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**JURIDICAL ANALYSIS IN THE FORMATION OF GOVERNMENT REGULATIONS IN LIEU OF LAW NO. 11  
OF 2020 CONCERNING JOB COPYRIGHT**

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**ABSTRACT**

This study aims to conduct a juridical analysis of the formation process of Government Regulation in Lieu of Law (Perppu) No. 11 of 2020 on Job Creation. The Perppu is a legal instrument adopted by the Indonesian government as an effort to accelerate the implementation of economic policies related to structural reforms. The research method used in this thesis is normative legal research with a statutory approach. The analysis is conducted on the legal basis for the formation of Perppu, including the president's authority in issuing Perppu and its relation to the role of the DPR in the formation of laws. The results of the analysis show that the formation of Perppu No. 11/2020 on Job Creation is based on an emergency and urgency that is considered to require swift action. However, there are debates regarding the president's authority to issue Perppu, especially in terms of time restrictions and the material regulated in the Perppu. This research contributes to understanding the juridical process of Perppu No. 11/2020 on Job Creation, as well as its implications for the legal system and democracy in Indonesia. The findings in this research are expected to be taken into consideration for the government, legislative institutions, and the community in drafting and evaluating regulations related to structural reforms.

Keywords: Perppu, Job Creation, Judicial Analysis

**INTRODUCTION**

In an era of technological progress and dynamic changes in the global economy, countries around the world are faced with the need to update and adapt their legal regulations to remain relevant and responsive to the demands of the times. (Zaidan, 2022). In Indonesia, as a developing country, the government continues to strive to create a conducive investment climate and encourage sustainable economic growth. One of the steps taken by the Indonesian government is to issue a Government Regulation in Lieu of Law (Perppu). The Perppu gives the government the authority to regulate matters that are considered urgent and need to be implemented immediately, without having to go through a long and complicated legislative process. (Diani, 2022).

One example of a significant Perppu is Government Regulation in Lieu of Law no. 11 of 2020 concerning Job Creation. This Perppu aims to overhaul and simplify regulations relating to investment, labor and business in Indonesia. The Job Creation Perppu has attracted widespread attention and has become a topic of debate in society and the academic world.

In this context, juridical analysis plays an important role in understanding and evaluating the impact and legal consequences of the establishment of the Job Creation Perppu. Juridical analysis involves examining the legal aspects related to the Perppu, including the legal basis, consistency with existing laws, and legal implications arising from its implementation. Through juridical analysis, the author of this journal aims to present a deeper understanding of the formation of Job Creation Perppu No. 11 of 2020. In this journal, the author will explore and evaluate various juridical aspects related to the Perppu, including the procedure for its formation, legality, and relevance to the existing legal framework.

The Job Creation Law, also known as the Omnibus Law, was passed on November 2 2020 by the Indonesian House of Representatives (DPR). This law was then inaugurated by President Joko Widodo on November 5 2020. However, this law received many protests and criticism from various groups because

it was considered detrimental to workers and the environment.(Pambudi, 2022). Job Creation Law no. 11 of 2020 has caused controversy in Indonesia because of the significant impact it has on employment policies, the environment and the investment sector. The Job Creation Law changes several provisions related to employment, including changes to the wage system, cuts to labor rights, and flexibility in terminating employment relations. This worries unions and pro-labor groups because they believe the law could weaken labor protections.

The Job Creation Law also contains provisions related to the environment. Several articles in this law have been criticized for weakening environmental protection by reducing environmental permit requirements, giving the central government more authority to make environmental decisions, and reducing companies' obligations to manage environmental impacts. The process of ratifying the Job Creation Law has also attracted controversy. Several parties criticized the rushed process and lack of public involvement in the process of drafting the law. They argue that this violates democratic principles and ignores people's aspirations. The Job Creation Law is also considered to give greater power to the government and the corporate sector. Several clauses in the law provide relaxation in investment regulations and ease of business, which is considered to benefit large companies while possibly harming small or vulnerable groups in society.

At the end of 2022, the government issued Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, which was ratified by the President of the Republic of Indonesia on 30 December 2022, instead of revising the law related to the Job Creation Law through the legislative body. The publication of the Ciptaker Perppu has caused controversy and debate among academics and legal experts. An expert in Constitutional Law, Bivitri Susanti, considers the publication to be a trick by the government because there is no urgency to force it.(Saptohutomo, 2023). Apart from that there is also Prof. Denny Indrayana, a Professor of Constitutional Law, considers the Ciptaker Perppu to be a form of disrespect for the Constitutional Court(Azhar, 2022).

## RESEARCH METHODS

Research methods are methods used by researchers to collect information about main problems through reviewing various aspects. This research uses normative juridical research(Muhaimin, 2020). Normative research is a type of research that focuses on rules or principles originating from statutory regulations, court decisions, or legal expert doctrine. In this research, a statutory approach is used, by examining laws relating to the issues discussed. Then it is described prescriptively to determine the problem being discussed.

## RESULTS AND DISCUSSION

### Formation of Perppu Based on Law Number 12 of 2011

According to Hans Kelsen, legal norms are binding orders or statements enforced by competent authorities in a particular legal system. Legal norms are rules that regulate human behavior in society and provide a basis for the application of law and the resolution of legal conflicts. Kelsen argued that legal norms have a hierarchical structure consisting of higher norms (Grundnorm) and lower norms. Grundnorms are basic norms that form the legal basis for the entire legal system. Lower norms must conform to norms higher in the hierarchy to have legal validity (Farida, 2017).

In the hierarchical system of statutory regulations, there are three basic principles that need to be understood and paid attention to. These three principles are (Hamidi, 2012):

1. *Lex Superior Principles*: This principle means that rules at a higher hierarchical level have higher power than rules at a lower hierarchical level. In other words, rules higher in the hierarchy can override or change rules below them. For example, laws can override government regulations or ministerial decisions.

2. *Lex Specialis Principles*: This principle means that more specific rules will regulate more specific things, while more general rules will regulate more general things. If there is a conflict between two rules, the more specific rule will have greater force than the more general rule. For example, if there is a law that generally regulates taxes, but there is also a law that specifically regulates income tax, then the rules governing income tax will have greater power in that case.
3. *Lex Posterior Principles*: This principle means that newer rules will regulate newer things or change older rules. If there is a conflict between two rules, the newer rule will have greater force than the older rule. For example, if there is a recent amendment to a law that changes a previously existing provision, then the latest amendment will apply.

Law Number 12 of 2011 concerning the Formation of Legislative Regulations (UU 12/2011) regulates the formation of government regulations in lieu of laws. Government regulations in lieu of laws can be formed by the President if there is an emergency that requires immediate arrangements, but it is not possible to wait for the formation of laws by the DPR (House of Representatives). Government regulations in lieu of law are temporarily valid until there is a law that permanently regulates the same material. If within 1 year after a government regulation in lieu of law is issued, there is no law regulating it, then the regulation is declared null and void.

Government regulations in lieu of laws can regulate all matters regulated by law, except for matters listed in Article 20 of the 1945 Constitution, such as human rights, the dissolution of political parties and general elections. To form government regulations in lieu of law, the President must submit a draft regulation to the DPR for approval. If the DPR does not give approval, then the draft regulation cannot be used as a government regulation in lieu of law. After obtaining approval from the DPR, the President can ratify government regulations in lieu of laws by signing them. The regulation was then promulgated in the State Gazette.

Government regulations in lieu of law can be examined by the Constitutional Court if there is a request for judicial review of the 1945 Constitution or higher legal regulations. Government regulations in lieu of laws have the same legal force as laws and must be obeyed by all parties. However, this regulation has a limited validity period and is expected to be replaced by a law discussed and passed by the DPR in the not too distant future.

Perppu can only be used to deal with problems that cannot be handled by previous laws, such as emergency situations, economic crises, or problems that arise suddenly. The Perppu must be made with the approval of the DPR and immediately become law. In the process of making Perppu and other laws, we must consider the principles underlying law making and law application. (Widayati., 2020).

According to IC Van der Vlies regarding the principles of forming statutory regulations quoted by Prof. Maria Farida in her book explains that the principles for forming legislative regulations can be divided into 2 categories, including: (Indratis, 2017).

#### 1. Formal Principles

- a) Principle of clear objectives (principe van duidelijkheid van doel)
- b) The principle of appropriate institutions (rechter organprincipe)
- c) Principle of the need for regulation (Noodzaaksbeginsel)
- d) The principle can be implemented (principe principe)
- e) Consensus Principle (consensusprincipe)

#### 2. Material Principles

- a) Principles of correct terminology and systematics
- b) Principles can be recognized
- c) The principle of equality in law
- d) Principle of legal certainty
- e) The principle of implementing the law according to individual circumstances

The formation of a Perppu is different from other statutory regulations because the drafting process is not carried out through legislation through the DPR, because the formation of a Perppu is the

constitutional right of the President. The basis for the power to form a Perppu refers to Article 22 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). The authority given to the President to promulgate a Perppu is contained in Article 22 of the 1945 Constitution which stipulates that it must be conditional on mandatory urgency, which is a special condition for the formation of a Perppu compared to other statutory regulations. In establishing a job creation process, the formal requirements and procedures that must be met must be followed properly to ensure that the jobs provided are in accordance with the law and the constitution. (kosariza, 2022).

#### **The urgency that compels the formation of the Job Creation Perppu**

The Government Regulation in Lieu of Law (Perppu) on Job Creation, which became Law Number 11 of 2020 concerning Job Creation, was formed based on a compelling urgency. Several reasons are the basis for establishing the Job Creation Perppu are as follows:

1. **Accelerating Economic Recovery:** The formation of the Job Creation Perppu was motivated by the need to accelerate national economic recovery, especially in facing the negative impact of the COVID-19 pandemic. This Perppu aims to encourage investment, create jobs and improve the investment climate in Indonesia.
2. **Ease of Investment:** One of the main objectives of the Job Creation Perppu is to improve regulations related to investment. Through deregulation and simplification of procedures, it is hoped that it can attract more investment from both within and outside the country. This is considered urgent to move the economic sector and create jobs.
3. **Regulatory Reform:** The Job Creation Perppu also aims to carry out regulatory reform in various sectors, including employment, licensing and other sectors. Regulations that are considered to limit economic growth and business development will be revised to create a more conducive business climate.
4. **Simplifying Bureaucracy:** The Job Creation Perppu proposes simplifying bureaucracy in the licensing and investment management processes. By reducing excessive bureaucracy and increasing efficiency, it is hoped that the investment process can run more quickly and smoothly.
5. **Increasing Community Welfare:** One of the aspects emphasized in the Job Creation Perppu is improving community welfare through job creation, protection for workers, and increasing overall economic productivity.

According to Prof. Aida Mardatillah who quoted Jimly in an article, Perppu can be divided into two types, namely Ordinary Perppu which were not approved by the DPR based on Article 22 of the 1945 Constitution due to compelling circumstances. because the country is in a state of emergency, based on Article 12 of the 1945 Constitution. In detail, the formation of the first perppu was a perppu which was expected to continue to be enforced by legislative provisions, which was formed because of the crisis that was about to occur and there was not enough time for the proper implementation of the ratification process Constitution. until it is promulgated as law. And secondly, the Perppu, was made not to be enforced permanently, but to respond to the emergency situation that is currently occurring, so that it can be re-enacted. (Mardatillah, 2020).

Therefore, the basis or basis used to create a Perppu must be explained clearly, including the compelling urgency. The basis for this urgency must be accompanied by a sociological, philosophical and juridical basis, in accordance with the requirements of Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

In forming the Job Creation Perppu, there are three conditions that must be taken into account in accordance with the parameters regulated in Law Number 12 of 2011 concerning the Formation of Legislative Regulations. These three conditions are as follows:

1. **Compelling Urgency:** The formation of a Perppu must be based on a compelling urgency, namely a situation that requires immediate arrangements to be made and it is not possible to wait for the law formation process to go through the DPR. In the context of the Job Creation Perppu, this urgency is

- related to national economic recovery and increasing competitiveness in the midst of the COVID-19 pandemic.
2. DPR Approval: The President must submit a draft Perppu to the DPR and obtain approval from the DPR. This process involves discussion and consideration by the DPR regarding the substance and urgency of the proposed Perppu. If the DPR does not give approval, then the draft Perppu cannot be made into a valid Perppu.
  3. Limited Validity Period: Perppu has a limited validity period. According to Law 12/2011, the Perppu is temporarily valid until there is a law that permanently regulates the same material. If within 1 year after the Perppu is issued, there is no law regulating it, then the Perppu is declared null and void.

### CONCLUSION

In the juridical analysis regarding the formation of Government Regulation in Lieu of Law (Perppu) no. 11 of 2020 concerning Job Creation, several important points can be identified. First, the Job Creation Perppu was formed based on a compelling urgency, especially in the context of accelerating national economic recovery and increasing investment in Indonesia. Second, the formation of this Perppu has followed the procedures regulated in article 22 of the 1945 Constitution and Law Number 12 of 2011 concerning the Formation of Legislative Regulations and also the Constitutional Court Decision Number 138/PUU-VII/2009 relating to the parameters of the compelling emergency that constitutes conditions in the formation of a Perppu. Third, the Job Creation Perppu has a limited validity period and will be replaced by a law that permanently regulates the same material. However, it is important to note that the juridical analysis only considers legal and procedural aspects, while the impact and substantive controversy of the Job Creation Perppu may need to be further analyzed separately.

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