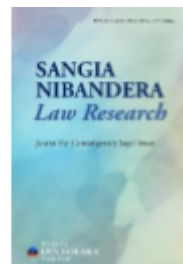


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Judicial Review of Parliamentary Oversight on the Issuance of the Job Creation Emergency Law from the Check and Balances Perspective

Tinjauan Yuridis Pengawasan DPR Terhadap Penerbitan Perppu Cipta Kerja dalam Perspektif Check and Balances

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Abstract

This study aims to analyze the mechanism of the implementation of the House of Representatives (DPR) oversight function towards the issuance of Government Regulation in Lieu of Law (Perppu) based on the 1945 Constitution and evaluate the application of the principle of checks and balances in the procedure of issuance and approval

of Perppu Number 2 of 2022 concerning Job Creation into Law Number 6 of 2023. The research method used is normative legal research with a statutory approach, a conceptual approach, and a case approach. The results of the study indicate that normatively, the 1945 Constitution has explained a strong mechanism of checks and balances where the DPR acts as a constitutional gateway through its legislative and supervisory functions to test the President's subjectivity regarding the parameters of "compelling urgency" as stipulated in the Constitutional Court Decision Number 138/PUU-VII/2009. However, the fact that the ratification of the Perppu on Job Creation indicates a weakening of the principle of checks and balances and is merely a mere formality. The House of Representatives (DPR) tends to ignore substantive material review and bypass emergency parameters to accommodate executive-heavy policies, as well as ignoring Constitutional Court Decision No. 91/PUU-XVIII/2020 concerning the obligation for meaningful public participation. This study recommends the need to codify the standard parameters of constitutional emergencies and strengthen parliamentary institutional independence.

Keywords

DPR Oversight, Job Creation Perppu, Checks and Balances, Urgency Forces

Abstrak

Penelitian ini bertujuan untuk menganalisis mekanisme penerapan fungsi pengawasan Dewan Perwakilan Rakyat (DPR) terhadap penerbitan Peraturan Pemerintah Pengganti Undang-Undang (Perppu) berdasarkan UUD 1945 serta mengevaluasi penerapan prinsip check and balances dalam prosedur penerbitan dan persetujuan Perppu Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang Nomor 6 Tahun 2023. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan (*staute approach*), pendekatan konseptual (*conceptual approach*), dan pendekatan kasus (*case approach*). Hasil penelitian menunjukkan bahwa secara normatif, UUD

1945 telah menjelaskan mekanisme check and balances yang kuat dimana DPR bertindak sebagai gerbang konstitusi melalui fungsi legislasi dan pengawasan untuk menguji subjektivitas Presiden atas parameter “kegentingan yang memaksa” sebagaimana diatur dalam Putusan Mahkamah Konstitusi Nomor 138/PUU-VII/2009. Namun, faktanya pengesahan Perppu Cipta Kerja mengindikasikan adanya pelemahan prinsip check and balances dan hanya pemenuhan formalitas belaka. DPR cenderung mengabaikan pengujian materil substantif dan melompati parameter kedaruratan demi mengakomodasi politik eksekutif (executive heavy), serta mengabaikan Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020 mengenai kewajiban partisipasi publik yang bermakna (*meaningful participation*). Penelitian ini merekomendasikan perlunya kodifikasi parameter baku kedaruratan konstitusional dan penguatan independensi kelembagaan parlemen

Kata Kunci

Pengawasan DPR, Perppu Cipta Kerja, Check and Balances, Kegentingan Memaksa

A. Introduction

In Indonesia's constitutional system, which adheres to the division of power, the principle of checks and balances is a fundamental aspect that must be maintained. This principle ensures that state power is not concentrated in a single institution, but is instead distributed proportionally and monitored by state institutions to prevent abuse of power. Thus, governance can be run based on the principle of constitutionalism, namely, power limited by law.¹ One concrete form of the application of the principle of balance of power is seen in the mechanism for issuing Government Regulations in Lieu of Law (Perppu) as regulated in Article 22 of the 1945 Constitution of the Republic of Indonesia (UUD 1945).²

Within this framework, the House of Representatives (DPR) plays a strategic role as a representative body of the

¹ Asshiddiqie, J. (2020). *Konstitusi dan Konstitusionalisme Indonesia*. Sinar Grafika.

² The 1945 Constitution of the Republic of Indonesia.

people that carries out legislative and supervisory functions. The legislative function places the DPR as a law maker together with the President, as stated in Article 20 paragraph (1) of the 1945 Constitution, including the authority to provide approval or rejection of a Perppu so that it can be stipulated as a Law in accordance with Article 22 paragraphs (2) and (3) of the 1945 Constitution. (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945) Meanwhile, the oversight function empowers the DPR to control government actions, both through political approval mechanisms and substantive review of executive policies. This ensures that the use of power, including in emergencies, remains within the constitutional framework and does not deviate from the principles of the rule of law. These two functions position the DPR as the primary instrument in maintaining the balance of power between the executive and legislative branches.

Article 22 of the 1945 Constitution authorizes the President to issue a Government Regulation in Lieu of Law (Perppu) in the event of a "*compelling emergency*." However, to maintain a balance of power, this authority is not absolute, as its implementation is overseen by the House of Representatives (DPR). The DPR plays a role in approving or rejecting Perppu during the next session, which embodies its oversight and control function over executive power. The principle of checks and balances in Indonesia began to develop after the amendments to the 1945 Constitution in 1999-2002, which strengthened the DPR's role as an independent legislative body to balance executive power. This amendment was influenced by the post-New Order democratic transition, when the concentration of power in the hands of the President often led to human rights violations. However, in practice, political dynamics such as the formation of coalitions of parties supporting the government often reduce the effectiveness of oversight, as seen in the discussion of the Job Creation Perppu, which was quickly approved by the DPR without substantive debate.

Legal issues arose when the President issued Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation, which sparked widespread

controversy because it was deemed to not meet the elements of "*compelling urgency*" as interpreted by the Constitutional Court (MK) in Decision Number 138/PUU-VII/2009. In that decision, the MK emphasized three cumulative requirements for an emergency: an urgent need to resolve the legal issue quickly; the required law does not yet exist or is inadequate; and the legal vacuum cannot be addressed through regular lawmaking procedures.³

The issuance of the Job Creation Perppu was carried out following the Constitutional Court Decision Number 91/PUU-XVIII/2020, which declared Law Number 11 of 2020 concerning Job Creation conditionally unconstitutional and ordered its revision through ordinary legislation within two years. (*Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020*, 2021) Instead of pursuing the usual legislative path with meaningful public participation, the government issued a Government Regulation in Lieu of Law (Perppu). The House of Representatives (DPR) then approved the Perppu as Law Number 6 of 2023 without in-depth substantive discussion. This phenomenon demonstrates a sharp gap between *das sollen* (*constitutional legal norms*) and *das sein* (*state practice*), where the legislative oversight function tends to weaken and shift to mere political formalities to bypass constitutional court decisions. Based on this description, the questions to be answered in this study are: how the DPR's oversight function is implemented regarding the issuance of Perppu based on the 1945 Constitution; and whether the procedures for the issuance and approval of the Job Creation Perppu have implemented the principle of checks and balances.

The development of the concept of checks and balances in modern democracies is inextricably linked to the idea of limited government, a consequence of the rule of law. In a constitutional democracy, power is no longer viewed as absolute, but rather must be limited through a mechanism of mutual control between branches of state power. This system aims to prevent the concentration of power in a single institution, which could potentially lead to abuse of power, and to ensure the protection of citizens' constitutional rights. Therefore, the principle of

³ Constitutional Court Decision No. 138/PUU-VII/2009 (pp. 1–33).

checks and balances serves not only as a mechanism for distributing authority but also as a constitutional instrument to maintain accountability for governance in accordance with democratic values and constitutional supremacy.

Theoretically, this concept is rooted in the theory of separation of powers put forward by Montesquieu in *De l'Esprit des Lois* (The Spirit of the Laws). Montesquieu argued that political freedom can only be realized if the legislative, executive, and judicial functions are separated into different institutions so that there is no concentration of power in one hand. According to him, if the formation of laws, the implementation of government, and the administration of justice are in the same institution, then the freedom of society will be threatened because it opens up the opportunity for arbitrary action. Thus, the separation of powers is not an end in itself, but rather a means to create a balance of power that guarantees the upholding of the constitution and the protection of human rights.⁴

In modern constitutional practice, Montesquieu's theory has evolved. Many countries no longer implement a strict separation of powers, but instead develop a model of distributed authority accompanied by a mechanism of checks and balances. This model allows each branch of government to continue to carry out its constitutional functions independently, while simultaneously having the instruments to control the actions of other state institutions. Thus, the relationship between state institutions is not subordinate, but rather coordinative and balancing, ensuring the effectiveness of democratic governance.⁵

In Indonesia, the strengthening of the principle of checks and balances gained significant momentum through the amendments to the 1945 Constitution of the Republic of Indonesia in the 1999–2002 period. Prior to the constitutional amendments, Indonesia's state structure exhibited a tendency toward executive dominance (executive heavy), which

⁴ De Montesquieu, C., Cohler, A. M., Miller, B. C., & Stone, H. S. (1945). Montesquieu: The spirit of the laws. *American History, 1861*(1900).

⁵ Editors, S., Sellers, M., Martyn, G., & Sellers, M. (2018). *Reconsidering Constitutional Formation II Decisive Constitutional Normativity* (Vol. 12).

weakened the oversight mechanism for the President. Following the amendments to the 1945 Constitution, the distribution of authority among state institutions underwent fundamental changes through the strengthening of the legislative, budgetary, and oversight functions of the House of Representatives (DPR) as stipulated in Articles 20 and 20A of the 1945 Constitution. In addition, the establishment of the Constitutional Court as guardian of the constitution further strengthened the constitutional oversight system for the actions of lawmakers and state administrators. These changes demonstrate that the Indonesian constitution has adopted the paradigm of constitutional democracy, which places the mechanism of checks and balances as one of the fundamental principles in governance.⁶

However, the effectiveness of implementing these principles in constitutional practice remains a matter of academic debate. Various studies have shown that the relationship between the President and the House of Representatives (DPR) in a multi-party presidential system is often influenced by coalition political configurations, thus preventing the legislative oversight function from always functioning optimally. Bayu Dwi Anggono's research explains that the checks and balances mechanism in the Indonesian constitutional system still faces the issue of executive political dominance, which has implications for weakening parliamentary oversight.⁷ Feri Amsari's research also shows that the use of Government Regulations in Lieu of Law (Perppu) has the potential to become an instrument for expanding executive authority if it is not balanced with effective legislative oversight. (Amsari, 2022) Meanwhile, Dian Agung Wicaksono's research emphasizes the importance of public participation as part of democratic oversight in the formation of legislation

⁶ Purnomo, A., Salam, N., Zamzami, M., & Bakar, A. (2023). Dimensions of Maqāṣid Al-Sharī 'Ah and Human Rights in the Constitutional Court's Decision on Marriage Age Difference in Indonesia. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7(3), 1397–1421.

⁷ Anggono, B. D. (2021). Prinsip Check and Balances dalam Sistem Ketatanegaraan Modern. *Jurnal Legislasi Indonesia*, 18(3), 295–310.

following Constitutional Court Decision Number 91/PUU-XVIII/2020.⁸

Similar findings were also put forward by Saldi Isra, who stated that the success of the Indonesian presidential system is highly dependent on the DPR's ability to carry out its oversight function independently from the political interests of the government coalition.⁹

Although these studies have made important contributions to the study of checks and balances, most have focused on the legality of the issuance of the Perppu, the political dynamics of legislation, or partial analysis of the Constitutional Court's decision. Few studies have specifically examined the House of Representatives' oversight function regarding the issuance of the Perppu on Job Creation, positioning the House as a constitutional gatekeeper obligated to verify the fulfillment of the "compelling urgency" parameter as formulated in Constitutional Court Decision Number 138/PUU-VII/2009. Furthermore, the relationship between the House of Representatives' obligation to carry out its constitutional oversight function and Constitutional Court Decision Number 91/PUU-XVIII/2020 has also not been comprehensively analyzed from a checks and balances perspective.

Based on these research gaps, this article offers a novel analysis of the House of Representatives' oversight function as a constitutional gatekeeper in the approval process for the Job Creation Perppu by integrating constitutional parameters regarding compelling urgency, the principle of checks and balances, and the doctrine of meaningful participation as a unified analysis. Through this approach, this research not only evaluates the compliance of the Perppu issuance and approval procedures with the provisions of the 1945 Constitution but also develops arguments regarding the importance of strengthening legislative oversight standards so that the

⁸ SIANIPAR, M. M., SAFAAT, M. A., SETIA NEGARA, T. A., & WIDIARTO, A. E. (2022). LAW AND PUBLIC PARTICIPATION IN INDONESIA. *Journal of Public Administration, Finance & Law*, 23.

⁹ Aris, M. S. (2018). Penataan sistem pemilihan umum yang berkeadilan untuk penguatan sistem presidensiil di indonesia. *Yuridika*, 33(2), 290-315.

President's authority to issue Perppu remains within the framework of a democratic rule of law.

B. Method

This research is normative legal research or doctrinal legal research, namely research that places law as a norm contained in legislation, court decisions, and the doctrines of legal scholars. This type of research was chosen because the problem studied focuses on testing the suitability of the House of Representatives (DPR) oversight mechanism regarding the issuance of Government Regulations in Lieu of Law (Perppu) with constitutional provisions and the principle of checks and balances. Thus, the main object of the research is not societal behavior or the empirical implementation of the law, but rather the legal norms that regulate the constitutional authority of the President and the DPR in the formation of Perppu along with the interpretations that develop in the doctrine and decisions of the Constitutional Court.¹⁰

The approach used consists of several complementary approaches. First, the statute approach, which systematically examines the provisions of the 1945 Constitution of the Republic of Indonesia, Law Number 17 of 2014 concerning the People's Consultative Assembly (MPR), the House of Representatives (DPR), the Regional Representative Council (DPD), and the Regional People's Representative Council (DPRD) as last amended, Law Number 12 of 2011 concerning the Formation of Legislation as amended by Law Number 13 of 2022, and Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation into Law. This approach is used to identify the conformity of legal norms governing the President's authority to issue a Perppu and the DPR's authority to approve or reject the Perppu.

Second, a conceptual approach is used to analyze various legal concepts and doctrines developed in the literature, including checks and balances, separation of powers, constitutional emergency power, constitutional gatekeepers, the

¹⁰ Mahmud Marzuki, P. (2005). *Penelitian hukum*. Jakarta: Kencana Prenada Media, 55.

rule of law, and meaningful participation. This approach is necessary to develop legal arguments regarding the DPR's oversight function as an instrument for limiting executive power in a democratic state governed by the rule of law.¹¹

Third, the case approach is carried out through analysis of Constitutional Court decisions that have direct relevance to the research object, in particular Constitutional Court Decision Number 138/PUU-VII/2009 concerning the parameters of "compelling urgency". (*Putusan Mahkamah Konstitusi Nomor 138/PUU-VII/2009*, 2009) and Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning the conditional unconstitutionality of the Job Creation Law and the importance of meaningful public participation in the formation of legislation.¹² The analysis of this decision aims to determine the consistency of the application of constitutional principles in the process of issuing and approving the Job Creation Perppu.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, laws and regulations related to the formation of the Perppu (Government Regulation in Lieu of Law), and Constitutional Court decisions. Secondary legal materials include books, scientific journal articles, research results, and opinions of constitutional law experts relevant to the research theme. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other scientific sources that assist in understanding the legal terms and concepts used.

The collection of legal materials was conducted through library research by exploring various primary and secondary legal sources with academic authority. Furthermore, the legal materials were analyzed qualitatively using normative legal analysis techniques through deductive reasoning. In the analysis process, this study applied several methods of legal interpretation, namely grammatical interpretation to understand the meaning of norms based on the formulation of

¹¹ Ibrahim, J. (2006). *Teori dan metodologi penelitian hukum normatif*. Malang: Bayumedia Publishing, 57(11).

¹² Mahkamah Konstitusi. (2021). Salinan PUTUSAN Nomor 91/PUU-XVIII/2020. *PUTUSAN Nomor 91/PUU-XVIII/2020*, 1-448.

laws, systematic interpretation by interpreting a provision in relation to constitutional norms and other laws and regulations, and teleological interpretation to discover the purpose of establishing legal norms within the framework of protecting the principles of the rule of law and constitutional democracy.¹³

The analysis results were then compiled using an argumentative approach, namely by constructing legal arguments based on the relationship between constitutional norms, constitutional law doctrine, Constitutional Court decisions, and normative facts related to the issuance and approval of Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation. This approach is intended to produce conclusions that are not only descriptive but also provide prescriptive arguments regarding strengthening the DPR's oversight mechanism as a manifestation of the principle of checks and balances in the Indonesian constitutional system.

C. Results and Discussion

1. Mechanism for Implementing the DPR's Supervisory Function on the Issuance of Perppu Based on the 1945 Constitution

Based on the constitutional design of the 1945 Constitution, the relationship between the executive power of the President and the legislative power of the DPR in the realm of forming emergency laws is regulated rigidly in Article 20, Article 20A, and Article 22. Article 20 paragraph (1) emphasizes the dominance of the DPR as the holder of the main power to form laws. The Perppu regulated in Article 22 paragraph (1) is a form of exception (exceptional power) in the form of legislative delegation to the President which is only valid by law if based on matters of "compelling urgency". In normative analysis, the use of Perppu is positioned as the *ultimum remedium* (last legal instrument) in the field of legislation. The government is not permitted to use Perppu as a shortcut (bypass mechanism) to avoid the procedure for forming ordinary laws that are

¹³ Hadjon, P. M., & Djatmiati, T. S. (2016). *Argumen Hukum, Surabaya*. Gadjah Mada University Press.

democratic, transparent, and deliberative.¹⁴ Indonesia's positive legal system, through the Law on the Formation of Legislation, has provided a valve for rapid legislative flexibility, such as an open cumulative list mechanism or the submission of bills outside the Prolegnas for urgent conditions. (Undang-Undang Nomor 13 Tahun 2022 Tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan, n.d.) Therefore, the justification for issuing a Perppu is constitutionally invalid if the normal legislative acceleration mechanism is still possible to be implemented.

The legislative review control mechanism of the House of Representatives (DPR) on Government Regulations in Lieu of Law (Perppu) basically consists of two functional dimensions, namely procedural-formalistic (formal) supervision and substantive-material (material) supervision. Procedural-formalistic supervision is based on the President's constitutional obligation to submit a Perppu to the DPR during the "*following session period*" as stipulated in Article 22 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Normatively, this phrase is understood as the DPR's first session period after the Perppu is enacted, thus becoming the constitutional deadline for the start of the legislative evaluation process. The formal supervision stages are implemented through DPR supporting organs, such as the Legislative Body or commissions with related duties, with the mechanism of Hearing Meetings (RDP), Working Meetings, and joint discussions with the Government to assess the fulfillment of procedural legality aspects and the completeness of the administration of the Perppu formation. Ultimately, the process culminates in a decision-making process at the DPR Plenary Session that is of a take-it-or-leave-it nature, that is, only approving or rejecting the Perppu as a whole without the authority to make changes or amendments to the norms contained therein.

In the substantive-material oversight dimension, the House of Representatives (DPR) plays a central role as a

¹⁴ Anggono, B. D. (2021). Prinsip Check and Balances dalam Sistem Ketatanegaraan Modern. *Jurnal Legislasi Indonesia*, 18(3), 295–310.

constitutional gatekeeper responsible for independently and objectively examining the President's subjective claims regarding the fulfillment of the constitutional requirement of "*compelling urgency*" as the basis for issuing a Government Regulation in Lieu of Law (Perppu). This authority cannot be exercised solely based on political considerations, but must be based on the legal parameters formulated by the Constitutional Court through Decision Number 138/PUU-VII/2009. This decision stipulates three cumulative conditions that must be met: the urgent need to resolve legal issues quickly, the existence of a legal vacuum or the inadequacy of existing regulations, and the impossibility of forming laws through ordinary legislative procedures due to time constraints. Therefore, the DPR is obliged to conduct a comprehensive constitutional necessity assessment by reviewing academic texts, examining the relevance of the material contained in the Perppu, and ensuring that the substance of the regulations does not conflict with the principles of the rule of law, constitutional supremacy, protection of human rights, and the principles of forming good legislation.

However, legal political analysis shows that the implementation of the House of Representatives' oversight function over Government Regulations in Lieu of Law (Perppu) still faces structural gaps that have an impact on weakening the effectiveness of the constitutional oversight mechanism. In Indonesia's multi-party presidential system, the effectiveness of the legislative oversight function is not only determined by constitutional norms but also greatly influenced by the configuration of political power in parliament. When the government gains the support of a dominant majority coalition in the House of Representatives, the phenomenon of a conflict of institutional loyalty arises, namely a condition where the political loyalty of DPR members to the government coalition is prioritized over the implementation of its oversight function as a representation of the people's interests. As a result, the evaluation process of Perppu tends to lose its independence and shifts to mere political formalities that function to legitimize the President's policies (executive heavy constitutional practice). This condition is further exacerbated by the absence of internal

DPR procedural law that explicitly requires the formulation of constitutional parameters and written legal arguments as the basis for assessing Perppu. Consequently, the decision to accept or reject Perppu is often not based on comprehensive, transparent, and accountable constitutional considerations, thereby reducing the quality of legislative oversight in a democratic state based on the rule of law.

The President's authority to issue a Government Regulation in Lieu of Law (Perppu) is a form of constitutional emergency power recognized in various democratic countries. Theoretically, this authority is based on the state's need to continue carrying out government functions when extraordinary circumstances require swift legal action, while ordinary legislative mechanisms cannot be immediately implemented. However, in a democratic state governed by law, emergency powers are not absolute; they remain subject to the principles of constitutionalism, the rule of law, and oversight mechanisms by other state institutions. Therefore, the existence of emergency powers should be understood as a strictly limited exception (constitutional exception), not as an instrument for expanding executive power.¹⁵

In the development of constitutional law theory, Oren Gross and Fionnuala Ní Aoláin explain that the use of emergency powers must meet three main prerequisites: the existence of a situation that truly threatens the interests of the state (necessity), the actions taken must be proportionate to the threat faced (proportionality), and all actions remain under constitutional oversight (constitutional accountability). Therefore, the existence of a legislative oversight mechanism is an important element to ensure that emergency powers do not turn into a means of consolidating executive power that erodes the principles of constitutional democracy.

In the Indonesian context, Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia grants the President the authority to issue a Perppu in cases of urgent

¹⁵ Furqon, W., & Djuhrijani, D. (2025). Normative Evaluation of Presidential Powers in Emergency Situations: Constitutional Limits and Legal Guarantees in Indonesia. *International Journal of Business, Law, and Education*, 6(2), 1098–1106.

necessity. However, this authority is limited by Article 22 paragraph (2) which requires the approval of the DPR in the next session. The construction of this norm shows that the constitution makers did not grant unilateral authority to the President, but rather established a legislative oversight mechanism as a form of implementing the principle of checks and balances. DPR approval is not merely a procedural formality, but is a constitutional instrument to test whether the conditions of urgent necessity are truly met in accordance with the parameters set by the Constitutional Court in Decision Number 138/PUU-VII/2009.¹⁶

The requirement for DPR approval aligns with the theory of legislative oversight, which positions parliament as an institution with an oversight function over executive actions. According to Joel D. Barkan, legislative oversight is a mechanism that allows parliament to evaluate the legality, accountability, effectiveness, and conformity of government policies to the constitution and the public interest. Legislative oversight extends not only to the implementation of laws but also to the use of discretionary powers, including emergency powers granted by the constitution. Therefore, the quality of constitutional democracy is greatly influenced by the effectiveness of parliament's oversight function.¹⁷

From this perspective, the House of Representatives (DPR) cannot be positioned merely as an institution that provides political approval for Perppu (Government Regulation in Lieu of Law), but rather as a constitutional gatekeeper. The constitutional gatekeeper concept positions certain state institutions as guardians to ensure that every use of constitutional authority remains within the constitutional framework. As gatekeeper, the DPR is obligated to objectively examine the fulfillment of the element of compelling urgency, assess the urgency of the material content of the Perppu, and

¹⁶ Siwu, S. C., & Rahman, R. A. (2022). *The State of Emergency in Indonesia. A Great Lesson from the Covid-19 Pandemic*.

¹⁷ Puspitasari, L. I. (2026). *PROBLEMATIKA PENINGKATAN FUNGSI PENGAWASAN DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA (ANALISIS PASAL 228 A PERATURAN DEWAN PERWAKILAN RAKYAT NOMOR 1 TAHUN 2025 TENTANG TATA TERTIB)*. UIN SUNAN KALIJAGA YOGYAKARTA.

ensure that the use of the President's authority does not deviate from the principles of the rule of law. Thus, the DPR's oversight function constitutes a form of constitutional control over the President's use of extraordinary authority.¹⁸

This concept aligns with the theory of checks and balances, which asserts that each branch of state power must have instruments to oversee the other branches. According to James Madison in *The Federalist* No. 51, an inter-agency oversight mechanism is necessary because "ambition must be made to counteract ambition." This means that the constitutional design must be able to prevent the natural tendency of each state institution to expand its power. Therefore, the House of Representatives' oversight of the Perppu is a manifestation of the principle that the President's authority in an emergency must still obtain constitutional legitimacy through parliamentary control.¹⁹

Constitutional practices in various countries also demonstrate the importance of legislative oversight of the use of emergency powers. In the United States, the President does have various powers in emergency situations under the National Emergencies Act of 1976. However, the declaration of a state of emergency remains under the oversight of Congress, which has the authority to end the state of emergency through legislative mechanisms and to oversee the implementation of executive authority through parliamentary committees. This model demonstrates that emergency powers are always balanced with legislative accountability mechanisms to prevent them from developing into uncontrolled power.²⁰

In Germany, the concept of a state of emergency is regulated in detail in the Grundgesetz (Basic Law), particularly regarding the state of defense. This regulation grants the federal government specific powers, but its implementation still

¹⁸ Antari, P. E. D. (2020). Implementasi fungsi pengawasan dewan perwakilan rakyat dalam upaya memperkuat sistem presidensial di Indonesia. *Refleksi Hukum: Jurnal Ilmu Hukum*, 4(2), 217–238.

¹⁹ Mochtar, Z. A. (2022). A Notion of Regulatory Reform. *Fiat Justitia: Jurnal Ilmu Hukum*, 16(1), 65–82.

²⁰ Ginsburg, T., & Versteeg, M. (2021). The bound executive: Emergency powers during the pandemic. *International Journal of Constitutional Law*, 19(5), 1498–1535.

requires the involvement of the Bundestag and Bundesrat, as representatives of the federal parliament. Even under certain circumstances, the Federal Constitutional Court retains the authority to review government actions if they are deemed unconstitutional. Germany's experience demonstrates that the principle of the rule of law (Rechtsstaat) remains a primary foundation even in a state of emergency.²¹

Meanwhile, in South Korea, the President can issue Emergency Executive Orders under the Constitution of the Republic of Korea if there is a serious threat to national security or public order. However, such actions must be immediately reported to the National Assembly for approval. If parliament rejects them, the President's actions lose their validity. This mechanism demonstrates that the legitimacy of the use of emergency powers remains dependent on legislative oversight as a representation of the people's sovereignty.²²

This comparison demonstrates a common principle across democracies: emergency powers never stand alone as executive prerogatives. Instead, the exercise of these powers is always balanced by effective legislative oversight as a means of checks and balances. Therefore, in the Indonesian context, the House of Representatives' approval of a Perppu should be understood as a substantive constitutional review process, not simply a political procedure to validate presidential policies. The stronger the House's oversight function, the more secure the balance of power and the protection of the principles of a democratic state under the rule of law.

2. Implementation of the Checks and Balances Principle in the Issuance and Approval Procedures for the Job Creation Perppu

An evaluation of the procedures for issuing Government Regulation in Lieu of Law (Perppu) Number 2 of 2022

²¹ Arnold, R. (2020). *Sądownictwo konstytucyjne a kryzys związany z koronawirusem: niektóre aspekty w świetle doświadczeń niemieckich. Gdańskie Studia Prawnicze, 4 (48)/2020, 28–40.*

²² Rusdiana, S., Situmeang, A., Fitri, W., & Tan, D. (2025). *Emergency Law as a Tool of Executive Centralization in Indonesia, Thailand, and Vietnam. International Law Discourse in Southeast Asia, 4(2), 48–76.*

concerning Job Creation and its approval by the House of Representatives (DPR) as Law Number 6 of 2023 indicates serious problems with the doctrine of checks and balances and the principle of the rule of law. The implementation of reciprocal supervision between the executive, legislative, and judiciary experiences functional paralysis due to the political dominance of executive legislation accommodated by parliament. Aspects of Testing *das sollen* control (juridical-constitutional parameters) and *das sein* (practice of ratification of the Job Creation Perppu) Compliance Status Towards the Judiciary Following the Constitutional Court Decision No. 91/PUU-XVIII/2020: Correcting formal defects in the Job Creation Law through the regular legislative route within 2 years; Avoiding the regular legislative route by issuing Perppu No. 2 of 2022 to annul the deadline for improvements from the Constitutional Court; Substantive Violation of Emergency Objectivity Fulfilling the 3 cumulative requirements of the Constitutional Court Decision No. 138/PUU-VII/2009 (Urgent need, Legal vacuum & impossibility of normal legislation); Using the pretext of the impact of the threat of a speculative global economic crisis and not stopping the function of the DPR. Manipulation of Legislative Control Parameters (DPR) The DPR critically examines the urgency of material emergencies and acts as a constitutional gatekeeper; Approves the Perppu to become Law No. 6 of 2023 quickly, bypassing public participation without substantive debate; Paralysis of the Public Participation Control Function; Meaningful participation (the right to be heard, considered, and receive an explanation) is eliminated in the issuance of the Perppu, and is totally limited when it is ratified into law by the DPR.

The issuance of the Job Creation Perppu constitutes a veiled form of constitutional disobedience against the Constitutional Court Decision No. 91/PUU-XVIII/2020. The judicial authority (MK) has declared the Job Creation Law formally flawed because it negates the principles of openness and public participation. The Constitutional Court mandated deliberative procedural improvements. However, the President invoked the urgent powers stipulated in Article 22 of the 1945 Constitution to issue a Perppu with content that is substantially identical to

the law declared legally flawed.²³ This action clearly bypasses the legal obligations established by the constitutional court. When this Perppu was brought to parliament, the House of Representatives (DPR) completely failed to fulfill its function as a balancing institution (mutual restraint). The DPR passed the Job Creation Perppu into Law Number 6 of 2023 quickly without any material debate regarding the existence of a real legal vacuum. The executive's rationale regarding the threat of a post-pandemic global economic crisis and geopolitical war was accepted at face value without any objective empirical verification by parliament. (*Risalah Rapat Pembahasan Perppu Nomor 2 Tahun 2022 Tentang Cipta Kerja Masa Persidangan 2022–2023*, 2023) In fact, at the time the Perppu was issued, the DPR and the Government were actively in session to form various other laws, which proves that there was no paralysis of the ordinary legislative function (legislative paralysis).

The House of Representatives' (DPR) approval of the Government Regulation in Lieu of Law (Perppu) in this context indicates a shift in the DPR's institutional function from representing the people to representing government interests. The DPR should carry out legislative and oversight functions as a manifestation of people's sovereignty, but in the Perppu approval process, there is a tendency to affirm the will of the executive without conducting critical and independent review. This condition results in the neglect of the principle of meaningful participation, namely meaningful public participation in the formation of legislation, as has been emphasized in various Constitutional Court decisions. Furthermore, the checks and balances mechanism does not function optimally and is only implemented to fulfill procedural formalities. As a result, state relations have shifted towards executive heavy, where the President gains very strong dominance in the law-making process through the DPR's political support, potentially ignoring constitutional boundaries and the authority of the decisions of the highest judicial institution in the country.

²³ Amsari, F. (2022). Penyalahgunaan Kewenangan Eksekutif dalam Penerbitan Perppu: Kritik terhadap Legislasi Darurat. *Jurnal Konstitusi*, 19(1), 80–100.

The House of Representatives' approval of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation is inextricably linked to the constitutional dynamics that developed following Constitutional Court Decision Number 91/PUU-XVIII/2020. In that decision, the Constitutional Court declared Law Number 11 of 2020 concerning Job Creation conditionally unconstitutional because its drafting process contradicted the principles of sound legislative drafting. The Court granted the lawmakers two years to make improvements and firmly emphasized the importance of implementing the principles of transparency and meaningful participation in every stage of the drafting process.²⁴

The significance of Decision Number 91/PUU-XVIII/2020 lies in its affirmation that the quality of lawmaking procedures is an integral part of the principles of a democratic state based on the rule of law. The Court not only assesses the formal aspects of lawmaking but also emphasizes that public participation must be carried out meaningfully, namely granting the public the right to obtain adequate information (the right to be informed), to express opinions (the right to be heard), and to receive an explanation for input provided (the right to be considered). Thus, the formation of legislation cannot be understood merely as a political process between state institutions, but rather as a constitutional process that must guarantee effective public involvement.²⁵

On the other hand, the Government chose to issue Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 as a new legal basis before the end of the deadline granted by the Constitutional Court. This choice has sparked debate regarding the relationship between the Constitutional Court's decision and the use of the President's authority under Article 22 of the 1945 Constitution of the Republic of Indonesia.

²⁴ Ramadoni, R., Suryadin, S., Mustamin, M., & Erham, E. (2025). Partisipasi Masyarakat dalam Pembentukan Undang-undang: Studi terhadap Partisipasi Masyarakat Secara Substansial/Bermakna (Meaningful Participation). *SENTRI: Jurnal Riset Ilmiah*, 4(12), 4314–4327.

²⁵ Dewantara, Y. P., & Widjiastuti, A. (2024). Peran Masyarakat dalam Pembentukan Peraturan Perundang-Undangan sebagai Pilar Negara Hukum. *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan*, 22(3), 439–450.

Constitutionally, the Constitutional Court's decision is final and binding, so that all state institutions are obliged to implement the substance of the decision with constitutional fidelity. Therefore, the issuance of the Perppu should not be interpreted as a mechanism to avoid the obligation to improve the legislative process as ordered by the Constitutional Court, but rather as an instrument that can only be used if all constitutional requirements regarding "compelling urgency" are truly met.²⁶

The parameters of "compelling urgency" have been formulated in a limited manner by the Constitutional Court in Decision Number 138/PUU-VII/2009. The Court established three cumulative conditions: an urgent need to resolve the legal issue quickly, a legal vacuum or inadequacy of existing laws and regulations, and the impossibility of enacting the law through ordinary procedures due to the excessive time required. These three conditions are intended to prevent the arbitrary use of the President's authority while ensuring that the Perppu remains within the scope of its role as an extraordinary legal instrument.²⁷

If these parameters are linked to the issuance of Government Regulation in Lieu of Law (Perppu) No. 2 of 2022, the House of Representatives (DPR) should conduct a substantive constitutional review of the reasons put forward by the Government. DPR approval cannot be based solely on political considerations regarding the importance of maintaining the investment climate or national economic stability; it must first examine whether circumstances truly exist that fulfill the elements of "compelling urgency" as defined in Constitutional Court Decision No. 138/PUU-VII/2009. Therefore, DPR approval serves not only to provide political legitimacy to the President's policies but also to exercise a constitutional oversight function as an implementation of the principle of checks and balances.

²⁶ Saifulloh, P. P. A., Arifin, F., Nggilu, N. M., Sulaiman, D. S., & Sarjo, M. (2026). The Ratio Legis of Government Regulation in Lieu of Law as Emergency Legislation. *Journal of Indonesian Constitutional Law*, 3(1), 28–55.

²⁷ Aji, A. M., & Nurhalimah, S. (2020). Examining the Restriction of Human Rights in Government Regulation in Lieu of Law. *Jurnal Cita Hukum*, 8(2), 363–378.

From a legal-political perspective, the issuance of the Job Creation Perppu demonstrates a strengthening executive-heavy configuration, namely the dominance of executive power in the process of formulating strategic legal norms. This phenomenon is influenced not only by the constitutional design but also by the political configuration of the governing coalition that controls the majority of seats in the House of Representatives (DPR). When political support for the President is dominant, the legislative oversight function has the potential to shift from a constitutional control mechanism to a mechanism for political legitimacy of government policy. This situation could ultimately undermine the effectiveness of the principle of checks and balances, one of the foundations of a democratic state based on the rule of law.²⁸

The concept of executive heavy has long been a concern in the development of Indonesian constitutional law. Prior to the amendments to the 1945 Constitution of the Republic of Indonesia, the President held a very dominant position in the administration of government, resulting in limited oversight mechanisms between state institutions. Although constitutional amendments have strengthened the position of the House of Representatives (DPR) through its legislative, budgetary, and oversight functions as stipulated in Article 20A of the 1945 Constitution, constitutional practice shows that executive political dominance can still occur through the configuration of governing coalitions. Thus, the effectiveness of checks and balances is determined not only by the constitutional design, but also by the political independence of the DPR in carrying out its oversight function.²⁹

In addition to meeting the pressing need for action, public participation is also a crucial indicator for assessing the constitutional legitimacy of the Job Creation Perppu. Constitutional Court Decision No. 91/PUU-XVIII/2020 explicitly requires meaningful participation in the process of formulating

²⁸ Kuswanto, K. (2018). Consistency of the Presidential System in Indonesia. *Sriwijaya Law Review*, 170–182.

²⁹ Saqiva, Z. S. (2026). *IMPLIKASI KOALISI GEMUK PEMERINTAH PRABOWO-GIBRAN TERHADAP FUNGSI PENGAWASAN DEWAN PERWAKILAN RAKYAT (DPR)*. UIN SUNAN KALIJAGA YOGYAKARTA.

legislation. However, the deliberations of Perppu No. 2 of 2022 and its enactment into Law No. 6 of 2023 have drawn criticism from various academics and civil society organizations for failing to fully facilitate effective public participation. Public involvement, however, is an integral part of the principles of participatory democracy, integral to the concept of a modern state based on the rule of law.

Based on this perspective, academic criticism of the DPR is not directed solely at the political choice of accepting or rejecting a Perppu, but rather at the quality of its oversight function. As a representative institution that derives legitimacy directly from the people, the DPR should act as a constitutional gatekeeper, conducting objective tests to determine whether the constitutional requirements for issuing a Perppu are met, evaluating the conformity of its contents with the Constitutional Court Decision, and ensuring that the drafting process still guarantees the principles of openness and meaningful public participation. If these functions are not carried out optimally, the DPR's approval mechanism has the potential to become a procedural formality that actually weakens the principle of checks and balances in the Indonesian constitutional system.

Thus, the primary issue in approving the Job Creation Perppu lies not solely in the President's authority to issue a Perppu, but rather in the extent to which the House of Representatives (DPR) independently exercises its constitutional oversight function based on the parameters established by the Constitutional Court. Therefore, strengthening the DPR's oversight mechanism is a crucial prerequisite for ensuring that the use of emergency powers remains within the constitutional framework, upholds the rule of law, and maintains the balance of power in a constitutional democracy.

D. Conclusion

The House of Representatives' oversight mechanism for the issuance of a Perppu (Regulations in Lieu of Law) based on the 1945 Constitution has been normatively designed as a strong instrument of checks and balances, encompassing formal-procedural and material-substantive oversight using the

parameters of Constitutional Court Decision No. 138/PUU-VII/2009. However, the effectiveness of this mechanism has been degraded due to its dependence on parliamentary political configuration. The dominance of the pro-government majority coalition has triggered a conflict of institutional loyalty that has crippled the independence of the House of Representatives, transforming legal control into a political formality that justifies executive discretion. The procedure for issuing and approving the Job Creation Perppu into Law No. 6 of 2023 has been proven to clearly violate the principles of checks and balances and the rule of law. This process is substantively flawed because it constitutes a form of constitutional disobedience to Constitutional Court Decision No. 91/PUU-XVIII/2020. The House of Representatives (DPR) failed to function as a balancing institution for power, passing unilateral claims of executive emergency without rational material review, and violating the public's right to meaningful public participation, thus emphasizing the resurgence of executive heavy practices in Indonesia.

The findings of this study have theoretical implications that the application of the principle of checks and balances in the Indonesian state system depends not only on the division of authority stipulated in the 1945 Constitution of the Republic of Indonesia, but also on the effectiveness of the implementation of the DPR's oversight function as a constitutional gatekeeper against the use of emergency powers by the President. The DPR's approval of the Perppu must be understood as a form of substantive constitutional review of the fulfillment of the "compelling urgency" requirement as formulated in Constitutional Court Decision Number 138/PUU-VII/2009, not merely a political approval mechanism. Practically, the results of this study indicate the need to strengthen the DPR's oversight mechanism by implementing more objective, transparent, and accountable evaluation parameters in the deliberations of the Perppu. This study recommends improving the regulations regarding the Perppu approval mechanism, either through amendments to Law Number 12 of 2011 concerning the Formation of Legislation, as most recently amended by Law Number 13 of 2022, or through improvements to the House of

Representatives' Rules of Procedure. These regulations should include the DPR's obligation to conduct explicit tests of the parameters of compelling urgency, consider compliance with Constitutional Court decisions, and create space for meaningful public participation in the Perppu deliberation process.

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