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Constitutional Authority of the President of Establishing the Government Regulation in Lieu of Legislation (PERPPU) State of Emergency

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Abstract
President in carrying out its duties and authority is limited to the power that has been given by the giver of sovereignty, i.e. the people. As a recipient of the sovereignty of the people is lined by law to keep it out of duty and authority limits. President perform its functions in accordance with the duties and powers granted by the Constitution NRI 1945 "In matters of urgency that forces, the President has the right set of government regulations in lieu of law". Under these provisions, the President is the highest authority in the event of a crunch that forced matters in the State Indonesia. In carrying out these obligation, the President does not need prior approval of the House of Representatives with the aim that it can quickly take appropriate action to address the emergency state (matters of urgency that forces)
Keywords: Constitutional obligation, President, PERPPU, Emergency State

A. INTRODUCTION

Indonesian state was established by the collective consciousness of the nation of Indonesia on the omnipotence of God. Consciousness was recorded in the third paragraph of the preamble of the Constitution NRI 1945 states that: "In the grace of Allah Almighty and to be encouraged by the noble desire, so Bohemian nationality-free, then the people of Indonesia's state independence". Even consciousness is then manifested in the first principle of Pancasila, Belief in God Almighty, as one of the basic State of Indonesia as stipulated in the fourth paragraph of the Preamble Constitution NRI 1945. Furthermore, point Almighty God is derived to in Article 29 paragraph (1) Constitution NRI 1945. In this regard, Article 29 paragraph (1) NRI 1945 Constitution states that: "The State is based upon belief in one supreme God".

Based on this, it can be said that the collective consciousness on power of God is the basis of the will of the Indonesian people to live together in an independent Indonesian state. Recognition of the sovereignty of God shows that Indonesia adheres to the theory of the sovereignty of God (Sovereignty of God). This means that the sovereignty of the Indonesian nation in setting up and conducting an independent Indonesian state government recognized is derived from God. Therefore, a logical thing when the people of Indonesia and then make the "Almighty God" as one of the foundations of the State of Indonesia.

Understand the sovereignty of God is then translated into the people's sovereignty principle and also understand the rule of law. Recognition of the existence of popular sovereignty and the rule of law can be seen in the fourth paragraph of the preamble of the Constitution NRI 1945 states that: ".... the Indonesian National Independence was drafted in the Constitution of the State of Indonesia, which is formed in an arrangement of the Republic of Indonesia which is based on the sovereignty of the people ... "(bold by the author). Schools of popular sovereignty is explicitly indicated by the phrase "sovereignty of the Republic of Indonesia that the people". While the ideology of the rule of law is implicitly indicated by the phrase "the Constitution of the State of Indonesia". It is said that because of the existence of the constitution or the constitution of a country is a requirement that he be referred to as a state of law.

Statement of the existence of popular sovereignty and the rule of law in the fourth paragraph of the 1945 Constitution NRI then derived to the provisions of Article 1 (2) NRI 1945 Constitution which states that: "Sovereignty belongs to the people and implemented in accordance with the Constitution". In addition to demonstrating recognition of the sovereignty of the people, the phrase "according to the Constitution" in Article 1 (2) of the 1945 Constitution NRI also confirms the existence of the rule of law. The existence of the rule of law was later reaffirmed by Article 1 (3) Constitution NRI 1945, which specifies that: "Indonesia is a country of law".

Asshiddiqie which states that: "The teaching of God's Sovereignty, Sovereignty and the Law of the People's Sovereignty apply simultaneously in thinking about the power of our nation. State"(Jimly Asshiddiqie, 2005,34) power in the State Indonesia container is basically derived from the collective consciousness of the nation of Indonesia on power God Almighty. Belief in Almighty God power is then realized in the idea of the

rule of law as well as the schools of popular sovereignty (Jimly Asshiddiqie). Furthermore, Asshiddiqie stated that:

The principle of the rule of law embodied in the idea rechtsstaat and the rule of law and the principles of the rule of law, which in terms of its legal policy must be structured in such a way through a common mechanism of democracy in accordance with the precepts of popular wisdom led by the consultative / representative. while, the concept of sovereignty of the people is realized through legal instruments and instrument-institutional system of state and government as a legal institution orderly. Therefore, the products produced in addition to the law reflects the principle of Almighty God, must also reflect the embodiment of the principle of popular sovereignty. The process of formation of an agreed national law must be done through a process of deliberation according to the principles of representative democracy as the embodiment of the principle of popular sovereignty.

Thus, in addition to manifest in the form of legislation, the sovereignty of the people is also reflected in the structure and institutional mechanisms of state and government that guarantees the legal system and the functioning of the democratic system. In the institutional manifestation of this country, the principle of popular sovereignty is organized through a system of separation of powers (separation of power) and the principle of checks and balances. This means that the power be separated and divided into state institutions to enable the mutual control and mutual balance. The principle of separation of power and checks and balances intended to limit the power of the state in order to avoid the domination of one branch of power over other branches of power that can lead to arbitrary action.

The scattering power of the people to the institutions of the country find its relevance to the concept of state law. A state law should be based on the idea of constitutionalism which requires the limitation of power to ensure the rights set forth in the constitution of the people. Harjono stated that the distribution of power within the framework of constitutionalism is not to be understood as the division of powers legislative, executive, and judicial alone. However, the main essence of the concept of power sharing is the absolute absence of another authority (Harjono, 2008,37). This means that the power does not accumulate on the person or in one institution, but proportionally divided such that the state institutions within the framework of the principle of checks and balances.

Construction like this is according Harjono said to be the intent of state law and the intent of constitutionalism as defined by Article 1 (2) Constitution NRI 1945 ((Harjono, 2008,7).

In the context of this paper, will be specifically discussed about the power given or submitted to the presidency. This discussion departs from a legal issue, namely sovereignty or whatever powers granted by the Constitution NRI Indonesian people in 1945 to institute president. To answer the legal issue, the discussion will be divided into two, namely: first, the authority of the presidency problem in general or overall well under normal circumstances and in a state of emergency; and second, in particular the president the authority problem when a state of emergency, including the issuing government regulation the reason matters of urgency force.

1. Authority Presidency In Normal Circumstances

NRI 1945 Constitution provides a strong position to the presidency. Said that because the president serves as the highest responsible government in the country of Indonesia (concentration of power and responsibility upon the president). Strong Position president to be responsible for the highest political as a logical consequence espoused presidential system of government, as has been implied in Article 4 paragraph (1) NRI Constitution which stipulates that: "The President of the Republic of Indonesia holds the power of government in accordance with the Constitution".

Associated with the presidential system of government, Bagir Manan stated that the presidential system of government known only one kind of executive (single executive). This means that the functions of head of state (head of state) and the head of government (chief executive) is on the one hand, which is held by the presiden (Bagir Manan ,1999,17) t. As a logical consequence of the position of the president as a single executive, the real function of the nominal executive (C.F. Strong, Bagir Manan, 1999,16) executive and not separately but together in the presidency(Bagir Manan, 1999,16). Therefore, the Indonesian constitutional practice is often referred to the president as head of state and the president as head of government.

In line with the opinion of the Bagir Manan, Harjono stated that the presidential system, the president is the only leader figure in a country that in addition to functioning as a leader in governance, it also automatically holds functions as head of state. Although sometimes the constitution does not specifically call, however, the president has the authority to lead the organization in addition to government, it also serves the important affairs of state non-governmental need in his capacity as a leader(Harjono, 2008,75).

Based on the role of the president as head of state as well as head of government, it is quite logical if then Suwoto hold presidential power grouping into two, namely the power of the President in his function as head of state and the power of the President in his function as head of government. In his capacity as head of government, the President of Indonesia has the authority to, among others: (1) the power to make in terms of

preparing and proposing the establishment of legislation; (2) assign powers of government regulation in lieu of law; (3) the power set of government regulations; and (4) the power to appoint and dismiss ministers of state. Meanwhile, in his capacity as head of state, the president of Indonesia has the power, among others: (1) The President holds the highest authority of the Army, Navy and Air Force; (2) The President declares state of emergency; (3) The President shall appoint Ambassadors and Consuls; (4) The President shall pardon, amnesty, abolition and rehabilitation; and (5) the President gave the carpet, decorations and other honors (Suwoto[1990,99-116].

In contrast to the president's power grouping is done by Suwoto mentioned above, CF Strong grouping presidential power with the power-sharing approach and the principle of checks and balances. According C.F. Strong, there are some functions that run the president in his capacity as head of government. The functions that relate to the following areas (Widodo Ekatjahyana ,2008,33):

1. Diplomatic power-Relating to the conduct of foreign affairs.
2. Administrative power-Relating to the execution of the armed and administration of the government.
3. Military power-Relating to the organization of the armed forces and the conduct of war.
4. Judicial power-Relating to the granting of pardons, reprieves, etc., to Reviews those convicted of crime.
5. Legislative power-Relating to the drafting of Bills and directing Reviews their passage into law.

In line with the functions proposed by CF Strong above, Rusadi Kantaprawira stated that the function that is run by the president as the executive includes several powers, namely ((Widodo Ekatjahyana ,2008,33-34):

1. Diplomatic, i.e. everything related to foreign affairs.
2. Administrative, which is associated with the execution of the laws of power, control, and supervision of the implementation of legislation, and its implementation in the context of service to the community.
3. Military and police, namely with regard to organization and regulation danger / war.
4. Judicial, namely in terms of amnesty, abolition, rehabilitation, and so on.
5. Legislative, namely in terms of drafting legislation (including the law on the state budget), expenditure which is a supplement regulations for legislation that created the legislature, and the interpretation of the rules in a typical situation.
6. To appoint officials - both high and intermediate - and also at the same time the right to change or suspend the appointment of officials.

While Bagir Manan perform classification / clustering of the president's powers are a little different from the classification performed CF Strong and Rusadi Kantaprawira as above. According to him, the president's powers can be classified into four areas, namely (Bagir Manan, 1999,121-178) [1]: 1) the power of governance; 2) powers in the field of legislation; 3) in the field of judicial power (author, judicial); and 4) The powers of the president in foreign relations. The author disagrees with the classification made by the Manan. Power in the military and police were applied by CF Strong and Rusadi Kantaprawira, specifically with regard to the organization can be incorporated in the power of governance, while those associated with the regulation of state of emergency / war can be incorporated into the president's powers in foreign affairs. Likewise, the power "to appoint officials" expressed by Rusadi Kantaprawira, can be incorporated into the "power of governance".

But against grouping is done by Manan, the authors simplified into three, namely by inserting foreign authority in relation to the governance authority. This simplification is based on the theory of separation of powers, namely the executive, legislative, and judicial powers. To that end, the following authors will conduct further discussion of presidential authority to use the three groups of presidential authority, that authority in the administration of government, authority in the field of legislation, and judicial authority in the field**.**

a. Power the Governing

Article 4 paragraph (1) NRI 1945 Constitution specifies that: "The President of the Republic of Indonesia holds the power of government in accordance with the Constitution".

2. Power in the Field of Legislation

Under the provisions of Article 4 paragraph (1) Constitution NRI, 1945, the President of the Republic of Indonesia holds the power of government under the Constitution. Associated with the phrase "the power of government" in the provisions of Article 4 of the 1945 Constitution NRI, in this case should be mentioned Jellineck opinion as quoted by A. Hamid S. Attamimi which states that the rule contains two aspects, namely formal and material significance. Government administration in formal terms of meaningful power set (verordnungsgewalt) and power disconnects (entscheidungsgewalt), while the government in the sense of material contains two related elements into one, that is, elements govern and implement elements (Element der Regierung und das das der Vollziehung) (A. Hamid S. Attamimi , 1990, 181-182).

Thus, it can be said that the provisions of Article 4 paragraph (1) of the 1945 Constitution NRI, has in it

[1] Bagir Manan, *Lembaga Kepresidenan...*, *Op Cit*., hlm. 121-178. Bandingkan dengan pendapat Maria Farida Indrati S., Ilmu Peraturan Perundang-undangan; Jenis, Fungsi, dan Materi Muatan, Kanisius, Yogyakarta, 2007, page. 131

the power set in terms of the formation of legislation. Therefore be logical then when A. Hamid S. Attamimi stated that Article 4 paragraph (1) of the 1945 Constitution NRI as provisions that are not directly contain the power of the President of the Republic of Indonesia settings((A. Hamid S. Attamimi , 1990,143, Maria Farida Indrati S, 2007,129).

The president's powers in the field of formation of such legislation.

a. Asking authority and discuss the Bill with the House

b. Establish the authority of Government Regulation

2. The power in the Judicial Sector

President of the judicial authority in the field related to the granting of pardon, amnesty, abolition, and rehabilitation. Granting clemency and rehabilitation carried out by the president by taking into consideration the Supreme Court, while granting amnesty and abolition by taking into consideration the House of Representatives. This is in accordance with the provisions of Article 14 of the Constitution NRI 1945, which stated that:

(1) Presidential pardon and rehabilitation by taking into consideration the Supreme Court.

(2) The President gave amnesty and abolition by taking into consideration the House of Representatives.

Associated with the grouping of such authority as the President's authority in the judicial field, there are some experts who claim that the real authority was not a form of judicial power. In this case Pylee as cited by Manan states that: "Pardoning power is sometimes Characterized as a judicial power of the President. This is wrong Because granting of pardon is prerogative of the executive and, as Reviews such, an executive power ". In addition, some of the reasons for, among others, that pardon, amnesty, abolition and rehabilitation is not a judicial process because it is not based on legal considerations but based on the non-legal considerations such as humanitarian considerations, political, or other considerations. The power held outside the judicial process, which is carried out before or after the judicial process and even negate the judicial process. Yet further disclosed by Manan that pardon, amnesty, abolition, and rehabilitation is generally said to be a judicial action because it can not be separated either directly or indirectly from the judicial process.

B. The authority of the President of the State Emergency

Before the country was formed, humans live in a state of wild or natural state (state of nature or status of the naturalist). According to John Locke, in the wild or natural state of the human being has a natural rights, the rights of man are privately owned. Natural rights in the form of the right to life, the right to freedom or liberty, and property rights (Soehino , 1998, 107-108). So according to the human nature since birth has had natural rights or natural rights(John Locke).

The problem that then arises in the wild state it is that natural rights can not be implemented properly. This is caused by the desire of each individual to defend their own interests. While on the other hand there is no legal certainty, resulting in the legal order can not be implemented. In this condition by **Franz Magnis Suseno** as quoted Ni'matul Huda, every individual is a potential threat to other individuals. Humans have always lived in fear, that fear of being attacked by another man stronger physical state. To protect themselves effectively, preventive measures cripple or eliminate potential enemies will be taken. Whether or not a man is conditioned like a wolf on another human being (homo homini lupus). This condition is known as the bellum omnium contra omnes (war of all against all) (Ni'matul Huda ,2011,40).

For this reason, individuals are then organized a public agreement (partum unionist) to form a political community or state. Under the agreement, individuals give up some of their natural rights to the public. Then the people appoint a ruler to whom is given a power to maintain and ensure the implementation of natural rights of each individual. With the purpose of the rule, then it means that the authority is constrained by limited natural rights of each individual. Or in other words, the authorities must not violate the basic rights of individuals.

After submission of the natural freedom of each individual to an organization called the country, then under the organization did they regain their civil liberty, namely freedom to do everything with the terms still within the law in force. In this oraganisasi sovereign is the people, while the government only in the capacity of representing the people. The consequence is that if the government does not carry out its power in accordance with the will of the people, then the government should be replaced.

Under the agreement the construction of such a society, Rousseau has produced the kind of country whose sovereignty is in the hands of the people through the common volition ((Ni'matul Huda ,2011,43). Thus Rousseau is the originator of the ideology or theory of popular sovereignty, which is based on what he called the volunteer general (general purpose). J.J. Von Schmid(Soehino , 1998,122) said that Volonte general was addressed to the public interest. But on the other hand there volunte de tous addressed to the benefit of everyone but the people it is not a unity, or in other words the interests of everyone individually.

From these ideas, it is necessary to understand that the ruling in this case in addition to protecting the public interest must also protect the interests of everyone individually. Consequently, the authorities in implementing the right or authority in order to maintain the integrity of the country should not ignore and / or violate the rights of citizens. Thus, one of the most important obligations with the state is to protect its people

under the laws applicable in the country concerned.

Legal protection to the people to find relevance in the context of state law. This is consistent with what was said by Philip M. Hadjon that protection for the people (rechtbescherming van de burgers tegen de overheid or legal protection of the governed againts administrative actions) inherent in the concept or concepts rechtsstaat the rule of law (Philipus M. Hadjon,2007.ix). The obligation to protect the people by the state under the laws of the course should be done either when the country under normal circumstances (ordinary condition) as well as a state of abnormal (state of emergency).

In the context of a state of law, the necessary legal instruments as the foundation for the state in carrying out its duty to protect its people. That is, each country claiming the state law can not be separated from the legislation. Attachment to the law is a fixed price that can not be bargained well as countries in the normal state or in an emergency. In connection with such emergencies, Asshiddiqie states that legally, the concept of a state of emergency was based on the doctrine that has been known for a long time, namely the principle of their purpose or necessity principle that recognizes the sovereign right of each country to take the steps necessary to protect and defend integrity of the state (Jimly Asshiddiqie ,2008,83).

But the doctrine of emergency is not solely left to the president to assess and determine in practice without the control of a legal nature. That is the doctrine of necessity has to be combined with the doctrine of self-defense (Jimly Asshiddiqie ,2008,91-92) which serve to protect human rights are essential from the danger that can not be corrected if there are circumstances where there is no alternative other way to protect and to preserve or restore the state of the law originally. Therefore, by reason of the need to defend themselves (self-defense) of the threats that endanger themselves and all citizens who must protect, then each country can only act to tackle any emergency situation occurs, but the actions that must remain within the law. Weighing any problems that occur in a country, it should be able to overcome the existing legal instruments to remain ensures the operation of the functions of power that protects the entire interest of the people. Basic framework must adhere to the regulatory framework set out in the constitution of each country and the laws that specifically regulate outline signs of danger or emergency perberlakuan intended.

In the Indonesian context, the development of constitutional law today is always discussed, debated, and even tend to be compared with the assumption that the country is in a state of peace, tranquility, normal or abnormal. Yet in practice, in addition to the condition of the state is normal or common (ordinary condition), sometimes also arise or occur abnormal condition, especially if it is associated with the condition of the Indonesian state in the area of the intersection, across the oceans, across continents, between cultures , an economic power, and even between civilizations that did not rule contains a lot of potential natural disasters and exceptional occurrences. This resulted in the Indonesian state vulnerable unusual circumstances arise or undesirable, exceptional circumstances, as well as other normal circumstances, all of which include the category of an emergency (state of emergency)(Jimly Asshiddiqie ,2008,6).

With reference to the constitutional doctrine of dualism, then in each situation it applies different legal norms. Under normal circumstances prevailing normal or ordinary law permanent, while in a state of emergency law does not normally apply temporary. In this case Asshiddiqie stated that in the constitutional doctrine of dualism, developed an understanding of the necessity for the provision governing for two different legal systems. The first system is applicable to a normal state to protect the rights and freedoms and the second system applies to emergency situations. The law applicable in case of emergency or extraordinary that so-called constitutional law of emergency (emergency law, martial law, or staatsnoodrecht). In it applies the doctrine is termed by George Jellineck with onrecht word recht(Jimly Asshiddiqie ,2008,6), is that something that is against the law be based on law, something that is not the law becomes law. Instead, the law that is not normal is only valid in a state that is not normal anyway (abnormal recht voor abnormal tijd) .

History of political life and constitutional Indonesia always have ups and downs are never embarrassed to talk about where in addition to the state is normal, often also tend to arise abnormal condition or emergency. Legal norms applicable in the case of a normal state based on the constitution and the laws that formally made to regulate various aspects relating to the conduct of civic life in general. If a country is in a state of unusual or that is commonly called a state of emergency, then the system or rule of law to be applied shall use the power and emergency procedures (emergency) also through an emergency law (law of emergency) to waive or postpone the legal enforceability under normal circumstances, without affecting the systems of democratic government based on the constitution (Binsar Gultom ,2010,1).

The setting of a state of emergency in the principal set out in Article 12 and Article 22 of the Constitution NRI 1945. From the article, it is known that the term used for an emergency state in the Constitution NRI 1945 there were two, namely: (i) the state of emergency (Pasal 12 UUD NRI 1945); and (ii) matters of urgency that forces (22 UUD NRI 1945.). According Asshiddiqie, seen from a practical sense, both point to the same problem, namely circumstances which are exempted from the normal state or a "state of exception" (Jimly Asshiddiqie ,2008,58). The state of the state of exception was described by Kim Lane Scheppele (Jimly Asshiddiqie ,2008,58) as "the situation in the which a state is confronted by a mortal threat and

responds by doing things that would never be justifiable in normal time, given the working principles of that state".

When an abnormal situation is, of course, have to be faced, overcome, and the consequences must be addressed with a view to returning the country to a normal state according to the constitution and laws of normal. If normal circumstances it does happen, there must be holders of power are given the authority to make decisions with the highest temporarily ignore some basic principles adopted by the country concerned (onrecht word recht). However, it should be set first on the terms of whether exceptional circumstances it may be declared or stated there, how supervision over the implementation of state power in the state of exception is done, and how well the end or the end of the state of exception it so as to avoid the excesses that can not be addressed in later day (Jimly Asshiddiqie ,2008,59).

Constitutionally, the power in emergencies either "danger" or "in matters of urgency to force" was given to the President. Provision that authorizes the President as holders of state power in danger mandated in Article 12 of the Constitution NRI 1945, which stated that: "the President declared a state of danger. Terms and consequently danger stipulated by law "(bolded by author). While the provision that states the President as holders of state power in matters of urgency to force mandated by Article 22 paragraph (1) Constitution NRI 1945. In this case Article 22 paragraph (1) NRI 1945 Constitution determines that: "In matters of urgency that forces, President the right to set regulations in lieu of law ".

So what are the terms of implementation and / or determination of two kinds of emergency by the President of the country. Associated with the "state of emergency", Article 12 of the Constitution NRI 1945 has stated explicitly that the terms and effect of state of emergency is set by law. In view of Article 12 of the Constitution NRI 1945 mandates that the terms and effect of state of emergency is set by law, it is imperative established juridical consequences of a law that would be a reference to a state of danger. The law on the state of the danger, in particular must first drafted to regulate dangerous situations referred to as mandated by Article 12 of the Constitution NRI 1945. For that reason in this case Indonesia has enacted Law No. 23 Prep 1959 Repeal Act No. 74 1957 (State Gazette No. 160 of 1957) and the determination of Emergency (Lembaran Negara Republik Indonesia Tahun 1959 Nomor 139, Tambahan Lembaran Negara Republik Indonesia Nomor 1908). In addition, partially have also enacted Law No. 27 Year 1997 on Mobilization and Demobilization(Lembaran Negara Republik Indonesia Tahun 1997 Nomor 75, Tambahan Lembaran Negara Republik Indonesia Nomor 3704) and Act No. 24 of 2007 on Disaster Management).

Thus it can be said that the determination of the terms of the power, control, and as a result of the danger in the hands of the legislators. Provisions regarding the danger that governed first by the law then be guidelines to be followed by the president to exercise its powers as an authority in danger. This arrangement logical done considering that the determination of danger may be consequences in the form of delays and / or reduction of the rights of citizens. While the delay and / or a reduction of the rights of citizens can only be done through legislation which is actually formed by the House of Representatives as the personification of the people of Indonesia.

1. Establish Authority Government Regulations in Lieu of Law (PERPPU)

Article 22 paragraph (1) NRI 1945 Constitution specifies that: "In matters of urgency that forces, the president has the right set of government regulations in lieu of law". Under these provisions, the President is the highest authority in the event of a crunch that forced matters in the State Indonesia. In carrying out these obligation, the President does not need prior approval of the House of Representatives with the aim that it can quickly take appropriate action to address the emergency state (matters of urgency that forces).

Bagir Manan stated that decree has equal footing with the law. Giving equal footing with this law because the material cargo should be regulated by law. The purpose of the "in lieu of law" is that because the substance of government regulation constitutes the substance of the law. Under ordinary circumstances (normal) the substance must be regulated by law. However, because of a crunch that forced arranged with government regulation (Bagir Manan ,1992,50).

In contrast to the opinion above Bagir Manan, Maria Farida Indrati S. stated that government regulation is formed by the President of the regulations made under the force crunch. The regulation has a position at the same level and same functions with the laws so that cargo is the same material with the substance of the law (Maria Farida Indrati S ,2008,243). Author less agree with the opinion of the S. Maria Farida Indrati because the actual substance of government regulation together with the substance of the law not as a result of government regulation position level with the law. But on the contrary, namely that government regulation position equivalent to the law because the material charge is equal to the substance of the law. The substance of which should be regulated by law because of the urgency of pushing then applied in the form government regulation.

With the same substance of the substance of the law, in addition to its impacts on equal footing, then government regulation also has the same function with the law. Associated with the government regulation

function, Maria Farida Indrati S. stated that because it has equal footing with the law, then the same function with the function government regulation legislation. Given the position and function the same government regulation with the law (Maria Farida Indrati S ,2008, 215-221), then after a set must be approved by the House of Representatives (Pasal 22 ayat (2) UUD NRI 1945). If Parliament approves or accepts, then government regulation is then passed as a law. Conversely, if government regulation is not approved by the House of Representatives, then he should be revoked (Pasal 22 ayat (3) UUD NRI 1945).

Despite having equal position with the law, but of course government regulation have slightly different juridical character by character juridical laws. The big difference in this juridical character government regulation is logical given that the legislation that created the abnormal condition, while the legislation is legislation that formed under normal circumstances.

As for "matters of urgency that forces", Article 22 of the Constitution NRI 1945 does not specify what is meant by matters of urgency that the force. The ambiguity of meaning matters of urgency to force the course will be an opportunity for the President to issue a government regulation subjectively. For that reason, the Constitutional Court then issued objective criteria that can be used as a handle for the President in determining government regulation. The legal considerations of Decision No. 138 / PUU-VII / 2009, the Constitutional Court stated that government regulation required if:

1. The existence of the state of the urgent need to resolve the legal issues appropriately under the Act;
2. The Act required that no resulting vaccum of law, or no law but inadequate;
3. The legal vacuums can not be overcome by making laws is the usual procedure because it would require a long time while the urgency of the need certainty to be resolved.

In addition to the objective criteria or reasons to hold on by the President in determining the government regulation, NRI 1945 Constitution also provides limitations on the authority government regulation determination to determine the presence of the control of the House of Representatives. Regulation which has been designated by the President must obtain the approval of the House of Representatives in the following trial. If Parliament approves, then government regulation is then set as law. Conversely, if the House of Representatives rejected, then it should be repealed.

Based on the above explanation, it can be seen that the power in an emergency in the form of "danger" or "in matters of urgency to force" can be executed President taking into account the terms respectively. The terms of the determination of danger specified in the legislation, while the determination government regulation requirements in terms of crunch that forced predetermined Constitutional Court in its Decision No. 138 / PUU-VII / 2009. Terms determination predetermined danger in the legislation is the only criterion for assessing the appropriateness of the hazard determination made by the President. Whereas in the case of the determination government regulation, in addition to the criteria given by the Constitutional Court, there is also a means of control such as the necessity of approval of the House of Representatives to government regulation set by the President.

C. CONCLUSION

In natural power institutionalized into the Indonesian state building is a combination of three sovereignty principle, namely the sovereignty of God, the sovereignty of the people, and the rule of law. The first sovereignty comes from God and given to the people of Indonesia. Then the people providing and distributing power in state institutions through law. Through the implementation of the law means that for the sovereignty of the people in the Indonesian state system should pay attention to the corridor and the limits prescribed by law. The President holds the executive power coutry besides legislative and judicial institutions. It is implemented in a variety of well-born President of the authority of the state in a normal state and a state of emergency. State In political triad concept, the separation of powers meant the absence of interference between the institution with other institutions so that what happens is the stiffness in coutry. Each agency exercise authority without any control from other institutions, therefore, countries that use the rule of law system uses a process of checks and balances as one of the control of an agency with other institutions. While Indonesia has adopted the concept of power sharing by the presence of interference from one institution to the other institutions. So that, in the formation of law that legislation which should only be owned by the legislature, executuve agency is authorized to establish the legal form of PERPPU.

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