



## **Lame-Duck Legislation in Indonesia: Constitutional Legitimacy and Islamic Principles of Legislative Restraint**

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**Abstract:** This article analyzes the compatibility of legislative practices during the lame-duck session with legal policy and *siyāsa dustūriyya* by examining Law No. 3 of 2024, the Second Amendment to Law No. 6 of 2014 concerning Villages. This study is a normative legal research employing a statutory, conceptual, and comparative approach. Legal materials were analyzed through legal interpretation and prescriptive analysis to assess constitutional legitimacy and the principles of Islamic constitutional law governing the exercise of legislative authority during a political transition. The results of the study indicate that although the House of Representatives retains the constitutional authority to enact laws until the end of its term, the enactment of strategic laws following the emergence of a new electoral mandate has undermined democratic legitimacy. From the perspective of constitutional politics, this practice is not entirely consistent with the principles of *maṣlaḥah*, *al-'adl*, *amānah*, and *shūrā*. Therefore, Indonesia's legal policy needs to limit the DPR's legislative authority during a lame-duck session about strategic laws, while still allowing for the enactment of laws that are urgent, administrative, or intended to prevent a legal vacuum. This finding contributes to the development of the concept of transitional legislative restrictions within Indonesia's constitutional system.

**Keywords:** lame-duck session; constitutional politics; legislative authority; democratic legitimacy; Islamic constitutional law.

**Abstrak:** Artikel ini bertujuan menganalisis kesesuaian praktik legislasi selama *lame-duck session* dengan politik hukum dan *siyāsa dustūriyyah* melalui studi terhadap UU No. 3 Tahun 2024 tentang Perubahan Kedua atas UU No. 6 Tahun 2014 tentang Desa. Penelitian ini merupakan penelitian hukum normatif dengan

menggunakan pendekatan peraturan perundang-undangan, pendekatan konseptual, dan pendekatan komparatif. Bahan hukum dianalisis melalui metode interpretasi hukum dan analisis preskriptif untuk menilai legitimasi konstitusional serta prinsip-prinsip hukum tata negara Islam dalam penggunaan kewenangan legislasi pada masa transisi politik. Hasil penelitian menunjukkan bahwa meskipun DPR tetap memiliki kewenangan konstitusional untuk membentuk undang-undang hingga berakhirnya masa jabatan, pembentukan undang-undang strategis setelah lahirnya mandat elektoral baru telah melemahkan legitimasi demokratis. Dari perspektif *siyāsa dustūriyya*, praktik tersebut tidak sepenuhnya sejalan dengan prinsip *maṣlahah*, *al-'adl*, *amānah*, dan *shūrā*. Oleh karena itu, politik hukum Indonesia perlu membatasi kewenangan legislasi DPR selama *lame-duck session* terhadap undang-undang strategis, namun tetap memberikan ruang bagi pembentukan undang-undang yang bersifat mendesak, administratif, dan untuk mencegah kekosongan hukum. Temuan ini berkontribusi pada pengembangan konsep pembatasan legislasi transisional dalam sistem ketatanegaraan Indonesia.

**Kata kunci:** lame-duck session; politik konstitusional; kewenangan legislatif; legitimasi demokratis; hukum konstitusional Islam.



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## Introduction

A lame-duck session refers to a transitional period after a general election in which incumbent officeholders continue to exercise public authority. At the same time, their successors have previously been elected but not yet inaugurated.<sup>1</sup> Although the term originated outside Indonesia, its constitutional relevance lies in the problem of democratic legitimacy.<sup>2</sup> During this period, outgoing representatives formally retain their authority. Still, their political mandate becomes increasingly contestable when they enact laws or take binding legal decisions that will affect the public beyond their remaining term.<sup>3</sup> In legislative practice, the main concern is that laws enacted during this

<sup>1</sup> John Copeland Nagle, "Lame Duck Logic," *Law Review, University of California, Davis, School of Law* 45, no. 4 (2012): 1184.

<sup>2</sup> Raihan Muhammad, "The Urgency of The Regulation of Legislative Power During The 'Lame Duck' Session to Optimize Constitutionalism," *Journal of Constitutional and Governance Studies* 1, no. 1 (2024): 38–61, <https://doi.org/10.20885/JCGS.vol1.iss1.art3>.

<sup>3</sup> Muhammad Anugerah Perdana, "The Implications of the Implementation of Lawmaking During the Lame Duck Session for the President's Impartiality in the 2024 Election," *Journal of Constitutional and Governance Studies* 1, no. 1 (2024): 96–110, <https://doi.org/10.20885/JCGS.vol1.iss1.art6>.

transitional period may be vulnerable to declining accountability, reduced responsiveness to voters, and the influence of short-term political interests.<sup>4</sup>

This is significant in a modern constitutional state because legislation is not merely a formal instrument of government, but also a manifestation of public sovereignty, justice, and social welfare.<sup>5</sup> In Indonesia, the problem becomes more serious because the constitutional and statutory framework does not specifically limit the DPR's legislative authority during the post-election transition. Although the term lame-duck session is not technically recognized in Indonesian constitutional law and differs from the concept of *demissioner*,<sup>6</sup> the substance of the problem remains relevant: incumbent DPR members retain legislative authority even after a new electoral mandate is issued.<sup>7</sup> Therefore, the central issue is not only whether the DPR is formally authorized to legislate during this period, but whether strategic legislation enacted in such circumstances possesses sufficient democratic legitimacy.<sup>8</sup>

Previous scholarship has demonstrated that lame-duck sessions may create serious risks in the legislative process.<sup>9</sup> The main concern is that outgoing legislators may no longer have a strong incentive to act in accordance with the public interest because some will not be re-elected in the next term.<sup>10</sup>

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<sup>4</sup> Jeffery A. Jenkins and Timothy P. Nokken, "Partisanship, the Electoral Connection, and Lame-Duck Sessions of Congress, 1877–2006," *The Journal of Politics* 70, no. 2 (2008): 1, <https://doi.org/10.1017/S0022381608080420>.

<sup>5</sup> Nadirsyah Hosen, *Shari'a & Constitutional Reform in Indonesia*, with Institute of Southeast Asian Studies, ISEAS Series on Islam (Institute of Southeast Asian Studies, 2007); Lukman Santoso, "Eksistensi Taqin Dalam Negara Hukum Modern Dan Relevansinya Dalam Dinamika Legislasi Di Indonesia," *El-Dusturie* 2, no. 1 (2023), <https://doi.org/10.21154/el-dusturie.v2i1.6746>.

<sup>6</sup> Mahruzar Hasibuan and Irwansyah Irwansyah, "Evaluasi Implementasi Periode 'Lame Duck' Di Indonesia Sejak Kemerdekaan Republik Indonesia Tahun 1945 Hingga Saat Ini," *Jurnal EDUCATIO: Jurnal Pendidikan Indonesia* 9, no. 2 (2023): 716, <https://doi.org/10.29210/1202322854>.

<sup>7</sup> Zainal Arifin Mochtar, *Politik Hukum Pembentukan Undang-Undang* (Buku Mojok, 2022), <https://books.google.co.id/books?id=CGeqEAAAQBAJ>; Umarwan Sutopo et al., "Presidential Threshold in the 2024 Presidential Elections: Implications for the Benefits of Democracy in Indonesia," *Justicia Islamica* 21, no. 1 (2024): 155–78, <https://doi.org/10.21154/justicia.v21i1.7577>.

<sup>8</sup> Oksalin Giryssia Ulaan et al., "Fungsi Legislasi Dalam Periode Lame Duck Session Dalam Lembaga Dewan Perwakilan Rakyat Republik Indonesia," *Lex Privatum* 13, no. 4 (2024): 1–19; Raihan Muhammad, "The Urgency of The Regulation of Legislative Power During The 'Lame Duck' Session to Optimize Constitutionalism," *Journal of Constitutional and Governance Studies*, June 24, 2024, 38–61, <https://doi.org/10.20885/JCGS.vol1.iss1.art3>.

<sup>9</sup> Gunawan Undang et al., "Social Policy, Regional Inequality, and Constitutional Rights Fulfillment: A Responsive Law Perspective in West Java," *Khazanah Hukum* 7, no. 3 (2025): 454–70, <https://doi.org/10.15575/kh.v7i3.49104>.

<sup>10</sup> Dian Furqani Tenrilawa et al., "Re-Bounding Emergency Lawmaking in Indonesia: Constitutional Design, Parliamentary Oversight, Islamic Law Perspectives, and Accountability After COVID-19,"

George Norris criticized lame-duck sessions for two reasons: first, they may produce laws that are vulnerable to particular political interests; second, they may give the majority party or coalition greater control over which bills are accelerated, delayed, or abandoned. In this situation, legislative authority remains formally valid, but lawmakers' accountability to voters weakens.<sup>11</sup> Saldi Isra similarly observes that legislative accountability tends to decline during transitional periods, especially when outgoing legislators continue to make strategic legal policies before the newly elected members are inaugurated.

In Indonesia, this problem has appeared in several electoral transitions. Following the 2014 election, the DPR enacted Law No. 22 of 2014 on the Election of Governors, Regents, and Mayors, which shifted the mechanism of regional head elections from direct election to election by the Regional People's Representative Council. After the 2019 election, public criticism also emerged when the DPR approved the revision of Law No. 19 of 2019 concerning the Corruption Eradication Commission near the end of its term. These examples indicate that the post-election transition is more than just an administrative interval between two parliamentary terms; it is also a politically sensitive period in which strategic legislation may be enacted with contested democratic legitimacy.<sup>12</sup> This issue becomes more urgent in the 2024 transition because the DPR resumed its legislative function following the election and before the inauguration of newly elected members.

Session (Duck Session) in the House of Representatives of the Republic of Indonesia for (four) months, with approximately 4 (four) remaining sessions. The general election for members of the House of Representatives of the Republic of Indonesia (DPR RI) faces several problems, including the lame-duck session. Based on General Election Commission Regulation (PKPU) Number 3 of 2022, which specifies the Stages and Schedule for the 2024 General Election. Therefore, the transition period, also known as the Lame-Duck Session, for

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<sup>11</sup> Jeffery A. Jenkins and Timothy P. Nokken, "Institutional Context and Party Power: Member Participation and Leadership Strategy in the Lame-Duck Congressional Era," *American Politics Research* 39, no. 4 (2011): 724-53, <https://doi.org/10.1177/1532673X10390447>.

<sup>12</sup> James Wallner, "The Implications of Regular Lame-Duck Sessions in Congress for Representative Government," The Heritage Foundation, September 6, 2016, <https://www.heritage.org/political-process/report/the-implications-regular-lame-duck-sessions-congress-representative>.

DPR RI members in 2024 will last for 7 months, starting on 14 February, the day of the general election, and ending on 1 October 2024, the day of the swearing-in ceremony for DPR RI members for the 2024-2029 term.<sup>13</sup>

The 2024 post-election transition provides a concrete context for investigating the problem of lame-duck legislation in Indonesia. Based on General Election Commission Regulation No. 3 of 2022 concerning the stages and schedule of the 2024 General Election, the election was held on 14 February 2024, while the newly elected members of the DPR RI were inaugurated on 1 October 2024. During this transitional period, the incumbent DPR members continued to exercise their legislative function. Several bills were discussed and approved, including the Bill on the Special Province of Jakarta, which later became Law No. 2 of 2024, and the Bill on the Second Amendment to Law No. 6 of 2014 concerning Villages, which later became Law No. 3 of 2024 on the Second Amendment to Law No. 6 of 2014 concerning Villages. Among these legislative products, this article focuses on Law No. 3 of 2024 concerning Villages because it directly affects the structure of local political power by extending the term of office of village heads to 8 years and allowing them to serve a maximum of 2 terms.<sup>14</sup>

The enactment of Law No. 3 of 2024 during the post-election transitional period raises a problem that extends beyond formal legality. Although the DPR formally retained legislative authority until the end of its term, the approval of a strategic law after the election and before the inauguration of newly elected representatives raises questions concerning democratic legitimacy, public accountability, and the proper use of legislative power. From the perspective of *siyāsa dustūriyya*, this issue can be assessed through the principles of *maṣlahah*, *al-‘adl*, *amānah*, and *shūrā*. These principles require legislation to be directed toward public benefit, justice, trustworthiness in the exercise of power, and meaningful consultation. Therefore, the case of Law No. 3 of 2024 is relevant to examining whether legislative action during a lame-duck session

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<sup>13</sup> General Election Commission Regulation No. 3 of 2022 concerning the stages and schedule of the 2024 General Election.

<sup>14</sup> Nabil Iqbal, *Refining Legal Frameworks for Cross-Border Climate-Induced Displacement: A Comprehensive Analysis of Provisions, Definitions, and New Arrangements under International Law*, August 20, 2024, <http://hdl.handle.net/1993/38435>.

merely meets formal constitutional requirements or also satisfies the substantive requirements of legitimate and accountable law-making.<sup>15</sup>

Although *siyāsa dustūriyya* does not specifically address the concept of a lame-duck session, its principles can serve as a normative framework for assessing the exercise of legislative authority during a political transition. The principles of *maṣlaḥah*, *al-‘adl*, *amānah*, and *shūrā* require public authority to be exercised for public benefit, justice, trustworthiness, and meaningful consultation.<sup>16</sup> These principles are relevant because the legislative process during a lame-duck session not only involves formal constitutional authority but also concerns the moral legitimacy of power, the protection of the public interest, and the accountability of representatives whose terms of office are approaching their end.

Previous studies on lame-duck sessions and the legislative function of the DPR have generally examined the issue from a positive-law perspective. For example, studies on the implementation of the lame-duck period in Indonesia, as well as on the legislative function of the DPR before and after the amendment of the 1945 Constitution, focus on the legislature's formal authority and the absence of explicit legal restrictions during the transitional period.<sup>17</sup> These studies are significant, but they have not thoroughly analyzed a specific legislative product enacted during the post-election transition as a case study. They have also failed to effectively examine the problem through the combined perspectives of political law and *siyāsa dustūriyya*. This article

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<sup>15</sup> A. Djazuli, *Fiqh Siyasah: Implementasi Kemaslahatan Ummat Dalam Ramburambu Syariah* (Raja Grafindo Persada, 2016); Lukmanul Hakim et al., "The Making of the Modern Muslim State; Islam and Governance in the Middle East and North Africa: By Malika Zeghal, Princeton University Press, William Street, Princeton, New Jersey, 2024, 398 Pp., \$99.95 (Hardcover), ISBN 9780691259673; \$35.00 (Paperback), ISBN 9780691134369; \$24.50 (eBook), ISBN 9780691189031," *African Identities*, January 28, 2025, 1–4, <https://doi.org/10.1080/14725843.2025.2459826>; Pietro Longo, "Theory and Practice in Islamic Constitutionalism: From Classica Fiqh to Modern Systems," in *Theory and Practice in Islamic Constitutionalism* (Gorgias Press, 2019), <https://doi.org/10.31826/9781463239640>.

<sup>16</sup> Hadi Iskandar et al., "Islamic Law and the Constitution: Analyzing the Compatibility of Religion-Based Legislation in Indonesia," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 12, no. 2 (2025): 332–55, <https://doi.org/10.32505/qadha.v12i2.11652>.

<sup>17</sup> Bon Sang Koo et al., "Testing Legislative Shirking in a New Setting: The Case of Lame-Duck Sessions in the Korean National Assembly," *Japanese Journal of Political Science* 20, no. 1 (2019): 33–52, <https://doi.org/10.1017/S1468109918000403>; Andi Sugirman et al., "Balancing Individual Political Rights and Institutional Integrity in an Islamic Constitutional Perspective on Party Switching in Indonesia," *El-Mashlahah* 15, no. 2 (2025): 369–92, <https://doi.org/10.23971/el-mashlahah.v15i2.9995>.

fills that gap by examining Law No. 3 of 2024 concerning Villages as a concrete example of legislation enacted during the 2024 post-election transitional period.

Based on this gap, the research question of this article is: how does the enactment of Law No. 3 of 2024 concerning Villages during the post-2024 election transitional period reflect the problem of democratic legitimacy in Indonesia's legislative process, and how should it be assessed through the perspectives of political law and *siyāsa dustūriyya*? This article argues that, while legislation enacted during a lame-duck session may be formally valid under Indonesia's existing constitutional framework, its legitimacy must still be assessed substantively when it concerns strategic laws that affect public policy, democratic accountability, and the long-term structure of political authority. Through this analysis, the article proposes a normative basis for limiting strategic legislation during lame-duck sessions, except in urgent circumstances that require immediate legislative action and are subject to strict public scrutiny.

This study uses normative legal research with a case-study orientation. The primary object of analysis is Law No. 3 of 2024 concerning Villages, particularly the provision that extends the term of office of village heads to eight years and allows them to serve a maximum of two terms. This case was selected because the bill was passed during the post-2024 election transitional period, when the incumbent DPR retained legislative authority, even though newly elected representatives had already received a new electoral mandate.

The legal materials used in this study consist of primary and secondary legal materials. The primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law No. 12 of 2011 concerning the Formation of Laws and Regulations as amended by Law No. 13 of 2022, Law No. 17 of 2014 concerning the MPR, DPR, DPD, and DPRD as amended, Law No. 6 of 2014 concerning Villages, Law No. 3 of 2024 on the Second Amendment to Law No. 6 of 2014 concerning Villages, General Election Commission Regulation No. 3 of 2022 concerning the stages and schedule of the 2024 General Election, official DPR documents concerning the legislative process, and relevant Constitutional Court decisions on law-making procedures and public

participation.<sup>18</sup> The secondary legal materials consist of books, journal articles, previous studies, and scholarly literature on lame-duck sessions, political law, democratic legitimacy, and *siyāsa dustūriyya*.

The legal materials were collected through library research and documentary study. The analysis was conducted both qualitatively and prescriptively in four stages. First, this study reconstructs the chronology of the 2024 post-election transition and the legislative process of Law No. 3 of 2024. Second, it examines the legal basis of the DPR's authority to legislate during the transitional period. Third, it evaluates the enactment of Law No. 3 of 2024 through political law by assessing formal legality, political interest, urgency, public participation, and democratic legitimacy. Fourth, it assesses the same legislative practice through *siyāsa dustūriyya* by applying the principles of *maṣlaḥah*, *al-‘adl*, *amānah*, and *shūrā*. This analytical framework is used to formulate normative limits on the DPR's legislative function during lame-duck sessions.

### **Lame-Duck Legislation in Indonesia: Between Constitutional Authority and Democratic Legitimacy**

Indonesia is the third-largest democracy in the world and held general elections on 14 February 2024. These elections are believed to be the largest democratic event in the world, held on a single day. According to data from the General Elections Commission (KPU), the total number of registered voters (DPT) for the elections was 204,807,222. The elections were also participated in by 23 political parties, including 17 national parties and 6 local parties.<sup>19</sup> Based on the KPU's national vote tally, the Indonesian Democratic Party of Struggle (PDI-P) secured 110 seats (18.97%) across 84 electoral districts (*dapil*) in the House of Representatives (DPR). Meanwhile, the Democratic Party secured 44 seats (7.56%) after receiving 11,283,160 valid votes from the 84 electoral

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<sup>18</sup> Rahmat Muhajir Nugroho et al., "Judicial Activism vs. Electoral Justice: The Overlooked Purcell Principle in Indonesia," *Jurnal Hukum Ius Quia Iustum* 32, no. 2 (2025): 361–86, <https://doi.org/10.20885/iustum.vol32.iss2.art5>; Zaka Firma Aditya and Sholahuddin Al-Fatih, "Indonesian Constitutional Rights: Expressing and Purposing Opinions on the Internet," *The International Journal of Human Rights* 25, no. 9 (2021): 1395–419, <https://doi.org/10.1080/13642987.2020.1826450>.

<sup>19</sup> KPU RI, "DPT Pemilu Dalam Negeri Dan Luar Negeri 204,8 Juta Pemilih," KPU RI, July 2, 2024, <https://www.kpu.go.id/berita/>; Aditya and Al-Fatih, "Indonesian Constitutional Rights."

districts. The total number of seats in the DPR for the 2019-2024 period is 580.<sup>20</sup>

**Table 1.** Composition of DPR Seats Period 2024-2029<sup>21</sup>

| Political Party | Seats      |
|-----------------|------------|
| PDI-P           | 110        |
| Golkar          | 102        |
| Gerindra        | 86         |
| PKB             | 68         |
| Nasdem          | 69         |
| PKS             | 53         |
| PAN             | 48         |
| Demokrat        | 44         |
| <b>Total</b>    | <b>580</b> |

Source: KPU RI Decision No. 1205 of 2024.

Following the general election on February 14, 2024, in which 580 candidates were elected to House seats, the composition of the Indonesian House of Representatives has recently changed. Half of the members of the House of Representatives have retired or were not re-elected. The transition period between the election of officials and the swearing-in of newly elected officials gives rise to certain behaviors related to policy and the exercise of authority, which is referred to as the lame-duck session.

A country that places law as supreme has the logical consequence that all administration of power in the country, especially governmental power, must be based on law.<sup>22</sup> One characteristic of a modern constitutional state is the use of legislation as a means of governing, in both civil-law and common-law traditions. Without legislative mechanisms, the legitimacy of all government

<sup>20</sup> Vitorio Mantalean and Icha Rastika, "Daftar Perolehan Kursi DPR RI 2024-2029: PDI-P Terbanyak, Demokrat Juru Kunci," Kompas.Com, March 22, 2024, <https://nasional.kompas.com/read/2024/03/22/15401341/daftar-perolehan-kursi-dpr-ri-2024-2029-pdi-p-terbanyak-demokrat-juru-kunci>; Bagus Hermanto et al., "Legislative Planning and Quality of Legislation: The Case of Prolegnas in Indonesia Lawmaking," *The Journal of Legislative Studies* 32, no. 2 (2026): 301-29, <https://doi.org/10.1080/13572334.2025.2492459>.

<sup>21</sup> KPU RI, "KPU RI Tetapkan Perlehan Kursi Parpol Dan Calon Terpilih DPRD-DPR Periode 2019-2024," KPU Republik Indonesia, 2019, <https://www.kpu.go.id/berita/>

<sup>22</sup> Aminuddin Ilmar, *Hukum Tata Pemerintahan* (Prenada Media, 2016); Bagrat Tunyan and Klaus H. Goetz, "Parliaments and Evidence-based Lawmaking in the Western Balkans: A Comparative Analysis of Parliamentary Rules, Procedures and Practice," *SIGMA Papers*, ahead of print, March 14, 2024, <https://doi.org/10.1787/e95bebb9-en>.

actions can be called into question.<sup>23</sup> The main idea of a more substantive rule of law is the ideal of a system and method of law-making (legislation) that truly prioritizes justice and the welfare of the people. Laws passed during the "lame-duck" sessions appeared to be much more productive than those passed during regular sessions, but they did not adhere to the law's requirement that each item be examined for a maximum of three sessions.<sup>24</sup> Do not allow a situation in which a country has laws that are not beneficial to its people. Or worse, laws that the people do not accept because they do not correspond with their aspirations. Many countries around the world idealize themselves as democratic rule-of-law states oriented toward providing welfare for their citizens, yet the laws they enact often contradict that very purpose.<sup>25</sup> One interesting thing about political parties is that one of the powers that elected cadres who become members of parliament will have is to deal with legislation. In her writing, Anita Marwing touches on a closely related issue: political corruption. That is, the real outcome of this lame-duck session is political corruption. One of the causes of political corruption is the high cost of politics, which includes funding for nominated political party candidates and campaign financing; there is an element of compulsion for elected candidates to repay the capital spent during political contestation.<sup>26</sup>

The conversion of a Bill (RUU) into law requires a complex process or mechanism for enacting legislation. The process of developing laws and regulations is governed by: *First*, Law Number 12 of 2011 concerning the Formation of Legislation Jo. Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation (P3 Law); *Second*, Law Number 17 of 2014 concerning the People's Consultative

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<sup>23</sup> Danang Risdiarto, "Kebijakan Dan Strategi Pembangunan Hukum Dalam Memperkuat Ketahanan Nasional," *Jurnal Penelitian Hukum De Jure* 17, no. 2 (2017): 177–93, <https://doi.org/10.30641/dejure.2017.V17.177-193>; Paulus Titaley et al., "Conflict of Authority in Election Disputes: The Shift from the Constitutional Court to Party Courts in Indonesia," *Khazanah Hukum* 7, no. 3 (2025): 434–53, <https://doi.org/10.15575/kh.v7i3.51367>.

<sup>24</sup> Fitra Arsil et al., "Law Making Activities during Lame Duck Sessions in Indonesia (1997–2020)," *Parliamentary Affairs* 76, no. 2 (2023): 421–42, <https://doi.org/10.1093/pa/gsab058>.

<sup>25</sup> Siti Mariyam et al., "The Making of Law in Indonesia: A Criticism and Evaluation of The Practise of Legislative Function in The House of Representatives," *Law Reform* 16, no. 2 (2020): 215–23, <https://doi.org/10.14710/lr.v16i2.33773>.

<sup>26</sup> Anita Marwing, "Indonesian Political Kleptocracy and Oligarchy: A Critical Review from the Perspective of Islamic Law," *Justicia Islamica : Jurnal Hukum Dan Sosial*, ahead of print, April 16, 2021, <https://doi.org/10.21154/justicia.v18i1.2352>.

Assembly, the House of Representatives, the Regional Representatives Council, and the Regional Representatives Council Jo. Law Number 13 of 2019 on the Third Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representatives Council, and the Regional Representatives Council (MD3 Law); *Third*, Presidential Regulation Number 87 of 2014 concerning the Implementation Regulation of Law Number 12 of 2011 concerning the Establishment of Legislation, as amended by Presidential Regulation Number 76 of 2021 concerning the Amendment to Presidential Regulation Number 87 of 2014 concerning the Implementation Regulation of Law Number 12 of 2011 concerning the Establishment of Legislation; *Fourth*, House of Representatives Regulation Number 1 of 2014 concerning Rules of Procedure (House Regulation 1/2014); and *Fifth*, House Regulation No. 2 of 2016 concerning the Procedures for Preparing the National Legislation Program.

The process of lawmaking is regulated by Law Number 13 of 2022 concerning the Formation of Legislation (P3 Law). According to the UU P3, the law-making process consists of 5 (five) stages, namely: 1) Planning (Articles 16–42 of the UU P3); 2) Drafting (Articles 43–64 of the UU P3); 3) Discussion (Articles 65–71 of the UU P3); 4) Approval (Articles 72–74 of the UU P3); 5) Enactment (Articles 81–87 of the UU P3).

Over-regulation that results in overlapping laws is the problem that gave rise to Law No. 13 of 2022. Through this second amendment to the P3 Law, Indonesia's legislative process introduced the “Omnibus” method. Broadly speaking, the omnibus method can be described as a piece of legislation that amends and/or revokes several provisions of laws and regulations across different sectors, consolidating them into 1 (one piece of legislation. Simply put, the omnibus method is closely related to efforts to simplify regulations within the framework of Uniform Law and Regulation (regulatory simplification).

Since 2011, the P3 Law, as one of the most important legal foundations and guidelines for lawmaking, has undergone several changes. These changes were not without reason, as the previous law was considered irrelevant to the current legal situation, necessitating the incorporation of new principles into the lawmaking process. In Indonesia, there is an example of a law passed during a lame-duck session that caused quite a stir in the national media, namely

when the House of Representatives held a plenary session to pass Law No. 17 of 2014 concerning the procedures for electing the leadership of the House of Representatives and the People's Consultative Assembly (MPR). Towards the end of the 2009-2014 term, the DPR changed the system for electing the leadership of the DPR and MPR, which was perceived as biased because certain parties felt disadvantaged by the change, while it benefited those who supported the enactment of the draft law.<sup>27</sup>

In every legislative formulation, the Indonesian House of Representatives will refer to the national legislation program (*Prolegnas*). In its formulation, the national legislation program (*Prolegnas*) is compiled by the DPR and set out in order of priority for the discussion of bills in each fiscal year during a DPR membership period. Targeted legislative planning aims to ensure consistent policy development that represents the community. During the 2020-2024 period, there were 263 *Prolegnas*, with 47 *Prolegnas* Priorities agreed upon. The Government, the DPR, and the Regional Representatives Council (DPD) can initiate proposals for draft laws. The 47 *Prolegnas* Priorities are listed below and will be registered as draft laws before being enacted. If the lame-duck period is not managed properly, it may hurt the administration of the state; some of the negative implications that could arise include: (1) Legal uncertainty and policy reversals for interested parties, the concerns of lame-duck officials regarding the implications of strategic decisions made during their term of office have the potential to hamper the running of the state<sup>28</sup> and (2) The lack of legitimacy of old officials in making decisions, especially strategic decisions, and the potential reduction of democratic values in state administration due to low public participation.<sup>29</sup> Regarding the implementation of elections during the transition period of government, Samuel P. Huntington

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<sup>27</sup> Ali Marwan Hsb, "Kegentingan Yang Memaksa Dalam Pembentukan Peraturan Pemerintah Pengganti Undang-Undang," *Jurnal Legislasi Indonesia* 14, no. 01 (2022): 115, <https://doi.org/10.54629/jli.v17i1.515>; Rif'ah Roihanah et al., "Sharia, State, and Family: Towards a Responsive Legislative Design for Household Resilience in Indonesia," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 60, no. 1 (2026): 45-61, <https://doi.org/10.14421/ajish.v60i1.1669>.

<sup>28</sup> M. Zainor Ridho, "Politik Konstitusi: Implikasi Politik Terhadap Pemilihan Presiden Dan Wakil Presiden Pasca Putusan Undang-Undang Nomor 42 Tahun 2008 Oleh Mahkamah Konstitusi," *Al Ahkam* 14, no. 1 (2018): 90-103.

<sup>29</sup> Helmi Chandra SY and Shelvin Putri Irawan, "Perluasan Makna Partisipasi Masyarakat Dalam Pembentukan Undang-Undang Pasca Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 19, no. 4 (2022): 766-93, <https://doi.org/10.31078/jk1942>.

stated that elections held during the transition period can be interpreted as follows:<sup>30</sup> (1) A sign of the end of a non-democratic regime, as well as a sign of the return of democracy and the rebuilding of social cohesion that had been disrupted by the tension or conflict between various social groups in society; (2) The inauguration of a new government in a democratic regime that replaces the authoritarian government that has fallen; (3) The establishment and consolidation of a democratic system, namely the effort to maintain the status quo regime to maintain power.

**Table 2.** DPR RI Priority Prolegnas Year 2020-2024<sup>31</sup>

| No. | Bill/Regulatory Sector                        | Stage            | Proposer | Updated     |
|-----|-----------------------------------------------|------------------|----------|-------------|
| 1   | Broadcasting Law No. 32/2002                  | Drafting         | DPR      | 29 Jun 2024 |
| 2   | State Civil Apparatus Law No. 5/2014          | <b>Completed</b> | DPR      | 3 Oct 2023  |
| 3   | Defense                                       | Registered       | DPR      | 10 Jul 2024 |
| 4   | Criminal Procedure Law No. 8/1981             | Registered       | DPR      | 10 Jul 2024 |
| 5   | Natural Resources Conservation Law No. 5/1990 | Discussion       | DPR      | 13 Jun 2024 |
| 6   | Shipping Law No. 17/2008                      | Drafting         | DPR      | 20 May 2024 |
| 7   | State-Owned Enterprises Law No. 19/2003       | Harmonization    | DPR      | 2 Oct 2023  |
| 8   | Consumer Protection Law No. 8/1999            | Drafting         | DPR      | 10 Oct 2024 |
| 9   | New and Renewable Energy                      | Discussion       | DPR      | 21 Sep 2022 |
| 10  | Hajj and Umrah Law No. 8/2019                 | Drafting         | DPR      | 10 Jul 2024 |
| 11  | Drug and Food Control                         | Harmonization    | DPR      | 28 Mar 2024 |
| 12  | Tourism Law No. 10/2009                       | Harmonization    | DPR      | 22 May 2024 |
| 13  | Prohibition of Alcoholic Beverages            | Drafting         | DPR      | 10 Jul 2024 |
| 14  | Domestic Workers' Protection                  | Proposal         | DPR      | 21 Mar 2023 |
| 15  | MPR, DPR, DPD, and DPRD Law No. 17/2014       | Registered       | DPR      | 10 Jul 2024 |
| 16  | Statistics Law No. 16/1997                    | Drafting         | DPR      | 7 Sep 2023  |

<sup>30</sup> Lemhanas, "Thesis Samuel Huntington Clash of Civilization Salah," LEMHANNAS RI, accessed June 19, 2025, <https://www.lemhannas.go.id/index.php/publikasi/press-release/1279-thesis-samuel-huntington-clash-of-civilization-salah>.

<sup>31</sup> Indonesian House of Representatives Decision No. 10/SPR RI/I/2023-2024 on the National Legislation Program.

|    |                                               |                  |          |             |
|----|-----------------------------------------------|------------------|----------|-------------|
| 17 | Ombudsman Law No. 37/2008                     | Drafting         | DPR      | 3 Oct 2023  |
| 18 | Judicial Commission Law No. 22/2004           | Registered       | DPR      | 10 Jul 2024 |
| 19 | Museums                                       | Drafting         | DPR      | 10 Jul 2024 |
| 20 | Special Region of Jakarta                     | <b>Completed</b> | DPR      | 28 Mar 2024 |
| 21 | Textiles                                      | Registered       | DPR      | 10 Jul 2024 |
| 22 | Hajj Financial Management Law No. 34/2014     | Registered       | DPR      | 10 Jul 2024 |
| 23 | Climate Change Management                     | Registered       | DPR      | 10 Jul 2024 |
| 24 | Strategic Commodities                         | Registered       | DPR      | 27 May 2024 |
| 25 | Advocates Law No. 18/2003                     | Registered       | DPR–Gov. | 10 Jul 2024 |
| 26 | Customary Law                                 | Harmonization    | DPR      | 4 Oct 2020  |
| 27 | Protection of Religious Figures and Symbols   | Registered       | DPR      | 10 Jul 2024 |
| 28 | Maternal and Child Welfare                    | <b>Completed</b> | DPR      | 4 Jun 2024  |
| 29 | Government of Aceh Law No. 11/2006            | Registered       | DPR      | 10 Jul 2024 |
| 30 | Public Services Law No. 25/2009               | Registered       | DPR–DPD  | 10 Jul 2024 |
| 31 | Civil Procedure Law                           | Discussion       | Gov.     | 4 Jul 2024  |
| 32 | Narcotics and Psychotropics                   | Discussion       | Gov.     | 10 Jul 2023 |
| 33 | Electronic Information and Transactions Law   | <b>Completed</b> | Gov.     | 5 Dec 2023  |
| 34 | Industrial Designs Law No. 31/2000            | Discussion       | Gov.     | 10 Jul 2024 |
| 35 | Pancasila Ideology Agency                     | Registered       | Gov.     | 12 May 2020 |
| 36 | Criminal Asset Confiscation                   | Registered       | Gov.     | 10 Jul 2024 |
| 37 | Patents Law No. 13/2016                       | Discussion       | Gov.     | 24 Jun 2024 |
| 38 | National Capital Law No. 3/2022               | <b>Completed</b> | Gov.     | 10 Jul 2024 |
| 39 | Procurement of Goods and Services             | Registered       | Gov.     | 10 Jul 2024 |
| 40 | National Long-Term Development Plan 2025–2045 | Discussion       | Gov.     | 13 Mar 2024 |
| 41 | Appraisers                                    | Registered       | Gov.     | 10 Jul 2024 |
| 42 | National Airspace Management                  | Discussion       | Gov.     | 10 Jul 2024 |
| 43 | Cryptography                                  | Registered       | Gov.     | 10 Jul 2024 |
| 44 | Private International Law                     | Registered       | Gov.     | 10 Jul 2024 |
| 45 | Maritime Affairs Law No. 32/2014              | Discussion       | DPD      | 20 Jun 2024 |
| 46 | Archipelagic Regions                          | Discussion       | DPD      | 10 Jul 2024 |

|    |                    |            |     |            |
|----|--------------------|------------|-----|------------|
| 47 | Regional Languages | Discussion | DPD | 3 Apr 2024 |
|----|--------------------|------------|-----|------------|

Source: DPR RI National Legislation Program (Prolegnas) 2020–2024 database, accessed 12 April 2025.

The 2020–2024 National Legislation Program shows that the DPR RI continued to have an active legislative role during the post-2024 election transitional period. Although the Prolegnas comprises 263 bills and 47 priority bills, the central issue in this study is not the number of bills included in the legislative program, but how the outgoing DPR used its remaining authority following the election and before the inauguration of newly elected members. During this period, the DPR continued to discuss and approve strategic bills, including the Bill on the Special Province of Jakarta and the Bill on the Second Amendment to Law No. 6 of 2014 concerning Villages. This legislative activity demonstrates that the lame-duck period in Indonesia is not merely an administrative interval but a politically significant period during which the incumbent legislature may still enact laws with long-term public consequences.

The enactment of Law No. 3 of 2024 concerning Villages is particularly relevant because it affects the structure of local political authority by extending the term of office of village heads to 8 years and allowing them to serve up to 2 terms. This substance distinguishes the Village Law amendment from ordinary technical legislation. It is specifically concerned with the circulation of local leadership, the accountability of village governance, and the relationship between political representation and public interest. From a political-legal perspective, the problem lies in the gap between formal legality and democratic legitimacy: the outgoing DPR formally retained its constitutional authority to legislate, yet its representative mandate had already weakened after the people had voted for a new legislative composition.<sup>32</sup>

This situation also raises concerns about the political motivations for legislation enacted toward the end of a parliamentary term. Strategic bills approved during a lame-duck session may be interpreted as serving short-term political calculations, consolidating political support, or securing institutional interests before the new DPR assumes office. Such perceptions

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<sup>32</sup> BPK RI, “UU No. 2 Tahun 2024,” BPK RI, accessed May 13, 2025, <https://peraturan.bpk.go.id/Details/283616/uu-no-2-tahun-2024>.

become stronger when the law fails to address an urgent emergency and has long-term ramifications for public governance. Therefore, the case of Law No. 3 of 2024 should be examined not only as a product of formal legislative procedure but also as an example of how political interests may shape the legislative process during a period of declining democratic accountability.

**Table 3.** Laws Passed During Lame-Duck Session

| Bill to be passed                                                     | Products Law                                                                       | Date Passed by the DPR RI |
|-----------------------------------------------------------------------|------------------------------------------------------------------------------------|---------------------------|
| Bill on the Second Amendment to Law No. 6 of 2014 concerning Villages | Law No. 3 of 2024 on the Second Amendment to Law No. 6 of 2014 concerning Villages | 28 March 2024             |
| Bill on the Province of the Special Region of Jakarta                 | Law No. 2 of 2024 concerning the Special Region of Jakarta Province                | 28 March 2024             |

Source: Processed by the author based on DPR RI official plenary-session reports and the BPK RI legislation database, 2024.

Under the Village Law, extending the term of office of the village head will result in losses due to the absence of leadership regeneration. According to A Fahrur Rozi, by approving the changes to Article 39, the DPR has allowed two political mistakes to occur. First, reconciling by allowing conservatism and blind political obedience of the village community to continue. Second, it limits or delays the circulation of leadership and government evaluations. This means that if the community is unsatisfied with the village head, it can replace the village head after 8 (eight) years. A long term in power does not guarantee that the village's political stability will improve. According to the author, before extending the village head's term of office, it is better to improve village governance. If oligarchic corruption persists, no amount of time the village head serves will be sufficient to address the existing issues.

With longer tenures in office, it is feared that village heads will be more difficult for the community to dismiss, even if they commit violations or fail to perform their duties properly. This allows village heads to commit acts of corruption or abuse of power without fear of repercussions. Determining the tenure of village heads nationwide through legislation is considered a form of central government meddling in regional authority. Intervention is the act of interfering.

**Table 4.** Accumulation of Prolegnas Year 2020-2024<sup>33</sup>

| Legislative Stage      | Number of Bills | Share       |
|------------------------|-----------------|-------------|
| Registered             | 18              | 38.3%       |
| Drafting               | 8               | 17.0%       |
| Harmonization          | 4               | 8.5%        |
| Proposal Determination | 1               | 2.1%        |
| Discussion             | 11              | 23.4%       |
| Decision               | 0               | 0.0%        |
| Completed              | 5               | 10.6%       |
| <b>Total</b>           | <b>47</b>       | <b>100%</b> |

Source: Author's calculation based on the DPR RI National Legislation Program (Prolegnas) 2020-2024 database, accessed 12 April 2025.

Based on the analysis of the laws and regulations above, it can be concluded that, to date, the laws and regulations in Indonesia have not explicitly regulated the mechanism of lawmaking in the post-election transition period, also known as the lame-duck session. The regulatory mechanism in question concerns legislative restrictions during the lame-duck session. This is evidenced by the Bill's passage into law during the lame-duck session, which is considered too urgent to pass during the transition period. And also many bills or bills that have been proposed and registered during the lame-duck session, members of the DPR seem to be chasing to pass or pass the bill into a law quickly, this can be proven by looking at the date of proposal and registration of the bill, after five years in office, members of the DPR RI seem to be active in exercising their authority, especially in the legislative function of forming laws and regulations. The laws passed by the DPR during the lame-duck session benefit DPR members and strengthen their political base in the future.

The DPR should make exceptions to legislative restrictions only for bills related to the state budget or state policies in emergency conditions. The absence of legislative restrictions during the lame-duck session has the potential to give the lame-duck session the freedom to override the prudent attitude in making decisions, so that the laws that are passed are not

<sup>33</sup> Indonesian House of Representatives Decision No. 10/SPR RI/I/2023-2024 on the National Legislation Program.

sustainable and do not have a direction that is in line with the needs of the community and the mandate of the constitution.

### **Legislative Restraint in *Siyāsa dustūriyya*: Limits of Authority during Political Transition**

After obtaining the results of the discussion of the first issue, the author is also interested in examining the lame-duck session from the perspective of Islamic law, specifically by studying *siyāsa dustūriyya*. In Islamic constitutional law, the legislative domain falls under the rubric of *fiqh siyāsa dusturiya*. *Siyāsa dusturiya* is part of *fiqh siyāsa*, which addresses issues of legislation to ensure it remains in accordance with sharia law.<sup>34</sup> The word *dustury* comes from Persian and refers to a person with authority in both politics and religion. After being absorbed into Arabic, the word *dustur* came to mean basic principles or foundations; nevertheless, the term also refers to a collection of rules that govern the foundations and cooperative relationships among members of society in a country, both written and unwritten.<sup>35</sup> *Dustur*, like the English word ‘constitution’ or the Indonesian equivalent *Undang-Undang Dasar*, means that lower-level legislation must not contradict the constitution.<sup>36</sup> Constitutional politics is a branch of political jurisprudence that addresses issues of state legislation. This section discusses, among other things, constitutional concepts (the constitution and the history of legislation's emergence in a country), legislation (how laws are formulated), and democratic and consultative institutions, which are important pillars of such legislation.<sup>37</sup>

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<sup>34</sup> Kamsi Kamsi, “Politics of Islamic Law in Indonesia: Indonesianization of Islamic Law,” *Asy-Syir’ah: Jurnal Ilmu Syari’ah Dan Hukum* 52, no. 1 (2018): 1–29, <https://doi.org/10.14421/ajish.v52i1.304>; Imam Yahya and Sahidin Sahidin, “Relation of Religion and Practical Politics: Contextual Adoption of Constitutional Islamic Jurisprudence for Muslim Clerics in Indonesia,” *HTS Teologiese Studies / Theological Studies* 78, no. 1 (2022): 1, <https://doi.org/10.4102/hts.v78i1.7405>.

<sup>35</sup> Imam Amrusi Jailani, *Hukum Tata Negara Islam* (IAIN Press, 2011); Umarwan Sutopo et al., *Fikih Siyasah: Dinamika Politik Islam Klasik Dan Kontemporer* (Q Media, 2026).

<sup>36</sup> A. Djazuli, *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis* (Kencana, 2017); Cekli Setya Pratiwi, “Threat to Indonesia’s Constitutional Court Independence Posed by Religious Populist Movements and Its Implication Towards Human Rights,” *Constitutional Review* 10, no. 2 (2024): 307–39, <https://doi.org/10.31078/consrev1022>.

<sup>37</sup> Saifuddin Saifuddin, “Fiqh Siyasah: Antara Das Sollen Dan Das Sein,” *In Right: Jurnal Agama Dan Hak Azazi Manusia* 10, no. 1 (2021): 1–35, <https://doi.org/10.14421/inright.v10i1.2504>; Muhammad Siddiq Armia, “Implementing Islamic Constitutionalism: How Islamic Is Indonesia Constitution?,” *Al-Adalah* 15, no. 2 (2018): 437–50, <https://doi.org/10.24042/adalah.v15i2.3389>.

In Islamic constitutional law, which serves as the benchmark for lawmaking and the main source of *fiqh siyāṣah dusturiyah*, the Al-qur'an al-karīm and Hadith, especially those related to imamah, are the primary sources. In accordance with the provisions of the constitution, laws and regulations issued by the authorities must be in accordance with the Qur'an and Hadith, the main sources of *siyāṣah dusturiyah*.<sup>38</sup> The authority to formulate legislation or the legislative function is vested in the legislative body, which in Indonesia is called the DPR RI. The authority to formulate legislation, or the legislative function, is a heavy burden and a great responsibility, as it concerns the most fundamental aspects of the concept of a constitutional state. As legislators, their responsibilities are substantial: to translate every need of the community into relevant legislation and to always be ready to adapt to changes that occur from time to time.<sup>39</sup>

The author will analyze one of the two laws used as examples, namely Law Number 3 of 2024 concerning Villages. At the very least, this will provide an overview showing that, from the perspective of *siyāṣa dustūriyya*, the enactment of legislation during the lame-duck session must be examined in great detail, especially since Islamic law prioritizes mercy towards all of creation. This brings a very positive spirit to the law, of course. Law Number 3 of 2024 was passed during the lame-duck session, amending the Second Amendment to Law Number 6 of 2014 on Villages, Article 39, which states that the Village Head holds office for 8 (eight) years from the date of inauguration. The Village Head can serve a maximum of 2 (two) consecutive or non-consecutive terms of office. The ratification of the law is included in the discussion of *siyāṣa dustūriyya* because the section examines legislation, the determination of law in the legislature, the judiciary, and judicial power, and the implementation of government by the executive power. In analyzing Law Number 3 of 2024, Article 39, regarding the position of village head, the author

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<sup>38</sup> Fadhila Restyana Larasati and Mochammad Bakri, "Implementasi Surat Edaran Mahkamah Agung Nomor 4 Tahun 2016 Pada Putusan Hakim Dalam Pemberian Perlindungan Hukum Bagi Pembeli Beritikad Baik," *Jurnal Konstitusi* 15, no. 4 (2019): 881–902, <https://doi.org/10.31078/jk15410>.

<sup>39</sup> Roy Marthen Moonti et al., "Living Constitution in Islamic Constitutional Law: A Comparative Study of Gorontalo Customary Constitutional Law in Majority and Minority Enclave Contexts," *Jurnal Ilmiah Al-Syir'ah* 23, no. 2 (2025): 339–71, <https://doi.org/10.30984/jis.v23i2.3566>; Pratiwi, "Threat to Indonesia's Constitutional Court Independence Posed by Religious Populist Movements and Its Implication Towards Human Rights."

draws on studies and concepts related to *ahl al-ḥall wa al-‘aqd* and *Imamah* in Islamic Leadership, as well as discussions of *siyāsa dustūriyya*. In *fiqh siyāsa dustūriyya*, there are theories or fields of *Siyasah* that discuss the issue of *ahl al-ḥall wa al-‘aqd*, or referred to as representatives of the people who are in charge of making laws in a country, such as the Constitution, Laws, Implementing Regulations, Regional Regulations, and so on. There is also an opinion that *siyāsa dustūriyya* comprises 4 parts, one of which is the Constitution. In the constitution, the sources and rules of legislation in a country are discussed, including material, historical, and statutory sources, as well as interpretations.

Law Number 3 of 2024 was inaugurated on April 25, 2024, by the DPR; in Islam, this institution is called *ahl al-ḥall wa al-‘aqd*. In the end, the extension of the term of office of the Village Head from 6 years to 8 years, and can serve 2 consecutive terms) Two periods are in the special category because the village is the spearhead of the Republic of Indonesia's government. So if the village head is re-elected, then he serves 16 years. In *siyāsa dustūriyya ahl al-ḥall wa al-‘aqd*, there is a council or institution authorized to elect, appoint, and dismiss the Imam.

In Indonesia's legislature, the *ahl al-ḥall wa al-‘aqd* is known as the DPR, or the House of Representatives, which makes and passes laws. Islamic government recognizes parliament as *ahl al-ḥall wa al-‘aqd*. It is an assembly that represents the aspirations of Muslims and serves as a forum for consideration by the ruling government (Caliph). In addition, the parliament served as a forum where the Caliph sought input on Muslim affairs. They represent the people in conducting *muhasabah* (control and correction) of the officials (*hukkam*). Islam has no time limit on the tenure of leadership. As a result, the village head's term of office becomes 8 years, with the option of re-election for two terms, bringing the total to 16 years. According to *fiqh siyāsa dustūriyya*, it is allowed as long as the village head in office is capable of carrying out his duties properly and in accordance with Islamic law. However, if a village head uses his position arbitrarily and is not in accordance with Islamic law, he must be replaced as soon as possible for the benefit of the people. This is of great concern to the author because there have been many cases of corruption committed by village heads. Corruption in the village

sector was recorded to have cost the state around IDR 162.2 billion in 2023. The number of corruption cases at the village level has increased rapidly since 2019. The relatively long tenure of the village head is feared to harm the people.

The House of Representatives (DPR) and the President, as the highest government bodies in Indonesia's constitutional system, are jointly responsible for formulating laws and deciding the state budget. Making laws entails determining the political policies implemented by the President (the Government). The legislative function is one of the main duties of the people's representatives. The representatives of the people in parliament are entrusted with the task of making laws and regulations that govern the relationships between individuals, between individuals and society, between individuals and the state, and between the state and other states.

In the study of *fiqh siyasa*, legislation or legislative power is also referred to as *al-sulṭah al-tashrī'iyya*, the power of the Islamic government to enact laws. In reality, no one has the right to impose laws to be enforced upon the Muslim community in accordance with the message of the Qur'an, Surah al-An'am/6:57, which serves as the basis for such legislation, namely: Say (O Prophet Muhammad), "I am upon clear evidence (the truth, namely the Qur'an) from my Lord, while you deny it. It is not within my authority (to bring down punishment) that you demand to be hastened. Establishing the law is the sole right of Allah. He explains the truth, and He is the best of judges."

The above verse contains legal information that the establishment of law is the sole right of Allah SWT. From an interpretive perspective, this verse is understood in two contexts: first, legal provisions in the context of giving rewards/recompense (*ṣawāb*) and punishment (*'iqāb*); second, legal provisions in the context of distinguishing between what is right and what is wrong.<sup>40</sup> In this context, al-Maududi argues that power belongs only to Allah SWT; there is no judge except Allah SWT; there is no law except His law; and there is no qanun except His qanun.<sup>41</sup> Even so, within certain limits, a ruler or judge also

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<sup>40</sup> Abi Al-Hasan Al-Mawardi, *Al-Nukat Wa Al-'Uyun Tafsir Al-Mawardi*, Juz 2 (Dar Al-Kutb Al-'Ilmiyyah, 2012); Mukhsin Aseri et al., "Negotiating Authority and Knowledge: Religion, Science, and Politics in the Fatwa Transformations of the Indonesian Ulema Council," *Journal of Islamic Law* 6, no. 2 (2025): 286–316, <https://doi.org/10.24260/jil.v6i2.4702>.

<sup>41</sup> Abu Al-A'la Al-Maududi, *Nizam Al-Hayah Fi al-Islam* (Mu'assasah AlRisalah, 1983), 23; Ali Murtadho Emzaed et al., "Islamic Law Legislation in Indonesia: Anomalies of the Relationship between Political

has the authority to establish and formulate laws for matters not explicitly addressed in the Quran and Hadith, or for issues that remain ambiguous, provided that such laws do not contradict the principles of Islamic law. This is the limit of authority for those granted the right to make laws, especially the legislative power or *sulṭah al-tashrī'iyya*. In this context, the term legislative power or *sulṭah al-tashrī'iyya* refers to the ability of the Islamic government to make laws that will be carried out by ahl ḥalli wa 'aqli.

Meanwhile, citizens or the community carry out the process of consensus (*shūrā*) or public consultation in accordance with the rules established in Islamic law, as revealed by Allah SWT. Al-Mawardi was the first scholar to introduce the concept of *imamah (shūrā)* as a form of replacement for the caliphate, in which *shūrā (ahl al-ḥall wa al-'aql)* has an important position in the government of the nation.<sup>42</sup> This principle has significant implications for the DPR's legislative function. Although the DPR is granted the authority to enact laws, from a constitutional-politics perspective, this authority is not absolute. Legislative power is a mandate that must be used to realize justice (*al-'adl*), the public interest (*maṣlaḥah*), and deliberation (*shūrā*). Therefore, every piece of legislation must be evaluated not only based on its compliance with constitutional procedures, but also on the extent to which its drafting process reflects these values.

The formation of Islamic law consists of three main components: the government, which has the authority to determine which laws apply in Islamic society. The second component is the Islamic community, which will implement the law, and the third component is the content of the regulations or rules. The rules or laws must be implemented, and their substance must adhere to the basic principles of Islamic law.<sup>43</sup> In other words, the government or certain parties that have been given the authority to carry out *siyāsa shar'iyya* obligations in their position as holders of *sulṭah tashrī'iyya* authority

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Configuration and Zakat Legal Product during the Reform Era," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (2023): 97–112, <https://doi.org/10.24090/mnh.v17i1.7815>.

<sup>42</sup> Imam al-Mawardi, *Al-Ahkam Al-Sulṭaniyah* (Qisti Press, 2017); Iskandar A. Gani et al., "The Constitutional Court's Protection and Fulfilment of the Citizens' Rights: Constitutional and Islamic Law Perspectives," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (2024): 317–38, <https://doi.org/10.22373/sjhk.v8i1.22215>.

<sup>43</sup> Kun Budianto, "Kelembagaan Politik Islam: Konsep Konstitusi, Legislasi, Demokrasi, Ummah Dan Shura," *Jurnal Studi Dan Politik* 1, no. 2 (2017): 159; Lukman Santoso, *Negara Hukum Dan Demokrasi Di Indonesia* (Arti Bumi Intaran, 2024).

to create laws that will be enforced in Islamic society for the benefit of Muslims, to realize social justice, and not to impose burdens. This is in line with the spirit of Islamic teachings. In Indonesian law, the People's Representative Council, known in Islamic language as *the ahlul hall wal 'aqd* (People of the Deliberative Assembly), represents the principle of *shūrā*. This deliberative council was first utilized when a head of state was appointed following the death of the Prophet Muhammad. This, of course, is inseparable from the sources of legal determination cited in the words of Allah SWT, QS: 42:38, 3:159, and 2:233.<sup>44</sup>

There are two legislative functions of Parliament in government from a constitutional perspective, namely: First, in matters already stipulated in the texts of the Qur'an and Sunnah, the laws enacted by this institution are divine laws prescribed by Allah SWT in the Qur'an and explained by the Prophet Muhammad SAW through his hadiths. However, this is very rare, as these two primary sources of Islamic teachings address general issues rather than delve into specific details. Meanwhile, societal development is rapid and complex, necessitating precise solutions to anticipate its challenges and, second, creative reasoning (*ijtihad*) on issues not explicitly addressed by the texts. This is where the Parliament, composed of mujtahids and muftis, is essential. In addition to referring to the texts, the *ijtihad* of legislative members must be guided by the principles of *jalb al-maṣāliḥ wa dar' al-mafāsid* (seeking benefit and avoiding harm). Their *ijtihad* must also consider the social context and conditions, so that the enacted regulations align with people's aspirations and do not burden them.

Based on the above discussion, it is clear that the legislative body in the Islamic system of government is an institution with a very broad scope of authority and responsibility.<sup>45</sup> These authorities are not merely interpreted as the right to enact legislation, but also as a constitutional mandate that must be

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<sup>44</sup> Afifuddin Muhajir, *Fiqh Tata Negara Upaya Mendialogkan Sistem Ketatanegaraan Islam* (Perpustakaan Nasional, 2020).

<sup>45</sup> Fajar Kamizi et al., "Konsep Kekuasaan Dalam Siyash Dusturiyah Dan Relevansinya Terhadap Prinsip Kedaulatan Rakyat Di Indonesia," *ELQONUN Jurnal Hukum Ketatanegaraan* 3, no. 1 (2025): 17–24, <https://doi.org/10.19109/elqonun.v3i1.31043>; Haris Maiza Putra and Hisam Ahyani, "Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (2022): 68–90, <https://doi.org/10.30984/jis.v20i1.1861>.

carried out to realize the public interest (*maṣlaḥah al-'ammah*).<sup>46</sup> Therefore, every piece of legislation produced must be oriented toward the interests of society at large and must not be directed toward serving the political interests of specific groups or individuals. This principle becomes increasingly important in the context of a “*lame-duck session*,” when parliament still has the constitutional authority to exercise its legislative functions but, politically, has lost some of its representative legitimacy due to the emergence of a new mandate following general elections.<sup>47</sup> In Indonesian governance, this situation raises concerns when legislative authority during the transitional period is used to enact strategic laws with long-term implications.<sup>48</sup>

This issue becomes even more prominent when considered in light of the tendency for legislation to be drafted to accommodate institutional or specific political interests rather than the public interest.<sup>49</sup> One example often highlighted is the amendment to the MD3 Law, which strengthens the institutional rights of the House of Representatives (DPR), including DPR members' immunity and other powers that could widen the gap between the legislative branch and the public.<sup>50</sup> Such conditions indicate that the exercise of legislative authority during a transitional period cannot be evaluated solely on the basis of compliance with formal procedures; it must also be assessed in light of the objectives of exercising power in a democratic state and the

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<sup>46</sup> Nurradian Nurradian et al., “Legislative Function of the House of Representatives of the Republic of Indonesia in the Transition Period of Lame Duck Session Perspective of Maṣlaḥah Mursalah,” *Al Ijarah Jurnal Pemerintahan dan Politik Islam* 9, no. 1 (2024): 76–76, <https://doi.org/10.29300/imr.v9i1.4912>.

<sup>47</sup> Aprista Ristiyawati et al., “Rethinking legislative term limits: safeguarding democratic renewal in constitutional state of indonesia,” *Diponegoro Law Review* 10, no. 1 (2025): 16–28, <https://doi.org/10.14710/dilrev.10.1.2025.16-28>.

<sup>48</sup> Sri Wahyuni et al., “Analisis Dinamika Legislasi Pada Periode Lame Duck Dalam Kepemimpinan Politik Di Indonesia,” *Jembatan Hukum* 2, no. 4 (2025): 11–25, <https://doi.org/10.62383/jembatan.v2i4.2473>; Dzakya Elvira Hasan, “Problematika fungsi legislasi dewan perwakilan rakyat republik indonesia pada masa transisi antara penetapan hasil pemilu dan pelantikan anggota baru (lame duck session) tahun 2014-2024” (Thesis, UIN Sunan Kalijaga Yogyakarta, 2026), <https://digilib.uin-suka.ac.id/id/eprint/75522/>.

<sup>49</sup> Fadillah Fadillah and Leo Dwi Cahyono, “Dinamika Legislasi Indonesia Dalam Kerangka Demokrasi Deliberatif,” *Jurnal Kajian Sosial Dan Humaniora* 1, no. 4 (2025): 228–41, <https://doi.org/10.63082/jksh.v1i4.28>; Muhammad Hizbullah et al., “Islamic Legal Politics in Post-Reformation Indonesia: Sharia Legislation, Decentralization, and Democratic Dynamics,” *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 12, no. 2 (2025): 641–59, <https://doi.org/10.32505/qadha.v12i2.12837>.

<sup>50</sup> Khudzaifah Dimiyati et al., “Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis,” *Heliyon* 7, no. 8 (2021), <https://doi.org/10.1016/j.heliyon.2021.e07865>.

principles of just governance.<sup>51</sup> Thus, this study argues that the DPR's legislative practices during the lame-duck session remain legally and constitutionally valid because the incumbent DPR members still possess authority under the 1945 Constitution of the Republic of Indonesia and applicable laws and regulations. However, from the perspective of constitutional politics, the main issue is not the existence or absence of such legal authority, but rather the diminished moral and democratic legitimacy of its exercise.

In Islamic constitutional law, authority (*wilayah*) is always inseparable from responsibility (*amānah*); thus, every exercise of power must be directed toward achieving the public interest (*maṣlaḥah*), upholding justice (*al-'adl*), and carried out through the mechanism of consultation (*shūrā*).<sup>52</sup> Therefore, although the enactment of laws during a lame-duck session still meets the requirements of formal legality, this practice can be viewed as contrary to the principles of *maṣlaḥah*, *al-'adl*, and *amānah* if it prioritizes short-term political interests over the interests of society at large. On this basis, Indonesia's legal policy normatively requires restrictions on the DPR's legislative authority during the transition period to safeguard democratic legitimacy and the quality of lawmaking.<sup>53</sup> The case of Law No. 3 of 2024 concerning Villages provides a concrete illustration of how "lame-duck legislation" manifests in Indonesia's constitutional practice. This law was enacted during the transitional period following the 2024 general election, bringing fundamental changes to the village governance system by extending the term of office for village heads from six years to eight years and allowing them to serve a maximum of two terms.<sup>54</sup>

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<sup>51</sup> Yudhi Hertanto and Asep Sapsudin, "Between legality and legitimacy in the procedural justice of the enactment of law no. 17 of 2023 on health," *Pranata Hukum* 21, no. 1 (2026): 1-16, <https://doi.org/10.36448/pranatahukum.v21i1.426>; Novendri Mohamad Nggilu et al., "Indonesia's Constitutional Identity: A Comparative Study of Islamic Constitutionalism," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (2024): 480-500, <https://doi.org/10.18860/j-fsh.v16i2.29851>.

<sup>52</sup> Stijn Cornelis van Huis, *Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba* (2015); Daniel S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions* (University of California Press, 1972).

<sup>53</sup> Dian Furqani Tenrilawa et al., "Re-Bounding Emergency Lawmaking in Indonesia: Constitutional Design, Parliamentary Oversight, Islamic Law Perspectives, and Accountability After COVID-19," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 13, no. 1 (2026): 384-405, <https://doi.org/10.29300/mzn.v13i1.10622>.

<sup>54</sup> Anisa Sulistiya and Nurul Arifin, "Problematisasi Pengesahan Undang-Undang Nomor 3 Tahun 2024 Terhadap Indeks Korupsi Dana Desa," *Sosio Yustisia Jurnal Hukum Dan Perubahan Sosial* 4, no. 2 (2024): 137-58, <https://doi.org/10.15642/sosyus.v4i2.620>; Lukman Santoso, "Construction of Village

From the perspective of formal legality, the 2019–2024 House of Representatives still has the constitutional authority to deliberate on and approve the draft law, as its members' terms have not yet ended. However, from the perspective of democratic legitimacy, the passage of such a strategic law during this period raises a more fundamental issue.<sup>55</sup> This is because the DPR, which is nearing the end of its term, is exercising its legislative authority after the people, through the general election, have already determined a new political configuration. Consequently, although the decision is procedurally valid, its basis of representative legitimacy becomes increasingly weak, especially when the enacted law has long-term consequences for the rotation of village leadership, the distribution of local political power, and the accountability of village governments. Furthermore, Law No. 3 of 2024 not only alters administrative provisions regarding the term of office for village heads but also reshapes the design of political power at the local level. Extending the term of office to sixteen years, if a village head is directly re-elected, has a direct impact on leadership renewal, the dynamics of local political competition, and the mechanisms through which the public evaluates village government officials. Thus, the legal issue is no longer merely about the validity of the lawmaking process, but rather whether a parliament that has entered a "lame-duck" phase still possesses sufficient legitimacy to enact policies whose effects will bind the government and the public far beyond the parliament's own term of office.

When analyzed from the perspective of constitutional politics, the enactment of Law No. 3 of 2024 must be evaluated in light of the principles of *maṣlaḥah*, *al-'adl*, *amānah*, and *shūrā*. The principle of *maṣlaḥah* requires that every piece of legislation provide greater benefits than the harms it causes.<sup>56</sup>

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Autonomy Regulation in Achieving People's Welfare: Critical Review Law Number 6 of 2014 on Villages," *Al-Daulah: Jurnal Hukum dan Perundangan Islam* 11, no. 1 (2021): 47–74, <https://doi.org/10.15642/ad.2021.11.1.47-74>.

<sup>55</sup> Bambang Iswanto and Miftah Faried Hadinatha, "Sharia Constitutionalism: Negotiating State Interests and Islamic Aspirations in Legislating Sharia Economic Law," *AHKAM: Jurnal Ilmu Syariah* 23, no. 1 (2023), <https://doi.org/10.15408/ajis.v23i1.32899>.

<sup>56</sup> Ahmad Yani Anshori and Landy Trisna Abdurrahman, "Constitutional Contestation of the Islamic State Concept in the Indonesian Parliament 1956–1959," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (2024): 278–316, <https://doi.org/10.18860/j-fsh.v16i2.29572>; Ibnu Taimiyah, *Siyasah Syari'iyah*; *Etika Politik Islam* (Risalah Gusti, 1995); Imam Ghazali and Ahmad Zaki Mansur Hammad, *Al Mustasfa Min Ilm Al Usul - Imam Ghazali* (Repro Books Limited, 2017).

Therefore, extending the term of office for village heads can indeed be justified if it is shown to enhance continuity in village development, governance effectiveness, and administrative stability.<sup>57</sup> However, this policy also has the potential to cause harm if it hinders leadership renewal, weakens democratic accountability, prolongs the concentration of political power at the local level, and increases the risk of abuse of authority.<sup>58</sup> If these potential harms outweigh the resulting benefits, then the substance of the law no longer fulfills the principle of *maṣlaḥah* as taught in *siyāsa dustūriyya*.

The principle of *al-'adl* calls for a balance between the need for governmental stability and the people's right to evaluate the leaders they have elected through democratic mechanisms periodically. Justice, according to *siyāsa dustūriyya*, is assessed not only by the equal application of the law, but also by the proportionality with which political power is distributed and limited so that it is not concentrated in the hands of any specific party. Furthermore, the principle of *amānah* requires every state official to exercise their authority carefully and responsibly. Although the House of Representatives (DPR) legally retains the authority to enact laws until the end of its term, the diminished legitimacy of its representatives following an election should provide an ethical basis for limiting that authority, particularly in the enactment of strategic legislation. As for the principle of consultation (*shūrā*), it is not merely understood as the fulfillment of deliberative procedures between the DPR and the Government, but also requires meaningful public participation, transparency in the legislative process, and deliberations genuinely oriented toward the public good.<sup>59</sup> Therefore, the main issue regarding the amendment to the Village Law is not merely whether the enactment of this law is valid, but rather whether its drafting process during the lame-duck session reflected the principles of the public good, justice, trust, and deliberative legitimacy as intended in constitutional politics.

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<sup>57</sup> Fitra Arsil et al., "Law Making Activities during Lame Duck Sessions in Indonesia (1997–2020)," *Parliamentary Affairs* 76, no. 2 (2023): 421–42, <https://doi.org/10.1093/pa/gsab058>.

<sup>58</sup> Muzayyin Ahyar and Ni'matul Huda, "Islamic Constitutionalism: Social Movement and the Framework of the Indonesian Constitution," *Constitutional Review* 7, no. 2 (2021): 2, <https://doi.org/10.31078/consrev726>.

<sup>59</sup> Valerian Thielicke, "Comparing Concepts of Shura – Insights for a Further Deparochialization of Democracy," *Comparative Political Theory* 5, no. 1 (2025): 1–24, <https://doi.org/10.1163/26669773-bja10075>; Abul A'la Al Maududi, *Islamic Law and Constitution* (Islamic Publication, 1977).

Based on this analysis, the restriction of the DPR's legislative authority during the lame-duck session should not be interpreted as the removal of the DPR's constitutional authority, but rather as a constitutional mechanism to safeguard the integrity of democracy and the legitimacy of lawmaking. The DPR, in collaboration with the President, may nevertheless deliberate on and enact urgent draft laws of an administrative nature related to the state budget or necessary to prevent a legal vacuum. Conversely, the deliberation of draft laws that substantially alter the direction of long-term public policy, the structure of political power, or the distribution of state authority should be postponed until the DPR elected in the general election begins its duties, unless there are truly urgent circumstances and their enactment has undergone strict public scrutiny. This model of restriction is more in line with national legal policy and the principles of constitutional politics, as it maintains constitutional continuity while preventing the use of transitional authority to enact laws whose substantive legitimacy remains in question.

Ultimately, such restrictions are necessary because the representative mandate granted by the people to DPR members has substantially diminished following the election, which produced a new political configuration. Although constitutional authority remains in effect until the end of their term, the moral legitimacy to establish strategic policies that bind society in the long term is no longer at the same level as when that mandate was first granted. Therefore, Indonesian legal policy should direct the legislative function during the lame-duck session solely toward resolving administrative matters, the budget, emergencies, or draft laws that do not alter the state's strategic policies. Meanwhile, the enactment of laws with long-term constitutional implications should be the prerogative of a new house of representatives that has received a direct mandate from the people. In this way, the principles of justice (*al-'adl*), the public interest (*maṣlaḥah*), trust (*amānah*), and consultation (*shūrā*) can be realized more effectively, while also preventing the abuse of legislative authority during the transition of government.

## **Conclusion**

This study shows that the practice of lawmaking during lame-duck sessions in Indonesia remains constitutional, as the House of Representatives (DPR) continues to exercise its authority until the end of its term. However, this

formal legality does not automatically result in democratic legitimacy. Once election results have established a new political mandate, the enactment of strategic legislation by a DPR nearing the end of its term can undermine the principles of democratic representation and accountability. From the perspective of constitutional politics, legislative authority is not only measured by procedural validity but must also fulfill the principles of *maṣlaḥah*, *al-‘adl*, *amānah*, and *shūrā*. Therefore, the enactment of Law No. 3 of 2024 concerning Villages during the lame-duck session demonstrates that the main issue lies not merely in the validity of the law’s enactment, but in whether the exercise of that authority aligns with the objectives of public interest, justice, and democratic legitimacy.

The main contribution of this study is to propose a model for the normative limitation of the DPR’s legislative authority during a lame-duck session, integrating legal politics with the principles of *siyāsa dustūriyya*. These restrictions are not intended to eliminate the DPR’s constitutional authority, but rather to ensure that the enactment of laws with strategic and long-term implications is carried out by a parliament that has obtained a new democratic mandate. At the same time, legislation during the transitional period is limited to matters of an administrative, budgetary, or emergency nature, or to prevent a legal vacuum. This model is expected to enhance the quality of constitutional democracy while advancing Islamic constitutional law scholarship on the exercise of legislative authority during periods of governmental transition.

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### **Disclosure Statement**

David Aprizon Putra, as the first author, is responsible for the overall conceptual design of the study, the development of the theoretical framework, the integration of the analysis, and the management of all scientific correspondence throughout the peer-review and revision process. Iskandar contributed primarily to the identification, examination, and verification of research materials, particularly those related to positive law. J.T. Pareke contributed primarily to validating quantitative findings and analyzing the Islamic legal perspective. Sulistriani contributed by cataloging documentary and quantitative data and editing the manuscript. Beny Saputra supported the analysis of the study's formal objects by situating the findings within a socio-legal framework. All authors participated in discussions regarding the research results, critically reviewed the manuscript, and approved the final version. Responsibility for the accuracy, originality, and integrity of this article is shared collectively among all authors.

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