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Examining the Restriction of Human Rights in Government Regulation in Lieu of Law*

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Abstract:
The implementation of human rights (HAM) in Indonesia can be restricted while its implementation is violated others' rights, or contradicted moral considerations, religious values, security, and public order. This limitation is referring to article 28 J of the 1945 Constitution of the Republic of Indonesia *(UUD 1945)* which has been regulated under the law. Besides, can human rights restrictions also be stipulated through legal products in the form of Government Regulation in Lieu of Law or *Perppu*? This question is build upon the understanding that *Perppu* is equated with the law in the hierarchy of statutory regulations. Nevertheless, Perppu that formed in a precarious and a hurry situation must consist of material content restrictions on crucial matters including human rights restriction. The limited contents of the Perppu should become a concern since it must be applied with extra caution and consideration. As a result, the Perppu which was compiled under abnormal conditions should not be justified in regulating human rights restriction.
Keywords: Human Right, Restriction of Human Right, Perppu

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Menelaah Pembatasan Hak Asasi Manusia dalam Peraturan Pemerintah Pengganti Hukum

Abstrak:
Di Indonesia, Hak asasi manusia (HAM) dapat dibatasi apabila pelaksanaannya menciderai hak asasi orang lain, betentangan dengan pertimbangan moral, nilai-nilai agama, keamanan, dan ketertiban umum. Pembatasan tersebut sesuai pasal 28 J UUD 1945 diatur dalam sebuah undang-undang. Lalu apakah pembatasan HAM juga dapat diatur melalui produk hukum berupa Perppu? Pertanyaan ini didasari oleh pemahaman bahwa Perppu disamakan derajatnya dengan undang-undang dalam hierarki peraturan perundang-undangan. Namun jika diresapi kembali Perppu yang dibentuk dalam keadaan yang genting dan terburu-buru, harus memiliki batasan materi muatan menyangkut hal-hal krusial seperti pembatasan HAM. Tentu saja pebatasan materi muatan Perppu ini patut menjadi perhatian, karena meskipun HAM dapat dibatasi, pembatasan HAM tersebut harus dilakukan dengan sangat hati-hati dan penuh pertimbangan. Sehingga Perppu yang tentu saja disusun dalam kondisi yang tidak normal, sudah sepatutnya tidak dibenarkan untuk mengatur pembatatan HAM.
Kata Kunci: Hak Asasi Manusia, Pembatasan Hak Asasi Manusia, Perppu

Рассмотрение ограничения прав человека в государственном регулировании вместо закона

Аннотация:
В Индонезии права человека могут быть ограничены, если их реализация наносит ущерб правам других людей, противоречит моральным соображениям, религиозным ценностям, безопасности и общественному порядку. Это ограничение в соответствии со статьей 28 J Конституции 1945 года регулируется законом. Тогда можно ли регулировать ограничение прав человека с помощью легального продукта в виде Perppu? Этот вопрос основан на понимании того, что Perppu равняется по рангу с законами в иерархии законодательных норм. Однако, если подумать ещё раз, Perppu, который был сформирован в шаткой и поспешной ситуации, должен иметь материальные ограничения в отношении важных вопросов, таких как ограничения прав человека. Конечно, ограничение содержания Perppu заслуживает внимания, потому что, хотя права человека могут быть ограничены, такие ограничения прав человека должны выполняться очень осторожно и с огромным вниманием. Так что Perppu, который, конечно, был составлен в ненормальных условиях, не должен оправданно применяться в регулировании ограничения прав человека.
Ключевые слова: Права человека, ограничения прав человека, Perppu

A. INTRODUCTION

The legitimacy became a bright spot explaining that Indonesia is increasingly concerned about the protection of human rights which specifically can be discovered in the second amendment of the 1945 Constitution of Republic of Indonesia *(UUD 1945)* since it is directly targeted to the improvement of the rules of human rights. The human rights matters are specifically regulated in Chapter XA which consists of 10 articles related to the protection and fulfillment of human rights for all citizens. However, the founding father is avoiding Indonesia to adopt free and unlimited human rights.

The founder of this nation aspires to the implementation of human rights in Indonesia be based on every precept contained in Pancasila. For this reason, the regulation of human rights in chapter XA of UUD 1945 concludes with article 28J which essentially mentioned that in exercising their rights, everyone is obliged to respect the human rights of others and obey the restrictions outlined in the law to meet fair demands according to the moral considerations, religious values, security, and public order. The existence of Article 28J as the closing of Chapter XA on Human Rights in a systematic/logical interpretation, as explained by the Constitutional Court in consideration of decision number 2-3/PUU-V/2007, mentioned that the human rights regulated in Article 28A to Article 28I of UUD 1945 are subjected to restrictions outlined in Article 28J of UUD 1945.

By analyzing through systematical and logical interpretation, it is noticeable that logical interpretation is the interpretation of a rule as part of the whole system of legislation by connecting it with existing laws (Mertokusumo & Pitlo, 1993). While systematic interpretation is an interpretation according to the system in the formulation of the law itself *(systematic interpretative)*. Furthermore, it can be applied if one rule and another rule of law govern the same thing, then both of the legal rules are linked and compared to each other. Thus, if the object of interpretation is an article of law, then the same provisions must have the same principles as other regulations as well as being referred to each other (Khalid, 2014). Therefore, by paying attention to the phrase-by-phrase in the article which regulates the human right limitation in a systematic and logical interpretation, it is true that the limitation is determined by law. Consequently, it becomes an interesting study to reveal the answer to why these restrictions are set to be stipulated by law? It is undeniable that the law is a product of legislation by the House of Representatives *(DPR)* and the President as the holder of legislative and executive power respectively.

However, besides the DPR, the President uses his executive power in certain circumstances to issue regulations that have the same degree as the law. The Indonesian Constitution in article 22 paragraph (1) has outlined that in the case of compulsive matters of concern, the President has the right to determine government regulations in lieu of laws. Therefore, the President seemed to take over the role of the DPR with his legislative power in determining policy by-laws. Under the "urgent and compelling" circumstances, these legal products can be effectively implemented without any discussion among legislative authority.

The equalized status between the law as a legislative product and the Perppu as an executive product has raised a question, is the Perppu can regulate all material content as well as the law? If only the answer is "yes", then the next question emerged, is the regulation issued in a hustle and without discussion in the legislative body adequate to arrange content on human rights as the law does? From the aforementioned notion, this paper aimed to examine the relevance of restrictions on the Perppu's contents on human rights towards the guarantees of equitable human rights restrictions. Besides, the author also attempted to explain the arguments and urgency to limit the material content that can be arranged through the Perppu, particularly on the regulation of human rights restrictions.

B. METHODS

This paper uses normative approaches to legal analysis, i.e. legal analysis carried out by analyzing library documents or additional facts, as a central activity. The normative law analysis is a scientific research approach to seeking evidence-based legal science theory from a normative point of view (Soekanto, 2015: 13-14). As a result, this analysis departs from the point of view of positive legal criteria for the national legislative framework (Marzuki, 2016: 59). The judicial framework and case-by-case methodology are the methods used. Secondary testimony is commonly used as the main legal information under the laws and regulations on the eradication of wrongdoing and the rulings of the court. The data that was accumulated is qualitatively analyzed.

C. RESULTS AND DISCUSSION

1. Human Right Limitation

Article 1 No. 1 of Law No. 39 of 1999 concerning Human Rights (Human Rights Law) described human rights as a set of inherent rights that stick into the essence and the existence of human beings as God's creatures and became His blessing that must be respected, and protected by the state, the law, the Government and everyone in this world. All of these are carried out for the sake of honor and protection of human dignity. From the definition above, it is noticeable that the state agrees to mention that human rights are not born from legal instruments or existed by the laws, in contrast, it is the inherent right that originated in human beings. The right is owned by humans due to their existence, then the state through its laws must recognize, guarantee, and protect human rights.

Indonesia is categorized as a state of the law by a clear statement in Article 1 paragraph (3) of the UUD 1945 that "the Republic of Indonesia is a state of law." Its concept is explained in article 1 paragraph (3) as well as being manifested by the existence of a special chapter regulating human rights in chapter XA in the second amendment to the UUD 1945. Previously, the regulation on human rights was contained in MPR Decree Number XVII/MPR/1998 concerning Human Rights. The decree of the MPR written that the views and attitudes of the Indonesian people towards human rights in the basis that they have views and attitudes on human rights derived from religious teachings, universal moral values, and national noble cultural values , and are based on the Pancasila and the UUD 1945. From the aforementioned provisions, it can be understood that the spirit of the inclusion of human rights in the constitution cannot be separated from the existence of the MPR Decree.

After the establishment of MPR Decree Number XVII/MPR/1998 then the first Indonesian Human Rights is called Law Number 39 of 1999. By examining holistically, both the decree and the law emphasized that Indonesia is recognizing and respecting human rights. Article IX (Obligation) verse 36 of MPR Decree Number XVII/MPR/1998 written that "In accomplishing the rights and freedoms, every person is obliged to obey the limitations of Law to guarantee the recognition and to respect for the others' rights and freedoms, besides, as well as to fulfill fair demands that suitable to the moral considerations, security, and public order in a democratic society." Similar arrangements are also contained in Law Number 39 in the year 1999 specifically in article 70. Both provisions have stronger legitimacy since the same regulation is included in article 28J of the UUD 1945 as the closing article in chapter XA on

Human Rights. Although essentially, article 70 of Law Number 39 the Year 1999 has a composition of phrases that are almost similar to the MPR Decree Number XVII/MPR/1998. It is stated in article 70 of Law Number 39 the Year 1999 "In exercising their rights and freedoms, every person is obliged to obey the restriction of Law which aimed to guarantee recognition, respect for the rights, and freedoms of others, besides, to fulfill a fair demand according to consideration morals, security, and public order in a democratic society.

The enactment of article 28J which regulates human rights limitation turns out to reflect the systematic arrangement of human rights in the Universal Declaration of Human Rights. The regulation of internationally recognized human rights is finished by Article 29 paragraph (2) which also regulates human rights limitation. In full article 29 paragraph (2), it is explained that "In the exercise of his rights and freedoms, everyone shall be subject only to **such limitations as are determined by law** solely to secure due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

The human rights limitation, in the Universal Declaration of Human Rights which was adopted by the General Assembly of the United Nations in 1948 in Paris, was then consistently manifested in 1945 of the United States of Indonesia *(RIS)* and the Provisional Constitution of 1950. RIS 1949 in Article 32 paragraph (1) impose restrictions on human rights with the following conditions:

> "The laws and regulations regarding the exercise of the rights and freedoms which mentioned in this section, if necessary, will establish the limits of those rights and freedoms, but only to guarantee recognition with full respect to the rights and freedoms of others, and to fulfill justice conditions for peace, decency and the public welfare in a democratic alliance. "

Similarly, Article 33 of the 1950 UUDS has the same intention to place restrictions on human rights and freedoms. It is stated that "Doing the rights and freedoms determined in this section can only be limited by statutory regulations only to guarantee the recognition and undeniable respect to the rights and freedoms of people others, and to fulfill just conditions for peace, decency, and prosperity in a democratic society. "

All of the arrangements that justify the existence of human rights restrictions as described formerly have conditions that must be met. The restriction can only be implemented if only the practice of each individual humiliates other's rights, public order, or contradicts national morality and

religious beliefs. It can occur since it has previously been restricted through legal products or the law. Throughout this law, the state has determined the enforcement of rights even that has potentially can damage the communities right, the morals of the nation and religion, and disturb public order, therefore, these rights deserve to be restricted.

In the practical condition of state administration, the validity of restrictions on human rights regulated by this law is also agreed upon by the Constitutional Court. This opinion can be seen in Decision Number 065/PUU-II/2004 which examines the constitutionality of Law Number 26 of 2000 concerning Human Rights Courts against article 28I of the UUD 1945. Essentially, the petitioner considers that the article conflicted with article 28I of the UUD 1945. In that decision, the Court provides the following considerations:

> "... Article 28I paragraph (1) may not be read independently but together with Article 28J paragraph (2). In this way, it would appear that systematically, human rights including the right not to be prosecuted based on retroactive laws-are not absolute, because in implementing their rights and freedoms, everyone has to respect others' right and to obey the limitation determined by the law which aimed at upholding and respecting the rights and freedoms of others and to fulfill fair demands based on with moral considerations, religious values, security and public order in a democratic society as regulated in Article 28J paragraph (2). By reading Article 28I paragraph (1) together with Article 28J paragraph (2), it has appeared that the right not to be prosecuted based on retroactive laws is not absolute, therefore, in the framework of "fulfilling fair demands under moral considerations, religious values, security, and order", can be set aside" (Decision of the Constitutional Court Number 065/PUU-II/2004).

From the *ratio decideci* of the Constitutional Court, it is noticeable that all articles contained in chapter XA of the UUD 1945 including Article 28I paragraph (1) It is not standing alone. However, it must be read together with Article 28J paragraph (2), so that any rights including the right not to be prosecuted based on retroactive laws protected by article 28I are not absolute. All rights recognized by the state can certainly also be restricted by the state. With a note that the restrictions are suitable to the limitations set by law.

The stipulation of human rights restrictions that build upon the law is becoming the main principle of human rights restrictions in the International Covenant on Civil and Political Rights or called the Siracusa Principles, the principles that need to be considered in terms of rights limitation and reduction. It was produced by international law experts who met in Siracusa, Italy in April and May 1984 (Civil and Political Covenant. Annex, UN Doc E / CN.4 / 1984/4

in 1984). Regarding these principles, human rights restrictions can only be implemented if meeting the following conditions: 1). Prescribed or regulated by Law; 2). In a democratic society; 3). Public Order; 4). Public Health; 5). Public Moral; 6). National Security; 7). Public Safety; 8). Rights and freedoms of others or the rights or reputations of others. Countries with their power can freely determine what rights, to what extent, and when to limit human rights while still observing the established principles.

All of the legal instruments, both in the national and international scope as explained above, determined that restrictions on human rights can be enacted through law. Then one question arises, why can these restrictions only be made through the law? Meanwhile, it is noticeable that the legal products of a country, including Indonesia, are not only in the form of laws since there are also regulations of law. There is one legal product called Perppu that has an equal position to the law. To answer this question, the author feels the need to discuss the appropriate meaning of law and how the process of its formation.

As is revealed by Law Number 12 of 2011 concerning the Formation of Legislation (PPP Act) in article 1 number 3, the Act is interpreted as the Legislation established by the House of Representatives *(DPR)* with the joint agreement of the President. The definition is inseparable from the provisions of Article 20 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) which outlines that each Draft of Law (RUU) is examined by the DPR and the president for a mutual agreement.

To be passed into law, RUU originating from the President, the DPR, and the DPD is compiled in the National Legislation Program (Prolegnas) which is jointly drafted by the DPR, DPD, and the government for the medium and annual term based on the priority scale for the establishment of the RUU. It should be underlined that each proposed RUU must be accompanied by an academic paper. However, depending on article 43 paragraph (3) of Law Number 12 of 2011 concerning Formation of Regulations and Regulations, the obligation to include academic paper as a scientific study of law is excluded for the RUU of state budget revenue and expenditure, the stipulation of Government Regulations in lieu of laws The law (Perppu) becomes the law, as well as the RUU to revoke the law or Perppu.

Furthermore, the approved RUU is then examined with two levels of discussion involving many parties. In the first level, the analysis is conducted through the meeting of the commission, joint commission, Legislative Board, Budget Board, or special committee. Activities in the first-level talks include introductory deliberations, discussion of the inventory list of problems, and the

submission of mini opinions. While the second discussion was held in the DPR plenary session including the report that contained the process, the opinion of the mini faction, the opinion of the mini-DPD, and the results of the first level of discussion, statement of approval or rejection of each faction and the DPR members verbally requested by the leader of the plenary meeting, and the president's final opinion conveyed by the assigned minister (See: Articles 67, 68, 69 of Law Number 12 of 2011 concerning Formation of Legislation).

Given the depth of the process of forming a law, the authors argue that the reason for the restriction of human rights by limitedly using the law is purposed to ensure the carefulness and good consideration of all parties, especially the people's representatives to limit the people' right. Moreover, an in-depth consideration in drafting a law can also be seen from the requirement for the inclusion of academic texts for each proposed RUU.

The inclusion of this academic paper is essential since it can be proven through the necessity determined by the current PPP Act. Previously, in Law Number 10 of 2004, academic texts were not necessarily required. As the statement concluded by Delfina Gusman in her article entitled Urgency of Academic Manuscripts in Forming Good Regulations, it is explained that the existence of Academic Manuscripts has crucial and strategic values in the formation of good legislation due to the preparation of Academic Manuscripts begins with research values that exist in the community, as a result, it is projected that the laws and regulations on the Academic Paper-based will have a great potential to be accepted by the community (responsive) (Gusman, 2011).

2. Examining the Existence of Perppu in Indonesia

Perppu is a legal product that has been recognized and constitutionally valid. As stipulated in Article 22 of the UUD 1945, the President has the right to stipulate a Perppu as a substitute for a law in the case of compulsion concerns. The unique provisions in Article 22 of the UUD 1945 related to this Perppu have never been amended. These provisions have become retained provisions in several times the amendment process of the UUD 1945 (Rohim, 2014). Although it has been amended from 1999 to 2002, the people's representatives still maintain this article as the original text and do not experience a change process in its article. Hence, it is proven to this day that the Presidents who have led Indonesia have referred to the same constitutional norms in issuing Perppu. Thus, the only reason for the issuance of the Perppu is frequently relying on "coercive urgency" which becomes the President's subjective right. The

"coercive urgency" as a condition of issuing the Perppu has different interpretations in practice since neither the law nor any legal product defines the meaning of it.

The Constitutional Court argued in its decision number 003/PUU-III/2005 that determining the existence of a "compelling urgency" becomes the President's subjective right, while the objectivity is assessed by the Parliament in the next trial who can choose between accepting or rejecting the stipulation of the Perppu into law (The Constitutional Court Decision No.138/PUU-VII/2009, p. 14). Later, the phrase "compulsion urgency" is then interpreted through the Constitutional Court's decision No. 138/PUU-VII/2009. Build upon the decidendi ratio of the ruling, there are three parameters to determine the conditions of urgency, namely: 1) There is an urgent need to resolve legal issues quickly based on the Law; 2) The required law does not exist yet which means the existence of a legal vacuum, or there is a law yet is not adequate; 3) The legal vacuum cannot be overcome by making the law in the usual procedure because it requires a long procedure and time, while the urgent situation needs certainty to be resolved (The Constitutional Court Decision No.138/PUU-VII/2009, p. 19).

Article 1 number 4 of the PPP Law in general provisions interprets the Perppu as a statutory regulation established by the President in matters of compelling urgency. Article 1 number 3 of Presidential Regulation 87 of 2014 concerning Regulations for the Implementation of Law Number 12 of 2011 on the Formation of Laws and Regulations (PP No. 87 of 2014) does not provide further limitations, the Government Regulation only mentions the same definition as contained in Law 12 2011 and the UUD 1945.

Each of the legislation recognized in Indonesia hierarchically has a tiered position. It is due to their different hierarchy positions have the consequence particularly in the functions and content of the various types of laws and regulations (Farida Indrati, 2008). The PPP Law aligns the position of the Perppu with the law, therefore depending on Article 11 of the PPP Law, both the contents of Perppu and the material contained in the law have remained the same.

According to article 10 paragraph (1) of the PPP Law, it is mentioned that the material content of law includes: further regulations regarding the provisions of the 1945 Constitution of the Republic of Indonesia *(UUD 1945)*, the order of law to be regulated by law, ratification of certain international agreements, the follow-up to the decision of the Constitutional Court, and/or fulfillment of legal needs in the community. Therefore, based on the law,

consequently, Perppu can regulate a broad material content as well as a law does.

The provision of Perppu's material content is similar to Bagir Manan's material. However, he explained that the Perppu contents should not be equally the same to the law, because things regulated in a Perppu are arrangements regarding matters related to the state administration. Therefore, Perppu is not justified in regulating constitutional matters, state institutions, judicial authority, the exercise of people's sovereignty, and others beyond the scope of the state administration (Manan, 1992).

The author can interpret that the material restrictions on the Perppu are similar to what expressed by Bagir Manan, it is due to issues of constitutional nature and matters relating to state institutions, judicial power, the exercise of popular sovereignty, are problems which cannot be decided in a short time. Furthermore, it is noticeable that the formation of Perppu is actualized quickly. In general, the formation of a statutory regulation covers the stages of planning, drafting, ratification, and enactment. The exception is for Perppu formed in a crisis that forces the planning stage to not be carried out, because of the unpredictable and unplanned situation.

The process and procedure of forming and preparing the Perppu are described in Part Three of Procedures for the Compilation of Government Regulations in lieu of Presidential Regulation Number 87 of 2014. In the event of compelling urgency, the President assigns the minister to draft a Perppu. The minister assigned to draw up the draft Perppu coordinates with the Minister/heads of non-ministerial government institutions and/or heads of related institutions (Presidential Regulation No. 87 of 2014). Subsequently, the completed draft of Perppu was then submitted by the minister to the President for enactment (Presidential Regulation No. 87 of 2014). After being stipulated, the Perppu is directly effective and legally binding. It is undeniable that a published Perppu is frequently caused much controversy among people since it is formed in a precarious condition and consequently remained imperfect.

One example of the Perppu that was highly debatable by various groups of people in Indonesia is the Government Regulation in Lieu of Law Number 1 of 2016 concerning Second Amendment to Law Number 23 of 2002 on Child Protection. The public is more familiar with this Perppu on Child Protection as Perppu *Kebiri* because it contains criminal provisions by giving castration punishment to perpetrators of sexual violence against children (Marwan, 2017).

The Perppu is practically regulating all criminal provisions. By analyzing holistically, does the establishment of the Perppu fulfill the requirements set by the Constitutional Court? Such as the requirement for an urgent need to resolve legal issues quickly based on the Act. Build upon the consideration point letter b of the Perppu on Child Protection, it is stated that the reason behind the establishment of this Perppu is caused by a significant increase number of sexual violence against children which threatens and endangers the lives of children, damages their personal life and development, and disturbs a sense of comfort, peace, security, and order Public. However, it should be noticed that cases of sexual violence in Indonesia are not something new, but have become old problems that could not be resolved by the state. The increase in cases of sexual violence against children caused by the negligence of the state has been brought to justice by the argument "urgency" to form a Perppu.

The second requirement in establishing a Perppu is because of the absence of required legislation which is categorized as a legal vacuum, or there are laws but are inadequate. Is there a legal vacuum because the required law does not yet exist? There has been a law governing sexual violence against children, namely Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Child Protection Act). Then the next question is whether the Child Protection Act is inadequate to deal with the problem of sexual violence against children?

Regarding this requirement, in the consideration point letter c of the Perppu on Child Protection, it is explained that criminal sanctions imposed on perpetrators of sexual violence against children have not provided a deterrent effect and could not comprehensively prevent the occurrence of sexual violence against children. To state that the law is ineffective or inadequate, it should be ensured that the law has been implemented optimally. The absence of a deterrent effect as argued in the weighing point does not have concrete evidence, whether the criminal provisions contained in the Child Protection Act are inadequate, or rather the criminal provisions that have been regulated in the Child Protection Act are not applied to the maximum.

However, at the end of the day, the Perppu on Child Protection was agreed by the Parliament and being enacted through Law Number 17 of 2016 concerning the Establishment of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 on Child protection. The process of establishing a Perppu into the law

itself needs to be considered since based on article 52 paragraph (3) of the PPP Law, the DPR only gives approval or rejection to a Perppu. The article indicates that the DPR is unable to change the Perppu, so the condition of "compulsive urgency" as required by the UUD 1945 seems to be the only indicator of testing a Perppu by the DPR to approve or reject the Perppu itself. When analyzed based on the relationship of the President as the executive power holder and the DPR as a legislative body, it is seen that the DPR's position is relatively only giving/rejecting the legitimacy of the Government's subjective will in shaping policy (Arsil, 2018).

D. CONCLUSIONS

All Indonesian juridical instruments are supported by the existence of an official interpretation of the Constitutional Court in several decisions related to the restrictions on human rights as well as at the international level which revealed that nothing of human rights in Indonesia is absolute and limitless. The state with its authority can form laws to impose restrictions on human rights if it turns out that the implementation of human rights can harm the human rights of others, contrary to cultural values, national morals, religion, and disrupt public order in a democratic society.

The equalization of the position of the Perppu with the law has made the material arranged in a Perppu remained the same as well as the applicable law. As a result, the current Indonesia Perppu can regulate anything as what the law does, including setting human rights restrictions as regulated in Article 28 J of the UUD 1945. In fact, given the different formation processes and the conditions at the time the Perppu was formed, it was appropriate there are restrictions on material content that can be arranged in a Perppu particularly regarding human rights restrictions by using criminal provisions. This problem must be accompanied by an in-depth scientific study and the need for community involvement in its formation. With the lack of community participation in determining criminal policy, it will potentially lead to arbitrariness towards the community itself.

Apart from all of the above, the UUD 1945 as the Constitution of the Republic of Indonesia must become a living constitution that can follow the times. Therefore, the concept of establishing the Perppu must be immediately addressed and clarified both in the procedures for establishing a Perppu, its contents, until the process and discussion to become law. Furthermore, in the coming amendments to the UUD 1945, the regulation regarding Perppu needs

to be considered and functioned as the objective for its establishment, namely to overcome urgent problems that cannot be solved by the law, rather than becoming a political sword for what seemed to be a means of controlling the legislative process in the DPR.

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