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# Interpreting Article 22(2) of the 1945 Constitution of the Republic of Indonesia Post Constitutional Court Decision 54/PUU-XXI/2023

*Memaknai Pasal 22 Ayat (2) Undang-Undang Dasar 1945 Republik Indonesia Pasca Putusan Mahkamah Konstitusi Nomor 54/PUU-XXI/2023*

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**Abstract** The aim of this research is to elucidate the interpretation of Article 22, paragraph (2) of the 1945 Constitution of the Republic of Indonesia, particularly focusing on the phrases "*obtain approval from the House of Representatives*" and

"*in the following trial.*" Employing a normative legal research approach, the study utilizes a statutory regulatory approach, a conceptual approach, and a case approach. The legal materials encompass both primary and secondary legal sources. The research findings delineate that the phrase "*obtain approval from the People's Representative Council*" in Article 22, paragraph (2) of the 1945 Constitution of the Republic of Indonesia signifies: (i) the requirement for the President to submit the Perppu to the DPR for approval; and (ii) the discretion of the DPR to either approve or disapprove the Perppu. Meanwhile, the interpretation of the phrase "*in the following trial*" entails: (i) the period during which the Perppu is submitted to the DPR by the President; (ii) the initial session of the DPR following the submission of the Perppu; and (iii) the initial session period after the expiration of the maximum time limit for the President to submit the Perppu to the DPR.

**Keywords** *Perppu, People's Representative Council of the Republic of Indonesia, President*

**Abstrak** Tujuan penelitian ini adalah untuk menganalisis makna dari Pasal 22 ayat (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, terutama memfokuskan pada frasa "*mendapatkan persetujuan dari Dewan Perwakilan Rakyat*" dan "*pada sidang berikutnya*". Penelitian ini merupakan penelitian hukum normatif yang menggunakan pendekatan peraturan perundang-undangan, pendekatan konseptual, dan pendekatan kasus. Sementara itu, bahan hukum yang digunakan dalam penelitian ini melibatkan bahan hukum primer dan bahan hukum sekunder. Temuan penelitian menggambarkan bahwa frasa "*mendapatkan persetujuan dari Dewan Perwakilan Rakyat*" dalam Pasal 22 ayat (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 berarti: (i) Presiden harus mengajukan Perppu ke DPR untuk persetujuan; dan (ii) DPR memiliki kewenangan untuk menyetujui atau menolak Perppu. Sementara itu, makna dari frasa "*pada sidang berikutnya*" mencakup: (i) periode sidang DPR ketika Perppu diajukan oleh Presiden kepada DPR; (ii) sidang pertama DPR setelah Perppu diajukan oleh Presiden kepada DPR; dan (iii) sidang pertama setelah berakhirnya batas waktu maksimum untuk pengajuan Perppu oleh Presiden kepada DPR.

**Kata kunci** *Perppu, Dewan Perwakilan Rakyat Republik Indonesia, Presiden*

## A. Introduction

Article 4 paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 (hereinafter referred to as UUD NRI Year 1945) explicitly states that "The President of the Republic of Indonesia holds government power according to the Constitution." The Constitutional Court, in Decision Number 2 / SKLN-X / 2012, interpreted the aforementioned article to mean that the authority to govern is one

of the attribution authorities granted by the NRI Constitution of 1945 to the President. This authority, in its implementation, must be carried out based on and limited by the provisions of the constitution itself, statutory provisions, and constrained by the constitutional authority of other state institutions.<sup>1</sup>

Indonesia, in running its government, adheres to the presidential system of government. According to Bagir Manan, the presidential system of government only recognizes one type of executive (single executive). In this system, the function of the head of state and the function of the head of government (head of the executive) are consolidated in the person of the President.<sup>2</sup>

As a consequence of the President being a single executive, they hold the highest responsibility for aspects of security, safety, and the welfare of the people, resulting in the concentration of power and responsibility on the President.<sup>3</sup> This responsibility applies not only to the state under normal circumstances but also extends to a state of exception. In such circumstances, the Constitution of the Republic of Indonesia of 1945 (UUD 1945) grants exclusive authority to the President in terms of legislation to enact a Government Regulation in Lieu of Law (*Peraturan Pemerintah Pengganti Undang-Undang*, hereinafter as Perppu). The procedures and formation of Perppu are different from the formation of legal products in normal times.<sup>4</sup> The grant of authority to the President to issue Perppu aims to ensure continued legal protection for the people, even in times of emergency. This authority acknowledges the need for the President to act swiftly and appropriately to safeguard the security and safety of the country.<sup>5</sup>

The determination of Perppu by the President is the full subjective right of a President as head of state and head of executive. The special right granted to a President can also be called *noodverordeningrecht* or the President's prerogative.<sup>6</sup> With the President's subjectiveness, it does not rule out the possibility of the Perppu determination being misused. Therefore, Article 22 paragraph (2) of the NRI Constitution of 1945 specifies that the House of Representatives (hereinafter referred to as the DPR) can conduct a test (*political review*) as an objective assessment of the Perppu. The *political review* was carried out in the following

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<sup>1</sup> Viktor Santoso Tandiasa and Aida Mardatillah, *Kompliasi Tafsir UUD 1945 dalam Putusan Mahkamah Konstitusi Tahun 2003-2022* (Yogyakarta: Laksbang Akademika, 2023).

<sup>2</sup> Bagir Manan, *Lembaga Kepresidenan* (Yogyakarta: FH UII Press, 2003).

<sup>3</sup> Jimly Asshiddiqie, *Konstitusi & Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2018).

<sup>4</sup> See also Sudirman, Sudirman. "Single Executive in The Indonesian Presidential System." *Jurnal IUS Kajian Hukum dan Keadilan* 11, no. 1 (2023): 1-16; Widiastuti, Anita Indah. "Multi-Party In Presidential System In Indonesia: What Does Democracy Mean?." *The Indonesian Journal of International Clinical Legal Education* 2, no. 4 (2020): 517-526.

<sup>5</sup> Philipus M. Hadjon, *Hak Asasi Manusia; Hakekat, Konsep, dan Implikasinya dalam Perspektif Hukum dan Masyarakat* (Bandung: Refika Aditama, 2009).

<sup>6</sup> Samriananda Septiyani, "Makna Garis Miring (/) Pada Frasa 'UU/PERPPU,'" *DiH: Jurnal Ilmu Hukum* 17, no. 1 (2021), <https://doi.org/10.30996/dih.v17i1.4520>.

session and the House of Representatives only had 2 (two) options, namely rejecting or approving the Perppu.<sup>7</sup>

A persistent challenge in the process of submitting Government Regulations in Lieu of Law (Perppu) for approval by the People's Consultative Assembly (DPR) lies in the ambiguity surrounding the criteria for "*getting approval*" and the timeframe described as "*in the following session*." The Constitution of the Republic of Indonesia (NRI) from 1945 does not provide explicit and detailed explanations for these terms, leading to uncertainties in practice. The DPR, at times, fails to categorize Perppu submissions clearly, leaving them without a defined status of approval or disapproval. Additionally, the approval decision by the DPR may occur either within the current session period or extend to the subsequent session period after the one during which the Perppu was initially submitted. These uncertainties underscore the need for clarification, considering the lack of explicit provisions in the NRI Constitution of 1945. Addressing these questions is imperative for a more transparent and effective legislative process.

This paper delves into the nuanced interpretation of Article 22(2) of the 1945 Constitution of the Republic of Indonesia, particularly in light of the consequential Constitutional Court Decision Number 54/PUU-XXI/2023. Article 22(2) holds significance as it encapsulates the essential processes for the issuance of Government Regulations in Lieu of Law (Peraturan Pemerintah Pengganti Undang-Undang or Perppu). The recent Constitutional Court decision has added layers of complexity to the understanding and application of this constitutional provision, prompting a thorough examination and analysis.

As the highest legal authority in Indonesia, the Constitutional Court plays a pivotal role in shaping the constitutional landscape. Decision 54/PUU-XXI/2023, which concerns Article 22(2), introduces new perspectives and considerations that demand careful scrutiny. This paper seeks to unravel the implications, reasoning, and consequences of the Constitutional Court's decision, shedding light on the evolving dynamics of constitutional governance in Indonesia.

Through a normative legal research approach, utilizing statutory regulatory, conceptual, and case analysis methods, this study aims to elucidate the precise meaning of key phrases within Article 22(2). By dissecting legal materials, both primary and secondary, the research endeavors to provide comprehensive insights into the implications of the Constitutional Court's decision on the interpretation and practical application of this constitutional provision. As we navigate the intricate

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<sup>7</sup> See also Daroin, Ad, and Achmad Najib. "Analisis Yuridis Persetujuan Peraturan Pemerintah Pengganti Undang-Undang (Perppu) Oleh DPR RI Dalam Persidangan Berikut Ditinjau Dari Pasal 22 Ayat (2) UUD 1945." *Thesis*. (Malang: Universitas Islam Malang, 2023); Febriyanti, Sari, and Kosariza Kosariza. "Analisis Yuridis Penetapan Peraturan Pemerintah Pengganti Undang-Undang (Perppu) Oleh Presiden Berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Limbago: Journal of Constitutional Law* 2, no. 1 (2022): 123-135.

terrain of constitutional law, this paper serves as a critical examination of the evolving legal landscape surrounding Article 22(2) in post-decision Indonesia.

## B. Method

Every research endeavor necessitates a methodology, acting as a blueprint for the research process.<sup>8</sup> In this study, the chosen research type is legal research, a systematic exploration aiming to identify legal rules, principles, and doctrines to address legal issues.<sup>9</sup> The adopted approaches include the statutory, conceptual, and case approaches. Primary and secondary legal materials serve as the foundational sources for this research. The collection of primary legal materials employs inventory and categorization methods, while secondary legal materials are gathered through library research methods. The collected primary, secondary, and tertiary legal materials undergo identification, classification, and systematic organization based on their sources and hierarchy. Subsequently, a comprehensive legal study is conducted using legal principles (legal reasoning) through deductive methods to analyze legal issues. The normative or prescriptive analysis is employed to provide answers to the legal issues investigated in the research.

## C. Results and Discussion

### 1. Meaning of the phrase *getting the approval of the House of Representatives*

In essence, Perppu is a government regulation in lieu of a law set by the President in the event of a compelling emergency (abnormal circumstances), so that the applicable law is also abnormal (*abnormale recht voor abnormal tijd*).<sup>10</sup> This means that the law that applies in an emergency is different from the law that applies under normal circumstances. This is caused by a condition or condition where a legal product cannot be made normally as well as the formation of a law. The provisions regarding this matter, stipulated in Article 22 of the Indonesian Constitution of 1945 which stipulated:

- (1) In the event of a compelling emergency, the President has the right to enact government regulations in lieu of laws.
- (2) The government regulation must be approved by the House of Representatives in the following session.

<sup>8</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, Cetakan ke (Jakarta: UI Press, 1982).

<sup>9</sup> There are 3 (three) reasons why the authors only mention "legal research" without the word normative, namely because: (1) the meaning of the words law and normative is the same so that if you add the word normative after the law is an exaggeration (hyperbole); (2) if adding the word normative after the word law as if there were legal research other than normative; and (3) the author cites the definition of legal research from Peter Mahmud Marzuki while Peter Mahmud Marzuki in his book or book title only mentions "legal research" without the word normative. See Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021).

<sup>10</sup> Jimly Asshiddiqie, *Hukum Tata Negara Darurat* (Jakarta: RajaGrafindo Persada, 2007).

(3) If it does not get approval, then the government regulation must be revoked.

With the provisions of Article 22 of the NRI Constitution of 1945 above, according to Jimly Asshiddiqie *Perppu is an "innere notstand"* where the Perppu is formed under abnormal circumstances.<sup>11</sup> As a result of force majeure, it is not possible to make laws that are a long process when the circumstances or need for such laws are very urgent. With this concept, Perppu is a *presidential noodverordeningsrecht* which really needs to be held so that state safety can be guaranteed by the government. This means that the determination of Perppu is the subjective right of the President to determine whether to issue Perppu or not.<sup>12</sup>

Constitutional Court Decision Number 138/PUU-XVII/2009 formulated 3 (three) conditions of compelling urgency, namely: 1) the existence of circumstances, namely the urgent need to resolve legal problems quickly based on the law; 2) the required legislation does not exist so that there is a legal vacuum, or there is a law, but it is inadequate; 3) The legal vacuum cannot be overcome by making laws in the usual procedure because it will take a long time, while the urgent situation needs certainty to be resolved.

In the case of compelling emergencies as stipulated in Article 22 paragraph (1) of the NRI Constitution of 1945, it is different from the state of danger as stipulated in Article 12 of the NRI Constitution of 1945. Although between the matter of compelling urgency and the state of danger both have the nuances of emergency, the two things have different meanings. This was conveyed by Saldi Isra and Erny Nurbaningsih in a dissenting opinion on Constitutional Court Decision Number 54/PUU-XXI/2023. According to him, every situation of danger always has a compelling emergency nature, but the matter of compelling emergency does not always start from dangerous conditions or situations. Thus, the compelling urgency carries a broader meaning than the state of danger.

The provisions of Article 12 of the NRI Constitution of 1945 contain at least 2 (two) main things, namely: First, the authority of the President to declare a state of danger; Second, the terms and consequences of the said state of danger are regulated by law. While the provisions of Article 22 of the NRI Constitution of 1945 give the President the authority to independently assess matters of compelling urgency that occur, while the state, *in casu* forming laws, cannot form a law in a normal procedure. In fact, the need for arrangements to overcome the precarious situation is urgent. In such conditions, the President in accordance with the provisions of Article 22 of the 1945 Constitution stipulates Perppu.

In addition to the objective criteria for "matters of compelling emergency" as stipulated in Article 22 paragraph (1) of the NRI Constitution of 1945, to limit the

<sup>11</sup> Jimly Asshiddiqie, *Perihal Undang-Undang* (Jakarta: Rajawali Pers, 2020).

<sup>12</sup> Asshiddiqie, *Perihal Undang-Undang*.

authority of the President which is very subjective, the NRI Constitution of 1945 also determines the means of control for the DPR. Article 22 paragraph (2) of the NRI Constitution of 1945 stipulates that, "The government regulation shall be approved by the House of Representatives in the following session". Furthermore, if the Perppu does not get approval by the DPR, then the Perppu must be revoked.

The DPR's assessment of the Perppu set by the President is one part of the principle of *checks and balances* between state institutions in accordance with the principle of *power limit power*. It is true that the President has the right to determine the Perppu, but it is not absolute because once it is determined the Perppu must be submitted to the DPR for approval or not. This indicates that the authority to determine Perppu by the President is only temporary. The Perppu should not be valid for too long, because it has the potential to violate human rights.

Bagir Manan stated that the phrase "must get approval" should also be interpreted as "must not get approval". This means that the DPR can refuse to give approval and the Perppu must be revoked as stipulated in Article 22 paragraph (3) of the NRI Constitution of 1945. According to Simorangkir, there are 3 (three) reasons for the DPR to reject the Perppu, namely: (1) because of different views on whether there are factors "in terms of compelling emergencies"; (ii) because it cannot agree on the content of its articles (its dictum); or (iii) due to a combination of (i) and (ii).<sup>13</sup>

In practice, there has been a dualism of Perppu testing, namely by the DPR and by the Constitutional Court. The Constitutional Court has until now declared itself authorized to examine the Perppu as stated in Constitutional Court Decision Number 145/PUU-XVII/2009. The Constitutional Court held that Perppu and the law have equal standing. So that the authority given by the Basic Law to the Constitutional Court to examine laws against the Basic Law has been expanded.<sup>14</sup> However, in practice the Constitutional Court's Perppu test often loses its object. Because the test object has received approval by the DPR. According to the author, the expansion of the authority of state institutions through court decisions is not appropriate because the mechanism for changing the Constitution has been explicitly determined in Article 37 of the NRI Constitution of 1945. That is, if the Constitutional Court is considered authorized, it should amend Article 24C paragraph (1) of the NRI Constitution of 1945 by including Perppu can be tested by the Basic Law.

Even if there is a dualism in the Perppu test, the DPR still has a constitutional obligation to give approval or not to give approval, this must be confirmed by the DPR. This assertiveness is needed to avoid if the determination of the Perppu has

<sup>13</sup> Simorangkir, *Hukum & Konstitusi Indonesia* (Jakarta: Gunung Agung, 1983).

<sup>14</sup> Baharuddin Riqiey, "Kewenangan Mahkamah Konstitusi Dalam Memutus Perselisihan Hasil Sengketa Pilkada Pasca Putusan Mahkamah Konstitusi Nomor 85/PUU-XX/2022," *Jurnal APHTN-HAN* 2, no. 1 (2023), <https://doi.org/10.55292/japhtnhan.v2i1.59>.

certain political motives that are not in the interest of the state. In fact, according to Daniel Yusmic P. Foekh in his book said that allowing the enactment of Perppu that did not get DPR approval is equivalent to perpetuating "dictatorship".<sup>15</sup> To prevent such a "*dictatorship*", the Perppu should not apply and should be revoked and declared invalid, as is customary in emergency law.

This is also as stipulated in Article 52 paragraph (5) and paragraph (6) of Law Number 12 of 2011 (hereinafter referred to as Law No. 12 of 2011) which reads:

- (5) In the event that the Government Regulation in Lieu of Law does not receive the approval of the House of Representatives in plenary meeting, then the Government Regulation in Lieu of Law must be repealed and must be declared invalid.
- (6) In the event that a Government Regulation in Lieu of Law must be repealed and declared invalid as referred to in paragraph (5), the House of Representatives or the President submits a Bill on the Repeal of Government Regulation in Lieu of Law.

From the provisions of Article 52 of Law No. 12 of 2011 above, it is clear that Perppu that does not get approval from the DPR must be revoked and declared invalid. The phrase "must be revoked and declared invalid" in the provisions contained in Article 52 paragraph (5) of Law No. 12 of 2011 above indicates that Perppu that is not approved by the DPR is "revocable" not "null and void". On such a basis, further action is needed to revoke the unapproved Perppu. The approval of the Perppu must be given by the DPR institutionally through a plenary session, and not by the DPR in a complete manner or even through a consultation meeting between faction leaders.<sup>16</sup> That is, if the person who gives approval or not is the Legislative Body of the House of Representatives, then it is invalid. Because the DPR Legislation Body is only a tool for the DPR. Meanwhile, to give approval or not to the Perppu submitted to the DPR must go through a plenary session, it is as stipulated in Article 52 paragraph (4) of Law No. 12 of 2011.

From the descriptions above, it can be concluded that the meaning of the phrase "obtaining approval" in the provisions of Article 22 paragraph (2) of the NRI Constitution of 1945 is: (i) The Perppu must be submitted to the DPR for approval; and (ii) In the event that the DPR gives approval, the DPR may approve the Perppu and the DPR may not approve the Perppu. So that if the DPR approves the Perppu, the Perppu must be enacted into law as stipulated in Article 52 paragraph (3) of Law No. 12 of 2011. However, if the Perppu does not get approval by the DPR, then the

<sup>15</sup> Daniel Yusmic P. Foekh, *Perpu Dalam Teori dan Praktik* (Depok: PT RajaGrafindo Persada, 2021).

<sup>16</sup> Because in practice, the DPR Legislation Body has given approval to the Job Creation Perppu while the DPR in the plenary session has not given approval or not to the Job Creation Perppu. In terms of consultation meetings between faction leaders, it has occurred in the case of Perppu Number 4 of 2008 concerning Financial System Security. See Sanny, Honing, John Pieris, and Daniel Yusmic P. Foekh. "Hak Asasi Manusia, Demokrasi Dan Pancasila." *to-ra* (2021): 142-156.



Perppu must be revoked and declared invalid as stipulated in Article 22 paragraph (3) of the NRI Constitution of 1945.

## 2. Meaning of "in the following trial"

The phrase "in the following trial" in Article 22 paragraph (2) of the NRI Constitution of 1945 becomes *debatable*. The reason is, the phrase does not have a detailed explanation in the NRI Constitution of 1945. So that in practice, both by the framer of the law and by state institutions in this case the Constitutional Court can give its own meaning. Of course this will cause legal uncertainty, where legal certainty is the main characteristic of the rule of law.<sup>17</sup> The principle is *ibi jus incertum, ibi jus nullum*—where the *right is uncertain*, there is no right.<sup>18</sup> With legal certainty, people's rights are protected from potential government arbitrariness.<sup>19</sup>

The phrase "in the following session" in the NRI Constitution of 1945 dates back to the first draft constitution drafted by Soepomo with Subardjo and A.A Maramis on April 4, 1942. In the draft constitution there is an article that substantially has similarities with Article 22 paragraph (2) of the NRI Constitution of 1945, namely in Article 5 paragraph (2) of the 1942 Constitution Bill which says the Perppu must be submitted before the next session of the DPR and if the DPR refuses, then the government is obliged to declare the rule invalid.<sup>20</sup>

The debate over what is meant by the phrase "in the following trial" in Article 22 paragraph (1) of the NRI Constitution of 1945 resurfaced after the approval of the Job Creation Perppu by the DPR into law. The reason is, the President has set the Job Creation Perppu on December 30, 2022, then on January 10, 2023 to February 16, 2023 is the Third Session Period of the 2022-2023 DPR. During the session period, the DPR did not provide any clarity at all whether the Job Creation Perppu was approved or not, even in the plenary session did not discuss at all about the Job Creation Perppu. However, on March 21, 2023, the DPR only provided clarity regarding the Job Creation Perppu, in which the DPR approved the Job Creation Perppu into law.

If we look at the explanation of the provisions of Article 52 of Law No. 12 of 2011, the meaning of "in the following session" is the first session period of the DPR after the Perppu was determined. This means that what is meant by "in the following session" according to Law No. 12 of 2011 is the closest DPR session period after the enactment of the Perppu by the President. Thus, the Job Creation Perppu submitted to the DPR should be revoked and declared invalid. Because, if you look at the sequence of the process of forming the Perppu until the submission of the Perppu to

<sup>17</sup> Syofyan Hadi, *Pengantar Ilmu Hukum* (Surabaya: R.A.De.Rozarie, 2021).

<sup>18</sup> Stone, Jason. "Ubi Jus Incertum, Ibi Jus Nullum: Where the Right Is Uncertain, There Is No Right: *United States v. Navajo Nation*." *Public Land & Resources Law Review* 27, no. 1 (2006): 149-165.

<sup>19</sup> Moh Fadli and Syofyan Hadi, *Kepastian Hukum: Perpektif Teoritik* (Malang: Nuswantara Media Utama, 2023).

<sup>20</sup> Daniel Yusmic P. Foekh, *Perpu Dalam Teori dan Praktik*.

the House above, the DPR has passed the following session period, in this case is the Third Session Period of the 2022-2023 DPR. Because during that session the DPR must provide an explanation whether the Job Creation Perppu is approved or not.

In addition, if the DPR really understands that the Job Creation Perppu is one of the President's efforts to deal with "compelling emergencies" as stated in Article 22 paragraph (1) of the 1945 NRI Constitution, it should be as soon as possible for the DPR to provide clarity whether the Job Creation Perppu is approved or not. Conversely, if the DPR actually adjourns the nearest session and will provide clarity in the next session again, this further shows that the Perppu that has been determined by the President does not meet the "*matter of compelling emergency*".

The Constitutional Court in 2020 has given the meaning of "the following trial" through Constitutional Court Decision Number 43/PUU-XVIII/2020. In legal considerations of Constitutional Court Decision Number 43/PUU-XVIII/2020, the Court held:

"That against these legal facts, according to the Court, the phrase "the following trial" in Article 22 paragraph (2) of the 1945 Constitution must be interpreted if the Perpu is submitted during the recess of the DPR. So if the Perpu is submitted during the implementation of the DPR session period as stipulated in the 2020 DPR Tatib, the phrase "the following trial" must be interpreted as a decision-making hearing by the DPR immediately after the Perpu is determined by the President and submitted to the DPR. That is, even though the Perpu is determined and submitted by the President during the current DPR session period (not the recess period), the DPR must provide an assessment of the Perpu Determination Bill at the decision-making session during the current DPR session. Meanwhile, if the Perpu is determined and proposed by the President during the recess, the DPR must give approval or not give approval to the Perpu at the decision-making session during the DPR session after the recess period ends. This is important considering that the essence of the issuance of the Perpu is due to the existence of a compelling emergency as an absolute condition. So that the longer the period of time for the DPR to give approval or not regarding the Perpu proposed by the President, it will eliminate the essence of the issuance of the Perpu. Moreover, the regulation regarding the time for the DPR to give approval or not regarding the issuance of the Perpu, further guarantees legal certainty both on the validity and nature of the sustainability of the Perpu, considering that the Perpu was formed based on the existence of a force crunch, which in this case is the Covid-19 pandemic which not only threatens health but also safety and the national economy..."

The above considerations can at least be concluded that the meaning of "the following trial" in Article 22 paragraph (2) of the NRI Constitution of 1945 has 2 (two), namely: (i) if the Perppu is submitted at the time of the DPR session, then during that session the DPR must make a decision whether it is approved or not; (ii) if the Perppu is submitted during the recess period, the DPR must give approval or not give approval during the DPR session after the recess period has ended. This decision is the opinion of 9 (nine) constitutional judges, without any dissenting opinion. The time limitation for giving such approval is none other than to indicate the encencies of the issuance of the Perppu. Because basically Perppu is a temporary regulation, so it has a certain validity period.<sup>21</sup>

According to the author, the time limitation given by the Constitutional Court above is appropriate and very clear. Because these considerations give the impression to the DPR not to delay providing clarity on the Perppu submitted to it. Given the essence of the Perppu itself is the regulations issued in "matters of compelling emergency". In addition, the determination of Perppu by the President is an effort by the President to maintain the safety of the country, so in these conditions the President must take quick steps to protect his people. So that the Perppu submitted to the DPR must be immediately given clarity, whether it is approved into law or not.

The meaning of "in the following trial" continues to change. We can find this in Constitutional Court Decision Number 54/PUU-XXI/2023. In the ruling, the Constitutional Court gave a new meaning to the phrase "in the following trial" in Article 22 paragraph (2) of the Indonesian Constitution of 1945 which according to the Court is a constitutional meaning according to the NRI Constitution of 1945. The Court held that the phrase "in the following proceedings" as in legal considerations was as follows:

"... it is important for the Court to determine the grace period for the approval of the House of Representatives in the following session as stipulated in Article 22 paragraph (2) of the 1945 Constitution. There are a number of time options to interpret the phrase "the following trial" whose application is considered constitutional based on the 1945 Constitution, namely: (1) the period of session of the DPR when the perppu is submitted by the President to the DPR; (2) the first session of the DPR after the perppu is submitted by the President to the DPR; (3) the first session period after the expiration of the maximum grace period for submitting perppu by the President to the DPR. The determination of this grace period is solely to create legal order in terms of approval of bills derived from perppu within the framework of

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<sup>21</sup> Fitra Arsil, "Menggagas Pembatasan Pembentukan dan Materi Muatan Perppu: Studi Perbandingan Pengaturan dan Penggunaan Perppu di Negara-Negara Presidensial," *Jurnal Hukum & Pembangunan* 48, no. 1 (2018), <https://doi.org/10.21143/.vol48.no1.1593>.

a democratic rule of law based on the constitution and does not reduce the urgency, urgency, and temporary aspects of the enactment of a perppu which is a special feature of the perppu itself. The DPR in approving the perppu should also prioritize the principle of good faith in the process and not wasting time..."

The above considerations can at least be concluded that the meaning of "the following trial" in Article 22 paragraph (2) of the NRI Constitution of 1945 has 3 (three) options, namely: (i) the period of the DPR session when the perppu is submitted by the President to the DPR; (ii) the first session of the DPR after the perppu is submitted by the President to the DPR; (iii) the first session period after the expiration of the maximum grace period for submitting perppu by the President to the DPR. This decision is the opinion of 5 (five) constitutional judges, and there are 4 (four) dissenting opinions, namely by Wahidudin Adams, Saldi Isra, Enny Nurbaningsih, and Suhartoyo. According to Wahidudin Adams in his dissenting, the meaning of the phrase "in the following trial" is that there are 2 (two) meanings, namely meaning in the strict sense and in the loose sense. In a strict sense, it means the first session period of the DPR after the Perppu is determined, while in a loose sense it is the period of the DPR session at any time after the Perppu is determined. Even Wahidudin Adams quoted Yusril Ihza Mahendra who interpreted the phrase "in the following session" as the period of the DPR session after the recess period when the Perppu was determined by the President.

Meanwhile, Saldi Isra and Enny Nurbaningsih interpret the phrase "in the following trial" with 2 (two) meanings, namely: (i) the first chance of the next DPR trial, or (ii) the first trial period when the DPR can reconvene. Agreements made during other sessions other than the first trial period will actually deny the temporary nature of the Perppu and are not in line with the principle of legal certainty. Thus, the phrase "the following trial" must be interpreted limited to the first session period and immediately after the Perppu is determined. Although there is dissenting by 4 (four) Constitutional Judges, the meaning that applies is the opinion of 5 (five) Constitutional Judges as stated in Constitutional Court Decision Number 54/PUU-XXI/2023. Given that the decision of the Constitutional Court is final and binding.<sup>22</sup>

The authors argue that the redefined meaning of the phrase "in the following trial" will have implications for interpreting Article 52, paragraph (1) of Law No. 12 of 2011. This is noteworthy, given that the explanation of Article 52, paragraph (1) of Law No. 12 of 2011 explicitly states that "in the following session" refers to the first session period of the DPR after the determination of the Government Regulation in Lieu of Law. While both Constitutional Court Decisions and Law No.

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<sup>22</sup> Johansyah Johansyah, "Putusan Mahkamah Konstitusi Bersifat Final Dan Mengikat (Binding)," *Solusi* 19, no. 2 (2021): 165–82, <https://doi.org/10.36546/solusi.v19i2.359>.

12 of 2011 carry binding legal force, it is incumbent upon the legislators to harmonize the interpretation of "in the following trial" within Law No. 12 of 2011. Alternatively, the People's Consultative Assembly, as a state institution with the authority to enact changes, could address this by providing clarity on the meaning of "in the following session" in the NRI Constitution of 1945.

Hence, the interpretation of the phrase "*in the following trial*" in Article 22, paragraph (2) of the NRI Constitution of 1945 encompasses: (i) the DPR's session period when the perppu is presented by the President; (ii) the inaugural session of the DPR following the perppu submission; and (iii) the first session period subsequent to the lapse of the maximum grace period for perppu submission as outlined in Constitutional Court Decision Number 54/PUU-XXI/2023.

#### **D. Conclusion**

This study finally concluded that the examination of Article 22, paragraph (2) of the NRI Constitution of 1945 reveals the presence of two phrases, "obtaining the approval of the House of Representatives" and "in the following session," susceptible to diverse interpretations. Regarding the phrase "obtaining the approval of the House of Representatives," it signifies that the DPR holds the authority to either sanction the Perppu into law or reject it. In the event of rejection, the Perppu must be annulled and deemed void. As for the interpretation of "in the following session," it encompasses: (i) the DPR's session period during the submission of the perppu by the President; (ii) the inaugural session of the DPR post perppu submission; and (iii) the initial session period following the expiration of the maximum grace period for perppu submission, aligning with the elucidation in Constitutional Court Decision Number 54/PUU-XXI/2023.

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