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Representation and Public Participation in the Indonesian Government System: A Normative Legal Analysis from the Perspective of Al-Mawardi

Yusuf Mardhani[1*]
[1]*E-mail: yusuf.mardhani@uinsatu.ac.id*
[1]*UIN Sayyid Ali Rahmatullah Tulungagung, Indonesia*
*corresponding author

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Abstract

This article analyzes the concept of representative power in the Indonesian system of government using a normative approach and the perspective of classical Islamic political thought, particularly that of Al-Mawardi. The main issue lies in the tension between formal legitimacy obtained through electoral mechanisms and substantive legitimacy that reflects the will of the people. This study employs a juridical-normative method with conceptual and historical approaches. The results of the study indicate that the representative system in Indonesia faces structural problems in the form of representational distortion and weak accountability. Meanwhile, Al-Mawardi's concept, through the institution of ahl al-hall wa al-'aqd, offers a model of representation based on moral and intellectual capacity that emphasizes ethical and fiduciary dimensions. However, this concept also has limitations in the context of modern democracy. This article concludes that a reconstruction of the representational model is needed, one that integrates the principles of deliberative democracy with Islamic ethical values to strengthen substantive public participation.

INTRODUCTION

The concept of representation is a cornerstone of modern democracy, particularly in systems of government that follow the representative democratic model. In the Indonesian context, this principle is rooted in the doctrine of popular sovereignty as affirmed in the 1945 Constitution, which states that sovereignty resides with the people and is exercised in accordance with the Constitution.[1] This formulation indicates a shift from a model of direct sovereignty toward a representative mechanism as a consequence of the complexities of the modern state. However, both theoretically and empirically, the concept of representation is not free from fundamental problems. Hanna Fenichel Pitkin asserts that representation involves not only the formal presence of people's representatives but also a substantive connection between the representative and the interests they represent.[2] In practice, there is a tendency for deviation between the people's mandate and the political actions of representatives, leading to the phenomenon of misrepresentation.

In the Indonesian context, this problem is further complicated by the dominance of political parties in the processes of recruitment and the articulation of interests. This reinforces the principal-agent problem thesis, wherein elected representatives, as agents, have the opportunity to deviate from the interests of the people, as the principal, due to weak control and accountability mechanisms.[3] Several recent studies indicate that Indonesian democracy remains dominated by a procedural model of representation that has not yet fully yielded substantive representation.[4]

Research on public representation and participation has developed in several key directions. First, studies within the liberal democratic tradition emphasize the importance of electoral mechanisms and formal accountability as the primary instruments of representation. Second, the deliberative democracy approach pioneered by Jürgen Habermas critiques the limitations of electoral democracy and emphasizes the importance of a rational and inclusive public sphere as the basis for political legitimacy.[5] Third, in the Indonesian context, some studies suggest that weak intermediary institutions and a strong political oligarchy result in significant distortions in

[1] Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 1 ayat (2).
[2] Pitkin, Hanna F. *The concept of representation*. University of California Press, 2023.
[3] JENSEN, Michael C.; MECKLING, William H. Theory of the firm: Managerial behavior, agency costs and ownership structure. In: *Corporate governance*. Gower, 2019. p. 77-132.
[4] Mietzner, Marcus. Indonesia's democratic stagnation: anti-reformist elites and resilient civil society. *Democratization*, 2012, 19.2. p. 209-229.
[5] Habermas, Jürgen. *Between facts and norms: Contributions to a discourse theory of law and democracy*. John Wiley & Sons, 2015.

representation.[6] On the other hand, within the body of Islamic political thought, the concept of representation has not been systematically examined within a comparative framework with modern democracy. Al-Mawardi, through Al-Ahkam al-Sultaniyyah, offers a model of governance that emphasizes the principles of trust, justice, and moral capacity as the basis for the legitimacy of power.[7] Nevertheless, most studies merely place Al-Mawardi's thought within a historical-descriptive framework, without critically linking it to contemporary problems of representation.

Although research on public representation and participation has developed significantly in the political science and legal literature, several conceptual limitations remain, pointing to relevant research gaps that warrant further examination. First, there is a strong tendency in the academic literature to draw a dichotomous distinction between analyses of modern democracy and Islamic political thought. Studies within the Western democratic tradition generally focus on institutional and procedural aspects, such as elections, party systems, and formal accountability mechanisms, without linking them to the normative framework developed within the classical Islamic tradition.[8] Conversely, studies of Islamic political thought, including the thought of Al-Mawardi, are more often situated within a historical-descriptive context, without systematic efforts to engage them in dialogue with contemporary issues within modern democratic systems.[9] Consequently, a normative-comparative approach capable of bridging these two traditions in an integrative manner has yet to emerge.

Second, studies on representation in contemporary democracy exhibit a reductionist tendency by focusing on procedural and institutional dimensions, while political-ethical aspects are relatively neglected. This approach is evident in the dominance of electoral democracy theory, which measures political legitimacy through majority vote aggregation mechanisms.[10] However, criticism from the perspective of deliberative democracy, as articulated by Jürgen Habermas, asserts that legitimacy is not determined solely by formal procedures but also by the quality of rational public discourse oriented toward the common good.[11] In this context, the absence of an ethical dimension in

[6] Winters, Jeffrey A. *Oligarchy*. Cambridge University Press, 2011.
[7] Al Mawardi, Abu al Hasan; Al Ahkam Al Sultaniyyah, Al Babi. Al Halabi Publishers. 1973.
[8] Mansbridge, Jane. "Clarifying the concept of representation." *American Political Science Review* 105.3 (2011): 621-630.
[9] Crone, Patricia. *God's rule: Government and Islam*. Columbia University Press, 2004, 268–290
[10] Schumpeter, Joseph A. *Capitalism, socialism and democracy*. routledge, 2013, 269.
[11] Habermas, Jürgen. *Between facts and norms: Contributions to a discourse theory of law and democracy*. John Wiley & Sons, 2015.

representative practices contributes to the public trust crisis in political institutions, particularly when elected representatives fail to fulfill their functions.

Third, today, there has been little research explicitly formulating a synthetic model between electoral representation in modern democracy and ethical principles in Islamic political thought. In fact, concepts such as amanah, justice, and moral responsibility developed within the Islamic tradition, particularly in the work Al-Ahkam al-Sultaniyyah, have the potential to enrich the normative framework for understanding representation.[12] The absence of this synthesis results in limitations in the development of a representation model that is not only procedurally legitimate but also possesses substantive legitimacy grounded in ethical values and public morality.

This research gap highlights the urgency of developing an integrative approach that not only examines representation from an institutional perspective but also incorporates the ethical dimension as a fundamental element in the analysis. Such an approach is expected to provide a theoretical contribution toward formulating a more comprehensive model of representation that is responsive to the demands for public participation in modern governance systems.

This article offers a novel conceptual contribution through three interrelated main aspects. First, this study develops an integrative normative-comparative approach by combining an analysis of the representative system in Indonesian democracy with classical Islamic political thought, particularly that of Al-Mawardi. Until now, these two traditions have tended to be studied separately: modern theories of representation have developed within a liberal-democratic framework, while Islamic political thought has been situated within a relatively isolated historical-normative context.[13] By integrating both into a coherent theoretical framework, this article not only broadens the analytical horizon but also opens the possibility of an epistemological dialogue between two traditions of thought that have long run parallel.

Further, this article undertakes a conceptual reconstruction of representation by positioning the ethical dimension as a fundamental element. In classical literature, as noted by Hanna Fenichel Pitkin, representation is understood not merely as formal presence but also as a substantive act reflecting the interests being represented.[14] However, in contemporary democratic practice, this dimension is often reduced to electoral procedures alone. Therefore, this article shifts the focus of analysis from procedural representation toward substantive representation grounded in the principles

[12] Al Mawardi, Abu al Hasan; Al Ahkam Al Sultaniyyah, Al Babi. Al Halabi Publishers. 1973.
[13] Asad, Muhammad. *The principles of state and government in Islam*. Univ of California Press, 2023.
[14] Rehfeld, Andrew. "The concepts of representation." *American Political Science Review* 105.3 (2011): 631-641.

of trust, integrity, and moral responsibility, as reflected in Al-Mawardi's thought through the concept of governance oriented toward the public good.[15] This approach enriches the discourse on representation by incorporating an ethical dimension that has long been neglected in modern democratic studies.

Furthermore, as an implication of the two previous approaches, this article formulates a new conceptual model termed "deliberative-ethical representation." This model is a synthesis of Jürgen Habermas's theory of deliberative democracy with ethical principles in Islamic political thought. Within this framework, the legitimacy of representation is determined not only by electoral mechanisms but also by the quality of a rational, inclusive, and common-interest-oriented public deliberation process, as well as by the moral integrity of political actors performing representative functions.[16] Thus, this model offers a conceptual alternative that seeks to bridge the tension between procedural and substantive legitimacy in modern democratic systems.

In this respect, the novelty of this research lies in the effort to shift the paradigm of representation from merely institutional mechanisms toward a more comprehensive normative framework by integrating the dimensions of democracy, ethics, and the tradition of Islamic thought. This approach is expected to provide not only theoretical contributions but also practical relevance in addressing the crisis of representation and strengthening public participation in contemporary governance systems.

Based on the above discussion, this article proceeds from the assumption that the crisis of representation in Indonesia's governmental system is not solely caused by individual factors, but also by an institutional design that has not yet been able to ensure a substantive connection between the people and their representatives. Therefore, a comparative analysis between the concept of representation in Indonesia's democratic system and Al-Mawardi's thought is necessary to identify a conceptual model that is more responsive to the demands of public participation. The research questions in this study are: (1) what is the concept of representative power in Indonesia's system of government; (2) what is the concept of representation in Al-Mawardi's thought; and (3) what is the relevance and critique of these two concepts in strengthening public participation.

[15] Al Mawardi, Abu al Hasan; Al Ahkam Al Sultaniyyah, Al Babi. Al Halabi Publishers. 1973.
[16] Habermas, Jürgen. *Between facts and norms: Contributions to a discourse theory of law and democracy*. John Wiley & Sons, 2015.

METHODS

This study employs a legal-normative approach focused on a conceptual analysis of representative power within the Indonesian system of government and its comparison with classical Islamic political thought. Unlike a normative approach that is descriptive-dogmatic in nature, this study is situated within a critical-normative framework, meaning it not only examines law as a system of norms but also tests the legitimacy, rationality, and orientation toward justice of representative practices. It combines several approaches. First, a statutory approach is used to examine the constitutional basis of representation in the 1945 Constitution and regulations related to representative institutions. Second, a conceptual approach is used to examine modern theories of representation, particularly Hanna Fenichel Pitkin's ideas on substantive representation, as well as Jürgen Habermas's theory of deliberative democracy, which emphasizes the importance of communicative rationality in legal legitimacy. Third, a historical approach is used to examine classical Islamic political thought, particularly Al-Mawardi's ideas in "Al-Ahkam al-Sultaniyyah". Fourth, a comparative approach is used to compare these two traditions in order to identify conceptual commonalities and tensions.

The philosophical justification for this research stems from a synthesis of legal normativism, deliberative rationality, and political ethics. However, to avoid tendencies toward formalism and pseudo-neutrality in legal analysis, this study explicitly adopts the perspective of Critical Legal Studies. In Roberto Mangabeira Unger's view, law is never truly neutral; rather, it is a social construction that reflects specific power relations and interests.[17] Thus, the representative system in democracy cannot be understood merely as a normative mechanism but also as an arena of power contestation that has the potential to produce structural domination. In this context, Duncan Kennedy asserts that legal doctrines often contain ambiguities that allow for differing interpretations, thereby opening space for political actors to manipulate the law to suit their interests.[18] This perspective is relevant in analyzing representative practices in Indonesia, where formal legitimacy through elections does not always correlate with substantive representation of public interests.

By incorporating the Critical Legal Studies framework, this study positions law as an object of critique, not merely an object of interpretation. This enables a deeper analysis of how legal and political structures can reproduce inequalities in representative relations. At the same time, this approach is complemented by an Islamic political ethics

[17] Unger, Roberto Mangabeira. "The critical legal studies movement." *Harvard law review* (1983): 561-675.
[18] Kennedy, Duncan. *Legal education and the reproduction of hierarchy: a polemic against the system*. Vol. 56. NYU Press, 2007.

perspective that emphasizes the principles of amanah and justice as normative corrections to such power biases. The legal materials used in this study consist of primary, secondary, and tertiary sources. Primary legal materials include the constitution and classical Islamic works; secondary legal materials encompass academic literature, books, and journal articles; while tertiary legal materials consist of dictionaries and encyclopedias. The collection of legal materials was conducted through a literature review by searching various relevant academic databases.

The analysis of legal materials was conducted qualitatively using interpretive, comparative, and argumentative methods. The stages of analysis included the identification of norms, conceptual interpretation, cross-tradition comparison, and the construction of a theoretical model. In the final stage, this study formulates a model of "deliberative-ethical representation" as a synthesis of analytical findings that integrates procedural, deliberative, and ethical dimensions. Therefore, this research method aims not only to explain existing structures of representation but also to critique and reconstruct them within a framework that is more responsive to the principles of justice, legitimacy, and public participation.

RESULTS AND DISCUSSION

1. Normative Structure of Representation

Research findings indicate that, normatively, Indonesia's representative system is founded on the principle of popular sovereignty as enshrined in the 1945 Constitution.[19] The implementation of this principle is realized through mechanisms of representative democracy that position the legislative branch as the embodiment of the people's will. Within this framework, political legitimacy is derived from free and competitive general elections.

However, further analysis reveals that this legitimacy is procedural, not substantive. Formally, elected representatives hold a constitutional mandate, but in practice, there is often a divergence between constituents' preferences and the political actions of their representatives. This phenomenon can be explained through Hanna Fenichel Pitkin's theory of representation, which distinguishes between formalistic representation and substantive representation.[2] In the Indonesian context, representation tends to remain at the formalistic level.

Moreover, an analysis of the normative structure of representation within Indonesia's system of government reveals that the constitutional framework has unequivocally

[19] Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 1 ayat (2).

placed sovereignty in the hands of the people, as affirmed in the 1945 Constitution.[1] However, when this principle is translated into institutional practice, there is a shift in meaning from substantive sovereignty toward procedurally mediated sovereignty. General elections, as the primary instrument of legitimacy, produce formal representation but do not necessarily guarantee a genuine connection between the will of the people and the actions of their representatives. Within Hanna Fenichel Pitkin's theoretical framework, this condition reflects the dominance of formalistic representation that fails to evolve into substantive representation.[20] In other words, the presence of people's representatives within the institutional structure is not synonymous with the actual representation of the people's interests.

This disparity becomes even more apparent when analyzed through the lens of contemporary political dynamics. An oligarchic party system and a closed political recruitment process create an incentive structure that encourages elected representatives to be more responsive to party interests than to those of their constituents. This reinforces what is known in agency theory as the principal-agent problem, where the mandate relationship between the people and their representatives is distorted due to information irregularity and weak control mechanisms.[21]

This gap between formal and substantive legitimacy becomes more evident when examined through the case study of controversial legislation in the House of Representatives, particularly in the process of enacting UU Cipta Kerja (the Job Creation Law) in 2020. The legislative process for this law drew widespread criticism from civil society for being perceived as non-transparent, lacking public participation, and tending to accommodate the interests of the economic elite.[22] Although it met the formal procedural requirements for lawmaking, its substance and process revealed a deficit in deliberation and representation.

This phenomenon concretely reflects the principal-agent problem, where elected representatives, as agents, do not fully act in accordance with the interests of the people, as the principal. In this context, political loyalty to a party and specific economic interests are more dominant than public aspirations. Marcus Mietzner's analysis of democratic stagnation in Indonesia reinforces these findings, demonstrating that political oligarchy

[20] Hanna Fenichel Pitkin, *The Concept of Representation*, 209.
[21] Bendickson, Josh, et al. "Agency theory: the times, they are a-changin'." *Management decision* 54.1 (2016): 174-193.
[22] Hermawati, Mutiara, and S. Suwarsit. "Problematika Pembentukan Undang-Undang Cipta Kerja Terkait Perlindungan Terhadap Hak-Hak Tenaga Kerja di Indonesia." *Media Hukum Indonesia (MHI)* 2.2 (2024): 156-167.

exerts significant influence in the legislative process. Thus, distortions in representation are not merely anomalies but structural patterns within the political system.

In the Indonesian context, this phenomenon does not stand alone but is linked to patterns of elite power consolidation, as identified by Marcus Mietzner, who demonstrates that procedural democracy can function without being accompanied by the strengthening of substantive representation. He further explained that Indonesian democracy has stagnated due to the dominance of political elites and the weakening of the legislative body's representative functions.[23] Thus, there is a structural gap between the normative design and the empirical practice of representation.

2. Distortions in Representation and Structural Problems

Further analysis shows that distortions in representation in Indonesia are not incidental but structural in nature. The dominance of political parties in the political recruitment process leads representatives to be more loyal to their parties than to their constituents. This reinforces the principal-agent problem, where the agent (the elected representative) has an incentive to deviate from the interests of the principal (the people).[24] The limitations of public accountability mechanisms.

The system of oversight over elected representatives remains periodic through elections, lacking effective control mechanisms between those periods. This situation creates opportunities for abuse of power. The low quality of public deliberation. From Jürgen Habermas's perspective, political legitimacy requires a rational and inclusive public discourse.[25] However, in practice in Indonesia, the deliberative space is often distorted by political and economic interests, thereby diminishing the quality of public participation.

Furthermore, these limitations are not confined to institutional aspects but also extend to the quality of the public sphere. From Jürgen Habermas's perspective, political legitimacy requires a deliberative process that is rational, inclusive, and free from domination.[26] However, reality shows that deliberative spaces in Indonesia are often fragmented by political and economic interests, thereby hindering the formation of a consensus based on rational argumentation. Consequently, public participation tends to be symbolic rather than substantive. From the perspective of critical legal theory, this

[23] Mietzner, Marcus. "Indonesia's democratic stagnation: anti-reformist elites and resilient civil society." *Democratization* 19.2 (2012): 209-229.
[24] Aspinall, Edward, and Ward Berenschot. *Democracy for sale: Elections, clientelism, and the state in Indonesia*. Cornell University Press, 2019.
[25] Jürgen Habermas, *Between Facts and Norms*, 110–131.
[26] Haryanto, Ward Berenschot, and Edward Aspinall. "Participation without accountability: deliberative democracy in village Indonesia." *South East Asia Research* 33.1 (2025): 49-67.

condition can be interpreted as a manifestation of power relations internalized within legal and political structures. Roberto Mangabeira Unger asserts that law is never neutral but rather reflects the dominant configuration of power.[27] Therefore, distortions in representation are not merely deviations in practice but logical consequences of the existing structure.

Furthermore, when analyzed through Jürgen Habermas's perspective, the process of drafting the Job Creation Law reveals a failure to meet the standards of deliberative legitimacy.[28] Ideally, legislation should undergo a rational and inclusive public discourse process. However, in this case, public involvement was limited, and the space for deliberation did not function optimally, resulting in substantively weak legitimacy.

From the perspective of critical legal theory, this case can be interpreted as a manifestation of power relations within the legal structure. Roberto Mangabeira Unger argues that law often functions as an instrument to reproduce the interests of dominant groups.[29] In the context of the Job Creation Law, the pro-investment nature of the regulations demonstrates how the law can be used to accommodate specific economic interests, even if they conflict with the aspirations of certain segments of society.

From the perspective of Critical Legal Studies, this condition can be understood as a manifestation of power relations within the legal structure. Roberto Mangabeira Unger asserts that law is not neutral but reflects the configuration of social power.[30] Therefore, the distortion of representation is not merely an individual failure but a product of institutional structures biased toward specific interests.

3. The Concept of Representation in Al-Mawardi's Thought

Unlike modern democratic systems, Al-Mawardi's thought in "Al-Ahkam al-Sultaniyyah" places representation within an ethical and fiduciary framework.[31] In this concept, power is not merely the result of political procedures, but a moral responsibility that must be exercised to achieve the common good of the people. The institution of *ahl al-hall wa al-'aqd* functions as a collective representation with the authority to appoint and oversee leaders. Unlike electoral systems, legitimacy in this concept is not determined solely by the number of supporters but by the moral and intellectual qualities of the

[27] Unger, Roberto Mangabeira. "The critical legal studies movement, 105-107.
[28] Wijaya, Agus, Solechan Solechan, and Suhartoyo Suhartoyo. "Analisis Yuridis Pengaturan Pemutusan Hubungan Kerja Dalam Undang-Undang Ketenagakerjaan Setelah Pengesahan Undang-Undang Cipta Kerja." *Diponegoro Law Journal* 11.2 (2022).
[29] Wardani, Riska Putri, and Sunny Ummul Firdaus. "Analisis Undang-Undang Cipta Kerja dalam korehensi teori pembentukan undang-undang." *Sovereignty* 1.4 (2022): 724-733.
[30] Unger, Roberto Mangabeira. "The critical legal studies movement, 105-107.
[31] Al Mawardi, Abu al Hasan; Al Ahkam Al Sultaniyyah

individuals involved. This approach demonstrates that representation in Al-Mawardi's thought is qualitative-ethical, not quantitative-procedural. However, this model also has limitations, particularly regarding inclusivity, as not all members of society have equal access to participate.

When compared to Al-Mawardi's perspective, this phenomenon highlights the absence of an ethical dimension in modern representative practices. In his work, power is understood as a trust that must be exercised to achieve justice and the public good.[32] Thus, political decisions made without considering the broader public interest can be viewed as a violation of this principle of trust.

On the other hand, Al-Mawardi's thought offers a different perspective on representation. In his work, power is understood as a trust that must be exercised in accordance with the principles of justice and the public good. The concept of *ahl al-hall wa al-'aqd* indicates that representation is not based on a mechanism of vote aggregation, but rather on the moral and intellectual qualities of individuals who possess the capacity to make decisions in the interest of the community. Thus, representation within this framework is qualitative and ethical in nature. However, this approach is not without its critics, particularly regarding its elitist nature and the limited access to participation for the general public.

4. Problematizing Representation and Public Participation of UU Cipta Kerja

From the perspective of critical legal theory, this case can be interpreted as a manifestation of power relations within the legal structure. Roberto Mangabeira Unger argues that the law often functions as an instrument for reproducing the interests of dominant groups. [6] In the context of the Job Creation Law, the substance of regulations deemed pro-investment demonstrates how the law can be used to accommodate specific economic interests, even if they conflict with the aspirations of certain segments of society. When compared to Al-Mawardi's perspective, this phenomenon highlights the absence of an ethical dimension in modern representative practices. In "Al-Ahkam al-Sultaniyyah," power is understood as a trust that must be exercised to achieve justice and the public good.[33] Thus, political decisions made without considering the broader public interest can be viewed as a violation of this principle of trust.

This comparison reveals that modern democratic systems excel in terms of procedures and formal inclusivity but are vulnerable to distortions stemming from power interests. Conversely, Al-Mawardi's approach emphasizes moral integrity as the foundation of

[32] Al Mawardi, Abu al Hasan; Al Ahkam Al Sultaniyyah
[33] Al Mawardi, Abu al Hasan; Al Ahkam Al Sultaniyyah

legitimacy but lacks mechanisms for broad participation. Within Jürgen Habermas's framework, the solution to this tension lies in the integration of democratic procedures and communicative rationality.[34] This gap is evident in the drafting process of the Job Creation Law, which has drawn widespread criticism due to a lack of transparency and public participation. This criticism gained legal legitimacy through Constitutional Court Decision No. 91/PUU-XVIII/2020, which declared the law to be conditionally unconstitutional.[35] The Constitutional Court determined that the law's drafting process failed to meet the principles of sound legislative drafting, particularly regarding meaningful public participation, clarity of wording, and openness.

This ruling has significant implications for the analysis of representation. Normatively, the Constitutional Court affirms that legal legitimacy is determined not only by the fulfillment of formal procedures but also by the quality of the legislative process, which involves substantive public participation. In other words, the Court shifts the standard of legitimacy from mere formal legality toward substantive legitimacy. From Jürgen Habermas's perspective, this ruling can be understood as a recognition of the importance of communicative rationality in lawmaking, where legitimacy is determined by the quality of an inclusive and argumentative public discourse.[36]

Furthermore, the ruling also demonstrates an institutional correction to the distortions of representation occurring in the legislative process. While the House of Representatives (DPR), as a representative body, was previously considered to have fulfilled its constitutional functions, this ruling affirms that formal representation is insufficient without meaningful public engagement. This aligns with critiques from critical legal theory, where Roberto Mangabeira Unger argues that law can reproduce power imbalances if not accompanied by effective corrective mechanisms.[37] In this context, the Constitutional Court acts as a corrective institution that realigns the legal framework with the principles of justice and participation.

From a comparative perspective, this phenomenon also highlights a fundamental difference from the thought of Al-Mawardi. In "Al-Ahkam al-Sultaniyyah," the legitimacy of power is heavily dependent on moral integrity and the principle of trust (amanah). If this approach were applied in a modern context, the problem in the drafting

[34] Jürgen Habermas, *Between Facts and Norms*, 110–131.
[35] Handriana, Ricky, and Maharani Nurdin. "Analisis Yuridis Dalam Pembentukan Peraturan Pemerintah Pengganti Undang-Undang Cipta Kerja." *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora* 6.1 (2023): 142-152.
[36] Agus, Dede. "Eksistensi Hubungan Industrial Pancasila Pasca Disahkannya Peraturan Pemerintah Pengganti Undang-Undang Cipta Kerja." *Jurnal Ius Constituendum* 8.1 (2023): 87-100.
[37] oberto Mangabeira Unger, *The Critical Legal Studies Movement,* 1-15.

of the Job Creation Law would not only lie in flawed procedures but also in the failure to meet ethical standards in the exercise of power. The Constitutional Court's ruling can be interpreted as a form of institutionalizing ethical values within the positive legal system, even though it has not explicitly employed a moral-religious framework.

The integration of empirical findings from case studies and legal corrections through the Constitutional Court's ruling reinforces the argument that the crisis of representation in Indonesia is structural. The procedural legitimacy generated by electoral democratic mechanisms is insufficient to guarantee substantive representation without public deliberation and ethical integrity. Within this framework, the "deliberative-ethical representation" model proposed in this study gains stronger justification, as it explains not only the source of the problem but also the direction of its normative solution.

In this respect, the Constitutional Court's ruling regarding the Job Creation Law serves not only as a correction to a single piece of legislation but also as an important precedent in the development of the concept of representation in Indonesia. It affirms that valid law must fulfill three dimensions simultaneously: procedural, deliberative, and ethical. These three dimensions form the primary foundation of the deliberative-ethical representation model formulated in this study.

Based on this analysis, the "deliberative-ethical representation" model proposed in this study gains empirical justification through this case study. This model asserts that political legitimacy is not sufficient if it relies solely on formal procedures; rather, it must be reinforced by the quality of public deliberation and the ethical integrity of political actors. In the context of legislation such as the Job Creation Law, this model indicates that the deficit in representation can be minimized through the opening of broader spaces for deliberation and the application of stricter ethical standards in the decision-making process.

This case study serves not only as an empirical illustration but also as concrete evidence that the crisis of representation within Indonesia's governance system is structural and requires a more comprehensive approach. The integration of democracy, deliberation, and ethics, as formulated in the deliberative-ethical representation model, becomes relevant as a normative framework for reconstructing a representative system that is more responsive to public participation.

CONCLUSION

This study shows that the power of representation in Indonesia's system of government is normatively rooted in the principle of popular sovereignty as enshrined in the 1945 Constitution, yet in practice tends to be reduced to procedural legitimacy.

Electoral democratic mechanisms are indeed capable of producing formal representation, but they do not yet guarantee a substantive connection between the will of the people and the actions of their representatives. This is reflected in various legislative dynamics, including the drafting of the Job Creation Law, which reveals a deficit in public participation and low-quality deliberation. The legal correction through Constitutional Court Decision No. 91/PUU-XVIII/2020 further underscores that legal legitimacy cannot rely solely on formal procedures but must meet standards of meaningful public participation and transparency in the legislative process.

From a theoretical perspective, analysis indicates that the crisis of representation in Indonesia is structural in nature and cannot be explained solely as a deviation in individual behavior. Approaches grounded in representation theory, deliberative democracy, and critical legal theory reveal that the relationship between the people and their representatives is shaped by power configurations, political institutions, and the quality of the public sphere. In this context, the law is not neutral but has the potential to reproduce dominant interests if not accompanied by effective corrective mechanisms.

On the other hand, Al-Mawardi's thought offers a normative perspective that positions power as a trust to be exercised based on the principles of justice and the public good. This concept provides an ethical dimension that is not widely accommodated in modern democratic practice, which tends to be procedural. However, this approach also has limitations regarding inclusivity and broad participation.

Based on this comparative analysis, this study formulates a model of "deliberative-ethical representation" as a conceptual synthesis that integrates procedural legitimacy, the quality of public deliberation, and the ethical integrity of political actors. This model asserts that legitimate representation must be built through a combination of inclusive democratic mechanisms, rational public discourse processes, and a moral commitment to the principles of trust and justice.

Thus, the primary contribution of this study lies in the reconstruction of the representation paradigm from one that was originally procedurally oriented toward a more comprehensive and normative approach. The implications of these findings suggest that strengthening the representative system in Indonesia requires reforms that are not only institutional but also cultural and ethical, so that public participation is no longer merely symbolic but becomes an integral part of the public policy-making process.

REFERENCES

Agus, Dede. "Eksistensi Hubungan Industrial Pancasila Pasca Disahkannya Peraturan Pemerintah Pengganti Undang-Undang Cipta Kerja." Jurnal Ius Constituendum

8.1 (2023): 87-100. Al Mawardi, Abu al Hasan; Al Ahkam Al Sultaniyyah, Al Babi. Al Halabi Publishers. 1973.

Al Mawardi, Abu al Hasan; Al Ahkam Al Sultaniyyah, Al Babi. Al Halabi Publishers. 1973.

Asad, Muhammad. The principles of state and government in Islam. Univ of California Press, 2023.

Aspinall, Edward, and Ward Berenschot. Democracy for sale: Elections, clientelism, and the state in Indonesia. Cornell University Press, 2019.

Bendickson, Josh, et al. "Agency theory: the times, they are a-changin'." Management decision 54.1 (2016): 174-193.

Berridge, G. R. Talking to the Enemy How States without 'Diplomatic Relations' Communicate. Palgrave Macmillan, 1994.

Crone, Patricia. God's rule: Government and Islam. Columbia University Press, 2004, 268–290

Habermas, Jürgen. Between facts and norms: Contributions to a discourse theory of law and democracy. John Wiley & Sons, 2015.

Handriana, Ricky, and Maharani Nurdin. "Analisis Yuridis Dalam Pembentukan Peraturan Pemerintah Pengganti Undang-Undang Cipta Kerja." Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora 6.1 (2023): 142-152.

Haryanto, Ward Berenschot, and Edward Aspinall. "Participation without accountability: deliberative democracy in village Indonesia." South East Asia Research 33.1 (2025): 49-67.

Hermawati, Mutiara, and S. Suwarsit. "Problematika Pembentukan Undang-Undang Cipta Kerja Terkait Perlindungan Terhadap Hak-Hak Tenaga Kerja di Indonesia." Media Hukum Indonesia (MHI) 2.2 (2024): 156-167.

Jensen, Michael C.; MECKLING, William H. Theory of the firm: Managerial behavior, agency costs and ownership structure. In: Corporate governance. Gower, 2019. p. 77-132.

Kennedy, Duncan. Legal education and the reproduction of hierarchy: a polemic against the system. Vol. 56. NYU Press, 2007.

Mansbridge, Jane. "Clarifying the concept of representation." American Political Science Review 105.3 (2011): 621-630.

Mietzner, Marcus. "Indonesia's democratic stagnation: anti-reformist elites and resilient civil society." Democratization 19.2 (2012): 209-229.

Pitkin, Hanna F. The concept of representation. University of California Press, 2023.

Rehfeld, Andrew. "The concepts of representation." American Political Science Review 105.3 (2011): 631-641.

Schumpeter, Joseph A. Capitalism, socialism, and democracy. Routledge, 2013, 269.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 1 ayat (2).

Unger, Roberto Mangabeira. "The critical legal studies movement." Harvard Law Review (1983): 561-675.

Wardani, Riska Putri, and Sunny Ummul Firdaus. "Analisis Undang-Undang Cipta Kerja dalam korehensi teori pembentukan undang-undang." Sovereignty 1.4 (2022): 724-733.

Wijaya, Agus, Solechan Solechan, and Suhartoyo Suhartoyo. "Analisis Yuridis Pengaturan Pemutusan Hubungan Kerja Dalam Undang-Undang Ketenagakerjaan Setelah Pengesahan Undang-Undang Cipta Kerja." Diponegoro Law Journal 11.2 (2022).

Winters, Jeffrey A. Oligarchy. Cambridge University Press, 2011.