

The Phenomenon of Autocratic Legalism in the Formation of Laws and Regulations in Indonesia

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Abstract

The phenomenon of autocratic legalism in the formation of laws and regulations in Indonesia refers to the use of legal instruments to consolidate authoritarian power through a process that appears legal but is contrary to democratic principles. This study aims to analyze the specific legal mechanisms through which this practice occurs and its impact on the Indonesian constitutional system. Through a normative legal research approach—integrating philosophical, statutory, and conceptual analysis—this study systematically examines the gap between procedural compliance and substantive democracy. Through a qualitative approach with literature studies and case analysis, this study finds that autocratic legalism is manifested through executive dominance in law-making, the weakening of public participation, and the use of law as a tool of repression. Concrete examples include the hasty passage of the Job Creation Law and the revision of the KPK Law which reduces the independence of anti-corruption agencies. As a result, there has been a narrowing of democratic space, inequality in law enforcement, and a weakening of the legislative oversight function. This study concludes that a more transparent and participatory reform of the legislative process is needed to prevent the degradation of constitutional democracy in Indonesia. The study concludes with concrete procedural recommendations, including legal-institutional reforms to ensure genuine public participation and a more robust role for the Constitutional Court in reviewing legislative procedures.

Keywords : Autocratic legalism, legislative process, public participation

A. INTRODUCTION

Laws are one of the products to achieve the ideals of a nation. In the relationship between politics and law, clearly the substance of law in legislation is heavily influenced by political interests because laws are one of the instruments of legitimacy to channel and realize government power. Nonet and Selznick state that criticism of law is always directed at its inability to achieve substantive justice. The inadequacy of law to achieve substantive justice can occur because the law is co-opted by inherent

political interests, starting from the formation process to its operation in society.(Rishan, n.d.) Within the framework of a modern democratic state, law is expected to be an instrument of justice and rights protection, as well as a means of social transformation that is legitimate because it is formed through participatory and deliberative processes. However, in practice, the symbiotic relationship between law and politics often experiences distortion. Law can be reduced to merely a formal legitimizing tool to consolidate power and serve dominant political interests, a phenomenon known in legal and political studies as legalistic authoritarianism or autocratic legalism.(Scheppelle, K. L., 2018)

The nature of politics and law shows an interconnected bond. Politics is a field related to the goals of society itself. Meanwhile, law in context regulates various aspects of community life. Thus, legal decisions are a formal form of political decisions, even though legal and political actors operate separately.(Sari, 2023) Legal politics clearly serves as a guideline or boundary to be followed in law formation to be effective and efficient. However, law formation in a democratic country inevitably carries the consequence of the emergence of authoritarianism. The use of legal instruments and legislative processes that formally comply with procedures, but substantively aim to consolidate authoritarian power, weaken checks and balances mechanisms, and limit participatory democratic space. Its main characteristic is that law no longer functions as a limit to power, but rather transforms into an instrument of power. In this context, compliance with legal formalities (procedural compliance) is used as a guise to wrap arbitrary actions and ignore substantive justice.(Tamanaha B.Z., 2004)

Legal authoritarianism or legalistic authoritarianism refers to the use of legal instruments and legislative processes by rulers to formally legitimize authoritarian power, even though its substance contradicts democratic principles, the rule of law, and checks and balances. In the context of law formation, this phenomenon is marked by executive dominance in the legislative process, restrictions on public participation, and the formation of repressive regulations to control criticism and opposition. Its main characteristic is that law no longer functions as an instrument of justice, but as a means to maintain power through seemingly legal mechanisms. (Ginsburg, T. & Simpser, A., 2014)

The government and the House of Representatives (DPR) are increasingly showing without hesitation that laws are the will of the state, not the will of the public. It is the state that interprets public desires, not the public themselves speaking about their wishes. Laws made without adequate participation, aspirations, and socialization are essentially a form of denial of popular sovereignty itself. Something strictly outlined in the 1945 Constitution but does not receive meaningful consideration from lawmakers. (Z. A. Mochtar, 2020) Examples include the enactment of omnibus laws that ignore deliberative procedures or the use of Government Regulations in Lieu of Law (Perppu) to cut democratic processes. (Posner, E. A., 2017) In Indonesia, this practice is reflected in the formation of laws that tend to be exclusive and benefit political elites, such as the Job Creation Law and the revision of the KPK Law, which erode accountability and transparency. (Aspinall, E., & Warburton, E, 2019)

In the last decade, there has been a tendency to use legal instruments as tools to consolidate centralized state power, where the central government systematically expands control through top-down legal products. (Hadiz V.R, 2017) This

phenomenon is often called legal centralism, where law no longer functions as an instrument of justice, but as a political tool to maintain power domination.(Holmes, 2019) In Indonesia, this is reflected in the rampant use of omnibus laws and Government Regulations in Lieu of Law (Perppu) that marginalize democratic deliberation processes, as in the case of the Job Creation Law passed with minimal public participation.(Warburton E & Aspinall, E., 2019)

The centralization of power through legal instruments also impacts the weakening of regional autonomy, where local policies often must submit to uniform central regulations.(Kurniawan, 2020) A study by Davidson (2018) shows that strengthening central authority through legal products can erode the principle of checks and balances because regional governments and representative bodies lose space to control policies.(Davidson, J.S., 2018) Furthermore, this tendency potentially gives rise to authoritarian legality, where law is used to silence criticism and secure the interests of political elites, as seen in the application of the ITE Law often used to criminalize opposition.(Setiawan, K., 2021b)

Three concrete examples of the phenomenon of autocratic legalism in law formation in Indonesia are: (1) The Job Creation Law, hastily enacted in 2020 using the omnibus law method, ignoring public participation and standard law formation procedures, thus deemed more favoring investment interests than labor and environmental protection; (2) The Revision of the KPK Law (2019) which weakened the independence of the anti-corruption agency through structural changes such as removing the KPK employee status as investigators and forming a Supervisory Board seen as a form of political intervention; and (3) Strengthening executive authority through instruments like the Perppu on Job Creation 2022 used to enact controversial

policies without adequate DPR discussion, reflecting power centralization in the hands of the president. These cases show how law is used as a tool to secure power agendas, rather than guaranteeing justice and accountability.

These practices not only deviate from the spirit of deliberative constitutional democracy but also represent a paradigmatic transformation in the relationship between law and power in Indonesia. This phenomenon indicates a shift from rule of law to rule by law, where law is reduced to a technical tool to rationalize and legitimize the ruler's will, rather than a norm that substantively limits power. This shift is very dangerous because it occurs within a formally democratic institutional framework, thus creating a "legitimacy paradox" where increasingly centralized and uncontrolled power is wrapped in the cloak of legality and parliamentary procedure. (Sipayung et al., 2024)

This trend cannot be viewed in isolation but is part of the global phenomenon of democratic backsliding or democratic regression, where democratically elected regimes gradually erode democratic institutions themselves. Indonesia, as the world's third-largest electoral democracy, becomes an important case to observe because it shows how regression can occur not through military coups but through legal devices and legislative procedures that appear lawful. This "autocratic legalism" becomes a more subtle and sustainable strategy compared to open authoritarianism. This research departs from the assumption that analysis of democratic quality is insufficient by only looking at electoral contestation but must delve into the behind-the-scenes process of lawmaking the arena where real interests are fought for and engineered.

Furthermore, the symptoms of autocratic legalism in Indonesia are also inseparable from the structural political-economic context post-Reformation,

specifically the strengthening of oligarchic forces. Oligarchy as the politics of material wealth, where actors with very large material resources influence state policy to protect and increase their wealth. In the Indonesian context, oligarchy has successfully accommodated and utilized the electoral democratic system to perpetuate its dominance. Therefore, the legislative process often becomes an arena of "war among oligarchs" or even "state capture," where law is designed to secure the economic interests of certain groups, as seen in extractive natural resource policies and labor deregulation. Thus, examining autocratic legalism also means investigating how imbalanced economic-political power relations are translated and consolidated through the language and procedures of law.

This research has significance both theoretically and practically. Theoretically, this study seeks to test and contextualize the concept of autocratic legalism, which has been widely developed in studies about Central and Eastern Europe, into the unique political setting of Indonesia with its dynamics of oligarchy, decentralization, and a dynamic civil society. Practically, the findings of this study are expected to provide a clear problem map for efforts to reform legislation and salvage constitutional democracy in Indonesia. If the lawmaking process, which is the heart of the democratic social contract, is ailing, then the entire national structure will be affected.

Based on the above description, the author is interested in examining the existence of the phenomenon where the administration of the state in reality acknowledges democratic principles but its implementation is based on autocratic legalism. How does the phenomenon of autocratic legalism occur in the legislative process in Indonesia, and what impacts does it have on democracy and checks and balances. Therefore, the author raises the title **The Phenomenon of Autocratic**

Legalism in the Formation of Laws and Regulations in Indonesia. Problem Formulation are **How does the phenomenon of autocratic legalism manifest in the legislative process in Indonesia? And What impacts are caused by the phenomenon of autocratic legalism on democracy?**

1. State of the art of previous research

The phenomenon of autocratic legalism, defined as the use of legal instruments and formal procedures to consolidate authoritarian power within a democratic framework, has been extensively studied in a global context. Previous research provides a robust theoretical and empirical foundation for this study, first by Brian Z. Tamanaha have established the core theoretical framework for “legalistic authoritarianism,” analyzing how law can be subverted to serve as a tool of power rather than a constraint on it, emphasizing the gap between procedural compliance and substantive justice.(Tamanaha B.Z., 2004) Kim Lane Scheppele has further developed the concept of “autocratic legalism,” specifically examining how democratically elected leaders use legislative and constitutional channels to erode democratic institutions.(Scheppele, K. L., 2018) Global Context of Democratic Backsliding: The study is situated within a broader body of literature on global democratic regression or “democratic backsliding”.(Levitsky & Ziblatt, 2018) This research identifies a trend where democracies are eroded from within through legal and institutional means rather than through overt coups. Indonesian Political and Legal Studies: Extensive research has been conducted on Indonesia's post-Reformasi political landscape. Scholars such as Edward Aspinall, Eve Warburton, and Marcus Mietzner have analyzed the resilience and vulnerabilities of Indonesian democracy, highlighting the resurgence of oligarchic

power, the weakening of oversight institutions, and the centralization of authority. Their work provides critical context for understanding the political economy behind legislative processes. *Legislative Process and Law Formation in Indonesia: Indonesian constitutional scholars like Jimly Asshiddiqie, Bagir Manan, and Maria Farida Indrati have thoroughly mapped the formal procedures, principles, and hierarchies of law formation in Indonesia, as codified in the 1945 Constitution and Law No. 12 of 2011. Their work establishes the normative benchmark (law in books) against which actual legislative practices (law in process) can be evaluated. Case-Specific Analyses: Previous studies have examined specific instances of controversial legislation in Indonesia. Research exists on the Job Creation (Cipta Kerja) Omnibus Law, the revisions to the KPK Law, and the application of the ITE Law. These analyses, often by Indonesian legal scholars and civil society organizations, have documented procedural shortcomings, limited public participation, and the substantive impacts of these laws on labor rights, anti-corruption efforts, and civil liberties. In summary, the state of the art reveals a well-developed understanding of the global concept of autocratic legalism, the specific dynamics of Indonesian politics, and the formal rules governing legislation. Prior research has also provided in-depth critiques of individual case studies of problematic laws.*

2. Problem and Gap Analysis

Despite the rich body of existing research, significant analytical gaps remain, which the current study aims to address: *The Gap Between Isolated Cases and Systemic Pattern: Previous research has often focused on analyzing specific laws (e.g., the Job Creation Law or the KPK Law revision) as isolated, high-profile*

events. The gap lies in the lack of a comprehensive, systematic analysis that connects these disparate cases to identify an underlying, recurrent pattern or modus operandi within Indonesia's legislative process. This study posits that these are not isolated incidents but manifestations of a broader, systemic phenomenon of "autocratic legalism."

The Gap Between Global Theory and Local Context: While the concept of autocratic legalism is well-theorized, particularly in the context of Central and Eastern Europe or other regions, the gap exists in its deep contextualization within the unique socio-political fabric of Indonesia. The Indonesian context is distinguished by a powerful post-Reformasi oligarchy, a hyper-presidential system, a fragmented yet dynamic civil society, and a specific history of decentralized governance. This study seeks to test and adapt the global theory to these local specificities, examining how autocratic legalism operates in this distinct environment.

The Gap Between Political and Legal Analysis: Existing literature often resides in separate silos political science analyses of power and oligarchy, and legal analyses of statutory procedures and judicial review. The gap is an integrated, interdisciplinary analysis that explicitly links the political drivers (e.g., oligarchic interests, executive dominance, cartelized party politics) with the legal mechanisms (e.g., omnibus method, Perppu, restrictive standing requirements) and their constitutional consequences (erosion of checks and balances, shrinking civic space). This study bridges these fields by examining how power relations are translated into legal form.

The Gap in Proposing Integrated Reform Pathways: Much of the critical research effectively diagnoses problems in specific laws or institutions. The gap lies in synthesizing the findings from across different case studies and structural analyses to propose a coherent set of

normative and practical recommendations for legislative reform. This study aims to move beyond critique to prescriptive analysis, suggesting multi-dimensional reforms targeting institutional, political, and societal levels to counter the trend of autocratic legalism. The Problem of “Legitimacy Paradox”: This study highlights a core problem insufficiently explored in previous work: the paradoxical use of democratic and legal procedures to undermine democratic substance. The problem is not a blatant dismissal of law but its strategic use to create a façade of legitimacy while centralizing power. Analyzing this paradox—how legality itself becomes an instrument for democratic regression—is a central problem this research tackles. In conclusion, this study identifies its niche by synthesizing case studies into a pattern, contextualizing global theory locally, integrating political and legal analysis, and formulating systemic reform recommendations to address the identified problem of autocratic legalism in Indonesia's legislative formation. It argues that without such a comprehensive approach, the gradual degradation of constitutional democracy through legal means may continue unchecked.

3. Research Method

This research employs a normative legal methodology, designed as a systematic and integrated evaluation of legal principles, norms, and positive regulations governing the legislative process. The objective is to critically analyze the gap between law in books (the constitutional and statutory framework) and law in process (actual legislative practices). This is achieved through a triangulation of three distinct but complementary analytical approaches by Philosophical Approach, this approach is used to examine the foundational ideas of justice, democracy, and the rule of law that underpin the 1945 Constitution. It

provides the normative benchmark for evaluating whether contemporary legislative practices align with the substantive ideals of Indonesia's constitutional democracy. Statutory Approach, this involves a detailed examination of primary legal materials, including the 1945 Constitution, Law No. 12 of 2011 concerning the Formation of Laws and Regulations (as amended), the Job Creation Law, the KPK Law, the ITE Law, and relevant Constitutional Court decisions (notably Decision No. 91/PUU-XVIII/2020). This approach maps the formal procedural requirements mandated by law. Conceptual Approach: This approach utilizes established legal and political concepts such as "autocratic legalism," "meaningful public participation," and "checks and balances" as analytical tools to interpret and categorize observed legislative phenomena. It bridges political theory with legal analysis. The research object is regulations of an autocratic nature. The data sources used in this research are primary data sources consisting of primary legal materials, namely relevant laws and regulations (1945 Constitution, Legislative Formation Law, Job Creation Law, KPK Law, ITE Law) as well as relevant Constitutional Court decisions (especially Decision No. 91/PUU-XVIII/2020). Secondary legal materials include books, scientific journals, academic articles, and commentaries by constitutional law experts discussing democratic theory, autocratic legalism, and Indonesian legal politics. Tertiary legal materials such as legal dictionaries and encyclopedias are used to clarify term definitions. Data Collection and Analysis are sourced from primary legal materials (laws and court decisions), secondary materials (academic books, journals, expert commentaries), and tertiary materials (legal dictionaries). Data collection is conducted through literature and document study. The analysis proceeds in two stages, Interpretive

Stage, which is the data from various sources is organized and interpreted to reconstruct the legislative process in the selected case studies (e.g., Job Creation Law, KPK Law revision). This stage identifies patterns, such as the use of omnibus methods to limit debate and the truncation of public consultation periods. Prescriptive Stage is based on the interpretive findings, this stage evaluates the identified gaps and formulates concrete, normative recommendations. These recommendations are grounded in the constitutional ideals and principles of the substantive rule of law, aiming to propose corrective measures for a more democratic legislative process. These recommendations are compiled based on the ideals of the 1945 Constitution and the principles of substantive rule of law, as an effort to correct deviations and strengthen a more democratic legislative process in the future. This research strives to produce a comprehensive and in-depth analysis of the manifestation of autocratic legalism in law formation in Indonesia, as well as its serious implications for the future of democracy. (Muhaimin, 2020)

B. RESULT AND DISCUSSION

The practice of state administration with power born from democracy appears to intensively exceed power limits by seizing the basic rights of citizens. The idea of legal supremacy and human rights has given rise to a phenomenon of the shrinking of democratization, and Indonesia is certainly not free from this. In the Indonesian context, it is necessary to reflect again on the understanding of law and state politics that is increasingly leaning towards authoritarianism. Post-reformation, electoral contests show the regime's interest in the control of oligarchy or capital. Fukuyama in his book, *Political Order and Political Decay* asserts that the developing democratic

process can be worse when under the influence of cartels and oligarchy. Democracy that runs is merely formal procedure. When democratic elections are held as a form of leadership succession with behavior that hijacks sovereignty itself.(Z. A. Mochtar, 2022)

The politicization of law in the legislative process occurs when law is used as an instrument to achieve the political goals of certain groups, not as a means of enforcing justice. According to Satjipto Rahardjo, the politicization of law is often manifested through the enactment of laws that benefit ruling elites or oligarchic groups while ignoring public interests.(Rahardjo, 2009) This is evident from the many draft laws discussed in closed sessions with minimal public participation, such as the revision of the KPK Law or the Minerba Law, which are deemed more favorable to corporate interests than the people. Hadiz and Robison also assert that oligarchy in Indonesia often utilizes the legislative process to perpetuate their economic-political power through intervention in policy-making.(Hadiz, V.R & Robinson, R, 2013)

Oligarchy plays a significant role in the legislative process by controlling political and economic resources to influence law-making. Winters explains that oligarchy uses their wealth to form coalitions with politicians and bureaucrats, so that the resulting policies tend to protect their interests.(Winters, J.A, 2011) For example, the enactment of the Job Creation Law is viewed by many parties as a form of business oligarchy intervention in law formation. Jeffrey Winters and Vedi Hadiz add that oligarchy in Indonesia influences the legislative process not only through lobbying but also by placing their cadres in strategic positions in the DPR and government. Consequently, legal products are often biased towards elite interests and weaken the principles of substantive democracy.(Winters, J.A & Warburton E, 2020)

1. Forms of Legalistic Authoritarianism in Regulation Formation in Indonesia

Autocratic legalism refers to the use of legal instruments to maintain authoritarian power, where regulation formation is dominated by political elites with minimal public participation. In Indonesia, this is evident from many legal products created to secure the interests of rulers, not to protect the rights of the community. (Aspinall, E. & Warburton, E, 2020) One law is enacted, and soon after, the said law is immediately brought to the Constitutional Court (MK) and requested for review, either formally, materially, or both. The pattern increased during the pandemic. The MK is seen as the only institution where judicialization of politics can solve these legislative problems. Many laws were enacted during that period, but several laws attracted public attention because their formation was very fast, some even taking only a few days. This is considered disproportionate to the substance of the law which directly touches on political rights, civil liberties, to corruption eradication. Besides those two reasons, they all have one similarity: minimal or even absent public participation.

The neglect of democratic substance often appears with the use of the right of initiative by the Government to control the legislative process, so the DPR only acts as a “rubber stamp”. (Mietzner, M, 2015) For example, the MD3 Law of 2019 makes judicial review more difficult and criminalizes criticism of the DPR. For instance, in the formation of the Minerba Law 2020, the government pushed for revisions beneficial to mining corporations while sidelining public participation. (Warburton, E & Aspinall, E., 2021)

Furthermore, laws such as the ITE Law are used to limit freedom of expression under the pretext of “public order”. (Setiawan, K., 2021a) The elastic

articles in this law are often used to criminalize activists and journalists, showing how law becomes a tool of repression rather than protection. The use of criminal law and multi-interpretation regulations as tools of repression and silencing criticism. The Information and Electronic Transactions Law (ITE Law), especially Article 27 paragraph (3) on defamation and Article 28 paragraph (2) on hate speech, has become the primary instrument in this practice. These articles, criticized as "rubber articles," are often used to report and criminalize journalists, activists, academics, and ordinary citizens who criticize the government or political leaders. Although this law has existed since 2008, the frequency of its use as a repressive tool has increased significantly in recent years, creating a chilling effect that narrows freedom of expression in the digital space. Thus, law that should protect is instead repurposed as a tool to silence opposition voices and consolidate the discursive hegemony of the rulers.

The KPK Law was also created non-transparently, ignoring civic participation and weakening independent institutions. Among the many laws enacted during the pandemic, the Job Creation Law is the most controversial. Legislation aimed at weakening or neutralizing supervisory and power-balancing institutions. The revision of the Corruption Eradication Commission Law (KPK Law) in 2019 is a paradigmatic example. This revision changed the structure and authority of the KPK, among other things, by forming a Supervisory Board with the authority to permit or prohibit investigations, and changing the status of KPK employees from special investigators to ordinary Civil Servants (PNS). (Setiawan, K., 2021b) These changes are viewed by many observers and anti-corruption activists as a systematic effort to tame and weaken the independence of a

superbody institution that has been a threat to corrupt political elites. This legislation uses a legal framework to disarm the capacity of institutions designed to control power, a typical tactic of autocratic legalism to secure impunity from accountability. This shifts the legislative function of the DPR as a representation of the people and a space for public deliberation into merely an administrative procedure.(Butt, 2019)

Formally, the Job Creation Bill (RUU Ciptaker) contains many changes to other laws, consisting of various different regulatory clusters (multi-cluster). At least the RUU Ciptaker contains or streamlines about 79 laws: 1239 articles; 15 chapters; and 174 articles covering 11 clusters from 31 relevant Ministries and institutions aimed at creating a conducive and progressive business climate. The number and scope are certainly too broad to be simplified with the omnibus law method, a method previously unknown in the Indonesian legal system and law formation.

The Job Creation Law was then submitted for formal and material review at the MK. At the MK level, Jokowi's plan to loosen regulations then failed when the MK decided to halt the implementation of the Job Creation Law for a maximum period of two years. If within two years improvements to the Job Creation Law are not made or not completed, then the Job Creation Law becomes inapplicable. However, this MK decision still sparked debate and a series of questions because it tended to be unusual. Although the MK decision on the Job Creation Law is among the first successful formal reviews, MK Decision Number 91/PUU-XVIII/2020 seemed hesitant.(Z. Mochtar, 2025)

In the midst of that process, the government also made changes to the law on the formation of laws and regulations, which was then enacted as Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Laws and Regulations (P3 Law), based on one of the considerations in MK Decision Number 91/PUU-XVIII/2020. This third amendment to the P3 Law was essentially rejected by the public because it was considered to prioritize the interests of lawmakers to support the omnibus law method in the Job Creation Law. This P3 Bill can also be seen as a follow-up to MK Decision Number 91/PUU-XIX/2021 related to the review of the Job Creation Law, especially regarding the regulation of the omnibus law method and public participation. However, as before, the discussion of this bill was done quickly and with minimal public participation, especially in implementing meaningful public participation, such as the right to be heard, considered, and explained (right to be heard; right to be considered; right to be explained). (Eko Riyadi, 2018)

This shows autocratic legalism works through executive dominance in law-making. This practice reflects autocratic legalism where law is used to silence critical voices and maintain the status quo. Furthermore, the use of Perppu to enact controversial policies without going through democratic processes. This shows how autocratic legalism exploits legal mechanisms to legitimize unilateral policies. The presidential prerogative in stipulating Perppu often ignores deliberative processes. The use of legislative methods that marginalize public participation and ignore deliberative processes. The omnibus method is used to accelerate enactment under the pretext of efficiency and simplifying regulation. However, in its implementation, the complexity and vast scope of material make meaningful

public participation impossible. Public consultation processes were conducted virtually within very limited timeframes during the pandemic, and thousands of inputs from civil society, labor unions, and experts were ignored.(Mietzner, M., 2023)

Non-compliance with non-transparent legislative procedures in the formation of a law is clearly contrary to the principles of openness, clarity of purpose, and conformity between type and substance. As explained earlier in the forms of autocratic legalism in the formation of the Job Creation Law, ITE Law, MD3 Law, Minerba Law, and KPK Law. The deviations that occur will form a legislative habit that accelerates the process by ignoring critical stages that guarantee public accountability and transparency.

The form of autocratic legalism in the formation of laws and regulations is also seen from the weak oversight of legal products. On the other hand, decisions issued by the Constitutional Court (MK) are often inconsistent in reviewing problematic laws. The form of autocratic legalism in regulation formation in Indonesia shows the weakening of the legislative role and public participation with the hasty enactment of laws without in-depth discussion and restriction of public involvement space in judicial review with strict legal standing requirements at the MK. Law can serve as a tool for social control and repression. It can be concluded that autocratic legalism is reflected in non-transparent legislative processes, minimal meaningful participation, and restriction of public space.

2. Impacts of Autocratic Legalism on Check and Balances and Legislative Oversight

Autocratic legalism transforms democracy into merely formal procedure, where legal procedures are carried out, but the substance of freedom and public participation is eroded. The lack of public participation in Indonesia results in the loss of the meaning of democracy as government of the people, by the people, for the people. The utilization of formal legal mechanisms is a gradual regression of democracy. The impact of autocratic legalism clearly injures democratic principles. The weakening of public involvement and oversight of the government is reflected in the consolidation of parliamentary authority that modifies laws to narrow civil liberties space, weaken oversight, and create unequal conditions.

The first and most fundamental impact is the erosion of substantive democracy into empty procedural democracy.(Merkel, n.d.) Democracy is no longer measured by the extent to which policies reflect public deliberation results and protect minority rights, but merely by the holding of periodic elections and fulfillment of legal formalities. Elections and legislation run, but their results are increasingly unresponsive to broader public aspirations and serve more the interests of oligarchy and the executive's power agenda. This condition creates a legitimacy crisis, where law and democratic institutions lose public trust because they are perceived as unfair and only benefiting a handful of elites.

The real impact of autocratic legalism is the product of the laws themselves. But not only that, restrictions on access to draft bills, the absence of public hearings, even obstacles for the public in providing input. This condition clearly creates a gap between policymakers and the public. Institutions like the Judicial Commission (KY) and the Ombudsman often do not have real power to control the executive and judiciary. For example, political intervention in the selection process

of Supreme Court justices shows how legalistic authoritarianism erodes the independence of oversight institutions.(Lisandi, 2025) The Constitutional Court (MK) and the Supreme Court (MA) are often politicized, as in cases of regional election disputes or law reviews favoring the rulers. When the judiciary is not neutral, the checks and balances function in the trias politica becomes ineffective.

Fatal weakening of the checks and balances system. The trias politica, which should mutually oversee and balance, experiences distortion. The legislative function of the DPR weakens due to the dominance of the executive agenda and being trapped in the logic of political transactions of the government's supporting coalition.(Slater, 2018) The DPR's oversight function becomes ineffective when the laws regulating them, such as the MD3 Law, are used to protect themselves from criticism and external intervention. Meanwhile, the judiciary function, although relatively more independent, also faces pressure.

The MK, although it has won several formal reviews, faces a dilemma between upholding the constitution and avoiding frontal conflict with the dominant political power. The weakening of the KPK as an independent external supervisory institution further narrows the channels of power accountability.(Hendianto, S., 2018) The research identifies a gap in procedural constitutional review. The MK's review currently focuses heavily on substantive outcomes and formal violations. There is a need for the Court to develop clearer, more robust standards for reviewing legislative procedures themselves, particularly regarding what constitutes adequate and meaningful public participation. Without such standards, the procedural bypasses described above remain largely immune to judicial correction until after their substantive damage is done.

The third impact is the shrinking of public space and civil society (shrinking civic space). The use of the ITE Law and other repressive regulations has created a climate of fear and criminalized activism. This not only violates freedom of expression but also kills one of the vital components of democracy: a critical and participatory citizenry. When critical voices are silenced, the government loses important feedback, policies become uncorrected, and the gap between rulers and the ruled widens. Restrictions on civic space in policymaking, as in the discussion of the Criminal Code Bill (RUU KUHP), show how legalistic authoritarianism ignores the people's voice. Without meaningful public participation, democracy loses its accountability. When law becomes merely a tool of power, public trust in democracy declines. (Tushnett, n.d.) An LSI Survey (2023) shows increased dissatisfaction with the performance of the DPR and the government, reflecting a legitimacy crisis due to legalistic authoritarianism. The impact of autocratic legalism not only erodes democracy but also damages checks and balances mechanisms, so that power becomes increasingly centralized and uncontrolled.

The fourth impact is the occurrence of legal inequality and injustice (legal inequality). Autocratic legalism creates a legal system that works asymmetrically. On one hand, law is used strictly to discipline society and silence opposition. On the other hand, law becomes blunt and unenforced against corruption perpetrators from elite circles or large corporations with political access. This damages the basic principle of the rule of law, namely equality before the law, and replaces it with "rule by law" where law is the ruler's tool to regulate the people, not to limit the power of the rulers themselves. (Tamanaha B.Z., 2012)

The fifth impact is a threat to the sustainability of Indonesian democracy in the long term. Practices of autocratic legalism, if left unchecked, have the potential to cause "democratic regression" or permanent democratic decline. Democratic institutions will gradually lose their capacity and authority, while executive power becomes increasingly consolidated. The people become increasingly cynical and apathetic towards the political process, which in turn can erode the legitimacy of the democratic regime itself and open the door to more open forms of authoritarianism in the future.(Levitsky & Ziblatt, 2018)

The existence of legalistic authoritarianism in law formation is concentrated in one individual or a small group of people, who control almost all aspects of government and societal life. In this system, there are no clear limits on power, and law is often used to strengthen and maintain the ruler's power, not to regulate or limit their actions. This tends to strip away protection for basic individual rights. Freedom of speech, freedom of the press, and the right to assemble are often restricted or eliminated for the sake of stability and the continuity of the ruler's power.(Farchan, n.d.)

Authoritarianism in the current era shows that there is a difference with the recognition of absolute control over information up to economic activity. New mechanisms in authoritarianism in the formation of laws and regulations develop as legitimizing tools to manage and guide various discourses of elite interests. With logical consequences, the freedom of citizens to use their basic rights does not depend on laws established by freely elected representatives in parliament and enforced by impartial Courts, but on the condition of the vertical relationship between citizens and elected leaders.

This certainly describes indications of democratic failure moving towards systemic authoritarianism through the formation of orthodox laws. Furthermore, democracy moving towards authoritarianism shows how the existing power to accommodate people's interests does not show its role, because in authoritarianism, power is clearly held by those who are arbitrary to access many things, oppress citizens and manipulate rules as legitimacy for structural violence. Lawmaking is part of the democratic system to achieve welfare. Democracy moving towards authoritarianism is clearly a very frightening thing, because authoritarianism is leadership that is inversely proportional to democracy. Authoritarianism is leadership that is arbitrary and centralized, therefore it is very important to prevent the emergence of authoritarian leadership within a democratic state nuance. (Tarigan, 2025) The cumulative impact is the transformation of democracy into an empty procedure. When laws are perceived as illegitimate because they are crafted without genuine public involvement, public trust in democratic institutions erodes. This creates a "legitimacy paradox" where power is centralized under a veneer of legality, leading to political apathy and a shrinking civic space, as critics face repressive instruments.

3. Analysis of Causal Factors: Executive Dominance, Oligarchy, and Structural Factors

The emergence of the autocratic legalism phenomenon in Indonesia is not a historical accident but the result of a configuration of political, economic, and structural factors that reinforce each other. The primary causal factor is the consolidation of executive power in a hyper-presidentialistic presidential system. The design of the Indonesian government system post-amendment of the 1945

Constitution actually creates a relatively strong president, with the authority to form cabinets, propose draft laws, and issue Perppu. (Asshiddiqie, 2006) In the context of President Joko Widodo's administration, this strength is reinforced by the ability to build a very broad majority coalition in the DPR, which includes almost all major political parties. This "fat" coalition, although creating pseudo-political stability, essentially neutralizes the opposition and oversight functions of the DPR. The DPR becomes part of the government's "approval machine" because coalition parties have an interest in maintaining their access to state resources and patronage. This executive dominance provides large space and capacity to push its own legislative agenda, even if it must sacrifice participatory processes. (Mietzner, M., 2023)

The second causal factor, and one closely interrelated, is the strong influence of oligarchy in Indonesian politics. Oligarchy, namely economic-political forces that control very large material resources and use that wealth to influence state policy to protect and increase their wealth, has become a key actor behind many controversial policies. According to Vedi R. Hadiz and Richard Robison (2017), Indonesian oligarchy has successfully consolidated its power post-New Order by controlling democratic political machines, especially political parties and legislative institutions. Practices of autocratic legalism are often a form of "state capture", where oligarchy uses legal channels to engineer regulations that favor their business interests while sidelining public interests. The Job Creation Law and the revision of the Minerba Law, for example, are widely considered policies driven by the interests of large conglomerates to obtain certainty and ease of doing business at the expense of environmental protection and workers' rights.

The third causal factor is structural and cultural weaknesses within the DPR. The weak technical capacity of DPR members in designing legislation makes them heavily dependent on draft laws from the government supported by adequate bureaucratic resources. Furthermore, the non-transparent recruitment and funding system of political parties makes DPR members more indebted to funders (donors) and party leaders than to their constituents. This dual loyalty erodes their representative function, and they tend to follow the instructions of factions or parties that are part of the government coalition, regardless of the substance of the RUU being discussed. Thus, the DPR fails to be an effective bulwark of democracy and checks and balances. (Slater, 2018)

The fourth causal factor is the fragmentation and weakness of civil society. Although Indonesian civil society is dynamic, it is often fragmented by issues and unable to build a solid and sustainable opposition coalition against autocratic policies. Additionally, repression strategies through the ITE Law and stigmatization of activists as "anti-development" or "foreign-funded" have successfully created a chilling effect and divided social movements. When civil society is weak, public bargaining power in the legislative process becomes very minimal, opening wider space for the executive and oligarchy to dictate the legal process.

The fifth causal factor is the paradigm of developmentalism and stability that overrides democracy. In official political discourse, accelerating economic development and maintaining political stability are often used as justification for implementing fast, closed, and top-down legislative methods. Criticism of policies like the Job Creation Law is often met with the narrative of "hindering investment

and development". This paradigm places democracy and civil rights as obstacles to be sacrificed to achieve development goals, a mindset that becomes fertile ground for the growth of autocratic legalism.

C. CONCLUSION

The phenomenon of autocratic legalism in the formation of laws and regulations in Indonesia has manifested in concrete forms: executive dominance, the use of the omnibus law method that marginalizes the public, the weakening of supervisory institutions like the KPK, and the criminalization of criticism through the ITE Law. These forms are not isolated incidents but symptoms of a systematic pattern. The form of autocratic legalism in the legislative process in Indonesia occurs through executive dominance in the submission and enactment of draft laws, the weakening of public participation, and the use of legal instruments like omnibus laws and Perppu to legitimize repressive policies that benefit ruling elites. The autocratic legalism approach in regulation formation in Indonesia shows that formal democracy does not always guarantee substantive justice, especially when law is used as a tool of power. Its impact has eroded the heart of substantive democracy, weakened the checks and balances system, narrowed public space, and created legal injustice. The root causes lie in the configuration of political power dominated by a consolidated executive, oligarchic state capture, the institutional weakness of the DPR, fragmentation of civil society, and the developmentalism paradigm that places democracy second. This results in a legitimacy crisis towards law and democratic institutions in Indonesia. Furthermore, it is necessary to emphasize meaningful participation in law

formation to produce a democratic product. Overcoming the threat of autocratic legalism requires multi-dimensional efforts. Advocate for the Constitutional Court to actively develop and apply a doctrine of procedural constitutional review. The Court should assert its authority to annul laws not only for substantive constitutional violations but also for grave procedural defects that violate the constitutional principles of people's sovereignty and deliberative democracy, particularly the failure to conduct meaningful public participation.

Restricting the Use of Perppu that propose a constitutional or legislative amendment to more narrowly define "compelling urgency" for issuing a Perppu and to establish an automatic review mechanism by the Constitutional Court within a strict timeframe to prevent its use as a tool for ordinary lawmaking. Without serious efforts to reverse this trend, Indonesia's constitutional democracy risks being increasingly trapped in an empty shell of legal formalism, while the substance of accountable and participatory power moves further away. Ultimately, combating autocratic legalism is defending the true meaning of the constitution and popular sovereignty that form the basis of this Republic.

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