

Implications Of Dualism In Testing Government Regulations In Lieu Of Laws (Perppu) Against Legal Certainty

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Abstract

In the event of a compelling emergency, the President has the right to enact a Government Regulation in Lieu of Law (Perppu). The government regulation must be approved by the House of Representatives (DPR) in the following session. If it does not get approval, then the government regulation must be revoked. (Article 22 of the 1945 Constitution). With this provision, the authority to review (Perppu) attributively lies with the House of Representatives. However, in the development and dynamics of constitutional law, the Constitutional Court Decision No. 138/PUU-VII/2009 was born, which has now become a jurisprudence that the Constitutional Court also has the right to test Perppu against the 1945 Constitution. Testing perppu in the DPR RI by political review is different from testing perppu in the Constitutional Court which is carried out by judicial review. This paper focuses on the dualism of testing perppu with its implications. In practice, it can happen that the House of Representatives and the Constitutional Court give conflicting decisions because of the different testing models. The research method used is normative juridical, which examines a set of legal materials related to the perppu testing. The analysis used is the need for certainty of time for the DPR to conduct a hearing for approval of perppu in Article 22 paragraph (2) of the 1945 Constitution and Article 19 paragraph (3) of the 1945 Constitution. The validity period of the Perppu is considered quite long and uncertain so that there are people who submit Perppu testing through the Constitutional Court. It is often found that when a judicial review is conducted through the Constitutional Court, it turns out that politically the Perppu is also being proposed by the DPR. And when the Perppu has been approved by the DPR into law, the Constitutional Court will decide on the Perppu review with a verdict stating that the petition cannot be accepted on the grounds that the petition has lost its object. The dualism of Perppu testing in practice creates a waste or legal uncertainty.

Keywords: Perppu, House of Representatives, Constitutional Court.

I. INTRODUCTION

The state constitution is the highest and most important law in a country so it is often referred to as the supreme law of the land. The constitution is the source of all laws and regulations in the country. If a country's constitution is in written form, it will clearly be the formal source for all laws and regulations in the country. In addition, all state organs such as the legislature, executive and judiciary, as well as other institutions, must also follow the constitution. In the 1945 Constitution of the Republic of Indonesia, Article 22 paragraph (1) states: In the event of a compelling emergency, the President has the right to enact government regulations in lieu of laws. Perppu according to Article 1 point 4 of Law Number 12/2011 on the Establishment of Legislation which states "Government Regulation in Lieu of Law (Perppu) is a statutory regulation stipulated by the President in the

event of a compelling urgency". Perppu has a significant position and role in the context of solving urgent and critical national problems.

The President's authority to enact a Government Regulation in Lieu of Law (Perpu) is an extraordinary authority in the field of legislation. This is because in stipulating Perppu, it is based on the President's subjective assessment without involving the House of Representatives (DPR) and only sought approval from the DPR at the next DPR session. The next session conducted by the DPR is uncertain when the time will be, but based on the provisions of Article 19 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the House of Representatives convenes at least once a year. With the provisions of this article, it can happen that the Perppu will be valid for up to one year waiting for the DPR to convene. Article 249 paragraph (1) of House Regulation Number 1 of 2020 on Rules of Procedure states: The DPR session year begins on August 16 and ends on August 15 of the following year. The session year is divided into 4 (four) or 5 (five) trial periods in accordance with the decision of the Consultative Body (article 249 paragraph 2). The trial period includes a session period and a recess period, except for the last trial period of 1 (one) DPR membership period, when the recess period is eliminated (Article 249 paragraph 3). Article 22(2) of the 1945 Constitution requires that Perppu must be approved by the DPR. Furthermore, Article 22 paragraph (3) of the 1945.

Constitution states: "If it does not receive approval, the government regulation must be revoked." The mechanism of giving approval and not giving approval to Perppu by the DPR is commonly referred to as political testing of Perppu by the DPR (legislative review). The authority of the DPR to approve and not approve Perppu is also regulated in Article 6 letter (b) of DPR Regulation No. 1 of 2020 concerning Rules of Procedure, which states: The DPR is authorized to "Approve or not approve government regulations in lieu of laws proposed by the President to become laws."

The judicial review of Perppu has also been conducted through the Constitutional Court. Actually, the authority of the Constitutional Court has been regulated in Article 24C of the 1945 Constitution in a limitative manner where Perppu testing is not included in the authority of the Constitutional Court.

However, in practice, the Constitutional Court has also stated that it is authorized to test Perppu materially with the 1945 Constitution, on the grounds that the material content of Perppu is the same as laws. Perppu since its enactment has created a legal norm and as a new legal norm will be able to cause: (a) new legal status, (b) new legal relations, and (c) new legal consequences. The legal norm is valid and applies like a law. The test can be conducted both before the rejection or approval by the DPR, and after the approval of the DPR because the Perppu has become a law. The dualism of Perppu testing by the DPR and by the Constitutional Court has caused legal uncertainty as will be explained in this paper.

II. LITERATURE REVIEW

Government Regulation in lieu of law (PURPPU).

Government Regulation in Lieu of Law (Perppu) is regulated in Article 22 paragraphs (1), (2) and (3) of the Constitution. Jimly Asshiddiqie stated that the legal basis for the stipulation of Perppu is a compelling emergency, due to a state of danger or for other reasons that are truly compelling. It can also occur due to urgent reasons, in order to maintain the safety of the country, while the legislative process through the House of Representatives (DPR) is difficult to implement, then the President on the basis of his belief can set regulations on the material that should be contained in the law in the form of Perppu.

However, because in every stipulation of Perppu, the subjectivity of the President cannot be separated, Article 22 paragraph 2 and paragraph 3 of the 1945 Constitution regulates that Perppu must be approved or not approved by the House of Representatives in the following trial. With the requirement to obtain approval from the House of Representatives, the Perppu is actually a product of the formation of unfinished legislation, and needs to be followed up with approval or political testing by the DPR, which has consequences if the Perppu is approved by the DPR then the Perppu will be enacted into law, and if rejected by the DPR then the Perppu must be revoked. In the Indonesian constitutional system, the position of Perppu is regulated in Article 7 paragraph (1) of Law Number 12/2011 on the Formation of Legislation. The types and hierarchy of laws and regulations in Indonesia consist of: 1. Constitution of the Republic of Indonesia Year 1945; 2. Decree of the People's Consultative Assembly; 3. Law / Government Regulation in Lieu of Law; 4. Government Regulation; 5. Presidential Regulation; 6. Provincial Regional Regulation; and 7. Regency/City Regional Regulation.

The article states that the hierarchy of government regulations in lieu of laws (Perppu) is equal to laws. This is because in terms of content, the Perppu is the same as the law, the only difference is that the Perppu is issued by the President in a case of compelling urgency. Regarding the criteria of the compelling urgency, the Constitutional Court in Decision Number 138/PUU-VII/2009 provides 3 (three) requirements, namely: 1. There is an urgent need to solve 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; and 3. The legal vacuum cannot be overcome by making laws in the usual procedure because it will take a long time while the urgent obstacle needs certainty to be resolved. Perppu is equated with the law according to Maria Farida because perppu is a government regulation that replaces the law, the content material is the same as the content material of the law. The same thing was also stated by Bagir Manan that the content material of the perppu is the content material of the law. In ordinary circumstances, the content material must be regulated by law. However, Bagir Manan further stated that the content material of government regulations in lieu of laws should be on matters relating to the administration of government (state administration). So, perppu should not be issued that are constitutional in nature and matters relating to state institutions, judicial power, implementation of popular sovereignty and others outside the scope of state administration.

III. METHODOLOGY

Research type and approach. This research is legal research using a normative approach. One of the uses of legal research is to find out whether and how the law regulates to accommodate the dualism implications of Perppu testing by the DPR and by the Constitutional Court on legal certainty and how legal procedures and ideal Perppu testing in the future."

Data Collection Method and Type. Data is obtained from materials that contain legal rules and other information related to a rule, legal events and legal decisions, which are called legal materials. Obtaining legal materials by searching legal documents of laws and regulations, literature studies and archival searches. Legal materials in this research include Primary Legal Materials and Secondary Legal Materials.

IV. RESULTS AND DISCUSSION

What is the ideal validity period of the Perppu:

As a government organizer, the President can form the necessary laws and regulations because the President is also the holder of regulatory power in the Republic of Indonesia. In this context, it does not mean that the President has absolute power in terms of forming laws. The President does not have the authority to regulate the public interest which contains regulatory material regarding the rights and obligations of citizens, but the President forms regulations in the event that the President implements the law. Therefore, there should be no independent Presidential Decrees with a function to regulate. The authority to regulate (regeling) against the President is only limited to: a. in the event that the conditions for the enactment of a state of emergency that allows the President to enact a Perppu are met; b. in the event that the regulated material relates to internal government administration decisions that are not related to the public interest.¹ In the 1945 Constitution, this regulatory function is seen in the formation of Government Regulations, in accordance with Article 5 Paragraph (2) of the 1945 Constitution and the formation of Government Regulations in Lieu of Laws (Perppu) under Article 22 Paragraph (1) of the 1945 Constitution.

Article 22 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that perppu, once issued, must be approved by the House of Representatives in order to become law. It states that "The government regulation must be approved by the House of Representatives in the following session". This provision not only regulates the requirement for DPR approval, but also shows that perppu is a temporary regulation that has a certain period of validity. The period of validity of a perppu according to the constitutional regulation is from the time it is enacted by the President until the statement of approval from the DPR which is carried out at the "following session". The Explanation of Article 52 paragraph (1) of Law Number 12/2011 on the Establishment of Legislation states that what is meant by "the following session" is the first session of the DPR after the Government Regulation in Lieu of Law is enacted.²

From the perspective of the Theory of Authority, the birth of Perppu is an attributive right of the President as stipulated in Article 22 paragraph (1) of the 1945 Constitution which states: "In the event of a compelling urgency, the President has the right to enact government regulations in lieu of laws. The stipulation of Perppu carried out by the President means that the President is carrying out the legislative function, which actually has the authority to make laws based on Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia in the hands of the House of Representatives (DPR), but in the event of a compelling urgency, the President has the right to stipulate Government Regulations in Lieu of Laws (Perppu). The condition of "compelling urgency" in practice appears to be the only indicator of the examination of a perppu by the DPR because the DPR cannot make changes to the material of the perppu. The provision in Article 52 paragraph (3) of Law No. 12/2011 on the Establishment of Legislation states that "the DPR only gives approval or does not give approval to Government Regulations in Lieu of Laws". This arrangement, when viewed from the context of executive and legislative relations as analyzed above, indeed makes the president's position as the controller of the legislative agenda in parliament. The position of parliament is not only passive but also relatively only as a legitimizer of the will of the government in forming policies. In terms of the policy material contained in the Perppu, this provision is problematic for the DPR. The DPR cannot make an option to accept with amendments to a Perppu that has been issued by the government. So the DPR only tests the "compelling urgency" requirement of a Perppu, not its material. The House of

¹ *Jimly Asshiddiqie State Institutional Formats and Power Shifts in the 1945 Constitution* FH UI Press, Yogyakarta 2005 p 108.

² *Law No. 12/2011 on the Formation of Legislation*

Representatives cannot have an attitude that accepts the occurrence of a "compelling urgency" but does not approve of the arrangements made by the president in handling it. Meanwhile, Article 22 paragraph (2) of the 1945 Constitution states that "The government regulation must be approved by the House of Representatives in the following session. " With these provisions, the validity period of Perppu according to the 1945 Constitution is a maximum of one year, this is based on the provisions of Article 19 paragraph (3) of the 1945 Constitution which states: " The House of Representatives convenes at least once a year.

Article 249 paragraph (1) of House Regulation Number 1 of 2020 on Rules of Procedure stipulates that the session of the House begins on August 16 and ends on August 15 of the following year: The session of the DPR begins on August 16 and ends on August 15 of the

following year. The session year is divided into 4 (four) or 5 (five) trial periods in accordance with the decision of the Consultative Body (article 249 paragraph 2). The trial period includes the session period and the recess period, except for the last trial period of 1 (one) DPR membership period where the recess period is eliminated (article 249 paragraph 3)³ . With this provision, there is a possibility that the Perppu can be valid for up to 6 (six) months. The regulation of the DPR's trial period, which is regulated in the House Rules of Procedure, is internal and can easily be changed by the DPR, making it less binding, whereas the regulation of the DPR's trial period to approve or not approve Perppu will have more legal certainty if it is regulated in the Constitution in the article governing Perppu. According to the theory of legislation, the validity of Perppu is temporary until there is approval from the House of Representatives (DPR) to be enacted into law. In the perspective of the theory of separation of powers, the issuance of Perppu can be a problem in the relationship between the executive and legislative institutions. The president's way of dealing with the legislature by using *proactive power* such as *emergency decree* or Perppu should not be cultivated because it is not in accordance with the principle of the division of powers. In various practices, the use of this power does not make executive-legislative relations better, but instead increases the tension between the two powers. If the president succeeds in using it, he or she tends to think that it is the right way to deal with the legislature, so they continue to use it. Meanwhile, parliament considers the repeated use of this power to be a challenge to the existence of parliament as the main policy maker and as the holder of law-making powers and oversight functions.

Bagir Manan states that government regulations as a substitute for laws must be seen as "*the necessary evil*", as something that should be avoided, but is forced to be taken as an effort to form improper law (*abnormale rechtsvorming*). This means that there should be no attitude for the formers, legislative bodies, other state institutions or the people who are bound by these regulations to accept this type of regulation as a prevalence that can occur at any time. The issuance of Perppu must be limited Not all issues can be regulated through Perppu because there are materials that are considered potentially misused for the political interests of executive power and there are materials that affect the value of public justice due to limited public participation in the formation of Perppu. Restrictions on the issuance of Perppu can be done by providing regulations for the issuance of Perppu through legislation, especially through the constitution. To avoid abuse of power and legal certainty, it is necessary to amend the constitution in order to regulate in more detail the process of forming perppu, its temporariness, until the process of discussion and approval in parliament, and in detail determine the materials that may be regulated through perppu regulations. When compared with the validity period of Perppu with the country of Brazil. In Brazil, the power of the president

³ Article 249 of House Regulation No. 1/2020 on Rules of Procedure

to issue regulations similar to Perppu is regulated in **Article** 62 of the 1988 Brazilian Constitution. The President of Brazil has the power to take proactive measures in legislation, namely issuing **presidential legislative decrees** which in Brazil are known as **medidas provisórias** or temporary measures. With this power, the President of Brazil can issue regulations that take effect immediately without the need for parliamentary approval. However, the constitution limits this power by providing that it can be exercised by the president under conditions of **relevance and urgency and that** within 30 days of its issuance the parliament must decide whether to accept the regulation, which will result in it becoming law, or reject it, which will result in its non-enactment.⁴

Whereas in the 1994 Argentine Constitution, the president is given the power to make decrees in exceptional circumstances that can take effect immediately known as *decreto de necesidad y urgencia* (decree of necessity and urgency). Most policy areas can be the subject matter of such presidential decrees. The Constitution only excludes criminal provisions, taxation, electoral matters and the party system as areas that may not be regulated. However, 10 days after issuance, the decree must be submitted to parliament for discussion.⁵ By comparing the validity period of Perppu in Brazil for only 30 days and in Argentina for 10 days, the validity period of Perppu in Indonesia, which normatively is a maximum of up to one year, it seems necessary to review the provisions of the validity period of Perppu or the period of testing of Perppu by the DPR so that the maximum time is set for 60 (sixty) days so that there is legal certainty whether a Perppu will be approved as a law or will be rejected by the DPR and then the Perppu is revoked.

Testing Perppu in accordance with the 1945 Constitution of the Republic of Indonesia.

According to the theory, the authority to review Perppu is attributively given to the DPR as stipulated in Article 22 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states: "Government regulations must be approved by the House of Representatives in the following session". With this provision, it is clear that it is the DPR that is given the right to examine a Perppu. As it is known that the formation of a Perppu until it later becomes a law or not is a political process, therefore it is appropriate for the Constitution to determine that the Perppu must be approved, in other words, it must be tested politically by the DPR. And article 22 paragraph (3) of the 1945 Constitution of the Republic of Indonesia determines: "If it does not get approval, then the government regulation must be revoked". From the perspective of the theory of legislation, the position of Perppu is parallel to the law where the form of Perppu is a government regulation while the Perppu material contains the same norms as the law where the norms are directly applicable since the Perppu is enacted by the President. In practice, in addition to the DPR conducting political testing of Perppu, the Constitutional Court based on its decision Number 138 / PUU-VII / 2009 which was later made jurisprudence in testing Perppu, the Constitutional Court stated that it was authorized to conduct Judicial Review of Perppu. However, if we examine the theory of authority, it turns out that Article 24C of the 1945 Constitution only gives authority to the Constitutional Court in a limitative manner and Perppu is not included in the authority of the Constitutional Court. The reason why the Constitutional Court has the authority to review the Perppu is because the Perppu creates legal norms and as a new legal norm, it will give rise to: (a) new legal status, (b) new legal relations, and (c) new legal consequences. The legal norm is born since the Perppu is passed and the fate of the legal norm depends on the approval of the

⁴ Fitra Arsil, *Politics of Perppu*, Head of Constitutional Law Study Division FHUI

⁵ Fitra Arsil Initiating restrictions on the formation and content of perppu: a comparative study of the regulation and use of perppu in presidential countries *Journal of Law & Development* 48 No. 1 (2018).

DPR to accept or reject the Perpu legal norm, however, before the DPR's opinion to reject or approve the Perpu, the legal norm is valid and applies like a law. Because it can lead to legal norms with the same binding force as the Law, the Court can test whether the norms contained in the Perpu are materially contrary to the 1945 Constitution. Thus, the Court has the authority to test the Perpu against the 1945 Constitution before the rejection or approval by the DPR, and after the DPR approval because the Perpu has become an Act;⁶

Constitutional Judge Moh. Mahfud MD had a concurring opinion on the Court's decision: The main point is that the testing of Perppu is the authority of the House of Representatives (DPR) and after it becomes a Law, the Constitutional Court can only conduct judicial testing on it. However, considering the important developments in the constitution, Perppu can be tested for constitutionality by the Constitutional Court, especially through the emphasis on constitutional interpretation. In relation to the development of state administration and Perppu testing, it is necessary to interpret the contents of the 1945 Constitution not only based on original intent, historical interpretation, and grammatical interpretation but must emphasize sociological and teleological interpretation. In addition to maintaining the uprightness of the constitution, namely "there must not be a single second of legislation that has the potential to violate the constitution without being straightened out or tested through judicial review." The Constitutional Court Decision No. 138/PUU-VII/2009 has given new authority to the Constitutional Court in addition to its authority which has been regulated limitatively in Article 24C of the 1945 Constitution. According to Hamdan Zoelva in an interview with I Dewa Gede Palguna in his book "Constitutional Complaints" stated that formally, it is impossible to give additional authority to the Constitutional Court without first making changes to the 1945 Constitution.⁷ But according to I Dewa Gede Palguna, the addition of the authority of the Constitutional Court can be done without formal changes to the 1945 Constitution. This can be done in 2 (two) ways, namely:⁸

1. Through *legislative interpretation*, which is the authentic or official interpretation of the legislator of a number of definitions in the law. This is done simply by amending the law on the Constitutional Court.
2. Through *judicial interpretation*, namely the interpretation carried out by the Constitutional Court of the provisions of the law in the Constitutional Court's decision.

In the case of the addition of the authority of the Constitutional Court to examine government regulations in lieu of laws that occur is the addition of the authority of the Constitutional Court through *judicial interpretation*. Where the Constitutional Court interprets that government regulations in lieu of laws are the same as laws because the two types of legislation are the same in terms of content and are hierarchically parallel. Due to the same content, the Constitutional Court stated that the Constitutional Court is authorized to examine government regulations in lieu of laws in terms of their material. According to the author, the sociological and teleological interpretations submitted by Mahfud MD should have a legal basis to state the authority of the Constitutional Court as the basis of legality as required by the Theory of the Rule of Law. In the absence of a legal basis in providing this interpretation, it can be said that the Constitutional Court has tested Perppu beyond the authority granted by the 1945 Constitution of the Republic of Indonesia Th 1945. In practice, one of the phenomena of the judicial submission of Perppu to the Constitutional Court is

⁶ Constitutional Court Decision Number 138/PUU-VII/2009

⁷ Palguna, I Dewa Gede, 2013. *Constitutional Complaints; Legal Efforts against Violations of Citizens' Constitutional Rights*, Sinar Grafika, Jakarta, pp. 593 - 594.

⁸ *Ibid*, p. 600.

due to the uncertainty of the enactment of Perppu with the provisions of Article 22 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that perppu after being issued must obtain approval from the DPR in order to become law. It states that "The government regulation must be approved by the House of Representatives in the following session". This provision not only regulates the requirement for DPR approval, but also shows that perppu is a temporary regulation that has a certain period of validity. The period of validity of a perppu according to the constitutional regulation is from the time it is enacted by the President until the statement of approval from the DPR which is carried out at the "following session". The Explanation of Article 52 paragraph (1) of Law Number 12/2011 on the Establishment of Legislation states that what is meant by "the following session" is the first session of the DPR after the Government Regulation in Lieu of Law is enacted.

The provision of Article 52 paragraph (1) allows the Perppu to take effect for up to one year if at the time of the issuance of the Perppu the DPR has just held its annual session and will only discuss the Perppu at the next session, which according to the provisions of Article 19 paragraph (3) the DPR convenes at least once a year. The uncertainty of the DPR session, which is only determined at least once a year, has led justice seekers to bring the issue of perppu to the Constitutional Court. There are several decisions of the Constitutional Court on Perppu, among others:

1. Decision Number: 138/PUU-VII/2009 Dated February 8, 2010, Regarding the Examination of Law Number 30 of 2002 Concerning the Corruption Eradication Commission; Decision Not Acceptable);
2. Decision Number: 54/PUU-VIII/2010 Examination of Government Regulation in Lieu of Law Number 1 Year 2010 on Forestry (Article 83 B) (withdrawn);
3. Decision No. 94, 93, 92, 91, 90/PUU- XI/2013 Examination of Government Regulation in Lieu of Law No. 1 of 2013 Concerning the Second Amendment to Law No. 24 of 2013 Concerning the Constitutional Court against the 1945 Constitution, (ruled inadmissible);
4. Decision Number: 128/PUU-XII/2014 Examination of Government Regulation in Lieu of Law Number 1 Year 2014 on the Election of Governors, Regents, and Mayors against the 1945 Constitution (declined);
5. Decision Number: 118, 119, 125, 126, 127, 129, 130, 135/PUU-XII/2014 Dated February 18, 2015, Examination of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors, and Examination of Government Regulation in Lieu of Law Number 2 of 2014 on Regional Government against the 1945 Constitution (ruled unacceptable);
6. Decision Number: 85/PUU-XV/2017 Examination of Government Regulation in Lieu of Law Number 1 Year 2017 on Access to Financial Information for Tax Purposes against the 1945 Constitution (withdrawn);
7. Decision Number: 96/PUU-XIV/2016 Dated November 28, 2017, Examination of Government Regulation in Lieu of Law Number 51 of 1960 on the prohibition of the use of land without the permission of the rightful owner or his/her proxy against the 1945 Constitution (rejected in its entirety);
8. Decision Number: 58/PUU-XV/2017 Dated 12 December 2017, Examination of Government Regulation in Lieu of Law Number 2 of 2017 Concerning Amendments to Law Number 17 of 2013 Concerning Community Organizations against the 1945 Constitution (ruled inadmissible)
9. Decision Number: 52, 49, 48, 41, 39, 38 /PUU-XV/2017 Dated 12 December 2017 Examination of Government Regulation in Lieu of Law Number 2 of 2017 Concerning Amendments to Law Number

- 17 of 2013 Concerning Community Organizations against the 1945 Constitution (ruled inadmissible);
10. Decision Number: 23/PUU-XVIII/2020 dated June 23, 2020 concerning Material Testing of Perppu Number 1 of 2020 concerning State Financial Policies for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic against the 1945 Constitution; (ruled unacceptable);
11. Decision Number: 24/PUU-XVIII/2020 dated June 23, 2020 concerning Material Testing of Perppu Number 1 of 2020 concerning State Financial Policy and Handling of the 2019 Corona Virus Disease Pandemic (COVID-19) against the 1945 Constitution; (ruled inadmissible);

For example, the case of Testing Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (Covid-19) Pandemic and / or in the Context of Facing Threats That Endanger the National Economy and / or Financial System Stability against the 1945 Constitution of the Republic of Indonesia. The case was filed on April 14, 2020 and has been decided based on the Constitutional Court Decision Number 23/PUU-XVIII/2020 dated June 23, 2020, with the verdict: Stating that the Petitioners' petition cannot be accepted, because the Petitioners' petition has lost its object, namely the proposed Perppu has been approved by the DPR as a law. The Perppu test at the Constitutional Court counted as the case was submitted on April 14, 2020 and was decided on June 23, 2020 or the Perppu test at the Constitutional Court took 70 (seventy) days. The testing of perppu by the Constitutional Court also contains legal uncertainty and problematics as follows:

1. When the Constitutional Court ruled the perppu as unconstitutional but then the House of Representatives approved the perppu submitted by the President which norm will apply;
2. When the Constitutional Court ruled the perppu as constitutional but then the House of Representatives did not approve (reject) the perppu submitted by the President which norm will apply;
3. When the Constitutional Court decides on a perppu that is not immediately or protracted, there is no examination by the House of Representatives but then the decision as mentioned in numbers 1 and 2 which norms will apply;

Problems will occur in practice, and most perppu conducted judicial review to the Constitutional Court is declared unacceptable because the object of perppu testing has lost its object, namely the perppu that is being tested has been approved by the House of Representatives into law. With this fact, it means that the testing of perppu through the Constitutional Court substantively has no legal certainty in its completion and is just a useless waste of time. There is dualism in testing Perppu, which is carried out first politically by the DPR, and second juridically by the Constitutional Court, but finally the Constitutional Court decided that the Judicial review request could not be accepted because the Perppu had been approved as a law by the DPR. With the decision of the Constitutional Court, it appears that there is overlapping or overlapping in the authority to review Perppu. If only the Constitutional Court adheres to the principle of limiting its authority and waits for the results of Perppu testing by the DPR whether the Perppu is approved or rejected as a law, and after being approved as a new law the Constitutional Court conducts testing according to its authority. With such facts, the actual testing of perppu through the Constitutional Court is not appropriate and the right test to the Constitutional Court after the perppu is broken by the testing of the House of Representatives by accepting the perppu as law.

One of the causes of the dualism in the testing of Perppu is the absence of a definite time limit on the testing of Perppu by the DPR. If there is a definite time limit on the testing of Perppu by the DPR, the applicants

for judicial review to the Constitutional Court will wait for the results of the testing of Perppu by the DPR and overlapping testing of Perppu will not occur.

V. CONCLUSION

The regulation of Perppu testing by the House of Representatives (DPR) as stipulated in Article 22 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states: "The government regulation must be approved by the House of Representatives in the following trial" does not provide legal certainty about the validity period of the Perppu, so it is necessary to provide a clear time limit in the Constitution in the article governing Perppu so that there is certainty of time limits in testing Perppu. The lack of clarity on the time limit for the House of Representatives' proceedings has created interest among justice seekers to file a judicial review of the Perppu to the Constitutional Court;

The authority to test Perppu according to the 1945 Constitution of the Republic of Indonesia is carried out by the House of Representatives not by the Constitutional Court, and in order to avoid overlapping testing of Perppu the Constitutional Court to obey the principle of not accepting requests for Judicial Review of Perppu but waiting until there is certainty whether the Perppu is approved or rejected by the DPR and after the Perppu becomes a new law it becomes the authority of the Constitutional Court to conduct its testing.

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Regulations

- Constitution of the Republic of Indonesia 1945;
- Law No. 12/2011 on the Formation of Legislation;
- House Regulation No. 1 of 2020 on Rules of Procedure;
- Constitutional Court Decision Number 138/PUU-VII/2009I/2008 in the Election Dispute of Bengkulu Regency.