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Transformation of the Legislative System in Indonesia Based on the Principles of Good Legislation

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ABSTRACT

The Constitutional Court's decision (Number 91/PUU-XVIII/2020) on the Formal Examination of Law Number 11 of 2020, addressing Job Creation and the subsequent enactment of Law Number 13 of 2022, has catalyzed a profound transformation in Indonesia's legal system. This legal evolution, explored in the context of the Transformation of the Legislative System in Indonesia Based on the Principles of Good Legislation, delves into the political dynamics of legislation leading to numerous Constitutional Court litigations. The quality of law formation is scrutinized in light of the principles of good legislation, emphasizing transparency, participation, effectiveness, and efficiency. The study assesses how the Indonesian parliament



executes its legislative function and underscores the imperative for reformulating planning, institutions, and capacity. The article advocates for an expedited authorization of Information and Communication Technology (ICT) as a crucial step toward digitizing legislation in the pursuit of a thoroughly transformed and principled legislative system.

Keywords: Transformation, Legislative System, Good Legislation

INTRODUCTION

In many developing countries, the omnibus law transplant is a framework for the formation of legislation that is not spared from a number of motivating factors, and inhibitions, as well as a standard measure for pursuing its legislative reform agenda.¹ The legislative reform agenda in the formation of laws in developing countries is carried out to accelerate the agenda of fulfilling people's welfare through improving laws and regulations, based on the principle of *good legislation*. Legal transplantation through omnibus law is a shortcut approach adopted to formulate legal products to avoid over-legislation and hyper-regulation.² On the one hand, the status of the omnibus law can be beneficial. But on the other hand, it can also lead to compromises and concessions that hinder innovation and progress in a system of law-forming that demands a new approach.³ The Job

¹ Chen Friedberg, "From a Top-Down to a Bottom-Up Approach to Legislative Oversight", *Journal of Legislative Studies* 17, No. 4 (2011): 525-528.

² Emanuela Carbonara and Francesco Parisi, "The Paradox of Legal Harmonization", *Public Choice* 132, No. 3/4 (2007): 367-400.

³ Margaret Sova McCabe, "Cooperation or Compromise? Understanding the Farm Bill as Omnibus Legislation", *The Journal of Food Law & Policy* 14, No. 1 (2018): 1-11.

Creation Law is the first law born from the Omnibus law method in Indonesia.⁴

Comparing with another countries, for instance Turkey, that in 1970, Turkey had adopted the omnibus law in the formulation of the Job Creation Bill through *Torba Yasa, Torba Kanun*, as a breakthrough law needed to solve various problems.⁵ The political mode and legislative consequences of the omnibus law in Turkey, which proposes changes to a large number of different and unrelated laws, have allegedly been used as a tool for the government to secretly attach new articles to the bill under discussion.⁶ The greater the number of current laws amended by the omnibus bill, the more likely those changes are to be overturned by the Constitutional Court.⁷

Serbia has implemented the omnibus law (*Omnibus Zakon*) through the Law on the Establishment of Certain Jurisdictions of Autonomous Provinces Number 6/2002, and the Statute of the Autonomous Province of Vojvodina 2009.⁸ The purpose of this omnibus law is to simplify the comprehensive regulation on the autonomy of provincial governments, related to the authority of social, cultural, economic, political, energy and resource affairs, the

⁴ O'Brien and Bosc note that there is no concise definition of an omnibus bill. An omnibus bill endeavors to modify, extract, or selectively apply specific laws, marked by a series of interconnected but distinct "*initiatives*." Audrey O'Brien and Marc Forest (eds.), *House of Commons Procedure and Practice*, (Ottawa, Ontario: House of Commons 2009), pp. 724-725.

⁵ Yasushi Hazama and Şeref Iba, "Legislative Agenda Setting by a Delegative Democracy: Omnibus Bills in the Turkish Parliamentary System", *Turkish Studies* 18, No. 2 (2017): 313-333.

⁶ S Ciftci, Walter Forrest, and Yusuf Alex, "Committee Assignments in a Nascent Party System: The Case of the Turkish Grand National Assembly", *International Political Science Review* 29, No. 3 (2008): 305-306.

⁷ Vladimir Unkovski-Korica, "World War II and The National Question: The Origins of The Autonomous Status of Vojvodina in Yugoslavia", *Europe-Asia Studies* 68, No. 10 (2016): 1731-1732.

⁸ Zivanka Miladinovic-Bogavac, "National Minorities, with Special Opening Opinion in the Republic of Serbia", *Economics* 63, No. 3 (2017): 87-95.

education system, the protection of multi-ethnic languages, as well as the basic rights of the Autonomous Province of Vojvodina.⁹

In the U.S., and Canada, omnibus law is a controversial practice that combines different measures in one bill, in a big way. The omnibus is a standard of the congressional landscape that changes traditional lawmaking in important ways.¹⁰ The omnibus law is a political vehicle to improve the capacity of the congress institutionally, to avoid fragmentation of the conflict between the committee area (*committee system*) and the presidential veto.¹¹ The evolution of this congress, requires a balance of political and institutional factors at once.¹²

In the Philippines, the Omnibus law is contained in "the Omnibus Investments Code of 1987", codifying various regulations that provide comprehensive fiscal and non-fiscal incentives. It is intended to logically and harmoniously simplify the overlap and multiplicity of regulations, to provide legal certainty in the field of investment. The Philippines should provide some form of efficient investor services taking into account the authority of the central and local governments, according to priorities, differences and needs.¹³

⁹ Vasilis Petsinis, "Regionalization Amidst 'State-Skrinkage': The Case of Vojvodina", *The Romanian Review of European Governance Studies* 3, No. 5 (2011): 5-28.

¹⁰ Definition original law omnibus get views at Attachment omnibus from year 1979 until 1994. The Omnibus Public Land Management Act of 2009, have material charge comprehensive about recovery act to Advance climate investment that useful for protection and Recovery ecosystem in America Union, where previously Inseparable deep some act. Louis Massicotte, "Omnibus Bills in Theory and Practice", *The Canadian Parliamentary Review* 36, No. 1 (2013): 13-17.

¹¹ Thomas Hooper, "More Than Two Is a Crowd: Mononormativity and Gross Indecency in the Criminal Code, 1981-1982". *Journal of Canadian Studies* 48, No. 1 (2014): 53-81.

¹² Glen S. Krutz, "Tactical Maneuvering on Omnibus Bills in Congress". *The American Journal of Political Science (AJPS)* 45, No. 1 (2001): 210-223.

¹³ John F. Pierce, "Philippine Investment Efforts: The Foreign Investment Act and the Local Governments Code", *Washington International Law Journal* 1, No. 1 (1993): 169-197.

In 2016, Vietnam implemented an omnibus law through the "*Law Amending and Supplementing a Number of Articles of the Law on Tax Administration*", to amend, add and repeal several existing articles in the Value Added Tax Legislation, Excise Tax and Tax Administration, and Business Corporate Income Tax Laws and Regulations; Royalty Tax; and Export-Import Tax.¹⁴

The utilization of omnibus law approaches has been a longstanding practice in developed nations such as the United States, Canada, Australia, Ireland, and New Zealand. This method is employed to facilitate more efficient, effective, and comprehensive legislative reforms. Furthermore, numerous developing countries, irrespective of their legal systems, including those adhering to civil law and common law traditions, have embraced this strategy as a means to address challenges associated with an excess of laws and regulations, often characterized by redundancy and overlap.¹⁵

However, despite the widespread adoption of omnibus laws, countries globally encounter impediments in their implementation. Challenges manifest in the form of undemocratic tendencies and the potential for the misuse of power, diverting from the noble intentions underlying omnibus legislation. Consequently, it becomes imperative for developing nations to navigate these hurdles and rectify deficiencies in legislative quality, aligning with the unique dynamics of their respective constitutional frameworks.¹⁶

The practice of omnibus law in various countries is believed to be beneficial both effectiveness and efficiency in the legislative process in a more comprehensive manner.¹⁷ But it also tends to

¹⁴ Armelle Guignier, and Alistair Rieu-Clarke, "Country Report: Vietnam Payment for Environmental Services", *IUCN Academy of Environmental Law Issue*, No. 1 (2012): 251-258.

¹⁵ R. Gluck, A.J. O'Connell, and R. Po, "Unorthodox Lawmaking, Unorthodox Rulemaking", *Columbia Law Review* 115, No. 7 (2015): 1789-1807.

¹⁶ N. Bones, D. Levi-Faur, and G. Mother, "Legislation and Regulation: Three Analytical Distinctions", *The Theory and Practice of Legislation* 7, No. 3 (2020): 169-174.

¹⁷ P.C. Westerman, *The Rule of Law as Export Product*, *The Theory and Practice of Legislation* 5, No. 2 (2017): 171-177.

potentially result in the drafting of laws that are undemocratic and go beyond the principle of *checks and balances*. Omnibus laws tend to lack precision and contain haste so that transparency and public accountability are low.¹⁸ The institutional ambition of the legislature enables energetic productivity rather than encouraging meaningful critical, extensive and participatory legislation. This symptom of legislative ambivalence tends to produce free interpretation of new consequential policies that have a major impact on the people.¹⁹

Globally, this article is intended to propose an ideal legal framework for transforming law formulation through omnibus law as a form of legislative reform for developing countries. This study examines potential constraints, and future prospects for national legislation reform using indicators of constitutional requirements and prerequisites based on the principle of *good legislation*. This research is expected to have a contextual impact on coherent and consistent omnibus packaging based on considerations of aggregation of interests of political actors (*stakeholders and shareholders*), executive and legislative institutional relations (*checks and balances*), budget situation and environmental factors. The formation of legislation must be able to avoid the anomaly of "*tort law*", taking into account the coherence of constitutional signposts of expanding the terms and internal standards of *tort law* with the benefits of its regulation broadly.²⁰

On Thursday, November 25, 2021, the Indonesian Constitutional Court (MK) has read Decision Number 91/PUU-XVIII/2020 regarding the submission of formal tests from several parties regarding Law Number 11 of 2020 concerning Job Creation (Job Creation Law).²¹ The

¹⁸ Evan Wright, "Omnibus Legislation and Separation of Powers: Too Big to Fail?", *Journal of Legislation* 49, No. 1 (2023): 110-135.

¹⁹ Adam M. Dodek, "Omnibus Bills: Constitutional Constraints and Legislative Liberations", *Ottawa Law Review* 48, No. 1 (2017): 1-42.

²⁰ John Murphy, "Anomalies in Tort Law: A Cause for Concern?", *The Modern Law Review* 86, No. 4 (2023): 843-1076.

²¹ I Gusti Kade Budhi Harryarsana, Supardi Hamid, Paulus Israwan Setyoko, Denok Kurniasih, and Anggara Setya Saputra, "The Role of Omnibus Law Implementation on the Women Workers Protection: An Descriptive Analysis of Labor Law in Indonesia", *Russian Law Journal* 11, No. 2 (2023): 324-329.

ruling essentially states that the Job Creation Law is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, conditionally as long as it is not interpreted as "*no improvement has been made within 2 (two) years since the decision was pronounced*".²² However, the Job Creation Law is still valid until the establishment is carried out according to the grace period stipulated in the decision, which is within a maximum period of 2 (two) years. If no improvement is made during the stipulated time, the Job Creation Law becomes permanently unconstitutional.²³

Then within the grace period as stipulated, the Law Framer cannot complete the repair, then the Job Creation Law is canceled, so that the Law, content material, or articles that have been repealed or amended by the Job Creation Law will apply again. In addition, the government is also prohibited from issuing new implementing regulations related to the Job Creation Law. President Joko Widodo said the government respected the Constitutional Court ruling, and would implement it immediately. Through the Minister of Law and Human Rights, the government will immediately follow up on the Constitutional Court Decision.²⁴

If the decision is examined, this formal defect of the Job Creation Law means that in the event of its formation process, it is considered that there is a legal defect or an error that is not in accordance with the laws and regulations. The political dynamics of legislation that gave birth to many lawsuits to the Constitutional Court show that the quality of the formation of good laws must be improved, by guiding a series of principles (principles) of *good legislation*.²⁵

²² I. Gede Yusa, Bagus Hermanto, and Nyoman Mas Aryani, "No-Spouse Employment and the Problem of the Constitutional Court of Indonesia", *Journal of Advanced Research in Law and Economics* 11, No. 47 (2020): 214-226.

²³ Noverdi Puja Saputra, "Dampak Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020 Terkait Pengujian UU Cipta Kerja", *Isu Sepekan Bidang Hukum*, December (2021).

²⁴ Kemensetneg, "Pemerintah Hormati Putusan MK Terkait UU Cipta Kerja", *Online News*, November 29 (2021).

²⁵ Nico Florin, "Quality of Legislation: A Law and Development Project" in J. Arnscheidt, B. of Rooij, J. M. Otto (eds.), *Lawmaking for Development; Explorations*

This research will present the transformation of the legal system in Indonesia after the Constitutional Court decision Number 91 / PUU-XVIII / 2020 regarding the formal test of Law Number 11 of 2020 concerning Job Creation. This article will discuss about: (i) the transformation of the legislation system after the Constitutional Court Decision Number 91/PUU-XVIII/2020; and (ii) transformation of the legislative system based on the principles of *good legislation* in Indonesia: lessons from various countries. This article begins by examining the ratio decidendi of the constitutional judges in the ruling, especially regarding the improvement of the legislative system. This was followed by an analysis of new regulations regarding the revision of the formation of laws and regulations contained in Law Number 13 of 2022, as a constitutional consequence of the Constitutional Court ruling. The next discussion focused on the principle of good legislation in various countries, as an adoptive reference for the transformative pattern of implementing the principle of *good legislation* in order to improve the quality of legislation in Indonesia in the future, including digitalization of legislative work as well as legal and security challenges. The last section draws several conclusions and recommendations.

EVOLUTION OF THE LEGAL FRAMEWORK: A RESPONSE TO CONSTITUTIONAL COURT DECISION NO. 91/PUU-XVIII/2020

I. Analysis of the Judicial Rationale (Ratio Decidendi) in Constitutional Court Decision No. 91/PUU-XVIII/2020

Omnibus law is a strategy commonly used by countries that adopt *the common law* system as a strategy to solve complicated and overlapping regulatory problems. The formation of laws with the omnibus

into The Theory and Practice of International Legislative Projects, (Leiden: Leiden University Press, 2008), pp. 75-89.

method will combine several rules with different regulatory substances, into a large regulation that functions as an *umbrella act*. The consequence is to repeal some of the rules resulting from the merger and their substance is subsequently declared invalid, either in part or in whole. For example, the United States, the Philippines, Vietnam, and many other countries have used this omnibus method. In fact, Ireland has abolished about 3,225 omnibus laws with the omnibus method.²⁶

On November 2, 2020, Law Number 11 of 2020 concerning Job Creation was passed using the Omnibus Law method. In addition, the omnibus method requires to pay attention to the content and substance of laws that must be amended in the Law on Job Creation reaching around 80 laws and more than 1,244 articles that are multisectoral. February 2021. In Indonesia, the purpose of the establishment of the Job Creation law is to Ease of Doing Business (EODB), through the creation and improvement of employment by providing convenience, protection, and empowerment to the cooperative and MSME sectors to absorb the widest possible Indonesian workforce while still paying attention to the balance and progress between regions in the national economic unity.²⁷In 2020, the ease of doing business in Indonesia was ranked 73rd. The law is expected to raise the convenience rating in Indonesia, to 53rd in the world. In addition, the law is also driven by the phenomenon of hyperregulation, vertical-horizontal policy conflicts, ineffectiveness and efficiency of various laws and sectoral policies which often result in legal certainty and dyssynchronization.²⁸

²⁶ Trisya Benazir Dewinagara, I. Gusti Ayu Ketut Rachmi Handayani, and Hari Purwadi. "The Omnibus Law Concept in the Job Creation Law and the Legal Consequences for Limited Liability Companies." *SASI* 28, No. 2 (2022): 323-335.

²⁷ Muchamad Zaenal Arifin, et al. "The Ratification of Omnibus Law: A Sign of Democratic Deconsolidation in Indonesia." *JSW (Jurnal Sosiologi Walisongo)* 6, No. 1 (2022): 13-28.

²⁸ Akhmad Haris Supriyanto, "Politik Hukum Kemudahan Berusaha dalam Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja (The Legal Politics of Ease of Doing Business Concepts in Law Number 11 of 2020 on Job

The job creation law is expected to guarantee the right of every citizen to work, as well as get fair and decent remuneration and treatment in employment relations; adjustment of various aspects of regulations related to alignment, strengthening, and protection for cooperatives and MSMEs as well as national industries. In addition, it is also for adjustments to various regulatory aspects related to improving the investment ecosystem, facilitating and accelerating national strategic projects that are oriented to national interests, and based on national science and technology based on the direction of Pancasila ideology, in the framework of Indonesia's human development as a whole. There are 11 clusters regulated in the law, as shown on Table 1.²⁹

TABLE 1. Inventory of Regulations in the Job Creation Law related to Building Permit and Investment Ecosystem

No	Clusters	Topic	Regulatory Integration	Notes
1	Simplification of Licensing	<ul style="list-style-type: none"> ▪ Location and Spatial Permits ▪ Environmental Permits ▪ Building Permit (IMB) and Certificate of Feasibility of Function (SLF) ▪ Business and Budget Plan (RBA) in 18 sectors 	Integration of 52 Laws (770 articles)	Abolishing Sector Permits and regulating Risk Based Licensing, as well as simplifying 3 basic permits (Location Permits, Environmental Permits, and Building Permits)

Creation)." *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 13, No. 1 (2022): 83-101.

²⁹ Dewi Sartika Putri, "Penerapan Omnibus Law Cipta Kerja di Indonesia Efektif atau Tidak? Studi Tinjauan Berdasarkan Sistem Hukum di Indonesia." *Jurnal Hukum & Pembangunan* 51, No. 2 (2021): 523-540.

No	Clusters	Topic	Regulatory Integration	Notes
2	Investment Terms	<ul style="list-style-type: none"> ▪ Closed Business Activities ▪ Open Business Field (Priority List) ▪ Investment Implementation 	Integration of 13 Laws (24 articles)	Simplifying requirements and improving the investment ecosystem
3	Employment	<ul style="list-style-type: none"> ▪ Minimum Wage ▪ Severance ▪ Termination of Employment (PHK) ▪ Outsourcing ▪ Sweetener ▪ Working Hours ▪ Foreign Workers (TKA) 	Integration of 3 Laws (55 articles)	Protect and increase the role of workers in support investment in Indonesia
4	The Land Acquisition	<ul style="list-style-type: none"> ▪ Land Acquisition ▪ Forest Area Utilization 	Integration of 2 Laws (11 articles)	Simplify land acquisition for development in the public interest and investment through the establishment of a Land Bank
5	Ease of Business	<ul style="list-style-type: none"> ▪ Immigration ▪ Patent ▪ Establishment of Limited Liability Company (PT) for MSMEs ▪ Downstream Mineral and Coal (Minerba) ▪ Oil and Gas Exploitation ▪ Village-Owned Enterprises (BUMDes) 	Integration of 9 Laws (23 articles)	Make the process attempt made faster and easier

No	Clusters	Topic	Regulatory Integration	Notes
6	Research and Innovation Support	<ul style="list-style-type: none"> ▪ Export Development ▪ Assignment of State-Owned Enterprises (SOEs)/Private Enterprises 	Integration of 2 Laws (2 articles)	Implications of the Revision of the SOE Law, so that the government can assign State-Owned Enterprises (SOEs) to support research and innovation at the central and regional levels
7	Government Administration	<ul style="list-style-type: none"> ▪ System Structuring and Authority of "Electronic Documents" ▪ Standardization of Standard Norms, Procedures and Criteria (NPSK) ▪ Discretion 	Integration of 2 Laws (14 articles)	Standardization of government administration to harmonize & Synchronize various regulations
8	Imposition of Sanctions	<ul style="list-style-type: none"> ▪ Elimination of Criminal Sanctions for Administrative Errors ▪ Determination of Administrative/Civil Sanctions 	Integration of 49 Laws (295 articles)	Provide clear proportional boundaries between criminal and administrative sanctions
9	Convenience, Empowerment, and SMEs Protection	<ul style="list-style-type: none"> ▪ MSME Criteria ▪ Single Database, Financing and Marketing ▪ Single Licensing ▪ Partnerships, Fiscal Incentives, and access to government projects 	Integration of 3 Laws (6 articles) regarding	Ease of doing business, empowerment and protection to Micro and Small Enterprises (MSEs)

No	Clusters	Topic	Regulatory Integration	Notes
		<ul style="list-style-type: none"> ▪ Collaborative Processing 		
10	Government Investments and Projects	<ul style="list-style-type: none"> ▪ Government Provides Land and Permits ▪ Establishment of SWF Institute 	Integration of 2 Laws (9 articles)	Tax reform to boost climate appeal Domestic Investment
11	Economic Zone	<ul style="list-style-type: none"> ▪ Special Economic Zone (SEZ): One Stop Services, Institutional (Administrator) ▪ Industrial Estate (KI): Supporting Infrastructure ▪ Free Trade Zone and Free Port (KPBPB): SEZ Facilitation for FTZ Enclave, Institutional 	Integration of 5 Laws (38 articles)	Expanding investment opportunities and encourage trade traffic activities international

Source: Processed from Coordinating Ministry for Economic Affairs Republic of Indonesia

In February 2021, the government (20 ministries/agencies) has issued 51 implementing regulations for Law No. 11 of 2020 concerning Job Creation. The derivative rules consist of 47 Government Regulations (PP) and 4 Presidential Regulations (Perpres). Previously, the government had issued 2 government regulations (PP), namely Government Regulation Number 73 of 2020 concerning Initial Capital of Investment Management Institutions, and Government Regulation Number 74 of 2020 concerning Investment Management Institutions. In accordance with the provisions of the Job Creation Law, Article 185 mandates the stipulation of implementing regulations no later than 3 (three) months since the Job Creation Law comes into effect on November 2, 2020. In

substance, the implementing regulations are grouped into 11 regulatory sectors as shown on Table 2.³⁰

TABLE 2. Inventory of Implementing Regulations of the Job Creation Law

Sector	Government Regulation (PP)	Presidential Regulation (PERPRES)
Licensing and Business Activities Sector	15	
Cooperatives and Micro, Small and Medium Enterprises and Village-Owned Enterprises (BUMDes)	4	
Investment	5	1
Employment	4	
Fiscal Facilities	3	
Spatial Planning	3	1
Land and Land Rights	5	
Environment	1	
Construction and Real Estate	5	1
Economic Zone	2	
Government Goods and Services		1

Source: Processed from Coordinating Ministry for Economic Affairs Republic of Indonesia

On November 25, 2021, the Constitutional Court Judge read decision Number 91/PUU-XVIII/2020. There are 3 crucial things that must be followed up by the Government, namely: *first*, the framer of the Law is instructed to accommodate the omnibus law method in amending Law Number 12 of 2011 concerning the Establishment of Laws and Regulations as amended by Law Number 15 of 2019 (Law on the Establishment of Laws and Regulations). *Second*, procedurally the establishment of the Job Creation Law must be corrected within

³⁰ Fauzi Iswahyudi, "Implikasi Kebijakan Omnibus Law Cipta Kerja dalam Perspektif Teori Perundang-Undangan." *Mahadi: Indonesia Journal of Law* 1, No. 1 (2022): 58-71.

two years of the Constitutional Court Decision being pronounced. *Third*, the Government must suspend all strategic policies/actions based on the Job Creation Law.

The judge argued that the Job Creation Law was "Conditional Unconstitutional", arguing (*ratio decidendi*) that the discussion of the Job Creation Bill (RUU) was considered not to apply the principle of openness, so as not to provide maximum participation space for the public (*meaningful participation*) to participate in discussing academic texts and materials of the Job Creation Bill. In addition, there were changes in the writing of some substances after the mutual agreement of the Framer of the Law. Then, between the basic norms, objectives, and scope are considered not in line with the standard formulation or standards for the formation of legislation. The Job Creation Law shows norms that are formed as if they were new laws, but in substance the Job Creation Law is an amendment to a number of laws. It is hoped that the government and the House of Representatives can work quickly to fix the problem.

The Constitutional Court Decision Number 91/PUU-XVIII / 2020 regarding the Formil Test case against Law Number 11 of 2020 concerning Job Creation, which was followed up by the stipulation of Law Number 13 of 2022, has resulted in the transformation of the legal system in Indonesia.

II. Pattern of Legislation System Transformation in Law Number 13 of 2022

The *statutory system* is a standard design of laws and regulations both at the central and regional levels, consisting of various holistic subsystems, including: policy strategies, processes, methods & techniques of state law formation, including judicial evaluation and testing systems or *toetsingrechts*.³¹

³¹ G. Hesseling, "Fockema Andreae's Rechtsgeleerd Handwoordenboek, 4th edition, compiled by N.E. Algra and H.R.W. Gokkel. H.D. Tjeenk Willink,

On June 16, 2022, the House of Representatives of the Republic of Indonesia (DPR RI) as the holder of the power to form a Law (Article 20 paragraph (1) of the Constitution of the Republic of Indonesia 1945), has passed Law Number 13 of 2022. In it, there are 10 substances of change, namely: (1) handling the testing of laws and regulations; (2) omnibus method; (3) harmonizing, rounding, and solidifying the conception of the Regional Regulation Draft (RAPERDA) and Regional Head Regulation Draft (RAPERKADA); (4) correction of technical errors in the writing of the draft law (RUU); (5) promulgation of laws and regulations; (6) monitoring and review of the Act; (7) community participation; (8) the establishment of laws and regulations electronically; (9) participation of legal analysts in the formation of laws and regulations; and (10) techniques for drafting laws and regulations. The pattern of transformation of the legislation system in Law No. 13 of 2022 can be seen in table 3 below.

TABLE 3. Pattern of Legislation System Transformation in Law No. 13 of 2022

Substance	Article	Note
Handling of statutory testing	Article 9	Provisions regarding the handling of testing are regulated in the DPR Regulation and Presidential Regulation
Omnibus method	Article 42A; Article 64 paragraph (1a) and paragraph (1b); Article 97A	Provisions regarding changes to the technique of drafting laws and regulations using the omnibus method are regulated by Presidential Regulation
Harmonization, rounding, and solidification of the conception of the	Article 58 and Article 97D	Harmonization, rounding, and solidification of the conception of Regional

Alphen aan den Rijn, 1977, 713 pp. Dfl. 76,50". *Netherlands International Law Review* 25, No. 2 (1978): 294-294.

Substance	Article	Note
Regional Regulation Draft and Regional Work Regulation Draft		Regulation Draft and Regional Work Regulation Draft Province/District/City are carried out by vertical agencies of ministries or institutions that organizing government affairs in the field of Establishment of Laws and Regulations
Correction of technical errors in writing the draft law (RUU)	Article 72 and Article 73 paragraph (1)	Revision and submission of the draft law shall be carried out within a maximum period of 7 (seven) days from the date of mutual agreement
Promulgation of laws and regulations	Article 73, Article 85	The ratification sentence reads: "This law is declared valid based on the provisions of Article 20 paragraph (5) of the Constitution of the Republic of Indonesia Year 1945"
Monitoring and review of the Act	Article 95A	The results of the Monitoring and Review of the Law can be a proposal in the preparation of the National Legislation Program
Community participation	Article 96	The provision of community input orally/in writing at each stage is carried out online and/or offline. Provisions regarding community participation are regulated in the House of Representatives Regulation, Regional Representative Council

Substance	Article	Note
Electronic establishment of laws and regulations	Article 97B	Regulation, and Presidential Regulation Provisions regarding procedures for the establishment of laws and regulations electronically the House of Representatives Regulation, Regional Representative Council Regulation, and Presidential Regulation
Participation of legal analysts in the formation of laws and regulations	Article 98; Article 99	Every stage of Regulation Formation Legislation includes the drafting of laws and regulations, and can include legal analysts and experts as needed, will be further regulated by Government Regulations
Techniques for drafting laws and regulations	Appendix I; Appendix II	Annex I and Annex II which form an integral part of this Law

The ratification of the Law requires the government to immediately prepare 5 implementing regulations, including: (1) Government Regulations (PP) concerning the participation and development of Drafters of Laws and Regulations; (2) Presidential Regulation (Perpres) on the handling of testing of laws in the Constitutional Court and handling testing of laws and regulations under laws in the Supreme Court; (3) Presidential Regulation (Perpres) concerning changes to the technique of drafting laws and regulations; (4) Presidential Regulation (Perpres) on Community Participation; and (5) Presidential Regulation (Perpres) concerning procedures for forming laws and regulations electronically.

HARMONIZING LEGISLATIVE SYSTEMS: INSIGHTS AND LESSONS ON GOOD LEGISLATION PRINCIPLES FROM GLOBAL PRACTICES

I. Application of Good Legislation Principles in Various Countries

Globally, most developing countries are transforming legislation through omnibus law with a new paradigm of *good legislation* to realize effective, efficient, and comprehensive legislative reform.³² This section is intended to review various principles of *good legislation* in various countries as a legal comparison tool in Indonesia.³³ The experiences of Turkey, and Serbia provide lessons on the necessity for the formalization of legislation through omnibuses, can produce legislation that can avoid the double burden of the constitutional court conducting judicial review.³⁴ This is guided by a number of values and principles of "good legislation", in the form of: (i) omnibus law requires good quality human resources on the basis of constituency, competence, and integrity, in the context of checks and balances of executive and legislative institutions based on a track record of state experience; (ii) the substance of the regulation through the omnibus law should have mandatory conditions for a measured and adequate assessment as a reference for well-planned national development; and (ii) the procedure for drafting laws through the omnibus law, both before, in the process, and after the formation of

³² Bagus Hermanto, and Nyoman Mas Aryani. "Omnibus legislation as a tool of legislative reform by developing countries: Indonesia, Turkey and Serbia practice." *The Theory and Practice of Legislation* 9.3 (2021): 425-450.

³³ Peter Van Lochem. "Legislation against the rule of law—an introduction." *The Theory and Practice of Legislation* 5, No. 2 (2017): 95-100.

³⁴ Lauren C. Bell, "Obstruction in parliaments: a cross-national perspective." *The Journal of Legislative Studies* 24, No. 4 (2018): 499-525.

laws must consider aspects of ideological, social, cultural, political, economic, and national integration.³⁵

The value of transparency is needed to avoid manipulation of norms, in order to prevent corruption of laws and regulations.³⁶ Information technology needs to be optimized to provide a variety of data and information about the entire process of drafting laws.³⁷ The value of accountability is intended to measure the benefits of all people based on constitutional principles, so that it does not only benefit certain parties.³⁸ Parliament must pay attention to all crucial aspects without neglecting the basic rights of every citizen, related to developing issues, both environmental, spatial plans, the energy and mineral resources sector, and all other aspects.³⁹

As for the value of participation, it is directed to strengthen the meaning of the participation of every civil society to strengthen the capacity of legislation meaningfully. Public participation must be as wide open and more meaningful as possible, so that in the current era it is necessary to utilize various digital platforms and social media to accommodate people's aspirations.⁴⁰ This must be supported by

³⁵ Danilo Vuković, and Marija Babović. "Social interests, policy networks, and legislative outcomes: The role of policy networks in shaping welfare and employment policies in Serbia." *East European Politics and Societies* 28, No. 1 (2014): 5-24.

³⁶ Rebecca Thorburn Stern, "When the ends justify the means? Quality of law-making in times of urgency." *The Theory and Practice of Legislation* 7, No. 2 (2019): 85-100.

³⁷ Zainuddin Zainuddin. "The Problems of Conception of Law Amendment with Government Regulations of Omnibus Bill on Job Creation Studied from the Theory of Legislation Perspective." *Randwick International of Social Science Journal* 1, No. 3 (2020): 474-485.

³⁸ Alan Watson, "From Legal Transplants to Legal Formants." *The American Journal of Comparative Law* 43, No. 3 (1995): 469-476.

³⁹ Tarmizi Tarmizi. "Legal simplification of land regulation associated with increased investment as the basis for conceptualization of the omnibus law." *Journal of Advanced Research in Law and Economics (JARLE)* 11, No. 47 (2020): 203-207.

⁴⁰ Somer, Murat. "Turkey: The slippery slope from reformist to revolutionary polarization and democratic breakdown." *The ANNALS of the American Academy of Political and Social Science* 681, No. 1 (2019): 42-61.

compromise and deliberative structures during the process of discussion and ratification by parliament. Finally, it is hoped that the ambitions of the political elite in parliament can accurately symbiosis mutualism with the public interests affected by the enactment of laws. Thus, the process of drafting laws through omnibuses does not adversely affect democratic legal values and human rights, as well as environmental ethics.⁴¹

Experience from countries such as the USA, United Kingdom, Canada, Israel, and the Philippines provides a reference that the principle of good legislation must meet the following conditions: (i) serve clearly identified policy objectives, effectively fit regulatory objectives; (ii) have a strong legal and empirical foundation; (iii) produce benefits that justify costs and benefits, related to cost considerations and distribution of effects to the whole society economically, socially and environmentally; (iv) minimizing cost losses and market distortions; (v) promote innovation through market incentives and a goal-based approach; (vi) clear, simple, and practical for users; (vii) consistent with other regulations and policies; and (viii) wherever possible in accordance with competition, trade and investment facilitation principles at domestic and international levels.⁴² Procedurally, good legislation requires effective and credible coordination mechanisms, fostering coherence across key policy objectives, clarifying responsibilities for ensuring regulatory quality, and ensuring the capacity to respond to fast-moving change.⁴³ From the perspective of institutional frameworks, good legislation requires adequate institutions and resources, and systems are in place to

⁴¹ Fankhauser, Sam, Caterina Gennaioli, and Murray Collins. "The political economy of passing climate change legislation: Evidence from a survey." *Global Environmental Change* 35 (2015): 52-61.

⁴² Kania Venisa Rachim, Christo Sumurung Tua Sagala, and Eddy Mulyono. "Omnibus Law dalam Konstitusi Indonesia." *Ajudikasi: Jurnal Ilmu Hukum* 7, No. 1 (2023): 17-34.

⁴³ Lyudmila Berg, "The establishment of legal rules as an element of the system of legal influence: an instrumental approach." *BRICS Law Journal* 5, No. 3 (2018): 114-134.

manage regulatory resources effectively and efficiently to carry out law enforcement responsibilities.⁴⁴

In Canada, a good law requires a balanced "dialogue" status between the executive and legislative, so that the product of regulation can be legitimate, can be maintained its existence and role, and function without reversal by the judiciary through judicial review.⁴⁵ Judicial processes that emphasize legislative substantive and procedural considerations, in turn, will compensate for their neglect in the legislative process. Judicial review can change the incentive structure of legislators by motivating legislators not to violate substantial and procedural norms in the formulation of statutory legal norms. The judiciary contributes to rational policy diffusion, and evidence-based law-making models. This can be measured from various judges' considerations in examining factors that hinder policy convergence, thus. The judiciary can play a coercive role in the diffusion of rational law-making models, through approaches that uphold the legitimacy of parliamentary democracy, issues of capacity, and political context and sensitivity; nor a human rights approach that is not dominated by an economic perspective alone.⁴⁶

Furthermore, is its significance in the law-making process in Nigeria and the United Kingdom. Post-legislative evaluation of legislation is carried out to assess its effectiveness, organically. The system of checks and balances is necessary as a balancing effect on the essence of the majority in a parliamentary system.⁴⁷ The domain of legislative behavior should be held to moderate standards in lawmaking, so as not to fall prey to some carelessness and

⁴⁴ Jeremy Waldron, "Representative Lawmaking", *Boston University Law Review* 89, No. 1 (2009): 335-355.

⁴⁵ Nurul Qamar, and Farah Syah Rezah. "The dichotomy of approach in the study of legal science: A critical review." *SIGN Jurnal Hukum* 4, No. 2 (2022): 191-201.

⁴⁶ Peter W. Hogg, "The Law-Making Role of the Supreme Court of Canada: Rapporteur's Synthesis", *Canadian Bar Review* 80, No. 1/2 (2001): 171-180.

⁴⁷ Or. Abegunde, "Legislature and Democratic Sustainability in Nigeria: History of Legislature in Nigeria", *International Journal of Humanities & Social Science Studies* 3 No. 3 (2016): 228-232.

misunderstanding. Promoting deliberation, dialogue, and philosophical colloquial negotiations based on matters of principle aimed at the common good on the basis of fair treatment based on morality. The legislature ideally serves as a clearing house for information about the nation's conscience, and to suppress claims of interest to pseudo-political ideals.⁴⁸

Good legislation is a principle that promotes better regulation at all levels of government, improves coordination and avoids overlapping responsibilities between regulatory authorities and levels of government; Implement regulatory quality criteria such as transparency, non-discrimination and efficiency of regulations within government, and encourage private entities and civil society to actively participate to maintain consistency in the deliberative application of regulatory quality criteria standards, as well as encourage a dynamic approach to ensure regulatory effectiveness through effective ex post evaluation.⁴⁹

In China, Pakistan, and Kazakhstan, the responsibility for improving the legislative process is first and foremost on the legislature itself.⁵⁰ For this reason, political will as well as the capacity and competence of legislators, to defeat the partisan considerations of individuals and their groups, in favor of ideological and institutional considerations.⁵¹

External actors play a vital role in fostering a symbiotic lawmaking process, often in the form of civil society-based coalitions

⁴⁸ Ittai Bar-Siman-Tov. "Mending the legislative process—the preliminaries." *The Theory and Practice of Legislation* 3, No. 3 (2015): 245-256.

⁴⁹ Kevin R. Den Dulk, and J. Mitchell Pickerill. "Bridging the lawmaking process: Organized interests, court-congress interaction, and church-state relations." *Polity* 35.3 (2003): 419-440.

⁵⁰ Ainur Zhenisovna Issayeva, et al. "Features of legal regulation of the procedure for the consideration of labor disputes in Kazakhstan." *Journal of Advanced Research in Law and Economics* 11, No. 1 (47) (2020): 66-73.

⁵¹ Rao Qasim Idrees, Zaheer Iqbal Cheema, and Jawad Riaz. "Role of harmonization and unification in perspective of China–Pakistan economic corridor physical infrastructure and applicable laws." *Journal of Advanced Research in Law and Economics* 11, No. 1 (47) (2020): 45-54.

operating independently from legislative bodies. Exemplary instances include the English Hansard Society in the UK, the Parliamentary Centre in Canada, the Centre for Legislative Development in the Philippines, and the Israel Democracy Institute in Israel. On a global scale, several international institutions contribute to the promotion of effective legislation, such as the Organisation for Economic Co-operation and Development (OECD), Inter-Parliamentary Union, United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Development Programme, Association of Secretaries General of Parliament, Commonwealth Parliamentary Association, Commonwealth of Legislative Counselors Association, and the International Association of Legislators, among others.⁵²

II. Elevating Legislative Quality in Indonesia through the Application of Good Legislation Principles

Legislation as an instrument other than unwritten law is part of the national legal system, holding a central position in the life of society, nation and state as a consequence of the rule of law⁵³. Legal principles are general propositions expressed in general terms about a set of values to serve as appropriate guidelines for carrying out a legal action. This legal principle provides clear guidelines for action, which is the "heart" of legal regulations.⁵⁴

⁵² Sherry Arnstein. "A Ladder of Citizen Participation": Journal of the American Institute of Planners (1969)." In *The City Reader*. (London: Routledge, 2020), pp. 290-302.

⁵³ Helmi Chandra SY, and Shelvin Putri Irawan. "Perluasan Makna Partisipasi Masyarakat dalam Pembentukan Undang-Undang Pasca Putusan Mahkamah Konstitusi." *Jurnal Konstitusi* 19, No. 4 (2022): 766-793.

⁵⁴ Dachran S. Busthami, "The Principles of Good Legislation Forming: A Critical Review." *SIGN Jurnal Hukum* 4, No. 2 (2022): 308-319.

The principle of law is not the rule of law, but no law can be understood without knowing the principles of law contained in it. The laws and regulations formed must not ignore legal principles, so that they can be ensured to be effective and efficient. The principles of the formation of legislation, among others⁵⁵:

1. Universal Legal Principles related to good faith (*goode trouw*), obedience (*billijkheid*), justice (*gerechtigheid*), legal certainty (*rechtszekerheid*), human virtue (*menselijke waardigheid*), expediency (*opportunititeit*), human rights (*veebiediging van de groundrechten*), and others;
2. Legal Principles of Good Law Formation (*beginselen van behoorlijke regelgeving*) into the principles of formie I and materiale I, namely: (i) the principle of formie I; clear objectives (*beginsel van duidelijke doelstelling*); appropriate organs/institutions (*beginsel van het juiste orgaan*); the need for regulation (*het noodzakelijkheidsbeginsel*); workable (*hetbebesel van uitvoerbaarheid*); and consensus (*het beginsel van de consensus*); (ii) material principles; correct terminology and systematics (*het beginsel van duidelijke terminology en sistem duidelijke*); can be recognized (*het beginsel van de kenbaarheid*); equal treatment in law (*het rechtsgelijkheidsbeginsel*); legal certainty (*het rechtszekerheidsbeginsel*); and law enforcement according to individual circumstances (*hetbebesel van de rechtsbedeling individuals*).

In connection with that, principles of the formation of legislation require the existence of legal order which includes: orderly formation (*order*), orderly substance (*content*), and orderly implementation. Based on these three disciplines, there are elements of ⁵⁶ general law, which include: the principle of authority, the principle of true material, the principle of applying to the future (*not retroactive*), the

⁵⁵ Andi Kasmianti, et al. "The essence of the principle of Establishing Good Laws and Regulations for Realizing Quality Regional Legal Products", *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* 23, No. 12 (2018): 54-67.

⁵⁶ Ni'matul Huda, and Riri Nazriyah. *Teori dan Pengujian Peraturan Perundang-Undangan*. (Jakarta: Nusamedia, 2019).

principle of new legislation overriding the old, the principle of regulatory order legislation, the principle of equality and impartiality, the principle of legitimate motive and purpose, the principle of certainty, compliance and justice, the principle of public interest, and the principle of implementability.⁵⁷

Article 5 of Law No. 12 of 2011 as amended by Law No. 15 of 2019, and last amended by Law No. 13 of 2022 stipulates that the establishment of laws and regulations must be carried out based on the principle of Regulation Formation Good legislation, including: (a) clarity of purpose; (b) appropriate forming institutions or officials; (c) conformity between the type, hierarchy and material of the cargo; (d) enforceable; (e) to usability and usability; (f) clarity of formulation; and (g) clarity.⁵⁸ Furthermore, Article 6 of Law No. 12 of 2011 states that:⁵⁹

"(1) The content of laws and regulations shall reflect the principles of:

- a. protection;
- b. humanitarian;
- c. nationality;
- d. kinship;
- e. archipelago;
- f. *Bhinneka Tunggal Ika* (Unity in Diversity);
- g. justice;
- h. equality of position in law and government;
- i. order and legal certainty; and/or
- j. balance, harmony, and harmony.

⁵⁷ Salahudin Tunjung Seta. "Hak Masyarakat dalam Pembentukan Peraturan Perundang-Undangan." *Jurnal Legislasi Indonesia* 17, No. 2 (2020): 154-166.

⁵⁸ Law of the Republic of Indonesia Number 12 of 2011 on Legislation Making (State Gazette of the Republic of Indonesia of 2011 Number 82, Supplement to the State Gazette of the Republic of Indonesia Number 5234)

⁵⁹ Law of the Republic of Indonesia Number 15 of 2019 on Amendment to Law Number 12 of 2011 on Legislation Making (State Gazette of the Republic of Indonesia of 2019 Number 183, Supplement to the State Gazette of the Republic of Indonesia Number 6398).

(2) In addition to reflecting the principles referred to in sub-article (1), certain laws and regulations may contain other principles in accordance with the legal field of the relevant laws and regulations."⁶⁰

Improving the quality of legislation requires the application of the principle of good legislation. Drinóczi establishes the concept (definition) of legislative quality or good legislation as: (i) an interdisciplinary approach to legislation that promotes the planned achievement of short, medium, and long-term social and economic goals through an open and evidence-based approach. The process of developing and adopting efficient and enforceable laws, as well as assisting in their implementation; (ii) approaches that combine the concepts of legislative and regulatory quality; and (iii) that implies or even requires quality legislative process.⁶¹

In Indonesia, the formation of laws and regulations is carried out through the stages of planning, drafting, discussing, ratifying or determining, and promulgation (Article 1 of Law No. 12 of 2011). The stages of the formation of legislation as shown in Figure 1.

The stages of the planning process for drafting laws are determined in the National Legislation Program (*Prolegnas*) as a planned, integrated, and systematic instrument, according to the priority scale in order to realize the national legal system. The House of Representatives of the Republic of Indonesia (DPR RI) has approved the National Legislation Program (*Prolegnas*) for the Medium Term 2020-2024 in its Plenary Meeting, December 17, 2019. *Prolegnas* 2020-2024 consists of 248 bills, which are a combination of proposals from the DPR, the Government, and the House of Representatives (DPD). The House of Representatives is the largest institution proposing bills in the 2020-2024 National Legislation with

⁶⁰ Law of the Republic of Indonesia Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on Legislation Making (State Gazette of the Republic of Indonesia of 2022 Number 143, Supplement to the State Gazette of the Republic of Indonesia Number 6801)

⁶¹ T. Drinóczi "Concept of Quality in Legislation-Revisited: Matter of Perspective and a General Overview". *Statute Law Review* 36, No. 3 (2015): 211-223.

179 bills, while the Government has 86 bills, and the DPD has 51 bills. Of the total proposed bills, 67 of them were proposed jointly, either DPR with DPD, DPR with Government, DPD with Government, or proposed jointly by DPR, DPD, and Government. The other 1 bill was not mentioned by the proposer, namely the Bill on National Population and Family. In addition, mapping based on the title of the Bill, the Economic sector has the most priority bills in the 2020-2024 National Legislation with 87 bills or equal to 35% of the total number of bills; while the Political, Legal and Security Bill amounted to 73 bills or equal to 29%; Bill in the field of Human Development and Culture as many as 64 bills or equivalent to 26%; and the Maritime sector as many as 24 bills or 10% of the total priority bills of *Prolegnas* 2020-2024 (PSHK, 2019).⁶²

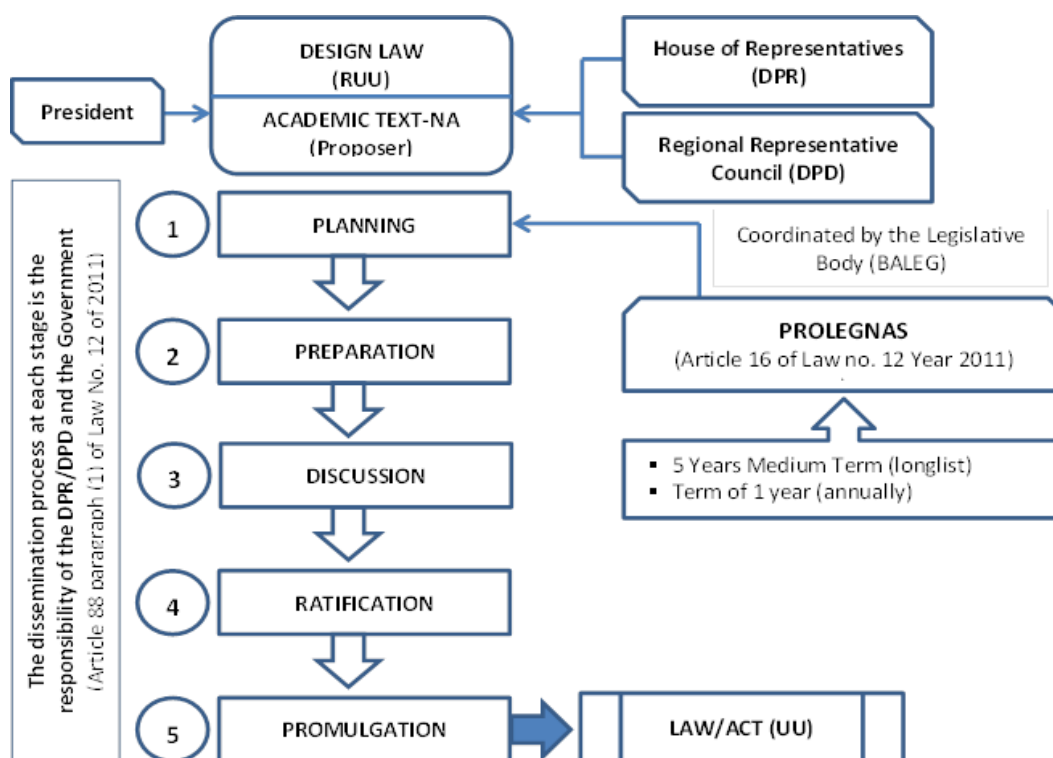


FIGURE 1. Stages of Law Formation in Indonesia

⁶² PSHK, "Prolegnas Jangka Menengah 2020-2024 dan Prolegnas Prioritas Tahun 2020", *Online*. Available at <https://pshk.or.id/publikasi/info-legislasi/prolegnas-2020-2024/>.

In Prolegnas 2020-2024, there are 130 Bills that are Amendment Bills, as shown in Figure 2.

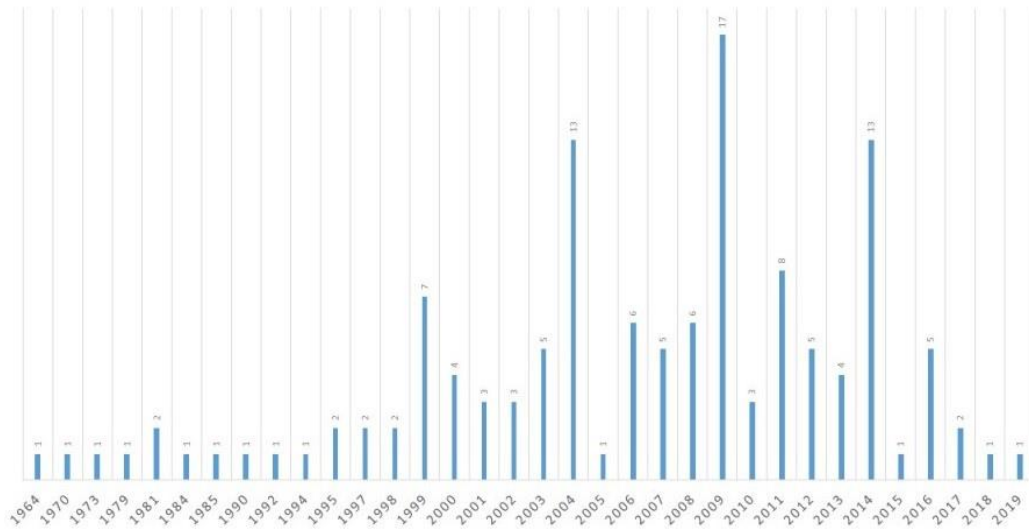


FIGURE 2. Number of Amendment Bills in *Prolegnas* 2020-2024 Based on Year of Formation/Last Amendment

Source: Processed from the Legislation Information System of the House of Representatives of the Republic of Indonesia, 2020.

Studies that show the low quality of law and legislative processes in Indonesia can be seen based on: (1) hyper-regulation and over-legislation; (2) conflict between the law and implementing regulations; (3) differences between laws and regulations and policies of government agencies; (4) the difference between laws and regulations with jurisprudence and Supreme Court Circulars; (5) conflicting policies of central government agencies; (6) differences between central and local government policies; (7) differences between legal provisions and the formulation of certain meanings; (8) conflict between the authority of government agencies due to unsystematic and clear division of authority. In addition, it is also assessed from the inaccuracy of the material content of the law (Law), harmony between laws, harmony between laws and other regulations, fulfillment of public aspirations, and relevance between the law and the benefits of the problems to be resolved (IPC, 2020).

For example, 4 laws in the energy sector that overlap and are inconsistent with each other, as table 4 follows.⁶³

TABLE 4. Problems of Under-Quality of Energy Sector Law

Law	Problem
Law No. 22 of 2001 concerning Oil and Gas	There are 18 (eighteen) articles that do not / do not meet the principle of clarity of formulation, and need to be adjusted to the decision of the Constitutional Court. These articles are Article 1 number 23, Article 2, Article 3, Article 4, Article 11, Article 12, Article 20, Article 21, Article 22, Article 28, Article 41, Article 44, Article 45, Article 48, Article 49, Article 59, Article 61 and Article 63.
Law No. 30 of 2007 concerning Energy	There are 5 (five) articles that do not / do not meet the principle of clarity of formulation, the principle of justice. These articles are Article 2, Article 3, Article 22, Article 25 and Article 28.
Law No. 30 of 2009 concerning Electricity	There are 16 (sixteen) articles that do not / do not meet the principle of clarity of formulation, the principle of balance of harmony and harmony, the principle of justice. These articles are Article 5, Article 10, Article 11, Article 16, Article 17, Article 27, Article 28, Article 33, Article 35, Article 37, Article 39, Article 42, Article 45, Article 34 and Article 48;
Law No. 21 of 2014 concerning Geothermal Energy.	There are 17 (seventeen) articles that do not / do not meet the principle of clarity of formulation. These articles are Article 2, Article 3, Article 26, Article 27, Article 31, Article 32, Article 40 and Articles 67-77.

Source: Indonesian Parliamentary Center (IPC), 2020.

The causes of problems in the quality of laws formed by the DPR are: (1) Problems related to the preparation and realization of the

⁶³ Indonesian Parliamentary Center, "Gejala Disharmoni Antar UU", *Online*, December 15 (2020).

National Legislation Program; (2) Problems in the process of harmonization of the Bill against applicable laws and regulations; (3) Weak public participation in the formation of laws; (4) The lack of institutionalization of the evaluation by the framer of the law he has formed; (5) The effectiveness of DPR fittings in the implementation of legislative functions; (6) Time availability and choice of focus of discussion; (7) The ability and motivation of Members of Parliament as law makers (lack of commitment as *law makers*); (8) Lack of government responsibility to succeed in the formation of quality laws; (9) The budget for the establishment of laws; (10) The influence of foreign interests in the formation of laws

J.P. Duprat & Helen Xanthaki (2017) propose a method to determine the quality of legislation through general characteristics, including: *clarity* (easy-to-understand text capacity), precision (convincing expressive accuracy), *unambiguity* (singular meaning), accuracy, and simple language.⁶⁴ Thus, it requires the ability of the framer of the law to articulate the purpose of the law based on the principle of good legislation as shown on Figure 2.⁶⁵

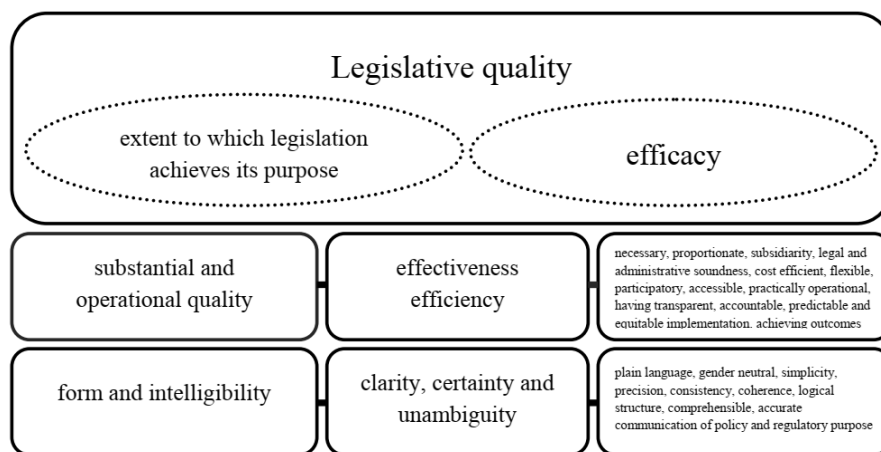


FIGURE 2. Quality Characteristics of Legislation

⁶⁴ Karpen, Ulrich, and Helen Xanthaki, eds. *Legislation in Europe: a comprehensive guide for scholars and practitioners*. (London: Bloomsbury Publishing, 2017).

⁶⁵ Aitken, Victoria E. "An exposition of legislative quality and its relevance for effective development." *ProLaw Student Journal* 2, No. 1 (2013): 1-43.

The principle of good legislation is a hierarchy, where expediency (efficacy) is the ultimate goal of regulation, which requires effectiveness and efficiency. Effectiveness implies that regulatory texts can adequately accommodate social context. Efficiency, shown by achieving maximum benefits using minimal resources. In order for effectiveness and efficiency to be met, the text of the regulation must meet the principles of *clarity*, *precision*, and *unambiguity*. In addition, semantic clarity that requires each word to have a single meaning, is complemented by syntactic clarity that requires the text to have a logical sentence structure and proper placement of phrases or clauses. As a result, laws become more predictable. Predictability allows users of legislation, including law enforcement, to understand the entire content of the regulation according to the intent of the regulation. The hierarchical foundation of regulatory formation requires neutrality and simplicity of language, thus supporting accuracy and encouraging gender differentiation (Saru Arifin 2022).⁶⁶

The most important requirement to be said to be a good law is the existence of orderly regulations in the formation of legislation, so that legislation meets the principle of consistency, known to everyone, clear, simple and can be strictly enforced so that it has the benefit of "*maximizing happiness and minimizing pains*" (Jeremy Bentham, 2010). Assessment of the expediency of legislation can use the Regulatory Impact Analysis (RIA) analysis method; Rule, Opportunity, Capacity, Communication, Interest, Process, and Ideology (ROCCIPI); The OECD Reference Checklist for Regulatory Decision-Making Better Regulation (ORCRDBR); Checklist to Assess Practicability and Enforceability of Legislation (CAPEL); Integrated Framework for Policy Analysis and Legislation' (IFPL); and Model Analysis of Regulatory Framework (MAKARA), or by other methods.⁶⁷ The following Figure 3 will show the orderly regulation in the formation of legislation.

⁶⁶ Saru Arifin. "Post-Pandemic Legislation in Indonesia: A Virtual Platform for Future Legislative Options?." *International Journal of Parliamentary Studies* 2, No. 2 (2022): 240-262.

⁶⁷ Jeremy Bentham. *Theory of Legislation*. (Trübner, 1871).

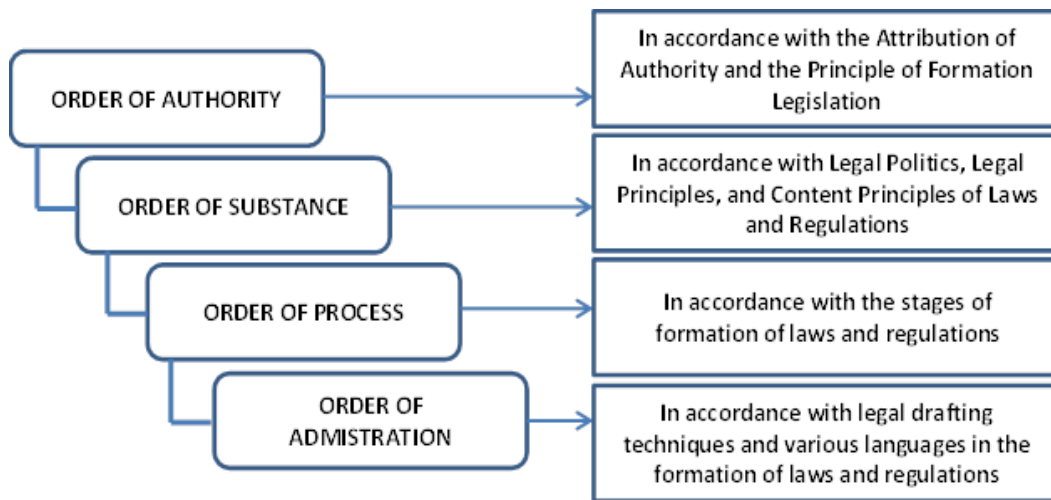


FIGURE 3. Orderly Regulation in the Formation of Legislation

I.C. Van Der Vlies asserts that the *order of authority* is the constitutional authority of lawmakers, which has been expressly ordered in the Constitution. In addition, lawmakers must also be able to find out through research the nature of things expressly ordered by the Constitution to the lawmakers, in the interest of the state⁶⁸. *Order of substance* relates to criteria regarding legal compliance, needs, and potential quantities of costs and benefits to the people. *Order of process* relates to the consistency, firmness and dynamics of *regulatory policy* that prioritizes the quality of legislation based on the principle of good legislation. An integrated approach is needed, both vertically and horizontally adjusting the conditions of Indonesia's legal, political, economic, social, and cultural systems. In addition, it can also adopt the best legislative practices in the international world. The "Order of administration" requires increasing technical capacity regarding legal drafting with standard standards that adapt the use of information and communication technology to improve the quality of legislation and digitize legislation.

⁶⁸ I.C. Van der Vlie, *Handbook Wetgeving* (Zwolle: W.E.J Tjeenk Willink, 1987); Van Der Vlies, Inge C. "The role and powers of the council of ministers." In *Netherlands Reports to the XIth International Congress of Comparative Law Caracas 1982*. (Dordrecht: Springer Netherlands, 1982). See also Mark Haugaard, "Power and legitimacy." *Knowledge as Social Order*. (London: Routledge, 2016), pp. 119-130.

Use of Digital Information and Communication Technology in Digitizing Legislation in Indonesia

Any country that wants to respect the rule of law, certainly puts forward freedom of expression as a prerequisite for the exercise of many other rights and freedoms. The interrelation between the freedom to communicate and express oneself with the rule of law is very close, to play the role of functioning of the law, while the rule of law must apply in order for communication to play that role.⁶⁹ Digital media has a recognized role in building national identity, related to the involvement of citizens in all governance of society, nation and state. This in itself is not something new, but what is new is the rapid change about Therefore, each rule is supposed to take into account technological changes in the field of communication.⁷⁰

The transformation of digital technology changes the legal framework of state regulations that originally evolved gradually and closed, towards adaptation that radically changes socio-economic and political realities. From a legal point of view, such special relationship patterns are contractual in nature Internet, reflecting the conventional interaction processes of pseudo-legal subjects, which correspond to the nature of almost all network interactions. However, its specificity is that the norms formed suppose qualitative changes in legal impact that cross localities in time dimensions that are reactive in intensity, giving rise to complications of legal impact organically.⁷¹

The transformation of the impact of law occurs under the influence of changes in the legal and social system that occur as a result of the reconfiguration of social objects affected by law. The legal means required by the state become genomic and will certainly affect the attitude of legislators towards it. Genomic information is that the

⁶⁹ Katrin Nyman-Metcalf, "Legislative Drafting Challenges in Communications Regulation: Convergence, Globalisation and New Media Culture", *International Journal of Legislative Drafting and Law Reform* 2, No. 1 (2014): 51-77.

⁷⁰ Tobias A. Dorsey, "The Impact of Information Technology on Drafting Offices", *International Journal of Legislative Drafting and Law Reform* 2, No. 1 (2012): 86-102.

⁷¹ E.E. Bogdanov, "Legal Problems and Risks of The Genetic Revolution: Genetic Information and Discrimination", *Lex Russica* 151, No. 6 (2019): 18-29.

transformation of legal impact is a sequential system, whether law-forming institutions, legal norms, or mental shifts (innovations), which do not coincide with previous structures with an additional (or new) set of functions. This transition requires a new paradigm for the state, within the framework of the general logic of changes in the process of formation and lawmaking, conditioned by new qualitative characteristics of society.⁷²

Virtual technology has been used by 65% of parliaments in carrying out legislative work in 2020, particularly in virtual plenary sessions, for example the experience of the parliaments of the Maldives, Spain, Chile and Brazil. Parliament considers the adoption of digital technology sophistication as a collaborative platform of *ParlTech* (Parliamentary Technology) in order to achieve its strategic goals, even in the Covid-19 pandemic situation (Inter-Parliamentary Union, 2021).⁷³

Communication accessibility is facilitated by the presence of digital technology, thus creating a new working culture for parliament, executive and judicial officials, as well as active public participation, in all phases of policymaking. Even in South Korea openly, people are fully encouraged to express their aspirations and input on a draft regulation. The best aspirations and inputs will be rewarded by the government. Digital technology can also be used to evaluate emerging public opinion, thereby encouraging inclusion and involvement of citizens in responding to policies taken. In addition, the legislature can analyze and respond in real time to people's aspirations, allowing for quick and appropriate policy modifications. This, of course, will increase effectiveness and efficiency, thereby strengthening transparency and participation. Nevertheless, the integration and increasing complexity of digital technologies, on the

⁷² L. N. Berg, "Transformation of Legal Impact in the Context of the Modern Information and Technological Structure (Case Study of The Relations Connected with Genomic Information)", *SHS Web of Conferences* 134, (2022): 00117.

⁷³ United Nations, Global Centre for Information and Communication Technologies in Parliament, and Inter-parliamentary Union. *World e-Parliament Report 2012*. (New York City: UN, 2012).

other hand as in some parliaments, adds to the complexity of the policy-making environment.⁷⁴

Many theoretical considerations point to the importance of public participation in the formation of laws. Public participation in the formation of laws needs to be done meaningfully (*meaningful participation*). Thus, the creation of genuine public participation and involvement must have three important prerequisites in it, namely the right to be *heard*, the right to be considered and the right to get an explanation or answer to the opinion given (*right to be explained*). A democratic system of legislation, therefore, must place meaningful public participation as paramount. Moreover, given Indonesia's vast demographic characteristics, and the large and diverse number of people, digital technology will be more efficient and cost-effective in collecting public input during the legislation process (Konul Habibova, and Ella Zaretskaya, 2022).⁷⁵

The Covid-19 pandemic has changed the work culture related to the use of information and communication technology, especially the use of *video conferencing* or *virtual meetings* through the Zoom application or software, Google Meet, Microsoft Teams, Cisco Webex, CloudX, and others. The use of information and communication technology in the field of legislation must consider: (1) The form of utilization of information and communication technology; (2) Advantages and disadvantages; (3) government support in digitizing legislation; and (4) The legal basis for the use of digital documents and signatures in legislation.

The forms of utilization of information and communication technology in digitizing laws and regulations, among others, include: (i) intensification of online meeting platforms or consultation meetings in order to compile and discuss legislation, both in the form of meetings, public tests, public consultations, discussions, seminars,

⁷⁴ Fotios Fitsilis, D. Koryzis, and J. de D. Cincunegui. "Advanced Cooperative Digital Platforms for Parliaments." *Global Conference on Parliamentary Studies (Global Parliamentary Studies)*. 2022.

⁷⁵ Konul Habibova, and Ella Zaretskaya, "Law and Legal Relations in the Digital Age", *SHS Web of Conferences* 141, (2022): 01019.

and other meetings; (ii) accessibility of online public participation in providing input on each stage of legislation formation; (iii) Digital documents of *legislation (paperless)* that are environmentally friendly; (iv) Digital Database and Online Dissemination of Legislation; (v) Development of *Legislative Drafting Software Solution* programs and applications in drafting legislation, such as *automated readability index* applications in the United States to measure whether or not a legislative formulation is easily understood by the public; and (vi) Electronic signature on statutory documents (Purnomo Sucipto, 2021).⁷⁶

The advantages obtained from the use of technology for the drafting process and statutory documents are efficient, accurate, fast, do not require a lot of paper and space. The losses suffered due to the use of these technologies in terms of formulation and discussion of legislation are the lack of freedom to express ideas and opinions due to limitations in displaying *gestures* and *body language*. In addition, speed being a priority results in reduced time for analysis and permeating the substance of the formulated arrangements because they are done in a hurry. In addition, another disadvantage is that there will always be threats of *hacks*, viruses, and malfunctions of technological equipment.

Government support in digitizing legislation is contained in the 2020-2024 National Medium-Term Plan (RPJMN), which states that "*digital transformation is absolutely necessary because it is one of the basic infrastructures in implementing the mission of Nawacita and achieving the goals of Indonesia's vision 2045 (sovereign, advanced, just, and prosperous)*." The government has also created digital transformation programs in the context of utilizing technology, including: (i) digital infrastructure development; (ii) strengthening transformation in strategic sectors through the development of the Digital Indonesia Roadmap 2021-2024; (iii) construction of a National Data Center; (iv)

⁷⁶ Purnomo Sucipto, "Pemanfaatan Teknologi dalam Dunia Perundang-Undangan", *Online*, November 21 (2021). Retrieved from at <https://setkab.go.id/pemanfaatan-teknologi-dalam-dunia-perundang-undangan/>

development of digital human resources/talents; and (v) drafting legislation/regulations as the legal basis for implementing digital transformation in Indonesia. The legal basis for the use of information technology related to legislation as shown on Table 5.

TABLE 5. Legal Basis for the Utilization of Information Technology in Digitizing Legislation

No	Law	Legal Provisions
1	Law Number 12 of 2011 concerning the Establishment of Legislation	Explanation of Article 88 paragraph (1): Dissemination of these laws and regulations is carried out, for example, through electronic and/or print media
2	Law Number 13 of 2022 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation	<p>Article 96 paragraph (2): The provision of public input orally/in writing at each stage is carried out online and/or offline.</p> <p>Article 97B, paragraphs (1) to (6):</p> <ol style="list-style-type: none"> (1) Establishment of laws and regulations can be done electronically. (2) Signature affixing in every stage of the Establishment of Laws and Regulations from planning to promulgation may use electronic signatures. (3) Electronic signature as referred to in paragraph (2) must be certified in accordance with provisions of laws and regulations. (4) Laws and regulations established electronically as referred to in Paragraph (1) has the same legal force as Established laws and regulations in printed form. (5) Laws and Regulations that signed with electronic signature as referred to in paragraph (2) has the same legal force as the Regulation Legislation signed nonelectronically. (6) Further provisions regarding procedures Establishment of Laws and Regulations electronically as referred to

		in paragraph (1) is regulated in the House Regulations, Regulations DPD, and Presidential Regulation.
3	Law Number 11 of 2008 concerning Electronic Information and Transactions <i>jo.</i> Law Number 19 of 2016	Article 5 paragraph (1): Electronic Information and/or Electronic Documents and/or printouts thereof constitute valid legal evidence. Article 11 paragraph (1): Electronic Signatures have legal force and legal effect.
4	Law Number 14 of 2008 concerning Public Information Openness	Article 7 paragraph (6): In order to fulfill the obligation to provide, provide and/or publish Public Information under its authority to Public Information Applicants, Public Bodies may utilize electronic and non-electronic means and/or media.
5	Personal Data Protection Act (UU PDP)	

Utilizing Information Communication Technology to consult law proposals, Indonesia can benefit from what Finland has done which has a long history of digital consultation. Alongside traditional approaches, Finland for some time has also been utilizing the Internet for the dissemination of Information, and providing the wider public with opportunities to get involved. for example, the widespread practice of posting draft laws on the Internet and the opportunity of the wider public to comment (OECD, 2010).⁷⁷

Ideally, the concept of e-Parliament should be placed in a broader context which includes: (i) the main functions of Parliament, (ii) the purpose of Parliament to implement democratic parliamentary practices following the IPU Guidelines for Parliament and Democracy in the Twenty-First Century.⁷⁸ This must certainly elaborate adequate

⁷⁷ Organization of Economic Co-operation and Development-OECD, *Better Regulation in Europe, Finland 2010*. (Paris: OECD, 2010). Available at <https://www.oecd.org/governance/regulatory-policy/betterregulationineuropefinland.htm>.

⁷⁸ Heriyono A. Anggoro, "Konsep dan Perkembangan e-Parliament", *Online*, October 1 (2020). Retrieved from <https://openparliament.id/2020/10/01/konsep-dan-perkembangan-e-parliament/>. See also Mehmet Zahid Sobaci, ed. *E-*

cybersecurity, including data ownership rights, prohibitions on data use, and collection, storage, processing, and transfer of users' personal data (Henry & Brantly, 2018). This is as mandated in the Personal Data Protection Law (PDP) which consists of 16 Chapters and 76 articles. This law was passed by the House of Representatives at the Plenary Meeting on September 20, 2022, which was attended by 295 council members, with details of 73 people physically present, 206 people attending virtually, and as many as 16 people not attending or permitting.⁷⁹

CONCLUSION

This article asserts that a fundamental criterion for defining a law as effective hinges on the establishment of systematic regulations in the legislative process. This ensures that legislation adheres to the principles of consistency, universal understanding, clarity, simplicity, and enforceability, thereby yielding practical benefits. The quality of legislation is gauged through key attributes, namely clarity (comprehensibility of the text), precision (convincing expressive accuracy), unambiguity (singular meaning), accuracy, and simplicity of language. Consequently, the lawmaker must possess the skill to articulate the legislative intent in accordance with the principles of sound legislation. Moreover, the incorporation of information and communication technology (ICT) in legislative processes necessitates consideration of: (1) the manner in which ICT is employed; (2) its advantages and disadvantages; (3) governmental support in digitizing legislation; and (4) the legal foundation for utilizing digital documents and signatures in legislation.

The article proposes that enhancing the quality of law drafting and formation in Indonesia requires a comprehensive transformation of the legislative system. This involves redefining planning,

Parliament and ICT-Based Legislation: Concept, Experiences and Lessons: Concept, Experiences and Lessons. (Hershey, Pennsylvania: IGI Global, 2011).

⁷⁹ Shawn Henry, and Aaron F. Brantly. "Countering the cyber threat." *The Cyber Defense Review* 3, No. 1 (2018): 47-56.

institutional frameworks, and the capacity of law formation. Additionally, there is a pressing need to enhance the quality of both the new regulatory impact assessment (*ex ante* impact assessment) and the *ex post* evaluation of existing laws. Accelerating the authorization of Information and Communication Technology in digitizing legislation is deemed crucial for fostering meaningful participation, transparency, and widespread dissemination.

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