

## Reconstruction of Law-Making in Indonesia: A Review of Legal Effectiveness

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### **Abstract**

*Ideally, the formulation of laws in Indonesia should align with the principles of a state based on law, emphasizing justice, legal certainty, and utility. However, in reality, the legislative process is often influenced by political interests, weak public participation, and the poor quality of academic manuscripts that fail to support legal effectiveness. This study aims to analyze the weaknesses in the legislative procedure in Indonesia and to offer a more effective conceptual reconstruction so that legislative products truly reflect the will of the people and fulfill the principles of a state governed by law. This article falls under library research with a qualitative approach. The methodology employed is*

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*normative legal research. The findings indicate that the effectiveness of law in the legislative process has not yet been optimal due to ongoing political dominance, low-quality public participation, and weak academic foundations. Therefore, the reconstruction of the law-making process should focus on improving the quality of academic manuscripts, strengthening mechanisms for public participation, and consistently applying the principles of transparency and accountability.*

**Keywords:** *Reconstruction, Legal Effectiveness, Legislative Process*

### **Abstrak**

Idealnya, pembentukan undang-undang di Indonesia harus selaras dengan prinsip negara hukum yang menekankan asas keadilan, kepastian, dan kemanfaatan. Namun, dalam realitasnya, proses legislasi seringkali dipengaruhi oleh kepentingan politik, lemahnya partisipasi publik, serta kualitas naskah akademik yang kurang mendukung efektivitas hukum. Penelitian ini bertujuan untuk menganalisis kelemahan dalam prosedur pembentukan undang-undang di Indonesia serta menawarkan rekonstruksi konseptual yang lebih efektif agar produk legislasi benar-benar mencerminkan kehendak rakyat dan memenuhi asas negara hukum. Artikel ini tergolong dalam penelitian pustaka dengan pendekatan kualitatif. Metodologi yang digunakan adalah studi hukum normatif. Hasil penelitian menunjukkan bahwa efektivitas hukum dalam pembentukan undang-undang belum optimal karena masih adanya dominasi politik, rendahnya kualitas partisipasi publik, dan lemahnya landasan akademik. Oleh karena itu, rekonstruksi pembentukan undang-undang perlu diarahkan pada peningkatan kualitas naskah akademik, penguatan mekanisme partisipasi publik, serta penerapan prinsip transparansi dan akuntabilitas yang konsisten.

**Kata Kunci:** Rekonstruksi, Efektivitas Hukum, Proses Legislasi

### **Introduction**

The formation of laws constitutes a fundamental pillar within Indonesia's constitutional system, which adheres to the principles of constitutional democracy. Laws occupy a strategic position, not merely as normative instruments regulating the life of society, nation, and state, but also as a representation of the people's sovereignty exercised through representative mechanisms in legislative institutions. In this context, laws must serve as instruments that provide legal certainty, justice, and tangible benefits for all citizens (Saragih, 2022). Legislative processes, therefore, cannot be viewed solely as formal political activities, but also as a process of national legal development that demands integration of philosophical values, sociological interests, and juridical considerations. The quality of legislation produced will greatly determine the legitimacy of the law and

its success in responding to societal dynamics and maintaining socio-political stability. Consequently, the urgency of examining lawmaking in Indonesia lies not only in its formal mechanisms but also in its legal substance and the effectiveness of its implementation.

In practice, lawmaking in Indonesia often reveals complexities that fall far short of the ideal. Normatively, Law No. 12 of 2011 on the Formation of Legislation provides clear guidance regarding the stages of lawmaking, from planning, drafting, and deliberation to enactment. However, in reality, the process is frequently marked by political bargaining between the executive, the legislature, and even non-state actors with lobbying power (Anggono, 2018). This has resulted in many laws that do not fully reflect the interests of the wider public but are instead dominated by the agendas of certain groups. Furthermore, public participation—supposed to embody the democratization of legislation—often remains superficial, limited to formal public hearings or non-substantive consultations. This condition poses serious implications, as the resulting legal products tend to be unresponsive to social needs, thereby triggering resistance, rejection, and even constitutional challenges before the Constitutional Court.

Ideally, the formation of laws should prioritize openness, accountability, transparency, and the use of comprehensive academic studies. A sound law must not only address short-term problems but also anticipate future social, political, and economic changes. Meaningful public involvement, academic contributions, and alignment with the national legal system are essential prerequisites for laws to function effectively (Samudra & Wijiningsih, 2024). Yet in reality, many laws are drafted hastily, supported by inadequate academic manuscripts, and heavily laden with political interests. Instances of disharmony between laws and other regulations—even within the legal hierarchy itself—are not uncommon. Such phenomena illustrate a wide gap between the ideal principles of lawmaking and its practical implementation.

This gap gives rise to the core problems in Indonesia's lawmaking: the effectiveness of law itself—namely, to what extent enacted laws can truly be applied, complied with, and yield benefits to society. Legal ineffectiveness is evidenced by the prevalence of judicial reviews at the Constitutional Court, low public compliance, and weak enforcement by law enforcement institutions. This demonstrates that laws are not always functioning as intended, either due to weaknesses in the legislative process, misalignment with societal values, or lack of political legitimacy. Hence, the central issue addressed in this study is how to construct a reconstruction of Indonesia's lawmaking process that can enhance legal effectiveness, ensuring that legislative products genuinely align with societal needs and the objectives of a rule-of-law state.

The main objective of this research is to analyze legal effectiveness in Indonesia's lawmaking process by critically examining the gap between legislative theory and practice. This study seeks to identify factors contributing to legal ineffectiveness—ranging from the substance of laws and the role of lawmakers to public involvement. Moreover, it aims to propose a conceptual reconstruction of lawmaking that is democratic, participatory, transparent, and responsive to social developments. Thus, this research does not stop at critiquing the weaknesses of the existing system but also endeavors to provide conceptual and practical

solutions that may be implemented in the legislative process. The contribution of this study is expected to be twofold: academic and practical. Academically, it enriches constitutional and legislative law literature by applying the theory of legal effectiveness, thereby broadening the understanding of law not only in normative terms but also in terms of its effectiveness in society. Practically, it offers insights for legislators, the government, and civil society in fostering higher-quality legal products. The proposed reconstruction of lawmaking is expected to realize a legislative system that is more accountable, democratic, and responsive.

## Literature Review

Studies on lawmaking from the perspective of legal effectiveness are not a new field of inquiry. Several scholars have already discussed and published works on the subject using various methods and approaches. Lalu M. Alwin Ahadi, in his work entitled; *“Efektivitas Hukum Dalam Perspektif Filsafat Hukum: Relasi Urgensi Sosialisasi Terhadap Eksistensi Produk Hukum”*, examined legal effectiveness by emphasizing philosophical aspects, particularly the relationship between the validity of a legal product and the degree of socialization carried out by the state. Ahadi’s findings affirm that law will not be effective merely because it has a legitimate juridical basis; it also requires intensive socialization so that it can be understood, accepted, and implemented by society (Ahadi, 2022). The similarity between Ahadi’s work and this research lies in the shared emphasis on legal effectiveness as a key element in the success of legislation. However, the difference is that Ahadi focuses more on the dimension of legal socialization, whereas this study highlights structural problems in the legislative process that weaken legal effectiveness in Indonesia.

Arnoldus Jansen Patrio Banola et al., in their work entitled; *“Efektivitas Harmonisasi Peraturan Perundang-Undangan Dalam Menghindari Tumpang Tindih Regulasi di Indonesia”*, discuss the importance of harmonizing regulations as an effort to overcome regulatory overlaps that frequently occur in Indonesia. Their findings reveal that weak coordination among lawmaking institutions has resulted in numerous unsynchronized regulations, thereby creating legal uncertainty (Banola, 2025). The similarity between Banola’s research and this study lies in the shared focus on legal effectiveness within the context of legislation. The difference, however, is that Banola’s study is more specific in addressing the harmonization of statutory regulations, while this research tackles a more fundamental issue, namely the reconstruction of the lawmaking process itself to ensure effectiveness from the very outset of drafting.

Siti Qomariah and Mhd. Fakhurrahman Arif, through their work entitled; *“Prosedur Pembentukan Undang-Undang di Indonesia Sebagai Negara Hukum”*, provide a detailed discussion of the procedural mechanisms in lawmaking in accordance with the principles of a rule-of-law state. Their research emphasizes the importance of the formal stages stipulated in Law No. 12 of 2011 and highlights that the success of a law greatly depends on compliance with these prescribed procedures. Their findings demonstrate that deviations from such procedures have direct implications for the legal legitimacy of a law (Qomariah & Arif, 2023). The similarity with this study lies in the shared focus on the lawmaking

process, but the difference is that Qomariah and Arif's work remains at a descriptive-procedural level, while this research seeks to go further by offering a conceptual reconstruction from the perspective of legal effectiveness.

After conducting a literature review, both from the three works mentioned above and other relevant sources, it becomes evident that most research on lawmaking in Indonesia has been oriented toward procedural aspects, regulatory harmonization, or the socialization of laws to the public. However, there remains a gap that has not yet been studied in depth, namely the dimension of reconstructing the lawmaking process from the perspective of legal effectiveness. This dimension is crucial because the effectiveness of a law is not determined solely by formal procedures or regulatory harmonization but also by the initial design of its formation, which must be capable of substantively responding to societal needs. Addressing this gap is the primary focus of this research, thereby generating both a research gap and novelty—particularly in examining the lawmaking process, presenting its problems, and offering solutions through the theoretical framework of legal effectiveness.

### **Research Methodology**

This article falls under library research with a qualitative approach. The methodology employed is normative legal study, which focuses on normative analysis of written legal materials to understand the substance, structure, and application of law in the practice of lawmaking in Indonesia (Butar, 2018). The primary data sources in this research are statutory regulations, such as Law No. 12 of 2011 on the Establishment of Legislation and its amendments, as well as other laws related to legislation. The secondary data sources consist of previous studies, scholarly journals, and books published within the last five years that support the analysis of legal effectiveness and legislative issues.

The method of data analysis is carried out in a descriptive-analytical manner, emphasizing three important stages. First, the identification of legal norms and principles contained in statutory regulations, in order to examine how the normative foundation is designed within the framework of a rule-of-law state. Second, critical interpretation of these regulations by testing the consistency between the legal text, the theory of legal effectiveness, and legislative practices, thereby revealing the extent of the gap between ideality and reality. Third, evaluation of both procedural and substantive weaknesses in the lawmaking process, which serves as the entry point for reconstruction ideas. The validity and reliability of the findings are ensured through source triangulation, by confirming results across primary legal materials, secondary data, and supporting literature. Thus, the outcomes of this research are not merely descriptive but also argumentative and critical.

### **The Lawmaking Process in Indonesia**

Before delving further into the lawmaking process in Indonesia, it is important to first understand the meaning of law itself. According to Jimly Asshiddiqie, there are two perspectives on law. First, in a broad sense, law refers

to a legal text that contains certain material and form according to the needs of society and the state (Asshiddiqie, 2017). Second, in a narrow sense, law is understood as a legislative act created by the legislature with the approval of the executive. This understanding is consistent with Article 1 point 3 of Law No. 12 of 2011 on the Establishment of Legislation, which states that a law is a regulation jointly enacted by the House of Representatives (DPR) and the President. In legal terms, a law is a *regeling*, meaning a legal norm of a general nature that binds all citizens without exception (Nasarudin, 2016). Thus, law holds a strategic function as a tool of social engineering and as an instrument to ensure order in national and state life.

The process of lawmaking is part of the broader establishment of legislation. This process encompasses several important stages: planning, drafting, deliberation, enactment or ratification, and promulgation (Adrie & Suardita, 2024). This is explicitly regulated in Article 1 point 1 of Law No. 12 of 2011. In other words, a law is not simply born but passes through a structured, systematic, and measurable set of procedures. Each stage plays a crucial role in ensuring the legitimacy, consistency, and quality of the resulting legislation. Moreover, the creation of a law cannot be separated from the political process that involves various interests, both from the executive, the legislature, and civil society. Therefore, the quality of a law greatly depends on how seriously these stages are carried out, including the extent to which transparency, participation, and accountability are maintained throughout the legislative process (Soeprapto, 2006).

The first stage is planning, which begins with the formulation of the National Legislation Program (*Prolegnas*). The DPR's Legislative Body (*Baleg*) plays the primary role in drafting *Prolegnas*, both for the five-year medium-term plan and the annual plan, involving the Ministry of Law and Human Rights and other relevant parties. *Prolegnas* serves as a legislative roadmap that determines priorities for lawmaking in accordance with societal legal needs and national development goals. It also functions to prevent overlap or disharmony between regulations. Beyond this, *Prolegnas* reflects the political direction of state law, since laws essentially represent the policies and vision of both the government and the DPR (Adrie & Suardita, 2024). Thus, planning is not merely administrative but a strategic process that determines the future quality of law. Poorly designed *Prolegnas* can lead to laws that are irrelevant or even contradictory to societal needs.

The next stage is drafting, which focuses on preparing the Bill (*RUU*) and its Academic Manuscript (*Naskah Akademik*, NA). The NA is an important document providing the philosophical, juridical, and sociological foundations of a bill. With the NA, every proposed bill has an academically accountable justification. Drafting must also consider harmonization to avoid conflicts with higher-level or parallel regulations. Once the draft is completed, it is submitted to the leadership of the DPR to be brought to a plenary session (Nasarudin, 2016). In plenary, the DPR may decide to approve without changes, approve with changes, or reject. This mechanism demonstrates that drafting is not merely technical legal writing but also involves political debate, inter-faction compromise, and input from society and academia. Thus, the drafting stage is fundamental in determining the

substance and direction of the law.

If the bill is approved with changes, the DPR and its instruments must make the necessary revisions within a given timeframe. After revision, the bill is submitted to the President for further action. The President then appoints the relevant Minister to discuss it further with the DPR. Law No. 12 of 2011 stipulates that this deliberation must be completed within sixty days of the President receiving the bill. This mechanism reflects the principle of checks and balances between the executive and legislative branches, ensuring that no single entity dominates the lawmaking process. The involvement of the President through the relevant minister also highlights the executive dimension in lawmaking, ensuring that the resulting law can be effectively implemented by the government. Thus, drafting is not merely administrative but also serves as the entry point into more substantive and political discussions.

The next stage is deliberation, which consists of two levels of discussion. At the first level, the bill is discussed by the DPR and the relevant minister in forums such as Commissions, Joint Commissions, the Legislative Body, or a Special Committee (*Pansus*). This forum is the main arena for technical discussion, where DPR factions and the government engage in in-depth debates on the substance of the bill. Often, sharp political dynamics arise at this stage, as each faction brings the aspirations of its constituents. The second-level deliberation takes place in the DPR plenary session, which is final and serves as the arena for making the ultimate decision on the bill (Santio & Nasution, 2021). If approved jointly, the bill is submitted to the President for enactment into law. If not approved, it lapses. This mechanism underscores that deliberation is the most political and decisive stage, as it is here that national political consensus is either achieved or not.

The enactment stage is a critical part of the legislative process. A bill approved by the DPR is submitted to the President for signature. According to Article 20 paragraph (5) of the 1945 Constitution, if the President does not sign the bill within thirty days of receipt, the bill automatically becomes law. This provision serves as a constitutional safeguard to prevent unilateral cancellation of legislation by the executive. However, in practice, this often sparks ethical and political debate, particularly when the President chooses not to sign a bill for certain reasons. Although legally valid, such a stance can be seen as a sign of discord between the executive and legislative branches, raising questions about the government's commitment to implementing laws that have already been jointly agreed upon. Thus, enactment carries both formal and political dimensions that are equally important for determining a law's legitimacy.

The final stage is promulgation. Once enacted, the law is promulgated in the State Gazette of the Republic of Indonesia and its Supplement. Promulgation is crucial because only through it does a law gain general binding legal force. It is also a means of public transparency, as the government and DPR are obliged to disseminate new laws to the public. Dissemination can be carried out through various media, both print and electronic, so that society can be aware of, understand, and comply with the prevailing regulations. Thus, promulgation is not merely an administrative formality but an integral part of the democratization of law (Nasrudin, 2016). Without proper promulgation, a law loses its practical meaning because it remains unknown and uncomprehended by society.

This sequence of stages demonstrates that the lawmaking process in Indonesia is long, complex, and full of political dynamics. It is not merely procedural but also involves philosophical, sociological, juridical, and political considerations. Each stage is designed to ensure that the resulting laws possess legitimacy, meet societal needs, and align with the nation's legal ideals. In other words, laws are not just formal legal products but also outcomes of legal-political compromises involving multiple actors. Thus, laws function both as legal instruments and as reflections of political interaction within a democratic state.

Beyond its technical aspects, the Indonesian lawmaking process has a strong constitutional basis. The 1945 Constitution affirms that the DPR holds legislative power, as stipulated in Article 20 paragraph (1). Meanwhile, Article 5 paragraph (1) grants the President the right to propose bills to the DPR, ensuring that the executive has a significant role in the initiation stage. Furthermore, Article 20 paragraph (2) of the 1945 Constitution states that every bill is discussed by the DPR and the President to obtain joint approval. This arrangement emphasizes that although the DPR is the main holder of legislative power, the President retains substantial space in lawmaking, both at the initiation and deliberation stages (Santio & Nasution, 2021).

With this constitutional foundation, it is clear that lawmaking cannot be regarded as a unilateral authority. It is the result of interaction and compromise between the DPR as the people's representative and the President as head of government. This mechanism reflects the principle of constitutional democracy, emphasizing checks and balances among state institutions. Thus, even though the DPR holds the primary authority, the President's involvement remains crucial in providing input, participating in deliberation, and enacting laws. The resulting legal products are therefore expected to truly reflect the people's interests while remaining consistent with national development goals. This process ensures that laws are not only formally legal but also politically legitimate.

## **Problems of Legislation**

### ***1. Weak Role of the Regional Representative Council (DPD) in the Legislative Process***

One of the fundamental reasons for the establishment of the Regional Representative Council (DPD) was to ensure regional representation in political decision-making at the national level. The presence of the DPD was expected to genuinely advocate for regional interests, especially in the legislative process that concerns communities across Indonesia. This stems from the historical awareness that Indonesia is a vast archipelagic state, where differences in social, economic, and cultural conditions among regions require a strong representative body at the central level. Article 22D of the 1945 Constitution provides the legal basis for the authority of the DPD, particularly in proposing draft laws (RUU) related to regional autonomy, central-regional relations, the establishment and expansion of regions, management of natural resources, and fiscal balance between the central and regional governments (Anggraini, 2024). Normatively, this provision places the DPD as an important actor that should hold a strategic position in shaping policies that favor the regions, not merely as a complementary institution within the

representative system. Thus, the existence of the DPD is essentially intended as a corrective force against the dominance of national politics, which often prioritizes central interests.

However, in practice, the role of the DPD in legislation remains very limited and is often regarded as insignificant. Indeed, the DPD has the right to participate in the discussion of certain draft laws and provide recommendations to the DPR regarding bills on taxation, education, and religion. Nevertheless, such authority does not extend to granting final approval of a draft law before it becomes legally binding. The phrase “participate in discussions” in Article 22D of the 1945 Constitution has triggered long debates. Some argue that logically, participation in discussions should culminate in approval, meaning that the DPD should have the right to determine the final fate of a bill. Conversely, others contend that the DPD’s role is limited to giving input without binding authority (Lubis et al., 2024). This interpretative ambiguity has reduced the DPD’s legislative powers to mere formality. The situation demonstrates a serious gap between constitutional ideals and actual implementation, in which regional aspirations continue to lack strong political channels in parliament.

The weakness of the DPD’s position in lawmaking has become a critical issue that has been raised several times through judicial review at the Constitutional Court. One landmark ruling was Decision No. 92/PUU-X/2012, which provided a progressive interpretation of the phrases “may propose” and “participate in discussions.” In that decision, the Court emphasized that the DPD should not be treated as equivalent to parliamentary factions or commissions within the DPR but must be recognized as a separate state institution with distinct constitutional authority (Ummah, 2022). This ruling essentially corrected constitutional practices that had reduced the DPD’s role to that of a complement. Through this interpretation, the Court sought to expand the DPD’s space in the legislative process so it could balance the dominance of the DPR and the President. However, although the ruling is legally binding, its implementation in practice has not been fully realized.

Subsequently, Constitutional Court Decision No. 79/PUU-XII/2014 further reinforced the reconstruction of the DPD’s authority. This ruling annulled several provisions of Law No. 17 of 2014 concerning the MPR, DPR, DPD, and DPRD (the MD3 Law), which were deemed to restrict the legislative function of the DPD. With this decision, the DPD’s role in both proposing and discussing draft laws gained stronger legitimacy (Indra et al., 2023). From a constitutional law perspective, this was a progressive step that should have strengthened the principle of checks and balances between the central and regional governments. However, it must be acknowledged that the Court’s rulings only provide new normative frameworks without directly changing the political practices at play. The DPR continues to dominate the legislative process, while the DPD still struggles to exercise its strengthened powers due to limited political support and institutional instruments. In other words, there remains a gap between normative legal empowerment and the realities of political practice.

Despite its constitutional legitimacy, the political reality shows that the DPD’s legislative role has not been fully optimized. The implementation of Constitutional Court decisions still faces many obstacles, whether institutional,

technical, or political resistance within the DPR. Many DPR members still view the DPD as a secondary body whose existence is incomparable to the DPR as the main legislative power holder. As a result, the DPD's expanded authority is still reduced in practice. This indicates that strengthening the DPD requires not only legal legitimacy but also political support and strong institutional mechanisms. Without genuine commitment from power holders, the DPD will remain trapped in a subordinate position despite having stronger legal grounds.

This limitation has serious implications for the quality of Indonesia's legal products. Laws often reflect national political interests more than the actual needs of local communities. Yet the DPD's presence should serve as a vital instrument to channel regional voices so they are not marginalized in central decision-making. With the DPD's legislative function weakened, central political dominance grows stronger, and the risk of injustice in public policymaking increases (Lubis et al., 2024). In the long term, this condition could widen the gap of distrust between the central and regional governments and weaken the legitimacy of democracy in the eyes of the people. Therefore, the weakness of the DPD is not merely a technical issue but also concerns the sustainability of Indonesia's representative democracy system.

## ***2. Laws Without Presidential Ratification***

The formation of laws in Indonesia is constitutionally the result of joint work between the House of Representatives (DPR) and the President, as affirmed in Article 20 paragraph (2) of the 1945 Constitution. In Indonesia's presidential system, the President's involvement in legislation is not merely symbolic but an integral part of the checks and balances mechanism that ensures every law is born through a deliberative and representative process. Through appointed ministers, the President has the role of formulating, proposing, and discussing draft laws with the DPR so that the resulting policies are expected to reflect the interests of the people (Saragih, 2025). However, in constitutional practice, there are instances where certain laws remain valid even though they were not signed by the President. Concrete examples include Law No. 25 of 2002 on the Establishment of the Riau Islands Province, Law No. 17 of 2003 on State Finance, and Law No. 18 of 2003 on Advocates. This condition has sparked serious discourse concerning legitimacy, political ethics, and the stability of Indonesia's legal system.

The phenomenon of laws becoming effective without the President's signature raises constitutional and administrative issues. According to Fajar Laksono and Subardjo, there are at least four fundamental problems (Laksono & Subardjo, 2025). First, the high retention rate of such laws triggers public debate, as people question the validity of laws not signed by the President. Second, it creates the impression of weak presidential political will in implementing such laws, thus causing uncertainty in enforcement. Third, it presents a legal threat in the form of potential annulment of laws that lack formal executive ratification. Fourth, it generates administrative issues, since laws are still published under the letterhead of the President of the Republic of Indonesia even when not signed by the President. These four problems show that the issue is not merely procedural but concerns public trust in the consistency of the legal and governmental system.

From the perspective of institutional relations, ideally, the relationship between the DPR and the President in lawmaking should be positive, complementary, and oriented toward the nation's interests. However, in reality, the relationship is often negative or even disharmonious. The President, as the highest executive authority, plays a crucial role in ensuring the effective implementation of laws. When the President chooses not to sign certain laws, the message conveyed is not only about disagreement but also about weak political synergy. Such a situation illustrates the inability of both institutions to optimize their political power in realizing legislative agendas. As a result, the effectiveness of laws passed without presidential ratification is called into question, and this in turn creates the potential for deadlock between legislative and executive powers.

Furthermore, the issue is not only about legislative effectiveness but also about political ethics and accountability principles in a presidential system. In governmental practice, ministers are the President's aides who are collectively responsible to him. When ministers approve a draft law but the President refuses to sign it, internal inconsistency emerges within the executive branch. This situation clearly contradicts the principle of presidentialism, where the President should serve as the central command of a solid and coordinated executive (Jamil & Kurniawan, 2024). This phenomenon reveals a governance gap, as the cabinet does not fully reflect the President's unified political voice. Thus, the implications are not only technical but also ethical, concerning the President's credibility as head of government.

Beyond the ethical dimension, another implication of laws unsigned by the President concerns political legitimacy. In the eyes of some citizens, such laws are perceived as legal products lacking moral legitimacy, even though they remain valid juridically. This creates a gap between formal legality and substantive legitimacy, ultimately affecting public trust in government and law (Saragih et al., 2025). If this phenomenon continues, it may establish a negative precedent that weakens the President's position within the constitutional structure while also tarnishing the image of Indonesia's presidential system. Therefore, the issue of laws without presidential ratification cannot be underestimated, as it concerns legal, political, ethical, and administrative dimensions of governance. The Constitution does allow laws to take effect even without a signature after a certain period, but this phenomenon reveals a deeper problem in the legislative-executive power relationship.

### ***3. Legal Disharmony***

Indonesia is known as one of the countries with the largest number of legal products in the world. In legal literature, this condition is often referred to as the phenomenon of hyper-regulation, namely a situation where the number of regulations produced is excessive but not balanced with the quality and consistency of the legal norms they contain. According to Saldi Isra, the surge of regulations in Indonesia is largely produced by the executive branch, not merely by the legislature (Saragih, 2022). This reflects that government bureaucracy tends to be responsive to regulatory demands but often pays little attention to aspects of harmonization and consistency with existing laws. As a result, instead of creating

legal certainty, the hyper-regulation phenomenon actually produces complexity within the national legal system.

The phenomenon of legal disharmony is clearly evident in the relationship between national laws and regional regulations. In practice, many local governments tend to comply more with ministerial regulations rather than laws. In fact, according to the principle of hierarchy of laws and regulations as stipulated in Law No. 12 of 2011 on the Formation of Laws and Regulations, laws are ranked higher than ministerial regulations. This condition creates vertical disharmony, where lower-level rules are treated as the main reference in policy implementation. Such a practice not only violates the principle of legal hierarchy but also risks undermining the authority of laws as the highest legal products after the 1945 Constitution.

In addition to vertical disharmony, Indonesia also faces horizontal disharmony. A significant number of laws contain conflicting provisions, whether in terms of norms, scope of regulation, or technical implementation. For example, several laws in the field of investment often conflict with those in environmental protection, leading to clashes between economic development interests and ecological preservation. This reflects weak inter-agency coordination in the legislative process, as well as the lack of effective harmonization mechanisms to reconcile differences between legal products (Kurniawan & Purbosari, 2022). Theoretically, however, legal harmonization is a crucial instrument to maintain consistency of norms, legal certainty, and the effectiveness of public policy implementation.

Institutionally, the Ministry of Law and Human Rights (Kemenkumham) has a central role as the “gatekeeper” of regulatory harmonization. Through the Directorate General of Legislation, the ministry has the authority to harmonize draft regulations proposed by ministries and institutions. However, such authority is limited as stipulated in Ministerial Regulation No. 2 of 2019. This regulation only mandates harmonization for ministerial regulations, regulations of non-ministerial government institutions, non-structural bodies, and regional regulations. Thus, harmonization between laws does not fall within Kemenkumham’s mandate, leaving horizontal conflicts between laws without an adequate resolution mechanism.

This limitation is further exacerbated by the fact that, in practice, Kemenkumham has not fully optimized the authority it already possesses. Many legal products—particularly ministerial regulations—substantively diverge from or even contradict existing laws. For instance, some ministerial regulations in the fields of trade and industry often overlap with regulations in labor or consumer protection (Galih Orlando, 2022). This shows that Kemenkumham’s role as the guardian of legal harmonization remains far from effective. Consequently, regulatory inconsistency not only disrupts legal certainty but also undermines public trust in the government as a policymaker.

The recurring legal disharmony has serious implications for governance. First, from a legal perspective, inconsistent regulations generate uncertainty, making it difficult for both law enforcers and the public to determine which rules must be followed. Second, from an economic perspective, overlapping regulations often become barriers to investment, as businesses must navigate contradictory

regulations. Third, from a political perspective, disharmony undermines government legitimacy, as the public perceives inconsistency in public policies. In other words, legal disharmony is a multidimensional problem with wide-ranging impacts on national stability.

Given the complexity of this issue, efforts to reconstruct the legal harmonization mechanism in Indonesia are imperative. First, the authority of Kemenkumham should be expanded to include harmonization at the level of laws, so that horizontal conflicts between laws can be resolved systematically. Second, inter-institutional coordination among regulatory drafters—particularly between the DPR, the President, and relevant ministries—must be strengthened to ensure that every legal product is consistent and non-contradictory. Third, the implementation of an integrated digital regulation system is crucial to facilitate real-time mapping, synchronization, and evaluation of all legal products. Fourth, the involvement of academics and civil society in the legislative process must be enhanced to provide critical perspectives while preventing the creation of overly sectoral regulations.

### **Theory of Legal Effectiveness: A Path to Resolving the Problems of Law-Making in Indonesia**

The problems surrounding the formulation and implementation of laws in Indonesia remain a central issue that continues to be debated within constitutional law studies. In reality, laws produced through lengthy deliberations between the House of Representatives (DPR) and the President often encounter obstacles during implementation. These obstacles may take the form of overlapping regulations, public rejection, weak political will from the executive branch, or limited capacity of law enforcement agencies to enforce them (Galih Orlando, 2022). This condition demonstrates that law-making in Indonesia has not been fully effective in achieving its primary objectives, namely ensuring legal certainty, justice, and public benefit. Therefore, a theoretical framework is needed to explain how law can function effectively while also offering solutions to the legislative problems in Indonesia.

Hans Kelsen provided the initial foundation for the concepts of validity and effectiveness of law. According to him, legal validity refers to the formal applicability of a norm, namely the extent to which a rule derives legitimacy from higher-order legal norms. Meanwhile, legal effectiveness refers to the extent to which the norm is actually obeyed and applied in society. In other words, validity determines whether a norm formally applies, while effectiveness shows whether the norm functions in reality. From Kelsen's perspective, legal effectiveness becomes a prerequisite for the continuity of a norm. A norm that is valid but ineffective in practice will eventually lose its binding force.

Kelsen's view was expanded by Soerjono Soekanto, who emphasized that legal effectiveness results from the interaction of several interrelated factors. First, the factor of legal substance, namely the content of the law itself. The clarity of formulation, consistency among provisions, and relevance to social needs are key determinants of its effectiveness. Laws that are vague, open to multiple interpretations, or misaligned with societal developments tend to cause problems

in implementation. For example, laws that are overly centralized often create friction with the principle of regional autonomy, resulting in stalled implementation. Second, the factor of law enforcers, encompassing all actors involved in the formation and application of law—from legislators and law enforcement officials to judges (Muhaimin, 2020). The professionalism, integrity, and consistency of law enforcers critically determine the success of the law. No matter how well a norm is drafted, if law enforcers lack moral and ethical commitment, the law will not have effective force. In Indonesia, discrepancies between legal norms and practice are still common, particularly due to political intervention and pragmatic interests among law enforcers.

Third, facilities and infrastructure play a significant role in legal effectiveness. Modern law enforcement requires adequate infrastructure, efficient administrative systems, supporting information technology, and sufficient human resources. Limitations such as the insufficient number of courts relative to Indonesia's vast territory or the lack of legal data digitalization result in slow and ineffective enforcement. Without adequate facilities, laws remain mere texts with little practical realization. Fourth, society as the social environment in which law operates (Naffine, 2021). An effective law is one that gains acceptance and support from society. If laws conflict with societal values or are perceived as unjust, resistance will emerge. For instance, the widespread rejection of the Job Creation Law illustrates that public participation and acceptance are key elements of legal effectiveness. Participation here not only means compliance but also involves societal engagement in the legislative process to ensure more aspirational legal products.

Fifth, culture also determines legal effectiveness. Culture, as the embodiment of values, norms, and traditions, provides the social framework that influences how law is understood and practiced. Laws that align with cultural values are more easily accepted and internalized, while those conflicting with local traditions often face rejection. Thus, law-making must consider societal cultural dimensions so that laws are not merely obeyed due to sanctions but are also accepted as part of the shared value system (Indra et al., 2023). In line with this, Lawrence M. Friedman identified three key elements in a legal system: legal structure, legal substance, and legal culture. These three elements interact to form a living legal system. In the Indonesian context, recurring legislative problems indicate that the issues lie not only in legal substance but also in institutional structures and the legal culture of state actors.

The DPR and the President, as lawmakers, are often trapped in political bargaining, while the prevailing legal culture still positions law as a tool for legitimizing power rather than as an instrument of justice. Recognizing these issues, a long-term solution is to reconstruct the law-making mechanism. One relevant idea is the establishment of an Independent Legislative Body or auxiliary body tasked with overseeing the legislative process. This institution would be independent, composed of elements from the executive, legislative, and judiciary, as well as legal experts and civil society representatives (Miftah et al., 2021). The existence of such a body would promote a unified perspective on legislative products while minimizing excessive political intervention. Thus, the legislative

process could become more objective, transparent, and oriented toward public interests.

If this idea were realized, law-making in Indonesia would no longer merely serve as a battleground for power struggles but would truly function as an instrument to fulfill the ideals of a state based on the rule of law. Legal products would not only be formally valid but also effective in implementation, as they align with societal needs, are supported by actors of integrity, equipped with sufficient facilities, and rooted in the nation's culture. Therefore, the theory of legal effectiveness can serve as both a conceptual and practical path to resolving the problems of law-making in Indonesia.

## Conclusion

The main problem in the law-making process in Indonesia lies in the gap between ideal principles and legislative practice. Normatively, the formulation of laws has been clearly regulated through Law Number 12 of 2011 and its amendments, yet in practice it is often distorted by political interests, limited public participation, weak academic studies, and a lack of transparency. This results in laws that are unresponsive to societal needs, disharmonious with other regulations, and ineffective, as reflected in the frequency of judicial reviews and public resistance. Thus, the effectiveness of law becomes a crucial benchmark to measure the extent to which legislation can truly function as an instrument of legal certainty, justice, and benefit.

In this context, reconstructing the law-making process is inevitable. Such reconstruction is not merely procedural refinement, but also substantive improvement through the strengthening of participatory principles, openness, transparency, and the integration of comprehensive academic studies. The legal effectiveness approach provides an analytical framework that bridges the gap between theory and practice, ensuring that enacted laws are not only formally valid but also politically legitimate and socially functional. This study contributes to two domains at once: academically, it enriches constitutional law studies with the perspective of legal effectiveness, and practically, it offers conceptual insights for legislators and the government in developing a more accountable, democratic, and adaptive legislative system in response to the dynamics of Indonesian society.

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