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Mainstreaming Justice in the Establishment of Laws and Regulations Process: Comparing Case in Indonesia, Malaysia, and Australia

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ABSTRACT

This paper compares the cases of Indonesia, Malaysia, and Australia to examine how these countries incorporate principles of justice in the establishment of laws and regulations. It explores the significance of mainstreaming justice in lawmaking, emphasizing equitable representation, fair access to justice, and human rights considerations. The analysis highlights the legal frameworks and institutional structures in each country. In Indonesia, the role of the Constitutional Court and stakeholder involvement in the legislative process are examined. Malaysia's constitutional framework and efforts to address ethnic and religious diversity, as well as the role of judicial review, are discussed. Australia's common law system emphasizes parliamentary scrutiny, public consultations, and protection of individual rights through the High Court and parliamentary



² committees. This study provides insights into the diverse approaches and challenges faced by these countries in mainstreaming justice in their lawmaking processes. It contributes to understanding how justice can be effectively integrated into laws and regulations, offering valuable insights for policymakers and legal practitioners seeking to promote justice in legislative contexts.

Keywords: Justice, Establishment of Laws and Regulations, Legal Theory, Law-Making Process

INTRODUCTION

The establishment of just and equitable laws and regulations is crucial for the development and stability of any society. It ensures that individuals are protected, their rights are respected, and their grievances are addressed. However, the process of formulating laws and regulations can sometimes be complex, and the degree to which justice is mainstreamed in this process can vary across different countries.¹

¹ Furthermore, it is emphasized that one of the primary objectives of the law is to achieve justice in carrying out its duties and functions. Alongside justice, legal certainty is crucial in the execution of these duties and functions. The existence of law is inherently tied to the presence of a society, as reflected in the phrase "*ubi societas, ibi ius*" (where there is society, there is law). Consequently, in the story of Robinson Crusoe, who lived in isolation, the need for laws is not apparent. The law comes into existence when there are multiple parties with different interests, namely the regulators who establish and enforce the law, and the stakeholders who are the recipients of the services provided by the law. The law encompasses broad dimensions and significantly impacts Indonesia's economic efficiency. As the purpose of the law is to establish order and justice, efforts should be made to effectively regulate matters that have not yet been addressed by taking into account the relevant legal principles associated with the proposed regulation. In implementing the law, it is essential to consider efficiency as a vital element. This entails

This study focuses on comparing the cases of Indonesia, Malaysia, and Australia in terms of mainstreaming justice in the establishment of laws and regulations. These countries represent diverse legal and cultural landscapes, providing an interesting comparative study. By examining their approaches, we can gain insights into how justice is incorporated into the legislative process and identify potential areas for improvement.

Indonesia, as a large and diverse country in Southeast Asia, has made significant progress in recent years towards strengthening its legal system. It has enacted reforms to enhance transparency, accountability, and access to justice. However, challenges remain, such as ensuring equal representation and participation of marginalized groups, combating corruption, and addressing human rights issues.² Malaysia, another Southeast Asian country, has a

prioritizing substance over form and focusing on the content of the law rather than merely adhering to formalities. By doing so, the law can better fulfill its purpose of achieving order and justice in a manner that is efficient and effective. See Monia Ciravegna, "Ubi Societas, Ibi Ius: The Legal System." In *Damanhur: An Esoteric Community Open to the World*. (Cham: Springer International Publishing, 2022), pp. 75-96; Ridwan Arifin, "Legal Development and Globalization: Some Contemporary Issues in Indonesia and Global Context." *Journal of Law and Legal Reform* 1, No. 3 (2020): i-iv; Alf Ross, *On Law and Justice*. (Oxford: Oxford University Press, 2019); Linda Mulcahy, *Legal Architecture: Justice, Due Process and the Place of Law*. (London: Routledge, 2010); Ridwan Arifin, "Capturing Various Ideas of Law and Justice in Indonesia and Global Perspective." *Lex Scientia Law Review* 6, No. 1 (2022): i-iv; Boy Nurdin, and Khayitjon Turdiev. "Paradigm of Justice in Law Enforcement in the Philosophical Dimensions of Legal Positivism and Legal Realism." *Lex Publica* 8, No. 2 (2021): 65-74.

² In the context of justice in the judicial sector (in terms of access to justice), it is emphasized that a fair trial is a concept which suggests that the judicial process must act fairly towards trying criminals for any type of crime. The concept of a fair trial is one means of upholding justice. This concept is based on the principle of equality before the law. This is in line with the law's objective of realizing equality and justice. These two concepts are related to each other and complement each other's goals. Judgments that are just and just can be reached by judges by using the characteristics of legal reasoning and ratio decidendi. In making decisions, judges must pay attention to formal procedural aspects along with universal aspects which include justice and humanity. These two aspects are generally considered by judges, especially in criminal cases where pardon can be granted. Meanwhile, in general courts, legal remedies can be held when the judge's

unique legal framework influenced by both common law and Islamic law. It has made efforts to promote justice in lawmaking processes by increasing public engagement and stakeholder consultations. However, there is a need to further strengthen mechanisms to protect minority rights, enhance the independence of the judiciary, and promote legal certainty.³

In another perspective, Australia, a country with a Western legal tradition, places a strong emphasis on the rule of law and judicial independence. The establishment of laws and regulations in Australia involves a comprehensive process that includes public consultations, expert opinions, and parliamentary scrutiny. However, there are ongoing discussions about the representation of indigenous communities, balancing individual rights with national security concerns, and addressing socioeconomic inequalities.⁴

decision does not fulfill a sense of justice due to an error in making a decision. This legal remedy can be carried out individually or as a legal entity based on the granting of authority from the applicable law. See Laurens Bakker, and Jaap Timmer. "Justice in Indonesia: The social life of a momentous concept." *The Asia Pacific Journal of Anthropology* 15, No. 4 (2014): 293-301; Virginia Murphy-Berman, and John J. Berman. "Cross-cultural differences in perceptions of distributive justice: A comparison of Hong Kong and Indonesia." *Journal of Cross-Cultural Psychology* 33, No. 2 (2002): 157-170; Budi Sastra Panjaitan, "Forum Privilegiatum sebagai Wujud Peradilan yang Adil Bagi Masyarakat." *Jurnal Media Hukum* 25, No. 1 (2018): 40-47; Yustinus Suhardi Ruman, "Keadilan Hukum dan Penerapannya dalam Pengadilan." *Humaniora* 3, No. 2 (2012): 345-353; Judith Prima Hapsari, "The Poor and Justice: Implementation of Legal Aid for the Poor in Indonesia (Problems and Solutions)." *The Indonesian Journal of International Clinical Legal Education* 3, No. 4 (2021): 553-568.

³ See Salim Ali Farrar, "Crime and Criminal Justice in Malaysia." In *Handbook of Asian Criminology*. (New York, NY: Springer New York, 2012), pp. 231-246; YAA Tan Sri Dato' Abdul Hamid, "Administration of Justice in Malaysia." *The Denning Law Journal* 2, No. 1 (1987): 1-22; Gary KY Chan, "The Right of Access to Justice: Judicial Discourse in Singapore and Malaysia." *Asian Journal of Comparative Law* 2, No. 1 (2007).

⁴ One key aspect of justice in law formulation is the principle of procedural fairness. This principle ensures that individuals have the right to a fair and impartial hearing, access to legal representation, and the opportunity to present their case before an independent and unbiased judiciary. The Australian legal system provides various mechanisms to uphold procedural fairness, such as the right to appeal, the presumption of innocence until proven guilty, and the right to legal aid for those who cannot afford representation.

By comparing these cases, the Authors aim to analyze the strategies, successes, and challenges in mainstreaming justice in the establishment of laws and regulations. This examination will shed light on the importance of inclusivity, transparency, and accountability in the legislative process. Furthermore, it will provide valuable insights for policymakers, legal practitioners, and scholars in each country, as well as for other nations seeking to improve their own systems.

In the further context, efforts have been made to mainstream justice in the establishment of laws and regulations in Indonesia, Malaysia, and Australia, several challenges and problems persist. Some of key issues faced by these countries such as limited representation and inclusion, insufficient public participation, weak judicial independence, corruption and bribery, human rights concerns, socioeconomics inequality, and balancing competing interests.

Another crucial aspect of justice in law formulation is the promotion of substantive equality. Laws and regulations are designed to address and mitigate systemic inequalities and discrimination in Australian society. They aim to protect the rights and liberties of marginalized groups, including Indigenous Australians, women, LGBTQ+ individuals, and people with disabilities. Additionally, legislation is enacted to combat racial discrimination, promote workplace equality, and ensure equal access to education, healthcare, and other essential services. Furthermore, justice in law formulation involves a balance between individual rights and the common good. Laws and regulations are created to safeguard public safety, maintain social order, and protect the rights of individuals in a democratic society. This includes laws related to criminal justice, civil rights, consumer protection, environmental regulations, and workplace safety. The Australian legal system seeks to strike a balance between individual freedoms and collective responsibilities, while considering the diverse needs and interests of the population. See Chris Cunneen, et al. *Juvenile Justice: An Australian Perspective*. (Melbourne: Oxford University Press, 1995); Stuart Macintyre, *Winners and Losers: The Pursuit of Social Justice in Australian History*. (London: Routledge, 2020); Chris Cunneen, Barry Goldson, and Sophie Russell. "Juvenile justice, young people and human rights in Australia." *Current Issues in Criminal Justice* 28, No. 2 (2016): 173-189; Bernard Murphy, and Camille Cameron. "Access to Justice and the Elevation of Class Action Litigation in Australia." *Melbourne University Law Review* 30, No. 2 (2006): 399-440.

Related to problem of limited representation and inclusion, in all three countries, there can be inadequate representation and inclusion of marginalized groups in the lawmaking process. Indigenous communities, ethnic minorities, women, persons with disabilities, and other disadvantaged groups may not have sufficient opportunities to participate in decision-making or have their concerns adequately addressed. This lack of representation can lead to laws and regulations that do not fully consider the needs and rights of all segments of society.⁵

Another challenge is insufficient public participation. Despite some progress in promoting public participation, there are still limitations in engaging the public effectively in the lawmaking process. Public consultations may not always be extensive, transparent, or accessible to all stakeholders. This can result in a lack of diverse perspectives and a failure to capture the full range of societal needs and expectations.⁶

⁵ Bambang Sutiyoso, "Mencari Format Ideal Keadilan Putusan dalam Peradilan." *Jurnal Hukum Ius Quia Iustum* 17, No. 2 (2010): 217-232; Ismail Ramadan, "Peran Lembaga Peradilan Sebagai Institusi Penegak Hukum dalam Menegakkan Keadilan Bagi Terwujudnya Perdamaian." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, No. 1 (2017): 69-87; Henny Saida Flora, "Keadilan Restoratif Sebagai Alternatif dalam Penyelesaian Tindak Pidana dan Pengaruhnya dalam Sistem Peradilan Pidana di Indonesia." *University of Bengkulu Law Journal* 3, No. 2 (2018): 142-158. See also Basar Dikuraisyin, "Sistem Hukum dan Peradilan Islam di Malaysia." *Jurnal Keislaman Terateks* 1, No. 3 (2017): 1-11; Sigit Somadiyono, "Perbandingan Sistem Hukum antara Indonesia dan Malaysia." *Wajah Hukum* 4, No. 2 (2020): 414-420; Deaf Wahyuni Ramadhani, and Salsabilla Eriko. "Studi Perbandingan Sistem Peradilan Pidana Indonesia dan Malaysia." *RECHTSTAAT NIEUW: Jurnal Ilmu Hukum* 7, No. 1 (2022): 1-11; Indra Rahmatullah, "Menerobos Sekat Administrasi Peradilan." *Refleksi Hukum: Jurnal Ilmu Hukum* 1, No. 2 (2017): 117-130.

⁶ Eko Prasajo, "People and Society Empowerment: Perspektif Membangun Partisipasi Publik." *Jurnal Ilmiah Administrasi Publik* 4, No. 2 (2004): 10-24; Purwanto, Arie, Anneke Zuiderwijk, and Marijn Janssen. "Citizen Engagement with Open Government Data: Lessons Learned from Indonesia's Presidential Election." *Transforming Government: People, Process and Policy* 14, No. 1 (2020): 1-30; Saru Arifin, "Illiberal Tendencies in Indonesian Legislation: The Case of the Omnibus Law on Job Creation." *The Theory and Practice of Legislation* 9, No. 3 (2021): 386-403; Ismail Khozen, Priantoro Budi Saptono, and

In the similar context, weak judicial independence is become one of the problems. Judicial independence is crucial for upholding justice and ensuring the rule of law. However, challenges persist in maintaining judicial independence in all three countries. Political interference, lack of safeguards, and inadequate protection for judges and legal professionals can undermine the integrity and impartiality of the judiciary. This can erode public trust in the legal system and hinder the establishment of just laws and regulations. Besides that, corruption and bribery adding to the problems faced by these three countries. Corruption poses a significant obstacle to mainstreaming justice in the establishment of laws and regulations. Instances of bribery, unethical practices, and undue influence can compromise the integrity of the legislative process. Such corruption undermines the principles of justice, transparency, and accountability and can result in laws that serve the interests of a few rather than the public good.

Human rights concerns also become one of the problems. Despite efforts to protect human rights, all three countries face ongoing challenges in this regard. Human rights violations, such as arbitrary arrests, restrictions on freedom of expression and assembly, and discrimination, can hinder the establishment of just laws and regulations. Addressing these human rights concerns requires a comprehensive and proactive approach to ensure that laws are consistent with international human rights standards. Furthermore, the human rights concerns impacted the inequalities, especially socioeconomic inequalities in this case. Socioeconomic inequalities

Mifia Septia Ningsih. "Questioning Open Government Principle within the Law-Making Process of Omnibus Law in Indonesia." *Soshum: Jurnal Sosial dan Humaniora* 11, No. 2 (2021): 143-154. See also Halimah Abdul Manaf, Ahmad Martadha Mohamed, and Alan Lawton. "Assessing Public Participation Initiatives in Local Government Decision-Making in Malaysia." *International Journal of Public Administration* 39, No. 11 (2016): 812-820; Brenton Holmes, *Citizens' Engagement in Policymaking and the Design of Public Services*. (Canberra: Parliamentary Library, 2011).

can impact the establishment of just laws and regulations. Inadequate consideration of social and economic disparities can result in legislation that exacerbates inequalities or fails to address the needs of marginalized communities. Addressing socioeconomic disparities and ensuring equitable access to justice are essential for mainstreaming justice in the lawmaking process.

Another major problem is related to balancing competing interests in which establishing just laws and regulations often involves striking a balance between competing interests, such as individual rights and public security concerns. Finding the right balance can be challenging, and there is often debate and disagreement on how to prioritize and reconcile these competing interests. Ensuring a fair and transparent decision-making process that adequately considers all perspectives is crucial for achieving justice in the establishment of laws and regulations.

Some studies have confirmed that equality and justice on law-making process in these three countries—Indonesia, Malaysia, and Australia—faced several problems. For instance, in Indonesia, some scholars have examined the legal reforms in Indonesia aimed at enhancing justice in the lawmaking process. This includes efforts to improve transparency, accountability, and public participation through mechanisms such as public consultations, stakeholder engagement, and access to information. Besides that, representation and inclusion were also become one of the challenges. The literature highlights the importance of inclusive and representative decision-making processes. It explores the challenges of ensuring marginalized groups, including indigenous communities and women, are adequately represented and their perspectives are considered in the establishment of laws and regulations. In the further context, corruption and governance were also become crucial issue in Indonesia. Studies have explored the impact of corruption on justice

in lawmaking processes. They analyze the role of anti-corruption measures, the independence of regulatory institutions, and the effectiveness of accountability mechanisms in promoting transparency and combating corruption.

Similarly with Indonesia, Malaysia also faced many challenges. Legal pluralism in Malaysia become main challenge in law-making process in this country. Some studies highlighted that Malaysia has unique legal system, which combines common law and Islamic law. Scholars discuss the challenges and opportunities of mainstreaming justice within this framework, including the need to balance different legal principles and ensure equal protection of rights.⁷ The concerns of law-making process in Malaysia are also related to public participation. There is a growing body of literature examining the role of public participation in Malaysia's lawmaking process. It explores the extent to which public consultations, parliamentary debates, and stakeholder engagement contribute to justice and accountability in the establishment of laws and regulations.⁸ Additionally, minority rights are also highlighted by some scholars, in which some studies emphasized the importance of protecting minority rights in lawmaking processes. It discusses the challenges of addressing the rights of ethnic and religious minorities, including indigenous communities, and explores strategies to ensure their inclusion and equitable representation.⁹

⁷ Farid Sufian Shuaib, "Strengthening Administrative Institutions of Islamic Law in Malaysia: An Overview." *Jurnal Syariah* 16, No. 3 (2008): 443-464; Tamir Moustafa, "Judging in God's name: State power, secularism, and the politics of Islamic law in Malaysia." *Oxford Journal of Law and Religion* 3, No. 1 (2014): 152-167.

⁸ Zainah Anwar, "Islamisation and its Impact on Laws and the Law-Making Process in Malaysia." *Warning Signs of Fundamentalism* 74, No. 1 (2004): 71-77; Sarah Petronella Moulds, and Ying Hooi. "The Role of the People in Post Legislative Scrutiny: Perspectives from Malaysia and Australia." *Journal of International Studies* 16, No. 1 (2020): 1-23.

⁹ See Thaatchayini Kananatu, *Minorities, Rights and the Law in Malaysia*. (London: Routledge, 2020); Juliet Pietsch, and Marshall Clark. "Citizenship Rights in Malaysia: The Experience of Social and Institutional Discrimination among Ethnic

LAW-MAKING PROCESS: IS JUSTICE REALLY REFLECTED?

In the halls of the legislative building, lawmakers gathered to tackle the challenging task of law-making. As they embarked on this process, they were confronted with a multitude of obstacles and complexities. The first challenge they encountered was the influence of politics. Within the walls of the legislative chambers, lawmakers from different parties clashed over their diverging interests and ideologies. Debates were often heated, and compromises were necessary to move forward. The constant pressure to appease various factions and interest groups added an additional layer of complexity to the law-making process.

As the lawmakers delved into the issues at hand, they soon realized the intricate and intricate nature of the matters they were tackling. Emerging technologies, scientific advancements, and complex legal questions demanded a deep understanding and expertise. However, not all lawmakers possessed the specialized knowledge required to address these intricacies effectively. They had to rely on experts, consult with relevant stakeholders, and conduct thorough research to ensure well-informed legislation.

Time constraints loomed over the law-making process, imposing a sense of urgency. The lawmakers were pressed for time to draft, debate, and pass legislation. This limited timeframe left little room for in-depth analysis, extensive deliberations, and comprehensive consultations with the public. As a result, there was a risk of hastily

Minorities." *Citizenship Studies* 18, No. 3-4 (2014): 303-314; Ahmad Suaedy, "Islam and Minorities: Managing Identity in Malaysia." *Al-Jami'ah: Journal of Islamic Studies* 48, No. 1 (2010): 1-44.

crafted or incomplete laws that failed to address all the nuances of the issues at hand.

One of the greatest challenges lawmakers faced was the delicate task of balancing competing interests. They had to consider the needs, desires, and concerns of various stakeholders, including industries, advocacy groups, and the general public. Striving to develop legislation that served the common good while addressing as many concerns as possible was a formidable challenge. Deliberations often involved difficult choices and compromises, trying to find the delicate equilibrium between different perspectives.

Access to accurate and up-to-date information posed another challenge. Legislators needed reliable data, expert opinions, and comprehensive research findings to make well-informed decisions. However, obtaining such information was not always easy. Limited access to relevant data and expert insights hindered the development of evidence-based legislation.

The labyrinthine legal system itself proved to be a challenge. Crafting new legislation that harmonized with existing laws and maintained consistency within the legal framework was a complex task. Lawmakers had to navigate intricate procedural rules and ensure that the new laws complemented and did not contradict the existing body of legislation.

Engaging the public in the law-making process was a priority, yet it presented its own set of challenges. Transparency, accessibility, and meaningful public participation were crucial. However, finding effective mechanisms to solicit public input, incorporating it into the decision-making process, and striking a balance between expert opinions and public sentiment were constant challenges that lawmakers had to address.

Even after legislation was drafted, the journey was far from over. Implementing and enforcing the laws required coordination among

various government agencies, allocation of resources, and monitoring mechanisms to ensure compliance. This aspect of the law-making process demanded careful planning and ongoing evaluation to identify and address any enforcement gaps.

According to legal experts, the law-making process is a complex endeavor that involves several key steps. While variations exist across different jurisdictions, the following stages are generally recognized as integral to the law-making process:

1. Proposal and Drafting

The process typically begins with the identification of an issue or problem that requires legislative intervention. Experts, such as legal scholars, government officials, or interest groups, may propose ideas for new laws or changes to existing ones. These proposals are then drafted into legislative language, often by legal professionals or specialized drafting committees.

2. Introduction and First Reading

The draft legislation is formally introduced in the legislative body, such as a parliament or congress, by a sponsoring lawmaker. This marks the first reading, during which the legislation's title, purpose, and general provisions are presented. No substantial debate or amendments typically occur during this stage.

3. Committee Review

The legislation is referred to one or more specialized committees responsible for examining its details, potential impact, and implications. Committees may hold hearings, gather expert testimony, and solicit public input to evaluate the merits of the proposed law thoroughly. They may suggest amendments, revisions, or even recommend rejecting the legislation.

4. Second Reading

The legislative body proceeds to the second reading, where lawmakers engage in substantive debates on the proposed

legislation. They discuss its provisions, potential consequences, and alternative approaches. Amendments may be proposed and considered during this stage, and the bill may undergo significant changes based on the input and deliberations of the lawmakers.

5. Third Reading and Passage

Following the second reading, the legislative body conducts the third reading. This stage typically involves a final debate on the bill, with lawmakers presenting their positions and arguments. After the debate, a vote is taken to decide whether the legislation should be passed. If the bill receives a majority of votes in favor, it is considered passed by the legislative body.

6. Consideration by Other Chamber (Bicameral Systems)

In countries with a bicameral system, where legislation requires approval from two separate chambers (such as a lower house and an upper house), the bill moves to the other chamber for consideration. The same process of readings, committee review, and debates occurs in the second chamber.

7. Reconciliation (Bicameral Systems)

If the two chambers pass different versions of the legislation or propose different amendments, a reconciliation process may be necessary. Representatives from both chambers meet to negotiate and resolve any differences, seeking to reach a consensus on the final version of the bill.

8. Approval by Head of State

Once the legislation is passed by both chambers (or a single chamber in unicameral systems), it is sent to the head of state, such as the president or monarch, for approval. Depending on the constitutional framework, the head of state may have the power to sign the bill into law, veto it, or return it to the legislature for further consideration.

9. Implementation and Enforcement

After receiving the necessary approvals, the law comes into effect. Government agencies and relevant authorities are responsible for implementing and enforcing the law, often through regulations, guidelines, or administrative procedures. Ongoing monitoring, evaluation, and potential amendments may be necessary to address any practical challenges or emerging issues.

In the further context, justice should be reflected in all law-making processes as emphasized by many legal scholars. Lon L. Fuller was an esteemed legal philosopher and scholar known for his work on legal theory and the rule of law. His influential book "*The Morality of Law*" examines the importance of law in society and highlights the significance of fair and just legal processes in the law-making process.¹⁰ Quite similarly with Fuller, Lawrence Lessig as a prominent legal scholar and advocate for legal reform has focused on the influence of money in politics and its impact on the law-making process. His book "*Republic, lost: How Money Corrupts Congress—and a Plan to Stop It*" explores the challenges of money-driven politics and proposes reforms to enhance the integrity of the law-making process.¹¹

Another perspective deliberated from Cass R. Sunstein as a renowned legal scholar and former government official who has extensively studied administrative law and regulatory policy. His work explores the challenges and opportunities presented by administrative agencies in the law-making process, including their

¹⁰ See Edwin W. Tucker, "The Morality of Law, by Lon L. Fuller." *Indiana Law Journal* 40.2 (1965): 270-279; Lon Luvois Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964); Kristen Rundle, "Fuller's Internal Morality of Law." *Philosophy Compass* 11, No. 9 (2016): 499-506; Kristen Rundle, *Forms Liberate: Reclaiming the Jurisprudence of Lon L. Fuller*. (London: Bloomsbury Publishing, 2012).

¹¹ Lawrence Lessig, *Republic, lost: How Money Corrupts Congress—and a Plan to Stop It*. (London: Hachette UK, 2015); Lawrence Lessig, "The Regulation of Social Meaning." *The University of Chicago Law Review* 62, No. 3 (1995): 943-1045.

rule-making authority and the need for transparency and public participation.¹² In the same context with Sunstein, Mark Tushnet—a distinguished legal scholar specializing in constitutional law and the judicial process—provides insights into the interaction between the legislative and judicial branches, highlighting the role of the judiciary in shaping and interpreting legislation.¹³

In addition, Lon L. Fuller proposed several ideas and principles regarding the law-making process. His work focused on the importance of procedural fairness and the rule of law in the creation and implementation of laws. Fuller argued that law should be viewed as a moral enterprise. He emphasized that the law should align with certain moral principles to be considered legitimate. According to Fuller, laws should promote justice, fairness, and respect for individual autonomy. Fuller also introduced the concept of the "*inner morality of law*," which refers to the internal characteristics that distinguish law from other forms of social control. He identified eight elements that contribute to the inner morality of law: generality, promulgation, non-retroactivity, clarity, consistency, constancy, congruence, and practicability. Fuller believed that these elements are crucial for a legal system to be legitimate and effective.

In the further context, Fuller stressed the significance of procedural fairness in the law-making process. He argued that the law should be created through fair and transparent procedures that allow for public participation and deliberation. Fuller emphasized that procedural fairness ensures that laws are enacted through a democratic and inclusive process. Besides that, Fuller also advocated for the rule of law as a fundamental principle in the law-making

¹² Cass R. Sunstein, "On the Expressive Function of Law." *University of Pennsylvania Law Review* 144, No. 5 (1996): 2021-2053.

¹³ Mark Tushnet, *Taking the Constitution Away from the Courts*. (New Jersey: Princeton University Press, 2000); Mark Tushnet, *Weak Courts, Strong Rights*. (New Jersey: Princeton University Press, 2009).

process. He contended that laws should be clear, publicized, and applied consistently to ensure that individuals can anticipate and conform to legal requirements. Fuller believed that the rule of law provides stability, predictability, and protection of individual rights. And to find justice in the law-making process, Fuller engaged in the debate between natural law and legal positivism. While he acknowledged the importance of positive law created by human authorities, he argued that positive law should not contradict fundamental principles of justice and morality. Fuller believed that law should align with certain natural law principles to be considered valid.¹⁴

PROBLEMS & CHALLENGES IN MAINSTREAMING JUSTICE IN THREE COUNTRIES (INDONESIA, MALAYSIA, AUSTRALIA)

It is important to note that the law-making process can vary significantly across different legal systems and jurisdictions. Some countries may have additional stages or variations in the process, while others may have unique procedures for law-making at the regional or local levels. Law formulation in Indonesia faces several challenges and problems that impact the effectiveness, fairness, and inclusivity of the legal system.

¹⁴ See Amy Gangl, "Procedural Justice Theory and Evaluations of the Lawmaking Process." *Political Behavior* (2003): 119-149; Tom Campbell. *What Justice is About*. (London: Macmillan Education UK, 1988); Wilfried Hinsch, "Legitimacy and Justice." *Political legitimization without morality?* (2008): 39-52; Ibnu Sina Chandranegara, and Eka NAM Sihombing. "Emergency Law-Making in Indonesia: Between Political and Constitutional Process." *Journal of Legal, Ethical and Regulatory Issues* 24, No. 4 (2021): 1-7.

One of the main challenges in Indonesia is concerning complex and fragmented legal framework. Indonesia's legal system consists of various laws, regulations, and legal principles, making it complex and sometimes fragmented. This complexity can create difficulties in interpreting and applying laws consistently, leading to confusion and inconsistencies in legal outcomes. In the further, there is often a lack of clarity and certainty in the wording of laws and regulations. Vague or ambiguous language can lead to different interpretations, resulting in legal uncertainty and potential inconsistencies in legal decision-making.¹⁵

Another challenge in Indonesia is limited access to legal information. Access to legal information and resources can be limited, particularly for individuals from marginalized communities and those living in remote areas. This lack of access hinders the understanding and awareness of laws and rights, impeding effective participation in the legal system. Besides that, inadequate public participation was also become a crucial issue on law-making process in Indonesia. The involvement of the public in the law formulation process is often limited. Public consultations and opportunities for meaningful engagement may be lacking, leading to a lack of diverse perspectives and diminishing the legitimacy of laws and regulations. In law-making process, the influence of interest groups, both political and corporate, can impact the formulation of laws in Indonesia. Lobbying, undue influence, and corruption can lead to laws that

¹⁵ Yustinus Suhardi Ruman, "Keadilan Hukum dan Penerapannya dalam Pengadilan." *Humaniora* 3, No. 2 (2012): 345-353; Yohanes Suhardin, "Fenomena Mengabaikan Keadilan dalam Penegakan Hukum." *Mimbar Hukum* 21, No. 2 (2009): 341-354; Carto Nuryanto, "Penegakan Hukum Oleh Hakim Dalam Putusannya Antara Kepastian Hukum dan Keadilan." *Jurnal Hukum Khaira Ummah* 13, No. 1 (2018): 71-84.

prioritize the interests of specific groups over the public good, undermining the principle of equal justice.¹⁶

Not only the law-making process, implementation and enforcement of laws can be challenging due to limited resources, capacity, and coordination among relevant institutions. This can lead to gaps in the application of laws, contributing to a lack of effective justice and accountability. In the implementation, corruption remains a significant problem in the formulation and implementation of laws in Indonesia. Instances of bribery, favouritism, and unethical practices can compromise the integrity of the legal system, undermine public trust, and result in unjust outcomes.¹⁷

Furthermore, inadequate protection of human rights was also become challenge. Despite progress, human rights protection can still be insufficient in Indonesia's legal framework. Issues such as freedom of expression, religious freedom, minority rights, and the rights of marginalized communities may not receive adequate attention and protection in the law formulation process.¹⁸ Addressing these

¹⁶ Agus Raharjo, A. Angkasa, and Rahadi Wasi Bintoro. "Akses Keadilan Bagi Rakyat Miskin (Dilema dalam Pemberian Bantuan Hukum oleh Advokat)." *Mimbar Hukum* 27, No.3 (2015): 432-444; Akhdiari Harpa, "Analisis Yuridis Pemberian Bantuan Hukum Bagi Masyarakat Miskin dalam Mewujudkan Akses Keadilan Terhadap Masyarakat Miskin." *Tadulako Master Law Journal* 3, No. 2 (2019): 113-124.

¹⁷ See Rahayu Prasetianingsih. "Akuntabilitas Kekuasaan Kehakiman." *Jurnal Konstitusi* 8, No. 5 (2011): 829-848; Fahmiron Fahmiron. "Independensi dan Akuntabilitas Hakim dalam Penegakan Hukum Sebagai Wujud Independensi dan Akuntabilitas Kekuasaan Kehakiman." *Jurnal Litigasi* 17, No. 2 (2016): 3467-3515; Sri Sutatiek. "Akuntabilitas Moral Hakim dalam Memeriksa, Mengadili, dan Memutus Perkara Agar Putusannya Berkualitas." *Arena Hukum* 6, No. 1 (2013): 1-21.

¹⁸ Susani Triwahyuningsih, "Perlindungan dan Penegakan Hak Asasi Manusia (HAM) di Indonesia." *Legal Standing: Jurnal Ilmu Hukum* 2, No. 2 (2018): 113-121. See also Anis Widyawati, et al. "Covid-19 and Human Rights: The Capture of the Fulfilment of Rights During the Covid Outbreaks." *Unnes Law Journal* 6, No. 2 (2020): 259-286; Nurfaika Ishak, "Religious Tolerance in the Constitution and Guarantees for the Protection of Human Rights." *Jurnal Scientia Indonesia* 8, No. 1 (2022): 53-70; Ridwan Arifin, Rodiyah Rodiyah, and Fadhilah Rizky Afriani Putri. "The Legal and Social Aspect for Underage Marriage Women's Education Rights in the Perspective of Human Rights: Contemporary Issues and Problems." *Sawwa: Jurnal Studi Gender* 15, No. 2 (2020): 219-240.

problems requires concerted efforts to enhance legal clarity, increase public participation, combat corruption, strengthen human rights protections, improve access to legal information, and enhance the capacity and coordination of relevant institutions. Reforming and streamlining the legal system to make it more accessible, efficient, and equitable is crucial for ensuring justice and the rule of law in Indonesia.

Law formulation in Malaysia faces several challenges and problems that affect the efficiency, fairness, and inclusivity of the legal system. Some key issues related to legal pluralism, lack of transparency and accountability, limited public participation, insufficient stakeholder engagement, political influence and partisanship, inconsistencies and legal uncertainty, limited resources and capacity, and protection of minority rights.

Addressing these problems requires efforts to enhance transparency, accountability, and public participation in the law formulation process. Strengthening stakeholder engagement, promoting legal clarity and consistency, improving the capacity of relevant institutions, and ensuring the protection of minority rights are crucial steps towards a more just and inclusive legal system in Malaysia.¹⁹

While Australia has a well-established legal system, there are still challenges and problems that impact the process of law formulation. However, some challenges faced by Australia, starting from limited indigenous representation, lack of diversity in decision-making bodies, influence of special interest groups, complexity and

¹⁹ Halimah Abdul Manaf, Ahmad Martadha Mohamed, and Alan Lawton. "Assessing Public Participation Initiatives in Local Government Decision-Making in Malaysia." *International Journal of Public Administration* 39, No. 11 (2016): 812-820; Suzie Mat Nurudin, et al. "Public Participation Process at Local Government Administration: A Case Study of the Seremban Municipal Council, Malaysia." *Procedia-Social and Behavioral Sciences* 211 (2015): 505-512.

length of legislation, inadequate public participation, timeliness and efficiency, and balancing competing interests.

It is further emphasized that one of the significant challenges in law formulation in Australia is the limited representation and inclusion of Indigenous peoples. The voice and perspectives of Indigenous communities may not be adequately reflected in the development of laws and regulations, leading to potential gaps in addressing their unique rights and interests. Furthermore, decision-making bodies involved in law formulation may lack diversity, including gender, ethnic, and socio-economic diversity. This can result in a lack of varied perspectives and a failure to consider the needs and experiences of different segments of society.²⁰

In addition, the condition was also affected by some groups interest, in which that special interest groups, such as industry lobbyists and powerful stakeholders, can exert influence on the law formulation process. This influence can skew legislative outcomes, favouring specific interests over the broader public interest, and potentially undermining the principles of justice and fairness. Not only this matter, the complexity and length of legislation in Australia can pose challenges for effective law formulation. Lengthy and convoluted laws can hinder accessibility, comprehension, and compliance. Simplification and consolidation efforts may be needed to enhance clarity and ensure laws are understandable and user-friendly.²¹

²⁰ Larissa Behrendt, *Achieving Social Justice: Indigenous Rights and Australia's Future*. (Alexandria, NSW: Federation Press, 2003); Sue McKemmish, et al. "Resetting Relationships: Archives and Indigenous Human Rights in Australia." *Archives and Manuscripts* 39, No. 1 (2011): 107-144.

²¹ See Thomas E. Webb, and Robert Geyer. "The Drafters' Dance: The Complexity of Drafting Legislation and the Limitations of 'Plain Language' and 'Good Law' initiatives." *Statute Law Review* 41, No. 2 (2020): 129-158.

Despite Australia has mechanisms for public consultation and engagement, public participation in law formulation can still be limited. The public may have insufficient opportunities to provide input and feedback, leading to a potential lack of accountability and legitimacy in the legislative process.²² Thereafter, the timeliness and efficiency of law formulation can be a challenge in Australia. Delays in the legislative process can result in outdated laws or inadequate responses to emerging social, economic, and technological developments. Streamlining procedures and ensuring timely decision-making are important for maintaining an effective legal system.

Meanwhile, law formulation often requires balancing competing interests, such as individual rights, public safety, and economic considerations. Striking the right balance can be challenging, and disagreements may arise regarding the prioritization and trade-offs between these interests. Ensuring a fair and transparent decision-making process is essential to address these challenges effectively.

In the other hands, when laws and regulations are being formulated, the aspect of justice ensures that they are designed to uphold fundamental principles such as equality, fairness, and the protection of individual rights. Justice is an integral aspect of the formulation of laws and regulations, serving as the foundation for a just and equitable legal system. It encompasses principles that aim to ensure fairness, equality, and the protection of individual rights within society. The consideration of justice in the formulation of laws and regulations is essential to maintain social order, promote a harmonious coexistence, and address societal needs and aspirations.²³

²² Chris Lewis, and David Marsh. "Network Governance and Public Participation in Policy-Making: Federal Community Cabinets in Australia." *Australian Journal of Public Administration* 71, No. 1 (2012): 6-19

²³ Rosemary Nagy, "Transitional Justice as Global Project: Critical Reflections." *Third World Quarterly* 29, No. 2 (2008): 275-289. See also June L. Tapp, and Lawrence Kohlberg.

At this matter, justice demands that laws and regulations are rooted in equality. This means that all individuals should be treated fairly and without discrimination before the law, regardless of their social status, ethnicity, gender, or any other characteristic. Laws and regulations should provide equal opportunities, rights, and protections to all members of society, fostering an inclusive and just legal framework.

Additionally, to ensure equality, laws should be designed in a way that protects individuals from any unfair treatment or disadvantage stemming from these characteristics. This means that people should not face discrimination or be denied their rights and opportunities based on these factors. By eliminating discrimination, societies aim to create an environment where everyone has an equal chance to succeed, thrive, and contribute to society.²⁴

The concept of non-discrimination is essential for providing equal access to justice. It ensures that the legal system treats all individuals fairly, regardless of their personal characteristics. When laws are formulated without discriminatory biases, individuals can trust that they will receive equitable treatment in legal proceedings and have their rights upheld. Moreover, non-discrimination guarantees that all individuals can enjoy the benefits and protections provided by the legal system. It ensures that no one is excluded from the advantages and safeguards offered by laws and regulations. This includes rights such as freedom of expression, the right to a fair trial,

"Developing Senses of Law and Legal Justice." *Journal of Social Issues* 27, No. 2 (1971): 65-91; Louis E. Wolcher, *Law's Task: The Tragic Circle of Law, Justice and Human Suffering*. (London: Routledge, 2016).

²⁴ Daniel Butt, "On Benefiting from Injustice." *Canadian Journal of Philosophy* 37, No. 1 (2007): 129-152; Robert Folger, Russell Cropanzano, and Barry Goldman. "What is the Relationship Between Justice and Morality?." In *Handbook of Organizational Justice*. (London, UK: Psychology Press, 2013), pp. 215-245.

protection against discrimination itself, and various other legal protections and opportunities available to citizens.²⁵

Laws and regulations should also promote equal opportunities for all members of society. This means that individuals should have the same access to education, employment, healthcare, public services, and other resources and opportunities. The legal framework should strive to eliminate barriers and inequalities that may prevent certain groups from fully participating in society. Equal opportunities foster social mobility, enhance social cohesion, and contribute to a more just and inclusive society. It is further explained that the importance of laws and regulations in promoting equal opportunities for all members of society. It asserts that individuals should have equal access to various aspects of life, including education, employment, healthcare, public services, and other resources and opportunities.²⁶

²⁵ Non-discrimination is an integral part of the principle of equality. It ensures that no one is denied their rights because of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth. In addition to those grounds, discrimination on certain other grounds may also be prohibited. These grounds include age, nationality, marital status, disability, place of residence within a country and sexual orientation. Sometimes it may be necessary to treat people differently to achieve equality. This is because differences between people may make it difficult for them to enjoy their rights without support. Different treatment may not amount to prohibited discrimination if the criteria for the differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the International Covenant on Civil and Political Rights. The right to equality and non-discrimination encompasses both positive and negative obligations - the obligation to refrain from discriminating or eroding equality and the obligation to protect and advance the fulfilment and enjoyment of the rights to equality and non-discrimination for all people. *See also* Daniel Moeckli, "Equality and Non-Discrimination." *International Human Rights Law* (2010): 189-208; Endah Rantau Itasari, "Equality and Non-Discrimination Principles in Providing Rights with Disabilities." *Jurnal Komunikasi Hukum (JKH)* 6, No. 2 (2020): 534-541; Mohammad Ibrahim, "The judicialisation of discrimination in the Indonesian constitutional court." *International Journal of Discrimination and the Law* 22, No. 2 (2022): 125-151.

²⁶ The principle of equal rights implies that the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that

Equal opportunities mean that individuals, regardless of their background, should have an equal chance to succeed and pursue their goals. This principle recognizes that everyone should be treated fairly and without bias, and that their access to resources and opportunities should not be hindered by factors such as race, religion, gender, age, disability, or other personal characteristics. To promote equal opportunities, the legal framework plays a crucial role. Laws and regulations should work towards eliminating barriers and inequalities that might prevent certain groups from fully participating in society. This can involve measures to address discrimination, promote diversity and inclusion, and ensure fair and equitable treatment in various spheres of life.

By promoting equal opportunities, societies strive to achieve several positive outcomes. *Firstly*, it fosters social mobility, which means that individuals can move up in society based on their abilities and efforts rather than being restricted by their background or circumstances. This allows for a fairer distribution of opportunities and rewards, ensuring that talent and hard work are the primary determinants of success. *Secondly*, equal opportunities contribute to social cohesion. When individuals have a sense of fairness and perceive that they have an equal chance to succeed, it helps to reduce social divisions and conflicts. It fosters a sense of shared values and a belief in a just and inclusive society, where everyone has a stake and can contribute to the collective well-being.²⁷ *Lastly*, promoting equal

every individual has equal opportunity for participation. See Stephen Hopgood. *The Endtimes of Human Rights*. (New York: Cornell University Press, 2018); Charles R. Beitz, *The Idea of Human Rights*. (Oxford: Oxford University Press, 2009); Brian Orend, *Human Rights: Concept and Context*. (Peterborough, Canada: Broadview Press, 2002).

²⁷ Joseph Chan, Ho-Pong To, and Elaine Chan. "Reconsidering Social Cohesion: Developing a Definition and Analytical Framework for Empirical Research." *Social Indicators Research* 75 (2006): 273-302. It is further emphasized that gender inequality is a structural problem that can be changed. It should be placed at the centre of social

opportunities contributes to a more just and inclusive society overall. It recognizes the inherent worth and dignity of every individual and seeks to create an environment where everyone can fully participate and thrive. It allows for the development of diverse talents and perspectives, leading to greater innovation, productivity, and societal progress.

In the similar context, equality in laws and regulations entails providing equal rights and protections to all individuals. This means that everyone should enjoy the same fundamental rights and freedoms, such as the right to life, liberty, security, and privacy. Legal protections should be extended to all individuals equally, ensuring that no one is arbitrarily deprived of their rights. Additionally, laws should provide safeguards against discrimination, exploitation, and other forms of harm, ensuring the well-being and dignity of all individuals.

The statement you provided highlights the concept of equality in laws and regulations, emphasizing the importance of providing equal rights and protections to all individuals. It asserts that everyone should enjoy the same fundamental rights and freedoms, without discrimination or arbitrary deprivation.

cohesion policies as it is key to reducing socio-economic inequalities. A high degree of inequality can lead to a deterioration in the levels of social cohesion. However, the implementation of social cohesion policies does not necessarily lead to a reduction in the gender gap if these policies do not incorporate mechanisms that alter the predominant tendency, activate measures that benefit women and explicitly seek to advance gender equality. The promotion of gender equality by public authorities brings benefits for the population as a whole and increases the feeling of belonging and trust in democratic institutions. See also David Schiefer, and Jolanda Van der Noll. "The essentials of social cohesion: A literature review." *Social Indicators Research* 132 (2017): 579-603; Susan A. McDaniel, "Social cohesion and gender: Reflections on tendencies and tensions." *Canadian Journal of Sociology/Cahiers canadiens de sociologie* (2003): 43-50; Fitzpatrick, Suzanne, and Anwen Jones. "Pursuing Social Justice or Social Cohesion?: Coercion in Street Homelessness Policies in England." *Journal of Social Policy* 34, No. 3 (2005): 389-406.

Equality in laws and regulations means that all individuals, regardless of their race, religion, gender, age, disability, or any other personal characteristic, should be treated with fairness and equality under the law. It ensures that no one is granted special privileges or subjected to unfair disadvantages. The concept of equal rights encompasses fundamental principles such as the right to life, liberty, security, and privacy. These rights are considered inherent and should be guaranteed to all individuals without discrimination. They provide a foundation for individuals to live their lives with dignity and autonomy.

Legal protections should be extended to all individuals equally, ensuring that no one is arbitrarily deprived of their rights. This means that laws should apply impartially to all, without favouritism or prejudice. The justice system should provide a fair and unbiased process for resolving disputes and upholding rights. In addition to equal rights, laws should also provide safeguards against discrimination, exploitation, and other forms of harm. Discrimination can manifest in various ways, such as unequal treatment based on race, religion, gender, or other protected characteristics. Laws should actively combat discrimination and ensure that individuals are protected from unfair treatment or prejudice.²⁸

Moreover, laws should protect individuals from exploitation and harm. They should establish mechanisms to prevent abuses of power, safeguard vulnerable populations, and ensure the well-being and dignity of all individuals. This can include laws against human

²⁸ See also Birgit Bräuchler, "The Revival Dilemma: Reflections on Human Rights, Self-Determination and Legal Pluralism in Eastern Indonesia." *The Journal of Legal Pluralism and Unofficial Law* 42, No. 62 (2010): 1-42; Hasse Jubba, et al. "The Future Relations Between the Majority and Minority Religious Groups, Viewed from Indonesian Contemporary Perspective: A Case Study of The Coexistence of Muslims and the Towani Tolotang in Amparita, South Sulawesi." *International Journal of Islamic Thought* 16, No. 1 (2019): 13-23.

trafficking, child labor, domestic violence, and other forms of exploitation or abuse. By providing equal rights and protections to all individuals, laws and regulations contribute to a just and equitable society. They establish a framework that upholds the well-being and dignity of every person, promoting fairness, justice, and respect for human rights.

Finally, justice also should be reflected on the objectives of laws¹² and regulations. The objective of equality in laws and regulations is to create an inclusive and just legal framework. This framework recognizes the inherent worth and equal value of every individual, and it strives to uphold the principles of fairness, justice, and non-discrimination. By promoting equality in the formulation of laws and regulations, a legal system can contribute to a society where everyone has equal opportunities, rights, and protections, and where diversity and inclusion are celebrated. This framework acknowledges and values the inherent worth and equal value of every individual, and it aims to uphold the principles of fairness, justice, and non-discrimination.

Promoting equality in the formulation of laws and regulations means that the legal system treats all individuals fairly and equally. It recognizes that every person should have equal opportunities, rights, and protections, regardless of their background or personal characteristics such as race, religion, gender, age, disability, or sexual orientation. It ensures that no one is excluded or disadvantaged based on these factors.

An inclusive legal framework celebrates diversity and acknowledges that societies are composed of individuals with different experiences, perspectives, and identities. It values and respects these differences, rather than seeking to marginalize or discriminate against certain groups. By embracing diversity, the legal system promotes a more comprehensive understanding of justice and

ensures that laws and regulations reflect the needs and experiences of all individuals.

Furthermore, an inclusive and just legal framework strives to eliminate barriers and biases that may hinder individuals from fully participating in society. It works to dismantle systemic inequalities and discrimination, enabling everyone to exercise their rights and access resources and opportunities on an equal footing. By promoting equality in laws and regulations, the legal system contributes to the creation of a fair and just society. It establishes a framework where the principles of fairness, justice, and non-discrimination are upheld, and where everyone is treated with dignity and respect. In such a society, individuals can have confidence in the legal system, knowing that their rights will be protected and that they will be treated fairly under the law.²⁹

²⁹ It is further explained that the concept of justice requires the fair and impartial application of laws, ensuring that legal procedures and mechanisms are transparent, consistent, and free from undue influence or bias. Only an independent Judiciary is able to render justice impartially on the basis of law, thereby also protecting the human rights and fundamental freedoms of the individual. For this essential task to be fulfilled efficiently, the public must have full confidence in the ability of the Judiciary to carry out its functions in this independent and impartial manner. Whenever this confidence begins to be eroded, neither the Judiciary as an institution nor individual judges will be able fully to perform this important task, or at least will not easily be seen to do so. Consequently, the principle of independence of judges was not invented for the personal benefit of the judges themselves, but was created to protect human beings against abuses of power. It follows that judges cannot act arbitrarily in any way by deciding cases according to their own personal preferences, but that their duty is and remains to apply the law. In the field of protecting the individual, this also means that judges have a responsibility to apply, whenever relevant, domestic and international human rights law. See Eli M. Salzberger, "A Positive Analysis of The Doctrine of Separation of Powers, or: Why Do We Have an Independent Judiciary?." *International Review of Law and Economics* 13, No. 4 (1993): 349-379; Gretchen Helmke, and Frances Rosenbluth. "Regimes and the Rule of Law: Judicial Independence in Comparative Perspective." *Annual Review of Political Science* 12 (2009): 345-366; Yustina Trihoni Nalesti Dewi, W. Riawan Tjandra, and Grant R. Niemann. "Independence of Judicial Power as a Foundation of Human Rights Judicial Function in Indonesia." *International Journal of Social Science and Humanity* 6, No. 3 (2016): 239-242; Ibnu Subarkah, et al. "The Obscurity of Judicial Independence towards Regulations with Legal Certainty in Indonesia." *International*

LAW-MAKING PROCESS: A DISCOURSE OF JUSTICE & LEGAL CERTAINTY

The law-making process is a vital aspect of governance that seeks to establish a discourse of justice and legal certainty within a society. It involves the creation, amendment, and enforcement of laws and regulations that govern the behavior and interactions of individuals and institutions.

One of the primary goals of the law-making process is to ensure justice. Justice refers to the fair and impartial treatment of individuals and the resolution of disputes in a manner that upholds fundamental principles of equity, fairness, and ethical conduct. Through the law-making process, societies aim to create a legal framework that promotes justice by providing guidelines for acceptable behavior, defining rights and responsibilities, and establishing mechanisms for dispute resolution.

Legal certainty is another fundamental objective of the law-making process. Legal certainty refers to the predictability and clarity of the law. It ensures that individuals and institutions can understand and anticipate the legal consequences of their actions, thereby allowing them to make informed decisions and plan their conduct accordingly. Legal certainty contributes to stability, consistency, and trust in the legal system, as it minimizes ambiguity and promotes a sense of confidence in the rule of law.

Journal of Multicultural and Multireligious Understanding 8, No. 11 (2021): 472-485. See also Melissa Crouch, ed. *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*. (Cambridge, MA: Cambridge University Press, 2019); Daniel S. Lev, "Between State and Society: Professional Lawyers and Reform in Indonesia." In *Legal Evolution and Political Authority in Indonesia*. (Leiden: Brill Nijhoff, 2000), pp. 305-320.

The law-making process typically involves various stages, including drafting, deliberation, consultation, and enactment. It often includes the participation of legislative bodies, policymakers, legal experts, and stakeholders to ensure that the laws created are comprehensive, well-considered, and aligned with societal values and needs.

During the law-making process, the discourse of justice and legal certainty can be fostered in several ways:

1. Inclusion and participation

The process should strive to be inclusive, allowing for diverse perspectives and voices to be heard. This can involve engaging stakeholders, conducting public consultations, and encouraging open and transparent discussions to ensure that laws reflect the interests and concerns of the entire community.

2. Transparency and accountability

The law-making process should be transparent, providing access to information, debates, and decision-making procedures. This transparency allows citizens to understand and evaluate the reasoning behind the laws, holding lawmakers accountable for their actions and ensuring that the process is fair and just.

3. Legal expertise and research

Sound legal expertise and empirical research are crucial in the law-making process. Legal professionals and researchers can provide insights, analysis, and evidence-based recommendations to guide the formulation of just and effective laws. This contributes to the overall discourse of justice and legal certainty.

4. Adherence to fundamental principles

The law-making process should adhere to fundamental principles of justice, such as equality, non-discrimination, human rights, and the rule of law. These principles provide a framework for the

creation of laws that protect individual rights, ensure fairness, and promote societal well-being.

By upholding justice and legal certainty, the law-making process establishes a foundation for a just and orderly society. It helps create a sense of fairness, provides predictability and stability, and ensures that the rights and interests of individuals and communities are protected. Ultimately, a well-functioning law-making process strengthens the rule of law, promotes social cohesion, and contributes to the overall well-being of a society.

Furthermore, it is stated that justice is a complex and multifaceted concept that encompasses fairness, equity, and the application of principles to ensure the right and appropriate treatment of individuals and groups within a society. It involves upholding and enforcing a set of moral, legal, and societal standards to maintain order, protect rights, and resolve disputes in a fair and impartial manner. And, in law-making process, it is also emphasized some important issues concerning justice and equality, as follows:

1. Fair and Impartial Application

Justice demands that laws are applied in a fair and impartial manner. This means that legal decisions and judgments should be based on the merits of the case and the application of the law, rather than personal bias, prejudice, or favoritism. Judges, legal officials, and other actors within the legal system should act with integrity and ensure that everyone is treated equally before the law.

2. Transparency

Justice requires transparency in legal procedures. This means that legal processes should be open, accessible, and understandable to all individuals. Transparency ensures that there is clarity regarding the laws and regulations, as well as the steps involved in legal proceedings. It allows individuals to understand their

rights, obligations, and the reasons behind legal decisions, fostering trust in the legal system.

3. Consistency

The concept of justice necessitates consistency in the application of laws. Similar cases and situations should be treated similarly, ensuring that the outcomes are predictable and based on established legal principles. Consistency promotes confidence in the legal system, as individuals can expect a fair and equitable treatment regardless of arbitrary factors.

4. Freedom from Undue Influence or Bias

Justice requires that legal procedures and mechanisms are free from undue influence or bias. This means that decisions should not be swayed by personal interests, external pressures, or discriminatory factors. Judges and legal officials should act independently, free from any improper influence, ensuring that their judgments are solely based on the law and the evidence presented.

5. Access to Justice

The concept of justice encompasses ensuring that all individuals have access to justice. This includes the right to a fair trial, legal representation, and due process. Laws should be formulated in a manner that enables individuals, regardless of their socioeconomic status, to seek legal remedies and have their cases heard in a fair and timely manner. Access to justice ensures that individuals can assert their rights, seek redress for grievances, and participate fully in the legal system.

Moreover, justice emphasizes the protection of individual rights. Laws and regulations should be designed to safeguard the inherent rights and liberties of individuals, such as the right to life, liberty, property, privacy, and freedom of expression. The formulation of

laws should consider the balance between protecting these rights and promoting the collective welfare of society.

When it is stated that justice emphasizes the protection of individual rights, it means that the principles and foundations of justice are centered on safeguarding the inherent rights and liberties of individuals. Laws and regulations should be designed and implemented in a manner that upholds and defends these fundamental rights. Individual rights are the entitlements and freedoms that every person possesses by virtue of being a human being. These rights may include but are not limited to the right to life, liberty, security, privacy, free speech, equality, due process, and non-discrimination. Justice seeks to ensure that these rights are respected, protected, and upheld within society.

Justice demands that laws and regulations prioritize the protection of fundamental rights and liberties that are inherent to every individual. These rights include but are not limited to the right to life, liberty, property, privacy, and freedom of expression. The legal framework should recognize and respect these rights as essential to human dignity and ensure that they are safeguarded against infringement. The right to life is also a fundamental human right that entails protecting individuals from arbitrary deprivation of life, including acts such as murder, unlawful killing, or excessive use of force. Laws and regulations should provide measures to prevent and punish crimes against life, ensuring the security and well-being of individuals.

Similarly, the right to liberty ensures that individuals are protected from arbitrary detention or imprisonment. Laws should establish clear and fair procedures for arrests, detentions, and criminal prosecutions, and individuals should have the right to challenge the lawfulness of their detention through habeas corpus or similar legal mechanisms. Another rights, the right to property

encompasses the protection of an individual's lawful ownership and possession of assets, whether tangible or intangible. Laws and regulations should establish frameworks for property rights, including protection against unlawful seizure, expropriation, or deprivation of property without due process and just compensation.

In the further discussion, the right to privacy is also crucial issues in which that the right to privacy guarantees that individuals have control over their personal information, activities, and private life. Laws and regulations should provide safeguards against unwarranted intrusion, surveillance, or unauthorized disclosure of personal information. This includes protection of privacy in digital spaces and confidentiality of personal data. In line with the rights to privacy, freedom of expression is a cornerstone of democracy and individual autonomy. Laws and regulations should protect individuals' right to express their opinions, thoughts, beliefs, and ideas freely, as long as it does not infringe upon the rights and well-being of others. Such protection includes freedom of speech, press, assembly, and association.

Therefore, balancing individual rights and collective welfare were also fundamental issue that have to be solved. While emphasizing the protection of individual rights, justice also recognizes the need to balance these rights with the collective welfare of society. Laws and regulations should consider the legitimate interests of the community, public order, and the well-being of others. This balance ensures that individual rights are protected while preventing their abuse or harm to others.

Additionally, justice entails addressing societal needs and aspirations. Laws and regulations should be responsive to the evolving needs, values, and expectations of the community they serve. Public consultations, participation, and engagement ⁵ in the law-making process are essential to ensure that diverse perspectives and

interests are taken into account, promoting a sense of ownership and legitimacy. When it is stated that justice entails addressing societal needs and aspirations, it means that laws and regulations should be responsive to the evolving needs, values, and expectations of the community they serve.

Justice demands that laws and regulations adapt to the changing circumstances and challenges faced by society. Societies are dynamic, and their needs and priorities evolve over time. Laws should be responsive to emerging issues, technological advancements, social changes, and new challenges. This ensures that the legal framework remains relevant and effective in addressing societal concerns and protecting the welfare of individuals.

Laws and regulations also should align with the values and norms of the community they serve. Societies have their own cultural, moral, and ethical foundations that shape their collective identity and aspirations. The legal framework should reflect and uphold these values, promoting social cohesion, cultural diversity, and the preservation of shared values. Furthermore, justice requires the inclusion of diverse perspectives and interests in the law-making process. Public consultations, participation, and engagement provide opportunities for individuals and communities to contribute their views, expertise, and experiences. This inclusive approach ensures that a wide range of voices are considered in the formulation of laws and regulations, promoting a sense of ownership and legitimacy.

In addition to public consultations, engagement with stakeholders such as civil society organizations, advocacy groups, professional associations, and experts is essential. These stakeholders often have specialized knowledge, insights, and expertise in specific areas. Engaging with them allows for a comprehensive understanding of the issues at hand and helps ensure that laws and regulations are well-informed, effective, and balanced. Justice

recognizes the importance of democratic decision-making in the formulation of laws and regulations. This means that the process should be transparent, participatory, and accountable. In democratic societies, laws should be enacted through a legislative process that involves scrutiny, debate, and voting by elected representatives. This process ensures that the laws reflect the will and interests of the people they represent. In the same context, when laws and regulations address societal needs and aspirations, it fosters a sense of legitimacy and trust in the legal system. When individuals perceive that their concerns and interests are heard and incorporated into the law-making process, they are more likely to comply with and respect the laws. This promotes social cohesion, enhances the effectiveness of the legal framework, and strengthens the relationship between citizens and the legal system.

By emphasizing the protection of individual rights, justice promotes a society where individuals can freely express themselves, participate fully in social, political, and economic activities, and live with dignity and autonomy. It ensures that laws and regulations are designed to safeguard these inherent rights and liberties, providing a framework for the fair and equitable treatment of all individuals.

CONCLUSION

The study concluded and highlighted that the mainstreaming of justice in the establishment of laws and regulations is crucial for ensuring fairness and protecting rights within a society. By comparing the cases of Indonesia, Malaysia, and Australia, we gain insights into different approaches and challenges. Indonesia has made progress in involving stakeholders, but implementation and enforcement remain challenging, particularly in remote regions.

Malaysia has incorporated human rights principles, but concerns exist regarding freedom of expression and judicial independence. Australia has been successful in mainstreaming justice, with robust mechanisms for public participation, transparency, and accountability. However, each country can learn from the others. Indonesia can enhance implementation and enforcement, Malaysia can strengthen judicial independence and protect fundamental freedoms, and Australia can address challenges faced by marginalized communities. Overall, mainstreaming justice is an ongoing process that requires evaluation, improvement, and learning from best practices to promote fairness and accessibility to justice.

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