



**Type: Research Article**

# Constitutional Law Perspective on the President's Authority to Issue a Government Regulation instead of a Law

**Sri Wahyuni** 

Faculty of Law, University of Muhammadiyah Kendari, Indonesia

E-mail: [sri303398@gmail.com](mailto:sri303398@gmail.com)

**Ahmad Rustan** 

Faculty of Law, University of Muhammadiyah Kendari, Indonesia

E-mail: [ahmad.rustan@umkendari.ac.id](mailto:ahmad.rustan@umkendari.ac.id)

**Nur Nasrhriany Jufri** 

Faculty of Law, University of Muhammadiyah Kendari, Indonesia

E-mail: [nur.jufri@umkendari.ac.id](mailto:nur.jufri@umkendari.ac.id)

## ABSTRACT

The potential for abuse of authority in the issuance of Government Regulation instead of Law (Perpu) can have a serious impact on the stability of the law and the democratic order in Indonesia. This research aims to analyze the authority of the President of the Republic of Indonesia in issuing Government Regulations instead of Law (Perppu) from the perspective of constitutional law. The problems raised in this study examine the constitutional basis and legal limitations in the issuance of Perppu, how urgent the reformulation of regulations and supervisory mechanisms in the issuance of Perppu is, and how the implications of the issuance of Perppu affect democracy and legal stability. This research is normative legal research using a statute approach to explore the legal basis that governs the issuance of Perppu, including Article 22 of the 1945 Constitution, which provides a constitutional basis for the President. The results of the analysis show that although the President has the authority to issue Perppu, there is an urgent need to clarify the criteria and procedures that must be followed so that the use of Perpu remains within the legal corridor and does not violate democratic principles. There is a potential for abuse of authority in the issuance of Perppu that can threaten legal stability and public trust. Stricter and more transparent regulations are needed related to the issuance of Perppu, as well as increased supervision from legislative institutions and civil society.

## KEYWORDS

Authority;  
Government  
Regulation  
instead of Law  
(Perpu);  
Constitutional  
Law



Copyright ©2025 by Author(s); This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. All writings published in this journal are the personal views of the authors and do not represent the views of this journal or the authors' affiliated institutions.



## INTRODUCTION

A Government Regulation instead of Law (Perppu) is a legal instrument that can constitutionally be issued by the President of the Republic of Indonesia in urgent and compelling circumstances. The existence of a Perppu is regulated in Article 22 of the 1945 Constitution as a form of discretionary authority inherent in the head of state. In practice, a Perppu serves a highly strategic function as a rapid policy instrument to address extraordinary situations requiring an immediate legal response. However, this mechanism often generates controversy because it can bypass the normal legislative process involving the House of Representatives (DPR). Therefore, it is important to examine more deeply how this authority is used to ensure it remains in line with constitutional and democratic principles.<sup>1</sup>

A key issue frequently highlighted is the limitations on the President's use of the Perppu, particularly in the context of the separation of powers between the executive and legislative branches. Concerns arise when the President's authority is perceived as overly broad or used arbitrarily without adequate institutional controls.<sup>2</sup> When the process of issuing a Perppu (State Regulation instead of Law) is not strictly monitored, the potential for abuse of authority is highly likely and can undermine the democratic legal order. This is where the importance of constitutional law studies lies, which can provide normative and legal explanations for this constitutional practice. With the right approach, this study can address public doubts about the legality and legitimacy of Perppu issuance.

The legal approach in this research aims to explore and analyze the legal basis underpinning the President's issuance of a Perppu. Article 22 of the 1945 Constitution explicitly states that the President may issue a Perppu in a state of compelling emergency, but it does not provide a detailed explanation of the definition and criteria for such an emergency. This ambiguity opens up a wide room for interpretation and is vulnerable to abuse. Therefore, a reading of the Constitution must be complemented by an analysis of Constitutional Court decisions that have interpreted the meaning of "compelling emergency" more concretely. This is crucial to avoid legal ambiguity and maintain procedural clarity in the issuance of Perppu.<sup>3</sup>

The Constitutional Court plays a highly strategic role in upholding constitutional principles regarding the President's authority to issue a Government Regulation instead of a Law (Perppu). Through various decisions, the Constitutional Court has established three main requirements for determining the existence of compelling exigency: an urgent need to resolve a legal problem, a legal vacuum that cannot be addressed through ordinary procedures, and compelling urgency. This interpretation is expected to serve as a standard reference in state administration practices. However, in many cases, the application of these three requirements remains subjective and influenced by political dynamics. Inconsistencies in the

---

<sup>1</sup> Rivanka Amelia & Nursyahbani Komendangi, 'Eksistensi Kewenangan Presiden Dalam Penetapan Keadaan Darurat' (2024) 4:2 J Multidisiplin Indones 1736-47.

<sup>2</sup> Farrel Nouvaleo, 'Kewenangan Presiden Dalam Keadaan Darurat : Kajian Perspektif Hukum Tata Negara' (2024) 2:2 J Educ Relig Humanit Multidisciplin 1379-89.

<sup>3</sup> R Amelia & N Komendangi, 'Eksistensi kewenangan presiden dalam penetapan keadaan darurat' (2024) 4:2 J Multidisiplin Indones 1736-1747.



implementation of Court decisions also pose a challenge to maintaining legal certainty.<sup>4</sup>

In political practice, it is not uncommon for the issuance of a Government Regulation instead of a Law (Perppu) to be used as a political tool to expedite government interests without undergoing a comprehensive parliamentary deliberation process. This has drawn criticism from civil society and academics, who believe that Perppu provides a constitutional loophole to bypass checks and balances. When Perppu are used as an alternative to expedited legislation without a valid justification, public trust in the legal system and government institutions can be eroded.<sup>5</sup> Therefore, it is crucial to strengthen oversight mechanisms for the issuance of Perppu (Regional Regulation instead of Law) to ensure that it does not conflict with the principles of transparency and accountability. Strengthening the role of the House of Representatives (DPR) and public participation must be an integral part of the governance of Perppu issuance.

The potential for abuse of authority in the issuance of Perppu can have serious consequences for legal stability and the democratic order in Indonesia. When a legal product is issued without a strong basis for urgency, it sets a bad precedent in the national legislative process. Furthermore, abuse of authority also reflects the government's weak commitment to upholding fair and balanced legal principles. In the long term, this could hinder the development of progressive and participatory national law. Therefore, concrete steps are needed to limit the room for excessive interpretation in the issuance of Perppu.<sup>6</sup>

Stricter and more transparent regulations are urgently needed to ensure that the President's authority to issue Perppu (Government Regulations instead of Law) is not abused. These regulations can take the form of implementing regulations or technical guidelines that establish clear requirements, procedures, and oversight for the Perppu issuance process. This way, the President's decisions are not based solely on subjective judgment but are legally and politically accountable. Furthermore, it is crucial to establish a legal audit system for each Perppu issued. This aims to provide the public with open access to information and assess whether the Perppu complies with the principles of the rule of law.<sup>7</sup>

Oversight of the issuance of a Perppu is not only the responsibility of the House of Representatives (DPR) as the legislative body, but also of civil society as a watchdog of democracy. Public participation in overseeing the issuance of a Perppu is crucial to promote transparency and participation in the public policymaking process. The media, academics, and non-governmental organizations can be critical partners in providing input and monitoring every policy taken by the executive. This public involvement will strengthen the legitimacy of the Perppu and prevent abuse of authority by the government. Furthermore, it is a concrete manifestation of healthy and civilized democratic practices.<sup>8</sup>

---

<sup>4</sup> Nouvaleo, *supra* note 2.

<sup>5</sup> F R Zubarita, 'Analisis Yuridis Peraturan Pemerintah Pengganti Undang-Undang No. 1 tahun 2020 tentang Kebijakan Keuangan Covid-19 Terhadap Penggunaan Anggaran di Masa Pandemi' (2022) 7:2 J Lex Renaiss 265–280.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> Nouvaleo, *supra* note 2.



In the context of constitutional law, this research makes a significant contribution to the development of constitutional discourse in Indonesia. It can serve as a normative reference for policymakers in exercising constitutional authority wisely and responsibly. The results can also enrich academic discourse on the limits of executive authority and the importance of upholding the principle of separation of powers. Furthermore, this study provides a critical reflection on current constitutional practices, which still pose numerous problems in terms of legality and legitimacy. With a comprehensive juridical and empirical approach, this research opens space for more progressive legal reform.<sup>9</sup>

This analysis is expected to lead to systemic improvements in state governance, particularly regarding the use of extraordinary presidential powers, such as issuing a Government Regulation instead of a Law (Perppu). A democratic state governed by the rule of law must ensure that all actions of state administrators are carried out within a just and responsible legal framework.<sup>10</sup> By clarifying procedures and improving oversight, the use of a Perppu (Regulations instead of Law) will no longer be a controversial instrument but instead a targeted legal solution. Commitment to the principles of transparency, accountability, and the rule of law is key to realizing a state with integrity. Therefore, this research serves not only as an academic discourse but also as a practical guide for improving Indonesian governance.

## METHOD

This research uses a normative juridical approach, namely an approach that focuses on the study of applicable legal norms, especially laws and regulations, legal doctrines, and decisions of relevant judicial institutions.<sup>11</sup> This approach is used to understand the constitutional basis of the President's authority in issuing a Government Regulation instead of a Law (Perppu) as regulated in Article 22 of the 1945 Constitution of the Republic of Indonesia. Data analysis is carried out qualitatively using a descriptive-analytical method, namely explaining and analyzing the data that has been collected to obtain a deep understanding of the President's constitutional authority in issuing a Perppu and its implications for democratic principles.

## RESULT & DISCUSSION

### I. Constitutional Basis and Legal Limitations on Issuing a Government Regulation instead of Law (Perppu)

The President of the Republic of Indonesia's authority to issue a Government Regulation instead of a Law (Perppu) is stipulated in Article 22 of the 1945 Constitution. This provision allows the President to take swift legal action in urgent situations when normal legislative mechanisms are not feasible. Historically, this

---

<sup>9</sup> Zubarita, *supra* note 5.

<sup>10</sup> Muhammad Alfar et al, 'Maladministrasi Dalam Pemenuhan Hak Anak Yang Berhadapan Dengan Hukum' (2023) 12:2 J Rechtens 257-272.

<sup>11</sup> Fatmawati et al, 'Aspek Hukum Dalam Pengendalian Dan Pemanfaatan Ruang Di Kota Kendari' (2024) 13:01 Rechtens 119-134.



article was intended to ensure the continuity of the state in the face of extraordinary circumstances.<sup>12</sup>

However, Article 22 of the 1945 Constitution does not specifically define what constitutes "compelling urgency," giving rise to interpretive debate. This ambiguity leaves room for the President to interpret the emergency according to specific political interests. This poses the risk of abuse of power in the context of a presidential system.<sup>13</sup> In Decision Number 138/PUU-VII/2009, the Constitutional Court attempted to address this issue by establishing three objective requirements for issuing a Perppu. These three requirements are: an urgent need, the absence of existing legislation, and the situation being unable to be addressed through standard procedures. This decision serves as an important guideline for assessing the constitutional validity of a Perppu.

However, the application of these three criteria in practice is not always consistent. An example is seen in Perppu No. 1 of 2020 concerning fiscal policy in response to the COVID-19 pandemic. Although the pandemic was considered a global crisis, the contents of the Perppu were widely criticized for containing provisions deemed too lax on state budget accountability.<sup>14</sup> A Perppu is often perceived as a shortcut to bypass the legislative process in the House of Representatives (DPR), which requires open and democratic deliberation. In a democratic legal system, the use of a Perppu should be a last resort (*ultimum remedium*), not a tool to avoid disagreements or political conflict.<sup>15</sup>

The DPR is indeed given the authority to approve or reject a Perppu after it is issued, as stipulated in Article 22 paragraph (2) of the 1945 Constitution. However, in practice, the legislative body often only serves as a formal rubber stamp without in-depth study of the urgency and content of the Perppu. This condition weakens the system of checks and balances that should be a pillar of constitutional democracy.<sup>16</sup> Furthermore, the lack of a judicial review mechanism for Perppu (Regional Government Regulations instead of Law) before enactment is a significant weakness in the Indonesian legal system. The Constitutional Court can only review a Perppu after it has been passed into law, not before it is enacted. This creates a legal vacuum at a crucial stage.

The uncontrolled issuance of Perppu can undermine public trust in the law and state institutions. If the public perceives that laws can change at any time without a transparent deliberative process, legal certainty will be compromised. Legal stability and social justice are at stake. Therefore, implementing regulations or laws is needed to technically govern the procedures and limitations for issuing Perppu. These laws should detail indicators of urgency, procedures for consultation with the

---

<sup>12</sup> Cipto Prayitno, 'Analisis Konstitusionalitas Batasan Kewenangan Presiden Dalam Penetapan Peraturan Pemerintah Pengganti Undang-Undang' (2020) 17:3 J Konstitusi 513.

<sup>13</sup> Otong Syuhada, 'Konsep Trias Politik Dan Pelaksanaannya Dalam Sistem Ketatanegaraan Indonesia' (2018) 6:1 J Surya Kencana Dua Din Masal Huk Dan Keadilan 108-122.

<sup>14</sup> *Ibid.*

<sup>15</sup> Prayitno, *supra* note 12.

<sup>16</sup> Saldi Isra, *Pergeseran Fungsi Legislasi: Menguatnya Model Legislasi Parlementer dalam Sistem Presidensial Indonesia* (Jakarta: PT. RajaGrafindo Persada, 2010).



House of Representatives (DPR), and opportunities for public participation.<sup>17</sup> This will strengthen the principles of good governance.

Indonesia's constitutional system requires institutional strengthening to ensure that the issuance of Perppu (Government Regulations instead of Law) does not deviate from the original intent of the constitution. Strong oversight by the House of Representatives (DPR), the Constitutional Court, and civil society must be developed more systematically.<sup>18</sup> Public oversight is crucial for ensuring the transparency of executive power. In the context of modern democracy, a Government Regulation instead of a Law (Perppu) should not be a tool for executive domination, but rather an instrument for the country's survival in extreme situations. Therefore, a constitutional law approach must prioritize the principles of accountability and limited power. By establishing a strict system of oversight and regulation of Perppu, Indonesia can strengthen the integrity of the government system and ensure that the President's actions remain within the framework of law and democracy. This is a concrete manifestation of the development of a just and sustainable legal system.

## **II. The Urgency of Regulatory Reformulation and Oversight Mechanisms in Issuing Perppu**

A Government Regulation, instead of a Law (Perppu), is a form of executive legal product that is emergency and temporary in nature. In the Indonesian legal system, the existence of a Perppu is explicitly regulated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "In cases of compelling urgency, the President has the right to issue a Government Regulation instead of law." This provision is intended as a legal response to extraordinary circumstances that prevent normal legislative procedures from being implemented. However, over time, the use of Perppu often sparks debate, especially when its urgency and its suitability with the principles of democracy and separation of powers are questioned.<sup>19</sup>

In state practice, there is a tendency for Perppu (Government Regulation instead of Law) to be used not only in urgent and compelling situations, but also as a political instrument to expedite government policies that may face resistance during deliberations in the House of Representatives (DPR). This is ironic, given that the Perppu's primary function is as an emergency legal tool, not a fast-track alternative for drafting legislation. Abuse of this authority can have serious consequences for the legal system and public trust in the government and legislative institutions.<sup>20</sup>

The main problem lies in the absence of explicit technical regulations regarding what is meant by "a state of emergency that compels". The 1945 Constitution, as the basic law, only provides a general phrase without further elaboration. It is in this context that Constitutional Court Decision Number

---

<sup>17</sup> R Nugroho, *Kebijakan publik untuk negara-negara berkembang: Model-model perumusan, implementasi, dan evaluasi* (Jakarta: PT Elex Media Komputindo, 2016).

<sup>18</sup> J Asshiddiqie, *Konstitusi dan konstitusionalisme Indonesia* (Jakarta: Setjen dan Kepaniteraan Mahkamah Konstitusi, 2006).

<sup>19</sup> Amelia & Komendangi, *supra* note 3.

<sup>20</sup> Nouvaleo, *supra* note 2.



138/PUU-VII/2009 emerged as a form of legal interpretation of the phrase. In this decision, the Constitutional Court formulated three conditions for the existence of a state of emergency that compels, namely: (1) there is an urgent need to resolve the legal problem quickly based on the law; (2) the required law does not yet exist so that a legal vacuum occurs; and (3) it is not possible to resolve the legal problem through the usual law-making procedure because it would require a relatively long time.<sup>21</sup>

Although the Constitutional Court's formulation has become a normative guideline, its interpretive nature still leaves room for subjectivity in its application. In some cases, Perppu issuances are carried out in situations that do not necessarily objectively meet these requirements. For example, the issuance of Perppu No. 2 of 2017 concerning Mass Organizations, which revoked the legal status of Hizbut Tahrir Indonesia (HTI), sparked controversy over whether the reason for issuing the Perppu truly met the criteria for a state of emergency.<sup>22</sup>

This situation demonstrates the need for regulatory reform regarding the procedures and limits of authority for issuing a Perppu. This reformulation could take the form of an organic law or more operational technical regulations, establishing objective indicators of a state of emergency, procedures for consultation with legislative bodies, and public involvement in overseeing Perppu. Without clear legal guidelines, Perppu will remain an ambiguous tool of power and vulnerable to being used outside the spirit of constitutional democracy.<sup>23</sup>

In the context of oversight, currently control over Perppu is normatively given to the DPR, which has the authority to accept or reject Perppu through ratification into law as stated in Article 22 paragraph (2) of the 1945 Constitution. However, this legislative oversight has serious weaknesses. First, because the DPR can only assess Perppu after it has been issued, the control is post-facto (*ex post*), not preventive. Second, the political reality that is full of interests makes rejection of Perppu by the DPR very rare, especially when most factions in the DPR come from the government coalition.<sup>24</sup>

This situation is exacerbated by the Constitutional Court's lack of authority to conduct a judicial review of a Perppu. The Court can only review a Perppu once it has been passed into law, creating a legal loophole where a Perppu can remain in effect for a limited period without adequate constitutional oversight.<sup>25</sup> Therefore, the discourse on expanding the Constitutional Court's authority to allow it to conduct judicial previews of Perppu (Government Regulations instead of Law) needs to be considered as a way to strengthen judicial oversight.

Furthermore, it is also crucial to strengthen civil society participation in the oversight process of Perppu issuance. In a democracy, public participation is a crucial instrument for achieving transparency and accountability in public policy. Through the involvement of academics, NGOs, and the media, the public can

---

<sup>21</sup> Prayitno, *supra* note 12.

<sup>22</sup> Nouvaleo, *supra* note 2.

<sup>23</sup> Anak Agung Ayu Putri Redita Swari, 'Pembentukan Peraturan Pemerintah Pengganti Undang - Undang' (2020) 10:11 J Kertha Desa 1170-80.

<sup>24</sup> Prayitno, *supra* note 12.

<sup>25</sup> Anak Agung Ayu Putri Redita Swari, 'Pembentukan peraturan pemerintah pengganti undang-undang' (2020) 10:11 J Kertha Desa 1170-1180.



provide critical assessments of the urgency and substance of the Perppu issued by the government.<sup>26</sup> This participation is also in line with the principle of a state based on the rule of law, which requires that all state policies be subject to oversight by the people, as sovereign.

Furthermore, evaluations of previously issued Perppu (Regulations instead of Law) also need to be developed as part of a corrective mechanism. The government and the House of Representatives (DPR) must provide transparent reports on the effectiveness and impact of Perppu issuances, both from a legal, economic, and social perspective. This evaluation will provide valuable lessons and serve as a basis for consideration in issuing future Perppu. Without objective evaluation, Perppu will continue to be a legal product lacking post-issuance accountability.<sup>27</sup>

The urgency of this reformulation is also closely related to the development of national law oriented towards legal certainty and justice. A sound legal system must be able to provide a clear demarcation between ordinary and extraordinary powers. A Government Regulation instead of Law (Perppu) is a form of extraordinary authority, so its use must be strictly limited and only used in truly extreme circumstances. Misuse of a Perppu will set a bad precedent and weaken the national legal system.<sup>28</sup>

The experiences of other countries can also provide lessons for Indonesia. In several countries with presidential systems, the use of emergency decrees or regulations by the President is strictly regulated and can only be enforced in times of war or civil emergency officially declared by parliament. Indonesia can adopt a similar approach to prevent Perppu from becoming an uncontrolled power arena. Therefore, the strategic step that needs to be taken is to build a legal system that is responsive and accountable to the issuance of Perppu. Regulatory reformulation, strengthening the role of the Constitutional Court and the House of Representatives (DPR), and civil society participation are three key pillars in establishing an effective oversight mechanism. Perppu must be positioned proportionally as an emergency legal tool, not as a short-term political instrument.

The role of state institutions must also be strengthened to enable them to carry out their functions independently and professionally. The DPR must improve the quality of its oversight of the executive, the Constitutional Court needs to be allowed to assess the constitutionality of Perppu before it takes effect, and the public must be empowered to participate in overseeing the course of democracy. When these three pillars are in balance, the use of Perppu will be more controlled and will not raise public concerns.

Ultimately, building a healthy legal system requires a commitment from all parties to uphold the constitution and the principles of the rule of law. The issuance of a Perppu (Regulation instead of Law) is not merely a matter of legal necessity, but also reflects how power is exercised within a framework of ethics and responsibility. Through regulatory reform and stronger oversight, Indonesia can ensure that Perppu are used appropriately, legally, and do not violate citizens' constitutional rights.

---

<sup>26</sup> Zubarita, *supra* note 5.

<sup>27</sup> *Ibid.*

<sup>28</sup> Prayitno, *supra* note 12.



The current state of the Indonesian state demonstrates the importance of designing a legal system that is not only responsive to emergencies but also capable of guaranteeing the protection of human rights and democratic principles. A Perppu, as an emergency legal instrument, is certainly necessary in certain situations. However, without clear controls and a robust evaluation mechanism, a Perppu can become a tool to justify excessive power. In this context, reformulation of the legal framework for issuing a Perppu cannot be delayed any longer.<sup>29</sup>

The urgency of reformulation stems not only from a legal-formal perspective, but also from a socio-political perspective. An increasingly critical public of state laws demands transparency and participation in every decision-making process, including emergency procedures such as the issuance of a Government Regulation instead of a Law (Perppu). Therefore, a Perppu should not only be assessed based on its normative validity, but also on how the issuance process reflects the spirit of democracy and openness. In some cases, regulatory ambiguity has led the public to perceive the government as using the Perppu as a tool to bypass criticism or expedite policymaking without sound discussion. A clear example is the issuance of the Perppu on Job Creation after the Constitutional Court declared the Job Creation Law conditionally unconstitutional. Although the government claimed urgency, civil society viewed the issuance of this Perppu as more politically motivated than objectively urgent.

If this practice is allowed to continue without evaluation and correction, it will create a precedent that Perppu can be used flexibly without strict limitations. This clearly contradicts the principle of limited government, which states that government power must be limited by law. Therefore, clear regulations regarding the requirements and procedures for issuing a Perppu will provide a strong legal framework while protecting people's rights from potential executive domination. Regulatory reform should not only clarify the formal requirements for a state of emergency but also establish quantitative and qualitative indicators for when a situation is considered an emergency. For example, a pandemic situation can be measured by data on the spread of the virus, healthcare capacity, and economic conditions. This way, the issuance of a Perppu will not be based solely on the President's subjective judgment but will also be scientifically proven and open to the public.

The procedure for issuing a Perppu must also be made more transparent. Currently, there is no standard mechanism for hearing public views before a Perppu is issued. Despite the nature of an emergency, the government can still involve community stakeholders, such as academics, independent institutions, or national commissions, to provide an objective assessment of the state of emergency and the substance of the Perppu. This will strengthen the public legitimacy of the emergency policy.

Another aspect that needs to be considered in the reformulation is the clarity of the validity period of the Perppu. Currently, a Perppu has legal force from the moment it is issued until the House of Representatives (DPR) approves or rejects it. However, there is no explicit provision regarding the maximum time limit for deliberation in the DPR. As a result, a Perppu can be in effect indefinitely, even if it

---

<sup>29</sup> Swari, *supra* note 25.



is an emergency. Therefore, a clear time limit is needed, for example, a maximum of 60 days after the start of the trial period, to avoid legal uncertainty.<sup>30</sup>

From a supervisory perspective, granting the Constitutional Court judicial preview authority over Perppu is a legal innovation that deserves more serious consideration. With this authority, the Court can review Perppu before they are widely implemented. This is crucial to prevent the creation of legal norms that violate constitutional principles and human rights, particularly if the Perppu contains restrictions on civil liberties, as in the case of the Perppu on Mass Organizations.<sup>31</sup>

Community empowerment is equally important in the oversight of the Perppu. Strengthening legal literacy among the public must be systematic so that the people are not merely the objects of policy, but also the subjects capable of controlling the course of government. Public participation in every stage of policymaking, including the issuance of the Perppu, will improve the quality of substantive democracy and prevent the state from exercising closed power.<sup>32</sup> Reformulation should also include a post-implementation evaluation. After a Perppu is passed or rejected by the House of Representatives (DPR), the government should provide a public report on the implementation of the Perppu, its impact, and its effectiveness in addressing the emergency. This evaluation can involve independent institutions, academics, and civil society organizations. This way, not only formal aspects are examined, but also the extent to which the Perppu resolves existing problems and does not create new ones.

In addition to strengthening legal and institutional aspects, systemic improvements are needed in Indonesia's legislative culture. The slow lawmaking process is often cited as a justification for issuing Perppu. Therefore, the DPR's legislative system also needs to be improved to make it more efficient and adaptable to emergencies. If the DPR can work more quickly and effectively, the need to use Perppu will be significantly reduced. Restructuring the Perppu system does not diminish the President's authority, but rather emphasizes the limits to ensure that authority is used responsibly.

### **III. Implications of Issuing a Perppu for Democracy and Legal Stability**

The President's issuance of a Perppu has significant consequences for the dynamics of the state administration, particularly in terms of democracy and legal stability. In a healthy democracy, all acts of power must be transparent, participatory, and accountable. When the President unilaterally issues a Perppu without substantial involvement from the House of Representatives (DPR), the principles of deliberative democracy are undermined.<sup>33</sup>

Democracy requires indirect public involvement through representative institutions. The legislative process is one of the primary channels for this participation. Therefore, when the legislative process is bypassed through the

---

<sup>30</sup> *Ibid.*

<sup>31</sup> Syuhada, *supra* note 13.

<sup>32</sup> Wahyu Nugroho, 'Politik Hukum Pasca Putusan Mahkamah Konstitusi atas Pelaksanaan Pemilu dan Pemilukada di Indonesia' (2016) 13:3 J Konstitusi 480–502.

<sup>33</sup> Swari, *supra* note 25.



issuance of a Government Regulation instead of a Law (Perppu), the space for public participation is narrowed.<sup>34</sup> This will diminish the legitimacy of the law in the eyes of the public.

A Government Regulation, instead of a Law (Perppu), as an emergency legal instrument, is indeed necessary in certain circumstances, such as disasters, economic threats, or national crises. However, if the use of a Perppu is not based on a real urgency, it will result in an abuse of authority that undermines the legal order. Democracy can degenerate into mere formalism if this continues. The excessive frequency of issuance of Perppu also creates legal uncertainty. Economic actors, legal practitioners, and the public become confused about the direction of the state's volatile legal policies. Legal stability can only be achieved if lawmaking is carried out openly, participatory, and through the normal legislative process.<sup>35</sup>

Public criticism of several Perppu (Government Regulations instead of Law), such as the Perppu on Mass Organizations, demonstrates concerns about the concentration of power in the hands of the executive. Many believe that the issuance of these Perppu was not driven by urgency, but rather to expedite certain political agendas without going through the House of Representatives (DPR). This reinforces the narrative that Perppu are vulnerable to being used as tools of legal authoritarianism.

In situations like this, the role of civil society is crucial. The mass media, academics, and NGOs must actively monitor and provide critical input on every Perppu issued. Horizontal oversight from the public can act as a counterbalance to executive power. The Constitutional Court has attempted to provide normative guidelines for the use of Perppu. However, the Court's weakness is its lack of authority to review Perppu before they take effect. Therefore, the Indonesian legal system needs to encourage procedural reforms in the form of strengthening the judicial review of emergency legal products.<sup>36</sup>

Not only judicial and legislative oversight, but also increasing public legal awareness must be a top priority for the state. Constitutional literacy will make the public more responsive to constitutional irregularities, including the issuance of Government Regulations instead of Law (Perppu). A state governed by law will be strong if its citizens are legally literate. The government needs to recognize that with great power comes great responsibility. In a democracy, the use of extraordinary powers such as Perppu must be broadly justified by law and society. Legitimacy is not limited to formal norms alone, but also requires public acceptance.<sup>37</sup>

One important step is to establish a clear and measurable legal framework for the use of Perppu (Government Regulations instead of Law). For example, by establishing an independent evaluation mechanism before a Perppu is enacted, and regular reporting to the public regarding the reasons and objectives of its issuance.

---

<sup>34</sup> D Suhariyanto, 'Problematika penetapan Perppu kondisi negara problems of the determination of country conditions in emergency in the legal system in' (2021) 4:1 J USM Law Rev 190–207.

<sup>35</sup> Swari, *supra* note 23.

<sup>36</sup> *Ibid.*

<sup>37</sup> M Nuraini, N & Ansori, 'Politik Hukum Kekuasaan Kehakiman di Indonesia' (2022) 6:2 J Wajah Huk 429–431.



This will strengthen accountability and transparency in state administration practices.

Overall, the use of Perppu must remain within a constitutional framework that upholds democratic principles. This extraordinary authority must not become a habit that weakens the people's representative system. A healthy democracy can only be realized if power is controlled by law and supervised by the public. By strengthening oversight, clarifying procedures, and increasing constitutional literacy in the community, Perppu issuance can be directed towards becoming an appropriate legal solution in emergencies, not a tool for short-term political gain. Only then can law and democracy in Indonesia continue to grow in a balanced and sustainable manner.

### **CONCLUSION**

First, more technical regulations are needed in the form of laws or implementing regulations that explain the procedures for issuing a Perppu in detail. These regulations must include indicators of urgency, consultation procedures with the House of Representatives (DPR), and public participation mechanisms to strengthen transparency and accountability. Second, the Constitutional Court's role as guardian of the constitution needs to be strengthened by granting judicial preview authority to Perppu before they take effect, not just to review them after they have been passed into law. This is crucial to prevent Perppu with authoritarian content or that do not meet the elements of urgency from being unilaterally enacted by the President. Third, the DPR must increase its capacity and commitment to conducting substantive oversight of Perppu. Ratification of Perppu should not be a formality but must undergo a comprehensive and open review. This is crucial to maintaining the legislative oversight function over the executive in a democratic system. Fourth, constitutional literacy among the public needs to be improved so that the public can understand and critique every legal product issued by the government, including Perppu. Legal and civic education must be strengthened from an early age to foster legal awareness and active social control. Fifth, the government must develop a legal culture that makes Perppu a last resort in crises, rather than a primary tool for resolving conflicts or expediting policy. By committing to the principles of the rule of law and democracy, Indonesia can avoid excessive concentration of power and maintain the legitimacy of state institutions.

### **DECLARATION OF CONFLICTING INTERESTS**

The authors state that there is no conflict of interest in the publication of this article.

### **FUNDING INFORMATION**

None.

### **ACKNOWLEDGMENT**

None.



## REFERENCES

### BOOK

- Asshiddiqie, J, *Konstitusi dan konstitusionalisme Indonesia* (Jakarta: Setjen dan Kepaniteraan Mahkamah Konstitusi, 2006).
- Isra, Saldi, *Pergeseran Fungsi Legislasi: Menguatnya Model Legislasi Parlementer dalam Sistem Presidensial Indonesia* (Jakarta: PT. RajaGrafindo Persada, 2010).
- Nugroho, R, *Kebijakan publik untuk negara-negara berkembang: Model-model perumusan, implementasi, dan evaluasi* (Jakarta: PT Elex Media Komputindo, 2016).

### JOURNAL

- Alfar, Muhammad et al, 'Maladministrasi Dalam Pemenuhan Hak Anak Yang Berhadapan Dengan Hukum' (2023) 12:2 J Rechtsens 257-272.
- Amelia, R & N Komendangi, 'Eksistensi kewenangan presiden dalam penetapan keadaan darurat' (2024) 4:2 J Multidisiplin Indones 1736-1747.
- Amelia, Rivanka & Nursyahbani Komendangi, 'Eksistensi Kewenangan Presiden Dalam Penetapan Keadaan Darurat'" (2024) 4:2 J Multidisiplin Indones 1736-47.
- Fatmawati et al, 'Aspek Hukum Dalam Pengendalian Dan Pemanfaatan Ruang Di Kota Kendari' (2024) 13:01 Rechtsens 119-134.
- Nouvaleo, Farrel, 'Kewenangan Presiden Dalam Keadaan Darurat : Kajian Perspektif Hukum Tata Negara' (2024) 2:2 J Educ Relig Humanit Multidiciplinary 1379-89.
- Nugroho, Wahyu, 'Politik Hukum Pasca Putusan Mahkamah Konstitusi atas Pelaksanaan Pemilu dan Pemilukada di Indonesia' (2016) 13:3 J Konstitusi 480-502.
- Nuraini, M, N & Ansori, 'Politik Hukum Kekuasaan Kehakiman di Indonesia' (2022) 6:2 J Wajah Huk 429-431.
- Prayitno, Cipto, 'Analisis Konstitusionalitas Batasan Kewenangan Presiden Dalam Penetapan Peraturan Pemerintah Pengganti Undang-Undang' (2020) 17:3 J Konstitusi 513.
- Suhariyanto, D, 'Problematika penetapan Perppu kondisi negara problems of the determination of country conditions in emergency in the legal system in' (2021) 4:1 J USM Law Rev 190-207.
- Swari, Anak Agung Ayu Putri Redita, 'Pembentukan peraturan pemerintah pengganti undang-undang' (2020) 10:11 J Kertha Desa 1170-1180.
- , 'Pembentukan Peraturan Pemerintah Pengganti Undang - Undang' (2020) 10:11 J Kertha Desa 1170-80.
- Syuhada, Oton, 'Konsep Trias Politik Dan Pelaksanaannya Dalam Sistem Ketatanegaraan Indonesia' (2018) 6:1 J Surya Kencana Dua Din Masal Huk Dan Keadilan 108-122.
- Zubarita, F R, 'Analisis Yuridis Peraturan Pemerintah Pengganti Undang-Undang No. 1 tahun 2020 tentang Kebijakan Keuangan Covid-19 Terhadap Penggunaan Anggaran di Masa Pandemi' (2022) 7:2 J Lex Renaiss 265-280.