

## Legislative Function of the House of Representatives of the Republic of Indonesia in the Transition Period of Lame Duck Session Perspective of Masalah Mursalah

Nurradian<sup>1</sup>, Saifullah<sup>2</sup>, Prayudi Rahmatullah<sup>3</sup>

<sup>1</sup>Universitas Islam Negeri Maulana Malik Ibrahim Malang, Indonesia. E-mail: nurradian463@gmail.com

<sup>2</sup>Universitas Islam Negeri Maulana Malik Ibrahim Malang, Indonesia. E-mail: saifullahdebab@yahoo.co.id

<sup>3</sup>Universitas Islam Negeri Maulana Malik Ibrahim Malang, Indonesia. E-mail: prayudirenggaing@uin-malang.ac.id

### Abstrak

The period where the change of leadership from the parliament and active officials to the newly elected officials, basically creates a time gap between the day of determining the election results and the day of inauguration of elected officials, this period is known as the lame duck period. This period is often used by officials and members of parliament to complete their work at the end of their term of office, so that sometimes the regulations and policies issued are not a few that get public rejection. This research discusses several things, namely the legislative function of the DPR during the lame duck period in the perspective of masalah mursalah, and the urgency of regulating the lame duck session in the Indonesian legal system. This research uses normative juridical research method by using statute approach, comparative approach, and conceptual approach. Sources of legal materials (primary, secondary, and tertiary) were collected by literature study and analyzed in a qualitative juridical manner. The results of the study are first, looking at the legislative function of the DPR during the lame duck period, which found that the DPR's legislative activities and achievements increased at the end of their term. This can be seen from the DPR's legislative activities in 2014 and 2019, where the number of bills that entered the National Legislation Program was more than the previous year and most of the laws passed were during the lame duck period. Second, from the perspective of masalah mursalah, the lame duck session, if utilized wisely, can be a tool for change in a short period of time. Based on this review, Indonesia needs restrictions in the submission of the national legislation mechanism by not allowing the production of laws during the lame duck session.

**Keyword:** Fungsi Legislasi; Lame Duck Session; Masalah Mursalah.

### INTRODUCTION

A lame duck session is an opportunity for lawmakers to pass legislation before their term officially ends. Any bills that have not been passed must be signed into law by the end of the year, otherwise they die and must be re-enacted in the next term. Sometimes things like this can

be a bad thing, as lawmakers can quickly pass controversial legislation without the attention of the public.<sup>1</sup>

There have not been many studies on the lame duck session in Indonesian. As a result, there is not much awareness about the issue of lame duck session. Lame duck session in Indonesian can be counted since the results of the legislative elections are known and the results are determined by the General Election Commission. In the lame duck period, leaders who are at the end of their term are still in office and can carry out policies that are less transparent and not in accordance with the interests of the people. In addition, policies taken by officials during the Lame Duck period are often considered ineffective and cannot be responded to quickly by the new government.

In Indonesia, a common problem during the lame duck period is the legislative activity of the House of Representatives (DPR), which suddenly increases rapidly at the end of its term. This increase in legislative activity is characterized not only by a high increase in legislative activities, but also by controversy when examined further regarding the substance of the legislation produced. For example, in the case of the replacement of members of the House of Representatives for the 2014-2019 period by members of the House of Representatives for the 2019-2024 period, between the post-election pause and the inauguration, there was an increase in the discussion of bills. There were 7 bills included in the National Legislation Program (Prolegnas), which is certainly very high when compared to the 2018-2019 session which only had 4 bills included in the National Legislation Program (Prolegnas).<sup>2</sup> In terms of increased legislative productivity, the DPR has been very productive compared to previous years. This increase in legislative activity often occurs during the last session before the inauguration of new members who have been elected but not yet sworn in.<sup>3</sup>

Cases in the history of Indonesian democracy that have occurred and proven the existence of this lame duck session, where legal products and legislation born during the lame duck period are not a few that get public rejection. Two of these cases include the DPR issuing Law No. 22/2014 on the Election of Governors, Regents and Mayors, which regulates the election of regional heads to be elected by the local DPRD and not through direct elections.<sup>4</sup> The law was widely criticized for being contrary to democratic principles. After the 2019 general election, the House of Representatives passed an amendment to Law No. 19/2019 on the Corruption Eradication Commission (KPK), which was passed before the inauguration of the elected members of the House of Representatives and promulgated three days before the inauguration of the President.

The change of leadership from parliament and active officials to newly elected officials basically creates a time gap between the day of the determination of election results and the day of inauguration of elected officials. Problems that then arise as a result of this are policies taken by officials who are still active at the end of their term of office, and legal uncertainty making policies that benefit certain parties. In addition, the problems caused by the Lame Duck

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<sup>1</sup> Jade Martinez, What Is Lame Duck And How Might It Effect Ohioans?, Diakses 7 Mei 2024, <https://www.acluohio.org/en/news/what-lame-duck-and-how-might-it-affect-ohioans>

<sup>2</sup> DPR-RI, *Buku Memori Dewan Perwakilan Rakyat Republik Indonesia Periode 2014-2019*, ed Sekretaris Jenderal DPR RI, 1 ed. (Jakarta: Dewan Perwakilan Rakyat Republik Indonesia, 2019) [www.dpr.go.id](http://www.dpr.go.id)

<sup>3</sup> Tatanegara, 18 September 2019, RUU Kontroversi di Masa Transisi, <https://tatanegara.ui.ac.id/ruu-kontroversi-di-masa-transisi/>

<sup>4</sup> Azeem Amedi, Maret 2022, Lame Duck: Penyalahgunaan Wewenang di Masa Jeda, <https://omong-omong.com/lame-duck-penyalahgunaan-wewenang-di-masa-jeda/>

session are making it difficult for people to determine who is responsible for policy outcomes, lack of transparency and hasty policy considerations.

In terms of analyzing this phenomenon, the lame duck event can also be analyzed from the point of view of Islamic law, one of which is by using the *maslahah mursalah* perspective. *Maslahah* itself means something that brings goodness or benefit, it can be emphasized that anything that contains benefits in it either to achieve benefits, goodness or to reject harm. Therefore, the purpose of this article is to analyze the legislative function of the House of Representatives of the Republic of Indonesia in the transition period of the lame duck session from the perspective of *maslahah mursalah* and restrictions on the submission of the national legislation mechanism during the lame duck period.

The introduction should be clear and provide the problem to be addressed in the manuscript. Before the objectives, the authors should provide adequate background, and a very brief survey of the literature to note the existing, to show which is the best of the previous studies, to show the main of the previous studies, to show what you want to achieve (to overcome those limitations), and to show the scientific benefits or novelty of the paper.

## **METHOD**

This article uses normative juridical research or library law research, which is research that focuses on examining the application of positive legal rules or norms. While the research approach used in the preparation of this article is a statutory approach, comparative approach, and conceptual approach, with primary data sources using Law Number 12 of 2011 concerning the Formation of Legislation, Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional Representative Council, and Law Number 7 of 2017 concerning General Elections. Secondary data includes books, legal literature, journals, and articles related to the lame duck session phenomenon. The data collection technique uses document study (library research).

## **RESEARCH RESULTS**

### **The Legislative Function of the House of Representatives in the Transition Period of the Lame Duck Session in the Perspective of *Maslahah Mursalah***

In Indonesia, in principle, the function of forming legislation is held by the House of Representatives, the function of government is held by the President, and the judicial function is carried out by the Supreme Court and the Constitutional Court.<sup>5</sup> Legislation in Indonesia has given the power to formulate laws to the House of Representatives, while still giving the government the right to submit bills to the House. The purpose of the policy of shifting power in law-making to the DPR is based on the desire to implement a democratic system of government based on the concept of distribution of power and the establishment of checks and balances mechanisms between State institutions.<sup>6</sup>

Philosophically, the legislative function of the DPR has a significant influence in determining the livelihood of the people. Every law produced is binding on the people of Indonesia without exception. This is where the participation of the DPR in carrying out the legislative function becomes a major highlight considering that this institution carries the responsibility as a forum

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<sup>5</sup> Susi Dwi Harijanti, *Pemilu, Demokrasi Dan Reformasi Hukum*, (Jakarta: STH Indonesia Jentera, 2023), 45.

<sup>6</sup> Dandi Saputra dkk, "Analisis Fungsi Legislasi Dewan Perwakilan Rakyat Republik Indonesia Ditinjau Dari Pemberlakuan Trias Politica", *Journal Of Sharia And Law*, No.2(2023):352-353

for democracy and public participation in governance.<sup>7</sup> The House of Representatives is a legislative body that is nothing but a political institution consisting of various representatives of political parties that are believed to be a forum for the aspirations of the people. Judging from the quiet law on the composition and position of the MPR, DPR, DPD, and DPRD, the DPR RI has 3 functions, namely, the legislative function, the budget function and supervision.<sup>8</sup> The shift of the legislative function from the President to the DPR after the amendment of the Constitution of the Republic of Indonesia Year 1945 has implications for the magnitude of the DPR's authority in lawmaking.<sup>9</sup> With the amendment of the 1945 Constitution, there was a shift in constitutional rules regarding lawmaking. The provision of Article 5 paragraph (1) has been amended so that the provision becomes "The President has the right to propose draft laws to the House of Representatives". Similarly, Article 20 paragraph (1) which after being amended states "The House of Representatives holds the power to form laws". Paragraph (2) then explains "Each draft law is discussed by the House of Representatives and the President for joint approval."<sup>10</sup> The amendment of Article 5 paragraph (1) and Article 20 paragraph (1) of the 1945 Constitution brought important changes in the Indonesian constitutional system, especially in terms of the power to form laws. This milestone change was marked by a change in power from the President to the DPR, which is an access to constitutional reform that occurred in 4 stages by regulating various constitutional content materials.<sup>11</sup>

In the context of the roles and functions of the DPR, these changes have had implications for increasing the roles and responsibilities of the DPR in the field of lawmaking, both qualitatively and quantitatively. With regard to the implementation of the DPR's legislative function, it has become a common understanding that most of its bills come from the government, especially during the New Order.<sup>12</sup> According to Jimly Assiddiqie, that the constitutional practice where the government tends to dominate in proposing draft laws compared to the legislature, is generally caused by several things, including:

1. The government has the most information or knows best about what, when, and why a policy should be regulated by law. In addition, members of the legislature who are also politicians are not required to have qualifications as drafters of laws.
2. Experts who need to be outlined in the law are mostly within the government.
3. The government has the largest supply of funds or budget to finance everything related to research activities and drafting laws.<sup>13</sup>

In addition, the slow movement of the DPR compared to the government in preparing draft bills is also due to two reasons:

1. The DPR tends to focus more on its oversight function.

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<sup>7</sup> Galang Asmara dkk, "Konsep Penguatan Fungsi Legislasi Dewan Perwakilan Rakyat Republik Indonesia Pasca Amandemen UUD NRI Tahun 1945", *Jurnal Kompilasi Hukum*, No.2(2019):195.

<sup>8</sup> Montisa Mariana, "Kedudukan Dan Fungsi Dewan Perwakilan Rakyat di Dalam Proses Legislasi Pasca Amandemen UUD 1945", *Jurnal Hukum*:6.

<sup>9</sup> Galang Asmara dkk, "Konsep Penguatan Fungsi Legislasi Dewan Perwakilan Rakyat Republik Indonesia Pasca Amandemen UUD NRI Tahun 1945" : 202.

<sup>10</sup> Sunarto, "Fungsi Legislasi DPR Pasca Amandemen", *Jurnal Integralistik*, No.1(2017):62.

<sup>11</sup> Sugiman, "Fungsi Legislasi DPR Pasca Amandemen UUD 1945", *Jurnal Ilmiah Hukum Dirgantara*, No.2(2020):177.

<sup>12</sup> Sunarto, "Fungsi Legislasi DPR Pasca Amandemen", *Jurnal Integralistik*:64.

<sup>13</sup> Jimly Asshiddiqie, *Perihal Undang-Undang*, (Jakarta: Konstitusi Press,2006),283.

2. The DPR has not opened up more space for the community and non-governmental organizations as well as academics from universities to collaborate in preparing draft bills.<sup>14</sup>

In addition, the approval of the DPR is also different from the approval of the President, where the DPR's approval of the bill needs to be measured carefully. The approval of the DPR cannot be equated with the approval of the chairman of the DPR, let alone the chairman of a faction, because the DPR is a representative institution filled with members and each member is a state official who has an equal position with each other.<sup>15</sup> Each member of the DPR is elected and has direct legitimacy from the people. The existence of chairpersons, leaders, and faction heads in the DPR are mere administrative organs. In decision-making, the vote of one member of the DPR has the same value as the vote of the chairperson of the DPR.<sup>16</sup>

To ensure that every decision made by the DPR in the formation of laws is representative and represents the will and decision of each member of the DPR, the Legislative Procedure Act provides for quorum requirements. Therefore, the quorum provision must be seen not only as a requirement of the proceedings, but also as a prerequisite for decision-making.<sup>17</sup> If a decision is made by a session that has no quorum, then the decision is unrepresentative, formally flawed, and does not represent the meaning of "DPR approval" contained in Article 20 paragraph (1) of the 1945 Constitution.

These things are prone to happen during the transition of power and the replacement of members of the DPR who are at the end of their term of office with members of the DPR who won the general election, or what is commonly known as the lame duck period. The lame duck period is the period after a general election, in which the old members of parliament are at the end of their term of office, while new members of parliament are elected but not yet inaugurated.<sup>18</sup>

The definition of a lame duck session refers to a period when a person in power has entered the final stage or term of his or her office, and a replacement member has been elected or is about to be elected.<sup>19</sup> A *lame duck session* is an opportunity for lawmakers to pass legislation before their term officially ends. Any bills that have not been passed must be signed into law by the end of the year, otherwise they die and must be re-enacted in the next term. Sometimes things like this can be a bad thing, as lawmakers can quickly pass controversial legislation without the attention of the public.<sup>20</sup>

In Indonesia, there have not been many studies on the lame duck session itself. As a result, there is not much awareness about the issue of lame duck session. The lame duck session in Indonesian can be counted since the results of the legislative general election are known and the results are determined by the General Election Commission. This can be seen from the previous general elections, namely the 2014 legislative elections held on April 9, 2014 and determined

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<sup>14</sup> Patrick Zeigenhain, *The Indonesian Parliament and Democratization Book: The Indonesian Parliament And Democratization*, Institute Of Southeast Asian Studies: 47-48.

<sup>15</sup> Susi Dwi Harijanti, *Pemilu, Demokrasi Dan Reformasi Hukum*, 25.

<sup>16</sup> Susi Dwi Harijanti, *Pemilu, Demokrasi Dan Reformasi Hukum*, 26.

<sup>17</sup> Susi Dwi Harijanti, *Pemilu, Demokrasi Dan Reformasi Hukum*, 27.

<sup>18</sup> Mahruzar Hasibuan, Irwansyah, "Evaluasi Implementasi Periode "Lame Duck" Di Indonesia Sejak Kemerdekaan Republik Indonesia Tahun 1945 Hingga Saat ini", *Jurnal EDUCATIO*, No.2(2023) : 716.

<sup>19</sup> Candace Lehman, Stephen Benz, *Lame Duck in Politics*[Definition, Amendment & Famous Outcomes, Diakses 7 Mei 2024, <https://study.com/academy/lesson/lame-duck-in-politics-definition-lesson-quiz.html>

<sup>20</sup> Jade Martinez, *What Is Lame Duck And How Might It Effect Ohioans?*, Diakses 7 Mei 2024, <https://www.acluohio.org/en/news/what-lame-duck-and-how-might-it-affect-ohioans>

the vote acquisition and elected candidates on May 9, 2014. This means that members of DPR and DPD have entered the lame duck period starting from May 9, 2014 until the inauguration day of the new DPR members on October 1, 2014. Another example can also be seen in the implementation of the 2019 general election which was held on April 9 to May 21, 2019, which means that the lame duck period in 2019 is May 21 to September 30, 2019. Despite entering the lame duck period, the DPR still organizes and decides on many laws.<sup>21</sup>

Towards the end of the last session, the frequency of discussion of bills increased, not only bills that required level II discussions, but also increased discussion of bills that entered the plenary session to be decided as DPR initiative bills.<sup>22</sup> The House of Representatives seems to be in a hurry at the end of its term to pass a backlog of bills.

A case in point is when the House of Representatives passed Law No. 19/2019 on the KPK, which was amended before the inauguration of the elected members of the House of Representatives and promulgated three days before the President's inauguration. The enactment of the KPK Law is arguably problematic from an ethical standpoint because it was enacted at the end of a term in which most DPR members were in a lame duck situation. By the time the draft revision of the KPK law was hastily discussed and passed, the 2019 general elections had already been completed and resulted in newly elected members of the House of Representatives who would replace the old or retiring members of the House.<sup>23</sup>

In the logic of democracy, members of the DPR who are not re-elected have lost their democratic legitimacy, which means they should not propose, authorize, or make decisions that have a broad impact on the people.<sup>24</sup> The draft revision of the KPK law has been highly contentious and met with widespread public rejection. This can be seen by the repeated postponement of the discussion by the DPR and the government. As such, it is appropriate that a bill with such a high degree of social complexity should be discussed by new members of the House of Representatives and during a new session, rather than being rushed through during a lame duck session.<sup>25</sup>

Furthermore, in 2024, which is an election year, the spotlight in the development of DPR legislative activities in the lame duck session is on the planning of the fourth amendment to the Constitutional Court Law, which is currently being discussed. As it is known that the Constitutional Court as a judicial institution has a final and binding decision, the Constitutional Court as a legal institution that can determine the direction of the nation and state through its decisions.<sup>26</sup>

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<sup>21</sup> Badan Pengkajian MPR RI, *Evaluasi Terhadap Undang-undang Dasar Negara Republik Indonesia Tahun 1945*, (Jakarta: Badan Pengkajian MPR RI, 2021), 152-153.

<sup>22</sup> Husein Kurnia Hoetomo, Pengaruh Lame Duck Session Terhadap Demokrasi Di Indonesia, Diakses 7 Mei 2024, <https://hmihukumbrwajaya.com/artikel-detail-12-pengaruh-lame-duck-session-terhadap-demokrasi-di-indonesia>

<sup>23</sup> Susi Dwi Harijanti, *Pemilu, Demokrasi Dan Reformasi Hukum*, 27.

<sup>24</sup> Rivka Well, "Resurrecting Legislation, *International Journal of Constitutional Law*", No.2(2016): 530. <https://academic.oup.com/icon/article/14/2/518/2526807>

<sup>25</sup> Susi Dwi Harijanti, *Pemilu, Demokrasi Dan Reformasi Hukum*, 28.

<sup>26</sup> Saifullah, Mustafa Lutfi, Abdul Aziz, "Transformasi Nilai-Nilai Hukum Islam Dalam Yurisprudensi Putusan MK Perspektif Teori Hukum Integratif", *De Jure: Jurnal Hukum Dan Syariah*, No.1(2020):2.

The discussion of the fourth amendment to the Constitutional Court Law is considered to take advantage of the momentum of the lame duck transition to immediately ratify the revision or amendment of the law.<sup>27</sup>

The Center for Law and Policy Studies (PSHK) reveals several reasons why the draft fourth amendment to the Constitutional Court Law is considered controversial. First, the planning of the fourth amendment to the Constitutional Court Law is not listed in the long list of Prolegnas 2020-2024 programs, nor is it listed in the 2024 priority Prolegnas or the 2024 open cumulative list. Second, the discussion at level 1 was carried out silently and hastily. Third, PSHK considers that the public participation channel is closed and the draft law document cannot be accessed and the main discussion of the fourth amendment to the Constitutional Court Law is not widely publicized.<sup>28</sup> Furthermore, the discussion of this law is in the lame duck period, which leads to the transition period of the new period of government to immediately ratify the fourth amendment to the Constitutional Court Law. According to PSHK, significant constitutional decisions should not be taken in a lame duck session, because it has the potential to cause problems with the legitimacy of decisions. The next bill that has become a polemic is the broadcasting bill, which is the revision of Law No.32 of 2002 on Broadcasting or Broadcasting Bill. The draft, which is currently in the Legislation Body (Baleg) of the House of Representatives, is considered to hamper press freedom in Indonesian.<sup>29</sup>

Parliament's legislative activity increases at the end of the term and many laws are passed by the House during the lame duck period.<sup>30</sup> In 2014 there were 31 bills in the lame duck session with 11 open cumulative bills. Then in 2019 the number of priority bills increased compared to the previous year with 10 open cumulative bills. In addition, in 2024, the priority Prolegnas has been set at 47 bills and 10 of them are new proposed bills. With the current number, the DPR has two main tasks, in addition to completing the Priority Prolegnas, it must also participate in electoral contests because only 11% of the current DPR members are not running for re-election.<sup>31</sup>

Regarding the relationship between *masalah mursalah* and the legislative function of the House of Representatives during the lame duck period, as has been understood that the institutionalization of Islamic law is to realize human benefits, namely to achieve benefits as well as to reject the emergence of harm. Thus, the juridical basis of this concept is the reality of social life, where Islamic law in various regulations and laws leads to the realization of benefits, namely what is in the interest and what is needed by humans in life.<sup>32</sup>

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<sup>27</sup> Santi Dewi, 26 Pakar Kirim Surat Terbuka Untuk Puan Dan Jokowi, Tolak Revisi UU MK, Diakses 28 Mei 2024, <https://www.idntimes.com/news/indonesia/santi-dewi/26-pakar-kirim-surat-terbuka-untuk-puan-dan-jokowi-tolak-revisi-uu-mk>

<sup>28</sup> Amelia Rahima Sari, Amirullah, PSHK Ungkap 5 Masalah Prosedural Revisi UU MK, Salah satunya Dibahas Secara Senyap, diakses 28 Mei 2024, <https://nasional.tempo.co/amp/1868393/pshk-ungkap-5-masalah-prosedural-revisi-uu-mk-salah-satunya-dibahas-secara-senyap>

<sup>29</sup> Tiara Juwita dan S. Dian Andryanto, 3 RUU Dalam Sorotan Publik: RUU Penyiaran, RUU MK, Dan RUU Kementerian Negara, Diakses 29 Mei 2024, <https://nasional.tempo.co/read/1869417/3-ruu-dalam-sorotan-publik-ruu-penyiaran-ruu-mk-dan-ruu-kementerian-negara>

<sup>30</sup> Badan Pengkajian MPR RI, *Evaluasi Terhadap Undang-undang Dasar Negara Republik Indonesia Tahun 1945*, 152.

<sup>31</sup> Rico Novianto, Menanti Masa "Transisi" Dalam Aktivitas Legislasi, detiknews, diakses 29 Mei 2024, <https://news.detik.com/kolom/d-7201204/menanti-masa-transisi-dalam-aktivitas-legislasi>

<sup>32</sup> Muhammad Rusfi, Validitas Maslahat Al-Mursalah Sebagai Sumber Hukum, *Jurnal Al-Adalah*, No.1(2014): 67

From the above explanation, it can be seen that the main elements in *maslahah mursalah* are as follows:

1. There is a benefit contained in an event or case that will be determined by the law through *maslahah mursalah*;
2. The benefit contained in the event or case must not conflict with *maqasid al-shari'ah* (the purpose of sharia);
3. There is no clear and unequivocal text that motivates to realize the benefit and there is also no text that commands ignoring it.<sup>33</sup>

That way the main point of *maslahah mursalah* is the absence of a *nash* regarding an event in which there is a benefit that is not contrary to the objectives of sharia.<sup>34</sup> In other words, the *nash* does not discuss the benefit either in the form of establishing its law, ordering it to be realized, or prohibiting attention to it. Thus, the legislative function of the DPR in this context is to form laws that pay attention to the benefit in accordance with the concept of *maslahah mursalah*. Parliament, as a legislative body, is responsible for forming laws that are in accordance with the interests and conditions of society. In carrying out its legislative function, Parliament needs to consider *maslahah mursalah* as a basis for creating relevant and effective legislation. *Maslahah* is to bring convenience and reject misfortune, every law established on the basis of *maslahah* can be reviewed from three aspects, namely:

1. Seeing the *maslahat* contained in the case in question;
2. Seeing the nature that is in accordance with the objectives of *shara'* (*al-washf al-munasib*) which requires a determination of a law in order to create a benefit;
3. Seeing the process of determining a law on a *maslahah* which is shown by a special proposition; d. Seeing the process of determining a law on a *maslahah* which is shown by a special proposition.<sup>35</sup>

This section is the most important part of your article. The analysis or research results should be clear and concise. The research results should summarize the (scientific) findings rather than provide the data in great detail. Please highlight the differences between your results or findings and previous publications by other researchers.

### **Restrictions on Prolegnas Submission Mechanism in the *Lame Duck* Period**

*Lame duck* session is often associated with the transition of power after the election, in Indonesia itself the regulations governing general elections are Law No.7 of 2017 concerning General Elections Jo. Government Regulation in Lieu of Law Number 1 of 2022 concerning Amendments to Law Number 7 of 2017 concerning General Elections. In general, Law No. 7 of 2017 does not explicitly regulate the time limit for the transition of government after the election is held, but only regulates the principles of implementing elections.<sup>36</sup>

In the provisions of Article 167 paragraph (7) of Law No.7/2017, it is said that the time limit for determining the elected candidate pair in the election of the President and vice president is

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<sup>33</sup> Elva Imeldatur Rohmah, "Fungsi Legislasi DPR Dan DPD Perspektif *Maslahah Mursalah* (Implikasi Putusan Mahkamah Konstitusi Nomor 92/PUU-X/2012)", *Jurnal Ummul Qura*, No.1(2018):23.

<sup>34</sup> Elva Imeldatur Rohmah, "Fungsi Legislasi DPR Dan DPD Perspektif *Maslahah Mursalah* (Implikasi Putusan Mahkamah Konstitusi Nomor 92/PUU-X/2012)" :23.

<sup>35</sup> Nur Asih, Hubungan Dewan Perwakilan Rakyat(DPR) Dan Dewan Perwakilan Daerah(DPD) Dalam Menjalankan Fungsi Legislasi Perspektif *Maslahah Mursalah*, (Undergraduate thesis, UIN Antasari Banjarmasin, 2022), 60.

<sup>36</sup> Nuryadin, "Urgensi Pengaturan *Lame Duck* Session (Sesi Bebek Lumpuh) Dalam Lembaga Dewan Perwakilan Rakyat Republik Indonesia" : 1810.

no later than 14 days before the end of the term of office of the president and vice president.<sup>37</sup> Then for the determination of elected legislative candidates, it is not explicitly regulated regarding the time period before the expiration of the term of office of the previous legislator to then be able to determine the elected legislative candidates.

Regarding the time period from the transition of power of the old legislator to the elected legislator. The law is limited to explaining the implementation of elections in general, but the law regulates the timing of elections which can be said to be a benchmark time in determining the end of the term of office of legislative members. The rules regarding the implementation time are contained in Article 167 paragraphs (1), (2), and (3) of Law Number 7/2017 concerning General Elections, which stipulates that the implementation of elections is carried out every five years, the determination of the day, date, and time of voting is carried out simultaneously on holidays or days that are closed nationally and the implementation time is determined by a Decree of the General Election Commission (KPU).<sup>38</sup> When compared to the United States, the regulation of this lame duck session in Indonesia has not received the attention it deserves, so the rules regarding this period have not been regulated in the legal system in Indonesia.

The United States has paid attention to the lame duck period by holding the 20th constitutional amendment, this amendment became known as the lame duck amendment.<sup>39</sup> With this amendment, the United States has shortened the time it takes to change officers or members of Congress to avoid the impact of lame duck events. The 20th Amendment was generally designed to remove the excessively long period of time for a defeated president or congressman to remain in office after an unsuccessful bid for re-election.<sup>40</sup> In the period after 1998, congresses and senates generally maintained election breaks of the same or similar duration. In the last three sessions, the Senate continued to convene later than Congress before the election, resulting in shorter electoral lulls. On average, these lulls lasted 38 days and began in early October. However, in six of the last eight congresses at least one chamber began to adjourn in mid or late September.<sup>41</sup> For this reason, it is necessary to have a policy urgency that regulates this lame duck period.

The regulation of the lame duck session aims to avoid attempts to manipulate or pass regulations that do not meet the standards of substance and public interest. The government and related institutions must play an active role in establishing clear guidelines and regulations to ensure that the legislative process continues to run with integrity and provide quality results. Of course, the formation of laws must not ignore the formal aspects, one of which is public participation, which cannot simply be a formality without meaning. Public participation in the formation of laws must be meaningful participation.<sup>42</sup>

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<sup>37</sup> Pasal 167 Ayat (7) Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum, Lembaran Negara Republik Indonesia Tahun 2017 Nomor 182, Tambahan Lembaran Negara Republik Indonesia Nomor 6109.

<sup>38</sup> Pasal 167 Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum, Lembaran Negara Republik Indonesia Tahun 2017 Nomor 182, Tambahan Lembaran Negara Republik Indonesia Nomor 6109.

<sup>39</sup> Jeffery A. Jenkins, Timotius P. Nokken, "Contemporary Lame-Duck Congressional Sessions: Review and Assessment with Special Emphasis On The 110<sup>th</sup> Congress", (2008) : 2.

<sup>40</sup> Brian P. Smentkowski, Twentieth Amendment United states Constitution, *Britannica*, Diakses 3 Mei 2024, <https://www.britannica.com/topic/Twentieth-Amendment>

<sup>41</sup> Congressional Research Service, *Lame Duck Session of Congress, 1935-2020 (74<sup>th</sup>-116<sup>th</sup> Congresses)*, (2022):10.

<sup>42</sup> Fahmi Ramadhan Firdaus, "Buru-buru Revisi UU Di Masa "Bebek Lumpuh", *Kompas.com*, Diakses 19 Juni 2024, <https://nasional.kompas.com/read/2024/06/19/05491401/buru-buru-revisi-uu-di-masa-bebek-lumpuh?page=all>

Restrictions on the submission of bills during the lame duck session need to be integrated in the national legislation mechanism, namely by limiting the submission of bills and the ratification of bills that have not entered a certain stage in the series of stages of national legislation in the DPR and must be continued to the next DPR period and restrictions on the use of other powers attached to the position. Furthermore, the prohibition of the discussion of the bill by members of parliament who are at the end of the period both DPR and DPD since the day of voting until the inauguration of new members of the general election results. This is to avoid any laws or strategic decisions being taken by parliament when they no longer have full legitimacy.<sup>43</sup> Limiting the submission in the national legislation mechanism is necessary to avoid the impact of this lame duck session. The discussion of a draft bill needs to be limited for legislators who are in the lame duck session, because the implications of the lame duck session will not occur because the discussion of the draft law has been completed before the elections were held or before entering this period. Proposed new requirements in the national legislation mechanism with restrictions on the submission of bills and the authority of legislators to pass laws at the last second.

## CONCLUSION

The legislative function of the House of Representatives during the lame duck period often experiences an increase in legislative activity, the legislative activity of the House of Representatives increases at the end of the term of office and many laws are passed by the House of Representatives during the lame duck period. The House of Representatives seems to be in a hurry when it is in its final period of office to pass bills that are piling up. Apart from the increase in legislative achievements, legislation issued by the DPR during the lame duck period sometimes causes rejection and controversy. In the perspective of *maslahah mursalah*, the legislative function of the House of Representatives in this context is to form laws that pay attention to the public good in accordance with the concept of *maslahah mursalah*. In carrying out its legislative function, Parliament needs to consider *maslahah mursalah* as a basis for creating relevant and effective legislation. *Maslahah* is to bring convenience and reject misfortune.

Providing new requirements in the process of submitting bills can also be a solution in dealing with this period, where the process of submitting bills is not allowed before the change of legislative members who have been elected. Thus, the national legislation mechanism can be said to have been closed before the election, the lame duck session has a high political content that affects the quality of the production of the law. Therefore, it is necessary to limit the time for the submission of draft laws before the end of the DPR period or before the holding of elections. Therefore, limiting the submission of the national legislation mechanism by not allowing the production of laws in the lame duck period.

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<sup>43</sup> Badan Pengkajian MPR RI, *Evaluasi Terhadap Undang-undang Dasar Negara Republik Indonesia Tahun 1945*, 153.

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