

Political and Legal Reconstruction of the Urgency that Forces the Issuance of PERPPU in Indonesia Based on Fair Benefit Values

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Abstract

Legal sovereignty in Indonesia places the 1945 Constitution as the highest norm, which is the basis for other legislation. In the legal hierarchy, PERPPU is an executive product issued based on presidential prerogative in times of urgent and compelling circumstances. This research aims to examine the position of PERPPU, especially PERPPU No. 2 of 2022, in the context of a compelling emergency in accordance with Article 22 paragraph (1) of the 1945 Constitution. This study uses quantitative and juridical-normative methods to explore the application of PERPPU in legal practice, taking into account the complexity of social phenomena and normative values, including doururiah in Islamic law. A multidisciplinary approach is applied, involving theories from figures such as Amartya Sen, John Locke, and Montesquieu, as well as the principles of the Rule of Law. Primary and secondary data were analyzed through document studies, semi-structured interviews and field observations. The research results show that PERPPU No. 2 of 2022 concerning Job Creation, which was issued as a response to urgent global economic conditions, fulfills the requirements of compelling urgency as mandated by the 1945 Constitution. However, the publication process raises concerns about subjectivity and potential abuse of power. The DPR's approval of the PERPPU represents a constitutional step in the right direction, but broader involvement of stakeholders and transparency of the process are essential to ensure fairness and compliance with the principles of the rule of law. PERPPU, as an instrument issued in urgent circumstances, must be managed strictly and only used as a last resort. The involvement of the DPR in the approval process is an important democratic control, but it must be carried out efficiently to avoid a legal vacuum. Transparency in the process of determining and evaluating compelling emergencies is critical to maintaining the integrity of the legal system and public trust. This research suggests the need for reform in PERPPU issuance procedures to ensure that each publication is based on objective and urgent needs, by avoiding broad interpretations that could lead to abuse of power.

I. Introduction

Legal sovereignty is placed in the highest position and most of the ideas in these legal norms are expressed in written regulations. In structure (hierarchy) legal norms, Indonesia places the 1945 Constitution as the basic rules for other legal norms under it, this is the source and basis for the formation of legislation under it.(Soeprapto, 2006)

In the hierarchy of statutory regulations there are regulations originating from government/executive products, one of which is the PERPU. The PERPU was issued on the basis of the President's prerogative considering the country's situation was in a critical and compelling situation. President's prerogative namely the privilege that the President has to do something without asking for approval from other institutions, namely the making of government regulations in lieu of laws by the President.(MD, 1999) The PERPU was made based on a compelling emergency situation. This authority is a consequence of the DPR's limitations in making laws in terms of time. The DPR as a legislative institution does not have sufficient time to make laws in a short time, even though regulations at the level of these laws must be made as soon as possible considering the emergency conditions and the nature of forcing them to be made immediately (Efendi & Disantara, 2022).

Soehino said that the PERPPU was established to regulate a material that should be regulated by law, but due to urgent circumstances it could not be postponed until there was a session in the DPR to discuss the Draft Law (RUU) that regulated this material. To overcome the situation so that the safety of the country is guaranteed by the government, the government was forced to act quickly, namely enacting a Perpu which has the same powers and degrees as a law without the approval of the House of Representatives (Soeprapto, 2008).

Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that:

"in the event of a compelling emergency, the President has the right to enact government regulations in lieu of law."

Government regulation in lieu of law (PERPPU) is a regulation which in terms of its content should be stipulated in the form of a law, but due to urgent circumstances that force it to be stipulated in the form of a government regulation (Asshiddiqie, 2008) This formulation can actually be said to fall into the objective wording category as intended by Cora Hoexter. This means that the President's right does not negate the DPR's right to control the determination of the PERPPU made by the President. If the DPR expresses its approval, then the PERPPU is recognized and applies as law. If it is rejected by the DPR, then the PERPPU must then be revoked in accordance with the provisions of Article 22 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In other words, the determination of the state of emergency itself does not solely depend on the subjective will of the President, but also depends on the will of the representatives. people in the DPR. However, from the perspective of the President's power, the right to enact a PERPPU based on the President's own unilateral assessment regarding the existence of a compelling emergency can be said to be subjective. This means that when a PERPPU is stipulated by the President based on the provisions of Article 22 paragraph (1) of the

1945 Constitution, the determination of the existence of a compelling emergency as a prerequisite can be said to be based solely on the subjectivity of the President's own power. The assessment regarding matters of compelling urgency only becomes objective after the matter has been assessed and confirmed by the DPR based on the provisions of Article 22 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

The historical dynamics of legislative regulations in Indonesia show that the background to the President's determination of PERPPU is generally different. This is because the measure of compelling urgency always has multiple interpretations and is very dependent on the President's subjectivity in interpreting the phrase compelling urgency as a basis for enacting a PERPPU.(Mawuntu, 2011) Interpreting the term compelling urgency with various interpretations will provide opportunities for the President to act arbitrarily. This means that with the absolute authority that the President has in issuing PERPPU, coupled with the absence of clear boundaries regarding the definition of a compelling emergency, there is a high chance of creating an authoritarian government.(Simamora, 2010)

Some time ago, the Government just issued a Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation. The reason for the issuance of PERPPU No. 2/2022 is a consideration of the urgent need to anticipate global conditions, both economic and geopolitical.(KlikLegal.com, 2023) Based on the government's reasons, two constitutional law experts also responded to the regulation. Feri Amsari as Academician and Director of the Center for Constitutional Studies (PUSaKO) Faculty of Law, Andalas University also questioned the reasons for the urgency that was the basis for the issuance of PERPPU No. 2/2022. According to him, a PERPPU can only be issued by the president if it meets the requirements of a compelling emergency condition and even though it is the president's prerogative, a PERPPU cannot actually be subjective (Kurniawan, 2022).

In line with Feri, Bivitri, a Constitutional Law Expert from the University of Indonesia said that PERPPU No. 2/2022 is issued by the government if there really is a compelling emergency situation or crisis. According to Bivitri, the "critical situation" appears to have been imposed by the government. So far there has been no clear definition of 'compelling circumstances'. As a result, there is no single interpretation of the causes of the birth of PERPPU. In this context, MK decision no. 138/PUU-VII/2009 which establishes three categories of compelling urgency. First, there is a situation, namely the urgent need to resolve legal problems quickly based on the law. Second, the required laws do not yet exist, resulting in a legal vacuum, or there are laws but they are inadequate. Third, this legal vacuum cannot be overcome by making laws through ordinary procedures because it will take quite a long time, while the urgent situation requires certainty to be resolved.

Furthermore, referring to the provisions of Article 87 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations regarding the validity of a statutory regulation, it determines that "legislative regulations come into force and have binding legal force on the date of promulgation, unless otherwise specified in the relevant laws and regulations". This is in accordance with the custom that applies in the world of legal science everywhere, namely that unless otherwise specified, all legal norms come into

binding effect from the date they are stipulated or promulgated. (Asshiddiqie, 2010) This also applies to PERPPU, that since it is stipulated or promulgated, PERPPU has binding legal force. Because PERPPU already has binding legal force after being stipulated or promulgated and to avoid abuse of PERPPU's authority, there should be an objective interpretation regarding compelling urgency, so that the authority to issue PERPPU by the President is not misused, because PERPPU is at the same level as the Law.

In the context of a rule of law, transparency and accountability in every decision taken by the authorities are fundamental principles. This is no exception for the President when using his prerogative in issuing PERPPU. Any power, when uncontrolled and lacking clear boundaries, has the potential to be abused. Therefore, even though the President has the privilege to issue a PERPPU in an emergency, this decision must always take into account the common interest and still refer to the principles of the rule of law.

The important thing to understand is that a compelling crisis should be a condition that is truly extraordinary and cannot be overcome by ordinary means. The issuance of a PERPPU that is based on a broad interpretation or forcing an understanding of "compelling urgency" could lead to a degradation of the quality of democracy and the integrity of the rule of law itself. In addition, transparency in the process of determining compelling emergencies is also important. The public must receive sufficient information about the concrete reasons behind the issuance of PERPPU. Without adequate transparency, it will be difficult for the public to trust government decisions and this could trigger wider distrust of state institutions.

From another perspective, the PERPPU issued must also receive a proportional response from the DPR. Although the DPR has the right to approve or reject PERPPU, the evaluation process should be carried out quickly and efficiently. If not, a legal vacuum could occur which could have a negative impact on social stability and order. Meanwhile, referring to PERPPU No. 2 of 2022 concerning Job Creation, this decision raises many questions. What is the real urgency of the PERPPU? Is the decision really based on compelling circumstances or are there other underlying considerations? Apart from that, it is also necessary to review the impact of the PERPPU on people's lives. Do the policies taken through PERPPU really provide benefits to the wider community or only benefit a handful of parties?

Indonesian Law School (STHI) lecturer Jentera Muhammad Nur Sholikhin assessed that the formation of the Job Creation Perppu was carried out unilaterally by the president, there was no involvement of the community or stakeholders as a form of implementation of participation. In fact, the steps taken by the president by issuing the Job Creation Perpu repeat the practice of drafting the previous Job Creation Law which had minimal participation. According to him, the government's serious efforts to formally improve the formation of the Job Creation Law were not visible in the process of forming the Perppu. In fact, it shows arbitrariness in the legislative process. People's positions and aspirations are increasingly being ignored and show poor legislative governance in the Joko Widodo government era.

Allan Fatchan Gani Wardhana, provides his views regarding Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation or Job Creation Perppu.

According to him, the government is obliged to study the considerations of the Constitutional Court (MK) decision, both in terms of improving the legislative process and related to the Job Creation Law which has been ordered by the MK. He believes that the issuance of the Job Creation Perppu proves that the government, especially the President, does not have good intentions to comply with Constitutional Court Decision Number 91/PUU-XVIII/2020. In the Constitutional Court's decision, one of the rulings is: "Order the legislators to make improvements within a period of no more than 2 (two) years from the pronouncement of this decision and if within this time period no improvements are made then Law Number 11 of 2020 concerning Job Creation becomes permanently unconstitutional."

This means that the priority is to improve the Job Creation Perppu, especially since the Constitutional Court has given a period of 2 years from the decision. There is enough time if the government wants to improve it. The procedure for issuing a Perppu is based on Article 22 of the 1945 Constitution of the Republic of Indonesia, namely that in the event of a compelling emergency, the President has the right to enact government regulations in lieu of law (Disantara, 2020a). Then government regulations must be approved by the DPR in a trial. If approval is not obtained, the government regulation must be revoked. This means that a Perppu can only be issued if the country is in a critical situation. (Dosen UII Berikan Besar Mengenai Perppu Buat Kerja, 2023)

In Islam we know a Qaidah irtikabu akhofiddararain obliged in Indonesian which means "choosing the lesser of two dangers is obligatory," a principle of Islamic law known as "al-akhaffu dararain" (الأخف الضررين). When linked to the phenomenon of PERPPU No. 2 of 2022 which was later passed into law by the DPR and became Law no. 6 of 2023 has indeed put the government in a dilemma situation. On the one hand, discussing the Job Creation Law via normal channels is felt to take a very long time. Meanwhile, the situation at that time required the government to take immediate action because the world had reached the end of the Covid 19 pandemic for almost 3 years, it was gradually fading, the economy was worried about recession and so on. So PERPPU was a solution taken and chosen by the government at that time.

Therefore, it is important for all parties to understand that PERPPU is not an instrument that can be used arbitrarily. Its use must be based on careful consideration and is truly urgent. And most importantly, the issuance of PERPPU must always prioritize the interests of society and the rule of law. That is the basis for the importance of this research being raised and discussed, which the author then explains with the title Political and Legal Reconstruction of the urgency that forced the issuance of PERPPU in Indonesia based on the value of just benefits. With a discussion focus on What is the Position of PERPPU in the Indonesian Constitutional Law System? And does PERPPU No. 2 of 2022 fulfill the Urgency Elements referred to in Article 22 paragraph (1) of the 1945 Constitution? By using Economic Analysis of Law Theory and Maqasid Syariah Theory as an Analysis Knife.

2. Research Method

This research uses quantitative methods and a juridical-normative nature to explore the

application of law in practice with a focus on the complexity of social phenomena and normative values in society, including the principle of *doruriah* in Islamic law. A multidisciplinary approach is applied involving theories from figures such as Amartya Sen, John Locke, and Montesquieu, as well as the principles of the Rule of Law. The data used is divided into primary data, such as texts from Constitutional Court decisions, and secondary data such as academic journals and mass media articles. Data collection methods include document studies, semi-structured interviews with experts, and field observations. Data analysis was carried out through content and discourse analysis to understand how *douriah* is reconstructed in legal policy and practice in Indonesia, especially in situations that require rapid action, with the aim of providing constructive recommendations for the formation of fairer and more responsive policy and legal reform.

3. Results and Discussion

The Position of Government Regulations in Lieu of Laws in the Indonesian Legal System

The word emergency is something that is unusual or beyond human capabilities. Emergency Constitutional Law is a series of extraordinary and special state institutions and authorities, to be able to eliminate emergencies or threatening dangers in the shortest possible time, into ordinary life according to general and ordinary legislation and laws, so that the main elements that must be present is (Sihombing, 1996):

- a. There is a state danger that deserves to be faced with extraordinary efforts.
- b. Ordinary efforts, common and customary institutions are inadequate to be used to respond to and overcome existing dangers.
- c. Extraordinary powers are given by law to the State Government to immediately end the danger of the emergency, returning to normal life.
- d. This extraordinary authority and the Emergency Constitutional Law are only temporary, until the emergency is deemed no longer dangerous.

The term and meaning of emergency law from the perspective of different countries. The law that applies in a state of emergency (state of emergency or *etat de siege*) in the Anglo Saxon tradition is called 'martial law'. whereas in the tradition of France and other continental European countries it is referred to as '*etat de siege*' (Disantara et al., 2024). Emergency Constitutional Law in the Netherlands is called "*staatsnoodrecht*". (Saputra, 2020) However, in the Dutch tradition the term "*staatsnoodrecht*" and the term "*noodstaatrecht*" have different concepts. These two terms are based on the division of subjective emergency law or known as "*staatsnoodrecht*" and objective emergency law or known as "*noodstaatrecht*". Subjective emergency law or *staatsnoodrecht* is the state's right to act in situations of danger or emergency by deviating from statutory provisions, and can even deviate from the constitution.(Asshiddiqie, 2008) Meanwhile, the concept of objective emergency law or known as *noodstaatrecht* is the opposite of subjective emergency law. *Noodstaatrecht* is a law that applies when the country is in a state of emergency.

In the constitution of the Republic of Indonesia, the 1945 Constitution of the Republic of

Indonesia, the two concepts regarding subjective and objective emergency law above are reflected in article 12 and article 22 of the 1945 Constitution of the Republic of Indonesia. In article 12 of the 1945 Constitution of the Republic of Indonesia, the president states that a state of danger where the conditions and consequences are stipulated in law. In the provisions of this article we can analyze that article 12 of the 1945 Constitution of the Republic of Indonesia is included in objective emergency law or noodstaatrecht because the law already exists which applies in situations of danger or emergency (Fahamsyah & Disantara, 2022). This is different from the provisions of article 22 of the Constitution of the Republic of Indonesia that in the event of a compelling emergency, the president has the right to enact government regulations in lieu of law (Disantara, 2020b). If you look further into this article, the granting of the right to the president to form a PERPPU is included in the staatsnoodrecht concept where the state's rights deviate from the provisions of the law, so the concept of the two articles which provide space when an emergency occurs cannot be equated.

In the theory of the hierarchy of legislative regulations, Adorlf Merk stated that a legal norm always has two faces (das Doppelte Rechtsantlitz). That a legal norm upwards is sourced and based on the norm above it, as well as downwards, legal norms also become the source and basis for the norms below it. (Soeprapto, 2006) The implementation of the constitution as a basic norm requires more concrete and detailed rules through subordinate regulations, in this case namely the Law and its subordinate regulations as implementers of the Law.

However, in the implementation of state administration, the process of creating a legal order cannot be carried out in accordance with normal conditions. So the Indonesian Constitution after amendments has accommodated in article 22 of the 1945 NRI Constitution that in the event of a compelling emergency, the President has the right to enact government regulations in lieu of law. Van Wijk Konijnkenbelt in his book *Hoofdstukken van Administratief Recht* explains that the constitution has given attribution authority to the president as the holder of regulatory powers. This attribution of authority (attributie van wetgevingsbevoegdheid) is the granting of authority to form statutory regulations given by the Grondwet (Basic Law) or wet (Law) to a state or government institution. In this case, giving attribution authority to the president to form Government Regulations in Lieu of Law (hereinafter referred to as PERPPU) reflects that the law must be responsive. As according to Philip Nonet and Philip Selznick, responsive law has several characteristics (Arinanto, 2004):

- a. The dynamics of Legal development increases the authority of purpose in legal reasoning.
- b. Purposes make legal obligations more problematic, thereby relaxing laws claims to obedience and opening the possibility of a less rigid and more civil conception of public order.
- c. As law gains openness and flexibility, legal advocacy takes on a political dimension. Generating forces that help correct and change legal institutions but threaten to undermine institutional integrity.

- d. Finally, we turn to the most difficult problem of responsive law: In an environment of pressure, the continuing authority of legal purposes and the integrity of the legal order depends on the design of a more competent legal institution.

If we look at article 139 of the 1949 RIS Constitution and article 96 of the 1950 Constitution, the term used at that time was an urgent situation. Jimly Asshiddiqie's interpretation in his analysis questions whether the issue of compelling urgency is always dangerous? Everything that is "dangerous" certainly always has the characteristic of giving rise to "compelling urgency." But on the other hand, anything that forces you is not always said to be dangerous. This means that a condition of compelling urgency has a broader meaning than a situation of danger. Furthermore, Jimly Asshiddiqie also provides limitations regarding the urgency of coercion with two aspects, namely the elements of 'reasonable necessity' and 'limited time' but does not emphasize the dangerous nature of a threat. From this statement it can be said that the limitation of the urgency of coercion is found in the background of the reasons and rationalization of the need so that the president uses his prerogative to issue a PERPPU. Apart from that, limited time conditions can be a basis for the president to form a PERPPU.

Another view by Bagir Manan states that a situation can be said to be a compelling emergency if it fulfills 2 (two) general characteristics, namely the presence of a crisis and the presence of urgency. A crisis situation occurs when there is a disturbance that causes urgency and is sudden (a grave and sudden disturbance). And the second characteristic, namely urgency, occurs when there are various circumstances that have not been taken into account beforehand and require immediate action without waiting for prior deliberation. Or there are real signs of the beginning and according to reasonable logic, if it is not regulated immediately it will cause disruption both to society and to the running of the government.(Firdaus & Erliyana, 2020)

The reason for issuing the PERPPU is because there is a situation of urgent urgency which can be said to be an unusual condition. So that after the emergency situation is over, there is a mechanism for returning to normal conditions. This mechanism is clearly accommodated in article 22 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia. In this provision, there is a check and balances mechanism by the legislative power to re-centralize it by approving or rejecting the existence of PERPPU in the next session. If the PERPPU is accepted in the DPR session, it will then be ratified into law. However, it needs to be emphasized that in the process of ratifying the PERPPU into law, the DPR should also pay attention to the material content that must be contained in a law. So that in the discussion process it is not just about giving approval. But it also accommodates mechanisms in the formation of laws such as the aspirations of the community and the protection of citizens' rights and human rights.(Ilmiyah et al., 2021)

In May 2020 the author attended a public lecture by Prof Jimly entitled 'Development of Emergency Constitutional Law in Indonesia' online on the YouTube channel. Professor of Constitutional Law, Faculty of Law, University of Indonesia (FHUI) Prof Jimly Asshiddiqie believes that there are actually two types of regulations. The Government Substitutes Laws (Perppu) in the 1945 Constitution. So far, the general public, including legal scholars, think that there is only one type of Perppu issued by the President in a

compelling emergency.

Many people misunderstand the nature of Perppu and fail to understand the differences between the two types of Perppu in the constitution. "This needs to be known because currently Indonesia is (de facto, ed) in a state of emergency due to the Covid-19 pandemic outbreak," said Prof. Jimmy. The two types of Perppu referred to by Prof. Jimmy. First, the Perppu is an ordinary law (the country is in normal circumstances) which is temporary due to a compelling emergency and has not yet received approval from the DPR based on Article 22 of the 1945 Constitution. Second, the Perppu is in a condition where the country is in a state of emergency or a state of danger based on Article 12 jo Article 22 of the 1945 Constitution.

Article 12 of the 1945 Constitution

The President declared a state of danger. The conditions and consequences of a state of danger are determined by law.

Article 22 of the 1945 Constitution

- (1) In the event of a compelling emergency, the President has the right to stipulate government regulations in lieu of law.
- (2) This government regulation must be approved by the House of Representatives in the following session.
- (3) If approval is not obtained, the government regulation must be revoked.

The first type of Perppu, Prof. Jimly explained that the issuance of a Perppu is generally intended to take effect permanently as an ordinary law. This Perppu usually contains important policies to be immediately stated in the form of law. However, due to a compelling emergency, there was not enough time to submit, discuss and obtain joint approval with the DPR to become a law.

The second type of Perppu, said Jimly, is not intended to apply permanently, but only temporarily during emergencies/dangers. This second type of Perppu is implemented as a means of implementing the state in a state of emergency as well as a special legal policy to overcome and deal with problems that arise in a state of danger/emergency and to restore the situation back to normal. Jimly explained that the arrangements for the revocation or end of the state of emergency/danger are accompanied by arrangements for all legal consequences after the state of emergency is declared over in transitional or closing provisions. As a temporary legal product in an emergency, government action can suspend or override various provisions of other laws. In fact, it ignores human rights articles (HAM) and others guaranteed by the 1945 Constitution.

In the context of Indonesian law, Government Regulations in Lieu of Law (PERPPU) are actually only justified in truly critical and compelling situations, as regulated in the 1945 Constitution. This is based on the principle that PERPPU is a temporary instrument and may only be issued in very urgent conditions and cannot be handled with ordinary legislative mechanisms. Therefore, the use of PERPPU that does not meet these strict criteria is not feasible because it has the potential to ignore a more democratic and comprehensive legislative process, which involves more consideration and public participation. Thus, the issuance of a PERPPU by the President without truly urgent and compelling circumstances could be considered not only inappropriate, but

also potentially "haram" because it violates the basic principles established by the constitution and state law.

The position of PERPPU No. 2 of 2022, whether it fulfills the Urgency Elements referred to in Article 22 paragraph (1) of the 1945 Constitution

Constitutionally, PERPU as a law in the material sense or in the broad sense (wet materielezin) is a form of statutory regulation which is the full authority of the President as regulated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which determines " In the event of a compelling emergency, the President has the right to stipulate a Government Regulation in Lieu of Law." The same thing is regulated and re-established in Article 1 point (4) of Law no. 12 of 2011 as amended by Law no. 15 of 2019 and finally with Law no. 13 of 2022 concerning the Second Amendment to Law no. 12 of 2011 concerning the Formation of Legislative Regulations which determines that Government Regulations in Lieu of Laws are statutory regulations stipulated by the President in the event of a compelling emergency.(Einstein et al., 2020)

Article 22 of the 1945 Constitution of the Republic of Indonesia explains that PERPU is a presidential noodvederingsrecht. Which means, there is the President's right to regulate in a compelling emergency. This article provides an understanding that Government Regulations in Lieu of Laws (PERPU) have the same hierarchy, function and material content as laws, only in their formation they are different from laws. Besides that, PERPU is a type of statutory regulation that uses its own name to distinguish Government Regulations and is not a Substitute for Laws.

The author is of the opinion that Government Regulation in Lieu of Law (Perpu) Number 2 of 2022 concerning Job Creation has been issued by the Indonesian Government in conditions of urgency and full consideration, making it a legal and strategic constitutional step. The decision to issue this PERPPU was not taken carelessly, but rather as a direct response to the Constitutional Court (MK) decision no. 91/PUU-XVII/2020 which requires immediate revision to anticipate rapidly changing economic and geopolitical conditions.

In the current global context, as stated by the Coordinating Minister for Political, Legal and Security Affairs, Mahfud MD, there is high urgency triggered by the impact of the war in Ukraine, which carries the threat of inflation, stagflation and multi-sector crises. This situation demands immediate action to mitigate impacts that may be detrimental to the national economy and the welfare of the Indonesian people. PERPPU Job Creation, in this case, is considered an important step in ensuring economic continuity and social stability.

This PERPPU has a strong basis in the Indonesian constitution, where the 1945 Constitution article 22 paragraph (1) gives the President the authority to issue a PERPPU in urgent situations. This is a constitutional prerogative designed to allow the government to act quickly in situations that cannot be resolved through the standard legislative process which would require more time.

PERPPU no. 2 of 2022 was not only issued in response to urgent external conditions, but

also as a form of compliance with MK decision no. 91/PUU-XVII/2020. In this decision, the Constitutional Court considered several aspects of the Job Creation Law that required further correction and clarification. Therefore, this PERPPU is designed to correct the discrepancies identified by the Constitutional Court, strengthen the legal foundation for economic activities, and provide the legal certainty necessary to attract investment.

As stated by the Coordinating Minister for Economic Affairs, Airlangga Hartarto, PERPPU Job Creation also aims to increase legal certainty which will support business and investment activities. In the midst of increasing global uncertainty, legal certainty is vital to maintaining and increasing investment flows into the country. This is important not only for post-pandemic economic recovery but also for Indonesia's long-term economic growth.(RI, 2022)

By considering urgent conditions and the need to be responsive to changes in the global and domestic environment, PERPPU No. 2 of 2022 is an appropriate and necessary constitutional step. This policy shows the government's sensitivity to global and local economic dynamics, as well as its commitment to safeguarding Indonesia's national interests. The presence of this PERPPU illustrates the courage and wisdom in leadership which is able to adapt legal policies quickly and effectively, making this PERPPU an adequate and constitutional answer to current challenges and previous MK decisions.

Reflecting on the two theories that the author has touched on in the background of this research, the author attempts to provide an overview of how urgent a compelling emergency situation is so that PERPPU No. 2 of 2022 is a wise choice taken by the government. First, the Economic Analysis of Law (EAL) approach, which was popularized by Richard Posner, in the author's opinion offers a very important analytical framework for evaluating these legal decisions in the context of economics and justice (Kurniawan et al., 2023). Therefore, the author seeks to understand the economic rationality behind this policy, as well as examine its effectiveness in realizing social benefits and justice (Jayantara et al., 2023).

EAL theory considers law as a tool for maximizing social welfare through the efficient allocation of resources. Posner emphasized that law should encourage rational economic decisions, where economic actors (*homo economicus*) act to maximize benefits with minimal costs. This approach is in accordance with Jeremy Bentham's principle of utilitarianism which focuses on creating the greatest happiness for the greatest number of people. EAL sees the role of law not only as a regulator, but as an optimizer of social and economic interactions in society.

In facing the significant post-pandemic economic impact, the Indonesian government is faced with the urgent need to maintain economic stability and prevent a deeper recession. The issuance of the Job Creation PERPPU can be seen as a response aimed at accelerating the economic recovery process through simplifying regulations and increasing efficiency in the national economy. According to the author, EAL theory, this step can be interpreted as an effort to increase economic efficiency, where efficiency is defined as the use of existing resources to produce maximum benefits. The cost-benefit analysis of this PERPPU shows that the benefits obtained from simplifying the licensing

process and increasing investment are expected to be greater than the social and economic costs that may arise due to regulatory uncertainty.

Application of EAL in the context of PERPPU No. 2 of 2022 raises questions about how justice is integrated in decisions dominated by efficiency considerations. In this case, efficiency must be seen not only from an economic perspective but also from a social justice distribution perspective. Is this PERPPU able to create justice for all levels of society? Does it bring positive change without harming certain groups?

Second, Maqasid Sharia, or the objectives of Islamic law, which focuses on meeting basic human needs and general welfare. According to Yasser 'Auda, Maqasid Sharia aims to protect religion, soul, mind, lineage and property (Al-Dharuriyyat Al-Khamsa). In the case of PERPPU No. 2 of 2022, compelling urgency is the condition underlying the issuance of this regulation. From the perspective of Maqasid Syariah, emergency measures like this can be justified if the aim is to protect one of the five basics of humanity recognized in Maqasid, especially property (mal) and life (nafs). In this context, wealth is not only defined as material wealth but also includes economic opportunities and job stability which are important in preventing wider economic decline and social insecurity.

Yasser 'Auda emphasized the importance of the principle of *maslahah* (welfare) in the implementation of Islamic law, which is directly related to the concept of justice. The implementation of PERPPU Job Creation must be assessed in terms of the benefits it brings to society, whether this policy effectively addresses pressing economic problems without causing greater losses in the future. This includes an in-depth analysis of the long-term economic impact and how this PERPPU secures jobs and improves people's quality of life.

According to Maqasid Syariah, the law must protect the mind ('aql) and heredity (nasl), which in the modern context can be interpreted as protecting the continuity and future of future generations. This demands that the Job Creation PERPPU must be evaluated not only in the context of short-term crisis response, but also from the perspective of its impact on economic and social sustainability. The integration between Maqasid Sharia principles and modern law shows that law is not only a regulatory instrument but also a tool for achieving social justice. Yasser 'Auda suggests that the application of law, whether in an Islamic or secular context, should always pursue the goals of general welfare, reducing inequality, and protecting basic human rights.

4. Conclusion

In the Indonesian legal system, Government Regulations in Lieu of Law (PERPPU) should only be issued in very critical and compelling conditions, in accordance with the provisions regulated in the 1945 Constitution. Due to its temporary and special nature, the use of PERPPU must be very careful and limited. to maintain the integrity of a more inclusive and participatory legislative process. Issuance of PERPPU without fulfilling the requirements of compelling urgency and only as a quick solution to legislative issues can damage the basic principles of democracy and justice, and therefore, in

practice, PERPPU must be managed with strict principles and only as a last step in truly emergency situations urge.

PERPPU no. 2 of 2022 concerning Job Creation, which was issued in the context of a response to the Constitutional Court decision and unstable global economic conditions, including the impact of the war in Ukraine, shows the high urgency and need for rapid legislative action that justifies its publication. This constitutionally meets the requirements of 'compelling urgency' as mandated in Article 22 paragraph (1) of the 1945 Constitution, considering that this urgency involves substantial aspects of economic stability and public policy that cannot be suspended. Thus, the issuance of this PERPPU is a legal and constitutional step, which demonstrates that the government is acting proactively and responsively in dealing with urgent conditions, while also ensuring the continuity of stable and predictive national economic laws and policies.

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