

## ABSTRAK

Isu hukum yang diangkat dalam penelitian ini adalah karakteristik Perpu dan konstusionalitas kewenangan MK dalam pengujian Perpu. Penelitian ini adalah peneltian normatif dengan pendekatan perundang-undangan, pendekatan konsep, pendekatan historis dan pendekatan kasus.

Hasil dari penelitian ini adalah: (1) Karakteristik Perpu sebagai peraturan perundang-undangan adalah instrumen hukum yang ditetapkan dalam keadaan abnormal/darurat yakni dalam hal ikhwal kegentingan yang memaksa, sehingga Perpu merupakan peraturan perundang-undangan yang bersifat sementara. Karakteristik Perpu tersebut berbeda dengan UU yang merupakan instrumen hukum yang ditetapkan dalam keadaan normal, sehingga UU bersifat tetap. Sehingga secara materiil Perpu memiliki kedudukan dan kekuatan mengikat sama seperti UU. Namun secara formal Perpu berbeda dengan UU, karena berdasarkan Pasal 22 ayat (1) UUD NRI Tahun 1945 Perpu merupakan peraturan yang penetapannya merupakan hak eksklusif Presiden. Oleh karena itu, sebagai sarana perwujudan kedaulatan rakyat, berdasarkan Pasal 22 ayat (2) UUD NRI Tahun 1945 Perpu tersebut harus diajukan ke DPR pada masa sidang yang berikut untuk mendapatkan persetujuan. (2) Kewenangan MK dalam pengujian konstusionalitas Perpu terhadap UUD NRI Tahun 1945 adalah kewenangan yang tidak memiliki dasar konstusional (inkonstitusional). Karena berdasarkan Pasal 24C UUD NRI Tahun 1945 MK hanya berwenang untuk menguji konstusionalitas UU terhadap UUD NRI Tahun 1945. Oleh karena itu, walaupun secara materiil UU dan Perpu adalah sama, namun secara formal keduanya adalah berbeda, sehingga pengujian Perpu bukan merupakan kewenangan MK baik pengujian secara formal maupun materiil, karena yang boleh diuji oleh MK adalah UU yang secara materiil normanya mengikat, dan secara formal merupakan hasil persetujuan bersama antara DPR dan Presiden. Dan jika dikaji dengan penafsiran gramatikal, penafsiran sistematis, dan penafsiran *original intent* (historis), UUD NRI Tahun 1945 hanya memberikan kewenangan kepada MK untuk menguji konstusionalitas UU terhadap UUD NRI Tahun 1945.

Penelitian ini merekomendasikan supaya MPR segera melakukan perubahan terhadap UUD NRI Tahun 1945 karena terdapat beberapa ketentuan dalam Pasal 22 UUD NRI Tahun 1945 yang bersifat ambigu seperti (i) istilah “persidangan yang berikut” harus diperjelas, sehingga terhadap Perpu yang tidak diajukan dan/atau disetujui atau ditolak pada masa sidang terdekat dengan penetapan Perpu harus dinyatakan tidak berlaku lagi karena hukum, ii) mengenai akibat hukum Perpu yang ditolak harus diperjelas dengan klausul “Terhadap peraturan pemerintah itu yang tidak mendapatkan persetujuan DPR tidak berlaku lagi karena hukum”, dan iii) MPR harus segera mengambil sikap mengenai berwenangnya MK dalam pengujian perpu karena yang berwenang untuk menambah, mengurangi atau mencabut kewenangan lembaga negara adalah MPR melalui perubahan UUD NRI Tahun 1945.

Kata Kunci : Pengujian, Peraturan Pemerintah Pengganti Undang-Undang (Perpu), dan Mahkamah Konstitusi

## ABSTRACT

It is reported that the issue of law taken accounts of this study is the characteristic of government regulation of laws replacement (Perpu) and even Constitution Court's (MK) Legislation Authority in Government Regulation of Laws Replacement review. Conveniently, this study is set as Normative one by, in additionally, orientated within Legislation approach, Conceptual approach, Historical approach, and even Problematic/Case approach.

Accordingly, the research finding belonging to is (1) the characteristic of government regulation of laws replacement as legislative regulation is alleged as a law instrument which is stated within emergent state of affair; criticality in state of emergency or at pinch. Thus, the government regulation of laws replacement considered as tentative regulation. The characteristic, however, belonging to government regulation of laws replacement would be rather differently to Laws encompassing the instrument of legislation which is under consciously setting in such way that is to be stated one as well as consistently, indeed. But then, the government regulation of laws replacement materially took part through role and even reign as Laws. It, However, in formal state of affair would be different. Hence, according to section 22 verse (1) UUD NRI 1945, in which government regulation of laws replacement is the president exclusive authority-saked regulation. So, as means of the representation towards citizenry standing upon actually-wide sovereignty, according to section 22 verse (2) UUD NRI 1945 such government regulation of laws replacement is to be introduced to Legislative Assembly at forward session for reaching after a ratification. (2) Constitution Court authority in constitutionality trial of government regulation of laws replacement toward UUD NRI 1945 is the authority which does not have constitutional base (in-constitutional). Taking into consideration that it is conformed to section 24 C UUD NRI 1945, Constitution Court only has authority to examine the constitutionality of regulation (UU) toward UUD NRI 1945. Thus, regardless of the fact that UU and government regulation of laws replacement are materially in line, however both are formally in different way. For the reason, government regulation of laws replacement trial is not belonging to Constitution Court (MK) within neither formal trial nor material trial. It is caused that Court Constitution could take for granted regulations (UU) which is materially stating norm as well as in formal state of affair the result of collective ratification between Legislative Assembly along with President. Furthermore, on condition that UUD NRI 1945 would be examined thorough by grammatical interpretation, systematical interpretation, original intent interpretation as so-called as historical interpretation, it only hands over the authority to Constitution Court to examine regulations (UU) constitutionality toward UUD NRI 1945.

This research extremely-hearted recommends towards Parliament to as sooner as possible make over the alternation towards UUD NRI 1945 inasmuch as presence of several rules in section 22 UUD NRI 1945 which is ambiguous, such as (i) term "session at following phase" must be clarified, thus for the government regulation of laws replacement which is not submitted and/or ratified or rejected at forward session within decision of government regulation of laws replacement ought to be stipulated as being expired policy due to Law, (ii) Concerning to the effects of government regulation of laws

replacement must be clarified by clause “towards government regulations that do not accept approval belonging to Legislative Assembly will be in expired policy due to Law”, (iii) The Parliament must take in part as sonner as possible, concerning the authority of Constitution Court in examining government regulation of laws replacement seeing that who authirizes to add, to reduce or to revoke authority of the institution is Parliament through a mending regulation of UUD NRI 1945.

*Key words: Review, Government Regulation of Laws Replacement, and Constitution Court (MK).*

