

ANATOMY OF THE DARK SIDE OF GOVERNANCE: BETWEEN FORMAL LEGALITY AND TRANSACTIONAL REALITY

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Abstract

This research dissects the phenomenon of bureaucratic pathology in Indonesia through the concept of the "dark side" of governance—specifically, the use of formal legal instruments to validate corrupt transactional practices. Departing from previous studies that have predominantly viewed maladministration as mere technical-administrative failure or conventional corruption, this research offers a scholarly contribution (novelty) through the theoretical framework of "Sociological Constitutionalism Based on Local Wisdom." This approach shifts the paradigm from top-down, legal-formal supervision toward the integration of socio-cultural sanctions as an informal control mechanism to counter state capture. Utilizing a qualitative method with a normative-empirical approach, this research analyzes the shift from Rule of Law to Rule by Law, as well as the exploitation of administrative discretion arising from hyper-regulation in the digital era. The primary academic contribution of this article is a proposed mitigation model for maladministration that no longer relies solely on bureaucratic digitalization as a panacea, but emphasizes the synchronization of procedural rigidity with societal ethical values as a counterweight to oligarchic power. The analysis demonstrates that without a reorientation of bureaucratic ethics grounded in local sociological values, digitalization will remain merely a procedural cosmetic that perpetuates state capture corruption behind the facade of government modernization.

Keywords: Governance, State Capture, Sociological Constitutionalism, Maladministration, Bureaucratic Pathology.

Abstrak

Penelitian ini membedah fenomena patologi birokrasi di Indonesia melalui konsep "sisi gelap" tata kelola pemerintahan, yakni penggunaan instrumen legalitas formal untuk memvalidasi praktik transaksional yang koruptif. Berbeda dengan studi terdahulu yang cenderung memandang maladministrasi sebagai kegagalan teknis-administratif atau tindak pidana korupsi konvensional, penelitian ini menawarkan kebaruan (novelty) melalui kerangka teoretis "Konstitusionalisme Sosiologis Berbasis Kearifan Lokal". Pendekatan ini menggeser paradigma dari sekadar pengawasan legal-formal yang bersifat top-down menuju integrasi sanksi sosial-budaya sebagai mekanisme kontrol informal dalam merespons state capture. Dengan menggunakan metode kualitatif melalui pendekatan normatif-empiris, penelitian ini menganalisis pergeseran Rule of Law menjadi Rule by Law serta eksploitasi diskresi akibat hiper-regulasi di era digital. Kontribusi akademik utama dari artikel ini adalah proposisi model mitigasi maladministrasi yang tidak lagi mengandalkan digitalisasi birokrasi sebagai solusi tunggal, melainkan menekankan pada

sinkronisasi antara rigiditas prosedural dan nilai-nilai etis masyarakat sebagai penyeimbang kekuatan oligarki. Hasil analisis menunjukkan bahwa tanpa reorientasi etika birokrasi yang berpijak pada nilai-nilai sosiologis lokal, digitalisasi hanya akan menjadi kosmetik prosedural yang melanggengkan pembajakan negara (state capture corruption) di balik wajah modernisasi pemerintahan.

Kata Kunci: Tata Kelola Pemerintahan, State Capture, Konstitusionalisme Sosiologis, Maladministrasi, Patologi Birokrasi.

BACKGROUND

Theoretically, administrative law and the principles of good governance are designed to limit absolute power and guarantee equitable public services through a formalized social contract. However, in modern governance, the law often undergoes a functional disorientation; it ceases to serve as an instrument for the bonum commune (common welfare) and instead transforms into a shield of legitimacy for actions that are ethically corrupt yet procedurally sound. This "dark side" phenomenon signals a substantial shift from the Rule of Law to Rule by Law, where legal instruments are manipulated to accommodate elite interests by disguising transactional agendas as administrative innovations.

The core problem in current governance centers on the manipulation of legal interpretation through regulatory ambiguity. Statutory provisions, including those within the framework of regional autonomy mandated by Article 18A of the 1945 Constitution and Law No. 30 of 2014, often leave broad discretionary loopholes. These gaps are systematically exploited by bureaucratic actors to justify transactional policies. Normative ambiguity within regulations is not merely an administrative oversight, but a deliberate design that creates space for shadowy negotiations. Consequently, public policies that have fulfilled all administrative requirements often facilitate oligarchic interests—a form of policy corruption whose impact on social justice is far more destructive than conventional individual-level bribery.

This chasm between law on the books and law in action is exacerbated by a bureaucracy trapped in blind formalism. Digitalization in government, which is intended to be an instrument of transparency, often functions merely as "procedural cosmetics" in reality. When internal oversight mechanisms fail to distinguish between genuine policy innovation and the abuse of authority, state institutions lose their moral legitimacy. Citizens have begun to view administrative law not as a guardian of fundamental rights, but as a bureaucratic burden that hinders their access to essential services.

Therefore, this research focuses on how the manipulation of legal procedures is utilized to obscure transactional motives in public policy-making. By dissecting the anatomy of this "dark side," this study aims to construct a mitigation model that transcends legal formalism by integrating the dimension of public ethics as a counterweight to discretion. Focusing on the integrity of legal interpretation is crucial to preventing institutional decay, ensuring that the law functions as a true supervisor of state administration rather than an instrument that legitimizes state capture.

To maintain focus and avoid broadening the scope of criminal law, this research focuses on the following:

- 1) Regulatory Dimension: The analysis is limited to the phenomenon of the shift in legal values from the Rule of Law to Rule by Law, particularly in legislative practices with minimal public participation (such as the Omnibus Law method).

- 2) Power Dimension: Focuses on the practice of State Capture Corruption, which involves collaboration between political elites and oligarchs in policy formulation (upstream), rather than simply administrative corruption at the implementation level (downstream).
- 3) Bureaucratic Dimension: Examines the influence of hyper-regulation and the broad discretionary space for public officials, which creates transaction costs (extortion) in public services such as licensing.
- 4) Mitigation Dimension: Solution analysis is limited to the integration of formal system reform (digitalization and meritocracy) with the strengthening of ethical values based on local wisdom.

Based on the analysis presented, three objective in this research; To examine the anatomy of fast-track legislation and the use of law as a "weapon" (lawfare), To evaluate the imbalance between law on paper (law in books) and transactional reality, as well as the phenomenon of "pseudo-digitalization", and, to find a solution formulation that combines formal legal certainty with the moral strength/social sanctions of community culture.

METHODS

This research employs a qualitative paradigm through a socio-legal approach, which positions law not merely as written norms (law in books), but as a dynamic social phenomenon (law in action). To dissect maladministration in governance practices, this study integrates a normative-empirical approach, focusing on the effectiveness of law within administrative reality. A conceptual approach is utilized to construct theories of good governance and state capture, while a statutory approach is applied to identify regulatory inconsistencies, particularly concerning Omnibus Law policies. Furthermore, a sociology of law approach is employed to evaluate bureaucratic behavior in response to existing regulatory structures.

Data sources in this research include secondary data consisting of primary legal materials, such as legislation and court decisions, as well as secondary legal materials, including reputable scientific journals, official reports from oversight institutions—such as the Ombudsman and the Corruption Eradication Commission (KPK)—and political sociology literature published within the last decade (2016–2026) to ensure contemporary relevance. Primary data were collected through participatory observation of digital public service transformations and an analysis of public discourse within digital media. The data collection procedure was conducted through systematic literature review using academic databases such as Scopus, Web of Science, and national legal repositories, where literature selection was filtered for documents with a direct correlation to maladministration and public policy.

To ensure depth of analysis, this research relies on the researcher as the primary instrument (human instrument), supported by the qualitative data analysis software NVivo 14 to perform thematic coding on thousands of pages of regulatory documents and policy narratives. The data analysis technique was carried out through stages of data reduction to isolate bureaucratic phenomena representing maladministration, followed by data display to compare the gap between the law in texts and its implementation in the field. The dialectic between the weaknesses of digital systems and bureaucratic discretionary practices was analyzed using inductive logic to identify the systemic patterns triggering governance failures. The validity of the research results was ensured through triangulation of legal sources, in which data from official regulations were cross-referenced with academic critiques and empirical realities to eliminate subjective bias. Through these structured procedures, this research seeks to achieve scientific objectivity in describing the anatomy of bureaucratic maladministration in a comprehensive and accurate manner.

FINDINGS AND DISCUSSION

This chapter analyzes the "dark side" of governance through a three-dimensional framework: the shifting paradigm of legal values, the anatomy of systemic corruption, and a proposed mitigation model that synthesizes structural reform with sociological constitutionalism.

Analysis of Legal Value Shift: From Rule of Law to Rule by Law

The fundamental pathology in Indonesian governance is the instrumentalization of law. While Article 1(3) of the 1945 Constitution establishes Indonesia as a *Rechtsstaat*, empirical reality shows a shift toward Rule by Law. Legislative processes have been transformed into "fast-track" mechanisms that prioritize political speed over "Meaningful Public Participation." The use of the Omnibus Law method serves as a landmark case where legal consolidation is utilized to bypass democratic deliberation. This phenomenon creates a "legality without legitimacy" trap, where policies are procedurally compliant but substantively violate the public sense of justice. Lawfare—the weaponization of legal provisions to suppress civil society—further cements this shift, as the state utilizes regulatory frameworks (such as the ITE Law) to discipline dissent, turning the law from a shield for citizens into a sword for the executive.

One of the most striking dark sides is the shift from the rule of law to the use of law as a tool of power. In this situation, the government is not subject to the law, but instead produces laws to facilitate specific agendas. Expedited legislative procedures without meaningful public participation are a key feature. A current example is the emergence of regulations using the Omnibus Law method, which is often criticized for its perceived reduction of environmental protection standards to facilitate investment without strict oversight, creating loopholes for uncontrolled exploitation of natural resources.

In Indonesia, this phenomenon has frequently been a hot topic of discussion among constitutional law academics and human rights activists, especially in the last decade. The following is an in-depth review and critical analysis of this practice in the Indonesian context, complete with actual examples encountered in the field:

In Indonesia, the principle of the Rule of Law is constitutionally enshrined in Article 1 paragraph (3) of the 1945 Constitution. However, in practice, there is a strong tendency for the law to be used as an "instrument of power" (Rule by Law). Law is often positioned as a "rubber stamp" to legitimize controversial executive policies. Instead of law functioning to limit power, the dominant political power in parliament (the grand coalition) actually directs the formation of laws to suit the government's pragmatic agenda. In fact, government authority, the implementation of state functions, and the administrative rights of the public are protected by national administrative law. This law limits what government officials, such as ministers, ministries, civil servants, and staff working for the government, may and may not do. More specifically, administrative law also includes rules and procedures that allow the public to question and challenge decisions made by government officials (Abi Rahman, 2024).

A concrete example is the Revision of the Corruption Eradication Commission (KPK) Law (2019): The revision process, carried out in a very short time and amidst massive public opposition, is a clear example of Rule by Law. The law was used to transform the structure of an independent institution (the KPK) into part of the executive branch, which is substantively considered to weaken corruption eradication for the sake of political stability and bureaucratic convenience.

The rule of law aligns with the "principle of democracy" as stated in Article 27, paragraph 1 of the 1945 Constitution of the Republic of Indonesia, which states: "All citizens are equal before the law and government and are obliged to uphold the law and government without exception."

Furthermore, it is also contained in the "principle of justice and equity," a reflection of the ideology of "social justice for all Indonesian people." Furthermore, the "principle of a balanced life" guarantees a balance between rights and obligations for every citizen in various areas of social life. Based on this explanation, it is certain that the principles of the rule of law in the context of government in Indonesia are enshrined in the 1945 Constitution, with its legal ideals, namely Pancasila.

The phenomenon of Fast-Track Legislation and Meaningful Participation, the devaluation of participation. In Indonesia, the Constitutional Court (MK) has actually introduced a standard for "Meaningful Public Participation," which encompasses three rights: the right to be heard, the right to have one's opinion considered, and the right to receive an explanation. The practice of fast-track legislation often ignores these three rights. Public discussions are conducted merely as procedural formalities (socialization) without any genuine intention to amend draft regulations based on public input. The fast-track legislation mechanism is seen as a solution in Indonesia's lawmaking system to ensure legal certainty and respond to urgent public needs. However, its regulation must be carried out carefully and comprehensively so as not to sacrifice the principles of justice and good legislative governance (Bayu Aryanto, Susi Dwi Harijanti, 2021).

A concrete example is the Omnibus Law on Job Creation: This is a landmark example of the Rule by Law practice in Indonesia. The consolidation of dozens of laws into one giant document, with a deliberation process that lacked transparency and very quickly created a democratic deficit. Although the Constitutional Court declared this law "conditionally unconstitutional," the government responded by issuing a Perppu (Government Regulation in Lieu of Law) on Job Creation, demonstrating how the law is used instrumentally to bypass court rulings.

Lawfare and the Normalization of Emergency Situations. Lawfare in Indonesia often arises through the criminalization of criticism or the use of loose provisions in regulations to suppress opposition or civil society movements. The narrative of "for the sake of development" or "for the sake of national security" is often used as justification for issuing restrictive regulations. The law is no longer a shield for citizens from arbitrariness, but rather a sword of authority to discipline those who disagree.

A concrete example: 1) The Electronic Information and Transactions (ITE) Law: Defamation articles are often used to criminalize activists or members of the public who criticize government policies or public officials. This is a form of using the law to create a chilling effect on freedom of expression. 2) Changes to the Constitutional Court Law: Repeated changes to the age requirements for constitutional judges are often considered to have political motives to retain or remove certain judges, which in turn threatens judicial independence.

Sociological Implications: Erosion of Trust and "Legality Without Legitimacy." When Rule by Law dominates, the law loses its moral authority. People obey the law not because they feel it is ethically right, but because they fear formal sanctions. Centralization of Power: The withdrawal of various authorities from the regions to the center (as in the Job Creation Law and the Minerba Law) destroys the spirit of regional autonomy and brings us closer to the New Order's centralized bureaucratic model, but with the "garb" of democratic legality. Public distrust of the House of Representatives (DPR) and legal institutions continues to grow. The emergence of various large-scale demonstrations (such as the Corruption Reform) demonstrates the deep chasm between the rulers' legal will and the public's sense of justice.

Indonesia is currently at a crucial crossroads. The practice of Rule by Law, disguised as democratic formalities, poses a more dangerous threat than overt authoritarianism, as it hijacks legal language to undermine the very essence of democracy. To return to the Rule of Law, we need:

- a) Judicial Independence (the Constitutional Court and Supreme Court): Courage to overturn formally and materially flawed legal products, even when faced with significant political interests;
- b) Critical Civil Society: Acting as an external monitor that consistently demands transparency; and
- c) Political Ethics Reform: Ensuring that lawmakers recognize that legality (legality according to articles) is not the same as legitimacy (moral legitimacy and the mandate of the people).

1) Fundamental Difference: Between Justice and Instruments

Doctrinally, the Rule of Law (Supremacy of Law) positions law as the supreme entity that binds all parties, including those in power. Law serves as a limitation of power. Conversely, the Rule of Law (Law as a Tool) views law as an administrative instrument to legitimize political will. Society is a group composed of certain structures, while the state serves as a bulwark or protector responsible for enforcing just laws. The Rule of Law is also identified with the concept of common law, where the state and all levels of society uphold the supremacy of existing laws based on justice. Whether or not the rule of law is implemented in a country is determined by whether the people in that country truly experience justice, meaning they are treated fairly, both as fellow citizens and between citizens and the government (Wahdah, 2023).

The rule of law is a form of legalism that provides the idea and concept that justice can be upheld through the technical creation of a regulatory system with procedures that are objective, impartial, and non-individual. One of the concepts promoted in the rule of law is the supremacy of law. Under the supremacy of law, law holds a central position, controlling the abuse of power (Brian Z. Tamanaha, 2004).

Theoretical Analysis: In Rule by Law, law loses its spirit of justice, leaving only its procedural framework. Those in power no longer ask, "Is this action just?" but rather, "Which article can we enact to legalize this action?" This is a form of legal formalism that ignores moral values and human rights. In modern constitutional theory, law is understood as the primary foundation for the exercise of state power, not merely a political instrument to legitimize the will of those in power. Indonesia, as a state based on law, as affirmed in Article 1 paragraph (3) of the 1945 Constitution, makes the rule of law the administration of the state, not rule by law as a tool of power (Nirwana Theresya Siboro, 2026).

In the Indonesian constitutional system, the principles of popular sovereignty (democracy) and the rule of law (nomocracy) cannot be separated but must be implemented simultaneously as a whole. The integration of these two principles gives rise to the concept of a democratic state under the rule of law (constitutional democracy), namely a constitutional system that combines the supremacy of law, equality before the law, limitations on state power, democratic governance, transparency, and social control mechanisms to guarantee the protection of citizens' rights (Asshiddiqie, J. (2020), in (Nirwana Theresya Siboro, 2026).

2) "Fast-Track Legislation" Mechanisms and the Devaluation of Participation

One of the salient features of this dark side is the use of extremely fast-track legislative procedures. Procedural Analysis: In many countries with trends of digital authoritarianism or closed bureaucracies, large-scale regulations are often passed in a short time. This deliberately limits the space for Meaningful Public Participation. Impact: Without credible public review, laws tend to be biased, accommodating only the interests of vested interests (voters or political funders) rather than the needs of the wider public.

3) Dark Side Analysis: Legislation as a Weapon (Lawfare)

This phenomenon, also known as Lawfare, occurs when legal instruments are used like weapons of war to remove political obstacles or opposition. Power Structure: By controlling legislative institutions, rulers can enact laws that specifically target certain groups, restrict civil liberties, or extend terms of office under the guise of legality. Normalization of Emergency: Often, governments use the narrative of a "crisis" (economic or health) to justify enacting regulations that bypass customary standards of legal rigor.

There is no specific definition of fast track legislation in the Indonesian legal system, this concept can be understood as a mechanism for the rapid preparation and discussion of Draft Laws in addition to the usual mechanisms, (Rajak, R., Islam, M. H., Rosidin, U., Islam, U., Sunan, N., Djati, G., 2025). Fast track legislation can be defined as a legislative mechanism that allows the formation of laws to be carried out quickly to respond to certain needs by bypassing some of the deliberative stages to immediately produce a law. In the Constitution, the meaning of this concept can be implicitly linked to the mechanism for determining Government Regulations in Lieu of Laws (PERPU) as regulated in Article 22 paragraph (1) of the 1945 Constitution which states that "in cases of compelling urgency, the President has the right to determine government regulations in lieu of laws." This provision is an exception to the formation of laws provided by the constitution to respond to emergencies, (Lestari, F., Haryono, D., & Hb, 2024).

The phenomenon of fast-track legislation cannot be separated from the political conditions that influence the lawmaking process. When the political configuration is democratic, the resulting laws tend to be responsive and open to public aspirations. Conversely, if the political configuration is dominated by elites, the resulting legal products risk being rigid, maintaining the status quo, and even tending towards repression (Solikhul Hadi, 2015), in (Nirwana Theresya Siboro, 2026).

While there is no specific definition of fast-track legislation in the Indonesian legal system, this concept can be understood as a mechanism for the rapid preparation and discussion of draft laws beyond the usual mechanisms. The author argues that fast-track legislation can be defined as a legislative mechanism that allows for the rapid formation of laws to respond to specific needs by bypassing some of the deliberative stages to quickly produce a law.

The use of the Omnibus Law method in various developing countries is often a clear example of the Rule by Law. Erosion of Environmental Standards: Analysis shows that the consolidation of hundreds of articles from various laws into a single regulation often includes articles that "weaken" Environmental Impact Assessment (EIA) standards. The rationale is ease of doing business, but in reality, this creates loopholes for the massive exploitation of natural resources without clear ecological responsibilities.

Considering that the quality and quantity of regulations in Indonesia often come under scrutiny, both nationally and internationally, because the legislative process often reflects political interests rather than the real needs of the community, such as in recent years, the submission of formal tests against several laws, one of which is Law Number 11 of 2020 concerning Job Creation (Job Creation Law), which was the beginning of the Constitutional Court through Decision Number 91/PUU-XVIII/2020, emphasizing that public participation is not only procedural, but must be meaningful, namely including the right to be heard, considered, and receive explanations, (Mandak, 2024).

Centralization of Power: In many cases, this type of regulation shifts oversight authority from the regions to the center or from independent institutions directly to the executive branch.

This destroys the system of checks and balances, a key pillar of good governance. Sociological Implications: Public Distrust. When the public realizes that laws are not designed to protect them, but to facilitate elitist interests, distrust in state institutions declines. Laws are no longer viewed as "protectors" but as "threats" that can change according to political whims.

The practice of Rule by Law is a latent threat to democracy because it operates within the legal system, not outside it. It does not destroy the law, but rather corrupts it from within by assuming the guise of legality while discarding the essence of justice. Strengthening the independent judiciary is necessary to conduct critical judicial review of legislative products born from processes flawed by participation. Law without justice is organized power, and power without law is naked tyranny.

Albert Venn-Dicey's concept of the Rule of Law has three principles: supremacy of law, namely strongly rejecting arbitrary actions from the government, equality before the law, namely equal standing before the law, and due process of law, namely guaranteeing the rights of the people, the main goal of the concept of rule of law is to promote justice for all people, everyone has equality before the law. The principles in the rule of law in Indonesia have been applied, it's just that in its concept Indonesia has its own characteristics, namely the "Cita Negara Pancasila" which is very important in the practice of fair Indonesian governance, (Wahdah, 2023).

The main danger of state capture is that decision-making no longer considers the public interest but rather favors the interests of certain groups. Laws, policies, and so on are designed to benefit certain groups, often at the expense of smaller groups, companies, and society at large (Hana Mariza, 2020).

Anatomy of State Capture Corruption and Exploitation of Discretion

State Capture represents the systemic paralysis of state functions by private interests. It operates upstream, where regulations are "designed" to benefit specific oligarchic actors. The study identifies "Regulatory Obesity" as a strategic tool for exploitation. By intentionally creating overlapping and ambiguous regulations, the state fosters an environment where bureaucratic discretion becomes a tradable commodity. This is exacerbated by the "revolving door" phenomenon, where regulators and regulated entities share fluid career paths, ensuring that policy jargon—such as "Economic Acceleration"—masks the pursuit of rent-seeking. Digitalization efforts (SPBE) have proven insufficient as a standalone solution because they often remain "digital lip service," automating the form of governance while maintaining manual, opaque verification channels that allow for continued extortion and under-the-table negotiations.

This is a high-level form of corruption in which private actors (oligarchies) influence the formation of laws and policies to benefit their own businesses. Unlike ordinary administrative corruption (bribery at the service desk), state capture operates before regulations are enacted. As a result, policies appear "legal" but are actually detrimental to the public. A concrete example is the establishment of import quotas for certain commodities or mining permits in protected forest areas based on political proximity between authorities and business owners, often disguised as "economic acceleration."

Transparency International defines state capture as a situation where powerful individuals, institutions, companies, or groups within or outside a country use corruption to shape a country's policies, legal environment, and economy to benefit their personal interests (Hana Mariza, 2020). According to them, state capture is a form of corruption that can penetrate all levels of public institutions, such as legislative, executive, judicial, and regulatory bodies, both at the federal and

local levels. State capture can also arise from shared interests between certain business actors and political elites through family ties, friendships, and interconnected ownership of economic assets. State capture, a form of corruption, has elements consistent with the crime against humanity stipulated in the Rome Statute. Therefore, corruption, specifically state capture, can be categorized as a crime against humanity. By designating corruption as a crime against humanity, individuals involved in corruption can be held criminally accountable under international law through international criminal courts or ad hoc international criminal tribunals (Hana Mariza, 2020).

Oligarchy is defined as an actor who commands and controls large concentrations of material resources that can be used to maintain or increase their personal wealth and social influence. These two concepts (state capture and oligarchy) are closely related—how a small group can influence and control structures and resources with their political, economic, and social capital (Yayan Hidayat, 2024). A precursor to the idea of state capture is regulatory capture, which describes a situation where public authorities, in their capacity as regulators of economic activity, specifically allow the interests of groups capable of influencing them to prevail over the public interest (Capussela, 2021). In Indonesia, State Capture often manifests itself in the form of Democratic Oligarchy. Democratic institutions such as elections and parliaments continue to operate, but the substance of policy is controlled by a small group of capital holders with direct access to decision-makers.

The most obvious example is the high cost of politics in regional and presidential elections. When candidates accept large donations from corporations, an implicit political contract is formed. Once in office, the favor is no longer given in cash (administrative corruption), but rather in the form of "Ordered Regulations." A concrete example: the revision of the Mineral and Coal Mining Law: The extremely rapid revision process, carried out amidst the Covid-19 pandemic, was widely criticized for allegedly guaranteeing contract extensions for holders of Coal Mining Work Agreements (PKP2B) without going through a competitive bidding process. This constitutes a form of legal "red carpet" for big business actors.

Regulatory complexity is often deliberately created (created complexity). In Indonesia, this phenomenon is known as Regulatory Obesity. When there is overlap between Ministerial Regulations, Regional Regulations, and Laws, officials have discretionary power to determine which regulations to "use." This discretion becomes an economic commodity. Businesses seeking speed will pay for "legal certainty" that the system intentionally creates uncertainty. A concrete example: Building Permits (PBG): The transition from IMB to PBG often encounters obstacles at the regional level due to incomplete or deliberately convoluted derivative regulations. This forces developers to engage in informal negotiations with relevant agencies to prevent projects from stalling, ultimately legalizing illegal levies under the administrative umbrella.

In Indonesia, the practice of "revolving doors" is very common but rarely strictly regulated. Someone can become the CEO of a mining company, then become a public official regulating the mining sector, and then return to the private sector after their term ends. This creates regulatory capture, where regulators are well aware of legal loopholes in their sector and use them to strengthen their group's business position. The resulting policies often use the jargon of "Energy Security" or "Food Sovereignty," but technically only benefit certain affiliated companies.

Mitigation efforts through digitalization (e-government) in Indonesia still face the challenge of "digital lip service." Often, registration systems are conducted online, but the verification and final approval processes remain in the hands of humans without transparent parameters. As long as the back-end of digital systems remains closed and manual, digitalization

simply shifts the location of "negotiations" from physical offices to private chat rooms or through intermediaries (permit brokers).

To break the chain of state capture in Indonesia, an approach is needed that goes beyond simply improving the system: 1) An Asset Forfeiture Law: As an instrument to impoverish actors involved in state capture. Without this instrument, the benefits of state capture far outweigh the risks of imprisonment; 2) Campaign Fund Transparency: There must be investigative audits of the sources of political funding. As long as political costs remain high and opaque, state capture will always be a way for elected officials to "recoup capital"; and 3) Strengthening Meaningful Public Participation: Civil society should not simply be an object of socialization, but must have the legal power to overturn regulations proven to ignore public participation in the process of their creation.

The practice of State Capture and Rule by Law in Indonesia poses an existential threat to good governance. The law, which should be a "tool of liberation," has instead become a "tool of legal oppression." To borrow a legal term, we must ensure that the law embodies substantive justice, not merely procedural justice. Without integrity at the upstream level of legislation, governance will simply be an orchestration of elite interests neatly packaged in statutory articles. (Marandici, 2021) in his journal refers to oligarchic state capture, or the concept of state control by oligarchies. This refers to a situation where economic and political power is concentrated in the hands of a small group of individuals who exert influence over parliament, the government, political parties, state administration, the police, the judiciary, and the media (Yayan Hidayat, 2024).

Oligarchic networks are complex and united by shared economic and political interests. Oligarchies rarely act alone in politics. They cultivate allies, build patronage networks, as identified by Henry Hale across Eurasia, and serve as the axis of mafia states, as analyzed by Balint Magyar in Hungary (Yayan Hidayat, 2024).

Governance is often mired in overlapping regulations deliberately created to generate "transaction costs." The more complex and unclear a regulation, the greater the discretionary power held by officials. Discretion without strict oversight becomes a gateway for extortion or underhand negotiations. A concrete example is the process of obtaining building permits (PBG) or business permits at the regional level, which often have varying derivative regulations, forcing business actors to resort to "grease-fixing" to ensure documents are processed quickly.

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The first effort must start from the upstream, namely the law-making process. The dark side often arises when regulations contain "rubber clauses" or intentionally created loopholes.

- 1) Rigid but Adaptive Legal Codification: Ensure that each regulation has clear limits of authority to minimize excessive discretion. Participatory Legislation: Close loopholes for intervention by vested interests by opening up space for meaningful public review (meaningful participation) in every draft law. Harmonization of Regulations: Sectoral egos often create overlapping regulations that become fertile ground for extortion. Synchronization of regulations between the central and regional governments is crucial.

- 2) Bureaucratic Transformation and Meritocracy. The dark side of governance is often rooted in human resources recruited based on patronage, not competence. Strict Merit System: Ensure that appointment to public office is based on qualifications and integrity. This reduces officials' dependence on political "favors." Digitalization of Governance (E-Government): The transparent implementation of digital systems such as e-budgeting, e-procurement, and e-catalogs can eliminate physical contact between service providers and users, automatically reducing opportunities for transactional activities. The legal and regulatory framework for the digital transformation of the Indonesian government has made significant progress, with the strengthening of its foundation through Law No. 1 of 2024 concerning Electronic Information and Transactions (ITE), the implementation of SPBE (Services for the Advancement of Information and Transactions), and the development of various integrated service platforms. This transformation demonstrates the government's commitment to administrative modernization and the implementation of good governance principles.
- 3) Law Enforcement and Judicial Reform, (Hartati Malkab1, 2025). Without consistent law enforcement, the law will be a mere paper tiger. Independence of Oversight Institutions: Strengthen the position of institutions such as the Ombudsman and the Anti-Corruption Commission to prevent them from being easily interfered with by the executive or legislative branches. Implementation of Cumulative Sanctions: In addition to criminal sanctions, administrative sanctions and impoverishment of corruptors through asset confiscation laws are vital instruments to provide a deterrent effect. Law Enforcement Integrity: Internal reforms within the police, prosecutors, and judiciary to ensure they do not become part of the "dark side."
- 4) Civil Society Oversight (Social Control). Civil society is at the forefront of maintaining government transparency. Whistleblower Protection: Creating a safe ecosystem for whistleblowers within government agencies so they can boldly expose deviant practices without fear of intimidation. Public Information Transparency: Ensuring public access to data on budget use and public policies is widely open in accordance with the principle of open information. Integrity Education: Building an anti-corruption culture from an early age through formal and non-formal education to shift the public mindset from a "permissive" to a "critical" one. Protection of public rights in the field of public law is carried out through oversight mechanisms. Legal oversight refers to whether the implementation of state duties and administration is carried out in accordance with applicable legal norms and whether established goals are achieved without violating applicable legal norms (Abi Rahman, 2024).

Analytically, the practice of the dark side of the law usually occurs due to information asymmetry and imbalanced power relations. When those in power hold greater information and authority without balanced checks and balances, the law tends to shift from a tool of justice to a tool of power.

Efforts to address the dark side of governance cannot be undertaken in isolation. Synergy is needed between Structural Reform (system improvement), Substantial Reform (legal product improvement), and Cultural Reform (ethical and mentality improvement). The success of these efforts depends heavily on the political will of the highest leadership to adhere to the rule of law and justice. In addition to formal legal approaches, approaches based on local wisdom values that uphold trust and integrity can also be a supporting instrument in building clean and authoritative governance.

Mitigation Model: Integrating Structural Reform and Sociological Constitutionalism

To address the governance crisis, this research proposes a mitigation model that bridges the gap between formal legal rigidity and cultural values. The following table illustrates the reciprocal relationship between these two domains:

Table 1: Integrated Governance Mitigation Model

Dimension	Structural reform (Positif Law/ Digitalization)	Cultural reform (Sociological Constitutional)
Objective	Systemic Efficiency and Transparency	Ethical Legitimacy and Accountability
Mechanism	E- Governance, Asset, Forfeiture Law, Meritocracy	Internalization of Amanah (Trust) and Culture of Shame
Control	External Supervision (Ombudmas/ KPK)	Social/ Traditional Control (Indigenous Institution)
Enforcement	Administrative/ Criminal Sanctions	Social Ostracism and Loss of Traditional Title
Core Value	Procedural Compliance	Substantive Ethical Adherence

This model argues that structural reform and cultural law are not mutually exclusive but interdependent. Positive law provides the procedural container (the rules), while local wisdom provides the ethical fuel (the spirit).

- De-alienating the Law: By injecting local values—such as the Sasi (Maluku) or Ing Ngarsa Sung Tuladha (Javanese)—into bureaucratic codes of ethics, the law ceases to be perceived as an "alien object" and becomes an extension of the collective conscience.
- Bridging the Ethical Gap: While formal law can only govern what is explicitly prohibited, the integration of local wisdom governs what is appropriate. This addresses the "discretionary loophole" by creating a psychological barrier for officials who might otherwise bypass laws for short-term gain.
- Institutionalizing Integrity: The transition requires a "Culture-Based Moral Audit" for high-ranking positions, ensuring that candidates possess both technical competence (proven by digital/systemic metrics) and moral integrity (validated by their standing within the community).

By synthesizing these two spheres, the bureaucracy can transition from a "cold machine" of compliance into a morally authoritative institution that treats public office as a sacred trust (Amanah) rather than a prerogative of power.

The local wisdom approach to governance is a form of sociological constitutionalism, where values entrenched within society are used as instruments to control the behavior of those in power. While formal law often addresses only administrative and legalistic aspects, local wisdom delve deeper into ethics, morality, and social sanctions.

In Indonesia, post-bureaucratic reform demands a transformation in governance that is no longer solely oriented toward technocratic efficiency, but also toward in-depth sociocultural responsiveness. Within the framework of regional autonomy, local governments are required to have the adaptive capacity to align formal policies with the values, norms, and social practices that are alive and internalized by the local community. Governance responsiveness in this context is not only defined as speed of service or procedural compliance, but also as the state's ability to understand, accommodate, and integrate citizens' aspirations and social identities into the overall public policy process (Bovaird, T., & Loeffler, 2020).

Studies of responsiveness in governance over the past five years have shown a shift in focus from an administrative approach to an adaptive and contextual approach. (Bovaird, T., & Loeffler, 2020), emphasizes that responsiveness is not only related to the speed of service, but also to the government's ability to understand the diverse and dynamic needs of citizens. A recent study (Andrews, R., Boyne, G. A., & Entwistle, 2021) shows that local government responsiveness is strongly influenced by institutional capacity and openness to public input.

Sociological Constitutionalism, through a local wisdom approach, addresses the deepest essence of the governance crisis in Indonesia: the loss of "spirit" or values in mechanistic bureaucratic procedures. When formal law experiences a moral deficit, local wisdom emerges as a centuries-old ethical navigation system.

The following is a lengthy review and in-depth analysis of the practice of local wisdom as an instrument to mitigate the "dark side" of governance in Indonesia:

1) Philosophical Relevance: Leaders as Trustees

From the perspective of local Indonesian wisdom, power is not absolute but relative and transcendental. This differs from the Rule by Law paradigm, which tends to view office as a prerogative to legitimize interests. In many regions of Indonesia, public office is viewed as an extension of the mandate of ancestors or God. If this mandate is betrayed through corruption, the penalty is not simply imprisonment, but rather "kualat" or spiritual destruction.

A concrete example: The Asta Brata Leadership Philosophy: In Javanese and Balinese culture, a leader must possess the eight attributes of nature (earth, sun, moon, ocean, etc.). A leader who is "like the earth" must give selflessly. When an official in Bali or Java applies this principle, the policies adopted will be oriented towards the long-term public good, not short-term rent-seeking profits.

2) Social Sanctions: Sharper than Criminal Law

The weakness of positive law is its "transactional" nature—prison sentences are often seen as a business risk that can be "paid" with the proceeds of corruption. In contrast, local wisdom offers sanctions that kill an individual's social existence. The culture of shame is a highly effective bulwark of integrity in Indonesian communal societies. If an official commits state capture or corruption, they not only face prosecution by the Corruption Eradication Commission (KPK) but also face ostracism from their traditional community.

A concrete example: the Minangkabau Indigenous Community: There is a principle of "Shame and Politeness" (Malu jo Sopan) and the sanction of "Discarding Throughout Custom." If a policymaker with a traditional title is proven to have committed a reprehensible act, they will lose their reputation among their community. They will be "not encouraged in ceremonies, not included in consensus." This sanction of excommunication is often more feared by regional bureaucrats than administrative sanctions.

3) Integrating Ethics into Policy: Closing the Ethical Gap

Many governance practices that are "legally" not in violation of regulations (for example, appointing relatives to certain positions as long as they meet administrative requirements) are considered by local wisdom to violate ethical standards. Local wisdom serves as an "ethical judge" before a case proceeds to court. It prevents free-riding behavior in the bureaucracy by demanding a higher moral standard than simply "not violating the law."

A real-life example: the Sasi system in Maluku and Papua: Sasi is a customary prohibition on harvesting certain natural resources for a specific period of time. When local governments integrate Sasi values into environmental management regulations, community

compliance rates increase dramatically. This prevents regulatory hijacking by unscrupulous entrepreneurs because they must deal directly with the moral authority of indigenous communities, rather than simply negotiating with government officials behind closed doors.

4) Challenge: Formalization vs. Essence

The biggest challenge in Indonesia is when local wisdom is merely used as a "decoration" or cultural cosmetic (such as wearing traditional clothing to the office), but the substance of its integrity is not upheld. Concrete steps are needed to ground these values in the modern system: 1) Culture-Based Moral Audit: In the selection of high-ranking regional positions, in addition to technical competency tests, traditional institutions should consider the candidate's moral track record within their community; and 2) Integrity Education Based on Local Narratives: Using folktales, proverbs, or Tambo (traditional Javanese proverbs) that embody anti-corruption values in bureaucratic training, so that these values feel "indigenous" rather than imported.

The local wisdom approach is an effort to "de-alienate the law." For a long time, the public has felt that formal law belongs to the elite in Jakarta and is often vulnerable to abuse. By incorporating local values into governance, we return the law to the conscience of the people. Clean governance is not only born from sophisticated digital systems, but from bureaucratic individuals who fear social sanctions and have a moral burden to their homeland. This integration will transform the Indonesian bureaucracy from a mere administrative machine into a morally dignified institution of service.

From a sociological legal perspective, the success of governance depends heavily on the legal awareness of its citizens. If formal law is viewed as an imposed "foreign object," people will tend to find ways to violate it. However, if governance is implemented with local wisdom values, the law is seen as an extension of the collective conscience. A local wisdom approach does not mean returning to the past, but rather reinventing government by injecting noble values (integrity, trustworthiness, simplicity) into the modern bureaucratic system. This creates a government that is not only "clean" financially but also morally "authoritative" in the eyes of the public.

CONCLUSION

The study concludes that governance in Indonesia is increasingly characterized by a shift in the function of law from an instrument for limiting state power to a tool for political legitimacy. Fast-track legislation and the extensive use of the Omnibus Law approach, implemented without meaningful public participation, have produced legality without legitimacy and weakened public trust in state institutions. The emergence of lawfare further illustrates how legally valid regulations can still be substantively unjust when used to suppress criticism. At the same time, corruption has evolved from administrative misconduct to policy-level corruption through State Capture Corruption, where oligarchic actors influence regulatory processes via political financing and revolving-door practices. Hyper-regulation and overlapping legal frameworks have expanded bureaucratic discretion, transforming it into an economic commodity that generates transaction costs and undermines public service effectiveness, even within digital governance systems. Conversely, local wisdom offers an important corrective by reinforcing ethical values such as shame, customary sanctions, and trustworthy leadership, thereby reducing the gap between formal legality and moral accountability. Integrating these values into governance can strengthen ethical leadership and restore public confidence. Based on these findings, the study recommends several governance reforms. First, the introduction of a Citizen's Veto mechanism would enable verified civil society organizations to temporarily suspend laws lacking adequate public participation before

they take effect. Second, all AI- and algorithm-based public service systems should undergo regular Independent Algorithm Audits to prevent hidden discretionary manipulation and digital corruption. Third, a Cultural Integrity Rating should be incorporated into civil servant promotion processes by involving customary institutions and community ethics councils to assess moral credibility alongside administrative performance. Fourth, the Government Internal Supervisory Apparatus (APIP) should be restructured into an independent whistleblower protection institution with functional accountability to external oversight bodies. Finally, mandatory cooling-off periods of three to five years should be imposed on former public officials before they assume positions in private companies operating in sectors they previously regulated. Together, these legal, technological, institutional, and cultural reforms provide a comprehensive strategy for reducing state capture, strengthening accountability, and promoting more transparent, ethical, and democratic governance.

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