

Autocratic Influencelegalism On The Institution Of Democracy And The Consolidation Of Civil Society In Indonesia

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Abstract

Levitsky and Ziblatt emphasize that threats to democracy often occur gradually through mechanisms that are legal but fundamentally weaken the system. This phenomenon is called autocratic legalism: the use of law to legitimize undemocratic actions. This phenomenon highlights how policies that appear legitimate can be abused to perpetuate power or reduce public participation space. Once all constitutional constraints have been loosened, those in power can easily use legal instruments so that their actions appear legal. In reality, this phenomenon—mutatis mutandis—weakens the consolidation of civil society in the institutionalization of democracy and even pushes it toward authoritarianism. This is exactly the condition currently occurring in legislative practice in Indonesia. Laws are made solely to fulfill the needs and desires of a small group of political elites. Examples include revisions to the KPK Law (Anti-Corruption Commission) and the State-Owned Enterprises (BUMN) Law, and the enactment of the new Capital City (IKN) Law—all of which demonstrate the high intensity of autocratic legalism in Indonesia's legislative process. At the same time, legislative products that represent the aspirations of many people remain unfinished, such as the Bill on Indigenous Peoples, the Bill on Asset Forfeiture (related to corruption proceeds), and the Bill on the Protection of Domestic Workers. The problems to be answered in this research consist of two main issues: (1) What is the impact of autocratic legalism on the institutionalization of democracy in Indonesia?, and (2) How does autocratic legalism influence the weakening of civil society consolidation in Indonesia? This research aims to analyze two things, First, why is the institutionalization of democracy difficult to achieve in a situation where autocratic legalism is strengthening, and civil society consolidation is weakening? Second, the

impact of autocratic legalism on the weakening of civil society consolidation in Indonesia. This research employs a doctrinal legal method, a conceptual approach, and qualitative analysis. The research findings show that the practice of autocratic legalism, which exploits legal procedures to legitimize power, has made the institutionalization of democracy difficult to function, due to the unsystematic pattern of relations between the executive and legislative branches in law-making, and executive dominance in this practice has reduced the essence of democracy and weakened human rights guarantees through the blurring of checks and balances functions, the strengthening of power coalitions, as well as the criminalization of criticism and restrictions on media freedom. Therefore, the practice of autocratic legalism must be halted through limiting presidential authority, strengthening judicial independence, and increasing meaningful public participation in government oversight.

Keywords: Autocratic Legalism; Civil Society; And Institutionalization Of Democracy.

Abstract

Levitsky and Ziblatt emphasize that threats to democracy often occur slowly through legal mechanisms that fundamentally weaken the system. This model is called autocratic legalism, the use of law to legitimize undemocratic actions. This phenomenon highlights how seemingly legitimate policies can be abused to perpetuate power or reduce public participation. Once constitutional constraints are relaxed, those in power can easily use legal instruments to appear justified. However, this phenomenon, mutatis mutandis, will weaken the consolidation of civil society for the institutionalization of democracy, even leading to authoritarianism. This is the situation that is currently occurring in legislative practice in Indonesia. Laws are created solely to meet the needs and desires of a handful of political elites. The revision of the Corruption Eradication Commission (KPK) Law, the revision of the State-Owned Enterprises Law, and the enactment of the National Capital City Law are examples of how autocratic legalism is occurring at a high intensity in legislative practice in Indonesia. Meanwhile, the push to deliver legislation that embodies the aspirations of many remains unresolved. Like the Law on Indigenous Peoples, the Law on Asset Confiscation, and the Law on the Protection of Domestic Workers, these laws remain unresolved. This research will address two issues: first, how does autocratic legalism impact the institutionalization of democracy in Indonesia? Second, how does autocratic legalism influence the weakening of civil society consolidation in Indonesia. This study aims to analyze two things: first, why the institutionalization of democracy is difficult to realize in a situation of strengthening autocratic legalism and weak consolidation of civil society; second, what is the impact of autocratic legalism on the weakening of democracy? consolidation of civil society in Indonesia. This research uses a doctrinal legal method with a conceptual approach and qualitative analysis. The results of the study indicate that: (1) the practice of

autocratic legalism that utilizes legal procedures to legitimize power has made it difficult for the institutionalization of democracy to work, due to the lack of a systematic pattern of relations between the executive and legislative branches in the formation of laws; and (2) the dominance of the executive branch in this practice has reduced the essence of democracy and weakened the guarantee of human rights through the blurring of the function of checks and balances, strengthening the power coalition, as well as criminalizing criticism and limiting media freedom. Therefore, the practice of autocratic legalism must be stopped by limiting the authority of the president, strengthening the independence of judicial institutions, and increasing meaningful public participation in government oversight.

Keywords : *Autocratic Legalism; Consolidation of Civil Society; Democracy.*

INTRODUCTION

One of the systems of government that is widely used in the modern democratic era is government by the people through representatives or often called the presidential system which places a clear separation of powers between the executive, legislative and judiciary.¹ In Indonesia, this system was strengthened again during the political transition period in 1999-2002 to implement a purely and consistently presidential system.² The implementation of this system encourages the birth of direct presidential elections by the people who will later hold the position of head of government and head of state, which is a special characteristic that distinguishes it from the parliamentary system.

In a presidential system, the position of the executive, legislative and judicial institutions is equally strong with the aim of creating checks and balances so that each branch of state power can supervise and balance each other.³ This is crucial to ensure that no single branch of government dominates and violates democratic principles and human rights. However, this concept has seemingly shifted in recent decades with the rise of executive-heavy presidential dominance, including granting executive power to create laws, leading to a tendency toward authoritarianism.⁴ As a result, the legislative power is only used as a servant of the executive.⁵ to assist the ruler in expanding and perpetuating his power by using legal mechanisms.

¹ Rendy Adiwilaga, Yani Alfian, Ujud Rusdia, *The Indonesian Government System*, (Yogyakarta: Deepublish, 2018)

² Idul Rishan, "The Risk of a Fat Coalition in the Presidential System in Indonesia," *Ius Quia Iustum Law Journal*, Vol. 27, Issue 2, (2020).

³ Mardhatillah, et al., "The Position of Constitutional Law in Guaranteeing the Sustainability of Democracy," *Journal of Law and Citizenship*, Vol.6, No. 1 (2024).

⁴ Sulkiah, "Implementation of the President's Prerogative Rights in Forming a Cabinet Based on Article 17 of the 1945 Constitution Amendment: A Review of the Indonesian Constitutional System," *Nurani Hukum: Journal of Legal Studies*, Vol. 2, No. 1 (2019).

⁵ Osbin Samosir and Indah Novitasari, "Citizens' Political Rights in the Grip of Identity Politics: Reflections Towards the 2024 National Simultaneous Elections," *Journal of Law, Humanities and Politics*, Vol. 2, Issue 3 (2022).

Leaders in such a system will strengthen their position as rulers by eliminating opposition, reducing oversight, and weakening the position of independent institutions through legal mechanisms, giving the appearance of constitutional legitimacy (autocratic legalism). However, what actually occurs is constitutional restraint that undermines the principles of democracy and human rights. This phenomenon certainly poses a serious challenge because it is often implemented under the pretext of maintaining national stability and public security. However, behind these rationales, various autocratic measures enacted through laws have weakened the role of independent institutions.

The transition of a government from democracy to authoritarianism begins with the election of a leader with a demagogic or political predator character through the formal procedure of democracy, namely general elections.⁶ This phenomenon becomes apparent when such leaders gain power legitimately, then use legal authority to legitimize their power to appear constitutional, but violate the spirit of democracy. This risk increases as political transition approaches, where incumbent leaders will seek to consolidate their positions for the long term, thus having a broad impact on the social and political structure of society by limiting civil liberties and narrowing the space for political opposition, so that society lives in a condition where the law no longer functions as a protector of people's rights, but as a means of control by the state.

To an outside observer who simply observes that elections continue and there is nothing illegal, it may appear that democracy is in good shape. However, autocrats who have hijacked the constitution seek to profit from the superficial appearance of democracy and legality. They use their democratic mandate to launch legal reforms that weaken oversight of executive power and undermine independent institutions in a democratic state, such as the weakening of the Corruption Eradication Commission (KPK) through the revision of the KPK Law, the revision of the Constitutional Court Law, the enactment of the Job Creation Law, and various other regulations that are not substantially oriented towards strengthening the legal system and accommodating the needs of the people, but rather as tools for political, economic, and financial elites united in circles of power to achieve their goals through legislation.⁷ This makes the complexity of the problems of governance increasingly acute when the people can no longer channel their aspirations, but are instead made into legal objects who must follow the wishes of the rulers through the products of laws that are formed.

Previous research results related to autocratic legalism have been conducted by several researchers and legal academics, such as those conducted by Zainal Arifin

⁶Muchamad Dicky Rachmawan, "Symptoms of Authoritarianism in Indonesia's Democratic Climate", SIYASI: Jurnal Trias Politica, Vol. 2, No. 1 (2024).

⁷Mugiyanto, "The Relationship between Oligarchy of Power and the Legal Politics of the Rulers," Indonesian Law Enforcement Journal (JPHI), Vol.3, Issue 1, (2022).

Mochtar and Idul Rishan, which focuses on the study of the formation of the Job Creation Law as a reflection of the autocratic legalism of the authorities without considering the procedures and substance of the legal products created.⁸ In addition, another study was conducted by Egi Fauzi on efforts to prevent autocratic legalism by applying the concept of meaningful public participation in the formation of legislation.⁹ Meanwhile, this research will focus on the study of autocratic legalism in the presidential system which is important to understand how the law can be abused by authoritarian powers, thereby blurring the concept of separation of powers which also has an impact on law enforcement and democracy as well as guarantees of human rights protection.

Problems

Based on the background above, the problems raised in this research are, firstly, How has the institutionalization of democracy developed in the context of the consolidation of civil society in one decade? Second, what is the impact of autocratic legalism on the weakening of consolidation of civil society in Indonesia.

RESEARCH METHODS

The research method used in writing this article is normative legal research or often called doctrinal legal research, which is a legal research method that examines the principles or legal rules that apply in society.¹⁰ by using a conceptual approach¹¹ which is based on primary legal materials, namely legal materials which have an authoritative nature, such as laws and court decisions.¹² and also secondary legal materials sourced from books, journals¹³, and other legal materials related to the research issue. The collected legal materials are then analyzed qualitatively to obtain prescriptions regarding essential matters related to the research being conducted.¹⁴ so that the author is able to provide solutions to the problems that occur.

⁸Zainal Arifin Mochtar and Idul Rishan, "Autocratic Legalism: The Making of the Indonesian Omnibus Law," *Yustisia Jurnal Hukum*, Vol. 11, No. 1 (2022).

⁹Egi Fauzi, Herry Tarmidjie Noor, Fahmi Ali Ramdhani, "The Concept of Meaningful Public Participation as a Way to Prevent Symptoms of Autocratic Legalism in Indonesia," Vol. 14, No. 1 (2024).

¹⁰Iman Jalaludin Rifa'I, et al., *Legal Research Methodology*, (Banten: PT Sada Kurnia Pustaka, 2023), 6.

¹¹Peter Mahmud Marzuki, *Legal Research*, Revised Edition. (Jakarta: Kencana PrenadaMedia Group, 2016).

¹²Ishaq, *Legal Research Methods and Writing of Theses, Dissertations, and Dissertations*, (Bandung: Afabeta, 2017), 128.

¹³Ibid.

¹⁴ Irwansyah and Ahsan Yunus, *Legal Research: Selected Methods & Article Writing Practices*, (Yogyakarta: Mirra Buana Media, 2020), 171.

RESULTS AND DISCUSSION

The Influence of Autocratic Legalism on the Institutionalization of Democracy

Autocratic legalism always identified with acts of abuse of power that are invisible and not easily detected, because the symptoms are not obvious.¹⁵ In the study by Mochtar & Rishan, signs that can be observed to identify autocratic legalism include 1) Co-optation of the ruling party in parliament, 2) Law is used to legitimize the desire for unilateral power, 3) Disrupting the independence of judicial institutions.¹⁶ These three signs indicate that in contemporary practice, the law is often manipulated for the opposite purpose: expanding executive power in ways that appear constitutionally legitimate but are in fact contrary to democratic values. This phenomenon is known as autocratic legalism, the practice of governments using legal legitimacy and democratic procedures to reinforce authoritarian power. In the Indonesian context, in recent years, the formation of laws in Indonesia has often sparked resistance from various levels of society. Even when laws are passed, their passage is marked by demonstrations. The term autocratic legalism, first introduced by Kim Lane Scheppelle in the Indonesian context, describes how modern regimes erode democracy through legal instruments. No longer through military coups or the overt dissolution of parliament, but through "legitimate silencing," namely, using the law to narrow the opposition, weaken independent institutions, and subjugate civil society. In the Indonesian context, this dynamic has begun to become apparent through a number of policies and political practices that demonstrate signs of democratic backsliding. The three signs described are actually interconnected and form a circle of power that is difficult to break without constitutional correction and strong public oversight.¹⁷

First, Co-optation of the ruling party in Parliament. Parliament is the heart of democracy. In a presidential system, it serves as a check and balance on the executive. However, when parliamentary parties are co-opted by the executive, this oversight function is weakened or even lost altogether. Co-optation can occur through two main mechanisms. First, an over-coalition, where nearly all political parties join the government, eliminating effective opposition. This weakens the DPR's oversight of government policy, as criticism of the government is perceived as an act of resistance to the flow of power. Second, co-optation occurs through the distribution of power and resources, such as ministerial positions, strategic positions in state-owned enterprises, or access to the state budget, which makes political

¹⁵McGee, A. (2022, September 27). Autocratic legalism: The 'silent' authoritarianism. The Loop. <https://theloop.ecpr.eu/autocratic-legalism-the-silent-authoritarianism/>

¹⁶Zainal Arifin Mochtar, Idul Rishan, (2022). Op.cit., p. 29-41.

¹⁷Egi Fauzi, Herry Tarmidjie Noor, Fahmi Ali Ramadhan, (2024). Op.cit., p. 113.

parties more loyal to the government than to their constituents and democratic ideals.

This is evident in the increasingly bloated ministerial structure. Prabowo began his administration by expanding the number of ministries to over forty and also increasing the number of deputy ministers. One example was the splitting of the Ministry of Law and Human Rights into three ministries. Furthermore, even for ministries with less extensive functions, more than one deputy minister was created. This practice was further enhanced by the addition of coordinating ministries, including even coordinating deputy ministers, which were essentially just a way of distributing positions among political elites and Prabowo's campaign team in the 2024 election.

The consequences of this choice are not simple. Adjusting ministerial nomenclature, shifting human resources within ministries, and requiring larger budgets are serious issues associated with this policy choice. Furthermore, this policy also makes coordination between ministries and agencies difficult because too many are handling one issue.

This situation represents a form of executive aggrandizement, the strengthening of executive power through seemingly democratic political mechanisms. In practice, many strategic political decisions in parliament become mere formalities (rubber stamps), as the majority of parliamentarians are within the government's orbit of power. This type of co-optation erodes the principle of the *trias politica*, where powers should check and limit each other. In the context of autocratic legalism, parliamentary co-optation serves as a gateway for the weakening of other democratic institutions. When parliament no longer performs its legislative and oversight functions independently, the law is easily manipulated to serve the interests of those in power. As a result, legal legitimacy loses its substantive meaning and becomes a political instrument.

Second, law as a legitimization of unilateral power desires. This is more focused when the law no longer functions as a means of limiting power, but rather as a justification for expanding or maintaining power. In this case, the authorities use the law selectively both in the legislative process, law enforcement, and judicial interpretation to justify political steps that are actually contrary to the principles of democracy and human rights. This phenomenon is often seen in hasty legislative practices, minimal public participation, and rife with power interests. For example, the formation of laws that reorganize state institutions or the relationship between executive power and other institutions, but are carried out without in-depth academic study and ignore the participation of civil society. In this context, the law becomes a political product that is "ordered" for the purpose of power, not as a manifestation of the will of the people as required by Article 1 paragraph (2) of the 1945 Constitution.

Furthermore, law enforcement can also be used as a means to criminalize criticism and opposition. Law enforcement officials, including the police, prosecutors, and other institutions, are often used to suppress voices deemed to threaten political stability or the government's image. Yet, in a democratic system, criticism is part of the freedom of expression guaranteed by the constitution. This practice creates rule by law, not the rule of law. This means that the law is used to govern, not to protect. The government can claim all its actions are legitimate because they are carried out "based on the law," even though the substance of the law is intended to strengthen its power. This is where the paradox of autocratic legalism finds its form, identical to the authoritarianism that grows from the womb of the law itself.

Third, interference with the independence of the judiciary. The third sign indicating the strengthening of autocratic legalism is the weakening of the independence of the judiciary. In constitutionalist theory, the judiciary is the last bastion protecting the constitution and citizens' rights from abuse of power. However, in a system dominated by the logic of autocratic legalism, the judiciary is actually tamed through various means, both structurally, politically, and culturally.

Structurally, the independence of judicial institutions can be compromised through non-transparent recruitment, appointment, or dismissal mechanisms for judges and judicial officials. This is explained in a research report by the Venice Commission, which states that judicial independence depends, among other things, on a structured, professional, and accountable recruitment process. One of the areas emphasized is the tracking of the track records of judges serving in judicial institutions.¹⁸ Executive intervention in the appointment of strategic officials in the judiciary creates political dependency, which ultimately influences court decisions. Politically, pressure on judges can occur through threats, negative image building, or media intervention. In some cases, the judiciary is forced to "adapt" to government policy directions to avoid losing political support or funding. Culturally, the legal culture among law enforcement officials is often paternalistic and hierarchical, so institutional independence has not yet fully become a collective consciousness. As a result, the judiciary loses its role as guardian of the constitution. When judges and judicial institutions no longer dare to take a dissenting stance against government policy, the justice system becomes merely an instrument of formal legitimacy for executive policy. This is the final stage of autocratic legalism: the law loses its critical power, and justice is replaced by obedience to power.

¹⁸European Commission for Democracy Through Law, Strasbourg: April 2025, p 4.

The Impact of Autocratic Legalism against the weakening Consolidation of Civil Society in Indonesia

In applying the concept of autocratic legalism, Scheppelle explains that leaders born of democratic means will employ various strategies to seize power haphazardly through mechanisms that appear constitutional, but which, in reality, harbor goals that are contrary to democratic principles. These strategies include amending the constitution, changing the electoral process, changing laws and regulations, weakening and controlling the legislature, weakening the system of checks and balances, and seizing control of the judiciary by increasing the number of judges.¹⁹

This pattern is carried out by almost all legalistic autocrats in the world by colonizing independent institutions by changing the laws that regulate the terms of office and dismissal of officials to create vacancies in institutional leadership positions, then they will give broad authority to the executive or legislative to fill positions with the aim of being able to place their loyalists in every sector.²⁰ This is always done under the pretext of carrying out institutional reforms to strengthen the democratic rule of law, but what actually happens is a form of colonization of state institutions which is used to expand the authority of the rulers and limit the space for movement of the opposition, this strategy is used to concentrate power in the hands of the executive in a way that appears normal.

There is an interesting case of autocratic legalism being implemented in Hungary when democratically elected Prime Minister Viktor Orban, who won 68 percent of the seats in parliament, amended the constitution to ensure that his government's election laws would guarantee him another term. Orban then reduced the independence of key institutions such as the judiciary, the media, the prosecutor's office, the tax authorities, and the election commission.²¹ to further his political ambitions. Afterward, Orban removed opposition figures and neutral experts from public institutions, extended the terms of their successors so they could wield influence beyond the democratic government's term, and outmaneuvered the opposition by changing parliamentary procedures so that opposition MPs could not even speak on the floor, let alone propose any amendments to government bills.²²

Orban's actions are essentially a copy of what Putin did in Russia by first centralizing many of the functions of local government in the constitution, then handpicking all local government leaders to make them personally loyal to him.²³ Both Orban and Putin created verticals of power to give national leaders a direct line to regional governments to exercise detailed control over their actions without going through parliament.

¹⁹Kim Lane Scheppelle, "Autocratic Legalism", *The University of Chicago Law Review*, Vol.85, No. 2 (2018).

²⁰Ibid.

²¹Ibid.

²²Ibid

²³Ibid

Orban's move to foster autocracy was also used in Poland by first controlling the Constitutional Court, holding the key to appointing constitutional judges before controlling the regular courts. This was done by first seizing the power to appoint chief justices to gain control of the judicial system. This was done through a bill that gave the justice minister the power to dismiss chief justices of lower courts within six months of the new law's passage in 2017.²⁴

This phenomenon is certainly not much different from what has happened in Indonesia, where the President has taken many policies that have weakened independent institutions including the Corruption Eradication Commission (KPK), the General Elections Commission (KPU), the House of Representatives (DPR), and even judicial institutions such as the Supreme Court and the Constitutional Court in order to consolidate power.²⁵

The weakening of the KPU and Bawaslu institutions was carried out by the President in 2022. This weakening began with the appointment of a selection team fraught with controversy and political interests. The KPU and Bawaslu selection teams for the 2022-2027 period were selected by the president with a composition that did not comply with the provisions of Law No. 7 of 2017. One violation was that the government elements, which should have been limited to three people, were not complied with, by sending government representatives on the selection team. The four government elements were: Juri Ardiantoro, who at that time served as Deputy at the Presidential Staff Office; Eddy OS. Hiariej, who at that time served as Deputy Minister of Law and Human Rights; Bahtiar, who at that time served as Director General of Politics and General Administration at the Ministry of Home Affairs; and Poengky Indraty, who at that time served as a member of the National Police Commission.

In addition to the selection committee's composition, which is inconsistent with the Election Law, there is also the issue of the team's background, which is not neutral and impartial in its recruitment of election management bodies. One of the most highlighted is Juri Ardiantoro, the team leader, who was the former Legal Director of the Jokowi-Ma'ruf Amin National Campaign Team in the 2019 Presidential Election. This is further confirmed by the fact that Juri Ardiantoro returned to the Prabowo ticket's national campaign team in the 2024 Presidential Election.

Ultimately, the product of this selection team was also very disappointing. Numerous violations and serious problems were found in the 2024 election process. This was undoubtedly the result of the President's haphazard recruitment process.

The measures taken were similar to those in Hungary, Poland, and Venezuela:

²⁴Anna Sledzinska-Simon, The Polish Revolution: 2015–2017 (I·CONnect, July 25, 2017), archived at <http://perma.cc/T2ZC-XVJK> in Kim Lane Schepppele. *Ibid.*

²⁵Muchamad Dicky Rachmawan, "Symptoms of Authoritarianism in Indonesia's Democratic Climate", *SIYASI: Jurnal Trias Politica*, Vol. 2, No. 1 (2024).

amending the law and extensively revising provisions relating to the terms of office of institutional leaders and judges. This was part of a consolidation of power by purging opposition from various state institutions, including the judiciary, and then installing individuals deemed loyal to the authorities to ensure that their policies were not overturned by either party.²⁶

In this case, the law is then used as an instrument for exchanging political favors. The initial step is a planned attack by the authorities on the institutions tasked with overseeing power. In Indonesia, this began to be seen when Judge Aswanto was dismissed as a Constitutional Judge on the grounds that he frequently annulled DPR products.²⁷ without paying attention to the conditions for dismissal as stipulated in Law Number 7 of 2020 concerning the Constitutional Court.²⁸ The dismissals were deemed to be motivated by a conflict of interest and an attempt to weaken and subjugate the Constitutional Court, as was done in Poland. These dismissals certainly contradict the independence of the judiciary, and such efforts will continue under the concept of autocratic legalism to ensure that the autocrats' stated aims are not overturned in court.

This practice of autocratic legalism has serious implications for the institutionalization of democracy and society. It undermines the democratic system and institutions designed to ensure that every piece of legislation is drafted in a participatory manner and to ensure the protection of human rights. This is because the practice of autocratic legalism uses democratic institutions, starting with the House of Representatives (DPR), and even the presidency, to justify legislation for the benefit of a small political elite.

This situation is certainly detrimental to society. Legislation that applies to all ultimately benefits only a small political elite. Unless corrected immediately, this type of legislative practice will further erode public trust and adherence to democratic institutions.

There are at least several court decisions, both at the Constitutional Court and the Supreme Court, that tend to be politically motivated, especially in the lead-up to the 2024 presidential and vice-presidential elections, with several decisions deemed to be affiliated with the government's political interests.

Table 1. Court Decisions with Political Nuances

Decision	Information
Constitutional Court Decision Number	Changes to the age requirement clause

²⁶ Will Freeman, “Colonization, Duplication, Evasion: The Institutional Strategies of Autocratic Legalism,” Princeton University Department of Politics, (2018).

²⁷ CNN Indonesia, “Aswanto Removed from Constitutional Court for Annulling DPR Products”, Jakarta, September 30, 2022, <https://www.cnnindonesia.com/nasional/20220930164056-32-854832/aswanto-dicopot-dari-hakim-konstitusi-karena-anulir-produk-dpr>.

²⁸ See Article 23 of Law Number 7 of 2020 concerning the Constitutional Court

90/PUU-XXI/2023	for presidential and vice presidential candidates
Constitutional Court Decision Number 30/PUU-XX/2022	Changing the term of office of the Constitutional Court leadership from 4 years to 5 years
Constitutional Court Decision Number 116/PUU-XXI/2023	Remove the 4% parliamentary threshold provision
Supreme Court Decision Number 23P/HUM/2024	Changing the interpretation of the age limit for regional head candidates from 30 years at the time of registration to 30 years at the time of inauguration.
Constitutional Court Decision Number 12/PUU-XXII/2024	This decision allows elected legislative candidates to run in regional head elections.
Constitutional Court Decision Number 60/PUU-XXII/2024	This decision has changed the threshold for nominating regional heads in the regional elections, allowing political parties that do not get seats in the Regional People's Representative Council (DPRD) to nominate candidate pairs for regional heads and deputy regional heads based solely on the results of the valid vote acquisition of the political party or coalition of political parties, ranging from 6.5 percent to 10 percent.

Source: processed by the author

Among these decisions, the one that has garnered the most public attention is Decision 90/PUU-XXI/2023, which allows the President's children under 40 to run for vice president. Furthermore, Supreme Court Decision Number 23P/HUM/2024 also seeks to benefit a particular party in the political contest by changing the registration requirement for regional head candidates from 30 years old at the time of nomination to 30 years old at the time of inauguration. This demonstrates that the judiciary, both at the Supreme Court (MA) and the Constitutional Court (MK), has transformed into a political representative body for the ruling elite, resulting in decisions that appear to benefit only a select group of people.

Furthermore, the Constitutional Court's ruling regarding changes to the age requirements for presidential and vice-presidential candidates further demonstrates the growing grip of autocratic legalism. This practice of autocratic legalism involves more than just the executive and legislative branches. The chaos surrounding the

age requirements for presidential and vice-presidential candidates, including efforts to change the minimum age requirements for regional head candidates, has also infiltrated the judiciary. The Constitutional Court and the Supreme Court have intervened to advance the interests of a limited political elite—in this case, President Jokowi's children—so that their two biological children can be nominated as vice president and gubernatorial candidates.

This situation undoubtedly further weakens the consolidation of civil society, which is working to ensure the quality of democratic governance and elections reaches a more substantial level. Despite civil society's efforts to strengthen political education, such as providing education on considerations and factors to consider when making political choices, political elites have instead disrupted the nomination system for presidential and regional elections. This clearly undermines the well-established democratic institutions, yet they are being haphazardly manipulated for the benefit of President Jokowi's children.

This can also happen due to the large role of the executive which is influenced by the power of the large coalition in parliament, where 427 of the 575 parliamentary seats for the 2019-2024 period are part of the President's own coalition.²⁹ making it easier for those in power to pass various matters without strict supervision, including by changing the term of office of constitutional judges, which in the practice of autocratic legalism is the main key that must be carried out by the executive (President) so that no one can annul the legal products that have been formed. With the existence of such great executive dominance (executive heavy) in autocratic legalism, it has obscured the concept of the presidential system itself, namely the existence of a clear separation of powers between the executive, legislative, and judicial institutions so that one cannot influence the other.³⁰

The idea of separation of powers put forward by Montesquieu is that the branches of power need to be separated so that the branches of government can be independent and limit the potential for abuse of individual or group rights in a position.³¹ becomes blurred due to the concentration of power in the hands of the executive (President) who has political ambitions to extend the term of office through legal mechanisms so that it appears legal and constitutional. In this way, the independent nature of each branch of power will be reduced or even lost in the hands of autocrats so that the monopoly and overpower of one institution will be strengthened. The existence of autocratic legalism used by rulers in the modern

²⁹ Andrea Lidwina, "DPR Controlled by Jokowi's Coalition Party", September 25, 2019, <https://databoks.katadata.co.id/politik/statistik/1468df8263e164b/dpr-dikuasai-partai-koalisi-jokowi>

³⁰ Ribkha Annisa Octovina, "Presidential System in Indonesia", CosmoGov: Journal of Government Science, Vol. 4, No. 2, (2018)

³¹ Rapif Sultan Al Farizi and Ahmad Naufal Nabawi, "The Concept of Trias Politica and Its Application in the Indonesian Government System", Nusantara: Journal of Education, Arts, Sciences and Social Humanities, Vol. 1, No. 2, (2024).

democratic era, including in Indonesia which combines legislative, executive, and judicial powers held by one person or group of people, then their control will be arbitrary because they are no longer bound and supervised by other branches of power, but themselves.

Furthermore, the concept of democracy always places the people in a strategic position as holders of sovereignty within the state system. Within a democratic framework, the people have the right to participate in decisions that affect their lives. However, its implementation has varied from country to country.³² A democratic government is a government that has limited powers and is regulated by law to prevent arbitrary action.³³ This is closely related to efforts to guarantee human rights, which are the main characteristic of a state based on law.

Democracy and human rights are closely linked and mutually supportive. In a democratic system, the people have supreme sovereignty in determining the leaders and representatives who will govern, ensuring that their aspirations are met in the administration of government. Therefore, human rights, such as the right to express opinions, assemble, and practice religion, are fundamental elements of democracy. A democratic state will always be committed to protecting these rights as part of its constitutional guarantees.

Without the protection and respect of human rights, democracy loses its essence, as people no longer have the freedom to express their views or demand justice. Guaranteeing human rights allows democracy to operate fairly. Conversely, democracy enables human rights to be upheld.

For the Indonesian people, democracy has been a priority since the founding fathers laid the foundations for Indonesian independence. Likewise, the protection and respect for human rights (HAM) were enshrined in the Constitution.³⁴ The practice of democratic life as has occurred in many developing countries such as Indonesia is often confused by political formats that appear democratic, but in practice are very authoritarian.³⁵ This occurs when the government is centered on one hand of power and the size of the parliamentary coalition reduces the checks and balances that should be able to create oversight as an effort to control power so that it is not arbitrary.

The practice of autocratic legalism has essentially diminished the essence of democracy and guaranteed protection of human rights by exploiting the law to strengthen power. This is evident in the growing size of the President's coalition in Parliament and the new phenomenon in Indonesian politics of embracing the opposition during elections to join the government. This leaves the people with few

³²Moh. Koesnardi & Bintan R. Saragih, *Science of the State*, 2nd Edition. (Jakarta: Gaya Media Pratama, 1988).

³³Miriam Budiardjo, *Fundamentals of Political Science*, (Jakarta: PT Gramedia, 2012)

³⁴Bobi Aswandi & Kholis Roisah, "The Rule of Law and Pancasila Democracy in Relation to Human Rights (HAM)", *Indonesian Legal Development Journal*, Vol.1, No.1, (2019).

³⁵Ibid.

options and forced to follow rules that are actually disadvantageous to them, as they are no longer represented in parliament when the executive dominates all branches of government.

The practice of autocratic legalism has serious consequences for the weakening of democratic institutions. Democratic institutionalization is essentially an effort to maintain and implement the state system, ensuring that state actions and decisions comply with the legal needs of society. However, the practice of autocratic legalism undermines the process of democratic institutionalization. Democratic systems and institutions, even parliament, serve only as tools for legitimizing the president and the limited political elite surrounding him, smoothing their political interests and agendas. This approach is taken without regard for the legal needs of society and the formation of legislation that is more needed to strengthen the state.

In a democratic context, autocratic legalism has weakened popular sovereignty and government accountability. When leaders use the law to secure power and limit opposition, the public loses access to open and participatory decision-making processes. This inevitably leads to a decline in the quality of democracy, as the people no longer have effective control over the government. Furthermore, autocratic legalism undermines the protection of human rights, as autocratic leaders criminalize protest and restrict freedom of the press and freedom of expression.

CLOSING

The phenomenon of autocratic legalism poses a latent threat to constitutional democracy because it operates through legal mechanisms that appear legitimate but actually negate the substance of justice and the principle of limiting power. In the Indonesian context, this phenomenon is evident in the strengthening of executive dominance, the weakening of the legislative role, and the reduced space for public participation in the process of formulating state laws and policies. This situation has a direct impact on the hampered institutionalization of democracy and the fragility of the consolidation of civil society as a primary pillar of democratic governance. Civil society, in its efforts to strengthen democratic institutions, consistently strives to strengthen the existing systems within constitutional democracies. In promoting legal policies, particularly in the formation of laws, civil society consistently strives to follow all procedures in the law-making process. Civil society consistently strives to be involved in the planning process of drafting laws by providing input to the development of the National Legislation Program (Prolegnas). For certain legislative issues, civil society is even actively involved in producing academic papers and drafts of draft laws.

However, civil society's efforts have become meaningless and insignificant, as the practice of autocratic legalism has negated the institutionalized legislative process that ensures its processes and content comply with the principles of the rule of law and the protection of human rights. Civil society's continued efforts to strengthen

and institutionalize democracy by faithfully following the existing legislative system have been in vain. This is because the legislative process is ultimately only intended for aspects that benefit a small political elite.

Furthermore, autocratic legalism has created space for human rights violations, where laws can be abused to suppress opposition, silence criticism, and deprive individuals of their rights. Therefore, it is crucial to limit the power held by the President to prevent the domination of power (executive heavy) in the hands of the executive, which results in an authoritarian government and weakens the system of checks and balances. Furthermore, it is crucial to restore the independence of the judiciary, particularly the Constitutional Court (MK), as the guardian of the constitution, to safeguard human rights and the implementation of government in accordance with the ideals of a democratic state based on the rule of law.

Thus, ending the practice of autocratic legalism is a constitutional and moral imperative. This can only be achieved by limiting presidential power to prevent centralization of authority, strengthening the independence of the judiciary as an enforcer of checks and balances, and empowering civil society to participate meaningfully in the political and legal process.

REFERENCES

Book

- Adiwilaga., Rendy, Yani Alfian, Ujud Rusdia,. (2018). The Indonesian Government System, Yogyakarta: Deepublish.
- Budiardjo., Miriam. (2012), Fundamentals of Political Science, Jakarta: PT Gramedia.
- Iman Jalaludin Rifa'I, et al., (2023). Legal Research Methodology, Banten: PT Sada Kurnia Pustaka.
- Irwansyah and Ahsan Yunus., (2020). Legal Research: Selected Methods & Article Writing Practices, Yogyakarta: Mirra Buana Media.
- Ishaq,. (2017). Legal Research Methods and Writing of Theses, Dissertations, and Dissertations, Bandung: Afabeta.
- Koesnardi., Moh., and Saragih., R., Bintan., (1988), State Science, Jakarta: Gaya Media Pratama.
- Marzuki, Peter Mahmud., (2016). Legal Research, Revised Edition. Jakarta: Kencana PrenadaMedia Group.

Journal

- Bobi Aswandi & Kholis Roisah, "The Rule of Law and Pancasila Democracy in Relation to Human Rights (HAM)", Indonesian Legal Development Journal, 1:1, 2019.
- Egi Fauzi, Herry Tarmidjie Noor, Fahmi Ali Ramdhani, "The Concept of Meaningful Public Participation as a Prevention of Symptoms of Autocratic Legalism in Indonesia," 14:1, 2024.

- Idul Rishan, "The Risk of a Fat Coalition in the Presidential System in Indonesia," *Jurnal Hukum Ius Quia Iustum*, 27:2, 2020.
- Kim Lane Schepppele, "Autocratic Legalism", *The University of Chicago Law Review*, 85:2, 2018.
- Mardhatillah, et al., "The Position of Constitutional Law in Guaranteeing the Sustainability of Democracy," *Journal of Law and Citizenship*, 6:1, 2024.
- Muchamad Dicky Rachmawan, "Symptoms of Authoritarianism in Indonesia's Democratic Climate", *SIYASI: Jurnal Trias Politica*, 2:1, 2024.
- Muchamad Dicky Rachmawan, "Symptoms of Authoritarianism in Indonesia's Democratic Climate", *SIYASI: Jurnal Trias Politica*, 2:1, 2024.
- Mugiyanto, "The Relationship between Oligarchy of Power and the Legal Politics of the Ruler," *Indonesian Law Enforcement Journal (JPHI)*, 3:1, 2022.
- Osbin Samosir and Indah Novitasari, "Citizens' Political Rights in the Grip of Identity Politics: Reflections Towards the 2024 National Simultaneous Elections," *Journal of Law, Humanities and Politics*, 2:3, 2022.
- Rapif Sultan Al Farizi and Ahmad Naufal Nabawi, "The Concept of Trias Politica and Its Application in the Indonesian Government System", *Nusantara: Journal of Education, Arts, Sciences and Social Humanities*, 1:2, 2024.
- Ribkha Annisa Octovina, "Presidential System in Indonesia", *CosmoGov: Journal of Government Science*, Vol. 4:2, 2018.
- Sulkiah, "Implementation of the President's Prerogative Rights in Forming a Cabinet Based on Article 17 of the 1945 Constitution Amendment: A Review of the Indonesian Constitutional System," *Nurani Hukum: Journal of Legal Studies*, 2:1, 2019.
- Will Freeman, "Colonization, Duplication, Evasion: The Institutional Strategies of Autocratic Legalism," *Princeton University Department of Politics*, 2018.
- Zainal Arifin Mochtar and Idul Rishan, "Autocratic Legalism: The Making of Indonesian Omnibus Law," *Yustisia Jurnal Hukum*, 11:1, 2022.

Internet

- Andrea Lidwina: "The House of Representatives is Controlled by Jokowi's Coalition Party"<https://databoks.katadata.co.id/politik/statistik/1468df8263e164b/dpr-dikuasai-partai-koalisi-jokowi>(last visited on October 30, 2024)
- CNN Indonesia, "Aswanto Removed from Constitutional Court for Annulling DPR Products", Jakarta,<https://www.cnnindonesia.com/nasional/20220930164056-32-854832/aswanto-dicopot-dari-hakim-konstitusi-karena-anulir-produk-dpr> (last visited on October 30, 2024).
- McGee, A. (2022, September 27). Autocratic legalism: The 'silent' authoritarianism. The Loop. <https://theloop.ecpr.eu/autocratic-legalism-the-silent-authoritarianism/>