

## BETWEEN LEGALITY AND LEGITIMACY IN THE PROCEDURAL JUSTICE OF THE ENACTMENT OF LAW NO. 17 OF 2023 ON HEALTH

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### Abstract

*This article examines the tension between legality and legitimacy within the procedural justice framework of Indonesia's Law No. 17 of 2023 on Health. While the law formally satisfies the positivistic criteria of legality as outlined in statutory drafting guidelines, its legislative process raised substantial concerns regarding transparency, participation, and deliberative inclusiveness. These issues highlight the broader philosophical problem of whether legal validity based solely on procedural formality is sufficient to constitute legitimate lawmaking in a democratic state governed by the rule of law. Using theoretical perspectives from Habermas, Fuller, and Rawls, this study analyzes the degree to which the formation of the Health Law reflects or departs from the ideals of procedural justice. Habermasian discourse theory underscores the importance of communicative participation and rational-public deliberation, both of which appear limited in the law's formation. Fuller's principles of internal morality reveal inconsistencies related to clarity, openness, and procedural integrity. Meanwhile, Rawls's notion of fairness emphasizes the need for equitable inclusion of affected stakeholders, particularly healthcare professionals and the wider public. The findings show that although the law may be legally valid, its legitimacy remains contested due to insufficient adherence to philosophical standards of just procedure. This paper concludes that bridging legality and legitimacy requires strengthening deliberative mechanisms, enhancing participatory routes, and reaffirming moral-procedural principles in legislative processes.*

**Keywords:** Legality; Legitimacy; Procedural Justice; Health Law.

### I. INTRODUCTION

The enactment of Law No. 17 of 2023 on Health has reignited debates concerning the integrity of Indonesia's legislative process, particularly with respect to procedural justice, legitimacy, and public participation. Although the law formally complies with the structural requirements outlined in Law No. 12 of 2011 and its amendments, questions remain regarding the extent to which its drafting process embodies the deeper philosophical principles that undergird legitimate lawmaking in a democratic constitutional state. Procedural justice, in the philosophical sense advanced by Habermas, Rawls, and Fuller, requires more than mere adherence to legal formality; it demands transparency, meaningful participation, and deliberative integrity as

prerequisites for legitimate legislation<sup>1,2,3</sup>. The tension between legality and legitimacy therefore becomes central to assessing the normative adequacy of the Health Law's formation.

Recent scholarship has highlighted the growing problem of accelerated lawmaking and the erosion of deliberative democratic principles in Indonesia. Adriaans (2021) argues that fast-track legislation often leads to democratic deficits, reducing opportunities for public deliberation and weakening legislative accountability<sup>4</sup>. Similar concerns are echoed by Indrayana (2021), who notes that rapid legislative processes in Indonesia have tended to sideline public reasoning, producing regulations that are formally valid but substantively unresponsive. Studies on Indonesia's Omnibus Law further illustrate this phenomenon<sup>5</sup>. Susanti (2021) demonstrates that the Omnibus Law on Job Creation instituted a model of hyper-centralization in legislative practice, characterized by limited transparency and insufficient public involvement<sup>6</sup>. Hadi (2022) similarly finds that public participation in Indonesian legislation often remains procedural rather than substantive, creating only the appearance of inclusion rather than genuine deliberative engagement<sup>7</sup>. More recently, Prasetyo (2023) observes that health professionals exhibited strong resistance toward health-sector regulations due to the government's failure to meaningfully consider professional input<sup>8</sup>. Taken together, these studies reveal a consistent pattern: the growing divergence between legal validity and procedural legitimacy in Indonesia's legislative landscape.

Despite these valuable contributions, the existing scholarship still leaves significant gaps. First, most studies emphasize political or sociological analyses of legislative deficiency, yet offer limited philosophical evaluation grounded in theories of procedural justice. Second, there remains a lack of research applying a rigorous philosophical framework, drawing from Habermasian discourse theory, Fuller's internal morality of law, and Rawlsian fairness, to examine the legitimacy of specific legislative processes, such as that of Law No. 17 of 2023 on Health. Third, although empirical reports by civil society organizations and the media highlight procedural

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<sup>1</sup> Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (MIT Press, 1996).

<sup>2</sup> John Rawls, *A Theory of Justice* (Harvard University Press, 1971).

<sup>3</sup> Lon L Fuller, *The Morality of Law*, Revised Edition (Yale University Press, 1964).

<sup>4</sup> P Adriaans, "Fast-Track Legislation and Democratic Erosion: A Comparative Study," *European Political Science Review* 13, no. 2 (2021): 245–63.

<sup>5</sup> Denny Indrayana, *Legislasi Cepat Dan Matinya Nalar Publik* (Jakarta: Gramedia, 2021).

<sup>6</sup> Bivitri Susanti, "The Omnibus Law: Indonesian Constitutionalism at a Crossroads," *Jurnal Konstitusi* 18, no. 1 (2021): 1–24.

<sup>7</sup> S Hadi, "Partisipasi Publik Dalam Pembentukan Undang-Undang: Antara Formalitas Dan Substansi," *Jurnal Hukum Ius Constituendum* 7, no. 1 (2022): 102–20.

<sup>8</sup> A Prasetyo, "Resistensi Profesional: Studi Sosio-Legal Respons Dokter Terhadap Regulasi Kesehatan Pemerintah," *Mimbar Hukum* 35, no. 1 (2023): 45–62.

irregularities and the exclusion of health stakeholders<sup>9,10</sup>, these findings have not been systematically integrated into a normative legal-philosophical assessment. Consequently, a comprehensive study that evaluates the Health Law's formation through the lens of legality, legitimacy, and philosophical procedural justice is still lacking.

This article offers several important novelties. First, it situates the debate on Indonesia's legislative process within a robust philosophical framework by synthesizing three major traditions in legal philosophy: Habermas's discourse theory, Fuller's procedural morality, and Rawls's principles of fairness. This triadic approach enables a deeper evaluation of legitimacy beyond formal compliance with statutory drafting rules, thus providing a more holistic assessment of the Health Law's procedural integrity. Second, the article connects normative philosophical analysis with contemporary legislative realities in Indonesia, demonstrating how deficiencies in participation, transparency, and deliberation undermine not only substantive outcomes but also the moral foundations of legal authority. Third, the study advances the proposition that legality and legitimacy must not be treated as separate domains; rather, legitimate lawmaking in a democratic society requires their integration through a process that is both formally valid and ethically justified.

The aim of this study is to critically examine the procedural justice of the enactment of Law No. 17 of 2023 on Health by analyzing the interplay between legality and legitimacy within Indonesia's legislative process. Specifically, this research seeks to: (1) assess the extent to which the law's formation satisfies formal legal requirements; (2) evaluate its compatibility with philosophical principles of procedural justice; and (3) identify the normative implications of the gap between legality and legitimacy for democratic governance and the future of legislative reform in Indonesia. Through this inquiry, the study aspires to contribute to broader discussions on how democratic legitimacy should be conceptualized and operationalized within Indonesia's evolving legal system.

## II. RESEARCH METHOD

This study employs a qualitative normative legal research design grounded in doctrinal and philosophical analysis<sup>11</sup>. The normative approach is used to examine the legal validity of the legislative process underlying Law No. 17 of 2023 on Health, while the philosophical dimension is applied to assess its legitimacy through the lens of procedural justice. This dual framework enables a comprehensive evaluation that integrates formal legal reasoning with normative ethical inquiry. The research begins with a doctrinal examination of Indonesia's statutory drafting framework, including

<sup>9</sup> Koalisi Masyarakat Sipil untuk Reformasi Kesehatan, "Laporan Pemantauan: Pembahasan RUU Kesehatan Yang Tertutup Dan Tidak Partisipatif" (Jakarta: Laporan CSO, 2023).

<sup>10</sup> Media Protes, "IDI, PPNI, Dan IBI Tolak RUU Kesehatan: Masukan Diabaikan," 2023.

<sup>11</sup> Endah Marendah Ratnaningtyas et al., *Metodologi Penelitian Kualitatif* (Sigli Pidie: Yayasan Penerbit Muhammad Zaini, 2023).

constitutional provisions and legislative procedures governing the formation of laws. This step involves identifying the formal requirements for the legislative process and assessing whether the enactment of the Health Law aligns with these procedural standards. The doctrinal analysis focuses on tracing the legislative stages, institutional actors, and procedural steps taken during the drafting, deliberation, and enactment of the law.

Following the doctrinal evaluation, the study incorporates a philosophical analysis based on key concepts of procedural justice, such as deliberation, fairness, openness, and moral integrity. This method allows the research to move beyond the surface of legal compliance and interrogate whether the legislative process embodies deeper principles of legitimacy. The philosophical assessment is conducted by interpreting primary legal sources, government documents, legislative records, public statements, and relevant reports from civil society organizations. Through these materials, the study critically evaluates the extent to which the legislative process reflected or deviated from the philosophical ideals of legitimate lawmaking. Data collection relies on library research, including statutes, draft bills, constitutional court decisions, academic books, journal articles, civil society reports, and credible media sources. These documents are examined systematically using qualitative content analysis. Coding procedures are applied to identify recurring themes related to participation, transparency, deliberative quality, and procedural consistency. The coding results are then synthesized to map the relationship between legal formalities and legitimacy dimensions <sup>12</sup>. The data are analyzed using an interpretive-analytical method. This method enables the researcher to compare normative legal requirements with philosophical principles, uncover gaps, and formulate critical conclusions regarding the procedural justice of the Health Law's formation. The combination of doctrinal, interpretive, and philosophical analysis ensures that the study not only evaluates compliance with legal norms but also provides a deeper understanding of the moral and democratic foundations of legitimate legislative processes.

### III. ANALYSIS AND DISCUSSION

#### Procedural Legality Analysis in the Formation of Law No. 17 of 2023 on Health

The procedural legality of Law No. 17 of 2023 on Health must be assessed within the framework of Indonesia's constitutional and statutory requirements governing the legislative process. As mandated by the 1945 Constitution, lawmaking must adhere to the principles of due process, democratic participation, and institutional accountability (Indonesia, 1945). These constitutional foundations are operationalized through Law No. 12 of 2011 and Law No. 15 of 2019, which stipulate mandatory stages of planning, drafting, public consultation, harmonization, parliamentary deliberation, and final enactment. From a doctrinal perspective, procedural legality requires that

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<sup>12</sup> Dyah Ochtorina Susanti, M Sh, and S H A'an Efendi, *Penelitian Hukum: Legal Research* (Sinar Grafika, 2022).

each of these stages be properly executed. However, the formation of the Health Law reveals multiple procedural issues that raise questions regarding the completeness and quality of its legal formation.

One of the central concerns relates to the acceleration of the drafting and deliberation stages. Scholars have observed that fast-track legislation tends to undermine procedural safeguards intended to ensure democratic accountability <sup>13</sup>. In the Indonesian context, accelerated legislative processes have been repeatedly criticized for limiting public deliberation and narrowing the space for meaningful oversight <sup>14</sup>. The legislative trajectory of Law No. 17 of 2023 mirrors these concerns. Civil society organizations reported that the drafting process was conducted with significant opacity, characterized by limited access to draft documents and restricted participation of professional associations, including medical practitioners. This pattern of procedural compression is consistent with similar critiques raised during the enactment of the Job Creation Law, where insufficient transparency and public engagement became central grounds for formal constitutional review <sup>15</sup>.

From a normative legal standpoint, procedural legality is not merely a checklist of formal steps, but also the assurance that each step is substantively fulfilled in accordance with statutory objectives. Anggono (2021) emphasizes that the integrity of legislative drafting lies in adherence to the methodological rigor prescribed in Law No. 12 of 2011. Yet, in the Health Law, the harmonization and public consultation stages appear to have been substantially abbreviated <sup>16</sup>. Reports indicate that professional bodies such as IDI, PPNI, and IBI were unable to present their recommendations adequately during parliamentary hearings, and several of their submissions were reportedly disregarded <sup>17</sup>. This raises questions not only about the formal conduct of hearings but also about the substantive openness of the process.

Procedural legality must also be examined through the lens of political-legal dynamics. Mahfud MD (2012) argues that the politics of law in Indonesia frequently influences legislative outcomes, where efficiency and executive agenda-setting may overshadow democratic procedural standards <sup>18</sup>. This phenomenon is evident in the increasing use of omnibus legislative techniques, which prioritize speed and integration over deliberative depth <sup>19</sup>. The Health Law exhibits characteristics similar to an omnibus model: broad coverage, rapid consolidation of multiple regulatory

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<sup>13</sup> Adriaans, "Fast-Track Legislation and Democratic Erosion: A Comparative Study."

<sup>14</sup> Indrayana, *Legislasi Cepat Dan Matinya Nalar Publik*.

<sup>15</sup> Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 91/PUU-XVIII/2020 (Perkara Pengujian Formil Undang-Undang Cipta Kerja)," 2021.

<sup>16</sup> T D Anggono, *Penataan Peraturan Perundang-Undangan: Gagasan Dan Praktik* (Jakarta: Konstitusi Press, 2021).

<sup>17</sup> Media Protes, "IDI, PPNI, Dan IBI Tolak RUU Kesehatan: Masukan Diabaikan."

<sup>18</sup> M Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: Rajawali Pers, 2012).

<sup>19</sup> J Asshiddiqie, *Omnibus Law Dan Penerapannya Di Indonesia* (Jakarta: Sinar Grafika, 2020).

domains, and limited engagement with sector-specific stakeholders. Such features reflect a political preference for consolidation rather than participatory refinement.

In addition, jurisprudential developments underscore the legal necessity of meaningful participation as part of procedural legality. Following the Constitutional Court's landmark ruling on the Job Creation Law, the doctrine of "meaningful participation" became an integral legal standard requiring adequate public access, balanced engagement, and consideration of public feedback<sup>20</sup>. Applying this doctrine to the Health Law suggests that while some public hearings were conducted, they fell short in terms of accessibility, depth of discussion, and responsiveness to public input. Hadi (2022) likewise notes that participation in many legislative processes remains formalistic, often functioning as a procedural formality rather than an avenue for genuine deliberation<sup>21</sup>. The procedural record of the Health Law appears to follow this trend, as stakeholder input was limited in both quantity and influence.

Moreover, socio-legal perspectives highlight that procedural legality must account for the broader social context in which legislative processes unfold. Saraswati (2021) demonstrates how legislative processes that exclude stakeholder voices tend to produce social resistance and delegitimization<sup>22</sup>. Prasetyo (2023) confirms this in the health sector, showing that physicians resisted health regulations when their professional autonomy and input were disregarded. This socio-legal pattern is evident in the aftermath of the Health Law's passage, which triggered widespread criticism from healthcare professionals who felt excluded from the deliberative process<sup>23</sup>.

At a deeper theoretical level, the concept of procedural legality is enriched by legal philosophy. Hart (1961) argues that law must be created according to rules of recognition, requiring institutional adherence to accepted procedures<sup>24</sup>. Fuller (1964) adds that legality requires moral procedural principles such as clarity, transparency, and congruence between official action and declared rules<sup>25</sup>. In the case of the Health Law, the alleged closed-door drafting process, inconsistent disclosure of draft texts, and inadequate deliberative transparency suggest deviations from these procedural ideals. Habermas (1996) further contends that legality must intertwine with communicative rationality, where democratic legitimacy arises from inclusive public discourse. The insufficient deliberative engagement observed during the law's

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<sup>20</sup> Bagir Manan, "Menafsir Ulang Uji Formil Pasca Putusan Cipta Kerja: Doktrin Meaningful Participation," *Jurnal Konstitusi* 19, no. 2 (2022): 281–305.

<sup>21</sup> Hadi, "Partisipasi Publik Dalam Pembentukan Undang-Undang: Antara Formalitas Dan Substansi."

<sup>22</sup> Ratna Saraswati, "Omnibus Law in Indonesia: A Socio-Legal Perspective on Labour Resistance," *Asian Journal of Law and Society* 8, no. 3 (2021): 605–23.

<sup>23</sup> Prasetyo, "Resistensi Profesional: Studi Sosio-Legal Respons Dokter Terhadap Regulasi Kesehatan Pemerintah."

<sup>24</sup> H L A Hart, *The Concept of Law* (Oxford University Press, 1961).

<sup>25</sup> Fuller, *The Morality of Law*.

formation indicates a gap between legal formality and communicative legitimacy <sup>26</sup>.

Several scholars emphasize that legal validity cannot be separated from broader institutional principles. Waldron (1999) argues that legislatures derive legitimacy from procedural fairness, especially in contexts involving diverse rights and interests <sup>27</sup>. In Indonesia, Wibowo (2021) demonstrates that omnibus-style procedures threaten this fairness by emphasizing efficiency over participation <sup>28</sup>. This critique aligns with the procedural characteristics of the Health Law, where efficiency-driven legislative tactics appear to have overshadowed public deliberation. Similarly, Yamin (2020) warns that weakening public participation mechanisms undermines the legal rationality of the legislative process <sup>29</sup>. The procedural history of the Health Law supports these concerns, as access to information and opportunities for public involvement were significantly constrained.

Viewed collectively, these doctrinal, socio-legal, and theoretical assessments indicate that while Law No. 17 of 2023 may satisfy the formal steps of legislative procedure, it raises substantial questions about the quality, transparency, and inclusiveness of its formation. Procedural legality, in its robust sense, requires not only compliance with statutory stages but also adherence to the normative and democratic principles that give those stages meaning. The evidence suggests that the formation of the Health Law exhibits deficiencies in public participation, deliberative integrity, and procedural transparency, thereby generating ambiguity regarding the adequacy of its procedural legality.

### **Procedural Justice and Democratic Legitimacy in the Perspective of Legal Philosophy**

The concept of procedural justice plays a central role in evaluating whether a law is not only legally valid but also democratically legitimate. Within legal philosophy, procedural justice is understood as the moral foundation ensuring that the processes of lawmaking reflect fairness, transparency, and public reason. Hart's positivist account positions legality primarily within the framework of rule-based validity, emphasizing the authority of rules and the internal point of view of officials in determining the legitimacy of legal norms <sup>30</sup>. However, this formalistic conception is insufficient for assessing democratic legitimacy because it reduces law to mere compliance with procedural requirements. In contrast, philosophical traditions from Dworkin, Fuller, Rawls, and Habermas expand the discourse by arguing that

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<sup>26</sup> Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*.

<sup>27</sup> Jeremy Waldron, *The Dignity of Legislation* (Cambridge University Press, 1999).

<sup>28</sup> Arief Wibowo, *Politik Hukum Omnibus Law: Antara Efisiensi Dan Partisipasi* (Yogyakarta: Thafa Media, 2021).

<sup>29</sup> Muhammad Yamin, "Problem Partisipasi Publik Dalam Pembentukan Omnibus Law," *Hasanuddin Law Review* 6, no. 3 (2020): 291–305.

<sup>30</sup> Hart, *The Concept of Law*.

legitimacy is inseparable from moral reasoning, rational participation, and substantive fairness <sup>31,32</sup>.

Habermas offers one of the most comprehensive accounts, grounding democratic legitimacy in communicative action and deliberative processes. Law, in his view, derives its authority from rational discourse, where all affected individuals are given equal opportunities to participate <sup>33</sup>. In the context of Indonesia's contemporary legislative practices, concerns about limited transparency, restricted access to information, and rushed deliberation, as reflected in the formulation of several omnibus-style laws, illustrate a significant departure from these deliberative ideals <sup>34</sup>. The experience of the Health Law mirrors this broader pattern, where the legislative process was criticized for failing to provide adequate space for civil society, professional groups, and the broader public to meaningfully contribute. Such deficiencies undermine the discursive legitimacy envisioned in deliberative democratic theory.

Fuller provides a distinct but complementary perspective by framing procedural justice through the "internal morality of law," which includes clarity, consistency, publicity, congruence, and non-retroactivity <sup>35</sup>. These principles define the moral obligations inherent in lawmaking processes. Failures to uphold transparency or to meaningfully involve affected stakeholders are not merely procedural missteps but violations of the moral foundation of legislative processes. When the procedural path of legislation becomes opaque or expedient, the moral legitimacy of the resulting law is compromised. This idea resonates with the concerns raised in debates on fast-track legislation, where accelerated procedures undermine reflection, accountability, and public reason <sup>36,37</sup>. In Indonesia, the experiences surrounding the Cipta Kerja Law and the subsequent judicial review underscore the judiciary's emphasis on "meaningful participation" as a critical element of legitimate legislation. The same principles become relevant in assessing the procedural fairness of Law No. 17 of 2023.

Rawls strengthens the philosophical foundation of procedural legitimacy by introducing the concept of fairness as justice. His notion of "public reason" requires lawmakers to justify legal decisions in ways that free and equal citizens can reasonably accept <sup>38</sup>. In contexts where legislative processes become exclusionary, overly technical, or dominated by particular political interests, public reason is effectively

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<sup>31</sup> Ronald Dworkin, *Law's Empire* (Harvard University Press, 1986).

<sup>32</sup> Rawls, *A Theory of Justice*.

<sup>33</sup> Jürgen Habermas, *The Theory of Communicative Action, Volume 1: Reason and the Rationalization of Society* (Beacon Press, 1984).

<sup>34</sup> Wibowo, *Politik Hukum Omnibus Law: Antara Efisiensi Dan Partisipasi*.

<sup>35</sup> Fuller, *The Morality of Law*.

<sup>36</sup> Adriaans, "Fast-Track Legislation and Democratic Erosion: A Comparative Study."

<sup>37</sup> Melissa Schwartzberg, "Fast-Track Politics: A Threat to Deliberative Democracy?," *Journal of Political Philosophy* 26, no. 4 (2018): 445-69.

<sup>38</sup> John Rawls, *Political Liberalism* (Columbia University Press, 1993).

displaced. The published reports showing the rejection of the Health Bill by professional medical associations, who argued that their critiques were systematically ignored, demonstrate a failure to satisfy Rawlsian standards of fairness and reasonableness. When the deliberative environment does not allow equal access to influence legislation, the resulting law may meet legal validity yet fail to achieve democratic legitimacy.

Dworkin's interpretivism further enriches this analysis by asserting that legitimacy requires laws to express a coherent moral narrative grounded in political integrity<sup>39</sup>. Law is not merely a system of rules but an expression of collective moral commitments. If the legislative process is fragmented, opaque, or dominated by instrumentalist considerations such as efficiency or political expediency, the law loses its justificatory moral coherence. Concerns regarding the strong political push behind omnibus-style reforms, often justified by claims of efficiency without adequate deliberation, align with Dworkin's warning about laws that lack moral integrity<sup>40</sup>.

Legal pluralism also contributes to the discourse by illustrating that legitimacy cannot be monopolized by state law alone. Social legitimacy emerges from the interaction of multiple normative orders within society<sup>41</sup>. In the context of health regulation, communities, professional associations, and civil society organizations possess their own normative frameworks, which are essential sources of legitimacy. When these voices are marginalized during legislative processes, the enacted law risks being normatively alienated from the society it governs. Such alienation is evident in public resistance and professional discontent toward the Health Law. From a constitutional perspective, the Indonesian legal system explicitly mandates participatory and transparent lawmaking, rooted in the principles of democratic constitutionalism as articulated in the 1945 Constitution. Statutory drafting laws further institutionalize these requirements. Therefore, procedural justice is not merely a philosophical aspiration but a constitutional imperative. When legislative processes violate these mandates, the resulting law undermines the constitutional order itself<sup>42,43</sup>.

The philosophical analysis reveals that democratic legitimacy requires far more than technical compliance with statutory procedures. It demands a lawmaking process that embodies moral coherence, participatory inclusiveness, deliberative quality, and adherence to constitutional values. The procedural justice of Law No. 17 of 2023 must therefore be evaluated not only on the basis of its formal validity but also its fidelity

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<sup>39</sup> Dworkin, *Law's Empire*.

<sup>40</sup> Indrayana, *Legislasi Cepat Dan Matinya Nalar Publik*.

<sup>41</sup> Franz von Benda-Beckmann, "Legal Pluralism and the Sociology of Law," *Journal of Legal Pluralism and Unofficial Law* 41, no. 61 (2009): 1-20.

<sup>42</sup> Mahfud MD, *Politik Hukum Di Indonesia*.

<sup>43</sup> Wawan Setiadi, "Implikasi Putusan MK No. 91/PUU-XVIII/2020 Terhadap Politik Legislasi Di Indonesia" (Universitas Gadjah Mada, 2022).

to the deeper moral and democratic principles articulated in legal philosophy. When these standards are not fully met, legality may persist, but legitimacy becomes contested, a problem that lies at the heart of contemporary debates on Indonesia's legislative reforms.

### **Implications of the Imbalance Between Legality and Legitimacy for Legal Effectiveness and Public Trust**

The imbalance between legality and legitimacy in the formation of Law No. 17 of 2023 on Health generates profound implications for the effectiveness, enforceability, and long-term sustainability of the law within Indonesian society. Legality, in the positivist sense, refers to the fulfillment of formal procedural requirements set forth in statutory regulations such as the Law on Legislative Drafting. However, democratic legitimacy requires broader adherence to deliberative participation, transparency, and moral justification. When legality is achieved without corresponding legitimacy, the resulting norm may be formally valid yet socially resisted, politically controversial, and normatively fragile. One of the most immediate consequences of this imbalance is a weakening of public trust in legislative institutions. Tyler argues that compliance is strongly influenced by perceptions of procedural fairness rather than fear of sanctions <sup>44</sup>. In the Health Law's formation, widespread claims of closed deliberations, ignored input, and rushed discussions, as highlighted in civil society reports, undermine the perception of fairness and thus erode trust. The resistance from key professional groups, such as doctors, nurses, and midwives, further exemplifies how legitimacy deficits translate into skepticism and oppositional mobilization. This mirrors broader patterns observed during the enactment of the Omnibus Law, where public distrust escalated following procedural irregularities and excluded participation <sup>45</sup>.

The erosion of trust has direct consequences for the law's practical enforceability. Pound's sociological jurisprudence posits that law must align with social realities to function effectively <sup>46</sup>. Laws that deviate from social expectations or ignore stakeholder concerns face greater implementation challenges. In socio-legal studies, Prasetyo demonstrates how professional resistance among healthcare workers can derail regulatory objectives, creating friction between state policy and occupational norms. If the Health Law is perceived as imposed rather than deliberatively constructed, compliance among medical practitioners may weaken, reducing administrative efficiency and hindering policy execution. This is consistent with legal pluralism theory, which notes that state law competes with other normative systems, such as professional ethics and institutional codes, whose legitimacy may surpass formal legislation when participatory deficits occur <sup>47</sup>.

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<sup>44</sup> Tom R Tyler, *Why People Obey the Law* (Yale University Press, 1990).

<sup>45</sup> Susanti, "The Omnibus Law: Indonesian Constitutionalism at a Crossroads."

<sup>46</sup> Roscoe Pound, "Sociological Jurisprudence," *Harvard Law Review*, 1912.

<sup>47</sup> Benda-Beckmann, "Legal Pluralism and the Sociology of Law."

Another implication concerns the diminished authority of the law itself. Fuller emphasizes that law must embody internal morality, publicity, clarity, congruence, and procedural integrity, to command respect and obedience <sup>48</sup>. When legislative processes lack transparency or disregard meaningful participation, they violate these moral principles, diminishing the normative authority of the law. The Health Law's drafting process, which civil society reports describe as closed and expedited, reflects such a violation. Adriaans and Schwartzberg similarly argue that fast-track legislation erodes deliberation, weakening the moral grounding that sustains democratic authority<sup>49</sup>. Within Indonesia, Indrayana warns that rapid legislative processes undermine "public reason," resulting in diminished public confidence and weakened legitimacy <sup>50</sup>.

The imbalance between legality and legitimacy also has constitutional implications. Indonesia's Constitution mandates democratic participation in governance and legislation. The Constitutional Court reinforced this principle by introducing the doctrine of meaningful participation in the judicial review of the Omnibus Law, emphasizing openness, access, and deliberative quality as constitutional requirements<sup>51</sup>. Therefore, when the formation of the Health Law deviates from these principles, it risks constitutional fragility. Setiadi's analysis shows that legislation failing to embody meaningful participation faces a higher likelihood of legal challenges and judicial scrutiny, destabilizing the legislative system <sup>52</sup>. This demonstrates that legitimacy deficits can escalate into formal legal uncertainties, weakening the stability of the regulatory framework.

Political legitimacy is also endangered when legality is emphasized at the expense of public inclusion. Mahfud MD argues that legal politics must reflect public values and aspirations for the law to maintain democratic accountability <sup>53</sup>. Excessive reliance on formal legality, especially within omnibus-style drafting, risks marginalizing public voices and prioritizing political expediency. Scholars of deliberative democracy, such as Fishkin and Gutmann & Thompson, assert that laws lacking broad public reasoning fail to achieve normative acceptance <sup>54,55</sup>. In the Health Law case, insufficient deliberation, including inadequate consultation with health professionals, creates a gap between policy goals and democratic justification. This gap becomes fertile

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<sup>48</sup> Fuller, *The Morality of Law*.

<sup>49</sup> Schwartzberg, "Fast-Track Politics: A Threat to Deliberative Democracy?"

<sup>50</sup> Indrayana, *Legislasi Cepat Dan Matinya Nalar Publik*.

<sup>51</sup> Manan, "Menafsir Ulang Uji Formil Pasca Putusan Cipta Kerja: Doktrin Meaningful Participation."

<sup>52</sup> Setiadi, "Implikasi Putusan MK No. 91/PUU-XVIII/2020 Terhadap Politik Legislasi Di Indonesia."

<sup>53</sup> Mahfud MD, *Politik Hukum Di Indonesia*.

<sup>54</sup> James S Fishkin, *When the People Speak: Deliberative Democracy and Public Consultation* (Oxford University Press, 2009).

<sup>55</sup> Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Harvard University Press, 1996).

ground for societal rejection and policy instability.

The imbalance further affects administrative effectiveness. Hart distinguishes between primary and secondary rules, emphasizing that legal systems depend on the internal acceptance of rules by officials<sup>56</sup>. If officials involved in implementation perceive the law as lacking legitimacy, their commitment to enforcing it weakens. This dynamic is evident in Indonesia's previous experiences with controversial laws, where bureaucratic uncertainty and institutional reluctance slowed implementation. In the context of the Health Law, such reluctance can manifest in delayed regulation drafting, inconsistent enforcement, and bureaucratic resistance, especially among agencies dependent on professional cooperation.

The imbalance also contributes to the cyclical phenomenon of legislative volatility. Anggono observes that poorly deliberated laws often require rapid revision or judicial correction, leading to regulatory instability<sup>57</sup>. This pattern was exemplified by the judicial correction of the Cipta Kerja Law, which introduced significant legal uncertainty. The Health Law may experience similar challenges if legitimacy deficits provoke judicial review petitions. Such instability undermines the predictability and durability of legal norms, which Waldron identifies as essential to the dignity of legislation<sup>58</sup>. Additionally, sociological implications are significant. Legal norms that lack legitimacy often encounter symbolic resistance expressed through protests, professional refusals, and widespread public criticism. Saraswati's socio-legal analysis of omnibus labor law resistance illustrates how marginalized participation fuels collective dissent<sup>59</sup>. Parallel dynamics appear in the public resistance to the Health Law, where stakeholders contested both its substantive content and procedural formation. This reinforces the view that effective law is inseparable from socially embedded legitimacy.

Philosophically, Dworkin emphasizes that law must reflect integrity, aligning past decisions, current principles, and future aspirations in a coherent narrative<sup>60</sup>. Procedural failings disrupt this narrative, rendering the law an instrument of political convenience rather than moral governance. Gadamer's hermeneutical view similarly underscores the role of mutual understanding in producing legitimate norms<sup>61</sup>. When stakeholders feel unheard, interpretive distance grows, weakening shared normative commitments. In the broader legal development context, the imbalance between legality and legitimacy hinders national legal reform. Abdul Rokhim et al. highlight how legal reforms must integrate societal values and normative expectations to be

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<sup>56</sup> Hart, *The Concept of Law*.

<sup>57</sup> Anggono, *Penataan Peraturan Perundang-Undangan: Gagasan Dan Praktik*.

<sup>58</sup> Waldron, *The Dignity of Legislation*.

<sup>59</sup> Saraswati, "Omnibus Law in Indonesia: A Socio-Legal Perspective on Labour Resistance."

<sup>60</sup> Dworkin, *Law's Empire*.

<sup>61</sup> Hans-Georg Gadamer, *Truth and Method* (Sheed and Ward, 1975).

sustainable<sup>62</sup>. The Health Law's contested legitimacy signals a deeper challenge in Indonesia's legislative reforms: the persistent tension between efficiency-driven legal drafting and the constitutional mandate for deliberative democracy. The imbalance between legality and legitimacy has wide-ranging implications, from diminished public trust, weakened enforceability, constitutional fragility, political contestation, to sociological resistance. A law that is procedurally legal yet democratically illegitimate ultimately suffers in its authority, effectiveness, and long-term acceptance. Strengthening meaningful participation, enhancing deliberative transparency, and restoring procedural morality are therefore essential to ensuring that legal norms not only meet formal standards but also command genuine public trust.

#### IV. CONCLUSION

The analysis demonstrates that the imbalance between legality and legitimacy in the formation of Law No. 17 of 2023 on Health has profound implications for the effectiveness, acceptance, and durability of the regulatory framework. While the law may fulfill the minimum procedural requirements established by statutory guidelines, its formation process reflects substantial deficits in transparency, deliberation, and public participation. This disharmony generates a legitimacy gap that weakens the normative force of the law, reduces its persuasive authority, and jeopardizes the foundational democratic principles that should guide legislative practice. When legal products are enacted through procedures perceived as exclusionary or overly expedited, they tend to face resistance, low compliance, and social contestation, which ultimately diminishes their capacity to achieve intended regulatory outcomes. Moreover, the legitimacy deficit also correlates with declining public trust in state institutions, especially when affected stakeholders perceive that their knowledge, experience, and interests were not genuinely considered in the decision-making process. Trust is essential not only to the functioning of democratic governance but also to the sustainable enforcement of public policy. Without broad-based legitimacy, legal norms risk becoming merely symbolic instruments lacking real social authority. Therefore, reconciling legality and legitimacy is crucial for future legislative reforms, ensuring that formal compliance with procedural law is accompanied by genuine, meaningful participation and transparent discourse. Strengthening this alignment will contribute to restoring public confidence, enhancing regulatory legitimacy, and reaffirming the moral and democratic foundations of Indonesian lawmaking.

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<sup>62</sup> Abdul Rokhim et al., "Islamic Legal Principles And National Reform: A Study Of The 2023 Indonesian Penal Code," *Kanun: Jurnal Ilmu Hukum* 27, no. 1 (2025): 133–51, <https://doi.org/10.24815/kanun.v27i1.41348>.

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