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THE ROLE AND CHALLENGES OF PUBLIC PARTICIPATION IN LAW FORMATION IN INDONESIA: A DEMOCRATIC PERSPECTIVE

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ABSTRACT

This study investigates the challenges and inefficacy of public participation in Indonesia's law formation process, focusing on its legal framework and democratic implications. The study adopts a doctrinal approach, employing both a conceptual and comparative framework to investigate public involvement in law-making from a democratic perspective. The study finds that vague legal provisions hinder meaningful public participation and recommends the establishment of explicit legal mechanisms to enforce public engagement. The findings indicate a pressing need for clearer, more detailed regulations governing public participation in the legislative process. Legislators should consider implementing formal feedback mechanisms early in the drafting phase to ensure inclusivity. In addition, involving a broad cross-section of the public may help reduce conflicts and create more representative and widely accepted laws. This study highlights critical gaps in the current regulatory approach to public participation in law-making and proposes the creation of mechanisms to enhance its effectiveness. The study's value lies in its recommendation for a pre-legislative review process that could improve accountability and public trust in democratic governance. It contributes to the academic discourse on public participation by suggesting legal innovations to bridge the gap between legislative intentions and public expectations.

Keywords: Consensus, public participation, law formation process, democratic legitimacy, Indonesia.

INTRODUCTION

Indonesia is a state of law, and the ideal pattern of the rule of law is a democratic rule of law (Wahjono, 2014). In a democratic legal state, every aspect of social, national, and state life is carried out in accordance with legal norms that reflect the will of the people (Christensen et al., 2020; Huda, 2014). In simple terms, legal norms are measures that must be obeyed by a person in their relationship with others or with their environment (Indrati, 2007). The law, as one of the written regulations containing legal norms, plays an important role in the Indonesian legal system (Bo'a, 2018; Hidayat et al., 2020; Simanjuntak, 2019). Laws are generally binding and must be in harmony with Pancasila and the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution) (Halim, 2016).

Laws are statutory regulations established by the House of Representatives (hereinafter abbreviated as DPR) with the joint approval of the President. After the amendment to the 1945 Constitution, although the power to make laws was transferred to the DPR, it still required the joint approval of the President. In a modern democratic system, public legal norms are formed by state institutions that represent the people (Gerung, 2010; Wijayanti, 2016). Therefore, its formation must be carried out more carefully, as public law must fulfil the wishes and desires of the people (Direktorat Jenderal Peraturan Perundang-undangan, 2010; Imran, 2020; Riyanto, 2020). In a democratic state system, the process of law formation is a bottom-up type, requiring that legal materials reflect the values and will of the people (Maulana, 2019; Pasaribu, 2007). Therefore, although the DPR and the President hold the authority to form laws, the process of its formation still requires the involvement of non-state parties, namely the community as actors, as well as in democracy.

Provisions concerning public engagement in legislative processes stem from the principles of a democratic legal system (Jati, 2012; Riskiyono, 2015). The involvement of the public in lawmaking, as a manifestation of democracy, must be appreciated both procedurally and substantively (Halim, 2016). Laws No. 12 of 2011 and No. 15 of 2019 govern public participation in the creation of laws and regulations, granting the public the right to contribute both verbally and in writing. As a result of these statutes, every stratum of society is afforded the broadest chance to input into the legislative process. This stipulation is an extension of the openness principle encapsulated in Law No. 12 of 2011 and its amendment, Law No. 15 of 2019. Dahl posited that a democratic framework is inherently dependent on participation, which serves as a venue for public negotiation within the policy-making sphere that directly affects their lives. This ensures that all community members are equally able to discuss issues and participate in decision-making processes (Dahl, 2001, p. 15).

In recent years, public participation in law-making has played a significant role in shaping and challenging legislation in Indonesia, underscoring its importance in the democratic process. While Indonesian laws mandate public input, real-world applications reveal varied outcomes depending on the transparency, accessibility, and responsiveness of the legislative process. Recent cases, such as the Omnibus Law on Job Creation (2020) and the revision of the Indonesian Criminal Code (KUHP) in 2022, illustrate both the challenges and impacts of public participation on legislative outcomes.

The Omnibus Law on Job Creation provides a compelling example of public response and legislative adaptation. Passed in 2020, the law aimed to streamline regulations and encourage foreign investment, but it sparked widespread protests and drew criticism from various sectors, including labour unions and environmental groups. Research by Zainal Arifin Mochtar (2024) noted that while the government held public consultations, these were often perceived as insufficiently inclusive, and many participants felt

their concerns were ignored. Empirical data from the Legal Aid Foundation revealed that over 30 protests occurred in major cities, demonstrating the scale of public opposition and dissatisfaction with the consultation process. Despite these protests, the law was initially passed without substantial changes. However, in 2021, a judicial review by the Constitutional Court found parts of the law unconstitutional due to inadequate public participation and mandated revisions (Buana, 2024), showcasing the influence of public pressure on judicial outcomes and policy amendments. Another relevant example is the recent revision of the Indonesian Criminal Code (KUHP) in 2022. This legislative process included public consultations but faced backlash due to provisions perceived as infringing on civil liberties, such as articles regulating morality, blasphemy, and freedom of expression. Research by Mahardika and Satria (2023) found that civil society organisations, legal experts, and the general public voiced their concerns in consultations and public hearings. However, these contributions were not fully integrated into the final legislation, leading to ongoing protests and criticisms from human rights organisations. Public dissatisfaction with the KUHP revision reflects a gap between legislative intent and public opinion, raising questions about the efficacy of participation mechanisms.

In contrast, some positive strides in public participation were noted during the drafting of environmental protection policies. According to Mulyana (2024), the government collaborated with environmental groups and indigenous communities to create policies that protected customary land rights and prevented deforestation. This collaboration demonstrates that inclusive consultation processes can lead to legislation that aligns more closely with public interests and strengthens government accountability.

Recently, legislators and the President have received significant criticism for their perceived lack of public involvement. The Indonesian Parliamentary Concerned Community Forum (FORMAPI) expressed the opinion that the DPR during the 2014-2019 period was the worst since the reform era (Putri & Adam, 2019). This condition is evident in the imbalance between the high budget and the minimal number of laws that have been successfully enacted, the poor quality of laws subjected to many judicial reviews, and the actions taken by the Constitutional Court due to the acceleration of a number of laws that are deemed unable to accommodate aspirations and do not meet the needs of the people. At the end of 2019, there was a demonstration movement in various regions in Indonesia that filed demands including the rejection and encouragement of a review of the revision of the Law on the Corruption Eradication Commission (hereinafter abbreviated as KPK), the Draft Criminal Code (KUHP), the Mineral and Coal Bill, the Bill on Manpower, demands for the enactment of the Bill on the Elimination of Sexual Violence, the Bill on Domestic Helpers and various other demands. However, these various protests led the DPR and the President to revise the KPK Law, limit it, and even respond receptively to a wave of public disapproval (Kompas, 2022).

Then, during the COVID-19 pandemic (in 2020), several pro-contra bills were also passed and promulgated, including the Bill on Minerals and Coal and the Bill on Job Creation. Even amid large-scale demonstrations, the DPR and the President still enacted the Bill on Mineral and Coal into Law No. 3 of 2020. Then, the Bill on Job Creation was passed into Law No. 11 of 2020. Indeed, there have been numerous rejections of legislative bills, including those concerning the KPK and the Criminal Code in 2019. In the end, only the Bill on the Criminal Code was postponed, while the others were still being passed. This proves that the provisions on public participation in the formation of laws and regulations, as regulated in Law No. 12 of 2011, still pose problems.

This study aims to examine public involvement in the legislative process from a democratic perspective, assessing its impacts on the development and quality of law-making. Specifically, the study explores several key questions: does public participation significantly prolong the law-drafting process? Who

should be involved to effectively reflect the public's aspirations, and to what extent should this participation be accommodated? the research further investigates how legislators should address public opinions that sharply diverge from their own and whether there should be specific benchmarks or criteria, such as a percentage threshold, to assess adequate public involvement. Additionally, it considers whether public participation should be inclusive of all citizens or limited to those with a direct interest in legislative outcomes. Through these questions, the study seeks to clarify the role and scope of public involvement in law-making, ensuring it aligns with democratic principles.

METHODOLOGY

This study is grounded in a doctrinal approach that examines the legal principles, structures, and democratic implications of public participation in Indonesia's law formation process. Utilising both conceptual and comparative frameworks, the study explores public involvement in law-making across Indonesia, Finland, South Africa, the United States, and Malaysia to identify best practices and democratic benchmarks. The approach is juridical-normative and descriptive-comparative, applying both vertical and horizontal analyses to identify cross-national differences. The analysis focuses on three dimensions: (1) regulatory framework, assessing the legal foundation of public participation; (2) participation mechanisms, examining the forms and effectiveness of consultation processes; and (3) underlying concepts, exploring the socio-political values underpinning participatory practices. By analysing Indonesia's current legal provisions and contrasting them with those in other democratic contexts, the study identifies ambiguities that hinder effective public engagement and evaluates potential improvements. Data collection combines a statutory analysis of Indonesia's legal framework with a review of secondary sources, including academic literature on democratic theories and comparative law studies. The findings highlight significant limitations within Indonesia's public participation provisions, supporting recommendations for clearer, formalised feedback mechanisms during early drafting stages and a pre-legislative review process to enhance inclusivity and accountability. Through this comparative approach, the study proposes legal innovations to bridge the gap between legislative intentions and public expectations, contributing valuable insights to the discourse on public participation.

DISCUSSION

Dissensus vs Consensus in Democracy

Based on past experiences, public participation in the legislative process is often perceived as less significant. However, following the Constitutional Court's decision on the judicial review of Law No. 11 of 2020 (refer to the Constitutional Court's Decision in case No. 91/PUU-XVIII/2020 on the Formal Examination of Law No. 11 of 2020), public involvement is now recognised as a key indicator of whether the lawmaking process has adhered to the proper procedures. Undoubtedly, public engagement in the formation of laws influences several aspects. For example, the drafting process may take longer, as lawmakers feel constrained by the need to pay attention to and accommodate public opinion. There is room for rejection or resistance, in part or in whole, to the norms outlined in the bill. It could also be that the refusal occurred because certain parties felt they were not involved; however, after that particular party became involved, they no longer refused.

According to Jacques Rancière, the study of rejection or disagreement in democracy is referred to as dissensus (Rancière, 2011; Indiyastutik, 2016). Literally, dissensus means disagreement or dispute and has an important meaning in a democratic system. Furthermore, it is stated that the most important thing in democracy is the dissensus (a disagreement or dispute) (Van Bouwel, 2017). Dissensus is a political process that encourages juridical litigation and fills gaps in the sensory order by contrasting existing frameworks of views, thoughts, and actions with those whose views, thoughts, and actions are unacceptable (Trubek, 1984; Choudhry, 2000).

In countries such as totalitarian North Korea, monarchical Brunei Darussalam, and other non-democratic countries (Talib, 2002; Zook, 2012), there is no freedom of opinion and no citizen participation in lawmaking. Thus, there is no room for a census because all citizens are forced to reach a consensus (agree). In such countries, law-making is largely monopolised by lawmakers, with little regard for citizens' opinions. In a country without a census, there is no democracy. According to Robet (2015), the essence of democracy lies not in consensus but in dissensus.

Dissensus in democracy is not just a rejection or disagreement with the state's policy plans (Landemore & Page, 2015). Democracy, in various literatures, is understood as government of the people, by the people, and for the people (Carpini et al., 2004; Mercer, 2002). However, real democracy, as described above, almost never exists in practice because the current system of democracy places the people on an unequal footing with the rulers. The ruler is dominant in the administration of government.

The democracy in place today directs the political decision-making process toward consensus, so that in the end, the consensus itself is the core of democracy. Democracy with a consensus model always seeks to accommodate the opinions of the dominant group and the community in a certain forum (communication), resulting in agreement among the dominant group because of the dominance of political influence and knowledge (Karpowitz, 2014). Disagreements are ostensibly discussed but are actually suppressed. The agreement is owned and made by the dominant group, which claims to know more and has the power to lead all speakers as if they agreed (Schneckener, 2002). People's sovereignty, as the main principle in a democratic system, is quantified into a majority decision and can be achieved through utilitarian transactions (Mill, 2015; Vanberg, 2005). Things like this then create elitism in politics, where public-interest transactions are carried out only by a small group of elites (Holmes, 1995). The concept of this kind of representation will then determine the quality of public policy.

Regarding the creation of laws and regulations, the concept of dissensus in democracy intersects with the politics of law and legislation. In the legislative process, the determination of policies or legal politics is often monopolised by those drafting the laws and regulations (Rose, 1978). Despite this monopoly, it is advisable to take into account public input. If the policy or legal policies taken by legislators are far from public aspirations, then the steps that can be taken are to submit a judicial review (Setiadi, 2020). However, judicial review becomes unsightly when a statutory regulation is promulgated and immediately submitted to it. In fact, many parties have prepared applications for judicial review while waiting for the promulgation process. As soon as the Law number is determined, the application for judicial review is immediately submitted. Therefore, suggestions from the public, as long as they do not conflict with statutory regulations and are useful, should be accommodated (Hsb, 2017). This accommodation will reduce conflicts with communities affected by the law and also reduce the tedious judicial review process and the costs involved.

The Regulatory and Concepts of Public Participation in the Formation of Laws in Various Countries and Comparison with Those in Indonesia

Public involvement in the legislative process is a vital element of contemporary democracy, ensuring that laws are reflective of and responsive to the community's needs and views. The following discussion will examine the regulatory frameworks and underlying concepts of public participation in the law-making processes of Indonesia, Malaysia, Finland, South Africa, and the United States:

Malaysia

In Malaysia, the regulatory framework for public participation in the legislative process is shaped by both constitutional principles and administrative practices. As a parliamentary democracy with a constitutional monarchy, Malaysia allows public involvement through selected mechanisms, primarily overseen by the executive branch (Manaf et al., 2016). Although the Federal Constitution is the supreme law, it contains limited explicit provisions mandating public participation in law-making, largely leaving the extent of engagement to the discretion of individual government agencies. Public participation is largely facilitated through Public Consultation Papers (PCP), where government agencies post proposed bills or policy drafts on official platforms for public review. This process, while a step forward in promoting transparency, is often criticised for lacking a structured framework that enforces meaningful incorporation of feedback into final legislation. Public consultation is mostly regulated by administrative guidelines rather than binding legal provisions, which means that responses to public feedback can vary widely depending on the issue, agency, or political climate (Widiati, 2018).

The underlying concepts of public participation in Malaysia are influenced by communitarian values and a hierarchical governance structure that prioritises order and societal harmony. As such, participation channels are generally structured within state-controlled frameworks that restrict more autonomous forms of civic engagement (Mushkat, 2002). Additionally, limitations such as restricted access to information and the absence of a formal freedom of information act further hinder effective public involvement.

Finland

In Finland, public participation is facilitated by a commitment to transparency and consensus-building, enshrined in the Act on Openness of Government Activities. The Finnish model utilises online platforms and traditional hearings to solicit public feedback on legislative proposals (Pelkonen, 2004). The approach aims to foster a collaborative environment between the government and its citizens, ensuring laws are well-informed and broadly supported. Challenges include maintaining meaningful engagement across all sectors of society and effectively integrating diverse inputs into legislative decisions.

In Finland, public participation is facilitated by a commitment to transparency and consensus-building, enshrined in the Act on Openness of Government Activities (Paliokaitė & Sadauskaitė, 2023). This model adeptly combines digital engagement through online platforms with traditional public hearings, creating a comprehensive framework for soliciting citizen feedback on legislative proposals (Pelkonen, 2004). This dual-channel strategy not only broadens the scope of participation by making it more accessible but also enriches the quality of input received by the legislature. Central to this model is the aim to cultivate a collaborative relationship between the government and its citizens, ensuring that legislative outcomes are reflective of a broad consensus and are well-informed by diverse perspectives. The use of online platforms, in particular, signifies a modern approach to engagement, allowing for a wider demographic reach and facilitating easier access to legislative processes for the general public.

South Africa

In South Africa, public participation in the formation of laws is deeply rooted in the Constitution, which mandates the public inclusion in legislative processes as a cornerstone of its participatory democracy (Maphazi, 2013; Zondi, 2016). This requirement is a direct response to the country's history of exclusionary governance and aims to ensure that all segments of society, especially marginalised groups, have a voice in shaping laws that govern them. The operational mechanisms for this public involvement include public hearings, stakeholder consultations, and opportunities for the public to submit comments on draft legislation. The intention behind South Africa's model is commendable, focusing on rectifying historical injustices and making the legislative process more inclusive and representative. By institutionalising public involvement, South Africa seeks to foster laws that are not only democratically legitimate but also more attuned to the diverse needs and challenges of its population.

United States

In the United States, public participation in the formation of laws is characterised by a decentralised approach that draws on a variety of mechanisms to engage citizens directly in the legislative process (Dietz & Stern, 2008). Rooted in the democratic ethos of individual rights and civic duty, this approach reflects the foundational belief that active engagement in governance is both a privilege and a responsibility of citizenship. One key mechanism for public participation is through town hall meetings, where constituents have the opportunity to engage directly with their elected representatives, voice concerns, and provide feedback on legislative proposals. These meetings serve as forums for dialogue and exchange, allowing lawmakers to gauge public sentiment and incorporate constituent input into their decision-making processes.

Additionally, the US regulatory system includes public comment periods for proposed regulations, allowing individuals and organisations to submit feedback and suggestions before rules are finalised (Balla, 2004; Cuellar, 2005). This process ensures that regulatory decisions are informed by diverse perspectives and expertise, promoting transparency and accountability in government action. Furthermore, the concept of direct representation plays a central role in the US system, with elected officials serving as conduits for public input and advocates for the interests of their constituents. Through regular communication with their elected representatives, citizens can actively influence the legislative agenda and shape policy outcomes.

Table 1

The Differences in Public Participation Frameworks and Concepts in the Legislative Processes of Indonesia, Malaysia, Finland, South Africa, and the United States

Country	Regulatory Framework	Participation Mechanisms	Underlying Concepts
Indonesia	Lacks comprehensive laws mandating public participation; limited by executive discretion.	Limited consultations and hearings, mainly organised by government agencies.	Hierarchical governance with limited public access to legislative processes.
Malaysia	Guided by constitutional and administrative practices; Public Consultation Papers (PCP) are often used.	Government posts draft bills online for public feedback.	Communitarian values, hierarchical structure, and limited autonomy in civic engagement.

(continued)

Country	Regulatory Framework	Participation Mechanisms	Underlying Concepts
Finland	Regulated by the Act on Openness of Government Activities, emphasising transparency.	Uses online platforms and public hearings for input.	Consensus-building and collaborative governance model.
South Africa	Public participation is a constitutional mandate; seeks inclusivity to address historical exclusion.	Public hearings, consultations, and formal comment submissions.	Participatory democracy, emphasising inclusivity and redressing past injustices.
United States	Decentralised system; regulations allow for direct public feedback on proposed rules.	Town hall meetings, public comment periods, and representative communication.	Individual rights, civic duty, and active citizen engagement.

Public participation in law making is universally acknowledged as essential for democratic governance across Indonesia, Malaysia, Finland, South Africa, and the USA. However, each country tailors its approach to suit its unique political, cultural, and historical context, leading to diverse methods and varying degrees of success and challenges. The common objective across these nations is to ensure the accessibility and inclusiveness of the participation process. However, achieving this goal is contingent upon addressing socio-economic disparities, technological limitations, and cultural barriers that may hinder certain groups from engaging effectively in the legislative process. Furthermore, all four countries face the ongoing challenge of integrating public feedback meaningfully into legislative outcomes. Despite mechanisms for public consultation being in place, ensuring that citizen input influences policy decisions remains a persistent challenge. Moreover, adapting to technological advancements and evolving public expectations presents a shared challenge. While digital platforms offer new opportunities for engagement, they also pose challenges related to digital literacy, internet access, and data privacy. Balancing traditional methods of participation with emerging digital tools is crucial to ensuring that all citizens have a voice in the legislative process. Despite these challenges, there is a collective commitment to enhancing public participation in the legislative process. This commitment reflects a broader global trend towards more open and participatory forms of governance. By continually refining and improving mechanisms for public engagement, these countries aim to strengthen democratic legitimacy, increase government accountability, and foster a sense of ownership and empowerment among citizens.

Public Participation in the Formation of Laws in Indonesia

Public participation in the formulation of legislation is governed by Law No. 12 of 2011, Presidential Regulation No. 87 of 2014, and Regulation of the Minister of Law and Human Rights No. 11 of 2021. This participation is an extension of the principle of transparency in the legislative process. Gaventa and Valderrama's study elucidates that participation is linked to citizens' rights and democratic governance (Gaventa, 1999; Chiweza, 2021). Sherry R. Arnstein introduced the concept of "a ladder of citizen participation," which outlines eight levels ranging from citizen control to manipulation: 1) citizen control; 2) delegated power; 3) partnerships; 4) placation; 5) consultation; 6) informing; 7) therapy; and 8) manipulation (Arnstein, 2020; Mahendrawati, 2020; Timney, 2014).

The Arnstein Ladder is Simplified by Purwanto as Follows:

Table 2

Ladder of Citizen Participation

1. Control by citizens 2. Delegation of authority 3. Partnership	The community has full authority/public participation
4. Concession 5. Consultation 6. Providing information	Symbolic Participation
7. Therapy 8. Manipulation	No participation

The steps outlined can be summarised as follows: a) manipulation involves exploiting the public's name to garner support and promise improvements without fulfilling them; b) therapy entails the authorities providing reasons for proposals while pretending to involve the public, primarily aiming to influence public perception rather than gather genuine input; c) providing information involves disseminating information to the public regarding activities, without empowering them to influence outcomes; d) consultation includes notifying and inviting the public to share opinions, though there is no assurance that these opinions will be considered in decision-making; e) concession requires the government to appoint affected individuals to a public body, granting them access to the decision-making process; f) partnership grants the public the right to negotiate with policymakers or the government; g) delegation of authority involves granting the public decision-making authority in specific planning processes; h) control by citizens allows the public to participate in overseeing the entire decision-making process (Setiawan, 2020).

Technological advances can also be used for activities that require public involvement in order to gather information, input, and public aspirations in the context of formulating public policies. In order to solicit inputs to formulate public policies, this can be done through: 1) publish, which is a one-way communication by publishing data and information that the public and other interested parties can access; 2) interact, which provides two-way communication with other interested parties; 3) transact, providing two-way communication as in the type of interact but in it there are public service transactions through the website.

The participation model suitable for implementation in the lawmaking process goes beyond simply providing information and input. It necessitates interaction between the public and legislators. This includes receiving feedback on which inputs were accepted or rejected, along with explanations for these decisions. Therefore, it is imperative to establish clear, detailed regulations and standard mechanisms regarding public participation in the formation of law and regulation. This ensures certainty for the public that their rights in the legislative process are upheld, including the right to be heard, the right to be considered, and the right to receive explanations.

The decision of the Constitutional Court No. 91/PUU-XVIII/2020 in the case of the Formal Examination of Law No. 11 of 2020 against the 1945 Constitution highlights the crucial importance of public participation in the legislative process. According to the decision's petitum, the establishment of Law No. 11 of 2020 was marred by significant procedural violations. These violations included rushed

discussions, a lack of transparency, and minimal public involvement. The Court's ruling on this formal judicial review of the Law on Job Creation underscores that public participation is not merely a procedural formality but a fundamental aspect of democratic law-making.

The decision by the Constitutional Court serves as a crucial reminder that the legislative process must be inclusive and transparent to truly represent the will and interests of the people. The case of Law No. 11 of 2020 illustrates the repercussions of disregarding these principles, as the rushed and opaque process resulted in significant public outcry and legal challenges. By underscoring the significance of public participation, the Court reaffirms that laws should be crafted through an open, participatory process that aligns with the democratic values of the 1945 Constitution. This ruling underscores the importance of lawmakers engaging with the public meaningfully and seriously considering their input throughout the legislative process, ensuring that laws are not only legally robust but also democratically valid.

The incorporation of provisions for public participation in the lawmaking process will have both positive and negative effects. Negative impacts include: 1) an increased financial burden in the legislative process, as facilitating meaningful public participation requires adequate facilities and infrastructure; 2) the necessity for adequate support from information technology; 3) the requirement for skilled, high-integrity human resources; 4) the need for legislators to allow for a broader space for meaningful public engagement; 5) and the elongation of the lawmaking process.

Meanwhile, the positive impacts can be in the form of: 1) increasing public trust in the law-forming parties (DPR and the President) (Saragih, 2011); 2) enhancing the legitimacy of the law because it involves many stakeholders, leading to greater public acceptance; 3) reducing the occurrence of judicial review by the Constitutional Court. According to data released by the Center for Law and Policy Studies (PSHK) during 2012-2021 there were 25 formal examinations at the Constitutional Court, most of which were related to the principle of openness/public participation (Pusat Studi Hukum dan Kebijakan Indonesia, 2021); 4) reducing potential protests or demonstrations against laws that have been enacted; 5) gathering as much public knowledge, expertise and experience as possible (Sirajuddin, 2015); 6) ensuring that laws and regulations reflect reality in the public, fostering a sense of belonging, responsibility, and accountability of the law (Sirajuddin, 2015); 7) the substance of the bill becoming more widely accepted by the public, thereby increasing the effectiveness of the law's enforcement; 8) accommodating the public's right to seek, obtain, and convey information as referred to in Article 28F of the 1945 Constitution by using all available methods.

Public involvement in the shaping of laws and regulations is indispensable, yet it remains inadequately executed. For instance, public engagement in the development of Government Regulations, Presidential Regulations, Ministerial Regulations, and directives issued by Heads of Non-Ministerial Government Institutions, as well as Governor and Regent/Mayor Regulations, remains deficient (Redi, 2019). Public participation is an extension of the principle of transparency in the legislative process. This principle stipulates that the formulation of laws and regulations—from planning and drafting to discussing, ratifying, and enacting—should be transparent and accessible. Transparency ensures that all segments of the public have the widest opportunity to provide input throughout the legislative process. The principle of transparency is intended to function as a form of oversight in the creation of laws and regulations, guaranteeing that the process is conducted openly and inclusively. By enabling the public to contribute their perspectives, the legislative process becomes more democratic and better reflects the populace's desires. Nevertheless, the practical implementation of public participation remains

incomplete, underscoring the need for great efforts to fully involve the public in legislative processes across all levels of government.

Public participation in the creation of laws and regulations is governed by Article 96 of Law No. 12 of 2011, further elucidated in Presidential Regulation No. 87 of 2014. As per these regulations, "the public has the right to offer input verbally and/or in writing during the formulation of laws and regulations". However, a significant inconsistency arises between Article 96 of Law No. 12 of 2011 and the clarification provided in Article 5(g) of the same legislation. Article 96(3) specifies that those entitled to provide input are individuals or groups with a vested interest in the content of the proposed legislation. Conversely, the elucidation of Article 5(g) asserts that all segments of the public should have the widest opportunity to provide input in the creation of laws and regulations. This incongruity introduces uncertainty regarding who is eligible to partake in the legislative process. The principle of openness, as highlighted in these articles, is meant to ensure transparency and inclusivity in the legislative process. It aims to allow all levels of the public to contribute their insights during the planning, drafting, discussing, ratifying, and enacting stages of law-making. However, the conflicting interpretations of Article 96(3) and Article 5(g) challenge the extent of public participation, potentially limiting it to those with a direct interest rather than the broader public. This conflict underscores the need for clearer guidelines to ensure comprehensive public involvement in the legislative process.

Article 96 paragraph (3) of Law No. 12 of 2011 states that not all members of the public have an interest in the formation of laws and regulations, and consequently, not everyone can participate. By limiting participation to those with a defined interest, legislators have the discretion to determine which groups are considered to have an interest. This law does not provide specific criteria for identifying these interested publics, leaving the categorisation up to the legislators.

This approach contrasts with the principle of openness, which advocates for inclusive participation. The principle of openness, as explained in the law, explicitly states that all levels of the public should have the widest possible opportunity to provide input, without distinguishing between interested and non-interested parties. Thus, while Article 96(3) restricts participation, the principle of openness supports broad, non-discriminatory public involvement in the legislative process. This discrepancy highlights a significant tension within the law, suggesting a need for clearer guidelines to ensure that the legislative process is both transparent and inclusive.

When examined from the perspective of Jacques Rancière, the distinction between interested and non-interested publics reveals that the makers of Law no. 12 of 2011 positioned the public in an unequal position. The lawmakers, in this case, as the dominant group in the social order, distinguish between the public who are interested and those who are not. Thus, legislators can decide to involve only the "pro" public groups in passing the legislative agenda, while the "con" public groups are not involved. Based on the author's observations, this kind of practice has been running in the process of forming laws and regulations so far.

In a situation like this, dissensus is suppressed to achieve consensus. The legislators should be aware that the census in the formation of laws and regulations can bring together individuals with different opinions in the public sphere. Besides producing quality arguments and fertilising the democratic process, the census also provides space for people who are marginalised from power, or even those who are not included in the political calculation of power. Thus, the sense of representation is not dominated or manipulated by those with a surplus of capital, but also prioritises minorities (Verma, 2019).

Although public participation in the formation of laws and regulations is regulated by Law No. 12 of 2011, it remains very vague and lacks detail. In practice, so far, disagreements have been avoided in the process of forming laws and regulations, and in the end, they have been forced to find a way to reach an agreement. Therefore, the agreement obtained is not an actual agreement but rather one that reflects only one side, namely, the authorities. Many statutory norms, especially laws, show that they are increasingly dominant in accommodating political and economic interests. As a result, legislative norms often do not represent the public interest in general, so that the process and results of legislation appear num (Indonesia Corruption Watch, 2008).

Law No. 12 of 2011 and its regulations lack explicit consequences for ignoring public participation in legislative processes, enabling laws to be enacted without public input. This oversight has been evident in several legislative cases in Indonesia. The Bill on Amendments to the KPK Law, the Bill on Amendments to the Mineral and Coal Law, and the Bill on Job Creation were ratified despite public opposition and accusations of inadequate public involvement. In contrast, extensive public protests have delayed the ratification of the KUHP Bill, demonstrating that significant public dissent can impact legislative outcomes. The absence of clear penalties for bypassing public participation means that legislators may continue to pass laws without sufficient public engagement, posing a challenge to the democratic process and the transparency principle intended by Law No. 12 of 2011. This discrepancy underscores the need for more definitive regulations that require public involvement in the legislative process, ensuring that laws reflect broader societal interests and considerations.

To address significant and prolonged issues, it is typically the legislators who take the lead in decision-making and subsequently invite public scrutiny through a judicial review by the Constitutional Court if consensus is not reached during the law-making process. Ideally, efforts should be maximised to reach a compromise to prevent the need for a judicial review. Judicial reviews of laws can be conducted both formally and substantively. The Constitutional Court's formal judicial review of the Law on Job Creation marks the first instance of such a decision since the Court's inception. Prior to the review of the Law on Job Creation, no formal judicial review had been granted. One of the formal judicial review requests that had been submitted but not granted was regarding Law No. 3 of 2009. Although the Constitutional Court acknowledged procedural flaws in its decision, such as non-compliance with transparency principles, it did not immediately invalidate the Law (See: Constitutional Court Decision No. 27/PUU-VII/2009 concerning Formal Examination of Law No. 3 of 2009).

This kind of condition is certainly a paradox if it is associated with the provisions of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which requires that sovereignty be in the hands of the people. In the process of forming the law, the people, in the true sense, are not sovereign; it is the parties that form the law (DPR and the President) who are sovereign. Thus, the people in this case are interpreted as representatives. Furthermore, the representatives of the people do not necessarily have to agree; a majority vote is sufficient. There has even been a decision-making process in forming the law through voting. In addition, during the Level II Discussion of the DPR, a decision was made on mutual approval of the Bill between the DPR and the President, which was marked by walkouts from several factions. Although the process of its formation was not in accordance with the proper mechanism, the bill still received mutual approval and was then promulgated.

To ensure meaningful public participation in law making, the legal consequences of excluding public involvement must be explicitly stated in the Law on the Formation of Legislation. Currently, public participation is often treated as a mere formality rather than an essential part of the legislative process. For legislation to be valid, it must involve public input in an open and substantive manner. Without this,

laws cannot achieve mutual agreement between the House of Representatives (DPR) and the President, a crucial condition for the legitimacy of any legislation. By clearly defining the repercussions for bypassing public participation, such as halting a law at the mutual agreement stage, the need for the President's promulgation or subsequent judicial review by the Constitutional Court could be eliminated. This approach would reinforce the democratic process, ensuring that laws reflect the will and interests of the broader society. Implementing strict, transparent regulations regarding public participation would prevent the enactment of laws without genuine public engagement, thereby enhancing the integrity and acceptance of legal frameworks.

CONCLUSION AND RECOMMENDATION

Public participation in every decision-making process, including the law-forming process, plays a very important role in a democratic system. It is one of the processes that must be prioritised so that the decisions taken reflect the public will. Therefore, a legal mechanism should be established to impose consequences if a bill does not go through the proper stages of public participation, so there is no need to wait for the law to be promulgated before submitting a request for judicial review to the Constitutional Court. Furthermore, public ideas, inputs, and proposals should be given a position equivalent to that of legislators in the legislative process. This is done to improve the quality of democracy in the formulation of laws. In addition, it is necessary to create a new mechanism in the Law on the Establishment of Legislation that specifies the legal consequences to be imposed if a bill fails to accommodate public participation properly. Recommendations that can be submitted include bills that have not been well attended by public participation, so that the discussion will not be continued at the Level II Discussion to obtain mutual agreement. Therefore, a more comprehensive revision of Law no. 12 of 2011, especially related to regulations on public participation, is essential.

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