



IUS CONSTITUENDUM CONTROL OF PRESIDENT'S AUTHORITY IN ENACTING GOVERNMENT REGULATIONS IN LIEU OF LAWS TO MINIMIZE ABUSE OF POWER

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Abstract

This research came from questioning the existence of presidential's subjective authority in enacting governmental ruling as replacement to a Law (hereinafter will be referred as Perppu), as according to Article 22 Clause (1) of Republic of Indonesia's basic law of 1945 which haven't ruled the strict limitation of presidential authority in determining matters of outmost emergency, this should be questioned because in reality indonesia still yet to fully shows an image befitting democratic country of law because the nonexistence of adequate control over the use of institutional power, and based on that, this research is necessary to be executed for it to offers a control of authority model for enacting a perppu by The President, result and topic of this research concluded that: First, when reading about history of Indonesian Constitution, there is nowhere to be found an adequate explanation about the existence of terms in Article 22 clause (1) Republic of Indonesia's basic law of 1945, but from developing doctrines, said terms are influenced by regulation about affairs of state during Dutch East-Indies era which providing clues about the existence about matters of outmost emergency. Second, Presidential authority in determining matters of outmost emergency which take shape in form of perppu, is need to be controlled in the future by reconstruction the objectivity of Perppu in Parliament, inside a framework of meaningful participation and reconstruction of Constitutional Court's authority on judicial control against the enactment of Perppu to minimize Abuse of Power.

Keywords: *Ius Constituendum*, Perppu, Control.

1. INTRODUCTION

The sign of a progress in matters of State-affairs are the application on ideas of constitutionalism as stated by hamilton which quoted by lutisone salevao which is: "*Ultimately, constitutionalism is about keeping government under control, it is the name given to the trust which men repose in the power of words engrossed on parchment to keep a government in order. This order is achieved by limiting the reach of government and setting out fixed, a priori ground rules for the exercise of public power*". Hamilton's statement, in a essence explains about constitutionalism as keeping a government under control, also the relation between government (governmental institution) with the one it governs (citizens) is very significant, if the governmental function ceased to be, the one which in most disadvantage will be the citizen, surely the failure in running a good government according to what its citizen desires itself a failure in realizing ideas of constitutionalism (Adhari, 2019). In line with the statement above, indonesia also inspired idea of constitutionalism in state affairs, where those ideas became the reason for a chain of Constitutional Amendment on Indonesia's basic laws of 1945 during 1999-2002, this Constitutional amendment surely became a visionary historical footnotes on indonesia's state-affairs because its abolished the domination of massive executive power and also provide a clear demarcationlines between legislative, executive, judicial power in the affairs of state in accordance to idea of constitutionalism (Huda, 2004).

But, this limitation of power as regulated in Basic Law of 1945 still shows inconsistencies, efforts to realize the country of law principle's which tightly related with tradition to limit power in accordance to law still haven't manifested in perfect manner. This argument is based by reality where The President still given the authority in enacting special regulation which is Perppu, as

mentioned *expressis verbis* in a Article 22 clause (1) Indonesia's basic law of 1945. The formula to the norm related with the President authority to enacting Perppu said: *"In matters of outmost emergency, the President possess the rights to enact overnmental ruling as replacement to an Act"*. Furthermore, the terms to forming a Perppu by the President is also written in Clause 4 Law No. 12 of 2011 about the formation of a Law said: *"Governemntal ruling as replacement to a Law, is a law which passed by the President in event of outmost emergency"*.

In accordance to the said terms of normative formula, then the prerogatives nature attached into the president to interpret the matters of outmost emergency in determining the status of State's own emergency with a subjective view, besides that, its also could be said that terms in the Basic Law of 1945 and Law no 12 of 2011 as been described beforehand, paints a terms that gave open interpretation for The President to execute its subjectivity in interpreting the phrase "matters of outmost emergency" as the reason to pass a Perppu. Therefore the nature of this terms triggers a crucial problem. The Crucial Problem is how a Perppu often cause controversies when passed, and how in reality these controversy is difficult to avoid because the passing of regulation types like Perppu place The President in proactive and effective position in creating a regulation and policies. While, according to separation of powers principle, a legislative authority resides in the hand of legislative body. And when passing a Perppu, The President present itself as a Holder of Legislative authority, The President is not only the main initiative taker in creating a policy but also said Law product promptly went into effect without undergo another process including deliberation in Legislative Institution (Yuliani, 2021).

In the era of President Jokowi's administration, the controversy about perppu that is the most phenomenal is Perrpu No. 2 of 2022 about Job Creation (Perppu Job Creation) which's further underlining Law No. 11 of 2020 about Job Creation (Law on Job Creation), the Crucial problem in public discourse boils to how previously The Constitutional Court already reviewing the formal validity of Law on Job Creation resulting in Court Ruling no 91/PUU-XVII/2020 which is very clear on its verdict which stated that Law on Job Creation is Inconstitutional with conditions its also mandated for the law to be amended for the duration of next 2 years (Saptohotomo, 2023). Ideally Constitutional Court Ruling must be followed through, but instead the government draws its Ultimate weapon, Perppu as legal instrument which possess tendencies to trick Constitutional Court's Ruling, from that condition surely shows the problem that subjective element on The President's in Passing a Perppu as a legal product which responded to Country in a state of emergency, almost like strayed far from its intended purpose, instead Perppu became a Legal product laden with political interest (Agus, 2019).

While Constitutional Court in its Ruling No. 138/PUU-VII/2009 actually given an objective parameter to determine "matters of outmost emergency", which are:

- a. The existence of urgent needs to handle a legal matters quickly in accordance to Law
- b. Law that hope to solve the problem is yet to exist and its implication to the vacuum of law, or the law did exist but inadequate to solve it;
- c. The Vacuum of law condition couldnt be handeld by normal procedure because it will need a long and the urgency of the situtation calls for certainty that it will be resolved quickly.

Even thought there is limitation in deliberation to pass a Perppu for it to comply with Constitutional Court's Ruling, but in this existing condition, the reality still shows Constitutional Court ruling as *jusriprudence* in affairs of state, simply inadequate in controlling The President's Subjectivity, proven by the arrival of Perppu Job Creation which considered by many parties as emergency legal instrument. Furthermore, in the theoretical scope of Emergency Constitutional Law, the choice of using a Perppu should be the final choice, and should be avoided as much as possible. The ease of issuing Perppu is certainly a serious problem, especially in the relationship between executive and legislative institutions (Boediningsih dkk, 2023). It should be noted that the president's way of dealing with legislative institutions by using proactive power such as emergency decrees or Perppu should not be adopted because it is not in accordance with the division of power principles.



Referring to Bagir Manan opinion, he stated that the Perppu should be seen as “the necessary evil”, as something that should be avoided, but was forced to be adopted as an effort to form inappropriate laws (abnormal rechtsvorming). This means that there must be no attitude for the creators, legislative institutions or other state institutions or the people who are bound by these regulations to accept this type of regulation as a norm that can occur at any time (Manan & Susi, 2014). Thus, based on the description above, this research is prospective in nature and focuses on offering a design for the authority to establish Perppu by the president as a future law (Ius Constituendum) to control overbroad authority for the President in enacting Perppu and can minimize abuse of power. The current legal scheme must of course be tested and developed in academic discourse, so that any constitutional events that have not yet occurred, are not visible to the naked eye, and have the potential to occur in the future, must be immediately anticipated properly and correctly by law. This is useful, because it can be said that the current regulation on the use of Perppu by the President is not yet in a “steady” form because Perppu are often issued easily and even when they appear they actually generate controversy in the public due to their being issued for purposes other than dealing with emergencies.

2. RESEARCH METHODS

The research typology used in this paper is normative legal research. Conceptually, normative legal research is put forward by many experts as dogmatic legal research, which in character is directed at evaluating positive law, and contains prescriptive elements or a normative dimension. In line with this, to thoroughly explore the issues in this research, it will be based on primary legal materials sourced from statutory regulations and secondary legal materials sourced from bibliographic literature. The approaches used are the statute approach, conceptual approach and comparative approach (Mamudji & Soekanto, 2009).

3. RESULTS AND DISCUSSION

3.1. Historical Review of the Authority to Establish Perppu by the President in the Indonesian Constitution

Gustav Radbruch in his work entitled Outline of Legal Philosophy says that law is a human creation, and as every creature's creation, it can only be understood by the mind. In more dramatic language, Goethe said that people who run away from their minds will ultimately not gain understanding. Specifically related to the constitution, it is stated that constitutions anywhere cannot be understood in depth if only the text is read. A deeper reading is needed into the history of the text, why the text appeared, under what conditions and atmosphere the text was created, what school was the basis for the formulation of the text, and what hopes and goals will be achieved with this formulation. The history of the formulation of this text will be explained in this sub-chapter.

That in the history of Indonesian constitution, the birth of Article 22 clause (1) of the 1945 Constitution of the Republic of Indonesia cannot be separated from Soepomo significant contribution. Precisely on July 11 1945, during a BPUPKI's session led by Radjiman Wedyodiningrat, the structure of the UUD drafting committee was established. And Soepomo can be called the architectural designer of the Indonesian constitution (Kusuma, 2004). This was proven in all the series of BPUPKI sessions and the Preparatory Committee for Indonesian Independence (PPKI) until the 1945 Constitution of the Republic of Indonesia was passed. Soepomo held an important role because he actively participate in explaining and answering various questions from members of the session regarding the draft constitutional text.

Furthermore, the dialectic of constitutional formulation was also carried out on July 13 1945, Soepomo outlined the 1945 Draft Constitution of the Republic of Indonesia which contained 442 articles. The first Draft Bill contains regulations regarding state emergency conditions and the President's authority in enacting Perppu (Handriyana & Nurdin, 2023). These provisions are explained in detail in article 10, namely: “The President declares “Staat van baleg”. The conditions and consequences of “Staat van baleg” are determined by law.” Furthermore, the explicit

provisions for the President's authority in enacting Perppu are also explained in Article 23 of the Draft Law with the following:

Table. 1: Article 23 Bill of Presidential Authority in State of Emergency

Clause (1)	Clause (2)	Clause (3)
In cases of compelling urgency, the President has the right to enact Perppu.	The Perppu must get approval from the House of Representatives.	If agreement is not reached, the Perppu must be revoked.

Source: Author's research

Based on the above plan, Soekarno then formed a "Language Refinement Committee" whose membership consisted of Djajadiningrat, Agus Salim and Soepomo. Furthermore, in a follow-up session on July 16 1945, Soepomo changed the format and substance of the Draft Law based on various responses from the committee. These changes are contained in the chapter on the DPR, which also includes provisions regarding the President's authority in enacting Perppu, these provisions contain several articles, namely Article 19, Article 20, Article 21 and Article 22. Soekarno as chairman of the committee that formed the Basic Law then preceded with the explanation of the Bill, but unfortunately Soekarno's explanation was still general in nature, namely regarding the philosophy of the state. In the end, Soekarno asked Soepomo to provide a detailed explanation, and Radjiman Wedyodiningrat also stated that he did not want to start the discussion before there was an explanation from Soepomo regarding the contents of the Basic Law. Soepomo finally took over to explain in his speech, he explained that the Basic law of 1945 creation's was carried out within limited timeframe and swiftly in order to achieve Indonesian independence as quickly as possible. However, from Soepomo's explanation in his speech, he did not explain all the articles because he considered various articles to be automatically understood.

Even though Soepomo considers the articles in the 1945 NRI Bill to be understood, what is highlighted in Soepomo's speech is that he did not explain it in detail regarding the special article regarding the President's authority in forming the Perppu, therefore there is no fundamental reason why this Article 22 paragraph (1) in the Republic Indonesia Constitution appears. As for researchers searching through various literature, they found few answers when referring to Bagir Manan's reading as quoted in Mar'atun Fitriah, it was said that the basis which allowed the emergence of Article 22 was because the formation of the 1945 Constitution of the Republic of Indonesia at that time was influenced by the regulation of Article 93 of the Indische Staatsregeling (Mar'atun, 2020). As a constitutional regulation during the Dutch East Indies era which emphasized the "dringende omstadigheden" clause as an indication of a critical situation. Thus, this clause becomes the justification for the President to pass a Perppu.

Although in the course of history it is permissible for Perppu to be stipulated through the President's subjectivity, it is not permissible for Perppu to be used haphazardly by the President for purposes other than overcoming emergency situations to quickly return to normal conditions. Up to now, the stipulation of Perppu has never been questioned from the optics of legality, because the 1945 Constitution of the Republic of Indonesia is the constitutional basis which gives the President the authority to enact Perppu (Aini, 2022). However, if we examine it closely, the granting of authority to the President in enacting the Perppu gives a broad impression that is only based on subjectivity and is not accompanied by specific limitations, this then creates a situation where every Perppu enactment always creates controversy.

Including in the contemporary era, Perppu issued by the President tend to always result in a gap between *das sein* and *das sollen*. The latest Perppu that has generated controversy at the public level is Perppu Law on Job Creation. However, before the birth of the Perppu, the Law on Job



Creation had already generated public controversy. The thing that sparked the controversy was the Law on Job Creation which was produced with the omnibus law concept in the process of being formed so that the content material did not go in line with the expectations of society at that time and there was a shading of authority (Firmansyah dkk, 2020). Previously it was the authority of the regional regime, then it became authority of the central regime, apart from that there are sharp changes in the rights of workers and tendencies towards the interests of investors.

Based on this controversy, the majority of people loudly rejected the Law on Job Creation. The form of expression of rejection was carried out by the public through demonstrations and using constitutional mechanisms by submitting a request for review of the law at the Constitutional Court. The debate regarding the constitutionality of the Law on Job Creation then ended at the Constitutional Court in a formal review process which resulted in Decision No. 91/PUU-XVIII/2020. In its decision regarding the formal review of the Law on Job Creation, the Constitutional Court decided that the Law on Job Creation was conditionally unconstitutional, and ordered the framers to amend the Law on Job Creation within 2 (two) years after the decision was read, and if within the specified time there is no follow-up action for improvement, then the Law on Job Creation changed its status to Permanently Unconstitutional.

However, instead of being corrected by the legislature, the public was once again presented with a controversial product, namely Perppu Job Creation at the end of 2022. The impression of the presence of this Perppu Job Creation is that it is an alternative route for the President to circumvent the Constitutional Court's decision. Controversy clearly arose as a result of the enactment of the Perppu Job Creation which was not based on objective considerations of assessing matters of compelling urgency and even in its substantive formulation, was no different from the Law on Job Creation which was declared unconstitutional by the Constitutional Court. This is the tangential point that the regulation regarding the President's authority in enacting Perppu still has problems due to the normative formulation of Article 22 of the 1945 Constitution of the Republic of Indonesia as the basis for the legality of the President's authority in forming Perppu does not provide adequate legal certainty regarding specific limitations for the use of the President's authority in forming Perppu (Oksifelda, 2020).

3.2. Ius Constituendum Management of Controlling the President's Authority in Passing a Perppu

Whereas, as with the issues previously discussed, the regulation of the President's authority in forming Perppu in accordance with Article 22 Clause (1) of the 1945 Constitution of the Republic of Indonesia can produce problems and controversies due to the President's enormous privileges without being balanced by special limitations. This situation certainly makes the Perppu a two-faced legal instrument, as according to Giorgio Agamben, who stated that this situation is a state on the verge of uncertainty between democracy, authoritarianism and absolutism, or in the rule of law paradigm, it is uncertainty between *rechtstaat* and *machtstaat*. Perppu is also referred to as undemocratic and potentially because it is not based on a legal basis (Agamben, 2005).

When a Perppu is produced without legitimacy, it will certainly have implications for the collapse of the spirit of the rule of law because the formation of a Perppu always gives rise to the opportunity for the birth of an authoritarian regime that is anomalous with the image of a rule of law and democracy (Levitsky & Ziblat, 2019). Apart from that, so far with the existing provisions, the Perppu is a legal product that is stipulated within the scope of great subjectivity by the President to negate the content of the law if the emergency situation interpreted by the President requires it. Apart from that, this situation also shows that deviations can be tolerated as long as what is being judged is the safety of the state and its citizens as per Cicero classic adage, *sallus populi suprema lex esto* (the safety of the people is the highest law). However, what needs to be re-examined is that it is a less positive situation when the President holds great authority in forming Perppu but is not accompanied by adequate control, which even triggers concerns that Perppu has the potential to emerge as an instrument of authoritarian power.

Perppu in Indonesia, with all the problems described previously, still appears to have deviations from the original intent and ideality of its use as an emergency legal instrument. Therefore, the use of the authority to determine Perppu by the President should be controlled considering that the formulation of norms in Article 22 Clause (1) of the 1945 Constitution of the Republic of Indonesia as well as the legislation under it, does not contain any restrictions at all, including regarding content material that can be regulated and there are no special restrictions. Restrictions are certainly necessary because when power gains great power, adequate control becomes increasingly necessary. Thus, in this section the researcher recommends several models for controlling the authority of Perppu by the President in the future as follows:

a. Reconstructing the Objectification of Perppu in the House of Representatives within the Framework of Meaningful Participation

The current practice is that the objectification of Perppu by the House of Representatives (hereinafter will be referred as DPR) is only in the form of giving approval or not giving approval to the Perppu stipulated by the President. Discussions in the DPR did not reach the substantive aspects of the Perppu. Such a mechanism will only make the DPR a tool for legitimizing the Perppu that has been established. It is important to redesign the above situation by giving the DPR the opportunity to review the substance of the Perppu. The review must emphasize the aspects of legality, constitutionality, implementation and legitimacy of the Perppu. The legality aspect is seen from the criteria of urgency which compels compliance with the limits set by the Constitutional Court.

This criterion deserves to be qualified as a basis for legality, because it is in accordance with the Constitutional Court's decision, that the president only has the authority to enact a Perppu if a compelling emergency arises. Without fulfilling these conditions, the President has no authority to enact a Perppu. The constitutionality aspect relates to what matters should not be included in a perppu because they conflict with the 1945 Constitution of the Republic of Indonesia, conflict with legal principles and statutory regulations, and conflict with the basic philosophy of the state. The implementation aspect can be measured by whether the targets and objectives of the Perppu have been achieved whether normal conditions have been achieved or not.

Next is the legitimacy aspect, that this aspect is related to the public's aspirations for a perppu in accordance with the framework of democracy. In this aspect, the process of discussing a perppu must be carried out openly like discussing a bill while still accommodating public participation. As if referring to Constitutional Court Decision No, 91/PUU-XVIII/2020, it is emphasized that there is more meaningful participation in the formation of legal products which is based on 3 (three) criteria, namely that the community has the right to have their opinions heard (right to be heard); the public has the right to have their opinions considered (right to be considered); The public has the right to receive an explanation or answer to the opinion given (right to be explained) (Sri Undari dkk, 2023).

Discussion of the Perppu through a process of meaningful participation in the substance of the Perppu does not mean that it will eliminate the political element of the DPR in approving the Perppu as described above. However, such discussions will at least reduce the level of subjectivity in the DPR which contains political elements, and it is hoped that it will prioritize objectivity in approving the Perppu. This is because within a democratic framework, the public can control and assess the legislative process properly in the formation of laws. This is different from the role of the DPR which immediately gives approval or rejection, which may also be based on the criteria of compelling urgency, but the determination is not open and cannot be monitored and assessed by the public. However, in a democratic country, public assessment of state institutions, especially in this case parliament, plays a very vital role. Of course, the discourse proposed by politicians in the DPR or even institutions from other branches of power will not develop so widely if it does not succeed in gaining strong public support.

Apart from the discussion aspect, something that also needs to be regulated rigidly is regarding limitations on the validity period of the Perppu. This is related to the temporary nature of



the Perppu as an Emergency Constitutional Law instrument which is ideally intended for countries in emergencies, as well as because the substance of the Perppu has the potential to contain certain irregularities. In Indonesia, the validity period of the Perppu is actually limited, but the time interval is not explicitly stated because Article 22 paragraph (2) stipulates that the Perppu must be approved by the DPR at the next session. Meanwhile, according to Bagir Manan, this clause, apart from changing the legal status of the Perppu, whether it is rejected or approved so that it becomes law, is also a time limit for the enactment of the Perpu, the longest of which is until the next Parliament session.

Jimly Asshiddiqie also interpreted that the Perppu is the only regulation issued by the President which is independent in nature in the sense that it does not implement the orders of the law which can be valid for a maximum of 1 (one) year. Next, the Perppu must be submitted for approval from the DPR. This means that within 1 year it must obtain approval from the DPR. However, in practice, there are still Perppu that are discussed beyond the first session period after the Perppu is enacted, even though the Perppu in question has legal consequences that are very likely to violate the rights of citizens and conflict with the 1945 Constitution of the Republic of Indonesia due to its.

Furthermore, if you look at several countries, the implementation of a state of emergency is always limited to a certain time. In India, for example, according to Article 352 of the constitution, a state of emergency ends within 2 (two) months, unless before the end of the term, the state of emergency receives approval from both chambers of parliament as appropriate. Australia further determined that the validity period of regulations made during an emergency will end automatically if within seven days parliament does not or has not given approval. Meanwhile in France, a state of emergency declared through a decree issued by the cabinet is limited to only 12 days, and only parliament has the authority to extend the state of emergency for more than 12 days.

Thus, it is important to pay attention to the use of emergency law in Indonesia so that the Perppu does not lose its emergency essence, as is the practice in several countries that the researchers have described above, so that the DPR objectification function towards the Perppu has the meaning that the DPR approval is a form of legitimacy and legality that has indeed been achieved. an emergency occurs so that the President determines it to be used by showing that there is a causal relationship between the emergency and the stipulation of the Perppu, as well as providing space for the DPR to participate in supervising the use of the Perppu which is an emergency legal instrument. The DPR is thus also given space to take responsibility based on objective conditions regarding state emergencies.

b. Reconstructing the Authority of the Constitutional Court in Judicial Control of the Determination of Perppu

Even though the Perppu can be objectified by the DPR, it does not rule out the possibility that the Perppu in its formation will still not be able to control the President's subjectivity, and even if it has not been objectified by the DPR, the Perppu will still be valid as positive law with the same binding force as the Law. Therefore, it is necessary to have adequate control of power in the construction of checks and balances from other state powers, in this case the Constitutional Court. The Constitutional Court involvement is necessary because the Constitutional Court role is to assess the constitutional validity of legal products under the 1945 Constitution of the Republic of Indonesia.

The judicial control by the Constitutional Court that will be offered is certainly different from the Perppu testing mechanism whose legality has so far been established through Constitutional Court Decision No. 138/PUU-VII/2009. In this research discourse, the ideal supervision is the Constitutional Court's supervision of Perppu which have not yet been adopted or in other words are still being planned by the President. or has already been stipulated, but the constitutionality of the material will first be assessed. Therefore, the following is the ideal design for judicial supervision by the Constitutional Court regarding Perppu in the future:

Table. 2: Design of Constitutional Court's Authority in Exercising Control over the Passing of a Perppu

Design of Perppu's Judicial Overwatch	
Carry out a review of the Perppu's planned content	Testing the Constitutionality of Perppu Materials passed by the President
<ul style="list-style-type: none"> - This process was carried out by the Constitutional Court mechanically without any prior request from the public. - In this process, the President first submits a request to the Constitutional Court to assess the criticality criteria for the proposed Perppu. - With this request, the Constitutional Court will then produce an assessment regarding the situation that the President means has fulfilled the criteria of compelling urgency as required in the constitution, to declare that the President has the authority to enact a Perppu. 	<ul style="list-style-type: none"> - With this request, the Constitutional Court will then produce an assessment regarding the situation that the President means has fulfilled the criteria of compelling urgency as required in the constitution, to declare that the President has the authority to enact a Perppu. - From the preview carried out by the MK, if according to the MK the Perppu is contrary to the 1945 Constitution of the Republic of Indonesia, then the MK declares the Perppu to be unconstitutional. However, if according to the Constitutional Court the Perppu is constitutional, then the Perppu will be declared to have binding force until it receives approval from the DPR at the next session's agenda.

Source: Author's research

As explained above, according to researchers, the Constitutional Court authority in judicial control over the enactment of Perppu is important considering the strategic function played by the Constitutional Court which is very influential in state administration. As for looking at a broader perspective regarding the need for a constitutional court to carry out a constitutional preview of the stipulation of emergency law, this research will describe the perspective in another country, namely Thailand. Thailand is a country in the Southeast Asian region that did not experience the traumatic background of colonialism. The constitutional history of Thailand began in 1932, at which time the Thai kingdom officially formed a constitution which then confirmed Thailand as a country.

Thailand declared itself as a unitary state in the form of a kingdom whose government system is a constitutional monarchy which places the King as head of State who serves for life but the power he exercises is limited by the constitution. This is outlined in the Thai Constitution, namely: "Section 3 The sovereign power belongs to the Thai people. The King as Head of the State shall exercise such power through the National Assembly, the Council of Ministers and the Court in accordance with the provisions of this Constitution." Furthermore, regarding the existence of the Constitutional Court's, in line with Indonesia, Thailand is also a country experiencing a transition from authoritarianism to democracy, therefore there is a need to form a constitutional judicial institution such as the MK that can be relied upon rather than leaving it to the district courts or the Supreme Court.



The Thai Constitutional Court was formed in 1997, at that time the drafters of the constitution tried to give the judiciary independence while also being able to supervise politics. Thus, in the Thai constitution, the Constitutional Court is given the authority not only to decide on reviewing the constitutionality of laws, but also has special authority, namely to decide on the constitutionality of emergency regulations before they are stipulated by the ministerial council. This activity is to control government actions regarding the stipulation of emergency laws. However, in Indonesia, on the other hand, the Constitutional Court still has limited special authority in constitutional review as stipulated in Article 24C paragraph (1) of the 1945 NRI Constitution, namely that the Constitutional Court authority is only to decide on reviewing laws against the 1945 NRI Constitution. Even the authority to review the constitutionality of Perppu is not explicitly regulated in the Indonesian constitution. so that the legal basis used by the Constitutional Court in reviewing the Perppu is its own product in Constitutional Court Decision No. 138/PUU-VII/2009. That in this decision the implementation of the Perppu review by the Constitutional Court can be carried out if a citizen submits an application. Of course, this is different from the Thai Constitutional Court which examines the constitutionality aspects of emergency regulations first before they are enacted, which is a control mechanism for the government.

Therefore, the design of judicial control over the stipulation of Perppu by the Constitutional Court which the author has described above is in principle a necessity. The underlying reason is that the use of emergency law in Indonesia is currently still not “steady” both in terms of the limits on the President’s subjectivity in enacting Perppu and control from state institutions which only involves the DPR. Reflecting on Thailand, the Constitutional Court involvement in assessing the constitutionality of emergency law is an adequate check and balance activity (Wardami dkk, 2023). Thus, the Indonesian Constitutional Court also needs to be given special authority to control the enactment of Perppu by the President. The involvement of the Constitutional Court is of course in line with the commitment to present the Constitutional Court in order to protect the country’s holy book, namely the constitution. Courts such as the Constitutional Court are also a forum for refreshing the new hopes of 270 million Indonesians due to the reform situation which expands guarantees of freedom and human rights and is also accompanied by an increasing potential for conflict, so the Constitutional Court is expected to play an important role as a referee in resolving all conflicts between the authorities and the citizens of the country (Ahmad, 2006). Thus, the involvement of state institutions from the judicial branch of power such as the Constitutional Court in supervising the enactment of Perppu is a positive thing because the purity of the law cannot be monopolized in the name of the forming authority.

4. CONCLUSION

This research illustrates that in fact Article 22 clause (1) of the 1945 Constitution of the Republic of Indonesia creates problems due to its provisions which provide wide scope for subjectivity for the President to interpret matters of compelling urgency. Proven with authority in this special case, the formation of Perppu often gives rise to controversy in the public. Meanwhile, if we refer to reading the history of the Indonesian constitution, namely when the draft Constitution was discussed in the BPUPKI session forum, no adequate explanation was found regarding the provisions of Article 22 clause (1) of the 1945 Constitution of the Republic of Indonesia which places the authority of the President in enacting Perppu. However, researchers tried to find further answers, and discovered the doctrine from Bagir Manan that the existence of Article 22 of the 1945 Constitution of the Republic of Indonesia was influenced by the regulation of Article 93 of the Indische Staatsregeling as a constitutional regulation in the Dutch East Indies era which emphasized the “dringende omstadigheden” clause as an indication of a critical situation. Thus, this clause becomes the President’s justification for enacting the Perppu.

Furthermore, when there is great authority for power in forming laws and is not accompanied by adequate control, of course the law will have the potential to appear as an authoritarian

instrument of power, including in the context of the President's power in enacting Perppu. Thus, it is necessary to control the use of the authority of the Perppu in the future through 2 (two) designs, namely: *First*, by reconstructing the objectification of the Perppu in the DPR within a frame of meaningful participation that adheres to legality, constitutionality, implementation, legitimacy and also procedures such as time limits for the Perppu to come into force. *Second*, the reconstruction of the Constitutional Court authority in judicial control over the enactment of Perppu involving state institutions from the judicial branch of power such as the Constitutional Court is a positive thing considering that the purity of the law cannot be monopolized by the authority that forms it, including the Perppu.

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