

## QUALITY OF DELEGATED REGULATIONS IN THE JOB CREATION LAW

**Achmad Safiudin R., Riza Multazam Luthfy, Airin Liemanto**

Faculty of Syariah and Law, Universitas Islam Negeri Sunan Ampel Surabaya, Indonesia

Fakultas of law, Universitas Gajah Mada Yogyakarta, Indonesia

Email: [safiudin@uinsa.ac.id](mailto:safiudin@uinsa.ac.id), [rizamultazam@uinsa.ac.id](mailto:rizamultazam@uinsa.ac.id), [airin.liem99@ugm.ac.id](mailto:airin.liem99@ugm.ac.id)

**DOI :** [http://doi.org/10.29240/negrei\\_v2n2\\_49528](http://doi.org/10.29240/negrei_v2n2_49528)

---

Submitted: Oct 3, 2025; Reviewed: Nov 4, 2025; Accepted: Des 10, 2025

---

### **Abstract**

*The existence of Delegated Regulations in the Job Creation Law is crucial for the proper implementation of the law. However, the excessive number of delegated regulations, created in a short time without in-depth study, has led to various problems in their implementation. This article captures the dynamics of delegated regulations under the Job Creation Law, assesses their quality, and formulates an ideal oversight model for their formation. This research is a normative legal study that analyzes in detail the concept of delegated regulations and the supervision of Government Regulations and Presidential Regulations as delegated regulations under the Job Creation Law, through three approaches: the statutory regulatory approach, the conceptual approach, and the comparative approach. Legal materials are reviewed and analyzed in depth. Historically, the dynamics of delegated regulations in the Job Creation Law are divided into three periods: after the enactment of Law 11/2020, after the Constitutional Court Decision Number 91/PUU-XVIII/2020, and after the enactment of Law 6/2023 on Job Creation. The dynamics of public rejection of the Job Creation Law's formation have not prevented the government from continuing to issue delegated regulations under it. This has led to numerous weaknesses in the delegation regulations, including their hasty creation (approximately 3 months), excessive government authority, and oversight issues. Therefore, oversight by both the executive and legislative branches, similar to the concepts in Australia and the United Kingdom, is necessary to improve the quality of the delegation regulations.*

### **keywords:**

*Control; Delegated Regulations; Job Creation Law;*

---

## A. Introduction

Delegated regulations play a crucial role in the proper implementation of the law.<sup>1</sup> With advancements in the administrative process and the development of democracy,<sup>2</sup> the number of delegated regulations in Indonesia continues to increase annually,<sup>3</sup> with a particularly significant increase occurring in 2021, with 115 Government Regulations (hereinafter referred to as "PP") and 104 Presidential Regulations (hereinafter referred to as "Perpres").<sup>4</sup> The large number of delegated regulations issued in 2021 is due to the provisions of Article 185 of Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as "Law 11/2020"), which mandates the stipulation of implementing regulations within a maximum of 3 (three) months of the Job Creation Law coming into effect on November 2, 2020.

The provisions of Article 185 of Law 11/2020 have the potential to create new regulatory complexities in Indonesia, which contradicts the goal of the omnibus law concept to simplify legislation.<sup>5</sup> This study aims to theoretically analyze the quality of the formation of good delegation regulations, especially seen from its formal aspects, so that the delegation regulations in Law 11/2020, which has now been revoked and replaced by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter abbreviated as "Law 6/2023 Job Creation") do not violate the principles of the formation of statutory regulations as mandated in Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Statutory Regulations (hereinafter abbreviated as "Law 13/2022").

Historically, Law 11/2020 contained 455 provisions mandating delegated regulations, comprising 441 government regulations (PP) and 11 presidential regulations (Perpres). By the

---

<sup>1</sup> Pasal 5 ayat (2) UUD NRI Tahun 1945 menyatakan "Presiden menetapkan peraturan pemerintah untuk menjalankan undang-undang sebagaimana mestinya". Lihat pula: Aditya Rahmadhony, Iwan Setiawan, Mario Ekoriano, Problematika "Delegated Legislation" Pada Undang-Undang Nomor 52 Tahun 2009 Tentang Perkembangan Kependudukan dan Pembangunan Keluarga, *Jurnal Legislasi Indonesia*, Vol 17, No. 4, Desember 2020, 408.

<sup>2</sup> Asaf Wiener dan Elad Man, "Considering a duty to delegate in designing regulatory legislation", *The Theory and Practice of Legislation*, Volume 7, Issue 3, 2019, DOI: 10.1080/20508840.2020.1730103, 3.

<sup>3</sup> Hal ini dapat dilihat dari jumlah PP yang dikeluarkan tahun 2016: 99 PP; 2017: 66; 2018: 60 PP; 2019: 90 PP, 2020: 81 PP; sedangkan Perpres yang dikeluarkan tahun 2016: 125 Perpres; 2017: 137 Perpres; 2018: 142 Perpres; 2019: 97 Perpres; 2020: 123 Perpres). Lihat: Sekretaris Negara Republik Indonesia, Jaringan Dokumentasi dan Informasi Hukum, Kementerian Sekretaris Negara, Produk Hukum, <https://jdih.setneg.go.id/Produk>, diakses 10 Desember 2021.

<sup>4</sup> *Ibid.*

<sup>5</sup> Bagus Hermanto dan Nyoman Mas Aryani, "Omnibus legislation as a tool of legislative reform by developing countries: Indonesia, Turkey and Serbia practice, *The Theory and Practice of Legislation*", Volume 9, Issue 3, 2021, 425. <https://doi.org/10.1080/20508840.2022.2027162>.

three-month deadline of February 2, 2021, the government had enacted at least 51 implementing regulations, comprising 47 PPs and 4 presidential regulations.<sup>6</sup>

Based on a study by the Indonesian Center for Law and Policy Studies (PSHK), the implementing regulations issued in 2021, consisting of 51 implementing regulations, contained 466 delegated provisions, of which these provisions included 11 delegations to Government Regulations, 11 to Presidential Regulations, 377 to Ministerial Regulations, 60 regulations of non-ministerial government institutions, and 7 Regional Regulations.<sup>7</sup>

Furthermore, the delegation of regulations is not only to lower regulations, such as ministerial regulations, but also contains provisions for parallel delegation between Government Regulations and between Presidential Regulations.<sup>8</sup> There are at least 11 delegated regulations from government to government regulations and one delegated regulation from a presidential regulation to a presidential regulation. Furthermore, the implementing regulations of Law 11/2020 contain 22 provisions on delegation of regulations to company regulations. These regulations are contained in two Government Regulations: Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment (19 delegated regulations) and Government Regulation Number 41 of 2021 concerning the Implementation of Free Trade Zones and Free Ports (3 delegated regulations).<sup>9</sup>

The hyperregulation caused by Law 11/2020 has the potential to render the resulting delegated regulations substandard. This has been criticized by several experts, such as Maria SW Sumarjono in the land sector, Hariadi Kartodihardjo in the Natural Resource Management sector, and the publication of the Faculty of Law, Gadjah Mada University (UGM) Yogyakarta, "Policy Paper: Critical Analysis of the Job Creation Law, November 2020." Various notes in other fields point to the messy substance, which actually demonstrates the poor drafting of Law 11/2020.<sup>10</sup>

---

<sup>6</sup> Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020 tentang Pengujian Formil Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, hlm. 293 (selanjutnya disebut "Putusan MK No. 91/PUU-XVIII/2020")

<sup>7</sup> Antoni Putra, 17 Maret 2021, "Ironi Penyederhanaan Regulasi di Cipta Kerja", <https://www.pshk.or.id/blog-id/ironi-penyederhanaan-regulasi-di-cipta-kerja/>, diakses 3 Maret 2022.

<sup>8</sup> Undang-Undang Pembentukan Peraturan Perundang-undangan memang tidak melarang adanya pendelegasian peraturan sejajar. Hal itu dituangkan dalam ketentuan teknisnya yang mengatur bentuk pendelegasian sejajar antar-undang-undang dan antar-peraturan daerah.

<sup>9</sup> Antoni Putra, "Ironi Penyederhanaan Regulasi di Cipta Kerja"

<sup>10</sup> Putusan MK No. 91/PUU-XVIII/2020, 93.

Based on the above background, this study seeks to assess the quality of the delegation regulations in Law 11/2020, which were drafted over a three-month period. Although Law 11/2020 has been revoked and replaced by Law 6/2023 on Job Creation, all its delegation regulations remain in effect and have the potential to cause various problems. Furthermore, the researcher will propose controls on delegation regulations created by the executive to prevent them from being excessive, particularly those affecting the livelihoods of the public.

## **Research Method**

The method used in this research is normative legal research, with a detailed analysis of the concept of delegated regulations and the supervision of Government Regulations and Presidential Regulations as delegated regulations in the Job Creation Law. Three approaches were chosen: a statutory regulatory approach, a conceptual approach, and a comparative approach. The collected data will then be processed, compared, and analyzed to provide a comprehensive explanation of the quality of the formulation of delegated regulations in the Job Creation Law. The analysis used is descriptive-deductive, based solely on statutory regulations and literature sources.

## **Discussion and Analysis**

### **1. Dynamics of Delegated Regulations in the Job Creation Law**

Omnibus Law is a method that is considered efficient for resolving many needs for new policies through regulations in a single process of forming laws.<sup>11</sup> In Indonesia, laws and regulations are numerous, complex, and often contradictory. The hope is that this omnibus law will streamline these regulations and create greater harmony.

However, the omnibus law's objectives are difficult to achieve within the Job Creation Law, particularly given the numerous delegated regulations that must be created. The dynamics of delegated regulations in the Job Creation Law itself are divided into three phases:

#### **a. Delegation Regulations Following the enactment of Law No. 11/2020 concerning Job Creation**

Law 11/2020 concerning Job Creation, as is known, compiled and amended 78 related laws. Through this number of laws, the government aimed to simplify regulations by creating an omnibus law. However, instead of simplification, the number of technical/implementing regulations for Law 11/2020 concerning Job Creation has

---

<sup>11</sup> Jimly Asshiddiqie, *Omnibus Law Dan Penerapannya Di Indonesia*, (Jakarta: Penerbit Konstitusi Press (Konpress), 2020). 20.

increased, and they will continue to be drafted. To date, several Government Regulations issued based on delegations or direct orders from Law 11/2020 concerning Job Creation include 47 Government Regulations (PP) and 5 Presidential Regulations (Perpres), details of which can be seen in Table 1 below.

**Table 1.** Delegation Regulation of Law No. 11/2020

| No. | Articles Followed Up by Implementing Regulations | Implementing Regulations (Form/Number/Year /Subject) | Description  |
|-----|--|--|--|
| 1   | Article 12                                       | Government Regulation (PP) No. 5 of 2021             | Implementation of Risk-Based Business Licensing.   |
| 2   | Article 176                                      | Government Regulation (PP) No. 6 of 2021             | Implementation of Business Licensing in the Regions.   |
| 3   | Articles 86, 87, 88, 89, 90, 91, 94, 104         | Government Regulation (PP) No. 7 of 2021             | Facilitation, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises (MSMEs).  |
| 4   | Article 109                                      | Government Regulation (PP) No. 8 of 2021             | Authorized Capital of Limited Liability Companies and Registration of Establishment, Amendment, and Dissolution of Companies Meeting Criteria for Micro and Small Enterprises. |
| 5   | Article 111                                      | Government Regulation (PP) No. 9 of 2021             | Tax Treatment to Support Ease of Doing Business.   |
| 6   | Articles 114 and 176                             | Government Regulation (PP) No. 10 of 2021            | Regional Taxes and Levies to Support Ease of Doing Business and Regional Services.   |
| 7   | Article 117                                      | Government Regulation (PP) No. 11 of 2021            | Village-Owned Enterprises.   |
| 8   | Article 50                                       | Government Regulation (PP) No. 12 of 2021            | Amendment to PP No. 14 of 2016 on the Implementation of Housing and Residential Areas.   |
| 9   | Article 51                                       | Government Regulation (PP) No. 13 of 2021            | Implementation of Flats (Vertical Housing).  |
| 10  | Article 52                                       | Government Regulation (PP) No. 14 of 2021            | Amendment to PP No. 22 of 2020 concerning Implementing Regulations of Law No. 2 of 2017 on Construction Services.  |
| 11  | Article 25                                       | Government Regulation (PP) No. 15 of 2021            | Implementing Regulation of Law No. 6 of 2017 on Architects.  |
| 12  | Article 24                                       | Government Regulation (PP) No. 16 of 2021            | Implementing Regulation of Law No. 28 of 2002 on Buildings.  |
| 13  | Article 104                                      | Government Regulation (PP) No. 17 of 2021            | Fourth Amendment to PP No. 15 of 2005 on Toll Roads.   |
| 14  | Article 142                                      | Government Regulation (PP) No. 18 of 2021            | Management Rights, Land Rights, Flats Units, and Land Registration.  |
| 15  | Articles 123 and 173                             | Government Regulation (PP) No. 19 of 2021            | Land Acquisition for Development in the Public Interest.   |
| 16  | Article 180                                      | Government Regulation (PP) No. 20 of 2021            | Control of Abandoned Areas and Lands.  |
| 17  | Article 17                                       | Government Regulation (PP) No. 21 of 2021            | Spatial Planning Implementation.   |
| 18  | Article 22                                       | Government Regulation (PP) No. 22 of 2021            | Environmental Protection and Management Implementation.  |
| 19  | Article 36                                       | Government Regulation (PP) No. 23 of 2021            | Forestry Implementation.   |
| 20  | Article 37                                       | Government Regulation (PP) No. 24 of 2021            | Procedures for Imposing Administrative Sanctions and Collection of Non-Tax State Revenue from Forestry Administrative Fines.   |
| 21  | Articles 39, 41, 42                              | Government Regulation (PP) No. 25 of 2021            | Implementation in the Energy and Mineral Resources Sector.   |

|    |                                     |  |  |
|----|-------------------------------------|--|--|
| 22 | Article 28                          | Government Regulation (PP) No. 26 of 2021        | Implementation in the Agriculture Sector.  |
| 23 | Articles 18, 19, 27, 115            | Government Regulation (PP) No. 27 of 2021        | Implementation in the Marine and Fisheries Sector.   |
| 24 | Article 44                          | Government Regulation (PP) No. 28 of 2021        | Implementation in the Industrial Sector.   |
| 25 | Articles 46 and 47                  | Government Regulation (PP) No. 29 of 2021        | Implementation in the Trade Sector.  |
| 26 | Article 55                          | Government Regulation (PP) No. 30 of 2021        | Implementation in Road Traffic and Transportation.   |
| 27 | Article 57                          | Government Regulation (PP) No. 31 of 2021        | Implementation in the Shipping Sector.   |
| 28 | Article 58                          | Government Regulation (PP) No. 32 of 2021        | Implementation in the Aviation Sector.   |
| 29 | Article 56                          | Government Regulation (PP) No. 33 of 2021        | Implementation in the Railway Sector.  |
| 30 | Article 81                          | Government Regulation (PP) No. 34 of 2021        | Employment of Foreign Workers.   |
| 31 | Article 81                          | Government Regulation (PP) No. 35 of 2021        | Fixed-Term Employment Agreements, Outsourcing, Working Hours, Employment Relations, Rest Periods, and Termination of Employment. |
| 32 | Article 81                          | Government Regulation (PP) No. 36 of 2021        | Wages.   |
| 33 | Article 82                          | Government Regulation (PP) No. 37 of 2021        | Implementation of Job Loss Guarantee Program.  |
| 34 | Article 68                          | Government Regulation (PP) No. 38 of 2021        | Umrah Pilgrimage Travel Cost Holding Accounts.   |
| 35 | Article 48                          | Government Regulation (PP) No. 39 of 2021        | Implementation in the Halal Product Assurance Sector.  |
| 36 | Article 150                         | Government Regulation (PP) No. 40 of 2021        | Implementation of Special Economic Zones.  |
| 37 | Article 152                         | Government Regulation (PP) No. 41 of 2021        | Implementation of Free Trade Zones and Free Ports.   |
| 38 | Articles 3(d), 26, 31, 36, 124, 173 | Government Regulation (PP) No. 42 of 2021        | Facilitation of National Strategic Projects.   |
| 39 | Article 17                          | Government Regulation (PP) No. 43 of 2021        | Settlement of Inconsistencies between Spatial Plans, Forest Areas, Permits, and Land Rights.                                     |
| 40 | Article 118 and Article 185(b)      | Government Regulation (PP) No. 44 of 2021        | Enforcement of Prohibition of Monopolistic Practices and Unfair Business Competition.  |
| 41 | Article 20                          | Government Regulation (PP) No. 45 of 2021        | Implementation of Geospatial Information.  |
| 42 | Articles 70, 71, 72                 | Government Regulation (PP) No. 46 of 2021        | Post, Telecommunications, and Broadcasting.  |
| 43 | Article 61                          | Government Regulation (PP) No. 47 of 2021        | Implementation in the Hospital Sector.   |
| 44 | Article 106                         | Government Regulation (PP) No. 48 of 2021        | Third Amendment to PP No. 31 of 2013 on Implementing Regulations of Law No. 6 of 2011 on Immigration.                            |
| 45 | Article 135                         | Government Regulation (PP) No. 64 of 2021        | Land Bank Agency.  |
| 46 | Article 158                         | Government Regulation (PP) No. 110 of 2021       | Additional State Capital Participation in the Investment Management Agency.  |
| 47 | Article 158                         | Government Regulation (PP) No. 111 of 2021       | Additional State Capital Participation in the Investment Management Agency.  |
| 48 | Article 50                          | Presidential Regulation (Perpres) No. 9 of 2021  | Housing Development Acceleration Agency.   |
| 49 | Article 77                          | Presidential Regulation (Perpres) No. 10 of 2021 | Investment Business Sectors.   |
| 50 | Article 20                          | Presidential Regulation (Perpres) No. 11 of 2021 | Cooperation between Central Government and State-Owned Enterprises in Providing Basic Geospatial Information.                    |



|    |             |   |   |
|----|-------------|---|---|
| 51 | Article 121 | Presidential Regulation (Perpres) No. 78 of 2021  | National Research and Innovation Agency.              |
| 52 | Article 134 | Presidential Regulation (Perpres) No. 113 of 2021 | Structure and Administration of the Land Bank Agency. |

Source: Data processed from the Legal Documentation and Information Network (JDIH) of the Cabinet Secretariat of the Republic of Indonesia

In general, most Government Regulations (Peraturan Pemerintah/PP) were enacted based on the mandate of the Job Creation Law (Law No. 11 of 2020). However, there are also several Government Regulations that were issued not directly as implementing provisions of specific articles of the Job Creation Law, but rather based on articles contained in other laws. Examples include: (1) Government Regulation No. 65 of 2020, which implements the provisions of Article 4(a) of Law No. 19 of 2003 on State-Owned Enterprises, as amended by Law No. 11 of 2020 on Job Creation; (2) Government Regulation No. 19 of 2022, which implements the provisions of Article 23 of Law No. 23 of 2014 on Regional Government, as amended several times, most recently by Law No. 11 of 2020 on Job Creation; and (3) Government Regulation No. 41 of 2022, which implements the provisions of Article 7 paragraph (4) of Law No. 39 of 2009 on Special Economic Zones, as amended by Law No. 11 of 2020 on Job Creation. In addition, there are three other Government Regulations that refer to Law No. 11 of 2020 on Job Creation in the “considering” section of their legal basis, including Government Regulation No. 49 of 2021 and Government Regulation No. 113 of 2021. With regard to Presidential Regulations (Peraturan Presiden/Perpres), all Presidential Regulations were issued with direct reference to specific articles of Law No. 11 of 2020.

b. Delegation Regulations Following Constitutional Court Decision Number 91/PUU-XVIII/2020

For the first time, the Constitutional Court partially granted a formal judicial review petition through Decision Number 91/PUU-XVIII/2020. The Panel of Constitutional Justices declared that Law No. 11 of 2020 on Job Creation suffers from formal defects. Therefore, the Constitutional Court held that the Law is inconsistent with the 1945 Constitution of the Republic of Indonesia. The full ruling of Constitutional Court Decision Number 91/PUU-XVIII/2020, particularly in dictum 3, states as follows:<sup>12</sup>

“To declare that the enactment of Law Number 11 of 2020 on Job Creation is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally

<sup>12</sup> Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020, 416.

has no binding legal force insofar as it is not interpreted as ‘no amendments are made within a period of 2 (two) years from the pronouncement of this decision’”

The conditional decision model in the UUCK is known as a non-self-executing decision model because it cannot be immediately implemented. Typically, the implications of this conditional decision must go through the legislative process, either through the creation of a law or through amendments to the law. This decision contains an order to the address to make changes to the constitutional basis within a time limit of two years. During this time, the validity of the law is suspended by the time limit specified in the Constitutional Court decision.<sup>13</sup>

Even though the Job Creation Law is in a conditionally unconstitutional position, the Government still issued new implementing regulations related to Law No. 11 of 2020 concerning Job Creation, including:

**Table 2.** Implementing Regulations of Law No. 11 of 2020 Constitutional Court Decision Number 91/PUU-XVIII/2020

| No. | Implementing Regulation   | Description / Remarks  |
|-----|---|--|
| 1   | Presidential Regulation (Perpres) No. 32 of 2022 on the Commodity Balance   | Issued on 21 February 2022 pursuant to Government Regulation (PP) No. 29 of 2021 on the Implementation of the Trade Sector, and in the context of issuing import approvals for fisheries commodities, as an implementing regulation of Law No. 11 of 2020 on Job Creation. |
| 2   | Minister of Agriculture Regulation No. 05 of 2022 on the Supervision of Import Recommendation for Horticultural Products  | Issued on 17 May 2022 based on Article 12 of Law No. 11 of 2020 on Job Creation.   |
| 3   | Minister of Trade Regulation of the Republic of Indonesia No. 25 of 2022 on the Amendment to Minister of Trade Regulation No. 20 of 2021 on Import Policies and Arrangements  | Issued on 9 May 2022, this regulation was enacted based on Minister of Trade Regulation No. 20 of 2021 concerning Import Policies and Arrangements.  |
| 4   | Regulation of the Minister of Investment/Head of the Investment Coordinating Board No. 1 of 2022 on Procedures for Implementing Partnerships in the Investment Sector between Large Enterprises and Micro, Small, and Medium Enterprises (MSMEs) in the Regions                             | Issued on 10 February 2022 pursuant to Government Regulation No. 7 of 2021 on the Facilitation, Protection, and Empowerment of Cooperatives and MSMEs, as an implementing regulation of Law No. 11 of 2020 on Job Creation.  |
| 5   | Decree of the Minister of Environment and Forestry No. 1 of 2022 on the Revocation of Forest Area Concession Licenses   | Issued on 5 January 2022 as an implementing regulation of Law No. 11 of 2020 on Job Creation.  |
| 6   | Decree of the Minister of Environment and Forestry No. SK.287/MENLHK/SETJEN/PLA.2/4/2022 on the Designation of Forest Areas under Special Management in Parts of State Forests Located in Production and Protected Forest Areas in Central Java, East Java, West Java, and Banten Provinces | Issued on 5 April 2022 pursuant to Government Regulation No. 23 of 2021 on Forestry Administration, as an implementing regulation of Law No. 11 of 2020 on Job Creation.   |
| 7   | Decree of the Minister of Environment and Forestry No. SK.5564/MENLHK-PKTL/PPKH/PLA.2/6/2022 on the Indicative  | Issued on 21 June 2022 pursuant to Minister of Environment and Forestry Regulation No. 7 of 2021 on Forestry Planning, Changes in Forest Area Allocation and Function, and Forest Area   |

<sup>13</sup> Hasdinar, “Implikasi Putusan Mk Nomor 91/Puuxviii/2020 Tentang Pengujian Undang-Undang Tentang Cipta Kerja Terhadap Pembentukan Peraturan Daerah”, *Jurnal Legislatif*, 6(1), 2022, <https://doi.org/10.20956/jl.v6i1.23884>.



|    |   |   |
|----|---|---|
|    | Map for Settlement of Land Tenure within Forest Area Arrangement (PPTKH)  | Utilization, as an implementing regulation of Law No. 11 of 2020 on Job Creation.   |
| 8  | Minister of Manpower Regulation of the Republic of Indonesia No. 18 of 2022 on the Determination of the Minimum Wage for 2023 | Issued on 16 November 2022 as an implementing regulation of Government Regulation No. 36 of 2021 on Wages, which was enacted as part of the implementation of Law No. 11 of 2020 on Job Creation. |
| 9  | Presidential Regulation (Perpres) No. 113 of 2021 on the Structure and Administration of the Land Bank Agency                 | Issued on 27 December 2021 as an implementing regulation of the Job Creation Law.   |
| 10 | Government Regulation (PP) No. 124 of 2021 on the Capital of the Land Bank Agency   | Issued on 30 December 2021 pursuant to Government Regulation No. 64 of 2021 on the Land Bank Agency, as an implementing regulation of Law No. 11 of 2020 on Job Creation.                         |
| 11 | Government Regulation (PP) No. 19 of 2022 on Deconcentration and Co-Administration Tasks                                      | Issued on 9 May 2022 to implement the provisions of Article 23 of Law No. 23 of 2014 on Regional Government, as amended several times, most recently by Law No. 11 of 2020 on Job Creation.       |
| 12 | Government Regulation (PP) No. 41 of 2022   | Issued on 1 November 2022 to implement the provisions of Article 7 paragraph (4) of Law No. 39 of 2009 on Special Economic Zones, as amended by Law No. 11 of 2020 on Job Creation.               |

Data adapted from Kepal, "Executive Summary: Monitoring Report on Violations of Constitutional Court Decisions in the Formal Review of the Job Creation Law," Jakarta, December 2022 and developed by the author.

The issuance of the various implementing regulations mentioned above demonstrates a failure to comply with the Constitutional Court's ruling, which requires revisions before issuing new policies. This practice has the potential to create legal uncertainty and violate citizens' constitutional rights, as derivative regulations are derived from laws whose legal validity is still pending. This government action can be viewed as a weakening of the constitutionality review function and raises the risk of future normative conflicts.

c. Delegated Regulations Following the Enactment of Law No. 6 of 2023 on the Adoption of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law

One year after the Constitutional Court's decision, the Government unexpectedly issued Government Regulation in Lieu of Law (Perppu) No. 2 of 2022 on Job Creation to replace Law No. 11 of 2020 on Job Creation, which had been declared conditionally unconstitutional. With regard to the legal status of delegated regulations that had already been enacted pursuant to Law No. 11 of 2020 on Job Creation, Article 18 letter (b) of the Job Creation Perppu provides as follows:

"All laws and regulations that constitute implementing regulations of Law Number 11 of 2020 on Job Creation shall remain in force insofar as they do not conflict with this Government Regulation in Lieu of Law"

Furthermore, the Government sought to immediately implement various strategic policies, particularly those related to Law No. 6 of 2023 on Job Creation. It can be observed that several delegated regulations have been enacted following the issuance of this Law. These delegated regulations are presented in the following table:

**Tabel 3.** Delegation Regulations Following the Issuance of Law No. 6/2023 on Job Creation

| No. | Delegated Regulation                             | Description / Remarks   |
|-----|--|---|
| 1   | Government Regulation (PP) No. 24 of 2023        | Work competency certification in the tourism sector.  |
| 2   | Government Regulation (PP) No. 39 of 2023        | Amendment to Government Regulation No. 19 of 2021 concerning the implementation of land acquisition for development in the public interest.   |
| 3   | Presidential Regulation (Perpres) No. 27 of 2023 | Amendment to Presidential Regulation No. 52 of 2022 on addressing social and community impacts on land identified as extinguished land ( <i>tanah musnah</i> ) in the context of development for the public interest. |
| 4   | Presidential Regulation (Perpres) No. 29 of 2023 | Zoning plan for the interregional marine area of the Flores Sea.  |
| 5   | Presidential Regulation (Perpres) No. 30 of 2023 | Zoning plan for the interregional marine area of the Malacca Strait.  |
| 6   | Presidential Regulation (Perpres) No. 37 of 2023 | National water resources policy.  |
| 7   | Presidential Regulation (Perpres) No. 40 of 2023 | Acceleration of national sugar self-sufficiency and provision of bioethanol as renewable fuel ( <i>biofuel</i> ).   |

Source: Data processed from the Legal Documentation and Information Network (JDIH) of the Cabinet Secretariat of the Republic of Indonesia

## 2. The Quality of Delegated Regulations in the Job Creation Law

The beginning of the 21st century marked significant progress in the science of legal regulation. This century marked the emergence of new criteria for achieving good governance: the quality of laws and regulations. In line with this, in 2006, the World Bank formulated six criteria to measure the level of governance in 199 countries, one of which is the quality of regulations.<sup>14</sup>

The quality of legislation is of direct concern to economic development and democracy.<sup>15</sup> In order to describe the problem of the quality of delegation regulations, it is necessary to review them in relation to the general principles of good governance, especially those related to the rule of law, division of power, political stability, transparency, accountability, good management practices, and community participation.

To date, Indonesia has not yet established a standardized framework for drafting high-quality delegated regulations. Nevertheless, there are generally accepted standards for achieving well-developed delegated legislation. These standards include:

<sup>14</sup> Cintia Costa de Abreu, Regulatory Quality and the Regulatory System in the UK, Makalah Akhir yang Dipresentasikan dalam Hansard Research Scholars Programme, London School of Economics, 2010, hlm. 6.

<sup>15</sup> Secretary General of the Council of Europe, State of Democracy, Human Rights and the Rule of Law: Role of institutions Threats to institutions, Council of Europe Publications, 2018, hlm. 71.

1. The legal ideals of statutory and regulatory formation
2. The authority to enact legislation and regulations
3. The procedural process for the formulation of delegated regulations

Delegated regulations under the Job Creation Law contain numerous weaknesses and do not conform to the standards of good legislative drafting. The following outlines the key deficiencies within the Job Creation Law:

1. The rushed formulation of delegated regulations leads to poor-quality law

In legislative practices across any country, regulations drafted only weeks or even days before promulgation frequently result in poor lawmaking. Policies developed rapidly and finalized at the last minute, with minimal consultation even within government institutions—let alone with external stakeholders—tend to produce inferior outcomes. Such policies are often less carefully considered, more inconsistent, and more vulnerable to unintended loopholes and anomalies. This approach also contributes to inadequate drafting quality. It is almost inevitable that instruments produced in haste, with limited scrutiny, will contain avoidable errors.

Furthermore, a survey conducted by the Hansard Society indicates that delegated legislation produced during the pandemic period led to an increased level of “oversight, technical mistakes, and drafting deficiencies.” Even where delegated regulations are technically correct, hastily drafted laws may still be difficult to follow. Time constraints may force drafters to adopt less elegant solutions—for instance, inserting fragmented new provisions into existing statutes—whereas additional time could allow for more streamlined, user-friendly, and coherent regulatory design.<sup>16</sup>

Drafting delegated regulations within a short timeframe also means that such regulations are not made available in a timely manner to those affected by them—businesses, schools, individual members of society, or their legal counsel—so that they may properly understand, prepare for, and comply with the new requirements. The same applies to the police and other authorities responsible for enforcing the law. As a consequence, this situation generates confusion regarding what the law actually provides and leads to inconsistencies in its enforcement.

---

<sup>16</sup> Jonathan Jones QC, “Reliance on secondary legislation has resulted in significant problems: it is time to rethink how such laws are created”, <https://constitution-unit.com/2021/10/13/reliance-on-secondary-legislation-has-resulted-in-significant-problems-it-is-time-to-rethink-how-such-laws-are-created/>, diakses 9 Juli 2023.

2. The problem of power

a. The powers granted to the President to make delegated regulations are often too broad

In general, based on the theory of separation of powers, laws are enacted by the legislature, implemented by the executive, and interpreted by the judiciary. Law No. 13 of 2022 provides only broad limitations regarding the scope of regulatory content that may be governed under various types of legislation and regulations. However, there is no absolute and universal formula for determining, in all cases, which powers must be exercised by the legislative body and which powers may be delegated. The boundary between legislative functions that are essentially non-delegable and those that may be delegated is often difficult to define or distinguish clearly.<sup>17</sup>

b. The boundary between what should be regulated in a Law and what should be governed through delegated regulations becomes blurred

In principle, a Law contains provisions relating to matters of policy and fundamental principles. Delegated regulations, on the other hand, deal with the technical aspects of implementing and operationalizing the Law. Although there are legitimate reasons for delegating authority to the executive branch, any decision to authorize the enactment of delegated legislation must be justified on its own merits. Certain matters, such as restrictions on fundamental human rights, clearly fall within the domain of statutory law. However, the distinction is not always straightforward, and some issues may be suitable for regulation either through primary legislation or delegated legislation. The following are matters that ideally should be included within the substantive scope of a Law, as provided under Law No. 13 of 2002:

- a) Further regulation of provisions in the 1945 Constitution that explicitly require statutory enactment.
- b) Further general regulation of the basic rules contained in the Articles (main body) of the 1945 Constitution.
- c) Regulation in the fields of:
  - relations among state institutions;
  - relations between citizens/residents;

---

<sup>17</sup> National Conference of State Legislatures, 16 November 2022, Separation of Powers: Delegation of Legislative Power, <https://www.ncsl.org/about-state-legislatures/separation-of-powers-delegation-of-legislative-power>, diakses 16 Juli 2023.

- relations between citizens/residents;<sup>18</sup>

In contrast, best practices based on comparative experiences in other countries, such as New Zealand, demonstrate that the substantive content of a Law is regulated in a more detailed manner. At a minimum, it should include:<sup>19</sup>

- 1) Significant policy matters;
- 2) Policies affecting fundamental human rights;
- 3) The creation of significant new public powers, such as search or seizure of property;
- 4) The granting or modification of rights of appeal;
- 5) Variations to the general law;
- 6) The creation of serious criminal offences and the imposition of significant penalties;
- 7) Authorization for taxation, borrowing, or the expenditure of public funds;
- 8) The establishment of new public bodies;
- 9) Amendments to other statutes;
- 10) Retrospective changes to the law;
- 11) Procedural matters that go to the essence of the legislative scheme.

Within the context of delegated legislation in Indonesia, Government Regulations (PP) are issued primarily to implement:

- a) further regulation of provisions in a statute that explicitly mandates such regulation;
- b) further regulation of statutory provisions that require implementation even if not expressly stated.

Furthermore, Presidential Regulations (PP) are intended to govern:

- a) regulations necessary for the exercise of governmental executive power as attributed under Article 4 paragraph (1) of the 1945 Constitution;
- b) further implementation of statutory commands, whether explicitly or implicitly mandated;

---

<sup>18</sup> Nuryanti Widyastuti, *Jenis, Hirarki, Fungsi, Dan Materi Peraturan Perundang-Undangan*, Jakarta, 28 Juli 2021, Direktorat Jenderal Peraturan Perundang-Undangan Menteri Hukum dan Hak Asasi Manusia, [https://pusdik.mkri.id/materi/materi\\_234\\_JENIS,%20HIRARKI,%20FUNGSI,%20DAN%20MATERI%20PUU%20Jul%202021%20revisi.pdf](https://pusdik.mkri.id/materi/materi_234_JENIS,%20HIRARKI,%20FUNGSI,%20DAN%20MATERI%20PUU%20Jul%202021%20revisi.pdf), diakses 29 Juli 2023.

<sup>19</sup> Legislation Design and Advisory Committee, *Legislation Guidelines*, 2021 Edition, <http://www.lac.org.nz/assets/documents/LDAC-Legislation-Guidelines-2021-edition-v2.pdf>, diakses 25 Juli 2023.

- c) further implementation of Government Regulation directives, whether explicitly or implicitly mandated.

When examining the comparative experience of New Zealand, delegated regulations may only be enacted when they are necessary to give effect to an Act of Parliament. This is particularly useful in situations where the implementation of legislation frequently changes, or where flexibility is desired for various other reasons. The following are matters that are appropriately included within delegated regulations:<sup>20</sup>

- 1) mechanisms for implementing the Law, including fees, the format and content of documents, and certain lower-level procedural requirements;
- 2) matters that are highly technical in nature;
- 3) provisions that enable potential developments, the likelihood of which is not yet known;
- 4) the need for flexibility or regular technical updates;
- 5) the need to respond to emergencies or other circumstances requiring rapid action;
- 6) matters that require consultation.

Due to the unclear parameters under Law No. 13 of 2022 regarding the boundaries of regulatory content between primary legislation and its delegated regulations, this may generate long-term and potentially damaging consequences, including for the supremacy of law. In a free society that respects the rule of law, only statutes should have the authority to criminalize conduct, and individuals must remain able to decide whether to comply with governmental guidance. The Government bears the responsibility to ensure that both the public and law enforcement authorities have a clear understanding of the distinction between guidance and binding law.

- c. When the legislature accepts controversial provisions within a delegated regulation, it establishes a precedent that makes it politically easier for the government to argue for taking on similar powers in subsequent delegated regulations, thereby creating a “normalisation” or “ratchet” effect.
- d. Broad powers in the making of delegated regulations may be exercised in the future in unforeseen ways that were not anticipated by the legislature at the present time.

---

<sup>20</sup> *Ibid*



- e. An excessive volume of delegated regulations now contains substantive regulatory provisions rather than policy, making them difficult for the legislature to properly scrutinise.

### 3. Oversight Issues in Delegated Regulations in Indonesia

There is no reasonable correlation between the substantive content of delegated regulations and the scrutiny procedures to which they are subject.

- a. The legislature does not have the authority to amend delegated regulations; therefore, objections or rejections of Government Regulations (PP) or Presidential Regulations (Perpres) that have already been enacted may effectively be disregarded.
- b. Executive control over the legislative agenda limits legislators' ability to secure regulatory debates on delegated regulations that raise public concern.
- c. Oversight procedures are superficial and often time-consuming, particularly within the House of Representatives (DPR).
- d. No sanctions are imposed on the government for issuing poorly drafted or low-quality delegated regulations.
- e. Certain delegated regulations employ confusing systems and overly complex terminology.

The formation of delegated regulations for the implementation of Law No. 11 of 2020 on Job Creation reveals fundamental problems in Indonesia's regulatory governance. The Constitutional Court, through Decision No. 91/PUU-XVIII/2020, declared the law conditionally unconstitutional and ordered corrective measures to be completed within a two-year period. However, before such revisions were fully carried out, the government continued to issue various implementing regulations. This practice creates a constitutional anomaly, as subordinate regulations are enacted on the basis of a parent norm whose validity has been temporarily suspended. Consequently, legal certainty is weakened, and the potential for normative conflicts becomes increasingly significant.

First, from the perspective of the legal ideals (*cita hukum*) underlying the formation of legislation, this practice contradicts principles that emphasize legal certainty (*rechtssicherheit*), justice (*gerechtigkei*), and utility or expediency (*zweckmassigkeit*). Regulatory drafting should be conducted through a process that guarantees transparency, participation, and prudence, so that the resulting regulations are not only formally valid but also reflect substantive justice. The accelerated drafting of delegated regulations under the Job Creation Law has instead

neglected the principles of openness and careful deliberation, thereby weakening the quality of the regulations, their harmonization, and their enforceability.

Second, from the aspect of regulatory authority, the 1945 Constitution adopts the principle of separation of powers: the legislative function lies with the House of Representatives (DPR) together with the President, while the implementation of laws falls within the executive domain. The delegation of authority to the President to formulate implementing regulations must therefore be limited to technical and implementative matters. However, the Job Creation Law grants an excessively broad mandate to the government, even on issues involving strategic policy choices, human rights, and restrictions on citizens' freedoms. Such overly expansive delegation, without clear parameters, weakens the DPR's oversight function and creates opportunities for abuse of power, as matters that should be regulated through legislative approval are shifted into the exclusive authority of the executive.

Third, from the perspective of the regulatory drafting process, the accelerated preparation of delegated regulations has resulted in the suboptimal implementation of essential stages such as planning, the drafting of academic papers, inter-ministerial harmonization, and public consultation. As a consequence, many provisions have been formulated with inadequate legislative drafting techniques, confusing terminology, and overlapping regulatory arrangements. The closed nature of the process has also limited opportunities for public participation and stakeholder input, even though such participation is a crucial requirement for democratic legitimacy and policy quality. This condition has generated several serious consequences, namely:

1. Regulations enacted in haste tend to contain technical errors and ambiguities that hinder effective implementation for both law enforcement authorities and the public.
2. The minimal public involvement reduces democratic legitimacy, as regulations with broad societal impact are not subject to the deliberative mechanisms that should properly accompany the legislative process.
3. The dominance of the executive branch in drafting delegated regulations creates a dangerous precedent: it becomes politically easier for the government to appropriate legislative space in the future, thereby weakening the principle of checks and balances.

To prevent the recurrence of similar practices, lawmakers need to strengthen the legal norms governing the delegation of authority. Legislation must establish clear criteria regarding

which matters may be delegated, require regulatory impact assessments, and ensure meaningful public consultation mechanisms. The House of Representatives (DPR) should also be granted stronger powers to review or suspend delegated regulations that concern strategic policies those with broad societal implications or affecting the livelihood of the public and fundamental human rights. In this way, the process of enacting delegated regulations will align with the legal ideals of lawmaking, maintain the balance of powers, protect the constitutional rights of citizens, and reinforce the principles of a democratic rule-of-law state.

### **3. Model of Control over Delegated Regulations under the Job Creation Law**

#### **1) Oversight at the Executive Level**

In Indonesian constitutional practice, the issuance of Government Regulations (Peraturan Pemerintah/PP) and Presidential Regulations (Peraturan Presiden/Perpres) lies entirely in the hands of the President, without oversight from any other institution. The centralization of authority over PP and Perpres thus becomes an untouchable power that no one can interfere with. In short, the President functions as the sole authority. Placing such exclusive authority in the hands of the President offers certain advantages, particularly in enabling the efficient maximization of regulatory power. However, in the absence of internal executive oversight, this arrangement may lead to the potential emergence of excessive or overreaching regulations.

Oversight commonly carried out by the Government is generally referred to as executive review. At least three benefits may be achieved if the role of executive review is strengthened. First, it contributes to better management of the legislative and regulatory drafting process. Second, the evaluation results can inform whether the objectives of a regulation have been achieved, while also identifying both the positive and negative impacts of its implementation. Third, given the interaction between law and social change, maintaining the coherence of the legal system requires that older regulations be adjusted in response to new developments.<sup>21</sup>

These benefits, technically, can be translated into conducting regular evaluations, systematically assessing all significant regulations, increasing the consistency of the regulatory stock, and reducing unnecessary regulatory burdens.<sup>22</sup> Until now, oversight of executive-

---

<sup>21</sup> Bayu Dwi Anggono, "Peranan Presiden Dalam Penataan Perundang-Undangan di Bawah Undang-Undang", *Jurnal Majelis* (2019), 106.

<sup>22</sup> *Ibid.*, 110.

issued regulations has been carried out by the relevant ministers. Continuing the implications explained previously, the President ultimately holds sole authority over the issuance of Government Regulations (PP) and Presidential Regulations (Perpres), allowing him to easily evaluate, correct, and directly supervise their implementation.

So far, the Ministry of Law and Human Rights has conducted such evaluations. Referring to Article 38 of Presidential Regulation Number 44 of 2015 concerning the Ministry of Law and Human Rights, it is stated that the National Legal Development Agency (Badan Pembinaan Hukum Nasional/BPHN) has, among its duties, “the monitoring, evaluation, and reporting on the implementation of legal analysis and evaluation, legal planning, legal education and assistance, as well as legal documentation and legal information networks.” The activities undertaken by the National Legal Development Agency (BPHN) may be regarded as a form of internal control, namely supervising legal products issued by the executive itself, whether in the form of regulatory instruments or policy measures, by revoking or replacing existing regulations with new ones.<sup>23</sup> Since the President has sole authority, it would be preferable for the President to directly, in addition to the BPHN's own initiative, instruct the BPHN to evaluate and oversee the regulations issued. This is a logical consequence of the President's position as head of the executive in a presidential system.

The role of the President as a supervisory party, through the one-stop shop BPHN, is to identify weaknesses or errors to improve and take preventive measures so that the same errors do not recur.<sup>24</sup> Furthermore, supervision is an important mechanism for realizing national legal development through the formation of laws and regulations that are oriented towards justice and welfare, while adhering firmly to the applicable rule of law.<sup>25</sup> With the President as the sole authority holder, then issuing direct orders to the minister, in this case the Ministry of Law and Human Rights, primarily through the BPHN, supervision will be easy to carry out, in order to detect what detailed material will be offered and included in both the PP and the Perpres.<sup>26</sup>

---

<sup>23</sup> Taufik H. Simatupang, “Mendudukan Konsep Executive Review Dalam Sistem Ketatanegaraan Indonesia”, *Jurnal Penelitian Hukum De Jure* Volume 19 Nomor 2 (2019), 225.

<sup>24</sup> Ni'matul Huda, *Hukum Pemerintahan Daerah*, (Bandung: Nusa Media, 2009), 103.

<sup>25</sup> Tim Peneliti, “Laporan Penelitian Pengawasan Terhadap Produk Hukum Daerah Dalam Rangka Mewujudkan Pembangunan Hukum Nasional.”, (Jakarta: Kerja sama antara DPR dengan Pusat Kajian Dampak Regulasi dan Otonomi Daerah Fakultas Hukum UGM, 2009), 140.

<sup>26</sup> Miftah Faried Hadinatha, “Penataan Materi Muatan Peraturan Pemerintah dan Peraturan Presiden dalam Sistem Hukum Indonesia”

The model of control over delegated legislation under the Job Creation Law places the President as the sole authority in the issuance of Government Regulations (PP) and Presidential Regulations (Perpres). This centralization of power indeed offers the advantage of efficiency, as the regulatory drafting process can proceed swiftly without bureaucratic obstacles between institutions. The President may directly instruct the National Legal Development Agency (BPHN) under the Ministry of Law and Human Rights to conduct monitoring, evaluation, and corrective measures with respect to both Government and Presidential Regulations, thereby enabling such regulations to be routinely adjusted in accordance with social developments and evolving legal needs. When optimized, an internally conducted executive review mechanism can ensure better regulatory management, assess whether the objectives of a regulation have been achieved, and maintain the coherence of the legal system through periodic evaluation as well as the revocation of obsolete rules.

However, this concentration of authority also entails significant risks to the principles of the rule of law and democracy. When the President exercises full control without the involvement of the legislature or any external oversight mechanism, the emergence of excessive regulations and interest-driven bias becomes difficult to avoid. The absence of a requirement to involve the House of Representatives (DPR) or the public in the evaluation process diminishes the legitimacy of delegated regulations and renders them more vulnerable to social resistance. In other words, while internal supervision may detect technical deficiencies, the lack of horizontal oversight from the legislature and meaningful public participation weakens accountability and creates opportunities for the abuse of power. Therefore, in order for this control model to remain consistent with the fundamental ideals of law-making, it is necessary to design a system of checks and balances that allows both the DPR and the public to play a role in monitoring the substance of delegated legislation, without undermining executive efficiency.

## 2) Supervision at the Legislative Level

Legislative institutions can play a role in preventive control measures. The House of Representatives (DPR) assists the government in selecting the most important policies, particularly legally and politically. Furthermore, these delegated regulations can be subject to widespread consultation and publication.<sup>27</sup>

---

<sup>27</sup> Handsard Society, Delegated Legislation Review, <https://www.hansardsociety.org.uk/projects/delegated-legislation-review>, diakses 9 Juli 2023.

There are two general ways in which the legislature can control delegated legislation. Delegated legislation can be requested to be laid before the House of Representatives, and it will not take effect until the House approves it—either by affirmative resolution, or after a specified period of time without the delegated legislation being repealed. Alternatively, delegated legislation can take effect immediately but can be repealed by the House within a specified period. These two are the most common methods, but there are many variations.<sup>28</sup>

For example, in the UK, delegated legislation in the form of Statutory Instruments must be approved by a vote of each House of Parliament before being enacted, or are subject to a veto by either house within a specified period after being enacted. Furthermore, the UK has a Scrutiny Committee within the House of Lords to consider the appropriateness of the provisions in each draft delegated legislation. These findings are reported to the House of Lords, but they have no power to amend the draft.<sup>29</sup>

In the Australian Parliament, the Senate or the House of Representatives may disallow delegated legislation. This power was granted during the early years of the federation, when the House of Representatives was understood to represent the people, while the Senate represented the states. These two chambers therefore possess distinct and separate powers.

Australia has also established the Senate Standing Committee for the Scrutiny of Bills, which was founded in 1981. This oversight committee plays a significant role, as its terms of reference include an instruction to report on whether any legislation improperly delegates legislative power, or whether such delegated authority is not made subject to adequate parliamentary scrutiny. In practice, however, the committee faces substantial challenges. It examines more than 200 delegated regulations each year and issues comments on approximately 40 percent of them, with the assistance of independent legal advisers. The committee's mandate is to review every delegated regulation and to ensure that:<sup>30</sup>

- a. The delegated regulation is consistent with the enabling Act or other higher-ranking legislation.
- b. It does not unduly infringe upon individual rights and personal freedoms.
- c. It does not make citizens' rights and freedoms dependent upon administrative decisions that cannot be reviewed by courts or other independent institutions; and

---

<sup>28</sup> David Hamer, *Can Responsible Government Survive In Australia?*, Canberra: The Department of the Senate, Parliament House, 2004.

<sup>29</sup> Moh. Fadli, "Perkembangan Peraturan Delegasi di Indonesia". Disertasi tidak Diterbitkan, Program Doktor Ilmu Hukum, Fakultas Hukum, Universitas Padjajaran, Bandung, 2012, 178.

<sup>30</sup> David Hamer, *Can Responsible Government Survive In Australia...*



d. It does not contain matters that would be more appropriately enacted directly by Parliament.

The committee is supported by independent legal advisers, who examine each of the approximately 1,200 regulations issued annually by the federal government. On average, the committee raises concerns in relation to around 170 delegated regulations that appear to contravene these principles. The Senate, however, does not possess the authority to amend or partially disallow specific provisions of a delegated instrument. Where the committee agrees with the assessment of its legal advisers, efforts are made to negotiate with the responsible minister regarding the necessary revisions. In practice, roughly three-quarters of the issues raised are resolved satisfactorily, either through acceptable ministerial responses, clarifications, or commitments to introduce the required amendments.<sup>31</sup>

If negotiations fail or become excessively prolonged, a notice of a disallowance motion is then introduced in the Senate. Such a motion must be addressed within a maximum of 15 sitting days from the time the instrument is tabled. If it is not dealt with within that period, the delegated regulation is automatically rendered ineffective and cannot be enforced. Furthermore, a regulation that has been disallowed may not be reissued in the same form for a period of six months, unless special permission is granted by the Senate. The possibility of disallowance serves as a strong incentive for ministers to respond promptly and responsibly. To date, the committee has operated with considerable effectiveness, and the public need only consider the undesirable regulations that have been successfully prevented to understand what might occur in the absence of such oversight. Common examples of regulations amended as a result of committee objections include those that reverse the burden of proof, as well as those that confer significant powers upon bureaucratic authorities.<sup>32</sup>

Based on the examples from the United Kingdom and Australia, legislative oversight is crucial in exercising control over delegated regulations issued by the executive branch. Therefore, there are compelling reasons to reconsider and restructure the use of delegated legislation, which may include the following measures:

1. Stricter scrutiny over the scope of delegated powers, the objectives for which they are granted, and the applicable legislative review procedures governing their implementation. Although there is no constitutionally fixed boundary between the proper and improper use of delegated legislation, it is still possible to articulate certain tests. For instance, delegated

---

<sup>31</sup> *Ibid*

<sup>32</sup> *Ibid*

regulations should not be used to establish policies or fundamental principles, but should be limited to administrative or regulatory purposes.<sup>33</sup>

2. The possibility of designing sector-specific legislative oversight procedures for delegated regulations, particularly in areas that directly affect the livelihood and welfare of the broader population.
3. The establishment of categories of delegated regulations, for example those that impose restrictions on individual rights and freedoms, or those that prescribe penalties above a certain threshold.
4. A general rule requiring delegated regulations to be issued for a minimum period before entering into force, rather than becoming immediately effective upon promulgation.
5. Clearer protocols for the publication and accessibility of delegated regulations, especially in circumstances where such regulations must be enacted rapidly.

Furthermore, when delegated legislation amends existing statutes, it should become standard practice to simultaneously publish a consolidated version of the amended statute. This would greatly enhance transparency and legal comprehension, particularly where the amendments are highly complex or are scheduled to take effect within a short timeframe.

## Conclusion

Since the enactment of the Job Creation Law (UU Cipta Kerja) in October 2020 until the issuance of Constitutional Court Decision No. 91/PUU-XVIII/2020 in November 2021, the government moved swiftly to promulgate a wide range of implementing regulations within a relatively short period. In less than two years, dozens of Government Regulations (Peraturan Pemerintah) and Presidential Regulations (Peraturan Presiden), including Ministerial Regulations, were issued as direct derivatives of the Job Creation Law. Notably, some of these regulations were even enacted after the Constitutional Court declared the law conditionally unconstitutional. This dense periodization reflects an extremely active and responsive dynamic of delegated legislation in support of the government's economic reform agenda. However, it simultaneously raises concerns regarding consistency, transparency, and legitimacy, as the legislative process unfolded amid significant legal uncertainty.

The process of formulating delegated regulations under the Job Creation Law was carried out at an exceptionally rapid pace (approximately three months) following the law's enactment,

---

<sup>33</sup> Jonathan Jones QC, "Reliance on secondary legislation has resulted in significant problems: it is time to rethink how such laws are created"

thereby generating a number of fundamental issues. Such acceleration undermines the legal ideals (*cita hukum*) of statutory lawmaking, which should emphasize legal certainty, justice, and utility. It also renders subordinate regulations vulnerable to technical errors, weak normative harmonization, and minimal public participation in procedural terms. Furthermore, the broad delegation of regulatory authority to the President blurs the boundary between fundamental policy matters that ought to be regulated through legislation and technical aspects that may legitimately be governed through delegated instruments. This opens the door to excessive regulatory provisions. These conditions are exacerbated by weak oversight mechanisms, both from the House of Representatives (DPR), which exercises only formal rather than substantive control, and from internal governmental review processes that are not always capable of preventing potential deviations. As a result, many implementing regulations are perceived as inconsistent with the principles of openness, legal certainty, and the balance of power.

Compared with practices in other jurisdictions, such as Australia and the United Kingdom, the Indonesian model of delegated legislation control appears to provide insufficient space for checks and balances. In Australia, delegated authority is strictly limited to technical matters, accompanied by robust public consultation procedures and rigorous legislative scrutiny, ensuring that Parliament retains control over fundamental policies. Similarly, in the United Kingdom, parliamentary review mechanisms allow Parliament to reject or request revisions to delegated legislation before it takes effect. By contrast, under the Job Creation Law, the President holds singular authority in the formulation and evaluation of Government and Presidential Regulations, while the DPR's oversight function remains politically weak. This comparison highlights the urgent need for reforming Indonesia's regulatory oversight framework so that delegated legislation is not only efficient but also accountable, participatory, and consistent with the ideals of a democratic rule-of-law state.

## **Bibliography**

- Aditya Rahmadhony, Iwan Setiawan, Mario Ekoriano, Problematika "Delegated Legislation" Pada Undang-Undang Nomor 52 Tahun 2009 Tentang Perkembangan Kependudukan dan Pembangunan Keluarga, *Jurnal Legislasi Indonesia*, Vol 17, No. 4, Desember 2020.
- Antoni Putra, 17 Maret 2021, Ironi Penyederhanaan Regulasi di Cipta Kerja, <https://www.pshk.or.id/blog-id/ironi-penyederhanaan-regulasi-di-cipta-kerja/>, diakses 3 Maret 2022.
- Asaf Wiener dan Elad Man, "Considering a duty to delegate in designing regulatory legislation", *The Theory and Practice of Legislation*, Volume 7, Issue 3, 2019, DOI: 10.1080/20508840.2020.1730103.

- Bagus Hermanto dan Nyoman Mas Aryani, Omnibus legislation as a tool of legislative reform by developing countries: Indonesia, Turkey and Serbia practice, *The Theory and Practice of Legislation*, Volume 9, Issue 3, 2021, 425. <https://doi.org/10.1080/20508840.2022.2027162>.
- Bayu Dwi Anggono, "Peranan Presiden Dalam Penataan Perundang-Undangan di Bawah Undang-Undang", *Jurnal Majelis* (2019).
- Cintia Costa de Abreu, *Regulatory Quality and the Regulatory System in the UK*, Makalah Akhir yang Dipresentasikan dalam Hansard Research Scholars Programme, London School of Economics, 2010.
- David Hamer, "Can Responsible Government Survive In Australia?", Canberra: The Department of the Senate, Parliament House, 2004.
- Handsard Society, *Delegated Legislation Review*, <https://www.hansardsociety.org.uk/projects/delegated-legislation-review>, diakses 9 Juli 2023
- Hasdinar, "Implikasi Putusan Mk Nomor 91/PUU-XVIII/2020 Tentang Pengujian Undang-Undang Tentang Cipta Kerja Terhadap Pembentukan Peraturan Daerah", *Jurnal Legislatif*, 6(1), 2022, <https://doi.org/10.20956/jl.v6i1.23884>.
- Jimly Asshiddiqie, *Omnibus Law Dan Penerapannya Di Indonesia*, (Jakarta: Penerbit Konstitusi Press (Konpress), 2020).
- Jonathan Jones QC, "Reliance on secondary legislation has resulted in significant problems: it is time to rethink how such laws are created", <https://constitution-unit.com/2021/10/13/reliance-on-secondary-legislation-has-resulted-in-significant-problems-it-is-time-to-rethink-how-such-laws-are-created/>, diakses 9 Juli 2023.
- Kepal, "Ringkasan Eksekutif: Laporan Pemantauan Pelanggaran Putusan Mahkamah Konstitusi dalam Pengujian Formil UU Cipta Kerja", Jakarta Desember 2022.
- Legislation Design and Advisory Committee, *Legislation Guidelines*, 2021 Edition, <http://www.lac.org.nz/assets/documents/LDAC-Legislation-Guidelines-2021-edition-v2.pdf>, diakses 25 Juli 2023.
- Miftah Faried Hadinata, "Penataan Materi Muatan Peraturan Pemerintah dan Peraturan Presiden dalam Sistem Hukum Indonesia"
- Moh. Fadli, "Perkembangan Peraturan Delegasi di Indonesia", Disertasi tidak Diterbitkan, Program Doktor Ilmu Hukum, Fakultas Hukum, Universitas Padjajaran, Bandung, 2012.
- National Conference of State Legislatures, 16 November 2022, Separation of Powers: Delegation of Legislative Power, <https://www.ncsl.org/about-state-legislatures/separation-of-powers-delegation-of-legislative-power>, diakses 16 Juli 2023.
- Ni'matul Huda, *Hukum Pemerintahan Daerah*, (Bandung: Nusa Media, 2009).
- Nuryanti Widyastuti, Jenis, Hirarki, Fungsi, Dan Materi Peraturan Perundang-Undangan, Jakarta, 28 Juli 2021, Direktorat Jenderal Peraturan Perundang-Undangan Menteri Hukum dan Hak Asasi Manusia, [https://pusdik.mkri.id/materi/materi\\_234\\_JENIS,%20HIRARKI,%20FUNGSI,%20DAN%20MATERI%20PUU%20Jul%202021%20revisi.pdf](https://pusdik.mkri.id/materi/materi_234_JENIS,%20HIRARKI,%20FUNGSI,%20DAN%20MATERI%20PUU%20Jul%202021%20revisi.pdf), diakses 29 Juli 2023.
- Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020 tentang Pengujian Formil Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

- Secretary General of the Council of Europe, State of Democracy, Human Rights and the Rule of Law: Role of institutions Threats to institutions, Council of Europe Publications, 2018.
- Sekretaris Negara Republik Indonesia, Jaringan Dokumentasi dan Informasi Hukum, Kementerian Sekretaris Negara, Produk Hukum, <https://jdih.setneg.go.id/Produk>, diakses 10 Desember 2021.
- Taufik H. Simatupang, "Mendudukan Konsep Executive Review Dalam Sistem Ketatanegaraan Indonesia", Jurnal Penelitian Hukum De Jure Volume 19 Nomor 2 (2019).
- Tim Peneliti, "Laporan Penelitian Pengawasan Terhadap Produk Hukum Daerah Dalam Rangka Mewujudkan Pembangunan Hukum Nasional.", (Jakarta: Kerja sama antara DPR dengan Pusat Kajian Dampak Regulasi dan Otonomi Daerah Fakultas Hukum UGM, 2009).
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang.
- Undang-Undang Nomor 13 Tahun 2022 tentang Perubahan Kedua atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.