

The Urgency of The Regulation of Legislative Power During The 'Lame Duck' Session to Optimize Constitutionalism

Raihan Muhammad

*Faculty of Law, Universitas Negeri Semarang, Semarang, Indonesia,
rainesia15@gmail.com, ORCID ID 0009-0002-1864-0500*

Abstract. This study explores the urgency of the regulation of legislative power during the "lame duck" session in Indonesia post-2024 Election. It focuses on understanding the condition, finding concrete solutions, and formulating policy recommendations to optimize the role of the legislature in facing the challenge. It employed the normative legal method, focusing on the analysis of legal documents, particularly in the context of the lame-duck session in Indonesia. The statutory approach was adopted to study laws and regulations in a comprehensive manner. Secondary data from literature review and library research support a qualitative analysis for a deeper understanding of the concept of law. It aims to contribute to the study of legislative power during the 'lame-duck' period in Indonesia. The findings of this research have important implications for the study of law in Indonesia, improvement of the quality of lawmaking, need for strict oversight and transparency, and law enforcement against corruption in the lawmaking. Reforms should be introduced to enhance internal and external oversight and change how policies are formulated. Therefore, political stability could be maintained and greater public trust could be fostered. It is of importance to establish good democracy and maintain political stability. Several recommendations are made to prevent and deal with the 'lame duck' session: (1) shortening the 'lame duck' period (transition); (2) promoting transparency and accountability; and (3) prohibiting lawmakers from convening sessions (except in the deliberation of APBN or emergency). They aim to strengthen constitutionalism in Indonesia.

Keywords: Legislative power, Lame Duck Session, Optimization of constitutionalism

Abstrak. Artikel ini mengeksplorasi urgensi pengaturan kekuasaan legislatif pada periode "bebek lumpuh" (lame duck) di Indonesia pasca Pemilu 2024. Fokusnya adalah memahami kondisi, mencari solusi konkrit, dan merumuskan rekomendasi kebijakan untuk mengoptimalkan peran legislatif dalam menghadapi tantangan tersebut. Metode yang digunakan adalah metode hukum normatif, dengan fokus pada analisis dokumen hukum, khususnya dalam konteks sidang lame-duck di Indonesia. Pendekatan perundang-undangan ditempuh untuk mengkaji peraturan perundang-undangan secara komprehensif. Data sekunder hasil kajian pustaka dan penelitian kepustakaan mendukung analisis kualitatif untuk memahami konsep hukum lebih dalam. Hal ini bertujuan untuk memberikan kontribusi terhadap kajian kekuasaan legislatif pada masa 'lame-duck' di Indonesia. Temuan penelitian ini mempunyai implikasi penting bagi kajian hukum di Indonesia, peningkatan kualitas pembuatan undang-undang, perlunya pengawasan dan transparansi yang ketat, serta penegakan hukum terhadap korupsi dalam pembuatan undang-undang. Reformasi harus dilakukan untuk meningkatkan pengawasan internal dan eksternal dan mengubah cara kebijakan dirumuskan. Oleh karena itu, stabilitas politik dapat dipertahankan dan kepercayaan masyarakat yang lebih besar dapat dipupuk. Pentingnya membangun demokrasi yang baik dan menjaga stabilitas politik. Beberapa rekomendasi dilakukan untuk mencegah dan menangani masa 'lame duck': (1) memperpendek masa 'lame duck' (transisi); (2) mendorong transparansi dan akuntabilitas; dan (3) melarang anggota DPR untuk mengadakan sidang (kecuali dalam pembahasan APBN atau darurat). Hal tersebut agar memperkuat konstitusionalisme di Indonesia.

Kata Kunci: Kekuasaan Legislatif, Sidang Lame Duck, Optimalisasi Konstitusionalisme

Submitted: 13 Maret 2024 | Reviewed: 30 Maret 2024 | Revised: 5 April 2024 | Accepted: 16 Mei 2024

INTRODUCTION

The regulation of legislative power is a key aspects of democratic government. In a number of countries, the legislature plays a pivotal role in determining the orientation of public policy and overseeing the government. However, in certain contexts, such as in a lame-duck session, the regulation of legislative power is of greater urgency as the legislature encounters significant obstacles in performing its function. The lame-duck session is a transition after the election, where the sitting members of parliament continue to serve while the newly elected members are yet to be sworn in.

During the 'lame duck' period, there are several problems: (1) the obstruction of lawmaking due to political conflicts; (2) the inability of the legislature to oversee the executive; or (3) the paralysis of legislative functions due to various internal and external factors. In this regard, the solution to the optimal role of the legislature is more urgent.

Nevertheless, according to Firdaus, in practice there is no lame-duck session in Indonesia as lawmakers (i.e. the House of Representatives [DPR]) tend to be productive in discharging their duties or functions before their term ends.¹ However, they acted improperly by making a number of problematic bills (RUU) or laws (UU). In 2019, for instance, there were controversial bills, such as the RUU KUHP, revision of the KPK Law, and so forth, which led to public resistance through a number of protests.²

Several previous research highlights the importance of regulating legislative power in the context. Nevertheless, the majority of previous studies have not adequately addressed the practical implementation of strategies in the context of 'lame duck' situations. In addition, there have been few scholarly articles on the lame-duck session post-2024 election. Therefore, this article is important and relevant to the current legal

¹ Fahmi Ramadhan Firdaus, "Apakah Praktik Lame Duck Session Dikenal di Parlemen Indonesia?," *HukumOnline*, August 31, 2021, <https://www.hukumonline.com/klinik/a/apakah-praktik-ilame-duck-session-i-dikenal-di-parlemen-indonesia-lt612de402e8191>.

² I Gusti Ngurah Santika, "Menelisik Akar Kegaduhan Bangsa Indonesia Pasca Disetujuinya Hasil Revisi UU KPK Dalam Perspektif Pancasila," *Jurnal Ilmiah Ilmu Sosial* 6, no. 1 (June 29, 2020): 26, <https://doi.org/10.23887/jiis.v6i1.25001>.

dynamics in Indonesia. For this reason, this study set out to address the research gaps by proposing concepts and policy recommendations.

The research questions are as follows. First, how is legislative power during the 'lame duck' session regulated in Indonesia? Second, how can the role of the legislature be optimized during the 'lame duck' session?

METHODOLOGY

This research employed the normative legal method, also known as doctrinal legal research. It used written legal sources, such as laws and regulations, court decisions or rulings, contracts, agreements, covenants, legal theories, and scholars' opinions. It primarily analyzed legal documents. As this research focused on written materials, it is often called library research or document research. This research relied on library materials or secondary data.³

It employed the statute approach to thoroughly analyze and look at all laws and regulations on the legal issue at hand.⁴ In this regard, those laws and regulations pertain to the lame-duck session in Indonesia.

This research also used secondary data obtained by analyzing legal issues through regulations, literature, and library resources relevant to the topic. The main objective is to gain a deeper understanding of the concept of law in the legal texts or sources.

Based on its materials and objects, this is library research using written sources, e.g. manuscripts, books, magazines, newspapers, and the other documents.⁵ This research employed the qualitative approach. It means that the data are not numerical. Qualitative data are often obtained through recordings, observations, interviews, or documents that contain verbal expressions.⁶

³ Muhaimin, *Metode Penelitian Hukum*, 1st ed. (Mataram: Mataram University Press, 2020).

⁴ Nur Solikin, *Pengantar Metodologi Penelitian Hukum* (Pasuruan: CV. Penerbit Qiara Media, 2021).

⁵ Rahmadi, *Pengantar Metodologi Penelitian* (Banjarmasin: Antasari Press, 2011).

⁶ Nur Solikin, *op. cit.*, p. 118

The present study undertook an in-depth analysis of the legal context of the lame-duck session in Indonesia, with a particular focus on relevant legal documents. Therefore, it will contribute to a better understanding of how legislative power during the lame-duck period in Indonesia should be regulated.

RESULTS AND DISCUSSION

'Lame Duck' Session in Indonesia

During the 'lame duck' period, the regulation of legislative power is of paramount importance to the smooth functioning of the government and the prevention of a power vacuum which could undermine political and social stability. Although there is no official term lame-duck session in Indonesia, the post-election transition period of government still presents similar challenges to legislative and oversight functions.

The term "lame duck" is used to describe the period between an election and the swearing-in of a new official, during which the incumbent has lost the election or is not running for another term. In this regard, there are several probabilities. Those who are about to leave office may be reluctant to initiate or implement strategic policies that could potentially pose a risk or arouse controversy. It is possible that they may be inclined to avoid making significant decisions and instead choose to "hand over" the responsibility to the incoming government.

However, their productivity may increase as they feel freer to make decisions with no political pressure or electoral consideration. Lame-duck officials may not launch a lot of new initiatives due to the limited time in office, and they tend to focus on completing existing tasks. In addition, some officials may use the lame duck period to cement their legacy or increase their influence in their final term by prioritizing projects or policies deemed to leave a positive mark on history or bring about significant change in society.

In Indonesia, one of the problems during the lame duck period is the surge of legislative activity in DPR at the end of its term. It can be seen in the higher number of regulations made and controversies caused by the contents of these regulations.

DPR passed more laws during this session than in the previous five years. The productivity rose before the inauguration of new lawmakers. This is a transition in which new members of parliament have been definitively elected, but have not taken office.⁷

Arsil et al conducted research on lawmaking during the ‘lame duck’ period in Indonesia from 1997 to 2020. The study describes how laws were made during the lame duck session in Indonesia from 1997 to 2020. Although lame duck sessions resulted in more laws than regular sessions, these laws frequently failed to comply with the legal requirement that each bill shall be deliberated in a maximum of three sessions.⁸

A number of DPR members took advantage of this situation to introduce laws that might benefit state officials, meet public resistance, and decrease their participation through judicial review in the Constitutional Court. The econometric analysis also indicates that the laws enacted during this period have a negative impact on the economy. While lawmakers and the President recognize that lawmaking during the lame duck period is not ideal, there has been no rule or prohibition against it.⁹

These findings suggest that the problems of legislative productivity during the lame duck period in Indonesia are the high number of laws and their contents. The increased legislative activity during the lame-duck session often results in controversial and poor laws. This shows the need for a stricter regulation on lawmaking during the post-election government transition to avoid the formation of inappropriate laws that could have a detrimental impact on the public and the economy.

The logic behind the ‘lame duck’ session is simple. The threat of not being re-elected helps prevent legislators from being opportunistic. Once the legislators decide or are

⁷ Fitra Arsil, “RUU Kontroversi di Masa Transisi – Hukum Tata Negara FHUI,” *Hukum Tata Negara FHUI* (Faculty of Law Universitas Indonesia, September 18, 2019), <https://tatanegara.ui.ac.id/ruu-kontroversi-di-masa-transisi/>.

⁸ Fitra Arsil, Ariesy Tri Mauleny, and Ryan Muthiara Wasti, “Law Making Activities during Lame Duck Sessions in Indonesia (1997—2020),” *Parliamentary Affairs* 76, no. 2 (November 20, 2021): 421—42, <https://doi.org/10.1093/pa/gsab058>.

⁹ *Ibid.*

forced to retire and enter their final term, they tend to neglect their obligations to their constituents (or political parties) and prioritize their own personal interests.¹⁰

The 'lame duck' period can have a detrimental impact on the quality of legislation and public trust in the government. The increasing number of laws during this period does not always reflect the needs and priorities of the people, which can lead to inconsistencies and overlaps in law and regulations. The lack of time for in-depth and participatory deliberation of bills also reduces accountability and transparency, increases the risk of passing poor and controversial bills, and decreases public oversight of legislators. The potential for bills to be passed during the "lame duck" period, with a greater focus on political interests than on public needs, can lead to the neglect of crucial and urgent issues in favor of pursuing specific political agendas.

It has an impact on public trust as the people may perceive DPR and the government as irresponsible and self-serving. Distrust of lawmaking and the quality of laws made can lead to apathy and cynicism about politics and public participation. The negative sentiment toward politics is growing as many people assume that politicians only use their positions for personal gain. This can exacerbate the crisis of trust and political legitimacy, even threatening democracy and political stability.

The 'lame duck' session is a threat not only in Indonesia. A superpower, the United States has experienced the lame duck period in its history. Although legislators are no longer directly related to their voters, lame-duck lawmakers still have the same voting rights and participate fully in the activities of Congress. The general public needs to be aware of the political agency issues linked to lame-duck sessions, such as corruption risks and support for controversial laws.¹¹

In particular, the United States House of Representatives has convened the 'lame-duck' session following each election since 1998. In the past, lame-duck lawmakers

¹⁰ Bon Sang Koo, Junseok Kim, and Jun Young Choi, "Testing Legislative Shirking in a New Setting: The Case of Lame Duck Sessions in the Korean National Assembly," *Japanese Journal of Political Science* 20, no. 1 (December 18, 2018): 33–52, <https://doi.org/10.1017/s1468109918000403>.

¹¹ Felix Schönenberger, "Out of Office, Out of Step? Re-Election Concerns and Ideological Shirking in Lame Duck Sessions of the U.S. House of Representatives," *SSRN Electronic Journal*, 2024, <https://doi.org/10.2139/ssrn.4706133>.

focused on a few specific issues, such as ratifying the General Agreement on Tariffs and Trade in 1994 or impeaching Clinton in 1998. Subsequently, lawmakers convened following elections to vote on a range of significant and controversial issues, including budget legislation increasing the debt limit (2010, 2014-2020), landmark legislation such as the Don't Ask Don't Tell Act (2010), and amendments to the National Defense Authorization Act (2010-2012, 2016, 2020), tax reform (2010-2014), Iran Sanctions (2016), and funding allocations for the Covid-19 pandemic (2020).¹²

In Indonesia, DPR members often deliberated or passed a number of bills into laws. However, legal experts argue that many laws passed are poor.

Several bills passed into laws in the election year

2009	2014	2019
Public Service Law	MD3 Law	KPK Law
MD3 Law	Regional Elections Law	P3 Law
Film Law	Regional Government Law	Water Resources Law
Health Law	JPH Law	MD3 Law
	Health Workers Law	PSDN Law

Source: Indonesian Center for Law and Policy Studies (PSHK) (2023) (table reviewed by the author)

From the table above, it can be seen that the bills passed into laws in political years are of particular significance as they pertain to state infrastructure such as regional elections, MD3, and KPK.¹³ Legislative decisions could be influenced by personal or group interests because members of parliament who would not be re-elected tend to pay attention only to specific requests or their own interests. Furthermore, there is a possibility that they may seek political gain or other kinds of gain. The 'lame duck'

¹² Ibid.

¹³ PSHK Indonesia, "Jalur Lambat RUU Perampasan Aset di Tahun Pemilu," Video, YouTube, November 2, 2023, <https://www.youtube.com/watch?v=GKbG4tnPbMo&t=3084s>.

session gives the major party considerable power to set the legislative agenda, choosing which bills to be deliberated or delayed. This reduces its accountability to its constituents. As a result, lame-duck lawmakers lose legitimacy and accountability because their decisions are no longer based on the interests of the people.¹⁴

It has raised concerns about the quality of laws introduced during this period. Even though several bills passed into laws during the 'lame duck' session pertain to crucial state infrastructure, such as regional elections, MD3, and KPK, the legislative decisions were probably influenced by certain personal or group interests. Furthermore, they were largely rejected by the general public. Scholars, university students, and the other part of civil society therefore staged protests "Reformasi Dikorupsi" (Reform Corrupted).¹⁵ RUU KPK was a bill in the national legislation program (Prolegnas) for 2015–2019. However, from 2016 to 2018, it was not passed into a law despite Prolegnas. In 2019 (the 'lame duck' period), it was prioritized in Prolegnas and enacted after it had been planned for approximately 4 years.¹⁶

This attempt to weaken KPK in the fight against corruption, with decisions made hastily and in secret, especially toward the end of the term, demonstrates the collusion among the elite to protect their own interests. It raised suspicions of a hidden agenda set by the government and DPR. This issue could be prevented by a rule that prohibits making important policies at the end of the term, except in emergency.¹⁷

¹⁴ Jeffery A. Jenkins and Timothy P. Nokken, "Partisanship, the Electoral Connection, and Lame-Duck Sessions of Congress, 1877–2006," *The Journal of Politics* 70, no. 2 (April 2008): 450–65, <https://doi.org/10.1017/s0022381608080420>.

¹⁵ Sri Lestari Wahyuningroem et al, "Youth Political Participation and Digital Movement in Indonesia: The Case of #ReformasiDikorupsi and #TolakOmnibusLaw," *F1000Research* 12 (May 24, 2023): 543, <https://doi.org/10.12688/f1000research.122669.1>.

¹⁶ Muhammad Addi Fauzani, Dian Kus Pratiwi, and Ahmad Ilham Wibowo, "Legalitas Dan Praktek Pembentukan Undang-Undang Secara Cepat di Indonesia (Studi terhadap Pembentukan Undang-Undang tentang Komisi Pemberantasan Korupsi dan Undang-Undang Mahkamah Konstitusi)," *Jurnal Legislasi Indonesia* 19, no. 4 (December 31, 2022), <https://doi.org/10.54629/jli.v19i4.968>.

¹⁷ Made Supriatma, "Apakah Lame Duck Session Diperlukan dalam Sistem Pemerintahan Kita?," *IndoPROGRESS*, September 21, 2019, <https://indoprogress.com/2019/09/apakah-lame-duck-session-diperlukan-dalam-sistem-pemerintahan-kita/>.

After the 2024 Election, the 'lame duck' session should be watched out for as there are several problematic bills. The Jakarta Special Region Bill (RUU DKJ)¹⁸, for instance, has led to a polemic. Under one of its articles, the Governor of DKJ would be appointed by the president. Even though it is still at the initiative proposal stage, based on the history of DPR RI's performance, it must be watched out for and monitored. Eliminating elections would undermine democracy and have a negative impact on the image of DPR RI.

During the 'lame duck' period, articles were traded off by lawmakers. It undermines the integrity and quality of legislation in Indonesia. Mahfud MD, a legal expert, also confirms it.¹⁹ According to the Indonesian Center of Law and Policy Studies (PSHK), lawmaking in Indonesia still lacks transparency, leading to the trade-off. This lack of transparency would lead to distrust in lawmaking. Sholikin argues that lawmaking in DPR from 2014 to 2019 was less accountable and accessible to the public.²⁰

It resulted in elite domination in lawmaking, which often ignores the interests and aspirations of the people. Furthermore, it has the potential to impact existing regulations, which may be perceived as overlapping and tailored to the interests of certain groups that have greater influence over lawmakers.²¹

It is known as legislative corruption. Despite Law No. 12 of 2011 on Lawmaking, the process remains vulnerable to corrupt behavior. Although Law No. 12/2011 on Lawmaking has stipulated mechanisms for preventing corruption in lawmaking, implementation is still key. The planning and deliberation stages are the most

¹⁸ Askari Razak, "Penunjukan Gubernur oleh Presiden dalam Wacana RUU Daerah Khusus Jakarta: Kontroversi dan Orientasi," *UNES Law Review* 6, no. 2 (December 29, 2023), <https://doi.org/10.31933/unesrev.v6i1>.

¹⁹ Abdillah M. Marzuqi, "Masih Ada Praktik Jual Beli Pasal, Mahfud MD: Penegakan Hukum Mengecewakan," *Media Indonesia*, November 30, 2023, <https://mediaindonesia.com/politik-dan-hukum/633838/masih-ada-praktik-jual-beli-pasal-mahfud-md-penegakan-hukum-mengecewakan>.

²⁰ Fitria Chusna Farisa, "Soal Jual-Beli Pasal, PSHK Sebut Proses Legislasi Memang Tak Transparan - pshk.or.id," *PSHK*, December 23, 2019, <https://pshk.or.id/rr/soal-jual-beli-pasal-pshk-sebut-proses-legislasi-memang-tak-transparan/>.

²¹ *Ibid.*

vulnerable to corrupt practices. On the other hand, the drafting, ratification, and promulgation stages have lower risks.²²

Of course, this practice raises doubts about the true purpose of lawmaking, by placing personal or group interests above the public interest. In addition, when controversial bills such as the DKJ Bill emerged, there was a concern that DPR members, particularly those who had lost the election, could take advantage of this opportunity for their personal gain in the process of deliberating and determining certain articles. This is especially true for those from the losing side, who might try to “break even”.

When articles are traded off, political or financial interests would dominate lawmaking, compromising the principles of democracy and justice. This threatens the legitimacy of the DPR RI as the the house of representatives that should act on behalf of the public interest. Therefore, the trade-off could lead to public distrust in the legislature and political process.

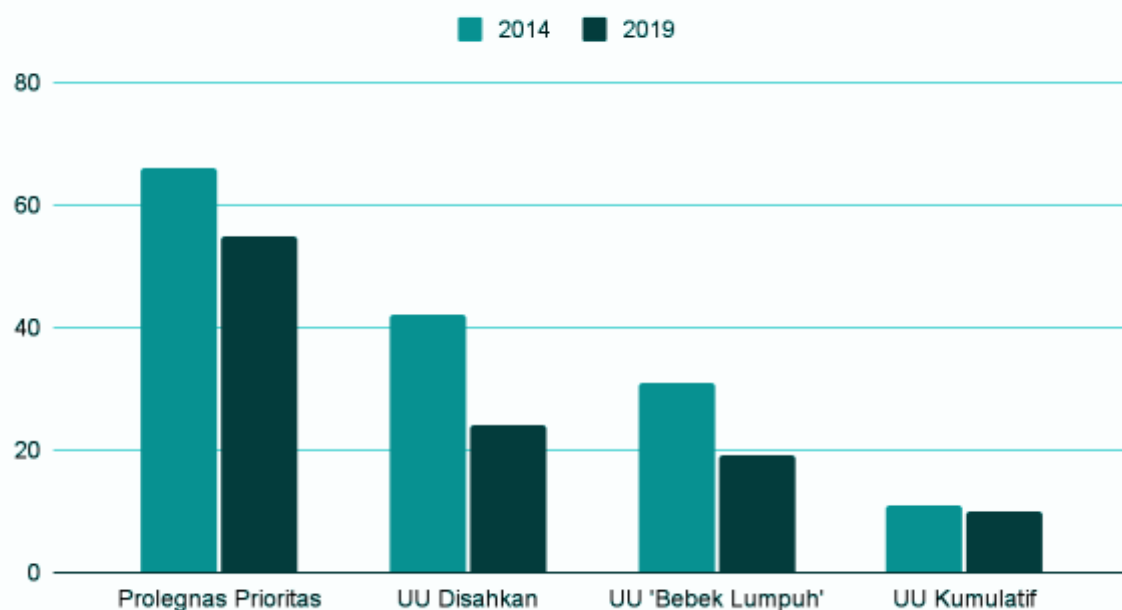
Strict oversight and effective control mechanisms over lawmaking, particularly during the 'lame duck' session, are of paramount importance. Transparency in lawmaking and law enforcement against corrupt or collusive practices are key in maintaining the integrity and legitimacy of the legislature. It is also important to preserve the principles of democracy in Indonesia's political system.

Indeed, the great power of the major party over setting the legislative agenda also increases the risk of intransparent and less accountable decision making. It could lead to political decisions which are inappropriate or even detrimental to the people. As a result, public trust in the government and the legislature would see a decline, and dissatisfaction with the political system would grow. So far, the people have not been satisfied with DPR. Therefore, public trust needs to be increased by bringing DPR and the people closer together. A survey conducted by Litbang Kompas in August 2020 shows a gap between DPR and its constituents, with the majority of respondents saying that DPR members rarely visited their regions. The lack of information about

²² Akhmad Adi Purawan, “KORUPSI LEGISLASI DALAM PEMBENTUKAN PERATURAN PERUNDANG-UNDANGAN,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 3, no. 3 (December 30, 2014): 347, <https://doi.org/10.33331/rechtsvinding.v3i3.30>.

visits and their concentration in certain locations are also contributing factors. Many people are dissatisfied with the performance of DPR members. They think that the DPR members do not represent their aspirations.²³ The following is the data on DPR RI's legislative achievements during the 'lame duck' period.

Capaian Legislasi DPR RI



Sumber: *Academic Constitutional Drafting 2020: Evaluasi terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Saputro, et al (reviewed by the author)

The table above shows the laws passed by DPR RI following the announcement of the election results by the General Elections Commission (KPU), also known as the transition period (the 'lame duck' period in several countries). The data shows that toward the end of its term, DPR RI rushed to pass many pending bills. Although there is no guarantee that laws introduced by the parliament during the 'lame duck' session are problematic, the primary concerns are the lack of transparency, accountability, and legitimacy in the lawmaking during the 'lame duck' session.²⁴

²³ Dedy Afrianto, "75 Tahun DPR RI, Tantangan Memangkas Ruang Berjarak," *Harian Kompas*, August 29, 2020, <https://www.kompas.id/baca/riset/2020/08/29/75-tahun-dpr-ri-tantangan-memangkas-ruang-berjarak>.

²⁴ Aditya Wahyu Saputro et al, *Academic Constitutional Drafting, 2020: Evaluasi Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 2020*, https://mpr.go.id/img/jurnal/file/030222_2020%20_%20Condraft%20UI%20Tim%20C%20-%20Evaluasi%20thdp%20UUD%20NRI%20Tahun%201945.pdf.

To overcome this challenge, there is a need for concrete efforts to enhance public participation in lawmaking. The communication mechanism between DPR and constituents could be strengthened through direct visits by DPR members to the regions and through digital platforms allowing allow the public to provide direct input and feedback. In addition, the policy-making process should be reformed to ensure that all parties involved, including civil society and experts, have equal access and can participate fairly.

In addition to efforts to improve the relationship between DPR and constituents, it is also crucial to ensure the quality or substance of legislation, particularly during the 'lame duck' period. A clear and transparent mechanism is needed to set the legislative agenda and ensure that each proposed bill genuinely addresses the needs and interests of the people. This could be done through improved internal and external oversight of DPR's performance and the strengthening of independent oversight institutions, such as the Development Finance Comptroller (BPKP) and the Corruption Eradication Commission (KPK). For this reason, strategies are necessary to prevent and deal with legislative dictatorship during the 'lame duck' period.

The Right Strategy to Optimize the Role of the Legislature during the 'Lame Duck' Period

In constitutional law, DPR members who are still in office after a general election, even though new members have been elected and will soon be sworn in, are referred to as lame-duck legislature. The session during this period is known as the lame-duck session. This concept has been implemented in the United States since the 20th amendment in 1935. With regard to the lame-duck legislature and lame-duck session, Congress refrains from exercising its authority to avoid any negative impacts on the people or the incoming members of Congress.²⁵

In Indonesia, DPR members often act improperly in drafting or passing bills into laws, sometimes betraying the fundamental principles of lawmaking. They also pay little

²⁵ Constitutional Court Ruling Number 79/PUU-XVII/2019.

attention to the aspects of democratic representation crucial to democracy.²⁶ It shows the arbitrariness of most legislators as the laws they passed do not fully reflect the products of a well-functioning democratic system.

Therefore, there is a need for stricter regulation on lawmaking during the post-election government transition to prevent inappropriate laws from being made and having a detrimental impact on the people and the economy. This includes limiting excessive lawmaking, focusing attention on issues of importance to the public, and increasing transparency, accountability, and public participation in the lawmaking.

It is also crucial to optimize constitutionalism with stricter rules of lawmaking during the 'lame duck' period to ensure that decisions made reflect the interests of the people as a whole and maintain the integrity of the political system. Such measures could include promoting transparency in lawmaking, encouraging public participation, and overseeing lawmaking more effectively. Therefore, constitutionalism could be optimized in Indonesia's legislation.

According to Jimly Asshiddiqie, constitutionalism is the notion of regulating and limiting government power to keep the government in order.²⁷ In constitutionalism, the constitution limits the power of the government. Its purpose is to prevent dictatorship and protect the rights of citizens.²⁸

There are at least two main principles of constitutionalism: (1) the limitation of the power of state institutions; and (2) the protection and guarantee of the rights of citizens. These two elements must be enshrined in the constitution of a state that adheres to the principles of constitutionalism. In essence, constitutionalism should be enshrined and reflected in the constitution. The constitution, as the supreme and basic law of the land, serves as the primary instrument for demonstrating the genuine implementation of constitutionalism.²⁹

²⁶ Ibid.

²⁷ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Sinar Grafika, 2021).

²⁸ Muhammad Alim, *Asas-Asas Negara Hukum Modern dalam Islam: Kajian Komprehensif Islam dan Ketatanegaraan* (LKIS Pelangi Aksara, 2010).

²⁹ Himas M. I. El Hakim, "Prinsip Konstitusionalisme Dalam Piagam Madinah dan Relevansinya bagi Konstitusi Indonesia," *Journal of Islamic Law Studies: Sharia Journal* 2, no. 3 (May 2021).

Indonesia's constitution and prevailing law do not clearly stipulate the inauguration of DPR RI members. Thus far, the inauguration has taken place in October by convention. Therefore, it is necessary to make clearer and more orderly regulations on the inauguration of DPR RI members in the constitution or prevailing law. This could improve order in the political system and strengthen the principle of constitutionalism. Clear regulations on when and how DPR RI members should be inaugurated would provide legal certainty and clarity for all relevant parties. This measure could serve to reinforce the principles of democracy and people representation within the political system. With clear provisions regarding the inauguration of DPR RI members, the democratization in general elections would be more structured and organized.

They would also increase the legitimacy of the legislature and strengthen the bond between representatives and their constituents. Furthermore, they could minimize the potential for abuse of power or political manipulation in the inauguration process. Transparent and accountable provisions would facilitate the public to monitor and oversee the inauguration of DPR RI members more easily, thereby reducing the potential for practices detrimental to democracy. An important aspect of enhancing constitutionalism is to reform and adapt the existing legal framework to evolving political conditions and dynamics. It is of paramount importance to ensure that the principles of constitutionalism can be implemented effectively and relevantly in the existing social, political, and legal contexts.

A measure which could be adopted is to regulate the earlier inauguration of DPR RI members, at least about two months. It aims to prevent legislative dictatorship during the 'lame duck' period. For example, in the United States, the 'lame duck' session rule has been in place for a considerable period of time. It is enshrined in the 20th Amendment to the United States Constitution passed on January 23, 1933. This amendment changed the start and end dates of the terms of office of the president, vice president, and members of Congress. Prior to the amendment, the term of office started on March 4. Then, the president and vice president take office on January 20,

and members of Congress on January 3.³⁰ The amendment was introduced to shorten the 'lame duck' period.

Indonesia could follow the precedent by inaugurating DPR members sooner after the election. It would shorten the 'lame duck' session and ensure that the newly-elected legislators can take office immediately without any power vacuum or arbitrariness. Furthermore, it is of the utmost importance to promote transparency and accountability in the legislative process. The public should be actively involved in the process through public hearings and other participatory forums. Therefore, public interests could be prioritized in lawmaking.

The measure to adopt is earlier inauguration of DPR members. It requires amendment to laws. The MD3 Law and the Election Law should be made congruent to prevent confusion and ensure the effectiveness of the rules. This is necessary because one of the main factors causing problems with the 'lame duck' session in various countries is the length of the transition period or the period between one term of office and the next.³¹

The 'lame duck' session after the election requires a careful strategy to optimize the role of the legislature. For this reason, clear rules and boundaries are required. The duration of the "lame duck" period should be limited in order to prevent outgoing legislators from making controversial policies. Legislative authority during the 'lame duck' period should also be limited to prevent abuse of power. Lawmakers should prioritize issues of importance to the public and avoid controversial bills. This requires strong political will³² from legislators and the political elite.

Transparency in lawmaking also plays a key role. The public should be granted greater access to information about bills, meeting agendas, and deliberation results. Public participation should be encouraged so that the people can provide input and suggestions about lawmaking. It is also of the utmost importance to strengthen

³⁰ "The Constitution: Amendments 11-27," National Archives, November 4, 2015, <https://www.archives.gov/founding-docs/amendments-11-27>.

³¹ John Copeland Nagle, "Lame Duck Logic," *UC Davis Law Review* 45, no. 4 (April 2012).

³² Amber NW Raile, Eric D Raile, and Lori A Post, "Analysis and Action: The Political Will and Public Will Approach," *Action Research* 19, no. 2 (May 2, 2018): 237–54, <https://doi.org/10.1177/1476750318772662>.

constitutionalism. If necessary, the Constitutional Court should be granted additional authority with regard to the judicial review of laws passed during the 'lame duck' period and deemed to be unconstitutional. Furthermore, political education needs to be improved to raise public awareness of the importance of constitutionalism and the legislative role. In addition, building a healthy political culture by improving integrity, accountability, and ethics and morality in lawmaking is necessary. This would be a firm foundation for strengthening constitutionalism in Indonesia's political system.

Thus far, the government and DPR (2019-2024 period) have passed controversial laws often criticized by the public. A list of controversial laws is provided.

Several Controversial Laws (2014 – 2019)
<i>Omnibus Law</i>
ITE Law revision
KPK Law
Nusantara Capital City (IKN) Law

The table shows that several laws introduced by the government and DPR have been controversial and drawn a lot of criticism from the public. The Omnibus Law on Job Creation has received a lot of rejection from the public as it is deemed to favor investors and harm workers. Experts also argue that this system has the potential to disrupt the existing system.³³ ITE Law has been considered incapable of resolving conflicts in the virtual world, exacerbating the current situation. It can be seen in virtual politics and digital repression.³⁴

One of the most highly publicized issues is how the government and DPR weakened KPK through amending the law on the anti-graft body. According to a number of legal

³³ Edy Kasro, Koesrin Nawawie A., and Siti Mardiyati, "Dampak Undang-Undang Cipta Kerja (Omnibus Law) Terhadap Undang-Undang Administrasi Pemerintahan," *Jurnal Kepastian Hukum dan Keadilan* 4, no. 1 (June 22, 2022), <https://doi.org/10.32502/khdk.v4i1.4474>.

³⁴ Shinta Resmy Cakra Ningrat and Soni Akhmad Nulhaqim, "Pasal Karet UU ITE dan Penyelesaian Konflik Digital di Indonesia," *Epistemik: Indonesian Journal of Social and Political Science* 4, no. 2 (October 31, 2023): 38–52, <https://doi.org/10.57266/epistemik.v4i2.158>.

experts, the authority amended KPK Law to impede KPK's capacity to combat corruption. As observed by PSHK, the amendment to the KPK Law, which was passed in President Jokowi's era, has been perceived as a significant setback for KPK since 2009.³⁵

IKN Law is controversial. The government's strategy to realize the grand plan of relocating the national capital from Jakarta to Kalimantan appears to have undergone a slight shift. The legal basis for the relocation of the country's capital city, Law No. 3 of 2022 on the National Capital, was amended only 9 months after it had been passed. One of the two bills in the 2023 Prolegnas priority list was the National Capital Bill. This shows the poor management of legislation by the government and DPR.³⁶

In Prolegnas 2023, 27 bills were pending, and 10 bills were deliberated by DPR and the government. Furthermore, in the 2024 Priority Prolegnas, 47 bills have been determined, 10 of which are newly proposed. Therefore, DPR has two main tasks, namely completing the Priority Prolegnas and participating in the election, given that only 11% of the current DPR members are not running for re-election.³⁷

To address the issue, it is essential to implement a series of serious and concrete measures to prevent the 'lame duck' session from having a detrimental impact on this nation. Fitrah Bukhari, a legal expert, proposes several methods to restrict the deliberation of bills following elections. Firstly, the Law on Lawmaking should be amended to prohibit the government and DPR members from proposing new bills during the "lame duck" period. Secondly, provisions related to substantial restrictions on post-election legislation should be incorporated into DPR's rules of procedure to limit the deliberation of bills following elections, with the exception of bills related to the State Budget (APBN) and emergency. Third, MKD could be used to temporarily

³⁵ Antoni Putra, "Upaya Pelemahan KPK Telah Berlangsung Lebih Dari Satu Dekade - pshk.or.id," PSHK, January 30, 2020, <https://pshk.or.id/blog-id/upaya-pelemahan-kpk-telah-berlangsung-lebih-dari-satu-dekade/>.

³⁶ Rofiq Hidayat, "Revisi UU IKN, Ada Persoalan Serius dalam Tata Kelola Legislasi," hukumonline.com, November 25, 2022, <https://www.hukumonline.com/berita/a/revisi-uu-ikn--ada-persoalan-serius-dalam-tata-kelola-legislasi-lt63804704b727d/>.

³⁷ Rico Novianto, "Menanti Masa 'Transisi' dalam Aktivitas Legislasi," Detikcom, February 20, 2024, <https://news.detik.com/kolom/d-7201204/menanti-masa-transisi-dalam-aktivitas-legislasi>.

limit its authority. It could issue a binding policy for other DPR organs not to discuss bills in stage I after elections.³⁸

In light of the aforementioned explanation, the author seeks to elucidate the significance of strategic measures to prevent and overcome the "lame duck" period in Indonesia. This is crucial to avoid any negative impact on the people. A measure to adopt is to shorten the transition period by a maximum of 60 days since the final and binding decision is issued. It aims to minimize—or even prevent—legislative dictatorship and abuse of power.

Another solution to the "lame duck" period and the transparency and accountability of DPR RI is to employ a comprehensive strategy that includes reforming its internal rules and procedures. In addition, more open mechanisms for the deliberation of bills, stricter oversight of budgets and expenditures, and openness in the process of electing officials should be established. To promote transparency and accountability, it is necessary to shift the burden of proof in Indonesian prevailing law, particularly to prevent legislative corruption.

It is then necessary to adopt a regulation that would prohibit the legislature from convening post-election sessions (commonly referred to as the 'lame duck' period) until the newly elected members have been inaugurated. However, the deliberation of APBN or emergency should be excluded. The prohibition aims to prevent legislative corruption in Indonesia's legislature. Several concrete measures could be implemented: (1) shortening the 'lame duck' period; (2) increasing transparency and accountability in lawmaking; and (3) prohibiting legislators from convening sessions, except during the deliberation of APBN or in emergency.

In addition, the need for internal reform in DPR RI cannot be ignored. It is imperative that more open mechanisms for the deliberation of laws, stricter oversight of budgets and expenditures, and transparency in the process of electing officials be established.

³⁸ Fitrah Bukhari et al, *Dinamika Negara Hukum Demokratis Pasca Perubahan UUD 1945* (2022; repr., Bandar Lampung: Pusaka Media, 2022).

However, this effort requires stricter oversight from external parties, including civil society and the mass media, as part of the pillars of democracy. Various stakeholders should be actively involved in monitoring and providing input on the performance of the legislature. The aim is to prevent abuse of power and to ensure that decisions taken are truly in the interest of the people.

The objective is to achieve greater transparency, accountability, and responsiveness in the legislative system through the implementation of these measures. This would strengthen constitutionalism and ensure that the legislature could effectively represent the people, in accordance with the principles of sound democracy and the constitution.

The theory of the optimization of constitutionalism highlights the importance of maintaining a balance between government power and the protection of individual rights and public interests. In the context of post-election legislation, the implementation of this theory would involve concrete measures to ensure that lawmaking reflects the values of constitutionalism.

One important aspect of the theory of the optimization of constitutionalism is the protection of individual rights. In the context of post-election lawmaking, it is essential to ensure that the laws passed do not violate fundamental individual rights, including freedom of opinion, freedom of expression, and protection against discrimination. Lawmakers should consider the impact of the laws on individual rights and adopt measures to protect them.

Furthermore, the theory of the optimization of constitutionalism highlights the importance of ensuring the transparency and accountability of lawmaking. In essence, the public should be granted greater access to information on the deliberation of bills and afforded the opportunity to participate in the process. For this reason, measures should be adopted to prevent conflicts of interest and abuse of power in lawmaking.

The concrete measures to optimize constitutionalism also include strengthening law enforcement institutions, such as the Constitutional Court, to ensure that laws passed are in accordance with the constitution and do not violate the principles of

constitutionalism. In addition, there is a need for better political education to raise public awareness of the importance of constitutionalism and the role of the legislature in maintaining justice and balance of power.

Implementing the theory of the optimization of constitutionalism in post-election lawmaking promotes democracy, transparency, and accountability in the lawmaking. It ensures that decisions made by the legislature reflect the public interest and maintain the integrity of Indonesia's political system.

CONCLUSIONS

The findings of this research have important implications for the study of legal phenomena in Indonesia, improvement of the quality of lawmaking, need for strict oversight and transparency, and law enforcement against corruption in the lawmaking. The measures to enhance the policy-making process and to build the capacity of DPR to account for its performance, both internally and externally, are crucial in maintaining political stability and gaining greater public trust.

Furthermore, this study is of significant importance in the context of Indonesia's democratic development and political stability. This research identifies several challenges during the 'lame duck' period. The results can be used to develop more effective strategies to address these issues, such as making stricter regulations on lawmaking, strengthening constitutionalism, implementing internal reforms in DPR, and improving political education for the public. Several recommendations are made to prevent and deal with the 'lame duck' session: (1) shortening the 'lame duck' period (transition); (2) promoting transparency and accountability; and (3) prohibiting lawmakers from convening sessions (except in the deliberation of APBN or emergency).

ACKNOWLEDGEMENT

I would like to express my deepest gratitude to all those helping me in completing this scientific article. I would also like to express my gratitude to my parents and extended family. Then, I would like to thank my teachers in kindergarten, elementary school, secondary school, and high school for teaching me to read and write and shaping my mindset. Furthermore, I am grateful to my lecturers who have imparted knowledge that has influenced my perspective. I am also grateful to the editor of this journal for having reviewed and corrected my manuscript. I would like to extend my gratitude to all those who have provided me with moral support and encouragement at each stage of this research. The support and encouragement have been crucial to the completion of this scientific article. I would like, once more, to express my gratitude for all assistance and contributions. May Allah Swt bless us all.

DECLARATION OF NO CONFLICT OF INTEREST

I hereby declare that I have no conflict of interest in this article.

REFERENCES

- Afrianto, Dedy. "75 Tahun DPR RI, Tantangan Memangkas Ruang Berjarak." *Harian Kompas*, August 29, 2020. <https://www.kompas.id/baca/riset/2020/08/29/75-tahun-dpr-ri-tantangan-memangkas-ruang-berjarak>.
- Alim, Muhammad. *Asas-Asas Negara Hukum Modern dalam Islam: Kajian Komprehensif Islam dan Ketatanegaraan*. LKIS Pelangi Aksara, 2010.
- Arsil, Fitra. "RUU Kontroversi di Masa Transisi - Hukum Tata Negara FHUI." *Hukum Tata Negara FHUI*. Faculty of Law Universitas Indonesia, September 18, 2019. <https://tatanegara.ui.ac.id/ruu-kontroversi-di-masa-transisi/>.
- Arsil, Fitra, Ariesy Tri Mauleny, and Ryan Muthiara Wasti. "Law Making Activities during Lame Duck Sessions in Indonesia (1997–2020)." *Parliamentary Affairs* 76, no. 2 (November 20, 2021): 421–42. <https://doi.org/10.1093/pa/gsab058>.
- Asshiddiqie, Jimly. *Konstitusi dan Konstitusionalisme Indonesia*. Sinar Grafika, 2021.
- Bukhari, Fitrah. *Dinamika Negara Hukum Demokratis Pasca Perubahan UUD 1945*. 2022. Reprint, Bandar Lampung: Pusaka Media, 2022.

<https://jdih.banyuwangikab.go.id/dokumen/ebook/Dinamika-Hukum-Demoratis-Pasca-Perubahan-UUD.pdf> .

El Hakim, Himas M. I. "Prinsip Konstitusionalisme Dalam Piagam Madinah Dan Relevansinya Bagi Konstitusi Indonesia." *Journal of Islamic Law Studies: Sharia Journal* 2, no. 3 (May 2021).

Farisa, Fitria Chusna. "Soal Jual-Beli Pasal, PSHK Sebut Proses Legislasi Memang Tak Transparan - pshk.or.id." PSHK, December 23, 2019. <https://pshk.or.id/rr/soal-jual-beli-pasal-pshk-sebut-proses-legislasi-memang-tak-transparan/>.

Fauzani, Muhammad Addi, Dian Kus Pratiwi, and Ahmad Ilham Wibowo. "Legalitas Dan Praktek Pembentukan Undang-Undang Secara Cepat di Indonesia (Studi terhadap Pembentukan Undang-Undang tentang Komisi Pemberantasan Korupsi dan Undang-Undang Mahkamah Konstitusi)." *Jurnal Legislasi Indonesia* 19, no. 4 (December 31, 2022). <https://doi.org/10.54629/jli.v19i4.968>.

Hidayat, Rofiq. "Revisi UU IKN, Ada Persoalan Serius dalam Tata Kelola Legislasi." *hukumonline.com*, November 25, 2022. <https://www.hukumonline.com/berita/a/revisi-uu-ikn--ada-persoalan-serius-dalam-tata-kelola-legislasi-lt63804704b727d/>.

Indonesia, PSHK. "Jalur Lambat RUU Perampasan Aset di Tahun Pemilu." Video. YouTube, November 2, 2023. <https://www.youtube.com/watch?v=GKbG4tnPbMo&t=3084s>.

Jenkins, Jeffery A., and Timothy P. Nokken. "Partisanship, the Electoral Connection, and Lame-Duck Sessions of Congress, 1877-2006." *The Journal of Politics* 70, no. 2 (April 2008): 450-65. <https://doi.org/10.1017/s0022381608080420>.

Kasro, Edy, Koesrin Nawawie A, and Siti Mardiyati. "Dampak Undang-Undang Cipta Kerja (Omnibus Law) Terhadap Undang-Undang Administrasi Pemerintahan." *Jurnal Kepastian Hukum dan Keadilan* 4, no. 1 (June 22, 2022). <https://doi.org/10.32502/khdk.v4i1.4474>.

Koo, Bon Sang, Junseok Kim, and Jun Young Choi. "Testing Legislative Shirking in a New Setting: The Case of Lame Duck Sessions in the Korean National Assembly." *Japanese Journal of Political Science* 20, no. 1 (December 18, 2018): 33-52. <https://doi.org/10.1017/s1468109918000403>.

Constitutional Court. Constitutional Court Ruling Number 79/PUU-XVII/2019.

Marzuqi, Abdillah M. "Masih Ada Praktik Jual Beli Pasal, Mahfud MD: Penegakan Hukum Mengecewakan." *Media Indonesia*, November 30, 2023. <https://mediaindonesia.com/politik-dan-hukum/633838/masih-ada-praktik-jual-beli-pasal-mahfud-md-penegakan-hukum-mengecewakan>.

Muhaimin. *Metode Penelitian Hukum*. 1st ed. Mataram: Mataram University Press, 2020.

Nagle, John Copeland. "Lame Duck Logic." *UC Davis Law Review* 45, no. 4 (April 2012).

Ningrat, Shinta Ressmy Cakra, and Soni Akhmad Nulhaqim. "Pasal Karet UU ITE dan

- Peyelesaian Konflik Digital di Indonesia." *Epistemik: Indonesian Journal of Social and Political Science* 4, no. 2 (October 31, 2023): 38-52. <https://doi.org/10.57266/epistemik.v4i2.158>.
- Novianto, Rico. "Menanti Masa 'Transisi' dalam Aktivitas Legislasi." *Detikcom*, February 20, 2024. <https://news.detik.com/kolom/d-7201204/menanti-masa-transisi-dalam-aktivitas-legislasi>.
- Purawan, Akhmad Adi. "KORUPSI LEGISLASI DALAM PEMBENTUKAN PERATURAN PERUNDANG-UNDANGAN." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 3, no. 3 (December 30, 2014): 347. <https://doi.org/10.33331/rechtsvinding.v3i3.30>.
- Putra, Antoni. "Upaya Pelemahan KPK Telah Berlangsung Lebih Dari Satu Dekade - pshk.or.id." *PSHK*, January 30, 2020. <https://pshk.or.id/blog-id/upaya-pelemahan-kpk-telah-berlangsung-lebih-dari-satu-dekade/>.
- Rahmadi. *Pengantar Metodologi Penelitian*. Banjarmasin: Antasari Press, 2011.
- Raile, Amber NW, Eric D Raile, and Lori A Post. "Analysis and Action: The Political Will and Public Will Approach." *Action Research* 19, no. 2 (May 2, 2018): 237-54. <https://doi.org/10.1177/1476750318772662>.
- Ramadhan Firdaus, Fahmi. "Apakah Praktik Lame Duck Session Dikenal di Parlemen Indonesia?" *HukumOnline*, August 31, 2021. <https://www.hukumonline.com/klinik/a/apakah-praktik-ilame-duck-session-i-dikenal-di-parlemen-indonesia-lt612de402e8191>.
- Razak, Askari. "Penunjukan Gubernur oleh Presiden dalam Wacana RUU Daerah Khusus Jakarta: Kontroversi dan Orientasi." *UNES Law Review* 6, no. 2 (December 29, 2023). <https://doi.org/10.31933/unesrev.v6i1>.
- Santika, I Gusti Ngurah. "Menelisik Akar Kegaduhan Bangsa Indonesia Pasca Disetujuinya Hasil Revisi UU KPK Dalam Perspektif Pancasila." *Jurnal Ilmiah Ilmu Sosial* 6, no. 1 (June 29, 2020): 26. <https://doi.org/10.23887/jiis.v6i1.25001>.
- Schönenberger, Felix. "Out of Office, Out of Step? Re-Election Concerns and Ideological Shirking in Lame Duck Sessions of the U.S. House of Representatives." *SSRN Electronic Journal*, 2024. <https://doi.org/10.2139/ssrn.4706133>.
- Solikin, Nur. *Pengantar Metodologi Penelitian Hukum*. Pasuruan: CV. Penerbit Qiara Media, 2021.
- Supriatma, Made. "Apakah Lame Duck Session Diperlukan dalam Sistem Pemerintahan Kita?" *IndoPROGRESS*, September 21, 2019. <https://indoprogress.com/2019/09/apakah-lame-duck-session-diperlukan-dalam-sistem-pemerintahan-kita/>.
- National Archives. "The Constitution: Amendments 11-27," November 4, 2015. <https://www.archives.gov/founding-docs/amendments-11-27>.
- PSHK. "Urgensi Pengesahan RUU Perampasan Aset - pshk.or.id," November 23,

2023. <https://pshk.or.id/aktivitas/urgensi-pengesahan-ruu-perampasan-aset/>.

Wahyu Saputro, et al, Aditya. *Academic Constitutional Drafting, 2020: Evaluasi terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, 2020. https://mpr.go.id/img/jurnal/file/030222_2020%20_%20Condraft%20UI%20Tim%20C%20-%20Evaluasi%20thdp%20UUD%20NRI%20Tahun%201945.pdf.

Wahyuningroem, Sri Lestari, Rheinhard Sirait, Uljanatunnisa Uljanatunnisa, and Dudy Heryadi. "Youth Political Participation and Digital Movement in Indonesia: The Case of #ReformasiDikorupsi and #TolakOmnibusLaw." *F1000Research* 12 (May 24, 2023): 543. <https://doi.org/10.12688/f1000research.122669.1>.