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Why Formal Legislative Reform Fails: The Persistence of Institutional Power and Legal Culture in Indonesian Law-Making

Fitriani Ahlan Sjarif[(1)]
Faculty of Law, University of Indonesia, Indonesia.
Email: fitriani.achlan@ui.ac.id

Muh Farhan Arfandy[(2)]
Faculty of Law, Sultan Ageng Tirtayasa University, Indonesia.
Email: muh.farhan@untirta.ac.id

Aditya Wahyu Saputro[(3)]
Faculty of Law, Cornell University, New York, United States.
Email: aws238@cornell.edu

Keane Natalia Christy Sualang[(4)]
School of Social & Political Sciences, University of Glasgow, United Kingdom.
Email: 3170301S@student.gla.ac.uk

ABSTRACT

This article examines how the quality of law-making in Indonesia has deteriorated and offers actionable solutions. Previous studies have documented procedural deficiencies in Indonesian legislation, but how power structures systematically sustain these deficiencies from generation to generation remains poorly understood. This article addresses this gap by proposing that formal reform will inevitably fail if it operates within symmetrical institutional power relations and rigid legal cultures. Using a socio-legal (normative-empirical) approach, the study examined three interlocking propositions: (1) the persistence of executive dominance over agenda-setting; (2) a rigid legal culture constrained by formal legalism inherited from colonial legal education; and (3) the ineffective role of Academic Drafts and public participation, which tend to be only symbolic. The findings suggested that entrenched cultural norms and unequal power relations disrupt the democratic balance of law-making, as seen in the hasty passage of the Omnibus Law on Job Creation. To achieve reform in practice, this article recommends transforming legal education through empirical training, enforcing independent quality assurance for Academic Drafts, and modernizing public engagement through structured digital consultation platforms.

Keywords: *Academic Draft, Law-Making, Legal Culture, Legal Education, Legal Formalism.*

I. INTRODUCTION

Law-making plays an important role in a modern state governed by law. Grounded in the constitution, it limits the authority of state officials so that they do not act arbitrarily, protects the rights of the people, and advances public

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welfare as mandated by the constitution. In practice, laws elaborate state policy and set out the operational means the state chooses to realize its major policies. The 1945 Constitution of the Republic of Indonesia affirms that sovereignty is in the hands of the people and is implemented according to the Constitution. This principle forms the core of Indonesia's constitutional framework, under which every law should reflect the aspirations of the people, ensure legal certainty, and deliver substantive justice.

Law-making that is expected to meet these ideals cannot be separated from the role of lawmakers and from the legal system established by state institutions under the Constitution (Paonganan et al., 2025). The legal education that produces Indonesian lawmakers should also be considered a determinant of successful law-making. Indonesia's legal system was initially shaped by the study of Dutch law, and upon independence the country had to establish its own legal system within a short time. Because Indonesia lacked sufficient law graduates at the time, the only option available was to adopt the Dutch legal system with minor adjustments to Indonesian particularities.

In reality, however, law-making in Indonesia remains far from this ideal. Indonesia's constitutional history shows that executive dominance over law-making has persisted from the beginning of independence to the contemporary era. This dominance is clearly visible in contemporary legislative practice, for example, in the enactment of the Job Creation Law. The Job Creation Law is an omnibus law that amends multiple existing laws (S W Madjid et al., 2023). It was the first law of its kind in Indonesia. That study noted that the Omnibus Law was enacted through procedures considered hasty and lacking in transparency, which drew widespread criticism from civil society. Its enactment shows that the Government held a dominant position in determining the agenda, content, and flow of deliberations, while the House of

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Representatives of the Republic of Indonesia tended to be passive and to follow the executive's direction (Suntoro & Nureda, 2022).

This practice shows that the checks and balances mechanism, which should constrain the government, has not functioned optimally. In many cases, the House of Representatives appears to serve as a formal legitimizer of the executive's will rather than as a representative of the people (Pulungan & A.L.W., 2022). The declining quality of the legislature is evidenced empirically by the high volume of judicial review petitions filed with the Constitutional Court (*Mahkamah Konstitusi*) and by a sharp decline in public trust. Recent data show that between 2020 and 2024 the Court received 237 judicial review petitions, 43% of which were partially granted, while public trust in the legislature fell significantly to 46.2% owing to the perception that laws prioritize elite interests over public needs (Satory et al., 2025). The most striking empirical evidence of this procedural and substantive failure is Constitutional Court Decision No. 91/PUU-XVIII/2020. In that ruling, the Court explicitly declared the Job Creation Law "conditionally unconstitutional" because of fatal formal defects and the absence of meaningful participation in its formation (Putra, 2024). The current legislative process in Indonesia often fails to meet the standards set by laws and regulations. The most tangible evidence of current executive dominance can be seen in this Constitutional Court decision. Instead of opening a deliberative process with meaningful participation, as required by Constitutional Court Decision No. 91/PUU-XVIII/2020, the executive branch bypassed parliamentary debate by issuing Government Regulation in Lieu of Law (Perppu) No. 2 of 2022 concerning Job Creation. The Perppu was then swiftly enacted as Law No. 6 of 2023. This move shows that even when the Constitutional Court requires meaningful participation, the executive branch

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retains the political power to circumvent that requirement by invoking a constitutional emergency.

This condition is further exacerbated by overlapping legislative and executive authority. In constitutional theory, the House of Representatives and the President should exercise the law-making function jointly. In practice, however, the boundaries of their authority are often blurred: the executive dominates joint deliberations so strongly that it weakens legislative oversight and independence, while the legislature often sacrifices its independence for the sake of short-term political coalitions. This lack of clarity in the boundaries of authority creates disharmony that weakens the quality of legislative and regulatory instruments (Rasji et al., 2025). As a result, law-making no longer serves as a deliberative forum that accommodates the interests of the people; it becomes only an arena for political transactions full of compromise.

Beyond institutional issues, legal culture also plays an important role in explaining the poor quality of Indonesian law-making. Friedman (1969, 1975) emphasized that legal culture reflects people's attitudes, perceptions, and values toward the law. In Indonesia, the legal culture of state officials still tends to be formalistic. Law is more often understood as a written text that must be adhered to without regard to substance and social justice (Sulaksono, 2023). As a result, a law is considered complete only when formal procedures are met, even if its substance does not yet address the needs of the community. Such a legal culture not only produces laws that are far from just but also erodes public trust in the law.

Indonesia's inherited legal thought is heavily influenced by rigid bureaucratic formalism, which is often mistakenly conflated with legal formalism. This paradigm of dogmatic legalism dominates both legal education and law-making practice in Indonesia. Legal education still emphasizes

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normative-formal aspects, namely the study of statutes, case law, and positive regulations, while philosophical, sociological, and interdisciplinary aspects tend to be ignored. Paradigms that prioritize bureaucratic procedure over substance limit the space for pursuing substantive justice because procedures are often placed above substance (Hermanto, 2016). As a result, law serves only procedural justice rather than the justice that lives in society. The dominance of formalism also shapes legal practice: law is treated only as an instrument of power rather than as a means of achieving social justice. When formal legal certainty is rigidly prioritized over public moral values, it creates a dangerous loophole for political elites to manipulate democratic processes (such as the perpetuation of dynastic politics) without technically violating positive law, thereby eroding substantive justice and democratic integrity (Rahmanto, 2025). In Indonesia, law tends to be used as a tool of power to defend the interests of certain parties, while weak groups struggle to obtain adequate legal protection. In practice, formalism often leads to rigidity and injustice in the law, which was originally intended to provide legal certainty (Harun, 2019).

University legal education contributes significantly to this problem. The legal education reform advocated since the beginning of the Reform Era has not fully addressed these substantive challenges. In practice, Indonesian law schools still teach students through an approach that emphasizes the dogmatic aspects of law and gives less attention to its empirical and critical aspects. The curriculum focuses on understanding laws and regulations rather than on developing analytical skills and social sensitivity (Nugroho et al., 2022). As a result, law graduates can generally read legal texts but lack the ability to assess the moral, political, and social relevance of a regulation. In law-making, Academic Drafts (*Naskah Akademik*), a formal requirement for preparing a bill (RUU), are expected to bridge the gap between academic approaches and the

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practice of legal politics. In practice, however, Academic Drafts are more often treated as administrative formalities. Many are compiled without in-depth research, some merely copying existing literature or regulations. Academic Drafts are therefore considered to have failed in their ideal function as a scientific filter ensuring that law-making is genuinely based on academic data and analysis.

Research on Indonesian law-making has largely focused on procedural and constitutional frameworks. This highly doctrinal literature leaves a critical research gap: it does not adequately explain why large-scale formal reforms, such as constitutional amendments and the institutionalization of the National Legislation Program, have failed to change the substantive quality of legislative practice. International scholarship on legislation, from the legisprudence of Wintgens (Wintgens, 2012) and Waldron's dignity of (Waldron, 1999) legislation to Habermas's (Habermas, 1996) deliberative democracy, has long emphasized that legislation requires rational justification and substantial public discourse. In Indonesia, however, the formal adoption of these ideals has failed in practice.

To address this research gap, this article introduces the Institutional-Cultural Persistence Model in Lawmaking as its core conceptual framework. The model posits that the quality of legislation cannot be explained only by procedural shortcomings; it must also be understood as the product of an intertwined causal chain in which entrenched power relations shape legal culture and determine the epistemic quality of future legislation. First, historically asymmetrical power relations have allowed a hegemonic executive branch to dominate the legislative branch, contrary to the normative dignity that legislation should have. Second, this political imbalance underpins a legal culture marked by the dominance of formal legalism and procedural

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formalism. Third, this interaction directly undermines the epistemic quality of legislation: when a law is made solely to serve executive interests and is drafted by a highly positivistic legal apparatus, important scientific safeguards and evidence-based mechanisms such as Regulatory Impact Analysis (OECD, 2021; Radaelli, 2004) are reduced to administrative formalities only. Even technical drafting standards (Xanthaki, 2014) and democratic mechanisms are bypassed.

Rather than treating the current legislative setback as a foregone conclusion, this article advances three fundamental propositions that can be critically examined: first, executive dominance has consistently marginalized the legislature since the early years of Indonesia's independence; second, legal education and legal culture in Indonesia are strongly dominated by rigid legal formalism; and third, Academic Drafts are used only as administrative formalities.

To systematically test these propositions and address the identified research gap, this study is guided by three principal research questions:

1. How has the historical development of executive-legislative relations shaped Indonesia's patterns of law-making?
2. How have positivistic legal culture and legal education affected the epistemic quality of legislation?
3. How can practical reforms concerning institutional arrangements, *Academic Drafts, and public participation* improve the law-making process?

II. RESEARCH METHODS

This study employs a mixed normative-empirical (socio-legal) method. A strictly normative approach is insufficient for analyzing behavioral and cultural phenomena. A socio-legal framework was therefore chosen to assess the actual

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effectiveness and legitimacy of the law-making process, executive dominance, legal culture, and the practical implications of formalism in legal education. This study goes beyond examining written rules by exploring how legal ideas, institutional behaviors, and cultural norms influence the empirical reality of law-making in Indonesia. The normative dimension uses the statutory, conceptual, and historical approaches to analyze constitutional frameworks and legal doctrines (Soekanto & Mamudji, 2013). The empirical dimension analyzes secondary empirical data, such as statistical records from the Constitutional Court, public trust surveys, and institutional evaluation reports, to evaluate the gap between the law in books (*das Sollen*) and the law in action (*das Sein*) (Hakim, 2016). Data are collected through a literature and document review in which all normative and socio-legal materials are systematically selected, categorized, and analyzed to develop actionable recommendations.

III. RESEARCH RESULTS AND ANALYSIS

A. Dynamics of the Law-Making Process in Indonesia

1. Early Independence Period (Era Pasca-Kemerdekaan)

The early period of Indonesia's independence (1945–1959) marked a decisive phase in the development of the constitutional system and the practice of national legislation. After the proclamation of independence on August 17, 1945, the nation's founders drafted the 1945 Constitution, which established the president as the supreme organizer of government who held legislative power together with the House of Representatives. This structure reflects a presidential model with strong executive influence, as the post-independence state of emergency demanded political stability. In practice, this arrangement led to executive dominance in law-making, while parliament remained relatively weak (Darmono, 2007).

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The period of constitutional transition, including the establishment of the Republic of the United States of Indonesia in 1949 and the 1950 Provisional Constitution, briefly made room for parliamentary practice. However, fragile cabinets, party fragmentation, and frequent changes of government reduced the capacity of parliament to function as a stable arena for legislative deliberation. As a result, the legislative process in the early 1950s was often influenced by the executive's need for legitimacy and stability rather than by strong legislative initiatives from parliament (Suciyati & Zulkarnain, 2024). In this situation, law-making was shaped more by the executive's need for stability and legitimacy of power than by legislative aspirations. This is consistent with analyses showing that, since the beginning of independence, law-making has served government interests more than it has functioned as a forum for public deliberation (Astutik & Trisiana, 2020).

This does not, however, justify the generalization that all laws of this period were flawed; some administrative and development rules were necessary for the country's early development. Critical shortcomings are found mainly in politically significant legislation. A concrete example of this procedural avoidance is the frequent use of presidential instruments during the era of Guided Democracy (1959–1965). Presidential Stipulation (Penpres) No. 11 of 1963 concerning the Eradication of Subversive Activities, for instance, allowed the executive to criminalize political opposition without parliamentary debate or democratic procedures, showing how the executive branch completely bypassed the legislature.

Legal development during this period was closely linked to the evolution of the dominant legal culture. As recent research has shown, however, it is common to construct a highly linear narrative that attributes rigid legal formalism exclusively to the colonial legacy. Although the formal legal

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framework has retained many Dutch legal instruments, such as the Civil Code (Butt & Lindsey, 2018), the original Dutch law school founded in Batavia adopted genuinely liberal and interdisciplinary methods that produced highly critical jurists (Bedner & Vel, 2021). Instead, strict formalism, the loss of critical methods of interpretation, and the complete decline of legal formalism largely developed and became entrenched after independence. During Guided Democracy and later the New Order, political pressure and the weakening of independent legal institutions deliberately transformed legal education and practice (Romadan, 2021). Law was systematically detached from its sociological context and recast as a strict, dogmatic instrument of administrative control and state stability. Executive dominance and the weakness of parliament at the beginning of independence further reinforced this newly stagnant legal culture (Reyhan et al., 2024).

At the time, Indonesian legal culture placed more importance on social customs and norms than on written law. However, as in other developing countries, the executive branch sought to consolidate its power through written legal instruments. This created a gap between the positivist nature of constitutional law and the living law of society. Studies show that this mismatch contributes to the low legitimacy of legislative products, as laws do not always reflect existing social realities (Ansori, 2017). Authoritarian formalism in Indonesian law is not a direct colonial legacy but rather a deliberate product of post-independence political repression. These laws were used to regulate and control society for the benefit of rulers, a pattern that became entrenched in Indonesian legal history and effectively marginalized critical jurisprudence during this tense transition period.

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2. *New Order Period (Era Orde Baru)*

The defining period for legislation in Indonesia was the New Order (1966–1998). After the collapse of Guided Democracy, the state under Suharto established a government oriented toward economic development and promising political stability. In practice, however, this stability was maintained through control over the legislature and the concentration of power in the executive. Executive dominance of this kind meant control over the legislative process, so laws were often enacted as instruments of regime legitimacy rather than as products of independent legislative decisions. Empirical and political studies consistently identify this pattern as an important feature of the New Order political system (Aspinall & Fealy, 2010).

One political mechanism that strengthened the executive branch, and even entrenched its dominance, was the simplification of the party system introduced in the early 1970s. The 1973 party fusion policy merged many parties into three formal forces: the Functional Groups (Golkar), the United Development Party (PPP), and the Indonesian Democratic Party (PDI). At the time, Golkar functioned as the regime's *de facto* political tool. This restructuring reduced political pluralism and weakened parliament's ability to serve as an arena for opposition or independent oversight of government policy. As a result, the House of Representatives often functioned as a formal source of legitimacy (upper limit) for executive decisions rather than as an autonomous partner in legislation (Crouch, 1978).

Laws passed during the New Order mainly served social and political purposes aligned with the interests of the executive branch. Legislation served to strengthen political stability, maintain military supremacy, and encourage economic development. In practice, every executive policy was accompanied by legislation that strengthened it and protected it from criticism. While

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technical and economic development laws of this era were often drafted systematically and neatly, laws with political implications were heavily flawed and served primarily to stifle dissent. A prime example is Law No. 8 of 1985 concerning Community Organizations. Parliament processed this law merely as a formal rubber stamp to force all organizations to adopt a single state ideology (*Asas Tunggal*), effectively paralyzing civil society participation and neutralizing opposition under the guise of formal legality.

The state of the judiciary also reinforced the top-down character of the New Order legislature. Before the Constitutional Court was established in 2003, no specialized judicial body had the authority to review the constitutionality of laws independently, as in modern judicial review systems. This limited the prospects for effective judicial oversight of statutes. The establishment of the Constitutional Court in 2003 was a reform response to the need for institutional correction. As a result, the concept of the state of law (*Rechtsstaat*) was replaced by the concept of the state of power (*Machtstaat*) in which the law was only used as an instrument of power (FR & Arfandy, 2025).

Beyond political and institutional factors, the structure of legal education and the professional culture inherited from the colonial period strengthened the positivistic and formalistic orientation of legal practice. Studies of Indonesian legal education show how the legacy of colonial education and its vocational orientation created a teaching tendency that emphasized mastery of legal texts and procedural compliance, which reduced the room for critical analysis and contextual approaches to the social functions of law. The tendency to use law as an instrument of power was also strengthened by the legal education paradigm that prevailed at that time. Law schools in Indonesia mostly taught positivist legal dogma and emphasized the understanding of written law rather than critical thinking or social analysis. The dominance of

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formalism in New Order legal education produced a generation of legal scholars who viewed law solely as a set of rules. This, in turn, made the legal culture of civil servants highly legalistic and formalistic. Asep Bambang Hermanto explains that legal formalism traps Indonesian law in procedural rather than substantive justice. Ultimately, law becomes nothing more than a tool serving the interests of rulers and capitalists (Hermanto, 2016).

This situation made legislative studies in Indonesia less relevant in practice. Legal academics often emphasized normative analysis of existing laws rather than critically examining how they were created and applied in a political context. The study of the legislative process was considered irrelevant because all legislative decisions were made by the executive branch, while the House of Representatives granted only formal legitimacy. Legislation during the New Order thus showed a strongly top-down pattern: laws were passed from above, with no significant scope for public participation. This pattern had several serious consequences. First, the public lost faith in legislation as an instrument of justice. Second, law was seen only as a tool of social control used to suppress political opposition. Third, the quality of law-making was low because it prioritized the political interests of the regime over the needs of the public. Within this framework, law lost its autonomy and came completely under executive control.

During the New Order, the study of legislation steadily deteriorated. Legal academics who adhered to formalism were unable to provide a thorough critique of authoritarian law-making practices. Meanwhile, the legislature, which should have been the executive's partner, became subordinate. As a result, law-making lost its deliberative meaning, and law became increasingly entrenched as an instrument for legitimizing power. This pattern remains one of the most enduring legacies of the New Order.

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3. Reform to Contemporary Era

The 1998 Reform Era marked an important turning point in Indonesia's legal history. The collapse of the New Order regime paved the way for fundamental changes in the political and legal system. One of the most important results of the reform was the gradual amendment of the 1945 Constitution between 1999 and 2002 (Asshiddiqie, 2011). These amendments strengthened the presidential system, affirmed the sovereignty of the people, and expanded the functions and authority of the legislature. In the legislative domain, the amendments sought to restore the House of Representatives (DPR) as a representative body on an equal footing with the president in exercising legislative power.

Law No. 10 of 2004 concerning the Establishment of Laws and Regulations (later replaced by Law No. 12 of 2011, as amended by Law No. 15 of 2019 and most recently by Law No. 13 of 2022) became a fundamental milestone of legislative reform. This framework regulates law-making procedures, including the principle of regulatory hierarchy, planning through the National Legislation Program (Prolegnas), and requirements for the preparation of Academic Drafts as a scientific basis. Formally, therefore, legal reform succeeded in creating a clearer and more transparent procedural framework (Indrati, 2007).

Despite these formal reforms, law-making practice still shows various deviations. First, executive dominance in law-making remains very strong: most bills included in the Prolegnas originate from the government rather than from the DPR. The national legislation agenda is still largely determined by the interests of executive power. Second, in deliberations the House of Representatives often acts pragmatically, prioritizing compromise over its

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representative functions. This results in the implementation *of the ideal* checks and balances mechanism.

The most obvious deviation is the enactment of Law No. 11 of 2020 concerning Job Creation (the Omnibus Law). The law was drafted using the *omnibus* method, which is relatively new in the Indonesian legal system. Its preparation and deliberation were very fast, lacked transparency, and did not involve public participation. Academics, civil society, and trade unions criticized the law for prioritizing the interests of investors and managers over workers' rights and environmental protection (Suntoro & Nureda, 2022). This created a legal framework that exacerbated structural injustices and precariousness for vulnerable labor groups, especially in emerging markets (Sofiani et al., 2026). In Decision No. 91/PUU-XVIII/2020, the Constitutional Court (MK) also declared the Job Creation Law conditionally unconstitutional because its formation was formally flawed. The ruling affirms that, despite the existence of formal procedural rules, legislative practices remain vulnerable to manipulation for the sake of the government's political interests (Decision No. 91/PUU-XVIII/2020 concerning the Testing of the Job Creation Law, 2020).

Beyond procedural deviations, legislative reform also faces serious challenges concerning the effectiveness of Academic Drafts. At the normative level, any bill must be accompanied by an Academic Draft, which forms the basis of scientific reasoning. In practice, however, Academic Drafts are often regarded as a mere administrative formality. Many are written without sufficient empirical research, some simply copying old literature or government guidelines. Consequently, Academic Drafts do not significantly improve the quality of legislation. This problem highlights the gap between the formal and substantive aspects of legislation. Formally, Indonesia has relatively extensive laws. Yet legislation remains far from the principles of deliberative democracy.

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Legislation remains dominated by the executive branch, public participation is minimal, and academic scrutiny is often ignored. As a result, many laws are short-lived, criticized, subjected to judicial review by the Constitutional Court, or even ineffective in their implementation (Butt & Lindsey, 2018).

In legislative studies, the Reform period also represents the current era. On the one hand, significant normative progress has been achieved, such as the strengthened role of the House of Representatives, the requirement of Academic Drafts, and planning through the National Legislation Program (Prolegnas). On the other hand, legislative practice continues to repeat old patterns: executive dominance, legal formalism, and low public participation. This paradox shows that legal reform has not yet fully reached the cultural dimensions of law and political practice.

A formalistic and positivist legal culture remains a major obstacle. Law enforcement agencies and legislators value compliance with administrative procedures more than basic characteristics. Consequently, laws often do not meet the needs of society. In this context, legislative studies are increasingly losing influence as legislative practice, although widely used scientifically, operates according to the logic of political power. The Reform period can thus be understood as an unfinished transition. Although reforms have created a clearer formal framework, the basic procedures have not changed. While the legal and political culture continues to be dominated by executive interests and the logic of power, legislation continues to hold up. It is therefore imperative to strengthen legislative research to provide criticism and alternatives to improve the quality of legislation in Indonesia.

The historical development of legal studies in Indonesia from the early days of independence to the present day shows a recurring pattern: executive dominance, a weak parliament, and legal education that emphasizes formality

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over critical analysis. Although each period had its own political and legal context, a common thread runs through them: legislation was used as an instrument of power rather than as a space for democratic debate. In the early years of independence, legislation focused more on maintaining the stability of government and continuing the legacy of the colonial legal system. The New Order era emphasized the consolidation of executive power through legislation that served as an instrument of political legitimacy, with the House of Representatives becoming merely a political symbol. Legal education was increasingly rooted in formalism, ignoring the critical study of the practice of legal education. Meanwhile, the Reform period brought formal changes through the amendment of the 1945 Constitution and the enactment of the Law on the Establishment of Laws and Regulations. Nevertheless, irregularities persist, as the Omnibus Law shows, and Academic Drafts often only serve as formalities.

A comparative summary of the main characteristics of each period can be seen in the following table:

Table 1. ***Dynamics of Law-Making in Indonesia***

Period	Political Context	Pattern of Dominance of Legislation	Legal Education & Culture	Main Features of Legislation Studies
Early Independence (1945–1959). (Feith, 1962; Lev, 1966)	The post-independence political situation; constitutional transition (political conflict,	Executive dominance; weak parliament; legislation is directed at government stability.	Influenced by Dutch colonialism; the legacy of positivism; the law is seen as formalistic	Legislative studies tend to be formalistic and focus mainly on the legal text of the

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	temporary constitution).		and dogmatic.	colonial legacy.
New Order Era (1966–1998). (Aspinall & Fealy, 2010; Bedner & Vel, 2021; Crouch, 1978)	Authoritarian regimes; political stability is maintained through executive control of the House of Representatives.	Legislation as political legitimacy; the House of Representatives is only an executive rubber stamp.	Legal education strengthens positivism; the legal apparatus is legalistic; the military has a strengthened political role (the doctrine of "dual function")	Critical legislative studies declined; the quality of public deliberation and research on the legislative process was limited by political power relations
Reform to Contemporary Era (1998–present). (Basyir, 2014; Butt & Lindsey, 2018; Indrayana, 2008)	Political reforms, amendments to the 1945 Constitution, democratization; however, political practices remain elitist.	Formal changes: Prolegnas, P3 Law, Academic Drafts; however, the practice shows deviations: executive dominance, omnibus practices (e.g., Job Creation Law), and public	Legal culture remains formalistic; legal education is slow to adapt; Academic Drafts are often formalities.	Paradox: normative progress vs. practices that subordinate procedures to political interests; the need for empirical legislative

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		participation debates.		research is growing

B. Problems in the Dynamics of the Law-Making Process: Aspects of Legal and Institutional Culture

To understand the complex relationship between political contexts and legislative outcomes discussed above, it is necessary to map the specific institutions involved and the prevailing legal cultures that influenced them. The following table summarizes how the interplay between institutional power dynamics and legal culture has evolved, and often hindered substantive justice, across the three major periods of Indonesian governance.

Table 2. ***Mapping of Institutions Involved and Relevant Legal Culture Factors***

Period	Key Institutions Involved in Law-Making	Inter-Branch Power Relations	Dominant Legal Culture Factors
Early Independence & Guided Democracy	President, KNIP / DPR (Parliament).	Executive Hegemony: The President frequently bypassed parliament using emergency edicts (*Penpres*).	Transitional & Pragmatic: Law was viewed as a revolutionary tool for state stability; remnants of colonial legal culture clashed with emergency political needs.
New Order Era	President, DPR (dominated by ruling party/military).	Subordinated Legislature: DPR functioned merely as a formal "rubber stamp"	Authoritarian Formalism: Highly bureaucratic and

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		to legitimize executive policies.	rigid. Legal certainty was prioritized, but substantive justice and morality were ignored to maintain regime stability.
Reform to Contemporary Era	President, DPR, DPD (limited role), Constitutional Court (MK).	Transactional/Oligarchic: Shared legislative power formally exists, but practices are often driven by elite political compromises rather than checks and balances.	Procedural Formalism: Procedural compliance is prioritized over substantive "meaningful participation"; Academic Drafts are often treated as mere administrative formalities.

Legal culture plays a decisive role in the quality and legitimacy of legislative products: the literature on *legal culture* shows that in addition to the formal structure and content of norms, the way societies, professions, and institutions interpret and apply law collectively will shape the effectiveness and purpose of the law itself (Friedman, 1969, 1975).

In Indonesia, historical and normative studies show a strong tendency toward formalistic and positivistic orientations rooted in colonial institutional legacies and legal education practices that emphasize mastery of normative texts. In bureaucratic and rule-making practice, this tendency appears in the emphasis on procedural and administrative compliance: a formally "complete"

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draft does not necessarily contain an adequate study of the social context, so legislative products risk meeting administrative requirements without resolving the substantive problems of the community (Rahardjo, 2009; Turiman, 2010). As a result, legislative products often only meet administrative requirements but fail to meet the needs of the community.

Another problem is a legal culture within the state apparatus that focuses more on power than on public accountability. The process of forming laws often serves the political interests of the rulers. Daniel S. Lev even argues that throughout Indonesian history, law has often been used as an instrument of rule *by law* rather than as an instrument of justice (*rule of law*) (Lev, 2000). This situation not only occurred under New Order authoritarianism but also continued into the Reform period, for example, with the passage of the Job Creation Law, which was widely criticized for prioritizing the interests of investors and executives over those of the people. This formal, elitist legal culture has led to a crisis of legislative legitimacy. Many laws have been rejected by the public, such as Law No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission and the Job Creation Law. This rejection suggests that legislation is not seen as the result of democratic consensus, but rather as a product of elitist politics and political clientelism that protects the ruling elite from real legal accountability (Ismayawati et al., 2025). The problematic legal culture of the apparatus therefore contributes significantly to the deterioration of the quality of legislation and public trust in the law.

Problems in the Indonesian legislative institutions cannot be separated from the relationship between the executive and the legislature. Formally, the amendments to the 1945 Constitution of the Republic of Indonesia have affirmed that the House of Representatives stands on par with the President in

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law-making. In practice, however, the relationship remains unbalanced. The executive still dominates the determination of the legislative agenda. Although the House of Representatives can, in numerical terms, propose many bills, empirical data on legislative outcomes show clear executive dominance. According to an end-of-year review by the Indonesian Center for Law and Policy Studies (PSHK), the National Legislation Program (Prolegnas) consistently falls far short of its targets, whereas priority, executive-led bills, especially those related to investment and state structure, are systematically fast-tracked and passed (Pusat Studi Hukum & Kebijakan Indonesia [PSHK], 2025). In contrast, bills introduced by the House of Representatives or civil society are often stalled indefinitely. The successful submission and adoption of strategic projects relies heavily on executive approval. As a result, the House of Representatives is often seen as an institution that grants formal legitimacy only to government projects.

This inter-institutional imbalance has given rise to procedural deviations: many laws are deliberated behind closed doors, in haste, and with minimal public participation. The Job Creation Law is the most obvious example: its text changed even after the House of Representatives had passed it, causing confusion and revealing a lack of transparency. In Decision No. 91/PUU-XVIII/2020, the Constitutional Court held that the process of forming the Job Creation Law was formally flawed and that the law was therefore conditionally unconstitutional. Transactional politics further worsens the quality of law-making. The relationship between the executive and the legislature is often based on political compromise among elites rather than on public deliberation. Jimly Asshiddiqie calls this phenomenon "pseudo-legislation," i.e., laws that are born only from agreements among political party elites rather than from the considered aspirations of the people (Asshiddiqie, 2006b).

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An important contribution of this article is to show that methodological and procedural changes do not automatically correct deep epistemic flaws in legislation. Normatively, the obligation to prepare Academic Drafts aims to anchor legislation in empirical reality. However, this study shows that despite continuous regulatory updates, such as Law No. 13 of 2022, whose Appendix I requires the assessment of a law's impact to be supported by specific methods, including Regulatory Impact Analysis (RIA) and ROCCIPI (Rule, Opportunity, Capacity, Communication, Interest, Process, and Ideology), the substantive quality of these analyses remains very low. Recent evaluations show that RIA and ROCCIPI are often applied only as a superficial administrative copy that is highly biased, highly prescriptive, and severely lacking in sound socio-economic assessment (Sjarif & Kastanya, 2023). This demonstrates that introducing international best practices such as RIA into a system still dominated by procedural formalism and executive agendas fails to generate genuine evidence-based law-making. Academic Drafts therefore function merely as a legitimation tool rather than as a substantive epistemic safeguard.

Compared with practices in other countries, Indonesian Academic Drafts still lag far behind. In Germany, for example, every government bill is required to include a detailed *Gesetzesbegründung* (explanatory statement), including an analysis of its socio-economic and legal impacts (Karpen & Xanthaki, 2017). In the United States, legislative drafting is preceded by policy papers that are usually debated openly in public. This comparison shows that Indonesia still needs to improve its practice so that Academic Drafts genuinely function as a scientific basis for legislation rather than a mere formality.

These three major problems, namely the formalistic legal culture of the apparatus, the unequal executive-legislative relationship, and the weak function of Academic Drafts, show that Indonesia's legislative problems are not

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only procedural but also cultural and structural. Formal reform through the 1945 Constitution of the Republic of Indonesia and the Law on the Establishment of Laws and Regulations has not been able to change substantive practices. A legalistic legal culture makes law enforcement officials more likely to look only at procedural aspects rather than substance. Unequal institutional relations place law-making under executive control, while academic instruments such as Academic Drafts have failed to function because of a lack of research and commitment. All of this produces legislation that is often rejected by the public, easily challenged before the Constitutional Court, and less effective in its implementation. Improving legislation in Indonesia therefore requires not only procedural reform but also a paradigm shift. Legal education should train law graduates in a critical and accommodating manner rather than focusing solely on the law itself. The relationship between the executive and legislative branches should be restructured to be more balanced and prudent. Academic Drafts should also be supported by evaluation mechanisms and the involvement of independent scholars. Without these cultural and structural changes, the study of legislation in Indonesia is likely to decline.

C. Recommendations for Improving the Formation of Good Laws

1. Epistemic Reform of Academic Drafts

To address epistemological shortcomings in the legislative process, the first fundamental reform should focus on the preparation and institutional role of Academic Drafts. However, epistemological reform cannot take place in a vacuum; it requires a radical transformation of the legal education system that trains legislators. To this day, legal education in Indonesia remains strongly influenced by the tradition of legal formalism, which places more emphasis on memorizing legal norms than on critical empirical analysis (Bedner & Vel,

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2021). To combat redundancy in legislation, legal education should integrate interdisciplinary approaches such as political science, sociology, and economics so that future legislators can carefully analyze the socioeconomic and environmental impacts of draft laws rather than just evaluating their normative structure (Johnstone, 1984). This aligns with Satjipto Rahardjo's concept of progressive law, which emphasizes that law must be understood in its social context (Rahardjo, 2009).

In this context, Academic Drafts should themselves be used as primary educational tools. As Sihombing (2024) points out, specialized courses such as "law writing" are essential for advanced legal education aimed at strengthening the professional skills of future legislators. These courses provide students with technical competence and a deep understanding of the legal principles needed to draft laws, which is essential for breaking the stereotype that law students are overly legalistic and dogmatic (Sihombing, 2024). This can be further strengthened by applying a clinical legal education model (Bloch, 2011). This model places students in internship programs at the House of Representatives or relevant ministries, where they are directly involved in evidence-based legislation. By reforming the foundations of legal education, the state ensures that the next generation of legislators has the empirical skills to produce high-quality Academic Drafts, freeing them from the limitations of administrative formalities. Beyond education, the institutional treatment of Academic Drafts also needs to be fundamentally reformed. Despite regulatory obligations to use structured methods such as RIA, these tools often remain superficial administrative formalities that justify the executive agenda. Drawing on international standards such as the German explanatory memorandum (Karpen & Xanthaki, 2017), Academic Drafts should be treated as binding scientific guarantees. However, rather than importing only foreign

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models, this approach needs to be adapted to the Indonesian context. This can be achieved by establishing an independent "Academic Draft Review Panel" composed of academics and civil society organizations. *This body would have the legal power to review and accredit the empirical and socio-economic validity of a bill before it can be included in parliamentary debate, effectively filtering out proposals that lack a substantial empirical basis.*

2. *Reform of the Institutional Balance between the House of Representatives and the President*

The second fundamental reform addresses the asymmetrical power relations characterized by executive hegemony and a subordinate legislature. Indonesian legislation is often criticized for reflecting the interests of political elites rather than the public interest. The Indonesian political tradition usually sees the law as an instrument of power (rule by law) rather than as a means of democracy (rule of law) (Ibad, 2024). Although the Reform Era brought constitutional amendments, legislative practices continued to be heavily influenced by the executive, while the House of Representatives (DPR) was often seen only as an institution that formally approves executive policy. The relationship between the executive and legislative branches is often based on political compromise rather than public debate, what Jimly Asshiddiqie calls "pseudo-legislation," or laws made solely by consensus among political elites, regardless of the people's considered aspirations (Asshiddiqie, 2006a). This institutional ambiguity and the subordination of legislative functions to executive interests are not confined to the national level; similar overlapping functions and systemic imbalances continue to hinder Regional Houses of Representatives (DPRD) in making regional regulations across Indonesia (Hariyanto et al., 2025).

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To prevent the DPR from acting only as a formal "rubber stamp" and to abolish this practice of transactional pseudo-legislation, the institutional balance must be restructured in practice. Strengthening the House of Representatives requires substantial development of its institutional capacity to draft and review legislation independently. This can be achieved by expanding the role, budget, and independence of the House of Representatives expert body and by filling its positions with nonpartisan researchers to reduce reliance on government-issued bills. In addition, the DPR Rules of Procedure (*Tata Tertib DPR*) must be revised to include strict procedural mechanisms. No bill should be debated in depth or brought to a plenary session without a certified compliance report, so that parliament's institutional dignity and oversight function can be restored (Waldron, 1999). This political responsibility should be strengthened through full compliance with, and implementation of, the judicial oversight of the Constitutional Court (MK) to ensure that the balance of power remains constitutionally bound (Fudin Hanif, 2022).

3. Reform Aimed at Ensuring Meaningful Public Participation

The third fundamental reform aims to transform public participation from a mere procedural formality into a meaningful and deliberative democratic process. One of the main obstacles to this transformation is the legal culture of the state apparatus, which remains highly legalistic and formalistic. Law is more often understood as a written text that must be respected, without considering the material value of justice. Satjipto Rahardjo refers to this condition as "rigid formalism" that blinds the legal apparatus to social reality (Rahardjo, 2008).The apparatus therefore often assumes that once the formal procedure of a public hearing has taken place, the legislative product is valid, which reduces public participation to mere administrative symbolism.

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To overcome this rigid culture and instill a deeper sense of public accountability, participation must be opened widely. Although Law No. 12 of 2011 formally requires public participation at every stage of law-making, this participation is often limited to superficial invitations without extensive mechanisms. In fact, public participation is a fundamental element in realizing deliberative democracy; as Asshiddiqie emphasizes, the legislative process must reflect a "constitutional civilization" characterized by openness, participation, and accountability (Asshiddiqie, 2011). Transparency is essential; without it, law-making in Indonesia will continue to be seen as a product of a political elite far removed from the people (Butt & Lindsey, 2018).

To operationalize meaningful public participation and bypass the bureaucratic culture of mere procedural compliance, the government and the DPR must establish a centralized, interactive "E-Rulemaking" digital platform. All bills must not only be publicly accessible online; the platform must also feature a structured consultation mechanism through which citizens and experts can annotate specific legal clauses. Most importantly, it must mandate a digital "feedback loop," a transparent tracking system requiring lawmakers to publicly document whether citizen input was accommodated or rejected and the substantive reasoning behind those decisions. By institutionalizing this feedback loop through integrated digital platforms (Arfandy & Maharani, 2024), the law-making process shifts toward genuine deliberative democracy. Improving the legal culture of the apparatus and establishing structured participation mechanisms ensure that laws reflect social reality and community needs rather than exclusive elite interests.

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IV. CONCLUSIONS

The decline in Indonesian law-making quality is a profound problem of institutional and cultural persistence, not merely a deficit of formal rules. Since independence, executive dominance has persistently treated law-making as a tool for political stability rather than a space for democratic deliberation. This asymmetric power relation is sustained by a rigid, formalistic legal culture that has been inherited and deeply entrenched through legal education. Consequently, law-making is reduced to administrative compliance, in which essential epistemic safeguards such as Academic Drafts and public participation become superficial tokenism.

The reform era reveals a paradox: while constitutional amendments and new procedural laws have been institutionalized, they consistently fail to produce genuine evidence-based law-making because they operate within these inherited power structures. Therefore, restoring the epistemic dignity of the law demands a paradigm shift beyond regulatory additions. It requires fundamentally dismantling executive hegemony, reforming legal education toward empirical scrutiny, establishing independent quality assurance for Academic Drafts, and modernizing public engagement through structured digital platforms. Ultimately, new formal rules will remain paralyzed until the underlying asymmetric institutional relations and dogmatic formalism are systematically dismantled.

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