

Nature "Matters of Urgency the Force" for President in Establishing PERPPU

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Abstract

When referring to the constitution, it is known that the President issued a decree requirements are in matters of urgency that forces. The constitutional order is clear, that the President may establish laws when there are conditions called "happenings crunch that forced". Pushing crunch that that is the object of reading or reference for the President to perform the role as a shaper of law, namely the regulation. Regulation should not be born or formed in a normal situation.

Keywords: It matters of urgency to force as a condition for the President in determining Government regulation

A. Introduction

Constitution of the Republic of Indonesia 1945 as the country's constitution, would have been called in it, including the set of rights, responsibilities, and authority of state leaders, is something fundamental. The President is the leader of a country that has many strategic role as a constitutional authority one of which was published regulation.

The authority of the president in setting This regulation is explicitly mentioned in the Constitution, but which has brought many questions are about the reasons publication regulation.

Indonesia as a legal state law should be understood as an integrated system consisting of elements of institutional (institutional), point rules (instrumental) and the behavior of the subjects of law (subjective and cultural elements). The third element of the legal system include; law-making activities (law making), the activities of law enforcement or application of the law (law administration) and judicial activities for violations of the law (law adjudicating) or commonly referred to law enforcement in the narrow sense (law enforcement) (Jimly Asshiddiqie, 2007, 13). Based on the description of this Jimly, can be understood, that the law of the state of the building is determined by the law-making factors. Making the law determined by the level of influence that made him.

President authority is regulated in Article 22 paragraph (1) of the Act of 1945) which states that "In matters of urgency that force, the President has the right set of government regulations in lieu of law." Determination Government regulation made by the President is also written in Article 1 paragraph 4 of Law No. 12 of 2011 on the Establishment of legislation that says, that the Government Regulation in Lieu of Law Legislation is set by the President in matters of urgency that forces.

President get the authority to issue government regulation there must be a reason behind it, or why until government regulation issuing authority in the hands of the president? Or why to entrust the state authority to issue decree by the president?

B. The authority of the President in Establishing government regulation.

President as the executive who holds one of the power government besides legislative and judicial institutions. In political triad concept, the separation of powers meant the absence of interference between the institution with other institutions so that what happens is the stiffness in country. Each agency exercise authority without any control from other institutions, therefore, countries that use the rule of law system uses a process of checks and balances as one of the control of an agency with other institutions. While Indonesia has adopted the concept of power sharing by the presence of interference from one institution to the other institutions. So that, in the formation of the law that legislation which should only be owned by the legislature, executive even agency is authorized to establish the legal form of government regulation (Anak Agung Wiwik Sugantari, 2014).

If it is seen in the realm of theory authority, the authority to make government regulation for president based on Article 12 of the Constitution is the authority of attribution as mandated by the Constitution.

According to Article 12 UUD 1945 stated that (1) the happenings crunch that forced the president has the right set of government regulations substitute for legislation, (2) government regulations that must be approved by the House of Representatives in the next session, (3) if not approval, then that government regulation should be revoked.

Based on this provision, then government regulation is a form of regulations made by the president without the need for agreement of the House because of the urgency of the forces and if the object that was normal, then the decree should be discussed again for approval by Parliament (Anak Agung Wiwik Sugantari 2014).

Making authority in the hands of the president's government regulation the authorities in the legislation which was ordered by the constitution. The authority granted to the President by the consideration, that one possible state will face a situation or a serious condition such as an emergency that requires rapid

Since the debate in the House take a long time and thus can not run an efficient government then as soon as possible to arrange a precarious situation, the emergency, the President was given the power (authority) to create your own i.e. without cooperation or without the active involvement of the Parliament a regulatory level with the Act. Government regulation born at a time when countries, especially Indonesia experienced matters of urgency that forces (<http://dimensilmu.blogspot.com> ²⁰¹⁴).

Granting authority to the President can be read into consideration the decision of the Constitutional Court, who called government regulations referred to in this article is in lieu of the Act, which means that the material should be regulated in the container Act but because of the urgency of the force, the 1945 Constitution gives the right to President to establish regulation and does not give the right to Parliament to make laws in lieu of legislation. If the rulemaking submitted to the Parliament, then the process in the House requires a long time since Parliament as a representative institution, decision-making in the hands of members, which means to decide something has to go through Parliament meetings so that Parliament should await the decision of the law needs fast may not be fulfilled.

Additionally, as an authority in the field of legislation or the establishment of legislation, the President still bound by the principle of making legislation that good. This means that in making Government regulation, the President should not ignore or should not abandon the principle of making legislation that both set out in legislation and in theory the manufacture or creation of legislation that is good.

Article 5 of Law No. 12 of 2011 on the Establishment of legislation states: in the form of legislation should be based on the principle of the Establishment of legislation that good, which includes:

- a. clarity of purpose;
- b. institutional or forming proper authorities;
- c. correspondence between the types, hierarchies, and substance;
- d. can be implemented;
- e. usefulness and result;
- f. clarity of formulation; and
- g. openness.

Article 6 states:

(1) The content of legislation should reflect the principle:

- a. aegis;
- b. humanity;
- c. nationality;
- d. family;
- e. country;
- f. unity in diversity;
- g. justice;
- h. equality before the law and government;
- I. order and the rule of law; and / or
- j. balance, harmony, and unity (UU Nomor 12 Tahun 2011 tentang Pembentukan Peraturan perundang-undangan).

In the legislative process as the law-making process, the law gave birth positive will fit and always influenced by certain political configurations that interact in the process. The legislative process can be said to be a law-making process that is in the legislature. In essence, the legislation consists of two major groups, namely, the sociological phase is ongoing processes to finalize the ideas, issues, and / or problems which would then be taken to the judicial agenda, after which it will continue into the judicial phase of the jobs which really concerns the formulation or application a rule or law (Anis Ibrahim, 2008,4)

Thought it shows, that legislation, including the authority of the President of the formation process of legislation is based on factual growing problem in society which is then formulated into a rule or legislation that regulates the public and state administration officials that the act does not violate the interests of the many . Legislative process conducted by this President is required to be aligned with the theory of the formation of legislation.

Indonesia as the country headed into a democratic order has been escorted by some instrument or law,

each has its hierarchy (<http://dimensilmu.blogspot.com/2013/06/>), as outlined in the Act No. 12 of 2011 on the Establishment of legislation. In accordance with the hierarchy of this legislation, the establishment was aligned with its formation, both from a philosophical, sociological, and juridical.

Especially with regard to regulation, a large frame and can be called fundamental, that the main reason for the issuance of regulation is due to a state or condition that is not normal or crunch that forced.

Regulation is a legal product that is valid according to the provisions of Article 22 of the Constitution of 1945. Formally, the decree is government regulation, not legislation. But substantially, material same decree with the substance of the Act. To regulation, the Parliament can do legislative review to approve the decree into law or not.

Under Article 22 of the Constitution of 1945, declared that without the prior consent of the House, the President can only set a rule as in Lieu of Law (regulation) for reasons of urgency or consideration. Henceforth, the rules while it must be submitted for parliamentary approval in the period since the regulation applied. If then the House of Representatives does not approve, the decree should be revoked. However, even so, at least theoretically rules have been implemented for one year. The possibility for the government to establish a Government Regulation in Lieu of this Act, it can be said is a transfer of power that is legislative (Jimly Asshiddiqie, 2005, 53).

C. Benchmark "matters Crunch Forcing"

The main reason the president can use in making government regulation obligation are "matters of urgency that forces". The debate on "matters of urgency that forces" has long been the case, both among former constitution rules and regulations as well as academics.

Sumali mention, that in the matters of urgency that forces, the president should be alert and act quickly to address the object, because if it is done with the bill on the House to overcome the object that force will require a long time. Crunch that forced the states of emergency that is not only limited to the threat of danger to the security, integrity of the state, or public order (Sumali, 2003, 90). But also things that can disrupt the stability of countries such as the economic crisis, political crisis, a moral crisis, natural disasters, and so forth.

Regulation in the State Constitution of Indonesia together with the emergency law set forth in Article 139 paragraph (1) Constitution RIS conjunction with Article 96 paragraph (1) 1950 which stated that: "The government is entitled to their own powers and responsibilities set emergency laws to regulate it -it running the federal government; that because the object urgent need to set up soon. "

Difference term used where the RI State Constitution uses the term substitute Government Regulation Act while in the Constitution RIS and 1950 use the terms Emergency Law. Attitude "modestly" with no mention of the term Act because it has not received the approval of Parliament, but rather "who change their Government Regulation Act" on constitution RIS (RIS Constitution), and 1950 was the attitude that "straightforward" despite the call Act but formed in states of emergency (urgent object) and since it was formed before obtaining the approval of Parliament (A. Hamid S Atamimi, 1990, 21). Although there are differences in terms of this matter, but the intent is formation can not be separated from two things, the first authority to make, and secondly, the presence of certain conditions or circumstances, including emergencies.

The circumstances mentioned in the Constitutional Law, meaning subjective constitutional law or the staatsnoodrecht subjective sense is right, namely the right of the state to act in case of danger or emergencies to deviate from the provisions of the shrimp, and even if it is necessary, deviate from the enactment constitution. In much of the literature, the term staatsnoodrecht in the subjective sense is usually called staatsnoodrecht alone, without subjective extra. Therefore, if we find the term staatsnoodrecht in the literature, we can understand it in the context of understanding that it is subjective. Thus habit is maintained by scholars since the source of staatsnoodrecht subjective meaning it is human rights which was originally a unwritten law that rests on basic law as an objective law. However, due to the influence of the flow of positivism and the doctrine of formal legal state, then after that develops staatsnoodrecht term in the objective sense (http://novritsar-hfh11.web.unair.ac.id/artikel_detail-70943)

The substance contained in the Act and regulation have the a same as a further adjustment of the State Constitution RI 1945. So that, regulation remains the Legislation that is possible to be published with the aim and intention of the force. Where are all the law-making process, because the existence of the law is to living with humans. The formation process of the law is relatively very important as the relative importance of seeing the process of implementation and enforcement of the law itself. Therefore, the processes that occur in law enforcement somehow affects the process of implementation and enforcement (Anis Ibrahim, 2008, 91).

Judging from Constitutional Law, then there is a condition in which a state of normal and abnormal / emergency (staatsnoodrecht) so that the current law is the law that is intended to apply in an emergency. There are four types of emergencies that emergence defense, state of tension, domestic challenges, and welfare emergency (<http://dimensilmu.blogspot.com/2013/06/>).

"It matters of urgency that forces" is also one of the discussion in the constitutional law of emergency.

Constitutional law is a series of emergency and authorized state institutions are incredible and special for the shortest possible time can eliminate emergency or danger to the lives of ordinary life. This means that there is a situation that is really an emergency or there is a crunch conditions that distinguish the normal situation.

When referring to the constitution, it is known that the President issued a decree requirements are in matters of urgency that forces. The constitutional order is clear, that the President may establish laws when there are conditions called "happenings crunch that forced". Pushing crunch that that is the object of reading or reference for the President to perform the role as a shaper of law, namely the regulation. Regulation should not be born or formed in a normal situation.

According to Yuli Harsono, that matters of urgency to force the subjectivity associated with the President. If the interpretation of the President determines, that in this country there are matters of urgency force, the President may issue a regulation (<http://dimensilmu.blogspot.com/2013/06/>). Position regulation as subjective norm is also expressed Asshiddiqie, that Article 22 UUD 1945 provides authority to the President to subjectively assess the state of the country or matters related to the state which led to a law can not be established immediately, while the need for setting material regarding which should be regulated is very urgent that Article 22 UUD 1945 provides authority to the President to establish a replacement government regulation legislation (regulation) "(Jimly Asshiddiqie ,2007,209). Basic law (constitution) gives recognition to the President, that the President has the authority of a special nature in relation to the reading and the establishment of conditions of the country.

According to Harun al-Rashid (in Kleden & Waluyo, Ed., 1981: 76-77 and 105), that in noodstaatsrecht, Law danger is always there, the implementation of the enactment of danger, as outlined in the president's decision. Noodstaatsrecht must be distinguished from staatsnoodrecht. According staatsnoodrecht doctrine, if a state of emergency may be acting head of state of any kind, even violate the constitution in order to save the country though. Staatsnoodrecht a state of emergency right, not the law. In Indonesia, the Presidential Decree of July 5, 1949 which set a re-enactment of the 1945 Constitution, in the eye based on the doctrine staatsnoodrecht Wiryono. According to Mahfud MD decree is not only based on staatsnoodrecht, but also based on the principle of *salus populi suprema lex* (the safety of the people is the supreme legal basis). Meanwhile, according to M. Hatta, Prawoto Mangkusasmito (in Mahfud MD: 2001: 136) and Yusril Ihza Mahendra (2001) who agree with Logeman, mentioned, that the Presidential Decree of July 5, 1959 is a revolution in the field of constitutional law. This decree became juridical products issued by the President when the country is facing serious problems (<http://dimensilmu.blogspot.com/2013/06/>)

"In matters of urgency that forces" is an absolute requirement for the president to exercise their rights. Contrary president can not exercise his right as long as there are no matters of urgency force (<http://dimensilmu.blogspot.com/2013/06/>).

Probe to the rear, the provisions of Article 22 (and Article 12) is the original text of the 1945 Constitution which was not amended. Elucidation of Article 22 UUD 1945 explained that, this article about noodverordeningsrecht President. Such rules need to be established so that safety can be guaranteed by the state government in a precarious situation, which forced the government to act quickly and appropriately. Nevertheless, the government will not be separated from the supervision of the Board of Representatives. Therefore, government regulations in this chapter, whose strength is equal to the Act must be approved also by the House of Representatives (M. Jodi Santoso <http://Jodisantoso.blokspot.com/2009/01/>). This understanding is in line with Marwan Sutedjo mind, that "matters of urgency that forces" must be a primary and fundamental reason for the president who intends to issue a decree, that the meaning of the urgency associated with a situation that really demands speed and precision of the President to turn the situation into not an emergency (Marwan Sutedjo, 2013,45).

Indrianto Seno Adji (2002) says, in Constitutional Law known principle of emergency law for emergencies or abnormal *retch voor abnormal Tilden*. This principle became the prerogative of the President as provided for in Article 22 paragraph (1) of the Constitution of 1945. According to Jimly Ashiddiqie (2006: 80-85), as an emergency decree legislation is based on the inner reason *nootstand* (emergencies that are internal) in state (I) urgent in terms of substance, and (ii) the precarious in terms of time. Meanwhile, Manan said, "happenings crunch forcing" a constitutive condition on which the authority of the President in setting regulation. This means that the constitution has been outlined, that the President with the authority that has been designated the constitution, can form or give birth regulation. If you can not show real terms the situation, the president is not authorized to determine government regulation. decree stipulated in the absence of "matters of urgency to force", then null and void (null and void), for violating the principle of legality that is made without authority. existence "happenings crunch that forced" also have to show some requirements of the crisis, which pose a real danger or obstacle to the smooth running of government functions. Therefore, the charge government regulation confined to implementation (administratiefrechtelijk) (M. Jodi Santoso <http://Jodisantoso.blokspot.com/2009/01/>).

Certain requirements that the essence of "matters of urgency that forces" is a special condition that

actually becomes limiting the use of authority so that the authority used by the President does not shift into arbitrariness (Ahmad Suaidi, 2011, 11). The tendency of arbitrariness when someone occupying a given position or power or legalizing, it is so often the case in the government environment, so that the constitution should provide the authority, but authority is limited. Specificity of the authority granted to the President is quite remarkable, as the President may determine the conditions of a country, which is not owned by the authority leader other state agencies.

Danger should not linger, because the main function of the law of the state of emergency (staatsnoodrecht) is to eliminate the danger immediately so back to normal. If there is a state of lingering, nod (danger) that it violates the law of the state of emergency was held goal. Danger to the extraordinary efforts must be a balance, so that it is not excessive authority and prevent the abuse of power that big. Danger, it is something abnormal, to overcome the dangers of the legal matter in ordinary circumstances must be seen as abnormal and extraordinary, perhaps under normal circumstances the authorities act in the category onrechtmatig, but because of danger or abnormal, then it is legitimate ruler action and can be justified (R. Kranenburg, 1951, 94-96/ Herman Sihombing, 1996, viii).

Content and scope of regulation on its own, justify a Jimly Ashiddiqie Manan, that not stand inner nature as the principal reasons can only be used as a reason for the enactment of regulation insofar as it relates to the internal purposes of government that requires the support level of legal protection Act. Moving from such things, it is clear that the President has limitations in using a subjective right in issuing government regulation. The President can only exercise his right insofar as it relates to the internal purposes of government (M. Jodi Santoso <http://Jodisantoso.blokspot.com/2009/01/>). President of subjective rights, although these rights are classified as special rights, but precisely because of this specificity, President authority is limited, not allowed to freely product the rules.

As emergency rule, regulation contains restrictions. First: regulation issued only in matters of urgency that forces. In practice, "matters of urgency that forces" is often interpreted broadly. Not only limited to the state containing a crunch or a threat, but including also considered urgent needs. Who determines crunch that forced it? Because the regulation establishes authority for the President, the President who legally determine the force crunch. Second, regulation is only valid for a limited time. President at the latest during the next session of Parliament shall submit to the Parliament regulation to obtain approval. If approved by Parliament, regulation turned into law. If not approved, the decree should be immediately revoked (<http://law.uui.ac.id/images/stories/Jurnal%20Hukum/7%20R.%20Nazriyah.pdf>).

Limitations on the duration and the approval of Parliament contains various meanings: (1) the authority to make regulation gives extraordinary powers to the President. This incredible power must be controlled to avoid the abuse of power by using regulation as a means; (2) has been presented, the substance of regulation is the substance of the Act. Therefore, to be submitted to Parliament in order to obtain approval to become law; (3) The regulation reflects a state of emergency. A state of emergency is a justification for instance deviate the principles of the state based on law or principle of constitutional state. Filing regulation as soon as possible to Parliament as soon as possible also means the return to the normal state which ensure the implementation of the principles of the state based on law or constitutional state (I Gde Pantja Astawa dan Suprin Na'a, 101-102). Regulation described as one of the powerful weapon that is owned by the President who is able to answer the problems of society and a state that can not be solved in the usual way. The Constitution does provide a lot of special weapons to the President in managing government. Special weapons given this constitution, although impressed put President has a variety of advantages over other state agencies. However, these advantages remain in custody juridical norms ((Ahmad Suaidi, 2011, 11-12)

Regarding the position of regulation is often questioned whether they would be retained. With a different name, either in Article 139 paragraph (1) Constitution of the Republic of Indonesia in 1949 and in Article 96 of 1950, so there is always a form of regulation, which is called Emergency Law. Article 139 paragraph (1) of the Constitution states RIS 1949, the Government is entitled to his own powers and responsibilities set emergency laws to regulate matters of federal government administration as urgent circumstances need to be set immediately. Provisions adopted in the 1950 Constitution Article 96 paragraph (1) asserts, "The government is entitled to their own power and responsibility set Emergency Law to regulate matters of governance which is due to circumstances that urgently need to be regulated immediately" (I Gde Pantja Astawa dan Suprin Na'a, 206). Paragraph (2) says that, Emergency Law has the power and the degree of the Act, this provision does not reduce specified in the following article

The second paragraph of the article that appears to refer to the regulations as stipulated by regulation under the 1945 used "Emergency Law". The use of emergency legislation is often confused with the Law on Emergency / Danger (Ni'matul Huda, 1999, 70).

Emergency Law or regulation is intended to call a level of law enforcement instead of the law made in matters that need to be regulated, so no need to wait for approval of the House first. The law on state of emergency is an Act to regulate when there is danger, well set on its terms may be declared when there is danger

or legal consequences after being declared or determined the existence of a state of danger.

D. Conclusion

Making authority in the hands of the president's government regulation the authorities in the legislation which was ordered by the constitution. The authority granted to the President by the consideration, that one possible state will face a situation or a serious condition such as an emergency that requires rapid treatment. Meanwhile, if the waiting period siding Parliament and debate in the House take a long time, worried president can not run an efficient government, the constitution of the members to the President if the country experienced a very precarious situation money and in "matters of urgency to force" the President may issue regulations without intervention of Parliament in the form of Government Regulation in Lieu of Law (PERPPU)

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