






Curbing Elitist Populism in Indonesia's Lawmaking: A Constitutional Law Perspective

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Abstract

This research addresses the deficiencies in the scholarly exploration of constitutional law in relation to elitist populism within the legislative framework of Indonesia. The article examines the tendency of elitist populism in Indonesian legislative practice and advocates the idea of curbing it by constitutional law. Elitist

populism, in the context of this article, refers to a political approach in which leaders claim to represent the common people, while simultaneously engaging in elitist practices. This study uses a normative juridical research method using statutory and conceptual approaches, and analyzes controversial cases with significant legislation impact. The research findings show that elitist populism in legislative practice is manifested in rapid legislation, and the consolidation of power that minimizes participation fails to reflect public aspirations. To limit these tendencies, constitutional law arrangements in institutional design, supervisory mechanisms, as well as spaces for public participation and awareness, need to be stronger. Therefore, it is recommended to strengthen the institutional rules of the constitutional court, revitalize the supervisory function of the house of representatives, encourage lawmaker's consistency in the application of *meaningful participation*, and build public awareness.

KEYWORDS *Constitutional Law, Elitist Populism, Indonesia, Lawmaking, Legislation.*

Introduction

Populism is a global political phenomenon that relies on rhetoric "in the name of the people" to gain political legitimacy and mass support. In the Indonesian context, populism has been practiced even since the time of the first president, Soekarno, with an anti-colonialism type of populism.¹ Through Nasakom and Guided Democracy, Soekarno aimed to unify domestic political factions opposing to "NEKOLIM" (neo-colonialism, colonialism, and imperialism). His foreign policies, including nationalization and NEFO, reinforced an anti-imperialist stance and bolstered his populist leadership persona.² In more recent times, the tendency of populism in Indonesia can be seen in legislative products that act in the name of the people's interests but actually aim to strengthen the power of certain groups.

This practice of populism in Indonesian legislation is closer to the concept of Elitist Populism proposed by Kirsten and Marius, Cainani and Porta, as well as Filimonova, which refers to an approach to politics in which leaders claim to represent the

¹ Nair, Deepak. "Populists in the Shadow of Great Power Competition: Duterte, Sukarno, and Sihanouk in Comparative Perspective." *European Journal of International Relations*, May 19, 2023, 135406612311738. <https://doi.org/10.1177/13540661231173866>.

² William Redfern, *Sukarno's Guided Democracy and the Limits of Populism* (University of Michigan, 2010), https://deepblue.lib.umich.edu/bitstream/handle/2027.42/77846/wredfern_1.pdf.

common people while simultaneously engaging in elitist practices.³ In Filimonova's review, these practices can have significant implications for governance, as they can lead to policies that favor elite interests under the guise of populist reforms, potentially undermining the democratic process.⁴ According to Lucardie's review this practice will lead to a new type of dictatorship⁵, which in Schoor's review triggered by elitist elements integrating into populist discourse.⁶ In this context, populism has significant juridical and institutional consequences, as it encourages the consolidation of executive power and erodes the deliberative space that is the foundation of the democratic rule of law.

The phenomenon of populism in post-reform Indonesia shows similar symptoms. Various strategic policies and legislative products, such as the revision of the Corruption Eradication Commission Law (KPK Law), the revision of the Constitutional Court Law (MK Law), the creation and replacement of the Job Creation Law (Ciptaker Law), the establishment of the National Capital City Law (IKN Law), the Health Law, and the revision of the Indonesian National Army Law (TNI Law), were carried out at high speed and with minimal public participation. These measures, although claimed to be part of structural reforms, have led to criticism from civil society because of ignoring participatory principles and concentrate power in the executive. Moreover, elitist populism in Indonesian legislation is often accompanied by delegitimization of opposition groups and critical civil society actors, or through moralistic narratives such as labeling as anti-development.

Populism in legislation often narrows the meaning of "the people" to a mere political tool for legitimization. This manipulation results in laws that are responsive to momentary mass pressure, but

³ Forkert, Kirsten and Guderjan, Marius. "Populism and the People: Elitism, Authoritarianism and Libertarianism" In *Affective Polarization: Social Inequality in the UK after Austerity, Brexit and COVID-19* edited by Jana Gohrisch and Gesa Stedman, 33-59. Bristol, UK: Bristol University Press, 2023. <https://doi.org/10.56687/9781529222289-006>; Caiani, Manuela, and Donatella Della Porta. "The Elitist Populism of the Extreme Right: A Frame Analysis of Extreme Right-Wing Discourses in Italy and Germany." *Acta Politica* 46, no. 2 (March 28, 2011): 180-202. <https://doi.org/10.1057/AP.2010.28>.

⁴ Filimonova, Tatiana. "Illiberal Vanguard: Populist Elitism in the United States and Russia." *The Russian Review*, September 10, 2023. <https://doi.org/10.1111/russ.12565>.

⁵ Lucardie, Paul. "Populist Democracy or Populist Dictatorship?", in Yannis Stavrakakis & Giorgos Katsambekis (eds.), *Research Handbook on Populism*, Edward Elgar Publishing, 2024, pp. 373-84. <https://doi.org/10.4337/9781800379695.00044>.

⁶ Schoor, Cornelia. "Where the Real People Meet the Real Elite: Exploring Mixes of Populism with Elitism." *Populism* 2, no. 2 (2019): 184-206. <https://doi.org/10.1163/25888072-02021032>.

ignore basic rights and the principle of pluralism.⁷ Anggono emphasized the importance of forming laws that remain responsive and participatory without falling into the trap of pure populism.⁸ Pacini explained that in the legislative process, populism tends to minimize deliberative procedures and ignore substantial public participation in decision-making.⁹

If unconstrained, populism has the potential to undermine constitutional democratic principles such as the independence of the judiciary, the protection of minority rights¹⁰, the rule of law, and government accountability¹¹. As Torre points out, populism carries the promise of improving democracy but also poses great risks to it¹². This double-edged political practice in the review of the theory of political-legal relations, needs to be "fenced in" by law¹³ so as not to cross the line¹⁴. Therefore, the existence of constitutional law becomes strategic in this curbing role.

In this context, constitutional law functions as a tool to prevent the concentration of power in the hands of a few elites, ensure transparency and accountability of state institutions, and keep political decisions within constitutional democratic corridors. In other words, constitutional law not only regulates procedures, but also protects the substance of democracy from manipulation by elites who claim to speak on behalf of the public interest without

⁷ Sankar, Mallika, Meghna Christina Mudaliar, and Tarannum Malhotra. (2024). Contemporary Populism and Progressivism. In: Chacko Chennattuserry, J., Deshpande, M., Hong, P. (eds) Encyclopedia of New Populism and Responses in the 21st Century. Springer, Singapore, https://doi.org/10.1007/978-981-16-9859-0_448-1.

⁸ Anggono, Bayu Dwi. "The Politics of Law on the Formation of Responsive, Participative, and Populist Legislation," Proceeding - Kuala Lumpur International Business, Economics and Law Conference 9, November 14, 2018.

⁹ Pacini, Fabio. Populism and Law-Making Process. In: Delledonne, G., Martinico, G., Monti, M., Pacini, F. (eds) Italian Populism and Constitutional Law. Challenges to Democracy in the 21st Century. Palgrave Macmillan, Cham. (2022) https://doi.org/10.1007/978-3-030-37401-3_6.

¹⁰ John E. Nowak and Ronald D. Rotunda, *Principles of Constitutional Law*, 3rd ed. (St. Paul, MN: Thomson/West, 2007), pp. 16.

¹¹ Barber, Nicholas W., The Constitutional State (January 4, 2011). Oxford: OUP, 2010, Oxford Legal Studies Research Paper No. 83/2010, Available at SSRN: <https://ssrn.com/abstract=1734604>

¹² De La Torre, Carlos, ed. The Promise and Perils of Populism: Global Perspectives. The University Press of Kentucky, 2015, pp. 2.

¹³ Garbbaum, Stephen. "The Place of Constitutional Law in the Legal System." In *The Oxford Handbook of Comparative Constitutional Law*, edited by Michel Rosenfeld and András Sajó, 169-189. Oxford: Oxford University Press, 2012. <https://doi.org/10.1093/oxfordhb/9780199578610.013.0009>.

¹⁴ Romano, Vito. "Introduction: An Entanglement of Missions for Constitutional Law." In *Constitutional Democracies in Crisis*, edited by Mark A. Graber, Sanford Levinson, and Mark Tushnet, 1-25. Oxford: Oxford University Press, 2022. <https://doi.org/10.1093/oso/9780197655832.003.0001>.

strong legitimacy.

Within the framework of constitutional democracy¹⁵, constitutional law has a fundamental function as a system for regulating state power¹⁶, which ensures the continuity of the principle of checks and balances¹⁷, the supremacy of the constitution¹⁸, and respect for political plurality. This function manifests itself in constitutionalism¹⁹, which, in Wing's view, is key to building a sustainable constitutional democracy by creating legal and political stability²⁰ that ensures the basic principles of the state are maintained despite changes in government. Therefore, the constitutional law not only controls the legislative mechanisms but also defend the core of democratic principles against exploitation by elite factions that resort to populist discourse as a vehicle for pseudo-legitimacy.

In the context of this description, it is important to study elitist populism not only as a political phenomenon, but as a challenge to institutional design and practice in constitutional law. Populist tendencies in Indonesian legislation has never been studied with a review of constitutional law. For this reason, this article will answer the questions; a) How can populism in legislation endanger constitutional democracy? b) How elitist populism practiced in legislation in Indonesia? c) What are the recommendations for constitutional law arrangements to limit this tendency in future legislation?

The theoretical challenge lies in integrating populism theory with legislative practices within Indonesia's constitutional democracy, while also formulating normative legal recommendations to address elite manipulation disguised as

¹⁵ Ridlwan, Zulkarnain, and Enny Nurbaningsih. (2018). "Law Revision on Indonesian Parliament's Oversight Function: Facing the Challenges of Democracy". *KnE Social Sciences* 3 (5):573–593. <https://doi.org/10.18502/kss.v3i5.2356>.

¹⁶ Alder, John. "The Purposes of Constitutional Law." In *Constitutional and Administrative Law*, 3rd ed., 3-22. London: Palgrave, 1999. https://doi.org/10.1007/978-1-349-15077-9_1.

¹⁷ Williams, Robert F., and Lawrence Friedman, 'State Constitutional Distribution of Powers', *The Law of American State Constitutions*, 2nd edn (New York, 2023), pp. <https://doi.org/10.1093/oso/9780190068806.003.0009>.

¹⁸ Congleton, Roger D. "The Nature of Constitutions." In *Improving Democracy Through Constitutional Reform*, 11-19. Boston, MA: Springer, 2003. https://doi.org/10.1007/978-1-4615-0421-4_2.

¹⁹ Alder, John. "Constitutionalism: The Rule of Law and the Separation of Powers." In *Constitutional and Administrative Law*, 3rd ed., 69-89. London: Palgrave, 1999. https://doi.org/10.1007/978-1-349-15077-9_4.

²⁰ Wing, Susanna D. "Principles of Constitutionalism." In *Constructing Democracy in Transitioning Societies of Africa*, 13-34. New York: Palgrave Macmillan, 2008. https://doi.org/10.1057/9780230612075_2.

populism. This study examines and seeks to address the notable deficiencies that currently exist within the academic discourse surrounding constitutional law, particularly as it relates to the multifaceted phenomenon of elitist populism, which has become increasingly prominent within the intricate legislative framework that governs Indonesia.

This study employs a normative juridical approach, utilizing both a statutory and a conceptual approach. The statutory approach is applied to examine the relevant legal norms, particularly the principles of constitutional law concerning constitutional democracy, the protection of plurality, the rule of law, and mechanisms of checks and balances as outlined in the 1945 Constitution of the Republic of Indonesia (UUD 1945). Meanwhile, a conceptual approach is used to understand the phenomenon of populism as a political idea and practice of power that has juridical implications, as well as to examine the construction of populism theory developed by legal and political theorists as an analytical knife in the context of Indonesian constitutional law.

The legal materials used in this research consist of primary legal materials in the form of laws and regulations such as the 1945 Constitution, Law Number 12/2011 on the Formation of Legislation and its amendments (P3 Law), KPK Law, Constitutional Court Law, Ciptaker Law, Health Law, and TNI Law. Secondary legal materials were obtained from legal literature, books on populism theory, scientific journals, and the results of relevant academic studies. Searches were also conducted on valid sources as part of tertiary legal materials to support the validity of the contextual narrative.

The analysis is conducted qualitatively using a deductive approach, which elaborates general theories of populism and principles of constitutional law into concrete cases of legislation that occur in Indonesia. The focus of the analysis is directed at identifying the relationship between the practice of elitist populism in legislative policy and its impact on constitutional institutions. The results of this analysis are then used as the basis for formulating normative arguments and legal recommendations in the conclusion of the article.

This research also employs an analytical prescriptive methodology, a technique that delineates legal challenges while concurrently providing critiques of elitist populist legislative practices. Based on the findings derived from these critiques, the research formulates normative propositions aimed at generating recommendations for enhancing the constitutional law architectural framework in the future, thereby ensuring that the law functions not

merely as a procedural instrument, but also as a mechanism that upholds the essence of constitutional democracy.

A. The Effect of Populism in Legislation on Constitutional Democracy

According to Kaidatzis, populism has both healthy and bad variants, where progressive populism promotes inclusiveness and participatory democracy, the authoritarian populism tends to centralize power and undermine democratic institutions.²¹ Muller characterizes populist governments through three main tendencies: the usurpation of state mechanisms, widespread corruption and "mass clientelism" involving the exchange of resources for political loyalty, and deliberate attempts to cripple civil society.²² With these tendencies, Corso added, populism, if framed within constitutional actions, has the potential to challenge the liberal democratic order by subverting the principle of the rule of law in a legalistic manner.²³

In modern constitutional law theory, constitutional democracy is not only understood as an electoral mechanism, but as a system of laws and institutions that guarantee the principles of pluralism, separation of powers, public participation and the supremacy of the constitution. In this context, populism, as characterized by Muller and Corso, poses a serious challenge, as it rejects pluralism and claims a monopoly on representation of the people's will. This claim is then used as legitimacy to reduce the role of the legislature, judiciary and civil society as part of the system of checks and balances that are essential in a state of law.

Muller argues that populism is anti-pluralist and anti-institutional,²⁴ because it seeks to eliminate all forms of opposition with the narrative that only one popular voice is legitimate - that of the populists themselves. In the practice of constitutional law, this can be seen in the delegitimization of academic criticism, the neglect of public participation in legislation, and the undermining of independent institutions. When state power begins to be exercised not on the basis of law, but on the basis of absolute moral claims, the principle of *rule of law* is replaced by *rule by moral*

²¹ Kaidatzis, Akritas. "Progressive Populism and Democratic Constitutionalism." *Revus*, no. 47 (January 26, 2022). <https://doi.org/10.4000/revus.8068>.

²² Jan-Werner Müller, *What Is Populism?* (Philadelphia: University of Pennsylvania Press, 2016), pp. 4.

²³ Corso, Lucia. "What Does Populism Have to Do with Constitutional Law? Discussing Populist Constitutionalism and Its Assumptions," on "Rivista di filosofia del diritto, Journal of Legal Philosophy" 2/2014: 443–470. <https://doi.org/10.4477/78466>.

²⁴ Muller. *Op.cit*

majoritarianism - a deviation from the essence of constitutionalism²⁵ and constitutional democracy.

It can be argued that elitist populism can be understood as a condition in which political elites monopolize the definition of "people's interests" while excluding participatory democratic mechanisms. Unlike populism that emerges from below as a form of dissatisfaction with elites, elitist populism is carried out by the elites themselves - using populist rhetoric, formal legal procedures, and representative claims to strengthen control of power and marginalize public scrutiny.

At the institutional level, elitist populism weakens the structure of the rule of law through the narrowing of the deliberative function of parliament, the consolidation of power in the hands of the executive, and the limitation of space for participation. In the Indonesian context, the practice of rapid lawmaking with minimal consultation is a concrete symptom of the practice of elitist populism that makes law an instrument of strengthening authority, not as a tool to limit power. This creates a condition that Muller calls "populism in power", namely populism that has been institutionalized and makes legal institutions an exclusive means of maintaining political dominance.²⁶

This analysis shows that elitist populism is not only a political challenge, but also a conceptual challenge within the framework of constitutional law. When the law is no longer a rational arena for the formulation of public interests, but only an extension of the singularly claimed will of its framers, the substance of the rule of law and democracy is reduced. Therefore, elitist populism demands to be responded not with political rhetoric alone, but through strengthening constitutional institutions, revitalizing oversight functions, and mainstreaming the principle of meaningful participation in the formulation of state policies.

B. Low Participation Legislation as a Practice of Elitist Populism

In Indonesian constitutional law, lawmaking should prioritize deliberative, participatory, and constitutional principles. Even the 2019 revision of the Law on the Formation of Legislation has

²⁵ Nicholas W. Barber, *The Principles of Constitutionalism* (Oxford: Oxford University Press, 2018), E-book, <https://www.ebooks.com/en-us/book/96314246/the-principles-of-constitutionalism/n-w-barber/>.

²⁶ Muller. *Op.cit*

emphasized the obligation to apply meaningful participation in the law-making process

However, the manifestation of elitist populism in legislative practices in recent years show the opposite tendency - especially in the ratification of a number of controversial laws, such as the revision of the KPK Law, the revision of the Constitutional Court Law, the IKN Law, the creation and replacement of the Job Creation Law, the Health Law, and the revision of the TNI Law.

1. Revision of KPK Law

The revision of the Corruption Eradication Commission Law (KPK Law) in 2019 is a prominent example of elitist populism in legislation, where state elites use moral and legal rhetoric to justify weakening watchdog institutions, while claiming to act on behalf of the people's interests. The revision fundamentally changes the institutional status of the KPK. This includes making it part of the executive and requiring the Supervisory Board's permission to conduct wiretapping which significantly narrow the anti-corruption agency's autonomy.

The official narrative presented by the government and The House of Representatives (DPR) at the time was that the revision aimed to "strengthen" the KPK to make it more professional, accountable, and in line with legal principles. It was also claimed that overseeing the KPK was necessary to protect human rights and safeguard democracy from potential abuse of power. However, in practice, the revision was widely perceived as a means of weakening the KPK's independence and creating opportunities for political interference in the fight against corruption.

In this context, elitist populism can be observed in how political elites monopolize narratives about the people's interests and democracy, while excluding meaningful public participation. The revision process was carried out swiftly and in secret, without transparent discussions or substantial public input. Despite opposition from various civil society groups, academics, and anti-corruption activists, their voices were disregarded in favor of advancing the political agenda of the elites.

The reorganization of the KPK into an executive agency also signals a vertical consolidation of power by the government, wherein an institution that should maintain full autonomy is reattached to the government structure. This reflects a pattern of elitist populism: the reshaping of democratic institutions under the guise of moral and legal justification, while ultimately preserving elite control over bodies that could threaten their interests.

Moreover, the revision of the KPK Law exhibits features of autocratic legalism, where legal tools are used to legitimize political actions that undermine core democratic principles. While the legislative process itself appeared procedurally legitimate, it substantively weakened public oversight over the government and diminished the accountability system.

The revision has also eroded public trust and diminished the effectiveness of law enforcement. Several significant corruption cases that were actively pursued before the revision have since stagnated, signaling that political intervention has significantly undermined the core functions of anti-corruption institutions.

Thus, the 2019 KPK Law Revision stands as a striking example of elitist populism in legislation, where elites employ the language of democracy and legality to weaken oversight mechanisms, consolidate power, and limit public participation. This sets a dangerous precedent in procedural democracy, as it demonstrates that the weakening of institutions can be done legally, yet it contradicts the constitutional spirit and the principles of a democratic rule of law.

The 2019 amendment to the KPK Law highlights the vulnerabilities of procedural democracy when elitist populism and legal discourse are used to undermine oversight institutions. This underscores the critical importance of a robust constitutional law framework to mitigate elitist populism in Indonesia's legislative process.

2. Revision of Constitutional Court Law

The revision of the Constitutional Court Law (MK Law) is one of the most obvious examples of the tendency towards elitist populism in the legislative process, which is characterized by the dominance of political elites in reorganizing state power institutions by claiming to act on behalf of the people and for the sake of strengthening institutions. Since its enactment in 2003, the Constitutional Court Law has been revised three times (2011, 2014, 2020) and another revision is proposed in 2024, which although postponed, still shows a consistent pattern of intervention in the institutional design of the Constitutional Court.

All of these revisions typically focus on regulating the age and tenure of constitutional judges - issues that are not really public priorities, but have become important instruments for political elites to maintain their influence in the highest judicial institution. The 2020 revision, for example, was widely criticized for its political substance, wrapped in a narrative of institutional strengthening.

However, the changes actually have the potential to weaken the independence of judges, because they extend terms of office without the basis of objective evaluation and open up space for dependence on the proposing institution.

Within the framework of elitist populism, the revision of the Constitutional Court Law shows a pattern in which state elites claim that re-regulation of the Constitutional Court is necessary to strengthen accountability, increase public trust, or improve institutional performance. However, the substance of the policy that is formed obscures the basic principles of judicial power that is independent of executive and legislative influence.

Critiques of the 2020 legislative process also revealed a pattern consistent with autocratic legalism. This law was passed even though it was not listed in the National Legislation Program, did not meet the carryover requirements, had a weak academic paper, and was discussed behind closed doors for only three days. This practice showed that legal procedures were carried out merely as a formality to legitimize the elite's pre-determined decisions.

Furthermore, the proposed revision in 2024 raises serious concerns regarding the independence of judges. The proposed evaluation or recall mechanism allows the proposing institutions - namely the DPR, the President, and the Supreme Court - to withdraw support for a sitting constitutional judge. Constitutional Court judges can only continue their tenure for up to 10 years if approved again by the proposing institution. This constitutes a systemic political pressure on judicial power, fostering judges who are dependent on the proposing institution rather than being independent.

The process was again conducted in a closed-door manner, with only a handful of DPR members participating, without meaningful public engagement. The rhetoric was that the revision "represented the will of the people" and was aimed at improving the quality of the Constitutional Court. In reality, the public was alienated from the process, and strategic decisions were made by political elites with non-transparent agendas.

Thus, the revision of the Constitutional Court Law is a clear form of elitist populism in legislation, where elites claim to act for the people, but the substance and process weaken institutions that should be the guardians of democracy. When this process is packaged legally, but without accountability, public deliberation, and democratic substance, what happens is the institutionalization of political control over the judiciary through formal legal channels - the hallmark of autocratic legalism.

The revision of the Constitutional Court Law exemplifies the manner in which elitist populism within legislative frameworks can undermine the autonomy of institutions responsible for constitutional oversight through legally valid procedural mechanisms, thereby reinforcing the significance of a constitutional law perspective in mitigating the phenomenon of elitist populism during the legislative development process in Indonesia.

3. Enactment of the IKN Law

Law No. 3 of 2022 on the National Capital City (IKN Law) and its amendments reflect a prominent practice of elitist populism in Indonesia's strategic legislative process. The government and parliament framed the relocation of the capital city as a solution to development inequality and a symbol of the nation's future. However, this populist rhetoric masks an agenda of centralized power, neglect of public participation principles, and lack of substantive accountability in the policy formation process.

The Center for Law and Policy Studies (PSHK) notes that the formation of the IKN Law is a clear example of arbitrary legislation by the DPR and the Government. PSHK assesses that this process ignores the orderly legislation and the principles of good regulatory practices,²⁷ such as transparency, meaningful participation, and accountability. The drafting of the law was done quickly and with minimal public deliberation, strengthening the impression that the decision had been locked at the elite level, then legitimized through formal legal channels.

The tendency of elitist populism in the IKN Law is also evident in how the state elite positions itself as the implementer of a grand vision of national development on behalf of the people, but without genuinely involving affected groups, especially indigenous peoples, local communities, and environmentalists. This shows symptoms of deliberative exclusion, where elite groups replace popular participation spaces with unilateral claims about public interests.

Furthermore, substantive criticism emerged from the Consortium for Agrarian Reform (KPA), which highlighted the agrarian aspects of the IKN Law. This law is considered to be selling land through the granting of Cultivation Rights Title (HGU) which can reach 190 years - an unusual duration and has the potential to turn state land into a long-term business commodity.²⁸ This opens up

²⁷<https://www.hukumonline.com/berita/a/pshk-uu-ikn-bentuk-kesewenang-wenangan-kuasa-legislasi-pemerintah-dpr-lt652fb62c7d906/?page=all>

²⁸ <https://www.hukumonline.com/berita/a/uu-ikn-terbaru-dinilai-obral-tanah-melalui-hgu-sampai-190-tahun-lt65265117a1d2a/?page=all>

opportunities for massive exploitation of agrarian and forestry resources in East Kalimantan, while ignoring the rights of indigenous peoples and local ecosystems.

The extraordinary powers granted to the Nusantara Capital Authority—which is directly under the President and not subject to regional oversight—demonstrate a very high concentration of power. Decentralization mechanisms, which should be a key post-reform principle, are undermined in this project. This reinforces the practice of elitist populism: using narratives of welfare and national progress to reduce the role of non-state actors and communities in strategic policy-making processes.

Although it appears procedurally valid, the IKN Law's legislative process also has elements of autocratic legalism, where the law is used as a means to lock in policies that have actually been decided unilaterally. Legality becomes an instrument to perpetuate power that is not substantially democratic.

Thus, the IKN Law is the result of a legislative practice driven by elitist populism, where state elites claim to represent the people to carry out a centralized, closed, and potentially exploitative development agenda, especially towards land and resources in East Kalimantan.

IKN Law elucidates the manner in which elitist populism within the legislative process can authorize the centralization of authority and the appropriation of resources, all under the guise of national advancement, thereby underscoring the imperative of adopting a constitutional law framework to curtail legislative practices that overlook public engagement, accountability, and foundational democratic tenets.

4. Enactment and Revision of Job Creation Law

The creation and replacement of the Job Creation Law in Indonesia reflects the practice of populism in legislation, where elite interests are packaged in the narrative of the people's interests, and culminates in symptoms of autocratic legalism that undermine the principles of constitutional democracy.

Thus, the phenomenon of autocratic legalism in the formation of the Job Creation Law does not stand alone, but is closely intertwined with leadership patterns characterized by elitist populism. Elitist populism where elites use populist rhetoric to legitimate centralized policy on behalf of the people and national development - but in reality formulate policies that concentrate power in the hands of a few elites and reduce public participation and the functioning of democratic institutions.

In the context of the Job Creation Law, the government claims that deregulation and legal simplification are needed to encourage investment and create jobs for the benefit of the people. However, this approach is instead drafted and imposed through problematic legal procedures, excluding meaningful public participation and removing the control role of institutions such as the Constitutional Court and the House of Representatives that are ideally part of a system of checks and balances.

The government's actions in continuing to enact Law Number 11 of 2020 after the Constitutional Court Decision Number 91/PUU-XVIII/2020, issuing Perppu Number 2 of 2022 without fulfilling the objective requirement of "compelling urgency", and then passing it into Law Number 6 of 2023, are concrete forms of the practice of elitist populism. In this case, political legitimacy is obtained by using the narrative of development and the interests of the people, but at the practical level, the legal process is actually used as an instrument to strengthen elite control over the legislative process and government.

The use of legal tools to consolidate power is what characterizes autocratic legalism, which is the institutionalization of power without control within a legal framework that appears legitimate on the surface. When associated with elitist populism, this tendency is even more worrying because it occurs in the form of "working for the people," even though its substance erodes the principles of deliberative democracy and legal sovereignty.

Therefore, the connection between autocratic legalism and elitist populism in the legislation of the Job Creation Law demonstrates a departure from the spirit of the constitution. The government is not only disregarding a final and binding judicial decision but is also using formal legality as a tool to implement a centralized and exclusive political agenda under the guise of serving the people.

The creation and subsequent amendment of the Job Creation Law serve as a clear example of the complex interaction between elitist populism and autocratic legalism within the legislative framework. In this case, the discourse of protecting the people's interests is manipulated to justify the strengthening of elite control, while simultaneously eroding the core principles of constitutional democracy. This highlights the crucial need for a constitutional law perspective to address and mitigate legislative actions that deviate from the fundamental values enshrined in the 1945 Constitution.

5. Enactment of the Health Law

The narrative used in drafting the Health Law (Law 17/2023) is full of populist jargon: guaranteeing access to health for all Indonesians, simplifying regulations, and strengthening the national healthcare system. However, substantively, this legislative process reflects a centralized elite agenda that is closed to the aspirations of the most affected groups.

Elitist populism can be seen in how the government took over the narrative of the need for health sector reform by downplaying the role of non-state actors such as health professional organizations (IDI, IBI, PPNI, etc.) and the academic community. In the process of drafting this law, these groups repeatedly raised objections, even staged demonstrations, but were not given adequate deliberative space. The government and DPR appear to position themselves as the only actors who understand and represent the public interest, while reducing the role of groups with technical expertise and ethical responsibility for health services.

The hallmark of elitist populism is also evident in the tendency to weaken intermediary institutions that are supposed to serve as a counterweight to power, such as professional organizations and consultative forums. The 2023 Health Law systematically limits the authority of professional organizations in regulating and supervising professional ethics, medical education, and health worker registration, and instead strengthens centralized state control. This process is done not on the basis of open evaluation, but rather on the pretext that these organizations have become "obstacles" to reform and are elitist—a narrative that the ruling elite turns around to delegitimize the technocratic opposition.

This elitist populism ultimately not only results in distortion of policy substance, but also closes the space for participation in democracy. The community seems to be involved, but the involvement is formalistic—such as through one-way socialization or limited discussions that do not affect the direction of the policy.

In this framework, autocratic legalism remains the foundation that sustains elitist populism, where procedural legality is used as a tool to legitimize the passing of laws that actually narrow the space for democracy. Laws are used to legitimately reorganize power in the health system, but at the expense of the principles of inclusivity, transparency, and social control of power.

Thus, the 2023 Health Law reflects a model of institutionalized elitist populism, in which state elites monopolize the public interest narrative, ignore the technical and ethical knowledge of the professional community, and consolidate authority through legal

instruments drafted without genuine deliberative space. The 2023 Health Law exemplifies the institutionalization of elitist populism through the legislative framework, characterized by the monopolization of the public interest discourse and the concomitant diminishment of the influence of professional organizations and civil society. This phenomenon underscores the imperative for a constitutional law perspective to mitigate the enactment of legislation that, while procedurally legitimate, fundamentally undermines deliberative democracy and the foundational principle of checks and balances.

6. Revision of TNI Law

The revision of Law No. 34/2004 on the Indonesian National Army (TNI Law) reflects a pattern of legislation that is increasingly influenced by elitist populism, where state elites use narratives of national interest and people's security to justify the expansion of power, despite potentially ignoring the principles of civil democracy and institutional accountability.

The dominant narrative in the TNI Law Revision is the need to adapt to the "challenges of the times" and the dynamics of non-military threats such as natural disasters, cyber, terrorism, and transnational crime. This rhetoric is used to legitimize the expansion of the military's role into civilian sectors, including the possible placement of active soldiers in civilian positions, which in principle contradicts the spirit of post-New Order TNI reform.

This is where elitist populism works: The political and military elite convey that this move is for the effectiveness and interests of the people, but the substance is the consolidation of power by a certain group through legal channels. This revision not only increases the military's role vertically but also blurs the distinction between civilian and military authority, a distinction that was previously established to ensure civilian supremacy in a democratic state.

The process of discussing the revision of this law reveals a pattern of closed legislation, with limited public involvement and minimal participation from civil society and academics who have raised concerns about the military's expanded role. There is no clear or pressing demand from the public, yet the revision is swiftly pushed forward by the government and military elites. This demonstrates a disregard for the principles of good regulatory practices, such as evidence-based, participatory, and accountable regulation.

Moreover, this trend reveals elements of autocratic legalism,

where the law is employed as a tool to formally and legally extend military influence into the civilian realm. This practice expands the space for covert authoritarianism within the framework of procedural democracy, as it is carried out not through a coup d'état but through legislative changes framed as "national responsibility."

There are also concerns about the potential for a subtle return to the dual function of the military, where the military is tasked not only with maintaining state security but also with involvement in civil and governmental affairs. This would mark a regression from the principles of security sector reform, which sought to position the military as a professional, neutral, and non-political force dedicated solely to national defense.

As such, the Revision of the TNI Law 2025 is the latest example of elitist populism in legislation, where state elites use the national threat narrative to shape regulations that expand military power, without an open and participatory democratic process. This not only blurs civil-military boundaries, but also has the potential to undermine the principles of constitutional democracy and civilian supremacy that have been championed since the 1998 reforms.

The TNI Law revision exemplifies the mechanisms of elitist populism. This operates via the narrative of national threat to rationalize the augmentation of the military's involvement in civilian affairs. The action, while procedurally valid, possesses the potential to obfuscate civilian authority and undermine the fundamental principle of constitutional democracy, thereby underscoring the necessity of a constitutional law framework in curbing the resurgence of a pattern of military bifunctionality through legislative mechanisms.

7. Lessons Learned from Legislation Case Studies in Indonesia

The 2019 revision of the KPK Law dramatically changed the face of the previously independent anti-corruption agency. While the government and the House of Representatives framed the narrative as to strengthen and professionalize the KPK, the revision substantially restricted key powers such as wiretapping and brought the KPK under executive authority. The closed process and lack of public deliberation reinforced the impression that the revision was not done to strengthen effort to eradicate corruption, but to control an institution that was perceived to threaten the interests of the political elite.

An almost identical pattern can be seen in the revision of the Constitutional Court Law. Under the pretext of institutional strengthening, the revision focuses more on extending the term of

office of judges and the potential for recall by the proposing institution, thus opening up space for the dependence of judges on the political institutions they are supposed to oversee. The independence of judicial power, which is an absolute requirement in a constitutional democratic system, is feared to be gradually eroded due to interventions wrapped in a legal framework.

Meanwhile, in the IKN Law, grand narratives about equitable development and symbols of the nation's future are used as a shield to justify a legislative process that is carried out quickly and behind closed doors, without the involvement of local communities, indigenous peoples, and affected civil society groups. Democratic deliberation mechanisms are replaced by elite rhetoric about the "common interest," when in fact there is a concentration of power in the hands of the IKN Authority that is not subject to democratic oversight mechanisms.

The Job Creation Law (2020-2023), Health Law (2023), and Revised TNI Law (2025) continue a similar trend. The Job Creation Law (Law No. 11 of 2020, replaced by Law No. 6 of 2023) is another prominent example of the practice of elitist populism in legislation, where political elites formulate major policies in the name of the people's interests, however they essentially strengthen the power of the central government and drastically reduce public participation. The government claims that this law is an effort to encourage investment, create jobs, and simplify regulations to accelerate national development. However, the process of drafting this law shows serious deviations from the principles of constitutional democracy.

The legislative procedure of the Job Creation Law contains a number of problems: the draft changed without public notice, public participation was limited and formalistic, and the presence of omnibus law provisions was mixed with legal substances across sectors without clear structure. Furthermore, after the decision of the Constitutional Court (Decision No. 91/PUU-XVIII/2020) which declared the law formally flawed and ordered its revision within two years, the government did not thoroughly review its substance, but instead chose to issue Perppu No. 2 of 2022 which was later passed into Law No. 6 of 2023, again without meaningful participation and without meeting the objective requirement of "compelling urgency."

In this context, elitist populism can be seen from the policy packaging strategy in the language of development and saving the national economy, even though the substance of this law has drawn criticism from labor unions, academics, environmentalists, and other civil society groups. The state elite positions itself as the sole

determinant of the direction of national policy, while public participation is only given space after the fact.

The enactment of the 2023 Health Law also reflects the strong elitist populist practices in the legislative process of the highly strategic public sector. The government promoted this law with the slogan of guaranteeing access to health, simplifying regulations, and building a service system that is more responsive to the needs of the people. However, behind the populist narrative, there are systematic efforts to marginalize health professional organizations, academics, and the medical community who have ethical and technical responsibilities in overseeing the quality of health services.

During the legislative process, many professional organizations, such as IDI, IBI, PPNI, issued open rejection, demonstrations, and extensive requests for hearings, but were not accommodated in a deliberative manner. The discussion process was closed, non-transparent, and lacked space for substantive dialog. One of the most crucial changes was the restriction of the role of professional organizations in ethical regulation, education, and certification of health workers, which previously served as a safety net for professional quality and accountability. The government took over this role centrally under the pretext of efficiency and bureaucratic reform.

The revision of the TNI Law 2025 represents the latest manifestation of elitist populism in legislative practice, this time within the domain of defense and civil-military relations. The government, along with certain political elites, is advancing the revision with the argument that expanding the military's role is necessary to address non-military challenges such as disasters, terrorism, cybersecurity, and cross-border crime. This rhetoric is presented as a response to the people's demand for a more adaptive national security system. However, the substance of the revision creates significant opportunities for the military to encroach upon civilian affairs.

One of the most highlighted articles is the placement of active servicemen in civilian positions, which in principle contradicts the spirit of post-New Order TNI reform. The return of the military to civilian posts, albeit in the name of effectiveness and national interest, is feared to blur the lines between civilian and military power, and pave the way for the establishment of authority without strong civilian control.

The process of discussing the revision of the TNI Law also shows a tendency to be closed, without the urgency being explained transparently to the public, and with minimal involvement of

academics, security experts, and civil society. Criticism from various parties about the possibility of a decline in civilian democracy did not receive adequate space in official forums. This emphasizes how political and military elites use external threat narratives to legally expand their authority, without an open and accountable consultation process.

Table 1. Trends in Elitist Populism in Legislation in Indonesia

No.	Legislation Case	Forms of Elitist Populism	Constitutional Law Regulatory Needs
1.	KPK Law Revision, 2019	The weakening of KPK institutions takes the form of strict supervision with a narrative of strengthening, closed processes, minimal participation.	Strengthen the checks and balances mechanism, affirm the independence of the KPK, require public testing before ratification.
2.	Revision of Constitutional Court Law, 2020	The regulation of judges' tenure to maintain political influence, accompanied by a fast and non-transparent legislative process.	Affirm political non-intervention in the judiciary, strengthen transparent and merit-based appointment mechanisms.
3.	IKN Law, 2022	Relocating the capital city with a narrative of equitable development, but without meaningful public participation and exclusion of local communities.	Require inclusive public consultations and socio-environmental impact studies in national strategic legislation.
4.	Job Creation Law, 2020-2023	Claiming deregulation for the people but using Perppu without the basis of urgency and ignoring the Constitutional Court's decision.	Strengthen the rules for Perppu formation, requiring meaningful public participation in omnibus legislation.
5.	Health Law, 2023	Taking over the narrative of health reform, dwarfing the role of professional organizations and closing down deliberative space.	Require institutional involvement of professional organizations, acknowledge technocratic expertise in regulatory decision-making.
6.	Revision of TNI Law, 2025	Widening the role of the military on the grounds of adaptation to the times, blurring the civil-military boundary without open public discussion.	Affirm civilian supremacy in the constitution, limit the role of the military to defense functions and not civilian positions.

Sources: Authors, 2025 (edited)

The great irony is that all of these legislative processes were

carried out in a procedurally legal manner. There is nothing that violates the formal mechanism of lawmaking. However, legal legality is not necessarily democratically just. This is where elitist populism shows its power: using legality to legitimize power, while getting rid of the substance of democracy such as openness, participation, transparency, and public deliberation.

Elitist populism also has long-term impacts on the life of the state. First, it weakens horizontal inter-institutional control, as oversight institutions are restricted by the powers they oversee. Secondly, it marginalizes vertical control from the public, turning channels for public participation into mere formalities. Third, it diminishes the quality of legislation, as the law-making process becomes closed off to knowledge-based contributions and technical expertise.

More significantly, elitist populism in legislation signals a paradigm shift in the role of law—from a mechanism designed to limit power to one that strengthens power itself. When institutions like the KPK, the Constitutional Court, professional organizations, and local civil authorities are disregarded or weakened through legal means, substantive democracy is undermined, replaced by elite control in a system still labeled as "democracy," but one that has lost its true essence.

Within the framework of constitutional law, this situation raises profound and urgent questions. If legal products can be crafted in ways that are procedurally legitimate yet contradict the constitutional spirit, what is the role of constitutional law as a protector of democracy and a safeguard for citizens against the concentration of excessive power? If the law is no longer an instrument of limiting power, but instead an instrument of strengthening power, how should institutional design, oversight mechanisms, and spaces for public participation be reconstructed?

C. Constitutional Law Arrangements in Limiting the Movement of Elitist Populism in Legislation

Populist movements have significantly weakened democratic institutions in various regions, which include weakening judicial independence, legislative oversight, media freedom, and human rights.²⁹ To curb this tendency, stronger constitutional law

²⁹ Al Waroi, Muhammad Nur Abdul Latif, Stanislaus Riyanta, and Muhammad Rustam. "Populism and the Erosion of Democratic Checks and Balances: A Systematic Literature Review across Regions." *International Journal of Multidisciplinary Research*

arrangements are needed in terms of institutional design, oversight mechanisms, and space for public participation. In the context of institutional design, the existence of the Constitutional Court is crucial in conducting formal/ material review for every law made with elitist populist practices. In the scope of supervision, revitalizing the DPR's supervisory function is the most legitimate way to restrain the tendency of elitist populism, considering that DPR members should be the voice of the people, not the elite. Finally, in strengthening the space for participation, the consistency of lawmakers in implementing *meaningful participation* and building public awareness is the direction of constitutional law regulation.

1. Institutional Strengthening of the Constitutional Court in the Principle of *Checks and Balances*

The constitutional system of checks and balances is designed to create a balance of power among state institutions, while ensuring government accountability in carrying out the constitutional mandate. But this system faces serious challenges; as Kassop notes, the need for continuous vigilance³⁰ so that the principles of democracy and the rule of law are not eroded by excessive power dynamics.

Within the structure of a democratic state, the courts play an important role as counterbalance. Harrington reminds us that courts can serve as a check on majority rule, safeguard the rights of minorities, and ensure a balance between various interests in society.³¹ This function becomes crucial when political interests becomes exclusive and fail to accommodate the diversity of public voices.

Furthermore, Holcombe explains that the system of checks and balances is designed to prevent the dominance of a single elite group in the process of interpreting and enforcing constitutional rules.³² This is a response to the tendency of political elites who often encourage policies that prioritize their own interests over the interests of the general public. It is in this context that the role of the

and Analysis 07, no. 10 (October 14, 2024). <https://doi.org/10.47191/ijmra/v7-i10-18>.

³⁰ Kassop, Nancy. The Constitutional Checks and Balances that Neither Check Nor Balance. In: Genovese, M.A., Han, L.C. (eds) *The Presidency and the Challenge of Democracy. The Evolving American Presidency Series*. Palgrave Macmillan, New York. https://doi.org/10.1057/9780230600744_4.

³¹ Harrington, C. B. (2004). On Law, Politics, and Judicialization. *International Journal of Constitutional Law*, 2(3), 561-568. <https://doi.org/10.1093/ICON/2.3.561>

³² Holcombe, Randall G. "Checks and Balances: Enforcing Constitutional Constraints." *Economies* 6, no. 4 (October 1, 2018): 57. <https://doi.org/10.3390/ECONOMIES6040057>.

Constitutional Court becomes very strategic.

The Constitutional Court holds the responsibility of maintaining the balance of power between state institutions and ensuring that no legal product contradicts the constitution.³³ In addition, this institution is tasked with protecting the constitutional rights of citizens³⁴, making it the main pillar in upholding the values of constitutionalism.

As reflected in the idea of constitutional review, the Constitutional Court has the authority to evaluate the constitutionality of legislative acts,³⁵ including against laws that have the potential to harm the principle of justice. In practice, Hernandez, et.al noted that the court has a role to harmonize conflicting interests without sacrificing the essence of basic rights³⁶, making it an important instrument in maintaining socio-political harmony in a state of law.

In theory, according to Moustafa, the role of the court can be a site of resistance to authoritarian policies³⁷, including in the context of elitist populism - where political elites claim to represent the "voice of the people" to pass regulations that actually benefit a handful of parties and harm deliberative democracy. In such conditions, the Constitutional Court becomes important to limit the tendency of elitist populism practices in the legislative process, by testing laws that are born from populist narratives but contradict constitutional principles.

Pacini explained that constitutional courts should be active in testing populist legislation that has the potential to undermine democracy.³⁸ Ginsburg also noted the need to be vigilant against

³³ Rachman, Irfan Nur. "Constitutional Court, Judicial Independence, and Efforts to Achieve Qualified Justice." *Hasanuddin Law Review* 5, no. 1 (May 4, 2019): 86–101. <https://doi.org/10.20956/HALREV.V5I1.1471>.

³⁴ Razak, Askari, Mohamad Muhtar, Kevin M. Rivera, and Geofani Milthree Saragih. 2023. "Balancing Civil and Political Rights: Constitutional Court Powers in Indonesia and Austria". *Journal of Indonesian Legal Studies* 8 (2), 1311-60. <https://doi.org/10.15294/jils.v8i2.70717>.

³⁵ Ginsburg, Tom, and Mila Versteeg. "Why Do Countries Adopt Constitutional Review." *Social Science Research Network*, September 2, 2013. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2319363.

³⁶ Hernández, Jorge Ernesto, Daniel Vinicio Ruiz Sandoval, Paul Esteban Salazar Ordoñez, and Lenin Antonio Tobar Gavilanes. "Judicial Balancing in Constitutional Law." *Migration Letters* 21, no. S11 (June 3, 2024): 142–54. <https://doi.org/10.59670/ml.v21is11.10653>.

³⁷ Moustafa, Tamir. "Law and Courts in Authoritarian Regimes." *Annual Review of Law and Social Science* 10, no. 1 (November 3, 2014): 281–99. <https://doi.org/10.1146/ANNUREV-LAWSOCSCI-110413-030532>.

³⁸ Pacini, Fabio. Populism and Law-Making Process. In: Delledonne, G., Martinico, G., Monti, M., Pacini, F. (eds) *Italian Populism and Constitutional Law. Challenges to Democracy in the 21st Century*. Palgrave Macmillan, Cham.(2022)

populist movements that could exert influence over the judiciary.³⁹ Moormann emphasizes that the Venezuelan experience demonstrates the importance of maintaining the independence of the judiciary so that it is not used as a legitimizing tool by authoritarian governments.⁴⁰ Holgado et al, point out that courts in hybrid regimes are often used to entrench executive power, undermining democratic accountability mechanisms.⁴¹ Ginsburg and Moustafa added that in many authoritarian regimes, the courts have become an instrument to consolidate power by using legal language to legitimize repressive actions.⁴²

Given the complexity of these challenges, institutional strengthening of the Constitutional Court is an urgent step. For this reason, according to Engert, continued support and capacity building of the court is needed⁴³, both in terms of human resources, professionalism of judges, legal research, and institutional independence. This strengthening must also include protection against political intervention and increased public understanding of the importance of the Constitutional Court in maintaining constitutional democracy.

Thus, the role of constitutional law in strengthening the Constitutional Court is not only about building strong legal institutions, but also about maintaining the substance of democracy itself, where power is limited by law, people's rights are protected, and the law is not manipulated for the benefit of the elite.

2. Revitalization of Parliament's Oversight Function in a Presidential System

In a presidential system, the oversight function carried out by the House of Representatives (DPR) is a fundamental part of the checks and balances mechanism. This function not only aims to

https://doi.org/10.1007/978-3-030-37401-3_6. (op.cit)

³⁹ https://en.mkri.id/news/details/2022-08-18/Tom_Ginsburg:_Constitutional_Court_Cannot_Guard_Democracy_Alone

⁴⁰ Moormann, Eric. "Populism, Constitutional Democracy, and High Courts - Lessons from the Venezuelan Case," 185-219. Cambridge University Press eBooks, 2022. <https://doi.org/10.1017/9781009031103.008>.

⁴¹ García Holgado, Benjamín, and Raúl A. Sánchez Urribarri. (2024). The Dark Side of Legalism: Abuse of the Law and Democratic Erosion in Argentina, Ecuador, and Venezuela. *American Behavioral Scientist*, 68(12), 1578-1596. <https://doi.org/10.1177/00027642241268332>

⁴² Ginsburg, Tom, and Tamir Moustafa. Rule by Law: The Politics of Courts in Authoritarian Regimes. Cambridge University Press, 2008, pp. 1.

⁴³ Engert, Pëllumbi. "The Justice Reform And Some Implications On The Constitutional Court." *Jus & Justicia* 14, no. 2 (January 1, 2020): 39–56. <https://doi.org/10.58944/tylq3514>.

ensure that the executive works within constitutional boundaries, but is also the main channel of public accountability for the exercise of state power. However, in practice, this oversight function faces serious challenges, particularly due to the increasing influence of populist movements within the parliament itself.

Referring to Zbiral's note, besides failing to improve lawmaking, the populist movement within the parliament also weakens the oversight function.⁴⁴ When political elites claim to represent the people in order to pass a particular agenda, they often ignore the deliberative process that should ensure the quality of legal substance. In Faosen's analysis, the activities of populist governments have a significant impact on the decline of parliamentary/legislative oversight functions, contributing to the marginalization of parliamentary oversight.⁴⁵ Under these conditions, the DPR risks losing its role as an independent institution that is critical of the government.

In fact, as Barnett states, parliamentary oversight of the executive is a fundamental principle of constitutional law.⁴⁶ Legislative oversight is an important tool to ensure that executive actions remain within constitutional limits, as well as a balancing mechanism in preventing excessive concentration of power. Simonelli emphasized that parliamentary oversight is strategic in the face of populism that tends to lead to a strong but unaccountable executive.⁴⁷ Therefore, the DPR must appear as an active and courageous institution in correcting executive policies that deviate from the principle of accountability.

Furthermore, in the context of legislation, Parliament's oversight function becomes increasingly important as part of constitutional law's efforts to restrain elitist populist legislation. When parliament fails to exercise its control function, it opens up space for the birth of legal products that do not reflect the real needs of the community,

⁴⁴ Zbiral, Robert. "Do Coalition Governments with Populist Parties Attempt to Rationalize Law-Making in Parliaments? Evidence from the Czech Chamber of Deputies." *Parliamentary Affairs* 74, no. 4 (September 9, 2021): 835–52. <https://doi.org/10.1093/PA/GSAB011>.

⁴⁵ Fasone, Cristina. "Catalyzing Marginalization? The Effect of Populist Governments on the Legislative and Scrutiny Functions of the Italian Parliament." *Parliamentary Affairs* 74, no. 4 (September 9, 2021): 802–18. <https://doi.org/10.1093/PA/GSAB009>.

⁴⁶ Barnett, H. (2010). *Constitutional & Administrative Law*. <https://www.taylorfrancis.com/books/mono/10.4324/9781315458373/constitutional-administrative-law-hilaire-barnett>

⁴⁷ Simonelli, Marco Antonio (2022) *"To Watch and Control the Government". 'Rediscovering' Parliaments' Oversight Function*. In: Populism and Contemporary Democracy in Europe - Old Problems and New Challenges. Palgrave Macmillan, Cham, pp. 291-311. ISBN 978-3-030-92884-1.

but merely respond to short-term political interests. Legislation born from the logic of elitist populism is often packaged with a narrative of siding with the people, but essentially serves the interests of a handful of political elites.

In the face of these challenges, constitutional law regulation to revitalize the DPR's oversight function must be seen as a strategic step to restore the spirit of parliament as a pillar of democracy. The DPR must strengthen its capacity and independence in conducting oversight of the executive, not simply as part of institutional formality, but as an exercise of constitutional responsibility. Effective oversight will ensure that every policy and legislation is tested in terms of accountability, participation and fairness.

3. Consistency of Lawmakers in Implementing *Meaningful Participation*

In a democratic system of constitutional law, public participation is not just formal access to the legislative process, but also an essential part of the principle of popular sovereignty stipulated in the constitution. Meaningful participation in the law-making process is key mechanisms to curb the tendency of elitist populism. In the Indonesian context, for example, the institutionalization of meaningful participation through changes to the P3 Law (Law 13/2022) is a progressive step in strengthening the foundations of democratic governance. This regulation makes progress in placing participation as an official component in the policy cycle, from formulation to evaluation.

However, as Mochtar, et al. note, although it is a positive step towards improving democratic governance, its inconsistent application reduces its potential impact.⁴⁸ This inconsistency opens the door to pseudo-formalism: the public is ostensibly involved, but without any real influence on the substance of the resulting policies.

In fact, as Firdaus, et al. state, public participation in policy formulation, implementation and evaluation should not only be formal but also truly reflect the will of the people and contribute to policy legitimacy.⁴⁹ Only in this way can participation effectively resist elitist populism, because anything that arises from public

⁴⁸ Mochtar, Zainal Arifin, Yance Arizona, Faiz Rahman, Umar Mubdi, Garuda Era Ruhpinesthi, and Mochamad Adli Wafi. "From Meaningful to Meaningless Participation: The Tragedy of Indonesia's Omnibus Law on Job Creation." *Journal of Legal Media* 31, no. 2 (December 5, 2024): 351–70. <https://doi.org/10.18196/jmh.v31i2.23557>.

⁴⁹ Firdaus, Fahmi Ramadhan, Ratih Listyana Chandra, and Christo Sumurung Tua Sagala. "Meaningful Participation as People's Sovereignty Form in Democratic Rule of Law State." *IUS QUIA IUSTUM Law Journal* 31, no. 2 (August 5, 2024): 337–57. <https://doi.org/10.20885/iustum.vol31.iss2.art5>.

aspirations will not be easily co-opted by elitist populism. Legislation that genuinely emerges from the needs and will of the people has a strong foundation of legitimacy and cannot easily be distorted into a tool for the interests of specific groups.

Moreover, meaningful participation in the legislative process counters elitist populism by ensuring true public engagement. It reinforces the public's right to be heard, considered, and explained, thereby promoting accountability and transparency in the legislative process, as Setiadi et al. argue. The right of the public to be genuinely considered is a core component of the due process principle in constitutional law. This goes beyond merely holding hearing forums; it is about how those opinions are processed, given weight, and rationally integrated into the final legal product.

Therefore, the consistency with which lawmakers implement meaningful participation serves as a critical test for the quality of constitutional democracy. When participation is genuinely incorporated and sustained, the law-making process will be less susceptible to populist narratives or controlled by the interests of a small elite claiming to represent the people, yet lacking an accountable mechanism.

In this framework, constitutional law is crucial not only as a normative guide but also as a guardian of participatory values in democracy. Through the principles of transparency, accountability, and substantive participation, constitutional law serves as a bulwark against manipulative and exclusionary legislation. Consequently, ensuring the consistency of meaningful public participation is not just a technical matter but an essential strategy within constitutional law to protect democracy from the distortion of elitist populism in the legislative process.

4. Building Public Awareness through Civic Education and Media Literacy Arrangements

Amidst the tendency of elitist populism in legislation, it is not enough for constitutional law to regulate institutional relations, but it must also form politically aware, critical and participatory citizens. Two important instruments in building democratic resilience are civic education and media literacy, which are increasingly relevant in the context of closed and manipulative legislation.

As Stitzlein states, civic education can be made more effective by providing an understanding of democracy, governance, as well as populism.⁵⁰ This kind of education should be part of a constitutional

⁵⁰ Stitzlein, Sarah M. "Populist Challenges to Truth and Democracy Met with Pragmatist Alternatives in Citizenship Education." *Educational Theory*, January 1, 2024.

law strategy to strengthen the position of the people in the face of legislative processes that are often controlled by elites. This substance is important along with the level of education, as Soares, et al, argues that higher levels of education correlate with populism, due to increased exposure to diverse viewpoints and critical analysis skills. Therefore, what is needed is not just the expansion of access to education, but as Crowther states, the affirmation of political education to build public awareness,⁵¹ including an understanding of democratic and participatory legislative mechanisms.

On the other hand, indeed in Podschwadek's review, the role of media is significant in building public awareness because mass media can inadvertently reinforce populist messages, which pose challenges to the democratic process.⁵² Under these conditions, media literacy is important in combating the rise of populism by improving individuals' ability to critically evaluate media messages and reject manipulative political narratives, as Tomsic states.⁵³ Media controlled by elite populist narratives can alter public perceptions and undermine meaningful participation. Therefore, civic education and media literacy are solutions to counter the effects of populist media. Therefore, they will equip citizens with the knowledge and skills to critically assess media content, thereby increasing their political autonomy and supporting the democratic process.

Both civic education and media literacy are closely related to the quality of the legislative process. The interaction between media, populism and literacy is crucial to fostering informed and engaged citizens in a democratic society. Citizens with critical thinking capacity and legal understanding will be better able to resist manipulative legislation and demand genuine participation in the legislative process. Thus, constitutional law not only acts as a regulator of power structures, but also as a guardian of the quality of democracy through the institutionalization of political education

<https://doi.org/10.1111/edth.12614>.

⁵¹ Jim Crowther, "The Contradictions of Populism: Reasserting Adult Education for Democracy," *Andragoška Spoznanja* 24, no. 1 (April 8, 2018): 19–34, <https://doi.org/10.4312/AS.24.1.19-34>.

⁵² Podschwadek, Frodo. "Inoculation against Populism: Media Competence Education and Political Autonomy." *Moral Philosophy and Politics* 6 (October 1, 2019): 211–34. <https://doi.org/10.1515/mopp-2018-0035>.

⁵³ Tomšič, Matevž. "Populism, Media Messaging, and Media Literacy." *Politics in Central Europe* 19 (September 1, 2023): 455–70. <https://doi.org/10.2478/pce-2023-0022>. See also: Surjit Singha, "Inclusive Responses to Diversity-Driven Populism," in *Encyclopedia of New Populism and Responses in the 21st Century*, ed. J. Chacko Chennattuserry, M. Deshpande, and P. Hong (Singapore: Springer, 2023), 1-7, https://doi.org/10.1007/978-981-16-9859-0_446-1.

and critical media. This is part of the effort to build long-term democratic resilience that is rooted in the people, not just the elite.

Conclusion

Based on the above review, the following conclusions can be drawn as: First, elitist populism that neglects aspirations in legislation can be a structural threat to the principles of constitutional democracy. Second, in the context of legislation, elitist populism is manifested in the form of rapid legislation that lacks public participation, delegitimization of opposition groups, and a tendency to consolidate elite power. These practices undermine the principles of democracy, subordination of power to the law, as well as the supervisory function between state institutions, which is the foundation of a democratic rule of law system. For Indonesia, cases such as the revision of the KPK Law, the revision of the Constitutional Court Law, the Job Creation Law, the IKN Law, and the revision of the TNI Law show how elitist populism can turn law into an exclusive instrument of power, rather than an expression of the will of the people

Third, to answer this challenge, constitutional law needs to regulate matters related to institutional strengthening, revitalization of functions, encouragement of consistency, and public awareness education. Strengthening the Constitutional Court as the guardian of the constitution is essential to uphold the principle of checks and balances, particularly when executive and legislative powers tend to become dominant. This effort must be supported by revitalizing the DPR's oversight function, ensuring it is once again effective as a power controller, rather than merely a political appendage.

At the same time, consistency in applying meaningful participation must be emphasized in every legislative process. Inclusive and substantial public participation is a fundamental condition for creating not just procedural, but legally and legitimately sound laws. Furthermore, to bolster the resilience of democracy from the grassroots level, civic education and media literacy must be strengthened through legal policies. Citizens' understanding of democracy and the development of critical thinking skills are vital to preventing populist manipulation of legislation and enhancing public control over power.

By integrating these recommended actions, constitutional law can serve not only as a framework of power but also as a guardian of the quality of constitutional democracy. However, it is crucial to recognize that failing to curb elitist populism in legislation could degrade Indonesia's democratic system into a form of legalistic

authoritarianism, where the law becomes a mere facade of legitimacy for consolidating elite power.

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