

## **Implementation of the Principle of Justice in the Formation and Substance of Government Regulation**

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Submitted: 2023-09-08 | Reviewed: 2023-09-29 | Revised: 2023-10-16 | Accepted: 2023-11-26

**How to cite:** Tiopan, Demson. "Implementation of the Principle of Justice in the Formation and Substance of Government Regulation." *Dialogia Iuridica*, Vol. 15, No. 1, 2023, pp. 076-093.

**DOI:**  
<https://doi.org/10.28932/di.v15i1.7449>

### **ABSTRACT**

*Prosperity can be achieved through the realization of order and organization within society. The principle of justice serves as one of the indicators that determine the attainment of the desired order and organization. In the concrete legal context, the process of forming legislation is required to reflect the presence of the justice principle inherent within it. A legal product is considered to fulfill the justice principle if it falls under the category of responsive law. Responsive law takes into account both functional and procedural aspects of its formation. This research uses a normative juridical research method with a statutory approach. The statutory approach is an approach used by basing it on the provisions of the applicable laws and regulations. This research aims to examine the implementation of the principle of justice in the substance and formation Government Regulation in Lieu of Law on Job Creation (Perppu Cipta Kerja). Perppu Cipta Kerja is perceived to not reflect the justice principle as it lacks the elements characteristic of responsive law. Consequently, the Perppu Cipta Kerja is categorized as a legal product that does not embody the value of justice, falling into the classification of conservative legal products. Therefore, it is imperative for the government to*

*conduct a reevaluation of the formation process and functional aspects, particularly regarding the substantive content, to ensure it aligns with the justice principles mandated by the law. This alignment would facilitate the realization of order and organization within society, ultimately contributing to the welfare of the populace.*

**Keywords: Justice; Responsive; Conservative; Perppu Cipta Kerja**

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## I. INTRODUCTION

Living in society always requires the presence of order and harmony. Order and harmony are essential for guiding society towards well-being. To achieve this order and harmony, the implementation of existing legal components is necessary. The legal components referred to in this context are the functions of the law, as articulated by Gustav Radbruch: the values of justice, certainty, and expediency. The realization of these fundamental values often, in practice, comes into conflict with each other. Furthermore, Gustav Radbruch addresses this issue by providing a standard priority in utilizing these fundamental legal values.<sup>1</sup> Gustav Radbruch places the value of justice as the top priority, to be fulfilled foremost. Based on this, it can be observed that the value of justice is something crucial to continually strive for. Throughout history, the concept of justice has often been a focal point for philosophers such as Aristotle. According to Aristotle, justice is the suitability of human actions, where suitability is understood as the meeting point between an excess and a deficiency.<sup>2</sup>

The principle of material content must be considered by legislative bodies to avoid overlapping jurisdictions and prevent potential infringements on the rights of citizens<sup>3</sup>. One of the fundamental principles of material content is the principle of justice. In the concrete legal framework, the value of justice is consistently used as the foundation for shaping legislation. This is explicitly stated in Article 6 paragraph (1)

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<sup>1</sup> Muslih, M. "Negara Hukum Indonesia dalam Perspektif Teori Hukum Gustav Radbruch." *Legalitas*, Vol. 4, No. 1, 2013, pp. 130-152, <http://dx.doi.org/10.33087/legalitas.v4i1.117>.

<sup>2</sup> Sembiring, Riki. "Keadilan Pancasila dalam Perspektif Teori Keadilan Aristoteles." *Aktual Jusctice*, Vol. 3, No. 2, 2018, pp. 139-155, <https://doi.org/10.47329/aktualjustice.v3i2.539>.

<sup>3</sup> Fadil, Muhammad. "Pembentukan Undang-Undang yang Mengikuti Perkembangan Masyarakat." *Jurnal Legislasi*, Vol. 15, No. 1, 2018, pp. 51-61, <https://doi.org/10.54629/jli.v15i1.12>.

letter g of Law Number 12 of 2011 concerning the Formation of Legislation (as last amended by Law Number 13 of 2022) ("Law on Legislation Formation"), which includes the requirement to adhere to the principle of justice in the content of legislation. The explanatory provisions of Article 6 paragraph (1) letter g of the Law on Legislation Formation clarify that the principle of justice entails that every aspect of legislative content must reflect proportional justice for every citizen. Through this explanation, it can be understood that the value of justice must always be upheld in legislation for the benefit of all citizens. Legal regulations consistently rely on legal principles to organize society and achieve a just order.<sup>4</sup>

On December 30, 2022, the government officially promulgated Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (Hereafter, *Perppu Cipta Kerja*) in response to Constitutional Court Decision Number 91/PUU-XVIII/2020. Many parties perceive the promulgation of *Perppu Cipta Kerja* as an act of defiance against the Constitutional Court's decision. The government should have instead made amendments to Law Number 11 of 2020 concerning Job Creation, which had previously been deemed conditionally unconstitutional. The reason for the enactment of the Government Regulation in Lieu of Law on Job Creation certainly needs to be studied objectively based on the procedure for the formation of government regulations in lieu of laws as stipulated by Constitutional Court Decision Number 138/PUU/VII/2009. The study focuses on the implementation of the principle of justice in particular regarding whether or not the principle of justice is fulfilled in the Government Regulation in Lieu of Law on Job Creation. The principle of justice should be a principle that must always be contained in the substance and process of forming laws and regulations. This is because the value of justice is a value that can certainly provide welfare for the community. Therefore, this paper will examine the implementation of the principle of justice in the establishment of Government Regulation in Lieu of Law on Job Creation.

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<sup>4</sup> Atmadja, Dewa Gede. "Asas-Asas Hukum Dalam Sistem Hukum." *Kertha Wicaksana*, Vol. 12, No. 2, 2018, pp. 145-155, <https://doi.org/10.22225/kw.12.2.2018.145-155>.

This normative legal study focused on examining the implementation of principles and norms in positive law.<sup>5</sup> This study was descriptive in nature. It described and analyzed the phenomenon based on facts in the form of secondary data, obtained from primary and secondary legal materials.<sup>6</sup> The approach used in this research is a statutory approach. The statutory approach is an approach taken by examining all laws and regulations that have relevance to the legal issues contained in the research.<sup>7</sup>

## **II. DISCUSSION**

### **1. The Principle of Justice as a Pillar of Law Products**

The formation of legislation is not undertaken without fundamental principles. Prof. Dr. Professor Dr. Muchsan asserts that a good legal product should reflect five principles: the philosophy of Pancasila, the rule of law, democracy, the public interest, and the principle of hierarchical diversity. The rule of law is undoubtedly one of the primary instruments in the formation of legislation, given that the rule of law is an essential characteristic of the Indonesian state. This is further emphasized by the views of Mochtar Kusumaatmadja, who states that law is the commander in the life of the state. This means that all aspects of life must be based on applicable rules.<sup>8</sup> Upon examination, the rule of law incorporates the principle of legal justice. Aristotle believed that justice is the balance between rights and obligations, where humans support both rights and obligations. Aristotle further divides justice into two types: distributive justice and commutative justice.<sup>9</sup> Distributive justice is the justice that allocates what is rightfully due to someone in proportion to their achievements. Commutative justice, on the other hand, is the justice given to each person in equal measure without considering their achievements. Meanwhile, the Sophists in Greece

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<sup>5</sup> Ibrahim, Johannes. *Teori dan Metodologi Penelitian Hukum Normatif*. Malang, Bayumedia Publishing, 2007, p. 29.

<sup>6</sup> Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta, Universitas Indonesia, 1986, p. 34.

<sup>7</sup> Marzuki, Peter Mahmud. *Metode Penelitian Hukum*. Jakarta, Kencana Prenada Media Group, 2008, p. 17.

<sup>8</sup> Laia, Aturkian. "Hukum Sebagai Panglima dalam Dunia Mitos dan Politik Sebagai Raja Pada Realitasnya." *Civic Society Research and Education*, Vol. 3, No. 2, 2022, pp. 1-12.

<sup>9</sup> Suheri, Ana. "Wujud Keadilan dalam Masyarakat Ditinjau dari Perspektif Hukum Nasional." *Jurnal Morality*, Vol. 4, No. 1, 2018, pp. 60-68.

argued that justice is what benefits the stronger.<sup>10</sup> Law, according to Herman J. Pietersen, is a normative framework. In this sense, law is conceptualized as an instrument of the state or polis concerned with justice, with rules of conduct to regulate human behavior. So, according to this perspective, law is an instrument for upholding justice, manifested as a behavioral guide with its primary function being the regulation of human conduct. Discussing law is synonymous with discussing the relationships between individuals. The concept of justice may vary depending on the perspective taken. In this article, justice is defined as a steadfast and continuous willingness to give each person what they rightfully deserve. The role of law in matters of justice is to translate the idea of justice into concrete forms that can benefit human relationships. Therefore, we can understand the statement by Herman J. Pietersen that the purpose of law is: to serve justice, to preserve society's systemic integrity and stability, and ultimately, to promote the general good and well-being.<sup>11</sup>

In the study of national law, justice derives its foundation from the state's principles, namely Pancasila. From a philosophical perspective, the principle of justice is evident in the fifth principle of Pancasila. It encompasses the value of justice that is realized in communal life (social life). This justice is inspired and grounded in the essence of human justice, which includes justice in the relationship between an individual and themselves, between individuals, between individuals and society, between people and their nation, and in the relationship between individuals and the One Almighty God.<sup>12</sup> Therefore, it can be said that Pancasila's values, including the value of social justice, should be considered in the process of forming legislation.

The adage "law without power is a fantasy, power without law is tyranny" is like two sides of an inseparable coin. Politics serves as a means to attain power in order to produce legal products. Preventing arbitrary actions can be achieved through legal products that should reflect the values present in society. One of the values in question is the principle of justice. Mahfud MD has stated that there are two characteristics of legal products, as follows: (a) Responsive/populist legal products are legal instruments

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<sup>10</sup> MD, Mahfud. *Politik Hukum di Indonesia*. Jakarta, Rajawali Press, 2012, p. 21.

<sup>11</sup> Sametko, FX. Adji. *Justice Not for All*. Yogyakarta, Genta Press, 2008, pp. 6-7.

<sup>12</sup> Aprita, Serlika and Rio Adhitya. "Penerapan Asas Keadilan dalam Hukum Kepailitan Sebagai Perwujudan Perlindungan Hukum Bagi Debitor." *Jurnal Hukum Media Bhakti*, Vol. 3, No. 1, 2019, pp. 46-56, <https://doi.org/10.32501/jhmb.v3i1.31>.

that reflect a sense of justice and fulfill the expectations of the community. In their creation, they involve significant roles and full participation from various social groups or individuals within the community. The outcome is responsive to the demands of social groups or individuals in society. (b) Conservative/orthodox/elitist legal products, on the other hand, are legal instruments whose content more closely aligns with the social vision of political elites, representing the desires of the government. They tend to be more positivist and instrumental, serving as tools for implementing the ideology and programs of the state. In contrast to responsive law, orthodox law is less open to the demands of groups or individuals within society. The role and participation of the public are relatively small in their creation.

Between these two types of legal products, responsive legal products reflect the principle of justice as a value present in society. The indicators used to determine whether a legal product is responsive or conservative include the process of legal creation, the nature of legal functions, and the potential interpretations of a legal product. Legal products characterized as responsive involve a participatory creation process, inviting the participation of the community through various social groups and individuals. In contrast, the creation process of legal products characterized as orthodox tends to be centralized, often dominated by state institutions, especially the executive branch.<sup>13</sup>

From a functional perspective, responsive law is aspirational in nature. This means it contains materials that generally align with the aspirations or desires of the community it serves. As a result, legal products of this nature can be viewed as the crystallization of the will of the people. On the other hand, orthodox law tends to be positivist-instrumental. This means it contains materials that more reflect the social and political vision of those in power or materials that serve as tools to fulfill the desires and interests of government programs.<sup>14</sup> In terms of interpretation, legal products characterized as responsive/populist typically provide limited opportunities for the government, particularly when it comes to technical matters. The narrow scope for interpretation usually only applies to technical issues. In contrast, legal products characterized as orthodox provide broader opportunities for the government to make

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<sup>13</sup> *Ibid*, p. 30.

<sup>14</sup> *Ibid*, p. 31.

various interpretations through supplementary regulations based on the government's unilateral vision, not limited to technical matters. As a result, responsive legal products tend to include detailed provisions on important matters, making it difficult for the government to make its own interpretations. Orthodox legal products, on the other hand, tend to include concise core provisions, allowing the government more flexibility to regulate based on its vision and political strength.<sup>15</sup> Furthermore, the formation of legal regulations must be carried out meticulously through in-depth studies, considering their general binding nature. This aligns with Jimly Asshidiqie's statement that laws are formed through a lengthy process until they are eventually enacted and remain open. Therefore, they must be prepared and discussed thoroughly.<sup>16</sup>

## **2. Implementation of the Principle of Justice in the Formation and Substance of Government Regulation in Lieu of Law on Job Creation.**

As previously explained, the government issued legal products in the form of Perppu Cipta Kerja. Historically, the job creation law is a legal product that had previously existed in the form of legislation. The historical record reveals that the legislative journey of the Law on Job Creation encountered fluctuations due to various public oppositions. The government's proposal concerning the Job Creation bill was initiated on December 17, 2019. Officially, the President forwarded the Job Creation bill to the House of Representatives (Hereafter, DPR) on February 7, 2020. Subsequently, the DPR followed up by conducting deliberations on the bill during the 13th Plenary Session. A consultation meeting, substituting for the DPR's Deliberative Body, then transferred the discussions of the Job Creation bill to the Legislative Body of the DPR. The Job Creation bill was collectively discussed by the DPR, involving several experts, scholars, academics, and stakeholders associated with the bill. This included professional associations, entrepreneurs, and labor unions. A detailed and intensive Inventory of Issues was conducted by the Working Committee from May 20 to October 3, 2020. On October 5, the Job Creation bill was officially ratified. On

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<sup>15</sup> *Ibid*, p. 32.

<sup>16</sup> Marzuki, Munawar and Ibnu Affan. "Analisis dalam Proses Pembentukan Undang-Undang Cipta Kerja Perspektif Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan." *Jurnal Ilmiah Metadata*, Vol. 3, No. 2, 2021, pp. 452-468, <https://ejournal.steitholabulilmi.ac.id/index.php/metadata/article/view/71/>.

November 2, 2020, the government and the DPR formally enacted Law Number 11 of 2020 concerning Job Creation. Throughout its course, the Job Creation law encountered various objections from different sectors, particularly labor groups, given its implications for labor interests. Amid these objections, several parties filed formal challenges against the Job Creation Bill. These challenges were ultimately upheld by the Constitutional Court through Decision Number 91/PUU-XVIII/2020, which declared the Job Creation Law conditionally unconstitutional. Conditional unconstitutionality implies that provisions of the law under review are deemed unconstitutional if the conditions set by the Constitutional Court are not met.<sup>17</sup> Consequently, it can be stated that a provision becomes constitutional when the specified conditions have been fulfilled. The Constitutional Court held that, in terms of formal or technical drafting, the Job Creation Law did not adhere to the drafting techniques stipulated in the Law on the Formation of Legislation (UU P3U). The omnibus law technique used in drafting the Job Creation law was not accommodated by UU P3U. Furthermore, when viewed from the aspects of deliberation and approval stages, the Constitutional Court assessed that the Job Creation law did not meet the principle of transparency. Although there was public involvement through various meetings, this public participation did not extend to the discussion of academic texts and the substantive changes within the Job Creation Law. Ideal public participation should encompass three elements: the right to express one's opinion, the right to have one's opinion considered, and the right to receive explanations or responses to the opinions provided.<sup>18</sup>

The implications of the conditional unconstitutionality of the Job Creation Law are significant. The Constitutional Court prohibits the government from issuing strategic and broadly impactful policies and implementing regulations related to the on Job Creation Law. Furthermore, the Constitutional Court instructed the DPR and the government to amend the Job Creation Law within two years from the date of the decision. One of the necessary steps in this amendment process is to incorporate the omnibus law drafting technique into the Law on the Formation of Legislation (UU

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<sup>17</sup> Partiah, Siti and Anis Farida. "Implikasi Yuridis Putusan Mahkamah Konstitusi yang Bersifat Konstitusi Non-Self Executing." *Jurnal Hukum dan Perubahan Sosial*, Vol. 1, No. 1, 2021, pp. 49-70, <http://jurnalpps.uinsby.ac.id/index.php/sosioyusti...>

<sup>18</sup> Putra, Antoni. "Implikasi Putusan Inkonstitusional Bersyarat dalam Putusan Mahkamah Konstitusi." *Jurnal Konstitusi*, Vol. 20, No. 1, 2023, pp. 58-77, <https://doi.org/10.31078/jk2014>.

P3U). However, the revision process of UU P3U conducted by the DPR and the government is deemed lack of transparency as it did not adequately consider public participation. This implies a lack of respect for the Constitutional Court's clear assertion that the initial process of forming the Job Creation Law did not involve public participation. Moreover, the Constitutional Court's statement declaring the Job Creation Law conditionally unconstitutional has raised a dilemmatic legal issue. This issue is related to the legal uncertainty surrounding the implementation of the Job Creation Law, as the Constitutional Court has instructed the DPR and the government not to issue implementing regulations. However, it is a common practice for a law to require implementing regulations to ensure that the provisions outlined in the law can be effectively executed. In addition, if the Constitutional Court were to declare the entire Job Creation Law unconstitutional, it would have far-reaching consequences, as a significant portion of the law has already been implemented by the government. Reverting to the state before the Job Creation law was enacted may not be feasible.

Instead of making improvements, the government issued Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, which was later ratified into law by the DPR through Law Number 6 of 2023. During its formation, Perppu Cipta Kerja was criticized for not reflecting the principle of justice. It was created without involving public participation because the creation of a Perppu does not include the stages of discussion or the drafting of academic texts that would provide channels for public participation as is customary in the legislative process in the DPR. In accordance with Article 43 of the Law on the Formation of Legislation (UU P3U), a bill originating from the House of Representatives (DPR), the President, or the Regional Representative Council (DPD) must be accompanied by an Academic Text. An Academic Text is a document that results from legal research or other forms of inquiry into a specific issue, which can be academically justified. It pertains to the regulation of a particular issue in a Draft Law, Draft Regional Regulation of a Province, or Draft Regional Regulation of a District/City, serving as a solution to societal legal issues and needs. The Academic Text assesses three substantial issues: Firstly, it can provide an answer to the question of "why a new regulation is needed?" Secondly, the Academic Text encompasses the scope, content, and main components of the regulation. Thirdly,

the Academic Text outlines the process to be employed for the formulation and enactment of the regulation.

These three substantive aspects necessitate that every legal norm to be established in a draft law is thoroughly considered and deeply studied. This requirement is based on the principle that law and regulations should be formulated for the common good, rather than for the benefit of individual or specific interest groups.<sup>19</sup> Hence, an Academic Text is essential in the formation of laws and regulation.

There are several other reasons that support the importance of an Academic Text in the formation of laws and regulations. Firstly, it aligns with the principles of good regulation formation. The principles of law and regulation formation, as outlined in the Law on the Formation of Legislation (UU P3U), underlie the substance of each article in a law. This is solely based on the goal of achieving societal benefit. Secondly, it enhances the effectiveness of legislative regulations within society. Essentially, the purpose of the law is the efforts made to uphold and protect society in their daily lives. Furthermore, as Soerjono Soekanto suggests, the effectiveness of the law is about ensuring that the law operates in the midst of society. Legal rules can be considered effective if they meet three elements: juridical effectiveness, sociological effectiveness, and philosophical effectiveness.<sup>20</sup> Thirdly, there are laws and regulations that often undergo judicial review. In principle, judicial review is a form of assessment carried out on a legislative regulation that holds a higher position in relation to the constitution as the highest law. The presence of an Academic Text can help minimize the need for judicial review. Of course, the implications of judicial review can lead to changes in the legal landscape related to the affected regulations. Furthermore, as Jimly Asshidqie points out, an Academic Text is a result of academic inquiry that adheres to scientific principles, such as being rational, critical, objective, and impersonal.<sup>21</sup>

The absence of the Academic Text preparation and deliberation stages is grounded in the nature of Perppu itself, which is created in cases of urgency or emergency situations. The authority for issuing Perppu is vested in the President, as

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<sup>19</sup> Asshidqie, Jimly. *Perihal Undang-Undang di Indonesia*. Jakarta, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006, p. 320.

<sup>20</sup> Soekanto, Soerjono. *Sosiologi: Suatu Pengantar*. Jakarta, Rajawali Pers, 2009, p. 19.

<sup>21</sup> Sihombing, Deus Levolt, et al. "Peran Naskah Akademik dalam Pembentukan Peraturan Perundang-Undangan." *Locus: Jurnal Konsep Ilmu Hukum*, Vol. 2, No. 1, 2022, pp. 230-239.

mandated by Article 22 of the 1945 Constitution of the Republic of Indonesia. However, the legislative body has not provided a specific definition of what constitutes an "urgency or emergency situation" as stated in the 1945 Constitution. To address the ambiguity surrounding the meaning of urgency or emergency, the Constitutional Court, in Decision Number 138/PUU-VII/2009 regarding the Explanation of Government Regulation in Lieu of Law Number 4 of 2009 on Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission, has provided objective guidelines for the issuance of Perppu. These guidelines include: (a) The presence of an urgent need to resolve a legal issue as quickly as possible under the law. (b) The required law is not available, resulting in a legal vacuum, or the existing law at the time is deemed inadequate. (c) The existing legal vacuum cannot be addressed through the regular legislative process because it would require a significant amount of time, whereas the ongoing urgent situation necessitates swift resolution.

From a content perspective, both regular laws and Perppu generally contain the same legal provisions. This is stipulated in Article 11 of the Law on the Formation of Legislation, which states that the content of Perppu is equivalent to that of regular laws. However, the key difference lies in the absence of the Academic Text in Perppu. As previously explained, the Academic Text serves as an academic benchmark to ensure that legislative products are well-targeted and aligned with the principles of good regulation formation. The absence of the Academic Text in Perppu opens up a higher possibility of substantive and procedural review against the 1945 Constitution (judicial review) through the Constitutional Court.

However, some parties argued that there was no urgency in forming the Perppu Cipta Kerja. This argument was based on the statement by the Executive Director of the Center of Economic and Law Studies, Bhima Yudhistira, who believed that there was no urgency for the creation of the Perppu Cipta Kerja, especially considering the relatively high economic growth rate of 5.3%.<sup>22</sup> Therefore, it can be argued that, fundamentally, the conditions for the issuance of a Perppu have not been met, which implies that there is no need for the government to issue a Perppu. Furthermore, when

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<sup>22</sup> FORMAH PK. "Perppu Ciptaker; Kegentingan atau Kelicikan?" *Forum Mahasiswa Mahasiswa Hukum Peduli Lingkungan.ub.ac.id*, 16 February 2023, <http://formahpk.hukum.ub.ac.id/perppu-ciptaker-kegentingan-atau-kelicikan/>, accessed on 27 August 2023.

considering the second condition, the absence of a legal vacuum or inadequacy of existing laws, this condition is also not met. This is because the presence of the Job Creation Law, which was previously declared conditionally unconstitutional, is considered to have already accommodated this aspect. However, the government needs to fulfill the conditions set by the Constitutional Court for the Job Creation Law to become constitutional again.

The third condition, which involves the need for an unusual procedure to address the existing emergency situation, is also not apparent in the formation of the Perppu on Job Creation. This is because, in principle, there is no compelling urgency or emergency situation evident. These conditions imply a tendency for the government to utilize the legal instrument of the Perppu on Job Creation to bypass public participation. However, the substances regulated within the Perppu Cipta Kerja pertain to the welfare of the public, including determining the direction of justice realization.

Furthermore, when reviewing the procedural aspects of its formation, Perppu Cipta Kerja was created using the omnibus law method. An omnibus law is a law that combines more than one aspect into a single piece of legislation.<sup>23</sup> According to Ahmad Redi, the characteristics of the omnibus law method are as follows: (a) Multisectoral, involving many sectors with similar regulatory topics. (b) Contains many articles due to the inclusion of multiple sectors. Consolidates numerous pieces of legislation into one regulation. (c) Stands alone without being linked to other regulations. d) Nullifies or repeals some or all of the existing regulations.<sup>24</sup>

However, in this case, the application of the omnibus law method was deemed to be not very effective due to formal inefficiencies. When applying the omnibus law method, lawmakers should have engaged in "reception in law," which involves a thorough examination and adaptation within the legal framework to ensure that there are no legal contradictions when transplanting laws (in this case, the method of forming

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<sup>23</sup> Supriyadi and Andi Intan Purnamasari. "Gagasan Penggunaan Metode Omnibus Law dalam Pembentukan Peraturan Daerah." *Jurnal Ilmiah Kebijakan Hukum*, Vol. 15, No. 2, 2021, pp. 257-270, <https://scholar.archive.org/work/w5ettkdrd5fvfi2tgypf3kg6ou/access/wayback/https://ejournal.balitbangh.am.go.id/index.php/kebijakan/article/download/1634/pdf>.

<sup>24</sup> Alhakim, Abdurrakhman and Ega Ginting. "Analisis Pembentukan Undang-Undang Cipta Kerja Pada Tahapan Perencanaan dan Penyusunan Berdasarkan Undang-Undang Pembentukan Peraturan Perundang-Undangan." *Jurnal UIB*, Vol. 1 No. 1, 2021, pp. 284-296.

legal regulations) to ensure effective implementation.<sup>25</sup> This endeavor is solely undertaken to achieve the essence of order and regularity within society, as it has been a legal aspiration across various regions of the world.

From a functional perspective, Perppu Cipta Kerja is considered not to reflect the principle of justice. This is because the substance contained in Perppu Cipta Kerja is not aspirational. The rules within it do not originate from the desires of the people but solely from the government's intentions. There are several rules that are deemed non-aspirational, one of which pertains to the labor cluster. Article 81, Number 15 of Perppu Cipta Kerja, which amends Article 59 of Law Number 13 of 2003 concerning Manpower, contains unclear phrases and tends to create legal loopholes that could harm workers. For example, the phrase "work estimated to be completed in a not too long time" could be used by employers to employ workers under uncertain working hours or conditions. This tendency towards the legalization of labor exploitation could, in fact, materialize, thereby depriving workers of the opportunity to attain the welfare to which they are entitled under both the constitution and existing legislation. Such a situation does not reflect the value of justice.

Another non-aspirational provision is found in the agricultural cluster related to food import policies. Article 64, Number 1 of Perppu Cipta Kerja, which amends Article 1, Number 7 of Law Number 17 of 2012 concerning Food, is believed to have reduced the welfare of farmers. This is because the core issue in this article is the tendency to relax food import policies, as food imports are no longer required to consider domestic production availability and national food reserves. The relaxation of food import policies can have an impact on farmers, potentially leading to a decrease in their sales and affecting their livelihoods. Such a situation is not in line with the principle of proportional justice as mandated by the law. This aligns with Aristotle's view that justice is proportional, providing each person with what is rightfully theirs.<sup>26</sup>

In the environmental sector, Perppu Cipta Kerja has made changes to several provisions. One of them concerns the right of the community to object to mining

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<sup>25</sup> Cakra, I Putu Eka. "Kompatibilitas Penerapan Konsep Omnibus Law Dalam Sistem Hukum Indonesia." *Jurnal Crepido*, Vol. 2 No. 2, 2020, pp. 59-69, <https://doi.org/10.14710/crepido.2.2.59-69>.

<sup>26</sup> Keladu, Yosef. "Kesamaan Proporsional dan Ketidaksamaan Perlakuan dalam Teori Keadilan Aristoteles." *DISKURSUS*, Vol. 1 No. 19, 2023, pp. 54-78, <https://doi.org/10.36383/diskursus.v19i1.347>.

activities. Article 39 of Perppu Cipta Kerja, which amends Article 162 of Law Number 3 of 2020 on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, essentially imposes criminal sanctions on anyone who obstructs or disrupts mining activities. There is concern that the phrase "obstructs or disrupts" could encompass objections raised by the community against mining activities. However, such objections are typically based on environmental concerns, which are fundamental human rights. Treating these objections as criminal offenses is contradictory to the right to freedom of expression as guaranteed by the constitution. This situation does not reflect the value of justice.

Based on the explanation above, it can be stated that the process of forming laws and regulations on Job Creation Perppu is classified as a conservative legal product or in other words, it is not a responsive and participatory legal product. This means that the Government Regulation in Lieu of Law on Job Creation is considered not to reflect the principle of justice as mandated in the P3U Law. The purpose of Perppu Cipta Kerja appears to be aimed at legal reform. Legal reforms can play a role in ensuring legal certainty to achieve justice.<sup>27</sup> However, in this context, the concept of justice can only be defined based on what is written in the law.<sup>28</sup> This is because the law serves as the pivot that determines the value of justice, without considering factual circumstances or the prevailing sense of justice in society. In the end, legal rules contain formulations that interpret new norms in relation to the norm of justice.<sup>29</sup> This condition shifts the assessment of justice from a focus on society to a focus on the legislator. Consequently, the aspiration of the community for the realization of justice remains unfulfilled. The implementation of the fifth sila, "social justice for all Indonesian people," cannot be effectively delivered by the DPR and the Government, who are entrusted with the sovereignty of the people as stipulated in the 1945 Constitution of the Republic of Indonesia.

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<sup>27</sup> Rahayu, Sri. "Implikasi Asas Legalitas Terhadap Penegakan Hukum dan Keadilan." *Jurnal Inovatif*, Vol. 7, No. 3, 2014, pp. 1-12.

<sup>28</sup> Arifin, Wandu. "Asas Keadilan Upah Guru Honorer dalam Perspektif Hukum." *Riau Law Journal*, Vol. 3, No. 1, 2019, pp. 85-104, <http://jta.ejournal.unri.ac.id:7680/index.php/RLJ/article/view/6956>.

<sup>29</sup> Nasution, Bahder Johan. "Kajian Filosofis tentang Konsep Keadilan dari Pemikiran Klasik sampai Pemikiran Modern." *Yustisia*, Vol. 3, No. 2, 2014, pp. 118-130, <https://doi.org/10.20961/yustisia.v3i2.11106>.

### **III. CONCLUSION**

Law on Job Creation has undergone a series of transformations and debates, originally taking the form of a law, being declared conditionally unconstitutional, changing into a Government Regulation in Lieu of Law (Perppu), and ultimately returning to the form of a law. Nevertheless, one thing remains certain: the principle of justice is a fundamental principle that is continually striven for and sought to be fulfilled. Legal products are closely related to the principle of justice. Legal products should be able to accommodate the principle of justice. Responsive legal products are those that reflect the principle of justice, while conservative legal products do not. The forming process and substance of Perppu Cipta Kerja can be characterized as conservative or, in other words, not responsive, considering its lack of aspirational and participatory elements. When examined from the formation process, the Job Creation Perppu is considered non-participatory considering that its formation is packaged in the form of a Perppu considering the absence of a discussion stage as found in legal products in the form of laws. Furthermore, when evaluated in terms of its function, Perppu Cipta Kerja is considered non-aspirational, as its substantive content does not reflect the desires or wishes of the public but rather the government's intentions. Therefore, the government needs to conduct a review of the formation and substance of laws and regulations including Perppu so that they can reflect the principles of justice.

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