



Legal Consequences of the Issuance of Government Regulation in Lieu of Law Number 2 of 2022 on the Legal Politics in Indonesia

Abdul Hamid Sobri¹, Iza Rumesten RS², Suci Flambonita³

¹⁻³ Master Of Law Program, Sriwijaya University, Palembang, Indonesia

hamidsobri77@gmail.com, izarumesten@gmail.com, suciflambonita@fh.unsri.ac.id

Abstract. *The issuance of Perppu Number 2 of 2022 has led to various dynamic debates within society. The government's actions have shown attempts to "circumvent" Constitutional Court Decision Number 91/PUU-XVIII/2020 and even eliminate the legislative role in the process of amending laws. Autocratic legalism is a situation where the law is utilized as a tool by the rulers (whether executive, legislative, judicial, or a combination thereof) to legitimize their actions in accumulating and consolidating power under the guise of law. The research findings indicate that the consequences of the issuance of Perppu Number 2 of 2022 include the violation of the legislative drafting grace period, failing to resolve legal uncertainties, and being considered non-aspirational, non-participatory, and non-transparent in its formation.*

Keywords : *Job Creation Perppu, President, Constitutional Court Decision, Constitutional Court, Autocratic Legalism*

1. INTRODUCTION

The issuance of Constitutional Court Decision Number 91/PUU-XVIII/2020 on November 25, 2021, declared that Law Number 11 of 2020 concerning Job Creation is conditionally unconstitutional. The basis for this decision is that the Job Creation Law is considered not to meet the requirements in terms of formal legality in the formation of a law as regulated in Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation. In its drafting, the Job Creation Law is considered not to meet the principle of clarity of norms, and in terms of methodology, the omnibus law method lacks a legal framework. Furthermore, the drafting process did not embody the principle of transparency, as evidenced by the lack of meaningful public participation (Helmi Chandra SY and Shelvin Putri Irawan, 2022). Moreover, even after joint approval between the President and the House of Representatives, the content of the Job Creation Law changed.

The content of the Constitutional Court's decision is to instruct the legislators to make immediate amendments to the Job Creation Law within a maximum period of two years after the issuance of the Constitutional Court's decision. If the time for amending the Job Creation Law exceeds the deadline set by the Constitutional Court, the Job Creation Law becomes permanently unconstitutional (Hidayat et al, 2023). However, it seems that the Constitutional Court's decision has lost its significance in the eyes of the government (Henny Saida Flora Yohanes Suhardin, 2023). Instead of revising the Job Creation Law, on December 30, 2022,

the government chose to issue Government Regulation in Lieu of Law Number 2 of 2022 (Job Creation Perppu). The issuance of the Job Creation Perppu disregards the Constitutional Court's decision as well as the role of the House of Representatives as the legislative body that should have undertaken the revision (Ni Kadek Ayu Sri Undari, 2023).

In the end, the Job Creation Perppu itself was ratified into law because it can be said that the House of Representatives is now “aligned with the Government”, as stated by constitutional law expert Bivitri Susanti in a Kompas TV interview on January 3, 2023. She further mentioned that the President's policy in issuing the Job Creation Perppu is called Autocratic Legalism, a type of legalism characterized by authoritarianism (Kim Lane Scheppele, 2018). The authoritarian nature is evident because the issuance of the Job Creation Perppu seems to be “manipulating constitutional law”, as it disregards Constitutional Court Decision Number 91/PUU-XVIII/2020 (Kompas TV YouTube).

The issue in this research is, What are the legal consequences of the issuance of Government Regulation in Lieu of Law Number 2 of 2022 on the legal politics in Indonesia?

2. METHODS

The research method used in this study is normative legal research. Normative legal research is conducted to obtain truth based on the scientific logic of law from its normative aspects, such as through legislation, legal theory, and others (Peter Mahmud Marzuki, 2024). The scientific logic in normative research is built upon scientific discipline and the normative methods of legal science (Jhony Ibrahim, 2019). The legal materials used in this research are obtained through primary data in the form of legislation (Amirudin and Zainal Asikin, 2018) and secondary data to clarify primary data in detail (Zainudin Ali, 2019). This data is collected through library research by analyzing books, studies, regulations, and media information (Mohammad Nazir, 2013). Subsequently, analysis is conducted using qualitative data analysis methods, which analyze legal materials in the form of statements and writings (P. Joko Subagyo, 2015). Conclusions are then drawn deductively, starting from general data and narrowing down to specific conclusions (Bambang Sunggono, 2016).

3. RESULTS AND DISCUSSION

The Position of Government Regulation in Lieu of Law (PERPPU) within the Indonesian Constitutional System

Article 22 of the 1945 Constitution stipulates as follows: Paragraph (1): In the event of compelling emergency circumstances, the President has the right to issue Government

Regulations in lieu of laws. Paragraph (2): Such Government Regulations must receive the approval of the House of Representatives at the following session. Paragraph (3): If not approved, the Government Regulations shall be revoked (Maria Farida Indrati Soeprapto, 2020).

According to the theory of the rule of law, any legal product issued by the government together with the House of Representatives or by the government alone, such as in this case the Government Regulation in Lieu of Law (Perppu) issued by the President, must comply with all the procedures previously regulated by the legislation. As stated in the general explanation of the 1945 Constitution regarding the Indonesian state administration system, it is based on law (*rechstaat*) and not on power (*machstaat*). However, in the issuance of the Job Creation Perppu, the state administration or government system seems to lean more towards power-based (*machstaat*) (Iza Rumesten et al, 2021). This is evidenced by the violation of the Constitutional Court Decision Number 138/PUU VII/2009 regarding the Three Criteria for Compelling Urgency in Issuing Government Regulations in Lieu of Law and the Constitutional Court Decision Number 91/PUU XVIII/2020 concerning the Conditional Unconstitutionality of Law Number 11 of 2020 on Job Creation.

According to Public Policy Theory, public policy is an action taken by the government as the holder of state power, in order to address various problems faced by citizens (Bambang Sugianto & Iza Rumesten RS, 2024). As we know, a legal product, in this case a Government Regulation in Lieu of Law (Perppu), is a public policy issued by a president that ideally is urgent or immediate for the sake of the state and public interest. In relation to this public policy theory, the urgency or immediacy appears to be forced and only serves the interests of a few individuals or groups.

Limitations on Authority in the Use of Government Regulations in Lieu of Law

The issuance of Government Regulations in Lieu of Law (Perppu) is a governmental regulatory instrument provided by the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) to address conditions of compelling emergency (Asshidiqie, 2008), necessitating the enactment of government regulations equivalent to laws to maintain stability and balance in state governance.

In its decision, the Constitutional Court provided criteria for the issuance of Government Regulations in Lieu of Law (PERPPU) in Constitutional Court Decision Number 138/PUU-VII/2009. Based on this decision, there are three requirements as parameters for the 'compelling urgency' that allows the President to issue a PERPPU (Cipto Prayitno, 2020), namely:

- i. The existence of a situation that requires urgent action to resolve legal issues quickly based on the law;
- ii. The necessary law does not yet exist, resulting in a legal vacuum, or there is a law, but it is inadequate;
- iii. This legal vacuum cannot be addressed through the usual legislative procedure as it would take a considerable amount of time, while the urgent situation requires immediate resolution.

According to the theory of authority, the application of the Job Creation Perppu indeed falls under the “special” discretionary authority of the President in issuing such legal products. However, this should not become a tool for interests that do not serve the people, because the ambiguity of the compelling urgency, which is the primary reason for issuing the Job Creation Perppu, is questionable.

Furthermore, in governmental discretion, which is essentially a derivative of the theory of authority as mentioned in the above discussion, the Job Creation Perppu is a “special” discretionary authority of the President. In a broader sense, discretion or *Freies Ermessen* refers to a freedom allocated within administrative tools, such as the freedom that principally allows state administrative tools to prioritize the success of achieving a goal (*doelmatigheid*) over strictly adhering to legal provisions, or the authority that has been valid to intervene in social activities to carry out tasks prioritizing the public interest (Ridwan H.R, 2017). The key point here is prioritizing the public interest, which is not evident in the urgency of issuing the Job Creation Perppu.

Compelling Urgency

In the context of the Job Creation Perppu, the preamble must provide considerations by demonstrating the alignment of the motives for drafting the Perppu at that time with the 'emergency' requirement as a strong reason or basis for constitutional issuance (Fadly Hasibuan & Iza Rumesten, 2023) as mandated by Constitutional Court Decision Number 91/PUU-XVIII/2020.

Upon examining the meaning of “emergency” in depth, it refers to the global dynamics resulting from rising energy and food prices, climate change, and supply chain disruptions. These situations and conditions have a negative impact on the economies of countries around the world, leading to inflation that significantly affects national economies (Ollyvia Cantik Nur Annisa, 2023). Therefore, stemming from this emergency, the issuance of the Job Creation Perppu is expected to address these problems and serve as a legal foundation capable of responding to challenges through widespread employment absorption, the empowerment of

cooperatives and micro, small, and medium enterprises (MSMEs), enhancing the investment ecosystem, accelerating strategic national projects, and efforts to improve workers' welfare and provide protection.

The odd use of the phrase 'will have a significant impact' in the preamble when providing considerations for the Job Creation Perppu indicates that the negative impact presented is not yet actual but still in the form of prospective arguments anticipated by the government. This is highly contradictory to the concept of an emergency or compelling urgency, which is the main requirement for issuing a Perppu.

In September 2022, the president announced that national revenue increased by 49% or approximately IDR 1,764 trillion (Francisca Christy Rosana, 2022). The president also stated that despite the slowdown in the global economy, fluctuating commodities and oil prices, the performance of the national economy (Indonesia) was considered very strong. In January 2023 (National Chinese New Year), the national economy (Indonesia) grew and developed, reaching 5.72% in the third quarter of 2022, with controlled inflation at 5.5% (Ministry of Finance, 2022). The president even claimed that the economic growth at that time successfully positioned Indonesia at the top rank among G20 countries.

Therefore, considering the urgency used as the reason for issuing the Job Creation Perppu, it is highly inconsistent with the actual reality (Fahri Bachmid, 2023). Consequently, based on the theory of the rule of law, the theory of authority, public policy theory, and the theory of governmental discretion, the legal product or discretionary authority issued by the President through the Job Creation Perppu does not comply with the applicable regulations. It is issued purely based on power and serves the interests of a specific group of people rather than the public interest.

Legal Certainty

One of the main objectives of issuing this Government Regulation in Lieu of Law (Perppu) is to provide legal certainty amidst global and economic uncertainties. With this Perppu, it is expected to fill the legal void that emerged after the Constitutional Court declared the Job Creation Law conditionally unconstitutional.

In relation to the theory of legal certainty, legal certainty essentially refers to the enactment of clear, precise, consistent, and consequential laws that cannot be influenced by subjective conditions (Bagir Manan and Kuntanan Magnar, 2017). However, in the issuance of the Job Creation Perppu, its implementation appears to be influenced by subjective conditions, serving the interests of certain political groups rather than the public or the state.

Based on the principles of the rule of law theory, which states that governance is conducted in accordance with laws (Suci Flambonita et al., 2021), the implementation of governance must refer to the legislation that serves as the guideline for state administration based on the will of the people. The constitution, which serves as the guideline for state governance, is further elaborated in legislation divided into various types of laws as stipulated in Law Number 12 of 2011 concerning the Formation of Legislation. Good legislation is harmonious with other legislation. The disharmony of legislation with other laws, whether at the same level or at different levels, will result in complex problems. Consequently, such legislation can be annulled due to inconsistencies with the constitution or higher legislation (M Jeffri Arlinandes Chandra et al., 2022).

Pros and Cons in Society

The issuance of the Job Creation Perppu has elicited reactions from various circles, one of which is former Chief Justice of the Constitutional Court for the 2003-2006 period, Jimly Asshiddiqie. Previously, on November 25, 2021, the Constitutional Court declared Law Number 11 of 2020 on Job Creation or the Job Creation Law formally flawed. Through Constitutional Court Decision Number 91/PUU-XVIII/2020, the Court declared the Job Creation Law conditionally unconstitutional and required the government to amend it within two years. Instead of amending the law, President Jokowi issued the Job Creation Perppu on December 30, 2022, citing compelling urgency to anticipate the threat of an economic crisis (Tempo, 2023).

The issuance of this Government Regulation in Lieu of Law (Perppu) has elicited various reactions from the public. Some support it, believing it can accelerate legal and economic reforms, while others oppose it, arguing that it does not align with democratic principles and public participation (L Sungkar et al., 2022).

The following are several points of contention regarding Government Regulation in Lieu of Law (Perppu) Number 2 of 2022:

- a. This Government Regulation in Lieu of Law (Perppu) alters the provisions for extended leave for workers, making it optional and based on an agreement between the company and the workers.
- b. This Government Regulation in Lieu of Law (Perppu) is considered to have no significant differences from the previous law.
- c. This Government Regulation in Lieu of Law (Perppu) is considered unaspirational and non-participative.

- d. This Government Regulation in Lieu of Law (Perppu) is considered to violate the principle of public transparency in its formation.
- e. This Government Regulation in Lieu of Law (Perppu) is considered susceptible to misuse by the government for personal interests, oligarchs, investors, or elite groups.
- f. This Government Regulation in Lieu of Law (Perppu) is considered to create uncertainty and doubt among investors regarding the prevailing regulations in Indonesia.

4. CONCLUSION

The legal impact of issuing Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 on Indonesia's legal politics is a violation of the grace period for drafting laws, during which the time granted by the Constitutional Court for two years was not utilized optimally by the government and law drafters to amend the Job Creation Law as mandated by the Constitutional Court through Decision Number 91/PUU-XVIII/2020. Furthermore, when the Job Creation Perppu was enacted, there were still approximately 11 months remaining in the grace period, which would end on November 25, 2023. However, instead of utilizing the grace period, the government took a shortcut by issuing the Job Creation Perppu. Regarding legal certainty, the issuance of the Job Creation Perppu does not accommodate such certainty because the content of the Job Creation Law, deemed conditionally unconstitutional, did not undergo significant changes in the Job Creation Perppu. Lastly, the reaction to the issuance of the Job Creation Perppu includes views that it does not have significant differences from the previous law, is unaspirational and non-participative, violates the principle of public transparency in its formation, can be misused by the government for personal, oligarchic, investor, or elite group interests, and can create uncertainty and doubt among investors regarding the prevailing regulations in Indonesia.

The government is expected to carefully consider and respect the orders given in the Constitutional Court's decision regarding a law, such as in the case of Law Number 11 of 2020 on Job Creation, which was declared conditionally unconstitutional and must be revised within a maximum period of two years, ensuring the principle of openness through maximum and meaningful public participation. However, the President issued the Job Creation Perppu unilaterally without meaningful participation

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