

Reformulating Government Regulations in Lieu of Laws through Fast-Track Legislation within the Framework of Deliberative Democracy

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ARTICLE INFO

Article History

Received: May 11, 2025

Revised: January 20, 2026

Accepted: April 29, 2026

Keywords

Perppu;

Deliberative Democracy;

Fast Track Legislation;

Emergency lawmaking

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ABSTRACT

This study aims to reformulate the mechanism for forming Government Regulations in Lieu of Laws (Perppu) through a fast-track legislation approach grounded in deliberative democracy. It addresses the constitutional problems arising from broad presidential discretion, unclear parameters of “compelling urgency,” limited legislative oversight, and the absence of public participation in emergency lawmaking. The study contributes a normative model that seeks to reconcile the need for rapid governmental responses to urgent circumstances with democratic legitimacy, transparency, accountability, and public participation. Using normative legal research, the study applies a statute approach and a conceptual approach, examining the 1945 Constitution, Law Number 12 of 2011 concerning the Formation of Legislation, legal literature, and the theories of deliberative democracy developed by Jürgen Habermas and James S. Fishkin. The findings demonstrate that Perppu formation remains vulnerable to executive dominance, politicization, and weak participatory safeguards, despite constitutional and judicial limitations. The study further finds that fast-track legislation can accelerate emergency lawmaking while retaining checks and balances, provided it incorporates deliberative principles of influence, inclusion, open dialogue, access to information, and meaningful participation. The study concludes that reformulating Perppu formation through a selectively applicable fast-track procedure can strengthen its democratic legitimacy without undermining its responsiveness to compelling urgency. It recommends revising Law Number 12 of 2011 to establish clear eligibility criteria, procedural safeguards, public consultation mechanisms, transparency requirements, and stronger parliamentary oversight.

Introduction

Government Regulation in Lieu of Law (Perppu) is one of the legal instruments that has a strategic role in addressing the conditions of compelling urgency in

Indonesia.¹ Perppu is a type of legislation mentioned in the 1945 Constitution of the Republic of Indonesia, namely in Article 22. The practice of issuing Perppu in the history of Indonesian state administration has often sparked debate among academics, legal practitioners, and the general public.² This mechanism allows the Government to take quick steps without going through a time-consuming legislative process to address emergency situations that require immediate solutions.³

However, in practice, the formation of Perppu often triggers controversy, especially regarding its legitimacy, transparency, and accountability.⁴ From 2019 to 2023, the government issued several Perppu, which sparked controversy in society. Some of the controversial Perppu include Perppu Number 2 of 2020 concerning State Financial Policy and Financial System Stability, Perppu Number 1 of 2022 concerning Amendments to the Minerba Law, Perppu Number 4 of 2021 concerning Handling Criminal Acts of Terrorism, Perppu Number 3 of 2022 concerning Job Creation, and Perppu Number 2 of 2023 concerning Postponement of the 2024 Elections.⁵

This shows that the formation of Perppu is often considered an attempt by the government to override the participatory and deliberative legislative process. This is evidenced by the issuance of the Job Creation Government Regulation in Lieu of Law, which was later enacted as the Job Creation Law without going through a proper legislative process.⁶ This has sparked debate among legal experts, practitioners, and the general public regarding the extent to which the mechanism for issuing a Government Regulation in Lieu of Law reflects the principles of participatory democracy.⁷ In comparative law, this mechanism has similarities to fast-track legislation used in several countries, such as the United States and the

¹ Putra Perdana Ahmad Saifulloh et al., "The Ratio Legis of Government Regulation in Lieu of Law as Emergency Legislation," *Journal of Indonesian Constitutional Law* 3, no. 1 (2026): 28–55, <https://doi.org/https://doi.org/10.71239/jicl.v3i1.230>.

² Wilma Silalahi and Yunita Estu Lestari, "Pengujian Perundang – Undangan: Legislative Review Executive Review Dan Judicial Review," *Jurnal Pustaka Cendekia Hukum Dan Ilmu Sosial* 3, no. 2 (October 3, 2025): 131–41, <https://doi.org/10.70292/pchukumsosial.v3i2.149>.

³ Muwaffiq Jufri et al., "Standardisation of the Legislation as a Follow-Up to the Constitutional Court's Decision on Judicial Review of Omnibus Law," *Jurnal Konstitusi* 21, no. 3 (September 2024): 366–91, <https://doi.org/10.31078/jk2132>.

⁴ Cipto Prayitno, "Constitutionality Analysis Limitation Authority of the President in the Stipulation of Government Regulation in Lieu of Act," *Jurnal Konstitusi* 17, no. 3 (November 10, 2020): 513, <https://doi.org/10.31078/jk1733>.

⁵ Rohadhatul Aisy, Ngboawaji Daniel Nte, and Windiahsari Windiahsari, "The Relationship Between Law and Politics in the Government Regulation in Lieu of Law (Perppu) on Social Organizations," *Indonesian Journal of Advocacy and Legal Services* 6, no. 2 (September 2, 2024): 269–92, <https://doi.org/10.15294/ijals.v6i2.30576>.

⁶ Zainal Arifin Mochtar et al., "From Meaningful to Meaningless Participation: The Tragedy of Indonesia's Omnibus Law on Job Creation," *Jurnal Media Hukum* 31, no. 2 (December 5, 2024): 351–70, <https://doi.org/10.18196/jmh.v31i2.23557>.

⁷ Dian Furqani Tenrilawa et al., "Re-Bounding Emergency Lawmaking in Indonesia: Constitutional Design, Parliamentary Oversight, Islamic Law Perspectives, and Accountability After COVID-19," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 13, no. 1 (June 1, 2026): 384, <https://doi.org/10.29300/mzn.v13i1.10622>.

United Kingdom. Fast-track legislation is a legal procedure that accelerates the law-making process by reducing the stages of discussion in parliament. Although efficient, this model has also been criticized for potentially weakening checks and balances. Therefore, it is important to evaluate the extent to which the "fast track" still ensures democratic legitimacy in the context of emergency law.

Deliberative democracy offers a relevant approach to overcome the weaknesses in the Perppu formation process. Habermas asserts that deliberative democracy is a model of democracy that requires discussion, consultation, and deliberation in forming certain policies.⁸ This means that the government in a country must give an opportunity for discussion with various stakeholders, in this case with labor communities, labor unions, and also society, in making a policy so as not to create social conflict in the midst of society.⁹

In this context, reformulating Perppu formation based on community participation is important to ensure that this legal mechanism is not only responsive to emergency needs but also aligned with democratic principles that uphold openness, public discourse, and accountability. According to Habermas, public space must fulfill two main criteria, namely freedom and critical nature. Freedom means that every individual has the right to speak, gather, and participate in political discussions anywhere. Meanwhile, critical nature reflects the readiness and ability to oversee the public decision-making process fairly and responsibly.

This view aligns with the concept of democracy expressed by James S. Fishkin. Fishkin states that democracy gives people a "voice" and creates space for them to find solutions to problems.¹⁰ This is an important element of democracy, although it is often interpreted differently in practice. In this context, "voice" in democracy is understood as the opportunity for every citizen to influence state policy in accordance with their wishes.¹¹

This article explores reformulating Perppu formation through a deliberative democracy approach to improve the quality and legitimacy of public policies in Indonesia. By integrating public participation into the emergency legislation process, it is hoped that Perppu can become a legal instrument that is not only effective in overcoming crises, but also able to strengthen public trust in the government.

In line with these objectives, the discussion in this paper is directed to answer two main formulation problems, namely: first, how the concept of deliberative

⁸ Ortwin Renn et al., "Deliberative Democracy: Concepts and Implications," in *Fairness and Competence in Citizen Participation* (Cham: Springer Cham, 2025), 33–66, https://doi.org/10.1007/978-3-032-02302-5_3.

⁹ Asep Nurjaman and Julio Tomas Pinto, "Hybrid Deliberative Democracy in Practice: A Case Study of Community Engagement and Public Decision-Making in Malang City, Indonesia," *Frontiers in Political Science* 7 (December 10, 2025), <https://doi.org/10.3389/fpos.2025.1658901>.

¹⁰ James Fishkin, "Deliberation by the People Themselves: Entry Points for the Public Voice," *Election Law Journal: Rules, Politics, and Policy* 12, no. 4 (December 2013): 490–507, <https://doi.org/10.1089/elj.2013.0200>.

¹¹ James Fishkin et al., "Scaling Dialogue for Democracy: Can Automated Deliberation Create More Deliberative Voters?," *Perspectives on Politics* 23, no. 2 (June 3, 2025): 434–51, <https://doi.org/10.1017/S1537592724001749>.

democracy is applied in the democratic system in Indonesia; and second, how the reformulation of the mechanism for the formation of Perppu based on community participation in the concept of deliberative democracy can be applied.

Through this discussion, the authors seek to identify the concept of deliberative democracy applied in Indonesia's democratic system and how the reformulation of the mechanism for forming community-based Perppu within the concept of deliberative democracy can be applied. The authors believe this effort is not only relevant to the development of law in Indonesia, but also makes a positive contribution to strengthening participatory democratic values amid increasingly complex socio-political dynamics.

Methods

The type of research used is normative legal research, which is research conducted to examine positive legal norms, both in the form of legislation, doctrine, and court decisions, relating to the formation of Perppu and the application of the principle of deliberative democracy in the Indonesian legal system. This research focuses on primary and secondary legal materials as the basis for analyzing the legal issues raised.¹² This research uses two approaches, namely: ¹³ 1) A statute approach, which is an approach carried out by examining all relevant laws and regulations, such as the 1945 Constitution of the Republic of Indonesia and Law Number 12 of 2011 concerning the Formation of Legislation. 2) Conceptual approach, which is an approach based on the views of legal experts and theories developed in the fields of constitutional law and democracy, especially the theory of deliberative democracy developed by Jürgen Habermas and James S. Fishkin.

This research uses three types of legal materials: 1) Primary legal materials, namely laws and regulations such as the 1945 Constitution of the Republic of Indonesia and Law No. 12 of 2011; 2) Secondary legal materials, in the form of legal literature, textbooks, scientific journals, scientific articles, and expert opinions relevant to the topic; 3) Tertiary legal materials, which are materials that provide guidance or explanation of primary and secondary legal materials, such as legal dictionaries and legal encyclopedias. Legal materials were collected through library research, namely by tracing and reviewing legal literature and documents related to the object of research. These sources were obtained from university libraries, online scientific journals, and official government documents.¹⁴ The analysis uses the descriptive-qualitative method, systematically describing and interpreting the legal materials obtained, then analyzing them with legal logic to develop juridical arguments on the

¹² Amiruddin dan Zainal Asikin, *Pengantar Penelitian Hukum* (Jakarta: Rajawali Pers, 2018), 54.

¹³ Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (November 2022): 289, <https://doi.org/10.37253/jjr.v24i2.7280>.

¹⁴ Tunggal Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Origins and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2023): 1–9, <https://doi.org/10.22219/aclj.v4i1.24855>.

subject matter.¹⁵ The authors also conduct systematic and teleological interpretation, especially of Article 22 of the 1945 Constitution and Article 23 of Law No. 12/2011.

Discussion

Concepts and Principles of Deliberative Democracy

Deliberative democracy was initiated by Habermas to overcome the dryness of Western rationalism in a neo-capitalist society. In neo-capitalism, rationality only means domination through economic and instrumental labor.¹⁶ The word deliberative comes from the Latin 'deliberatio', which means 'consultation', 'deliberation', or 'deliberation'. So, democracy is said to be deliberative if, in the process of making public policies, it is tested through public consultation first, or, according to Habermas' theory, it is called "public discourse".¹⁷ Deliberative democracy as a concept of thought was first introduced by Jürgen Habermas, who emphasized the importance of public participation for the benefit of society, where the State must provide space for the community to contribute to every policy formulation. In deliberative democracy, the state no longer determines its policies in a closed space (splendid isolation). Unlike what is understood by the public in general, that the 'public sphere' is a forum for discussing every public policy, but more than that, the public sphere is not just a place but a condition that allows constituents to be able to play an active role in voicing every public interest in policymaking in favor of the public interest.¹⁸

The concept of deliberative democracy was first systematically introduced by Jürgen Habermas, a German philosopher who developed the theory of communicative action. Habermas views the ideal deliberative process as one in which citizens can communicate with each other in a public space that is free from domination, with the aim of reaching a rational and fair understanding. This public space is intended to reach a common understanding through an inclusive and equal argumentative process. But what is still difficult to guarantee in this system is the extent to which political interactions between higher institutions are influenced by the large currents of popular voices, aka whether the people have sufficient access to enliven the dynamics of discourse. Habermas, as mentioned earlier, offers a model of democracy that allows people to be involved in the process of making laws and

¹⁵ Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies."

¹⁶ Simone Chambers, "Deliberative Democracy and the Digital Public Sphere: Asymmetrical Fragmentation as a Political Not a Technological Problem," *Constellations* 30, no. 1 (March 30, 2023): 61–68, <https://doi.org/10.1111/1467-8675.12662>.

¹⁷ Emilie Pratico, *Habermas and the Crisis of Democracy* (London: Routledge, 2022), <https://doi.org/10.4324/9781003144519>.

¹⁸ Riyadi et al., "Democracy Deliberative in Learning History," in *Proceedings of the International Joint Conference on Arts and Humanities 2023 (IJCAH 2023)* (Paris: Atlantis Press, 2023), 955–61, https://doi.org/10.2991/978-2-38476-152-4_93.

policies. That is, a deliberative democracy that guarantees that civil society is fully involved in making laws through discourse.¹⁹

According to Carson and Karp, there are 3 criteria for public policymaking that can be categorized as a deliberative process. The three criteria are:²⁰ a) Influence: the process should have the ability to influence policy and decision-making; b) Inclusion: the process should be representative of the population and inclusive of diverse viewpoints and values, providing equal opportunity for all to participate; c) Deliberation: the process should provide open dialogue, access to information, respect, space to understand and reform issues, and movement towards consensus.

Deliberative democracy is also a critical response to the crisis of representation that often occurs in liberal political systems.²¹ In conventional representative systems, people's aspirations are often reduced or subordinated by the interests of political and economic elites. Therefore, deliberative democracy requires a mechanism that allows people to participate directly and substantially in every stage of the policy-making process, including the legislative process. Inclusive and transformative public discourse is an absolute requirement so that public policies reflect substantive justice, not just formal legality. Thus, deliberative democracy not only restores society's active role in democracy but also encourages the realization of social justice through an ethical and equal communication process.

Deliberative Democracy in the Indonesian Democratic System

Regarding the history of democratic theory worldwide, Ni'matul Huda, in his book *State Science*, notes two historical facts: first, almost everyone today claims to be a democrat. Various political regimes around the world describe themselves as democracies. However, what one regime says and does often differs substantially from what another does. Second, many countries claim to embrace a democratic system, but their political systems often show significant insecurity in enforcement. The history of democracy in Europe shows that democracy is difficult to implement.²²

A democratic system is a form of government often described as “government by the people, for the people, and of the people.” When viewed from an etymological point of view, democracy comes from the words *demos* (people), and *cratein* (rule). According to the interpretation of R. Kranenburg in his book “*Inleiding in de vergelijkende staatsrechtwetenschap*”, the word democracy, which

¹⁹ Veith Selk and Dirk Jörke, “Back to the Future! Habermas and Dewey on Democracy in Capitalist Times,” *Constellations* 27, no. 1 (March 9, 2020): 36–49, <https://doi.org/10.1111/1467-8675.12423>.

²⁰ Riyadi et al., “Democracy Deliberative in Learning History.”

²¹ Ciaran Cronin, “On the Possibility of a Democratic Constitutional Founding: Habermas and Michelman in Dialogue *,” in *Habermas and Law* (Routledge, 2020), 197–223, <https://doi.org/10.4324/9781003074977-13>.

²² Putra Perdana Ahmad Saifulloh et.al, “Political Dynasties in General Elections According to Human Rights and A Comparison in Four ASEAN Countries,” *Trunojoyo Law Review (TLR)* 7, no. 1 (2025): 123–60, <https://doi.org/10.21107/tlr.v7i1.28492>.

is formed from the two main Greek words above, means how to rule by the people.²³ So, literally, the word democracy can be interpreted as the people ruling.

In Indonesia itself, the development of the democratic system according to Budiardjo is divided into 3 stages, namely:²⁴ a) The period of the Republic of Indonesia I (Constitutional Democracy): in this era, the democratic system emphasizes the central role of parliament and its parties, so it is also known as parliamentary democracy; b) The period of the Republic of Indonesia II (Guided Democracy), the democratic system in this era was considered to have deviated from the existing constitutional values; c) The period of the Republic of Indonesia III (Pancasila Democracy): during this period, Pancasila democracy is a constitutional democracy system that emphasizes the presidential system.²⁵

In examining the history of the development of Indonesian democracy, Gaffar said that discussion of democracy in Indonesia cannot be separated from the periodization of Indonesia's political history. Namely, what is referred to as the period of government during the independence revolution, parliamentary government (representative democracy), Guided Democracy government (guided democracy), and New Order government (Pancasila democracy).

Indonesia's democratic system has evolved through four main phases:²⁶

- a) Parliamentary Democracy (1945-1959): After independence, Indonesia adopted a parliamentary system under the 1945 and 1950 Constitutions. However, unstable party coalitions and frequent cabinet changes (averaging only eight months) hindered economic and political progress. Parliament and political parties held significant power, often debating every policy.
- b) Guided Democracy (1959-1965): Initiated by President Soekarno through the 1959 Presidential Decree, this era featured strong presidential dominance, limited political party roles, military involvement, and rising communist influence. It was marked by authoritarian tendencies, such as Soekarno being made president for life in 1963. The era ended with the G30S/PKI incident in 1965.
- c) Pancasila Democracy (1965-1998): Following the fall of Guided Democracy, the New Order regime under Soeharto emphasized Pancasila and the 1945 Constitution. However, despite its democratic rhetoric,

²³ Koencoro Poerbopranoto, *Sistem Pemerintahan Demokrasi*, (Bandung: Eresco, 1987), hlm. 6.

²⁴ Amancik Amancik et al., "Choices of Law for Democratic Regional Head Election Dispute Resolution Institutions in Indonesia," *Jambura Law Review* 6, no. 2 (July 22, 2024): 304–38, <https://doi.org/10.33756/jlr.v6i2.24792>.

²⁵ Muwaffiq Jufri et al., "Religion and State in Islamic Constitutional Law: The Role of Pesantren in Strengthening Symbiotic Islam and the State in Madura," *Justicia Islamica* 21, no. 2 (November 6, 2024): 221–46, <https://doi.org/10.21154/justicia.v21i2.9283>.

²⁶ Muhammad Bahrul Ulum, "Indonesian Democracy and Political Parties After Twenty Years Of Reformation: A Contextual Analysis," *Indonesia Law Review* 10, no. 1 (April 30, 2020), <https://doi.org/10.15742/ilrev.v10n1.577>.

political openness was limited, and government control remained authoritarian in practice.

- d) Reform Democracy (1998-present): Triggered by Soeharto's resignation in 1998, this era introduced more democratic governance. Key features include fair elections, decentralization of power, open political recruitment, and greater protection of civil rights such as freedom of expression and the press.

Problems of Formulation of Perppu in Indonesia

Government Regulation in Lieu of Law (Perppu) is a form of legal product that is constitutionally legitimized through Article 22 of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). The provision states that the President has the authority to enact Perppu in cases of compelling urgency. However, the formulation of the phrase "matters of compelling urgency" in the 1945 Constitution is not accompanied by a detailed explanation, leaving room for broad interpretation and potential misuse by the authorities.²⁷

Although Perppu is considered an important legal product in an emergency, in practice, its formulation raises various problems from normative, procedural, and political perspectives. The main problems in the formulation of Perppu in Indonesia include at least three aspects: first, the absence of rigid legal parameters related to the meaning of "compelling urgency"; second, the dominance of presidential authority without strict control mechanisms in the early stages; and third, the potential for politicization in the formation of Perppu to avoid a longer legislative process in the DPR. The Constitutional Court in Decision Number 138/PUU-VII/2009 stipulated three conditions that must be met in order to be said to be a critical situation, namely: a) There is an urgent need to resolve legal issues quickly to avoid a legal vacuum. The need must be so urgent that it is impossible to wait for the ordinary legislative process, which tends to take a long time; b) The required law is not available or inadequate, making it insufficient to serve as a basis for resolving issues quickly and accurately; c) The process of forming laws through ordinary procedures will take a relatively long time, while the situation that occurs requires immediate handling, so a legal instrument that can be immediately enacted is needed.

However, implementing this decision is not always consistent with the government's practice of issuing Perppu. The provision remains open to broad interpretation, so the President is likely to misuse it for political interests.²⁸ Furthermore, another worrying problem is the dominance of the President's power

²⁷ Putra Perdana Ahmad Saifulloh, "Penafsiran Pembentuk Undang-Undang Membentuk Kebijakan Hukum Terbuka Presidential Threshold Dalam Undang-Undang Pemilihan Umum Yang Bersumber Dari Putusan Mahkamah Konstitusi," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (2022): 153, <https://doi.org/10.33331/rechtsvinding.v11i1.867>.

²⁸ Muhammad Fajri Zulfi and Mochamad Adli Wafi, "The Idea of Formal Review by the Constitutional Court of Laws Enacting Government Regulations in Lieu of Law: Questioning Parliamentary Objectivity," *Jurnal Konstitusi* 23, no. 1 (March 31, 2026): 025–054, <https://doi.org/10.31078/jk2312>.

in the process of forming Perppu. Unlike laws that are drafted through a joint process with the House of Representatives (DPR), Perppu is entirely the result of the President's initiative and authority. This creates an imbalance between the executive and legislative branches. Perppu becomes a *top-down* legal product, without any participatory mechanism that reflects the principles of constitutional democracy. Bivitri Susanti criticizes that this pattern shows authoritarian tendencies in the legislative process, where the President can unilaterally determine the law without adequate supervision from parliament.²⁹

Although the DPR has the authority to accept or reject Perppu during the next session, this legislative control is often ineffective. Many of the DPR's political decisions on Perppu are shaped by internal political dynamics and government pressure, rather than substantive analysis of the Perppu's urgency and content. In practice, the DPR rarely rejects a Perppu, despite various academic and public arguments against its existence. One of the DPR's functions in overseeing Perppu is often merely a formality, without a critical evaluation of the basis for urgency or the regulation's content.³⁰

More dangerously, Perppu is often used not because of a legal emergency, but as a tool to achieve certain political goals. Perppu No. 2/2017 on Community Organizations is a controversial example, as it was used to dissolve certain organizations directly without a fair judicial mechanism. Various civil society groups and legal institutions, such as the Institute for Criminal Justice Reform (ICJR), criticized it, arguing that the government abused its authority by issuing a Perppu for political interests rather than because of a legal emergency.

Another problem in formulating Perppu is the lack of space for public participation in the drafting process. Unlike the legislative process for laws, which accommodates public aspirations through hearings, academic papers, and public consultations, the executive forms Perppu behind closed doors. In fact, despite its emergency nature, Perppu is still a legal product that directly impacts society, so ideally it should still be formed with transparency and participation in mind. The lack of transparency in forming Perppu shows a lack of accountability in Indonesia's emergency legislation system and a mismatch between legal procedures and the principles of a democratic state of law.

These problems show that the formation of Perppu in Indonesia still leaves many issues, both in theory and practice. Mahfud MD once said that the development of law is strongly influenced by existing political dynamics, and that most legal products are an extension of power. So, the vagueness of norms, weak institutional control, potential abuse of authority, and the absence of public participation indicate that reform of the mechanisms and norms for forming Perppu

²⁹ Saifulloh et al., "The Ratio Legis of Government Regulation in Lieu of Law as Emergency Legislation."

³⁰ Lutfil Ansori, "Pembatasan Penetapan Peraturan Pemerintah Pengganti Undang-Undang Dalam Penyelenggaraan Pemerintahan," *Konferensi Nasional Asosiasi Pengajar Hukum Tata Negara Dan Hukum Administrasi Negara* 1, no. 1 (December 31, 2023): 517–46, <https://doi.org/10.55292/2s7e3295>.

is urgent. Perppu should be a temporary legal solution in extraordinary conditions, not a political instrument that authorities can use arbitrarily.³¹

Fast-track legislation is the process of forming laws quickly, with maximum deadlines intended to meet normative needs. Of course, several countries have begun to implement this method by developing their respective mechanisms. The concept of *Fast Track Legislation* aims to ensure legal certainty in situations that require a quick government response. In this context, basic legal values such as justice, expediency, and legal certainty remain important guidelines. First, Fast Track Legislation must uphold justice. Although the process is accelerated, the decision taken must be fair and not detrimental to the parties involved. Second, expediency must also be considered.

Fast Track Legislation is expected to provide the maximum benefit to the community or the state in emergency or urgent situations. Decisions must consider long-term benefits and not only react to the current situation. Third, legal certainty remains the main principle. Although the process is fast, *Fast Track Legislation* must provide legal certainty. Decisions must be clear and unambiguous, and their impact should be predictable for the general public. Thus, Fast Track Legislation can be seen as a tool to maintain legal certainty, even in situations that require a quick response. With an accelerated process, values such as justice, expediency, and legal certainty are still expected to be guaranteed.³²

Based on the description above, if Fast Track Legislation is applied, it must be accommodated normatively because it affects the Indonesian legislative system itself; to implement this concept, Law Number 12/2011 concerning the Formation of Legislation must be amended. The Law sets out the qualifications for a law that can be passed using the *fast-track legislation* method. Among the qualifications are as follows: a) Legal decisions that require normative adjustments; b) Respond to errors in the existing law; c) The existence of non-emergency social phenomena that require legal adjustments. This qualification is important to avoid deviations in the application of FTL, so only laws with the urgency of immediate ratification can use the FTL method.³³

Implementation of the Concept of Deliberative Democracy in the Formation of Perppu through Fast Track Legislation

The establishment of Perppu in Indonesia is often considered an instrument of constitutional emergency.³⁴ However, in practice, Perppu is often used to

³¹ Saifulloh et al., "The Ratio Legis of Government Regulation in Lieu of Law as Emergency Legislation."

³² Mas Pungky Hendra Wijaya and Mohammad Zulfikar Ali, "Legislation Impediments in Reorganising Government Bodies in Indonesia," *BESTUUR* 9, no. 1 (August 2021): 1, <https://doi.org/10.20961/bestuur.v9i1.51633>.

³³ Indra Bayu Nugroho et al., "Penerapan Gagasan Fast Track Legislation Dalam Pembentukan Undang-Undang Di Indonesia Dalam Perspektif Efisiensi Legislasi," *INICIO LEGIS* 5, no. 2 (November 13, 2024): 49–62, <https://doi.org/10.21107/il.v5i2.27625>.

³⁴ Saifulloh et al., "The Ratio Legis of Government Regulation in Lieu of Law as Emergency Legislation."

accelerate the legislative process without public participation, raising controversy over its legitimacy and legal quality. Based on an analysis of available sources, reforming the Perppu formation mechanism through a fast-track legislative approach that integrates public participation within a deliberative democracy framework is a crucial solution. The experience of the United Kingdom, which applies a fast-track legislative process while still ensuring parliamentary oversight and limited public consultation, demonstrates that expedited lawmaking can coexist with democratic principles, making it a relevant model for reforming Indonesia's Perppu mechanism.³⁵

Perppu should only be issued in emergencies that threaten national interests. However, in practice, Perppu is often used to quickly discuss controversial bills without involving public participation, as in the case of the Job Creation Law and the IKN Law. This contradicts the principle of *checks and balances* and could violate people's constitutional rights.

In making laws, it must be based on the principles or provisions of good law formation mentioned in Law Number 12/2011 Chapter 2 Articles 5 and 6 regarding the principles of law formation as a solution as follows: a) Clear objectives; b) Authorized or official institution; c) Alignment between types of hierarchy and content substance; d) Can be done; e) Efficiency and permanence; f) Formulation transparency; g) Openness.

Furthermore, in Article 6, the content of laws and regulations must reflect the principles:³⁶ a) Protection, b) Humanity, c) Nationalism, d) Brotherhood, e) Civility, f) Unity in diversity, g) Justice, h) Equal hierarchy of law and government; i) Harmonization and legal certainty; j) Balance and harmony. Meanwhile, there are five procedures in the formation of laws or legislation in Indonesia, including: a) Planning; b) Compilation of Discussion; c) Endorsement or Determination; d) Invitation.³⁷

Planning procedures are planning actions, or methods. Planning is the activity of creating concepts and organizing laws and regulations for implementation. Drafting procedure is the stage of preparing and developing legal documents that must be prepared properly: a) Academic paper; b) Philosophical foundation; c) Juridical foundation; d) Sociological foundation; e) Substance; f) Cover. If the law-making process is to be characterized by a deliberative process, then a process must be created that refers to the realization of the three criteria above. The new process that is to be built must: a) have the ability to influence policy and decision-making;

³⁵ Ansori, "Pembatasan Penetapan Peraturan Pemerintah Pengganti Undang-Undang Dalam Penyelenggaraan Pemerintahan."

³⁶ Mohammad Fadli, Marsudi Dedi Putra, and Miftahus Sholehudin, "Fast-Track Legislation Yang Benar Dan Demokratis," *Arena Hukum* 16, no. 3 (December 31, 2023): 443–62, <https://doi.org/10.21776/ub.arenahukum.2023.01603.1>.

³⁷ Agnes Fitryantica and Regy Hermawan, "Fast-Track Legislation Mechanism as an Alternative to the Formation of Legislation in Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 16, no. 3 (November 30, 2022): 423–32, <https://doi.org/10.30641/kebijakan.2022.V16.423-432>.

b) be representative of the population and open to diverse values and viewpoints, and provide equal opportunities for all parties to participate; c) provide an open space for dialogue, respect for views, and access to information.

The absence of clear limitations on the President's authority to issue Perppu is often based on subjective views about the urgency of policy formation, although it cannot be denied that, in running the government, situations often arise that require quick and responsive action. For this reason, Indonesia has Government Regulation in Lieu of Law (Perppu) as a legal instrument that allows the President to issue regulations with the force of law without having to go through a lengthy law-making process in the DPR. The legal basis for this Perppu is found in Article 22 of the 1945 Constitution of the Republic of Indonesia. Which reads:

- 1) In cases of compelling urgency, 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 next session.
- 3) If it does not receive approval, then the government regulation must be revoked. This article authorizes the President to issue a Perppu in certain urgent circumstances. Perppu applies like a law but must be approved by the House of Representatives within a certain time to remain in effect.

In fact, forming a Perppu can also involve the DPR by applying the concept of fast-track legislation appropriately, measurably, and quickly. Various terms refer to the mechanism of fast law formation, ranging from Fast Track Legislation (FTL) to Motion urgency, which refers to the procedure of law formation within a relatively short time.³⁸ These terms are accompanied by various arrangements and practices carried out by various countries. This concept proposes a special mechanism that accelerates the process of law formation for issues that require quick and responsive handling from the government due to the demands of the State situation at hand, this mechanism can generally be qualified in Article 23 paragraph (2) of Law No. 12/2011, which reads:³⁹ "In certain circumstances, the DPR or the President may propose bills outside the Prolegnas, including: 1) To address extraordinary circumstances, states of conflict, or natural disasters; and 2) Other certain circumstances that ensure the national urgency of a Bill that can be jointly approved by the DPR organs specifically dealing with legislation and the minister who organizes government affairs in the field of law."

Article 23 paragraph (2) of Law No. 12/2011 on the Establishment of Legislation (PP Law) states that in certain situations, both the DPR and the President

³⁸ Bayu Aryanto, Susi Dwi Harijanti, and Mei Susanto, "Menggagas Model Fast-Track Legislation Dalam Sistem Pembentukan Undang-Undang Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10, no. 2 (August 27, 2021): 187, <https://doi.org/10.33331/rechtsvinding.v10i2.703>.

³⁹ Yuniar Riza Hakiki and Taufiqurrahman Taufiqurrahman, "The Idea of Structuring National Legislation Based on The Ratio of Decidendi & Obiter Dictum Constitutional Court Decision," *Jurnal Konstitusi* 20, no. 1 (March 25, 2023): 78–99, <https://doi.org/10.31078/jk2015>.

can propose bills outside the National Legislation Program (Prolegnas). This applies in emergencies, conflicts, natural disasters, or other situations that require immediate handling in the national interest. Bills proposed under these conditions must be approved by the DPR organs specialized in legislation and the minister responsible for government affairs in the field of law. The similarity between this article and Perppu can be seen from several aspects. Namely, these situations indicate that the bill process must be expedited due to the State conditions faced. However, to respond quickly, the government often uses a Perppu rather than going through the DPR, which does not provide certainty about when it will be passed given the State's urgent conditions. Thus, the Perppu and the related concept of "Fast Track Legislation," or the formation of fast laws, share similarities in addressing these constraints.

Conclusion

The concept of democracy in Indonesia has evolved significantly since independence, from Constitutional Democracy, Guided Democracy, Pancasila Democracy, to the Reformation era. Each period has its own characteristics and challenges in realizing the ideals of government of, by, and for the people. In this context, Habermas's idea of deliberative democracy offers a new perspective that emphasizes the importance of rational and inclusive public participation in the policy formulation process. This concept prioritizes public discourse free from domination as a mechanism for reaching a fair understanding, so that resulting policies better reflect the interests of the community at large and overcome the crisis of representation that often arises in conventional representative democratic systems. Thus, the implementation of Deliberative Democracy principles, such as the influence of participation, inclusiveness, and open deliberation processes, has the potential to strengthen the quality of democracy in Indonesia towards substantive justice.

Problems with the formulation of Perppu in Indonesia include unclear parameters for "compelling urgency," the dominance of presidential authority without strong initial checks, and the potential for politicization. Although the Constitutional Court has set limits, implementation remains open to broad interpretation. Furthermore, the absence of public participation in drafting Perppu, in contrast to the process of legislating laws, demonstrates a lack of accountability and is incompatible with the principles of democratic rule of law. To address this, reform of the Perppu drafting mechanism through a *fast-track legislation* approach that integrates the principles of deliberative democracy is crucial. The concept of *fast-track legislation*, which emphasizes the rapid formation of laws while upholding the values of justice, expediency, and legal certainty, can be accommodated normatively through the revision of Law Number 12/2011 on the Formation of Legislation. This revision can include clear qualifications for when a law may be passed through a rapid mechanism, as well as integrate deliberation stages that involve public participation. Thus, Perppu is expected not only to be a quick-response instrument

in emergency conditions, but also a legitimate and accountable legal product that reflects the principles of deliberative democracy in Indonesia.

Acknowledgment

None

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