

# QUALITY OF LEGISLATIVE PROCESS DURING THE TIME OF THE PANDEMIC

Ibnu Sina Chandranegara<sup>\*</sup>, Dwi Putri Cahyawati<sup>\*\*</sup>

<sup>\*</sup> Corresponding author, University of Muhammadiyah Jakarta, South Jakarta, Indonesia  
Contact details: University of Muhammadiyah Jakarta, Jl. KH Ahmad Dahlan, Cirendeui, South Jakarta, Indonesia  
<sup>\*\*</sup> University of Muhammadiyah Jakarta, South Jakarta, Indonesia



## Abstract

### How to cite this paper:

Chandranegara, I. S., & Cahyawati, D. P. (2023). Quality of legislative process during the time of the pandemic. *Corporate Law & Governance Review*, 5(2), 100–108.  
<https://doi.org/10.22495/clgrv5i2p11>

Copyright © 2023 by Authors

This work is licensed under a Creative Commons Attribution 4.0 International License (CC BY 4.0).  
<https://creativecommons.org/licenses/by/4.0>

ISSN Online: 2664-1542  
ISSN Print: 2707-1111

Received: 06.12.2022  
Accepted: 01.09.2023

JEL Classification: K10, K20, K23, K40  
DOI: 10.22495/clgrv5i2p11

Due to opaque and hurried deliberation during the COVID-19 incident, Indonesia's legal system has been low-quality. Matched to Rishan's (2022) and Chandranegara and Cahyawati's (2023) reports, there has been a decline in the quality of the legislative process due to the conflict of interest of the lawmakers. During the COVID-19 pandemic, laws are frequently created with little input and strict respect for procedural rules. This paper intends to answer two research questions, first, how and why the market's power is interested in controlling the legal system, and second, what scenario would minimize and prevent the consequences of the influence. This study uses a normative legal research method with a conceptual approach. The study demonstrates that realizing the fulfilment of economic objectives can be achieved through the legislative process. As a result, the legislative process may lose its purpose. It is possible to hold this hostage starting with corrupt activities like bribery or political donations, which are typically linked to corruption, as well as a model of cognitive bias since lawmakers are subtly connected to corporate interests. As a result, lawmakers must stop business actors from having conflicts of interest.

**Keywords:** Quality of Lawmaking, Public Health Emergencies, Legislation, Special Interest

**Authors' individual contribution:** Conceptualization — I.S.C. and D.P.C.; Methodology — I.S.C. and D.P.C.; Data Curation — I.S.C. and D.P.C.; Formal Analysis — I.S.C.; Resources — I.S.C.; Writing — Original Draft — I.S.C. and D.P.C.; Writing — Review & Editing — I.S.C.

**Declaration of conflicting interests:** The Authors declare that there is no conflict of interest.

## 1. INTRODUCTION

In recent years, morally repugnant legislation has drawn much attention in Indonesia. In contrast, numerous countries have attempted to identify the most effective methods of controlling COVID-19; the government and the House open more avenues for extending state authority and promoting rent-seeking interests (Best, 1987; Chandranegara, 2021; Indrati, 2007; Larkin, 2016). The main focus of the criticism, however, turned out to be how the quality of the legislative process violated constitutional morality (Chandranegara & Cahyawati, 2023; Frohnen & Carey, 2016; Rishan, 2022). During the pandemic, the legislative process frequently proceeds with little input and strict respect for the rules (Chandranegara, 2020a).

Crucial legislation, including Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009

concerning Mineral and Coal Mining (hereinafter, Law No. 3 of 2020) and Law No. 11 of 2020 concerning Job Creation (hereinafter, Law No. 11 of 2020) were tested in the lawmaking process aspect through a constitutional review mechanism because it was made with minimal participation. The two laws are a component of a regulatory reform strategy that started in 2019 when President Joko Widodo began his second term in office. The President believed that current laws and regulations hampered the complexity of doing business (Redi & Chandranegara, 2020). As a result, Indonesia's investment climate is considered ineffective, inefficient, and lacking in legal certainty due to the long and complicated licensing system created by the current laws and regulations. In the end, it has an impact on international investors in Indonesia.

In the end, people assume that the law is just a game of the haves and political interests compared to how legal dogmatics explain a legal product (Balleisen & Moss, 2009). At the same time, the stigmatisation of the laws and regulations born in this way can undermine the trust of legal institutions structurally, socially, and morally. This condition is known as a regulatory capture or where the power of capital can “hostage” the laws and regulations to side with business interests rather than public interests (special interests) (Carpenter & Moss, 2013). Therefore, two elements in the lawmaking process, namely, legislators and the law of the lawmaking process, play an essential role. The legislator is the subject of authority, while the law of the law-making process is the due process of lawmaking. For Ulrich Karpen, these two instruments have a significant role in producing the laws and regulations that meet the criteria for good laws and regulations, the quality of lawmaking procedures, and the cost of making laws (Karpen, 2008; Karpen & Xanthaki, 2017).

This study aims to answer two research questions:

*RQ1: How and why is the market's power interested in controlling the legal system?*

*RQ2: What scenario would minimize and how to prevent the consequences of the influence.*

The current paper followed the logical sequence of notions' appearance. The structure of this paper is as follows. Section 1 presents the introduction of the gap between the facts that the legislative process has to be carried out with maximum participation. Still, during the pandemic, the legislative process in Indonesia limits public involvement instead. Section 2 reviews the relevant literature regarding the quality of the legislative process. Section 3 analyses the methodology used to conduct normative legal research, while Section 4 deals with the case analysis of Indonesia's legislative process during the pandemic. Finally, Section 5 discusses how to limit the regulatory capture, followed by Section 6, which concludes the paper.

## 2. LITERATURE REVIEW

The state's style influences the law, and the laws are known as legal products and political products (Mahfud, 2009; Wheare, 1951). This doctrine put laws as a product of the political configuration that worked in its time (Waldron, 1999). This condition explains that policymakers have consciously made laws with many understandings and interests (Asshiddiqie, 1994; Wibisana, 2017). Stigler (1971) said that regulation is acquired by the industry and is designed and operated primarily for its benefits. It explains that regulations not only reflect government intervention, such as regulations, standards, or permits, which are not intended for the public interest but serve the interests of specific groups/industries or are well-known as regulatory capture.

There are at least two ways and motivations for legislators being captured; first, through the model known as the materialist. This model is created through corrupt practices such as bribery or political donations, which are generally associated with corruption (Carpenter & Moss, 2013; Levine & Forrence, 1990). Second, through the cognitive bias

model, commonly known as the non-materialist model. This model arises because legislators begin to think or internalise themselves as actors of capital power over the industry or market, which are the objects they regulate (Carpenter & Moss, 2013). These two models have a corrosive effect on the legislative process in the long term (Boehm, 2007; Laffont & Tirole, 1991; Makkai & Braithwaite, 1992).

In some doctrines, it has been explained that if the interests of a group are significant and the number of groups is small, then the group will have a better position in influencing the course of the regulation (Balleisen & Moss, 2009). For example, business groups have a significant per capita interest compared to consumers, workers, or other groups and have extensive resources to control regulations. Thus, even though legislation's original purpose is to protect the public interest, this goal is not achieved because, in the regulatory process, the object that wants to be regulated instead turns to control or dominate the regulator. Therefore, the conception is that all members of society are economically rational; therefore, everyone will pursue self-interest to the point where the personal marginal benefit from lobbying the regulator is only equal to the private marginal cost. In this view, legislation has the potential to distribute wealth. Therefore, people either lobbied for legislation to increase their wealth or to ensure that regulation was ineffective in reducing their wealth. Second, in the end, the legislators have no independent role to play in the regulatory process, and interest groups fight for control of the government's coercive power to achieve the distribution of wealth they desire. So, there are at least four things that are expected from this “hostage” process, among others: 1) control of the laws and regulations and their forming bodies; 2) success in coordinating the activities of regulatory bodies with theirs so that their interests can be satisfied; 3) neutralise or ensure the non-existent or mediocre performance of regulatory bodies; 4) the interaction process with regulators gave regulators a mutually beneficial perspective of sharing (Balleisen & Moss, 2009; Carpenter & Moss, 2013).

From an economic perspective, government intervention is needed if there is a market failure. Economics usually refers to the four conditions that indicate the existence of this market failure. First is the presence of monopoly or abuse of a dominant position. In contrast to a competitive market, where the price is determined when the marginal cost equals the marginal benefit, in a monopoly market, the price is determined by business actors above the marginal cost so that the price becomes too high (Cooter & Ulen, 2012). As a result, the goods are too little for the consumer. Although this situation is advantageous for corporate players, it eventually hurts consumers and society, as evidenced by deadweight loss. Given these circumstances, it is evident that the market is dysfunctional and that government action is necessary (Levine & Forrence, 1990).

Second, market failure also occurs when there are severe informational asymmetries. Such informational mismatches might prevent the efficient exchange of products or market activities, as one party may gain only by taking advantage of the other party's ignorance. Although the market process can

sometimes resolve this information problem, in many instances, it can only be determined by government involvement (Cooter & Ulen, 2012). Government intervention is possible from two angles to address informational disparities. On the one hand, the government can enact many laws that mandate transparency. With this clause, the government imposes various responsibilities on corporate actors/activities to inform the public about the price, identity, composition, quality, or quantity of specific items produced/ marketed or actions taken. On the other hand, the government can also enact many laws to forbid or regulate false information. Information submitted freely by the parties and information that must be provided is subject to this control (Ogus, 2004).

Third, public goods can be a manifestation of market failure. Cooter and Ulen (2012) compare and contrast private and public goods. Public goods have non-rivalrous qualities, which means that one person's use of an item does not limit its availability for others, and non-excludability means that it is costly to stop other people from using the products.

Fourth, an externality is yet another type of market failure. Prices that do not take into account environmental expenses are an indication of this state. Externalities cause the market to overlook all associated costs incurred by a production process. Since the prices people pay do not correspond to the actual cost of a good or activity, externalities encourage people to make poor judgments (Holmstrom, 2020). Everyone, both producers and consumers, fails to consider all the costs of their decisions and actions because there are components of costs that experience externalisation and become a burden on society in general. In short, externalities reflect behaviour that wants to reap personal benefits but is unwilling to bear the costs of obtaining those benefits (Anton et al., 2001).

The rationale for government action listed above can be categorized as economic justification. Government intervention can be justified because it benefits the economy, for example, by addressing market flaws and taking the shape of regulations and tools controlled by the government. But it is also essential to consider the public choice theory to understand how different government initiatives might arise. According to Ogus (2004), public choice theory aims to clarify how individual preferences are reflected in voting processes or other policies used by public institutions to generate collective decisions or assess the effects of those decisions on social welfare. According to this hypothesis, market-based behaviour and political behaviour are not all that dissimilar from one another, both work to increase each person's profits. The fundamental interaction in politics is the exchange of goods and interests, which forms the backbone of the market system (Ogus, 2004). At least three groups can be used to explain this theory of public choice: those who see regulation as an extension of the interests of interest groups, those who see regulation as a manifestation of the interests of bureaucrats, and those who see regulation as a way for regulators to pursue financial gain.

The first group sees that government intervention, such as regulations, standards, or licensing, is not intended for the public interest but instead serves the interests of specific groups/

industries. According to Stigler (1971), the industry acquired the regulation designed and operated primarily for its benefit. The second group of public choice theories seeks to explain that government intervention is born or formed because of the influence of the bureaucracy. Initially, this group's view stemmed from the standpoint of Niskanen (2001), who compared bureaucrats to employees in private organisations. According to Niskanen (2001), bureaucrats and employees of private companies are distinguished not because of differences in character but because of differences in incentives and restrictions that are only owned by bureaucrats and not owned by employees of private companies.

In contrast to private companies, whose behaviour is controlled by consumers, the behaviour of bureaucrats is controlled by bureaucratic leaders and not by the general public. Thus, bureaucrats who buy from this bureaucratic "market" are the leaders of the bureaucracy, namely politicians, as the only "buyers" of the services of the bureaucrats. (Niskanen, 2001). On the other hand, bureaucrats also enjoy a monopoly position as the market's sole sellers. Both bureaucrats and politicians have unique positions as "sellers" and "buyers" of monopolies, and their relationship involves the promise of results measured against a budget. It means that both bureaucrats and politicians will ultimately only focus and be interested in the amount of money budgeted (Ogus, 2004).

The third group of public choice theory sees government intervention as entirely useless for the public interest and is only a source of income or rent for the government. This view, for example, is represented by de Soto (2000, as cited in Shleifer & Vishny 1998), states: "an important reason why many of these permits and regulations exist is probably to give officials the power to deny them and to collect bribes in return for providing the permits" (pp. 81-82). A more dramatic opinion is also expressed by Sun (2002, as cited in Jacobs & Coolidge (2006), which states that: "when someone has finally decided to invest, he then is subjected to some of the worst treatment imaginable" (pp. 4-5).

According to the above, business requirements, laws, or permits, for instance, are issued by the government to collect money from business actors rather than to regulate or direct enterprises to perform for the public benefit. If greater complexity is required, licensing increases because more complexity creates more opportunities for business players to be asked for bribes.

### 3. RESEARCH METHODOLOGY

It is a doctrinal legal research method that uses secondary data. This method, also called the "black letter" methodology, focuses on the letter of the law rather than the law in action (Jacobstein & Mersky, 1985). Using this method, we compose a descriptive and detailed analysis of legal rules found in primary sources (cases, statutes, or regulations). This method aims to gather, organize, and describe the law; provide commentary on the sources used, and then identify and describe the underlying theme or system and how each source of law is connected.

For instance, it used the Indonesian 1945 Constitution, Law No.12 of 2011 concerning

the Formation of Legislation (hereinafter, Law No. 12 of 2011), Law No. 3 of 2020, Law No. 11 of 2020, Constitutional Court Decisions No. 91/PUU-XVIII/2020, Decisions No. 60/PUU-XVIII/2020 and other Constitutional Court Cases in other states. In addition, it also used a conceptual approach before the data were analysed qualitatively. The study used only secondary data. A positive legal inventory became an initial and primary activity to conduct research and assessment in the study.

#### 4. RESULTS: QUALITY OF LEGISLATIVE PROCESS DURING THE TIME OF THE PANDEMIC IN INDONESIA

Several variables influence the quality of the legislative process, these are the degree of democracy, which correlates with the political elite's commitment to democracy and the rule of law (Drinóczy, 2015). The level of democracy or participation, however, is one of the factors that fundamentally affect the quality of legislation, both from the aspect of contents and procedures (Vanterpool, 2007).

These levels of democracy affect legislation and its quality in at least three manners. Firstly, there is less participation in legislation because of the low level of institutional trust and because the political decision-maker perceives participation and involvement as an obstacle to efficient governance required by the newly developed "guided democracy". Thus, state effectiveness appears to be more significant than participation. Secondly, the legislation merely exploits the constitutional and legislative authority of political forces that hold a resounding majority in the parliament, as directed democracy so demands, to sway the political perception and reliance of other power branches and independent centres (Pinelli, 2011). Thirdly, and as a consequence, the significance of the intermediary system of constitutional democracy, the importance of exchanging opinions, the consensual nature of democracy, and the material conditions of quality legislation decrease in some states, which implies the change and evolution of the values that we have thought to be an intrinsic part of constitutional democracy. The power does not compensate for the potential deficit of democracy by deepening it, by providing effectively more of it (Drinóczy, 2015), but by the reinterpretation of democracy and by the retuning of the importance of its essential components, which does not eliminate the democracy itself in this phase, yet significantly reinterprets it and in certain respect makes it formal (Voermans, 2009; Xanthaki, 2001).

Indonesia's rule of law is largely absent during the pandemic, allowing dominant politico-business elites to plunder resources and accumulate power. Moreover, the issuance of highly controversial regulations during the pandemic shows disregard for the law-making process and exploitation of public health crises.

The ratification of Law No. 3 of 2020 on June 10, 2020, drew criticism from various parties, including non-governmental organisations and environmental activists. Since the law's enactment, seven judicial review lawsuits have been registered, three of which have examined its lawmaking process (Chandranegara, 2021). Several parties and applicants for judicial review alleged that Law No. 3 of 2020

solely supports coal mining firms. Additionally, the law disregards the locals' concerns regarding mining operations and environmental protection. Additionally, no district residents participated in the discussion from the planning meeting until it was ratified. According to Article 96 of Law No. 12 of 2011, the general people are entitled to express aspirations verbally or in writing. For instance, it took the House only three months to pass it in May 2020, which is extraordinarily speedy. The modified Mining Act Bill was one of the divisive measures whose passage the House had hoped to hasten before the 2014-2019 legislative session ends in September. However, this bill's consideration was put on hold in reaction to student demonstrations. The administration restored the statute thanks to COVID-19's early 2020 breakaway and the limitations it imposed on public protest.

For government and businesses, the existing Mining Act was seen as unable to provide legal certainty for mining activities. (Harsono, 2020) As claimed by Minister of Energy Arifin Tasrif, the revisions aim to address this problem and would maximise benefits for the people (Petriella, 2020). Additionally, it was asserted that the changes would increase the value of investment opportunities and facilitate commercial transactions for miners, attracting additional capital to the mining sector. One of the fundamental changes is outlined in Article 35 of Law No. 3 of 2020, which abolishes local governments' power to grant mining licenses, including for small-scale mining by local populations (Article 67), implying that this procedure has been centralised. According to the government, reducing roadblocks and bureaucracy was done to hasten the permit application process for mining companies. Centralising mining permits, however, might be an effort to consolidate rent-seeking activities. As stated in Article 47, Law No. 3 of 2020 permits more extended contracts and ensures that mining business permits will be renewed for 20 years. Article 47, before the change, only allowed for extending business permits. Article 83 of Law No. 3 of 2020 additionally changes the word "may be given" to "guaranteed" to renew special mining business permits.

These updated regulations for mining activities are, in fact, advantageous to commercial interests. The 2020 Mining Act, for instance, was praised by the Indonesian Coal Mining Association for improving "long-term legal and investment stability" (Harsono, 2020). However, these corporations have created 87,000 hectares of coal mine voids (Jong, 2020). Automatic lease renewals will stop these abandoned mining mines from being reopened. It has impacted the environment and the lives of local populations, contradicting the market economic principles of sustainable development. Instead of the government's intention to create a liberal political-legal structure to serve the market economy, Law No. 3 of 2020 furthers rent-seeking interests and promotes illiberal legalism. Additionally, because this draft law was debated opaquely without adequate public consultation, it became a paradigm for regulatory capture through public health emergencies (Chandranegara, 2021).

Law No. 11 of 2020 is similarly based on a class conflict narrative that supports capitalist interests while ignoring those of workers, the environment,

and the often secretive legislative process (Redi & Chandranegara, 2020). Big commercial interests are also visible in the genesis of the core idea in the form of ease of licensing, oversight, or reduced standards, in addition to the challenging process of avoiding covert disputes (Chandranegara, 2020b). So the hypothesis that explains that business interests will try to pursue a “race to the bottom” becomes difficult to refute (Al’afghani & Bisariyadi, 2021). By introducing the idea of risk-based regulation, it can classify a business activity as low or medium risk so that it does not require a permit; lowers standards; and reduces the frequency of supervision; concepts that are oriented toward the capitalist are discovered (Al’afghani & Bisariyadi, 2021).

Due to its hasty nature and lack of adequate public input, Law No. 11 of 2020’s deliberation process also ran against the values of transparency. The administration and legislative authorities invoked COVID-19 to support their position, claiming that the new law would provide additional employment opportunities for people who had lost their occupations because of the pandemic (Chandranegara, 2020a; Cormacain, 2020). Furthermore, the government secretly drafted the bill without the participation of relevant stakeholders. These documents were not disclosed to the public until the draft bill and its academic study was submitted to the House (Mochtar & Rishan, 2022). Business people made up most of the government task team creating the Job Creation Bill. No workers’ representatives were participating at the same time, suggesting whose interests would be represented by this law (Keyzer, 2020).

According to the government, Law No. 11 of 2020 will increase the number of investment possibilities and, consequently, the number of jobs. The truth is that this law has withdrawn many workers’ rights from the current regulation. For example, it eliminates the required two-day weekend and raises the maximum amount of overtime permitted from 14 to 18 hours (Articles 78, 79). Additionally, it eliminates the maximum duration of the temporary work agreement (Article 59), denying workers job security and benefits. Article 156, on the other hand, lowers the compensation for laid-off employees from 32 to barely 25 times their monthly income. By assigning the government a portion of the payment duty, the law also affects how compensation is paid (Article 46A). The government must now pay laid-off workers six times their past salary through a new unemployment fund. Simply expressed, this rule significantly lessens the requirement for businesses to ensure job security and employment benefits to attract investors.

The debate over Law No. 11 of 2020 contradicted a liberal political-legal system. Instead, it bolstered illiberal legislation prioritising domestic rent-seeking businesses above foreign investment. Additionally, Law No. 3 of 2020, which poses severe hazards to the environment and people, is comparable to Law No. 11 of 2020 because it opens up even more potential to steal state resources. For instance, Articles 7 to 11 of Law No. 11 of 2020 dramatically weaken business-related environmental protection rules by switching the permit system from a license-based to a risk-based approach. With this new strategy, only certain commercial operations that the government considers to

significantly impact the environment and related social, economic, and cultural factors are now needed to submit an environmental impact analysis report.

Sembiring et al. (2020) comment, “it is possible that an activity that may have significant impacts is not deemed a high-risk activity if the possibility of the damage occurring is infrequent” (p. 103), in which case an environmental impact analysis report document would not be needed. Furthermore, government approval has replaced environmental permits based on an Environmental Impact Assessment (EIA) report as a requirement for getting a business permit. As a result, an environmental permit is no longer a government tool for establishing legally obligatory standards for any activity that may have a substantial environmental impact. Additionally, through the amendments to Article 26 of the Environmental Protection and Management Act, affected communities continue to be included in creating the environmental document. However, taking away their ability to contest the document exposes them to more danger. Environmental non-governmental organisations (NGOs), government representatives, and environmental experts are prohibited from seeing the environmental impact study paper during this time. Contrary to the principles of sustainable development, which are universally acknowledged as essential to a liberal market economy, these developments increase environmental dangers.

Rent-seeking interests, which are widespread in the undemocratic political system, are also supported by Law No. 11 of 2020, Article 111, which defines “gratification” as any gifts or benefits offered to public officials or civil servants, makes this clear by classifying them as taxable income. The provisions of Articles 154 to 165, which govern the creation of a new Investment Management Institute, also present a chance to misappropriate public funds. With limited accountability, this entity coordinates and manages the flow of investment funds. Any capital used for investments financed by the state is no longer regarded as state property. Even though, as was previously established, “state loss” is a vital component of the corruption crime, any financial losses suffered by that institution are not deemed state financial losses because they become that institution’s asset, as required by Article 160 (Mudhoffir & A’yun, 2021). As a result, the Supreme Audit Agency cannot audit the institution’s assets (Article 161). Likewise, no government or Investment Management Institute officials are subject to legal responsibility if they contribute to the institution suffering from financial losses (Article 163).

Following a review of the constitutionality of Law No. 11 of 2020’s formalities by the Constitutional Court through case No. 91/PUU-XVIII/2020, the Law is finally ruled to be conditionally unconstitutional with a grace period of two years. Legislators were given a two-year deadline to improve how they are formed and to refrain from introducing broad-reaching, strategic measures relevant to Law No. 11 of 2020. In addition to ignoring the content’s substance and focusing exclusively on the standard features, it is established that the law-making process is founded on criteria other than uniform, unambiguous, and clear standards. The establishment

can hold a power of attorney captive, as in the notion and typology previously discussed, if the norm of openness is upheld. It further demonstrates that Law No. 11 of 2020 was developed within the framework of industrial capitalism, which calls for a flexible employment strategy. Marx argued that the social, legal, and political relationships supporting labour exploitation are capitalism's foundation. Capitalists view labour as a commodity they must buy to make commodities (Milius et al., 2018). Therefore, it is unsurprising that labour policies always satisfy market appetites rather than protecting and fulfilling basic needs and workers' rights.

## 5. DISCUSSION: PREVENTING SPECIAL INTEREST IN THE LEGISLATIVE PROCESS

The legislature appears to be stuck in the puzzle of legalism, believing they can enact any law as they are a legitimate body and are not constrained by legal efficacy and logical acceptability considerations (Decision No. 60/PUU-XVIII/2020, 2020). Legislators believe that a law they pass is binding on all parties and must be obeyed since they are direct representatives of the people. Even though there are issues with the law-making process, the government believes it is acceptable to use coercion against those who disobey a law. Legislators must justify every decision they make when enacting laws since it is not sufficient for them to presume that they are the bodies authorized to do so just because they have acquired legitimacy (Wintgens, 2002). Legislators cannot create laws at will even though the people legitimate them. However, many steps must be taken to ensure that the laws developed are legitimate, of high quality, and reflect the wishes of the general population.

The rule of law notion acknowledges the significance of the substantive due process of lawmaking and the procedural due process of legislation, notwithstanding its ramifications (Gardbaum, 2018; Rose-Ackerman et al., 2015). Therefore, the substantive due process of lawmaking concerns whether the lawmakers have offered sufficient justification for the issuance of a decision. The procedural due process of law-making questions whether the legislators have followed acceptable protocols while making decisions.

In his illustration, Kelsen (2017) said that the function of lawmaking is full (total function) consisting of several parts (partial function). The process of creating laws involves a series of legal actions. The process, which can be thought of as a sequence of steps, will impede and obstruct the passage of laws. This time frame is necessary to guarantee that the law has undergone enough consideration and that the public is notified about any laws passed or altered (Bartley, 2014; Dorantes & Brooks, 2012). Citizens need to be aware of plans for new or amended laws since this will allow for public discussion. On this side, substantive due process and legal due process are related. To ensure that substantive and procedural due is intended. As a result, the law-making process should be seen differently than as a procedural clause that has no bearing on the law.

At least two dimensions must be obtained to sustain this legal system's due process: the actor

and instrument dimensions. The legislator is the actor dimension. Actors are expected to be able to make decisions in this situation that serve the public interest and escape the trap of being held captive by the capitalist. Limiting the conflicts of interest brought on by the capitalist authority's intrusion into the legislative process can control this issue. As a legislator, he must uphold the principles of public ethics, which state that any judgments or policies should be based on high ideals and the good of the community. The consideration or evaluation of decisions may be biased due to a conflict of interest (Moore et al., 2010). In addition, conflicts of interest can affect (cognitive) thinking processes in two ways; conscious and subconscious (self-interest) (Orentlicher, 2002). Such a situation will bring a moral dilemma (Foot, 2002). Moral choices are made not in a closed space but are part of social interaction (Alvarez, 2011). Ultimately, social considerations like fidelity, upholding trust, reciprocity, or assisting someone in need guide decisions (Organisation for Economic Co-operation and Development [OECD], 2004).

Regarding the instrument dimension, the availability of standardized and standardized procedures in law-making is an instrument effort to prevent the regulatory captured (Mochtar & Hiariej, 2021). According to the democratic premise, legislators are an extension of the people's authority. Therefore, it was merely carrying out the people's demands. Thus, the constitutionality of the legislative process must stem from the fundamental law; legislation is only enforceable if it is founded on the highest power (sovereignty) and considers the populace's wishes as a source of sovereignty used by the state to exercise its authority. Philosophically, passing laws simply does the two tasks listed above while acting within its legal jurisdiction.

The law shall urge lawmakers to be obligated to provide guarantees to the community's participation rights to be included in policymaking, lawmaking, and various other decision-making mechanisms in government, in addition to serving as a standard procedure for lawmaking. For example, in the case *Doctors for Life International v Speaker of the National Assembly and Others* (2005, para. 129) states:

"What is ultimately important is that the legislature has taken steps to afford the public a reasonable opportunity to participate effectively in the law-making process. Thus construed, there are at least two aspects of the duty to facilitate public involvement. The first is the duty to provide meaningful opportunities for public participation in the law-making process. The second is the duty to take measures to ensure people can take advantage of the opportunities provided. Public involvement may be seen as 'a continuum that ranges from providing information and building awareness to partnering in decision-making'. This construction of the duty to facilitate public involvement is consistent with our participatory democracy and international law's right to political participation. As pointed out, that right not only guarantees the positive due to participate in public affairs, but it simultaneously imposes a duty on the State to facilitate public participation in public affairs by ensuring that this right can be realised. It will be convenient here to consider each of these aspects,

beginning with the broader duty to take steps to ensure that people can participate. The duty to take steps to facilitate public involvement”.

These things point to a change in how we see the interaction between the people and the legislators. According to the conventional viewpoint, the interaction between the public and lawmakers is viewed through social contract theory. The people are said to provide the legislature authority to create laws that represent the popular will (Arter, 2006). This social contract relationship is often seen in the perspective of the proxy version, where the people give legitimacy to the legislators. Then the legislators can regulate public life without needing to bring legitimacy to the products they create (Harijanti et al., 2019). The relationship between the people and the state can be categorized as one-way. The contemporary perspective, however, perceives the social contract from the standpoint of “trade-offs” (Decision No. 60/PUU-XVIII/2020, 2020). Legislators must engage the public and provide justification for each law they pass. The new paradigm mandates proper and meaningful public participation in every lawmaking process.

Public participation has significant objectives, among others; firstly, to create solid collective intelligence between all interested parties and especially those affected, so that can provide a better analysis of potential impacts and produce a quality legislative process; secondly, to create an inclusive and representative relationship between legislators and citizens; third, increasing citizens’ trust and confidence in legislators; fourth, strengthen the legitimacy and responsibility together for every decision and action; fifth, improved understanding of the role of legislators by citizens; sixth, providing opportunities for citizens to communicate their interests; and seventh, creating an accountable and transparent law-making process (Constitutional Court Case No. 91/PUU-XVIII/2020, n.d.).

Therefore, it is imperative to update Law No. 12 of 2011, which contains all definite, standard, and standard techniques that bind all institutions, as a component of the instrument for prohibiting the power of attorney of capital hostages. Therefore, the legislator must establish clear criteria to satisfy these improvisations if they wish to use them in creating laws. As a general adage, *potentia debet sequi justitiam, non antecedere*, means power to follow the law and not the other way around. In addition, updates regarding the fulfilment of

meaningful public participation need to be reformulated in Law No. 12 of 2011 to at least contain a normative obligation guarantee to open the involvement for the community, and the steps lawmakers must take.

## 6. CONCLUSION

This article tries to understand the political and legal justifications for the pandemic responses connected to the current legal system. We argue that because Indonesia is controlled by a state of disorder representing an illiberal politico-legal system, the public health issue has evolved into an instrument for consolidating power and profit. The pandemic has been seen less as a threat and more as an opportunity by elite political and corporate entities. The pandemic has also been used for political and commercial elitism, leading to numerous controversial legislation, such as the Mining Law Act of 2020 and the Job Creation Law of 2020. The design of laws can help to fulfil more important economic interests. As a result, it could turn into a pointless process. This method will prevent numerous rules and regulations from affecting the general public. Because legislators are inadvertently connected to special interests, this regulatory capture can be accomplished through a model that starts with corrupt practices like bribery or political donations, typically associated with corruption. It can also be achieved through a model of cognitive bias.

Therefore, a scenario is required to stop the deterioration of the legislative process. It is necessary to avoid conflicts of interest between the business actor and the actor’s dimension (the legislator). Furthermore, all definite standards, standard procedures, and ways that satisfy the practice requirements must be updated in the instrument’s measurements (Law No. 12 of 2011). Additionally, it affirms the promise of community engagement and ensures that the general public has the chance or means to participate. After all, there is the limitation of this research that we do not have a specific report on how many members of the House have special interests because they are affiliated with their business interests. So research focusing on how significant members of the House that have affiliation with their business interest in the quality of legislation will expand the depth of this research in the future.

## REFERENCES

1. Al’afghani, M. M., & Bisariyadi, B. (2021). Konsep regulasi berbasis risiko: Telaah kritis dalam penerapannya pada undang-undang cipta kerja. *Jurnal Konstitusi*, 18(1), 66–90. <https://doi.org/10.31078/jk1814>
2. Alvarez, S. (2011). Constitutional conflicts, moral dilemmas, and legal solutions. *Ratio Juris*, 24(1), 59–74. <https://doi.org/10.1111/j.1467-9337.2010.00474.x>
3. Anton, A., Fisk, M., & Holmstrom, N. (2001). *Not for sale: In defense of public goods*. Routledge.
4. Arter, D. (2006). Introduction: Comparing the legislative performance of legislatures. *Journal of Legislative Studies*, 12(3–4), 245–257. <https://doi.org/10.1080/13572330600875423>
5. Asshiddiqie, J. (1994). *Gagasan kedaulatan rakyat dalam konstitusi dan pelaksanaannya di Indonesia: Pergeseran keseimbangan antara individualisme dan kolektivisme dalam kebijakan demokrasi politik dan demokrasi ekonomi selama tiga masa demokrasi, 1945–1980-an*. Ichtar Baru Van Hoeve.
6. Balleisen, E. J., & Moss, D. A. (2009). *Government and markets: Toward a new theory of regulation*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511657504>
7. Bartley, K. A. (2014). *“They don’t know how we live”: Understanding collaborative management in Western Alaska* [Master’s thesis, the University of Alaska Anchorage]. <http://doi.org/10.13140/RG.2.1.3682.4482>

8. Best, J. A. (1987). Legislative tyranny and the liberation of the executive: A view from the founding. *Presidential Studies Quarterly*, 17(4), 697-709. <https://www.jstor.org/stable/27550479>
9. Boehm, F. (2007). *Regulatory capture revisited — Lessons from economics of corruption* (Working Paper). Internet Centre for Corruption Research (ICGG). <https://www.icgg.org/downloads/Boehm%20-%20Regulatory%20Capture%20Revisited.pdf>
10. Carpenter, D., & Moss, D. A. (2013). *Preventing regulatory capture: Special interest influence and how to limit it*. Cambridge University Press. <https://doi.org/10.1017/CBO9781139565875>
11. Chandranegara, I. S. (2020a). Komparasi kebijakan hukum dalam penanggulangan pandemi Covid-19 di berbagai negara: Penggunaan keadaan dan hukum darurat atau optimalisasi instrumen hukum yang ada? In A. Redi & I. S. Chandranegara (Eds.), *Segi hukum terhadap implikasi Covid-19 di Indonesia* (pp. 22-34). Prenada Media. [https://www.academia.edu/44483630/Komparasi\\_Kebijakan\\_Hukum\\_dalam\\_Penanggulangan\\_Pandemi\\_Covid\\_19\\_di\\_Berbagai\\_Negara\\_Penggunaan\\_Keadaan\\_dan\\_Hukum\\_Darurat\\_atau\\_Optimalisasi\\_Instrumen\\_Hukum\\_yang\\_Ada](https://www.academia.edu/44483630/Komparasi_Kebijakan_Hukum_dalam_Penanggulangan_Pandemi_Covid_19_di_Berbagai_Negara_Penggunaan_Keadaan_dan_Hukum_Darurat_atau_Optimalisasi_Instrumen_Hukum_yang_Ada)
12. Chandranegara, I. S. (2020b). Kompabilitas penggunaan metode omnibus dalam pembentukan undang-undang. *Jurnal Hukum Ius Quia Iustum*, 27(2), 241-263. <https://doi.org/10.20885/iustum.vol27.iss2.art2>
13. Chandranegara, I. S. (2021). Pengadopsian mekanisme fast-track legislation dalam pengusulan rancangan undang-undang oleh presiden. *Jurnal Penelitian Hukum De Jure*, 21(1), 123-140. <https://doi.org/10.30641/dejure.2021.V21.123-140>
14. Chandranegara, I. S., & Cahyawati, D. P. (2023). Conflict of interest prevention clause in the constitution: The study of the Indonesian Constitution. *Heliyon*, 9(3), Article E14679. <https://doi.org/10.1016/j.heliyon.2023.e14679>
15. Constitutional Court Case No. 91/PUU-XVIII/2020. Constitutional Court of the Republic of Indonesia. [https://www.mkri.id/public/content/persidangan/putusan/putusan\\_mkri\\_8240\\_1637822490.pdf](https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_8240_1637822490.pdf)
16. Cooter, R., & Ulen, T. (2012). *Law and economics* (6th ed.). Addison-Wesley.
17. Cormacain, R. (2020). Keeping Covid-19 emergency legislation socially distant from ordinary legislation: Principles for the structure of emergency legislation. *The Theory and Practice of Legislation*, 8(3), 245-265. <https://doi.org/10.1080/20508840.2020.1786272>
18. Decision No. 60/PUU-XVIII/2020. Constitutional Court of the Republic of Indonesia. [https://jdih.esdm.go.id/storage/document/20\\_putusan\\_mkri\\_8192\\_uu32020.pdf](https://jdih.esdm.go.id/storage/document/20_putusan_mkri_8192_uu32020.pdf)
19. Doctors for Life International v Speaker of the National Assembly and Others. (2005). Case No CCT12/05. The South African Constitutional Court. <http://www.saflii.org/za/cases/ZACC/2006/11.html>
20. Dorantes, M., & Brooks, J. J. (2012). *Visiting and listening: Meaningful participation for Alaska native peoples in conservation projects*. U.S. Fish and Wildlife Service. <http://doi.org/10.13140/2.1.1109.8404>
21. Drinóczi, T. (2015). Concept of quality in legislation — Revisited: Matter of perspective and a general overview. *Statute Law Review*, 36(3), 211-227. <https://doi.org/10.1093/slr/hmv008>
22. Foot, P. (2002). *Moral dilemmas: And other topics in moral philosophy*. Oxford University Press. <https://doi.org/10.1093/019925284X.001.0001>
23. Frohnen, B. P., & Carey, G. W. (2016). *Constitutional morality and the rise of quasi-law*. Harvard University Press. <https://doi.org/10.4159/9780674968905>
24. Gardbaum, S. (2018). Due process of lawmaking revisited. *Journal of Constitutional Law*, 21(1), 1-32. Legal Scholarship Repository. <https://scholarship.law.upenn.edu/jcl/vol21/iss1/2/>
25. Harijanti, S. D., Abdurrahman, A., & Perwira, I. (2019). *Gagasan etis dalam Undang-Undang Dasar Tahun 1945 dan model penerapannya*. Perpustakaan Universitas Padjajaran.
26. Harsono, N. (2020, May 13). House approves revised Mining Law amid outcry. *The Jakarta Post*. <https://www.thejakartapost.com/news/2020/05/12/house-approves-revised-mining-law-amid-outcry.html>
27. Holmstrom, N. (2020). Rationality, solidarity, and public goods. In A. Anton, M. Fisk, & N. Holmstrom (Eds.), *Not for sale: In defense of public goods* (pp. 69-92). Routledge.
28. Indrati, M. F. (2007). Meningkatkan kualitas peraturan perundang-undangan di Indonesia. *Jurnal Legislasi Indonesia*, 4(2), 18-28. <https://perpustakaan.kpk.go.id/index.php?p=fstream-pdf&fid=3659&bid=3740>
29. Jacobs, S. H., & Coolidge, J. G. (2006). *Reducing administrative barriers to investment: Lessons learned* (Vol. 17). World Bank. <https://doi.org/10.1596/978-0-8213-6494-9>
30. Jacobstein, J. M., & Mersky, R. M. (1985). *Fundamentals of legal research*. Foundation Press.
31. Jong, H. N. (2020, May 13). With new law, Indonesia gives miners more power and fewer obligations. *Mongabay*. <https://news.mongabay.com/2020/05/indonesia-mining-law-minerba-environment-pollution-coal/>
32. Karpen, U. (2008). Improving democratic development by better regulation. In C. Stefanou & H. Xanthaki (Eds.), *Drafting legislation* (pp. 151-164). Routledge.
33. Karpen, U., & Xanthaki, H. (2017). *Legislation in Europe: A comprehensive guide for scholars and practitioners*. Bloomsbury Publishing.
34. Kelsen, H. (2005). *General theory of law and state*. Routledge. <https://doi.org/10.4324/9780203790960>
35. Keyzer, P. (2020, January 29). *The Indonesian omnibus law: Opportunities and challenges* [Paper presentation]. Universitas Brawijaya. <https://file.umj.ac.id/data/Ibnu%20Sina%20Chandranegara/Omnibus%20Laws%2C%20Patrick%20Keyzer%20%20.pdf>
36. Laffont, J.-J., & Tirole, J. (1991). The politics of government decision-making: A theory of regulatory capture. *The Quarterly Journal of Economics*, 106(4), 1089-1127. <https://doi.org/10.2307/2937958>
37. Larkin, P. J., Jr. (2016). The lost due process doctrines. *Catholic University Law Review*, 66(1), 293-362. <https://doi.org/10.2139/ssrn.2649958>
38. Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining. *Database Peraturan*. <https://peraturan.bpk.go.id/Home/Details/138909/uu-no-3-tahun-2020>
39. Law No. 11 of 2020 concerning Job Creation. <https://uu-ciptakerja.go.id/wp-content/uploads/2020/11/Salinan-UU-Nomor-11-Tahun-2020-tentang-Cipta-Kerja.pdf>
40. Law No. 12 of 2011 concerning the Formation of Legislation. *Database Peraturan*. <https://peraturan.bpk.go.id/Home/Details/39188/uu-no-12-tahun-2011>
41. Levine, M. E., & Forrence, J. L. (1990). Regulatory capture, public interest, and the public agenda: Toward a synthesis. *Journal of Law, Economics, & Organization*, 6, 167-198. [https://doi.org/10.1093/jleo/6.special\\_issue.167](https://doi.org/10.1093/jleo/6.special_issue.167)



42. Mahfud, M. (2009). *Politik hukum di Indonesia*. PT RajaGrafindo Persada.
43. Makkai, T., & Braithwaite, J. (1992). In and out of the revolving door: Making sense of regulatory capture. *Journal of Public Policy*, 12(1), 61-78. <https://doi.org/10.1017/S0143814X00005006>
44. Milios, J., Dimoulis, D., & Economakis, G. (2018). *Karl Marx and the classics: An essay on value, crises and the capitalist mode of production*. Routledge. <https://doi.org/10.4324/9781315191652>
45. Mochtar, Z. A., & Hiarij, E. O. S. (2021). *Dasar-dasar ilmu hukum: Memahami kaidah, teori, asas dan filsafat hukum*. Red & White Publishing.
46. Mochtar, Z. A., & Rishan, I. (2022). Autocratic legalism: The making of Indonesian omnibus law. *Yustisia Jurnal Hukum*, 11(1), 29-41. <https://doi.org/10.20961/yustisia.v11i1.59296>
47. Moore, D. A., Tanlu, L., & Bazerman, M. H. (2010). Conflict of interest and the intrusion of bias. *Judgment and Decision Making*, 5(1), 37-53. <https://doi.org/10.1017/S1930297500002023>
48. Mudhoffir, A. M., & A'yun, R. Q. (2021). Doing business under the framework of disorder: Illiberal legalism in Indonesia. *Third World Quarterly*, 42(11), 2651-2668. <https://doi.org/10.1080/01436597.2021.1967738>
49. Niskanen, W. A. (2001). Bureaucracy. In W. F. Shughart II & L. Razzolini (Eds.), *The Elgar companion of public choice* (pp. 258-270). Edward Elgar Publishing Limited. <https://doi.org/10.4337/9781843763017.00023>
50. Ogus, A. I. (2004). *Regulation: Legal form and economic theory*. Bloomsbury Publishing.
51. Orentlicher, D. (2002). Conflicts of interest and the constitution. *Washington & Lee Law Review*, 59, 713-766. <https://doi.org/10.2139/ssrn.312440>
52. Organisation for Economic Co-operation and Development (OECD). (2004). *Managing conflict of interest in the public service*. <https://doi.org/10.1787/9789264104938-en>
53. Petriella, Y. (2020, May 12). Menteri Arifin berharap UU Minerba bisa menjawab tantangan industri pertambangan. *Bisnis.com*. <https://ekonomi.bisnis.com/read/20200512/44/1239679/menteri-arifin-berharap-uu-minerba-bisa-menjawab-tantangan-industri-pertambangan>
54. Pinelli, C. (2011). The populist challenge to constitutional democracy. *European Constitutional Law Review*, 7(1), 5-16. <https://doi.org/10.1017/S1574019611100024>
55. Redi, A., & Chandranegara, I. S. (Eds.). (2020). *Omnibus law: Diskursus pengadopsiannya ke dalam sistem perundang-undangan nasional*. Radjawali Press.
56. Rishan, I. (2022). Evaluasi performa legislasi dalam pembentukan Omnibus law cipta kerja: Kajian legisprudensi. *Undang: Jurnal Hukum*, 5(1), 43-67. <https://doi.org/10.22437/ujh.5.1.43-67>
57. Rose-Ackerman, S., Egidy, S., & Fowkes, J. (2015). *Due process of lawmaking: The United States, South Africa, Germany, and the European Union*. Cambridge University Press. <https://doi.org/10.1017/CBO9781107338845>
58. Sembiring, R., Fatimah, I., & Widyaningsih, G. A. (2020). Indonesia's Omnibus Bill on job creation: A setback for environmental law? *Chinese Journal of Environmental Law*, 4(1), 97-109. <https://doi.org/10.1163/24686042-12340051>
59. Shleifer, A., & Vishny, R. W. (1998). *The grabbing hand: Government pathologies and their cures*. Harvard University Press.
60. Stigler, G. J. (1971). The theory of economic regulation. *The Bell Journal of Economics and Management Science*, 2(1), 3-21. <https://doi.org/10.2307/3003160>
61. Vanterpool, V. (2007). A critical look at achieving quality in legislation. *European Journal of Law Reform*, 9(2), 167-204. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ejlr9&div=16&id=&page=>
62. Voermans, W. (2009). Concern about the quality of EU legislation: What kind of problem, by what kind of standards? *Erasmus Law Review*, 2(1), 59-95. [https://www.elevenjournals.com/tijdschrift/ELR/2009/1/ELR\\_2210-2671\\_2009\\_002\\_001\\_004.pdf](https://www.elevenjournals.com/tijdschrift/ELR/2009/1/ELR_2210-2671_2009_002_001_004.pdf)
63. Waldron, J. (1999). *The dignity of legislation*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511621987>
64. Wheare, K. C. (1951). *Modern constitutions* (Vol. 213). Oxford University Press.
65. Wibisana, M. R. A. G. (2017). Campur tangan pemerintah dalam pengelolaan lingkungan: Sebuah penelusuran teoritis berdasarkan analisa ekonomi atas hukum (economic analysis of law). *Jurnal Hukum Dan Pembangunan*, 47(2), 151-182. <https://doi.org/10.21143/jhp.vol47.no2.812>
66. Wintgens, L. (2002). *Legisprudence: A new theoretical approach to legislation*. Bloomsbury Publishing.
67. Xanthaki, H. (2001). The problem of quality in EU legislation: What on earth is really wrong? *Common Market Law Review*, 38(3), 651-676. <https://doi.org/10.54648/350927>