

The Setback of Indonesia Democracy in The Covid-19 Pandemic Era in Law-Making Process

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ABSTRACT

At the beginning of 2020, the world was faced with the COVID-19 Pandemic which had an impact on various fields, from health, economics, education to politics and law, especially in the Law-Making Process, the existence of Large-Scale Social Restriction policies to overcome the Pandemic on the other hand had an impact on limited space for participation. The public takes part in the Law-Making Process due to the policy to reduce meetings involving large crowds in one place, apart from that the issue of transparency worsens the practice of the Law-Making Process during the Covid-19 Pandemic, including the revision of the Mineral and Coal Law and the Law-Making Process of the Job Creation Law, even though the existence of the law is the basis for the government to act and carry out its functions is an essential thing in a civil law based state. A good law must fulfill 2 (two) aspects, including the material and the formal aspects. Several practices that deviate from formal aspects of the Law-Making Process during the Covid-19 Pandemic violate the principles of participation and transparency and threaten democracy. Through a normative juridical approach with conceptual, statutory and comparative approaches, this research aims to explain the symptoms of legislative practices that threaten democracy during the Covid-19 Pandemic. The research results show that participation in the Law-Making Process during the Pandemic was weak and not transparent. In the future, as an effort to maximize public participation in the Law-Making Process during the emergency period, it needs to be supported by the adoption of information technology to comprehensively support the public's role in the Law-Making Process at every stage, coupled with the Constitutional Court Decision No. 91/PUU-XVIII/2020 which orders meaningful public participation in Law-Making Process.

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PRELIMINARY

It has been almost several year since Indonesia emerged from the crisis brought about by the Covid-19 pandemic. The entry of the virus prompted the Government to declare Health Emergency status through Presidential Decree No. 11 of 2020 concerning the Determination of the Corona Virus Disease 2019 (COVID-19) Public Health Emergency, which is used as the basis for making policies to deal with Covid-19, quoted from the Ministry of Health website,

overall suspect Covid-19 in Indonesia has reached number 6 Million more people.¹ The government has recommended that the public observe physical distancing through social restrictions, with the enforcement of these measures delegated to local authorities to ensure the economy continues functioning. Efforts are being made to keep infection and death rates low to alleviate citizens' fears. Additionally, the central government does not restrict people from traveling back to their hometowns, avoiding a complete lockdown.²

From a legal perspective, The Indonesian government is not enforcing the existing quarantine law. Instead, President Joko Widodo issued Government Regulation in Law No.1 of 2020 on State Financial Policy and Financial System Stability for Managing the Covid-19 Pandemic. This regulation allows the state budget deficit to exceed 3 percent of the gross domestic product, shields COVID-19 program officials from criminal prosecution, and assumes the legislative role in budget matters. This has sparked controversy, as it could undermine the rule of law, weaken democratic values, and suggest a deviation from democratic principles in Indonesia.³

The pandemic affects Various aspects, including health, economics, politics, socio-culture, and law. Even though the country is in a difficult situation, this cannot be used as an excuse, state functions must continue and be adaptive to adapt to existing conditions, solely for the safety of the entire community. In the realm of politics and law, the legislative process is being conducted in a hybrid manner, incorporating both online and offline methods. Online methods in formulating laws are commonplace considering the development of information technology.⁴ The law was discussed in a hybrid manner due to the Large-Scale Social Restrictions (PSBB) policy in DKI Jakarta, which banned large gatherings to prevent the spread of COVID-19. Consequently, legislators had to adapt by holding both online and offline meetings to draft and form laws. However, debates arise regarding the validity of passing laws where DPR members attend virtual plenary meetings and are not physically present, and controversy arises regarding formal aspects when the public finds it difficult to participate in providing input or aspirations in the law formation process.⁵

It was recorded that 4 (four) controversial laws were discussed and passed during the pandemic, including Law no. 11 of 2020 concerning Job Creation, Law no. 3 of 2020 concerning Amendments to Law no. 4 of 2009 concerning Mineral and Coal Mining, Law no. 7 of 2020 concerning the Third Amendment to Law no. 24 of 2003 concerning the Constitutional Court, and Law no. 2 of 2020 concerning the Stipulation of Government Regulations in Lieu of Law no. 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (Covid-19) Pandemic and/or in

¹ "Infeksi Emerging," accessed December 1, 2023, <https://infeksiemerging.kemkes.go.id/dashboard/covid-19>.

² Bertha Lubis, "Implementasi Kebijakan Penanganan Pandemi Covid-19 Di Kota Cimahi Provinsi Jawa Barat," *Jurnal Media Birokrasi*, 2021, 28, <https://doi.org/10.33701/jmb.v3i1.2469>.

³ Mohammad Hidayatullah et al., "The Successes and Failures of Three Democracies in Resolving Covid-19: Indonesia, The United States of America, and South Korea," *Social Science, Education and Humanities Research* 642, no. Icoposdev 2021 (2022): 65, <https://www.atlantis-press.com/proceedings/icoposdev-21/125970348>.

⁴ "Parlementaria Terkini - Dewan Perwakilan Rakyat," accessed December 1, 2023, <https://www.dpr.go.id/berita/detail/id/38163/t/Kebijakan-Pemerintah-dalam-Menangani-Pandemi-Harus-Sejalan-dengan-Prinsip-Demokrasi>.

⁵ "Pengambilan Keputusan Tanpa Kehadiran Fisik Anggota DPR Tetap Konstitusional - Kompas.Id," accessed December 1, 2023, <https://www.kompas.id/baca/polhuk/2021/10/27/pengambilan-keputusan-tanpa-kehadiran-fisik-anggota-dpr-tetap-konstitusional>.

the Context of Facing Threats that Endanger the National Economy and/or Financial System Stability Becomes Law.

In these four laws, decision-making at both working and plenary meetings is carried out in a hybrid manner, even though Law No. 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council and the DPR's Rules and Regulations confirm that The DPR can make decisions if the meeting is attended by more than half of the members of the meeting, consisting of more than half of the faction elements. We can understand that virtual meetings can be held if they do not have an agenda for making decisions and besides that they are not regulated in the DPR's rules and regulations. However, what happened was that the virtual meeting was held to make decisions, this was problematic in terms of legality and gave rise to debate as to whether virtual presence was the same as the phrase "presence" as intended in Law No. 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Council Regional Representatives, and Regional People's Representative Council and DPR Rules of Procedure.

More specific arrangements are needed to regulate decision-making in virtual discussions or meetings. This aims to provide better results in decision-making in the DPR so that it is of high quality and will ultimately produce laws that follow formal and material aspects. Generally, the law formation process consists of 5 (five) stages: planning, drafting, discussion, approval/ratification, and promulgation. In normal situations, normatively, there are no problems in forming laws. However, emergency conditions in this context namely health emergencies, have made us aware that conventional methods used in normal situations experience difficulties when an emergency occurs, so that the stages The law formation stage needs to be formulated in such a way but without ignoring the formal and material aspects.

Democracy is widely regarded as an advanced political system, but it still faces significant challenges. One such challenge is democracy during a pandemic, where government decisions and policies to manage the crisis are often seen as conflicting with democratic values. and social freedom. The government's restrictions on society in the name of security trigger many people's assumptions that the government is trying to centralize power, including decision-making, which can be used for political interests. In fact, in several countries, the pandemic has strengthened the power of authority over society. They are stricter and use an autocratic approach using absolute top-down policies. However, several countries have also succeeded in implementing democratic values in handling the pandemic. Such as Germany, Norway, Finland, Taiwan, and South Korea. These countries pay attention to the needs of society and discuss with scientists and the community in the decision-making process. The government and society are trying to find solutions that can be done together.

6

Considering the previously outlined background, there are 2 (two) main issues to be raised in this article. First, how is the decline of democracy during the Covid-19 pandemic related to the formation of laws? Second, how will the role of technology and information solve the problem of lack of public participation in forming good laws in emergencies in the future, learning from the COVID-19 pandemic?

METHOD

⁶ "Pengaruh Pandemi Covid-19 Pada Nilai Demokrasi Di Masyarakat - IPSH," accessed November 24, 2023, <https://ipsh.brin.go.id/2021/01/13/pengaruh-pandemi-covid-19-pada-nilai-demokrasi-di-masyarakat/>.

The type of research used is Normative Juridical, using a conceptual approach that departs from the views and doctrines that have developed in the science of law and legislation, especially the concept of forming reasonable legislative regulations, then a case approach. (case approach) to analyze the problem of forming controversial laws during the health emergency due to COVID-19, and the statutory approach (statute approach) which is used to examine legislative regulations related to the problems raised in this case the formation of statutory regulations and state emergencies.

The technique used for gathering legal materials in this research is library research. This approach is employed to collect secondary data by studying both primary and secondary legal documents. Primary legal materials, which are considered authoritative, include legislation, official records or minutes from legislative processes, and jurisprudence.⁷

Meanwhile, secondary legal materials include legal-related publications not included in official documents. Publications about law include textbooks, legal journals, and comments or expert views on court decisions related to the research title, namely literature about legislation and state emergencies.

The data analysis method employed is qualitative analysis, which involves describing the research findings in words rather than using numerical data. The form of research results is diagnostic-prescriptive-analysis which is based on existing legal problems or events including the causal factors, which then provide solutions based on theoretical analysis and/or existing law.

RESULT AND DISCUSSION

The Setback of Indonesia Democracy in the COVID-19 Era

The COVID-19 pandemic has become a kind of test for every affected country and its government, especially those that adhere to democracy, because the pandemic not only impacts the health and economic sectors, but also on the political conditions of a country in formulating and implementing policies. Covid-19 has altered people's habits and behaviors. Politically, the pandemic has led to new regulations and ways of thinking for both governments and societies on local and global scales. It has also transformed parliamentary democracy, political parties, and the functioning of elections. As a democratic country, Indonesia should be careful in taking policies related to the pandemic without reducing democratic values.⁸

Carrying out the government's agenda during a pandemic is not as easy as expected because the pandemic situation is an obstacle where people's space for movement is limited for health reasons. When the COVID-19 pandemic hit Indonesia, democracy experienced a downward trend. Many surveys and indices commonly used to measure the quality of democracy illustrate this trend. In the annual Freedom in the World index released by Freedom House, Indonesia is labeled "partly free" with a democracy score of 61 on a scale of 0-100—consisting of a score of 30 for political rights (out of a maximum of 40) and 31 for civil liberties (out of maximum 60). Indonesia continues to grapple with issues such as systemic corruption, discrimination and violence against minority groups, separatist movements, and the politicization of religious blasphemy laws. This is the fourth year in a row that Indonesia has experienced a decline in the Freedom in the World index.⁹

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2019), 181.

⁸ "Pengaruh Pandemi Covid-19 Pada Nilai Demokrasi Di Masyarakat - IPSH."

⁹ "Indonesia: Freedom in the World 2020 Country Report | Freedom House," accessed November 25, 2023, <https://freedomhouse.org/country/indonesia/freedom-world/2020>.

Several decisions and policies taken by the government in dealing with the pandemic are often considered contradictory to the values of democracy and freedom of society. Based on The Economist Intelligence Unit (EIU) report which released the 2022 Democracy Index, Indonesia is ranked 54th globally, The EIU categorizes Indonesia as a flawed democracy, giving it a score of 6.71. As per the EIU's criteria, flawed democracies typically have fair and free electoral systems and respect fundamental civil liberties. Nevertheless, these nations struggle with major challenges, including limited press freedom, a political culture that inhibits criticism, low levels of citizen political participation, and poor government performance. The EIU Democracy Index is determined using five indicators: the electoral process and pluralism, the functioning of government, political participation, political culture, and civil liberties.¹⁰

The worsening of Indonesian democracy during the pandemic can be seen in many symptoms. At the policy level, the government of President Joko Widodo is violating the principles of democracy and decentralization of power, including the enactment of many regulations that are considered controversial, restrictions on freedom of expression, and dependence on political support from networks of security actors. In addition, the securitization of handling the pandemic, through the active involvement of the military, has the potential to leave behind a structure of norms and regulations that will make it difficult to return to normal conditions even after the pandemic is over. Meanwhile, on a local level, the COVID-19 pandemic has exacerbated signs of intolerance and undermined social unity. Incidents of religiously motivated violence and restrictions on religious practices continue to occur in various parts of Indonesia. This escalation of intolerance has the potential to fuel ideologies and bolster violent extremist movements.¹¹

The Covid-19 pandemic, which began affecting Indonesia in March 2020, has had an impact on the political processes. In a larger context, the pandemic is affecting Indonesia's ongoing political development process. This section discusses how the pandemic proves that democracy has gone on hiatus during the pandemic. The government has taken many controversial policies since the pandemic hit, such as revising the Mineral and Coal Law, issuing Government Regulations in Lieu of Law No. 1 of 2020 concerning State Financial Policy and Financial System Stability. for handling the COVID-19 pandemic which provides opportunities for corruption, increasing BPJS Health contributions, continuing to hold Regional Head Elections, revising the Constitutional Court Law, and the most controversial one is passing the Job Creation Law. These policies were taken without involving meaningful participation from the community under the pretext of the pandemic forcing restrictions on mobility. Consequently, a multitude of these policies faced public opposition, including resistance against the Mineral and Coal Law, objections to the rise in BPJS Health contributions, opposition to the 2020 simultaneous Regional Head Elections, and disapproval of the Job Creation Law.

Starting from the Revision of Law No. 4 of 2009 concerning Minerals and Coal, the civil society coalition that is part of #BersihkanIndonesia stated that the process of revising the Mineral and Coal Law is a form of guarantee (bailout) from the government to protect the safety of corporate elites, not the people and the environment. The Coronavirus Disease (COVID-19) crisis period also limits the space for public aspirations and participation to the

¹⁰ EIU, "Democracy Index 2022: Frontline Democracy and The Battle for Ukraine," 2023, 1–82, www.eiu.com.

¹¹ Imron Rasyid et al., "Pandemi, Demokrasi, Dan Ekstremisme Berkekerasan Di Indonesia," *The Habibie Center*, 2021, 3.

point that discussing and ratifying it in the midst of a pandemic is a procedural flaw.¹² The malpractice of ratifying the Mineral and Coal Bill during the pandemic is a form of carelessness. Because the formation of a law that should consider the prosperity of the Indonesian people, sets a bad precedent and is driven by the interests of corporations and the ruling elite.¹³

From the onset of the pandemic, the public has urged the government to enact a Government Regulation in Lieu of Law (Perppu) to address the myriad challenges posed by COVID-19. Subsequently, Perppu No. 1 of 2020 was issued, focusing on State Financial Policy and Financial System Stability for managing the pandemic. However, this Perppu has faced criticism, particularly regarding its prioritization of economic concerns and perceived provision of extensive discretionary powers coupled with legal immunity, lacking sufficient oversight mechanisms. Consequently, these aspects are seen as undermining the democratic rule of law principles. However, like it or not, this Perppu is needed to provide guarantees for public officials in making decisions in handling the pandemic, noting that the Perppu also contains shortcomings, especially in the aspect of monitoring and accountability if there is the misuse of the state budget which results in state losses.¹⁴

Furthermore, on September 1, 2020, the DPR and the President approved the Revision of the Constitutional Court Law, which faced significant criticism regarding both its content and the procedural aspects. Substantively, the revisions made were deemed non-urgent, especially considering the government's primary focus on managing the COVID-19 pandemic during that time. The constraints imposed by the Covid-19 pandemic, such as restrictions on gatherings and mobilization, significantly limited public participation. Prior to its approval, discussions were only conducted over two days on August 26 and 27, 2020, followed by a decision made during a plenary session on September 1, 2020.¹⁵

During the community's economic difficulties which have an impact on health, the President is disobeying the law which should not happen in a democratic rule of law country. The President ignores Supreme Court Decision No. 7P/HUM/2020 which states that the increase in BPJS contributions through Presidential Regulation No. 75 of 2019 violates the law because it is not based on adequate considerations from a juridical, sociological, and philosophical perspective. Through Presidential Regulation Number 64 of 2020 concerning the Second Amendment to Presidential Regulation Number 82 of 2018 concerning Health Insurance, the President has again increased BPJS Health contributions. This rule seems to replicate Presidential Regulation No. 75 of 2019 which the Supreme Court has canceled. The contribution increases of almost 100% applies to BPJS Health Class I, Class II and Class III Non-Wage Recipient Workers (PBPU) and Non-Worker Participants (BP). The increased BPJS contributions will worsen ordinary people's welfare during the pandemic. Rather than enhancing and bolstering the accessibility of BPJS services for the general populace, the

¹² "RUU Minerba Lanjut Di Tengah Pandemi, Berikut Kritikan Masyarakat Sipil - Mongabay.Co.Id : Mongabay.Co.Id," accessed November 25, 2023, <https://www.mongabay.co.id/2020/05/11/ruu-minerba-lanjut-di-tengah-pandemi-berikut-kritikan-masyarakat-sipil/>.

¹³ Herma Desvira, "Malapraktik Pengesahan Rancangan Undang-Undang Mineral Dan Batubara Di Kala Pandemi," *Jurnal Recths Vinding*, 2020, 4.

¹⁴ Fahmi Ramadhan Firdaus and Anna Erliyana, "Perlindungan Kebijakan Diskresi Dalam Penanganan Covid-19 Menurut Undang-Undang No. 2 Tahun 2020," *PALAR (Pakuan Law Review)* 6, no. 2 (2020): 39, <https://www.kompas.com/tren/read/2020/03/27/090200565/update-virus-corona-di-dunia--tembus-200-negara-529.614->.

¹⁵ "Masih Pandemi, ICW Minta Jokowi Tolak RUU MK Yang Sedang Dibahas Di DPR," accessed November 25, 2023, <https://news.detik.com/berita/d-5001962/masih-pandemi-icw-minta-jokowi-tolak-ruu-mk-yang-sedang-dibahas-di-dpr>.

President is increasingly burdening the people with increased BPJS contributions.¹⁶ In line with this, Parliament stated that increasing BPJS contributions during a pandemic was not appropriate, the government should wait for the economy and health to stabilize. The government places too much emphasis on economic affairs and BPJS governance, but forgets about social matters such as the impact of this pandemic.¹⁷

Regarding the issue of conducting regional head elections during the COVID-19 pandemic and still in the status of a health emergency, at the campaign stage there was an increase in violations of health protocols which showed a disregard for the rules that had been established, so that reluctance to comply with existing health protocol standards became a new taboo. in campaign implementation. Implementing democracy during a pandemic, especially the 2020 regional elections, gives rise to the assumption that political interests are more important than saving people's health. The policy to carry out Pilkada during the pandemic is a policy that does not side with the people because it continues to carry out Pilkada when the regulations for implementing Pilkada during the emergency period have not yet been fulfilled. Shifting and limiting campaign models during a pandemic, apart from being ineffective, also has an impact on reducing citizen involvement in democracy, thus having implications for political participation and various unconstitutional political practices such as coercion, ignoring health protocols, immorality, and money politics. So in the future special attention is needed to form a concept on how to implement the concept of political contestation in health emergencies such as the Covid-19 Pandemic.

18

The last instance is the enactment process of Law No. 11 of 2020 regarding Job Creation, which is perceived to lack transparency and hinder public participation in voicing their concerns. Since its inception within the government, the drafting process of the Job Creation Law has faced substantial criticism due to the absence of a definitive publication of the draft bill. Numerous versions of the draft have been circulating without clear confirmation from the government regarding the official version, leading to confusion among the public. The discussion process appeared rushed and capitalized on the conditions imposed by the Large-Scale Social Restrictions (PSBB). This raised significant public apprehension, particularly as pandemic-related restrictions limited public oversight of the bill's discussion. Consequently, avenues for advocacy, such as protests and demonstrations, were curtailed, leaving social media and the internet as the primary platforms for expressing concerns. Following discussions at the Legislative Body (Baleg), many labor unions refused to support the bill as they were not involved in its initial formulation. Even after its ratification at the Plenary Session on October 5, 2020, transparency remained lacking, with the final version of the bill not distributed to the present DPR members or the public. Multiple versions of the bill have been circulating, ranging from 1028 to 1187 pages, creating further ambiguity regarding its content and implications.

This condition illustrates two things related to the political process during the pandemic. First, it is increasingly difficult for citizens to voice their aspirations and be involved in decision-making during a pandemic. Second, parliament, which is supposed to accommodate the interests of the community and monitor government policies in

¹⁶ "Presiden Meninggalkan Rakyat Dan Melakukan Pembangkangan Hukum Dengan Kembali Menaikan Iuran BPJS - LBH Jakarta," accessed November 27, 2023, <https://bantuanhukum.or.id/presiden-meninggalkan-rakyat-dan-melakukan-pembangkangan-hukum-dengan-kembali-menaikan-iuran-bpjs/>.

¹⁷ "Parlementaria Terkini - Dewan Perwakilan Rakyat," accessed November 27, 2023, <https://www.dpr.go.id/berita/detail/id/28981/t/javascript>.

¹⁸ Alexsander Yandra, Adrian Faridhi, and Khuriyatul Husna, "Demokrasi Di Tengah Pandemi COVID-19," *Nakhoda: Jurnal Ilmu Pemerintahan* 21, no. 1 (2022): 81–82, <https://doi.org/10.35967/njip.v21i1.255>.

monitoring the pandemic, has also not been optimal.¹⁹ The Parliament must oversee various aspects of the COVID-19 response policy to ensure the constitutional health rights of citizens, as guaranteed by the 1945 Constitution and articulated in Law Number 36 of 2009 on Health. According to Article 5, Paragraph (1) of this law, individuals possess equal rights to access resources in the healthcare sector. Furthermore, Paragraph (2) asserts the right of everyone to receive safe, high-quality, and affordable healthcare services. Additionally, Paragraph (3) affirms the right of individuals to determine their required healthcare services independently and responsibly. Thus, healthcare is recognized as a universal right, irrespective of ethnicity, culture, religion, or economic status, with the government, local authorities, and communities accountable for implementing these health initiatives, as stipulated in Article 49, Paragraph (1) of Law Number 36 of 2009. One crucial area requiring parliamentary oversight is the availability of Personal Protective Equipment (PPE) for healthcare workers, which remains deficient in various hospitals,²⁰ whereas this is the government's responsibility based on Article 26 paragraph (2) and Article 13 of Law Number 36 Year 2014 concerning Health Workers.

Article 26 paragraph (2) stated "Head of Health Service Facilities as referred to in paragraph (1) and / or regional heads in charge of health service facilities must consider meeting the needs for clothing, food, shelter, and location, as well as work safety and security for health workers. with the provisions of the Legislation." Article 13 stated "The Government and Local Governments are required to meet the needs of Health Workers, both in number, type and competency equally to ensure the sustainability of health development." Such an issue should never have arisen, given that doctors, nurses, and other medical staff are at the forefront of the battle against Covid-19. Insufficient Personal Protective Equipment (PPE) heightens the risk of medical personnel contracting COVID-19, which is highly undesirable as it could exacerbate the pandemic.

Based on Indonesia's experience in dealing with the pandemic in the first year, the crisis caused by COVID-19 has accelerated autocratization tendencies in politics in Indonesia. Apart from increasingly limited civil participation, this tendency can be seen in the government's choice to prioritize the economic agenda over public health or civil rights. The pandemic has also pushed the government to expand the military's role and intelligence in people's daily lives. This reminds us of the New Order authoritarian era. In the second year of 2021, the pandemic allowed the government to limit civil liberties further and increasingly use the military and intelligence in society in the name of political stability. This effort can be made due to the government regime which has a large coalition in parliament and does not have an effective opposition. This condition is at odds with the democratization agenda which requires effective control of the government in power.²¹

Resolving Lack of Participation Public in the Law-Making Process in the COVID-19 era (State of Emergency) Through Technology and Information

The pandemic has brought a new era for people in the world and Indonesia to adapt their habits to limited mobility due to diseases. During this pandemic, the government does not seem to have a clear road map regarding policies that have changed during the pandemic.

¹⁹ Heri Kusmanto, Fredick Broven Ekayanta, and Saipul Bahri, "Dampak Pandemi Covid-19 Terhadap Demokratisasi Dan Desentralisasi Di Indonesia," *Langgas: Jurnal Studi Pembangunan* 1, no. 1 (2022): 13, <https://doi.org/10.32734/ljsp.v1i1.8269>.

²⁰ "APD Yang Terus Menerus Kurang | Republika Online," accessed November 25, 2023, <https://news.republika.co.id/berita/q83350328/apd-yang-terus-menerus-kurang?>

²¹ Kusmanto, Ekayanta, and Bahri, "Dampak Pandemi Covid-19 Terhadap Demokratisasi Dan Desentralisasi Di Indonesia," 14.

Apart from that, the government must also accommodate the implementation of democracy in Indonesia, including the 2020 Simultaneous Regional Elections and the duties of state institutions amidst social restrictions. Of course, there must be new strategic steps towards adapting to democracy in Indonesia.

These changes are generally a natural process as a form of flexibility and adaptation to emergency or critical situations that occur. For instance, the enforcement of Emergency PPKM faced criticism from the public as it restricted their livelihoods, appearing undemocratic since it was not entirely supported by the community. However, the government's policy formulation is based on the interests of the people, namely so that they are not exposed to Covid-19, which is increasingly spreading violently.

In the case of the Emergency PPKM policy, the policy formulation implemented by the government does not seem to be based on the aspirations of the people. However, the government's policy decisions refer to the existing situation, where positive cases of Covid-19 are increasingly widespread and restrictions on community activities are needed to control it. If community activities are not restricted, it will pose a danger of spreading the virus to the community itself.

A large amount of homework is seen during the pandemic, especially in the legislative role of the House of Representatives has been highlighted during the pandemic. The process of law formation has seen limited public engagement, with Parliament often following the government's lead without significant checks and balances. The executive branch has assumed a more prominent position, evident in the frequent use of Article 22 of the 1945 Constitution over Article 12. Article 22, Paragraphs (1) and (2) grant the president the power to issue government regulations in lieu of laws, which must be approved by Parliament through hearings.²²

The COVID-19 pandemic forces most people to live with physical mobility restrictions, leading them to enter the digital world. The digital world is being transformed into the real world so that educational activities, work, buying and selling, expressing opinions and expressions can easily be carried out online. This opportunity is one solution that can be implemented to accommodate public participation in the process of laws making during an emergency, one of the cases being during the Covid-19 pandemic where space for public mobilization is limited for health safety reasons.

The size of the territory, distance, access, and population also pose challenges for the government and the DPR in facilitating public participation in the laws making. This phenomenon ultimately encourages the public to channel their aspirations through social media or what is known as "viral-based policy". In the end, to create meaningful participation, the legislators revised Law No. 12 of 2011 concerning the Establishment of Legislation into Law No. 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Law-Making Process, to revamp the mechanism for genuine public engagement rather than it being a mere formality is crucial. Specifically, in Article 96, Paragraph (1), it is stipulated that the public has the right to offer input orally or through written means at all stages of law and regulation process, with Paragraph (2) further specifying that this input can be submitted through both online and offline channels.

²² "Pakar Nilai Pembentukan UU Di Masa Pandemi Covid-19 Kurang Partisipasi Publik - Nasional Tempo.Co," accessed November 24, 2023, <https://nasional.tempo.co/read/1531284/pakar-nilai-pembentukan-uu-di-masa-pandemi-covid-19-kurang-partisipasi-publik>.

The second entitlement, known as the right, to be considered, is outlined in Article 96, Paragraph (7) of Law No. 13 of 2022 states that the results of public consultations must be considered during the planning, drafting, and deliberation of laws and regulations. Zainal Arifin Mochtar asserts that including public opinion in lawmaking reflects respect for the people's sovereignty. Therefore, the theory of law formation holds that public participation is fundamental to the legislative process. (Constitutional Court Decision Number 91/PUU-XII/2020 concerning Formal Review of Law Number 11 of 2020 regarding Job Creation, p.83).

Thirdly, the right to be informed is elucidated in Article 96, Paragraph (8) of Law No. 13 of 2022. This provision enables legislators to elucidate to the public the outcomes of discussions regarding community input. It follows that legislators are tasked with establishing channels for receiving feedback on public input and aspirations, a task that can be facilitated through the utilization of information technology.

One way to accommodate meaningful, technology-based participation is to use an online participation portal, often called e-participation, to create meaningful public debate between the community and policy formulators. Indeed, not all problems are solved by digitalization. However, this choice is reasonable, considering that 90.75% of Indonesia's population is reported to be smartphone users. The problem is that the features on sites belonging to ministries and state institutions do not fully support realizing meaningful (digital) participation. For example, the House of Representatives (DPR) released the Public Participation in Law Drafting (SIMAS PUU) portal in 2017. However, most content is one-way and does not allow citizens to provide direct feedback. Another problem with e-governance portals is that many similar sites and applications belonging to each ministry are not yet integrated with each other. Instead of making it more accessible, this makes it difficult and confusing for ordinary people to choose a portal to convey their aspirations.²³

Even though features still need to be improved, using the e-participation portal must be a priority because it brings various other benefits to the government and the public. First, in a cost-benefit analysis, updating the e-participation feature will minimize the waste of state budgets for offline public consultations which are often expensive, have minimal benefits, and are often mere formalities. Second, from a social justice perspective, e-participation makes policy dialogue more inclusive because it can involve citizens in 3T areas (outermost, frontier, and underdeveloped). Third, using e-participation also minimizes the harmful effects often encountered in offline consultations, for example, the groupthink phenomenon (simply following the majority view), and forum manipulation by inviting participants partially.²⁴

Technology is a necessity nowadays to support rapid development and progress. The use of technology in forming laws brings benefits, especially in public participation, indeed many European countries view technology and information as vital components in effective regulation. These advantages encompass the following: Firstly, given the extensive array of regulations spanning various sectors and institutions, technological assistance is essential for the seamless updating and retrieval of regulatory information. Complex regulations can be efficiently managed with technological support. Secondly, online public consultations can be enhanced through discussion forums and improved access to information, including

²³ "Jangan Tunggu Viral Dulu: Pentingnya Portal 'e-Participation' Untuk Gandeng Warga Dalam Kebijakan Publik," accessed December 3, 2023, <https://theconversation.com/jangan-tunggu-viral-dulu-pentingnya-portal-e-participation-untuk-gandeng-warga-dalam-kebijakan-publik-191214>.

²⁴ Ibid.

details on the law formation process. Thirdly, electronic consultations can be facilitated by establishing a website portal to bolster the government and parliament in offering interactive services to aid the decision-making process in law formation.²⁵

The Indonesian government has endeavored to advance information technology through policies aimed at digital transformation across various community engagements, including the digitization of legislation. Evidence of this commitment can be found in the 2020-2024 RPJMN, several Presidential directives, and the implementation program for digital transformation. The 2020-2024 RPJMN emphasizes the significance of digital transformation as a fundamental infrastructure for realizing the Nawa Cita mission and attaining the objectives of Indonesia's vision 2045, which envisions the nation as sovereign, advanced, just, and prosperous. Regulation of information systems in statutory regulations is significant to regulate. How a system can support the formation of better laws and regulations. Not only does it support harmonization of the substance of regulations, it can also support open opportunities for public participation and how to carry out better and more transparent administration or archiving of legal and regulatory documents.²⁶

The challenges to implementing democratic principles will become increasingly steep in the future. Many political and government agendas must be completed by the government amidst existing limitations. The most crucial thing is of course the 2024 election agenda which includes the simultaneous presidential and legislative elections. The political temperature leading up to the democratic party is predicted to escalate from year to year, until it reaches its peak in 2024. This is a tough challenge for Indonesian democracy to remain committed to the principle of the greatest good of society in the practice of politics and government.

The democratic problems faced in the next few years are projected to become even more massive and sharp. If we do not serve Pancasila and the constitution, it is feared that democracy will fall into a phenomenon called "democracy without demos", namely political and government practices that ignore the aspirations of the people. Of course we don't want to get into that condition. We need to encourage democracy to continue to move progressively (progressive democracy).

CLOSING

The pandemic must not diminish democratic values and at the same time, democracy must not be an obstacle to us being able to defeat the pandemic. State institutions should carry out or have good adaptability to respond to the needs and desires of the community during the pandemic era. Likewise, with the public, the rapid presence of information technology in the digital world is used to convey aspirations in forming laws. The act of communicating aspirations and sentiments via social media remains clouded by the looming risk of cyberattacks and the potential for legal repercussions. Digital platforms are expected to strengthen the security of their users and uphold human rights so that people can enjoy freedom of speech and expression in the digital realm. On the lawmaker's side, public participation through the digital world must be interpreted as meaningful participation that must be listened to, considered, and explained. The weakening of civil space during the COVID-19 pandemic must be a common concern to prevent injuring the right to freedom of

²⁵ Bayu Dwi Anggono, *Perkembangan Pembentukan Undang-Undang Di Indonesia* (Jakarta: Konstitusi Press, 2014), 193.

²⁶ "Perlunya Memperjelas Pembentukan Peraturan Berbasis Elektronik," accessed December 1, 2023, <https://www.hukumonline.com/berita/a/perlunya-memperjelas-pembentukan-peraturan-berbasis-elektronik-lt6241af8083f44/>.

speech and expression. Concrete action is needed to encourage democratization, especially in the formation of laws during times of emergency. Democracy must not experience setbacks or be deliberately postponed due to the pandemic. Government consistency in implementing democracy is essential, especially in maintaining public trust in the government and democracy itself.

BIBLIOGRAPHY

Books:

Anggono, B. D. (2014). *Perkembangan Pembentukan Undang-Undang di Indonesia*. Konstitusi Press.

Marzuki, P. M. (2019). *Penelitian Hukum*. Kencana.

Rasyid, I., Efendi, J., Peranto, S., & R, M. (2021). Pandemi, Demokrasi, dan Ekstremisme Berkekerasan di Indonesia. *The Habibie Center*, 1–48.

Journal Articles:

Desvira, H. (2020). Malapraktik Pengesahan Rancangan Undang-Undang Mineral Dan Batubara Di Kala Pandemi. *Jurnal Recths Vinding*, 1–4.

Firdaus, F. R., & Erliyana, A. (2020). Perlindungan Kebijakan Diskresi Dalam Penanganan Covid-19 Menurut Undang-Undang No. 2 Tahun 2020. *PALAR (Pakuan Law Review)*, 6(2), 23–41.

Hidayaturrahman, M., Kusumawati, I. R., Sudarman, Ubaid, A. H., & Alfiyah, N. I. (2022). The Successes and Failures of Three Democracies in Resolving Covid-19: Indonesia, The United States of America, and South Korea. *Social Science, Education and Humanities Research*, 642(Icoposdev 2021), 63–70. <https://www.atlantispress.com/proceedings/icoposdev-21/125970348>

Kusmanto, H., Ekayanta, F. B., & Bahri, S. (2022). Dampak Pandemi Covid-19 terhadap Demokratisasi dan Desentralisasi di Indonesia. *Langgas: Jurnal Studi Pembangunan*, 1(1), 9–17. <https://doi.org/10.32734/ljisp.v1i1.8269>

Lubis, B. (2021). Implementasi Kebijakan Penanganan Pandemi Covid-19 Di Kota Cimahi Provinsi Jawa Barat. *Jurnal Media Birokrasi*, 27–38. <https://doi.org/10.33701/jmb.v3i1.2469>

Yandra, A., Faridhi, A., & Husna, K. (2022). Demokrasi di Tengah Pandemi COVID-19. *Nakhoda: Jurnal Ilmu Pemerintahan*, 21(1), 70–84. <https://doi.org/10.35967/njip.v21i1.255>

Internet or Website:

APD yang Terus Menerus Kurang / *Republika Online*. (n.d.). Retrieved November 25, 2023, from <https://news.republika.co.id/berita/q83350328/apd-yang-terus-menerus-kurang?>

Infeksi Emerging. (n.d.). Retrieved December 1, 2023, from <https://infeksiemerging.kemkes.go.id/dashboard/covid-19>

Jangan tunggu viral dulu: pentingnya portal “e-participation” untuk gandeng warga dalam kebijakan publik. (n.d.). Retrieved December 3, 2023, from <https://theconversation.com/jangan-tunggu-viral-dulu-pentingnya-portal-e->

participation-untuk-gandeng-warga-dalam-kebijakan-publik-191214

Masih Pandemi, ICW Minta Jokowi Tolak RUU MK yang Sedang Dibahas di DPR. (n.d.). Retrieved November 25, 2023, from <https://news.detik.com/berita/d-5001962/masih-pandemi-icw-minta-jokowi-tolak-ruu-mk-yang-sedang-dibahas-di-dpr>

Pakar Nilai Pembentukan UU di Masa Pandemi Covid-19 Kurang Partisipasi Publik - Nasional Tempo.co. (n.d.). Retrieved November 24, 2023, from <https://nasional.tempo.co/read/1531284/pakar-nilai-pembentukan-uu-di-masa-pandemi-covid-19-kurang-partisipasi-publik>

Parlementaria Terkini - Dewan Perwakilan Rakyat. (n.d.-a). Retrieved December 1, 2023, from [https://www.dpr.go.id/berita/detail/id/38163/t/Kebijakan Pemerintah dalam Menangani Pandemi Harus Sejalan dengan Prinsip Demokrasi](https://www.dpr.go.id/berita/detail/id/38163/t/Kebijakan%20Pemerintah%20dalam%20Menangani%20Pandemi%20Harus%20Sejalan%20dengan%20Prinsip%20Demokrasi)

Parlementaria Terkini - Dewan Perwakilan Rakyat. (n.d.-b). Retrieved November 27, 2023, from <https://www.dpr.go.id/berita/detail/id/28981/t/javascript>

Pengambilan Keputusan Tanpa Kehadiran Fisik Anggota DPR Tetap Konstitusional - Kompas.id. (n.d.). Retrieved December 1, 2023, from <https://www.kompas.id/baca/polhuk/2021/10/27/pengambilan-keputusan-tanpa-kehadiran-fisik-anggota-dpr-tetap-konstitusional>

Pengaruh Pandemi Covid-19 pada Nilai Demokrasi di Masyarakat - IPSH. (n.d.). Retrieved November 24, 2023, from <https://ipsh.brin.go.id/2021/01/13/pengaruh-pandemi-covid-19-pada-nilai-demokrasi-di-masyarakat/>

Perlunya Memperjelas Pembentukan Peraturan Berbasis Elektronik. (n.d.). Retrieved December 1, 2023, from <https://www.hukumonline.com/berita/a/perlunya-memperjelas-pembentukan-peraturan-berbasis-elektronik-lt6241af8083f44/>

Presiden Meninggalkan Rakyat dan Melakukan Pembangkangan Hukum Dengan Kembali Menaikan Iuran BPJS - LBH Jakarta. (n.d.). Retrieved November 27, 2023, from <https://bantuanhukum.or.id/presiden-meninggalkan-rakyat-dan-melakukan-pembangkangan-hukum-dengan-kembali-menaikan-iuran-bpjs/>

RUU Minerba Lanjut di Tengah Pandemi, Berikut Kritikan Masyarakat Sipil - Mongabay.co.id : *Mongabay.co.id.* (n.d.). Retrieved November 25, 2023, from <https://www.mongabay.co.id/2020/05/11/ruu-minerba-lanjut-di-tengah-pandemi-berikut-kritikan-masyarakat-sipil/>

Reports:

EIU. (2023). *Democracy Index 2022: Frontline Democracy and The Battle for Ukraine*. 1–82. www.eiu.com.

Indonesia: Freedom in the World 2020 Country Report | Freedom House. (n.d.). Retrieved November 25, 2023, from <https://freedomhouse.org/country/indonesia/freedom-world/2020>

