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The disappearance of the 'legislative model': Indonesian parliament's experience in response to Covid-19

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ABSTRACT

The argument that choosing a legislative model will strengthen Parliament's checks and balances in an emergency has not been proven in Indonesia. Due to the high president's constitutional legislative power, combined with his coalition supported by a majority of parliamentarians in Covid-19 emergency, left parliament to serve much of the executive's agenda. This paper compares the law-making process in the parliamentary period before and during the pandemic. Extreme partisan power will allow the executive to control the legislative agenda and weaken Parliament's legislative power under the pretext of the Covid-19 pandemic emergency. The 'legislative model' is no longer viable; instead, various laws have been passed, unrelated to Covid-19.

KEYWORDS Legislative model; president's legislative power; state of emergency; Covid-19 pandemic; law-making process

Introduction

Various historical records and accounts present details of the executive branch's abuse of power under the pretext of a state of emergency (Loveman, 1993). Perhaps the most famous was an account found in the historical records of the Weimar Constitution, abused by Hitler, who made a state of emergency permanent (Watkins, 1939). Moreover, the actions of Benito Mussolini, Mubarak and Stroessner demonstrate leaders abusing their emergency powers, breeding authoritarianism (Bosworth, 1973; Kassem, 2004).

Ginsburg and Versteeg (2020) elaborated that the executive branch's authority in a state of emergency was particularly prevalent, with the intention to provide a required immediate response. Nevertheless, authorising the executive branch to respond to an emergency will potentially generate an uncontrollable executive power. Posner and Vermeule (2010) said, '*In crises, the executive governs nearly alone, at least so far as the law is*

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concerned.' Furthermore, Clinton Rossiter (2017) worried that this situation could mutate into a dangerous constitutional dictatorship.

This emergency concept was then developed into the controlling role of another branch of power, such as the legislative branch. Ferejohn and Pasquino (2004) introduced a 'legislative model' concept employed to deal with a crisis. A legislative model is an approach in which the legislature is capable of creating a law used to regulate matters undertaken by an emergency ruler in a state of emergency (Ferejohn & Pasquino, 2004). The legislature first formulates several norms endowing the executive branch some limited discretion. Therefore, the emergency ruler endowed with the authority to deal with an emergency may employ normally disallowed exceptions. That legislative model will also provide boundaries so that the executive branch's power is exercised according to applicable laws and regulations (Ginsburg & Versteeg, 2020).

Ferejohn's and Pasquino's legislative model was then supported by Ginsburg and Versteeg, who stated that its existence controlled the executive branch's power (Ginsburg & Versteeg, 2020). Various constitutions worldwide stipulate a state of emergency by employing the legislature to approve a declaration, extension, oversight and finally, cessation of a state of emergency (Khakee, 2009).

So far, a legislative model has been deemed to ideally anticipate any abuse of power exercised by the executive branch in a state of emergency. The involvement of another branch of power in handling an emergency has proven beneficial in protecting democracy and human rights in times of crisis (Bulmer, 2008). The legislature's involvement in creating and overseeing a law in a state of emergency is considered a design of checks and balances in such times (Bulmer, 2008).

Lates research in European countries shows that the executive branch's dominance in the Covid-19 pandemic marginalised Parliament's role in overseeing matters (Griglio, 2020). Therefore, Parliament's oversight of the executive branch's dominance in a state of emergency played a crucial role (Cormacain & Bar-Siman-Tov, 2020). This legislative marginalisation can be anticipated through the use of the legislative model. The concept of the legislative model is to give legislative branch power as part of a constitutional dictatorship. The constitution allocate dictatorship provisions to enable the government to overcome the emergency. Accordingly, this means that the executive branch's and the legislature's agendas should be focused on solving emergency matters.

Nevertheless, this legislative model of decency may not always be effectively applied in certain situations. A case-study method of research in Indonesia ascertained that a legislative model has lost its potential, due to the President's legislative power combined with the partisan power in Parliament. The congruency between the legislature and the executive branch in

Indonesia's presidential system had weakened the roles of a legislative model, resulting in a hostile atmosphere of checks-and-balances mechanisms in times of emergency.

A legislative model is intended to be practicable when applied in Indonesia: the construction design of Indonesia's constitution affirms its adoption (Arsil & Ayuni, 2020). Article 12 of the 1945 Constitution stipulates, '*The President declares a state of emergency. The conditions for such a declaration and the subsequent measures regarding a state of emergency shall be regulated by law.*' This article indicates that a state of emergency and the consequences have to first be constructed in a legislative product, the level of which is the same as a law.

This paper's arguments are based on four primary indicators, as follows. First, the Covid-19 pandemic has rendered the executive branch more powerful and controlled many legislative agendas. Second, the lawmakers tended to discuss legislative products by simplifying the procedures. Third, the legislative productivity increased; however, it was not a follow-up agenda intended to deal with the state of emergency. Fourth, the public openly protested and rallied in dissatisfaction with those legislative products created by the lawmakers. They suspected that the state of emergency would be exploited by the political elites to pass laws accommodating their agendas, affording little benefit to the public.

This paper studied various activities conducted by Indonesia's parliament, especially the House of the Representatives of the Republic of Indonesia (DPR RI) in 2020. This analysis of the roles of Parliament focused particularly on the two main functions of the DPR RI, namely legislative functions and budgeting functions. This paper observed the parliamentary role in dealing with the Covid-19 pandemic emergency.

Legislative model as a response to Indonesia's Covid-19 emergency

'Legislative model' approach

Ferejohn and Pasquino (2004) explained three models of emergency powers, one of which was a legislative model. The two other models they introduced were the Roman Dictatorship model and Neo-Roman Model. These two models are best described as a dictatorship power endowed by the Roman Senate to a military commander for a certain period of time. The dictator was then authorised to postpone legal rights and to prepare military and other forces to anticipate an invasion, or rebellion threat, to resolve security matters (Rudenstine, 2013). Unfortunately, these two models often made the legislature lose control since the executive branch would become dominant under the pretext of emergency defence.

As in the legislative model, the legislature played a crucial role in determining whether the requirements of a state of emergency were met and in creating the power employed to deal with that state of emergency (Ferejohn & Pasquino, 2004). Moreover, the policies and the implementation were partially aimed towards two objectives: dealing with the emergence of a state of emergency and efficiently restoring law and order.

However, it does not mean that the executive will become powerless when the legislative model is applied. The interest in imposing a dictatorship clause is common in the anticipation of an emergency. Rossiter thought that in a state of emergency, a 'constitutional dictatorship' was required as an inevitable factor and to maintain the existence of a constitutional and democratic state. He even stated that a constitutional dictatorship was an inevitable truth and that '*No form of government can survive that excludes dictatorship when the life of the nation is at stake*' (Rossiter, 2017).

Some criticism against the development of a constitutional dictatorship concept is that the executor of such a dictatorship is no longer centred at one monocratic executive branch, but more shared between independent execution centres. Sanford Levinson and John M. Balkin called it a Distributed Dictatorship syndrome (Levinson & Balkin, 2010). In that context, Ferejohn and Pasquino (2004) proposed strengthening the roles of the representatives in Parliament when a state of emergency was declared, called the 'legislative model'. It is expected that a legislative model will strengthen the roles of the legislature, so that any branch will be able to oversee the executive branch's emergency power effectively. The functions of that legislature are comprised of matters such as determining and regulating boundaries, and overseeing and controlling any practices in the state of emergency made by the executive branch (Levinson & Balkin, 2010).

Tom Ginsburg and Mila Versteeg stated that the legislative model was the most popular approach to dealing with the Covid-19 pandemic emergency (Ginsburg & Versteeg, 2020). Several countries, such as Austria, Denmark, Burkina Faso, Germany, Norway, the Netherlands, Taiwan, Japan, and Switzerland, employed 'the use of existing legislation' when activating the Covid-19 pandemic state of emergency. The use of existing legislation is what Ginsburg and Versteeg considered the implementation form of a legislative model. These countries activated their law on public health, or their law on natural disasters, enabling them to take some coordinated measures to deal with the public-health state of emergency, such as quarantine and the closure of bars, restaurants and any places subject to overcrowding (Ginsburg & Versteeg, 2020).

Ginsburg and Versteeg (2020) stated that this model had several advantages. For instance, it was guaranteed that the legislature would be involved in such crisis management. However, the most significant advantage was that a typical constitutional framework still applied, so human rights protection,

freedom of expression, and any democratic mechanisms protected by the constitution cannot be abused. Any rights constraints still complied with the political oversight and the judicial branch. The legislative model, or law-based emergency activation, is supposed to make the perspective of emergency policies more specific, focusing on public health and the disaster.

The legislative model is considered an adequate alternative that is preferable to the declaration of a state of emergency under the constitution. The emergency declaration based on the constitution tends to afford the emergency ruler too much power; therefore, personal freedom may be abused with such unlimited political and legal control. Therefore, the emergency ruler's potential to abuse his or her power will be greater. In many democratic countries, a declaration of a state of emergency is usually reserved as 'a safety valve' in the event that the government has no adequate law to deal with the crisis.

Indonesia's response to the Covid-19 state of emergency

Article 12 of the 1945 Constitution of the Republic of Indonesia stipulates that Indonesia acknowledges the use of law-based, state-of-emergency arrangements. The clause stating 'the subsequent measures regarding a state of emergency shall be regulated by law' shows that the imposition of a state of emergency has to be regulated by law and aligned with the legislative model characteristics. In Indonesia, a law is produced as a deal made jointly between the legislative and the executive branch. Nevertheless, in a particular situation, such as in 'an urgent precariousness', the President shall be able to pass a Government Regulation in Lieu of Law singlehandedly pursuant to Article 22 of the 1945 Constitution of the Republic of Indonesia. Afterwards, the Parliament shall determine whether to ratify that Government Regulation in Lieu of Law to be a law, or reject it.

In response to the global Covid-19 pandemic, the Government of Indonesia employed three kinds of laws (Arsil & Ayuni, 2020). First, the President of Indonesia activated a state of emergency by employing Law on Health Quarantine (Presidential Act Number 11 year 2020 concerning the Corona Virus Disease 2019 Public Health Emergency). Second, the President activated a state of national non-natural disaster emergency, based on the Law on Disaster Management (Badan Penanggulangan Bencana Nasional, 2020)

Third, the President of Indonesia made a government regulation in lieu of law or in Indonesia called as *peraturan pemerintah pengganti undang-undang* (hereafter *Perppu*) due to an urgent precariousness: Perppu Number 1 of 2020 on the Policy of the State Budget and Financial System Stability for the Handling of the Corona Virus Disease 19 Pandemic and/or in the Framework of Dealing with any Threats that may Harm National Economy and/or the Financial System Stability March 31, 2020; and

Perppu Number 2 of 2020 on the Third Amendment to Law on Governor, Regent and Mayor Elections on May 4, 2020. Those three kinds of laws issued by the government seemed to focus on the same approach; namely, a legislative model.

The declaration of that legislative model was marked with the issuance of the Presidential Decree of the Republic of Indonesia Number 11 of 2020, on stipulation on the Corona Virus Disease 2019 Public Health Emergency serving to activate Law Number 6 of 2018 Health Quarantine; next, the Presidential Decree of the Republic of Indonesia Number 12 of 2020 on Stipulation of Non-Natural Disaster of the Corona Virus Disease 2019 (COVID-19) as a National Disaster serving to activate Law Number 24 of 2007 on Disaster Management.

Ginsburg and Versteeg stated that an emergency product in the form of legislation could also be passed with an ex-post scheme (Ginsburg & Versteeg, 2020). In this regard, if an emergency occurs and the executive branch needs additional powers, a new legislative product can be issued, enabling some legal exceptions employed to deal with the crisis. This ex-post scheme is usually employed when legislation providing exceptions is not available or is not sufficiently available. In the context of Indonesia, a new and fast legislative product can be accommodated by making a Perppu which constitutes one of the President's legislative powers.

Article 22 of the 1945 Constitution of the Republic of Indonesia authorises the President in times of urgent precariousness to make a law-level regulation that is directly applicable without the legislature's approval. However, a Perppu applies temporarily and should be approved by the Parliament in its next parliamentary session so that the regulation will still apply. If that regulation is rejected, it should be cancelled. Perppu Number 1 of 2020 was deemed as a means of providing a legal basis to the government to use the state budget with impunity under the pretext of the Covid-19 pandemic. The formulation mechanisms of the state budget are simplified, and the oversight is politically and legally eased.

Meanwhile, Perppu Number 2 of 2020 serves as a form of the postponement enacted to adjust to a general election during the pandemic. Both are deemed to meet 'the urgent precariousness' clause due to the Covid-19 emergency, so it requires an immediate response to new legislation. Nevertheless, it is regretful that no legislative products have mentioned the time limit of the emergency. The time limit on how long it will take at the minimum or maximum for each of those emergency statuses must be applied (Arsil & Ayuni, 2020).

The time limit of the emergency status can serve as the implementation of a legislative involvement during a state of emergency. Bruce Ackerman (2004) thought that an emergency law had to include a super-majoritarian escalator. That law had to mention the time limit of the emergency that

automatically ends the enactment of legal clauses applicable in that state of emergency unless the majority of the members of Parliament approve the extension of the state of emergency. Therefore, Parliament played a crucial role in determining the time limit to be adopted in the law to ensure the legislature's involvement and control on the unbound executive branch when the state of emergency took place (Ginsburg & Versteeg, 2020).

Oren Gross and Fionnuala Ní Aoláin stated that when declaring a state of emergency, the government had to mention the time limit and a strict procedure applied to extend the emergency (Gross & Aoláin, 2006). Several regulations stipulate an extension limitation of a state of emergency or a particular limitation, usually amounting to six months or one year, which will then be evaluated (Bulmer, 2008). Referring to the legislative model scheme, it can be noted that the evaluation and extension of a state of emergency are part of Parliament's authority in implementing such a state.

The concern of Ginsburg and Versteeg (2020), which states that the legislative role is limited only to ratifying the formation of emergency law, is a potential reduction in the role of the legislative model. Parliament has the function of oversight and control over its implementation. Furthermore, it is also expected to revise and add regulations to strengthen the handling of Covid-19.

Legislative model in the event of a majority partisan power in Indonesia's presidential system

A legislative model takes the form of checks and balances over the executive branch's power, tending to be at its height in times of emergency. Debates over emergency legislations are very much influenced by Carl Schmitt, a classic theorist on a state of exception and the sovereign (Cristi, 1997). He suggested that an exception clause could not be predicted or restricted by any laws; therefore, requiring absolute power (Khakee, 2009). Carl Schmitt's theory had been widely criticised since it tended to omit an element of checks and balances from the other branches of power (Freeman, 2003). Worrying about it was a commonplace occurrence: the history of the emergence of a state of exception theory led to the birth of Hitler's abuse of power (Vagts, 2012).

Carl Schmitt's theory is deemed to breed a dangerous constitutional dictatorship (Rossiter, 2017). The utilisation of the state of exception is the realisation of an extra-constitutional power enabling the government to take over all the powers and leave other branches of power behind (Levinson & Balkin, 2010). Therefore, that legislative model alternative can serve as middle ground in activating a state of emergency; however, the model tends to lose its potential when responding to Indonesia's Covid-19 pandemic emergency.

Based on the results of their study on the phenomenon of Brazil's presidential system, Angelina Cheibub Figueriedo and Fernando Limongi found out that the President's power could serve as the government's means of allying with the legislature, or even as a means of leading the legislative agendas (Figueiredo & Limongi, 2000). They stated that the same situation in the parliamentary system could also occur in the presidential system. In the parliamentary system, the executive branch's control over the legislature is common. The executive branch takes the initiative to make a policy, and the legislature will simply approve or reject the policy bill it proposes.

Based on the results of Figueriedo and Limongi's study, it was found that, in the presidential system, the same thing could occur: the President's legislative power makes the President a policy-making initiator. In fact, he or she could be the controller of the legislative agendas in the legislature (Figueiredo & Limongi, 2000; Tsebelis, 1995). Moreover, Figueriedo and Limongi exemplify that the President of Brazil, with his constitutional power, used to control the legislative agendas. On many occasions, Parliament could only either accept or reject the proposal.

Indonesia's Constitution indeed endows the President with great legislative power in proposing, discussing, and approving the law-making process. Furthermore, it also allows the President to issue a regulation having the same authority as the law without any discussion in Parliament (a Government Regulation in lieu of law). Together with majority support from Parliament, this constitutional design permits the President to control the legislative agenda. The President's incentive to do so becomes greater in the Covid-19 state of emergency, since the executive branch is usually an emergency ruler.

Indonesia's choice of employing a legislative model approach as its state of emergency option is supposed to deliver a message that the President shall distribute his dictatorship to the legislature to focus on handling emergency matters. Instead of exercising his legislative role to handle such emergency matters, the President takes advantage of this situation by making many laws not directly related to the handling of Covid-19 by simplifying the procedures and reducing public participation. The President and the House of Representatives tend to take advantage of a state of emergency, in the absence of public participation, to create policy.

While the contents of a legislative model are applied procedurally, the strength of the President's power and political bias have resulted in weak legislative oversight in times of pandemic. What is actually occurring in Indonesia is that out of nine parties in Parliament, seven are the President's supporters. Therefore, President Jokowi controls 471 out of 575 parliamentary seats, accounting for 81.91 per cent of the votes in the House. This situation enables the President to easily dominate the legislative agendas,

especially in times of pandemic when there is a lack of, or minimal, public attention concerning the policy-making activities.

Even without a state of emergency, the President of Indonesia can exercise great authority in the legislative field. As commonly occurs in a country operating a presidential system, Indonesia's executive branch is also authorised in the legislative field. Nevertheless, in Indonesia, the President's legislative power is relatively noticeably high.

Both House and the President have legislative powers that can be said to be equivalent. In Indonesia, a bill cannot be passed without the President's approval. Article 20 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that House and the President shall discuss every bill to acquire a joint approval after the bill is jointly discussed. The President's involvement in legislation started from planning five-yearly and annual bills known as the National Legislation Program (*Prolegnas*). Then, the President of the Republic of Indonesia may also take the initiative to propose a bill. In fact, if the President rejects a bill, it cannot be passed into law and brought into effect. The rejected bill cannot be proposed to be discussed again in the next session of the DPR of that period.

Compared to the President's veto power in the presidential system exercised in the legislative process, Indonesia's 'joint approval' system seems to strengthen the President's position. The clause 'joint approval' in the 1945 Constitution of the Republic of Indonesia cannot be replaced or overruled by other mechanisms. Whatever the situation, each branch's approval should be secured before the bill is passed. This formulation is different from the President's veto commonly found in the law-making process in other countries with a presidential system. In such countries, the President has the right to veto a bill to stop the law-making process, but Parliament can overrule President's veto on the condition that a certain quorum is met. In the United States, the President's veto can be overruled by two-third the votes of congress.

Other than being endowed with a 'joint approval' power in making a law, the President of Indonesia also has another relatively elevated legislative power: the right to issue a law-level presidential decree or constitutional decree that can be more unimpeded than Presidents in other countries. Perppu issuance mechanism is relative without any significant restrictions under the pretext of an 'urgent precariousness,' which the President can subjectively interpret. When assessing the continuation of a presidential decree, Parliament is faced with two options only: it either totally approves it or totally rejects it. It means that if Parliament believes that there is an 'urgent precariousness' as the President intends, it also has to accept the arrangement made by the President. Moreover, it cannot propose another arrangement. Furthermore, Indonesia's Constitution does not explicitly regulate which matters may serve as the content of a Presidential decree.

All content materials of law can be a content material of that Presidential decree known in Indonesia as a Perppu (Arsil, 2018).

Anomaly in the making of a law in times of Covid-19 pandemic

Instead of focusing all its attention on overseeing the law on the state of emergency, Indonesia's Parliament has actively made legislative products not directly related to the management during the pandemic. Marcus Mietzner (2020) thought that the Indonesian government's response to the Covid19 was inferior to many other countries in the region. Similarly, Lindsey and Mann stated that Indonesia's central government was not responsive to the mitigation of the crisis (Lindsey & Mann, 2020).

Despite the Indonesian government's poor response to the Covid-19 emergency, Parliament did not show substantial control over the government's various policies to deal with the pandemic. Shockingly, Indonesia's Parliament exercised its legislative functions normally or ran its business as usual, such as passing several laws not directly related to the handling of the Covid-19. Parliament passed a controversial bill inciting much public rejection, such as Law on Job Creation (or Omnibus Law), and attempted to pass the Bill of Pancasila Ideological Way. Based on the products and the law-making process, it was notable that not only were the Parliament's legislative functions exercised normally, but Parliament also looked as if it was suddenly exercising greater performance, more so than in a normal situation.

The legislative model is supposed to endow the legislature with an oversight role over the executive branch. However, in the case of Indonesia, it does not happen. The law-making practises were compared before and after the state of emergency was declared to show that a dictatorship distribution in the legislative model, ordering Parliament and the President to focus on emergency matters, was merely symbolic.

Greater legislative productivity in times of pandemic

In 2020, Indonesia's Parliament passed controversial 13 laws of great complexity. 13 laws passed in a year by The House of Representatives (DPR) was actually an average number for each period in the first year after the general election, or the first year after the National Legislation Program (*Prolegnas*) serving as a five-yearly legislation plan of the formulation of law. In 2005, the DPR of the 2004–2009 period passed 14 laws. In 2010, the DPR of the 2009–2014 period passed 13 laws. In 2015, the DPR of the 2014–2019 period passed 14 laws. Pertinently, all of them took place in periods of normality, not in a state of emergency.

Therefore, considering the number of laws passed, the state of emergency declared since the beginning of 2020 did not slow down legislative activities. If observed more deeply, the content materials of the laws passed in times of the pandemic were considered weighty and requiring in-depth discussion. Based on the results of the statistics data (Figure 1), it was found that four laws belonged to *Prolegnas*, and nine did not belong to *Prolegnas* nor open cumulative lists. In general, laws belonging to an open cumulative list do not require in-depth discussion since they are passed due simply to formalities. Four *Prolegnas* laws passed in a year can be viewed as prolific and more productive than previous years or previous periods.

The anomaly in the Indonesian Parliament's legislative performance was clarified when its productivity in passing laws with massive content materials and a high number of clauses and articles was observed (Figure 2). Moreover, for the past fifteen years, the average number of pages in the laws passed by the DPR was 1247, while in 2020, when the pandemic emergency was declared, the total number of pages in the laws passed by the DPR was 1367 pages. The most phenomenal law passed in this period was the Law on Job Creation. The law, amending the content materials of 79 laws, consists of 186 articles, and its pages numbered 1187.

The DPR's anomalous productivity in the law-making process became incompatible with the legislative model. Legislative model characteristics were supposed to endow a form of checks and balances in a state of emergency. However, in a situation of high partisan power and the executive branch's high legislative power, Parliament took advantage of the state of emergency to pass the laws, proposed by the President, in a relatively short time. Instead of generating control, the legislative model, as mandated in Indonesia's Constitution, became an instrument to support the executive branch's agenda of passing laws not directly related to the Covid-19 epidemic.

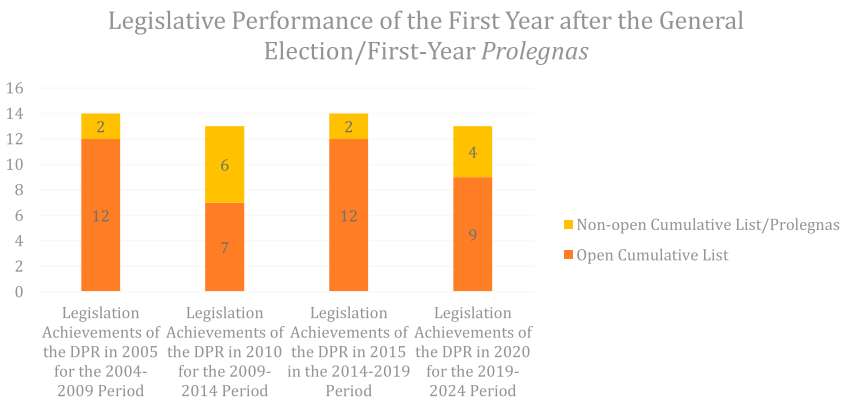


Figure 1. First-Year Legislative Accomplishment after the General Election/First-Year *Prolegnas* (data processed by the author).

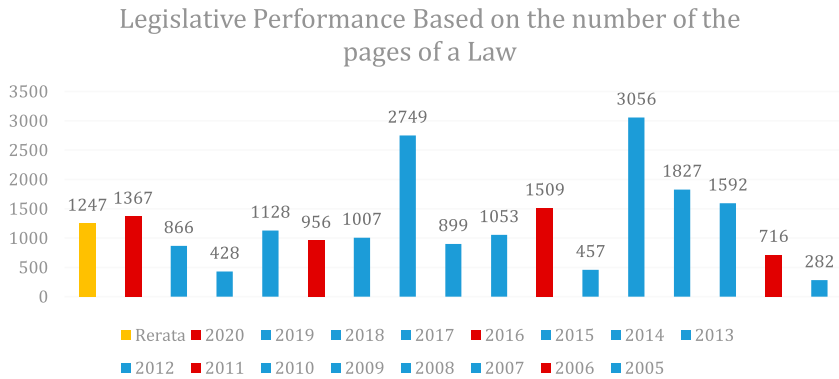


Figure 2. Legislative Accomplishment Based on the Number of Pages of the Law (data processed by the author).

Quick discussion process and approval

The facts behind making a law in times of pandemic become more shocking when the duration of the DPR to pass a law in that period is observed. There were four laws categorised as requiring in-depth and profound discussions passed by the DPR and the President in times of the pandemic; namely Law on Mineral and Coal Mining, Law on the Amendment to Law on the Constitutional Court, Law on Job Creation, and Law on Stamp Duty. In addition, there were two Government Regulations in lieu of law issued by the President, and those were also categorised as regulations requiring similar in-depth and profound discussions.

Those six legislative products were completed in a relatively short time. The Law on Mineral and Coal was completed in only four months (February 13, 2020 – May 12, 2020); the Law on the Constitutional Court (Mahkamah Konstitusi/MK) was completed in only one month (August 31, 2020 – September 1, 2020); and the Law on Job Creation – a Law with the most extensive content materials and including the most profound coverage – was completed in under seven months (April 14, 2020 – October 5, 2020). Meanwhile, it took only a short time for the Perppu to be discussed in DPR, which Parliament swiftly approved. The approval process was not unusual, like other Perppu discussed in the DPR, even when some clauses reduced Parliament’s authority. Perppu Number 1 of 2020 was discussed by the Budget Committee, The House of Representatives of The Republic of Indonesia, for only several days. Practically, the discussion took place on May 4, 2020 (Budget Committee’s The House of Representatives of The Republic of Indonesia Report, 2020). All the fractions in the DPR approved that Perppu should be passed into law. Only a small fraction refused that Perppu.

So quickly was this Perppu discussed that many experts thought it unusual: it had received such extensive material coverage. The Perppu amended 12 other Laws; furthermore, it also reduced DPR's authorities, especially those regarding the formulation of a state budget. This Perppu was a kind of amendment to a state budget commonly passed with the DPR's approval. Moreover, it was enough for the President to make a state budget by simply issuing a Regulation of the President. In addition, the Perppu gave every opportunity to the government to use the state budget with minimum control under the pretext of the pandemic emergency.

Article 2 of the 2020 Perppu Number 1 gives the government the freedom to change the 3% deficit limit to above 3% until the end of 2023. The budget's control mechanism, employing a maximum state financial deficit limit, was removed. When this Perppu was enacted, political and legal controls over the formulation and utilisation of the state budget were significantly reduced.

Those facts were shocking since it usually took such a long time for the DPR and the Government to discuss a particular bill or a Perppu. As it took such a long time to discuss a bill in DPR, provisions in Article 99 of Law Number 17 of 2014 on Parliament stipulating that the discussion on a bill of law should be completed in only 3 (three) legislative sessions were included. These provisions were made so that a bill was not supposed to be discussed with beating around the bush. Additionally, the lawmakers were supposed to perform effectively, so the target for the number of laws passed in a year, made by DPR and the President, could be met.

However, the provisions regulated in that article also open the possibility of extending the discussion period, because it must be decided in a DPR plenary session. Many bill discussions require an extension through a DPR plenary session, which is extended many times (Hidayat, 2019).

By counting the scenario without an extension, namely 3 (three) legislative sessions, it can be estimated that the time required for the lawmakers to discuss a bill should range from 9 months to one year since, in a year, the DPR has 4 or 5 legislative sessions (The House of Representatives of The Republic of Indonesia, 2019). As mentioned above, a bill is generally discussed by asking for an extension or even several extensions. Therefore, a bill is more usually discussed for more than one year before it is passed into law in a regular session.

As a comparison, the data on the discussion of several bills of the previous period can be displayed. The discussion started in 2015, or one year after the 2014 general election, which was equal to 2020, one year after the 2019 general election. For instance, it took almost 14 months to discuss the Bill of Trademark (August 31, 2015 – October 27, 2016); it took almost 22 months (February 24, 2015 – December 15, 2016) to discuss the Bill of Construction Services; and it took 14 months (April 12, 2016 – June 28, 2016) to discuss the Bill of Tax Amnesty.

Procedure simplification

During the Covid-19 pandemic emergency, the DPR dealt with the situation so that meetings and plenary sessions could still be held and decisions could still be made. Therefore, the DPR held meetings and made decisions virtually, through a video-conference mechanism; this was acknowledged in DPR's rule of procedure as a legitimate mechanism. Regulation of DPR RI Number 1 of 2014 on Code of Conduct was amended by Regulation of DPR RI Number 1 of 2020 on Code of Conduct. The sentence legalising the virtual meeting stated:

All of the meetings of DPR are attended by the members unless there are certain situations, such as a state of emergency, an urgent precariousness, extraordinary circumstances, a conflict, a natural disaster and other certain situations ensuring a national urgency. In any of those cases, the meeting can be held virtually by taking advantage of information and communication technology.

With this provision, a pandemic is interpreted as a particular situation or extraordinary circumstances enabling the DPR to hold a long-distance meeting virtually. This phenomenon prevailed globally in parliaments all over the world. It is recognised that Parliament must always perform its functions even in times of emergency or extraordinary circumstances, such as a pandemic (Inter-Parliamentary Union, 2020).

As a result of this provision, the DPR can continue its legislative agenda, including a public hearing with the stakeholders of the bill or pertinent government officials concerning a bill. A decision can be made without the physical presence of Parliament and the government members. The enactment of a state of emergency is indeed at risk of reducing many democratic procedures for the sake of a sustainable decision-making process and even quick decision making. Ginsburg and Versteeg (2020) warned that any extraordinary measures had to be taken limitedly and temporarily, so that the constitutionalism principles could survive and not fall victim to the virus.

There is concern about simplifying a decision-making mechanism because the democratic procedures will also be simplified. The utilisation of technology that does not require the members of Parliament to attend the meeting and to join a decision-making process physically is not intended to reduce the essence of public representation functions and rooms. This particular information technology convenience is supposed to enhance the representation functions' implementation and extend the participation rooms.

Nevertheless, based on the data of DPR activities during the pandemic, it was found that public participation decreased, as did the implementation of representation function in Parliament. For instance, a public hearing to discuss the Bill of Job Creation was attended by only 16 stakeholder groups. The bill contained many content materials and involved various

stakeholders. It amended 79 cross-sectoral laws and contained 186 articles. Moreover, it comprised 1187 pages.

Compared to the discussion of law in normal times, prior to the enactment of the pandemic emergency, those facts naturally raise many questions about public involvement. For instance, the discussion of the Bill of Amendment to Law on the Eradication of Criminal Acts of Terrorism focused only on criminal acts of terrorism, several articles of which were amended and consisted of only 49 pages, involving 37 stakeholder groups. 12 stakeholders attended the government's hearings, 15 stakeholder groups attended the public hearings, and 10 Working Visits.

Other discussions of bills, even though the material is simpler, also showed similarities. When Law Number 16 of 2017 was discussed, 28 public hearings were held with various stakeholder groups, although this law comprised only 8 articles, overruled 20 articles and consisted of 25 pages.

The implementation of representation functions also decreased, despite such technological conveniences. It was shown by the attendance of members of the DPR at virtual meetings. In general, fewer DPR members attended a DPR plenary session after the state of pandemic emergency was enacted, whereas, according to the Regulation of DPR on Code of Conduct, virtual attendance is acknowledged as a legitimate attendance. Below is the [Figure 3](#) showing the comparison of the attendances after and before the state of emergency was enacted.

The attendance of members of the DPR plays such a crucial role in the plenary session: in that forum, the final decision of the DPR RI is made.

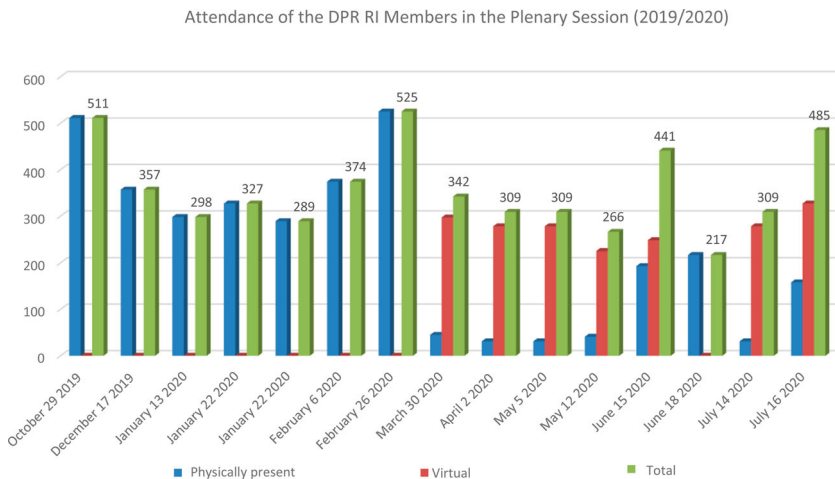


Figure 3. Public Participation and Implementation of the Representative Function of the Indonesian Parliament during the Enforcement of the Covid-19 Pandemic Emergency (Arsil & Mauleny, 2020).

In the making a DPR decision binding all of the people of Indonesia, without exception, the representation level should be high.

As mentioned previously, there has been criticism regarding the low attendance of DPR members at every plenary session, with the average attendance below 60% on many occasions (Formappi, 2019). The number of DPR members for the period 2019–2024 was 575, and their average physical attendance rate (see blue chart) in the plenary session was 66.5%. When technological advancements, such as virtual meetings, had been legitimised, and those members did not have to physically attend the parliament building, their attendance rate decreased: the average was 44.6% (see red chart).

Another procedure simplification made by DPR was to take advantage of a recess by continuing any legislative activities. A recess was used to meet the legislative target of the Omnibus Bill of Job Creation (Ramadhan, 2020). This practice was not common in DPR RI. Regulation of DPR on Code of Conduct stipulates: ‘A recess is a period in which DPR conducts its activities out of court, especially outside of DPR buildings, such as making some working visits.’ (The House of Representatives of The Republic of Indonesia, 2015). That stipulation sends a message that the main activity of DPR members during a recess is interacting with their constituents in their election region to play their representation role; namely, absorbing people’s aspirations, socialising DPR’s products and reporting their performance. Therefore, if a recess is used to hold a meeting discussing a bill, DPR members can neglect their fundamental duties and their representation functions.

Indeed, any extraordinary steps or uncommon procedures are taken when the state of emergency is enacted and required. However, those steps should be limited, and the purposes should be made clear; namely, to deal directly with the state of emergency the country is facing. Any usual legislative agenda not directly related to the emergency should still be conducted in a routine manner to ensure that the democratic procedures and the citizens’ constitutional rights are not neglected. In the legislative model framework, Indonesia’s choice of emergency model does not authorise the persons in charge to deviate from those that are democratically stipulated and the citizens’ rights are protected by the Constitution.

The president as the controller of the legislative agendas, and the absence of legislative model practices

During the Covid-19 pandemic emergency in Indonesia, there have been several aspects to law making, as mentioned above. They are as follows: (1) productivity was high; (2) discussion took place quickly; (3) procedures were simplified; (4) the content materials were not directly and closely related to the pandemic, nor the emergency that the country was facing.

Those characteristics were clearly seen in the making of a law. Parliament tried to complete and pass laws as quickly as possible to achieve high performance. In a state of emergency, it is understandable that an emergency requires swift action, sometimes ignoring the democratic procedures commonly required over a relatively long period. Nevertheless, the content materials must be promulgated: the high legislative performance overriding the usual procedures in law making is not directly related to activities intended to deal with the country's emergency.

Interestingly, Parliament's high performance and even the DPR's willingness to simplify law-making during the Covid-19 pandemic emergency could occur, since the DPR served the government's agenda. The indicators are as follows. First, all the bills successfully passed into law were absolutely dominated by the government's proposals. Of 13 (thirteen) bills successfully passed into law, the government proposed 11 bills: one bill was a joint proposal between the government and DPR, and one bill was proposed by the DPR (The House of Representatives of The Republic of Indonesia, 2021). One bill proposed by the DPR was a bill with a carry-over status or a bill originating from the DPR of the previous period, having almost been completed. It means that the DPR of the current period did not require much further discussion.

Second, both Perppu serving as a symbol of the President's control in the legislative process during the pandemic were swiftly approved; hitherto, an uncommon method of rubber-stamping. Perppu Number 1 of 2020 was an example of the DPR hastening its approval. The constitution stipulates that once a Perppu is issued by the President, it shall be discussed by the Parliament in the 'following plenary session,' which means that the Perppu has some time to be enacted and cannot directly be rejected by the Parliament. In general, the enactment of a Perppu before it is approved or rejected by the Parliament ranges from 5 to 6 months. However, it did not occur regarding Perppu Number 1 of 2020. This Perppu was immediately discussed by DPR immediately after being issued by the President.

Moreover, it was not rejected but approved after being discussed for only one day. Perppu on Regional Head Election also underwent a similar process in Parliament. Its approval process took place smoothly and quickly, and the members unanimously approved the Parliament.

Third, the DPR could easily approve legislation, reducing its authority. Its quick and easy approval of Perppu Number 1 of 2020 was also a symbol of how easily the DPR accepted a legislative material proposed by the government. The DPR's approval of many bills proposed by the government, such as the Bill of Job Creation, containing so many articles, proved that the DPR was indeed under the executive branch's control. Moreover, that phenomenon became more convincing when witnessing the rapid approval of Perppu Number 1 of 2020. That Perppu stipulates the reduction to DPR's

authority in making a state budget and weakens the DPR's role in overseeing the executive branch's use of the state budget. In fact, the DPR quickly approved the content materials, reducing its hand with the executive branch. It took only one day for the DPR to discuss that Perppu.

That the executive branch played a dominant role in making a law and serving as the controller of various legislative agendas in Parliament could be explained by taking into account the President's legislative power combined with the high partisan power in Parliament. During this pandemic emergency, the President of Indonesia actively exercised his legislative powers in the forms of proposing a bill, taking part in the discussion of and approving a bill, and exercising his power by issuing a presidential decree (a Perppu). Those authoritative legislative powers could be smoothly exercised due to great partisan power in the form of an oversized political coalition in Parliament.

Consequently, it seems that the legislative model serving as Indonesia's emergency option is simply symbolic. Indeed, Indonesia did not activate a state of emergency based on the constitution endowing the emergency ruler such great power. However, a legislative model was adopted since the executive branch only activated a state of emergency based on law: they stopped there. The legislature's role did not seem to exist. In fact, it tended to serve the executive branch's agenda in making a policy without any proper control. In light of these facts, it was reasonable to assume that the executive branch had taken advantage of the state of emergency to pass its various legislative agendas lacking public control and the necessary in-depth discussions of those bills, given that they were quickly discussed and the procedures were simplified.

Public reaction to legislative agendas during the pandemic

Public reaction, serving as one of the representation function indicators, is an important consideration when analyzing a legislative product. Not only will a legislative product that has been passed bind all citizens, but a public reaction is also a form of aspiration responses in the function of a representative institution. Therefore, Parliament must make sure that any legislative products it passes into law reflect the citizens' general aspirations, not just the political elites' agenda.

In the event that a legislative product receives a negative response from the public, the function of a parliament's representation will be questionable. Mass rallies as a part of public responses are seen as normal in non-pandemic times. In times of the Covid-19 pandemic, a mass rally is not an easy option, yet the public still takes that option.

Without question, a mass rally tended to violate a health protocol. However, the threats created by those legislative agendas, binding the

citizens without sparing any inspiration space, made a mass rally their choice of action. Note that many mass rallies take place in a pandemic as a result of those controversial legislative agendas. One of the biggest mass rallies took place after Law Number 11 of 2020 on Job Creation was passed. While the public focused its attention on the rise of Covid-19 numbers, Parliament suddenly passed the bill known as the Omnibus Law.

The mass rallies had taken place since the Law on Job Creation was passed, on October 5, 2020, and not only did they take place in the capital city, Jakarta, but also in almost all of the provinces of Indonesia (BBC News Indonesia, 2020). These protests lasted until November 2020, some of which resulted in riots, with a total of 5918 protesters arrested by the police (Bustomi, 2020).

It also acknowledges that the Bill of Pancasila Ideological Way was strongly challenged. The bill was considered to be controversial, especially by Indonesia's Rightist Islamists, and also triggered many mass rallies all over Indonesia. One of Indonesia's prominent religious authorities' institutions, the Indonesian Ulema Council (MUI), stated that the Bill of Pancasila Ideological Way was 'a theft in silence'. The Parliament then postponed the Bill's enactment in the 2020 session (BBC News Indonesia, 2020).

Another form of public dissatisfaction with such legislative products made in pandemic emergencies was filing several Judicial Review appeals to the Constitution Court. Almost all the laws passed in this pandemic were appealed and challenged by the Constitutional Court. There were several laws, the judicial reviews of which were appealed to the Constitutional Court during the pandemic, such as Law Number 7 of 2020 on the Amendment to Law on the Constitutional Court; Law Number 3 of 2020 on Mineral and Coal Mining; Law Number 11 of 2020 on Job Creation; Government Regulation in lieu of Law Number 1 of 2020; and Government Regulation in lieu of Law Number 2 of 2020.

Those phenomena of judicial review over the laws once they were enacted and did not take into effect yet could be considered a form of public dissatisfaction with the discussion process of those laws. Moreover, the public also felt that forum provided during the discussions did not adequately accommodate public aspirations. Therefore, the public tried to move the public hearing into court. This phenomenon was a form of public remedy for the disappearance of a public hearing supposed to take place in a conventional Parliament session.

Conclusion

In an effort to deal with the Covid-19 Pandemic, Indonesia has implemented several laws on public health and national distress. It seems that the activation of that state of emergency scheme, based on the law, goes hand in

hand with the ‘use of existing legislation’ characteristic in a scheme proposed by Ginsburg and Versteeg, deemed to be the further elaboration of a legislative model concept proposed by Ferejohn and Pasquino. This option avoids activating a state of emergency based on the constitution deemed to endow the emergency ruler with such authoritative power that it could be abused to deviate citizens’ rights and would lack control.

Pursuant to the concept, the activation of a legislative model was supposed to give more room to the legislature’s power to play a crucial role in deciding how to deal with a state of emergency. In the Covid-19 emergency, Indonesia’s Parliament seemed to exercise its legislative functions actively. The DPR controlled the law-making activities, as in a normal situation; in fact, in some cases, the productivity of the DPR was greater in such extraordinary times than experienced in normal life. Moreover, the DPR discussed the bills quickly and simplified the discussion procedures.

However, interestingly, if the content materials of those bills are observed, they were not directly and closely related to the state of emergency that the country was facing. It appeared that the DPR’s high legislative ‘performance’ took place in order to serve the executive branch’s agendas. The executive branch lead the legislative agendas in Parliament. It was proven with the facts that (1) almost all of the bills proposed and passed into law in times of pandemic emergency were the initiatives of the executive branch; (2) the DPR’s swift approval of two government regulations in lieu of law issued by the government was a rarity; (3) the DPR quickly approved a Perppu in which some clauses actually reduced the DPR’s power.

The executive branch could play its role as the controller of legislative agendas in Parliament since the President actively exercised his constitutionally high legislative powers combined with the partisan strength in Parliament. This combination of two powers encouraged the DPR to enhance its legislative performance. However, it materialised only since the DPR wanted to serve the executive branch’s legislative agendas. Consequently, instead of actively playing a crucial role in dealing with the state of emergency that the country was facing, the DPR actually served the executive branch’s agendas without proper control. The legislative model expecting various actors to play a role in the policy-making process in a state of emergency did not seem to be achieved. The executive branch appeared to emerge alone, so there was suspicion that the executive branch had taken advantage of this situation to formulate many policy agendas with little public participation due to the ongoing state of emergency.

Public reactions to various legislative policies during the pandemic served as evidence of the narrow participation created by the decision-makers. In turn, these narrow participation would incite a series of mass rallies, and many judicial review appeals would be filed demanding better representation and aspiration forums.

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