

PUBLIC PARTICIPATION AFTER THE LAW-MAKING PROCEDURE LAW OF 2022

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Abstract

Constitutional Court Decision No. 91/PUU-XVIII/2020 affects Law no. 11 of 2020 concerning Job Creation. More than that, the Constitutional Court's decision seems to portray the fundamental problems of the law-making process that must be corrected immediately. These problems are, first, the Omnibus method in Law no. 12 of 2011 concerning the Establishment of Legislation. Second, procedural error and a change in the text after the mutual agreement. Third, ignoring meaningful public participation in the formation of laws. This research will focus on correcting the Constitutional Court to the process of law formation to prioritize meaningful participation, not just a mere formality. The legislators then followed up the Constitutional Court's notes by revising Law no. 12 of 2011 concerning the Establishment of Legislation for the second time become Law no. 13 of 2022, one of the substances of which is to change the provisions of Article 96, which contains the regulation of public participation in the formation of laws. The formulations of the problem raised in this study are: what is the meaning of meaningful public participation in the construction of rules based on the Constitutional Court Decision No. 91/PUU-XVIII/2020, and what is the ideal arrangement in Law no. 12 of 2011 concerning the Formation of Legislations to accommodate meaningful participation in the formation of laws. This study found that Law no. 13 of 2022 cannot accommodate meaningful participation because it is still a right and not an obligation. Then legislators must create information technology-based tools that help increase meaningful participation in law-making.

Keywords: public participation; law making; formal review; constitutional court

INTRODUCTION

Background

One of the essential rules of the statute is that all actions are based on law or legislation, a formal legal state, namely a legal state that gets activities from the people, and all authorities' actions require certain legal and must be based on law. This formal state of

law is also called a democracy based on law.¹

The relationship between the people and the state in a democratic climate in Indonesia cannot be separated because the people hold the highest sovereignty and are implemented

¹ Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Pasca Reformasi*, (Jakarta: Bhukuana Ilmu Populer, 2008), pg. 304

based on the Constitution.²

Even though we have entered the Reformation era, an event that became the momentum for the opening of democratization in Indonesia, our democratic life still has many shortcomings. According to the 2021 World Democracy Index report released by The Economist Intelligence Unit (EIU), Indonesia is ranked 52nd in the world with a score of 6.71. The EIU also classifies Indonesia as a country with a flawed democracy (flawed democracy). According to the EIU, countries with flawed democracies generally already have free and fair electoral systems and respect fundamental civil liberties. However, countries in this 'disabled' group still have fundamental problems such as low press freedom, an anti-critical political culture, weak citizen political participation, and government performance that has not been optimal. Although still classified as 'disabled,' Indonesia's democracy index has risen 12 from the previous year, ranked 64th globally. The EIU Democracy Index is calculated based on five indicators: electoral process and pluralism, government functions, political participation, political culture, and civil liberties.³

As for the five indicators measured by EIU to determine the Democracy Index, Indonesia's score rose in three aspects, namely the functioning of the government, from 7.50 to 7.86. Civil liberties rose from 5.59 to 6.18. Meanwhile, political participation shot from a score of 6.11 to 7.22. However, two aspects are still stagnant compared to last year. The electoral process and pluralism did not move at a score of 7.92. The political

culture indicator is also still at 4.38.⁴

The low index of our democracy in 2021 is influenced by public policies that do not pay attention to public input, including revising the Corruption Eradication Commission Law and establishing the Job Creation Law that the formation lacks public participation. The government must know who will raise or lower the Democracy Index itself. The government must optimize its role in line with the public's will. In its report, the EIU said that Indonesia could reverse the downward trend in the quality of democracy due to two things. First, the Constitutional Court's decision requires Law No. 11/2020 that is conditionally unconstitutional and asks the government and the DPR to revise it. Second, President Joko Widodo's cabinet, which accommodates various political groups, is conducive to building consensus among political forces.⁵

However, on the other hand, the existence of laws and regulations for the rule of law also faces problems, including there are still legal products that have been passed, causing issues in various aspects, among others, many laws that are not needed by the community, the quality of the products is inadequate, there are still many laws that conflict with each other, are not well integrated from the start.⁶

The problem of disengaged laws and regulations gives rise to what Richard Susskind calls hyperregulation.⁷ President Joko

2 Article 1 paragraph (2) UUD 1945

3 Monavia Ayu Rizaty, *Indeks Demokrasi Dunia 2021 Indonesia dinilai Masih Lemah*, Katadata.co.id, 2022, <https://databoks.katadata.co.id/datapublish/2022/02/14/indeks-demokrasi-dunia-2021-indonesia-masih-dinilai-lemah> last accessed 10 June 2022

4 Kurnia Yunita Rahayu, Iqbal Basyari dan Nina Susilo, *Peningkatan Skor Indeks Demokrasi 2021 Tak Serta Merta Tandai Perbaikan Kualitas Demokrasi Indonesia*, Kompas.id, 2022, <https://www.kompas.id/baca/polhuk/2022/02/14/peningkatan-skor-indeks-demokrasi-2021-tak-serta-merta-tandai-perbaikan-kualitas-demokrasi-indonesia> last accessed 10 June 2022

5 *Ibid.*

6 Bayu Dwi Anggono, *Perkembangan Pembentukan Undang-Undang di Indonesia*, (Jakarta: Konstitusi Press, 2014), pg. 10

7 Richard E Susskind, *The Susskind Interviews: Legal Experts in Changing Times* (Sweet & Maxwell, 2005) pg. 117

Widodo complained about issues with laws and regulations, including hyper-regulation and overlapping regulations. Resulting in convoluted bureaucratic implementation and caused uncertainty so that investment was hampered in the first period of his reign. The 4th National Constitutional Law Conference (KNHTN) in Jember in 2017 also recommended streamlining regulations in Indonesia because so many spread across various ministries/agencies.⁸

Overcoming the overlapping and disengaged laws and regulations that cause investment to be not maximal, the government and the House of Representatives formed the Job Creation Law, which was drafted using the Omnibus Law method. Maria Farida Indrati understood Omnibus Law as a new law that contains or regulates various kinds of substances and subjects for simplifying various laws that are still in effect.⁹ According to Audrey O. Brien, the Omnibus Law is a draft law that includes more than one aspect which is combined into one law. Meanwhile, according to Barbara Sinclair, Omnibus Law is a complex regulatory process and its completion takes a long time because it contains a lot of material even though the subject, issue, and program are not always related.¹⁰

The government's policy with the House of Representatives to form laws using the Omnibus Law method cannot be separated

from the pros and cons. On the one hand, the Omnibus Law method is considered one of the concrete efforts to overcome regulatory problems, but on the other hand, there is no proper regulation on how to form a law. The Omnibus Law method should be regulated in Law no. 12 of 2011 as amended for the second time by Law no. 13 of 2022 concerning the Establishment of Legislation.

The chronology of the formation of the Job Creation Law began on December 17, 2019. At that time, the Job Creation Bill was included in the 248 Mid-Term National Legislation Program (Prolegnas) for 2020-2024 and the 2020 Priority Prolegnas, which the House of Representatives ratified, the government and Regional Representatives in the Plenary Session of the House of Representatives. On February 12, 2020, the President sent six ministers, namely, the Coordinating Minister for the Economy, Minister of Finance, Minister of Law and Human Rights, Minister of Manpower, Minister of Agrarian and Spatial Planning, and Minister of Environment and Forestry, to submit a draft, academic text (NA) of the Job Creation Bill along with a Presidential Letter to the House of Representatives, which was received directly by the Chair of the House of Representative and 4 Deputy Chairs.¹¹

The consultation meeting to replace the Deliberative Body (Bamus) of the House of Representatives submitted the discussion of the Job Creation Bill to the Legislation Body of the House of Representatives. And the Legislative Council of the House of Representatives formed a Working Committee on the Job Creation Bill on April 14, 2020, which consisted of 35 members and five leaders of the DPR Baleg. On April 27, by

8 Moh. Nadlir, *Rekomendasi Jember untuk Penataan "Obesitas Regulasi" di Indonesia*, Kompas.com, 2017, <https://nasional.kompas.com/read/2017/11/12/17412311/rekomendasi-jember-untuk-penataan-obesitas-regulasi-di-indonesia> last accessed 10 June 2022

9 Maria Farida, *Omnibus Law, UU Sapu Jagat?*, Kompas.id, 2020, <https://kompas.id/baca/opini/2020/01/04/omnibus-law-uu-sapu-jagat> last accessed 11 June 2022

10 Paulus Aluk Fajar Dwi Santo, *Memahami Gagasan Omnibus Law*, Binus.ac.id, 2019, <https://business-law.binus.ac.id/2019/10/03/memahami-gagasan-omnibus-law> last accessed 12 June 2022

11 Kiswondari, *Kronologi Lahirnya UU Cipta Kerja yang Jadi Kontroversial di Masyarakat*, Okezone.com, 2020, <https://nasional.okezone.com/read/2020/10/07/337/2289793/kronologi-lahirnya-uu-cipta-kerja-yang-jadi-kontroversial-di-masyarakat?page=3> last accessed 12 June 2022

inviting several related experts, experts, and academics, as well as stakeholders related to the Ciptaker Bill, including professional associations, employers, and labor unions. The Ciptaker Bill comprises 174 articles from 15 chapters that impact 1203 articles from 79 related laws and is divided into 7197 Problem Inventory Lists (DIM). The DIM discussion is carried out by the Working Committee in detail and intensively starting from April 20 to October 3, 2020, or 3 sessions of the House of Representatives. Until its peak on October 5, 2020, the Job Creation Act was passed and then promulgated on November 2, 2020, into Law No. 11 of 2020 concerning Job Creation.¹²

Throughout its formation, the Job Creation Law has drawn criticism from various elements related to the lack of transparency and public participation. Since it was compiled, no official publication of the draft has been given to the public. The Covid-19 pandemic has limited meetings and mobility, making it quite difficult for the public to provide input.

Whereas law must be built democratically and nomocratically to invite participation and absorb the aspirations of the broader community through fair, transparent, and accountable procedures and mechanisms.¹³

After being ratified at the Plenary Meeting on October 5, 2020, there are still things that are not transparent because the draft of the bill that was passed was not given to the Members of the House of Representatives who were present and also to the public. Several versions are published to the public, namely versions 1028 pages, 905 pages, 1052 pages, 1035 pages, and 812 pages, and finally, the final version approved by the President changed to 1187 pages.¹⁴

¹² *Ibid.*

¹³ Moh. Mahfud. M.D, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*, (Jakarta: Raja Grafindo Persada, 2013) pg. 5

¹⁴ Agus Sahbani, *Berubah Setelah Persetujuan Bersama, Nasib UU Cipta Kerja di Ujung Tanduk?*, Hukumonline.com, 2020, <https://www.hukumonline.com/berita/baca/lt5f9aaf3e042a4/berubah-setelah-persetujuan-bersama--nasib-uu-cipta-kerja-di-ujung-tanduk> last accessed 13 June 2022

Due to its formation, which was deemed to have violated the principles of procedural due process of law and substantive due process of law¹⁵, several parties submitted a Formal Test to the Constitutional Court. Of the 12 requests for both formal and/or material review, only one application was partially granted, namely the Constitutional Court's decision No. 91/PUU-XVIII/2020 which stated the Copyright Law. Conditional unconstitutional work as long as no repairs are made for 2 years since the decision was pronounced on November 25, 2021.

The Constitutional Court's decision Number 91/PUU-XVIII/2020 is a decision in a formal review case of Law Number 11 of 2020 concerning Job Creation submitted by several applicants consisting of private employees, students, lecturers, Migrant CARE, the Nagari Customary Density Coordination Board of West Sumatra and Minangkabau Natural Customary Court. In their lawsuit, the petitioners argued that the process of drafting the Job Creation Law violated Article 22A of the 1945 Constitution and the provisions of Article 5 letter a, letter e, letter f, and letter g of the Laws Making Law relating to the principle of transparency.

The petitioners presented pieces of evidence of the violation of the establishment of the Job Creation Law, namely changes to Article 1 number 16, Article 51, Article 53, Article 57, and Article 89A in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers.¹⁶ The changes regulated in

¹⁵ [hukumonline.com/berita/baca/lt5f9aaf3e042a4/berubah-setelah-persetujuan-bersama--nasib-uu-cipta-kerja-di-ujung-tanduk](https://www.hukumonline.com/berita/baca/lt5f9aaf3e042a4/berubah-setelah-persetujuan-bersama--nasib-uu-cipta-kerja-di-ujung-tanduk) last accessed 13 June 2022

¹⁶ Ida Bagus Gede Putra Agung Dhikshita, Deni Clara Sinta, and Candra Dwi Irawan. "Politik Hukum dan Quo Vadis Pembentukan Undang-Undang Dengan Metode Omnibus Law Di Indonesia." *Jurnal Legislasi Indonesia* 19, no. 2 (2022): 165-184.

¹⁶ See Petitioner's Statement in the Decision of the Constitutional Court (MK) Number 91/PUU-XVIII/2020 concerning Formal Examination of

the Job Creation Law are considered contrary to the principle of openness and ignore public participation. This argument is based on the process of discussing the law, which does not include community groups directly affected by changes to related articles. These community groups consist of the Indonesian Migrant Workers Union (SBMI), the Migrant CARE organization, and other migrant worker organizations.

Even though various meetings have been held with various community groups, said the Constitutional Court, these meetings have not discussed academic texts and materials for amendments to the quo law. The Constitutional Court said that it made the people involved in the meeting not aware of the material changes to the law that would be incorporated in Law 11/2020.

In addition, the Job Creation Law is considered to not meet the requirements of Law 12/2011 regarding the principles of the formation of laws and regulations as a necessity to be used in forming laws and regulations.

One interesting thing that will be the focus of this research study is that there is progressivity in consideration of the formal review of the Job Creation Act which is lack of participation, including outlining various constitutional standards at each stage of law formation, involving meaningful public participation, ensuring the principle of openness in the form of transparency. And accessibility to processes and documents related to the formation of laws (academic manuscripts, bills, and others).

Research Question

Regarding the things described in the background, there are 2 (two) problem formulations that will be discussed in this study:

1. What is the meaning of meaningful public participation in the formation of laws?
2. What is the ideal arrangement in Law No. 13 of 2022 concerning the Formation of Legislation to accommodate meaningful participation in the formation of laws?

Research Goals

The research objectives to be achieved are:

1. To explain the concept of meaningful participation in the decision of Constitutional Court No. 91/PUU-XVIII/2020
2. To formulates arrangements to achieve meaningful public participation.

Research Methods

The method used in this research is a normative juridical legal research method (Legal Research) with three types of approaches, namely: the statute approach, the conceptual approach, and the historical approach. The data analysis method used is qualitative analysis. The qualitative analysis method is an analysis of data that does not use numbers but provides descriptions (descriptions) in words of the findings.

This study specifically discusses Constitutional Court Decision No. 91/PUU-XVIII/2020, which discusses aspects of meaningful public participation in the formation of laws. This research applied the normative judicial legal method. The data was collected through the study of documents and literature on secondary data in the form of primary, secondary, and tertiary legal materials. The descriptive analysis was employed in this study.

DISCUSSION

There are 4 (four) points in the Constitutional Court Decision No. 91/PUU-XVIII/2020. First, the establishment of the Job

Law Number 11 of 2020 on Job Creation, pg.61.

Creation Law does not have legally binding provisions conditionally as long as it is not interpreted as not being corrected within two years of the decision being pronounced. Second, if within two years the legislators are unable to complete the revision of the Job Creation Law (until November 25, 2023), then the Act or articles or material content of the law that have been revoked or amended by the Job Creation Act, must be declared valid again. Third, the Job Creation Law will remain in effect until the formation is corrected following the grace period as determined in the Constitutional Court Decision 91/PUU-XVIII/2020. Fourth, states suspend all strategic and broad-impact actions or policies and are prohibited from forming new implementing regulations related to the Job Creation Law. As the focus scope has been described in the background, this research discusses the future of public participation in the formation of laws to create meaningful participation contained in the legal consideration of Constitutional Court Decision No. 91/PUU-XVIII/2020.

Meaningful Public Participation in the Constitutional Court Decision No. 91/PUU-XVIII/2020

In a democracy, the most important thing is how to ensure participation for all people.¹⁷ Participation comes from English literature, namely “participate,” which means to participate, take part, participate. H.A.R Tilaar defines participation as a manifestation of the will to implement democracy through a decentralized process by seeking bottom-up planning that includes the public in the planning and development process.¹⁸ Henk

Addink assessed that participation is the active involvement of group members in a process in the group.¹⁹ So participation is a logical consequence of a country that adheres to people’s sovereignty.²⁰

Meanwhile, Lothar Gundling explained the basic reasons for the importance of public participation in the formation of a policy, including a). providing information to the government (informing the administration), b). increasing the public’s willingness to accept decisions (increasing the readiness of the public to accept decisions), c). assisting legal protection (supplementing judicial protection), d). democratizing decision-making).²¹

Public participation is one factor that reduces the possibility of institutional and group interests contaminating the Act. Community participation ensures that the resulting law is not drafted 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 so vulnerable in nature because it can be interfered with by the interests of political parties and the interests of the parliament itself.²²

Public participation in the state is guaranteed as constitutional rights based on Article 27 paragraph (1) and Article 28C paragraph (2) of the 1945 Constitution, which provides opportunities for citizens to participate in government and build society, nation, and state. Community participation and involvement in the process of public

17 Siti Hidayati, Partisipasi Masyarakat Dalam Pembentukan Undang-Undang (Studi Perbandingan Indonesia Dengan Afrika Selatan, Jurnal Bina Mulia Hukum 3, no. 2 (2019), pg.227.

18 H.A.R Tilaar, *Kekuasaan dan Pendidikan: Manajemen Pendidikan Nasional dalam Pusaran Kekuasaan*, (Jakarta: Rineka Cipta, 2009) pg. 287

19 Henk Adding, *et al.*, *Human Rights and Good Governance*, (Utrecht: Utrecht University, 2010), pg. 36

20 Article 1 paragraph (2) UUD 1945

21 Yuliandri, *Asas-Asas Pembentukan Peraturan Perundang-Undangan Yang Baik, Gagasan Pembentukan Undang-Undang Berkelanjutan* (Jakarta: RajaGrafindo Persada, 2009), pg.187.

22 Riza Multazam Luthfi, “Hubungan Antara Partisipasi Masyarakat, Pembentukan Undang-Undang dan Judicial Review”, Jurnal al-Daulah, Vol. 5, No. 2, Oktober 2015, pg. 168-193

policy-making plans, public policy programs, public decision-making processes, and the reasons for making public decisions are one of the characteristics of the administration of a democratic state.²³

Apart from the public itself, public involvement in the formation of laws will benefit the legislators. First, legislators will know the needs and how to properly meet the needs of the community. Second, there is mutual trust between the legislators and the community, so that a harmonious relationship is established. Third, increase public awareness and role in implementing the law.²⁴

Regarding Participation Systems and Mechanisms, Cohen and Uphoff distinguish participation into four types according to participation systems and mechanisms, namely:²⁵

First, Participation in Decision Making is community participation in the decision-making process and organizational policies. Participation in this form provides opportunities for the community to express their opinions to assess a plan or program that will be determined. The community is also allowed to assess a decision or policy that is currently running. Participation in decision-making is a process in which development priorities are selected and outlined in the form of programs that are tailored to the interests of the community. It is done by involving the community to indirectly experience training to determine their future democratically. This type of participation will be used in the research, in which the community is involved

in every process of law-making of Job Creation law.

Second, Participation in Implementation is the participation or participation of the community in the development of operational activities based on a predetermined program. In the implementation of development programs, the form of community participation can be seen from the number (amount) who are active in participating, the forms that are participated, such as labor, materials, money, all or part of it, direct or indirect participation, enthusiasm for participation, occasionally or repeatedly. -repeat.

Third, Participation in Benefits is community participation in enjoying or utilizing the development results achieved in implementing development.

Fourth, Participation in Evaluation is community participation in the form of participation in assessing and supervising development activities and their results. This assessment is carried out directly, for example, by participating in monitoring and evaluating, or indirectly, for example, by providing suggestions, criticism, or protests.

The formation of laws is considered aspirational and participatory if the process considers the people's aspirations. According to Satjipto Raharjo, a piece of legislation is said to be aspirational and participatory if it can produce regulations that have the following characteristics:²⁶ First, general and comprehensive in nature, which is thus a special and limited virtue and character, Second, universal, because laws are formed to deal with future events. Therefore, laws cannot be formulated to deal only with certain events; and the Third has the power to correct and improve itself. It is common for regulations to include a clause containing the possibility of a review.

23 Saut P. Panjaitan, "Jaminan Perlindungan Konstitusional Hak Tiap Orang Untuk Memperoleh Informasi dan Berkomunikasi", *Jurnal Simbur Cahaya*, 15, no. 42 (2010), pg. 1957-1958.

24 Muhammadiyah, "Partisipasi Publik Sebagai Strategi Mewujudkan Good Governance Otonomi Daerah", *Jurnal Ilmu Pemerintahan*, Vol. 3, No. 1, April 2013, pg. 61

25 Siti Irene Astuti. *Desentralisasi dan Partisipasi Masyarakat* pg. 61-63

26 Satjipto Rahardjo, *Hukum dan Masyarakat* (Bandung: Angkasa, 1986) pg. 114

There are two meanings in the formation of participatory laws, namely process and substance. The process is a mechanism for forming laws that should be implemented transparently so that the public can convey their aspirations in formulating policies or solving problems. The substance is the subject matter of regulations that are intended for the benefit of the wider community so that a responsive democratic law product is formed.²⁷

One of the principles of establishing good laws and regulations according to Law no. 12 of 2011 concerning the Formation of Legislations as amended for the second time by Law Number 3 of 2022 namely the fulfillment of the principle of Openness, which means that the Formation of Legislations starts from planning, drafting, discussing, ratifying, or determining, and enacting transparent and open legislation.

So that all levels of society, especially those affected, have the widest possible space to provide input and express their aspirations in the formation of laws and regulations.

In the past few years, the legislators were deemed indifferent to public participation in the process of forming laws. These problems can be seen in several processes of law formation, including the Revision of the Law on the Corruption Eradication Commission, the Revision of the Law on Minerals and Coal, and finally, the Law on Job Creation.

In fact, one of the principles for the formation of good laws and regulations is the fulfillment of the principle of openness, which means that in the formation of laws and regulations starting from planning, drafting, discussing, ratifying or determining, and enacting, including access to the public who have an interest and affected to obtain

information and give aspiration at every stage in the law-making process. So that all levels of society, especially those affected, have the widest possible space to provide input and express their aspirations in the formation of laws and regulations. The legislative process is not only carried out by the House of Representatives together with the government, the public as the holder of the highest legitimacy and sovereignty must know to what extent and how the draft law will have a general impact when it is passed.

Although the laws formed by the legislators have a good purpose, this does not automatically weaken the role of public participation, and the community is needed as a balancing force, especially to oversee the "blind spot" in the process of law-making, because it cannot be denied that there will be many political factors will affect the purpose of the formation of laws that were originally intended for the benefit of the community.

This is where the importance of participation community is in the process of forming regulations and legislation. Participatory democracy is expected to guarantee more for the realization of the product responsive law because the community participates make and have the birth of rule legislation.²⁸

Participation is not enough only for a few people who sit in representative institutions because institutions and people who sit in representative institutions often use politics in the name of the people's interests to fight for their own personal or group interests. Direct people's participation will bring three essential impacts: first, avoiding opportunities for manipulation of people's involvement and clarifying what the community wants; second, adding value to the legitimacy of the planning formulation. The more people involved, the

27 Moh. Mahfud MD, *Perkembangan Politik Hukum: Studi tentang Pengaruh Konfigurasi Politik Terhadap Produk Hukum di Indonesia*, Disertasi, UGM, 1993, pg. 66.

28 Saifudin, *Partisipasi Publik Dalam Pembentukan Peraturan Perundang-undangan*, (Yogyakarta, FH UII Press, 2009) pg. 33.

better; and third, increase public awareness and political skills.²⁹

The existence of community participation in the formation of laws and regulations is essential because the people's representative system can never be relied on as the only channel for people's aspirations. Therefore, the principle of representation in ideas is distinguished from representation in presence because physical representation alone does not necessarily reflect the representation of ideas or aspirations.³⁰

The state has provided a formal test route for laws whose formation is deemed not to be in accordance with formal provisions, including the absence of participation and openness. According to Jimly Asshiddiqie, the formal review of the law is an important issue as the control mechanism of the Constitutional Court in the democratic process is not on track. In fact, the decision of the Constitutional Court in the formal examination must prioritize justice and constitutional truth, the formal test is a more progressive theory regarding the examination of a more extra procedural review of law legislation. In the United States, this formal test has developed as a control mechanism for the democratic system. So that the latest theory emerged, for example, semi-procedural review which later became extra-procedural review.³¹

The formal review is a manifestation of the Constitutional Court as a protector of democracy, as stated by Jimly Asshiddiqie that there are at least 5 (five) functions of the Constitutional Court, namely as a guardian of the constitution, the final interpreter of the constitution, protector of human rights, protector of constitutional rights, and protector

of democracy.³²

As a state of law, it is not only the constitutionality of articles that must be tested but also the process of making laws, not only law enforcement which requires strict compliance with procedures, law-making is also necessary. A state of law must not only ensure due process of law, but also due process of law-making. In a law enforcement process, evidence obtained through improper means, such as torture or search without a letter, can invalidate the case with clear procedures. So logically, it should also apply in the formation of law, the law whose formation injures the procedure, the consequences can be canceled.³³

According to a researcher of the Indonesian Parliamentary Center (IPC), Muhammad Ichsan, that the number of laws that were passed, which was then submitted to the Judicial Review at the Constitutional Court, showed that the legislators did not accommodate the aspirations of the community as stakeholders. The legislators are considered closed and reluctant to listen to public input. Based on records, of the 78 laws produced by the House of Representatives for the 2014-2019 period, there were 14 laws that were tested before the Constitutional Court with a total of 116 petitions.³⁴

The research of the *KoDe Inisiatif* shows that as many as 44 formal reviews were

29 Sirajuddin, *Legislative Drafting Metode Partisipatif dalam Pembentukan Peraturan Perundang-undangan*, (Malang, Setara Press, 2016) pg. 237.

30 Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme*, (Jakarta, Sinar Grafika, 2010), pg. 133.

31 Moh. Mahfud MD. *Loc. cit.*

32 Tim Penyusun Hukum Acara Mahkamah Konstitusi, *Hukum Ajar Mahkamah Konstitusi*, (Jakarta, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2010) pg. 10

33 Bivitri Susanti dan Nurul Fazrie, "Tantangan Pengujian Proses Legislasi di Mahkamah Konstitusi" <https://www.hukumonline.com/berita/a/tantangan-pengujian-proses-legislasi-di-mahkamah-konstitusi-lt5f8e4201deea4> last accessed 20 June 2022

34 Rofiq Hidayat, "Minim Partisipasi Publik Penyebab Produk UU Berujung ke MK" <https://www.hukumonline.com/berita/baca/lt5da83b13e8ca5/minim-partisipasi-publik-penyebab-produk-uu-berujung-ke-mk/> last accessed 20 June 2022

submitted with 22 different types of reasons, a total of 93 times being postulated for formal violations. The problem of formal violations that was most postulated in the formal examination was a violation of the principles of the formation of good laws and regulations, which was 13 times and did not open the participation of the public and/or related stakeholders 4 times.³⁵

KoDe Inisiatif considers that the Constitutional Court has so far prioritized procedural aspects in the formal judicial review of laws. Such as whether in making decisions in the plenary session of the House of Representatives quorum or not, the discussion of the law in question begins with the presence of a presidential letter or not, and in the process of discussing the law holding a public hearing meeting (RDPU) or not. Do not see a more holistic reality whether the process of forming the law in question has been formed in the right way or not.³⁶

Against dozens of Formal Tests that have been submitted, finally on November 25, 2021, the Constitutional Court granting the Formal Testing of Law no. 11 of 2020 concerning Job Creation. The granting of the Formal Testing of the Job Creation Act through the Constitutional Court's Decision No. 91/PUU-XVIII/2020 can be said to be one of the Landmark Decisions, in the Black's Law Dictionary, Landmark Decision, namely "A decision of the Supreme Court that significantly changes existing law." It can also be understood that the Landmark Decision means that the decision has an important impact on the life of the state and society which must be obeyed by all stakeholders,

including the legislators.

The nature of the landmark decision was first seen from the granting of the first formal test in the 18 years that the Constitutional Court was established, the Constitutional Court's Decision No. 91/PUU-XVIII/2020 seems to be a warning for legislators to be careful and not to form laws "recklessly" and must comply with the procedures for establishing existing laws and regulations and must uphold transparency and substantive public participation or meaningful participation.

The Constitutional Court Decision Number 91/PUU-XVII/2020 states that the Job Creation Law was contrary to the 1945 Constitution of the Republic of Indonesia and did not have conditionally binding legal force as long as it was not interpreted as "no improvement in the period of 2 (two) years from the date of this decision. However, in point (4) of the ruling, the Constitutional Court stated that Law Number 11 of 2020 concerning Job Creation is still valid until the formation is corrected following the grace period as determined in this decision.

In its decision the Constitutional Court stated:

"In addition to the fulfillment of the formalities of all the stages above, another problem that must be considered and fulfilled in the formation of the law is public participation. The opportunity for the public to participate in the formation of laws is actually a fulfillment of the constitutional mandate which places the principle of people's sovereignty as one of the main pillars of the state as stated in Article 1 paragraph (2) of the 1945 Constitution. Furthermore, public participation is also guaranteed as a right. Constitutional rights are based on Article 27 paragraph (1) and Article 28C paragraph (2) of the 1945 Constitution which provides opportunities for citizens to participate in government and build society, nation, and state. If the formation of laws with processes and mechanisms actually closes

35 KoDE Inisiatif, *Menakar Peluang Pengujian Formil Revisi UU KPK di Mahkamah Konstitusi* (Jakarta: KoDe Inisiatif, 2020), pg. 2
36 Aida Mardatillah, "Dua Guru Besar Minta MK Lebih Berperan dalam Pengujian Formil UU" <https://www.hukumonline.com/berita/baca/lt5eb6bc526b78a/dua-guru-besar-minta-mk-lebih-berperan-dalam-pengujian-formil-uu?page=3> last accessed 20 June 2022

or distances the involvement of community participation to participate in discussing and debating its contents, it can be said that the formation of laws violates the principle of people's sovereignty."

In its legal considerations, the Constitutional Court confirmed that the establishment of the Job Creation Act violated 3 (three) provisions, namely:³⁷

1. The formation of a law that is not based on a definite, standard, and standard method in accordance with the provisions of the PPP Law.
2. There is a change in the substance of the Law after the stage of mutual approval between the DPR and the President;
3. Does not meet the principle of openness in the formation of laws and regulations.

According to the Constitutional Court, regarding the principle of openness, the facts of the trial revealed that the legislators did not provide maximum space for public participation. Even though various meetings have been held with different community groups, these meetings have not discussed academic texts and materials for amendments to the quo law.

The people involved in the meeting did not know for sure what material changes to the law would be incorporated into Law 11/2020. Moreover, academic texts and the Draft Law on Job Creation cannot be easily accessed by the public. In fact, based on Article 96 paragraph (4) of Law No. 12 of 2011 concerning the Establishment of Legislation, access to draft laws must make it easier for the public to provide input orally and/or in writing.

Constitutional Court Decision No. 91/PUU-XVIII/2020 states that there are seven objectives of public participation in the formation of laws. They were first, creating

a strong collective intelligence that will provide a better analysis of potential impacts and broader consideration in the legislative process for higher quality outcomes overall. Second, build a more inclusive and representative legislative body in decision-making. Third, increasing the trust and confidence of citizens in the legislature. Fourth, strengthen the legitimacy and shared responsibility for every decision and action. Fifth, increase the understanding of the role of parliament and members of parliament by citizens. Sixth, providing opportunities for citizens to communicate their interests. Seventh, create a more accountable and transparent parliament.³⁸

The Constitutional Court in its decision emphasized that public participation in the formation of laws must be meaningful participation. Meaningful participation has 3 important prerequisites. First, the right to be heard. Second, the right to be considered (right to be considered). Third, the right to get an explanation or answer to the opinion given (right to be explained).³⁹

Seen in a philosophical sense, participation is the implementation of democratic principles. The current era of openness must be understood by the public that participation is not only a right, but also an important necessity. The public are not only users, but they are citizens who should have a sense of belonging in the administration of the state. Public participation is also in line with the concept of good governance, participation will produce outputs to improve the quality of the policies formed and also enrich stakeholder references in deciding the most appropriate policies.

Constitutional Court Decision No. No. 91/PUU-XVIII/2020 encourages the realization of Deliberative Democracy. As explained

37 See Legal Considerations number 3.19 in the Constitutional Court Decision Number 91/PUU-XVIII/2020, p.412.

38 Constitutional Court Decision No. 91/PUU-XVIII/2020 (Poin 3.17.8) pg. 392-393

39 *Ibid.*

bermas that Deliberative Democracy requires a public space so that the public can express their every opinion regarding the formation of a policy.⁴⁰ The public space can be physical or public space in terms of conditions. Thus, the fulfillment of participation will be assessed from the presence or absence of this public space.

Based on deliberative democracy, the law must be formed through a public and participatory space. So, to form a deliberative law, the main thing that is important to do is to create an interactive public space that runs in two directions, not only in the form of one-way socialization activities.⁴¹

Follow-up on the Constitutional Court's Decision No. 91/PUU-XVIII/2020 Realizing Meaningful Participation in Law No. 13 Year 2022

Normatively, public participation in the formation of laws is regulated in Article 96 of Law no. 12 of 2011 concerning the Establishment of Legislation, that the public has the right to provide input orally and/or in writing in the Formation of Legislation. Oral and/or written input can be made through public hearings, work visits, outreach, and/or seminars, workshops, and/or discussions. The community referred to in the article is an individual or a group of people who have an interest in the substance of the Draft Law and Regulations, and each Draft Legislation must be easily accessible for public.

However, in practice, the legislators in the past few years have not fully implemented the mandate of the article, we can at least

see this problem in several processes of law formation, including the Revision of the Law on the Corruption Eradication Commission, the Revision of the Law on Mineral and Coal, and the Law on Job Creation.⁴² Participation is only a formality and is only used as a one-sided claim that the important thing is that there has been participation, to the exclusion of meaningful participation. This condition was agreed upon by the Constitutional Court in its Decision No. 91/PUU-XVIII/2020, which states that there is a direct violation of the process of establishing the Job Creation Law. At least three violations occurred. Namely, discussions that are carried out in a hurry, are not, transparent and lack participation.

Constitutional Court Decision No. 91/PUU-XVIII/2020 later became one of the backgrounds for the Revision of Law No. 12 of 2011 concerning the Establishment of Legislation into Law no. 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Legislation, in order to reorganize the mechanism for meaningful public participation and not merely a formality. Specifically, what is the correction of the Constitutional Court can be seen in Article 96 of Law no. 13 of 2022, the right to be heard is written in Article 96 paragraph (1) as follows, the public has the right to provide input orally and/or in writing at every stage of the formation of laws and regulations, then in paragraph (2) it is added that giving public input is carried out online and/or offline.

Appreciation for legislators who include the mechanism for aspirations carried out online or offline, learning from the experience of forming the Job Creation Act, advocacy and conveying aspirations by the public so massively through social media, this is inseparable from the Covid-19 pandemic

40 Liza Fariyah and Sri Wahyuni, *Demokrasi Deliberatif Dalam Proses Pembentukan Undang-Undang Di Indonesia: Penerapan Dan Tantangan Ke Depan*, Makalah Ilmiah Lembaga Kajian Dan Advokasi Untuk Independensi Peradilan (Leip), 2015, p.7.

41 Wimmy Hallim, "Demokrasi Deliberatif Indonesia : Konsep Partisipasi Masyarakat Dalam Membentuk Demokrasi Dan Hukum Yang Responsif," *Jurnal Masyarakat Indonesia* 42, no. 1 (2016), p.27.

42 Fahmi Ramadhan Firdaus, *Mewujudkan Pembentukan Undang-Undang yang Partisipatif*, (Banyumas, Amerta Media, 2021) pg. v

conditions which limit mobility and physical encounter.

The second right, namely the right to be considered, can be seen from Article 96 paragraph (7) of Law no. 13 of 2022 which states that the results of public consultants are taken into consideration in planning, drafting, and discussing laws and regulations. According to Zainal Arifin Mochtar, considering public opinion in the formation of the law is a form of respect for the sovereignty of the people. Based on this, in the theory of law formation, it is stated that public participation is the importance of the legislative administration process.⁴³

Finally, the right to be explained in Article 96 paragraph (8) of Law no. 13 of 2022 that legislators can explain to the public the results of the discussion of community input, which becomes the next homework for legislators is to provide a means to provide feedback on public input and aspirations. It is of course overcome by utilizing information technology.

However, for the record, the formulation of Article 96 is more inclined to regulate the rights of the community in the formation of laws and regulations, even though it is also necessary to regulate the obligations of the legislators. For example, Article 96 paragraph (8), the phrase "can" has the potential to be a reason for legislators not to always provide explanations for public input. Ideally, the phrase should be changed to "mandatory" because meaningful participation is an inseparable unit, the right to an explanation is a mandatory consequence of the right to be heard and the right to be considered.

The essence of which is also a breakthrough from Law 13 of 2022 is the formation of laws and regulations that are more advanced and follow the times. The

form is that the formation of legislation is carried out electronically.⁴⁴ This is inseparable from the development of information system technology and the use of electronic documents is inevitable and becomes a necessity in the era of digital technology.⁴⁵

Normatively, the technical mechanism for public participation can be found in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 11 of 2021 concerning Procedures for Implementing Public Consultations in the Formation of Legislation as the implementing regulation of Article 188 paragraph (3) of Presidential Regulation Number 87 of 2014 concerning Implementing Regulations of Law Number 12 of 2011 concerning the Establishment of Legislation, with the existence of revision of Law no. 12 of 2011 in particular Article 96 which regulates public participation, will further emphasize meaningful participation. So that later the provisions of Article 96 can be implemented effectively, the implementing regulations must adjust the revision of Law no. 12 of 2011.

Looking far ahead, affirmation can consider to include public participation in the formation of laws in the Constitution, as practiced in Venezuela. Moreover, in Venezuela, the formation of participatory laws is affirmed in its constitution in Article 211 which reads:

"During the process of debating and approval of bills, the National

43 Zainal Arifin Mochtar testimonial, in the Decision of the Constitutional Court (MK) Number 91/PUU-XII/2020 concerning Formal Testing of Law Number 11 of 2020 on Job Creation, pg.83.

44 Martyasari Rizki, "UU No. 13 Tahun 2022 Tanda Dimulainya Era Baru Penyusunan Peraturan Perundang-undangan Indonesia" Warta Ekonomi, <https://wartaekonomi.co.id/read426905/uu-no-13-tahun-2022-tanda-dimulainya-era-baru-penyusunan-peraturan-perundang-undangan-indonesia> last accessed 13 September 2022

45 Rofiq Hidayat, "Perlunya memperjelas pembentukan peraturan secara elektronik". Hukumonline, <https://www.hukumonline.com/berita/a/perlunya-memperjelas-pembentukan-peraturan-berbasis-elektronik-lt6241af8083f44?page=3> last accessed 13 September 2022

Assembly or Standing Committees shall consult the other organs of the State, the citizenry and organized society to hear their opinion about the same. The following shall have the right to speak during debates on proposed laws: the Cabinet Ministers, as representatives of the Executive Power; such justice of the Supreme Tribunal of Justice as the latter may designate, to represent the Judicial Power; such representative of Citizen Power as may be designated by the Republican Ethic Council; the members of the Electoral Authority; the States, through a representative designated by the State Legislative Council; and the representatives of organized society, on such terms as may be established by the Regulations of the National Assembly”

In this provision, we can understand that in the process of discussing the draft law, the National Assembly or the Standing Committee must consult with other state institutions, citizens, community groups.⁴⁶

The extent to which public participation will be meaningful, can refer to the Theory “A Ladder of Citizen Participation” which was initiated by Sherry Arnstein as follows:⁴⁷

Table 1. A Ladder of Citizen Participation

1.	Citizen Control		
2.	Delegated Power		
3.	Partnership	>	Citizen Power (community power), This group describes the ideal of community participation, they are given a wide space to participate, determine their future through policies or programs and are able to control and evaluate government work.
4.	Placation		
5.	Consultation		
6.	Informing	>	Tokenism (negative, discriminatory treatment), in this group the public is not prohibited and even given space to participate, but the power remains with the government.
7.	Therapy		
8.	Manipulation		

Source: Sherry Arnstein, “A Ladder of Citizen Participation”, Journal of the American Institute of Planners 35, no. 4 (1969) p. 216-224

Judging from the level of the participation ladder above, public involvement in the formation of laws in Indonesia is currently included in the “Placation” participation stage, where communication between policymakers in this case the law and the community, has been running intensely and the community already has the ability to lobby. Communities have space to provide suggestions or plan policy proposals. But it remains the legislators who determine whether public aspirations can be followed up or not. So that the output that occurs due to the participation process is only a formality. whether the aspirations of the community are followed up or not still depends on the political will of the legislators.⁴⁸

46 Saldi Isra, *Pergeseran Fungsi Legislasi* (Jakarta: Raja Grafindo Persada, 2010) pg. 93

47 Sherry Arnstein, “A Ladder of Citizen Participation”, *Journal of the American Institute of Planners* 35, no. 4 (1969) p. 216-224

48 Kamarudin, Tinjauan Yuridis Partisipasi Masyarakat Dalam Pembentukan Undang-

Public participation is no longer just a formality but touches the substance. What has happened so far is fraudulent participation, as if the left ear heard the people's aspirations, but the right ear came out without any trace of it in the draft law. All forms of verbal participation cannot continuously deceive the people, and the people need participation in concrete actions in making laws and regulations.⁴⁹

Ideally, the stage of public participation that is applied in the process of making laws in Indonesia to be more meaningful is the type of "Partnership" because, at this stage, the position of legislators and the community are as equal partners. The community has bargaining power, and there have been negotiations between the public and power holders, both from the stages of law formation and implementation, as well as monitoring and evaluation.

Communities have difficulty accessing the decision-making process and have room to negotiate and reach agreements. In this context, the legislators will be more accommodating to public aspirations because the positions of the two are equal partners who complement each other. If public aspirations are not accommodated, legislators must also provide accountability responses with substances that meet scientific, rational, and academically accountable criteria. According to Habermas, opening a space for public participation is a must in terms of the formation of legislation.⁵⁰

More public participation will actually make it easier for legislators, for example as a more precise comparison where the community needs the substance of the draft law, aspirational laws will not cause chaos and are effective in society.⁵¹

According to Alexander Abe, direct public participation in the formation of legislation brings three important impacts. First, avoiding the possibility of manipulating people's involvement and clarifying what the community wants. Second, adding value to the legitimacy of the planning formulation. Third, increase public awareness and political skills.⁵²

Technically, the House of Representatives as the people's representative already has an element of community participation, but this is not enough to be fully relied on. Therefore, the principle of representation in ideas is distinguished through representation in the presence to support the fulfilment of public participation, because representation alone is not enough to present ideas or aspirations of the wider community.⁵³

From the beginning, the process of law-making must involve the public with a bottom-up model, so as to create fair and democratic laws. Democratic legislators make offers and emphasize the urgency of openness and community involvement in determining legal politics, in a participatory way, it is likely to form a fair common consensus from the state for its people, so that it will encourage the emergence of public trust in the government so that synergies emerge between the community and government.

Undang, Jurnal Perspektif Hukum, Vol. 15 No. 2 Tahun 2015. p. 183.

49 Gaudensius Suhardi, "Partisipasi Tipu-Tipu" https://mediaindonesia.com/podiums/detail_podiums/2373-partisipasi-tipu-tipu last accessed 1 July 2022

50 Liza Fariyah dan Della Sri Wahyuni, *Demokrasi Deliberatif dalam Proses Pembentukan Undang-Undang di Indonesia: Penerapan dan Tantangan ke Depan*, (Jakarta: Lembaga Kajian dan Advokasi untuk Independensi Peradilan, 2015), pg. 1

51 Maria Farida Indrati, *Ilmu Perundang-undangan: Proses dan Teknik Penyusunan*. (PT Kanisius, 2018). pg. 295

52 Sirajuddin, *Legislatif Drafting: Pelembagaan Metode Partisipatif dalam Pembentukan Peraturan Perundang-undangan*, (Malang: Setara Press, 2015) pg. 237

53 Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme*, (Jakarta: Sinar Grafika, 2010), pg. 133

One of the forms of legislation that accommodates substantive and liberative public participation is the Sexual Violence Bill (RUU TPKS) which was recently jointly approved by the House of Representatives and the Government on April 12, 2022, which formally began the process of forming the TPKS Bill in 2015. The discussion went on relatively fast for only 4 days, despite being carried out openly. Civil society inputs are accommodated in the Problem Inventory List (DIM). There was almost no open rejection in the discussion. This bill is a legal breakthrough in the prevention and handling of cases of sexual violence in a comprehensive and integrated manner.

We need to realize, with the challenges of diversity in Indonesia, it is very difficult to accommodate all parties. Of course, we hope that the existence of Law 13 of 2022 can make public participation in the formation of laws more substantive and as broad as possible, not only in improving the Job Creation Act, but all laws that are formed in the future. Legislators must not only hear and consider the aspirations of those who are pro in the formation of laws, but also accommodate those who are against it, because those who are against are actually the ones who are really affected and have the potential to be harmed.

The adoption of information technology in the formation of laws needs to be carried out thoroughly. This is a form of implementation of Article 97B paragraph (1) of Law no. 13 of 2022, which reads: The formation of laws and regulations can be done electronically. Regarding the process of forming the law, we can look at the official website of the DPR (<http://www.dpr.go.id/>), there we can see how far and to what stage the law was formed, but for the record not all related data. The law formation process is updated in real time, one example is the Job Creation Law, we know that the Job Creation Law was previously jointly

approved by the House of Representatives and the government on October 5, 2020, but the draft regarding the Job Creation Law is not attached to the website, this is different from other law-making processes.

The House of Representatives needs to learn from the Constitutional Court regarding transparency and accountability, every trial at the Constitutional Court is completed, and it doesn't take long for us to access the minutes of the trial on the website of the Constitutional Court. In order to accommodate people who want to participate in the process of forming the law, SIMAS PUU (<https://pusatpuu.dpr.go.id/simas-puu/index#>) was formed by the House of Representatives, SIMAS PUU or Community Participation in Drafting Laws. the law realizes the formation of laws that are participatory, transparent, accountable, integrated, efficient and effective.⁵⁴

Because so far in the House of Representatives, transparency of information has only relied on the live broadcast of the parliament's TV channel and the House of Representatives' Youtube chanel. The public can only watch without an interactive dialogue room. Referring to the interpretation of the Constitutional Court in decision 92/PUU-XVIII/2020, public participation should be carried out in terms of the availability of space and opportunities for the public to express opinions, consider their opinions and respond to their opinions.

Regarding the database of laws and regulations in Indonesia, the government has provided a special page under the Ministry of Law and Human Rights with a link (<https://peraturan.go.id/>). In addition, there is a startup company engaged in law, namely Online Law, which also provides a database of laws and regulations that can be accessed at (<https://www.Hukumonline.com/pusatdata>).

54 SIMAS PUU, "Sistem Informasi Masyarakat PUU" <https://pusatpuu.dpr.go.id/simas-puu/index#> last accessed 4 July 2022

In addition, the Ministry of Law and Human Rights through the National Legal Development Agency also manages the National Legal Documentation and Information Network Center (JDIHN) which is a forum for joint utilization of legal documents in an orderly, integrated, and sustainable manner, as well as means of providing complete legal information services. , accurate, easy, and fast.⁵⁵

Specifically, to accommodate public participation, a website platform *pasrtisipasiku.bphn.go.id* has been provided to provide input in the process of forming the law.

Meaningful participation is very important in improving the Job Creation Act, this seems to have been responded to by the Government through a Presidential Decree (KEPPRES) concerning the Task Force for the Acceleration of Socialization of Law Number 11 of 2020 concerning Job Creation, which has the task of conducting socialization in a comprehensive manner. massive and directed to the community, as well as synergizing the substance of the Job Creation Act. In line with this, and also as a follow-up to the Constitutional Court Decision Number 91/PUU/U-XVIII/2020 which gives 2 years to revise the Job Creation Act.

The aspect of openness as noted in the Constitutional Court Decision Number 91/PUU/U-XVIII/2020, is important to put forward, because without openness, participation will not run optimally. Based on the consideration of letter b of Law no. 14 of 2008 concerning Public Openness stated that the right to obtain information is a human right and the disclosure of public information is one of the important characteristics of a democratic country that upholds the sovereignty of the people to realize good state administration.

The implementation of community participation in the formation of laws and regulations must be supported by the implementation of openness in forming laws and regulations and protection from the state for freedom of opinion and voice of ideas and association, and assembly. This is because openness in forming laws and regulations provides access to information to the public to trigger or provide education to the public in the formation of laws and regulations.⁵⁶

CLOSING

Conclusion

The Constitutional Court's Decision No. 91/PUU-XVIII/2020 can be said to be the Landmark Decision which was the first to grant the Formal Review; besides that, this decision portrays a legislative process that is not participatory in the formation of the Job Creation Act, even though public participation must be an absolute thing. If the improvement process does not provide maximum space for public participation, rejection will continue to occur. It may be tested in the Constitutional Court. The Constitutional Court's decision must be interpreted to reorganize public participation in forming a more meaningful law, with the initial step of changing the clause regarding public participation in the formation of laws in Law no. 12 of 2011 concerning the Establishment of Legislation through Law no. 13 of 2022. Then the legislators can make meaningful public participation guidelines in accordance with Law No. 13 of 2022 as a standard in the formation of laws.

Public participation must be opened as wide as possible, and it is necessary to take advantage of various digital platforms and social media to accommodate

55 Presidential Regulation on the National Legal Documentation and Information Network, Presidential Regulation No. 33 of 2012, Article 1 point 1

56 Salahudin Tunjung Seta. "Hak Masyarakat Dalam Pembentukan Peraturan Perundang-Undangan." *Jurnal Legislasi Indonesia* 17, No. 2 (2020): 154-166.

public aspirations. No less essential recommendations regarding the Revision of Law no. 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Legislation are currently recognized as insufficient to answer regulatory problems so that in the future, there is a need for further revisions to overcome regulatory issues. The thing that needs to be criticized from Law No. 13 of 2022 is that it still has not placed legislators who have the obligation to participate. So it is necessary to regulate the obligations of legislators, not only to regulate public rights.

Suggestion

After the issuance of the Constitutional Court's decision, it is considered that it can contribute to fixing the system of forming laws and regulations. At the same time, it is a reminder that lawmakers must always obey the principles in every process of forming laws in the future, especially the principle of openness which is realized through more meaningful public participation.

This research found several conclusions. First, in a democratic rule of law, public participation in forming laws is necessary. Currently, the public's awareness of participating in the formation of laws is relatively high. Still, the problem is that public opinion is not taken into account and is considered only a formality. Legislators must understand the meaning of meaningful participation because the constitution guarantees this.

Second, legislators (government and parliament) need to be more sensitive to opening a wider public space, so that the deliberation process can be optimal. Rational discourse and debate must be developed with more quality. The meeting to discuss the formation of laws broadcast on social media is not a benchmark regarding the fulfillment of public participation.

Third, legislators should not underestimate public participation because Constitutional Court Decision No. 91/PUU-XVIII/2020 is a warning to form laws not only materially but also formally. In the process of revising the Job Creation Law, public participation must be non-negotiable. If the improvement process does not provide space for maximum public participation, the rejection will not stop happening and the results of the improvement may be re-examined in the Constitutional Court.

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REFERENCES

Book

- Anggono, Bayu Dwi. *Perkembangan Pembentukan Undang-Undang di Indonesia*. Jakarta: Konstitusi Press, 2014.
- Asshiddiqie, Jimly. *Pokok-Pokok Hukum Tata Negara Pasca Reformasi*. Jakarta: Bhuna Ilmu Populer, 2008.
- _____, Konstitusi dan Konstitusionalisme, Jakarta: Sinar Grafika, 2010
- Farihah, Liza dan Della Sri Wahyuni, *Demokrasi Deliberatif dalam Proses Pembentukan Undang-Undang di Indonesia: Penerapan dan Tantangan ke Depan*, Jakarta: Lembaga Kajian dan Advokasi untuk Independensi Peradilan, 2015
- Henk Adding, et al., *Human Rights and Good Governance*. Utrecht: Utrecht University, 2010.

- Indrati, Maria Farida. *Ilmu Perundang-undangan: Proses dan Teknik Penyusunan*. Yogyakarta: PT Kanisius, 2018.
- Isra, Saldi. *Pergeseran Fungsi Legislasi*. Jakarta: Raja Grafindo Persada, 2010
- KoDE Inisiatif, *Menakar Peluang Pengujian Formil Revisi UU KPK di Mahkamah Konstitusi*, Jakarta: KoDe Inisiatif, 2020
- Mahfud. M.D, Moh. *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*, Jakarta: Raja Grafindo Persada, 2013.
- Rahardjo, Satjipto. *Hukum dan Masyarakat*, Bandung. Angkasa. 1986
- Ramadhan Firdaus, Fahmi. *Mewujudkan Pembentukan Undang-Undang yang Partisipatif*, Banyumas: Amerta Media, 2021
- Richard E Susskind, *The Susskind interviews: Legal experts in changing times*. Sweet & Maxwell, 2005.
- Saifudin, *Partisipasi Publik Dalam Pembentukan Peraturan Perundang-undangan*, Yogyakarta: FH UII Press, 2009.
- Sirajuddin, *Legislative Drafting Metode Partisipatif dalam Pembentukan Peraturan Perundang-undangan*. Malang: Setara Pers, 2016
- Sirajuddin, *Legislatif Drafting: Pelembagaan Metode Partisipatif dalam Pembentukan Peraturan Perundang-undangan*, Malang: Setara Press, 2015
- Tilaar, H.A.R. *Kekuasaan dan Pendidikan: Manajemen Pendidikan Nasional dalam Pusaran Kekuasaan*. Jakarta: Rineka Cipta, 2009.
- Journal**
- Ida Bagus Gede Putra Agung Dhikshita, Deni Clara Sinta, and Candra Dwi Irawan. "Politik Hukum dan Quo Vadis Pembentukan Undang-Undang Dengan Metode Omnibus Law Di Indonesia." *Jurnal Legislasi Indonesia* 19, no. 2 (2022)
- Kamarudin, *Tinjauan Yuridis Partisipasi Masyarakat Dalam Pembentukan Undang-Undang*, *Jurnal Perspektif Hukum*, Vol. 15 No. 2 Tahun 2015
- Muhammadiyah, "Partisipasi Publik Sebagai Strategi Mewujudkan Good Governance Otonomi Daerah", *Jurnal Ilmu Pemerintahan*, Vol. 3, No. 1, April 2013
- Salahudin Tunjung Seta. "Hak Masyarakat Dalam Pembentukan Peraturan Perundang-Undang." *Jurnal Legislasi Indonesia* 17, No. 2 (2020)
- Saut P. Panjaitan, "Jaminan Perlindungan Konstitusional Hak Tiap Orang Untuk Memperoleh Informasi dan Berkomunikasi", *Jurnal Simbur Cahaya* 15, no. 42 (2010), 1957-1958.
- Sherry Arnstein, "A Ladder of Citizen Participation", *Journal of the American Institute of Planners* 35, no. 4 (1969), 216-224.
- Siti Hidayati, *Partisipasi Masyarakat Dalam Pembentukan Undang-Undang (Studi Perbandingan Indonesia Dengan Afrika Selatan)*, *Jurnal Bina Mulia Hukum* 3, no. 2 (2019),
- Riza Multazam Luthfi, "Hubungan Antara Partisipasi Masyarakat, Pembentukan Undang-Undang dan Judicial Review", *Jurnal al-Daulah*, Vol. 5, No. 2, Oktober 2015
- Laws**
- Indonesia. 1945 Constitution of the Republic of Indonesia.
- . *Law on the Establishment of Legislation*, Law no. 12 of 2011, SJ. No. 82 of 2011. ASJ. No. 6398.
- . *Presidential Regulation Implementing Regulation No. 12 of 2011 concerning the Establishment of Legislations*, Presidential Regulation No. 87 of 2014, SJ. No. 199 of 2014.

—. Regulation of the Minister of Law and Human Rights concerning Procedures for Implementing Public Consultations in the Formation of Legislations, Regulation of the Minister of Law and Human Rights No. 11 of 2021

Constitutional Court Decision No. 91/PUU-XVIII/2020

Internet

Aluk Fajar Dwi Santo, Paulus. *Memahami Gagasan Omnibus Law*, Binus.ac.id, 2019, <https://business-law.binus.ac.id/2019/10/03/memahami-gagasan-omnibus-law/>

Ayu Rizaty, Monavia. *Indeks Demokrasi Dunia 2021 Indonesia dinilai Masih Lemah*, Katadata.co.id, 2022, <https://databoks.katadata.co.id/datapublish/2022/02/14/indeks-demokrasi-dunia-2021-indonesia-masih-dinilai-lemah>

Farida, Maria. *Omnibus Law, UU Sapu Jagat?*, Kompas.id, 2020, <https://www.kompas.id/baca/opini/2020/01/04/omnibus-law-uu-sapu-jagat>

Hidayat, Rofiq. "Perlunya memperjelas pembentukan peraturan secara elektronik". Hukumonline, <https://www.hukumonline.com/berita/a/perlunya-memperjelas-pembentukan-peraturan-berbasis-elektronik-lt6241af8083f44?page=3>

Kiswondari, *Kronologi Lahirnya UU Cipta Kerja yang Jadi Kontroversial di Masyarakat*, Okezone.com, 2020, <https://nasional.okezone.com/read/2020/10/07/337/2289793/kronologi-lahirnya-uu-cipta-kerja-yang-jadi-kontroversial-di-masyarakat?page=3>

Kurnia Yunita Rahayu, Iqbal Basyari dan Nina Susilo, *Peningkatan Skor Indeks Demokrasi 2021 Tak Serta Merta Tandai Perbaikan Kualitas Demokrasi Indonesia*, Kompas.id, 2022, <https://www.kompas.id/baca/polhuk/2022/02/14/peningkatan-skor-indeks-demokrasi-2021-tak-serta-merta-tandai-perbaikan-kualitas-demokrasi-indonesia>

Nadlir, Moh. *Rekomendasi Jember untuk Penataan "Obesitas Regulasi" di Indonesia*, Kompas.com, 2017, <https://nasional.kompas.com/read/2017/11/12/17412311/rekomendasi-jember-untuk-penataan-obesitas-regulasi-di-indonesia>

Ramadhan Firdaus, Fahmi. *Memperbaiki UU Cipta Kerja*, Kompas.id, 2021, <https://www.kompas.id/baca/opini/2021/12/08/memperbaiki-uu-cipta-kerja>

Rizki, Martyasari. "UU No. 13 Tahun 2022 Tanda Dimulainya Era Baru Penyusunan Peraturan Perundang-undangan Indonesia", Warta Ekonomi, <https://wartaekonomi.co.id/read426905/uu-no-13-tahun-2022-tanda-dimulainya-era-baru-penyusunan-peraturan-perundang-undangan-indonesia>

Sahbani, Agus. *Berubah Setelah Persetujuan Bersama, Nasib UU Cipta Kerja di Ujung Tanduk?*, Hukumonline.com, 2020, <https://www.hukumonline.com/berita/baca/lt5f9aaf3e042a4/berubah-setelah-persetujuan-bersama--nasib-uu-cipta-kerja-di-ujung-tanduk>

Suhardi, Gaudensius. "Partisipasi Tipu-Tipu". Media Indonesia, https://mediaindonesia.com/podiums/detail_podiums/2373-partisipasi-tipu-tipu

SIMAS PUU, "Sistem Informasi Masyarakat PUU" <https://pusatpuu.dpr.go.id/simas-puu/index#>