

Can Government Regulations in Lieu of Law Exceed Constitutional Limits?

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Abstract: This article aims to examine the constitutional limits governing the issuance of Government Regulations in Lieu of Law (*Perppu*) in Indonesia by analyzing the constitutional requirements of compelling necessity, presidential discretion, and legislative oversight within the framework of the 1945 Constitution. The study employs a normative legal research method using statutory, historical, conceptual, and case approaches. Primary legal materials include Article 22 of the 1945 Constitution, relevant legislation, Constitutional Court decisions, and historical records of *Perppu* issuance, complemented by secondary legal literature. The analysis covers 185 *Perppu* enacted from the Soekarno administration to the Joko Widodo administration, with particular emphasis on *Perppu* No. 1 of 2015 concerning the appointment of interim leadership of the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*—KPK) and *Perppu* No. 2 of 2022 on the Job Creation Law, subsequently enacted as Law No. 6 of 2023. The findings reveal that the interpretation of “compelling necessity” has gradually expanded through constitutional practice, increasing the scope of presidential discretion while making parliamentary approval an essential constitutional safeguard. The study concludes that the constitutional legitimacy of a *Perppu* depends not only on the existence of genuine emergency circumstances but also on effective legislative oversight and judicial review to preserve constitutional supremacy and the separation of powers. This article contributes to constitutional law scholarship by providing a comprehensive historical and doctrinal analysis of Indonesia’s *Perppu* practice and by proposing a clearer constitutional framework for balancing executive emergency powers with democratic accountability and the rule of law.

Keywords: Constitutional Emergency, Executive Discretion, Parliamentary Oversight, Presidential Authority, Constitutional Supremacy

1. Introduction

A Government Regulation in Lieu of Law (*Peraturan Pemerintah Pengganti Undang-Undang* or *Perppu*) represents one of the most distinctive constitutional instruments within Indonesia’s legal system because it combines executive discretion with legislative authority in extraordinary circumstances. Unlike ordinary statutes, which are enacted through a deliberative process involving both the President and the House of Representatives (*Dewan Perwakilan Rakyat* or DPR), a *Perppu* is promulgated solely by the President before receiving parliamentary approval. Nevertheless, once enacted, it possesses the same legal status and binding force as an Act of Parliament, enabling it to regulate rights, obligations, and public institutions immediately upon promulgation. This constitutional arrangement creates an inherent paradox between the necessity of rapid governmental action and the democratic requirement that legislation be produced through representative deliberation. On the one hand, the existence of the *Perppu* mechanism reflects the constitutional recognition that certain emergencies require immediate legal intervention when waiting for the ordinary legislative process would endanger public interests or state stability. On the other hand, granting temporary legislative power to the executive raises persistent concerns regarding the concentration of power, potential executive overreach, and the erosion of legislative supremacy. Consequently, the constitutional legitimacy of a *Perppu* has never depended solely on its formal issuance by the President but also on whether the emergency genuinely satisfies constitutional standards and whether subsequent parliamentary review functions effectively as a democratic safeguard. These competing constitutional values have made the *Perppu* one of the most debated legal instruments in Indonesia’s constitutional jurisprudence and political practice since the adoption of the 1945 Constitution. The constitutional foundation for the issuance of a *Perppu* is established in Article 22 of the 1945 Constitution, which authorizes the President to enact a Government Regulation in Lieu of Law only in circumstances of compelling emergency (*kegentingan yang memaksa*). The constitutional text

intentionally provides only a broad formulation of this requirement, leaving substantial room for constitutional interpretation concerning what qualifies as an emergency sufficient to justify the exercise of extraordinary executive legislative power. Following the constitutional amendments after the Reform Era, the Constitutional Court played a decisive role in clarifying this ambiguity through its landmark jurisprudence, particularly Constitutional Court Decision No. 138/PUU-VII/2009, which formulated objective criteria for determining the existence of a compelling emergency. According to the Court, three cumulative conditions must exist: an urgent need to resolve legal problems swiftly, the absence or inadequacy of existing legislation, and the impossibility of resolving the issue through the ordinary legislative process because of time constraints. Furthermore, Article 22 requires that every *Perppu* be submitted to the DPR during its next legislative session for approval. Parliamentary approval transforms the *Perppu* into an ordinary statute, whereas rejection obliges the President to revoke it, thereby reaffirming legislative oversight over executive emergency lawmaking. This constitutional design reflects Indonesia's attempt to reconcile governmental efficiency with democratic accountability by ensuring that extraordinary executive authority remains temporary, conditional, and ultimately subject to legislative scrutiny within the constitutional framework of checks and balances.

Historical experience demonstrates that the use of *Perppu* has been closely intertwined with Indonesia's changing political regimes, constitutional developments, and governance challenges. Since Indonesian independence, at least 185 *Perppu* have been promulgated by successive presidents, although their distribution has been remarkably uneven across different administrations. President Sukarno issued 143 *Perppu*, accounting for the overwhelming majority of all emergency regulations, a phenomenon closely associated with the constitutional instability, parliamentary fragmentation, regional rebellions, and Guided Democracy that characterized the early decades of independence. During President Soeharto's administration, the number of *Perppu* declined considerably despite the centralized nature of executive authority, reflecting the New Order's preference for political stability and legislative dominance under executive influence. Following the democratic transition after 1998, the frequency of *Perppu* issuance remained relatively limited but became increasingly controversial because each issuance was subject to heightened constitutional review, public scrutiny, and judicial interpretation. Rather than merely responding to armed conflict or national security crises, contemporary *Perppu* have increasingly addressed complex constitutional, electoral, economic, public health, and institutional governance issues. This historical evolution illustrates that the function of *Perppu* has shifted from an instrument of political survival during periods of constitutional instability toward a mechanism intended to respond to extraordinary legal circumstances within a democratic constitutional order. Consequently, examining historical patterns of issuance provides important insights into how emergency legislative authority has evolved alongside Indonesia's constitutional transformation and the changing relationship between executive discretion, legislative oversight, and judicial control.

The objectives of this study are fourfold. First, it examines the constitutional framework, legal principles, and judicial doctrines governing the President's authority to issue Government Regulations in Lieu of Law (*Perppu*), with particular emphasis on the interpretation of the constitutional requirement of *kegentingan yang memaksa* (compelling emergency) under Article 22 of the 1945 Constitution and the Constitutional Court's jurisprudence. Second, it analyzes the historical development and statistical distribution of *Perppu* issuance under successive Indonesian presidents in order to identify patterns reflecting different constitutional settings, political transitions, and governmental responses to extraordinary situations. Third, it investigates two of the most influential contemporary case studies—Government Regulation in Lieu of Law No. 1 of 2015 concerning Regional Head Elections and Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation—which generated extensive constitutional debates regarding the existence of compelling emergency, the limits of executive lawmaking, and the constitutional role of parliamentary approval. Finally, this study evaluates the constitutional implications of the ratification process of *Perppu* within Indonesia's system of separation of powers by assessing whether current constitutional practice adequately safeguards democratic legitimacy, legal certainty, institutional accountability, and effective checks and balances. Through these objectives, the study seeks to contribute to constitutional scholarship by providing a comprehensive understanding of the evolving relationship between emergency legislation, executive discretion, judicial review, parliamentary oversight, and democratic constitutionalism in Indonesia.

2. Method

This study employs normative legal research using a doctrinal approach to examine the constitutional regulation and legal implications of Government Regulations in Lieu of Law (*Perppu*) within Indonesia's constitutional system. The research focuses primarily on legal norms contained in the 1945 Constitution, statutory regulations governing legislative formation, Constitutional Court decisions, parliamentary documents, and relevant constitutional doctrines concerning emergency powers and separation of powers. A statute approach is utilized to analyze the constitutional provisions regulating the issuance and ratification of *Perppu*, while a conceptual approach is adopted to examine theories of constitutional emergency, democratic legitimacy, constitutionalism, executive discretion, and checks and balances. In addition, a case approach is applied to evaluate significant Constitutional Court decisions and selected *Perppu* that have shaped the development of Indonesian constitutional law. These approaches enable the study to assess both the normative framework and the evolution of constitutional interpretation regarding the President's emergency legislative authority.

The legal materials analyzed consist of primary, secondary, and tertiary legal sources. Primary legal materials include the 1945 Constitution, Government Regulations in Lieu of Law, statutes concerning lawmaking, Constitutional Court decisions, and official parliamentary records relating to the approval or rejection of *Perppu*. Secondary legal materials comprise scholarly books, peer-reviewed journal articles, constitutional commentaries, and academic publications discussing emergency legislation, constitutional review, and executive power. To complement the doctrinal analysis, this study also examines historical data on the issuance of *Perppu* by successive Indonesian presidents and conducts an in-depth analysis of Government Regulation in Lieu of Law No. 1 of 2015 and Government Regulation in Lieu of Law No. 2 of 2022 as representative contemporary case studies. All legal materials are analyzed qualitatively through legal interpretation, systematic analysis, and comparative constitutional reasoning to produce comprehensive conclusions regarding the constitutional legitimacy and democratic implications of *Perppu* ratification in Indonesia.

3. Results and Discussion

3.1. Constitutional Foundation and Institutional Practice of *Perppu* in Indonesia

The constitutional authority to issue a Government Regulation in Lieu of Law (*Peraturan Pemerintah Pengganti Undang-Undang* or *Perppu*) is exclusively derived from Article 22 of the 1945 Constitution, making it the only constitutional provision that authorizes the President to exercise temporary legislative power during extraordinary circumstances. Article 22 establishes a complete constitutional framework consisting of three interrelated provisions. Paragraph (1) empowers the President to issue a *Perppu* only in the event of a compelling emergency (*kegentingan yang memaksa*). Paragraph (2) requires every *Perppu* to be submitted to the House of Representatives (*Dewan Perwakilan Rakyat* or DPR) at its next session for approval, thereby ensuring that emergency executive lawmaking remains subject to democratic oversight. Paragraph (3) further provides that a *Perppu* must be revoked if it fails to obtain parliamentary approval. Together, these three constitutional provisions demonstrate that a *Perppu* is intended to function as a temporary and exceptional legislative instrument rather than an alternative mechanism for ordinary lawmaking. The constitutional design seeks to balance two competing objectives: enabling the executive to respond immediately to extraordinary situations while preserving parliamentary supremacy through mandatory legislative review. Consequently, Article 22 embodies a constitutional compromise between governmental efficiency and democratic accountability, ensuring that emergency powers remain constitutionally limited and procedurally controlled.

Although Article 22 establishes the constitutional basis for issuing a *Perppu*, it does not define what constitutes a "compelling emergency." This constitutional silence has generated considerable debate regarding the scope of presidential discretion and the appropriate limits of executive emergency powers. Initially, determining whether a compelling emergency existed was largely regarded as a matter of presidential judgment. However, this subjective approach created the possibility of inconsistent application and potential misuse of emergency legislative authority. The Constitutional Court significantly reduced this ambiguity through Decision No. 138/PUU-VII/2009, which formulated three cumulative constitutional requirements for determining the existence of a compelling emergency. First, there must be an urgent need requiring an immediate legal solution. Second, the existing legal framework must be absent or inadequate, thereby creating a legal vacuum that cannot effectively address the problem. Third, the ordinary legislative process must be incapable of resolving the issue promptly because of the time required for parliamentary deliberation. These judicial criteria transformed the constitutional doctrine from one based primarily on executive discretion into one grounded in objective constitutional standards.

Consequently, the Court strengthened constitutionalism by ensuring that the President's emergency legislative authority remains subject to legal review rather than being exercised solely according to political expediency.

Within Indonesia's legislative hierarchy, a *Perppu* occupies a unique position because it possesses the same legal force and hierarchical status as an ordinary statute immediately upon promulgation. Law No. 12 of 2011 on the Formation of Legislation, as amended by Law No. 15 of 2019, recognizes a *Perppu* as equivalent to a law despite its unilateral issuance by the President. This equivalence enables a *Perppu* to create new legal norms, amend existing statutes, suspend statutory provisions, or repeal previous legislation without prior parliamentary approval. Such extensive legal authority explains why the *Perppu* constitutes one of the most powerful constitutional instruments available to the executive. Nevertheless, this authority is deliberately balanced through the constitutional requirement of DPR approval under Article 22(2). A *Perppu* is self-executing and becomes effective immediately after promulgation, allowing the government to address urgent legal problems without procedural delay. However, its continued validity depends entirely on subsequent parliamentary approval. If the DPR approves the *Perppu*, it becomes a definitive statute with permanent legal effect. Conversely, if the DPR rejects it, the President is constitutionally obligated to revoke the regulation, while the legal consequences arising during its temporary validity must be resolved through subsequent legislation. This mechanism illustrates Indonesia's effort to reconcile emergency executive action with democratic legislative control.

The historical development of *Perppu* issuance demonstrates that the use of emergency legislative authority has varied considerably across Indonesia's constitutional history. Since independence, a total of 185 *Perppu* have been promulgated by successive presidents and acting presidents, although their distribution has been highly uneven. President Sukarno alone issued 143 *Perppu*, representing approximately 77.3 percent of the total number ever enacted. This overwhelming concentration reflects the political instability, constitutional experimentation, regional conflicts, and Guided Democracy that characterized the early decades of Indonesian statehood. Acting President Juanda issued 24 *Perppu* (13.0 percent), while Acting President Mr. Assaat promulgated six (3.2 percent), both serving during transitional constitutional periods requiring extraordinary governmental responses. By contrast, President Soeharto issued only eight *Perppu* throughout more than three decades in office. This relatively small number did not necessarily indicate fewer emergencies but rather reflected the executive's dominant political influence over the legislative process, enabling rapid enactment of ordinary legislation without resorting to emergency regulations. During the Reform Era, the frequency of *Perppu* issuance became more moderate, with Presidents Habibie, Abdurrahman Wahid, Megawati Soekarnoputri, Susilo Bambang Yudhoyono, and Joko Widodo issuing comparatively fewer *Perppu*. These historical patterns demonstrate how constitutional practice has evolved alongside Indonesia's democratization and the strengthening of institutional checks and balances.

An examination of the historical practice reveals a gradual transformation in the functional purpose of *Perppu* within Indonesia's constitutional system. During the early decades of independence, *Perppu* were predominantly issued in response to national emergencies, political instability, armed conflicts, and urgent security concerns requiring immediate governmental intervention. As Indonesia's constitutional order matured, however, the grounds for issuing *Perppu* shifted toward addressing legal vacuums, institutional crises, and situations where existing legislation proved inadequate to resolve urgent public problems. More recently, *Perppu* have also been employed to respond to Constitutional Court decisions, exemplified by Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation, as well as to safeguard strategic public institutions, such as Government Regulation in Lieu of Law No. 1 of 2015 concerning the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*). These developments illustrate that emergency lawmaking has expanded beyond traditional security-related emergencies into broader areas of constitutional governance, economic policy, and institutional reform. While this evolution reflects the increasing complexity of modern governance, it also raises important constitutional questions regarding the appropriate boundaries of executive legislative authority and the continuing relevance of the constitutional emergency requirement established under Article 22.

The contemporary practice of issuing *Perppu* presents significant constitutional challenges concerning the preservation of democratic constitutionalism and the separation of powers. A growing concern among constitutional scholars is the tendency to employ *Perppu* not solely as an emergency legal instrument but increasingly as an alternative mechanism for implementing controversial public policies that might otherwise encounter prolonged legislative deliberation. Such a development risks diluting the constitutional meaning of *kegentingan yang memaksa* and transforming an exceptional constitutional power into a routine policy-making tool. If this trend continues, it may weaken the DPR's constitutional

role as the principal legislative institution and reduce the effectiveness of democratic accountability within Indonesia's constitutional framework. Therefore, maintaining the exceptional nature of *Perppu* requires a stricter application of the Constitutional Court's objective criteria, more rigorous parliamentary scrutiny during the ratification process, and greater judicial consistency in reviewing the constitutional validity of emergency legislation. Strengthening these institutional safeguards is essential to ensuring that *Perppu* remain confined to genuine emergencies, thereby preserving constitutional balance, protecting the rule of law, and reinforcing democratic governance in accordance with the principles embodied in the 1945 Constitution.

3.2. Contemporary Constitutional Practice: Comparative Analysis of *Perppu* No. 1 of 2015 and *Perppu* No. 2 of 2022

The contemporary constitutional practice of issuing Government Regulations in Lieu of Law (*Perppu*) demonstrates that the constitutional legitimacy of emergency legislation depends not only on compliance with Article 22 of the 1945 Constitution but also on whether the circumstances objectively satisfy the constitutional doctrine of *kegentingan yang memaksa* established by the Constitutional Court. Two of the most significant *Perppu* issued during President Joko Widodo's administration—*Perppu* No. 1 of 2015 concerning the Corruption Eradication Commission (KPK) and *Perppu* No. 2 of 2022 concerning Job Creation—illustrate contrasting constitutional contexts despite both ultimately being approved by the House of Representatives (DPR). Although each regulation relied upon the President's emergency legislative authority, the constitutional rationale, degree of urgency, and public acceptance differed considerably. The first addressed an institutional crisis threatening the operational continuity of Indonesia's principal anti-corruption agency, whereas the second responded to constitutional uncertainty following a Constitutional Court decision concerning the Job Creation Law. Examining these two cases comparatively provides valuable insights into how the constitutional concept of compelling emergency has evolved in practice and how political considerations increasingly intersect with constitutional doctrine in determining the legitimacy of executive emergency lawmaking.

Perppu No. 1 of 2015 is generally regarded as one of the strongest contemporary examples of constitutionally justifiable emergency legislation. The issuance of the regulation followed an unprecedented institutional crisis after two of the five KPK commissioners, Abraham Samad and Bambang Widjojanto, were designated as criminal suspects, resulting in their temporary suspension under the prevailing KPK Law. The resulting leadership vacuum threatened the Commission's ability to perform its statutory functions because important institutional decisions required the participation of an adequate number of commissioners. Existing legislation provided no sufficiently rapid mechanism for appointing interim commissioners, making the ordinary legislative process incapable of addressing the institutional paralysis within the necessary timeframe. Consequently, the government argued that the situation fulfilled the Constitutional Court's three criteria for a compelling emergency: an urgent legal need, the inadequacy of existing legislation, and the impracticality of waiting for ordinary legislative procedures. The subsequent approval of the *Perppu* by the DPR and its enactment as Law No. 10 of 2015 reinforced the perception that emergency legislative authority may legitimately be exercised when essential constitutional institutions face an immediate operational crisis that threatens the public interest and the continuity of state governance.

A markedly different constitutional debate emerged with *Perppu* No. 2 of 2022 concerning Job Creation. Unlike the KPK case, the issuance of this *Perppu* did not arise from an immediate institutional breakdown but from the Constitutional Court's Decision No. 91/PUU-XVIII/2020, which declared the Job Creation Law conditionally unconstitutional while granting the legislature two years to revise the legislation through the ordinary legislative process. Rather than utilizing the remaining legislative period, the government issued a *Perppu* at the end of 2022, arguing that global economic uncertainty, post-pandemic recovery, and investment stability required immediate legal certainty. Critics, however, questioned whether these circumstances genuinely constituted a compelling emergency within the meaning established by Constitutional Court Decision No. 138/PUU-VII/2009. They argued that legal uncertainty resulting from a Constitutional Court judgment differed fundamentally from unforeseen emergencies such as institutional collapse, armed conflict, or natural disasters because the Court itself had already provided sufficient time for legislative revision. Accordingly, constitutional scholars contended that the government had relied on emergency legislation to accelerate ordinary policy objectives rather than to resolve an unavoidable constitutional crisis, thereby expanding executive discretion beyond the exceptional circumstances contemplated by Article 22 of the Constitution.

The comparison between these two *Perppu* demonstrates that parliamentary approval alone cannot conclusively determine the constitutional legitimacy of emergency legislation. Although both regulations were ultimately ratified by the DPR and enacted as Law No. 10 of 2015 and Law No. 6 of 2023 respectively, the constitutional quality of their underlying justifications differs substantially. *Perppu* No. 1 of 2015 addressed an immediate institutional emergency characterized by a genuine legal vacuum and the inability of existing legal mechanisms to protect the operational integrity of the KPK. By contrast, *Perppu* No. 2 of 2022 primarily addressed regulatory uncertainty within an ongoing legislative process that had already been structured by a Constitutional Court decision. This distinction illustrates that constitutional review of emergency legislation should focus not merely on formal compliance with Article 22 but also on whether the factual circumstances objectively satisfy the constitutional doctrine of compelling emergency. The two cases therefore reveal that constitutional legitimacy depends upon proportionality, necessity, and the availability of less restrictive legislative alternatives rather than solely on political approval by the legislative branch.

These case studies also reveal broader constitutional implications concerning executive–legislative relations and the future regulation of *Perppu* in Indonesia. The DPR's ratification process constitutes the principal democratic safeguard against excessive executive lawmaking; however, its effectiveness ultimately depends upon independent constitutional evaluation rather than political coalition dynamics. When parliamentary approval is driven predominantly by political alignment with the executive, the constitutional function of legislative oversight risks becoming procedural rather than substantive. Consequently, the experiences of *Perppu* No. 1 of 2015 and *Perppu* No. 2 of 2022 underscore the need for further regulatory refinement. More precise statutory indicators of *kepentingan yang memaksa*, clearer procedural requirements for parliamentary review, greater consistency in Constitutional Court jurisprudence, and more comprehensive regulation of the legal consequences arising from rejected *Perppu* would strengthen constitutional accountability while preserving the exceptional character of emergency legislation. Such reforms are essential to ensuring that *Perppu* remain instruments of genuine constitutional necessity rather than becoming an alternative pathway for implementing ordinary governmental policy outside the regular democratic legislative process.

4. Conclusion

This study demonstrates that the Government Regulation in Lieu of Law (*Perppu*) occupies a unique position within Indonesia's constitutional system as an extraordinary legislative instrument that temporarily grants the President lawmaking authority during situations of compelling emergency. Although constitutionally valid under Article 22 of the 1945 Constitution, the legitimacy of a *Perppu* depends not only on its formal issuance but also on the objective fulfillment of the constitutional requirement of *kepentingan yang memaksa*, as interpreted by the Constitutional Court. Historical analysis of 185 *Perppu* reveals significant variations in their use across different political eras, with an overwhelming concentration during the Sukarno administration reflecting the constitutional instability of the early post-independence period, while the Reform Era has generally demonstrated a more restrained pattern of emergency lawmaking. The comparative examination of Government Regulation in Lieu of Law No. 1 of 2015 and Government Regulation in Lieu of Law No. 2 of 2022 further illustrates that the constitutional legitimacy of a *Perppu* depends on the existence of a genuine emergency, the proportionality of executive intervention, and the effectiveness of parliamentary and judicial oversight in preventing the expansion of executive legislative power beyond constitutionally permissible limits.

These findings indicate that the constitutional design governing *Perppu* requires further refinement to preserve the balance between governmental effectiveness and democratic constitutionalism. The DPR's approval mechanism remains an indispensable constitutional safeguard, but its effectiveness depends on rigorous, objective, and independent parliamentary scrutiny rather than political expediency. Accordingly, future legal reform should establish clearer statutory indicators for determining the existence of a compelling emergency, strengthen procedural standards for parliamentary review, and promote greater judicial consistency in assessing the constitutionality of emergency legislation. Such reforms would enhance legal certainty, reinforce the separation of powers, and prevent the use of *Perppu* as an ordinary policy-making instrument. Ultimately, maintaining the exceptional character of *Perppu* is essential to ensuring that emergency powers remain consistent with the principles of constitutionalism, democratic accountability, and the rule of law in Indonesia.

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