

A Legal Analysis of the Government Regulation in Lieu of Law (Perppu) Number 1 of 2020 About State Financial Policy and Stability of Financial Systems for the Handling of Corona Virus Disease 2019 (COVTD-L9) and / or in Order to Overcome Threats against the National Economy and/or Stability of the Financial Systems

Dr. Laksanto Utomo

¹SH, M. HUM, Senior Faculty Member of Law Department, Sahid University Jakarta, Indonesia
Faculty of Law Sahid University Jakarta, Jl. Prof. Dr. Supomo, SH No.84 Tebet, Jakarta Selatan 12870

Abstract: *This article examines Perppu No. 1 of 2020 to ascertain whether the contents are in line with the needs and demands of the people, and whether it is effective in handling Covid 19 in Indonesia. It is hoped that quick action can restore the economy immediately. The approach used is a textual approach. One important implication of the enactment of Perppu No. 1 of 2020 is the trimming of the authority of the DPR in Law No.17 of 2014 concerning the People's Consultative Assembly of the People's Consultative Assembly, the DPR's People's Representative Council, the Regional Representative Council of the DPD, the Regional People's Representative Council of the DPRD. A number of articles were abolished, as a result the DPR did not have the authority to discuss adjustments to the State Budget (APBN) and / or changes in the framework of preparing estimates of changes as far as they were related to the handling of Covid 19.*

Keywords: Corona Virus Disease 2019; Government Regulation In Lieu Of Law; Legal Analysis

1. Introduction

Indonesia is facing a large impact from the global recession so that policy makers issue crisis protocols for the worst scenarios regarding GDP and the rupiah exchange rate while COVID-19 weakens business. A government regulation in lieu of law (Perppu) includes a series of crisis protocols that allow Bank Indonesia (BI) to cast a lifeline into the state budget through direct government bond purchases and to banks through liquidity support.

This year the Indonesian economy is expected to grow by 2.3 percent under the baseline scenario, which will be the lowest level since 1999, or contract by 0.4 percent in the worst case scenario, in the face of a higher risk of global recession, m Harsono, N ; Akhlah, AW (April 2, 2020) reports that according to Finance Minister Sri Mulyani Indrawati. The rupiah exchange rate may range between Rp. 17,500 and Rp. 20,000 per US dollar, which is weaker than the 1998 financial crisis. They also say that President Joko Widodo has announced plans to spend Rp. 405.1 trillion on health care, social safety nets and recovery programs business. New regulation, Perppu No. 1/2020, allowing the budget deficit to widen beyond the previous legal limit of 3 percent of gross domestic product (GDP).

It becomes very urgent to replace temporarily the Law on State Finance which limits the deficit of state expenditure to a maximum of 3 percent of GDP. In addition, a state of

urgency is also needed for the granting of authority to the Government in order to be able to reallocate and refocus the budget that had previously been allocated in the 2020 APBN. Through rapid action it is expected to be able to restore the economy immediately. The legal basis for compelling urgency and urgent needs is based on Article 22 paragraph of the 1945 Constitution stated that "In the case of coercive urgency matters, the President has the right to set Government Regulations in lieu of laws". The parameters deemed critical and forceful in the 1945 Constitution are stated in parameters in the Constitutional Court Decision Number 138 / PUU-VII / 2009 in paragraph 1, namely due to the urgent need to resolve legal issues quickly based on the Law.

Sakti, NW (04/13 2020) states that there are three main focuses in saving the country from the Covid-19 pandemic, which are life safety and public health, social safety nets and economic recovery for those affected. However, the government does not protect those who carry out their duties in bad faith and do not comply with statutory provisions. Because there are other laws that regulate legal protection. Legal protection efforts to the competent authorities in making policies in accordance with the law are already listed. They are also listed in other laws. Therefore, the Perppu must have legal certainty. then it will be regulated in regulations at the President and Minister level. In other words, in its implementation.

Volume 9 Issue 4, April 2020

www.ijsr.net

[Licensed Under Creative Commons Attribution CC BY](https://creativecommons.org/licenses/by/4.0/)

Perppu No. 1 of 2020 needs to be examined carefully so that the substance and objectives are expected to be achieved. Looking at the substance of Perppu No. 1 of 2020 is a necessity, to ensure whether the contents are in accordance with the needs and demands of the people, and whether it is effective in handling Covid 19. This is important so that the existence of Perppu No. 1 of 2020 is truly the right policy, and not an obstacle in handling the Covid 19 pandemic

2. Title and Overview

The title begins with the word "Policy", then the policy format is used as a *Perppu* No. 1 of 2020. Indeed, there is no prohibition on formulating material with a policy format and the title also uses the preposition "Policy" (such as Presidential Regulation 16/2017 on Indonesian Maritime Policy).

Legal system		
Regulation	Regulatory Policy	Policy
1) 1945 Constitution (Undang-Undang Dasar 1945 or UUD'45)	Policy rules are general regulations issued by government agencies with regard to the direction of the exercise of government authority over citizens or other government agencies and the making of these regulations does not have a firm basis in the constitution and formal laws either directly or indirectly.	1) General policy is a strategic direction that gives guidance on what needs to be done now for better development in the future, for example a resource management policy
2) Resolutions of the People's Representative Council (MPR)		2) Technical policy is the technical translation of general policy into activity activities.
3) Acts (Undang-Undang or UU, also translated as Laws) and Government Regulation in Lieu of Acts		3) Implementation policy is the details of the implementation of each activity described in the technical policy, for example how the implementation of each component of the activity.
4) Government Regulation (Peraturan Pemerintah or PP)		
5) Presidential Regulation (Peraturan Presiden or Perpres)		
6) Regional Regulation (Peraturan Daerah or Perda)		
7) Village Regulations		BESCHIKKING Decisions that are individual and congressional or contain administrative stipulations (BESCHIKKING) or decisions in the form of Judge's verdict.

Because it uses the the first word "Policy" in the title of this Perppu, the legal and institutional review of the Perppu will use a policy format approach as can be seen in the Figure on the Form of Legal Arrangements in Indonesia. In daily practice, the relationship between regulation (regulation: regulatory regulations) and regulatory policy (regulation / beschikking: policy regulation) and public policy (policy that consists of general policy, technical policy, and implementation policy) is subject to the principle of the law of *lex superior derogate legi inferiori*, where the policy must not conflict with regulatory policy, especially with regulation.

In this case, the legal and institutional review of this Perpu will not use the format of the relationship between regulation, regulatory policy, and policy (given the very short time) as an approach, but what will be used is a policy format consisting of general policy, technical policy, and an implementation policy to examine the overall Perppu material which covers the opening, torso, as well as general explanation and article by article explanation.

Perppu material is grouped into General Policy is based on Article 12 paragraph (1) which states that "Changes in posture and / or details of the State Budget (APBN) in the context of implementing state financial policy and the steps as referred to in Article 2 through Article 11 regulated by or based on Presidential Regulation.

As a General Policy format, the Perpres material mandated by Article 11 paragraph (2) jo. The articles of the Law on State Administration which regulate discretion jo. Articles of Law 12 of 2011 concerning Formation of Regulations and Regulations should be directed to regulate the substance of Article 2 through Article 11 in a position as Technical Policy that covers the authority of 6 PMK and 1 Permendagri, and can be linked to other Perpu Articles that cover authority 1 BI Regulations and 2 BI Regulations with OJK are in the position of Implementation Policy.

As a General Policy format, the Perpres material mandated by Article 11 paragraph (2) juncto The articles of the Law on State Administration which regulate discretion juncto Articles of Law 12 of 2011 concerning Formation of Regulations and Regulations should be directed to regulate the substance of Article 2 through Article 11 in a position as Technical Policy that covers the authority of 6 PMK and 1 Permendagri, and can be linked to other Perpu Articles that cover authority 1 BI Regulations and 2 BI Regulations with OJK are in the position of Implementation Policy.

1) Basic Considerations on Perppu No. 1 of 2020..

Whereas from the analysis of the basis of considerations (consider points a, b, c and d) the issuance of Perppu No. 1 of 2020, in principle has fulfilled the parameters as the urgency of giving authority to the President to stipulate Government Regulations in lieu of Laws as regulated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

This view is reinforced by the Constitutional Court Decision No. 138 / PUU-VII / 2009 there are three categories of urgency, namely: First, there are circumstances, namely the urgent need to resolve legal issues quickly based on the law, Second, the required laws do not yet exist so that there is a legal vacuum, or there is the law but is inadequate, and Third, the legal vacuum cannot be overcome by making laws through ordinary procedures because it will require a long time while the urgent situation requires certainty to be resolved.

2) Main Body Perppu No. 1 2020

This Perppu is divided into two major groups, namely the state financial policy which regulates the budgeting and financing fields, the regional financial sector and the taxation sector as well as the financial system stability

policy which regulates the expansion of the authority of the Financial Sector Stability Committee, strengthening the authority of Bank Indonesia (BI), the Financial Services Authority (OJK) and the Deposit Insurance Corporation (LPS) as well as providing loans to LPS. It can be seen that the Financial Sector Stability Committee (KSSK) consisting of the Ministry of Finance, BI, OJK and LPS are the parties mentioned in this Perppu. This Perppu mandates the establishment of 5 PPs, 1 Perpres, 5 Minister of Finance Regulations, 1 Ministry of Home Affairs Regulation, 1 BI Regulation, and 2 Joint Minister of Finance and BI Regulations, and 1 OJK Regulation. In carrying out their duties, each related official carries out his good faith and complies with statutory regulations. Article 50 of the Criminal Code states that "Anyone who commits an act to carry out the provisions of the law is not convicted", while in Article 51 paragraph 1 of the Criminal Code it is stated that anyone who commits an act to carry out an office order given by the competent authority is not convicted. Thus the corridor in the implementation of this Perppu is clear that it cannot violate the provisions of the law. Therefore Article 27 paragraph 2 which reads: "Members of the KSSK, the Secretary of the KSSK, Members of the KSSK Secretariat and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority and the Deposit Insurance Agency and other officials, who are related to the implementation of Government Regulations in lieu of this Law cannot be prosecuted both civil and criminal if in carrying out the task is based on good faith and in accordance with the provisions of the legislation. laws, not included in the category that cannot be prosecuted.

3) Review of the Minister of Finance's Authority in Perppu No. 1 of 2020

From the search for the contents of Perppu No. 1 of 2020 it was found that there were 5 (five) Articles mandating the establishment of a Minister of Finance Regulation (PMK) as a regulation to implement Perppu No. 1 of 2020. The articles are Article 2 paragraph (2), Article 6 paragraph (13), Article 7, Article 10 paragraph (1,2), and Article 24 paragraph (2).

In addition to mandating the formation of PMK, Perppu No. 1 of 2020 also provides several authorities to the Minister of Finance for the following matters: First, authorizing the Minister of Finance to provide customs facilities in the form of exemption or relief of import duties in the context of handling emergency conditions and the recovery and strengthening of the national economy (Article 4 paragraph (1) letter d), Second, Value Added tax imposed on the utilization of Intangible Taxable Goods and / or Taxable Services from outside the Customs Area within the Customs Area as referred to in paragraph 12l is collected, deposited and reported by foreign traders, overseas service providers, In addition to mandating the formation of PMK, Perppu No. 1 of 2020 also provides several authorities to the Minister of Finance for the following matters: First, authorizing the Minister of Finance to provide customs facilities in the form of exemption or relief of import duties in the context of handling emergency conditions and the recovery and strengthening of the national economy (Article 4 paragraph (1) letter d), Second, Value Added tax imposed on the utilization of Intangible Taxable Goods and / or Taxable Services from outside the Customs Area within the

Customs Area as referred to in paragraph 12l is collected, deposited and reported by foreign traders, overseas service providers, International Trade through Electronic System (PPMSE), and / or Domestic Trade through Electronic System (PPMSE), appointed by the Minister of Finance (Article 6 paragraph (3)), Third, the Minister who organizes government affairs in the field of communication and informatics authorized to terminate access at the request of the Minister of Finance (Article 7 paragraph (5)), and Fourth, the Minister of Finance has the authority to provide customs facilities in the form of exemption or relief of import duties in the framework of: (a) handling the Corona Vints Disease 2019 pandemic (COVID- 19; and / or (b) facing threats that endanger the national economy and / or the stability of the national financial system (Article 9).

The above description indicates that the Minister of Finance has a very large and decisive role in the implementation of Perppu No. 1 of 2020. As stated, in accordance with Perppu No. 1 of 2020, the Minister of Finance was not only given the mandate to form 5 PMKs, but was also given the authority to provide customs facilities in the form of exemption or relief of import duties in the context of handling emergency conditions and the recovery and strengthening of the national economy, appointing foreign and domestic PPMSE, requesting The MOCIT conducts termination of access, and has the authority to provide customs facilities in the form of exemption or relief of import duties in the context of handling Covid 19 and / or facing threats that endanger the national economy and / or stability of the national financial system.

The big role carried by the Minister of Finance in the implementation of Perppu No. 10 of 2020 it needs to be observed, so that state financial policies and financial system stability in handling Covid 19 are not concentrated only in the Ministry of Finance. Moreover, that great authority is not followed by the function of supervision and accountability.

Another oddity is that in Perppu No. 1 of 2020, no single article was found regarding the role of the Coordinating Minister for the Economy. The role of Bank Indonesia also seems minimal, because Bank Indonesia is only mandated to form 1 Bank Indonesia Regulation (Article 16 paragraph (2)). The rest is in the form of 2 (two) Joint Regulations of the Minister of Finance and Bank Indonesia as mandated by Article 18 paragraph (4) and Article 19 paragraph (3) Perppu No. 1 of 2020. Whereas as a central bank, Bank Indonesia has an interest in maintaining financial system stability. This is related to the function of BI as the Lender of the Last Resort (LOLR) or the authority authorized to provide liquidity in times of crisis. Therefore, Bank Indonesia will always try to keep the financial system stable so that it can avoid a crisis. Bank Indonesia is also an authority that holds a monetary mandate and a payment system whose stability is closely related to financial system stability.

Based on the above description is not excessive if the role and authority of the Minister of Finance in Perppu No. 1 of 2020 it needs to be reviewed proportionally, and the role given to Bank Indonesia as the Central Bank and Monetary Authority needs to be further enhanced. In addition, the existence of the Financial Services Authority also needs to

be maximized. The existence of the Coordinating Minister for the Economy should ideally be played in the coordinating function of the implementation of Perppu No. 1 of 2020. The spirit of togetherness and sharing of roles in handling the nation's problems, including the handling of the current Covid 19 pandemic is very important.

4) Perppu's Acting Officer No. 1 of 2020 Cannot Be Sued

In Article 27 of Perppu No. 1 of 2020 there are important points that need to be criticized, namely:

- Article 27 paragraph (1) reads "Costs incurred by the Government and / or KSSK member institutions in the framework of implementing state revenue policies including taxation policies, state expenditure policies including policies in regional finance, financing policies, financial system stability policies, and the national economic recovery program, is part of the economic costs for saving the economy from the crisis and does not constitute a state loss".
- Article 27 paragraph (2) reads "Members of the KSSK, the Secretary of the KSSK, members of the KSSK secretariat, and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority, the Deposit Insurance Agency, and other officials, who are related to the implementation of Government Regulations in lieu of the Act "This law cannot be prosecuted both civil and criminal if in carrying out its duties based on good faith and in accordance with the provisions of the legislation".
- Article 27 paragraph (3) reads "All actions including decisions taken pursuant to Government Regulations in lieu of this Law are not objects of a lawsuit that can be submitted to the state administrative court".

Article 27 of Perppu No. 1 of 2020 as described above clearly contains legal immunity or legal immunity from criminal, civil, and state administrative requirements for the parties mandated to implement Perppu No. 1 of 2020. The weakness of Article 27 is more perfect because it is not matched by a strict oversight and accountability function.

First, the phrase "is not a state loss "(Article 27 paragraph (1). This phrase has the potential to be used as a legal reason or shield by certain parties to commit criminal acts of corruption or take personal advantage in the midst of the Covid pandemic disaster 19. There is no guarantee of costs incurred by the Government and / or KSSK member institutions in the context of implementing state expenditure policies and so on are really used fully for economic recovery or saving the economy from the crisis due to the Covid pandemic 19. Because in managing state finances both during normal and during crises such as the current potential of certain parties to committing unlawful acts intentionally or due to negligence in the name of the interests of economic recovery or economic rescue is very likely to occur, so the use of phrases instead of state losses, in Article 27 paragraph (1) is very improper and must be changed to not a loss country if no element of pe is found acts against the law based on state financial audits by authorized institutions.

Second, the sentence..... cannot be prosecuted both civil

and criminal if in carrying out the task is based on good faith and in accordance with the provisions of the legislation (Article 27 paragraph (2)). That sentence, especially the word of good faith also has the potential to become a legal reason or a shield for the implementation of Perppu No. 1 of 2020 in order to avoid criminal prosecution and / or civil lawsuits on criminal acts of corruption or acts against the law or abuse of authority that may occur when those referred to in Article 27 paragraph (2) implement Perppu No. 1 of 2020. The term good faith is known in treaty law (Article 1338 paragraph (3) of the Civil Code. Good faith implies an understanding of the inner states of the parties in making and implementing the agreement must be honest, open and trusting. the party must not be tainted by intentions to deceive or cover up the real situation. From the explanation, it can be said that the key to good faith is honest. This honesty can be interpreted as integrity and professionalism. However, the definition and parameters of good faith both in Article 27 paragraph (2) Perppu No. 1 of 2020 still needs to be reviewed and clarified and confirmed so that there is certainty in its application.

Third, the sentence "All actions including decisions taken based on Government Regulations in lieu of this Act are not objects of a lawsuit that can be submitted to the state administration court" (Article 27 paragraph (3)). The sentence can provide a wide space for the occurrence of abuse of authority or abuse of position on behalf of the interests of implementation Perppu No. 1 Tahun 2020.

Ideally the editorial of Article 27 paragraph (3) must be clarified and the boundaries / guidelines must be clarified so that they are not misused. A law that gives too much room to make legal open policy and discretion can actually cause uncertainty and is more prone to irregularities. This must be avoided so as not to harm the country and the people.

Use of state money without legal liability as regulated in Article 27 of Perppu No. 1 of 2020 is a mistake and error of reason, because it can open wide space for the occurrence of corruption in the midst of efforts to deal with the Covid pandemic 19. The contents of Article 27 Perppu No. 1 of 2020 is contrary to the principle of equality before the law (equality of every citizen before the law) as determined by Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

5) Articles of Law Revoked by Perppu No. 1 of 2020

Referring to Article 28 of Perppu No. 1 of 2020 it was found that at least a number of Articles of 12 Laws that were declared invalid were declared to be invalid as long as it relates to the state's financial policies for handling the spread of Corona Virus Disease 2019 (COVID-19) and / or in order to face threats that endanger the national economy and / or stability financial system based on Government Regulation in lieu of this Act.

The stated articles are as follows:

- Article 11 paragraph (2), Article 17B paragraph (1), Article 25 paragraph (3), Article 26 paragraph (1), and Article 36 paragraph (1c) of Law Number 6 of 1983 (and its Amendment Law) on General Provisions and Tax Procedures.

- Article 55 paragraph (41 of Act Number 23 of 1999 (and its Amendment Law) concerning Bank Indonesia.
- Article 12 paragraph (3) along with its explanation, Article 15 paragraph (5), Article 22 paragraph (3), Article 23 paragraph (1), Article 27 paragraph (3), and Article 28 paragraph (3) in Law Number 17 Year 2000 concerning State Finance.
- Article 3 paragraph (3) of Law Number 1 of 2004 concerning State Treasury.
- Article 22 paragraph (2) and paragraph (3) of Law Number 24 Year 2004 (and the Amendment Law) concerning the Deposit Insurance Agency.
- Article 27 paragraph (1) along with their explanations, Article 36, Article 83 and Article 110 paragraph (2) of Law Number 33 of 2004 concerning Financial Balance Between the Central Government and Regional Governments.
- Article 17 of Law Number 36 of 2009 concerning Health
- Article 72 paragraph (2) along with an explanation of Law Number 6 Year 2004 concerning Villages
- Article 316 and Article 317 of Law Number 23 Year 2014 (and its Amendment Law) concerning Regional Government.
- Article 177 letter c number 2, Article 180 paragraph (6), and Article 182 of Law Number 17 Year 2004 (and its Amendment Law) concerning the People Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council.
- Article 20 paragraph (2) and paragraph (3) of Law Number 9 Year 2016 concerning Prevention and Management of Financial System Crisis.
- Article 11 paragraph (22), Article 40, Article 42 and Article 46 of Law Number 20 Year 2009 concerning the State Budget for Fiscal Year 2020.

If the articles that are declared to be invalid are examined, it relates to the fields of economy, taxation, finance and banking, including those relating to the budget which are scattered in 12 Laws as outlined above.

One important implication of the enactment of Perppu No. 1 of 2020 is the trimming of the authority of the DPR in Law No.17 of 2014 concerning MPR, DPR, DPD, DPRD. Some articles were abolished, such as Article 177 letter c number 2; Article 180 paragraph (6); and Article 182. As a result, the DPR does not have the authority to discuss adjustments to the State Budget (APBN) and / or changes in the context of preparing estimates of changes as far as they are related to the handling of Covid 19.

Perppu No. 1 Year 2020 has great authority and has been effective. This Perppu has broken through various related laws and Perppu implementing officials will also manage a large budget. Therefore, the oversight function of the DPR and the supervision of all components of society regarding the implementation of Perppu No. 1 of 2020 is a necessity that must not be ignored.

Refereces

- [1] Sakti, NW (2020/04/13)"Perppu Nomor 1 Tahun 2020 Tak Membuat Penyelenggara Negara Kebal Hukum", Kompas
<https://money.kompas.com/read/2020/04/13/060600326/perppu-nomor-1-tahun-2020-tak-membuat-penyelenggara-negara-kebal-hukum?page=all>.
- [2] Harsono, N; Akhlah, AW (April 2, 2020) Indonesia braces for recession, activates crisis protocol TheJakartaPost available at <https://www.thejakartapost.com/news/2020/04/01/indonesia-braces-for-recession-activates-crisis-protocol.html>
- [3] Peraturan Pemerintah Pengganti Undang-Undang Republik Indonesia Nomor 1 Tahun 2020 (2020-03-31) available at <https://www.pajak.go.id/id/peraturan-pemerintah-pengganti-undang-undang-republik-indonesia-nomor-1-tahun-2020>