IQAS Vol. 55 / 2024 ii, pp. 269–287

Legal Changes during Joko Widodo's Administration – Backsliding of Democracy?

Research Note

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Abstract

This paper provides an overview of the legislative landscape and its background under the Joko Widodo administration (2014–2024). The transition of presidential power from Susilo Bambang Yudhoyono to Joko Widodo marked the consolidation of democracy in post-authoritarian Indonesia, continuing from the pivotal reforms of 1998. The period of Widodo's administration from 2014 to 2024 illustrates how free elections and freedom of expression, combined with advancements in IT technology, have inadvertently highlighted societal divisions, including discrimination against minorities. Beyond political evolution, the period has also witnessed emerging economic disparities within Indonesian society, as well as the effects of the COVID-19 pandemic during the latter half of the period. This paper focuses on major legislative initiatives during the Joko Widodo administration. It systematically examines the background, contents and pivotal discussions of these significant pieces of legislation, providing a comprehensive analysis of the legislative developments during this crucial decade in Indonesia. It goes on to argue that the legislative policies of the Widodo administration reflect a situation where the transition from authoritarianism to democratisation falls short of fully embodying constitutionalism, characterised by limits on executive power and respect for human rights.

Keywords: Indonesia, Joko Widodo government, law and democracy, legislative policy, law and human rights, democratic backsliding, Omnibus Law

The transfer of the presidency from Susilo Bambang Yudhoyono to Joko Widodo in 2014 marked a significant step in the consolidation of democracy in post-authoritarian Indonesia, a process that began with the end of the Suharto regime in 1998. This was the second peaceful transfer of the presidency based on a direct general election,[1] following the 2004 transfer from Megawati Sukarnoputri to Yudhoyono.

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DOI 10.11588/iqas.2024.2.27207

However, at the same time, there is growing concern about the declining quality of democracy in Indonesia. In the 2024 presidential election, Prabowo Subianto selected Widodo's eldest son, Gibran Rakabuming, as his vice-presidential running mate. Prabowo, who is a former son-in-law of the late Suharto,[2] as well as the former military commander of a special operation unit that was alleged to be involved in the forced disappearance of pro-democracy activists in 1997 and 1998,[3] had previously competed against Widodo in the 2014 and 2019 presidential elections. Indeed, although Widodo's ruling party, the Indonesian Democratic Party of Struggle (*Partai Demokrasi Indonesia Perjuangan*, PDI-P), had nominated a different presidential candidate, Widodo effectively supported Prabowo, who formed a partnership with his son. This move suggests Widodo's intention to pave the way for his son's future presidential candidacy and to establish a political dynasty.

The impact of the COVID-19 pandemic has also been significant for Widodo's administration. Widodo's second term coincided with the outbreak of the pandemic. Shortly after the first patient was identified on 2 March 2020, large-scale social restrictions (*Pembatasan Sosial Berskala Besar*, PSBB) based on the Health Quarantine Law (Law No. 6/2018) were repeatedly implemented, placing a significant burden on ordinary citizens.[4] Indonesia's COVID-19 response was comparatively moderate compared to that of neighbouring countries, prioritising the maintenance of economic activities rather than strict lockdown measures.[5] However, particularly during the surge of the Delta variant, the country experienced a notably high number of fatalities.[6] Amidst such circumstances, the Widodo administration enacted some controversial laws, which are under consideration in this paper. Consequently, inadequacies in deliberation and lack of transparency elicited criticism, contributing to societal turmoil compounded by economic distress.

Amid these developments, many observers are concerned about a potential resurgence of authoritarian tendencies in Indonesia, particularly during Widodo's second term. The resurgence of authoritarianism or democratic backsliding can be observed in various post-authoritarian countries. However, political landscapes and social responses to democratic backsliding vary from country to country. For example, Egypt's post-authoritarian democratisation was short-lived when the military displaced the popularly elected president in 2013. In contrast, the

1 Samuel P. Huntington (1991: 266) proposed the "two-turnover test" for measuring the consolidation of democratisation.

2 Prabowo married Suharto's second daughter in 1983 and later divorced in 1998.

3 At least 22 activists were kidnapped and 13 of them are still missing (Kontras 2017: 2).

4 The first large-scale social activity restriction, determined by the Minister of Health, was applied in April 2020. The government gradually relaxed restrictions in 2022, and the last major social restriction policy, the requirement of health insurance for foreign visitors, was lifted on 9 June 2022.

5 Marcus Mietzner (2020: 6–7) highlights the Widodo administration's policy of prioritising the economy.

6 During July and August 2021, the number of deaths reported per day exceeded 2000; see https://covid19.go.id/peta-sebaran (accessed 19 June 2022).

same year, Indonesia held a presidential election that marked the second peaceful transition of the presidency. While the political and social trajectories leading to democratisation in the two countries show striking similarities (Mietzner 2014: 435), their experiences with democratic backsliding differ significantly.

Turkey is another Muslim-majority country that experienced a democratic transition from authoritarianism. Freedom House reclassified Turkey from "partly free" to "not free" in 2018.[7] Turkey's democratisation was driven partly by its diplomatic policy to join the EU. However, in the mid-2010s, the tendency toward authoritarianism became apparent, marked by the suppression of anti-government protests in 2013. President Erdoğan strengthened his autocratic position through a series of elections designed to benefit the ruling party (Essen / Gumuscu 2016)[8]. In response to this authoritarian tilt, opposition parties formed electoral coordination despite their ideological differences and achieved some level of success[9] (Selçuk / Hekimci 2020).

Compared to Egypt and Turkey, Indonesia's democratic backsliding is more subtle. Legislation under Widodo's presidency, discussed in this paper, indicates democratic backsliding during a period of highly competitive elections and a significantly high level of political freedom, especially media freedom, which are explicitly guaranteed by the post-authoritarian Constitution.[10]

Consequently, this paper will examine legislation under the Widodo administration from 2014 to 2024, focusing on its impact on civil and political freedoms, as well as on the rights of marginalised minorities and economically disadvantaged classes.

Legislation in Indonesia

Between 2014 and 2024, the Indonesian parliament, known as the People's Representative Council (*Dewan Perwakilan Rakyat*, DPR), passed 207 statutes. In Indonesia, budgets, international treaty ratifications and administrative changes such as the division, establishment and merger of provinces are also enacted through parliamentary statutes. Consequently, the actual number of substantive

7 See https://freedomhouse.org/country/turkey/freedom-world/2018 (accessed on 21 May 2024).

8 Essen / Gumuscu (2016) describe Turkey under Erdoğan as a competitive authoritarian regime. Although competitive elections are held regularly, the government mobilizes state employees and uses the state's financial resources for the ruling party's electoral campaign, controls mass media to restrict opposition parties' access, and suppresses freedom of expression among the dissenting groups.

9 According to Selçuk / Hekimci (2020: 14), the electoral coordination by opposition parties prevented the ruling party from securing a majority or three-fifths majority necessary to amend the constitution in three out of seven elections between 2014 and 2019. These elections included the presidential, parliamentary, and local elections, as well as a national referendum.

10 After 1998, Indonesia had a series of constitutional amendments that brought changes in government structure, allocation of power and the guarantee of human rights. However, *Pancasila* (Indonesia's state ideology which is contained in the Preamble of the Constitution) remains an uncontestable state ideology. *Pancasila* is often referred to as a limitation of individual freedom, as discussed by Shimada (2022).

legislative acts is considerably lower than the total reported. Additionally, Indonesian statutes typically only outline general principles and frameworks. The detailed provisions necessary for implementation are often contained within a range of subordinate legislation, including government regulations, ministerial regulations and presidential regulations, collectively referred to as implementation regulations (*peraturan pelaksana*). Moreover, because the drafting of these implementation regulations typically commences only after the relevant law has been enacted, a significant delay between the enactment of a law and its effective implementation occurs.

In Article 22, the Indonesian Constitution also grants the President the authority to issue Government Regulations in Lieu of Law (Perpu, short for *Peraturan Pemerintah Pengganti Undang-Undang*) if there are emergent reasons. If such Perpu are not subsequently ratified by the parliament, they expire. During the period covered by this paper, several Perpu were issued, addressing controversial matters such as the Social Organisation Law in 2017 and the Amended Omnibus Law on Job Creation in 2022. The subsequent sections of this paper will examine the parliamentary statutes and Perpu in chronological order.

Controversial legislation between 2014 and 2024

Electronic Information and Transactions Law (Law No. 19/2016)

The Electronic Information and Transactions Law was initially enacted in 2008 (Law No. 11/2008) under Yudhoyono to establish legal certainty for internet businesses and to safeguard consumers. It underwent significant amendments during Widodo's administration in 2016 (Law No. 19/2016) and again in 2024 (Law No. 1/2024).

While primarily aimed at regulating the digital economy, the law also contains provisions with profound implications for freedom of expression. Articles 27 to 29 stipulate criminal punishment against individuals who distribute, transmit or make accessible electronic information deemed to violate moral standards, engage in gambling, defamation or threats, or spread fake news or hate speech.

Despite revisions in 2016[11] and 2024,[12] these articles continue to pose a substantial risk to freedom of expression online. According to data from Amnesty International and the Southeast Asian Freedom of Expression Network, there were 74 cases prosecuted under this law during Yudhoyono's second

11 The amendment gives further definitions of distribution, transmission and accessibility in the official eradication, and defines defamation as provided in the Criminal Code. The amendment also includes the reduction of the penalty.

12 The amendment further reduces the penalty of both imprisonment and fine.

term (2009–2014). This figure skyrocketed to 233 cases during Widodo's first term (2014–2019), highlighting an increasing enforcement trend as reported by Hamid Usman (2019).

Social Organisation Law (Law No. 16/2017)

State corporatism was a foundational element of authoritarian rule during the Suharto regime, which lasted until May 1998. The Social Organisation Law was enacted in 1985 alongside the Law on Political Parties and Golkar[13], the Election Law, the Law on the People's Representative Council and People's Consultative Assembly (DPR/MPR), and the Law on Referendum.[14] These laws were collectively referred to as "the five political laws" and effectively restricted civil and political freedom during the Suharto regime. Among them, the Social Organisation Law served as a critical instrument to consolidate state corporatism and bolster authoritarian control over civil society. This law granted prestigious status to a selected number of government-sanctioned organisations while imposing restrictions on other social organisations not authorised by the government.[15] Unlike other four laws that were promptly abolished or amended after democratisation, this law was formally amended by Law No. 17/2013, and the new law mandated a judicial decision before the suspension or dissolution of a social organisation (Articles 65, 68).

However, under President Widodo's administration, the government regained the authority to disband social organisations without judicial intervention. In 2017, Widodo issued Perpu No. 2/2017, which amended the 2013 law; this Perpu was later ratified as Law No. 16/2017. This amendment removed the requirement for judicial recourse that was previously necessary to suspend or dissolve social organisations. Under the new framework, the law authorises the issuance of suspension or dissolution orders solely through ministerial decisions (Article 62).

This amendment was intended to curb political Islamic extremism, exemplified by the activities of the *Hizbut Tahrir Indonesia* (HTI), a radical Islamic

13 Golkar (*Golongan Karya*, or "functional group" in English) was a political group mainly composed of civil servants and sanctioned by the government. Suharto's government used Golkar to limit the influence of political parties on state administration and to secure civil servants' loyalty to the government. Under the Suharto regime, Golkar was positioned as a non-party organisation. However, Golkar reorganised itself into a political party after 1998.

14 The Law on Political Parties and Golkar recognised only three state-sanctioned political parties and effectively prohibited other political parties. The Law on Election provided strict election campaign rules including pre-screening of candidates by the government. The Law on DPR/MPR provided a significant number of parliament seats nominated by the President without election to effectively control the parliament. The Referendum Law set prohibitively difficult conditions for the referendum to amend the constitution, which gave broad power to the President.

15 For example, the regime recognised the Indonesian Journalist Union (*Persatuan Wartawan Indonesia*, PWI) as the sole national journalist association. Consequently, when some journalists, dissatisfied with PWI, formed the Alliance of Independent Journalists (*Aliansi Jurnalis Independen*, AJI), both PWI and the Ministry of Information pressured media companies not to hire AJI members (see Aliansi Jurnalis Independen 2024).

organisation. Then, HTI was disbanded in 2017 under this new Perpu.[16] HTI had been prominently involved in the mass campaign demanding the prosecution of then-Jakarta Governor Basuki Tjahaja Purnama on charges of blasphemy. Given that HTI had not resorted to violence, the removal of judicial oversight in the process of disbanding organisations like HTI raised concerns about potential violations of the constitutional right to freedom of association. Additionally, the regulation extends beyond targeting religious extremism; it also prohibits organisations that espouse Marxist-Leninist or separatist inclinations. It reflects the repressive strategies of the Suharto era against any "anti-Pancasila" ideologies in general.

Law on Legislative Institutions (No. 2/2018)

The primary purpose of the Law on Legislative Institutions is to provide a legal foundation for the status and structure of representative legislative bodies at both national and local levels. These bodies include the People's Consultative Assembly (MPR), the People's Representative Council (DPR), the Regional Representative Council (DPD), the Provincial People's Representative Council (DPRD Provinsi) and the Municipal People's Representative Council (DPRD Kabupaten/Kota).

However, a new amendment, adopted in February 2018 and enacted in March of that year, has drawn substantial criticism for curtailing freedom of expression and granting excessive protections to parliamentarians against external oversight. The law now allows the Parliament's Honorary Council (*Mahkamah Kehormatan Dewan*) to take legal action against individuals who demean the parliament and its members, despite the Honorary Council's primary responsibility to ensure that parliamentarians adhere to the code of ethics (Article 122(a)). Moreover, for criminal investigations, including those related to corruption, the law mandates that the investigating body must obtain written approval from the President after consulting the Honorary Council to summon parliamentarians or request their testimony regarding the crime (Article 245(1)).

This amendment was adopted in a short period and with minimal reporting to the President.[17] Following public outcry over the amendment, Widodo announced his intention not to sign the bill (Sapiie 2018). However, under the Constitution, if a bill passed by the DPR is not signed by the President within 30 days, it automatically becomes a law to be implemented.[18] Consequently, the only recourse to challenge or overturn this legislation is to file a petition for judicial review with the Constitutional Court.

16 For the background of the dissolution order for HTI, see Harijanto / Fozdar (2023).

17 Eight factions in DPR, including the ruling party PDI-P, supported the bill, while only two opposition parties abstained (Varagur 2018).

18 See Article 20(5) of the Constitution.

Indeed, in June 2018, the Constitutional Court unanimously ruled for the annulment of controversial provisions of the law. These included the parliament's right to summon any person, with police assistance if deemed necessary, the Honorary Council's right to take legal action against defamation of the parliament, and the requirement for the President to consult with the Honorary Council before consenting to an investigating body obtaining testimonies from parliamentarians.[19]

Marriage Law (Law No. 16/2019)

The law amends the earlier 1974 Marriage Law (Law No. 1/1974). Given Indonesia's status as the nation with the largest Muslim population worldwide and its diverse religious landscape, marriage has often been a politically sensitive issue. Certain practices, allegedly based on conservative interpretations of Islamic law, have sparked controversy, especially those affecting the rights of minorities. These practices include polygamy, child marriage,[20] divorce procedures and the prohibition of interfaith marriages.

The 2019 amendment was enacted in response to the Constitutional Court ruling in 2018 that declared the provision setting different minimum marriage ages for men and women in the previous law – 19 years old for men and 16 years old for women – to be unconstitutional. The court ruled that this provision violated the right to equality under the law and governance as guaranteed by the Constitution.[21] Consequently, the revised law now establishes a uniform minimum marriage age of 19 years for both men and women (Article 7(1)).

Nevertheless, the law permits a dispensation from the minimum age requirement based on a petition from the couple's parents, which necessitates a court decision after considering the opinions of the potential husband and wife. Indeed, the amendment has revised provisions to strengthen the protection of children's rights, particularly those of girls, from traditional Islamic marriage practices that may be considered conservative.

Despite these legal changes, there is a noticeable trend toward a more conservative interpretation of Islamic law within Indonesian society. For instance, in July 2023, the Supreme Court issued a circular letter (*Surat Edaran*) instructing lower courts to reject applications for the authorisation of interfaith

19 See the Constitutional Court Decision No. 21/PUU-XVI/2018.

20 It should be noted that the issue of child marriage is not merely an issue of interpretation of Islamic law, but a complex issue influenced by various cultural, social, economic and legal factors. Grijns / Horii (2018: 463-464) argued that while child marriage is sustained based on conservative Muslim values, various dilemmas and compromises at each level of society are observable. Additionally, Statistics Indonesia (*Badan Pusat Statistk*, BPS) reports provinces with the highest child marriage are West Nusa Tenggara Barat, South Sumatera, West Kalimantan, West Sulawesi and Papua, where a high number of low-income populations exist (see Yoesep 2024).

21 The Constitutional Court decision No. 22/PUU-XV/2017, ordered in 2018.

marriages.[22] This circular letter reverses a previous Supreme Court decision in 1989, which allowed interfaith marriage through a civil registration process.[23] It also conflicts with the Civil Administration Law of 2006, which continues to permit interfaith marriages registered through a civil registration office, provided the couple receives prior court authorisation (Nur 2023).

Another sign of the growing influence of conservative Islamism in the judiciary is the Supreme Court's judicial review decision in 2021. This review overturned a joint ministerial decision made by the Ministers of Social-educational Affairs, Internal Affairs and Religious Affairs[24] that had barred the enforcement of Islamic religious dress codes which obligate female pupils to wear a headscarf in public schools. The Supreme Court[25] ruled that this joint decision was invalid, arguing that it conflicted with higher legal regulations, including the Regional Government Law, the Child Protection Law, the Law on Legislative Procedure and the National Education System Law.[26]

Corruption Eradication Commission Law (Law No. 19/2019)

This amendment has attracted significant criticism for weakening the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*, KPK) that was established in 2002. Under the 2002 law on KPK (Law No. 30/2002), the commission enjoyed considerable independence and robust authority to investigate corruption within government organisations. The KPK also earned a reputation as the most trusted state organisation, in sharp contrast to the perceived untrustworthiness of the parliament. However, the 2019 amendment of the law significantly reduced the KPK's autonomy by bringing it under executive's control. The Parliament, frustrated by the KPK's vigorous investigations into corruption cases involving its members from both the ruling and opposition parties, passed this amendment to shield themselves.

Key amendments include the establishment of a Supervising Board for the KPK, the appointment of corruption-crime investigators from outside of the KPK, and a restructuring of the KPK and its officials' positions within the executive branch. Firstly, the KPK Supervising Board (*Dewan Pengawas*) is composed of board members appointed by the President to oversee the KPK's operation. The KPK must now obtain written permission from the Supervising Board for critical investigative activities such as wiretapping, house searches

22 Supreme Court's Circular Letter (*Surat Edaran Mahkamah Agung*) No.02/2023.

23 The Supreme Court decision No.1400K/Pdt/1986, ordered in 1989.

24 Joint Ministerial Decision of the Minister of Culture and Education, the Minister of Internal Affairs and the Minister of Religion No.02/KB/2021.

25 Article 24A of the Constitution stipulates that the Supreme Court is responsible for reviewing legal regulations below the parliamentary law, to ensure their compatibility with higher legislation. Consequently, judicial review by the Constitutional Court is limited to laws enacted by the parliament, while the Supreme Court reviews all other implementing regulations.

26 The Supreme Court decision No.17P/HUM/2021, ordered in 2021.

and seizures (Articles 37B(1), 47(1)). Secondly, unlike the previous law, the revised law authorises the KPK to designate police, prosecutors or other civil servants as investigators (Articles 43, 45). Thirdly, with the revision, the KPK has been reclassified as part of the executive branch (Article 3), and its officers are now considered national civil servants (Article 24(2)). Additionally, the revised status of KPK officers requires their participation in a "patriotism test" (*Tes Wawasan Kebangsaan*) conducted by the Ministry of Civil Servant Empowerment and Bureaucratic Reform to evaluate their allegiance to the Indonesian government. This test, which covers controversial topics, resulted in seventy-five KPK officers, out of more than one thousand officers, failing (DetikEdu 2021), underscoring the significant implications of the law's amendments on the independence and capability of the commission.

Some petitions challenging the law were submitted for judicial review to the Constitutional Court. Although the Court dismissed most petitions, it annulled, among the controversial revisions, the requirement for the Corruption Eradication Commission to obtain prior permission from the Supervising Board for wiretapping, house searches and seizures (Yulida 2021).

Constitutional Court Law (Law No. 7/2020)

The revision of the law on the Constitutional Court (*Mahkamah Konstitusi*), enacted on 1 September 2020, has stirred controversy primarily for two significant reasons: the extension of terms for Constitutional Court Judges and the opaque, rushed deliberation process. In fact, this amendment lacked any pressing necessity, even amid the COVID-19 pandemic.

The amended law raises the retirement age for Constitutional Court Judges from 60 to 70 years and extends their term from 10 to 15 years (Article 23(1) c). Parliament claims that these modifications aim to enhance the independence of the Constitutional Court. However, this revision causes concerns that extending the judges' terms without a robust selection and monitoring framework could lead to increased politicisation of the court (Ghina 2020). For instance, the incumbent chief judge of the Constitutional Court can now retain his position until 2026 under the new law, whereas he would have retired in 2021 under the previous law.[27] Thus, critics contend that these lengthened terms essentially serve as the government's tool for potentially incentivising judges to favour certain decisions in controversial legislative matters, such as the KPK law, the forthcoming Omnibus Law on Job Creation and the new Criminal Code (Ghina 2020).

The accelerated deliberation of this bill has also drawn significant criticism. Introduced to the parliament on 24 August 2020, it was passed just eight days

27 In 2023, the Constitutional Court ruled that the extended term provisions of the new law would not apply retroactively to the current judges (Decision No. 81/ PUU-XXI/ 2023).

later on 1 September, following predominantly closed sessions. This rapid approval, the quickest in the history of the parliament, surpassed even the 12-day deliberation of the KPK bill in 2019 (ibid.).

The Omnibus Law on Job Creation (Law No. 11/2020)

In October 2020, amid the COVID-19 pandemic, the Indonesian parliament passed the Omnibus Law on Job Creation, a highly controversial piece of legislation during Widodo's term. Spanning 1,187 pages, the law aims to attract investment through deregulation by amending or repealing approximately 79 existing laws, purportedly to create more job opportunities. The President signed the law for implementation in November 2020.

According to the government, the Omnibus Law on Job Creation aims to drive and transform the economy by reducing barriers to investment, including a broad spectrum of deregulatory measures and bureaucratic simplifications as a strategy for job creation. The law facilitates a more conducive environment for investment and business activities by introducing risk-based business licensing,[28] simplifying business license requirements, streamlining the categorisation of business license sectors and easing investment requirements (Article 6). Consequently, the business sector has largely welcomed the law.

Conversely, the law has caused serious concerns about workers' rights. Despite its title, "Job Creation", the connection between deregulation and the creation or improvement of employment remains ambiguous. For instance, Article 4 of the law provides the job-creation strategy to accomplish the aims of the law. Both the investment ecosystem improvement and labour issues are addressed in the strategy. However, the law does not provide a clear causal relationship between deregulation and increased employment, nor does it address how the quality of jobs is to be ensured.

In terms of revising the Law on Manpower (Law No. 13/2003) through the Omnibus Law, the law claims to enhance "the protection of the labour force and increase the role of the labour force in supporting the investment ecosystem" (Article 80). However, the specifics of this protection remain vague in the revised Law on Manpower. The main amendments of the Law on Manpower involve easing conditions related to foreign employees, fixed-term employment, termination, outsourcing, break times and paid leave,[29] thereby diminishing protections for regular full-time Indonesian workers. Notably, restrictions on fixed-term employment and outsourcing have been lifted, giving companies

28 Risk-based business licensing differentiates licensing requirements based on the potential risks for health, safety, the environment and the exploitation and management of natural resources. For example, low-risk business activities require only a business registration number. In contrast, medium-risk businesses need a standard certification along with the registration number, while high-risk businesses must obtain specific permissions (Articles 7–10).

29 Articles 42–49, 56, 61, 66, 77 of the Law on Manpower.

greater flexibility to terminate employees with severance packages. Furthermore, the clause stipulating that minimum wages should "meet the demands of a decent living" (Article 89) has been removed.

Regarding the legislative process, despite the extensive length of the law, it was rapidly passed by parliament only after a brief period of deliberation. There was also criticism that the government had not provided adequate information to lawmakers. Additionally, the fact that numerous articles of the law were "corrected" after the bill was adopted fuelled controversy, suggesting that the bill had been prematurely proposed (Alya 2020).

In November 2021, the Constitutional Court declared the law "conditionally unconstitutional", citing non-compliance with proper legislative procedures, and ordered the government to amend the law within two years.[30] On 30 December 2022, Widodo responded to this court order by issuing a Perpu on Job Creation (Perpu No. 2/2022). The government claims that this Perpu addresses some of the most criticised aspects of the original law, such as unrestricted outsourcing and the calculation of the minimum wage (Jayanty 2022).

Sexual Violence Crime Law (Law No. 12/2022)

The Sexual Violence Crime Law is designed to address and deter sexual offenses, including rape, sexual slavery, forced prostitution, online sexual abuse, forced contraception, forced sterilisation and coerced marriages, which include child marriage. Convictions for sexual violence crimes could receive up to 15-year prison sentence. The law also provides for support, protection, legal aid and health services for victims of sexual violence crimes.[31]

It took six years for the Parliament to adopt the bill and approve it into law. The delayed enactment reflects the influence of conservative attitudes towards women's status within both the parliament and broader Indonesian society. The National Commission for the Elimination of Violence Against Women (*Komisi Nasional Anti Kekerasan terhadap Perempuan*, or Komnas Perempuan) initiated the draft bill, which was first introduced to parliament in 2016. However, the deliberation stalled and did not progress for several years, until the bill was finally adopted by the parliament in 2022.

Opposition to the bill came primarily from conservative Islamic political parties, such as the Prosperous Justice Party (*Partai Keadilan Sejahtera*, PKS), who argued that the bill undermines Islamic values by overly prioritising women's rights and tacitly condoning extramarital sex. PKS specifically contended that criminalising non-consensual sex implies tolerance for consensual sex outside of marriage, including what they consider deviant behaviours, such as homosexuality. Clearly, such a claim is used as a pretext. Indeed, such oppo-

30 The Constitutional Court Decision No.91/PUU-XVIII/2020, decided 4 November 2021.

31 For a summary of the law see Llewellyn 2022.

sition is often rooted in a broader resistance to the enhancement of women's status, which is viewed as contrary to traditional Islamic law that dictates a wife's subordination to her husband. For example, a leader of a group that submitted an online petition signed by almost 150,000 people against the bill to the government stated, "Forced sexual activities will be chargeable offenses under the law, even if it's a wife rejecting her husband's advances. Yet consensual sex, even outside of marriage, will be permissible."[32] Despite those oppositions, the law established that non-consensual sex between spouses would be considered sexual violence against women, which is subject to criminal punishment. However, these objections indicate that discrimination against sexual minorities and resentment towards gender equality remain deeply rooted in Indonesia.

Criminal Code (Law No. 1/2023)

The new Criminal Code (*Kitab Undang-undang Hukum Pidana*, KUHP) has also sparked significant controversy, leading to violent protests. Since the independence of Indonesia, the Criminal Code enacted by the Dutch colonial government (*Wetboek van Strafrecht*, WvS) had been retained. This is because the Constitution stipulates that all legal regulations in force as of its promulgation on 18 August 1945 remain valid until replaced by new legislation. Consequently, a number of colonial regulations, including WvS, have remained in effect. Although WvS underwent minor modifications through Law No. 1/1946,[33] and the title of the Code was translated to Indonesian, all clauses have remained written in Dutch, and there has been no official translation to date.

The need to enact a new Criminal Code for independent Indonesia has been discussed since the country's independence as a crucial step toward the decolonisation of law. However, the repressive provisions of the colonial Criminal Code, which the Dutch government used to suppress the Indonesian nationalist movement in the Dutch East Indies, also proved to be useful legal tools for the authoritarian regimes in Indonesia after its independence, namely those under Sukarno and Suharto. Among these repressive measures, crimes against public order, such as the so-called "hate-sowing articles (*haatzaai artikelen*)",[34] criminalised the expression of hostility, hate and insult against the government or any group of people. These articles were used by the authoritarian governments to suppress political opponents and critical media in Indonesia. It was only after the end of the Suharto regime that the Constitutional Court ruled that the hate-sowing articles, along with other oppressive clauses such as the

32 For criticism from the conservative side against the law see Walton (2019).

33 For example, slander against the King was changed to slander against the President.

34 Articles 154-157 of the previous Criminal Code.

crime of slander against the president, were void due to their vagueness and inconsistency with the right to legal certainty.[35]

The new Criminal Code proposed in 2019 was thus presented as one of the achievements of the decolonisation of Indonesian law. The new Criminal Code bill aimed both to modernise and to decolonise Indonesian criminal law by incorporating concepts such as restorative justice and social service as a form of punishment,[36] as well as by integrating penalties based on local customary laws (*hukum adat*) in Indonesia into the law.[37]

However, the new Criminal Code also contained clauses that were viewed as discriminatory against minorities, reflecting the influence of conservative Islamic groups, and repressive against civil freedom, which was seen as a regression of democracy in Indonesia. As a result, the draft of the Criminal Code faced significant opposition and sparked widespread protests from civil society, such as the Indonesia Legal Aid Foundation (*Yayasan Lembaga Bantuan Hukum Indonesia*, YLBHI), the most prominent human rights NGO, and student groups.

Therefore, the legislative process of the new Criminal Code has been anything but straightforward. Coupled with the criticism of the revised KPK law mentioned above, widespread protests against the new Criminal Code bill escalated and resulted in loss of life[38]. In response to the public outcry, Widodo requested the parliament to halt the bill's deliberation in 2019. Approximately three years later, in June 2022, the parliament placed the new Criminal Code at the top of its annual national legislation programme and resumed deliberation. The bill was eventually adopted in 2023 and signed into law by Widodo as Law No.1/2023, with enforcement scheduled to begin in January 2026.

Controversial aspects of the new Criminal Code include the recognition of "the living law in the society" (*hukum yang hidup dalam masyarakat*) as a source of criminal law (Article 2) and penalties based on customary law (*hukum adat*) as a supplemental punishment (Articles 96, 97, 116). This integration of customary law to the Criminal Code raises concerns regarding the principle of legalism, encapsulated by the maxim "no crime without law" or *nulla poena sine lege*. Another point of contention is the retention of the death penalty. Additionally, the code allows for the confiscation of private property as a supplemental punishment (Articles 81, 91), which may disproportionately affect the poor.

35 The Constitutional Court annulled the crime for insulting the head of state by the decision No.013-022/PUU-IV/2006, and the hate-sowing articles by the decision No.6/PUU-V/2007.

36 Articles 65 (1) e and 115 of the new Criminal Code.

37 Articles 2, 96–97 and 116 of the new Criminal Code. Among all, Article 2 provides that the principle of "*nullum crimen sine lege* (no crime without law)" does not diminish the applicability of the living law within society that stipulates a person may be subject to punishment even though the act is not regulated in this law. Furthermore, Article 96 (1) allows the imposition of additional penalties that require the fulfilment of obligations based on customary law in the region where the crime was committed.

38 Protesting against the new Criminal Code, thousands of people clashed with security forces across Indonesia, including in Jakarta. The police responded with tear gas and water cannons. As a result of these clashes, at least one protester was killed in Kendari, Sulawesi. (New Straits Times 2019)

The code imposes restrictions on freedom of expression, encompassing crimes against the integrity and dignity of the President (Articles 218, 219), insulting governmental organisations (Articles 240, 241), contempt of court (Article 280), unregistered demonstrations (Article 256) and the dissemination of fake news (Articles 263, 264). Provisions based on conservative moral standards include crimes of public morality violation (Articles 406-410), extramarital sex (Article 411) and cohabitation (Article 412). Crimes of public morality violation broadly penalise behaviours deemed inconsistent with societal morality, the dissemination of pornographic materials and even public displays or explanations of contraceptive devices. The provisions concerning extramarital sex and cohabitation are also applicable to non-Indonesian nationals residing in Indonesia, raising concerns within the tourism industry about potential negative impacts on businesses.

The criminalisation of acts against religion and religious activities is another controversial aspect. This includes expressions of hostility or insult toward any religion in Indonesia (Articles 300, 301), provocation of atheism (Article 302), obstruction of religious activities including prayer or religious gatherings (Article 303), insulting persons engaged in prayer (Article 304) and defacement of religious facilities (Article 305). Because the Indonesian government officially recognises only six religions – Islam, Catholicism, Protestantism, Hinduism, Buddhism and Confucianism – , and religious minority groups often face discriminatory treatment or even violent aggression, these articles raise significant concerns about the freedom of religion for minorities.

Lastly, the crime of conspiracy for treason is assumed to have been committed when it is prepared with intent (Article 160). Acts of treason can target the head of state, the territory and the government (Articles 191–193), with punishment potentially extending up to the death penalty. Under the previous criminal code, the crime of conspiracy for treason was broadly applied to suppress political activities advocating for greater autonomy or criticising human rights violations, such as those in Papua, even if these activities were non-violent. This broad application raises concerns about the potential for continued misuse of the Criminal Code to stifle political dissent and restrict freedom of expression.

As seen above, the new Criminal Code contains provisions that could be applied repressively to civil society and political activities, as well as clauses that reflect conservative religious values, which could pose risks to religious and social minorities. The new Criminal Code is scheduled to come into effect in January 2026, three years after its promulgation. Therefore, how the new Criminal Code will be applied will largely depend on the future development of Indonesian politics.

This section reviewed nine pieces of legislation that sparked widespread controversy within Indonesian society during the Widodo administration, 2014-2024. Six out of the nine legislations were adopted by the parliament during

Widodo's second term. The next section, as a conclusion, summarizes those legislations and discusses the relationship between legislative policy in the Widodo administration and the backsliding of democracy.

Conclusion

The nine legislations discussed above can be broadly classified based on their content. Firstly, those that weaken the value of civil and political freedoms include the Electric Information and Transaction Law, the new Criminal Code, and the amendments to the Social Organisations Law. In these laws, the notion of the superior status of freedom of expression is weakened. Freedom of expression is easily restricted by competing interests such as the reputation of other individuals, state authority or state ideology, leading to the criminalisation of diverse and alternative opinions, both in cyberspace and in public spaces.

A second group consists of legislations aimed at diminishing external oversight of public authority, such as the Legislative Institutions Law, the Corruption Eradication Commission Law, and the Constitutional Court Law. With the end of the Suharto regime, during which the executive branch dominated the legislative and judicial branches, the parliament significantly bolstered its position against other government sectors through a series of constitutional amendments. While enhancing democratic legitimacy through direct presidential elections, the President also wields influence within the parliament by forming broad-based coalition cabinets. Although elections are the key to democratisation, an overemphasis on the majoritarian principle weakens the checks on power, another goal of democratisation[39].

The inclination to deter external oversight is evident in the legislative process of the Omnibus Law on Job Creation. This law, prioritising the logic of global capitalism, was crafted without broad public participation. Furthermore, despite its complexity and volume, the government pushed for rapid adoption in the parliament, citing the need to revive an economy devastated by the COVID-19 pandemic. In response to criticism, the government merely points out that the Constitutional Court may entertain judicial review petitions, despite enacting the amended Constitutional Court Law with the intention of co-opting the Constitutional Court.

Thirdly, laws aiming to enhance the status of women include the amended Marriage Law and the Sexual Violence Crimes Law. Despite the intention of

39 According to Crouch (2023: 22), the post-authoritarian constitutional amendment from 1999 to 2002 aimed at constitutional democracy by, among all, reducing the excessive power of the president, realising representative legislature, and establishing a judiciary independent of the executive. However, Crouch (2023: 22) also argues that there is a persistent threat of a return to the authoritarian constitution, especially, since 2019.

legal protections for women in these legislations, conservative views unfavourable to women's rights are widespread both within the government and Indonesian society.

The judiciary, particularly the Constitutional Court, has demonstrated a mixed response to legislation but has generally been less critical of the Widodo administration. As for the Law on Legislative Institutions in 2018, the Court found most of the controversial provisions, which prevent external criticism against parliamentarians, unconstitutional. However, in the case of the Corruption Eradication Commission Law in 2019, which significantly curtailed the independence and competence of the anti-corruption investigation body, the Constitutional Court acknowledged unconstitutionality in only a few articles. Furthermore, concerning the Omnibus Law on Job Creation in 2020, the Court mandated only formal revisions to be completed within two years. Additionally, there have been instances where the Court has evidently shown support for the incumbent President. Although it is not discussed in the previous section, to potentially allow Widodo's eldest son to become a vice presidential candidate, the Court ruled the age restriction provisions of the election law (Law No.7/2017 on the General Election) unconstitutional[40]. Widodo's brother-in-law, Anwar Usman, also participated in this ruling as the Chief Judge of the Court. Although Anwar Usman was later dismissed from his position as Chief Judge for violating the ethical code, the ruling remains effective, and Widodo's son was elected as vice president alongside presidential candidate Prabowo in the 2024 presidential election.

The legislative policies of Widodo's administration reflect a situation where the transition from authoritarianism to democratisation falls short of fully embodying constitutionalism, which is characterised by the limitation of executive power and respect for human rights. As evidenced by the results of the presidential elections in 2004, 2009 and 2014, Indonesia has achieved a remarkably stable electoral democracy, and the result of the 2024 election consolidates this tendency. However, human rights, construed as the rights of minorities not to be overridden by the majority, have become subservient to the interests of the majority, as evidenced by laws that potentially discriminate against women, as well as religious and sexual minorities. Furthermore, both the parliament and the President have pursued legal policies that weaken restrictions on the state power, citing majoritarian legitimacy derived from electoral processes.

40 Article 164 (q) originally stipulated that the president and the vice president must be at least 40 years old. However, the Constitutional Court ruled that this article should be interpreted that the president and the vice president "must be at least 40 years old or have been elected as local heads." (see the Constitutional Court decision No. 90/PUU-XXI/2023) As a result of this decision, Widodo's son, who was 36 years old but the incumbent mayor of Surakarta City at that time, became eligible to be a vice-president candidate in the 2024 presidential election.

Democratic backsliding in post-authoritarian Indonesia presents a distinct trajectory compared to countries such as Egypt and Turkey. In Indonesia, neither a resurgence of military involvement in politics nor the emergence of an autocratic political leader occurred immediately in the post-authoritarian period. However, the combination of the majoritarianism institutionalised by the Constitution after democratisation and the illiberal legacy that remained from the authoritarian regime has contributed to curbing broad participation and the inclusiveness of marginalised people in Indonesian politics. Whether or not this situation is unique to Widodo's administration requires further study of political development.

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Appendix: Laws and legal documents

Constitution

The Constitution of the Republic of Indonesia

Parliamentary Laws

Constitutional Court Law: Law No. 24/2003 (revised several times and the latest major revision in 2020 as Law No. 7/2020)

Manpower Law: Law No. 13/2003

Marriage Law: Law No. 1/1974 (revised in 2019 as Law No. 16/2019)

Corruption Eradication Commission Law: Law No. 30/2002 (revised in 2015 as Law No. 10/2015 and in 2019 as Law No. 19/2019)

Electric Information and Transaction Law: Law No. 11/2008 (revised in 2016 as Law No. 19/2016 and in 2024 as Law No. 1/2024)

Social Organisation Law: Law No. 17/2013 (revised in 2017 as Law No. 16/2017)

General Election Law: Law No. 7/2017

Legislative Institutions Law: Law No. 2/2018

Health Quarantine Law: Law No. 6/2018

Omnibus Law on Job Creation: Law No. 11/2020 (revised in 2022 by Government Regulation in Lieu of Law No. 2/2022)

Sexual Violence Crime Law: Law No. 12/2022

Criminal Code: Law No. 1/2023

Other regulations

Joint Ministerial Decision of the Minister of Culture and Education, the Minister of Internal Affairs and the Minister of Religion No. 2/KB/2021

The Supreme Court Circular Letter No. 2/2023

Court decisions

The Supreme Court Decision No. 1400K/Pdt/1986

The Supreme Court Decision No. 17P/HUM/2021

The Constitutional Court Decision No. 013-022/PUU-IV/2006

The Constitutional Court Decision No. 22/PUU-XV/2017

The Constitutional Court Decision No. 21/PUU-XVI/2018

The Constitutional Court Decision No. 91/PUU-XVIII/2020

The Constitutional Court Decision No. 81/ PUU-XXI/ 2023

The Constitutional Court Decision No. 90/PUU-XXI/2023