

Analysis of Government Regulations in Lieu of Law No. 1 of 2020: As a Response to the Urgency of the COVID-19 Pandemic

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Abstract: This study delves into the analysis of Government Regulations in Lieu of Law (PERPU) enacted by the president as a response to the urgency of the COVID-19 pandemic. It specifically focuses on PERPU No. 1 of 2020, which was issued during a state of coercive crunch without replacing or amending an existing or forthcoming law. The study employs a normative juridical or normative law research method using a statute and conceptual approach to examine the compliance of PERPU No. 1 of 2020 with the parameters outlined by the Constitutional Court. The findings reveal that the determination of the reason for the Health emergency in this PERPU seems subjective and is not in line with the parameters outlined by the Constitutional Court. The study concludes that the issuance of PERPU must be regulated more strictly and transparently to ensure that it is only utilized in exceptional situations, in accordance with the Constitution and its application is objective.

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INTRODUCTION

Indonesia is a nation that has been undergoing rapid growth and development. As the country has developed, it has brought with it a host of challenges and problems that are large, complex, and often difficult to address (Asmara & Sumarwono, 2021). These challenges range from economic issues such as income inequality and job creation to social issues like corruption and environmental degradation (Handayani et al., 2022; Hill, 2018). Furthermore, these challenges have been compounded by the state of the world, which is characterized by volatility, uncertainty, complexity, and ambiguity.

Given this situation, Indonesia urgently needs a set of rules to address the problems, challenges, and threats that it is facing (Butt et al., 2016; Wijaya & Ali, 2021). The need for such rules has been recognized by the 1945 Constitution of the Republic of Indonesia. According to Article 22 paragraph (1) of the Constitution, in the event of a compelling crunch, the President has the right to enact government regulations in lieu of laws.

The purpose of this provision is to allow the President to take swift and decisive action in response to pressing problems and emergencies. This provision is especially important in situations where the normal legislative process would be too slow or ineffective in addressing a problem (Arsil et al., 2022). By allowing the President to issue government regulations in lieu of laws, the Constitution provides the President with the flexibility and authority to take the necessary steps to address pressing problems.

However, the use of Government Regulations in Lieu of Laws (PERPU) has been controversial in Indonesia. This controversy has centered on both the formation and implementation of these regulations (Arifin, 2022). One of the primary concerns with the use of PERPU is that it can undermine the role of the legislative branch of government. In a democratic system, the legislative branch is responsible for enacting laws and regulations, and the use of PERPU can be seen as an attempt to circumvent this process (Rajagukguk & Najib, 2021).

Another concern with the use of PERPU is that it can be used to bypass the checks and balances that are built into the Indonesian political system. These checks and balances are designed to ensure that no one branch of government becomes too powerful or dominant. By allowing the President to issue regulations without the approval of the legislative branch, PERPU can be seen as a way for the executive branch to overstep its bounds and undermine the balance of power in the government.

Despite these concerns, the use of PERPU has been necessary in certain situations. For example, during the Corona Virus Disease 2019 (COVID-19) pandemic, the President issued a PERPU to address the emergency situation that was unfolding (Hasibuan et al., 2020). This regulation provided the government with the authority to take necessary actions to control the spread of the virus and address the economic and social impacts of the pandemic.

To address the controversies surrounding the use of PERPU, a progressive legal approach is necessary. This approach would involve breaking away from the rigidity of positivism and incorporating a more flexible and dynamic approach to the law. By doing so, Indonesia can develop a legal system that is better able to address the challenges and complexities of the modern world.

The PERPU in Indonesia are a statutory authority given to state institutions to establish regulations instead of laws, as stated in Article 22 of the 1945 Constitution. The implementation of PERPU can take the form of regulations or special actions (Hermanto & Mas Aryani, 2021; Sitorus et al., 2018). However, the PERPU's position is controversial in terms of its formation and implementation because of the Indonesian legal system's positivism. Therefore, a progressive legal approach is required to break its rigidity comprehensively.

The President of Indonesia is the holder of state government power as the head of state and government in a presidential system of government (Budi, 2022). As head of state, the president is a symbol of national representation, a symbol of national unity, and has duties and responsibilities, including national ceremonies and protocols. As head of government, the president acts as the organizer of legislative affairs, such as law enforcement. The presidential system of government in Indonesia has several universal principles, including a clear separation of powers between the executive and the legislature, the sole executive role of the president, and the appointment of ministers as subordinates responsible to the president.

According to the Constitutional Court Decision Number 138/PUU-VII/2009, the President can establish a PERPU if there is an urgent need to resolve legal issues

expeditiously under the Act, and the required Act does not yet exist or is inadequate, and the legal vacuum cannot be resolved by ordinary procedures. The "coercive crunch" is a subjective consideration for the issuance of a PERPU, and the President's consideration should be based more on the objective state of the nation and state.

In 2020, Indonesia faced the COVID-19 pandemic, which had a significant impact on the country's economy. Before the pandemic, Bank Indonesia estimated inflation to reach 3.01% by the end of 2020, and the rupiah prices would weaken compared to the realization in 2019. However, with the pandemic, the Minister of Finance estimated that Indonesia's economic growth projection was around 2.3%, with a worst-case scenario of up to -0.4%. As a result, the Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the COVID-19 Pandemic was established to mitigate the impact of the pandemic on the country's economy.

The Impact of COVID-19 Pandemic. The PERPU was issued to ensure the stability of the financial system and support the national economy during the pandemic.

The PERPU on State Financial Policy and Financial System Stability includes various measures to mitigate the economic impact of COVID-19, such as tax incentives, fiscal stimulus, and financial sector support. One of the most significant measures is the allocation of funds for social safety net programs to support vulnerable groups, such as low-income households and informal workers, who are most affected by the pandemic. The PERPU also provides a framework for the government to cooperate with financial institutions to maintain the financial system stability and provide liquidity support to businesses affected by the pandemic.

The issuance of the PERPU during the COVID-19 pandemic highlights the role of PERPU in responding to urgent situations and addressing legal vacuums. The government had to act quickly to mitigate the economic impact of the pandemic, and the PERPU provided a legal basis for the government's actions. However, the issuance of the PERPU was also criticized for lacking transparency and public consultation. The controversy surrounding the PERPU reflects the ongoing debate in Indonesia over the appropriate use of PERPU and the balance between executive power and democratic accountability.

RESEARCH METHODS

The research being conducted adopts a normative or normative juridical legal research approach. This method includes research on legal systematics and legal synchronization levels. The study utilizes a statute approach by referring to the works as well as a conceptual approach (Fischer & Miller, 2017). These two approaches are necessary to examine the prospects of existing regulations and their application, which will provide the author with a perspective on the issue under study.

The statute approach used in this study involves analyzing the existing laws and regulations related to the topic of interest. This method is useful in evaluating the extent to which these laws and regulations can effectively address the problem (Yoon &

Lubienski, 2018; Young & Diem, 2017). On the other hand, the conceptual approach helps to identify the underlying principles and theories that are relevant to the topic. This approach is useful in providing a deeper understanding of the issue at hand and can also help in identifying gaps in the current legal system.

The data sources for this study come from literature studies, specifically referencing the work (Sagena et al., 2023). This approach is suitable for the research since it provides an extensive collection of relevant materials for the study. Additionally, the use of literature studies allows the author to examine existing theories, principles, and frameworks relevant to the issue under investigation.

RESULTS AND DISCUSSION

The government has designated COVID-19 as one of the diseases that cause emergencies in the country of Indonesia in accordance with Presidential Decree No. 11 of 2020 Determination of COVID-19 Public Health Emergency. Emergencies can automatically cause disruption to government finances, such as through a decrease in government revenue, an increase in government spending, or even a larger deficit in government revenue and expenditure. However, the President cannot simply override existing provisions and in accordance with the law.

A state of urgency or urgency, it is necessary to take appropriate action in dealing with it. If there are urgent circumstances or needs that must be resolved immediately by applying the law, a government regulation must be formed in lieu of a law, but legislation is still needed to solve the urgent problem or need. or inadequate to solve an urgent problem or need. Therefore, this urgent need is insurmountable and may even increase in size and complexity if we have to wait for the necessary legislation to be passed.

The enactment of Government Regulation in Lieu of Law No. 1 of 2020 is a form of the president's response to the COVID-19 pandemic. The existence of COVID-19 has a huge impact on various aspects of people's lives, including in the development of the Indonesian state.

The establishment of PERPU No. 1 of 2020, the president pays close attention to public health. In addition, the President also pays attention to the national economy in the form of slowing national economic growth, declining state revenues, financial system stability, and deteriorating financial systems as indicated by a decrease in various domestic economic activities.

PERPU Number 1 of 2020 is a legal instrument formed as an effort to save health and the national economy in terms of spending on health, social safety nets, and economic recovery, including for the business world and affected communities. The form of government attention to the community is prioritized on the effects experienced by the community during the COVID-19 pandemic that is being faced.

Article 1 of PERPU No. 1 of 2020 emphasizes the importance of tax policy, government spending policy, fiscal policy and government financial system stability, both in dealing with the COVID-19 pandemic and in facing threats that endanger economic stability

and/or the national financial system. This includes policies in the field of regional finance, monetary policy, and policies to overcome the problems of financial institutions that endanger the national economy.

The State Finance Law stipulates that in an emergency such as COVID-19, the Government can make expenditures that are not yet available without the need for dpr approval, but the government by submitting it in the Budget Realization Report.

It can be seen in the Budget for infrastructure development or the budget for the payment of foreign and domestic debts set aside for the time being by being diverted to the needs that are urgently needed by the people. Because in Indonesia the highest sovereignty is held by the people, then all return to the people with priority to the people. If the Central Government declares that the Local Government needs a Loan and/or Grant for the mitigation of COVID-19, then the Central Government can provide Loans and/or Grants to Local Governments without the need for dpr approval, but it is enough to submit it in the Budget Realization Report, which is no later than the end of July of the relevant fiscal year. In other words, the State Finance Law specifies that if the country is in an emergency such as a Health emergency caused by COVID-19. In the State Finance Law, the Government is asked to be able to maximize the revenue received by the state by prioritizing urgent state expenditures, so that the state budget deficit in that year does not increase in size than what has been stipulated in the state budget that year.

Content of PERPU No. 1 of 2020 Aspects of Statutory Theory

Law No. 12 of 2011 concerning the Establishment of Laws and Regulations does not specifically regulate the content of PERPU. This law only explains that "The content material of the Government Regulation in Lieu of the Act is the same as the content material of the Act". However, this emphasizes the importance of the consistency of content between PERPU and the established law.

The content material that must be filled in the PERPU is as follows:

- Further regulation of the provisions of the Constitution of the Republic of Indonesia of 1945
- An Order of an Act to be governed by an Act
- Ratification of certain international treaties
- Follow-up to the Constitutional Court's ruling
- Fulfillment of legal needs in society

In 2015, Asshiddiqie put forth an argument suggesting that PERPU, which refers to a government regulation in Indonesia, should have been enacted as a law instead (Asshiddiqie, 2015). However, due to the urgency of the situation, the regulation was hastily designated as a government regulation. It is important to note that legislation is considered the absolute material of the statute, which means that it contains a specific type of concrete content that can only be provided in the form of legislation, and not in any other rules.

According to Asshiddiqie's interpretation, this special or absolute charge material refers to the specific content that can only be effectively embodied in a legal statute, and cannot be adequately communicated through any other type of regulation or rule-making (Rizaldi, 2020; Takalamingan, 2021). This is because legislation involves a higher degree of formalization and scrutiny, ensuring that the provisions are clear, comprehensive, and enforceable. Therefore, when creating laws, policymakers must take great care in crafting precise and comprehensive language that will ensure the effective implementation and enforcement of the law.

The special or absolute charge material to it is as follows:

- Delegation of regulatory authority or legislative delegation of rule making power;
- The act of repealing a previously existing law;
- Changes in the provisions of the law;
- The establishment of government regulations in lieu of laws;
- Ratification of an international treaty;
- Imposition of Taxes and Coercive Levies;
- Determination regarding the imposition of criminal sanctions; and
- Determination of the authority of investigation, prosecution, and conviction.

PERPU, or a government regulation in Indonesia, is essentially equivalent to a law that has been passed and made official before receiving approval from the House. This is done as a means of addressing urgent situations that require immediate action, known as the "coercive crunch". Therefore, the content material of PERPU is identical to that of the law.

The content of the law, stating that it is a set of rules or regulations that govern the behaviour of individuals and entities within a society. These rules are created through a formal legislative process, with careful consideration given to the potential impact on various stakeholders, as well as the legal and ethical implications (Leenes et al., 2017). The content of the law is therefore a reflection of the values, norms, and priorities of the society that created it.

However, it is important to note that while the content of PERPU may be identical to that of the law, the process of enacting it is different. PERPU is enacted by the President, without the involvement of the House, and is only temporary in nature. Once the urgency has passed, the PERPU must be either approved by the House or allowed to expire. This highlights the unique role that PERPU plays in the legal system, providing a means of addressing urgent situations while also ensuring that the legislative process is upheld stated about the content of the law as follows:

- Regulates those expressly ordered by the Constitution to be regulated by law;
- Further regulate the provisions in the Basic Law and in the Provisions of the MPR;
- Regulating the rights (asasi) of man, regardless of his position as a citizen or not;

- Regulating the rights and obligations of citizens;
- Regulates the division of state power, including judicial power and free judges;
- Regulates the principal organization of the Supreme and Higher institutions of the State;
- Regulates the division of state areas over large and small areas;
- Regulates who can be called a citizen and how to acquire or lose citizenship;
- Other matters which by the provisions of a statute are established to be further regulated by another statute.

The government regulation that replaces the law is created to act as the regulator of a material that should have been regulated under normal circumstances through the formal legislative process. This sentiment is reinforced. It is important to recognize that the content material of PERPU is considered statutory content material, which means that it must be promulgated under ordinary circumstances and through the usual legislative process.

When a government regulation is used to replace a law, it may be done so as a means of addressing urgent situations that require immediate action. However, it is important to note that this should only be done in exceptional cases and with due consideration given to the potential impact on various stakeholders. The content material of PERPU, even though it is created through a different process, must still adhere to the same standards of clarity, comprehensiveness, and enforceability as a law.

Furthermore, the role of PERPU in the legal system is unique and limited. It is temporary in nature and must be either approved by the House or allowed to expire once the urgency has passed. This highlights the importance of the legislative process in creating laws that reflect the values, priorities, and needs of the society they govern. In essence, while PERPU may serve a necessary purpose in certain situations, it cannot replace the importance and legitimacy of the formal legislative process in creating effective and sustainable regulations.

In addition to the opinions of the content material described by experts, the content material is explained in the 1945 Constitution of the Republic of Indonesia, namely as follows:

- Human rights;
- Rights and obligations of citizens;
- The exercise and enforcement of state sovereignty and the division of state power;
- The territory of the country and the division of regions;
- Citizenship and residency; and
- State finances; and ordered by an Act to be governed by an Act.

In addition to the content material in government regulations in lieu of laws, there are other materials related to the interests or obligations of the people with restrictions and / or reductions in human rights, including the following:

- Materials that impose obligations on citizens,
- Content material restricting civil liberties,
- Content material containing obligations or prohibitions, including articles on the imposition of criminal sanctions,
- Taxpayers and tariff levies;
- Agreement on Citizenship and Acquisition or Loss of Citizenship.

The restrictions on the content of PERPU are essential to ensure that it does not interfere with important matters concerning the State Budget, human rights, and the interests and obligations of the people. As explained in the Constitutional Court Decision Number 13/PUU-VII/2009, PERPU should not include the revocation of existing laws and regulations or changes in their provisions. However, it can be established for urgent matters that require immediate attention and cannot wait for the approval of the House of Representatives.

There are four instances when the President can establish PERPU, as described in the national legislative program. First, for laws regulated in the 1945 Constitution and MPR Kteteapan that have not been determined by the DPR at a crucial time. Second, for the ratification of international agreements that have significant and fundamental consequences on people's lives, require changes or formation of laws, and are urgently needed. Third, for the scheme of division of state power, including the judiciary and free judges, when legislation is urgently needed and the House cannot convene objectively due to a crisis or emergency. Fourth, for the regulation of the principal organization of the institutions of the Higher State, which is included in the national legislative program but needs relevant legislation that cannot wait for the House's convening due to an emergency.

PERPU No. 1 of 2020 explains the state's financial policies, including state revenue financial policies such as tax policies, state spending policies such as regional finances, and financing policies. The scope of PERPU No. 1 of 2020 includes materials related to the collection of the state budget and tax and duty obligations. The regulation ensures that the state does not burden its people beyond taxes and other levies. If there is an imposition on the people in any other form that is arbitrary, burdensome, and violates the sovereignty of the people, then the regulation cannot be carried out because it is subjective and does not consider the burden on the people.

Furthermore, PERPU No. 1 of 2020 also regulates state spending policies, including regional finances and financing policies. This means that the PERPU allows the government to allocate and distribute funds in response to the emergency situation, which in this case is the COVID-19 pandemic.

It is important to note that while the PERPU allows for certain restrictions on human rights, it is still subject to constitutional limitations. As stated in the Constitution, the restriction must be necessary, proportionate, and not arbitrary. Any restriction that violates these principles may be challenged in the Constitutional Court.

CONCLUSION

Based on the findings of this study, it can be concluded that the Presidential Policy of establishing PERPU No. 1 of 2020 in response to the COVID-19 pandemic does not comply with the criteria set by the Constitutional Court for the establishment of PERPU. The Constitutional Court only permits the establishment of PERPU in urgent circumstances or needs that cannot be addressed by existing laws.

Furthermore, the study suggests that PERPU No. 1 of 2020 does not serve to address any legal gaps but rather to revoke certain provisions related to the state's financial policies. This raises concerns that the existing laws, such as the Finance Law, are already sufficient to regulate the necessary financial policies during a public health emergency.

The study highlights the potential implications of the establishment of PERPU No. 1 of 2020 on the separation of powers and the rule of law in Indonesia. The government must uphold the principles of constitutionalism and respect the role of the legislature in enacting laws that are necessary for the country.

As such, this study contributes to the ongoing discussions surrounding the use of PERPU in Indonesia and the importance of adhering to the principles of constitutionalism and the rule of law in times of crisis.

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