

# PUBLIC PARTICIPATION RECONSTRUCTION IN LEGISLATION FORMATION IN INDONESIA POST-PANDEMIC

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## ABSTRACT

Covid-19 is not only a dangerous disease for humans, but this pandemic also impacts the sustainability of democracy in Indonesia. In the last decade, Indonesia's democracy index has declined and even reached its lowest position in 2020. This is due to the lack of freedom and public involvement in actualizing their political interests, including in forming laws and regulations. The principle of openness in forming laws and regulations is intended to prevent corruption in legislation. Nevertheless, implementing public participation in forming laws and regulations is only a pseudo-ritual. This research method uses normative research with approaches (statute approach, case approach, and comparative approach). The results of this discussion find that the decline in Indonesia's democracy index is the lack of community involvement caused by the lack of government transparency in operating and less proactive legislators in preparing and screening public participation. Also, it still needs to be an absence of regulations governing participation mechanisms that accommodate input from the community. Then there is a need for improvements to the parliamentary system by reconstructing public participation, which is not only limited to parliamentary agreements but also provides opportunities for the public to take part and have the right to an opinion and the right to ask for answers to opinions.

**Keywords:** *public participation, legislation, democracy*

## INTRODUCTION

A democratic government is a government that provides space for the people to take part and participate in all forms of state problems. Amin Rais (Suparyanto, 2008, p. 11) also stated that one of the forms of a state that is said to be democratic or not is community involvement in decision-making. In line with that, Sidney Hook also argues that in a democracy, all government decisions, directly or indirectly, must be based on the majority agreement the adult people freely give. (Suparyanto, 2008, p. 3).

The existence of a pandemic not only threatens human health but also threatens the sustainability of democracy in Indonesia. Joen Hoey, the author of The

Economist Intelligence Unit EIU's report, said, "*The pandemic confirms that many rulers have become accustomed to exclude the public from discussion of today's pressing issues, and shows elite government, not popular participation, has become the norm.*" Indonesia has declined and even occupies the lowest position in 2020. The EIU, which released the 2020 Democracy Index Report, puts Indonesia in the 64th position (Putra, 2021) out of various countries with a score of 6.3. This score has decreased from the previous year, which was 6.48.

Based on these data, there are five indicators used by the EIU in determining a country's democracy index, including the electoral process and pluralism, government functions and performance, political participation, political culture, and civil liberties. Based on these indicators, the EIU classifies countries into four regime categories: full democracies, flawed democracies, hybrid regimes, and authoritarian regimes. In Indonesia, the EIU scores 7.92 for the electoral process and pluralism. Meanwhile, the function and performance of the government with a score of 7.50; political participation was 6.11; political culture was 4.38; and civil liberties with a score of 5.59. This is the lowest figure obtained by Indonesia in the last 14 years, and Indonesia is categorized as a country with a flawed democracy.

On another note released by Freedom House (*Freedom House*, 2022), a non-governmental organization that focuses on democracy in various parts of the world. It shows Indonesia is still in the Partly Free classification, scoring 59 out of 100. This Partly Free classification is in the middle between Free and Not Free. Even in assessing the openness of the Indonesian government, it scored 2 out of 4. This indicates that if the openness process is low, it can be ascertained that the community's involvement in all matters is also low.

In fact, according to K.H. Ma'ruf, public openness is the spirit of democracy (Kusumaningtyas, 2020) which stipulates the obligations of transparency and accountability to public bodies, as well as opening channels for public participation in the formulation and implementation of development programs. Openness is a prerequisite for the birth of a democratic government (Riskiyono, 2017, p. 25); the principle of openness should be translated into real terms in various aspects of governance, including in the formation of laws and regulations.

In Freedom House's notes, the issue of openness highlights the controversy over *Undang-Undang Cipta Kerja*, which lacks public participation; the process is concise and discussed during the pandemic. *RUU Cipta Kerja*, which includes new laws and revisions to 79 existing laws, in its report that the government did not consult the public adequately on the contents of the law; they claimed consultations were intentionally avoided to sow confusion over the provisions of the law (*Freedom House*, 2022).

Whereas in the provisions of Law 12 of 2011 concerning the formation of laws and regulations, the principle of openness must be carried out to invite the public to provide the broadest possible input. Matters regarding public participation are regulated in article 96, where the public can provide input either orally or in

writing. *Undang-Undang Cipta Kerja* has legally violated the rules in the process of its formation; this has been proven by the Constitutional Court's decision which affirms that *Undang-Undang Cipta Kerja* is unconstitutional with conditions.

Another thing in public participation that becomes a problem in forming legislation is the lack of clarity about community input, whether it is considered or not. So that the Indonesian government system relies on legislators; in other words, even though the whole community refuses, the government agrees, and the government's decision is absolute, and this is indeed a consequence of the entire representation system given. In a democratic government, legislators should not pursue quantity but rather the quality of legislation. Community involvement and, in its accommodation, community input in the drafting of legislation is a determinants of the quality of a legal product. Clarity regarding public participation must specify the extent to which the public can take part in the process of forming a statutory regulation.

## METHOD

As socio-legal research (Wiratraman, n.d.) that examines issues of democracy, this research studies the involvement of public participation in the formation of laws and regulations. The main focus of this research is to examine and analyze public participation as one of the requirements for forming laws and regulations. This study uses a statutory approach contained in Law 12 of 2011 concerning the Establishment of Legislation and other related regulations. In addition, this research uses a comparative approach which, in this case, compares the implementation of public participation in forming legislation in various countries. Moreover, finally, using a case approach related to the issue of public participation, including *Undang-Undang Cipta Kerja*, *Undang-Undang Mahkamah Konstitusi*, and *Undang-Undang Ibu Kota Nusantara* (IKN), in which the entire law has become a polemic because of the process of its formation, the network of aspirations, and formation during the Covid-19 pandemic.

## RESULT AND DISCUSSION

### **Problems with the Establishment of *Undang-Undang Cipta Kerja*, *Undang-Undang Mahkamah Konstitusi*, and *Undang-Undang Ibu Kota Nusantara* (IKN)**

As a democratic state of law, the formation of law in Indonesia must be carried out according to a mechanism under democratic principles. Because democracy in Indonesia is based on law, the mechanism of law formation under democratic principles must also be institutionalized in the form of law (Ayus, 2021, p. 23).

Law 12 of 2011 concerning the Formation of Legislation refers to forming laws and regulations up to regional regulations. In forming legislation, a series of stages must be carried out, from planning to enactment, and nothing is missed. In the

process of its formation, it must also comply with the principles and content contained therein. The process of its formation not only transforms texts into articles but also guarantees vast opportunities for the community to participate in its formation. Carbble (VCRAC crabble, 1994, p. 4) argues that the most critical aspect of statutory regulations is not only related to the process of their formation; good laws and regulations, in essence, also need to pay attention to the basics of their formation, especially those relating to the foundations, principles, which are related to the material content. Maria Farida also stated that the preparation of Legislation includes two main problems, namely: Formal/procedural elements, which are related to the formation of Legislation that takes place in a particular country, and Material/substantial elements, which are related to the problem of processing the contents of an Act (Afif, 2017, p. 7).

Thus the formation of good legislation must comply with the substantial and formal aspects so that the enactment of the law is not only the will of the policymakers but also the will of the community as the owner of sovereignty. In line with that, Eka Nam Sihombing stated that every statutory regulation established by an authorized institution or official is expected to apply in the community so that it becomes a parameter for the community. Thus the norms contained therein are obeyed and implemented by the community so that they are not just a collection of arguments for the legislators. (Eka NAM Sihombing, 2021, p. 60).

Several Indonesian laws were enacted and felt to override transparency and ignore public participation, we can see these problems from the process of forming *Undang-Undang Cipta Kerja*, *Undang-Undang Mahkamah Konstitusi*, and *Undang-Undang Ibu Kota Nusantara* (IKN), which are all laws were formed and promulgated during the COVID-19 pandemic.

a. Law Number 11 of 2020 concerning *Cipta Kerja*

Before the decision of Constitutional Court No. 91/PUU-XVII/2020, *Undang-Undang Cipta Kerja* has reaped many polemics, including the lack of transparency in the formation process, making it difficult for the public to participate. Since the drafting process, there has been confusion over the draft work copyright law, and it has never received clarification from the government; this has made the public even more confused because there is no clarity from the initiating institution.

In the notes of Fajri Nursamsi, a researcher at the Center for Legal and Policy Studies (PSHK), three things underline toward *Undang-Undang Cipta Kerja*, namely discussions during recess and outside working hours, minutes of discussion meetings are not disseminated to the public, and decision making is not based on votes. In the plenary session of approval. (Firdaus, 2021, p. 75) Regarding discussions outside working hours or other than Monday - Friday, it is possible if it is approved in a meeting and by the leadership of the people's representative council. However, the public still has to know; the problem is that outside the meeting time and the House of Representatives building, this is never published to the public. So it is unknown

why the discussion of *RUU Cipta Kerja* is so fast and tends to be forced (CNN Indonesia, 2020).

The discussion process that was carried out also seemed rushed and took advantage of the Large-Scale Social Restrictions (PSBB) situation; this became a particular concern for the public because, during the pandemic, the public's room for movement in overseeing the discussion of *RUU Cipta Kerja* was limited by the strict PSBB rules so that there will be no more advocacy in the form of rallies or demonstrations.

In the end, after being submitted for a judicial review, *Undang-Undang Cipta Kerja* was canceled or declared conditionally unconstitutional by the Constitutional Court; in its decision, the Constitutional Court stated, "the establishment of *Undang-Undang Cipta Kerja* is contrary to the 1945 Constitution and has no legal force to bind conditionally as long as it is not interpreted as 'no improvement is made in the law,' 2 (two) years since this decision is pronounced'. Stating that *Undang-Undang Cipta Kerja* is still in effect until repairs are made to the establishment by the grace period as determined in the decision (Mahkamah Konstitusi, 2021).

The Court thinks that the process of establishing *Undang-Undang Cipta Kerja* does not meet the provisions based on the 1945 Constitution of the Republic of Indonesia, so it must be formally declared invalid. In its consideration, the Constitutional Court questioned the concept of omnibus law in *Cipta Kerja*, whether the method included making new laws or making revisions, because so far in the process of forming laws and regulations, only the concept of revising and making new ones was known.

Then in the decision of the constitutional court, the process of its formation did not apply the principle of openness as described in Article 5 letter G. The implication of not being open to the formation of laws and regulations is that there will be no public participation, so this is contrary to Article 96 of Law 12 of 2011 concerning Establishment of laws and regulations which discuss public participation, which should access the law required to make it easier for the public to provide input orally or in writing.

b. Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning *Mahkamah Konstitusi*

On September 1, 2020, the DPR, together with the President, ratified the revision of *Undang-Undang Mahkamah Konstitusi*, which received several criticisms of both substance and procedure. The dynamics of changing *Undang-Undang Mahkamah Konstitusi* do not touch on such substantial aspects as adding or reducing the duties or authorities of the Constitutional Court Judges but only revolve around the requirements to be appointed as constitutional judges (Dahoklory, 2021, p. 229). Even though the government's focus at that time was dealing with the Covid-19 pandemic.

The condition of the Covid-19 pandemic that limits crowds and mobilization is undoubtedly felt, which results in minimal public participation. Previously, the discussion was only carried out for two days on August 26 and 27, 2020, which was then taken at the plenary meeting on September 1, 2020.

The closed discussion meeting was revealed by the Deputy Chair of Commission III of the DPR, Pangeran Khairul Saleh, that the Working Committee meeting to discuss the revision of the Constitutional Court Bill must be held behind closed doors. The reason is that the articles to be discussed do not cause misunderstandings in the community. (Sari, 2020) This is contrary to the principle of openness in forming laws and regulations that must be carried out openly.

According to a researcher at *Pusat Studi Hukum dan Kebijakan* (PSHK), M. Nur Sholikin, the speedy and closed legislative process can be seen as a deliberate attempt to limit or even shut down public participation. The repeated practice of closed and non-participatory legislative processes indicates a disregard for the orderly procedures or formal aspects of forming laws. Bagir Mana also mentioned that ratifying the revision of *Undang-Undang Mahkamah Konstitusi* was fast. However, it cannot be said because there are urgent and urgent circumstances, so it is necessary to ratify the Act in Fast track legislation (Sausan & Syahruri, 2021, p. 47).

c. Law Number 3 of 2022 concerning *Ibu Kota Nusantara*

The last example is the formation of law no. 3 of 2022 concerning *Ibu Kota Nusantara*, which has received a lot of criticism and rejection because its formation is considered less aspirational and does not become a significant need for the community during a pandemic. The formation process, which only took a short time, was considered not to accommodate the interests of the community.

In the process of its formation, Sholikin, a senior researcher at *Pusat Studi Hukum dan Kebijakan* (PSHK), provided notes on the IKN Law. First, closing the space for public participation, according to him, in drafting the IKN bill, the House of Representatives and the government deliberately closed the space for public participation in providing input on the substance of the IKN Bill. Both discussions of the IKN bill were considered to be dominated by the elite; Sholikin saw that the community had no place in the discussion of the IKN bill. The discussion also seemed to be dominated by elites by ignoring the rights of community participation guaranteed in the Constitution and the Constitutional Court Decision No. 91/PUU-XVIII/2020. Third, neglecting the substance because the preparation has closed the space for public participation can result in weak accountability of the IKN draft law, both in-process and substance. (Hidayat, 2022).

Professor of Law at the University of Muhammadiyah Jakarta (UMJ) Syaiful Bakhri revealed that the IKN law is formally and materially flawed, similar to *Undang-Undang Cipta Kerja* (CNN Indonesia, 2022). If the formal formation does not carry out public participation, then the material aspects of the substance of the law do not represent the community. This lack of public participation is based on the

time that the discussion of the bill into law only takes 42 days. If we refer to the legislative process, starting from the preparation stage to the discussion, it takes about 130-160 days (Mahardika, 2020, p. 214). The long time is the result of public participation, in which the legislators are obliged to hold meetings with public opinion, working visits, and socialization.

The short duration of the formation of the IKN law has caused many interests that have not been accommodated. For example, there are several indigenous tribes whose interests have not been accommodated in the IKN law. In addition, environmental activists are not involved in public discussions even though the relocation of the capital city has the potential to damage the environment; this is based on the results of research conducted by several non-governmental organizations in the environmental field, which tend to see the negative impact of moving the capital city (Gelora Mahardika & Saputra, 2022, p. 17).

### **Comparison of Public Participation in Legislation in Different Countries**

#### **a. Public Participation in Indonesia**

In principle, all parties within and outside the state structure can initiate the idea of the Formation of Legislation (Asshiddiqi, 2006, p. 141). The Council of Europe makes participation part of the 12 Principles of Good Governance (*12 Principles of Good Governance*, 2008) which explains these principles to provide broad access to the public in obtaining information. Participation is a principle and a character which reflects good governance. On the other hand, Ismoyo, Muluk, and Saleh stated that good governance emphasizes the compatibility among the actors; are the government, the private sectors, and the society, which makes the inclusion of the stakeholders in the development, becomes essential. Therefore, active participation from the stakeholders from the private sector and the citizens is required to strengthen their role in succeeding the policy (Mindarti, 2016).

Participation in the Big Indonesian Dictionary is participation or participation (KBBI Online, n.d.); in forming legislation, participation can be interpreted as participating in an activity from planning to evaluation. Participation is also defined as community involvement directly or indirectly through representative institutions. Meanwhile, community participation is defined as participation, either individually or in groups, actively in determining public policy (Isra, 2010, p. 282).

Community participation in forming legislation is one form of actualizing the political interests of the community, which in political science is referred to as political participation. Samuel Huntington and Joan Nelson, as quoted by Pataniari Siahaan in Sihombing, define political participation as follows "political participation as activity by private citizens designed to influence government decision-making" (Sihombing, 2021, p. 163).

The space for public participation in forming laws and regulations is regulated in Article 96 of Law 12 of 2011 concerning the formation of laws and regulations. Community participation is not only limited to spectators but also has the right to

participate in a law that is formed. The community can provide input orally and in writing to form laws and regulations. Oral and written input can be made through public hearings, work visits, outreach and seminars, workshops, and discussions.

On the other hand, Law 12 of 2011 mandates that every process of legislation formation, starting from the planning, drafting, discussion, stipulation, and enactment stages, must be open and transparent. This openness is the first step in creating participation because if the formation of laws and regulations is closed, the public will not be able to participate.

Of the five stages in forming legislation, Sihombing divides three forms of public participation: pre-legislation, legislation, and post-legislation (Sihombing, 2021, p. 167). According to him, community participation in each stage must be different, although some are the same. This means that participation in the preparation process differs from participation in the discussion process after it becomes a statutory regulation.

#### 1) Pre-legislation

This pre-legislation stage is contained in the planning and drafting of legislation. At this stage, four forms of community participation can be done. First, community participation in the form of research, in this case, can be done by the community; there are no problems in society that need to be studied in-depth and require the completion of arrangements in legislation. Second, community participation is in the form of discussions, workshops, and seminars; this participation is carried out as a follow-up to the research results on an object that will be regulated in laws and regulations. Third, participation in the form of submissions or initiatives. This submission is intended to propose a statutory regulation. Fourth, this is the last form of community participation in planning and drafting legislation by providing proposals for draft laws and regulations from the community.

#### 2) Legislation

At this stage, six forms of community participation are contained in Article 96, paragraph 2 of Law no. 12 of 2011, including participation in the form of hearings or meetings with public opinion. Second, public participation in the draft alternative legislation, this alternative draft can be given when the draft legislation being discussed in the legislature has not been or is not even aspirational to the interests of the wider community. Third, participation in the form of input through print media. Fourth, participation through electronic media, in this case, can be done by creating a dialogue by presenting competent resource persons in their fields. Fifth, participation is in the form of demonstrations, which support or reject a law being made. Sixth, participation in discussions, workshops, and seminars, in this case, was carried out to obtain clarity on issues regarding the material being discussed in the legislature.

#### 3) Post Legislation

The last public participation is at the stage after becoming a law; this participation can be done by testing the law against the 1945 Constitution of the Republic of Indonesia, whose authority is in the Constitutional Court and regulations



under the law against the law. Law under the Supreme Court. This is done if legislation enactment violates the community's constitutional rights.

b. Public Participation in South Africa

Parliament is South Africa's legislative body. Thus, one of its primary functions is to pass new laws, amend existing ones, and revoke or abolish (cancel) old ones. This function is based on the South African Constitution. The National Assembly (NA) and the Provincial National Council (NCOP) play lawmaking roles. A Bill can only be submitted in Parliament by a Minister, Deputy Minister, a parliamentary committee, or Member of Parliament (MP). The Executive initiates about 90% of the Bills.

The formation of law in South Africa is regulated in Articles 73 - 82 of the 1996 Constitution; the process begins by discussing a text that the ministry regarding specific issues has made; the text is known as the "Green Paper," which is then published in the Government Gazette to get input, suggestions, and criticism from the community. The public's suggestions and inputs are then used as the basis by the relevant ministries or teams formed to compile Laws to make improvements to the Green paper. The result of the improvement of the Green Paper is referred to as the White Paper; the relevant commission in parliament then discusses this for later revision or rejection. After being refined by the government through the ministry, the National Assembly approved the bill; then, the bill was then submitted to another chamber, namely the NCOP. Once the National Assembly and the NCOP have approved a bill, the bill is then sent to the President for approval (Czapanskiy & Manjoo, 2008, p. 5).

The Bill can be returned to the National Assembly for review when the President has consideration to disagree for specific reasons after receiving the Bill. If the bill contains material related to the province, then the National Council of Province must be involved. If the bill that has been reviewed agrees with the President's considerations, and the Constitutional Court decides that the bill is constitutional, then the President must ratify the bill. Laws that have been passed must be disseminated appropriately and have been in effect since they were promulgated.

Historically, Since the advent of democracy in 1994, all citizens can be involved in what happens in Parliament. Article 59 of the 1996 South African Constitution states that Parliament must facilitate public involvement in the legislative and other processes in the National Assembly and the NCOP.

c. Public Participation in the United States

The first step in the legislative in the United States process is to propose a bill to Congress. Anyone can draft it, but only members of Congress can propose bills. Several important bills are usually proposed at the request of the President, such as the annual federal budget. However, the initial bill could undergo significant changes

in the legislative process. Once proposed, a bill is referred to the appropriate committee for review. There are 17 Senate committees, with 70 sub-committees, and 23 house committees, with 104 sub-committees.

A bill is first considered in a subcommittee, where it can be accepted, amended, or ultimately rejected. If the sub-committee members agree to proceed to the following process, it is reported to the full committee, where the process is repeated. During this process stage, committees and subcommittees hold hearings to investigate the merits and demerits of the bill.

When the bill was discussed, the debate process in the House of Representatives was very structured. Each member who wishes to speak only has a few minutes; the number and types of changes are usually limited. In the Senate, debate on most bills is limitless. A bill must pass through both houses of Congress before being submitted to the President for consideration. Although the Constitution requires that the two bills have the exact wording, in practice, this is rarely the case. A Conference Committee was formed to harmonize the Bill, consisting of members from both chambers. Committee members produced a conference report intended to be the bill's final version. Each room then votes again to approve the conference report. Depending on the bill's origin, the final draft is then registered by the Secretariat of the House of Representatives or the Secretary of the Senate and submitted to the Chair of the House of Representatives and the President of the Senate for signature. The bill is then sent to the President (Firdaus, 2021, p. 53).

Based on Article 1 Section 7 number 2 of the United States Constitution, every bill must be approved by the two chambers of Congress: the Senate and the House of Representatives. Before it becomes a law, it must be submitted to the President for approval. If they agree, the Act will be signed, and if not, the President of the United States will return it to the Senate and the House of Representatives by giving reasons for rejection (objection).

The President's rejection of a bill approved by both chambers of the United States Congress is known as a veto. A veto is the constitutional power of the President of the United States to pass a bill.

### **Reconstruction of Public Participation in the Formation of Legislation**

Public participation is a prerequisite and a representation of the realization of a democratic government (Riskiyono, 2017, p. 25). If the government is not accompanied by participation, there will be no democratic government system in the country. Therefore, as one of the principles of Good Governance and a manifestation of people's sovereignty, public participation in policymaking must be guaranteed in the constitution or statutory regulations. This guarantee is needed to show that the public can be involved in implementing and monitoring a policy.

Democracy is expected to guarantee the realization of a responsive legal product because the community participates in drafting and fostering the birth of law. Public participation in forming these laws will make the community more critical and

the government more responsive in the democratic process, thus giving birth to an honest government and responsible citizens (Riskiyono, 2017, p. 26).

Public participation is a guarantee that must be given to the people to be able to participate in the process of administering the state and accessing public policies freely and openly (Riskiyono, 2017, p. 41). Although formally in Law no. 12 of 2011 concerning the Establishment of Legislations has provided guarantees for citizens to be involved in drafting laws and regulations. However, the *political will* of the legislature is still essential to realizing participation in the process of forming the legislation. If the legislature unlocks this lock, then public participation will be felt by the legislature and the executive in implementing a law.

Mahfud MD, as quoted by Joko Riskiyono, stated that the formation of a participatory law covers the substance and process. At the level of substance, it means that the material to be regulated must be aimed at the interests of the wider community to produce laws that are democratic and have a responsive/populistic character. Furthermore, at the process level, the mechanism for forming legislation must be transparent so that the community can provide input and regulate issues (Riskiyono, 2017, p. 11). Thus, participation, transparency, and democratization are integral and inseparable parts of forming laws in a democratic country.

Public participation in forming laws and regulations can be done in 2 ways: active and passive participation. Through active participation, it can be done with the initiative of the community to play a role in the formation process following the general meeting, public debate, and writing. Passive participation comes from outside the community, which in this case, is carried out by the legislature or the executive; it can be through public dialogue, seminars, and workshops. However, this passive participation needs to be noticed because substantial activities are not only used as a formality events (Susanti & Fazrie, n.d.).

Regarding public participation, Sherry R Arnstein, who put forward the concept of *Eight Runs On Ladder of Citizen Participation*, explained that participation is based on the power of the community to determine a final product. In general, the eight stairs are divided into three major groups, namely as follows (Arnstein, 1969):

- a) There is no participation or *non-participation*, which includes *manipulation* and *therapy*.
- b) Community participation in residence accepts several provisions, including *informing*, *consultation*, and *placement*.
- c) Community participation in the form of having power which includes *partnership*, *delegated power*, and *citizen control*.

In Indonesia, public participation in the formation of legislation, if examined from the concept of Sherry R Arnstein, is still at the consultation stage or in the concept of tokenism, where the community is allowed to have an opinion but does not have the power to influence their opinion, as in the case described above. . Although the provisions of Article 96 of Law 12 of 2011 concerning the Establishment of Legislation provide guarantees of participation. However, it is only

formal in terms of how to participate in the formation of legislation. However, the regulations on community participation in these provisions have not provided a clear picture (Huzaeni & Anwar, 2021, p. 226). The article mandates that government administration accommodate the right of public participation to be involved in the preparation and discussion of legislation. There are no further provisions regarding technical regulations on how the public participation mechanism must be accommodated by government administration (Nugraha & Ratnawaty, 2016, p. 32).

Public participation in forming laws and regulations related to human rights is contained in Article 28 E of the 1945 Constitution. The law guarantees the public to express their opinions responsibly on state administration policies. However, these rights will be difficult to materialize because there is no obligation for the government that this opinion will influence the decisions it takes (Eka NAM Sihombing, 2021, p. 171).

According to Alexander Abe, public involvement in forming legislation can provide three critical impacts: first, avoiding manipulation of people's involvement and clarifying the community's will. *Second*, providing added value to the legitimacy of the planning formulation. *Third*, increase public awareness and political skills (Alexander, 2005, pp. 90–91). In line with this, the consequences of not involving the public in forming legislation have a terrible impact. According to Mas Achmad Santosa, forming legislation that does not involve the public in the regulation process does not solve social problems but creates new problems in society (Eka NAM Sihombing, 2021, p. 165). even worse, due to the non-participatory process of law-making, there will be legislative corruption (Firdaus, 2021, p. 78).

From the example above regarding the formation of *Undang-Undang Cipta Kerja*, *Undang-Undang Mahkamah Konstitusi*, and *Undang-Undang Ibu Kota Nusantara* (IKN), which are considered problematic, it can be used as a benchmark for the weakness of the legislative process in Indonesia, one of which is related to public participation. Its hasty formation and lack of participation should be a mirror for improving the legislative process in the future.

Indeed, legislators have no legal consequences if they do not involve the community in forming the legislation. This, of course, sparked controversy in the community, which led to the submission of a formal and material review of the legislation itself. The guarantee of community participation should be regulated by providing legal consequences if it does not involve the community in its formation. Because the concept of popular sovereignty as contained in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph 2 is not only involved in elections but also the community has the right to actualize their political interests by forming the legislation. JJ Rousseau, who put forward the theory of popular sovereignty, held the (Rudy, 2013, p. 258) view that the sovereign is the people while the government is only a representative. If the government does not carry out affairs by the people's will, then the government must be replaced; the people's sovereignty is based on the general will. Public participation is a form of people's sovereignty. Thus the state

should be present and guarantee community involvement in all forms of state problems, including in forming the legislation.

Concerning participation in the formation of legislation, there must first be transparency. Transparency and participation are inseparable units. This is explained in Article 5 Letter G concerning the Principle of Openness "That in the formation of laws and regulations starting from planning, drafting, discussing, ratifying or determining, and promulgation is transparent and open. Thus, all levels of society have the broadest opportunity to provide input in forming laws and regulations. However, this principle of openness has no legal consequences if it is not carried out in the same way as public participation.

Indeed, in some expert views, the principle of law is not a concrete legal norm, as stated by Paul Schotlen in the quote from Maria Farida that the principle of law is not law, but the law cannot be understood without these principles (Indrati, 2020, p. 253). However, in the principle of openness in the formation of laws and regulations, the author holds a different view that openness should be translated as a legal basis that must be carried out and has consequences, whether the law cannot be ratified or legally canceled because this is related to the concept of people's sovereignty. as well as the parliament, which is the people's representative institution, the most basic function of the parliament is the representation of representation itself. Representative institutions without representation are meaningless (Ayus, 2021, p. 48).

Public participation is generally understood as a series of activities in the form of demands or "resistance" against a policy that is carried out in a systematic and organized manner. The aim is to influence policy formation by the community's will. So legislators should encourage broad transparency to the community; this is related to the consideration of letter b of Law no. 14 of 2008 concerning Public Openness states that the right to obtain information is a human right and the disclosure of public information is one of the essential characteristics of a democratic country that upholds the sovereignty of the people to realize good state administration. With openness, the community can take part in the process of participation in the formation of legislation.

In addition, the active role of legislators in capturing people's aspirations is vital. This is done to reduce the possibility of the interests of institutions and groups contaminating the law. Public participation ensures that the resulting laws are not drawn up only by a political elite. A legislature parliament has a better chance of gaining strong upstream legitimacy than a committee of experts. However, parliament is vulnerable because it can be interfered with by the interests of political parties and the interests of the parliament itself (Luthf, 2015, p. 192). Thus, public participation should be understood as a necessity.

The use of technology is also essential in the process of forming laws and regulations to implement public participation. The majority of countries in Europe

consider technology and information as supporting variables for *good regulation*. These benefits include:

1. The number of managed regulations is extensive across fields and institutions, thus requiring technical support to update and retrieve regulatory data. Complex regulations can be implemented with the help of ICT
2. Technology is beneficial for developing online public consultations through discussion forums and access to information, including information on law-making. (This is very useful, like during a Pandemic where access to gatherings is minimal)
3. Electronic consultation can be developed by establishing a website portal to support the government and parliament in opening interactive services to support the decision-making process for forming laws.

By understanding this public participation, inevitably, the content material is only intended for the benefit of the people. Misappropriation of the material content intended for the benefit of the people means denying the nature of the existence of a law in society. In turn, enacting laws that do not support the public interest will be dangerous for the sustainability of the wider society. That is why the blessing community participates in forming laws and regulations (Riskiyono, 2017, p. 40).

## CONCLUSION

Law Number 12 of 2011, as amended in Law Number 15 of 2019 concerning the Formation of Legislation, has guaranteed public participation in its formation. However, this participation does not explain further the mechanism for accommodating community involvement and input, so many laws and regulations are made and ignore public participation, which makes Indonesia's democracy index decline.

The absence of legal consequences due to the lack of transparency and participation makes legislators increasingly arrogant in carrying out their duties to form laws and regulations. In popular sovereignty theory, public involvement is one of the rights guaranteed in the constitution and is related to human rights. Thus, legislators should not pursue the quantity of legislation but the quality of the law itself. Therefore, public participation should be translated as a necessity for state administration, including in forming the legislation. The process not only includes text in the articles of legislation but also involves the public and accommodates their interests.

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