

ELECTORAL DEMOCRACY, HIDDEN OLIGARCHY: A MULTI-THEORETICAL ANALYSIS OF THE LEGITIMACY OF THE FINANCIAL-SECTOR OMNIBUS LAW, LAW NUMBER 4 OF 2023
(A Study of Political Configuration, Critical Legal Studies, and Oligarchy Theory Following the Enactment of Law Number 4 of 2026 on the Amendment to the Financial Sector Development and Strengthening Law)



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Abstract

The enactment of Indonesia's financial-sector omnibus law, Law Number 4 of 2023 on the Development and Strengthening of the Financial Sector (P2SK Law), later amended through Law Number 4 of 2026, presents a theoretical paradox: formal electoral democracy did not automatically produce responsive law as predicted by Mahfud MD's legal-policy theory. This study analyzes that legitimacy problem through a multi-theoretical framework comprising legal-policy theory (Mahfud MD), constitutionalism (Jimly Asshiddiqie), dignified-justice theory (Teguh Prasetyo), state theory (Abu Daud Busroh), oligarchy theory (Jeffrey Winters), and Critical-Legal-Studies. Employing a normative-juridical method with a library-research approach, the study examines statutes, Constitutional Court rulings, and scholarly literature. The findings show that the low public-participation score in the formation of the P2SK Law (8.91 out of 100, per the Indonesian Parliamentary Center) is not an anomaly but confirms Dahl's and Diamond's thesis that electoral democracy can operate without adequate liberal substance. Winters's oligarchy theory supplies the missing causal mechanism: Indonesia, as a civil oligarchy since 1998, allows capital elites' material power to dominate policy substance through lawful institutional channels without displacing formal democratic structures. Critical Legal Studies complements this by exposing how normative indeterminacy and technocratic narratives conceal distributive choices behind seemingly neutral legal language. The 2026 amendment is analyzed as evidence of the structural limits of Asshiddiqie's constitutionalist theory, which remains reactive and does not reach material or transnational power actors. The study recommends strengthening meaningful public-participation mechanisms and greater transparency regarding the relationship between domestic policy and multilateral institutional agendas in future financial-sector legislation.

Keywords: Omnibus Law, Oligarchy, Critical Legal Studies, Legal Policy, Financial Sector Law

INTRODUCTION

Since the Seventh President first announced it in his inauguration address on 20 October 2019, the omnibus law has become a central instrument of Indonesia's regulatory reform. Following Law Number 11 of 2020 on Job Creation, a similar approach was applied to the financial sector through Law Number 4 of 2023 on the Development and Strengthening of the Financial Sector (hereinafter the P2SK Law), which integrated seventeen sectoral statutes into a single instrument comprising 27 chapters and 341 articles.

A significant development occurred when the House of Representatives passed the Bill on Amendments to the P2SK Law during the 20th Plenary Session of the Fifth Sitting Period 2025–2026 on 4 June 2026, which was subsequently promulgated on 17 June 2026 as Law Number 4 of 2026 (DPR RI, 2026; Yudi, 2026). Deputy Chairman of Commission XI, Mohamad Hekal, explicitly stated that the revision was driven by the need to follow up on Constitutional Court rulings and to optimize the role of the financial sector, encompassing seventeen substantive points of change (DPR RI, 2026).

Among the substantive changes introduced by Law Number 4 of 2026 are the institutional strengthening of the Deposit Insurance Corporation (LPS), the Financial Services Authority (OJK), and Bank Indonesia; performance-evaluation mechanisms for these three authorities by the DPR; stock-exchange demutualization; expanded OJK authority over carbon exchanges and crypto assets; the establishment of a task force to combat illegal online lending and online gambling; provisions on debt instruments issued by the Daya Anagata Nusantara Investment Management Agency (Danantara); strengthened governance of financial conglomerates through mandatory identification of controlling shareholders and ultimate beneficial owners; and the introduction of a restorative-justice mechanism for resolving financial-sector cases under Article 278F (Admin IKPI, 2026; DA, 2026; Prastya, 2026).

Notwithstanding this technical complexity, the central problem addressed in this study concerns the democratic legitimacy of the law-making process itself. The Legislative Performance Index measured by the Indonesian Parliamentary Center in 2021 recorded a public-participation score of only 8.91 out of 100, the lowest of all indicators assessed (Sanjaya & Rasji, 2021). This finding raises a fundamental theoretical question: if Indonesia is a democratic state with an elected DPR and an elected President, why did the formation of a strategic statute such as the P2SK Law fail to exhibit the responsive character predicted by Mahfud MD's legal-policy theory, which holds that democratic political configurations produce law that is responsive to the people's needs? (MD, 2017).

To address this problem, the study employs a multi-theoretical framework comprising the legal-policy theory of Mahfud MD, the constitutionalism of Jimly Asshiddiqie, the dignified-justice theory of Teguh Prasetyo, the state theory of Abu Daud Busroh, the oligarchy theory of Jeffrey Winters, and Critical Legal Studies. Combining these six frameworks is intended to produce a comprehensive diagnosis of why formal electoral democracy does not automatically yield responsive law, and how informal material power can shape public-policy substance behind the facade of lawful democratic procedure.

In light of the foregoing, this study aims to: (1) analyze the democratic-legitimacy problem of the P2SK Law and its 2026 amendment through six legal-political and political-economy frameworks; (2) evaluate the explanatory strengths and weaknesses of each theory;

and (3) formulate theoretical implications and policy recommendations for future financial-sector legislation.

REVIEW OF LITERATURE

In Polyarchy: Participation and Opposition, Dahl formulated democracy as consisting of two independent dimensions: contestation, namely free and fair political competition, and inclusiveness/participation, namely the extent to which citizens are genuinely involved in the political process. A state may satisfy the dimension of contestation without adequately satisfying the dimension of participation, thereby falling short of the ideal status of polyarchy (Dahl, 1971).

Building on this framework, Diamond articulated the growing gap between the electoral form and the liberal substance of democracy. Elsewhere, Diamond (2017) explicitly placed Indonesia among electoral democracies showing signs of decay despite procedurally functioning elections (Diamond, 1999).

According to Mahfud MD, legal policy is the official policy line on law to be enacted in order to achieve state objectives. Three propositions underlie his theory: law as the determinant of politics, politics as the determinant of law, and an interdependent relationship between the two. Democratic political configurations, he argues, produce responsive/populist law, whereas authoritarian configurations produce orthodox, conservative, or elitist law (MD, 2017).

For Asshiddiqie, the constitution functions as a constraint upon the political process, applying formal (procedural compliance) and material (substantive conformity with the 1945 Constitution, including Article 33 on economic democracy) review standards. This approach has been empirically validated through Constitutional Court Decision Number 91/PUU-XVIII/2020, which declared the Job Creation Law conditionally unconstitutional owing to procedural defects in public participation (Asshiddiqie, 2010, 2020).

A different route is taken by Prasetyo, who developed the dignified-justice theory (the Dignified Justice Theory), synthesizing natural law, legal positivism, and utilitarianism within a Pancasila-based framework of substantive justice, requiring that law honor human dignity in its entirety rather than merely satisfy procedural certainty (Prasetyo, 2019).

A more elementary framework is supplied by Busroh in the classic text *Ilmu Negara* (State Theory), supplies the most elementary framework: the functions of the state (defense, welfare, justice, regulation) and the elements of the state (people, territory, sovereign government) as benchmarks for assessing whether a given legal product remains consistent with the nature and purpose of the state (Busroh, 2015).

Departing from these normative approaches, Winters formulated an oligarchy theory defining oligarchs as actors who command concentrations of material wealth deployable to defend or enhance that wealth and exclusive social position (Winters, 2011), the politics of wealth defense by materially endowed actors. Winters advances the central thesis that oligarchy is not displaced by democracy but rather is fused with it. Winters and Page reinforce this proposition: oligarchy is not inconsistent with democracy (Winters & Page, 2009). Winters further develops a typology of four oligarchy types along two axes (armed/disarmed and individual/collective): warring, ruling, sultanistic, and civil oligarchy,

with post-1998 Indonesia categorized as a civil oligarchy operating through lawful institutional channels rather than direct coercion (Winters, 2011).

Taking yet another angle, Critical Legal Studies, as pioneered by Kennedy (1997) and Unger (1986), rejects any rigid separation between legal and political argument (law is politics), and advances the indeterminacy thesis (Kennedy, 1997; Unger, 1983), that authoritative legal materials do not genuinely determine the outcome of legal disputes in any objective sense, but remain open to interpretation shaped by interests and existing power relations (LawTeacher, 2018). Kennedy further develops a critique of rights, contending that legal-rights argumentation ultimately reduces to policy argumentation open to political consideration (Kennedy, 1997).

Within this body of scholarship, Prior research on the P2SK Law has examined OJK's institutional dimensions (Syafitri, 2023), the transformation of financial-sector regulation (Putri & Malau, 2026), and legitimacy through Habermasian and critical-legal perspectives (Ekarini et al., 2025). However, a study specifically integrating Winters's oligarchy theory with Indonesia's domestic legal-policy theories, while also incorporating the 2026 amendment into Law Number 4 of 2026, has not yet been extensively undertaken, a gap this article seeks to fill.

RESEARCH METHOD

This study employs a normative-juridical method with a library-research approach, as the primary object of inquiry is a legal product (the P2SK Law and its amendment) analyzed for its conformity with a specified theoretical framework, rather than empirical field-based social behavior.

Data sources comprise primary legal materials (Law Number 4 of 2023, Law Number 4 of 2026, and Constitutional Court Decisions Number 91/PUU-XVIII/2020, Number 59/PUU-XXI/2023, and Number 85/PUU-XXII/2024) and secondary legal materials (books, national and international journal articles, official reports from the DPR, the Ministry of Finance, and OJK, as well as verified official media reporting).

Data collection was conducted through document tracing and analysis, with source triangulation to verify consistency across sources. Data analysis proceeded in two stages: (1) descriptive mapping of the factual legislative process of the P2SK Law and its amendment; (2) theoretical interpretation using the six frameworks outlined above, producing a comprehensive diagnosis of the democratic-legitimacy problem under study.

RESULTS AND DISCUSSION

The Paradox of Electoral Democracy and Mahfud MD's Political Configuration

Data from the Indonesian Parliamentary Center show a public-participation score of merely 8.91 out of 100 in DPR legislation (Sanjaya & Rasji, 2021), even as the DPR and the President remain elected through legitimate general elections. Within Dahl's framework, this finding indicates that Indonesia satisfies the dimension of political contestation while failing to adequately satisfy the dimension of inclusiveness/participation in the context of financial-sector legislation (Dahl, 1971).

Within Mahfud MD's framework, this finding does not contradict his thesis but rather confirms it with greater precision: what determines the responsive character of a legal product

is not a state's formal democratic status, but the degree of openness and power distribution within the actual political configuration that produces that legal product (MD, 2017). Where public participation remains low despite a functioning formal democratic structure, the actual political configuration tends toward closed technocracy, such that the resulting legal product (the P2SK Law) exhibits an orthodox institutional design, even as its normative narrative (financial inclusion, consumer protection) remains nominally responsive.

Civil Oligarchy and the Politics of Wealth Defense in the P2SK Law

Winters's oligarchy theory supplies the causal mechanism explaining why formal electoral democracy can operate without substantive participation: oligarchy is not displaced by democracy but fused with it (Winters, 2011). Winters identifies post-1998 Indonesia as a case of transition from sultanistic oligarchy (the Suharto era, in which a single oligarch monopolized personalistic rule) toward civil oligarchy, a condition in which oligarchs have disarmed from direct coercive power and instead defend their wealth through lawful institutional channels: policy lobbying, political financing, and influence over the regulatory process.

The substance of the P2SK Law exhibits a pattern consistent with the civil-oligarchy thesis: the opening of up to 99 percent foreign ownership of commercial banks, the regulation of Financial Conglomerate Holding Companies, and the stock-exchange demutualization framework are arenas in which wealth defense operates lawfully through formal legislative procedure. The 2026 amendment reinforces this pattern through provisions on Danantara debt instruments, expanded banking and Islamic-banking business scope, and strengthened financial-conglomerate governance via mandatory identification of controlling shareholders and ultimate beneficial owners (Admin IKPI, 2026), provisions which, despite their stated transparency objectives, continue to operate within a framework that structurally serves the interests of large capital owners with the capacity to adapt to new regulatory complexity.

Normative Indeterminacy and Technocratic Narrative: A Critical Legal Studies Reading

Critical Legal Studies reads this problem through Kennedy's indeterminacy thesis: key provisions in the P2SK Law and its amendment, the definition of systemic interest, the boundary of OJK's authority over financial conglomerates, the criteria for financial-sector technological innovation, remain open to interpretation (Kennedy, 1997). This interpretive openness is structurally more readily filled by actors possessing superior lobbying capacity and information access, namely large financial institutions, than by consumers or small business actors.

Applying the hermeneutics of suspicion to the official narrative surrounding the P2SK Law and its amendment reveals a consistent pattern: each provision is framed in the language of financial-system stability, international competitiveness, and inclusive economic growth, as articulated by Minister of Finance Purbaya Yudhi Sadewa, who stated that the amendment aims to drive inclusive national economic growth in line with the President's *Asta Cita* agenda (Amrin, 2026), without explicitly engaging the distributive question of who bears the costs and who reaps the benefits of each policy choice.

The introduction of a restorative-justice mechanism under Article 278F of Law Number 4 of 2026, permitting the resolution of financial-sector cases through restorative approaches from the investigative through to the trial stage (DA, 2026), may be read through Kennedy's critique of rights: while ostensibly progressive in terms of victim restoration, this

provision also opens a broad interpretive space regarding who is entitled to access such restorative mechanisms (Kennedy, 1997), a space potentially more accessible to large corporate offenders with strong legal capacity than to individual victims of predatory financial practices.

The Limits of Jimly Asshiddiqie's Theory: Reactive Character and Limited Reach

Jimly Asshiddiqie's constitutionalist theory proves empirically valid: three successive Constitutional Court decisions: Number 91/PUU-XVIII/2020 (Job Creation Law conditionally unconstitutional), Number 59/PUU-XXI/2023 (correcting OJK's monopoly over investigative authority), and Number 85/PUU-XXII/2024 (affirming that LPS budgetary authority requires DPR approval), confirm the formal and material review instruments he develops (Asshiddiqie, 2010, 2020). Law Number 4 of 2026 is itself explicitly framed as a follow-up to these rulings (IKPI, 2026).

However, this analysis also confirms the structural limitations of Jimly's theory previously identified: first, its reactive (ex post facto) character, constitutional correction occurs only after the P2SK Law was enacted and had been in force for years, rather than preventing defects at the drafting stage; second, its limited capacity to analyze informal material power as explained by Winters (Winters, 2011); and third, its inability to reach actors beyond the domestic constitutional architecture, including the influence of multilateral institutional policy agendas that have shaped Indonesia's financial-sector reform agenda.

Synthesis: Economic Democracy and Dignified Justice as Substantive Benchmarks

Integrating Prasetyo's dignified-justice theory with the economic-democracy concept under Article 33 of the 1945 Constitution as developed by Asshiddiqie, the problem of the P2SK Law and its amendment ultimately returns to a substantive question (Asshiddiqie, 2010, 2020; Prasetyo, 2019): do the new provisions on financial conglomerates, exchange demutualization, and Danantara debt instruments genuinely honor the economic dignity of the broader population, or do they remain, at root, an arena of civil-oligarchy wealth defense clothed in the language of stability and inclusion? Busroh adds the most elementary benchmark (Busroh, 2015): does this legal product genuinely fulfil the state's welfare function, or does it predominantly serve a regulatory function benefiting large business interests?

The synthesis of these six theories yields a single analytical conclusion: no single theory alone can fully explain the legitimacy problem of the P2SK Law. Dahl and Diamond diagnose the form-substance gap in democracy; Mahfud MD explains how a closed political configuration shapes legal character; Winters unpacks the material mechanism behind that gap; Critical Legal Studies exposes how legal language conceals distributive choices; Jimly supplies constitutional correction instruments, albeit reactive ones; and Prasetyo together with Busroh supply substantive benchmarks of justice and state function as final evaluative parameters.

Diagram of Theoretical Dialogue Structure

To clarify how the six theoretical frameworks interrelate, rather than functioning as isolated, competing lenses, Figure 1 presents a structural flowchart depicting the dialogue among them, organized into five analytical layers: empirical symptom, diagnostic layer, explanatory mechanism, textual-normative mechanism, corrective layer, and substantive benchmark.

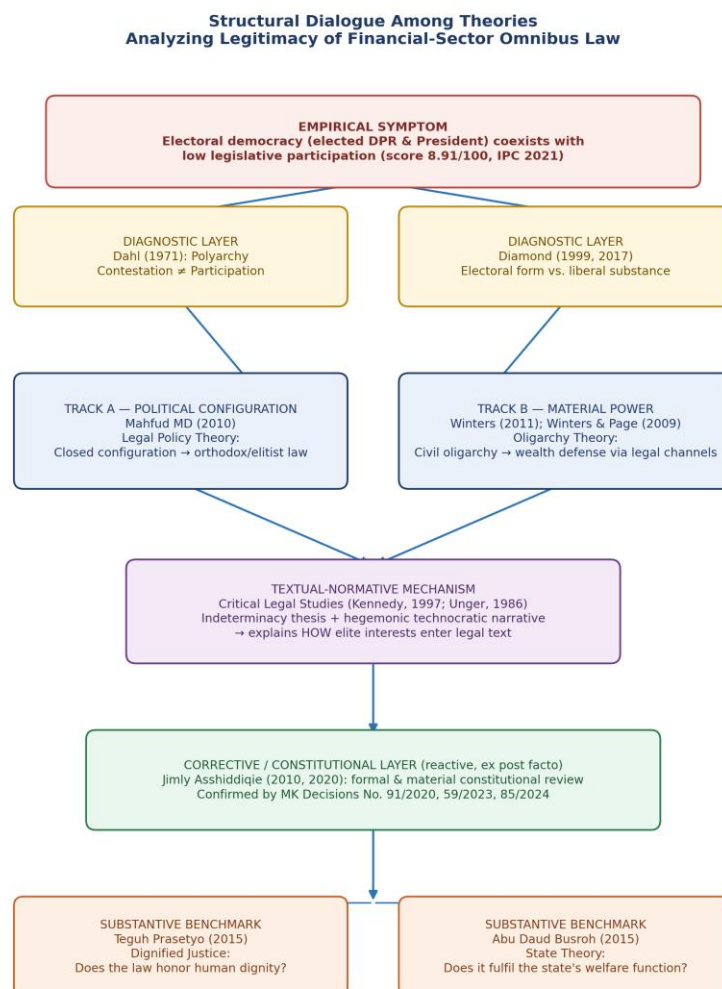


Figure 1.

Structural Dialogue Among Theories in Analyzing the Legitimacy of the Financial-Sector Omnibus Law

Source: Author's elaboration (2026), synthesized from Dahl (1971), Diamond (1999, 2017), Mahfud MD (2010), Winters (2011), Winters & Page (2009), Kennedy (1997), Unger (1986), Asshiddiqie (2010, 2020), Prasetyo (2015), and Busroh (2015)

As Figure 1 illustrates, the six theories do not operate as parallel, unrelated frameworks but rather as sequential analytical layers: the diagnostic layer (Dahl, Diamond) identifies the empirical paradox; two explanatory tracks (Mahfud MD and Winters) independently account for the political and material mechanisms producing that paradox; both tracks converge upon Critical Legal Studies, which explains how those mechanisms become embedded in legal text; this textual mechanism is, in turn, subject to ex post facto constitutional correction (Jimly Asshiddiqie); and the entire chain is finally evaluated against substantive benchmarks of dignity and state function (Prasetyo, Busroh).

Tabel 1.
Comparative Table of the Six Theoretical Frameworks

Theory	Unit of Analysis	Key Mechanism	Principal Strength	Principal Limitation
Dahl (1971) / Diamond (1999, 2017)	Regime-level democratic dimensions	Separates contestation from participation; identifies the electoral form/liberal substance gap	Provides precise diagnostic vocabulary for the paradox	Descriptive only; does not explain underlying causal mechanism
Mahfud MD (2010)	National political configuration	Configuration (open/closed) determines legal character (responsive/orthodox)	Strong contextual-political explanation	Deterministic; no normative yardstick for validity
Asshiddiqie (2010, 2020)	Constitutional norms and institutional powers	Formal and material judicial review against the 1945 Constitution	Empirically validated via three MK rulings; concrete testable standard	Reactive (ex post facto); no reach over material/transnational actors
Prasetyo (2015)	Human dignity as legal subject	Synthesis of certainty, utility, and substantive (Pancasila-based) justice	Indigenous substantive-justice benchmark	Abstract; difficult to operationalize empirically
Busroh (2015)	The state as an entity (function & purpose)	Tests legal products against the state's welfare/regulatory functions	Most elementary, foundational benchmark	Classical/general; not designed for contemporary omnibus legislation
Winters (2011) / Winters & Page (2009)	Material wealth concentration (oligarchs)	Civil oligarchy: wealth defense via lawful institutional channels	Explains coexistence of democracy and elite dominance	Materialist lens may underweight ideational/discursive factors

Theory	Unit of Analysis	Key Mechanism	Principal Strength	Principal Limitation
Critical Legal Studies (Kennedy, 1997; Unger, 1986)	Legal text and doctrinal language	Indeterminacy thesis; hegemonic technocratic narrative	Explains how power enters and hides within legal text	Strong indeterminacy version criticized as overstated

Source: Author's synthesis (2026), based on Dahl (1971), Diamond (1999, 2017), Mahfud MD (2010), Asshiddiqie (2010, 2020), Prasetyo (2015), Busroh (2015), Winters (2011), Winters & Page (2009), and Kennedy (1997).

CONCLUSION

This study concludes that the low level of public participation in the formation of the P2SK Law and its amendment, Law Number 4 of 2026, is not an anomaly that refutes Mahfud MD's legal-policy theory, but rather a confirmation that the responsive character of a legal product is determined by the actual political configuration, the degree of participation and power distribution, rather than by formal democratic status alone. Indonesia's electoral democracy, as explained by Dahl and Diamond, satisfies the dimension of political contestation while exhibiting a significant deficit in substantive participation.

Winters's oligarchy theory supplies the missing explanatory mechanism in the domestic framework: Indonesia, as a civil oligarchy, allows the material power of capital elites to dominate financial-sector policy substance through lawful institutional channels, without needing to displace the prevailing formal democratic structure. Critical Legal Studies complements this diagnosis by revealing how normative indeterminacy and technocratic narrative function to conceal distributive choices behind seemingly neutral legal language.

Jimly Asshiddiqie's constitutionalist theory remains indispensable as a corrective instrument, as evidenced by the three Constitutional Court rulings underlying the 2026 amendment of the P2SK Law, yet it bears structural limitations: it is reactive, possesses limited capacity to analyze material power, and does not reach transnational power actors. Prasetyo's dignified-justice theory and Busroh's state-function theory complete the analytical framework by supplying the final substantive benchmark of for whom this financial-sector legal product is ultimately intended.

The theoretical implication of this study affirms the necessity of a multi-theoretical approach in analyzing the legitimacy of omnibus law in Indonesia, given the complexity of the interaction between formal democratic procedure, informal material power, and the construction of legal language. Future research is recommended to conduct empirical studies on the implementation of the seventeen substantive changes in Law Number 4 of 2026, particularly the impact of the restorative-justice mechanism on access to justice for victims of predatory financial practices, and to trace the relationship between the substance of the amendment and the policy agendas of multilateral financial institutions.

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