

LAW & SOCIAL POLICY | RESEARCH ARTICLE

Constitutionality Of Independent Government Regulations (PP) In Indonesia

Ahla Nurus Saada¹

¹ Department of Master of Law, Faculty of Law, Universitas Airlangga, Surabaya, Indonesia.
Email: ahla.nurus.saada-2024@fh.unair.ac.id¹

ARTICLE HISTORY

Received: March 4, 2026

Revised: April 11, 2026

Accepted: April 16, 2026

DOI

<https://doi.org/10.52970/grlspr.v5i2.2142>

ABSTRACT

This study examines the constitutionality of independent Government Regulations (PP) within the Indonesian legal system. Independent Government Regulations (PP) are regulations issued by the President without an explicit delegation of authority from a law, but based on the attribution of authority under Article 5 (2) of the 1945 Constitution. This phenomenon has sparked debate regarding its compatibility with the principles of the rule of law and the principle of legality. Using a normative legal approach, this study analyzes legislation, Supreme Court decisions, and the opinions of constitutional law experts through a literature review. The research findings indicate that independent Government Regulations (PP) are constitutional as long as their issuance is based on the President's delegated authority and does not conflict with laws or the 1945 Constitution. However, their existence must remain subject to oversight through the Supreme Court's judicial review mechanism to ensure their conformity with the hierarchy of legislation and the principle of legality. These findings underscore the importance of legal clarity in the formulation of Government Regulations to prevent legal uncertainty and potential abuse of authority, while simultaneously strengthening the constitutional system and regulatory framework in Indonesia.

Keywords: Constitutionality, Government Regulations, Delegate Legislation, Judicial Review.

I. Introduction

A democratic state based on the rule of law requires a hierarchical and systematic legal system to ensure legal certainty, justice, and benefit. In the Indonesian context, government regulations (PP) play a vital role as instruments for implementing laws. A Government Regulation (PP) is a legal regulation issued by the president to properly implement a law. However, in practice, not all PP are formed on the basis of explicit delegation from laws. The phenomenon of forming PP without a basis of delegation has sparked debate regarding its constitutionality, legitimacy, and legal implications for the national legal system (Ismail et al., 2024). Article 13 of Law No. 12 of 2011 on Legislation states that regulations may contain (1) material mandated by law or for implementing Government Regulations, or (2) material for exercising governmental authority. Thus, Presidential Regulations can function as delegated, implementing, or independent regulations (Erickatama, 2023). Independent regulations must be based on primary legislation and may not exceed the scope of the delegation (Jimly Asshiddiqie, 2020). Independent Government Regulations (PP), hereafter referred to as independent PP, are government regulations issued by the President without an

explicit mandate or delegation of authority from laws (UU) or other government regulations. Their existence is based on the President's constitutional authority, which is attributive rather than delegative in nature (Bimasakti, 2024).

Independent PP are issued because laws frequently contain vague, general requirements without specific practical direction, necessitating effective implementation. Independent PPs, which represent the President's constitutional authority as head of state, enable the President to handle pressing regulatory needs more effectively and adaptably than delegated PP (Delegasi & Perundang-undangan, 2024). Furthermore, independent PP help prevent laws from becoming overly detailed and rigid, allowing statutes to focus on fundamental principles while the technical aspects of implementation are regulated through more flexible government regulations. The urgency of this research arises from gaps and ambiguities in Indonesia's legal system, particularly regarding the regulation and hierarchy of delegated legislation (Al-Fatih et al., 2023). The President may establish Government Regulations (PP) to carry out laws in accordance with Article 5 paragraph (2) of the 1945 Constitution. In reality, PPs are frequently given without explicit delegation, which calls into doubt their legitimacy. The hierarchy and boundaries of delegated rules are not well defined in Law No. 12 of 2011 and its revisions, which raises the possibility of overlaps, ambiguities, and Supreme Court review.

Against this background, previous studies have revealed differing perspectives on the President's authority to issue PP. In a noteworthy research, Ni'matul Huda explores the constitutional structure of presidential authority and makes the case that, even though the 1945 Constitution permits the creation of PP, such authority must stay within legislative bounds. The report emphasizes the necessity to restrict presidential power within the framework of the constitution by criticizing the practice of issuing autonomous PP and highlighting the possibility of unconstitutionality when regulations are created without a clear legal foundation. In contrast, the second study by Maria Farida Indrati S. adopts a normative-conceptual perspective on presidential authority. She argues that the issuance of PP and Government Regulations in Lieu of Laws (Perpu) constitutes the President's attributive authority, which does not always depend on legislative delegation. From this perspective, independent PP can be seen as part of the President's original constitutional authority and therefore are not necessarily constitutionally problematic, as long as they derive from such attributive power. Meanwhile, the third study by Sukardi has a more systemic pattern of regulatory delegation from laws to lower-level regulations and its legal consequences. This research is important because it aims to elucidate the constitutional foundation, boundaries, and legal ramifications of independent PP within Indonesia's parliamentary hierarchy, building on these contrasting viewpoints. By doing this, the study hopes to resolve current ambiguities and advance knowledge of the President's regulatory power within the bounds of the rule of law.

Based on these differences in perspective, it is clear that although all three studies discuss the authority to issue PPs, each has a different emphasis: Ni'matul Huda focuses on constitutional restrictions, Maria Farida focuses on the legitimacy of the President's attributive authority, and Sukardi focuses on the systemic implications of delegating regulatory authority. Building on these distinctions, this study is important because it aims to define more precise criteria for their judicial assessment as well as to elucidate the constitutional foundation and bounds of PP established without express legislative delegation. Such clarification is necessary to ensure legal certainty and uphold the principle of hierarchy within Indonesia's system of legislation. The problem with delegated legislation in Indonesia stems from ambiguous criteria that separate PP issued under the President's own power from those based on legislative delegation. The Supreme Court frequently considers the content of PP rather than the validity of their delegation, which leaves some PP legitimate in the absence of a clear statutory mandate and raises questions about executive authority. However, when laws are delayed or overly broad, this flexibility may allow the executive to solve pressing regulatory demands. This study strengthens legal certainty and the rule of law by objectively analyzing both points of view and offering more precise standards for evaluating the constitutionality and delegation basis of PP.

In addition, real legal problems also arise from the absence of a normative obligation for PP drafters to explicitly state the basis for delegation in the preamble or body of the regulation, even though Law No. 12

of 2011 emphasizes the principles of clarity of purpose and clarity of legal basis in the formulation of legislation. In practice, many PP only include the constitutional basis of Article 5 paragraph (2) of the 1945 Constitution without referring to specific delegative articles in the relevant laws. This fact can be verified by examining the recitals of various cross-sectoral PP, which show a pattern of implementing regulation formation without explaining the functional relationship with the norms of the laws being implemented. This lack of clarity makes formal testing difficult and opens up broad room for interpretation of the authority of the regulation maker.

The concept of delegate legislation refers to legislation enacted by bodies other than the legislature, based on the delegation of authority from primary legislation (Baizura, 2021). In the Indonesian legal system, delegate legislation generally takes the form of Government Regulations, Presidential Regulations, Ministerial Regulations, and other implementing regulations. There are three main models in the structuring of delegate legislation in Indonesia, namely: (1) a hierarchical model based on the legal basis for the establishment of institutions, (2) a hierarchical model based on the position of institutions, and (3) a hierarchical model based on the source of delegated authority in the formulation of regulations (Muhammad Saleh S.H, 2021). However, a fundamental weakness lies in the absence of clear regulations regarding the hierarchy and limitations of delegate legislation, giving rise to potential overlap and legal uncertainty. The absence of explicit regulations regarding the hierarchy of implementing regulations such as Government Regulations (PP) and Presidential Regulations (Perpres) has led to overlapping norms and over-regulation, which violates the principle of *lex superior derogat legi inferiori* as stipulated in Article 7 of Law No. 12/2011. The practice of cascading delegation (*delegatus non potest delegare*) further exacerbates the situation, meaning that the party to whom authority is delegated may not redelegate that authority to another party. This is contrary to Article 10(1)(b) of Law No. 12 of 2011, which prohibits the delegation of rulemaking authority, whereby the executive branch dominates the formulation of regulations outside the scope of the parent law.

Meanwhile, Government Regulations (PP) that lack a clear basis of delegation can be reviewed through the judicial review mechanism of the Supreme Court. Within the Indonesian legal system, the Supreme Court has the authority to review regulations below statutes to assess their formal and material conformity with the law (Ayah Natalian Oktavianus, 2022). In order to uphold the concepts of checks and balances and legal conformance, the Court may revoke or declare a PP illegal if it is determined to be in conflict with legislative provisions or to have been granted without a legitimate basis of authority. However, the current review mechanism remains limited. Under Article 24A of the 1945 Constitution, the Supreme Court mainly examines the legality of regulations in terms of formal and material consistency with statutes, rather than conducting a broader constitutional review (Kurniawati & Rohmah, 2024).

This restriction undermines legal certainty and the balance of powers by creating a supervisory gap that permits potentially conflicting PP to continue in effect until expressly repealed. In light of this, this study assesses the effectiveness of current review procedures and investigates the constitutionality of PP issued without clear delegation. By acknowledging the Supreme Court's jurisdiction to examine subordinate rules, the study is consistent with the current legal framework. However, it also critically examines the Supreme Court's restrictions and the vagueness of the delegation norms found in Law No. 12 of 2011. This study intends to strengthen Indonesia's legislative system and provide more precise guidelines for the creation and evaluation of delegated legislation by elucidating these problems.

II. Literature Review and Hypothesis Development

2.1. Theoretical framework on the rule of law and principle of legality

From the perspective of a modern constitutional state, the discourse on the constitutionality of Government Regulations without explicit delegation must first be placed within the theoretical framework of the rule of law and the principle of legality. Article 1 paragraph (3) of the 1945 Constitution explicitly states that Indonesia is a constitutional state. The rule of law means that the constitution guarantees to all citizens

that the enforcement of the law in the political process carried out by the executive, legislative, and judicial branches will always be based on the authority established by law (Kholish & Ulumuddin, 2022). The rule of law is an effort to uphold the law and ensure it holds the highest authority. By properly enforcing the law, the entire community can be protected without interference from any party, including the government (Suteki, 2022). The normative consequence of this provision is that every action and legal product of the government must have a valid basis of authority and be constitutionally accountable.

The principle of legality holds that any government action or decision is valid only to the extent that it is based on applicable laws and regulations. This principle links Indonesia's claim to be a state governed by the rule of law with the government's obligation to act not according to the whims of officials, but according to clear and accountable written norms (Ongaran & Adhari, 2025). The principle of legality (*wetmatigheid van bestuur*) requires two fundamental things (Alivia Fitri Salsabila, 2023). First, every government action must have a clear basis of authority in higher legal norms. Second, the use of this authority must not deviate from the purpose for which it was granted (*detournement de pouvoir*).

Theoretically, legality is not always synonymous with delegation. In a legal system that recognizes the attribution of authority, the constitution can directly grant normative competence to state organs. If Article 5 paragraph (2) is understood as a form of attribution, then the President has the original authority to issue PPs as long as they are intended to implement laws. However, the principle of the rule of law also requires restrictions on the expansion of executive power. Without clear parameters, broad interpretations of Article 5 paragraph (2) have the potential to shift the balance of power and weaken the legislative function. It is in this construction that the principle of legality functions not only as the basis for the legitimacy of government actions, but also as an instrument of control against the possible abuse of authority in the formation of Government Regulations without explicit delegation.

2.2. Theory of Authority: Attribution, Delegation, and Mandate

In analyzing the constitutionality of Government Regulations (PP) without explicit delegation, the theory of authority becomes a conceptual foundation that cannot be ignored. In administrative law doctrine, governmental authority essentially derives from three main mechanisms, namely attribution, delegation, and mandate. The legitimacy, boundaries, and responsibility of governmental acts are all impacted by this divide. Experts like Indroharto and Philipus M. Hadjon adopted Dutch administrative law doctrine in Indonesia, which states that: attribution grants original authority directly from the constitution or law, delegation transfers authority and responsibility from one organ to another, and mandate permits authority to be exercised by another organ without transferring legal responsibility (Supit et al., 2026).

The recipient possesses complete rights without the necessity for delegation as attribution is, in theory, the strongest authority and must be understood precisely in accordance with its imparting norm. On the other hand, delegation and mandate transfer power from one government entity to another, with the delegator losing control and the delegatee taking on accountability (Taufan et al., 2025). Mandatory delegation of authority refers to a situation where a person who holds authority by virtue of attribution or delegation may grant that authority to another person or entity to act on their behalf. At any time, the delegator may revoke or reinstate such authority (Muhali & Kuntardjo, 2024).

Therefore, although constitutional attribution can be the basis for the formation of a Government Regulations (PP), this authority cannot be used to create new norms that are independent and stand outside the framework of law enforcement. This is where the relevance of the theory of authority becomes crucial, as it provides parameters for assessing whether a PP is a form of lawful implementation, a valid delegation, or an *ultra vires* act. Thus, the analysis of attribution, delegation, and mandate is not only conceptual in nature, but also determines the constitutional boundaries between legitimacy and abuse of authority in the practice of forming legislation.

2.3. Hierarchy of Laws and the System of Legislation

In assessing the constitutionality of Government Regulations without explicit delegation, analysis cannot be separated from the doctrine of the hierarchy of norms and the system of legislation applicable in the Indonesian legal system. Theoretically, the structure of the hierarchy of norms refers to Hans Kelsen's Stufenbau Theory, which places legal norms in a hierarchical structure, where the validity of a norm is determined by its conformity with higher norms (Wahyu Prianto, 2024). In the Indonesian context, this structure obtains constitutional legitimacy through Article 7 of Law Number 12 of 2011 as amended, which places the 1945 Constitution at the highest position, followed by laws, and then Government Regulations as subordinate norms. The legal implications of this hierarchical structure indicate that government regulations (PP) do not have the authority to govern independently. Such regulations must be subordinate to laws and serve as implementing rules that elaborate on the provisions of the law. This principle holds that if there is a conflict between the two, the higher-ranking law prevails over the lower-ranking one. In this case, Presidential Regulations function as lower-ranking laws, and government regulations must be subject to the regulations above them (Harahap, 2025). Therefore, when there is a practice of forming PP without an explicit basis of delegation, the issue that arises is not merely a matter of the formality of article references, but whether the substance of the PP remains within the corridor of implementing the norms established by law.

The nature, rank, and content of rules are all consistent under the Indonesian legal system. A government regulations (PP) that restricts citizens' rights or imposes significant obligations—matters that should only be regulated by laws—violates the division of legislative powers and may be unlawful. As a result, independent Government regulations (PP) need to be checked for regulatory hierarchy compliance, at least officially. In accordance with Article 8 of the formal hierarchy—such as laws, government regulations, and presidential regulations—provided that such laws are recognized as long as they are governed by higher-ranking laws or are necessary for the public good (Maarif, 2024). Next, the material dimension, namely whether its normative content remains implementative.

2.4. Concept of Independent Government Regulation

The concept of Independent Government Regulation is a construct that arose from the dynamics of Indonesian constitutional practice, particularly in interpreting the scope of presidential authority based on Article 5 paragraph (2) of the 1945 Constitution. Conceptually, this term refers to Government Regulations that are formed without explicit delegation provisions in specific laws, but are still claimed to be regulations to “implement the law as it should be”. The scope and limits of the subject matter of a Presidential Decree are not specifically defined (Jayadi & Setiawan, 2024). From a constitutional law perspective, the existence of independent PP raises normative problems because they exist in a gray area between constitutionally attributed authority and the principle of subordination in the hierarchy of laws and regulations. The primary problem with autonomous Government Regulations (PP) is not just that they lack a delegation provision, but also whether they establish new, independent standards or apply preexisting laws. Government Regulations (PP) are intended to supplement laws; if they control topics not covered by the law, they may go beyond their implementing role and infringe on the legislator's authority, which could disturb the separation of powers and increase executive dominance in the creation of legal norms (Taqiuddin et al., 1945).

However, not all PP without explicit delegation can be immediately deemed unconstitutional. In a constitutional system that recognizes the attribution of authority, the constitution can provide space for the President to further regulate technical aspects of law implementation as long as such regulations remain within the normative framework established by the legislature. Therefore, the concept of independent PPs must be interpreted restrictively and functionally: it can only be justified if it materially functions as an administrative instrument to ensure the effective implementation of laws, not as a means of forming new, independent policies.

III. Research Method

Legal research is a process of discovering coherent truth, namely determining whether existing legal rules are in accordance with legal norms, whether norms in the form of commands or prohibitions are in accordance with legal principles, and whether a person's actions are in accordance with legal norms or legal principles (Aminudin, 2025). This research is perspective-based, using a statute approach and a conceptual approach. The research employs a statute approach by examining relevant laws and regulations, as well as a conceptual approach by analyzing legal doctrines, concepts, and scholarly opinions related to the research topic. The legal sources in this study include primary and secondary legal sources. The primary legal sources used are the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2011 concerning the Formation of Legislation, Law Number 30 of 2014 concerning Government Administration, and Law Number 14 of 2004 concerning the Supreme Court. The secondary legal sources used in this study are legal books, including legal theses, dissertations, and journals.

The technique used to collect legal materials in this study was a literature review (Al-Fatih & Fadli, 2024). A Literature review is a method of gathering legal knowledge from written sources, such as books, statutes, regulations, official documents, archival reports, and previous research relevant to the topic under study. This analysis is conducted through contextual analysis, which supports the examination and interpretation of relevant legal materials by examining the legal context in which they were produced, such as the relationships between legal norms, the background of their formation, and their relevance to the research problem under study. The technique of analyzing legal materials in this study is deductive and uses the syllogism method. The main premise of this approach is the application of basic legal concepts, statutory laws, and legal doctrines to the particular legal issues under investigation. The study draws logical conclusions about the legal ramifications of the issues under investigation by connecting these premises using syllogistic reasoning.

IV. Result and Discussion

4.1. The Concept and Model of Delegate Legislation in Indonesia

a. Definition of Delegate Legislation

Delegate legislation in the Indonesian legal system refers to laws and regulations made by organs or institutions outside of parliament, whose authority is expressly granted by law. In practice, delegate legislation is often referred to as implementing regulations of laws, as it aims to further regulate or elaborate on provisions that have been generally regulated in laws (Aminudin, 2025). Delegated legislation is also democratic and absolutely necessary, considering that the ruling government is also the choice of the people, as expressed through elections. Thus, the legitimacy given to the government is actually strong enough to serve as a basis for the government to make implementing regulations, all of which are aimed at governing society. Delegate legislation, which is issued by officials outside of parliament like the President, ministers, or agency heads, is typically binding on the general public. Its content usually adds to or expands upon the law without changing its core principles, and its formation requires express legal authorization (Marihhot et al., 2024). In the Indonesian legal system, delegate legislation can take the form of Government Regulations (PP), Presidential Regulations (Perpres), Ministerial Regulations (Permen), and other implementing regulations that are hierarchically subordinate to laws. Thus, every delegation regulation must clearly state its source of delegation and may not exceed the limits of authority granted by the parent law.

The legal system in Indonesia recognizes two types of regulations, namely primary legislation (laws enacted by the House of Representatives together with the President) and delegated legislation (implementing regulations issued by the executive branch or other organs based on delegation from the law). The existence of delegated legislation is very important to ensure the smooth implementation of laws,

especially since laws often only contain basic norms and do not regulate the technical details necessary for their implementation (Sholahuddin Al-Fatih, 2023).

b. The Urgency and Function of Delegate Legislation

Delegate legislation arose from the need to provide flexibility and efficiency in the legal system. Laws usually only regulate broad frameworks or general principles, so that technical and operational details need to be further regulated through delegated regulations. Thus, delegate legislation allows the government or authorized officials to respond quickly to the needs of the community without having to wait for a lengthy legislative process in parliament. One of the main purposes of delegate legislation is efficiency in the regulatory process. The legislative process in parliament tends to be time-consuming because it must go through stages of discussion, approval, and ratification involving many parties. If all technical aspects are regulated in law, then the time and energy of the legislative body will be spent discussing administrative or technical matters (Aditya Ardiansyah, 2024). With delegate legislation, technical regulations can be formulated by the executive or relevant institutions more quickly and flexibly without having to go through a lengthy legislative process in parliament.

Delegate legislation makes it possible for regulations to be more flexible and responsive, enabling the government to swiftly handle changing societal challenges without having to wait for sluggish legal adjustments. Examples of these issues include shifts in commodity pricing, public service rates, or technical standards in health and education. Another function of delegate legislation is to provide space for technical expertise and local wisdom. Many implementing regulations require special understanding and expertise, for example in the fields of technology, the environment, or spatial planning (Baizura, 2021). Delegate legislation supports checks and balances and prevents executive abuse by bringing rules into line with actual realities and assisting in maintaining the balance of power between the legislative and executive branches.

c. Model Delegate Legislation

The model of delegate legislation in the Indonesian legal system is closely related to the hierarchical structure of legislation and the sources of authority for its formation. Based on the results of the study, there are three main models that regulate the construction of delegate legislation in Indonesia, namely: a hierarchical model based on the legal basis for the formation of institutions, a hierarchical model based on the position of institutions in the state structure, and a hierarchical model based on the source of delegated authority in the formation of regulations (Sholahuddin Al-Fatih, S.H., 2022). First, the hierarchical model based on the legal basis for the establishment of institutions places delegated regulations in accordance with the legal authority of the institution that established them. The higher the legal basis for the establishment of an institution, the higher the position of the regulations it produces in the hierarchy of legislation. For example, regulations established by the President occupy a higher position than those established by ministers, because the legal basis for the establishment of the President is constitutionally stronger.

Second, the hierarchical model based on the position of institutions within the state structure refers to the position of regulatory bodies in the Indonesian constitutional system. State institutions that have a strategic position or higher authority in the constitutional system, such as the President or the House of Representatives, will produce regulations that are hierarchically above those made by institutions with lower positions, such as ministries or local governments. Third, hierarchical models based on the source of delegation authority focus on the origin or source of the delegation of regulatory authority. In this model, delegated regulations are formed due to explicit orders or transfers of authority from higher laws and regulations. For example, laws explicitly mandate the formation of implementing regulations in the form of Government Regulations, Presidential Regulations, or Ministerial Regulations. This model emphasizes the importance of clarity in the source of delegation to prevent overlapping or ambiguity of authority between regulatory agencies.

In practice, these models of delegate legislation often cause problems, especially when there is an unclear or inconsistent delegation of authority within the hierarchy established by law. One of the problems

that often arises is the formation of delegated regulations that are not in accordance with the mandate or type of regulation that should be in place, as well as the existence of delegated regulations that further delegate authority to a lower level without a clear legal basis. In addition, the number of delegate regulations in Indonesia is very large and scattered across various ministries and state institutions, thereby complicating regulatory arrangements and creating a need for harmonization and reconstruction of regulations within the hierarchy of legislation. Therefore, a thorough understanding of delegate legislation models is very important to ensure the clarity, fairness, and effectiveness of the Indonesian legal system.

4.2. Constitutionality of Independent Government Regulations (PP)

a. Definition and Characteristics of Independent Government Regulations (PP)

Referring to government regulations formed based on the original authority (attribution) possessed by the President, not because of an order or delegation from a specific law. The constitutional basis for the formation of independent PPs is Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945). The main characteristics of PP Mandiri are:

- 1) Not based on delegation: They are issued without explicit mandates from specific laws. Their considerations typically emphasize philosophical, juridical, and sociological foundations, as well as the urgency of regulation, rather than referencing particular statutory provisions.
- 2) Derived from presidential authority: Independent PPs reflect the President's original constitutional authority under the 1945 Constitution, not a delegation from other laws.
- 3) General content: The provisions focus on the general implementation of laws, rather than addressing specific articles of a statute.
- 4) Practical identification: Independent PPs can be recognized in practice by examining their considerations, which highlight urgent legal needs or broader philosophical and sociological reasons instead of citing specific legal provisions.

Government regulations that are not based on delegation from legislation are government regulations that are formed without an explicit mandate from specific legislation. In practice, this type of government regulation is created to fill legal gaps or respond to legal needs that arise in society, as long as they do not conflict with applicable legislation. The existence of these independent PPs can be seen as an effort by the President to carry out governmental functions effectively and efficiently, especially in situations where the law does not explicitly regulate or mandate the formation of certain implementing regulations.

b. Analysis of Constitutionality Aspects

The constitutionality of Government Regulations (PP) that are not based on direct delegation from the law is closely related to Article 5 paragraph (2) of the 1945 Constitution. This article states that the President has the authority to issue government regulations to implement laws as they should be. This provision provides the basis for the President's authority to issue PPs as instruments for implementing laws. However, the phrase "implementing laws as they should be" leaves room for interpretation as to whether this authority is absolute (attributive) or can only be exercised if there is explicit delegation from the law (delegative). From the perspective of the principle of the rule of law (*rechtstaat*), every government action, including the formation of PP, must be based on law and cannot be arbitrary. The rule of law requires legal certainty, protection of human rights, and restrictions on state power through clear and hierarchical rules. In this context, the existence of independent Government Regulations (PP) raises constitutional questions regarding their compatibility with the principle of the rule of law and the principle of legality.

The constitutional implications of government regulations (PP) relate to their impact on national law and legal principles. Pursuant to Article 5, paragraph (2) of the 1945 Constitution, any PP issued without a clear understanding of the law may still have a constitutional basis as long as it does not conflict with or undermine

that law. However, if a PP makes changes that should be made in accordance with the law or constitutional principles, it can undermine national legal principles, weaken legal norms, and create opportunities for abuse of power. Therefore, mechanisms for restriction and oversight are essential to ensure that the president's actions in the regulatory sphere remain consistent with the constitution.

Restrictions on the President's power to issue PP have also been strengthened through amendments to the 1945 Constitution, which establish mechanisms for oversight by the DPR and judicial institutions as part of the checks and balances in Indonesia's constitutional system. Thus, every PP, whether delegative or attributive (independent), must still comply with the principles of legality and the hierarchy of laws and regulations, and can be judicially reviewed if suspected of conflicting with higher regulations. Nevertheless, some argue that mandatory Government Regulations (PP) should not always be viewed negatively. The President's authority under Article 5, paragraph (2) of the 1945 Constitution of the Republic of Indonesia can be interpreted as a constitutional authority that allows the executive branch to handle administrative or technical matters when immediate regulations are needed, particularly when the legislative process is underway.

c. Mechanism for Testing Government Regulations Without Delegation Basis

The legal basis for the Supreme Court's authority to conduct judicial review of regulations under the law is stipulated in Article 24A paragraph (1) of the 1945 Constitution (UUD 1945). This article states: "The Supreme Court has the authority to adjudicate at the cassation level, review regulations under the law against the law, and has other powers granted by law". This authority is reinforced in Law No. 12 of 2011 on the Formation of Legislation (Article 9 paragraph 2), which stipulates that the Supreme Court shall review regulations under the law against the law (Irfan Ardyan Nusanto, 2021). The Supreme Court conducts testing through two approaches:

1) Material Testing

Material review focuses on the content or substance of regulations. The Supreme Court assesses whether the material content of regulations under the law (such as Government Regulations or Ministerial Regulations) conflicts with higher regulations, particularly laws or the 1945 Constitution. For example, testing whether the provisions in a Ministerial Regulation conflict with the Consumer Protection Law. And assessing the conformity of regional regulations with sectoral laws.

2) Formal Testing

Formal review focuses on the procedure for establishing regulations. The Supreme Court examines whether the regulations have been established in accordance with the formal requirements stipulated in the legislation, such as:

- Public consultation process
- Harmonization stages
- Approval by the authorized official

Example: revoking a Presidential Regulation if its formulation did not involve the notification and discussion stages with the House of Representatives as required by law. The issue of the constitutionality of independent PPs becomes relevant when the existence of such PPs implies restrictions on rights, the establishment of new legal norms, or the regulation of matters that should be regulated directly by law. In this case, the principle of legality and the principle of nondelegation doctrine in public law become the main basis for conducting constitutionality tests. Based on Pasal 24A ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 and related laws (Undang-Undang Nomor 5 Tahun 1986, Undang-Undang Nomor 9 Tahun 2004, and Undang-Undang Nomor 51 Tahun 2009), Mahkamah Agung (MA) has the authority to review

Pemerintah laws. Mahkamah Agung may invalidate a law if it has a proper legal foundation or is in conflict with established legal norms (Aini et al., 2024).

One example of this testing practice can be seen in Supreme Court Decision Number 38 P/HUM/2015, which overturned a Government Regulation because it contradicted its parent law and lacked a clear basis for delegation. This decision emphasizes the importance of a direct link between Government Regulations and the norms in the law, both explicitly and systematically. Thus, the existence of an independent PP must be tested based on three main criteria:

- Does the PP have a valid basis for delegation, either explicit or implicit?
- Is the content of the PP technical in nature or does it contain new norms?
- Does the PP conflict with norms in the law or infringe on the rights of citizens?

If these three criteria are not met, then the existence of the PP can be considered materially unconstitutional and potentially subject to annulment through a judicial review mechanism in the Supreme Court.

V. Conclusion

Based on the discussion regarding the constitutionality of Government Regulations (PP) without a basis for delegation, often referred to as independent PP, it can be concluded that the existence of independent PP is constitutionally valid within the Indonesian legal system. This is based on Article 5 paragraph (2) of the 1945 Constitution, which grants attributive authority to the President to issue PPs to implement laws as they should be, even without explicit delegation from specific laws. Independent PPs function as implementing instruments that enable the government to respond to legal needs quickly and flexibly, especially in regulating technical and urgent matters. However, the existence of independent PPs must remain within the corridor of the principles of the rule of law and legality, and must not conflict with laws or the 1945 Constitution. Oversight of independent PPs is crucially important through the mechanism of judicial review in the Supreme Court to ensure that these PPs do not exceed their authority and remain consistent with the hierarchy of legislation. Thus, judicial review is a crucial instrument in maintaining the balance of power between the legislature and the executive and ensuring legal certainty for the public.

As a suggestion, it is necessary to establish clearer guidelines and regulations regarding the legal basis for the formation of independent PPs to avoid multiple interpretations and potential abuse of authority. The government and legislative bodies should strengthen coordination in setting the limits of authority for the formation of implementing regulations, including independent PPs, so that the principle of the supremacy of law is upheld. In addition, legal socialization and education for regulatory officials and the public also need to be improved so that there is a better understanding of the position and function of independent PPs in the national legal system. With these steps, it is hoped that the regulatory system in Indonesia can run more effectively, transparently, and accountably in accordance with the values of the rule of law.

References

- Aditya Ardiansyah, I. (2024). Urgensi Partisipasi Masyarakat Dalam Pembentukan Rancangan Undang-Undang Masyarakat Hukum Adat. 1.
- Aini, R., Azzura, G., & Ananda, P. (2024). Kedudukan dan Kewenangan Mahkamah Agung dalam Menyelenggarakan Kekuasaan Kehakiman di Indonesia. 8(1), 303–309.
- Al-Fatih, S., & Fadli, M. (2024). History of The Development of The Principle of Delegatus Non-Potes Delegare and Its Implementation. *Arena Hukum*, 17(1), 210–225. <https://doi.org/10.21776/ub.arenahukum.2024.01701.12>

- Al-Fatih, S., Safaat, M. A., Widiarto, A. E., Uyun, D. Al, & Nur, M. (2023). The Hierarchical Model of Delegated Legislation in Indonesia. *Lex Scientia Law Review*, 7(2), 629–658. <https://doi.org/10.15294/lesrev.v7i2.74651>
- Alivia Fitri Salsabila. (2023). Penerapan Prinsip Legalitas, Yuridikitas, Dan Diskresi Dalam Penyelenggaraan Pemerintahan Di Indonesia Guna Mengukuhkan Tata Kelola Yang Berkeadilan. 09, 3683–3696.
- Aminudin, C. (2025). Pencegahan Penyalahgunaan Wewenang Pemerintah dalam Membuat Peraturan Perundang-Undangan Sekunder Preventing Abuse of Government Power in Making Secondary Legislation. *Jurnal Hukum Ekuualitas*, 1(1).
- Ayah Natalian Oktavianus, A. (2022). Kewenangan Mahkamah Konstitusi Dalam Menguji Peraturan Pemerintah Pengganti Undang-Undang Ditinjau Dari Perspektif Negara Konstitusional. *Jurnal Paris Langkis*, 2(2), 41–50. <https://doi.org/10.37304/paris.v2i2.3669>
- Baizura, M. (2021). Penataan Pendelegasian Perundang-Undangan dalam Pembentukan Peraturan Daerah Dikaitkan Dengan Realisasi Program Pembentukan Peraturan Daerah. *Riau Law Journal*, 5(2), 240. <https://doi.org/10.30652/rlj.v5i2.7884>
- Bimasakti, M. A. (2024). Permasalahan Instrumen Delegasi Kewenangan Menurut Undang-Undang Administrasi Pemerintahan. *Konferensi Nasional Asosiasi Pengajar Hukum Tata Negara Dan Hukum Administrasi Negara*, 2(1), 187–208. <https://doi.org/10.55292/6fgdqt22>
- Delegasi, M., & Perundang-undangan, P. S. P. (2024). *Almufi Jurnal Sosial dan Humaniora (ASH) Materi Muatan Peraturan Pemerintah Atau Peraturan Presiden*. 1(2).
- Erickatama, A. (2023). Problematika Perencanaan Pembentukan Peraturan Pemerintah Dan Peraturan Presiden. *Grondwet*, 2(2), 224–237.
- Harahap, P. K. (2025). Kedudukan Peraturan Presiden Dalam Hierarki Peraturan Perundang-Undangan Indonesia. *Jurnal Hukum, Pendidikan & Sosial Keagamaan*, 4(2), 233–248. <https://doi.org/https://doi.org/10.47200/awtjhpas.v4i2.2868>
- Irfan Ardyan Nusanto. (2021). Analisis terhadap Dualitas Peraturan Menteri dalam Sistem Peraturan Perundang-Undangan di Indonesia. 4(1), 53–68. <https://doi.org/10.24090/volksggeist.v4i1.4660>
- Ismail, A. S., Az Zahra, Q., Pratiwi Nurcahyani, E., & Nurul Anisa, A. (2024). Keberlakuan Peraturan Pemerintah Yang Belum Ada Peraturan Pelaksananya. *AL WASATH Jurnal Ilmu Hukum*, 5(1), 55–64. <https://doi.org/10.47776/alwasath.v5i1.687>
- Jayadi, H., & Setiawan, A. (2024). Model Pendelegasian Materi Muatan Peraturan Lembaga Negara Setingkat Presiden. *Jurnal Kompilasi Hukum*, 9(2), 235–248. <https://doi.org/https://doi.org/10.29303/jkh.v9i2.195>
- Jimly Asshiddiqie. (2020). *Konstitusi dan Konstitusionalisme Indonesia*. sinar grafika.
- Kholish, M. A., & Ulumuddin, I. F. (2022). Supremasi Hukum dan Perubahan Sosial : Sebuah Tinjauan Hukum Barat Dan Hukum Islam. *Peradaban Journal Law and Society*, 1(1).
- Kurniawati, D., & Rohmah, E. I. (2024). Peran Mahkamah Konstitusi Dalam Penguatan Prinsip Checks And Balances Dalam Sistem Ketatanegaraan Indonesia Dalam sistem ketatanegaraan modern , prinsip checks and balances keseimbangan kekuasaan antara cabang-cabang pemerintahan , yakni yang berpotensi m. *Qaumiyah: Jurnal Hukum Tata Negara*, 5(2), 183–207.
- Maarif, I. (2024). Dinamika Kedudukan Peraturan Lembaga dalam Hierarki Perundang-Undangan : Tinjauan Yuridis dan Perspektif Praktis. *Unes Law Review*, 7(1), 336–344. <https://doi.org/https://doi.org/10.31933/unesrev.v7i1.2297>
- Marihot, J., Saragi, A., Sjarif, F. A., & Indrati, M. F. (2024). Implementing Regulations for the Omnibus Law within the Taxation Cluster : A Delegated Legislation Perspective. *Jurnal Ilmu Hukum Asosiasi Pimpinan Perguruan Tinggi Indonesia*, 11(01), 20–44. <https://doi.org/https://doi.org/10.58829/lp.11.1.2024.239>
- Muhali, & Kuntardjo, C. (2024). Obscurity Of Norms : Nurses As Recipients Of Delegated Tasks From Anesthesiologists Kekaburan Norma (Obscurity Norm) Perawat Sebagai Penerima Tugas. *Jurnal Hukum Sehasen*, 10(2), 495–502.

- Muhammad Saleh S.H. (2021). Rekonseptualisasi Pendelegasian Wewenang Legislasi dalam Pembentukan Peraturan Perundang-Undangan. 167–186.
- Ongaran, J. S., & Adhari, A. (2025). Mencegah Legalisasi Tindakan Ultra Vires Melalui Struktur Hierarkis: Hubungan Presumptio Iustae Causa Dan Prinsip Legalitas Dalam Hukum Administrasi Indonesia. *El-Iqtishady: Jurnal Hukum Ekonomi Syariah*, 7(2), 1191–1204. <https://doi.org/https://doi.org/10.24252/el-iqthisady.v7i2.63250>
- Sholahuddin Al-Fatih, S.H., M. . (2022). Model Penataan Regulasi Peraturan Delegasi Dalam Hierarki Peraturan Perundang-Undangan Di Indonesia. 1, 829–854.
- Sholahuddin Al-Fatih. (2023). Rethinking Delegated Legislation in the Indonesian Legal System. 14(2), 240–251.
- Supit, G. J., Rumokoy, D. A., Pinasang, D. R., Hukum, M., Universitas, P., & Ratulangi, S. (2026). Analisis Yuridis Pelaksanaan Wewenang Oleh Pejabat Pemerintah Ditinjau Dari Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan. 6, 83–92.
- Suteki, S. (2022). Hegemoni Oligarki Dan Ambruknya Supremasi Hukum. *Jurnal Crepido*, 04(November), 161–170. <https://doi.org/https://doi.org/10.14710/crepido.4.2.161-170>
- Taqiuddin, H. U., Tantri, T., Tenggara, W. N., & Presidensial-multipartai, S. (1945). Paradoks Sistem Presidensial-Multipartai dan Pelemahan Checks and Balances Legislatif Pasca Amandemen UUD 1945. c, 18–36.
- Taufan, M., Putra, P., Susetyo, W., Hukum, F., Islam, U., Indonesia, B., & Koperasi, P. (2025). Dualisme Kewenangan Pengawasan Koperasi Simpan Pinjam Antara Kementerian Koperasi Dan UKM Serta Otoritas Jasa Keuangan. *Jurnal Supremasi*, 15(25), 135–148. <https://doi.org/https://doi.org/10.35457/4n04k667>
- Wahyu Prianto. (2024). Analisis Hierarki Perundang-Undangan. 2(1), 8–20.