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STATUS OF GOVERNMENT REGULATIONS IN LIEU OF LAWS IN INDONESIAN STATE ADMINISTRATION SYSTEM

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The position of government regulation in lieu of law (Perppu) in the state administration system is regulated in Article 22 paragraph (1) of 1945 Constitution of the Republic of Indonesia. In cases of compelling urgency, the President has the right to issue such regulation in lieu of law. This study uses normative legal research that analyses the provisions contained in the Indonesian Constitution, in which the President is constitutionally given the right to issue Government Regulations in Lieu of Laws in an emergency or critical conditions in order to resolve urgent issues quickly so as not to endanger the safety of the state. In order to comply with the principles of democracy, after the enactment of a Government Regulation in Lieu of Law within a period of one year, it must obtain the approval of the People's Representative Council by making it a law; otherwise, the Perppu must be revoked.

Keywords: Perppu, administration, Indonesia, government regulation, 1945 Constitution.

СТАТУС ЧРЕЗВЫЧАЙНЫХ ПОСТАНОВЛЕНИЙ, ЗАМЕНЯЮЩИХ ЗАКОНЫ, В ИНДОНЕЗИЙСКОЙ СИСТЕМЕ ГОСУДАРСТВЕННОГО УПРАВЛЕНИЯ

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Возможность принятия чрезвычайного постановления, заменяющего закон (Perppu), в системе государственного управления регулируется пунктом 1 статьи 22 Конституции Республики Индонезии 1945 года. В случаях крайней необходимости Президент имеет право издать такое постановление вместо закона. Данная статья представляет собой нормативно-правовое исследование, в котором анализируются положения, содержащиеся в Конституции Индонезии, в которой Президенту предоставлено право издавать чрезвычайные постановления вместо законов в опасных и критических ситуациях для

быстрого решения неотложных вопросов, не ставя под угрозу безопасность государства. С целью соблюдения принципов демократии после принятия чрезвычайного постановления, заменяющего закон, оно в течение года должно быть одобрено Советом народных представителей в качестве закона, в противном случае Perppu должен быть отозван.

Ключевые слова: Perppu, администрация, Индонезия, государственное регулирование, Конституция 1945 года.

Introduction

Government regulations in lieu of laws are procedures stipulated by the President in critical and coercive circumstances. In the event of a crisis, a President is authorized by the Constitution to stipulate a government regulation in lieu of a law with the intention that the safety of the state can be guaranteed by the government in a forcing precarious situation, so that the government in this case can act quickly and appropriately. Maria Farida stated that government regulations in lieu of laws are regulations made by the President in “a matter of compelling urgency” [11, p. 80].

Government regulations in lieu of laws (hereinafter referred to as Perppu) are the only regulations that require an element of urgency for their formation. Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that, “in the event of a pressing emergency, the President has the right to issue government regulations in lieu of laws”. In the explanation, it was emphasized that this article is about the “noodverordeningsrecht” of the President [8, p. 50]. Unlike the process of forming a law which involves the legislature, this regulation is only determined by the President.

In addition to the 1945 Constitution the regulations under it, namely laws, further regulate Perppu. The law in question is Law No 12 of 2011 concerning the formation of legislation. Article 1 point (4) of this Law states that “Government regulations in lieu of laws are statutory regulations stipulated by the President in matters of compelling urgency”. In terms of types, hierarchy and content material of laws and regulations, Article 7 point (1) of law concerning formation of legislation

states that the types and hierarchies of legislation consist of 7 levels of Legislation. In this hierarchy, Article 7 number (1) letter (c) outlines the Perppu parallel to the law. Thus, in Article 11 it is stated that the content of the Peprpu is the same as the content of the law.

According to Maria Farida Indrati Soeprpto, a Perppu is a regulation that is at the same level as a law, made under a compelling crunch, formed by the President, and has the same function as a law. Therefore, the contents of the Perppu are the same as the contents of the law [10, p. 243].

In line with the law above, the Constitutional Court Decision No 1-2/PUU-XII/2014 dated 11 February 2014 also states that the content of the Perppu is the content of the law, has the power to apply as a law and is generally binding since its promulgation. As part of the types and hierarchy of laws and regulations, the Perppu is an authority of the President in the field of legislation. Perppu's position is indeed parallel to the law in the statutory hierarchy.

However, the formation of a Perppu is not the same as the formation of a law. The formation of the Perppu, as explained in Article 22 paragraph (1) was formed by the President with conditions of compelling urgency. This means that the birth of a Perppu is not formed through the mechanism of discussion and approval from the House of Representatives, hereinafter referred to as the DPR (DPR) and the President, but is formed on the basis of the absolute authority of the President, which is formed due to a compelling emergency.

However, the 1945 Constitution does not explain what is meant by this "compelling urgency". Thus, its interpretation opens up a wide scope for subjectivity and as it pleases for the rights holder who stipulates this Perppu, namely the President. With the presence of the conditions stipulated by the Constitutional Court in the Court's Considerations in Decision No 138/PUU-VII/2009, the intent and meaning of this coercive and precarious situation received a more directed and legal interpretation. According to this Constitutional Court Decision, there are 3 requirements that must be met by the Government or the President in order to issue a Perppu, namely:

1. There is an urgent need to resolve legal issues quickly based on the law.

2. The required law does not yet exist so there is a legal vacuum, or there is a law but it is not sufficient.

3. This legal vacuum cannot be overcome by making laws in the usual manner because it will take quite a long time, while the urgent situation requires certainty to be resolved [15].

The Court also stated that a state of emergency was not the only situation that gave rise to a compelling crisis and depended on the subjective assessment of the President. However, it is also based on the objective assessment mentioned above. Thus, the President cannot arbitrarily issue a Perppu. This is because the President's subjective assessment of the situation and precariousness must be objectively based on the conditions for the birth of a Perppu as outlined in the Constitutional Court decision No 138/PUU-VII/2009 above.

That way, the Perppu that has been stipulated by the President can be measured whether it has met the requirements for the birth of a Perppu or not. Using another sentence, the conditions decided by the Constitutional Court are a parameter for the President in establishing a Perppu. So, if the President does not obey and comply with these elements, the Perppu that is issued will be formally flawed.

Perppu is a regulation formed by the President in "a matter of urgency", therefore the process of its formation is different from the formation of a law. So far, laws have always been formed by the President with the approval of the House of Representatives, and under normal circumstances or according to the Amendments to the 1945 Constitution, they are formed by the People's Representative Council (DPR) and jointly approved by the DPR and the President, and ratified by the President. Meanwhile, the Perppu was formed by the President without the approval of the DPR because of a "forced urgency" The elucidation of Article 22 of the 1945 Constitution before the amendment uses a separate name is intended to differentiate it from government regulations which are not a substitute for laws. Grammatically, the 1945 Constitution does not intend to give its own shape, such as the form of laws or government regulations.

Perppu can be said to have the same degree as a law, it is just that the procedure for its formation is different. But in the next process it becomes law if the Perppu is approved by the DPR. And must be revoked if the DPR does not approve the Perppu issued by the President. However, regarding the functions and contents of the Perppu, it is actually the same as the law. Law No 12 of 2011 concerning the formation of legislation has regulated the process for submitting a Perppu to become law. Namely, Article 52:

1) Government Regulations in Lieu of Laws must be submitted to the DPR in the following session.

2) Submission of government regulation in lieu of law as referred to in paragraph (1) is carried out in the form of filing a draft law concerning the stipulation of government regulation in lieu of law to become law.

3) The DPR only gives approval or does not give approval to government regulations in lieu of laws.

4) In the event that a government regulation in lieu of law obtains approval from the DPR in a plenary meeting, the said government regulation in lieu of law shall be stipulated to become law.

5) In the event that a government regulation in lieu of law does not obtain the approval of the DPR in a plenary meeting this regulation must be revoked and declared no longer valid.

6) In the event that a government regulation in lieu of law must be revoked and declared invalid as referred to in paragraph (5), the DPR or the President shall submit a draft law concerning the revocation this regulation.

7) The draft law on revocation of government regulations in lieu of laws as referred to in paragraph (6) regulates all legal consequences of the revocation of these regulations.

8) The draft law on the revocation of government regulations in lieu of law as referred to in paragraph (7) is stipulated to become the law in the same plenary session as referred to in paragraph (5).

However, the thing that becomes a problem in the Perppu as a “noodverordeningsrecht” of the President, is the meaning of “a matter of compelling urgency” itself. The President’s assessment of “compelling urgency” as the basis for forming the Perppu is seen as subjective, so it is feared that it will not be on target in overcoming the legal gaps that occur. It is feared that the President’s subjectivity in responding to the “legal gap” that has occurred will also impact on the substance of the substance of the Perppu’s content, so that its formation should be supported by the legal political clarity behind it. When the government is able to make regulations that are regulatory, binding in general and impose rights and obligations on citizens, then to what extent does the government limit itself to interpreting the meaning of this compelling crisis. As previously explained, that the power of the government is so broad that the executive power in the field of legislation, namely the formation of a Perppu, should also be given a limit. This limitation does not lead to the power to form a Perppu but leads to the reason or basis for the meaning of “forced urgency”. Because the position of Perppu is very important in the governance system in Indonesia where the President is required to act quickly to resolve issues that are considered important and urgent for the safety of the nation and state.

Methodology

This paper is a scientific research that studies a particular legal phenomenon by analysing it or conducting an in-depth examination of a legal fact and then seeking a solution to the problems arising from the said phenomenon. Legal research is divided into 2 namely normative legal research and empirical legal research [3, p. 27].

Normative legal research places law as a building system of norms. The norm system in question is regarding principles, norms, rules of law, court decisions, agreements, and doctrines. Meanwhile, empirical legal research understands the social conditions and situations where the law is applied, so that empirical legal research provides a complete understanding of a law when it is applied in society [3, p. 45].

This paper uses normative legal research to answer existing problems related to the absence of compelling constraints in the process of issuing Perppu in government

administration. In general, normative legal research uses legal principles, norms, rules from laws and regulations or doctrines. This study uses the principles of legislation and doctrine. The results of testing on statutory regulations and doctrine can assist researchers in finding any requirements so that the understanding of the urgency of urgency in the process of forming a Perppu in the field of taxation can become clear.

Results and discussion

The overview of government regulations in lieu of laws

Article 22 of the 1945 Constitution of the Republic of Indonesia has emphasized, that in the event of an emergency that compels the President to issue a government regulation in lieu of law. This government regulation must be approved by the DPR in the next trial. If you don't get approval, then the government regulation must be revoked. This provision indicates that the situation is more urgent and very forced, without waiting for conditions that are determined in advance by and in a law, as well as what are the consequences that cannot be awaited in a law the President has the right to issue a Perppu as well as declare a dangerous and emergency situation [9, p. 140].

The essence of the birth of the Perppu is to anticipate a "critical forcing" situation. So, there is an element of coercion to be anticipated immediately but within the legal framework, namely through the Perppu. And the Perppu must immediately be discussed and put on trial to be discussed and approved to be enacted into law, if it is not approved by the DPR then the Perppu by law must be revoked [7, p. 60].

The element of urgency that forces must have general characteristics, namely: 1) There is a crisis; 2) There is an urgency (Emergency). A crisis situation when there is a disturbance that causes a sudden urgency (a grave and sudden disturbance). Urgency if there is a situation that was not calculated beforehand and requires an immediate action without waiting for deliberation in advance or there are clear and reasonable signs of the beginning which, if not regulated, immediately cause disturbances to both the community and the running of the government [14, p. 60].

According to Jimly Ashidiqie, there are 3 material requirements in determining the Perppu, namely: a) There is an urgent need or act Reasonable necessity; b) The time available is limited (limited time) or there is a time crunch; c) There are no other alternatives available or according to reasonable reasoning (beyond reasonable doubt) other alternatives are not expected to be able to overcome the situation, so the issuance of a Perppu is the only way to overcome this situation [2, p. 13].

If these three conditions have been met, the President as the head of government will automatically have constitutional authority to regulate matters desired in order to carry out the functions of administering the state and the wheels of government he leads.

What material can be included in the Perppu of course depends on the needs encountered in practice. In fact, this regulation concerning the protection of human rights guaranteed by the 1945 Constitution may be determined by this Perppu as long as it is intended to deal with emergencies in order to protect the entire nation and all of Indonesia's bloodshed [2, p. 13].

According to Sjahran Basah in Marwa there are 5 legal functions namely:

1. Directive, meaning law as a guide in building to form a society to be achieved in accordance with the goals of state life.

2. Integrative, meaning as a builder of unity.

3. Stable, namely as a caretaker and guardian of harmony, harmony and balance in the life of the state and society.

4. Perfective, namely as a good complement to the attitude of citizens' actions when there is a conflict of rights and obligations to get justice;

5. Corrective, namely as a corrective for the attitude of action, both state administration and citizens when there is a conflict of rights and obligations to get justice [6, p. 112].

Perppu is one of the legal products issued by the government and aims to protect the interests of the government and society, of course, in its issuance it must meet the requirements both in formulation and substance. Bearing in mind that the purpose of a regulation is not only to regulate society, but also to give authority to the

government so that the purpose of forming a regulation is achieved. The law is not a goal, but law is a means or tool to achieve goals that are non-judicial in nature and develop due to responses from outside the act. It is the factors outside the law, that make it dynamic. This includes the process of forming a Perppu, so that when it is declared in effect the five legal functions can run as they should.

Powers and authorities of the President in issuing government regulations in lieu of laws

The President's power in the legislative field is that the head's authority in statutory regulations is within the framework of governmental power, which means the power to implement laws. The power of the President is not only to make regulations implementing laws but also to submit draft laws to the People's Representative Council (DPR).

According to Montesquieu's opinion quoted by Sumali: "In principle, the legislative power is expected to be the only body that makes laws and regulations (*wet materielezin*) but in practice it is limited to the practice of regulations outside the law which tend to stick to executive power. The executive authority to form a regulation other than statutory regulations and the Constitution is still in the corridor determined by the Law and the Constitution" [18, p. 73].

The President is the biggest producer of law, because the president knows the most and has the most access and is the biggest source of information in the law-making process. The President best understands what, why, how much, when and how these regulations are made [5, p. 88]. Articles 4 and 5 of the 1945 Constitution explain: Article 4 paragraph (1): the President of the Republic of Indonesia holds government power according to the Constitution; Article 5 paragraph (2): the President stipulates a government regulation to carry out the Law as it should.

In addition, the regulatory function is seen in the formation of laws with the approval of the House of Representatives (DPR) in accordance with Article 5 Paragraph (1) of the 1945 Constitution, the formation of government regulations based on Article 5 Paragraph (2), the formation government regulation in lieu of law

(Perppu) based on article 22 paragraph 1 which is a statutory regulation directly referred to by the Constitution [17, p. 17].

A government regulation in lieu of law (Perppu) is based on the provisions of article 22 paragraph (1) of the Constitution, which stipulates: “In the event of a pressing emergency, the President has the right to issue a government regulation in lieu of law”. According to Abdul Ghofar, if when the DPR is not in session while the president needs to enact a regulation that should be a law or the material is a threat of criminal punishment, so it must be made in the form of a law. Thus the President has the authority to issue Perppu [4, p. 101].

As a form of Presidential system, a state led by a President has the power as head of state and as head of government. As head of state, the President is a symbol of representation of the state and a unifying symbol of the nation, where the duties and responsibilities as head of state include matters that are ceremonial and state protocol [16, p. 134]. Meanwhile, as the head of government, the President functions as the organizer of legislative tasks (implementing laws). In line with this, based on Article 4 Paragraph (1) of the Constitution, it states: “The President of the Republic of Indonesia holds government power according to the Constitution”. The meaning contained in these provisions is that the President is the head of executive power/government in the country. Although the 1945 Constitution does not explicitly state the President as head of state, it can be seen in articles 10-15, where this power is a consequence born of the President’s position as head of state [19, p. 203].

However, even though governmental/executive powers are in the hands of the President, it does not mean that his authority rests solely on that power. The President according to the Constitution even has legislative authority as stipulated in Article 5 paragraph (1), namely submitting a draft law to the DPR, and Article 20 paragraph (2), namely giving approval to the draft law that has been discussed with the DPR. That because the Constitution regulates basic matters, in fact the provisions of Article 4 Paragraph (1) give broad authority to the President and are not detailed. This could be due to the very broad realm of government power.

Governance basically has two meanings:

1. The government in a broad sense (government in a broader sense), which includes all functions that exist within the state. Viewed from the *trias politica* theory, governance in a broad sense includes the power to form laws (legislative), the power to implement laws (executive), and the power to judge (judicial). Thus, power in a broad sense includes the power to form limited laws, executive power, and limited judicial power.

2. The government in a narrow sense, that is only concerned with executive functions, which executive power is power regarding the implementation of laws. This is in line with the opinion of Harold J. Laski, that the executive branch is: “a tool, which is obliged to implement the regulations that have been set by the legislature and work under the supervision of the legislature” [1, p. 215].

Because the President is the executor of government power, he is given various powers to carry out his obligations. The various powers of the President, which are usually formulated in the Constitutions of various countries, cover the scope of authority as follows:

1. Authority that is executive in nature or organizes government based on the Constitution. In fact, in a more stringent system, all government activities carried out by the President must be based on constitutional orders and applicable laws and regulations. Thus, the usual tendency with what is called “discretionary power” is limited to the narrowest possible area.

2. Authority that is legislative in nature or to regulate public or public interests (to regulate public affairs based on the Law and the Constitution). This authority to regulate is considered to be in the hands of representative institutions, not in the hands of the executive. If the executive feels the need to regulate, then the authority to regulate in the hands of the executive is a derivative of the authority of the legislature. This means that the President may not stipulate something, for example, a Presidential decree will no longer be self-regulating as previously understood

3. Judicial powers in the framework of restoring justice related to court decisions, namely to reduce sentences, grant pardons, or eliminate charges that are closely related to the court's authority. In a Parliamentary system that has a head of

state, this is usually easy to understand because of the symbolic role that is in the hands of the head of state. But in the Presidential system the authority to grant clemency, abolition and amnesty is determined to be in the hands of the President

4. Diplomatic powers, namely carrying out communications with other countries or other international law subjects in the context of foreign relations, both in war and peace. The President is the top leader of the country and because of that, he is the symbol of a nation political sovereignty in dealing with other countries. With the approval of Parliament, he also has the political authority to declare war and make peace with other countries.

5. Administrative powers to appoint and dismiss people in state positions and state administration positions. Because the President is also the chief executive, he should have the right to appoint and dismiss people in government positions or state administration positions [12, p. 75].

Position of government regulation in lieu of law in Indonesian state administration system

The form of regulations known in the 1945 Constitution other than laws is government regulations in lieu of laws or Perppu. The legal basis for this form of legislation is the provisions of article 22, which states:

1) In the event of a pressing emergency, the president has the right to issue government regulations in lieu of laws.

2) The government regulation must obtain approval from the DPR in the following session.

3) If approval is not obtained, the government regulation must be revoked.

In the 1945 Constitution there are several types of laws and regulations including: Laws – Article 5 paragraph (1), Juncto – Article 20 Paragraph (1), government regulations – Article 5 Paragraph (2), government regulations in lieu of laws – Law (Article 22). This shows that the President as the head of government can make government regulations in lieu of laws in critical circumstances and that the Perppu has been recognized since the independence of the Republic of Indonesia [13, p. 37].

It is different with the 1949 Constitution of the United States of Indonesia (RIS Constitution) and the Provisional Constitution of 1950 Perppu, which are known as Emergency Laws. Where in article 139 of the RIS Constitution and article 96 of the Provisional Constitution reads:

1) The government and on its own proxies stipulates an Emergency Law to regulate matters in the administration of the federal government which, due to urgent circumstances, need to be regulated immediately.

2) The Emergency Law has the powers and powers of the Federal Law, this provision without prejudice to those set out in that article.

Article 96 of the Provisional Constitution of 1950 reads:

1) The government has the right to its own power and responsibility to stipulate Emergency Laws to regulate matters of government administration which, due to urgent circumstances, need to be regulated by the State.

2) The Emergency Law has the power and degree of law. This provision does not reduce what is stipulated in the following article.

If you compare the Perppu regulated by the 1945 Constitution the RIS Constitution and the 1950 Constitution, there is little difference. First, the authority or authority in making Perppu in the 1945 Constitution is the authority of the president while for the RIS and 1950 Constitution is the authority of the government.

From the formulation of the Perppu contained in Article 22 of the 1945 Constitution, it can be concluded regarding the position of the Perppu in administering government in Indonesia as follows:

1. That in terms of the type/form of the Perppu it is a government regulation as referred to in Article 5 paragraph (2) of the 1945 Constitution, but in circumstances which compel the government regulation, from a material standpoint it can contain the same provisions as the Law.

2. In the 1945 Constitution there is no official term related to Perppu, so it can be interpreted that the term Perppu can be replaced with an Emergency Law, for example;

3. A Perppu can only be stipulated by the President if there is a compelling urgency, which cannot be confused with the notion of a state of emergency. In the sense of “forced urgency”, there is an emergency character, which gives the President the basis for authority to issue a Perppu. The emergency itself arises from the subjective assessment of the President regarding the demands of an urgent situation to act quickly and appropriately to overcome the situation (noodverordeningsrecht).

4. Basically, Perpu are equal to or have the same powers as the Law. The DPR must actively oversee both the enactment and supervision of Perppu.

5. Perppu is temporary.

Conclusion

The President’s authority in forming and enacting government regulations in lieu of laws (Perppu) is one of his subjective powers to determine the direction of state policy towards the principles and objectives of the state mandated by the Constitution. Perppu is the authority of the President, which has been regulated in the Indonesian Constitution. In this case, the President can act quickly in making a decision under the legal umbrella of the Perppu so that problems that are critical and urgent in nature are resolved immediately. There is no need to rely on laws that process its manufacture takes a long time because it requires cooperation between the president and the House of Representatives. The legal position between government regulations in lieu of laws and laws has the same and equal position. The position of the Perppu is very important in the administration of government in Indonesia. The existence of the Perppu is very helpful in solving critical problems quickly for the safety of the country.

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