

# The Effect of Legal Political Determination of Perpu Number 1 of 2020 on Financial Markets in Indonesia During the COVID-19 Pandemic

Blucer Welington RAJAGUKGUK<sup>1</sup>, Muhammad NAJIB<sup>2</sup>

Received: August 20, 2020 Revised: January 25, 2021 Accepted: February 03, 2021

## Abstract

The purpose of this research paper is to overcome the impact the COVID-19 in Indonesia, the Government of the Republic of Indonesia has set Perpu No.1 of 2020 concerning State Financial Policies and Financial System Stability for Handling COVID-19 Pandemic. This paper uses a descriptive analysis method with a normative juridical approach, namely by explaining the politics of law in the stipulation of Perpu No. 1 of 2020 into Law, then analyzing its effect on the character of legal products contained in the Act. The data sources used in this paper are the 1945 Constitution of the Republic of Indonesia, Perpu Number 1 of 2020 which has been ratified into Law Number 2 of 2020, Legislation in the field of state finance, literature books, and several articles from print and electronic media. This paper concludes that the legal politics of establishing Perpu No.1 of 2020 into Act was born from a democratic political system and configuration, but the character of its legal products was conservative. The aim of the paper is to focus on the discussions related to the new regulations that have been made by the Indonesian government and analyse the impact resulting from the enactment of these regulations.

**Keywords :** Legal Politics, State Finance, COVID-19, Law

**JEL Classification Code:** K15, K23, G18

## 1. Introduction

In the early months of the year 2020, the world experienced 2019 Corona Virus Disease pandemic (Covid-19). Covid-19 virus is a new type of virus that has very fast transmission rate and no vaccine has been found for protection against it. In just a matter of a few months, this virus spread to almost all the countries of the world, including Indonesia. The Indonesian government announced the first case of Covid-19 in Indonesia in early March 2020. Because the victims of the Covid-19 virus kept on increasing and spreading world over,

on March 11, 2020, the World Health Organization (WHO) declared Covid-19 as a Global Pandemic.

The spread of Covid-19 carries risks to public health and has even claimed lives for those infected in various parts of the world. The Covid-19 pandemic has also significantly disrupted economic activity and has major implications for the economy of most countries around the world, including Indonesia. To overcome its impact in Indonesia, on March 31, 2020 the Government of the Republic of Indonesia issued Government Regulation in Lieu of Law (Perpu) Number 1 of 2020 concerning State Financial Policies and Financial System Stability for Handling Covid-19 Pandemic and / or In the Context of Facing Threats Harm National Economy and / or Financial System Stability. Furthermore, the President of the Republic of Indonesia declared Covid-19 pandemic as a Non-National Disaster with Presidential Decree Number 12 of 2020 dated April 13, 2020 (Presidential Decree Number 12 of 2020).

Perpu No. 1 of 2020 contains several legal norms whose material content is divided into issues of state financial policy, taxation and financial system stability policies. The issuance of Perpu No. 1 of 2020 had caused controversy among the people, because it was considered to be in conflict with the constitution and in disharmony with other laws. In addition,

<sup>1</sup>First Author and Corresponding Author. Head, Main Directorate of Development and Development of State Financial Audit Law, State Audit Board of the Republic of Indonesia, Indonesia [Postal Address: Jl. Jenderal Gatot Subroto No. 31, Central Jakarta, 10210, Indonesia] Email: blucerwelington.bpk.jp@gmail.com

<sup>2</sup>Staff of the Main Directorate of Development and Development of State Financial Audit Law, State Audit Board of the Republic of Indonesia, Indonesia. Email: muhammadnajib.bpk.jp@gmail.com

© Copyright: The Author(s)

This is an Open Access article distributed under the terms of the Creative Commons Attribution Non-Commercial License (<https://creativecommons.org/licenses/by-nc/4.0/>) which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

this Perpu is also considered an omnibus law in another form. Some parties also consider that the Government deliberately used the momentum of the Covid-19 pandemic to issue the Perpu to overcome economic problems that were actually happening at home (Kompas, 2020).

In addition, there are controversies in certain articles, which are considered to give the right of immunity to the government so that it violates the constitution and democratic principles. Regarding this matter, Menko Polhukam Mahfud MD (2017) explained that “Officials who carry out their duties in good faith cannot be criminalized (because) they are in the Criminal Code, in the Ombudsman Law, in the BI Law, in the General Taxation Provisions Act, in the Tax Amnesty Law, in the Tax Amnesty Act, many do. In the Advocate Law even the Constitutional Court’s ruling also says so. So, I think there is no problem, he explained” (Luxiana, 2020).

Of all the articles contained in Perpu Number 1 of 2020, the main controversy is in article 27 which consists of 3 verses, which read as follows:

- (1) Costs incurred by the Government and / or KKS member institutions in the context of implementing tax policy revenues, state expenditure policies including regional financial sector policies, financial stability policies, and national economic recovery programs. Some part of the economic cost to save the economy from the crisis and not losses to the state.
- (2) Members of the KKS secretariat, KKS secretaries, KKS members, as well as officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority, and the Deposit Insurance Corporation, and other officials linked to the implementation of this Perpu, cannot be prosecuted either civil or criminal if they carry out their duties. Based on the good faith and in accordance with statutory requirements.
- (3) All of the actions stated that the verdicts taken are based on this Perpu are not the object of a lawsuit that can be submitted to the administrative law council (*Perpu* Number 1 of 2020, LN Number 87 of 2020, TLN Number 64855).

Upon the issuance of Perpu No. 1 of 2020 which caused such controversy, a lawsuit was brought to the Constitutional Court by a group of people such as the Anti-Corruption Society (MAKI), Amien Rais, and Din Syamsudin in different registers. In principle, the Constitutional Court (MK) lawsuit assess that some articles in Perpu No. 1 of 2020 are contrary to the 1945 Constitution and must be canceled by the Court (*Perpu* Number 1 of 2020, LN Number 87 of 2020, TLN Number 64855).

However, in the midst of the debate over Perpu Number 1 of 2020, on May 12, 2020, the DPR Budget Board in the

DPR Plenary Meeting discussed the Perpu Number 1 of 2020, where eight factions agreed and one faction disagreed that the Perpu became Law. Furthermore, on May 18, 2020, the Republic of Indonesia Parliament formally enacted Regulation Number 1 of 2020 into Law Number 2 of 2020 (Law Number 2 of 2020, LN Number 134 of 2020, TLN No. 6516) concerning the stipulation of Perpu Number 1 of 2020 into Law.

In connection with the issuance of the Perpu, Asshiddiqie (2008) in the State Administration Emergency Law reports, said that there are 2 types of requirements for the 1945 Constitution of the Republic of Indonesia for the publication of the Perpu. Initially while implementing it there lies a danger which can be equated with the interpretation of an emergency condition, (Jimly, 2008) is Article 12 of the 1945 Constitution of the Republic of Indonesia, in this matter the President reports a dangerous condition (MPR, 2002). Second, based on Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, in the sense of coercion, the President has the right to stipulate a Perpu (MPR, 2002). Next, whether Perpu No. 1 of 2020 is enforced while what is promulgated as a law, this is the authority of the DPR.

Departing from the above background, this paper will discuss two issues. First, how is the legal politics in establishing Perpu Number 1 of 2020 to become Law Number 2 of 2020? Second, how is the political influence of the law on the character of the legal products contained in Law Number 2 of 2020 concerning Stipulation of Perpu Number 1 of 2020 into Law? This paper aims to provide an overview of the politics of law in the stipulation of Perpu Number 1 of 2020 into Law Number 2 of 2020 and its influence on the character of legal products contained in the Act.

## 2. Literature Review

Law and politics are subsystems in the social system. Each carries out certain functions to drive the social system as a whole and synergistically. Broadly speaking, the law functions to carry out social control, dispute settlement and social engineering or innovation. While political functions include maintaining the system and adaptation (socialization and recruitment), conversion (rule making, rule application, rule adjudication, interest articulation and aggregation) and capability functions (regulative extractive, distributive and responsive) (Oka Mahendra, 2004) on Rahardiansah (2006).

The relationship between law and politics is that existing laws (in the sense of positive law) are political decisions. The Basic Law in Indonesia was made by the MPR which is a political institution. Likewise with other laws and regulations as the implementation of the Basic Law, it is also a political decision (Saragih, 2006). Therefore, discussion on legal politics is focused on positive law or the law in force at that time, which was made or determined by the state through the state institution or authorized officials.

Legal politics is like a “policy” that is taken (pursued) by the state (through its institutions or officials) to determine which laws need to be changed, which laws are needed, which laws need to be regulated, what is governed by this policy by the administration of the country and a government that can run well and in an orderly manner so that the objectives of the country (such as people’s welfare) can be realized gradually and in a planned manner. (Saragih, 2006). Meanwhile According to Mahfud (2017), Legal politics is a “legal policy or formal line (policy) on law that is enforced either by making new laws or amending old laws, in order to achieve the goals of the country”. Thus, political law is an option for legislation to be promulgated and options for laws to be revoked or not enforced, all of which are to achieve the goals of the state set out in the Preamble to the 1945 Constitution (Mahfud, 2017).

Legal politics adheres to the principle of double movement, in addition to being a framework for formulating policies in the field of law (legal policy) by authorized state institutions, it is also used to criticize legal products that have been enacted based on the legal policy (Syaukani and Thohari, 2007).

In the Indonesian government system, a legal product arise in the sense of positive law, is inseparable from the influence of the political system prevailing at that time. The influence of the political system on the birth of the legal product gives rise to a thesis which states that “the law is a political product”. According to Mahfud (2017), with the assumption that “law is a political product”, the law is seen as a dependent variable, while politics is placed as an independent variable. The laying of the law as a variable that depends on politics or politics that is determinant of the law is easily understood by looking at the reality in the sense of abstract rules (imperative articles) is a crystallization of the political wills that interact with each other and compete. Trials with government laws to form laws like legal products are basically an area of contest so that the interests and aspirations of all politics can be accommodated in political decisions and become laws. The law that was born from this contestation was looked at like a political product (Mahfud, 2017).

As we know that Perpu Number 1 of 2020 was stipulated by President Joko Widodo on March 31, 2020, wherein the government system in Indonesia adheres to the presidential system. Based on Octovina (2018), the characteristics of presidential government systems are:

- a. President as head of state and as head of government;
- b. The president is not elected by a representative body but is elected by the people;
- c. The President is in the same position as the legislature;
- d. The cabinet is formed by the President, so that the cabinet is responsible to the president;
- e. The President cannot be overthrown by the legislature, and vice versa the President cannot dissolve the legislature.

The characteristics of implementing this presidential government system are reflected in the 1945 Constitution of the Republic of Indonesia (1945 Constitution) after the amendment. One of the provisions that strongly indicates the strength of the presidential system in the 1945 Constitution of the Republic of Indonesia NRI is implied in Article 7C, which states that the President cannot freeze and / or dissolve the DPR (Aritonang, 2010). In addition, the provisions of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that sovereignty is in the hands of the people and is carried out according to the Constitution, indicates that there is not a single institution that is more supreme than other institutions. All state institutions that are included in playing organs are in equal position with their respective functions. Other provisions that signify a presidential government system in the 1945 Constitution of the Republic of Indonesia are mentioned in the Article 6A paragraph (1) which states “President and Vice President are elected in a pair directly by the people”, and provisions regarding the appointment and dismissal of ministers which are the prerogative rights of the President without the need for a mechanism approval from the DPR, as regulated in Article 17 paragraph (2).

While the political system adopted at that time was a democratic political system. According to Bingham Powel, Jr. stated that the democratic political system has 5 characteristics, namely (Ulfa, 2020):

- a. Legitimacy of the government is based on the claim that the government represents the wishes of the people (the highest law is prepared based on what is needed and desired by the people, then the government holding power and members of parliament must obey the law);
- b. Arrangements that organize negotiations (bargaining) to obtain legitimacy are carried out through competitive elections (elections which are one way in a democratic-based system to choose and determine a regulation, legislation or people’s representatives carried out with fair and honest competition);
- c. Some adults can participate in the electoral process or as candidates to occupy important positions (the words of some adults are those who have reached the age limit and meet certain conditions to participate and become candidates for government officials);
- d. People choose in secret and without coercion (usually in the TPU there is a voting booth which is used by the community to choose the prospective partner who will be chosen secretly and based on their conscience);
- e. Communities and leaders enjoy basic rights, such as freedom of speech, association, freedom of association and freedom of the press (freedom of speech means that all levels of society have the right and freedom to voice their thoughts and opinions or better known as aspirations).

**Table 1:** Composition of DPR Membership in 2019–2024 Based on Faction

No	1	2	3	4	5	6	7	8	9	Total
Member	128	85	78	59	58	54	50	44	19	575
%	22.26	14.78	13.57	10.26	10.09	9.39	8.7	7.65	3.3	100

Note: 1. Partai Demokrasi Indonesia Perjuangan (PDIP); 2. Partai Golongan Karya (Golkar); 3. Partai Gerakan Indonesia Raya (Gerindra); 4. Partai Nasdem; 5. Partai Kebangkitan Bangsa (PKB); 6. Partai Demokrat; 7. Partai Keadilan Sejahtera (PKS); 8. Partai Amanat Nasional (PAN); and Partai Persatuan Pembangunan (PPP).

Source: <http://www.dpr.go.id/tentang/fraksi>, June 2020.

In the aftermath of the 1999 elections, the role of political parties in the political system in Indonesia has strengthened again, due to the absence of a single party that controls a simple majority in the MPR and DPR, and also because the climate of democracy has enveloped political life in Indonesia (Saragih, 2006). The composition of DPR membership during the stipulation of Perpu Number 1 Year 2020 into Law is a member of the DPR resulting from the 2019 election as follows:

From a democratic political configuration but there is no one party that controls a simple majority in the DPR, as shown in the table above, it is difficult for a faction to pass its program without forming a coalition with other factions until a simple majority is reached in the institution. Likewise with the executive, it is difficult for the President to pass a bill he has submitted to the DPR without compromising with the large factions in the DPR (Saragih, 2006). Theoretically, the politics of law resulting from political systems and democratic political configurations is the politics of law that brings legal order closer to populist social or legal realities. The legal politics of a government or regime can usually be observed from (Saragih, 2006):

1. The cabinet program that was formed;
2. Considerations formulated in each statutory regulation that is produced, especially the Law;
3. A general explanation of each statutory regulation produced, especially the Law.

### 3. Research Methods and Materials

This paper uses a descriptive analysis method with a normative juridical approach, namely by explaining the politics of law in the stipulation of Perpu No. 1 of 2020 into Law, then analyzing its effect on the character of legal products contained in the Act. The data sources used in this paper are the 1945 Constitution of the Republic of Indonesia, Perpu Number 1 of 2020 which has been ratified into Law Number 2 of 2020, Legislation in the field of state finance, literature books, and several articles from print and electronic media.

The conceptual framework of this research are described in Figure 1 below:

## 4. Results and Discussion

### 4.1. Political Law Determination of Perpu Number 1 Year 2020 Becomes Law Number 2 Year 2020

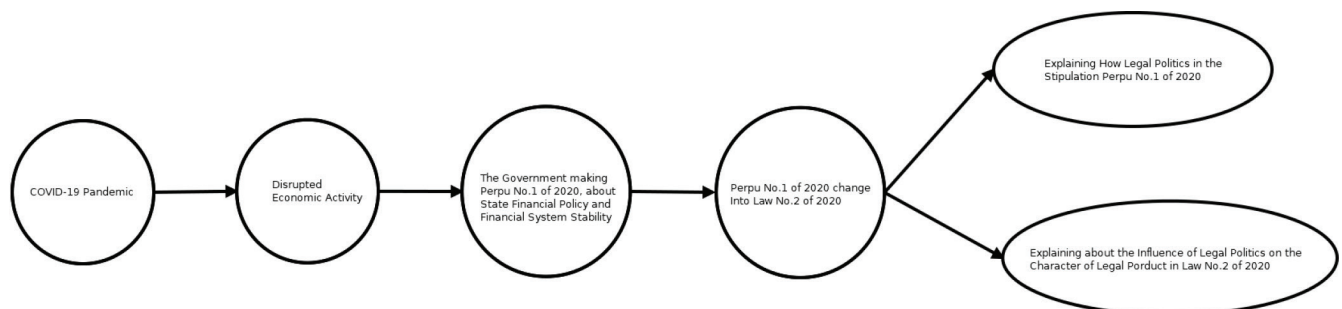
Based on the considerations contained in Perpu No. 1 of 2020, it can be seen that the birth of this Perpu was motivated by the spread of Covid-19 which was declared by WHO as a pandemic in most countries around the world, including in Indonesia. The implications of the Covid-19 pandemic have had an impact among others on slowing national economic growth, decreasing state revenue, and increasing state spending and financing, so that various Government efforts are needed to save health of the national economy, with a focus on spending on health, social safety nets (social safety net), and economic recovery including for the business world and affected communities.

In addition, the implications of the Covid-19 pandemic have also affected the deterioration of the financial system as indicated by a decline in various domestic economic activities so that it is necessary to be jointly mitigated by the Government and the Financial System Stability Committee (KSSK) to take action to anticipate (forward looking) in order to maintain sector stability finance. Therefore, the Government and related institutions need to immediately take policies and extraordinary steps in the context of saving the national economy and financial system stability through various relaxation policies related to the implementation of the State Budget (APBN) especially by increasing spending on health, spending on social safety nets, and economic recovery, as well as strengthening the authority of various institutions in the financial sector. According to the Government, these conditions have met the parameters as a compulsion urgency that gives authority to the President to stipulate Government Regulations in lieu of the Law as stipulated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. For the Government and related institutions to take these policies and steps in a very short time, it is necessary to stipulate Government Regulation in Lieu of Laws on State Financial Policy and Financial System Stability for Handling Corona Virus Disease 2019 (COVID-19) and / or in the context of facing threats that harm national economy and/or the stability of the financial system.



**Table 2:** Composition of DPR Membership in 2019–2024 Based on Faction

Source	Title	Opinion
Mahfud MD (2017)	<i>Politik Hukum di Indonesia</i>	<ul style="list-style-type: none"> <li>– “legal policy or official line (policy) about the law that will be enforced either by making new laws or by replacing old laws, in order to achieve the goals of the country”.</li> <li>– Legal politics is a choice of laws that will be enacted as well as choices about laws that will be revoked or not enacted all of which are intended to achieve the objectives of the state as stated in the Preamble to the 1945 Constitution.</li> <li>– Political configuration is democratic and legal products are responsive / populist, for the democratic country.</li> </ul>
Octovina (2018)	<i>Sistem Presidensial di Indonesia</i>	The characteristics of presidential government systems are: President as head of state and as head of government; the president is not elected by a representative body but is elected by the people; the President is in the same position as the legislature; and the cabinet is formed by the President, so that the cabinet is responsible to the president.
Oka Mahendra (2004) on Rahardiansah (2006)	<i>Pengantar Ilmu Politik; Paradigma, Konsep Dasar dan Relevansinya Untuk Ilmu Hukum</i>	Political functions include maintaining the system and adaptation (socialization and recruitment), conversion (rule making, rule application, rule adjudication, interest articulation and aggregation) and capability functions (regulative extractive, distributive and responsive).
Saragih (2006)	<i>Politik Hukum</i>	Legal politics is like a “policy” which is taken through the institution of its officials to ascertain which laws need to be changed, or which need to be changed, or which laws need either, or which laws override what is regulated or managed. with this policy, the administration of the country and government can run well and in an orderly manner so that prosperity can be realized gradually.
Syaukani and Thohari (2007)	<i>Dasar-dasar Politik Hukum</i>	Legal politics adheres to the principle of double movement, in addition to being a framework for formulating policies in the field of law (legal policy) by authorized state institutions, it is also used to criticize legal products that have been enacted based on the legal policy.
Bingham Powel Jr. in Ulfa (2020)	<i>Sistem Politik Demokrasi</i>	Democratic political system has 5 characteristics: Legitimacy of the government is based on the claim that the government represents the wishes of the people; arrangements that organize negotiations to obtain legitimacy are carried out through competitive elections; Some adults can participate in the electoral process or as candidates to occupy important positions; people choose in secret and without coercion; and communities and leaders enjoy basic rights, such as freedom of speech, association, freedom of association and freedom of the press.



**Figure 1:** Conceptual Framework

In the general explanation of Perpu No. 1 of 2020, among others, it was stated that “The response of state financial and fiscal policies is needed to face the risk of a 2019 Coronavirus pandemic (COVID-19), among others in the form of increased spending to mitigate health risks, protect the public and maintain business activities. Pressure on the financial sector will affect the 2020 Budget Year State Budget especially in the Financing side (Perpu Number 1 of 2020). Furthermore, in paragraphs 7 and 8 of General Explanation Perpu Number 1 of 2020 is stated as follows:

*“The spread of the Coronavirus Disease 2019 pandemic (COVID-19) which has an impact and threatens Indonesia’s economic growth is partly due to declining state revenues and global economic uncertainty, requires extraordinary policies and measures in the field of state finance including in the field of taxation and regional finance, and the financial sector, which must be taken immediately by the Government and related institutions to overcome these urgent conditions in the context of saving health of people and the the national economy with a focus on health spending, social safety nets, and the recovery of the affected business world. Therefore, an adequate legal instrument is needed to provide a strong foundation for the Government and related institutions for making the policies and measures referred to.”*

In accordance with the Decision of the Constitutional Court Number 138 / PUU-VII / 2009, the aforementioned conditions have met the parameters as a compulsion urgency in the framework of stipulating Government Regulations in lieu of laws, including:

- a. because there is an urgent need to resolve legal problems quickly based on the Act;
- b. the required law does not yet exist so that there is a legal vacuum or inadequacy, and
- c. the condition of the legal vacuum that cannot be overcome by making the Act in an ordinary procedure that requires a long time while the urgent situation needs certainty to be resolved.”

Based on the considerations and general explanation, it can be seen that the legal politics in the issuance of Perpu No. 1 of 2020 is to save health and the national economy due to the deterioration of the financial system due to the impact of the Covid-19 pandemic. For this reason, the Government requires extraordinary policies and measures in the field of state finance in the context of saving the national economy and financial system stability through various relaxation policies related to the implementation of the National Budget, including increasing spending to mitigate health risks, protecting the public and maintain business activities. The legal basis for the issuance of the Perpu is

based on the provisions of Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that “In matters of urgency, the President has the right to set government regulations in lieu of laws”. Thus, it can be understood that the policy set out in Perpu No. 1 of 2020 was taken in connection with the existence of a compelling urgency as a result of the Covid-19 pandemic.

Furthermore, based on the provisions of Article 22 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the government regulation must obtain the approval of the People’s Legislative Assembly in the next trial. Therefore, after Perpu Number 1 Year 2020 was enacted and promulgated on March 31, 2020, the Government submitted a Draft Law (RUU) concerning Stipulation of Perpu Number 1 Year 2020. On May 4, 2020, a Decree of the Republic of Indonesia House of Representatives was adopted at the first level that the Bill Establishment of Perpu Number 1 of 2020 so that it can be brought to the plenary level. Then on May 6, 2020 a working meeting was held with Commission XI, where the Ministry of Finance (Kemenkeu) had delivered various updates and explanations about the Ministry of Finance’s policy amid the Covid-19 pandemic, discussions on macro asumi and the state budget posture of 2020 (Secretariat of the Cabinet of the Republic of Indonesia, 2020). Furthermore, in the plenary meeting of the 15th DPR, session 3, 2019/2020 trial year, Tuesday, May 12, 2020, the House of Representatives had given its approval to enact a Bill on the Stipulation of Perpu No. 1 of 2020 into Law. After obtaining the approval of the House of Representatives, Perpu Number 1 Year 2020 was then ratified by President Joko Widodo to become Law Number 2 Year 2020 concerning the Establishment of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling Covid-19 and / or in the context of facing threats that harm national economy and/or stability of the financial system into Law, on May 16, 2020, and promulgated on May 18, 2020.

As we know that at the General Election in 2019, President Joko Widodo was carried by 9 political parties, but only 5 political parties succeeded in occupying seats in the DPR, namely PDIP, PPP, PKB, Golkar, and Nasdem. Then at the beginning of forming a cabinet, the Gerindra Party joined forces to form a coalition with the Government. Thus, there were 6 factions in the DPR that became the Government coalition, with a total of 427 seats or 74.26%, consisting of: PDIP as many as 128 seats, Golkar 85 seats, Gerindra 78 seats, Nasdem 59 seats, PKB 58 seats, and PPP 19 seats (Lidwina, 2020). The number of factions that formed a coalition with the Government made it easier for the Government to propose a bill to be approved as a law. Evidently, in the discussion of the Draft Bill on the Establishment of Perpu Number 1 of 2020, only one faction, namely the PKS Faction, which rejected Perpu Number 1 of 2020 became Law (Sari, 2020).

If we look at the considerations and general explanations contained in Law Number 2 of 2020, the formulation is not much different from the considerations and general explanations contained in Perpu Number 1 of 2020. This shows that the politics of establishing Perpu Number 1 of 2020 becomes The law, together with the political law in the formation of the Perpu, is intended to overcome the urgency that is forced as a result of the Covid-19 pandemic, so that the Government requires policies and extraordinary measures in the field of state finance in the context of saving the national economy and financial system stability. In this case, it seems that the DPR fully supports the Government's policies contained in Perpu Number 1 of 2020, because there is not the slightest revision or amendment to the provisions stipulated in Perpu Number 1 of 2020.

#### **4.2. The Influence of Legal Politics on the Character of Legal Products Contained in Law Number 2 of 2020 concerning Stipulation of Perpu Number 1 of 2020 into Law**

Departing from the assumption that "law is a political product", then politics as an independent variable will largely determine the legal product produced as an affected variable. In other words, a country's political configuration will bear the character of certain legal products in that country. Prof. Dr. Moh. Mahfud MD (2017) distinguishes two types of legal product characters:

- 1) Responsive legal products, also known for populist characteristics, namely legal products that reflect justice and fulfill citizens' expectations. In the process of making these laws, people who are selected are well recognised in the community and those who fully participate in the social groups or within the community. The results are responsive to social groups or people within the community.
- 2) Law products that are conservative / orthodox / elitist in nature, namely legal products that have content and are more reflective of a political vision, reflect more on the will of the government, are positivist-instrumental in nature, that is, become tools for implementing ideology and state programs. Contrary to responsive law, this type of law is more close to the groups and individuals in society. In making the role and community participation is relatively small.

Mahfud (2017) describes the relationship between political configuration and the character of legal products as follows: In a country whose political configuration is democratic, its legal products are responsive / populist, whereas in countries whose political configurations are authoritarian, their legal products are orthodox / conservative / elitist. Changes in political configuration from authoritarian to democratic or vice versa have implications for changes in the character of legal products.

However, according to Saragih (2006), there are times when non-democratic (authoritarian) political configurations can also create laws that bring the legal system closer to social (populistic) reality, of course there are many considerations of this regime to produce such laws. On the contrary, in a democratic political configuration, laws can be created that keep the legal system away from social (conservative) realities, which are used normally to deal with a state emergency or a state in danger.

As explained above, if Perpu No.1 / 2020 was born because of the pressure that forced this law due to the Covid-19 pandemic, the Government needed extraordinary policies and actions in the field of public finances in order to save the nation. Economy and financial system stability. By law, the publication of the Perpu is interpreted as justifiable, because as per the conditions of Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia if certain conditions are bad for the country then the President has the right to stipulate government regulations in law. Next, the conditions override the regulation of the Perpu regulated in Law No. 12 of 2011 concerning the Making of Laws and Regulations which have been replaced by Law No. 15 of 2019 (Law 12/2011). Article 1 point 4 of Law 12/2011 states that Government Regulations in Lieu of Laws which were promulgated by the President in matters of pressure. Next, based on the requirements of Article 52 paragraph (1) and paragraph (2) of Law 12/2011, the Perpu must be submitted to the DPR in the next session, in the form of submitting a Draft Law (RUU) concerning the stipulation of a Government Regulation in Lieu of a Law into Law. - Invite. In accordance with Article 43 paragraph (4) letter b. Law 12/2011, the Draft Law on Determining the Perpu into Law is not obliged to be accompanied by an Academic Paper. On the submission of the bill, the DPR only gave any approval it did not give approval to the Perpu (Article 52 paragraph (3) of Law 12/2011).

Perpu Number 1 of 2020 which has been ratified into Law Number 2 of 2020 contains 5 Chapters and 29 Articles. The subject matter regulated in Perpu Number 1 of 2020 is the state financial policy and financial system stability policy in the context of handling the Covid-19 pandemic and / or facing threats that endanger the national economy and / or financial system stability, which includes:

State financial policies, including:

- 1) state revenue policy, including tax policy
- 2) state expenditure policies, including policies in the area of regional finance; and
- 3) financing policies.

Financial system stability policies, including policies for handling financial institution problems that endanger the national economy and / or financial system stability, whether implemented by Bank Indonesia (BI), the Deposit Insurance Agency (LPS), the Financial Services Authority (OJK), or those conducted by the government.

Like the omnibus law which revised several related laws, Perpu Number 1 of 2020 also stated that several provisions in 12 (twelve) Laws did not apply, insofar as they relate to state financial policies for handling the spread of Covid-19 and / or in the context of facing threats that endanger the national economy and / or financial system stability based on this Perpu. The twelve Acts affected are:

- 1) Law Number 6 of 1983 concerning General Provisions and Tax Procedures, as amended several times, the latest by Law Number 16 of 2009 (UU KUP);
- 2) Act Number 23 of 1999 concerning Bank Indonesia, as amended several times, the latest by Act Number 6 of 2009 (BI Act);
- 3) Law Number 17 of 2003 concerning State Finance;
- 4) Law Number 1 of 2004 concerning the State Treasury;
- 5) Law Number 24 of 2004 concerning the Deposit Insurance Corporation, as amended by Law Number 7 of 2009 (LPS Law);
- 6) Law Number 33 of 2004 concerning Financial Balance between the Central Government and Regional Governments;
- 7) Law Number 36 of 2009 concerning Health;
- 8) Law Number 6 of 2014 concerning Villages;
- 9) Law Number 23 of 2014 concerning Regional Government, as amended several times, the latest by Law Number 9 of 2015 (UU Pemda);
- 10) Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the Regional House of Representatives, and the Regional House of Representatives, as amended several times, the latest by Law Number 13 of 2019 (MD3 Law);
- 11) Law Number 9 Year 2016 concerning Prevention and Management of Financial System Crisis; and
- 12) Law Number 20 Year 2019 concerning the State Budget for the 2020 Budget Year (2020 State Budget Act).

Considering that this Perpu was issued to overcome compulsive violence, the drafting must be done quickly, so that it is not done by first collecting the people's aspirations. In fact, according to the provisions of Article 43 paragraph (4) letter b. Law 12/2011, Perpu Draft does not require academic texts. Therefore, the material regulated in the Perpu better reflects the government's wishes and is positivist-instrumentalist. Such legal products, according to Mahfud (2017), are categorized as conservative / orthodox / elitist legal products. In contrast to responsive legal products, conservative / orthodox / elitist legal products are closed to the demands of groups and individuals in society, and in the process of making them do not provide a large role and participation from the community. In this case, all criticism and / or demands from the public regarding the issuance of Perpu Number 1 of 2020 were not considered in

the stipulation of the Perpu as Law. The authority of the DPR is also limited to the extent of giving approval or not giving approval to the said Perpu, without being given the authority to change or revise the contents of the said Perpu.

The birth of conservative legal products from a democratic political configuration is in accordance with the opinion of Prof. Bintan R. Saragih (2006) who stated that there are times when a democratic political configuration, laws can be created that keep the legal system away from social reality (conservative), which is usually used to cope with state emergencies or the state is in danger. This opinion also supports the theory from Utrecht in Saragih (2006) which states as follows:

*“Political law tries to make rules that will determine how humans should act. Legal politics investigates what changes must be made in the current law to fit social reality. It can be said, legal politics continues the development of law by trying to eliminate as much tension between positivity and social reality. Legal politics makes an ius constituendum (the law that will apply), and tries to make the ius constituendum on the day afterwards act as ius contitutum (the new applicable law).*

*But sometimes also, in order to keep the legal system away from social reality, that is in this case legal politics becomes an instrument in the hands of a “ruling class” that has the right to colonize a large part of the community without regard to that social reality. The result is the tension between positivity and social reality is even greater, because the “ruling class” is less or does not want to pay attention to social reality”.*

The difference with Utrecht's theory in the stipulation of this Perpu is that the reason for issuing conservative legislation is not because of a “ruling class” who wants to colonize most members of the community or to maintain power, but because of the urgency that forces to cope with certain circumstances which endangers the interests of the people, nation and state. The issuance of such conservative regulations can be legally justified and the most important thing is that to implement such legal politics there must be supervision from the Parliament and the people themselves. The government must also do everything in its power to resolve quickly the unfavorable conditions (Saragih, 2006).

## 5. Conclusion

Based on the above discussion it can be concluded as follows:

1. Government Regulation in Lieu of Law (Perpu) Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling Covid-19 Pandemic and / or “In Order to Face Threats that Harm National Economy and / or Financial System



Stability”, issued by the President Joko Widodo on March 31, 2020, at which time the government system in Indonesia adopted a presidential system. Perpu No. 1 of 2020 was subsequently approved by the DPR into Law in the 15th DPR plenary meeting, trial period 3, 2019/2020 trial year, Tuesday, May 12, 2020, where the political system adopted at that time was a democratic political system. Therefore, it can be said that the politics of the enactment of Perpu Number 1 of 2020 became an Act born from a democratic political system and configuration. Based on the preamble formulation and general explanation, it is known that the legal politics of establishing Perpu Number 1 of 2020 into Law, is the same as the legal politics in establishing the Perpu, which is to overcome the urgency that forced as a result of the Covid-19 pandemic, so the Government needs policies and extraordinary measures (extraordinary) in the field of state finance in the context of saving the national economy and financial system stability.

2. Considering that Perpu No. 1 of 2020 was issued to overcome compulsive violence, the drafting must be done quickly, without having to capture the aspirations of the community first. In fact, according to the provisions of Article 43 paragraph (4) letter b. Law 12/2011, Perpu Draft does not require academic texts. Therefore, the material regulated in the Perpu more reflects the wishes of the government and is positivist-instrumentalist, so that the legal product is conservative / orthodox / elitist. The birth of conservative legal products from a democratic political configuration is in accordance with the opinion of Saragih (2006) who stated that there are times when a democratic political configuration, laws can be created that keep the legal system away from social reality (conservative), which is usually used to cope with state emergencies or the state is in danger. Juridically, the issuance of the Perpu referred to can be justified, because it is in accordance with the provisions of Article 22 paragraph (1) of the 1945 NRI Constitution jo. Article 1 number 4 and Article 52 of Law 12/2011. The most important thing is that to implement such legal politics there must be oversight from the DPR and the people themselves.

## References

- Aritonang, D. M. (2010). Application of the Presidential System in Indonesia after the Amendment of the 1945 Constitution. *Mimbar Hukum – Faculty of Law, Gadjah Mada University*, 22(2), 391–407.
- Asshiddiqie, J. (2008). *Emergency Constitutional Law*. Jakarta, Indonesia: PT Raja Grafindo Persada.
- Asshiddiqie, J. (2018). Constitutional Adjudication and Democracy. *Journal of Constitutional Justice*, 5(2), 45–71. doi:10.35215/jcj.2018.5.2.002
- Aujirpongpan, S., & Hareebin, Y. (2020). The Effect of Strategic Intuition, Business Analytic, Networking Capabilities and Dynamic Strategy on Innovation Performance: The Empirical Study Thai Processed Food Exporters. *Journal of Asian Finance, Economics and Business*, 7(1), 259–268. <https://doi.org/10.13106/jafeb.2020.vol7.no1.259>
- Government Regulation in Lieu of Law (Perpu) Number 1 of 2020 concerning *State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic and / or in the Context of Facing Threats That Endanger the National Economy and / or Financial System Stability*.
- Huang, C. C., & Ngoc, B. H. (2019). The Relationship between Innovation Capability and Firm’s Performance in Electronic Companies, Vietnam. *Journal of Asian Finance, Economics and Business*, 6(3), 295–304. <https://doi.org/10.13106/jafeb.2019.vol6.no3.295>.
- Kyurova, V., & Yaneva, D. (2017). Research on the Impact of the *Corporate Image* on the Competitiveness of Interior Design Enterprises. *International Conference on Innovations In Science And Education*. Vol 5, 495–498. <https://doi.org/10.12955/cbup.v5.973>.
- Lee, J. W., & Xuan, Y. (2019). Effects of Technology and Innovation Management and Total Factor Productivity on the Economic Growth of China. *Journal of Asian Finance, Economics and Business*, 6(2), 63–73. <https://doi.org/10.13106/jafeb.2019.vol6.no2.63>
- Lee, T., & Nam, H. (2016). An Empirical Study on the Impact of Individual and Organizational Supply Chain Orientation on Supply Chain Management. *The Asian Journal of Shipping and Logistics*, 32(4), 249–255. <https://doi.org/10.1016/j.ajsl.2016.12.009>
- Muafi, M. (2020). A nexus among strategic orientation, social network, knowledge sharing, organizational innovation, and MSMEs performance. *The Journal of Asian Finance, Economics, and Business*, 7(6), 327–338. doi:10.13106/jafeb.2020.vol7.no6.327.
- Kompas. (2020). Article 1 2020 Perppu Immunity Sued to the Constitutional Court, the Government is Judged as Using the Outbreak. *KOMPAS Newsletter*. Retrieved June 20, 2019 from: <https://nasional.kompas.com/read/2020/04/17/12172991/pasal-imunitas-perppu-1-2020-digugat-ke-mk-pemerintah-dinilai-manfaatkan-wabah>.
- Law of The Republic of Indonesia No. 12 of 2011. *The Formation of Laws and Regulations* as amended by Law Number 15 of 2019.
- Law of The Republic of Indonesia No. 2 of 2020. *Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic and / or in the Context of Facing Threats That Endanger the National Economy and / or Financial System Stability Became Law*.

- Law of The Republic of Indonesia No. 12 of 2011. *Preparation of Government Regulation In Lieu of Law*. Jakarta.
- Lidwina, A. (2020). *DPR is controlled by Jokowi's Coalition Party*. Retrieved June 27, 2020 from: <https://databoks.katadata.co.id/datapublish/2019/10/25/parlemen-dikuasai-partai-koalisi-jokowi>.
- Luxiana, K. M. (2020). *Mahfud MD Explains the Problem of Immunity in the Corona Perppu*. Retrieved April 21, 2020 from: <https://news.detik.com/berita/d-4985568/mahfud-md-jelaskan-soal-kekebalan-hukum-dalam-perppu-corona>.
- Mahfud. (2017). *Political Law in Indonesia*. Jakarta, Indonesia: Raja Grafindo Persada.
- Octovina, R. A. (2018). Presidential System in Indonesia. *CosmoGov: Jurnal Ilmu Pemerintahan*, 4(2), 248–249. DOI: <https://doi.org/10.24198/cosmogov.v4i2.17065>
- Presidential Decree Number 12 of 2020. *Determination of Non-Natural Disasters of the Spread of Covid-19 as a National Disaster*.
- Rahardiansah, T. (2006). *Introduction to Political Science; Paradigm, Basic Concepts and Their Relevance for Legal Studies*. Jakarta, Indonesia: Trisakti University.
- Saragih, B. R. (2006). *Political Law*. Bandung, Indonesia: CV. Utomo
- Sari, H. P. (2020). *DPR Ratifies Economic Stability Perppu for Handling Covid-19 Into Law*. Retrieved June 27, 2020 from: <https://nasional.kompas.com/read/2020/05/12/16362121/dpr-sahkan-perppu-stabilitas-ekonomi-untuk-penanganan-covid-19-jadi-uu>.
- Secretariat of the Cabinet of the Republic of Indonesia. (2020). *DPR Approves Perpu Number 1 of 2020 Becomes Law*. Retrieved June 27, 2020 from: <https://setkab.go.id/dpr-setuju-perpu-nomor-1-tahun-2020-jadi-undang-undang>.
- Thohari, A. A., & Syaukani, I. (2007). *Fundamentals of Legal Politics*. Jakarta: Raja Grafindo Persada.
- The People's Consultative Assembly of the Republic of Indonesia (MPR RI). (2002). *The 1945 Constitution of the Republic of Indonesia*. Jakarta, Indonesia: Secretariat General of the MPR-RI.
- Ulfa, L. (2020). *Democratic Political System*. Retrieved June 27, 2020 from: <https://www.kompasiana.com/lisdianaulfa/59ba5591a7249b2f891f1e62/sistem-politik-demokrasi>.