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Reconstructing Presidential Emergency Legislative Powers: A Constitutional Analysis of Urgency Doctrine and Checks and Balances in Indonesia

Dian Furqani Tenrilawa[1]*, Achmad Ruslan[2], Aminuddin Ilmar[3], Marten Arie[4]

[1,2,3,4]Faculty of Law-Universitas Hasanuddin Makassar, Indonesia; tenrilawadianfurqani@gmail.com

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Abstract. This study analyzes the shifting authority in legislative formation under the amended 1945 Constitution of the Republic of Indonesia, which grants the power to initiate laws to the House of Representatives (DPR) with the President's approval. However, the President retains the authority to enact emergency government regulations equivalent to laws under specific urgent conditions, as specified in Article 22(1) of the Constitution. Historically, all presidents have exercised this constitutional decree authority, although based on differing interpretations of the term "compelling urgency" and influenced by the dynamics between the executive and legislative branches. This normative legal research, supported by empirical legal materials and statutory approaches, reveals that emergency legislative authority remains essential for resolving crises without the delay of standard legislative processes. The study emphasizes the importance of checks and balances among the President, DPR, and the Constitutional Court. Particularly, the Constitutional Court plays a critical role in reviewing the legitimacy of such presidential actions, as affirmed in Decision No. 138/PUU-VII/2009. Therefore, a clear separation of powers is vital in restructuring the application of emergency legislative authority within Indonesia's constitutional framework.

1. INTRODUCTION

Indonesia as a country based on law requires that the highest power in the state is law according to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia that " *Indonesia is a country based on law* ", which realizes the idea of a state in the design of *checks and balances* so that it is not limited to strengthening but opens up space for the realization of constitutional democracy.[1] Law can be seen in its form through explicitly formulated rules. In the rules or legal regulations are contained actions that must be implemented in the form of law enforcement. Laws are created to be implemented, so it is not surprising to say that law can no longer be called law if it is never implemented.[2]

The use of the principle of *checks and balances* plays a significant role in Indonesia as a democratic country to avoid potential disputes over authority as explained in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia with a phrase that regulates two main elements, namely " *disputes over the authority of state institutions* " and " *whose authority is granted by the 1945 Constitution of the Republic of Indonesia* ". Based on the practice of disputes over the constitutional authority of state institutions, Ni'matul Huda inventoried several causes, namely: (1) overlapping authority between one state institution and another; (2) the authority of a state institution whose authority is obtained from the constitution but is ignored by other state institutions, and; (3) the authority obtained from the constitution but exercised by other state institutions.[3]

The philosophical basis of a country that adheres to the concept of a Welfare State, the function and task of the state is not merely to maintain and implement the law as optimally as possible in order to realize an orderly and safe community life, but the most important thing is how with this legal basis the general welfare of all levels of society (citizens) can be achieved.[4] In terms of the authority to form laws and regulations, based on the amendment to the 1945 NRI Constitution, the power to form laws is no longer with the President with the approval of the DPR, but has shifted to the power of the DPR with the approval of the President [5]as regulated in Article 20 paragraph (1) of the 1945 NRI Constitution that " *The People's Representative Council (DPR) holds the power to form laws* ", then discussed with the President to reach a joint agreement [6]. But even though the power to form laws has been given to the DPR, in special conditions, the President still has the authority to form Regulations that are at the same level as Laws [7]using *the Constitutional Decree Authority* (CDA) or what is known as Perpu according to Article 22 paragraph (1) of the 1945 NRI Constitution which states that " *In the event of urgent matters that force, the President has the right to stipulate government regulations as a substitute for laws* " [8]. Susi Dwi Harijanti is of the opinion that the urgent conditions that force as a requirement for the determination of a Perpu are already clear before our eyes, we cannot base urgent matters on matters that are merely estimates or conjectures.[9]

So far, the provisions in Article 22 of the 1945 NRI Constitution 22 remain as the original text, which means that all Indonesian

[1] Isra, Saldi. *State institutions: concepts, history, authority, and constitutional dynamics*. Rajawali Pers, 2020.
[2] Sari, Sonia Sekar, et al. "Disregarding the Constitutional Court Decision Concerning the Prohibition of Concurrent Deputy Minister Positions: Disregard of the Constitutional Court Decision Concerning the Prohibition of Concurrent Deputy Minister Positions." *Constitutional Journal* 20.4 (2023): P. 608
[3] Kurnia Saleh, SH *Notes on Democratic Legal State*. Guepedia, 2020.
[4] Patittingi, Farida, et al. "Relationship between State and Religion in Regional Regulations with Sharia Nuances: Pancasila Perspective." *Pancasila: Jurnal Keindonesiaan* 1.1 (2021): Pg. 20
[5] Simamora, Anatia. "Reader Acceptance of the News of President Jokowi's Impeachment on the Online News Portal Tempo.co." (2024).
[6]Article 20 paragraph (2) of the 1945 Republic of Indonesia Constitution
[7] Article 7 of Law Number 12 of 2011
[8] Minutes of the Indonesian House of Representatives, Secretariat General of the Indonesian House of Representatives
[9] Harijanti, Susi Dwi. "Perppu as an Extraordinary Rules Meaning and Limitation." *Journal of Development Law Paradigm* 2.01 (2017): 77-91.

*Corresponding author.

presidents refer to the same legal norm in issuing Perpu, namely "compelling urgency". This can be seen from several historical traces since the implementation of Perpu in Indonesia, namely:

1. In the Soekarno regime in 4 periods, as many as 114 Perpu were established which can be classified: 8 in the field of defense and security; 94 in the field of economy; 19 in the field of law; 7 in the field of social and; 16 in the field of politics. This shows that the urgent matters that forced generally concerned the field of economy. In this regime, the position of the DPR was very weak because at that time the DPR functioned as an assistant to the President and was often intervened by the President in the implementation of the authority and function of the DPR.[10]
2. In the Soeharto regime, there were 8 Perpu, which were classified as regulating social, economic, and legal fields, which tended to be in the economic field. This shows that the pressing urgency generally concerned the economic field. In this regime, the president was given great authority in terms of legislation, although according to Decree Number 31/DPR-GR/IV/65-66 it states that the President and DPR-GR are equal and joint in forming laws.[11]
3. During the BJ. Habibie regime, 3 (three) Perpu were formed, one of which revoked the other Perpu and the other was rejected by the DPR, so that practically none of the Perpu formed by President Habibie were enacted into law. Although during this administration, a state of civil emergency was imposed in Aceh regarding the Free Aceh Movement (GAM) rebellion, none of the 3 Perpu formed were legal instruments to overcome the state of emergency in Aceh. The Perpu are classified as regulating the political and legal fields.
4. During the KH Abdurrahman Wahid regime which lasted for about 20 months, the number of Perpu formed was 3 Perpu and all of them regulated the economic sector. During this regime, there was political tension in the country which had an impact on the relationship between the President and the DPR [12]so that it can be said that at that time the government was running based on political pressure which caused an unhealthy relationship between the DPR and the President.
5. The Megawati regime formed 4 (four) Perpu. None of the four Perpu were related to the state of military emergency in Aceh. Since the end of President Soeharto's reign, a state of military emergency was imposed in Aceh which was triggered by the rebellion carried out by the Free Aceh Movement (GAM). After entering the reform era, President Habibie imposed a state of civil emergency. During President Megawati's era, the entire province of Nanggroe Aceh Darussalam was declared in a State of Danger with the level of Military Emergency. On May 18, 2004, the state of danger was changed again to the level of Civil Emergency.
6. During the Susilo Bambang Yudhoyono regime, which entered the reform era, there were a total of 19 Perpu, covering 6 Perpu in the political field, 5 Perpu in the economic field, 5 Perpu in the social field, and 3 Perpu in the legal field. There were only 2 Perpu that did not receive approval from the DPR, one of which was Perpu Number 4 of 2009 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission.[13]

The practice of Perpu has always been carried out by all Presidents in office by relying on personal subjectivity, what is different is the interpretation of each era on the phrase "urgent necessity" and the influence of the relationship pattern between the President and the DPR. [14]In terms of preventing changing reasoning on Article 22 of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court outlined the article in the judge's considerations in the Constitutional Court Decision Number 138 of 2009 that the provisions of Article 22 of the 1945 Constitution of the Republic of Indonesia contain:[15]

1. Granting authority to the President to make government regulations in lieu of laws.
2. This authority can only be used in urgent circumstances.
3. The government regulation in lieu of law must obtain approval from the DPR at the next session.

And the Constitutional Court Decision Number 138 of 2009 provides 3 parameters of the condition of "urgent necessity" as stated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia to be used as a basis for the President in issuing a Perpu, namely:

1. Due to the urgent need to resolve legal issues quickly based on the Law.
2. The required laws do not yet exist, resulting in a legal vacuum or the current laws being inadequate.
3. A legal vacuum condition that cannot be overcome by making a law through normal procedures which require a long time, whereas the urgent situation requires certainty to be resolved.

Because the issuance of a Perpu is often considered not to meet the requirements of "urgent necessity", its discussion by the DPR is also often postponed or not immediately carried out at the first session since the Perpu was enacted, the Constitutional Court through this decision also expanded the authority to be able to test the Perpu against the Constitution based on Article 7 paragraph (1) of Law Number 12 of 2011 as amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation related to the hierarchy of Indonesian Legislation which aligns Laws and Perpu while protecting human rights that are injured due to the implementation of these regulations.[16]

The authority to determine the Perpu by the President in Article 22 paragraph (1) of the UUD NRI cannot be separated from the provisions of Article 22 paragraph (2) and paragraph (3) and Article 20 (1) of the UUD NRI 1945. If there is an error in the interpretation of "urgent necessity" it should be anticipated by discussion by the DPR to immediately revoke the Perpu that has been in effect. However, in practice, this is not considered enough so that the Constitutional Court is bound to be able to discuss the Perpu before or after it is discussed by the DPR, even though the construction is not yet clear.

The need for criteria or parameters of the condition of "urgent necessity" has developed into the need for a reconstruction related to the existence of the Perpu so that it remains in line with the principle of *checks and balances*, considering that the constitutional concept related to the existence of the Perpu built by the President, the DPR and the Constitutional Court is not on the same track. The President has a concept based on personal subjectivity, the DPR discusses the Perpu past the first session period and the MK has a parameter of "urgent necessity" which also tests the Perpu even before it is discussed by the DPR.

In order to uphold truth and justice based on the Constitution, the decision of the Constitutional Court which contains all relevant legal considerations and opinions becomes a guideline for all parties involved in the implementation of the Constitution

[10] Yusmic, Daniel. "Perpu in Theory and Practice." (2021).
[11] Ibid, pp. 301-302
[12] Ibid, p. 321
[13] Constitution, Constitutional Court Procedural Law Drafting Team. "Constitutional Court Procedural Law." *Jakarta: Secretariat General and Clerk's Office of the Constitutional Court* (2010).
[14] ERHAM, ERHAM. "IMPLICATIONS OF THE SHIFT IN THE MEANING OF PEOPLE'S SOVEREIGNTY IN FILLING THE OFFICES OF PRESIDENT AND VICE PRESIDENT AFTER THE AMENDMENT TO THE 1945 NRI CONSTITUTION." (2022).
[15] Constitutional Court Decision Number 138 of 2009
[16] Consideration of Constitutional Court Decision Number 138 of 2009

as the highest law of the state.[17] seeing the Constitutional Court in its decision providing a measure for issuing a Perpu in the Constitutional Court Decision Number 138/PUU-VII/2009. Based on the Constitutional Court Decision, there are three parameter requirements for the existence of a "compelling urgency" for the President to stipulate a Perpu, namely:[18]

1. There is a situation, namely an urgent need to resolve legal problems quickly based on the law.
2. The required law does not yet exist, resulting in a legal vacuum or there is a law but it is inadequate.
3. This legal vacuum cannot be overcome by making a law through normal procedures because it will take a long time, whereas this urgent situation requires certainty to be resolved.

During President Jokowi's regime when issuing Perpu Number 2 of 2022 concerning Job Creation due to "potential threats and risks of global economic uncertainty due to Covid-19, the Perpu Cipta Kerja was issued to provide legal certainty, legal vacuum, which in the perception of domestic and foreign investors for the sake of Indonesia's economic stability". The problematic substance and procedure for determining it were followed by a delay in the discussion period by the DPR which was carried out during the second session. This is considered inconsistent with the provisions of Article 22 paragraph (2) of the 1945 NRI Constitution which states that " *Government Regulations must obtain the approval of the People's Representative Council in the following session* ". The explanation of Article 52 paragraph (1) of Law Number 12 of 2011 as amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation states that what is meant by "the following session" is the first session period of the DPR after the Perpu is stipulated.

The Job Creation Perpu Number 2 of 2022 was issued on December 30, 2022, so the first session period is the third session period of the DPR for the 2022-2023 session year which will take place from January 16 to February 16, 2023. If the discussion of the Perpu is postponed as if there is no urgency to discuss it, it proves that there is a difference in understanding the concept of "urgent matters that force" between the President and the DPR. What was previously understood was that if the Perpu was not tried at the first session of the DPR, it would automatically be revoked in accordance with the provisions of Article 22 paragraph (3) of the 1945 NRI Constitution.[19]

The existence of the Perpu basically pays attention to the determination of the Perpu based on the authority of the branches of power involved, namely by the President in terms of determination, the DPR in terms of discussion and currently also by the Constitutional Court in terms of testing. The DPR, which has legislative authority, should reject the Ciptaker Perpu Number 2 of 2022 in the discussion process and carry out the MK's order to improve several norms in the Ciptaker Law Number 11 of 2020 and maintain government *checks and balances*. Especially because the MK's decision stated that the Job Creation Law is still valid but has no binding force. In other words, there has been a misuse of the Perpu if on the basis of its determination there is no legal vacuum and there is no urgent urgency to be resolved. In addition, the arbitrary determination of the Perpu can have a negative impact on the Indonesian legislative system and the relationship between state institutions between the President, DPR and MK, for example the Cipta Kerja Perpu. Where in its determination, the President does not respect the decision of the MK as well as the DPR as the institution that forms the Law. If this is not corrected, it is very possible that the pattern of abuse of power through political compromise will repeat itself and become the modus operandi of power.

Each state institution from the 3 (three) branches of power has its own constitutional concept regarding the Perpu, giving legal uncertainty to the public and potential disputes over the authority of state institutions due to the absence of *checks and balances* in the implementation of authority in the existence of the Perpu. The logic that needs to be built is how the three state institutions, namely the President, the DPR and the Constitutional Court, can respond to the conditions of "urgent matters that force" according to Article 22 of the 1945 Constitution of the Republic of Indonesia with the same attitude and context but not outside the provisions of the constitution.

This phenomenon shows that there is a mismatch between the existence of Perpu and Indonesian laws and regulations and the principle of *checks and balances* which creates legal uncertainty for the community. Therefore, an ideal reconstruction is needed regarding the existence of Perpu by the President, DPR and MK in the existence of Perpu, so that the three branches of power can build the same constitutional concept of Perpu using the principle of *checks and balances* . The principle of *checks and balances* can form a mechanism of mutual control and balancing between those in power so that there is no overlapping function and no office holder exceeds the limits of power that have been set in a constitution.[20]

Based on this, the author feels it is important to study and analyze the "Existence of Government Regulations in Lieu of Laws (Perpu) According to the Principle of Checks and Balances", so that the use of authority by the President, DPR and MK in the existence of the Perpu can be based on objective compelling urgency without reducing the authority of other state institutions.

2. RESEARCH METHODS

The research uses a normative research type using empirical legal materials, the author uses a statutory approach *(staat approach)* in the 1945 Constitution of the Republic of Indonesia, Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation, Constitutional Court Decision Number 138 of 2009, which regulates the President's authority to stipulate Perpu, the authority of the DPR to discuss Perpu, the authority of the Constitutional Court to test Perpu, the hierarchy of legislation, the legal standing of Perpu and the process of forming legislation. In addition, the author uses a case approach *related* to several peerpu phenomena stipulated by several Presidents, for example Perpu JPSK, Perpu Covid-19, Perpu Ormas, Perpu Cipta Kerja.

Before conducting the analysis, the data will be classified according to the research objectives. Article 22 of the 1945 Constitution stipulates that the President has the right to stipulate government regulations in lieu of laws on the condition that compelling urgency is met.

The discussion of the Perpu by the DPR and the testing by the Constitutional Court as a form of a democratic state of law, is intended so that every time the President stipulates a Perpu, it must be supervised by the People through the DPR and can be tested constitutionally through the MK. A Perpu construction is needed that involves 3 branches of power, based on the principle

[17] Setiawan, H., Handayani, IGAKR, Hamzah, MG, & Tegnan, H. (2024). Digitalization of Legal Transformation on Judicial Review in the Constitutional Court. *Journal of Human Rights, Culture and Legal Systems*, *4* (2), 263-298. Pg 264

[18] Prayitno, Cipto. "Constitutional Analysis of the Limitation of Presidential Authority in Determining Government Regulations in Lieu of Laws." *Constitutional Journal* 17.3 (2020): 513.

[19] Humaira, Sajida Ali Safaat, and Muhammad Dahlan. "Emergency Status in Handling the Covid-19 Pandemic in the Perspective of Emergency Constitutional Law." *Collection of Student Journals of the Faculty of Law* (2021).

[20]The Consultative Assembly of the Republic of Indonesia, " *Checks and Balances* in the Indonesian State System" First Edition, MPR RI Research Agency: ISBN 987-602-51170-0-8, p. 28

of *checks and balances* to avoid the accumulation of power and arbitrariness towards the community. This construction will be formed based on the authority of the President, DPR and MK obtained from the Constitution by considering the principle of *checks and balances.*

3. RESEARCH RESULTS AND DISCUSSION

The history of the development of the ideal of a constitutional state began with the concept of Plato's thought (427-347 BC) which was then continued by Aristotle (384-322 BC). Plato in his book entitled *Politea* gave a response to the worrying condition of the state because at that time it was led by people based on arbitrariness. Plato's idea was further developed by Aristotle. In his view, a good state is a state that is governed by a constitution and has legal sovereignty. This view is contained in his work entitled *Politica.* He also stated that there are three elements of a constitutional government, namely: *first* , government is implemented for the public interest, *second* , government is implemented according to laws based on general provisions, not laws made arbitrarily that ignore conventions and constitutions, *third* , constitutional government, meaning government that is implemented according to the will of the people, not in the form of coercion-pressure as implemented by a *despotic government* .[21]

Perpu as one type of legislation in the legal norm system of the Republic of Indonesia. Perpu is conceptualized as a regulation that from its side should be stipulated in the form of a law, but due to urgent conditions, a government regulation is forced to be implemented to immediately resolve a fairly urgent government problem. [22]According to Jimly Asshiddqie, the term Perpu is a government regulation in lieu of a law which is in the form of a government regulation as stated in Article 5 paragraph (2) of the 1945 NRI Constitution that " *The President stipulates government regulations to implement laws properly* ".

Perpu as one of the sources of law whose position is at the same level as law in the hierarchy of statutory regulations, or law/ perpu is in third place in the hierarchy of legislation based on Law Number 12 of 2011 as amended. Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation. Provisions of Article 1 number 4 of Law No. 12 of 2011 concerning the Formation of Legislation.[23]

Perpu is a legal product that is valid and constitutional according to the provisions of Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Formally, Perpu is a government regulation, not a law. Article 22 of the 1945 Constitution of the Republic of Indonesia states:

1. In cases of urgent necessity, the President has the right to issue government regulations in lieu of laws.
2. The government regulation must receive approval from the House of Representatives in the following session.
3. If approval is not obtained, the government regulation must be revoked.

Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) states that the President can issue a government regulation if the state is in a state of urgent necessity. According to the official explanation of the 1945 Constitution, the phrase "urgent necessity" is a translation of " *noodverordeningsrecht* ". " *Nood* " means danger or emergency and " *ordenen* " means to regulate or arrange. The explanation of the 1945 Constitution emphasizes that a Perpu needs to be issued so that the safety of the state can be guaranteed by the government in a critical situation.[24]

The 1945 Constitution of the Republic of Indonesia regulates two types of provisions if the state is not in a normal state. Namely the condition of "state of emergency or state of danger" in Article 12 of the 1945 Constitution of the Republic of Indonesia and the condition of "urgent urgency in Article 22 of the 1945 Constitution of the Republic of Indonesia. According to Daniel Yusmic, there are two types of Perpu based on the 1945 Constitution, namely:

1. Perpu for and in conditions where the country is in a state of emergency or danger according to Article 12 of the 1945 Constitution of the Republic of Indonesia.
2. Perpu as an ordinary law of a temporary nature, due to urgent circumstances, has not received approval from the DPR based on Article 22 of the 1945 Constitution of the Republic of Indonesia.

Both types of Perpu have several significant differences and indeed should be distinguished. Although in terms of the procedure for forming both are almost the same, but in substance they are different, where the first type of Perpu is purely intended for a limited time which can be used as a means of implementing emergency law, a means of pouring out special legal policies, a means of restoring conditions to their original state according to the normal legal system and regulating the termination of an emergency. While the second type of Perpu is intended as a substitute for a law containing permanent policies as stated in laws in general, which will apply as ordinary laws after receiving approval from the DPR. This second type of Perpu contains policies that are important to be immediately stated in laws, but due to time constraints in submitting, discussing and obtaining joint approval from the DPR RI, a fast government policy is needed to resolve very urgent problems. [25]In this case, the author will focus on the Perpu in the regime of Article 22 of the 1945 Constitution of the Republic of Indonesia.

According to Bagir Manan, a Perpu stipulated by the President must meet the requirements of urgency, which include: (1) issued in urgent and compelling circumstances; does not regulate matters regulated in the Constitution; (2) does not regulate the existence and duties of state institutions and does not delay or eliminate the authority of state institutions; (3) may only regulate provisions of laws relating to the administration of government.[26] Harjono as a former Constitutional Justice of the Republic of Indonesia for the 2003-2013 period, argued that the existence of Perppu as an "emergency door" is needed if at any time the country faces a pressing emergency situation, which should not be opened continuously because there must be limitations. Because Perpu is an *imperative norm* whose use must follow the requirements stipulated in the 1945 Constitution of the Republic of Indonesia.[27]

The checks and balance mechanism between the President and the DPR, there are normative criteria that must be met in determining the Perpu as stated in Article 22 paragraph (2) of the 1945 Constitution of the Republic of Indonesia , which reads:

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[21] Hasrul, Moh. "Arrangement of Institutional Relations Between Provincial Government and Regency/City Government." *Perspective: Study of Legal and Development Issues* 22.1 (2017): Page 3

[22] Asshiddiqie, Jimly. "Emergency constitutional law." *(No Title)* (2007).

[23]Article 1 number 4 of Law Number 12 of 2011 concerning the Formation of Legislation

[24] Simamora, Janpatar. "Multiple Interpretations of the Meaning of "Ihwal Kusuma Perppu" in the Issuance of Perppu." *Pulpit Hukum-Faculty of Law, Gadjah Mada University* 22.1 (2010): 58-70.

[25]Notes Daniel Yusmic, Op.Cit. p. xxii.

[26] Rohim, Nur. "Controversy over the Formation of Perppu Number 1 of 2013 Concerning the Constitutional Court in the Realm of Compelling Urgency." *Jurnal Cita Hukum* 2.1 (2014).

[27] ANSORI, LUTFIL. "TESTING OF GOVERNMENT REGULATIONS IN LIEU OF LAWS TO REALIZE CHECKS AND BALANCES MECHANISM IN THE INDONESIAN STATE CONSTITUTIONAL SYSTEM." (2022).

paragraph (2) " *The government regulation must obtain the approval of the People's Representative Council in the following session* "; paragraph (3) "if it does not receive approval, then the government regulation must be adopted"; Article 52 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation states that *"the Perpu must be submitted to the DPR in the following session".* What is meant by "the following session" is the first term of the DPR after the Perpu is determined. Paragraph (3) " *The DPR only gives approval or does not give approval to government regulations in lieu of laws"* . Paragraph (4) *"in the event that the government regulation in lieu of laws receives the approval of the DPR in a plenary session, the government regulation in lieu of laws"* Article 71 letter b of Law Number 2 of 2018 concerning the Second Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council, states that *"the DPR has the authority to give approval or not to give approval to government regulations in lieu of laws submitted by the President to become laws."*

The matter of compelling urgency is a primary requirement for granting the President the authority to be able to stipulate a Perpu based on Article 22 of the 1945 Constitution. According to Bagir Manan, compelling urgency must show two general characteristics, namely the existence of a crisis of urgency, namely the existence of a disturbance that causes sudden urgency and urgency, namely a previously uncalculated situation that includes immediate action without prior deliberation.[28]

According to Susi Dwi Haijanti, compelling urgency is something that is already real before our eyes, it cannot be based on things that are merely estimates or assumptions. In line with this, Moh Kursnadi and Harmaily stated that "compelling urgency" is a situation that is both urgent and compelling. In the sense that both conditions are cumulative, it cannot be interpreted when the condition is only urgent but not compelling or only compelling or not urgent.[29]

The urgent requirements as a condition for issuing a Perpu as formulated by the Constitutional Court through Decision Number 138/PUU-VII/2009 are:

1. There is a situation, namely an urgent need to resolve legal problems quickly based on the law.
2. The required law does not yet exist, resulting in a legal vacuum, or there is a law but it is inadequate.
3. This legal vacuum cannot be overcome by making a law through normal procedures because it will take a long time, whereas this urgent situation requires certainty to be resolved.

Daniel Yusmic is of the opinion that the three requirements of the Perpu given by the Constitutional Court in the judicial review decision Number 138/PUU-VII/2009 are not binding because they are not contained in the ruling, but rather in the decision considerations. This is different from Suhartoyo's opinion which emphasizes that the decision considerations are part of the Constitutional Court's decision and are binding. Daniel Yusmic in his dissertation [30]argues that the formulation of compelling urgency by the Constitutional Court's decision actually gives greater authority to the President, when the 3 parameters should contain restrictions on the authority of the President's Perppu. [31]A similar opinion was expressed by Zainal Arifin Mochtar that the parameters of the Perppu determined by the Constitutional Court should be further supplemented in accordance with the initial minutes of the Constitution written by Soepomo, Subarjo and Maramis.[32]

The principle of checks and balances on government regulations in lieu of laws (perpu) according to Meuwissen is that a law is categorized as good if it meets three validity requirements, namely: a). Social or factual validity; b). Legal validity; c). Moral validity. Social and factual validity is interpreted as being able to be implemented by the community, legal validity is made in accordance with legal procedures and does not conflict with other legal norms, especially higher norms and moral validity is intended so that the legal norms made do not conflict with moral values, for example, the basic rights of the community.

According to A. Hamid S Attamimi, in the formation of legislation in Indonesia, it is mandatory to pay attention to two legal principles, namely the legal principle that provides guidelines and guidance for the formation of the contents of the regulation (*Material*) and the legal principle that provides guidelines and guidance for the pouring of regulations into their composition for the method of formation and for the procedure for formation (*Formiil*).[33]

In Article 5 of Law Number 12 of 2011 concerning the Formation of Legislation as amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation, it is stated that the principles of the formation of good Legislation include: a. clarity of purpose; b. appropriate institution or official forming it; c. suitability between type, hierarchy and content material; d. can be implemented; e. usefulness and effectiveness; clarity of formulation; and g. openness.

Therefore, in the process of forming laws and regulations, there are several things that need to be considered, starting from the institution that must have the authority, the procedure for forming and the substance of the regulation itself. Based on Article 1 paragraph (5) and paragraph (6) of Law No. 30 of 2014 concerning Government Administration, the difference between authority and authority is based on the difference between the two, namely: "Authority is the right held by a government agency and/or official or other state administrator to make decisions and/or actions in the administration of government. Meanwhile, what is meant by government authority, hereinafter referred to as authority, is the power of a government agency and/or official or other state administrator to act in the realm of public law".

The granting of authority or power is given through three events, namely attribution, delegation or mandate. The definition of attribution, delegation and mandate has also been explicitly regulated in the provisions of Article 1 number 22, number 23 and number 24 of Law No. 30 of 2014 which stipulates that: "Attribution is the granting of Authority to Government Agencies and/or Officials by the 1945 Constitution or Law. Delegation is the delegation of Authority from a higher Government Agency and/or Official to a lower Government Agency and/or Official with responsibility and accountability fully transferred to the recipient of the delegation. Meanwhile, what is meant by Mandate is the delegation of Authority from a higher Government Agency and/or Official to a lower Government Agency and/or Official with responsibility and accountability remaining with the mandate giver."

The 1945 Constitution of the Republic of Indonesia grants the DPR the power to form laws based on Article 20 paragraph (1) of the 1945 Constitution. The authority given attributively shows that constitutionally the DPR holds a legislative function. In the *trias politica theory*, the legislative function is in the legislative area, while according to Saldi Isra, the legislative function is a function in making or forming laws.[34]

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[28] Manan, Bagir, and the Presidential Institute. "Gama Media Publisher." (1999).
[29] Daniel Yusmic, Op.Cit.
[30] Saifulloh, Putra Perdana Ahmad, Amancik Amancik, and Sonia Ivana Barus. "Restructuring the Revocation of Government Regulations in Lieu of Laws in the Indonesian Constitutional System." *Sasana Law Journal* 10.1 (2024): 84-100.
[31] Danile Yusmic, *ibid,* p, 382.

[33] Ibid, p. xvii.
[34] Saldi Isra, "Shifting Legislative Functions", (Jakarta: Raja Grafindo), 2010, p. 43.

The authority to form laws and regulations in Indonesia can be divided into the power to form laws and the power to form legislation. The power to form laws by the President is based on Article 5 paragraph (1) that " *The President has the right to submit a bill* ", then Article 20 paragraph (2) that " *every draft bill will be discussed by the DPR and the President to obtain joint approval* "; the power to form government regulations Article 22 paragraph (1) that " *in urgent circumstances, the President has the right to stipulate a Perpu* " and Article 5 that " *The President has the right to stipulate a PP to implement the Law* ". Article 1 paragraph (2) of the 1945 NRI Constitution states that " *Sovereignty lies in the hands of the people and is implemented according to the Constitution* ". In a democracy, the sovereign people are the ones who have the authority to regulate themselves according to the principle of autonomy through direct individuals or through intermediaries of people's representatives in the DPR which is emphasized in Article 20 paragraph (1) of the 1945 NRI Constitution.[35]

In the existence of laws, things that must be considered are not only in the process of formation to enactment, but also the testing process. The authority to test laws on the constitution can be said to be the main authority of the Constitutional Court, as the reason for the establishment of the Constitutional Court in Indonesia. [36]Based on the principle of constitutional supremacy, parliament is part of the institution that must be supervised by the constitution. One example is that the Constitutional Court can control legal products that are determined based on *the rule of majority* in parliament [37], through a *judicial review*. In addition, based on Article 24 C paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court is obliged to provide a decision on the opinion of the DPR regarding alleged violations by the President or Vice President according to the 1945 Constitution of the Republic of Indonesia.

The existence of laws and Perpu involves the relationship between 3 (three) state institutions that have been clearly stipulated in the constitution, namely in Article 22 paragraph (1) of the 1945 NRI Constitution as the authority of the President which states that " *in the event of urgent circumstances, the President has the right to stipulate government regulations in lieu of laws* "; Article 22 paragraph (2) of the 1945 NRI Constitution as the authority of the DPR that " *the government regulation must receive approval from the People's Representative Council in the following session* " and " *if it does not receive approval, the government regulation must be revoked* ". The Constitutional Court based on Article 24C paragraph (1) *has the authority to test the Law on the Constitution*, the Constitutional Court Decision applies forward (*Prospective*), not retroactive. *The* consequence of a prospective decision is that all events, actions or decisions that have occurred before the provisions of the article/paragraph/law are revoked, are always considered valid and do not conflict with the decision that has been issued (*rechtmatig*) , [38]from this, the Constitutional Court then stipulated the Constitutional Court Decision Number 138/PUU-VII/2009 which not only stipulates the prerequisites for the determination of a Perpu by the President, but also adds authority to the Constitutional Court to be able to test a Perpu on the Constitution, which is based on the hierarchy of laws in Indonesia [39]which equates Laws and Perpu with the same content. With the consideration that:

1. The legal norms in the Perpu before the DPR gives its opinion to reject or approve it are valid like laws.
2. "Because the legal norm of the Perpu has the same binding force as a law, the Court can test whether it is materially contradictory to the 1945 Constitution."
3. The Court's authority to review a Perpu covers both before the Perpu is discussed by the DPR and after it is approved by the DPR to become law.

Differences in interpretation can occur due to the lack of clarity in the regulation of relations between state institutions, or due to differences in understanding of existing regulations. Ideally, state institutions can establish a relationship that is full of cooperation, harmony, but does not abandon the principle of mutual supervision and balance. The application of the separation of powers must be carried out by applying the principle of *checks and balances*, to prevent abuse of power. This is because parallel powers between branches of power have the potential for a deadlock in power relations that will disrupt the wheels of state administration.

The Constitutional Court as one of the judicial institutions besides the Supreme Court has one of the tasks to test laws against the constitution. However, in practice, the Constitutional Court adds its own authority to test Perpu which is basically still in the domain of the DPR. [40]The expansion of the Constitutional Court's authority in testing Perpu is based on the content of the Perpu material being the same as the content of the law. As a product of the President that has not received approval from the DPR, the Perpu can be categorized as a law in the material sense (*Wet in materiele in zin*).[41]

In the formal review of Law Number 19 of 2004, the Constitutional Court is of the opinion that the Perpu issued by the President, based on Article 22 of the Constitution, is the subjective authority of the President, different from the condition of a state of danger in Article 12 of the 1945 Constitution and in Law (Prp) Number 23 of 1956 which must be based on objective conditions. The subjective rights of the President in Article 22 will become objective after being approved by the DPR to be stipulated as a law. However, more than that, the Constitutional Court is of the opinion that the condition of "urgent circumstances that force" as a consideration for issuing a Perpu is expected to be based more on the objective conditions of the nation and state.[42]

From several Constitutional Court decisions on applications for judicial review of Perpu, Constitutional Court Decision Number 138/PUU-VII/2009, the Constitutional Court added the authority to examine, try and decide on the *a quo application*, even though the 1945 Constitution does not explicitly grant authority to the Constitutional Court, with the following considerations [43]:

1. Perpu has the same position as law.
2. Types and hierarchy of Perpu and equivalent laws based on Article 7 paragraph (1) of Law Number 10 of 2004.
3. The existence of Article 22 of the 1945 Constitution must be placed in the 1945 Constitution system after comprehensive amendments I, II, III and IV.

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[35] Koynja, Johannes Johny. "The Form of the Constitutional Court's Decision that is Final and Binding (A Philosophical Study)." *Discretionary Journal* 3.2 (2024): 151-165.

[36] Ibid*,* p. 316

[38] Librayanto, Romi, et al. "Arrangement of the Authority of the Constitutional Court in Strengthening the Independence of the Judicial Power." *Amanna Gappa* 27.1 (2019): Page 44

[40] Amini, Siti Aisyah. *IMPLICATIONS OF THE CONSTITUTIONAL COURT DECISION NUMBER 91/PUU-XVIII/2020 ON THE JOB CREATION LAW REVIEWED FROM LAW NUMBER 12 OF 2011 IN CONJUNCTION WITH LAW NUMBER 15 OF 2019.* Diss. Sultan Agung Islamic University Semarang, 2022.

[41] Ibid.

[42] Consideration of the “consideration” of the Constitutional Court’s decision in “Summary of Constitutional Court Decisions 2003-2008, 1st Edition, Jakarta: Secretariat General of the Constitutional Court, 2008, p. 442.

[43] Constitutional Court Decision Number 1138/PUU-VII/2009

4. The Constitutional Court formulated three conditions for "urgent circumstances that force" as the basis for determining a Perpu, namely: 1) the existence of a situation, namely an urgent need to resolve a legal problem appropriately based on the law; 2) the required law does not yet exist so that there is a legal vacuum or there is a law but it is inadequate; 3) the legal vacuum cannot be overcome by making a law through normal procedures because it will take a long time while the urgent situation requires certainty to be resolved.
5. The definition of a compelling emergency situation in Article 22 b of the 1945 Constitution is different from the dangerous conditions regulated in Article 12 of the 1945 Constitution.
6. The determination of a Perpu that has the same content as a law is the authority of the President without involving the DPR. However, because a Perpu creates a) new legal status, b) new legal relationships, c) new legal consequences and its binding force is the same as a law, the Constitutional Court can test whether the Perpu is materially contradictory to the 1945 Constitution before rejection or approval by the DPR.

Based on several discussion processes until the issuance of the Constitutional Court's decision regarding the parameters of the Perpu, the author is of the opinion that the authority of the Perpu is maintained, so that the emergency government situation can be resolved immediately without waiting for the process of forming legislation by the DPR which takes a long time. However, several concerns about the misuse of the Perpu that have been conveyed by several experts and specialists, seem to be answered in the Constitutional Court's decision which seems to be worrying about *constitutional dictatorship*, by providing 3 parameters of compelling urgency and giving new authority to the Constitutional Court to be able to test the Perpu, due to the lack of supervision or *legislative review* in the DPR.

The principle of checks and balances, in the existence of Perpu involving the authority of the President, the DPR and the Constitutional Court. In Montstesquieu's view, the three branches of power must be separated and structurally differentiated in organs that do not interfere with each other's affairs, especially in the reconstruction of Perpu. Daniel Yusmic argues that it is necessary to carry out legal reconstruction of Perpu when almost all Presidents who have served in Indonesia have used their authority and stipulated Perpu because it is indeed a tempting authority. [44]Article 22 of the 1945 Constitution which regulates the President has the right to stipulate Government Regulations as a substitute for Laws if there is a compelling emergency; the Government Regulation must be approved by the House of Representatives (DPR) in the following session; and if it does not receive approval, the Government Regulation must be revoked. A legal reconstruction is needed that is in accordance with the constitutional order and is relevant to the current conditions of Indonesia, especially in relation to the additional authority of the Constitutional Court in testing Perpu based on Constitutional Court Decision Number 138 of 2009. Ultimately, the law that culminates in the constitution as the highest basic law that will function as a tool to limit the power of a political institution. Therefore, Montesqiueu emphasized that all legal products must be one of the state instruments that pay attention to the principle of *checks and balances* that can be tested by paying attention to the aspects of validity, justice and legal certainty.

4. CONCLUSION

The existence of Perpu remains important to be maintained so that the government's emergency can be resolved without waiting for the process of forming legislation which takes a long time. Anticipation needs to be done so that *constitutional dictatorship does not occur* by providing 3 parameters of compelling urgency and giving new authority to the Constitutional Court to be able to test Perpu, due to the lack of supervision in the DPR. The principle of *checks and balances,* in the existence of Perpu involving the authority of the President, the DPR and the Constitutional Court. The three branches of power must be separated into organs that do not interfere with each other's affairs, especially in the reconstruction of Perpu. Article 22 of the 1945 Constitution regulates the President's authority to stipulate Government Regulations as a substitute for Laws if there is a compelling emergency; the Government Regulation must be approved by the House of Representatives (DPR) in the following session; and if it does not receive approval, the Government Regulation must be revoked. A legal reconstruction is needed that is in accordance with the constitutional order and is relevant to the current conditions of Indonesia, especially in relation to the addition of the authority of the Constitutional Court in testing Perpu based on Constitutional Court Decision Number 138 of 2009 which stipulates three categories of compelling emergencies, namely the existence of a situation, namely an urgent need to resolve legal problems quickly based on the law. Second, the required law does not yet exist so that a legal vacuum occurs. These three legal vacuums cannot be overcome by making laws through regular procedures because it will take a long time while the urgent situation requires legal certainty.

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