

# The Tension Between the Rule of Law and Political Interests in Indonesia: A Legal and Governance Perspective

Abdillah Mustari

Alauddin Islamic State University, Indonesia

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## ABSTRACT

This article critically examines the persistent tension between the principles of the rule of law and political interests in Indonesia's system of democratic governance. Although Indonesia constitutionally affirms itself as a state based on law, as enshrined in Article 1(3) of the 1945 Constitution, the practical operation of legal institutions reveals a pattern of sustained political intervention. Such intervention has significantly weakened legal certainty, undermined institutional independence, and eroded public trust in the legal system. Employing a normative-doctrinal legal approach combined with contextual political analysis, this study argues that law in Indonesia is frequently instrumentalized by political elites. Rather than functioning as a neutral framework to restrain power and uphold justice, legal mechanisms are often deployed to legitimize and consolidate political authority.

The analysis focuses on three interrelated domains. First, it explores political influence in the legislative process, demonstrating how formally valid legal procedures may produce substantively regressive outcomes, particularly when public participation and accountability are marginalized. Second, it examines the politicization of the judiciary, especially through appointment mechanisms and decision-making processes that compromise judicial independence and constitutional oversight. Third, it analyzes the selective and politically biased enforcement of law, highlighting how executive influence and weak accountability structures distort the principle of equality before the law.

To contextualize Indonesia's experience, the article draws comparative insights from other transitional and backsliding democracies, including South Korea, Taiwan, Hungary, and Poland. These cases illustrate how institutional design, political commitment, and civil society engagement shape the resilience or fragility of the rule of law. The findings suggest that Indonesia's rule of law challenges are structural rather than incidental, reflecting deeper governance deficits. Consequently, strengthening the rule of law in Indonesia requires comprehensive institutional reform, the depoliticization of legal institutions, and the reinforcement of democratic accountability to ensure the substantive realization of constitutional legality.

**Keywords:** rule of law; political interference; legal instrumentalization; judicial independence; Indonesia.

## INTRODUCTION

Indonesia constitutionally declares itself a state based on law (*rechtsstaat*), as enshrined in Article 1(3) of the 1945 Constitution. This provision reflects a normative commitment to legality, legal certainty, and the subordination of political power to law. In theory, the rule of law serves as a foundational principle that constrains state authority, protects fundamental rights, and ensures

accountable governance. In practice, however, Indonesia continues to face profound challenges in translating constitutional ideals into institutional realities.

Since the democratic transition following the collapse of authoritarian rule in 1998, Indonesia has undergone extensive legal and institutional reforms. Constitutional amendments, judicial restructuring, and the establishment of independent oversight bodies have all been intended to strengthen the rule of law. Yet, more than two decades later, political interference remains deeply embedded in legal institutions. Legislative

processes are frequently shaped by elite bargaining, judicial independence is compromised through politicized appointments, and law enforcement is often characterized by selectivity and bias.

This article argues that these problems are not merely episodic deviations but reflect a structural tension between law and politics within Indonesia's governance system. Law is frequently deployed not as an impartial framework for justice, but as an instrument for legitimizing political interests. This phenomenon raises critical questions about the nature of Indonesia's democracy, the integrity of its legal institutions, and the prospects for meaningful rule of law consolidation.

The article proceeds as follows. Section two outlines the theoretical framework and relevant literature on the rule of law, legal instrumentalization, and governance in transitional democracies. Section three explains the methodology. Sections four through six analyze political intervention in legislation, the judiciary, and law enforcement. Section seven provides comparative insights from South Korea, Taiwan, Hungary, and Poland. Section eight discusses the implications for Indonesia's legal governance, followed by concluding remarks.

## THEORETICAL FRAMEWORK AND LITERATURE REVIEW

The concept of the rule of law has long occupied a central position in legal and political theory. Classical theorists such as A.V. Dicey emphasized the supremacy of law, equality before the law, and the absence of arbitrary power. Joseph Raz further articulated formal criteria of the rule of law, including clarity, stability, and prospectivity of legal norms. Tom Bingham later expanded the concept to include access to justice, protection of fundamental rights, and accountability of public officials.

While these formulations emphasize law as a normative ideal, critical scholars caution against assuming that law inherently constrains power. Tamanaha argues that the rule of law can function both as an ideal and as an instrument of domination, depending on political and institutional contexts. In weak or hybrid democracies, legal forms may coexist with authoritarian practices, creating what some scholars describe as “rule by law” rather than rule of law.

Recent comparative scholarship highlights the phenomenon of legal instrumentalization, whereby political actors use formal legal mechanisms to entrench power while maintaining a façade of legality. Scheppele's concept of “autocratic legalism” captures how elected governments undermine democratic institutions through formally lawful means. Sadurski's analysis of Poland illustrates how constitutional and judicial reforms can be weaponized to erode judicial independence without overt constitutional rupture.

In Southeast Asia, similar dynamics have been observed. Studies on the Philippines under Duterte demonstrate how law enforcement and judicial processes can be mobilized against political opponents. In Indonesia, scholars such as Butt and Lindsey have documented persistent weaknesses in judicial independence, legal pluralism, and enforcement consistency.

By contrast, South Korea and Taiwan are frequently cited as examples of transitional democracies that have successfully strengthened the rule of law through institutional reform, merit-based judicial appointments, and robust anti-corruption mechanisms. These cases provide valuable comparative benchmarks for assessing Indonesia's challenges and reform prospects.

## METHODOLOGY

This study employs a qualitative research design combining normative legal analysis and contextual political assessment. Primary legal materials—including constitutional provisions, statutes, and judicial decisions—are analyzed to assess formal commitments to the rule of law. These materials are complemented by case based analysis of legislative reforms, judicial appointments, and law enforcement practices that illustrate political intervention.

Comparative analysis is used to situate Indonesia's experience within broader patterns observed in transitional democracies. Rather than offering exhaustive case comparisons, the article draws selectively on relevant experiences from South Korea, Taiwan, Hungary, and Poland to illuminate institutional mechanisms that either protect or undermine legal autonomy.

## Political Intervention in the Legislative Process

Political interference in Indonesia's legislative process represents a central manifestation of the tension between law and power. Although legislative procedures formally adhere to constitutional and statutory requirements, substantive outcomes are often shaped by elite political interests rather than public deliberation.

The 2019 revision of the Anti-Corruption Commission Law (KPK Law) exemplifies this dynamic. Procedurally enacted through parliamentary mechanisms, the revision significantly weakened the independence and effectiveness of Indonesia's most prominent anti-corruption institution. The legislative process was expedited, public participation was minimal, and critical voices from civil society and academia were largely disregarded. Substantively, the revision introduced supervisory mechanisms and employment changes that curtailed investigative autonomy.

This case illustrates how formal legality can conceal substantive regression. Legislative authority was exercised not to strengthen accountability, but to shield political elites from legal scrutiny. Such practices reflect a broader pattern of legal instrumentalization, in which law is used to legitimize political objectives rather than constrain them.

The dominance of political party coalitions in parliament exacerbates this problem. Weak internal party democracy, oligarchic financing, and executive influence limit the legislature's capacity to function as an independent check on power. As a result, legislative products frequently prioritize political stability and elite interests over legal integrity and democratic accountability.

The consequences extend beyond specific statutes. Repeated experiences of politicized legislation erode public confidence in lawmaking institutions and undermine the normative authority of law itself. When legality is perceived as contingent on political power, the rule of law loses its capacity to function as a shared societal framework.

## Political Influence in the Judicial Process

Judicial independence constitutes a core element of the rule of law. In Indonesia, however, the judiciary remains vulnerable to political influence, particularly through appointment mechanisms and institutional design.

The appointment of justices to the Constitutional Court and judges to the Supreme Court involves political branches, including the executive and the legislature. While formal selection procedures exist, these processes are often characterized by political bargaining and transactional considerations. Professional merit and integrity do not always serve as decisive criteria.

Concerns regarding judicial capture have intensified in response to several high-profile Constitutional Court decisions that align closely with incumbent political interests. Decisions affecting electoral rules and power configurations have generated public suspicion regarding judicial impartiality. Although not all controversial decisions necessarily result from political pressure, the broader pattern of politicized appointments undermines institutional credibility.

Judicial dependence on political actors weakens the judiciary's role as guardian of the constitution and protector of fundamental rights. From a governance perspective, this condition erodes checks and balances and facilitates the concentration of power. The judiciary risks becoming an instrument of political legitimation rather than a forum for principled legal reasoning.

## Politicization of Law Enforcement

Law enforcement in Indonesia further illustrates the structural tension between law and politics. Institutions such as the police and prosecution service operate within legal frameworks that formally mandate impartiality and equality before the law. In practice, enforcement patterns often reveal selectivity and political bias.

Selective prosecution is a recurring concern. Political opponents, activists, and government critics are more likely to face investigation and prosecution, while alleged violations by politically connected elites frequently remain unaddressed or are processed slowly. The use of broadly worded statutes, such as provisions within the Electronic Information and Transactions Law, facilitates discretionary enforcement and political repression.

Structural factors contribute to this problem. Law enforcement agencies remain institutionally linked to the executive branch, limiting their autonomy. Oversight mechanisms are weak, and accountability processes lack transparency. As a result, law enforcement becomes susceptible to political direction, undermining the principle of equality before the law.

The implications are severe. Public trust in legal institutions declines, corruption persists, and democratic participation is constrained by fear of legal reprisal. In such conditions, law no longer functions as a safeguard against power but as a mechanism for maintaining political dominance.

### **Comparative Perspectives: Lessons from Other Democracies**

Comparative experiences highlight that legal outcomes are shaped not only by formal rules but by institutional design and political context. South Korea and Taiwan demonstrate how sustained reform can strengthen legal autonomy, while Hungary and Poland illustrate how democratic erosion can occur through legal means.

In South Korea, post-authoritarian reforms focused on depoliticizing judicial appointments, strengthening prosecutorial independence, and empowering anti-corruption institutions. High-profile prosecutions of former presidents underscore the capacity of legal institutions to act independently.

Taiwan pursued similar reforms, enhancing judicial oversight, transparency, and public participation. Independent anti-corruption agencies and a strengthened constitutional court have contributed to legal accountability.

By contrast, Hungary and Poland illustrate how legal mechanisms can be manipulated to weaken judicial independence while maintaining constitutional formality. These cases underscore the dangers of legalism divorced from substantive democratic commitments.

For Indonesia, these comparisons suggest that constitutional declarations alone are insufficient. Effective rule of law requires institutional safeguards, political restraint, and active civil society engagement.

### **Implications for Legal Governance in Indonesia**

The Indonesian case reflects broader global concerns regarding the fragility of the rule of law in hybrid democracies. Legal reform efforts that focus solely on formal compliance risk reinforcing legal instrumentalization rather than addressing underlying power dynamics.

Meaningful reform requires depoliticizing judicial and law enforcement institutions, strengthening oversight mechanisms, and enhancing transparency in legislative processes. Equally important is cultivating political culture that respects legal constraints and empowers civil society as a watchdog.

Without such reforms, the tension between law and politics will persist, undermining democratic consolidation and public trust.

## **CONCLUSION**

Indonesia's constitutional commitment to the rule of law remains largely aspirational. Political intervention in legislation, the judiciary, and law enforcement continues to undermine legal integrity and democratic accountability. This article has shown that these challenges are structural rather than incidental, rooted in the instrumentalization of law by political elites.

Comparative experiences demonstrate that reform is possible but requires sustained political will, robust institutional design, and active societal oversight. For Indonesia, strengthening the rule of law is not merely a legal project but a democratic imperative.