

Strengthening Rule of Law in the Legislative Process in Indonesia

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Abstract. *The principle of rule of law is the main foundation of the state of law which requires that the process of forming laws be carried out in a constitutional, transparent, accountable, and participatory manner. However, in the practice of legislation in Indonesia, various laws often receive criticism due to weak procedural compliance, lack of meaningful public participation, and increasing formal testing in the Constitutional Court. This condition shows that there is a gap between the legal norms of the formation of laws and regulations and the actual practice of legislation. This study aims to analyze and evaluate the strengthening of the principle of rule of law in the legislative process in Indonesia by examining the relationship between the normative framework of law-making and the institutional practice of law-making. This study uses the doctrinal-socio-legal research method with a qualitative approach, which combines normative analysis of laws and regulations and the principles of the state of law with empirical analysis based on official documents of the legislation process, including academic manuscripts, minutes of DPR meetings, list of problem inventories, and statements of the DPR and the Government in the Constitutional Court's decision. The data is analyzed qualitatively through legal reasoning and content analysis. The results of the study show that although the regulatory framework for the formation of laws has accommodated the principle of rule of law, its implementation is still formalistic and does not fully guarantee meaningful public participation. This study concludes that strengthening the rule of law in the legislative process requires procedural reform and strengthening accountability mechanisms to ensure the quality of constitutional and democratic legislation.*

Keywords: *Constitutional; Law; Legislative; Participation; Public.*

1. Introduction

The principle of the rule of law is the main foundation in the modern legal state which emphasizes that all actions of state administrators must be carried out based on law, fairness, and accountability (Rodiyah et al., 2023). This principle requires a limitation of state power through law and a guarantee of protection of citizens' rights. In the context of law formation, the rule of law is not only related to the substance of legal norms, but also to the process of its formation which must be transparent, accountable, and participatory (Mahmutovic & Alhamoudi, 2024). Therefore, the quality of the legislative

process is an important indicator to assess the extent to which the principles of the rule of law are consistently implemented.

From a global perspective, strengthening the rule of law is seen as the main prerequisite for democratic stability and the sustainability of legal development (Atta & Sharifi, 2024). Countries with open and accountable legislative processes tend to have higher levels of public trust in state institutions (Honig et al., 2023). On the other hand, legislation that is drafted behind closed doors and with minimal public participation has the potential to give birth to legal products that have weak legitimacy and are difficult to implement. Various studies show that failure to ensure a legislative process in accordance with the principles of the rule of law often leads to increased legal conflicts and regulatory uncertainty (Meneceur, 2023).

A number of international studies confirm that the quality of law-making is greatly influenced by procedural openness and public involvement (Sloboda et al., 2022). Legislation drafted without meaningful participation mechanisms tends to ignore the interests of affected groups and results in unresponsive norms. Recent research shows that procedural transparency and legitimacy are important prerequisites for the law to be accepted and obeyed by the public (Öztürk, 2024). Thus, the rule of law must be understood as a principle that works from the stage of law formulation, not only at the stage of law enforcement.

In the Indonesian context, the legal framework for the formation of laws and regulations normatively has adopted the principle of the rule of law and a structured law-forming mechanism (Parikesit & Herman, 2025). Arrangements regarding planning, drafting, discussing, and promulgating laws have been regulated in detail in laws and regulations (Agustiwi, 2022). However, the practice of legislation involving the House of Representatives and the Government still often draws public criticism. The criticism is mainly related to the legislative process which is considered formalistic, lacks transparency, and has not fully opened up substantial public participation space.

This problem is reflected in the increasing number of applications for formal testing of the law at the Constitutional Court in recent years. This phenomenon shows that the problem of legislation in Indonesia is not only related to the substance of the law, but also to the procedure for its formation (Mendy & Sarr, 2025). Other research confirms that weak procedural compliance in the legislative process has direct implications for the quality and legitimacy of legislation (Mentovich et al., 2023). This condition shows that there is a gap between the legal norms of law formation and the actual practice of legislation.

Previous research on the rule of law and the legislative process has generally focused on normative analysis or comparative studies between democratic countries. Recent studies show that public participation in law-making is often treated as an administrative obligation, rather than as a substantive mechanism that influences the content of legislation (Hämäläinen & Salminen, 2025). Meanwhile, comparative studies show that the effectiveness of public participation is highly dependent on the institutional design and political commitment of lawmakers (De Francesco & Tosun, 2023). However, research that directly links legal norms, institutional practices, and the quality of public participation in the Indonesian context is still limited.

Based on these gaps, this study aims to analyze and evaluate the strengthening of the principle of rule of law in the process of forming laws in Indonesia. This research

specifically examines the relationship between the legal norms of the formation of laws and regulations and the actual practice of law-making institutions. The main focus is directed at procedural compliance and the quality of public participation as indicators of the application of the rule of law in legislation. Theoretically, this research contributes to the development of constitutional law studies, while practically it is expected to be a reference for policymakers in designing a more constitutional, transparent, and democratic legislative process.

2. Research Methods

2.1. Research Type and Approach

This study uses a type of qualitative research with a doctrinal-socio-legal research approach (Daly & Tomlinson, 2023). This approach was chosen because the research not only analyzes legal norms textually, but also examines how these norms are operationalized in the institutional practice of law formation. The qualitative approach allows researchers to understand the dynamics of the legislation process in depth, in particular the relationship between the normative framework and the actual practice of law-making institutions.

2.2. Research Design

The research design used is legal research based on document analysis with a focus on the process of forming laws in Indonesia (Negara, 2023). The analysis unit of this research includes the stages of law formation, starting from planning, drafting, discussion, to ratification and promulgation. The analysis focused on the application of the principles of the rule of law, especially the aspects of procedural compliance, transparency, and public participation. This design allows researchers to examine the legislative process as a structured and iterative institutional practice.

2.3. Data Sources and Research Materials

This research uses legal data and empirical data based on official documents. The main data is obtained from laws and regulations that are still in force, including the Constitution of the Republic of Indonesia in 1945, Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Laws and Regulations as last amended by Law of the Republic of Indonesia Number 13 of 2022, as well as implementing regulations that regulate the process of forming laws. In addition, empirical data was collected from academic manuscripts of the draft law, minutes of the meeting of the House of Representatives of the Republic of Indonesia, the list of problem inventories, and official statements of the Government and the House of Representatives in the decision of the Constitutional Court.

2.4. Data Collection Techniques

The data collection technique was carried out through documentation studies and systematic tracing of primary and secondary legal sources (Yang et al., 2024). Documents are collected from the official websites of state institutions, reputable scientific journals, and academic publications relevant to the research topic. All documents were selected based on the criteria of relevance of substance, source validity, and direct relevance to the legislation process.

2.5. Research Procedure

The research procedure is carried out gradually and systematically. The first stage is the identification of the normative framework for the formation of laws and the relevant principles of the rule of law. The second stage is carried out by collecting and classifying official documents of the legislation process according to the stages of law formation. The third stage is the analysis of the relationship between legal norms and institutional practices based on indicators of procedural compliance and public participation. The final stage is the formulation of findings and the drawing of conclusions based on a synthesis between normative and empirical analysis.

2.6. Data Analysis Techniques

Data analysis was carried out qualitatively using legal reasoning and content analysis (Mitchell, 2023). This analysis is used to identify patterns of compliance with legislative procedures and the quality of public participation in the law-making process. The data were analyzed thematically by comparing between normative provisions and actual practices reflected in official documents.

2.7. Data Validity and Reliability

The validity of the data is maintained through the source triangulation technique, namely by comparing laws and regulations, legislation documents, and Constitutional Court decisions (Meydan & Akkaş, 2024). This approach is used to ensure that research findings are not one-sided and have a strong empirical basis. The reliability of the analysis was strengthened by the consistency of the use of the same rule of law indicators and legislation procedures in all documents analyzed.

3. Results and Discussion

3.1. Procedural Compliance with Legislation and the Formalistic Character of Rule of Law Implementation

The results of the study show that normatively the legal framework for the formation of laws in Indonesia has accommodated the principle of the rule of law, especially in the aspect of procedural certainty and limitation of law-making authority. This principle is reflected in the regulation of the stages of law formation which are tiered, systematic, and structured. However, an analysis of the official documents of the legislation process shows that compliance with these procedures tends to be carried out in a formalistic manner. Legislative procedures are fulfilled more as administrative requirements than as substantive mechanisms to guarantee the quality of the law. This condition shows that the application of the rule of law in the legislation process still emphasizes compliance with procedural forms rather than the depth and quality of the law-making process.

The findings were obtained from an analysis of Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Laws and Regulations as last amended by Law of the Republic of Indonesia Number 13 of 2022. Article 5 of Law Number 12 of 2011 expressly regulates the principles of the formation of good laws and regulations, including clarity of purpose, suitability between types and content materials, and the principle of openness. In addition, Article 22A of the 1945 Constitution of the Republic of Indonesia mandates that the procedures for the formation of laws must be further regulated in the law. Normatively, these provisions are designed to ensure a transparent

and accountable legislative process. However, in practice, the implementation of these principles still faces various institutional and procedural obstacles.

Empirical analysis was carried out on the Minutes of the Meeting of the Legislative Body of the House of Representatives of the Republic of Indonesia, the Minutes of the Commission Meeting, and the Minutes of the Public Hearing Meeting obtained from the official repository of the Secretariat General of the House of Representatives of the Republic of Indonesia. In addition, the Problem Inventory List jointly compiled by the House of Representatives and the Government was analyzed to assess the depth of discussion of the substance of the bill. The results of the analysis show that the discussion of draft laws is often carried out in a relatively short period of time. This condition has an impact on the limited space for substantive deliberation between lawmakers. This fact indicates that the legislative process is carried out with an orientation to administrative settlement, not an in-depth study of the substance of the law.

The academic text of the draft law, which is normatively required under Article 43 of Law Number 12 of 2011, should serve as a scientific basis in the formation of laws. However, the findings of the study show that academic manuscripts are not always used as the main reference in the discussion of article by article. In meeting minutes, academic arguments contained in academic texts are often not explicitly referenced. This shows a separation between the scientific foundation and the political dynamics of legislation. As a result, legal rationality in the law-making process is less than optimal.

In the perspective of procedural rule of law theory, the law-making procedure has a central function to prevent abuse of power and ensure the accountability of lawmakers (Pech, 2022). The legitimacy of the law is determined not only by the content of the norm, but also by the process of its formation (Duke, 2024). When the procedure is carried out formally, the function of controlling legislative power becomes weak. This condition has implications for the decline of the democratic legitimacy of the legislation product. The findings of this study show that there is a gap between the ideals of the theory of the rule of law and the practice of legislation that takes place.

The issue of procedural compliance is also reflected in the Decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-XVIII/2020 concerning the formal testing of Law Number 11 of 2020 concerning Job Creation. The decision, which was read on November 25, 2021, critically assesses aspects of openness, public participation, and compliance with law-making procedures. The official information of the Government and the House of Representatives contained in the decision is an important source of empirical data to assess the actual practice of legislation. The Constitutional Court affirmed that procedural defects have constitutional implications. This decision corroborates the finding that the problem of legislation lies in the implementation of procedures, not in the absence of legal norms.

When compared to the practice of legislation in other democratic countries, procedural compliance in the legislative process in Indonesia still faces serious challenges. In some countries, the internal mechanisms of parliament serve as instruments of procedural compliance oversight before legislation is passed (Szabó, 2023). In the Indonesian context, the internal oversight mechanism has not been effective in the country. As a result, corrections to procedural defects are often only made through the testing

mechanism at the Constitutional Court. This condition shows the weak procedural control at the internal level of the legislative institution.

The implications of these findings show that strengthening the rule of law in the legislative process is not enough to be done through formal regulatory changes alone. Institutional practice reforms are needed that encourage substantive and consistent procedural compliance. Internal evaluation of each stage of legislation needs to be strengthened from the planning stage to ratification. Without these changes, the risk of formal testing of the law in the Constitutional Court will continue to be repeated. Thus, these findings affirm the importance of procedural reform as an integral part of strengthening the rule of law.

3.2. Public Participation in the Legislation Process: Between Norms and Practices

The results of the study show that the regulation of law formation in Indonesia has regulated the obligation of public participation. However, the implementation of these provisions does not fully guarantee meaningful participation. Public participation in the practice of legislation tends to be carried out symbolically and procedurally. Community involvement is often limited to formal forums that have no significant effect on the substance of the policy. This condition shows that public participation has not yet functioned as an effective deliberative instrument.

Article 96 of Law Number 12 of 2011 as amended by Law Number 13 of 2022 explicitly guarantees the right of the public to provide input in the formation of laws and regulations. This provision is strengthened by the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 11 of 2021 concerning public consultation procedures. Normatively, the regulation is intended to ensure openness and accountability of legislation. However, the implementation of these provisions is still administrative. As a result, public participation has not been fully internalized in the legislation process.

Analysis of Public Hearing Meeting Minutes, academic manuscripts, and Problem Inventory Lists shows that public input is rarely explicitly integrated into the discussion of articles. Meeting minutes show that public participation forums are often held after key policy directions have been set. As a result, the space for public influence on the substance of legal norms becomes very limited. This condition shows that public participation does not function as a corrective mechanism. Thus, the effectiveness of public participation is low.

The limited time for discussing the draft law also has a direct impact on the quality of public participation. Participation forums are often held in short periods of time and with limited access to information. The public does not always obtain complete legislation documents before providing input. As a result, public participation tends to be reactive and non-deliberative. This condition weakens the quality of dialogue between lawmakers and the public.

The theory of deliberative participation emphasizes that public participation must have a real influence on the legal decision-making process (Webler, 2026). Participation that has no impact on the substance of the policy does not meet the standard of democratic legitimacy. Within the framework of the rule of law, public participation functions as a control mechanism for legislative power (Wardana et al., 2023). When participation is

symbolic, the control function is not effective. The findings of this study show that there is a discrepancy between the practice of legislation and deliberative principles.

Criticism of weak public participation is reflected in the Decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-XVIII/2020. The Constitutional Court affirmed the importance of meaningful public participation as part of the principles of the rule of law and constitutional democracy. The official statement of the Government and the House of Representatives in the decision shows that the public participation mechanism has not been implemented optimally. This ruling places public participation as a constitutional issue. Thus, public participation has real legal implications.

In the practice of legislation in a number of democratic countries, public participation is accompanied by an obligation to provide a formal response to public input. The mechanism serves to increase accountability and transparency of legislation (Webler, 2026). In the Indonesian context, the obligation to provide such a formal response has not been explicitly regulated (Wardana et al., 2023). As a result, there is no guarantee that public input will be followed up. This condition weakens the position of the community in the legislation process.

The implications of these findings suggest that strengthening the rule of law requires a redefinition of the concept of public participation in the legislative process. Public participation should be understood as a substantive deliberative mechanism, not just a procedural formality. Institutional obligations are needed to consider and explain the follow-up to public input. These findings contribute to the development of constitutional law studies, especially related to the procedural dimension of democracy (Steuer, 2023). Thus, the quality of legislation is largely determined by the quality of public participation.

4. Conclusion

This study confirms that although the normative framework of law formation in Indonesia has explicitly accommodated the principle of rule of law, its implementation in legislative practice still shows a formalistic tendency and does not fully guarantee procedural compliance and meaningful public participation. Analysis of laws and regulations and official documents of the legislation process shows that there is a gap between the legal norms of law-making and the institutional practices of law-making, which has an impact on the decline in the quality of deliberation, accountability, and democratic legitimacy of legislation products. These findings show that strengthening the rule of law in the legislative process is not enough to be done through formal regulatory improvements, but requires procedural reforms that emphasize substantive compliance and strengthening the internal accountability mechanisms of legislative institutions. The limitation of this research lies in the use of empirical data based on official documents without involving field data in the form of interviews or direct observation of legislative actors, so that the perspective of actors has not been explored in depth. Therefore, further research is recommended to combine normative and empirical approaches in the field to enrich the understanding of the political dynamics of law and legislation practice, as well as to formulate a more operational and contextual model for strengthening the rule of law in the process of law formation in Indonesia.

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