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# The Implementation of Referendum as a Limitation to Autocratic Legalism in the Formation of the Nusantara Capital City Law

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**Abstract**

*This study employs a normative legal research method to analyze the rule of law, legal doctrines, and principles related to the implementation of referendums as limitations on legislative authority. Using a statutory approach, the research examines relevant Indonesian legislation, including the 1945 Constitution, Law Number 12 of 2011 on the Formation of Legislation, and the IKN Law. Primary legal materials, such as key statutes, and secondary legal materials, including academic literature, form the basis of the analysis. The study also incorporates comparative insights from South Korea's Constitutional Court decision on capital relocation. Findings reveal that referendums, while essential to participatory democracy, have been marginalized in Indonesia following the repeal of referendum provisions. Furthermore, the study critiques the legislative process of the IKN Law, highlighting its limited public participation and potential indicators of autocratic legalism. By analyzing compliance with democratic principles and the rule of law, the study identifies critical issues, such as co-optation of legislative power, constitutional violations, and compromised judicial independence, emphasizing the need for robust safeguards to prevent authoritarian tendencies in democratic systems. This research contributes to understanding the intersection of legal frameworks, public participation, and governance in Indonesia and beyond.*

**Keywords:** *autocratic legalism, the formation of law, nusantara capital city, referendum*

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**Introduction**

The relocation of the nation's capital city based on Law Number 3 of 2022 concerning the Capital City of the Archipelago well-known as *Ibu Kota Nusantara* (IKN) has been procedurally established by Law Number 12 of 2011 concerning the Formation of Legislation. However, establishing laws in a fast-track manner with a duration of 42 days raises big questions about the extent to which public aspirations have been absorbed in establishing the Law. That is because, generally, establishing a Law takes a long time as a form of caution to produce quality legal products. An example is Law Number 1 of 2023 concerning the Criminal Code, the draft of which has been submitted since 1970 (Simatupang, 2016). In other words, establishing the Criminal Code Law took 53 years until it was finally officially ratified as a Law.

Article 1, paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that sovereignty resides with the people and is exercised in accordance with the Constitution. This provision implies that all decisions affecting the people must undergo a democratic process. This principle later became the foundation for the establishment of Elections as a form of representative democracy, enabling the election of representatives of the people in both the executive and legislative branches. These two powers are structured separately to create a system of checks and balances (Jang & Shin, 2008). In other words, the existence and political actions of the Government should go through a process of verification and criticism from the legislative power. That aligns with Garsten's opinion on McKinnell stated that "the executive and legislative branches can legitimately claim to be representative of the people; thus, neither could become dominant" (McKinnell, 2023). This condition causes the checks and balances in the Indonesian constitutional system to fade. That is because the government is attracting all political components to join the regime of power. This condition is very worrying because the constitution states that the power to form laws is under the executive and legislative. This situation mirrors the conditions observed in Argentina, Ecuador, and Venezuela, which exhibit identical indications (Holgado & Urribarri, 2024). The involvement of these two components was initially intended to ensure that all draft laws in the process of forming them would present a dialectic of ideas and minimize the emergence of authoritarianism in one branch of power. This condition is because the Law has binding power since it was enacted (Yuliani, 2017). In other words, when it has been enacted, anyone within the scope of the Republic of Indonesia is obliged and subject to the Law. If both powers decide to collude or one of them is co-opted, then the country can be trapped in a condition of autocracy legalism (Scheppele, 2018).

In simple terms, this can be seen from the legislative process in Indonesia in the 2019-2024 period, which often nullifies aspirations and tends to ignore the formal procedural aspects of the formation of laws and regulations. This condition is exacerbated by several moments when the Government and the House of Representatives cherry-picked the Constitutional Court's decision. That can be seen clearly in revising the Local Election Law, where the

Government and the house of representatives openly formed a coalition to ignore the Constitutional Court's decision. This phenomenon is worrying for the existence of Indonesian democracy. That is because the election, as a form of implementing democracy, has transformed into a medium for legitimizing power. On the other hand, the concept of *trias politica*, which initially aligned three powers in a parallel pendulum, has slowly evolved to be centered on the executive branch of power as the holder of the sovereignty of law enforcement.

Therefore, the process of forming laws based on Law Number 12 of 2011 concerning the Formation of Legislation needs to be reviewed, especially regarding strategic matters. That is because laws are the only legal products that are permitted to limit a person's Human Rights (Mujaddidi, 2022). Therefore, it is worrying if authoritarian interests co-opt the formation of laws. Implementing a referendum as the last instrument for forming laws is an alternative solution when the House of Representatives can no longer represent the people's voice. However, it is inappropriate for all laws to go through a referendum. It is necessary to conduct an in-depth and comprehensive study regarding what kind of regulations must go through this process. Based on the background above, this research seeks to answer the question of how to implement a referendum to limit the power of lawmakers to prevent the birth of autocracy legalism. This study aims to prevent the recurrence of autocratic legalism and to demonstrate that implementing a referendum can overcome limitations.

**Methods**

This research employs normative legal research, a process aimed at identifying the rule of law, legal doctrines, and principles. Normative research is conducted by examining and analyzing relevant legislation or other legal materials related to the Implementation of Referendum as a Limitation on Law-Making Authority. The study adopts a statutory approach by Ibrahim (2007), analyzing various regulations pertinent to the research topic. In this context, normative legal research relies on main data gathered from literature, involving a collection of relevant legal sources, either through libraries or online journal databases. The data collection in this research focuses on two main components: primary legal materials and secondary legal materials. These components are essential for building a comprehensive understanding of the legal framework and its theoretical underpinnings relevant to the study.

The primary legal materials consist of key legislation that directly pertains to the research. This includes the 1945 Constitution of the Republic of Indonesia, which serves as the foundational legal document of the nation, and Law Number 12 of 2011 on the Formation of Legislation, which outlines the processes and principles for drafting and enacting laws. Other critical statutes include Law Number 3 of 2022 on the Nusantara Capital City, which provides the legal framework for establishing Indonesia’s new capital, and Law Number 39 of 2008 concerning Ministries of State, which governs the organization and functions of state ministries.

Additionally, Law Number 23 of 2014 concerning Regional Government addresses the relationship between central and regional authorities, while Law Number 19 of 2019 on the Corruption Eradication Commission highlights the legal structure and mechanisms for combating corruption in Indonesia. Besides, the secondary legal materials complement the primary materials by offering deeper insights and analyses. These include reference books and academic journals that explore the themes of the research, providing both theoretical and practical perspectives. By engaging with these secondary sources, the study can contextualize and critically evaluate the primary legal materials, ensuring a well-rounded and informed analysis. Together, these two components form the backbone of the research, enabling a robust examination of the legal issues at hand through a blend of statutory analysis and academic discourse.

Additionally, the study will incorporate South Korea's Constitution, particularly examining the Constitutional Court of South Korea's decision to annul the proposed relocation of the capital from Seoul to Sejong. This comparison offers valuable insights into how other jurisdictions address similar issues concerning capital relocation and legal constraints on executive authority.

**Results and Discussion**

Referendum is one of the decision-making mechanisms carried out directly without going through a meeting or parliament. Meanwhile, according to Harmaily Ibrahim (2017), a referendum is a general election mechanism in another form. In the context of democracy, a more detailed explanation was given by Liane Strobel, who stated that referendums are one of the main collective decision-making instruments of modern democracies. They allow people to participate in political decision-making, but they also entail the challenge of presenting complex issues comprehensibly and concisely (Ströbel et al., 2023). They also said that the referendum process has the purpose of getting an answer to a concrete question about which people are asked to express their choice. Through this process, the people acquire the status of decision-maker, and depending on the nature of the referendum, the variety of which is limited only to its binding or consultative nature, the decision adopted by the majority vote is mandatory (in the case of the decisional referendum), and this only obliges the governors to take into account the popular vote, which is not imposed to them (in the case of the consultative referendum) (Uşvat, 2017). Meanwhile, the definition of a referendum has essentially existed in the Indonesian legal system, namely in Law Number 5 of 1985 concerning Referendums; in Article 1, it is stated that "A referendum is an activity to directly ask for people's opinions regarding whether or not they agree with the will of the People's Consultative Assembly to amend the 1945 Constitution". However, this provision was removed after the amendment to the 1945

Constitution. It was followed by removing the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IV/MPR/1983 concerning Referendums.

Meanwhile, autocracy legalism is a new term in modern democracy. Quoting Pozen and Scheppele (2020), initially, democracy, constitutionalism, and liberalism went hand in hand. They strengthened each other, but in the current context, democracy through the electoral process gave birth to authoritarian leaders who caused liberalism to be slowly pushed out of the democratic parade. The authoritarian leader translated the victory into illiberal constitutional changes (anti-liberalism). In addition, Schepelle also explained that intolerant majoritarianism and plebiscite support from charismatic leaders were used as a guide for democracy (Scheppele, 2018). They use the popularity and the majority to change the system in an authoritarian manner but still claim that their actions are democratically legitimate. One of the consequences of autocratic legalism, according to Ulfgard, is fundamentally defying the principle of separation of powers (Ulfgard, 2023). That is in line with the opinion of Javier Corrales, the figure who first introduced the term. According to Corrales, autocratic legalism has three key elements: the use, abuse, and non-use (in Spanish, *desuso*) of the law in the service of the executive branch (Corrales, 2016). Based on several of these opinions, it can be interpreted that autocratic legalism is an act of executive power that uses its authority as a law enforcer to give birth to a new form of authoritarianism through a democratic process.

**Fragile Law Formation in Autocratic Legalism**

One indicator of the emergence of autocratic legalism is the emergence of many autocratic laws. Coralles gives an example of this phenomenon as it happened in Venezuela during the leadership of Hugo Chavez, which was then continued by Maduro, where there were changes to several articles in the constitution and laws to strengthen the President's authority, for example, the 1999 constitutional amendment which increased the President's authority, eliminated the senate and prohibited public funding of political organizations, and gave the President the authority to hold a referendum to replace members of the legislature, dissolve the legislature under certain conditions and propose constitutional amendments (Cortés, 2024). In addition, there were still many authoritarian regulations issued during the Chavez leadership era, including The Organic Law of Telecommunications (2000), which allows the government to revoke broadcasting licenses for mass media to the revision of the Criminal Code, which broadens the meaning of insults so that acts of disrespect towards state officials can be categorized as criminal acts. This condition illustrates that the government of Hugo Chavez, who was elected through a democratic election mechanism (winning with 56.2% of the vote), actually used his power to produce several regulations that tended to be authoritarian.

The Venezuelan legal system follows a complex and structured process for making changes to the constitution or laws, consisting of seven distinct stages: initiative, debate, voting, passing,

sanction, enactment, and publication. Each stage plays a crucial role in ensuring that the legislative process is comprehensive and adheres to democratic principles. At the initiative stage, the Venezuelan Legislation Law provides the public with an opportunity to propose draft laws, demonstrating a commitment to participatory democracy. According to the law, several entities can initiate a draft law, including the national executive power, the legislative power, and the supreme tribunal of justice. Additionally, the institutions that constitute citizen power namely the ombudsman, prosecutor general, and comptroller general also have the authority to propose legislation. The electoral power is another entity with the capacity to initiate lawmaking.

Moreover, the law allows for direct public involvement in the legislative process. If at least 0.1% of all permanently registered voters sign a public petition, they can propose a draft law, underscoring the inclusivity of Venezuela's legal framework. This mechanism ensures that the voice of the populace is heard and considered during the lawmaking process, reflecting the values of representative governance. By incorporating these stages and opportunities for participation, Venezuela's legal system establishes a rigorous framework for developing and amending laws, ensuring that multiple stakeholders are involved in shaping the nation's legal landscape. Based on the stages above, the stages of law-making in Venezuela have essentially been carried out democratically because they involve two branches of power: the President (executive) and the National Assembly (legislative). However, this process is only at the procedural level. That is because, in the end, the law that limits democracy was successfully enacted in the Venezuelan legal system.

On the topic of autocratic legalism, this is a relatively recent term in modern democratic discourse. Kim Lane Scheppele explains that democracy, constitutionalism, and liberalism initially developed together, reinforcing one another. However, in contemporary contexts, electoral democracy sometimes leads to authoritarian leaders who gradually drive liberalism out of democratic processes. These authoritarian leaders interpret their electoral victories as mandates to implement constitutional illiberalism (anti-liberalism). Scheppele further explains that intolerant majoritarianism and plebiscitary support from charismatic leaders are often used as democratic facades, enabling these leaders to wield popularity and majority support to enforce authoritarian changes under the guise of democratic legitimacy. According to Ulfgard (2023), a significant consequence of autocratic legalism is its fundamental opposition to the principle of separation of powers. Javier Corrales, the originator of the term, notes that autocratic legalism consists of three main elements: the use, abuse, and non-use (in Spanish, *desuso*) of the law to serve executive interests. From these perspectives, autocratic legalism can be understood as executive power that leverages its authority to enforce laws in a way that fosters a new form of authoritarianism through democratic processes.

**Lack of Public Participation in the Formation of the IKN Law**

The relocation of the national capital is one of the vital things in a country. That is because the relocation of the capital city is not only moving the center of government but also the center of civilization, economy, culture, and intellectuals. Therefore, the relocation of the capital city should be carried out carefully and involve all elements of society. In relocating the Indonesian Capital City from Jakarta to the Archipelago, the process of forming Law Number 3 of 2022 concerning the IKN was carried out within 5 months. In simple terms, the process can be summarized as follows:

On September 29, 2021, the President sent a Presidential Letter (*surpres*) along with a draft of the IKN Bill to the The House of Representatives, which at that time was submitted by the Minister of State Secretary Pratikno and the Minister of National Development Planning Suharso Monoarfa to the Chairperson of the Indonesian House of Representatives Puan Maharani at the Parliament complex, Senayan, Jakarta then On December 7, 2021, namely 2 (two) months after receiving the presidential letter along with the draft of the IKN Bill, the House of representatiives established a special committee for the IKN Bill consisting of 56 members, with 6 leaders. According to Deputy Speaker of the house of representatives Sufmi Dasco Ahmad, the IKN Bill Special Committee was decided in a consultation meeting replacing the The House of Representatives Deliberative Body meeting on November 3, 2021. The IKN Bill Special Committee consists of 12 people from the Indonesian Democratic Party of Struggle Faction, 8 people from the The Party of Functional Groups Faction, 8 people from the Gerindra Faction, 6 people from the National Democrat Faction, 6 from the National Awakening Party, 5 from the Democrats, 5 from the Prosperous Justice Party, 4 from the National Mandate Party, and 2 people from the United Development Party Faction, then on January 3, 2022, 5 IKN Bill Special Committee members conducted a working visit to Kazakhstan with the Department/National Development Planning Agency. The working visit was for comparative research because Kazakhstan had moved to its capital. The activity suddenly drew criticism because it was a visit abroad amidst the high spread of the Omicron variant of the coronavirus.

On January 17, 2022, the Special Committee for the IKN Bill held a meeting to discuss the IKN Bill. It ended on January 18, 2022) in the early morning hours by producing an agreement that the IKN Bill would be brought to a plenary session of the house of representatives to become a law. In the meeting, 8 out of 9 factions reported that they agreed to bring the IKN Bill to a plenary session. Only the Prosperous Justice Party faction rejected it. Member of the Special Committee for the IKN Bill from the Prosperous Justice Party faction, Suryadi Jaya Purnama, explained that his faction took this stance because it took into account that there were still several matters in the substance of the IKN Bill, including the issue of funding for the relocation of the nation's capital. The Prosperous Justice Party faction considered that many of the substances and thoughts of the Prosperous Justice Party faction had yet to be accommodated in the IKN Bill. Hence, the Prosperous Justice Party faction of the House of Representatives rejected

the IKN Bill for the next session, then The IKN Special Committee has held several working meetings with the government to review the IKN Bill, such as the concept of IKN authority and the selection of the name "Nusantara" as the name of the new capital city. And finally, on February 15, 2022, a plenary meeting passed the IKN Bill into law. The gavel for ratification of the IKN Bill went smoothly because all members of the council who attended the meeting agreed to it." The ratified law consists of 11 chapters and 44 articles that contain all matters related to transferring the nation's capital city.

Based on this process, the formation of the IKN Law has gone through several stages regulated in Law Number 12 of 2011 concerning the Formation of Legislation, including planning, drafting, discussion, ratification, and promulgation. However, this process needs to include the provisions in Article 96 of the Formation of Legislation Law, which requires public participation at every stage of the formation of laws. However, in reality, the indigenous people of the Balik Sepaku tribe, namely the indigenous people who live in the IKN area, were not involved in forming the IKN Law (Risti Aulia et al., 2023). Most indigenous people did not know about the transfer of the capital city to the island of Kalimantan, so they needed to learn about the impact and consequences of the project. Therefore, the process of forming the IKN Law had minimal public participation.

**Potential for Autocratic Legalism in the IKN Law**

Looking at the process of forming the IKN law, which has minimal public representation and was carried out quickly (five months), this condition illustrates the chaotic Indonesian legislative process. However, this raises the question of whether the chaotic process is caused by autocratic legalism. In the sector of law formation, autocratic legalism can be measured through three parameters, including (1) the co-optation of the ruling party in the parliament, (2) the violations of the law and constitution, and (3) the undermined judicial independence (Mochtar & Rishan, 2022).

The first indicator is the co-optation of the ruling party in parliament. Based on the data presented in the previous sub-chapter, of the 9 factions in parliament, only the Prosperous Justice Party faction rejected the ratification of the IKN Bill. Simply put, the percentage of the IKN Bill Special Committee is as follows:

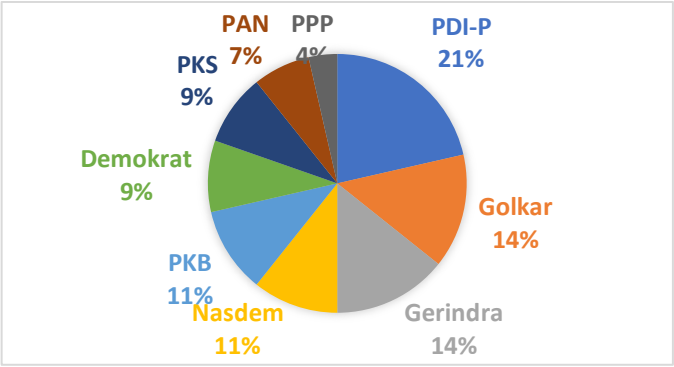



Chart 1. Percentage Proportion of the Special Committee for the IKN Bill

The only faction that rejected the IKN Bill was the Prosperous Justice Party faction, whose percentage of votes in the Special Committee was only 9% (5 people). That differs from the total faction that supported the IKN Bill to be made into a Law, which was 91% (51 people). This condition illustrates the government's success in co-opting all legislative power elements to create laws without going through democratic procedures. That is in line with Schepelle's opinion, which states that "Autocratic legalism" of that kind capitalizes on the normative force attributed to the law, allowing lawmakers to disguise their autocratic intentions as regular applications of the law (Bornemann, 2022).

The IKN Bill's alignment with the law and constitution can be analyzed through two key aspects: formal and material. From a formal perspective, Article 5 of Law Number 12 of 2011 on the Formation of Legislation outlines specific principles that must be adhered to when forming laws and regulations. These principles include clarity of purpose, ensuring that the objectives of the law are well-defined and serve the intended legal framework. The law must also be formed by the appropriate institution or official, upholding the authority of entities designated for legislative processes. Additionally, there must be consistency between the type, hierarchy, and content material of the law, ensuring that it aligns with the broader legal structure and does not create contradictions.

Further formal principles emphasize the law's feasibility and practicality, requiring that it can be implemented effectively without undue complexity. Its usability and effectiveness are also crucial, demanding that the law provide clear benefits and meet its intended goals. Clarity of formulation ensures that the law is free from ambiguity, facilitating straightforward interpretation and application. Lastly, the principle of openness highlights the importance of transparency and public participation in the legislative process, ensuring that stakeholders are involved and informed throughout. Analyzing the IKN Bill against these principles provides a comprehensive understanding of its compliance with formal legislative standards.

In terms of clarity of purpose, the formation of the IKN Law as stated in the Academic Manuscript of the IKN Bill issued by the Ministry of National Development Planning states that

Jakarta is no longer suitable as a capital city, starting from the level of density, congestion, and pollution. That is the basis for moving the capital city from Jakarta to Nusantara, East Kalimantan. However, the academic manuscript must explain the purpose of moving it to Nusantara. Many other cities throughout Indonesia are topographically more suitable as capital cities. Therefore, at this stage, the formation of the IKN Bill needs to fulfil the clarity of objectives.

Regarding the institutional aspect or the right forming officials, the formation of the IKN Bill has gone through the right process and involved the President and the The House of Representatives as the holders of the power to form the Law in terms of the suitability of the type, hierarchy, and content of the material, at least a law must regulate the formation of the IKN Bill because the special status of Jakarta as the capital city is also regulated in the Law. In terms of implementation, the IKN Law, although difficult, can still be implemented. Sociologically, the transfer of the IKN may benefit the people of Kalimantan regarding usability and effectiveness. In terms of clarity of formulation, the regulation raises uncertainty regarding the position of the capital city of Indonesia, whether in Jakarta or the archipelago. Meanwhile, in the last aspect, namely openness, the formation of the IKN Law, which is fast and minimally participatory, is proof that the IKN Law does not meet the formal principles of forming good laws and regulations. In simple terms, this can be described in the following table.

Table 1. Fulfilment of Formal Principles for the Formation of the IKN Law

| No | Principle | Compliance |
|---|---|---|
| 1. | Clarity of Purpose | Partially Compliant |
| 2. | Proper Institution or Official Authority | Compliant |
| 3. | Consistency in Type, Hierarchy, and Content | Compliant |
| 4. | Feasibility of Implementation | Compliant |
| 5. | Usefulness and Effectiveness | Compliant |
| 6. | Clarity of Formulation | Non-Compliant |
| 7. | Openness | Non-Compliant |

Table 1 shows that when referring to the principles of the formation of laws and regulations, the IKN Law still needs to meet the requirements as a good regulation based on Law Number 12 of 2011 concerning the Formation of Laws and Regulations. In addition, the existence of the IKN Authority Body also raises constitutional issues. The existence of the IKN Authority Body is regulated in Article 1 number 8, which states, "The Special Regional Government of the Indonesian Capital City is a special regional government that organizes government affairs in the Indonesian Capital City." Referring to the Indonesian constitution, the recognition of special regions is regulated in Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states, "The state recognizes and respects regional government units that are special or exceptional in nature as regulated by law."

Recognition of special regional governments is implemented by establishing several laws that regulate regional specialties, including:

- Law Number 29 of 2007 concerning the Special Capital Region of Jakarta (before being revoked and replaced by Law Number 2 of 2024 concerning the Special Region of Jakarta Province)
- Law Number 21 of 2001 concerning Special Autonomy for Papua
- Law 13 of 2012 concerning the Special Status of the Special Region districts and cities have Regional People's Representative Councils whose members are elected through general elections
- Governors, Regents, and Mayors as Heads of Provincial, Regency, and City Governments are elected democratically

However, in practice, the IKN Authority Agency is not elected through a democratic process but is appointed by the President, and its position is equal to that of a Minister. If refering to Article 8 paragraph (2) of Law Number 39 of 2008 concerning the Ministry of State, it is stated that the Ministry carries out national technical implementing functions. That is certainly in contrast to the IKN Authority Agency, whose functions and roles are similar to those of regional heads. Therefore, the existence of the IKN Law explicitly contradicts Article 18, paragraphs (3) and (4) of the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2011 concerning the Formation of Legislation, Law Number 23 of 2014 concerning Regional Government and Law Number 39 of 2008 concerning the Ministry of State. Meanwhile, the third aspect of autocratic legalism is the undermined judicial independence. The independence of the Constitutional Court has been a big question since the enactment of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court. That is because the change allows Constitutional Court Judges to serve up to 15 (fifteen) years from the previous 5 (five) years. When referring to Article 8 of The Universal Charter of The Judge, a document agreed upon by Judges from all over the world, it is stated that:

*"Any change to the judicial obligatory retirement age must not have a retroactive effect."*

This provision explicitly prohibits retroactive application of changes to the term of office for judges, emphasizing that any extension of a judge's tenure should apply only to future appointments and not to those currently serving. The rationale behind this is to preserve judicial independence, as altering the term of office for incumbent judges could compromise their impartiality and subject their decisions to external influence. Despite this principle, the enactment of the IKN Law demonstrates significant characteristics of autocratic legalism, where legislative processes are leveraged to concentrate power and undermine democratic norms. The IKN Law exemplifies this through non-transparent legislative procedures and a lack of public

participation, further entrenching executive dominance. The table below identifies specific indicators of these autocratic tendencies, highlighting how the law's formulation deviates from principles of democratic governance and accountability.

Table 2. Indicator of Autocratic Legalism in IKN Bill

| No | Indicator | Compliance |
|---|---|---|
| 1. | The co-optation of the ruling party in the parliament | Met |
| 2. | The violations of the law and constitution | Met |
| 3. | The undermined judicial independence | Met |

**Referendum as the Last Filter of Autocratic Legalism**

The phenomenon of autocratic legalism is a contextual phenomenon in contemporary democratic countries. This condition is caused by the concept of only being able to operate in countries with weak democracy. That is in line with Coralles' opinion, which states that weak democratic presidents often conclude that they can manipulate institutions to their advantage with clever political manoeuvring and public funds. Weak democracies are thus susceptible to a clash between hard-to-restrain presidents and weak institutions that do their best to stop them (Corrales, 2016).

The birth of the political legitimacy of autocratic legalism is the General Election, where the people hand over part of their sovereignty to the President and the The House of Representatives. Therefore, after the election, the president and the house of representatives have unlimited authority to regulate the country regarding law enforcement and the formation of laws (Smibert, 2024). However, this paradigm could be different if related to the discussion of the Strategic Bill. There is an obligation to involve the people in decision-making through a referendum. The phenomenon of cancelling the law on transferring the nation's capital was caused by the government not involving the people in a referendum in South Korea (Richardson & Bae, 2009). The Constitutional Court of South Korea stated that the transfer of the capital of South Korea from Seoul to Sejong is a strategic decision that must be made through a referendum based on Article 72 of the South Korean Constitution. Therefore, the idea of a referendum can be an option. However, to what extent is the referendum effective in stopping the actions of the ruler's autocratic legalism? That can be seen by observing several controversial regulations issued by the Government in the last five years:

Firstly, revision of the corruption eradication commission law, The revision of the Corruption Eradication Commission Law that weakens the Corruption Eradication Commission is one of the legal products that tends towards autocratic legalism. That is because the Corruption Eradication Commission is one of the independent law enforcement institutions in the field of corruption and is not subject to the President. However, after the enactment of Law Number 19 of 2019 concerning the Corruption Eradication Commission, the position of Corruption

Eradication Commission was placed as an executive institution responsible to the President. Looking at the Indonesia Survey Agency (LSI) survey on October 4-5, 2019, after the ratification of the KPK Bill, 70.9% agreed that the revision of the KPK Law weakens the KPK, while 60.7% supported the rejection of the KPK Law along with support for the issuance of a lieu of law. That suggests that if the referendum scheme is used to ratify the Corruption Eradication Commission Bill, then it is certain that the KPK Bill will not be passed into law.

Secondly, revision of the constitutional court law, the addition of the term of office of Constitutional Court judges from the previous 5 (five) years and can be re-elected for one term changed to 15 (fifteen) years and applied to judges who are currently serving is one of the regulations that is considered to harm the independence of judges. Based on a survey by one of the national media, almost 75% of respondents needed to learn about the revision of the Constitutional Court Law. The public was not involved in revising the Constitutional Court Law. If a referendum is held, the public can assess whether the changes to the Law have a good or bad impact on the independence of Constitutional Justices.

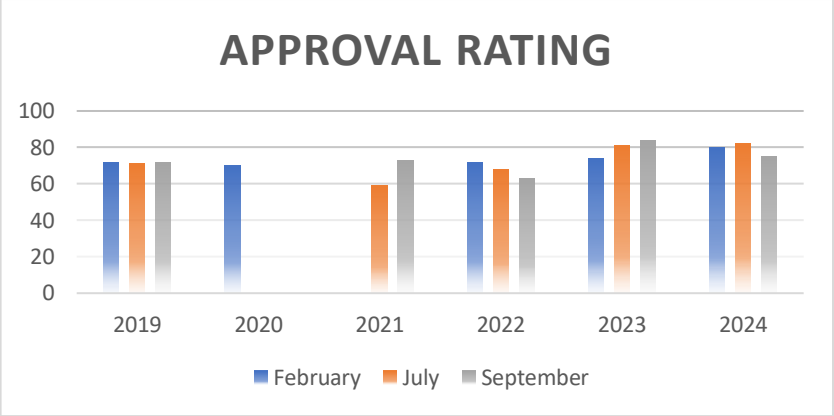
Thirdly, the revision of Law Number 1 of 2023 concerning the Criminal Code (KUHP) provides advantages to those in power. This is because several provisions within the law create opportunities for the President to criminalize individuals who criticize the government or state institutions through the Electronic Information and Transactions (ITE) Law. According to a survey conducted by Litbang Kompas in June 2022, 89.3% of respondents were unaware of the plan to pass the Criminal Code Bill (RUU KUHP). If issues related to the revision of the Criminal Code had been transparently communicated to the public and subjected to a referendum, the Criminal Code Bill which tends to foster regulations that could lead to autocratic legalism would likely not have been enacted.

Fourthly, the Job Creation Law, which also utilized the omnibus law mechanism, has sparked significant controversy. This Law is problematic because of the many norms that do not side with the people, both in the employment sector and the environment. According to a Kompas poll, 60.5% of the public thinks the Job Creation Law does not represent the people's aspirations. Meanwhile, 30.5% claim to be represented, and 8.9% need to know. If a referendum is held on the Job Creation Law, it is possible that the Job Creation Bill will not be passed into Law.

The last, the most recent example is the regulation to relocate the nation's capital from Jakarta to the IKN, which has proven to be highly problematic. According to a survey conducted by the Institute for Democracy & Strategic Affairs, 57.3% of the public opposed relocating the capital to the IKN, while only 40.1% either agreed or strongly agreed. This data suggests that the IKN Bill would likely not have been passed into law if a referendum had been held. These findings highlight that many of these legal products are not aligned with the will of the people. Notably, the survey was conducted at a time when the President’s approval rating was above 60%,

illustrating that a high approval rating for the President does not always translate into public support for his policies.

**Chart 2.** President Joko Widodo's Approval Rating according to Political Indicators




Sources: (The Jakarta Post, 2024)

Based on the data, President Jokowi's approval rating has only ever been below 60% when handling Covid-19 badly. However, outside of that, the figure is always above 60%, even touching 80% several times. Based on the graph and correlated with surveys related to government policies, the President's approval rating only sometimes appears symmetrical with the survey of policies issued by the President. Based on this, if a referendum is implemented in Indonesia, it will limit the number of regulations whose processes are carried out autocratically without involving public participation. To ensure that the authorities do not change the referendum scheme, this norm needs to be included in the constitution, namely in Article 20 of the 1945 NRI Constitution. The provisions in the constitution can be added with the following norms:

*"Changes to the Law relating to the functions and authorities of the President, the house of representatives, the senate, constitutional court, supreme court, judicial commission, eradication of corruption, and other strategic matters relating to national interests must receive the people's approval through a referendum."*

Changes like these would directly limit the President's authority to amend laws and indirectly curb the rise of autocratic legalism. Based on the data above, it is evident that in the context of Indonesia, restricting power in the legislative process is essential to prevent the emergence of autocratic legalism. This need is exemplified by the process of formulating the IKN Law, which was carried out in an autocratic manner without adequately considering public aspirations. Such a process reflects a concentration of power that disregards democratic principles and highlights the potential dangers of unchecked legislative authority. This aligns

with Scheppele's (2018) assertion that laws born from autocratic processes tend to solely accommodate the interests of officials while neglecting broader societal needs. This lack of inclusivity not only undermines democratic principles but also risks creating legal frameworks that serve a select few rather than the collective good. Therefore, establishing mechanisms to ensure transparency, public participation, and accountability in law-making processes is crucial for preventing legislation that fosters autocratic tendencies and for safeguarding democratic governance. These mechanisms would not only protect against the concentration of power but also ensure that laws reflect the aspirations and welfare of the people they are meant to serve.

**Conclusion**

The phenomenon of autocratic legalism is an unavoidable event in a weak democracy like Indonesia. However, it can be limited through a constitutional amendment by adding a norm of obligation to hold a referendum on changes to laws related to the functions and authorities of state institutions, eradication of corruption, and other strategic issues. Research indicates loopholes in the Indonesian legal system that could gradually undermine democracy from within. The IKN Law, for instance, was drafted in a non-transparent manner, unlike other legal products that faced widespread public rejection. However, due to the lack of constitutional restrictions, laws remain valid as long as procedural requirements are met. Evidence reveals no significant correlation between public approval ratings and the legislative process. To prevent the rise of autocratic legalism, it is crucial to explicitly adopt a referendum mechanism. This would ensure that lawmakers cannot unilaterally dictate the country's legal policies. To promote a more democratic Indonesia, the author recommends constitutional amendments to include referendums as a mandatory process for enacting laws that directly impact the public. These include laws concerning the roles and powers of the President, the House of Representatives, the Senate, the Constitutional Court, the Supreme Court, the Judicial Commission, anti-corruption efforts, and other strategic matters of national interest. Safeguarding Indonesia from the risks of autocratic legalism is essential to preserving its democratic foundations. Future research could explore the implementation of referendum mechanisms in other countries, particularly in democracies with similar challenges. A comparative study could provide insights into best practices and the potential feasibility of incorporating referendums into Indonesia's constitutional framework.

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