

Legal Ideals: The Legal Expediency as the Main Orientation of Lawmaking

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ABSTRACT

Lawmaking in Indonesia continues to face challenges in harmonizing legal certainty, justice, and legal expediency as guiding principles of a state governed by the rule of law. This condition highlights the importance of reforming the paradigm of legislation so that law not only fulfills formal and procedural requirements but also delivers tangible benefits to society. This study aims to analyze the position of legal utility as a primary orientation in the formation of legislation in Indonesia and to examine the relationship between legal utility, justice, and legal expediency. It also aims to identify problems in the formation and implementation of legislation that do not fully reflect societal needs and to formulate a reconstruction of the lawmaking process. This study employs normative legal method using statutory, conceptual, and case approaches, with data analyzed qualitatively. The findings indicate that legal expediency should be positioned as the primary orientation of lawmaking while harmoniously integrating justice and legal certainty. Legal utility should not be understood merely as the pursuit of the greatest happiness for society but must also take into account the equitable distribution of benefits, public participation, and the long-term impacts of legal implementation. Therefore, legislators should strengthen public participation mechanisms and regulatory impact evaluations to ensure that legislation responds to the actual needs of society.



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INTRODUCTION

The development of society is closely interconnected with the development of state life. A state is an organization established to regulate collective life, protect citizens' rights, maintain public order, and achieve societal objectives. Each state has distinct characteristics in developing its constitutional system. These differences are influenced by historical background, culture, social conditions, economic development, and the political dynamics prevailing within society. Law is an essential instrument through which the state regulates social relations and establishes order in society (Rahman et al., 2025). Nevertheless, the function of law extends beyond regulating conduct and imposing sanctions for violations (Moiseienko, 2024). Law also serves to protect individual rights, resolve disputes, limit state power, and create conditions conducive to the realization of social welfare (Akmal, 2025).

Differences among national legal systems demonstrate the relationship between law and social development. In modern legal development, the civil law and common law traditions are commonly used to explain two influential legal systems (Akmal, 2021). Historically, the civil law tradition places written legislation and codification at the center of legal sources, whereas the common law tradition assigns an important role to judicial precedents. However, the distinction between these two traditions is not absolute. Countries belonging to the civil law tradition continue to develop case law and judicial decisions, while common law jurisdictions also rely on legislation to regulate social life (Wardhani et al., 2022).

Indonesia is generally classified as a country influenced by the civil law tradition because legislation occupies a central position within its legal system (Akmal, 2021). Nevertheless, Indonesian legal practice also recognizes the role of judicial decisions, customary law, and various social norms acknowledged under applicable legal provisions (Wahyudi & Umar, 2026). This condition indicates that the Indonesian legal system cannot be understood solely through the classification of legal traditions. It must also be examined through the interaction between formal legal norms, legal institutions, and social realities.

Through his legal system theory, Lawrence M. Friedman (1967) explains that a legal system consists of three interrelated components: legal structure, legal substance, and legal culture. Legal structure encompasses the institutions responsible for administering and enforcing the law, while legal substance comprises legal norms and principles. Legal culture refers to society's attitudes, values, and behavior toward the law. This theory demonstrates that legal development cannot be achieved merely by producing written regulations. Effective institutions, consistent implementation, and social acceptance are also necessary for the law to function optimally.

In Indonesia, Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state governed by the rule of law. This provision entails that the exercise of state power must be based on law and constrained by the Constitution. Nevertheless, the rule of law should not be understood merely in terms of the existence of legislation and formal compliance with procedural requirements. It also requires the protection of constitutional rights, equality before the law, accountability in the exercise of power, and the substantive realization of constitutional objectives (Akmal, 2025).

One of these constitutional objectives is the promotion of public welfare, as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia. This commitment is further reflected in Article 33, which establishes principles governing the national economy, and Article 34, which regulates the state's responsibilities in providing social welfare. These provisions demonstrate that Indonesia's constitutional system is intended not only to establish formal order but also to direct the exercise of state power toward improving societal welfare.

This context raises a fundamental question concerning the purpose of lawmaking. Legal certainty, justice, and expediency are widely regarded as essential values that must be considered in the formation and implementation of law. Legal certainty concerns the clarity, consistency, and predictability of legal norms. Justice concerns fair treatment and the reasonable distribution of rights, obligations, benefits, and burdens. Meanwhile, legal expediency concerns the capacity of law to generate tangible benefits for society and address the needs that underlie its enactment.

Although these three values serve different functions, they cannot be separated from one another. Problems arise when lawmaking places greater emphasis on legal certainty and formal justice, while the actual effects of regulations on societal needs and welfare receive insufficient attention (Akmal & Arlianti, 2022). A regulation may be clearly formulated and consistently enforced without necessarily resolving social problems or protecting vulnerable groups. Conversely, a policy that promises short-term economic benefits may produce injustice if it disregards constitutional rights and legal certainty (Anwar et al., 2026).

This study aims to analyze the position of legal expediency as a primary orientation in the formation of legislation in Indonesia and to examine the relationship between legal expediency, justice, and legal certainty. It also seeks to identify problems in the formation and implementation of legislation that do not fully reflect societal needs and to formulate a reconstruction of the lawmaking process oriented toward tangible benefits, the protection of constitutional rights, meaningful public participation, and equitable welfare distribution. Accordingly, law is expected not only to satisfy formal legal requirements and provide certainty but also to promote substantive justice and improve the welfare of Indonesian society.

RESEARCH METHODS

This article employs a normative legal method to examine the conceptual and constitutional position of legal expediency in the formation of legislation. This method is appropriate because the research focuses on legal norms, legal principles, constitutional provisions, judicial decisions, and academic perspectives concerning the objectives of law and the state's responsibility to promote social

welfare. The study adopts three approaches. First, the statutory approach examines constitutional provisions, legislation governing the lawmaking process, and other relevant regulations. Second, the conceptual approach analyzes the concepts of legal expediency, justice, legal certainty, the rule of law, and social welfare based on relevant legal theories. Third, the case approach examines Constitutional Court Decision No. 91/PUU-XVIII/2020 as an example of the relationship between legislative procedures, public participation, and constitutional legitimacy.

The legal materials used in this study consist of primary and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law No. 12 of 2011 on the Formation of Legislation and its amendments, and relevant Constitutional Court decisions. Secondary legal materials comprise books, scholarly articles, and academic publications addressing legal systems, legal philosophy, utilitarianism, and constitutional law. All legal materials are analyzed qualitatively through interpretation, conceptual comparison, and systematic examination of the relationship between legal norms and constitutional objectives. This article is doctrinal in nature and does not employ empirical research methods. Its conclusions concern normative principles and institutional recommendations rather than statistical claims regarding the effectiveness of legislation or the welfare outcomes resulting from the implementation of specific regulations.

RESULTS AND DISCUSSION

1. Legal System and the Foundations of Lawmaking

A legal system is not merely a collection of independent rules but an integrated framework consisting of norms, institutions, procedures, and social practices that interact to regulate society (Wardhani et al., 2022). The functioning of this system depends on the relationship between the formal structure of law and the social conditions in which it operates. Lawrence M. Friedman's (1967) legal system theory emphasizes the interrelationship between legal structure, legal substance, and legal culture. Legal structure refers to the institutions and organizations responsible for administering and enforcing the law. Legal substance encompasses the norms, principles, and provisions that establish rights and obligations. Meanwhile, legal culture includes the attitudes, values, expectations, and behavior of both society and legal officials toward the law.

The relationship between law and society helps explain why legal systems develop differently across countries. Although the civil law and common law traditions provide useful categories for comparative analysis, neither tradition exclusively determines the substantive characteristics of a country's legal system (Wardhani et al., 2022). Historical experiences, constitutional arrangements, administrative practices, economic structures, and political institutions also shape how legal norms are formulated and implemented (Wallis, 2022). Indonesia illustrates this relationship through the central position of legislation, the role of judicial decisions in legal interpretation, and constitutional recognition of customary law communities. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia recognizes and respects customary law communities and their traditional rights, subject to constitutionally prescribed conditions. Article 28I paragraph (3) also recognizes cultural identities and the rights of traditional communities in accordance with the development of the times and civilization.

These constitutional provisions demonstrate that the Indonesian legal system accommodates the relationship between state law and social norms that develop within society. However, this does not mean that every social custom automatically acquires legally binding force. Recognition of social norms must remain consistent with applicable legal foundations, constitutional requirements, and the need to maintain coherence within the national legal system (Marikar, 2023). This has important implications for lawmaking. Legislation should not be formulated solely on the basis of internal legal doctrinal analysis. Legislators must also consider the social problems that a regulation seeks to address, the institutions responsible for implementing it, the groups affected by its provisions, and the potential consequences arising from its application (Ogus, 2002).

Gustav Radbruch (1950) emphasized legal certainty, justice, and utility as three important dimensions in evaluating law. Each serves a distinct function in the relationship between law, state power, and society. These functions must be understood without treating the three values as objectives that necessarily exclude one another. Legal certainty requires legal norms to be clear, accessible, consistent, and predictable in their application (Julyano & Sulistyawan, 2019). Members of society must

be able to understand the legal consequences of their actions, while state institutions must exercise their authority within established legal limits. Legal certainty also protects legitimate expectations and reduces the risk of arbitrary action. Nevertheless, legal certainty does not, by itself, determine the substantive legitimacy of a regulation. A provision may be clearly formulated and consistently enforced while still imposing disproportionate obligations or reducing the protection afforded to particular groups.

Justice concerns this substantive dimension of law (Sadurski, 1984). It requires the law to respect human dignity, provide equal protection, and distribute rights, obligations, and burdens fairly. Justice may require different treatment where relevant differences in circumstances exist, particularly when the uniform application of a rule would reinforce existing inequalities. Such differential treatment, however, must be supported by reasons that are legally and constitutionally justifiable.

Legal expediency concerns the tangible contribution of law to societal needs and objectives (Akmal & Ramadhan, 2023). It raises the question of whether a legal norm can address the problem underlying its enactment and whether the benefits it generates are proportionate to the burdens and risks it creates. Radbruch's account of the fundamental values of law provides an important foundation for understanding this relationship. He identifies justice, legal certainty, and purposiveness or utility as fundamental dimensions in the evaluation of law. His approach demonstrates that the assessment of law cannot, in every circumstance, be reduced to a single criterion.

2. Beyond Utilitarian Happiness: Reconstructing the Meaning of Legal Utility

The concept of legal utility is often associated with utilitarian philosophy, particularly the ideas of Jeremy Bentham. Bentham (1828) in his work, *An Introduction to the Principles of Morals and Legislation*, introduced the principle of utility as a standard for evaluating actions according to their tendency to produce pleasure or reduce suffering. This idea subsequently influenced the development of legal philosophy by emphasizing the importance of the consequences of legislation and government action. Bentham's contribution is significant because it shifts attention from the mere existence of normative commands toward the outcomes they produce (Latipulhayat, 2015). A law cannot be considered successful solely because it has been formally enacted. Its justification must also be assessed in terms of the objectives it seeks to achieve and the effects of its implementation.

In a constitutional state, legal utility cannot be reduced to the maximization of happiness through aggregate calculations (Posner, 1979; Rosen, 1998). First, individuals experience and evaluate happiness differently. Second, an overall increase in social utility may conceal substantial losses suffered by particular groups. Third, certain rights cannot be disregarded merely because doing so is considered beneficial to the majority. For example, a policy may stimulate economic growth while simultaneously restricting low-income communities' access to essential public services (Causa et al., 2026). Aggregate calculations of utility might classify such a policy as beneficial, even though its implementation could undermine equality and constitutional protection. Therefore, constitutionally grounded legal utility must consider not only the amount of benefit generated but also its distribution, accessibility, sustainability, and compatibility with fundamental rights.

Legal expediency can therefore be understood as the capacity of legal norms and institutions to generate meaningful social benefits while respecting constitutional limits and principles of justice (Akmal & Ramadhan, 2023). Such benefits may include preventing harm, protecting rights, improving the quality of public services, reducing unnecessary administrative burdens, and creating fairer social and economic opportunities (Akmal, 2025). This understanding also distinguishes legal expediency from short-term political popularity. A policy may receive substantial public support in the short term while generating legal uncertainty or imposing burdens on future generations. Conversely, legal reform may require a period of adjustment but ultimately provide stronger protection and more sustainable benefits. Accordingly, the assessment of legal expediency must take both short-term and long-term consequences into account.

Legal expediency also has a procedural dimension. Public participation, transparency, access to information, and accountable decision-making contribute to the quality of legal norms (Rijal, 2023). These procedures enable lawmakers to identify problems more accurately, assess competing interests, and anticipate potential obstacles to regulatory implementation (Ahern, 2025). This procedural dimension is important because lawmakers do not always possess complete knowledge of all the social

conditions affected by proposed legislation. Communities, professional groups, local institutions, businesses, and civil society organizations may possess information necessary to understand the consequences of a legislative proposal. Meaningful participation enables such information to be considered during the legislative process (Andriani, 2023).

Legal expediency should be assessed through at least five interrelated considerations: the extent to which a regulation addresses identifiable public needs, the appropriateness of the chosen legal instrument, the fairness of the distribution of benefits and burdens, the feasibility of implementation, and the compatibility of expected outcomes with constitutional rights and long-term social welfare. These considerations provide a more comprehensive framework than simply equating expediency with happiness. They also make the concept of legal expediency more operational in evaluating legislation by connecting legal philosophy with practical questions concerning institutional design and public policy.

3. Challenges of Legal Reform in Indonesia

The development of Indonesian law demonstrates the continuing need to adapt inherited legal structures to the evolving needs of society. Several areas of law illustrate this challenge, particularly civil law, criminal law, and regulations governing economic and social policies. In the field of civil law, significant parts of Indonesia's legal framework remain influenced by regulations originating from the colonial period. The Indonesian Civil Code, for example, originated in the Dutch colonial legal order and continues to be applied alongside subsequent national legislation and other applicable legal provisions (Amelia, 2026; Djumardin et al., 2024; Mangara & Al-Djufri, 2022). The existence of inherited colonial provisions does not automatically mean that they are ineffective or unjust. Rather, it raises questions about their compatibility with contemporary social relations, constitutional principles, economic developments, and the requirements of modern legal practice.

Civil law reform, therefore, cannot be limited to replacing outdated terminology or reorganizing existing provisions. It must assess whether current legal norms adequately protect parties in civil relationships, respond to developments in economic activities, and provide fair and accessible dispute-resolution mechanisms. Similar challenges arise in civil procedural law. Indonesia's civil procedure framework has historically been influenced by regulations inherited from the colonial period, alongside national legislation and developments in judicial decisions. Reform must address access to justice, procedural fairness, the time and costs required to resolve disputes, the effective enforcement of judicial decisions, and the ability of individuals to obtain remedies for violations of their rights.

In criminal law, legal development reflects a different approach to reform. Law No. 1 of 2023 on the Criminal Code represents an important step toward replacing the former colonial-era Criminal Code with a national codification of criminal law. This reform reflects a longstanding effort to align criminal law with Indonesia's constitutional order and the evolving legal needs of society. Nevertheless, the enactment of new legislation does not automatically guarantee the achievement of criminal law reform objectives. Its impact depends on consistent law enforcement, institutional readiness, the protection of the rights of suspects and defendants, attention to victims' interests, and the proportionality of criminal sanctions. The success of reform must therefore be evaluated not only in terms of the novelty of legal norms but also through their implementation and social consequences (Ikhsan et al., 2025).

Developments in criminal procedural law also demonstrate the importance of accurately identifying the nature of legal reform. Law No. 8 of 1981 on Criminal Procedure is a product of national legislation rather than a colonial-era regulation. Nevertheless, it has faced demands for reform in response to developments in constitutional rights, criminal justice practices, and procedural safeguards. This demonstrates that legal reform is necessary not only to replace inherited colonial provisions but also to improve national legislation that no longer fully addresses contemporary needs (Kirunda et al., 2025).

These examples reinforce the argument that legal expediency should serve as one of the principal criteria for reviewing the national legal framework. The age of a regulation should not be the sole justification for replacing it. Reform must instead be based on an identification of deficiencies in existing provisions, a clear understanding of the objectives of the proposed changes, and an assessment of the benefits expected from the new regulatory framework. This approach can prevent legal reform from becoming merely symbolic. Newly enacted legislation may appear progressive yet reproduce the

weaknesses of previous regulations if it is formulated without adequate analysis of social needs, implementation capacity, and its consequences for society (Akmal & Ramadhan, 2023). National legal reform must therefore combine doctrinal consistency with substantive evaluation. Its success depends on whether legal changes improve protection, strengthen dispute resolution, expand access to justice, and establish a more effective framework for realizing constitutional rights (Akmal, 2025).

4. Public Participation and the Legitimacy of Lawmaking

The legitimacy of legislation is determined not only by the authority of the institution that enacts it but also by the quality of the lawmaking process (Akmal & Arlianti, 2022). In a constitutional democracy, public participation provides citizens with opportunities to express their needs, evaluate proposed regulations, and contribute relevant information to legislative decision-making. Law No. 12 of 2011 on the Formation of Legislation, as amended, establishes the legal framework for the preparation and enactment of legislation in Indonesia. Article 96 regulates public participation, including opportunities for members of the public to provide oral and written input during the legislative process. This provision reflects the principle that lawmaking should not be detached from the society whose conduct and interests will be affected by the resulting legal norms.

Meaningful public participation is essential to legal expediency because legislators must ensure that proposed regulations genuinely address social problems. Without adequate public involvement, legislation may be developed on the basis of incomplete information, overlook implementation challenges, or disregard the interests of groups with limited access to political decision-making (Suhendarto & Handoyo, 2025). Participation should not be measured solely by the number of consultations conducted or submissions received. Its substantive quality depends on the availability of accessible information, effective opportunities for affected groups to express their views, and reasonable explanations of how public input has been considered.

The process of enacting the Job Creation Law illustrates these concerns. In Decision No. 91/PUU-XVIII/2020, the Constitutional Court examined the formal constitutionality of the enactment of Law No. 11 of 2020 and declared its enactment conditionally unconstitutional, subject to requirements concerning legislative improvements and the lawmaking process. The decision emphasized the importance of meaningful public participation, including the right to be heard, the right to have opinions considered, and the right to receive explanations or responses. This case demonstrates that procedural legality and substantive policy objectives cannot be entirely separated. Even legislation intended to promote economic development must satisfy constitutional requirements governing its enactment (Akmal & Arlianti, 2022). Failure to meet these requirements may undermine public trust and create uncertainty regarding the status and implementation of the resulting legal norms (Akmal & Arlianti, 2022).

At the same time, public disagreement with a regulation does not automatically establish that the regulation is unconstitutional or entirely devoid of social expediency. Democratic decision-making inevitably involves competing interests and differing policy perspectives. The essential requirement is that legislative choices must be made through constitutionally valid procedures, supported by defensible reasoning, and remain subject to judicial review (Akmal & Arlianti, 2022). Public participation should serve as a means of improving the substantive quality of legislation rather than merely fulfilling administrative requirements. Public input can help identify alternative solutions, detect disproportionate burdens, and reveal consequences that might otherwise have been overlooked.

Participatory lawmaking should be strengthened through the publication of accessible draft legislation, the provision of adequate explanatory materials, consultations with affected groups, sufficient time for submitting feedback, and transparent explanations of how significant issues have been addressed. For proposed regulations with substantial social or economic implications, supporting analyses should also explain the expected benefits, implementation costs, distributional effects, and potential risks. These measures can strengthen the legitimacy and effectiveness of legislation. Society should therefore be regarded not merely as an object of legal regulation but also as a rights-bearing community entitled to participate in the development of the legal system (Kohl & Walenta, 2023).

If legal expediency is to serve as a primary substantive orientation in the formation of legislation, it must be translated into an analytical process that can be applied in practice. General assertions that legislation is enacted in the public interest are insufficient unless accompanied by

explanations of the problems to be addressed, the available regulatory alternatives, and the anticipated consequences of implementation. The first stage is to identify genuine public problems. Legislators must distinguish problems requiring legal intervention from those that could be addressed more effectively through administrative improvements, public service reforms, education, economic incentives, or other non-legislative instruments (Scott & Brown, 2011). The existence of a social problem does not automatically establish the need for new legislation.

The second stage is to formulate clear and assessable legislative objectives. Proposed regulations should explain the conditions they seek to improve and the legal mechanisms expected to produce those improvements (Haines, 2011; Radaelli & De Francesco, 2013). Overly broad and unmeasurable objectives make it difficult to evaluate a regulation's effectiveness after implementation. The third stage is to assess alternative regulatory and policy options. Legislators should consider whether the chosen instrument is appropriate to the problem and whether a less burdensome alternative could generate comparable benefits. This approach supports the principle of proportionality and reduces the risk of unnecessary regulation.

The fourth stage involves assessing justice and the distribution of regulatory impacts (Cecot & Hahn, 2024). The benefits and burdens of a regulation should be analyzed across different social groups, regions, economic sectors, and institutional settings. Particular attention should be given to the possibility that formally uniform rules may produce disproportionate effects on vulnerable groups. The fifth stage concerns legal certainty and implementation feasibility. Proposed provisions must be clear, consistent with the existing legal framework, and capable of being implemented by the responsible institutions. Ambiguous obligations, overlapping institutional authority, and unrealistic administrative requirements may prevent the realization of the intended benefits.

The sixth stage is the implementation of meaningful public participation (Firdaus et al., 2024). Consultation should begin at an early stage so that public input can influence the content of proposed legislation rather than merely confirm decisions that have already been made. Legislative records should also explain, where relevant, the principal concerns raised by the public and the reasons for accepting or rejecting particular proposals. The seventh stage is post-enactment evaluation. Legal expediency cannot be fully assessed before a regulation has been implemented because its actual effects may differ from initial expectations. Accordingly, evaluation mechanisms should examine whether the regulation has achieved its objectives, whether unintended burdens have emerged, whether its effects are unequal, and whether it has created new forms of legal uncertainty (Radaelli & De Francesco, 2013).

These stages are not intended to constitute a rigid formula that must be applied identically to every legislative proposal. The depth of analysis should correspond to the significance, complexity, and potential impact of the proposed regulation. Nevertheless, the stages provide a systematic framework for ensuring that legal expediency is assessed throughout the legislative process. This framework also requires institutional accountability. Legislatures and the government should have access to defensible legal, social, economic, and administrative analyses. Where necessary, independent experts and affected communities should be involved in evaluating the assumptions underlying proposed regulations.

The assessment of legal expediency must also extend beyond economic indicators. Budgetary savings, investment, and productivity may be relevant considerations, but they cannot serve as the sole basis for determining the legitimacy of legal norms. Evaluation must also account for constitutional rights, access to justice, social and environmental consequences, and the equitable distribution of public benefits. This reconstruction seeks to shift the understanding of lawmaking away from an approach that treats enactment as the principal indicator of success toward one that evaluates the relationship between societal needs, constitutional objectives, procedural legitimacy, legal clarity, and implementation outcomes.

CONCLUSION

Legal expediency should serve as a primary orientation in the formation of legislation in Indonesia. Law must not merely ensure legal certainty and consistent enforcement but also address societal needs, protect constitutional rights, and promote social welfare. Legal expediency should not be understood solely as the pursuit of happiness, as reflected in Jeremy Bentham's utilitarian philosophy, but should also encompass the equitable distribution of benefits, the protection of vulnerable groups, and the long-term consequences of legal implementation. Therefore, legal

expediency, justice, and legal certainty must operate in harmony to ensure that law delivers tangible benefits without disregarding the rights of society.

The formation of legislation should be based on societal needs, meaningful public participation, and assessments of its potential impact and implementation effectiveness. Although Indonesia's legal framework provides a foundation for protecting rights and promoting public welfare, the evaluation of legislative objectives and implementation requires further strengthening. Accordingly, the success of law should not be measured solely by the number of regulations enacted or their formal legal validity, but also by their capacity to provide protection, promote justice, and improve societal welfare.

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