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The Urgency of Administrative Law in Light of *Ius Constituendum* Regarding the Role of Village Heads

Article

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Abstract

This article delves into the crucial aspects of the Constitutional Court of the Republic of Indonesia's decision, focusing on the emergency state of administrative law concerning open legal policy decisions referred back to legislators, particularly regarding the tenure of village heads. The study employs a conceptual and legal approach, centering on the Constitutional Court Decision No.15/PUU-XI/2023 concerning the village head's position. This represents an open legal policy for law framers, paving the way for the political prevention of Pilkades (village head elections) money politics. Law No. 6 of 2014, which is under consideration for revision, lacks explicit measures against money politics. The methodology adopted is normative legal research that integrates legal theory with legislation. The findings indicate that open legal policy rulings necessitate immediate action by law framers, signaling administrative law urgency. The rationale is that law framers must react to that decision, and revising the law does not necessarily require inclusion in the National Legislation Program (Prolegnas). Decision on open legal policies must be administratively executed by law framers, including the issuance of Government Regulation in Lieu of Law (Perpu), which subsequently require legislative approval to become law. In essence, the decision of the Constitutional Court carries a moral and ethical coercive force, achieved by transforming *ius constitutum* into *ius constituendum*.

Keywords: *Administrative law emergency; ius constitutum; ius constituendum.*

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INTRODUCTION

The phenomenon of money politics in village head elections (Pilkades) is notably more prevalent compared to district/city, provincial, and national elections. This issue continues to garner media coverage and research interest.¹ The primary focus revolves around the regulations

¹ Effendi Hasan et al., "The Practice of Money Politics in Village Head Elections and Its Effect on The Participation Level of Beginner Voters," *Journal of Governance and Public Policy* 10, no. 1 (January 2023): PRESS, <https://doi.org/10.18196/jgpp.v10i1.15576>.

and penalties stipulated by Law No. 6 of 2014 concerning Villages, which brings into question the state's role in supervising village democracy and governance. The opportunity to establish rights stems from the Constitutional Court of the Republic of Indonesia (MK-RI) Decision No.15/PUU-XXI/2023, which aims at enhancing democracy and governance in villages through the adoption of open legal policies. The authority to conduct constitutional review is distinctly separate from the traditional general judicial system. Nevertheless, within the framework prevalent in European countries, if either the general judicial body or the litigants question the constitutionality of the legislation at the heart of their case, they can request the Constitutional Court to undertake a constitutional review.² Prompted by the Indonesian Village Government Association's (APDSI) advocacy, lawmakers swiftly consented to extend the term of office for village heads from six to nine years.³ This development reinforces the concept of the rule of law as enunciated in Article 1, paragraph (3) of the 1945 Constitution.⁴ The principle of orderly administration must, therefore, guide the execution of government.⁵

The Committee on Legislation (Baleg) of the People's House of Representatives of the Republic of Indonesia (DPR-RI) has reached a consensus on a Draft Law (RUU) proposing amendments to Article 29 paragraphs (1) and (2) of Law No. 6 of 2014.⁶ Achmad Baidowi views this decision as a manifestation of open legal policy for legislators, stating that it does not necessitate inclusion in the National Legislation Program (Prolegnas).⁷ Conversely, data from Indonesia Corruption Watch (ICW) reveal that between 2016 and 2022, there were 682 cases of corruption in villages, involving 959 suspects and resulting in a state loss of Rp770.6 billion.⁸ ICW advises against the addition of positions, deeming it inappropriate.⁹ Similarly, Arman Suparman, chairman of the Committee for the Monitoring of Regional Autonomy Implementation (KPPOD), argues that creating more positions is not a viable strategy for village development.¹⁰ Abdul Halim Iskandar, Minister of Villages, Development of Disadvantaged Regions, and Transmigration (Kemendes PDTT), explains that the initiative to extend the term of office for village heads originated from the Indonesian Village Government Association's (APDSI) concerns about the challenges of achieving development within a limited timeframe.¹¹ The extension of a village head's term of office correlates

² Diding Rahmat and Sarip Sarip, "Comparative A Model Islamic Constitution Dalam Pembentukan Dual Yurisdiction Yudikatif Pasca Amandemen UUD 1945," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 2, no. 2 (December 10, 2019): 131–45, <https://doi.org/10.24090/VOLKSGEIST.V2I2.2880>.

³ Fakhri Fadlurrohman, *Village Officials Ask DPR to Immediately Complete Revision of Village Law* (Kompas.id, 2023).

⁴ Zahermann Armandz Muabezi, "NEGARA BERDASARKAN HUKUM (RECHTSSTAATS) BUKAN KEKUASAAN (MACHTSSTAAT)," *Jurnal Hukum Dan Peradilan* 6, no. 3 (November 30, 2017): 421–46, <https://doi.org/10.25216/JHP.6.3.2017.421-446>.

⁵ Bambang Ariyanto and Rachman Maulana Kafrawi, "Orderly Principles of State Administration in Selecting Ministers," *Legality: Jurnal Ilmiah Hukum* 30, no. 1 (2022): 12–28, <https://doi.org/10.22219/ljih.v30i1.15868>.

⁶ KOMPASTV, *Baleg Agreed on Revision of Village Law: Village Head's Term of Office Is 9 Years, Village Funds Increase to 2 Billion* (Jakarta: Kompas TV, n.d.).

⁷ Constitutional Court of the Republic of Indonesia, *Decision Number 15/PUU-XXI/2023 Constitutional Court of the Republic of Indonesia*, 2023.

⁸ KOMPASTV, *Baleg Agreed on Revision of Village Law: Village Head's Term of Office Is 9 Years, Village Funds Increase to 2 Billion*.

⁹ Danu Damarjati, *Rejecting Extension of Village Head's Term of Office, ICW Submits Village Corruption Data* (Jakarta: DetikNews, 2023).

¹⁰ KOMPASTV, *Baleg Agreed on Revision of Village Law: Village Head's Term of Office Is 9 Years, Village Funds Increase to 2 Billion*.

¹¹ TvOneNews, *Village Head's Term of Office Is 9 Years, Are There Shrimp Behind the Rock? TvOne Democracy Notes* (tvOneNews, 2023).

with an increase in nomination costs, which can range from hundreds of millions to billions.¹² This situation necessitates a discussion on open legal policy in relation to extending terms of office and addressing corruption, ultimately leading to a debate on *ius constituendum* before it transitions into *ius constitutum* and becomes a matter of administrative law. These administrative efforts reflect the principles of the state ideology, Pancasila.¹³

A study on open legal policy conducted by Iwan Satriawan and Tanto Lailam, regarding MK-RI Decision Number 46/PUU-XIV/2016 on the rejection of broadening the definition of adultery in the Criminal Code (KUHP), has implications for national legislation. The decision's limitation lies in its lack of clear directives for both positive and negative legislator. Often, decisions handed down to legislators conflict with democratic principles and risk failing to realize a living constitution. The recommendation from this study is the necessity for research into law formation and decisions, particularly in relation to the design of MK-RI decisions within the national legislative framework.¹⁴

Salahuddin Al-Fatih's research on open legal policy suggests that while Common law interpretations are precise, the distinction between positive and negative legislators has the potential to create division among MK-RI judges.¹⁵ Iwan Satriawan and Tanto Lailam highlight these limitations, whereas Salahuddin Al-Fatih focuses on legal interpretation. Their findings collectively underscore the opportunity for legislators to implement decisions effectively.¹⁶

Mardian Wibowo, I Nyoman Nurjaya, Muchammad Ali Safaat, and Jazim Hamidi explore open legal policy adopted by lawmakers in instances where the Constitution does not explicitly dictate the material content to be formulated.¹⁷ The three studies collectively indicate that open legal policy is appropriate when the norms being regulated are not clearly defined in the Constitution, do not violate the Constitution, and prevent the abuse of power.¹⁸

Friedman's sociological theory is also examined, analyzing how law evolves in response to social norms and values. This approach delves into how socio-cultural factors in Indonesia shape the development of legal mechanisms, public attitudes, and enforcement strategies.¹⁹

Research on village corruption conducted by Satria Unggul Wicaksana Prakasa, Asi, and Mualimin Mochammad Sahid attributes the issue to irresponsible elites.²⁰ Increasing the term of office for village heads is not a viable solution as long as these irresponsible elites continue to foster

¹² Tegal Regency, *Village Head Candidate Candidate Costs Reach 1 M*, Tegal Regency Regional People's Representative Council, 2018.

¹³ Ahmad Siboy et al., "The Effectiveness of Administrative Efforts in Reducing State Administration Disputes," *Journal of Human Rights, Culture and Legal System* 2, no. 1 (2022): 14–30, <https://doi.org/10.53955/jhcls.v2i1.23>.

¹⁴ Iwan Satriawan and Tanto Lailam, "Open Legal Policy in the Constitutional Court Decisions and National Legislation Making," in *Proceedings of the Third International Conference on Sustainable Innovation 2019 – Humanity, Education and Social Sciences (IcoSIHESS 2019)* (Paris, France: Atlantis Press, 2019), <https://doi.org/10.2991/icosihess-19.2019.70>.

¹⁵ Sholahuddin Al-Fatih, "INTERPRETATION OF OPEN LEGAL POLICY BY THE CONSTITUTIONAL JUDGES IN JUDICIAL REVIEW OF PARLIAMENTARY THRESHOLDS," *Diponegoro Law Review* 6, no. 2 (October 2021): 231–46, <https://doi.org/10.14710/dilrev.6.2.2021.231-246>.

¹⁶ Satriawan and Lailam, "Open Legal Policy in the Constitutional Court Decisions and National Legislation Making."

¹⁷ Mardian Wibowo et al., "The Criticism on the Meaning of 'Open Legal Policy' in Verdicts of Judicial Review at the Constitutional Court," *Const. Rev.* 3 (2017): 262.

¹⁸ Satriawan and Lailam, "Open Legal Policy in the Constitutional Court Decisions and National Legislation Making."

¹⁹ Ridwan Arifin et al., "A Discourse of Justice and Legal Certainty in Stolen Assets Recovery in Indonesia: Analysis of Radbruch's Formula and Friedman's Theory," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 2 (December 27, 2023): 159–81, <https://doi.org/10.24090/VOLKSGEIST.V6I2.9596>.

²⁰ Satria Unggul Wicaksana Prakasa, "Reduce Corruption in Public Procurement: The Effort towards Good Governance," *Bestuur* 10, no. 1 (2022): 33–42.

dynastic politics.²¹ This suggests that regulations alone cannot curb corruption if the underlying causes are not addressed.²² Village heads often experience stress due to unmet financial expectations and disappointment.²³

Research by Jafar Ahmad, Her Herdiawanto, and Laode Harjudin highlights the political struggles faced by village heads, primarily driven by competition for village funds.²⁴ Prior to the implementation of Law No. 6 of 2014, money politics was not a significant issue, but it has become more prevalent since the law's enactment.²⁵ One reason is that village head candidates now spend less money and receive more attention from the government.²⁶

Endik Hidayat and Miskan's research reveals that money politics in village elections aims to influence voters and balance spiritual power.²⁷ St. Halimang notes that conflict in village elections often revolve around financial issues, factional disputes, and the egoism of candidates.²⁸ The explanation aligns with the findings of Hendrik Hidayat and Miskan,²⁹ as well as Satria Unggul Wicaksana Prakasa, Asi, Mualimin Mochammad Sahid, who also emphasize the conflict between factions and the egoism of candidates.³⁰

The decision on open legal policy, whose execution was deferred to the legislators, is discussed in detail by Iwan Satriawan and Tanto Lailam, particularly its influence on the national legislative system.³¹ They argue for the importance of improving the national legislative system before finalizing *ius constitutum*.

Research on money politics by Jafar Ahmad, Her Herdiawanto, and Laode Harjudin examines the situation before and after the implementation of Law No. 6 of 2014.³² Their findings highlight the significant costs associated with village head elections, a topic also explored by Endik Hidayat and Miskan.³³ The discussion on money politics post-Law No. 6 of 2014 emphasizes the need to address these issues before finalizing *ius constitutum*.

²¹ Sarip and Diana Fitriana, "Avoiding Role Thoery in Justifying Interim Changes of Deputy Regent," *Journal of Legal Issues* 52, no. 2 (2023): 131–41.

²² Prakasa, "Reduce Corruption in Public Procurement: The Effort towards Good Governance."

²³ Andre Zulkarnain and Nurcahyati, "Coping Strategy for Unelected Village Head Candidates," *Character: Journal of Psychological Research* 8, no. 2 (2021).

²⁴ Jafar Ahmad, Heri Herdiawanto, and Laode Harjudin, "Transformation of the Political Struggle Model at the Village Level Due to the Fight for Village Fund Resources: A Case Study of Village Head Elections before and after the Enactment of UU Desa Number 6 of 2014.," *Masyarakat, Kebudayaan & Politik* 36, no. 1 (2023).

²⁵ Ahmad, Herdiawanto, and Harjudin.

²⁶ Hasan et al., "The Practice of Money Politics in Village Head Elections and Its Effect on The Participation Level of Beginner Voters."

²⁷ Endik Hidayat and Miskan, "Village Democracy and Winning Strategies Based on Power in Javanese Culture in Village Head Election in Tanjung Village, Pagu District, Kediri Regency," in *Proceedings of the International Conference of Democratisation in Southeast Asia (ICDeSA 2019)* (Paris, France: Atlantis Press, 2019), <https://doi.org/10.2991/icdesa-19.2019.14>.

²⁸ St Halimang, "The Village Head Election Conflik Resolution in Moramo Community in Maqashid Syariah Persepective," *Journal of Contemporary Islam and Muslim Societies* 4, no. 2 (2020).

²⁹ Hidayat and Miskan, "Village Democracy and Winning Strategies Based on Power in Javanese Culture in Village Head Election in Tanjung Village, Pagu District, Kediri Regency."

³⁰ Prakasa, "Reduce Corruption in Public Procurement: The Effort towards Good Governance."

³¹ Satriawan and Lailam, "Open Legal Policy in the Constitutional Court Decisions and National Legislation Making."

³² Ahmad, Herdiawanto, and Harjudin, "Transformation of the Political Struggle Model at the Village Level Due to the Fight for Village Fund Resources: A Case Study of Village Head Elections before and after the Enactment of UU Desa Number 6 of 2014."

³³ Hidayat and Miskan, "Village Democracy and Winning Strategies Based on Power in Javanese Culture in Village Head Election in Tanjung Village, Pagu District, Kediri Regency."

The study on open legal policy and money politics opens up discussion on establishing the right and *ius constitutum* from the perspective of administrative law emergencies. The aim is to position open legal policy within the context of administrative law emergencies, ensuring that the right is maintained in the participatory space for improving village elections and respecting *ius constitutum*. This is crucial for the state to oversee democracy and village administration.

The focus of this study is on the theoretical arguments for open legal policy as an administrative law emergency. It examines how the space to establish the right can improve democracy and village administration, while respecting *ius constitutum*, particularly when the extension of the village head's term of office is realized.

RESEARCH METHODS

The research delves into the MK-RI Decision No.15/PUU-XI/2023, which addresses the role of the village head and its implications for open legal policy for legislators. This decision paves the way for mechanisms to curb in village elections. Law No. 6 of 2014, which is under consideration for revision, currently lacks explicit measures against money politics. The chosen methodology is normative legal research, which integrates legal theory with legislation analysis.³⁴

The research specifically targets the anticipated amendments to Law No. 6 of 2014, juxtaposed with the MK-RI decision on open legal policy. It aims to contribute to the discourse on establishing rights, offering insights into the urgent need for administrative law interventions. This involves leveraging the opportunity presented by the legislative revision process to mitigate the influence of money politics in village elections, a factor that undermines village development.³⁵

The analysis follows a qualitative descriptive approach, executed in stages: initially, data are organized according to the study's focal points; they are then interpreted through the lens of constitutional theory concerning village elections. Subsequently, the data are scrutinized to identify opportunities for participatory engagement in shaping decisions on open legal policy and addressing the issue of money politics in village elections. Finally, the study emphasizes the importance of respecting *ius constitutum* to uphold the rule of law.

ANALYSIS AND DISCUSSION

Theoretical Argumentation on Decision-Making and Open Legal Policy in the Context of Administrative Law Emergencies

The concept of open legal policy, with its execution reverting to legislators, signifies an administrative law emergency. This scenario underscores the obligation of lawmakers to act promptly in response to legal decisions and revisions, without the necessity for these actions to be incorporated into the Prolegnas. Carl J. Freidrich's theoretical framework on open legal policy emphasizes that, under normal conditions, legislative actions should be planned within the Prolegnas agenda and subjected to thorough discussions.³⁶ According to Carl J. Freidrich, the essence of open legal policy is to ensure the orderly administration of law.

³⁴ Johnny Ibrahim, *Normative Legal Research Theory & Methods* (Malang: Bayumedia Publishing, 2008).

³⁵ Khudzaifah Dimiyati et al., "Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis," *Heliyon* 7, no. 8 (August 2021): e07865, <https://doi.org/10.1016/j.heliyon.2021.e07865>.

³⁶ Mira Fajriyah, "Judicial Refraction of the Determination of the National Legislation Program in the DPR RI," *Constitutional Journal* 13, no. 1 (2016): 48–71.

This perspective is supported by Article 71A of Law no. 15 of 2019, amending Law No. 12 of 2011 regarding the Formation of Legislative Regulations. This amendment introduces the carry-over mechanism, allowing legislative processes to continue into the next session.³⁷ Freiderch's viewpoint, in conjunction with Article 71A, suggests that the incorporation of decisions on open legal policy into Prolegnas is not obligatory for addressing administrative law emergencies. Such emergencies are considered exceptions to the standard legislative process.³⁸ Furthermore, the principle of justice, which is fundamental to law, transcends mere mathematical calculation or purely textual. Justice is not achieved by ensuring equal shares among individuals but rather through the fair and equitable application of law.³⁹

Achmad Baidowi's perspective on the MK-RI Decision No.15/PUU-XXI/2023, which is directed to legislators and the government, indicates that the basis for open cumulative discussions and revisions can occur at any time, without the requirement to be included in the annual Prolegnas priority list.⁴⁰ This view aligns with Mar'atun Fitrah's stance that the bill surpasses the conventional list of bills scheduled in Prolegnas.⁴¹ Moreover, MK-RI decisions characterized as open cumulative include a variety of legislation types, such as the law on ratification of international agreements, the State Budget (APBN) law, laws establishing new autonomous regions, and laws ratifying Government Regulations (Perpu).⁴² The use of terms like 'open cumulative' and 'breaking through the bill list' further underscores the existence of an administrative law emergency, bypassing the standard legislative administration processes. According to Article 10 paragraph (1) Law no. 12 of 2011, there are five categories of laws whose content is mandated be regulated by legislation: further regulation of the provisions of the 1945 Constitution, legal orders that must be regulated by law, ratification of international agreements, responses to MK-RI decisions; and adherence to community laws.⁴³

The presence of open legal policy, with the phrases 'open cumulative' and 'breaking through the bill list,' as discussed by Iwan Satriawan and Tanto Lailam, underscores the need to delineate the roles of positive and negative legislators.⁴⁴ This discourse is grounded in the theories of Hans Kelsen and Allan Brewer Carias, who define a negative legislator as one who performs the normative function of revoking norms and declaring laws unconstitutional. This is based on the principle that the Constitutional Court does not possess the authority to modify laws or usurp the powers of other institutions, a key characteristic of a negative legislator. Conversely, a positive legislator must fulfill the sense of justice within society, an obligation that stems from abstract review rather than

³⁷ Risdiana Izzaty, "Urgensi Ketentuan Carry-Over Dalam Pembentukan Undang-Undang Di Indonesia," *Jurnal HAM* 11, no. 1 (April 2020): 85, <https://doi.org/10.30641/ham.2020.11.85-98>.

³⁸ Beni Kurnia Illahi and Haykal Haykal, "Principles and Dynamics of Emergency State Financial Law in Handling the Covid-19 Pandemic," *Rechts Vinding Journal: National Legal Development Media* 10, no. 1 (2021).

³⁹ Wawan Andriawan, "Pancasila Perspective on the Development of Legal Philosophy: Relation of Justice and Progressive Law," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, no. 1 (June 2022): 1–11, <https://doi.org/10.24090/VOLKSGEIST.V5I1.6361>.

⁴⁰ KOMPASTV, *Baleg Agreed on Revision of Village Law: Village Head's Term of Office Is 9 Years, Village Funds Increase to 2 Billion*.

⁴¹ Mar'atun Fitrah, "Reconstructing Planning for the Formation of Laws in Accelerating Community Participation," *Indonesian Legislation Journal* 20, no. 2 (2023).

⁴² KOMPASTV, *Baleg Agreed on Revision of Village Law: Village Head's Term of Office Is 9 Years, Village Funds Increase to 2 Billion*.

⁴³ Radita Ajie, "Limits of Policy Choices for Law Makers (Open Legal Policy) in Forming Legislation Based on Interpretation of Constitutional Court Decisions," *Indonesian Legislation* 13, no. 2 (2016): 111–20.

⁴⁴ Satriawan and Lailam, "Open Legal Policy in the Constitutional Court Decisions and National Legislation Making."

concrete individual cases.⁴⁵ The effectiveness of these efforts is contingent upon the prevailing political conditions and the structure of the government, as well as the legislative procedures that underpin state sovereignty within the theory of separation of powers.⁴⁶ To reinforce this line of thought, it is imperative that the legislature considers the interests of the community, given that legislators serve as representative of the people.⁴⁷

Based on Montesquieu's doctrine of the separation of powers, the legislator refers to the legislative institution.⁴⁸ According to Article 20, paragraph (2) of the 1945 Constitution, the legislature is required to collaborate with the executive to transform proposals into binding laws (*ius constitutum*). The concept of open legal policy indirectly compels both the legislature and the executive to revise laws determined by the judiciary without reinforcing the argument for an administrative law emergency. While it remains possible for the legislature to include revisions in the Prolegnas, Zsolt Szabó cautioned that this approach could complicate matters, including the potential of questioning of the legislature's role as the people's representative.⁴⁹ It is important to note that the open legal policy verdict represents a second step after achieving *ius constitutum*, then reverting to *ius constituendum* by the legislator to become *ius constitutum* once again.⁵⁰ Roger Douglas emphasized that an administrative emergency necessitates an appropriate response, given its public implications and the potential to introduce new legal challenges.⁵¹ According to Alex Carol, the field administrative law was recently developed to complement the judiciary and political systems, and to prevent maladministration.⁵² The views of Roger Douglas and Alex Carol highlights that, in the context of open legal policy decisions by MK-RI, it is imperative for legislators to respond swiftly to prevent maladministration, as these decisions significantly impact the public. The characteristics of open legal policy decisions in the context of administrative legal emergencies include: the absence of a requirement to enter Prolegnas; the involvement of both law-forming and law-implementing institutions in responding to decisions; and a focus on the public interest.

The absence of strict sanctions for lawmakers who fail to respond to decisions regarding open legal policy theoretically gives rise to legal phenomena associated with legal policy and political consciousness.⁵³ Solutions can be revisited through the constitution, reflecting the nation

⁴⁵ Arief Rachman Hakim and Yulita Dwi Pratiwi, "Positive Legislature in the Constitutional Court Decision Regarding Legal Remedies for Decisions to Postpone Debt Payment Obligations," *Constitutional Journal* 19, no. 4 (2022): 933.

⁴⁶ Zsolt Szabó, "Judicial Control of Parliamentary Procedure: Theoretical Framework Analyses," *Constitutional Review* 9, no. 1 (May 2023): 001, <https://doi.org/10.31078/consrev911>. In the last two decades, courts, including supranational ones (e.g. ECtHR

⁴⁷ Sarip Sarip et al., "Civil Service Police Unit Principle : No Punishment and No Taxation without Representation," *Otoritas : Jurnal Ilmu Pemerintahan* 13, no. 2 (August 2023): 315–32, <https://doi.org/10.26618/ojip.v13i2.9106>.

⁴⁸ Lukas Van Den Berge, "Montesquieu and Judicial Review of Proportionality in Administrative Law: Rethinking the Separation of Powers in the Neoliberal Era," *Eur. J. Legal Stud.* 10 (2017): 203.

⁴⁹ Izzaty, "Urgensi Ketentuan Carry-Over Dalam Pembentukan Undang-Undang Di Indonesia."

⁵⁰ Szabó, "Judicial Control of Parliamentary Procedure: Theoretical Framework Analyses." in the last two decades, courts, including supranational ones (e.g. ECtHR

⁵¹ Roger Douglas, "Administrative Law and Response to Emergencies," *Australian Journal of Emergency Management, The* 14, no. 2 (1999): 2–8.

⁵² Alex Carroll, *Constitutional and Administrative Law* (Manchester: Manchester Metropolitan University, 2009).

⁵³ Iryna Mima et al., "Legal Policy: The Latest Dimensions of Development," in *Proceedings of the III International Scientific Congress Society of Ambient Intelligence 2020 (ISC-SAI 2020)* (Paris, France: Atlantis Press, 2020), <https://doi.org/10.2991/aebmr.k.200318.007>; Khamami Zada et al., "Constitutionalizing Sharia: Identity and

state's ideals and promoting institutional harmony.⁵⁴ The MK-RI Decision No.15/PUU-XI/2023 concerning Law No. 6 of 2014 exemplifies open legal policy, providing the legislature and executive with the opportunity to respond promptly and in an open, cumulative manner to the MK-RI's rulings, ideally integrating the nation state's data and ideals.⁵⁵ The data in question pertain to corruption in villages, especially considering that criticisms from the APDSI about the challenges of political consolidation in villages have been predominantly one-sided, focusing on the village head's term of office.⁵⁶ Given that legislators aiming to implement the decision of open legal policy represent the populace, it is prudent to seek input from various stakeholders before reinstating Law No. 6 of 2014 as *ius constitutum*, or positive law.⁵⁷ This approach opens avenues for public participation, allowing citizens to contribute their perspectives on village-related issues.

The emergency status of administrative law arises due to the nature of decisions in open legal policy, which entails transitioning from the position of *ius constitutum* to *ius constituendum* and then back to *ius constitutum*. This makes it reasonable to revise laws without following the standard legislative process.⁵⁸ Following Law No. 6 of 2014, it is widely believed—both through academic studies and media reports—that revisions are necessary, particularly to address issues like the money politics involved in Village Head Elections.⁵⁹ It is crucial to prevent the abuse of power by policymakers within the national framework.⁶⁰ According to Alex Carol, only the decisions of MK-RI are part of the judiciary, while other decisions, such as those made by the legislature or the President, are political.⁶¹ An open legal policy decision can be considered an administrative law emergency based on the following criteria and implementation methods:

Table 1.
Criteria and Implementation of Administrative Law Emergency

No.	Criteria	Executor
1	The decision of the judiciary in Indonesia by the Constitutional Court is of an open legal policy nature	Execution is carried out by or delegated to law-making institutions, bypassing the Prolegnas priority list.
2	The decision transitions from <i>ius constitutum</i> to a state where the right must be preserved	Lawmakers and law enforcers are required to revert to their role in re-establishing rights under <i>ius constitutum</i> .

Independence of Islamic Politics Among Students,” *JURIS (Jurnal Ilmiah Syariah)* 21, no. 2 (December 30, 2022): 195–206, <https://doi.org/10.31958/JURIS.V21I2.6954>.

⁵⁴ Wahyu Prijo Djatmiko, “LEGAL POLICY AND ITS POSITION IN THE TAXONOMY OF SCIENCE,” *Jurnal Dinamika Hukum* 18, no. 1 (January 2018): 123, <https://doi.org/10.20884/1.jdh.2018.18.1.1903>.

⁵⁵ Riza Multazam Luthfy, “Legal Politics of Regulating Village Regulations in Legal Products,” *Indonesian Legislation Journal* 18, no. 4 (2021): 492.

⁵⁶ Fadlurrohman, *Village Officials Ask DPR to Immediately Complete Revision of Village Law*.

⁵⁷ and Elya Kusuma Dewi Sarip, Diana Fitriana, “Using the Datwa of the Indonesian Ulema Council as Legislative Doctrine,” *Indonesian Legislation Journal* 16, no. 3 (2019).

⁵⁸ Douglas, “Administrative Law and Response to Emergencies.”

⁵⁹ M H Prasetyo, “Money Politics Crimes in Regional Head General Elections Against Government Construction,” *Administrative Law and Governance Journal* 3, no. 3 (2020): 464.

⁶⁰ Fiona Cullen, “National Planning Policy Framework,” *Gateway Methodology / Stages of Heritage-Led Regeneration* 1, no. 1 (2023): 1–65.

⁶¹ Carroll, *Constitutional and Administrative Law*.

No.	Criteria	Executor
3	The judgment is rendered from the perspective of a negative legislator, not a positive legislator	Lawmakers, when re-establishing rights, assume the role of a positive legislator.
4	Decisions are made with consideration of the constitution	Any modifications must align with the nation's ideals and the constitution, while also considering the principle of open cumulateness.

Sources: researchers regarding the comparison of Criteria and implementation of emergency law

The concept of an administrative law emergency, as explained by Desiree Le Clercq, highlights the complexities of implementing national emergencies through administrative procedures. Judicial decisions are referred back to legislators, recognizing that the judiciary is not a political institution.⁶² During an administrative law emergency, Articles 12 and 22 of the 1945 Constitution are not used as references, considering that decisions are made by political institutions.⁶³ It is important to note that Articles 12 and 22 of the 1945 Constitution pertain to executive authority.⁶⁴ Administrative law emergencies serve a function of checks and balances among the MK-RI, DPR-RI, and the President, thereby supporting democracy.⁶⁵ An administrative law emergency is carried out by the top judiciary, transforming *ius constitutum* into the establishment of rights as outlined in Article 24C, paragraph (1) and paragraph (2) of the 1945 Constitution. One of the key functions of this process is the judicial review of laws against the Constitution.⁶⁶ However, the decisions of the Supreme Court of the Republic of Indonesia (MA-RI) do not constitute an administrative law emergency, as detailed in Table 1, considering that regulations below the level of laws are tested against the law themselves.

Thomas Riesthuis's perspective elucidates that the MK-RI's decision-making process is conceptually grounded in a normative approach to legal adjudication.⁶⁷ The MK-RI, recognizing the normative essence of law, entrusts legislators with open legal policy decisions to ensure the administration aligns with societal expectations, acknowledging the legislators' role as representatives of the people.⁶⁸ Alison Fischer underscores the imperative for legal scholars to uphold the normative basis of law to ensure administrative coherence and authority.⁶⁹ The empirical

⁶² Desirée LeClercq, "Judicial Review of Emergency Administration," *Am. UL Rev.* 72 (2022): 143.

⁶³ Seno Wibowo Gumbira, I Gusti Ayu Ketut Rachmi Handayani, and Kukuh Tejomurti Tedjomurti, "The Urgency of Presidential Policy to Revitalize and Maintain the Existence of Cooperatives Based on Pancasila," *Sriwijaya Law Review* 3, no. 2 (2019): 199–224.

⁶⁴ Jayus Jayus and Muhammad Bahrul Ulum, "Presidential Power's Limitation to Emergency Provisions in Indonesia," *Jurnal Cita Hukum* 8, no. 2 (2020): 343–62.

⁶⁵ Elliot Bulmer, "Emergency Powers International IDEA Constitution-Building Primer 18," *Sweden: International IDEA*, 2018.

⁶⁶ Dian Agung Wicaksono and Faiz Rahman, "Influencing or Intervention? Impact of Constitutional Court Decisions on the Supreme Court in Indonesia," *Constitutional Review* 8, no. 2 (December 30, 2022): 260–94, <https://doi.org/10.31078/CONSREV823>.

⁶⁷ Wicaksono and Rahman.

⁶⁸ Ludwing Marengo et al., "Time Evolution of the Behaviour of Brazilian Legislative Representatives Using a Complex Network Approach," ed. Haroldo V. Ribeiro, *PLOS ONE* 15, no. 2 (February 2020): e0226504, <https://doi.org/10.1371/journal.pone.0226504>.

⁶⁹ Alison Fischer, "Colonialism, Context and Critical Thinking: First Steps Toward Decolonizing the Dutch Legal Curriculum.," *Utrecht Law Review* 18, no. 1 (2022).

responsibilities fall upon the legislators and law enforcers, especially the DPR-RI and the President, whose roles are crucial in facilitating the checks and balances of state power.⁷⁰

In the context of decision-making on open legal policy, it is imperative that the law is executed by lawmakers, similar to the process followed for emergency laws (Perpu), which subsequently require ratification to become formal law.⁷¹ Ahmad Baidowi highlighted that, according to the MK-RI decision on open legal policy concerning Law No. 6 of 2014, revealed by Ahmad Baidowi, the outcomes of the cumulative open decision were presented to both the DPR-RI and the Government.⁷² If legislators fail to consider these outcomes, administrative actions will not embody good governance, given their significant implications for the legislature, executive and judicial branches.⁷³ The institutional response to an administrative law emergency is defined by moral and ethical standards aimed at promoting prosperity.⁷⁴ Iwan Satriawan points out that there are inherent challenges associated with decision on open legal policy, suggesting that there should be constraints on the decisions from the MK-RI that are forwarded to legislators.⁷⁵ These limitations are crucial for administration and in elucidating the role of institutions in the context of administrative law emergencies, which have a profound impact on the national legislative framework.

The right to Establish Improvement of Village Administration Democracy and its Respect

At a theoretical level, it is understood that the MK-RI decision on open legal policy imposes an obligation on legislators to follow up on these decisions. Concrete evidence demonstrates that the MK-RI decisions possess a morally compelling nature and institutional ethics, which are enacted by transforming *ius constitutum* into the establishment of rights. Legislators have made extraordinary efforts, such as bypassing the National Legislation Program, indicating an administrative law emergency. In this context, the right to terminate provides a broad space for public participation, allowing for input regarding the extension of the village head's term of office. Furthermore, the MK-RI's decision, based on Article 23, paragraph (1) of Law No. 12 of 2011, falls into the open cumulative category.⁷⁶ The legislative process in Indonesia includes three mechanisms for producing laws while facilitating public participation: the Prolegnas mechanism, the open cumulative list mechanism, and the non-Prolegnas mechanism.⁷⁷ Each of these mechanisms has its own criteria, as detailed in the following table:

⁷⁰ Rahmat and Sarip, "Comparative A Model Islamic Constitution Dalam Pembentukan Dual Yurisdiction Yudikatif Pasca Amandemen UUD 1945."

⁷¹ Cipto Prayitno, "Constitutionality Analysis of the Limits of the President's Authority in Determining Government Regulations in Lieu of Laws," *Constitutional Journal* 17, no. 3 (2020).

⁷² KOMPASTV, *Baleg Agreed on Revision of Village Law: Village Head's Term of Office Is 9 Years, Village Funds Increase to 2 Billion*.

⁷³ Ibnu Sina Chandranegara, "Comparison of Judicial Administration in a Judicial Emergency Due to the Covid-19 Pandemic in the United States and Indonesia," *Jurnal Hukum Right Because Right* 28, no. 1 (2021): 45–70.

⁷⁴ Phoebe E Arde-Acquah, "Salus Populi Supreme Lex Est: Balancing Civil Liberties and Public Health Interventions in Modern Vaccination Policy," *Wash. U. Jurisprudence Rev.* 7 (2014): 337.

⁷⁵ Satriawan and Lailam, "Open Legal Policy in the Constitutional Court Decisions and National Legislation Making."

⁷⁶ Meirina Fajarwati, "Follow-up to the Constitutional Court Decision in the National Legislation Program," *Research* 11, no. 3 (2017): 195–204.

⁷⁷ Nurrahman Aji Utomo, "Outlining the Legislative Framework as an Instrument for the Realization of Human Rights," *Constitutional Journal* 13, no. 4 (2016): 866.

Table 2.
Law Making Mechanisms

No.	Mechanism	Criteria
1	Prolegnas	This planning instrument, which includes the names of proposed bills, is utilized under normal conditions by both the DPR-RI and the President. It initiates the process to establish <i>ius constitutum</i> -based law. The legal foundation is rooted in Chapter IV Article 16 of Law No. 12 of 2011 regarding the Formation of Legislative Regulations.
2	MK-RI Decision	Instruments not part of the National Legislation Program are executed through an open legal policy decision made by MK-RI to be implemented by lawmakers. This process involves transforming the initial negative legislator stance into a positive <i>ius constitutum</i> , based on Article 23 paragraph (1) of Law No. 12 of 2011 concerning the Formation of Legislative Regulations
3	Non-Prolegnas	These are instruments not included in the National Legislation Program, initiated by either the DPR-RI or the President, due to political conditions such as emergencies that necessitate immediate legislative action. The legal basis for this mechanism is Article 23 paragraph (2) of Law No. 12 of 2011 concerning the Formation of Legislative Regulations

Source: researchers comparing the law making mechanisms of Prolegnas, MKRI and Non-Prolegnas

In the Prolegnas, the instruments that must be included in the planning process are executed under normal conditions by the DPR-RI and the President, adhering to existing legislation. These instruments are essential components of state administrative law that need to be carried out under normal circumstances. When it comes to the MK-RI decision, which implements an open legal policy, it undoubtedly leads to distinct legal consequences. In this scenario, legislators are obligated to respect and enact the determinations made by the MK-RI. This situation signifies that the MK-RI's decision functions similarly to a government regulation acting in lieu of law, circumventing the Prolegnas process.

This stance further creates opportunities public engagement, allowing for input that could enhance village democracy and administration throughout the process.⁷⁸ Respecting such contributions is crucial, especially if the legislative decision continues to extend the terms of office for village heads, in alignment with the legislators' agreements or plans, acknowledging Indonesia's commitment to the rule of law principle. Nonetheless, these efforts are subject to legal scrutiny, which means that the decisions made by the DPR regarding *ius constitutum* can be re-evaluated. Community members or stakeholders with grievances have the option to present their concerns to the MK-RI again, specifically regarding the tenure village head as discussed.

CONCLUSION

Based on the available studies, it can be concluded that the execution of what is known as an open legal policy decision falls back to the lawmakers, indicating an administrative law emergency. This situation arises from the necessity for lawmakers to address decisions, and revisions to the

⁷⁸ Satriawan and Lailam, "Open Legal Policy in the Constitutional Court Decisions and National Legislation Making."

law are not mandated to be included in the National Legislation Program. This concept of open legal policy has theoretical backing, as once stated by Carl J. Freidrich. Moreover, the notion is supported by the urgency of administrative law emergencies, as described by Desiree LeClercq. She notes that while national emergencies are challenging to implement, they still require adherence to administrative procedures and judicial decisions are referred back to the legislators, considering that the judiciary does not function as a legislator in the political institutional sense. Considering the arguments presented, it is evident that the actions taken by the MK-RI can be regarded as a response to a state administrative law emergency within the legal administrative system. This is related to the procedures that must be followed while a decision is pending, offering a window for input before becoming *ius constitutum*. However, once the decision reverts to *ius constitutum*, all parties must respect it. This does not preclude legal course for those who are dissatisfied or feel aggrieved. There remains a legal avenue, specifically the submission of a case for material examination to the MK-RI.

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