

DISINTEGRATION OF LAW AND MORALITY IN THE SUBSTANCE OF LEGISLATION: BETWEEN LEGAL SOVEREIGNTY AND POPULAR SOVEREIGNTY IN THE CONSTRUCTION OF NATION LAW

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ABSTRACT

This research examines the relationship between law, morality, and power in Indonesia's democratic rule of law state, focusing on the practice of legislation formation and enforcement. Stemming from normative concerns over law's increasing instrumentalization as a political tool that distances itself from moral values and public needs, this study employs a juridical-normative method with conceptual and philosophical approaches. Guided by three research questions concerning the theoretical manifestation of law-morality-power relations, the tensions between formal legality and moral legitimacy in contemporary legal products, and strategic measures to reconstruct their interconnection this analysis critically examines the Job Creation Law, the new Criminal Code, and the amendment to the Indonesian National Armed Forces Law as concrete cases illustrating the gap between legal formality and moral substance. The findings reveal that weak interconnection between law and morality has eroded public trust in legal institutions. Legislation formation dominated by political interests and minimal public participation tends to produce unresponsive and inequitable regulations. This study recommends three strategic measures: transparent and participatory legislative processes based on social impact and human rights analysis, substantive legal balance between state interests and citizen protection, and strengthened oversight of power through independent institutions, press freedom, and civil society participation. These measures are essential for realizing meaningful law that serves social welfare within a democratic rule of law framework.

Kata kunci: morality; formation of legislation; democratic rule of law state.

A. INTRODUCTION

Law, by its very nature, cannot be reduced to a mere instrument of formal coercion or retaliation. The existence of law transcends the simple notion of rules created by rulers through their authority. Law is not perpetually situated within the context of punishment and absolute judgment against individuals; rather, law ideally constitutes a reflection of a good life that fosters peace and tranquility. Consequently, the absoluteness of law in its application represents a fundamental error. Hans Kelsen posits that law itself is a set of rules regarded as a system concerning human behavior, signifying that law does not refer to a single rule but rather to a comprehensive system of rules that must be understood within their interrelationship.¹ The principle of The Rule of Law, not The Rule of Man, affirms that law is law and not merely a beautiful arrangement of words composed by a legal poet.

¹Jimly Asshiddiqie and Ali Safa'at, *Teori Hans kelsen Tentang Hukum*, (Jakarta : Konspress, 2024), p. 13.

A systematic law in regulating human behavior appears insufficient to serve as a guiding principle. Rather, law operates within the contextual space of human behavior. Judicial processes, law enforcement mechanisms, and institutions empowered to form and enforce the law would be meaningless if the idea of law is not comprehensively interpreted as an order embedded within the circle of societal life.² This raises a foundational question: what is the relationship between law and morality, and how does this relationship manifest in the practice of legislation formation? Moral law. This term may become something ideal in interpreting the existence of law itself. Law as an order is not far from the meaning that law itself shapes and is shaped by human behavior. Law as a rule also provides space for law to explore the systematics of broader societal life. If so, then law in its concept is actually something good before becoming an instrument that nowadays evokes great fear among society.

Understanding this relationship requires a clear conceptual distinction. Morality derived from the Greek ethos pertains to ethics, encompassing values of good and evil, right and wrong, that are internalized and lived within society. Law, in contrast, deals with formal rules of conduct that are externally enforced and carry sanctions for non compliance. These two normative systems are not identical; rather, they exist in a dynamic relationship of interdependence and tension. In this article, the term "law and morality" is used consistently to denote this relationship, avoiding the potentially misleading term "moral law" which might incorrectly suggest that law and morality are synonymous. This conceptual clarity is essential for understanding why legislation that fails to reflect moral values often provokes public resistance and conflict.

Understanding the philosophy of law requires examining the values, ethics, and morality embedded within legal norms, as law cannot be separated from the broader context of justice, humanity, and social values. In this article, the term "law and morality" is used consistently to denote this relationship, avoiding the potentially misleading term "moral law" which might incorrectly suggest that law and morality are synonymous. This conceptual clarity is essential for understanding why legislation that fails to reflect moral values often provokes public resistance and conflict.³

Further elaborates that the values of Pancasila which serve as the philosophical foundation of Indonesian law have not been fully reflected in the national legal system. This is due to several factors, including the tendency of those in power to interpret Pancasila according to their own interests, and the stagnation of national legal reform caused by competing political interests.⁴ Emphasize that law becomes empty and meaningless if it is not infused with morality. Religion and morality serve as essential elements in the development of law that is responsive to societal needs. These perspectives underscore that the relationship between law and morality is not merely theoretical but has profound implications for legal practice and legitimacy.

As the primary subject in legal regulation, the individual serves as the rights bearer; these rights are concretely expressed and documented in legal instruments created by the relevant authority. However, when individuals and communities demand their rights, this creates a dilemma for law and its enforcement. Hugo Sinzheimer states that law never grows and develops in a vacuum but rather as a process arising from the tension between thesis and antithesis within the dialectics of the ideas that give birth to law.⁵ This tension between law and morality becomes particularly acute when legal products are perceived as serving political interests rather than public welfare.

²Aminuddin Ilmar, *Membangun Negara Hukum Indonesia*, (Makassar : Phinatama Media, 2014), p. 2..

³Erwin, Muhammad, *Filsafat Hukum: Refleksi Kritis Terhadap Hukum dan Hukum Indonesia (Dalam Dimensi Ide dan Aplikasi)*, Edisi Revisi, (Jakarta: Rajawali Pers, 2016), p. 87

⁴Maroni, "Eksistensi Nilai Moral dan Nilai Hukum Dalam Sistem Hukum Nasional." *Jurnal Pancasila dan nilai moral dalam hukum nasional*, Volume 5 Nomor 2, 2019, p. 23

⁵Cahya Wulandari, *Kedudukan Moralitas dalam Ilmu Hukum*, *Jurnal Hukum Progresif*, Volume 8 Number 1, 2020 : <https://doi.org/10.14710/hp.8.1.1-14>, p. 1.

The dynamics of individual life within society continue to evolve alongside the passage of time. Thus, the notion that the State serves as a protector through legal instruments becomes reassuring to society. However, in contemporary times, conflicts of interest are inevitable. This reflects that law is not inherently regarded as something good, whereas the values that live and develop amidst society continue to overshadow it as a unified entity known as morality.

The dynamics of individual life within a community or commonly referred to as society will continue to evolve alongside the passage of time. Thus, the packaged notion that the State serves as a protector through legal instruments becomes music to society's ears. However, in contemporary times, conflicts of interest are inevitable. This reflects that law is not inherently regarded as something good, whereas the values that live and develop amidst society continue to overshadow it as a unified entity known as morality.

As time progresses, societal life evolves, rendering the maxim "*ibi societas ibi ius*" more than a mere suggestion. Law is expected to be intertwined with moral aspects in its implementation. Morality must be concretized within law, particularly in the form of legislation, to establish a good state order. Law enforcement serves as a reflection of the relevance between legal values and moral values. This illustrates that the presence of law should ideally be something positive—a guide for civic life or a tool to regulate societal dynamics—yet it has instead become the primary source of conflicts between individuals, society, and even the state. Van Apeldorn states that society needs law, and if society adheres to it, the law can be enforced.⁶

There exists a paradigm about law that, if understood partially, will always regard law as imperfect. Law in its application must be both stable and dynamic. On one side, law, in accordance with its enforcement objectives, must promise certainty, placing it in a stable position; however, on the other side, law is not demanded to be rigid, but rather to follow the dynamics of developments in wider society.⁷ This often becomes a loophole in understanding law or in the formation of law itself. The authority of legislation makers—the Government—frequently creates major conflicts amid society. Achmad Ali states that Indonesia is in the phase of a "Hyper Regulated Society" with the presence of thousands of regulations, yet this does not reduce—or even increases—conflicts of interest between the government and society.⁸

The mindset of legislation makers remains focused on achieving legal certainty for society without considering developments in societal life. This reflects that the atmosphere of law making avoids the concept of the interconnection between law and morality. Law is not merely an instrument from a normative perspective alone; rather, its purpose also considers the benefits of its existence. The concept of law itself expresses commands and prohibitions that are static in nature and cannot be dynamic without understanding the substance of regulations that encompass good and evil.⁹ The twists and turns of legal development within a dynamic societal order amid changing times reflect law's non-progressive tendency toward conflicts within society. Law tends to be used merely as a political tool and is non-participatory. Overlapping legislation, society shackled by political dynamics, and continuous conflicts arising from its enforcement sufficiently illustrate the minimal contribution of law to the state.

In its development, law tends to merely reflect the immense sovereignty of the lawmakers themselves without addressing the needs of society. Rather, the construction of law requires society's involvement in governance to ensure that the policies created are truly needed for the existence of law formation itself and align with society's needs. There are three key

⁶Renaldi Fathurrachman. Dava Rizki. Salman Al Faridzi, (*Dimensi Moralitas Terhadap Hukum*, IBLAM Law Review, Volume 2 Number 3, 2022 : <https://doi.org/10.52249/ilr.v2i3.73> , p. 2.

⁷Fitriatus Shalihah & Oksep Adhyanto, *Hukum, Moral, dan Kekuasaan dalam telaah (Hukum adalah Alat Teknis Sosial)*, Fiat Justisia, Volume 10 Number 4, 2017 : <https://doi.org/10.25041/fiatjustisia.v10no4.735> , p. 672.

⁸Achmad Ruslan, *Teori dan Panduan Praktik Pembentukan Peraturan Perundang-Undangan di Indonesia*, (Jakarta : Rajawali Press, 2023), p. 12.

⁹Syarifuddin, *Hubungan Antara Hukum dan Moral dalam Islam*, Jurnal Tahrim, Volume 10 Number 1, 2014 : <https://doi.org/10.33477/thk.v10i1.62> , p. 36.

outcomes achievable through active public involvement in the formation of legislation, namely: Transformation of Behavior and Government Institutional Structures; Enhancement of Capacity in Public Institutions and Organizations; and Accessibility to Public Information. Through this approach, policies or legislation will be more just, equitable, and oriented toward development priorities based on society and/or citizens.

Current law cannot reasonably be justified if it is once again understood merely as an instrument of societal behavior; rather, law has now become a political tool that appears to be bred from Roscoe Pound's teachings on the function of law itself. This means that law now camouflages itself as a mere societal instrument, used solely as a basis to support the political interests of its creators. It is not something foreign when law fails to provide benefits to society.¹⁰ The author is indeed impressed by Achmad Ali's remarks on the progressive dynamics of law, which have produced millions of rules; however, from the existence of those rules, it seems there has never been a single day when society does not complain about the emergence of legislation or policies ostensibly created for society itself.

Conflicts regarding legislation in Indonesia frequently occur. The emergence of the omnibus law mechanism up to the present day is marked by the introduction of the TNI Law (UU TNI), which serves as the precursor to the expansion of the TNI's own tasks and authority to actively participate in governance without considering its position, status, or even implications. The UU TNI has recently attracted public attention and sparked waves of national demonstrations. The expansion of the military's role in the civilian sphere tends to close spaces and weaken civilian supremacy, while reopening the window to the New Order era's dual function of ABRI.¹¹ This is not merely a substantive issue; rather, the formation of the UU TNI was conducted in a closed manner and appeared to deviate from the formal context of transparent legislation formation.

The connection between these two laws and morality requires explicit articulation. The Job Creation Law represents a moral problem not merely because of its procedural defects, but because it subordinates social justice and public welfare to economic efficiency and investment interests. When a law through the omnibus method drastically amends around 1,023 articles from 79 existing laws without meaningful public participation, it violates the moral principle that those affected by legislation should have a voice in its formation. This constitutes what Luc J. Wintgens identifies as the problem of *legisme* where lawmaking bodies, possessing formal legitimacy, believe they can create any law without regard for legal efficacy and rational acceptability. Furthermore, the law's prioritization of capital interests over workers' rights and environmental protection raises fundamental questions about whether the law serves merely to legitimize government actions or genuinely fosters justice. This gap between formal legality and substantive justice is precisely where the moral dimension of law becomes visible.

The Indonesian National Armed Forces Law (UU TNI) similarly presents a moral problem that extends beyond formal legality. When a law expands military authority into civilian spheres without transparent procedures, public participation, and adequate oversight mechanisms, it erodes the moral legitimacy of state power. As demonstrated by public criticism, the academic manuscript of the UU TNI itself contained problematic formulations, including references to TNI as an "instrument of power" a characterization fundamentally at odds with the military's constitutional function in national defense. The closed formation process and deviation from the principles of openness and public participation represent not merely procedural violations but moral failures that undermine public trust. The expansion of military roles in civilian governance threatens to weaken civilian supremacy and reopen the door to the traumatic

¹⁰Kenari Purnama, *Dasar-Dasar Hukum Tata Negara*, (Yogyakarta :Anak Hebat Indonesia, 2025), p. 227

¹¹https://www.thejakartapost.com/indonesia/2025/09/18/no-flaws-in-process-for-controversial-tni-law-constitutional-court.html?utm_source=chatgpt.com, diakses pada tanggal 16 November 2025, Pukul 23.00 WIT

experiences of the New Order era, demonstrating how the absence of morality in law formation can have profound implications for democratic institutions.

The presence of Law Number 11 of 2020 concerning Job Creation also represents endless political pressure without considering the impacts it causes. The omnibus law method drastically amends around 1,023 articles from 79 existing laws. Criticism is inevitable because this method is deemed to ignore several Principles of Legislation Formation, namely the principles of openness and public participation.¹² It is explicitly illustrated that there is a non-reciprocal, overlapping, and systemic decline involving law, morality, and power. Based on the foregoing discussion, this study identifies three interconnected research questions: First, how does the relationship between law, morality, and power manifest in the practice of legislation formation in Indonesia? Second, why do contemporary legal products such as the Job Creation Law, the new Criminal Code, and the amendment to the Indonesian National Armed Forces Law demonstrate tensions between formal legality and moral legitimacy? Third, what measures are necessary to reconstruct the interconnection between law and morality in order to realize a democratic rule of law that genuinely serves the welfare of society? These questions guide the normative analysis presented in this article.

B. RESEARCH METHOD

This research constitutes normative legal research, which extends beyond the conventional boundaries of legal positivism by integrating moral considerations as a counterbalance to its normative substance. As a doctrinal legal inquiry, this study systematically examines legal norms, principles, and doctrines through critical analysis of primary and secondary legal materials. The research employs two primary approaches: the legislative approach (statute approach) and the conceptual approach (conceptual approach). The legislative approach is utilized to examine the formation and substance of positive law in Indonesia, with particular focus on three contemporary legal products that exemplify tensions between formal legality and moral legitimacy: the Job Creation Law, the new Criminal Code, and the amendment to the Indonesian National Armed Forces Law. Meanwhile, the conceptual approach is deployed to analyze legal concepts and doctrines relevant to the relationship between law, morality, and power, drawing from legal philosophy, state theory, and moral philosophy. This dual approach enables a comprehensive understanding of how theoretical constructs inform and critique concrete legislative practices in Indonesia.

The legal materials employed in this research consist of two categories: primary legal materials and secondary legal materials. Primary legal materials encompass legislation, regulations, and official legal documents pertinent to the subject matter, including the Job Creation Law, the new Criminal Code, and the Indonesian National Armed Forces Law. Secondary legal materials comprise academic literature, including books, journal articles, legal commentaries, scholarly writings, and philosophical works relevant to the relationship between law, morality, and power. These legal materials were obtained through library research techniques (library research), involving systematic collection, classification, and analysis of both printed and digital sources. The collection process was conducted through comprehensive searches of academic databases, institutional repositories, and physical library collections to ensure the completeness and relevance of the legal materials examined.

The analysis was conducted descriptively and qualitatively. The descriptive aspect serves to systematically present the legal phenomena under study, including the normative content of the legislation examined and the institutional practices surrounding their formation and enforcement. The qualitative aspect enables interpretive analysis of the normative and

¹²https://sumbar.antaranews.com/berita/390049/omnibus-law-dalam-undang-undang-cipta-kerja?utm_source=chatgpt.com, diakses pada tanggal 17 November 2025, Pukul 20.00 WIT

philosophical dimensions of the issues examined, allowing for a nuanced understanding of the tensions between formal legality and moral legitimacy. The conclusion of this research is formulated through a process of systematic reasoning, synthesizing theoretical frameworks with concrete legal cases to address the three research questions posed in this study. This methodological framework ensures that the analysis remains grounded in legal doctrine while remaining responsive to the moral and philosophical dimensions that are central to the study's objectives.

C. DISCUSSION

Kautilya, in historical records, states that a state emerges from an agreement in which society consents to establish a regulatory order to protect its interests.¹³ This implies that the order of social life cannot be separated from the way they create peace through rules that reflect their mutual lives.¹⁴ Affirms that although the Arthashastra is often compared to Machiavelli's works, Kautilya actually demonstrates a profound concern for moral dimensions and collective welfare, not merely power politics. This demonstrates that since ancient times, the relationship between law and morality has been a fundamental concern in constitutional thought. This implies that the order of social life cannot be separated from the way they create peace through rules that reflect their mutual lives. In line with modern ideas, it must be clarified that a law-based state should place the vision of legal development above national development goals. Law serves as the foundational agreement made by society, which should be substantively as relevant as possible to the ideas and concepts of social life.

In line with modern ideas, it must be clarified that a law-based state should place the vision of legal development above national development goals. Law serves as the foundational agreement made by society, which should be substantively as relevant as possible to the ideas and concepts of social life. The shift of the state from the night-watchman concept to a welfare state transforms the dynamics of statehood. The government is demanded to actively engage in the formulation of legislation and policies. As known, the basic concept of good governance is how governmental actions or deeds can provide the best services to society to enhance their welfare, both materially and spiritually.¹⁵

In the development of law, the presence of society becomes an inseparable part and unity. Marcus Tullius Cicero, in his famous adage, states that "Where there is society, there is law." Law cannot be separated from the life of society, just as society needs law to achieve order in life within a group. At least to maintain the integrity and harmony between law and society, the state must ensure who holds sovereignty in the country, which must be regulated by law.¹⁶ The principle of legality becomes the primary key in the administration of a law-based state, indicating that no action can be deemed right or wrong if it has not yet been regulated within a framework of rules. This tends to describe legal provisions as absolute guides for social and state life. However, who would have thought that legal provisions can be created and determined by the power inherent in a legitimate person or organization as its maker, making it not impossible for law to deviate from its very existence.

The conflict between the understanding of legal positivism as conveyed by Kelsen, who in his study does not address issues of morality and justice because the law itself can determine its own direction outside the legal context.¹⁷ This tendency directs lawmakers toward viewing the

¹³Romi Librayanto, *Ilmu Negara (Suatu Pengantar)*, (Makassar : Pustaka Refleksi, 2012), p. 153.

¹⁴Boesche, Roger, "Kautilya's Arthashastra and the Concept of the State.", *Journal of Indian Philosophy*, Vol. 43, No. 1, 2015, pp. 1-25

¹⁵Aminuddin Ilmar, *Hukum Tata Pemerintahan*, (Makassar : Identitas Universitas Hasanuddin, 2013), p. 139

¹⁶Azmi, *Kedaulatan Rakyat dalam Perspektif Negara Hukum yang Berketuhanan*, *Jurnal Al-Qalam*, Volume 34 Number 1. 2017, p. 205.

¹⁷Cahya Wulandari, *Op.cit.*, p. 3.

dilemmatic problems in the formation of Legislation as merely requiring formation to avoid conflict with higher rules, without needing to consider the substantive content of the law itself, which is far from just. The validity of the claim that this State upholds popular sovereignty is undermined when the law itself constitutes the power of politics. Upon examination, the power of lawmakers is political power invoked in the name of the people to achieve specific goals set by its creators. Even though the State itself tends to proclaim its country as a Democratic State, in reality, that state tends to legitimize power by appropriating the people's voice.¹⁸

In Plato's work titled "Republic," he states that fundamentally, a state that claims to be democratic actually constitutes a form of acknowledging the existence of a "Philosopher King" within the state.¹⁹ A person who thirsts for power usually masters the science or art of communication rather than understanding the context of democracy itself. It is as if "society tends to believe the words of many people about heart disease that can be cured by herbal medicine more than the words of a doctor who has studied heart disease for years." Underscores that the morality of power constitutes a fundamental prerequisite in a democratic rule of law state. Public power cannot be evaluated solely from the aspect of formal validity derived from legislation, but also from its alignment with the moral values prevalent in society. Within this framework, law and morality are not separate entities but are intertwined in shaping the legitimacy of power.²⁰

In the context of constitutional governance, the weakening of sovereignty can be influenced by two primary factors: internal and external factors. From an internal perspective, the degradation of sovereignty often stems from the attitudes and actions of those in power, whether exercised individually or collectively. Sovereignty, which essentially derives from the people, generates the legitimacy of power through democratic mechanisms such as general elections and regional head elections, positioning people's representatives in legislative, executive roles, and various other public offices. This process entails moral and legal bonds in the form of promises and mandates to manage power for the public interest. However, in practice, power originating from the people is frequently treated as personal property, controlled by regimes prone to authoritarianism, or exploited deviantly by specific groups. This phenomenon is evident in the widespread abuse of authority, culminating in legal violations, including corruption crimes perpetrated by public officials in the executive domain. Such conditions reveal a profound tension between legal norms and moral values in the administration of state power.

It has become commonplace in a democratic rule-of-law state to present spectacles of conflict arising from the irrelevance of societal life to the laws created by "its representatives." The morality of power constitutes a fundamental prerequisite in a democratic rule-of-law state. Public power cannot be evaluated solely from the aspect of formal validity derived from legislation, but also from its alignment with the moral values prevalent in society. Within this framework, law and morality are not separate entities but are intertwined in shaping the legitimacy of power. Power exercised without a moral orientation risks losing its ethical significance, even if it has a juridically valid legal basis. Therefore, the relevance of law and morality emerges as a central issue in assessing the quality of state governance.

In constitutional democratic systems, popular sovereignty serves as the primary source of legitimacy for power. Through mechanisms of general elections, the people delegate authority to their representatives to occupy executive, legislative positions, and other public offices. This delegation not only entails legal consequences but also embodies moral bonds in the form of a mandate to exercise power for the public interest. Political promises, oaths of office, and

¹⁸Imam Wahyudi, "Positivisme Hukum dan Tantangannya dalam Pembentukan Peraturan Perundang-Undangan di Indonesia." *Jurnal Hukum Ius Quia Iustum*, Vol. 27, No. 2, 2020, pp. 201-220

¹⁹Romi Librayanto, *Op.cit.*, p. 23.

²⁰Tuti Suryani, "Filsafat Hukum dan Moralitas Kekuasaan dalam Negara Hukum Pancasila.", *Jurnal Konstitusi*, Vol. 21, No. 1, 2024, p. 45-67

commitments to public service constitute concrete manifestations of moral responsibility. If power is exercised in deviation from its original purpose, what occurs is not merely a legal violation, but also a betrayal of the moral values underpinning the relationship between the people and those in power.

Achieving the goal of "constructing a just and ideal legal development" is no easy feat; the tendency of law resembles a coin with two distinct sides. On one side, it reflects the realistic aspects of societal life; on the other, it mirrors general patterns born from consensus. It is uncertain how to depict the odds of surfacing the advantageous side versus the disadvantageous one. Unlike mathematicians with formulas to determine probabilities for both sides, the author instead contemplates who controls that coin. In other words, this underscores the dilemma between implementing popular sovereignty and legal sovereignty, both of which manifest tangibly in the dynamics of societal life.

The people require law to create peace and security for their lives; however, law is not merely an instrument always regarded as a tool to bind society, the elements of justice and the principle of equality in its application constitute a guarantee for the safety of the wider community.²¹ It is essential to reflect that the creators of law are free and moral human beings, so as not to become ensnared in the arbitrariness of those in power.²²

In the practice of constitutional governance, tensions between law and morality frequently arise alongside the dynamics of legislation formation and implementation. This is evident in the recent development of Indonesian law, which has tended to generate problems within society. The most hotly debated issues in Indonesia's legal evolution include the enactment of the Job Creation Law, the adoption of the new Criminal Code, and amendments to the Indonesian National Armed Forces Law. These three legal products reflect the state's policy direction, with direct implications for the relationship between the legality of power and moral legitimacy.

The Job Creation Law was drafted with the primary objective of promoting economic growth through regulatory simplification and enhancing the investment climate. From a policy perspective, this orientation can be understood as the state's effort to address global challenges and boost national competitiveness. Nevertheless, the formation process and substantive provisions of the Job Creation Law have elicited widespread criticism, particularly concerning the protection of workers' rights, environmental safeguards, and public participation in the legislative process. When the law prioritizes economic efficiency and investment interests over protections for vulnerable groups, serious questions arise regarding the moral orientation of the legal instrument itself. conclude that the omnibus method in the Job Creation Law has disregarded the moral principles of legislation formation, particularly the principles of openness and public participation, thereby engendering a crisis of moral legitimacy.²³ Does the law frequently serve merely to legitimize government actions, or does it truly foster a perspective on governmental legal conduct that carries broad implications arising from the regulatory or policy environment that may precede it?

From the perspective of the morality of power, law should function as an instrument to balance economic interests with social justice. The state has a moral obligation to ensure that development policies do not sacrifice citizens' basic rights. If law is perceived as a tool to accommodate the interests of certain groups, public trust in those wielding power will erode. Thus, the legitimacy of law is not solely determined by its formal validity, but also by society's moral acceptance of its objectives and impacts. cautions that legislation formation cannot be separated from its inherent moral dimension. Employing Luc J. Wintgens's jurisprudence

²¹F Shalihah & Oksep Adhyanto, *Op.cit.*, p. 671

²²Renaldi Faturrachman. *Op.cit.* Volume 2 Number 3, p. 2.

²³Nugraha, Rizki & Kartini, Dewi, "Omnibus Law dan Krisis Legitimasi Moral: Studi Kritis UU Cipta Kerja." *Jurnal Legislasi Indonesia*, Vol. 20, No. 2, 2023, p. 145-162

framework, this study demonstrates that every law must satisfy the criteria of rational acceptability and legal efficacy to be morally accepted by society.²⁴

The transformation of national criminal law through the enactment of the new Criminal Code also raises no less important debates in the context of the relationship between law and morality. On one side, the renewal of the KUHP represents a progressive step to break free from colonial legacies and align criminal law with national values. However, on the other side, several new provisions have sparked concerns regarding the expansion of criminalization of private and moralistic behaviors. Regulations on decency offenses, religious expressions, and the expansion of complaint-based offenses pose risks of the state using criminal law as a tool for moral control. The use of criminal law to regulate public morality must be approached with caution. In a plural society, moral values are not singular and uniform. If the state imposes a single moral standard through criminal threats, the law risks becoming a means of oppression against individual freedoms and minority groups. The morality of power demands that the state restrain itself in employing criminal instruments, while prioritizing principles of proportionality, non-discrimination, and respect for human rights. Without such moral boundaries, criminal law can lose its role as a guardian of justice and transform into a tool of repression.

Another relevant dimension in the discussion of the morality of power is the relationship between civil and military power, as reflected in the amendments to the Indonesian National Armed Forces Law. The arrangement of the military's role in a democratic state is a sensitive issue directly related to the nation's political history and past human rights violations. The expansion of the Indonesian National Armed Forces' role beyond national defense functions raises concerns about the weakening of civilian supremacy and the accountability of armed institutions. From a moral perspective, the state has a responsibility to ensure that armed power is not used outside the framework of law and democratic oversight.

The morality of power demands that every expansion of authority for state institutions, particularly those holding a monopoly on the use of violence, be accompanied by strict and transparent control mechanisms. Without effective oversight, power tends to be abused, and the law loses its moral binding force. Therefore, regulatory reforms in the defense and security sector should not only focus on effectiveness but also on protecting citizens' rights and strengthening the rule of law principle.

If these three legal developments are analyzed comprehensively, a tendency to strengthen the state power structure emerges, one that is not always balanced by strengthening accountability mechanisms and public participation. This condition reveals a gap between law as a normative product and morality as a guiding value for the exercise of power. When law functions more as an instrument of power than as a means of justice, a legitimacy crisis becomes an unavoidable consequence. Therefore, systematic efforts are needed to re-strengthen the interconnection between law and morality in state governance. Emphasizes that the reconstruction of the relationship between law and morality requires a comprehensive approach through three main pillars: reform of participatory legislative processes, strengthening of equitable legal substance, and improvement of power oversight mechanisms.

First, the legislative formation process must be conducted transparently, participatively, and based on analyses of social impacts and human rights. This aligns with the principle of jurisprudence which emphasizes the importance of rationality and public participation in legislation formation. Adds that without meaningful public participation, laws lose their moral legitimacy and risk being rejected by society.

Second, the substance of the law must reflect a balance between state interests and the protection of citizens, particularly vulnerable groups. Underscore that the protection of workers'

²⁴Budi Santoso, "Dimensi Moral dalam Pembentukan Undang-Undang di Indonesia: Perspektif Legisprudence.", *Jurnal Hukum dan Pembangunan*, Vol. 55, No. 1, 2025, p. 88-105.

rights and environmental safeguards constitutes a measure of a legal product's morality, not merely a technical-juridical consideration.

Third, oversight of power implementation must be strengthened through independent institutions, press freedom, and civil society participation. Reminds that since Kautilya's era, the effectiveness of power oversight has been a determining factor for successful governance. Without oversight, power tends to be abused and law loses its moral binding force.

Ultimately, the sustainability of democracy and the rule of law greatly depends on the ability of state organizers to maintain a balance between legality and moral legitimacy. Law that loses its moral dimension will struggle to gain public trust, while morality without the support of just law will lose its implementational power. In the Indonesian context, the challenges ahead are to ensure that every legal product and public policy is not only juridically valid but also fair and morally meaningful. Thus, the exercised power truly reflects the will of the people and the noble goals of the nation as mandated in the constitution. Reminds that legal development in Indonesia cannot be separated from the values of Pancasila, which serve as the moral foundation for the entire national legal order. This affirms that the relationship between law and morality is not merely a theoretical matter but has become a constitutional commitment that must be realized in constitutional practice.

D. CONCLUSION

Law, power, and morality are three inseparable elements in the administration of a democratic rule-of-law state. Law does not arise in a vacuum, but rather is the result of social consensus that reflects power relations, the values alive in society, and the common goals that the state seeks to achieve. Therefore, the validity of law cannot be assessed solely from formal and procedural aspects, but must also be tested through its ethical dimension and justice. The evolution of the state from the night watchman concept to the welfare state brings consequences of an increasing role for the state in regulating societal life. However, this expansion of roles simultaneously increases the potential for abuse of power if not accompanied by a strong moral foundation. When law is formed and implemented primarily as a political instrument, the sovereignty of the people risks being reduced to mere formal legitimacy, without guarantees that public interests truly become the main orientation of power. The dynamics of the formation and change of legislation reveal tension between the demands for power effectiveness and the need for moral legitimacy. Legal products that are unresponsive to public aspirations, human rights, and principles of social justice have the potential to trigger a public trust crisis and weaken the foundation of the rule of law itself. This situation underscores the importance of the morality of power as a prerequisite for the sustainability of constitutional democracy. Thus, strengthening the rule of law does not solely depend on adherence to the principle of legality, but also on the ethical commitment of state officials in exercising their authority. Fair law demands a balance between certainty, utility, and justice, which can only be achieved if power is exercised with moral awareness. It is at this point that law finds its meaning as a means to realize welfare and justice for all the people, not merely as a tool for legitimizing power.

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