



# Technium.

50/2023



The 7th International Conference on Social Sciences  
Organized by Faculty of Social Science  
and Law Manado State University

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## Some Provisions In The 1945 Constitution Of The Republic Of Indonesia Are Further Regulated By The Law

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**Abstract.** The highest written legal basis in the unitary state of the Republic of Indonesia is the 1945 Constitution of the Republic of Indonesia. This means that some provisions in the 1945 Constitution of the Republic of Indonesia need further regulation with laws and regulations. Given that the product of state law is the Constitution and laws and regulations, it is correct and appropriate if some provisions in the Constitution are further regulated by laws and regulations. The laws and regulations, as stipulated in the 1945 Constitution of the Republic of Indonesia are Law, Perpu, PP, Perpres, Perda.

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## 1 Introduction

The real manifestation of the existence, sustainability and sustainability of the Unitary State of the Republic of Indonesia (hereinafter referred to as NKRI) in accordance with Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945) which reads that the State of Indonesia is a state of law, where the regulation of state maintenance is based on the UUD NRI 1945 and also laws and regulations. The basis for the preparation of laws and regulations is regulated in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (hereinafter referred to as the Law on the Establishment of Laws and Regulations) along with its amendments in Law Number 13 of 2022. Not only that, in order to realize legality and certainty, further codification of several provisions in the UUD NRI 1945 must be presented, so that there is no vague norm or vacuum of norm or conflict of norm.

Further regulation is needed, considering that the substance of the basic norms only regulates in general related to the system and state administration, so there are several provisions that need further regulation. The 1945 Constitution of the Republic of Indonesia is referred to as basic norms in line with terms referring to the Constitution. Tutik Quarterly Tutik said that the regulations (Constitution) are written as decisions of the authorized body in the form of the Constitution or Law[1]. There is no country in the world that does not have a constitution as Jibon Lim explained "There is not a country in the world without some form of a Constitution[2], where the constitution is the most important condition for the formation of the state. In Indonesia, the UUD is known as the Constitution. And in countries that are based on constitutional democracy, the Basic Law can be called a written constitution. Some jurists also agree that the UUD is integrated with the constitution such as Sri Soemantri, Jimly Asshiddiqie and G.J. Wolhaff[3] Lord James Bryce English jurist also equates the constitution with the constitution[4]. The Constitution or Constitution of the Republic of Indonesia Year 1945 only regulates matters that are very important and still general, as Eric Barendt argues "The constitution of a state is the written document or text which outlines the powers of its parliament, government, courts, and other important national institution[5]. This indicates the need for further regulation.

To ensure that there is no legal vacuum, the 1945 Constitution of the Republic of Indonesia has stipulated the types of laws and regulations to implement some of the provisions contained therein. These provisions can be: Law (Law), Government Regulation in Lieu of Law (hereinafter referred to as Perppu), Government Regulation (hereinafter referred to as PP), Presidential Regulation (hereinafter referred to as Perpres), Regional Regulation (hereinafter referred to as Perda). And in this article it is limited to further regulation with the Law. The selection of Law in the focus of this article, considers what Hans Kelsen called where the Law is considered as a form of

elaboration of basic norms that can be referred to as *Formel Gesetz*[6].

Meanwhile, if it is related to the enactment of the Law on the Establishment of Laws and Regulations, where in one of the articles regulates several types of laws and regulations, it refers to Article 1 number 3 to number 8. In addition to the laws and regulations mentioned above, there are still laws and regulations that are recognized for their existence and have binding force as long as they are ordered by higher laws or formed based on authority. These laws and regulations are regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, Supreme Court, Constitutional Court, the Financial Audit Board, Judicial Commission, Bank Indonesia, Ministers, agencies, institutions or commissions at the same level established by Law or the Government by order of the Law, Provincial People's Representative Council, Governor, Regency / City People's Representative Council, Regent/Mayor, Village Head at the same level.

Understanding the statement above, there is actually no need for arrangements as Article 1 Number 3 to Article 1 Number 8 of the Law on the Establishment of Law Regulations. Given that the State Constitution of the Republic of Indonesia has stipulated several types of laws and regulations under the State Constitution of the Republic of Indonesia to implement the provisions regulated therein. So it is not appropriate to regulate the type of laws and regulations. This paper wants to discuss whether the Constitution of the Republic of Indonesia also contains provisions related to the further implementation of several provisions in the State Constitution of the Republic of Indonesia and affirms the existence of the Decree of the People's Consultative Assembly in the State Constitution of the Republic of Indonesia.

## 2 Discussion

### 2.1 Further regulation of several provisions in the 1945 Constitution of the Republic of Indonesia with Law

The written constitution of Indonesia which refers to the 1945 Constitution of the Republic of Indonesia has regulated and stipulated in general the administration of the state, state institutions, state life, the position of citizens with their rights and obligations and human rights. This is in line with the opinion of J. G Steenbeek followed by Sri Soemantri[7] related to the content of the constitution which broadly contains 3 things, namely the regulation on the protection of human rights and citizens, the regulation on the basic constitutional structure of the state and the regulation on the division of powers, limitation of power rather than basic constitutional duties.

The content material in the 1945 Constitution of the Republic of Indonesia regulates basic matters and in general, it is necessary to further regulate with laws and regulations whose position is under the 1945

Constitution of the Republic of Indonesia, one type of legislation is Law. Referring to the law on the Establishment of Laws and Regulations, what is meant by the Law is the laws and regulations formed by the People's Representative Council (hereinafter referred to as the DPR) with the mutual consent of the President. Some provisions in the 1945 Constitution of the Republic of Indonesia that must be further regulated by law are as shown in the table below.

Table of Some Laws as Further Implementers

No	Provisions in the 1945 Constitution of the Republic of Indonesia	Law on
1	Article 2 paragraph (1)	The People's Consultative Assembly
2	Article 6 paragraph (2)	Requirements to become president and vice president
3	Article 6A paragraph (2)	Procedures for conducting presidential and vice presidential elections
4	Article 11 paragraph (3)	International treaties
5	Article 12	a state of emergency
6	Article 15	Awarding of titles, merits and other honors
7	Article 16	Advisory Council
8	Article 17 paragraph (4)	Establishment, change and dissolution of State Ministries
9	Article 18 paragraph (1)	Regional Governments
10	Article 18 paragraph (7)	The structure and procedures for the conduct of regional governments
11	Article 18 A paragraph (1)	The authority relations between the central government and the regional government of the provinces, regencies, and the municipalities, or among provinces and regencies and the municipalities by having regard to regional specificity and diversity
12	Article 18 A paragraph (2)	The financial relations, public service, the utilization of natural resources and other resources between the central government and the regional governments shall be regulated and be executed justly and harmoniously
13	Article 18 B paragraph (1)	Local government units of a special or special nature

14	Article 18 B paragraph (2)	entities of the adat law societies along with their traditional rights to the extent they still exist and are in accordance with the development of the society and the principle of the Unitary State of the Republic of Indonesia
15	Article 19 paragraph (2)	The structure of the People's Representative Council
16	Article 20 A paragraph (4)	The right of the People's Representative Council and the right of the members of the People's Representative Council
17	Article 22A	The procedures for the enactment of laws
18	Article 22B	Terms and procedures for dismissal of members of the DPR
19	Article 22C paragraph (4)	Structure and position of the Regional Representative Council(DPD)
20	Article 22D paragraph (4)	Terms and procedures for dismissal of DPD members
21	Article 22E paragraph (6)	General elections
22	Article 23 paragraph (1)	State budget of income and expenditure
23	Article 23A	Taxes and other levies of compelling character for purposes of the state
24	Article 23B	Denomination and value of the currency
25	Article 23C	State Finance
26	Article 23D	Structure, position, authorities, responsibilities, and independence of the central bank.
27	Article 23E paragraph (3)	Follow-up of State Financial Audit Results
28	Article 23G paragraph (2)	Financial Audit Board
29	Article 24 paragraph (3)	Other Bodies Whose Functions Are Related to Judicial Power
30	Article 24A paragraph (1)	Authority of the Supreme Court
31	Article 24A paragraph (5)	Structure, position, membership, and procedural law of the Supreme Court and the subordinated judicial bodies
32	Article 24 B paragraph (4)	Structure, position and membership of the Judicial Commission
33	Article 24C paragraph (6)	Appointment and discharge of a constitutional court justice, the procedural law as well as the other provisions

34	Article 25	The conditions to become and to be discharged as a judge
35	Article 25A	State territory
36	Article 26 paragraph (1)	Attestation as a citizen
37	Article 26 paragraph (3)	Citizens and residents
38	Article 28	Freedom to associate and to assemble, to express thought verbally and in writing and else
39	Article 28J paragraph (2)	Restrictions on the exercise of rights and freedoms
40	Article 30 paragraph (5)	The structure and position of the Indonesian National Military (TNI), the State Police of the Republic of Indonesia (POLRI), the authority relationship of the TNI and the POLRI, the conditions for participation of the citizens in the effort of defense and security of the state, as well as matters related to defense and security
41	Article 31 paragraph (3)	National educational system
42	Article 33 paragraph (5)	National Economy and Social Justice
43	Article 34 paragraph (4)	Destitute people and neglected children, social security system, decent health care facilities and public service facilities
44	Article 36C	Flag, Language, and Coat of Arms, and National Anthem

The 1945 Constitution of the Republic of Indonesia, in addition to regulating and stipulating the Law also regulates and stipulates other types of laws and regulations, namely Perppu. Although Perppu is not a type of legislation formed to further implement the provisions in the 1945 Constitution of the Republic of Indonesia as a Law. Although the position of Perpu is parallel to the Law / has the same position. As stipulated in Article 22 paragraph 2 of the 1945 Constitution of the Republic of Indonesia. The position of the Law and Perpu in the Law on the Establishment of Law Regulations has the same position, equal, but in fact it can be bound not the same as the Law because it does not have the approval of the People's Representative Council (DPR)[8].

Perppu can be interpreted as a law that when viewed from the content should be regulated and stipulated by law, but due to compelling emergency circumstances, it is regulated and stipulated in the type of legislation, namely PP. Understanding the contents of Article 22 paragraph (1) of the 1945 Constitution of

the Republic of Indonesia "In the event of a compelling emergency, the President has the right to enact government regulations in lieu of laws", this provision shows the President's subjectiveness in determining Perppu. A compelling emergency is not the same as a state of danger, as the material stipulates Article 12 of the 1945 Constitution of the Republic of Indonesia. The President's subjectiveness becomes objective, after the Perppu gets the approval of the DPR during the following session and if it does not get the approval of the DPR, the Perppu must be revoked. Perppu is a PP, but it functions as a law because of the compelling urgency. The compelling emergency is contained in an emergency nature or an abnormal condition that requires an unusual effort to immediately end the condition[9].

## 2.2 The existence of the provisions of the People's Consultative Assembly

The decree of the People's Consultative Assembly (TAP MPR), has the meaning of a form of decision issued by the People's Consultative Assembly (MPR) which has the force of binding law both outside and into the MPR. TAP MPR is not in line with the Law or Perppu, but even in the order of laws and regulations above the Law or Perppu. This indicates an important position. Law Number 12 of 2011 reinserts the MPR TAP in the order of laws and regulations, where in Law Number 10 of 2004 concerning the Establishment of Laws and Regulations previously did not mention the MPR TAP in the order of laws and regulations.

Ironically, the formal juridical the 1945 Constitution of the Republic of Indonesia does not regulate, either explicitly or implicitly, the MPR Decree. However, in constitutional practice, there have been many "MPR Decrees (Ketetapan MPR)". This is different from the conditions before the amendment of the 1945 Constitution of the Republic of Indonesia, where in the provisions of Article 1 paragraph 2 of the Constitution "sovereignty is in the hands of the people and is exercised solely by the MPR". The 1945 Constitution before the amendment, gave the MPR a legal forum "provisions" to form regulations and legal products. which is also the embodiment of Article 3 where the MPR has the discretion to be able to determine the Constitution and the lines of the country's direction. so that MRP requires a legal platform, one of which is the "MPR Decree", which binds both in and out[10]. Therefore, there is no authority from the 1945 Constitution of the Republic of Indonesia given to the People's Consultative Assembly either to create or form an TAP MPR.

## 3 Conclusion

From the results of the analysis above, it can be concluded, first, the 1945 Constitution of the Republic of Indonesia has regulated and stipulated the types of laws and regulations to further implement some of the provisions contained in the 1945 Constitution of the Republic of Indonesia and one of the types of laws and

regulations is the Law. The two provisions of the People's Consultative Assembly (MPR) are not regulated in the 1945 Constitution, but in practice the constitution of the Republic of Indonesia affects the course of government.

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