



Indonesian Legal Politics of Formal Legality Against the Formation of the Perppu on Job Creation

¹**Suwarsit Suwarsit***

¹Faculty Of Law, Universitas Pembangunan Nasional Veteran Jakarta, Indonesia

suwarsit@upnvj.ac.id

Abstract: Politics of law is a legal policy that determines how a country can achieve its goals, as in the enactment of Perppu No. 2 of 2022 concerning Job Creation, which has abolished the application of Law No. 11 of 2020, which was previously considered unconstitutional with conditions by the Constitutional Court. Therefore, this study aims to analyse the problems of the formal legality of copyright work and its relation to legal politics. The results of this analysis process show that the legal politics of the Perppu on Job Creation is the formation of law by applying omnibus law. However, in the formulation of the Perppu on Job Creation, there are many notes and confirmed violations of the formation procedure by the Constitutional Court. On the other hand, the government's ability to predict the destructive potential of the economy is considered contradictory.

Keywords: Urgent Force, Perppu on Job Creation, Legal Politics, Indonesian.

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1. Introduction

Law is a political product formed and legalised by the state to guide the rules of life in society, nation and state with the aim of welfare based on legal certainty, justice and benefit. The discussion of legal politics interconnects to the discussion of the term constitution in the sense of a political constitution. C.F. Strong used this term as the title of his book *Modern Political* (Hidayat & Arifin 2019).

Constitution even in Kenneth Clinton Wheare's book *Modern Constitutions*, even among economists who are focused on economic thought, discussing constitutional economics Hardin (1998) for example, in his writings, uses the term "Constitutional Political Economy".

The interpretation of the constitution is undone freely because if it is done freely, it will lead to manipulation; in this regard, Kentridge Aj said that judges are not accessible in interpreting the constitution in terms of the use of values they prefer. The test of constitutionality must be found in the constitution itself (Motala & Ramaphose, 2002:14).

Caution in interpretation is inseparable from the desire to minimise - if not possibly eliminate the errors that occur as a result of interpretation. In the decision of the case *Lenge v Australian Broadcasting Corporation*, the Supreme Court Justice of Australia said: "Errors in constitutional interpretation are not remediable by the legislature, and the court's approach to constitutional matters is not necessarily the same as in matters concerning the common law or statutes" (Lnch, 2005).

It has even been said by Sir Anthony Mason, former Chief Justice of Australia, that the role of the Supreme Court in interpreting constitutional rules is one of the two issues that often cause conflict of opinion among the Supreme Court Justices. This situation needs judicial self-restraint. However, there is an obstacle in that this restraint is closer to professional ethics and not to the rule of law. Therefore, Dieter Grimm emphasises the need for judicial self-restraint (Grimm, 2011).

The courts divide functions between the political and legal branches of government. Politics and law are the primary resources in forming and enforcing law. So, both have a close relationship and interdependence because politics without law can lead to arbitrariness (dzalim), while the law without politics will be paralysed (Prabowo et al, 2020). Politics makes the law more felt and influential in the community's life.

The existence of law is the main point of validity for political power, and political power makes law more effective—the formation of law and becoming a rule results from the political process of law. Legal politics is terminologized as a policy that has been or is to be implemented nationally by the government. Mahfud MD explained that legal politics is the direction of the law made by the state in order to achieve the goals of a country whose forms include making new laws and replacing old laws (Mahkamah Konstitusi Republik Indonesia, 2014). According to Satjipto Rahardjo, legal politics is the activity of choosing and the means to realise specific legal and social goals in society (Sihombing, 2020:12). Legal politics has a significant and decisive impact on a country in achieving its goals, especially in forming and enforcing existing laws (Ius Constitutum) and aspired laws (Ius Constituendum). The ideals or goals of a country have an integral relationship with the government as the determinant of policy direction.

In the study of legal politics that has been described previously, it will be the scope of the author's discussion to examine one of the legal products, namely Government Regulation in Lieu of Law (Perppu) of the Republic of Indonesia No. 2 of 2022 concerning Job Creation which has become a Law (U.U.) since it enacted on March 31, 2023. However, the study focuses on the Perppu before it became a law. The presence of this legal product has become a public spotlight, especially in the process of formation and ratification, giving rise to various perceptions. On the one hand, it is assumed to be a breakthrough step in the national development process with ease of doing business/investment to open up jobs for the welfare of the people. On the contrary, it is seen as an effort to prioritise a group of groups (investors), and Perppu is still flawed in making and implementing it. Based on the description above, this research will emphasise two problems, namely. 1) How is the legal politics of the formation of the Perppu on Job Creation? 2). How is the contradiction in the formal legality process of the Perppu on Job Creation?

2. Research Methods

This research is normative legal research, using secondary data consisting of primary and secondary legal materials. Primary legal material in the research was obtained from the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2011 concerning the Establishment of Legislative Regulations, Law Number 11 of 2020 concerning Job Creation, Regulations in Replacement of the Job Creation Law, and Decisions Constitutional Court Number 91/PUU-XVIII/2020, while the secondary material in this research was obtained from various literature, including books, journals and online newspapers. Next, after the data is obtained, it is analyzed and presented in the actual situation.

3. Result & Discussion

3.1. Political Science in the State

The state is a tool (instrument) of society that has the power to regulate human relations in society. Humans live in an atmosphere of cooperation, as well as in an atmosphere of antagonism and conflict. The state is an organization that within a territory can legally impose its power on all other power groups and that can determine the goals of common life.

A state is defined as a political organization that has power over a geographic area and the people living in that area. The state has a duty to ensure the rights of its citizens and their welfare through institutions such as the government, courts, and army. States also have the power to create and maintain laws and regulations.

There are several different views on the state, some of which see the state as an institution created to protect individual rights, while others see the state as a tool to achieve common goals. There is also a view that says that the state is a political organization that has a monopoly on power and has the authority to make and maintain laws.

The state can be viewed from the perspective of sovereignty (power) or from the perspective of binding regulations (legal angle), as expressed by Aristotle, one of the state and legal thinkers of the Greek era, for example, giving the meaning of the state, namely a community power (association rather than family and village/village) which aims to achieve the highest good for humanity. Meanwhile, Marsilius, a medieval state and legal thinker, views the state as a body or organism that has the basics of life and has the highest goal, namely establishing and maintaining peace (Suhino, 1980: 34).

Although the view of the State emphasizes the specific processes by which government decisions are made, influenced, and transformed into laws or policies, especially in dealing with conflicts of interest. On the other hand, a view of the State that emphasizes power emphasizes the interactions between different power relationships within a situation or structure, highlighting the tensions and conflicts within it. These differences become the subject of debate regarding the definition of politics by shaping the understanding of what is meant by political activity. Proponents of the state view argue that it is important to distinguish between political and non-political power relations, because the state view aims to identify specific processes of governance and decision-making. In contrast, proponents of the power view believe that labeling a structure or situation as "political" is a way to emphasize the tensions and potential conflicts among the activities and interests within it. Moreover, the state view's focus on government decisions and policy making leads to a stricter definition of politics, whereas the power view, with its emphasis on broader power relations and conflict, supports a broader understanding of politics (Mason, 1990).

However, the concept of an ideal state is the embodiment of a value system of justice (rule of law), responsibility (vertical and horizontal), leadership abilities (intellectual and strategic), and religious morality. If each individual has this concept, then together they will try to control the color of state policy in order to create order, social harmony and the growth of a dynamic and conducive human civilization (Nizar, 2003).

Legal political institutions in China, consisting of the Legal Political Committee and the National Supervision Commission, have an important role in shaping the dynamics of the legal system. The Legal Political Committee acts as a supervisory coordinator that influences the dominance of the police in relation to the courts and prosecutors, while the National Supervisory Commission was formed to strengthen supervision of public officials and has the authority to investigate and punish corruption cases, thus having a further impact on power dynamics in the legal system and affects the balance of power in the legal system. The balance of power between police, prosecutors, and courts in China's legal system shifted over time, with courts and prosecutors gaining increased autonomy and power compared with the police, primarily due to professionalization, the rise of civil and commercial cases, and changes in political-legal policies. leadership of the Legal Political Committee. (Wang & Liu, 2019).

According to theories in political science, the state has several main tasks, such as creating a stable and safe environment for its citizens, guaranteeing justice and individual rights, and ensuring that its citizens meet their basic needs. The state is also responsible for maintaining territorial integrity and protecting society from widespread threats (Nambo & Puluhalawa, 2005).

Political science can contribute to good governance by defining governance and evaluating the significance and impact of government actions on the political system. This contribution is based on the ability of political science to help define what is meant by government, for analytical purposes, and to assess the significance and impact of various government actions on the political system itself. Additionally, political science can play an important role in evaluating the impact of government policies on society. Although it takes years for a policy to have a real impact on society, political scientists can help in evaluating those impacts (Lowi, 1985: 67).

3.2. Legal Politics of Job Creation Perppu

The formation of laws is always influenced by certain political interests, because politics has an influence on the law, based on legitimacy as mandated by the constitution which is to obtain attributive authority to form laws and regulations (Pardede, 2021: 90). Politics and law are interpreted ideally as an instrument

for the creation of laws that are just, useful and have legal certainty, not interpreted to support the desires of implementing statutory regulations alone, namely the executive power as ruler (Darmawan, 2020). Political and legal institutions continue to develop along with awareness that abusive political and legal authorities must be abandoned on the basis of shared prosperity (Wignjosoebroto, 2013).

The development of legal politics in Indonesia began in the era of reform. A generation of thought has been based on an idea, ideals, and future law with confidence under the desires and needs of society. Legal politics becomes a basic guideline in determining the values, formation, application and development of law in Indonesia. Legal politics becomes a foothold to achieve the state's goals and the nation's ideals based on Pancasila as the state ideology. According to Bellefroid, legal politics can be used as the current law and expanded into laws that apply in the future (Hum, 2020: 28).

The politics of law in forming the Job Creation Regulation is to anticipate the world economy and protect business actors against the threat of multi-sector crises, inflation, stagflation and political conditions, and interest rate issues (Sekretariat Kabinet Republik Indonesia, 2022). The President considers global uncertainty, including domestic and foreign investor risks. In 2023, Indonesia will rely heavily on investment. Hence, it needs legal certainty by issuing the Perppu on Job Creation, mitigating the global crisis's impact and preventing the global economy's vulnerability, which continues to be hit by various challenges that could lead to a global recession (Chandra et al, 2023). This Perppu also aims to develop a supportive legal system by harmonising laws through a single law through the concept of omnibus law (Kurniawan, 2021).

Perppu on Job Creation forms on conditions that are considered a compelling urgency due to the uncertain global situation and the occurrence of Legal vacuum after the Job Creation Law was deemed unconstitutional by the Constitutional Court (M.K.). In the Constitutional Court Decision (M.K.) No. 91/PUU-XVIII/2020, which formally examines Law No. 11 of 2020 concerning Job Creation (Job Creation Law) with the substance of the decision including ordering to improve the Job Creation Law within a maximum period of 2 (two) years to the legislators since the Constitutional Court's decision was delivered. If the law is not revised within that period, then the Job Creation Law is considered permanently unconstitutional (Mahkamah Konstitusi Republik Indonesia, 2021).

In implementing the Constitutional Court's decision, the government has done several things: First. The stipulation of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation (Perppu), which has included rules and includes the omnibus method in the preparation of laws and clarifies meaningful participation in the formation of legislation. Second, meaningful participation is increased, as evidenced by the government's efforts to establish the Job Creation Law Task Force (Task Force for Accelerating Socialisation of the Job Creation Law) to increase public understanding and awareness of the Job Creation Law. Third, conducting solutions such as research, tracing and rechecking of errors in the writing of the Job Creation Law, including incorrect references to articles or paragraphs, typos, incomplete letters, and titles or serial numbers of chapters, sections, paragraphs, articles, paragraphs, or items that are not appropriate, which are not substantial (Kementerian Koordinator Bidang Perekonomian Republik Indonesia, 2023).

Airlangga Hartarto, as the Coordinating Minister for Economic Affairs (Menko Perekonomian), revealed that the Perppu on Job Creation was born in response to the state of the Job Creation Law, which is in the period of implementing improvements as mandated by Constitutional Court Decision Number 91/PUU-XVII/2020. The Constitutional Court's decision allows the state to improve the procedures for forming the Job Creation Law within a 2-year time limit. Then, it is not allowed within two years to make a new implementing regulation, broad impact and strategic policy. However, this condition turns out that the Coordinating Minister for the economy revealed that it could cause doubts for investors who will invest. Business actors who have invested will experience a legal vacuum, and the current rules are considered inadequate because they cannot make the necessary changes to the implementing regulations.

The Job Creation Perppu was formed due to the urgency that occurred, among others, because the Constitutional Court Decision No. 91/PUU-XVIII/2020 needs to be implemented because if it is not

implemented, it will be challenging to adapt to the global situation (BPSDM Hukum dan Ham, 2022). Likewise, it will also affect job creation and the national economy. In addition, if the state takes the mechanism for the formation of laws and regulations in a business-as-usual manner (not through Perppu), the state will face bureaucracy and a long time for the mechanism for the formation of laws and regulations. Such conditions directly affect MSEs and vulnerable groups of society because they will face the threat of an uncertain global situation and investors who feel the urgency of the presence of regulations that can make them feel safe in investing in Indonesia (Isma, 2023).

The political direction of the Job Creation Programme is the formation of laws to increase investment and create new jobs for society's welfare (Yusuf, 2023). Just like the old Job Creation Law, the formation of the Job Creation Perppu uses the concept of Omnibuslaw as a form of simplification of regulations related to job creation. The concept is considered a solution to strengthen Indonesia's capacity as a state of law and the legislative function of the DPR. A series of mechanisms for forming Perppu on Job Creation, from planning, drafting, discussion, ratification or stipulation to promulgation, one of which involves legal politics. The mechanism impacts the legal products resulting from the Perppu on Job Creation. In the legal and political process of the Perppu on Job Creation, it is essential to involve public participation because the law in this mechanism is not only seen as an imperative regulation but as a subsystem strongly influenced by the dynamics in the formulation of materials and norms. However, there are allegations of particular interests influencing the formation of the Perppu on Job Creation; besides, the Perppu on Job Creation has raised many notes, especially before the Job Creation Law became a Perppu.

3.3. Contradictions in the formal legality process of the Job Creation Perppu Contradictions in the Case of Force Majeure

In legal politics, the law-making factor is decisive in forming a law, including the formation of the Job Creation Perppu, which, in its procedural mechanism, was born based on a compelling urgency. The law has the highest authority in determining an interest that needs to be protected against society. Therefore, the legal protection society provides, based on existing agreements, must be used to regulate the relationship between society itself and between the government and individuals (Ridho et al, 2021).

Based on the 1945 Constitution of the Republic of Indonesia (UUD NRI), the President has the right and authority to issue a Perppu as stated in Article 22 paragraph (1), which reads, "in the event of a compelling urgency, the President has the right to stipulate government regulations in lieu of laws". Prior to the amendment, the article explained the compelling urgency as an emergency or dangerous condition for a country. The compelling urgency is assessed from the characteristics of events or circumstances that are difficult, important or crucial, and their presence is difficult to predict.

The substance of Constitutional Court Decision Number 138/PUU/VII/2009 has contained an explanation of "in the event of a compelling urgency" The decision explains the points that can be used as a benchmark for compelling urgency, including (Harruma et al, 2022);

- 1) There is an urgent need to resolve legal issues quickly based on the law;
- 2) The required law does not yet exist, resulting in a legal vacuum, or there is a law that is inadequate;
- 3) The legal vacuum cannot be overcome by making laws in the usual procedure because it will take a long time while the urgent situation needs certainty to be resolved.

In situations considered abnormal conditions, the applicable legal norms also undergo special adjustments as part of efforts to implement out-of-the-ordinary. In this case, the presence of Perppu as an emergency regulation is also followed by restrictions to prevent abuse of authority by the executive branch, namely the President. Perppu is a statutory power the President possesses as part of his role. Executives allow the President to enact regulations in a state of compelling emergency. Therefore, Perppu can only be issued in a "compelling emergency" situation (Rahmawati & Nugraha, 2021).

Theoretically, the interpretation of compelling urgency is a subjective assessment of the President, but common sense in practice must be supported by rational-legal arguments and tested objectively by the

DPR. According to the Deputy Speaker of the MPR RI, the issuance of Perppu No. 22/2022 does not follow the requirements for the issuance of Perppu stipulated in Article 22, paragraph 1 of the 1945 Constitution, which regulates the urgency of force. The Constitutional Court has also provided conditions that are classified as a compelling urgency as a reason for the creation of Perppu. So basically, this Perppu does not meet these requirements because the substance of the Job Creation Law changes many laws that have no legal vacuum in question, and the state can still run without the Job Creation Law (MPR RI, 2023).

In a condition that is considered a compelling urgency by the President, so that it becomes a reason for the President to immediately submit the Perppu that has been issued to the DPR, this certainly makes the position of the DPR very crucial because the DPR is a representation of the people as an assessor of the objectivity of the issuance of the Perppu and whether or not the Perppu should be passed into a law that will be binding without any time limit like a Perppu. The DPR acts as a supervisor of the President's use of subjectivity in the issuance of a Perppu (Undari & Sudiarawan, 2023).

Based on the hierarchy, Perppu has an equal position with the law. This is because the content material of the Perppu is the same as that in the law and has equal binding force, but what distinguishes the Perppu is created on matters of compelling urgency. Regarding the Perppu, especially the Job Creation Perppu, which has become the spotlight in the community, Jimly Asshidqie said that in the formation of the Perppu, there are two types of Perppu.

This job creation, Perppu considers that the government seems to be above the law (rule by law). The government should not merely take the way out of issuing Perppu related to reasons of emergency or urgency. The President, who should have a more significant role in revising the Job Creation Law, is the DPR, not taking the way out by issuing a Perppu on the grounds of urgency. The President and the DPR should negotiate and revise Law No. 11 of 2020 on Job Creation, which was ruled unconstitutional by the Constitutional Court.

In the science of legislation, considerations in each statutory regulation are vital to illustrate its preparation's philosophical, sociological, and juridical foundations. In the context of the Job Creation Perppu, these considerations must show the relevance of the drafting of the Perppu to the condition of a "compelling emergency" as the basis for its issuance per the mandate of the constitution. If carefully considered, the interpretation of "compelling emergencies" in this Perppu refers to a global dynamic situation caused by rising energy and food prices, climate change, and disruptions in the supply chain. This situation harms the world economy and is predicted to affect Indonesia's national economy, including inflation significantly.

Therefore, the Job Creation Perppu is considered a legal solution that can overcome the problem through broad employment, empowerment of cooperatives and MSMEs (Micro, Small and Medium Enterprises), improvement of the investment ecosystem, acceleration of national strategic projects, and protection and improvement of workers' welfare. However, there is an irregularity in using the phrase "will have a significant impact" in considering the Job Creation Perppu. It shows that the adverse impacts described in considering the Perppu on Job Creation have not yet occurred. The adverse impacts mentioned are only the government's potential predictions. The government's ability to predict the potential contradicts the "compelling emergency" requirement in the issuance of Perppu, which refers to a situation that cannot be predicted in advance and requires immediate resolution. However, the President announced that Indonesia's economic situation was growing very well at 5.72 per cent in the third quarter of 2022, and inflation was under control at 5.5 per cent (Kementerian Keuangan Republik Indonesia, 2022). The reality of the Indonesian economy, which shows an excellent condition, further triggers the irregularity of considering "compelling urgency" as the basis for the issuance of the Job Creation Perppu.

3.4. Limitation of the Meaning of "Case of Compelling Urgency in Some Countries.

If we look at the history of state administration in Indonesia, almost all Perppu are always issued by the President when the state is in an emergency. The creation of Perppu is a significant difference from the creation of a law. The Perppu is created from the President's interpretation as stipulated in Article 22 of

the 1945 Constitution, namely about a matter of compelling necessity, while the creation of law is born from a draft based on an agreement between the DPR as a legislative body and the President as an executive body first. Prof. Ismail Sunny said issuing a Perppu can be interpreted as an emergency. More than that does not exist (Widrawan, 2014).

The 1945 Constitution regulates two emergencies. First, Article 12 states, "The President establishes a state of danger. The conditions and consequences of a state of danger are stipulated by law". Emergency in this Article is related to a state of war or threat of war. Meanwhile, Article 22 explains that: (1) In the event of a compelling urgency, the President has the right to enact a government regulation in lieu of law. (2) The government regulation must receive approval from the House of Representatives in the next session. (3) The government regulation must be revoked if it does not receive approval. The legislation provides a constitutional basis for the President to overcome emergencies, and it is interpreted that the formation of Perppu is still subjective by a president, so it is challenging to interpret objectively even though the Constitutional Court issues a reference in its decision (Prayitno, 2020).

In the event that a compelling urgency is a condition required by the President in the formation of Perppu in Indonesia, in several countries, namely Brazil, this condition is called "relevance and urgency", and in Argentina, it is called "exceptional circumstances" or "necessity and urgency", both of which mean an interpretation of conditions by the President as an emergency decree and this is relatively the same problem in Indonesia (Sulistiono & Boediningsih, 2023). Limited time in the legislative process, but the need for regulations immediately becomes the urgency of creating a condition of compelling urgency. This fact also has the same relationship with Brazil, which is called relevance, and Argentina, which is called necessity. Is terminologized as a condition that requires a rule and has urgency related to limited time (Arsil, 2018).

In Brazil in 1990, President De Mello issued a lot of Decree. This emergency required the formation of Perppu, which in one year was as many as 163 on the grounds of an emergency decree or an emergency condition. Therefore, it caused a lot of criticism and protests, especially from the parliament, so there were restrictions on Perppu for the President in the form of a Draft Law (Bill). However, it turns out that the bill that has been made has experienced obstacles because of the difficulty of interpreting the provisions of Article 62 in the Brazilian constitution. However, the criticisms and efforts of parliament had such an impact on De Mello and his advisors that in the following year, 1991, De Mello only issued eight decrees. Of course, this was a practical step, namely by limiting policies based on the phrase "compelling urgency", with this limitation as a governing law.

Canada first practiced the Omnibus Law method in 1888 regarding civil regulations, namely bringing together two separate and different agreements regarding railways. However, during its development, this idea received objections and opposition from various groups of society, so it was rejected by the Senate in 1923 because it was considered too bold. This omnibus bill method is used in Bill No. 234 concerning National Railway Construction which was rejected by the Senate and opposed by the wider community was intended to make things easier for Members of the House of Commons and the Armed Forces (Massicotte, 2013).

The United States formed and established legislation using the Omnibus Law method, namely the Consolidated Appropriations Act, which regulates the Federal Government's Revenue and Expenditure Budget in its entirety. It can be understood from this practice that legislation using the Omnibus Law method is not a regulation or norm that regulate society directly, but as a dependent norm, meaning that the application of these norms depends on other norms which regulate in more detail regarding their application, as in the common law legal system, court decisions are the highest source of formal law with the principle of judge made law. The omnibus bill is only a consolidative norm, providing guidelines for judges to decide cases in court, so that in its application, the omnibus bill depends on the norms made in court decisions (Cristiawan, 2021:22).

The issuance of Peppu in Indonesia was undertaken with a condition that became the reason, namely in the form of a compelling urgency. The decision of the Constitutional Court has regulated a criteria basis used

as a condition of a compelling urgency. In practice, the DPR becomes a legislative institution that examines a Perppu only with an indicator, namely the condition of "compelling urgency". As stipulated in the provisions of Law No. 12/2011 on the formation of laws and regulations, precisely in Article 52 paragraph (3), it is stated that the DPR only gives approval or does not give approval to Perppu. The provisions of the regulation become an affirmation that the position of the DPR is only to legitimise the will of the executive, namely the President, who is the party that issued the Perppu, thus certainly making the role of the DPR as a parliamentary party seem passive (Arsil, 2018).

The use of the terms "necessity and urgency", "relevance and urgency", or "compelling urgency" has not shown that these conditions are a practical restriction on the issuance of Perppu by the executive power. The condition of the interpretation made by the President as the party given the right to create Perppu based on compelling urgency includes a high subjectivity of interpretation. Therefore, other restrictions are urgent in addition to the conditions of compelling urgency, and several countries in Latin America have already imposed such restrictions. did so due to their experience with the productivity of the President's use of perppu.

3.5. Contradiction of Public Openness/Public Participation Principle in Formality.

The principle of public participation is the key to maintaining continuity between popular sovereignty and state power. Public participation in a democratic state cannot separate from the people as the highest sovereignty holder, which, based on social contract theory, the people as sovereignty holders have the right to form a government, including participating in any decision-making process to produce a democratic society (Wahab et al, 2020). A democratic state makes law the commander in chief, which in the political theory of the rule of law can be interpreted in two views. First, it is a procedural device the ruler uses to rule based on applicable law, meaning the rule of law is about the sovereignty or supremacy of law over humans. In a state of law, everyone has an equal position (equality before the law) regardless of social rank and status. It reinforces the 1945 Constitution of the Republic of Indonesia as stated in Article 28D Paragraph (1): "Everyone is entitled to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law". Second, for citizens, the rule of law is prescriptive, which means that there are behavioural guidelines required by law to protect citizens and force the government to act according to the law (Manan, 2019).

In the Job Creation Law, the Constitutional Court (M.K.) views that formal deficiencies are considered a lack of meaningful participation as one of the applications of the principle of openness. As a result, the law was deemed unconstitutional under certain conditions. However, ironically, the government repeated the mistake of forming the law by issuing the Perppu on Job Creation without providing meaningful participation opportunities for the public. There are three requirements in an assessment of public participation space, namely the right to be heard (public opinion has the right to be heard), the right to be considered (considered), the right to be explained (entitled to get an explanation or answer to the opinion that has been conveyed) (Lubis, 2022). In reality, these three rights are not fulfilled with the creation of the Job Creation Perppu, which regulates job creation.

It was drafted without going through the customary law and regulation procedure. In addition, the issuance of the Job Creation Perppu shows the government's effort to reduce the critical role of the legislative body that should be involved in improving the Job Creation Law per the Constitutional Court's decision. Instead of involving the DPR in improving the Job Creation Law, the government issued a Perppu full of formal oddities without going through an open discussion process with the public. Although, in the end, the Perppu still requires the approval of the DPR in the next session, the direct enforceability of the Job Creation Perppu provides binding legal force after it is passed and promulgated.

Philosophically, the government states that in issuing the Perppu Ciptaker, it has been carried out with careful consideration by taking into account various factors, including seeing conditions that can threaten, such as inflation, stagflation, multi-sector crises, interest rate problems, geopolitical conditions, food crises, and protecting business actors in anticipation of the global economy (Kementerian Sekretariat Negara Republik Indonesia, 2022). In essence, the government as a policy maker in drafting a regulation, must

follow the principle of openness, which states that the process of forming laws and regulations, starting from planning, drafting, discussing, ratifying or determining and promulgating, is transparent and open. In making Perppu Ciptaker, the government did not have the initiative to hold public involvement by not opening a space for socialisation for the community. This Perppu also ignores the Constitutional Court decision No. 91/PUU-XVIII/2020, which mandates the government to bring meaningful participation.

Problems with the Perppu on Job Creation show inconsistencies between the Constitutional Court's decision on the Job Creation Law, the government's actions in the issuance process, and the impact on the process of public participation and the legislature's role. So, the enactment of the Perppu, which has become a law, needs to be reviewed. Which always pays more attention to the aspirations, accommodates the interests of the entire community, and provides more comprehensive benefits in development efforts and welfare improvement.

4. Conclusions

The legal politics of the Perppu on Job Creation is law formation by applying omnibus law in law formulation to increase investment to create jobs. The Perppu on job creation is present based on. The President's interpretations that there is a compelling urgency due to global dynamics such as rising energy and food prices, climate change, and supply chain bottlenecks. This situation has adversely affected the world economy and is expected to affect inflation in Indonesia significantly. Therefore, the Job Creation Perppu comes as an expected solution. However, the adverse impact of the situation described is only a prospective impact that has the potential to occur based on the government's prediction. The government's ability to predict this potential contradicts the requirement of "compelling urgency" in the issuance of Perppu, which refers to a situation that occurs unexpectedly and causes urgency that requires immediate resolution. Furthermore, the government should not exclude public participation in forming laws as it is included in the formal formation procedure. Because the people also have the right to know how the rules will be applied. Ignoring the public's right to participate in the law-making process can result in a law becoming procedurally flawed.

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