

COMPELLING CIRCUMSTANCES IN THE FORMATION OF GOVERNMENT REGULATIONS IN LIEU OF THE JOB CREATION LAW

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ABSTRACT

This study shows that the birth of the Job Creation Perppu is in the background with the Constitutional Court Decision Number 91/PUU-XVIII/2020 which states that Law Number 11 of 2020 concerning Job Creation is conditionally unconstitutional. The basis for the formation of the Perppu is the existence of state factors in a state of compelling emergency, in which the President has subjective authority to issue the Perppu as stated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The problem in this study is how to determine the matter of compelling urgency in the formation of Government Regulations in Lieu of Law (Perppu). Has the establishment of Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation met the element of compelling urgency? The research method used is normative juridical research using literature data from various literature, books, journals, laws and regulations, etc. Data analysis is carried out in a qualitative normative way. The results of the study show that the President has the authority to determine matters of compelling urgency based on the element of objectivity contained in the Constitutional Court Decision Number 138/PUU-VII/2009. First, there is an urgent situation or need to resolve legal problems quickly based on the law, Second, there is a legal vacuum or the existing law is inadequate, Third, there is no time for drafting laws with normal procedures. Then, the fulfillment of the element of compelling urgency in the formation of Perppu Number 2 of 2022 concerning Job Creation was not fulfilled. Because the urgency forced to deal with the state of national economic resilience on which the Perppu was formed did not occur in reality. The government's growth indicators and optimism in the national economy do not show a bad situation but develop well. The condition of legal vacuum or inadequate existing law is not met, because in the Constitutional Court Decision Number 91/PUU-XVIII/2020 the Job Creation Law continues to be enforced during the two-year improvement period, which in terms of content and content of the Job Creation Perppu is not significantly different from the Job Creation Law, and still re-enacts the law, articles that have been revoked if the lawmakers fail to improve. The time limit for the formation of the Law is not normally met, because the formation of the Job Creation Perppu is still in the period of revision of the Job Creation Law which is declared conditionally unconstitutional and does not make good use of the improvement time.

Keywords: *Perppu Job Creation, Compelling Urgency, Formation of Perppu.*

ABSTRAK

Dalam penelitian ini menunjukkan lahirnya Perppu Cipta Kerja dilatar belakangi dengan adanya Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020 yang menyatakan Undang-undang Nomor 11 Tahun 2020 Tentang Cipta Kerja inkonstitusional bersyarat. Dasar dari pembentukan Perppu adalah adanya faktor negara dalam keadaan kegentingan memaksa, dalam keadaan tersebut Presiden mempunyai kewenangan subjektif untuk mengeluarkan Perppu sebagaimana tertuang dalam Pasal 22 ayat (1) UUD NRI 1945. Adapun permasalahan dalam penelitian ini adalah bagaimanakah penentuan hal ihwal kegentingan memaksa dalam pembentukan Peraturan Pemerintah Pengganti Undang-undang (Perppu). Apakah pembentukan Peraturan Pemerintah Pengganti Undang-undang (Perppu) Nomor 2 Tahun 2022 Tentang Cipta Kerja telah memenuhi unsur kegentingan memaksa. Metode penelitian yang digunakan adalah penelitian yuridis normatif dengan menggunakan data kepustakaan dari berbagai literatur buku, jurnal, peraturan perundang-undangan dll. Analisis data dilakukan dengan cara normatif kualitatif. Adapun hasil penelitian menunjukkan Presiden mempunyai kewenangan untuk menentukan hal ihwal kegentingan memaksa dengan didasari unsur objektifitas yang tertuang dalam Putusan

Mahkamah Konstitusi Nomor 138/PUU-VII/2009. Pertama, adanya keadaan atau kebutuhan mendesak untuk menyelesaikan masalah hukum secara cepat berdasarkan undang-undang, Kedua, terjadinya kekosongan hukum atau hukum yang ada tidak memadai, Ketiga, tidak tersedianya waktu penyusunan undang-undang dengan prosedur normal. Kemudian, pemenuhan unsur kegentingan memaksa dalam pembentukan Perppu Nomor 2 Tahun 2022 Tentang Cipta Kerja tidaklah terpenuhi. Karena kegentingan memaksa untuk menangani keadaan ketahanan ekonomi nasional yang menjadi dasar pembentukan Perppu tidak terjadi secara nyata. Indikator pertumbuhan dan optimisme pemerintah dalam perekonomian nasional tidak menunjukkan keadaan yang buruk melainkan berkembang dengan baik. Kondisi kekosongan hukum atau hukum yang ada tidak memadai tidak terpenuhi, karena dalam Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020 tetap memberlakukan Undang-undang Cipta Kerja selama masa perbaikan dua tahun, yang secara materi muatan dan isi Perppu Cipta Kerja tidak berbeda signifikan dengan Undang-undang Cipta Kerja, dan tetap memberlakukan kembali undang-undang, pasal yang telah dicabut apabila para pembentuk undang-undang gagal memperbaiki. Keterbatasan waktu pembentukan Undang-undang secara normal tidak terpenuhi, karena terbentuknya Perppu Cipta Kerja masih dimasa perbaikan Undang-undang Cipta Kerja yang dinyatakan inkonstitusional bersyarat dan tidak memanfaatkan waktu perbaikan dengan baik.

Kata Kunci: Perppu Cipta Kerja, Kegentingan Memaksa, Pembentukan Perppu.

A. BACKGROUND

Government regulation in lieu of law (Perppu) is a law and regulation whose formation is determined by the president in the event of a compelling emergency, as based on Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads, In the event of a compelling emergency, the president has the right to establish a government regulation in lieu of a law. "Government regulation in lieu of law (Perppu) is a regulation that in terms of content should be stipulated in the form of a law, but due to a compelling state of emergency, it is stipulated in the form of a government regulation".¹

However, from the perspective of the President's power, the right to establish a Perppu on the basis of the President's own unilateral assessment regarding the existence of a compelling emergency can be said to be subjective. This means that when a Perppu is stipulated by the President based on the provisions of Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the determination of the existence of a compelling emergency as a prerequisite can be said solely based on the subjectivity of the President's own power. "The assessment of the matter of compelling urgency becomes objective only after it is assessed and justified by the House of Representatives based on the provisions of Article 22 paragraph (2) of the 1945 Constitution of the Republic of Indonesia".² In essence, the issuance of the Perppu is part of the President's authority in providing legal protection for the community as a form of anticipation of a precarious and coercive situation. Hierarchically, the Perppu even has a position equivalent to the law under the 1945 NRI Constitution. and have the same content material that can be arranged in it.

There is a very controversial thing from the enactment of Perppu Number 2 of 2022 concerning Job Creation, because on the other hand, there is a decision of the Constitutional Court Number 91/PUU-XVIII/2020 concerning Job Creation which is declared conditionally unconstitutional, In the Constitutional Court Decision, the Constitutional Court ordered the lawmakers to immediately amend the Job Creation Law with a minimum period of two years from the time the decision was pronounced.³ The Constitutional Court even stated that if the improvements made exceeded the specified time limit, then the Job Creation Law was declared permanently unconstitutional.

¹Jimly Asshiddiqie, *Emergency Constitutional Law*, Rajawali Press, Jakarta, 2008, p. 3.

²*Ibid.*, p., 13

³Amar Constitutional Court Decision Number 91/PUU-XVIII/2020.

However, instead of implementing the Constitutional Court's decision to improve the drafting of the Job Creation Law, the government ignored by issuing Perppu Number 2 of 2022 concerning Job Creation, under the pretext that there was a compelling emergency, of course, in this case there was an action that was considered to harm the applicable legal norms. One of the points of controversy lies in the statement of the term "compelling urgency". In the 1945 Constitution, the terminology of "compelling urgency" can be interpreted variously by the executive, so the essence of "compelling urgency" can give rise to unclear biases. "Even the terminology of compelling urgency is not closed to the possibility of being interpreted only as a "sovereign interest" that is temporary for a specific purpose and purpose".⁴

The many injustices in the denial of workers' rights or adequate wages and the status of workers in Indonesia have been exacerbated since the enactment of the Job Creation Law, even labor organizations are considered weak in conveying aspirations in the protection of workers' rights.⁵ Legal protection is something important because it is an element that must exist in a country and is no exception in terms of legal protection for workers. In the life of the state, there is definitely a relationship between fellow citizens and between countries and their citizens. This relationship can then give rise to rights and obligations, legal protection is the right of citizens and providing legal protection is the obligation of the state.⁶

The historical dynamics of laws and regulations in Indonesia show that the background of the establishment of the Perppu by the President is generally different. This is because the measure of compelling urgency is always multi-interpreted and highly dependent on the President's subjectivity in interpreting the phrase compelling urgency as the basis for establishing a Perppu. Interpreting the term compelling crisis with various interpretations will provide an opportunity for the President to act arbitrarily. "This means that with the absolute authority that the President has in issuing the Perppu, coupled with the absence of clear limits on the definition of compelling urgency, there will be a great opportunity to create an authoritarian government".⁷

In the practice of constitutional law in Indonesia so far, of course, there is a basis for legal certainty in taking a legal action, because there is legal uncertainty in determining the basis of "matters of compelling urgency", in this case the Constitutional Court decision Number 138 /PUU-VII/2009 stipulates three categories of compelling urgency. First, there is a circumstance, namely the urgent need to resolve legal problems quickly based on the law. Second, the required laws do not yet exist so that there is a legal vacuum, or there are laws but they are inadequate. Third, the legal vacuum cannot be overcome by making laws through ordinary procedures because it will take a long time while the urgent situation requires certainty to be resolved.⁸

Furthermore, referring to the provisions of Article 87 of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations regarding the enactment of a law and regulation, it is determined that "laws and regulations come into force and have binding legal force on the date of promulgation, unless otherwise specified in the relevant laws and regulations". This is in accordance with the prevailing practice in the world of legal science everywhere, that is, unless otherwise specified, all legal norms

⁴Siddiq, Muhammad. "Urgency of coercion or the interests of the ruler (Analysis of the Formation of Government Regulations in Lieu of Law (PERPPU))." *Ash-Shir'ah: Journal of Sharia and Law* 48.1 (2014).

⁵Ekawati, Dian, and Dadan Herdiana. "Arrangement of Granting Wage Rights in the Process of Termination of Employment and Its Implementation in the Judge's Decision." *Journal of Citizenship* 7.2 (2023): 2044-2050.

⁶Hadi, Abdul. "Legal protection for employees who experience termination of employment after a court decision has permanent legal force." *Journal of Surya Kencana Satu: Dynamics of Legal and Justice Issues* 9.2 (2019): 53.

⁷Hsb, Ali Marwan. "Compelling Urgency in the Formation of Government Regulations in Lieu of Laws." (2019).

⁸Constitutional Court Decision Number 138/PUU-VII/2009.

come into force binding from the date of being established or promulgated. This also applies to the Perppu, that since it was established or promulgated, the Perppu has binding legal force.⁹

Because the Perppu already has binding legal force after it is established or promulgated and to avoid abuse of the authority of the Perppu, there should be an objective interpretation of the compelling urgency, so that the authority to issue the Perppu by the President is not abused. It is interesting to know whether the conditions or criteria of a compelling emergency are the basis for determining the Perppu by the President and whether the Perppu issued is in accordance with the requirements of a compelling emergency.

The discourse on the Perppu with the terminology of "compelling urgency" is one of the issues that is often debated by legal experts. This makes the topic discussed in this study will be a reference for constitutional law with the title "**Formal Legality Related to Compelling Urgency in the Formation of Government Regulations in Lieu of Law (Perppu) on Job Creation**".

B. RESEARCH METHODOLOGY

The type of research used is normative legal research. Normative legal research is oriented to the analysis of applicable legal documents or materials and is related to the analysis of the urgency of forcing the formation of laws and regulations (PERPPU) as stated in the relevant laws and regulations. Juridical approach (law is seen as a norm or *das sollen*), because in discussing the problem this research uses both legal materials (both written and unwritten laws or both primary and secondary legal materials). Normative research on law will produce theories about the existence and function of law in society and the changes that occur in the processes of social change. The normative in this study means that in analyzing the problem is carried out by combining legal materials with books, or documents that (secondary legal materials) are related to the research title.¹⁰

In accordance with the title and problems that will be discussed in this study and in order to provide useful results, this research is carried out with juridical-normative research (normative legal research method). The normative juridical research method is a literature law research conducted by researching literature materials or secondary data.¹¹ According to Peter Mahmud Marzuki, there are 5 (five) approaches that can be used in legal research, namely:¹² *Statute approach*, *Case approach*, *Historical approach*, *Comparative approach*, *Conceptual approach*.

The approach used in this legal research, the researcher uses two research approaches, namely the statute approach and the *case approach*. The legislation-legislation approach is an approach that is carried out by analyzing the rules and regulations related to the legal issue. In the method of approaching legislation, researchers need to understand the hierarchy, and the principles in laws and regulations. Then the case approach is carried out by conducting an analysis of cases related to the issues at hand that have become court decisions that have permanent legal force.¹³

C. FINDING & DISCUSSION

1. Determination of Compelling Urgency in the Formation of Government Regulations in Lieu of Law (Perppu)

The authority to form Government Regulations in Lieu of Laws is based on Article 22 of the 1945 Constitution of the Republic of Indonesia and article 1 number 4 of Law Number 12 of 2011

⁹Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Laws and Regulations.

¹⁰Ali, Zainuddin, *Legal Research Methods*, Sinar Grafika, Jakarta, 2021, p. 24.

¹¹Soerjono Soekanto and Sri Mahmudji, *Normative Legal Research, A Brief Review*, Raja Grafindo Persada, Jakarta, 2003, p. 13.

¹²Peter Mahmud Marzuki, *Legal Research, Revised Edition*, 15th Edition, Kencana, Jakarta, 2021, p. 93

¹³*Ibid.*, p. 134

concerning the Establishment of Laws and Regulations which explains that the President has the right to stipulate a Perppu in a situation of compelling emergency. This compelling urgency has become a basis for the establishment of the Perppu by the president in guaranteeing the continuity of the law in urgent circumstances or in circumstances of such limited time. The use of the terminology of compelling urgency will give rise to various interpretations depending on the subject who interprets it, so that it can cause bias in interpreting it. In interpreting the compelling crisis related to the formation of the Perppu, it is the subjectivity of the president as the holder of the authority to form the Perppu. However, of course, in its formation, it must be based on careful consideration so that the products produced are solely for the benefit of the nation and state.

In this case, the President, as the ruler of the executive realm in the administration of Indonesia, is given the subjective prerogative to make the Perppu. It is the President who interprets the compelling state of crisis related to the condition of the government that he is facing.¹⁴ Because it is very subjective, the Perppu is not closed to the possibility of deviations in terms of intent and objectives. To prevent this from happening, the government must really understand fully and be careful in the process of forming the Perppu. The planning process of a Perppu which includes reasons that will be taken into consideration for "matters of compelling urgency" must be really considered. If the government feels that constitutional reasons are not enough to issue a Perppu, then the government does not need to force itself to issue the Perppu to fulfill the wishes of individuals or groups. The essence of the birth of the Perppu is to anticipate a "precarious and forceful" situation, so there is an element of coercion to be anticipated immediately but in the legal corridor, namely through the Perppu. And the Perppu must be immediately discussed and tried to be discussed and approved to be promulgated into law, if it is not approved by the DPR, then the Perppu for the sake of law must be revoked.

Based on this, the requirement for the establishment of a Government Regulation in Lieu of Law (Perppu) in accordance with the Laws and Regulations is the fulfillment of the requirements regarding "compelling urgency". In the formation of the Perppu, the substance of its formation is based on Pancasila as the basic norm that applies in Indonesia, and does not contradict the constitution that applies in Indonesia, namely the Constitution of the Republic of Indonesia in 1945, precisely Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

In this case, the determination of "compelling urgency" is an important and definite condition in the birth of a Perppu, but the 1945 Constitution of the Republic of Indonesia and Law Number 12 of 2011 concerning the Establishment of Laws and Regulations do not explain in detail the matter of compelling urgency, even after experiencing two changes to Law Number 12 of 2011 to Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations and finally Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations also does not have a special article that regulates the limitations on matters of compelling urgency for the formation of Perppu. In fact, the essence of the change in the law is as an improvement to the previous law. However, this does not apply to the mechanism for the formation of the Perppu which still causes polemics. Thus, it means that there is no special meaning regarding "Compelling urgency" in rules that are parallel and have a higher hierarchy than the Perppu, including the 1945 Constitution of the Republic of Indonesia and Law Number 12 of 2011. So that this is the President's subjective authority to determine the Perppu.

However, it does not mean that it is absolutely only on the subjective assessment of the President because what has been explained about the subjective assessment of the President must be

¹⁴Saraswati, Retno. "Design an effective presidential system of government." *Legal Issues* 41.1 (2012): 137-143.

based on objective circumstances. There are three conditions as parameters regarding compelling urgency. That is referring to the Constitutional Court Decision Number 138/PUU-VII/2009. which stated, First, there is an urgent need to resolve legal problems quickly based on the law. Second, the required laws do not yet exist so that there is a legal vacuum, or there are laws but they are inadequate. Third, the legal vacuum cannot be overcome by making laws according to ordinary procedures because it will take a long time while the urgent situation needs certainty to be resolved.¹⁵

Looking at the parameters that have been set by the Constitutional Court, basically the issuance of the Perppu is based on the occurrence of a legal vacuum in the face of urgent problems. In such conditions, the implementation of the formation of laws with a normal process cannot be carried out because the problems faced require a quick response. Therefore, as an effort to ensure legal certainty and protection of the interests of the community, the President can use his authority to issue Perppu. Although in essence the right of a President to issue a Perppu is a prerogative, the exercise of that right must be based on clear and strict reasons or conditions.¹⁶ With the existence of the three conditions for determining the urgency of forcing for the formation of the Perppu which has been decided by the Constitutional Court, it has a directional basis and contains elements of objectivity for the President in determining the urgency of forcing in the formation of the Perppu.

However, within the limitation of determining the matter of compelling urgency, it should not only be in the Constitutional Court Decision, but also must be regulated and explained in detail in Law Number 12 of 2011 concerning the formation of Laws and Regulations so that there is no void of norms, so that there needs to be a revision of the Law on the Establishment of Laws and Regulations which also regulates three things regarding "compelling urgency" as stated in the Constitutional Court's decision. Government Regulations in Lieu of Laws are indeed included in the type of laws and regulations whose existence has been clearly mentioned in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. However, the Perppu is still different from the Law, because the validity period of the Perppu is very short, namely until the House of Representatives session closest to the date of the Perppu's determination.¹⁷

This condition certainly raises questions considering that the Perppu is also one of the hierarchies of laws and regulations in Indonesia that will give birth to legal norms and as a new legal norm will be able to give rise to new legal status, new legal relationships and new legal consequences. If there are no clear restrictive rules, the existence of the Perppu will actually cause polemics in the laws and regulations in Indonesia. Because the making of the Perppu does not have the involvement of legislative institutions, namely the DPR, the community and academic manuscripts for its formulation. Thus, if determining a country in a state of compelling emergency is only based on the President's subjectivity, without the value of objectivity and strict limitations to determine the state of compelling emergency in the formation of the Perppu. What should be regulated specifically and in detail in parallel rules, namely the law, then this can have the potential to cause abuse of authority/position (*abuse of power*), and of course this is really not in line with the principle of the state of law, but more dominantly leading to the system of the state of power.

2. The fulfillment of the element of compelling urgency in the formation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation

¹⁵Constitutional Court Decision No. 138/PUU-VII/2009

¹⁶Almanar, Husni A. Jalil, and Nur Rasyid. "THE POSITION OF GOVERNMENT REGULATIONS IN LIEU OF LAWS IN THE SYSTEM OF LAWS AND REGULATIONS IN INDONESIA." *Journal of Law* 3.2 (2015).

¹⁷Febriansyah, Reza Fikri. "The Existence and Prospects of Perppu Regulation in the Legal Norm System of the Republic of Indonesia." *Indonesian Journal of Legislation* 6.4 (2018): 667-682.

The establishment of the Perppu is a form of rights as well as authority owned by the President, the authority is given as stated in Article 22 of the 1945 Constitution of the Republic of Indonesia and Article 1 number 4 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations. This authority is categorized with the attributive authority of the individual, the authority that the President has in the formation of the Perppu alone cannot be directly used with the state of the state in normal or ordinary conditions, but there must be a state factor in a state of compelling emergency, as stated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, "in the case of a compelling emergency, The President has the right to establish government regulations in lieu of laws".

The fulfillment of the element of compelling urgency in the formation of the Perppu is a very important condition that must be met, but the determination of compelling urgency is not explained in detail by a higher rule, namely the 1945 NRI Constitution and a parallel rule, namely the law, but the explanation for the determination of compulsory urgency only exists in the Constitutional Court Decision Number 138/PUU-VII/2009. The Constitutional Court's decision provides three categories for determining compelling urgency, which are as follows.¹⁸

- 1) The existence of circumstances is the urgent need to resolve legal problems quickly 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 laws in ordinary procedures because it will take a long time while the urgent situation needs certainty to be resolved.

Seeing the birth of Perppu Number 2 of 2022 concerning Job Creation, we need to first rely on Law Number 11 of 2020 concerning Job Creation, which was declared conditionally unconstitutional by the Constitutional Court through Decision Number 91/PUU-XVIII/2020. The decision is based on the consideration that the Job Creation Law has not met various provisions of the formal legality of the formation of a law. Then it is considered that it does not meet the principle of normative clarity in the drafting of laws, the omnibus law method used does not have a clear legal basis, and the drafting process has ignored the principle of openness through the absence of space for maximum and meaningful public participation. Then the Constitutional Court gave a deadline for the amendment of the Job Creation Law, which is two years since the decision was pronounced, namely on November 25, 2021.

Thus, the lack of public participation in the formation of the Job Creation Law is one of the main bases that is most highlighted. with the lack of public participation in the formation of a law, it will show a clarity that the laws that are made that should be for the benefit of the community will be more directed only to the interests of politics and the ruling class. Likewise, the government's manipulation in the formation of the Job Creation Perppu which ignores the mandate of the Constitutional Court through Decision Number 91/PUU-XVIII/2020 illustrates that the Job Creation Perppu is very important for the ruler in terms of unfulfilled public participation and the absorption of people's aspirations that are not properly and correctly accommodated.

The reasons and objectives of the government in forming a Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (Perppu Cipta Kerja) include the following:¹⁹

"The reason for the issuance of the Job Creation Perppu by the government:

¹⁸Constitutional Court Decision Number 138/PUU-VII/2009.

¹⁹Rachman, AA Muhammad Insany, Evi dwi Hastri, and Rusfandi Rusfandi. "REVIEW OF THE STIPULATION OF PERPU NUMBER 2 OF 2022 CONCERNING JOB CREATION IN THE PERSPECTIVE OF LEGAL SOCIOLOGY." *JOURNAL OF ARROWS OF JUSTICE* 2.1 (2023): 41-51.

1. Anticipating highly volatile global changes.
2. Employment has decreased significantly as a result of the covid 19 pandemic.
3. As a continuation of the implementation of the Constitutional Court Decision Number 91/PUU-XVIII/2020.
4. Weakening national economic fundamentals related to competitiveness.
5. The reserve of staples in Indonesia is very limited.
6. Inflation in several developed countries has risen sharply, such as the United States and the United Kingdom

The purpose of issuing the Job Creation Perppu, according to the government's view, is to increase employment to facilitate an increase in the number of labor force. Adjusting regulations related to cooperatives and minimum wages. Improve the investment, financial ecosystem and national strategic acceleration. Ensuring fairness, protection and social security for workers and the sustainability of the business world in the future".

Referring to the points of consideration in the policy of forming a rule, the reason or consideration is very important to know for the basis of what kind of purpose the rule is made and the basis for what kind of consideration the rule is issued. Of course, in this case, the basis for consideration in the Job Creation Perppu must meet the relevance in the conditions for its formation, namely "matters of compelling urgency", as stated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Thus, if viewed carefully from the consideration of the meaning of the urgency of forcing the Perppu on Job Creation, the outline of the consideration explains the government's concern in the global economic situation which has the potential to be bad and will have a significant influence on the national economy, including the increase in energy prices, food and climate change, so that the establishment of the Perppu is used as a legal basis to deal with the situation aforementioned. Among them is for the absorption of labor and the improvement of the investment ecosystem.

Thus, according to the author, the use of the sentence "which has the potential to be bad and will have a significant influence on the national economy" in the basis of consideration for the formation of the Job Creation Perppu does not meet the element of compelling urgency, because on the basis of these considerations it is only based on the government's concerns and the situation has not yet occurred, and is only on the basis of a prospective (possibility) of occurring. Thus, the prediction principle used by the government is certainly irrelevant/in line with the principle of "compelling urgency" in the basis of the formation of the Perppu, among which there is an urgent need and must be resolved immediately.

The basis for the consideration of economic resilience which is used as the basis for the meaning of "compelling urgency" in the Job Creation Perppu also seems to be contrary to the reality of the national economic situation which is far from critical. According to Ni Kadek Ayu Sri Undari through her research,²⁰ "In September 2022, President Joko Widodo announced that state revenue experienced a growth of 49 percent or Rp 1,764 trillion. Then, President Jokowi said that Indonesia's economic performance is very strong, even at a time when the global economy is slowing down and world oil and commodity prices are fluctuating. In January 2023 during the National Chinese New Year Celebration, the President announced that Indonesia's economic situation was growing very well, at 5.72 percent in the third quarter of 2022 and inflation was under control at 5.5 percent. Not only that, the President even claimed that the economic growth succeeded in bringing Indonesia to the first rank among other G20 countries". Thus, when viewed in reality, national economic

²⁰Formality, Legality. "FORMAL LEGALITY OF THE ISSUANCE OF THE JOB CREATION PERPPU: A STUDY OF THE PRESIDENT'S SUBJECTIVITY IN THE MIDST OF AN OVERSIZED COALITION."

resilience is far from the element of compelling urgency, starting from its growth and the government's optimism in national economic resilience. Of course, the element of compelling urgency in considering the formation of the Job Creation Perppu is very contradictory to reality and only contains the direction of the elements imposed solely by the government.

The basis for the consideration of the Establishment of the Perppu related to the occurrence of a legal vacuum is actually not in line with and the fulfillment of the element of the legal void, because if referring to the decision of the Constitutional Court Number 91/PUU-XVIII/2020 which states that the Job Creation Law is declared conditionally unconstitutional, the Constitutional Court provides legal certainty related to stating that the Job Creation Law and its implementation rules are still valid during the process The improvements were carried out by the lawmakers. The Constitutional Court has even given consideration in the form of re-enactment of laws, articles and content materials in the Law that have been revoked or amended through the Job Creation Law if the lawmakers fail to prepare improvements within the specified time.

Thus, according to the author, there is a contradictory value if the basis for considering the legal void is the reason for the formation of the Job Creation Perppu, because the material and content of the Job Creation Perppu are not significantly different from the Job Creation Law which has been declared conditionally unconstitutional by the Constitutional Court. The contradictory value is added that the Job Creation Perppu repealed the Job Creation Law, but its implementation regulations were not changed but were maintained. Thus, the basis for considering the legal vacuum in the formation of the Job Creation Perppu is not fulfilled. The basis for insufficient time considerations in the formation of laws. If this is the basis for consideration to form a Job Creation Perppu, it is certainly not appropriate, because in material terms the content of the Job Creation Perppu is not significantly different from the Job Creation Law which has been declared conditionally unconstitutional by the Constitutional Court.

If you look at the government's statement delivered by the Coordinating Minister for the Economy Airlangga Hartanto at the 19th plenary meeting of the House of Representatives of the Republic of Indonesia on March 21, 2023. emphasized that the form of the Perppu was chosen because if the state goes through the process of forming laws and regulations as usual instead of through the Perppu, then the state will be faced with time and a long bureaucracy in the process of forming laws and regulations.²¹ Then as an implementation of the Constitutional Court Decision Number 91/PUU-XVIII/2020.²²

Thus, if the basis for considering the time limitation for the government is used as the basis for the formation of the Job Creation Perppu, of course in this case it seems that the government and the lawmakers do not make good use of the time to make improvements to the Job Creation Law, but the government prefers to issue the Job Creation Perppu. which had previously been given two years of improvement by the Constitutional Court through Decision Number 91/PUU-XVIII/2020, which is until November 25, 2023, which actually still has eleven months since the Job Creation Perppu was issued in December 2022 by the President. Then in the content of the Constitutional Court Decision Number 91/PUU-XVIII/2020 there is no order to form a Perppu as a replacement or improvement, but mandates for the improvement of the formation of a legal basis and the involvement of more public participation.

²¹Anisa Sopiah Cnbc Indonesia, "Passed into Law, This is the Reason Jokowi Made the Job Creation Perppu", <https://www.cnbcindonesia.com/news/20230321124946-4-423537/disahkan-jadi-uu-ini-alasan-jokowi-bikin-perppu-cipta-kerja>, accessed on November 30, 2023.

²²Ilyas Fadilah, "It turns out that this is the reason why Jokowi issued the Job Creation Perppu", <https://finance.detik.com/berita-ekonomi-bisnis/d-6489568/ternyata-ini-alasan-jokowi-terbitkan-perppu-cipta-kerja/amp>, accessed on November 30, 2023.

Thus, if the value of the Constitutional Court Decision Number 138/PUU-VII/2009 is an objective requirement to determine the state in a state of compelling emergency, including the situation of the state in urgent and critical conditions, legal vacuum and fast time to resolve the legal vacuum, then in this case the fulfillment of the element of urgency forces the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (Perppu Job Creation) that it has not yet fulfilled in its formation.

D. CONCLUSIONS AND RECOMMENDATIONS

Based on the description above, the author can give the following conclusions:

- 1) The determination of the urgency of forcing the formation of the Perppu is a subjective authority possessed by the President. However, it must remain objective in its determination. The objective value is in the Constitutional Court Decision Number 138/PUU-VII/2009. First, there is an urgent need to resolve legal problems quickly based on the law. Second, the required laws do not yet exist so that there is a legal vacuum, or there are laws but they are inadequate. Third, the legal vacuum cannot be overcome by making laws according to ordinary procedures because it will take a long time while the urgent situation needs certainty to be resolved. These provisions must be fulfilled as a subjective parameter of the President in determining the circumstances of the emergency forcing the formation of the Perppu.
- 2) The element of compelling urgency in the formation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation was not fulfilled. Referring to the Constitutional Court Decision Number 138/PUU-VII/2009. First, the element of urgent need to solve the problem legally. It is not fulfilled because in reality, the urgency of forcing to deal with the state of national economic resilience in the formation of the Job Creation Perppu does not occur in real terms, the growth indicators and the government's optimism for the national economy do not describe a bad situation but the opposite. Second, there is a legal vacuum or the existing law is inadequate and not fulfilled, the Constitutional Court Decision Number 91/PUU-XVIII/2020 decided to continue to enforce the Job Creation Law during the two-year repair period. In terms of material content, the content of the Job Creation Perppu is not significantly different from the Job Creation Law which is declared conditionally unconstitutional by the Constitutional Court. Third, the insufficient time limitation in the formation of the Law was not met, because the Job Creation Perppu was promulgated during the revision of the Job Creation Law, which in terms of content material content of the two was not significantly different. The government did not take advantage of the two-year grace period properly and correctly as mandated by the Constitutional Court through its decision.

First, there needs to be a revision related to the Law on the Formation of Laws and Regulations that provides a detailed and specific explanation in determining the matter of compelling urgency for the formation of Perppu. The law on the formation of laws and regulations has undergone changes, starting from Law Number 12 of 2011 concerning the Formation of Laws and Regulations, to the latest Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Laws and Regulations. In these changes, there is no article that specifically explains and details the formation of the Perppu which is the subjective authority of the President. With a special and detailed explanation in the law that has a hierarchy equivalent to the Perppu, the value of objectivity in the formation of the Perppu will be more directed, and the

touchstone of its determination has an element of legal clarity. Because if the objective value of determining matters of compelling urgency is only based on the Constitutional Court Decision, which contains elements of judges' interpretation, then it is not equivalent to the hierarchical position of the Perppu.

Both the Government and the legislature should improve the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (Perppu Cipta Kerja) in terms of fulfilling the element of compelling urgency, so that it is fully fulfilled in accordance with the objective parameter value of the Constitutional Court Decision Number 138/PUU-VII/2009. Then the absorption of aspirations and community involvement in the preparation of the Job Creation Perppu can be accommodated properly and correctly, so that it does not give rise to multiple interpretations that the Job Creation Perppu only provides the interests of a certain person or group, which will lead to an act of abuse of power.

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