

Meaningful Participation In The Formation of Law By The House of Representatives

Lalu Muhammad Amar Fawazi^{1*}, Moh. Fadli¹, Shinta Hadiyantina¹

¹Faculty of Law, Brawijaya University Malang, Indonesia

*Corresponding Author Email: laluamar292@student.ub.ac.id

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ABSTRACT

Public participation in the formation of laws is one manifestation of the principles of popular sovereignty and a democratic state based on the rule of law. The development of Indonesian constitutional law, through Constitutional Court Decision Number 91/PUU-XVIII/2020, has introduced the concept of meaningful participation as a constitutional standard in the formation of laws. This concept requires the fulfillment of three main elements: the right to be heard, the right to be considered, and the right to be explained. However, the regulation of public participation in Article 96 of Law Number 13 of 2022 concerning the Formation of Legislation has not fully accommodated these three elements, particularly regarding the obligation of lawmakers to provide explanations for the follow-up of public input. This study aims to analyze the conformity of the regulation of public participation in the formation of laws with the constitutional standard of meaningful participation and formulate a reconstruction of the ideal regulation in the Indonesian legislative system. This study uses a normative legal research method with a legislative approach and a conceptual approach. Legal materials were obtained through a literature study consisting of primary, secondary, and tertiary legal materials, then analyzed prescriptively using Philippe Nonet and Philip Selznick's Responsive Legal Theory and Sherry R. Arnstein's Ladder of Participation Theory. The results of the study indicate that the current regulations have accommodated the right to be heard and some elements of the right to be considered through various public participation mechanisms. However, the right to be explained element has not received adequate normative guarantees because it is still facultative. Therefore, regulatory reconstruction is needed through changes to imperative norms, strengthening mechanisms for considering public aspirations, establishing a transparent feedback system, and increasing legislative accountability in order to realize meaningful public participation in the formation of laws.

Keywords: Meaningful Participation; Community Participation; Lawmaking; Constitutional Court; Responsive Law; Participatory Democracy.

1. INTRODUCTION

The formation of laws in a democratic state under the rule of law is not only determined by the fulfillment of formal procedures as stipulated in statutory regulations, but also by the extent to which the process reflects the principle of popular sovereignty. The Indonesian Constitution, through Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, affirms that sovereignty rests with the people and is exercised according to the Constitution. This provision has the consequence that the people are not only objects subject to the law, but must also be given space to participate in the process of forming laws that will regulate their lives. Therefore, the quality of a law is not only measured by the aspect of procedural legality, but also by the democratic legitimacy built through public involvement in the legislative process. From the perspective of a modern state under the rule of law, public participation is an important instrument



to ensure that the norms formed truly reflect the needs, aspirations, and interests of the people who will be affected by the implementation of these norms. (Asshiddiqie, 2006; Asshiddiqie, 2014)

Public participation in the formation of laws is closely related to the fulfillment of citizens' constitutional rights. Article 27 paragraph (1) and Article 28C paragraph (2) of the 1945 Constitution of the Republic of Indonesia provide a normative basis that every citizen has the right to participate in government and to collectively fight for their interests in the development of society, the nation, and the state. In the context of the formation of laws, this right is realized through the opportunity to express opinions, provide input, and participate in various public consultation forums organized by lawmakers. Thus, public participation is not merely an administrative mechanism in the legislative process, but rather a concrete form of implementation of citizens' constitutional rights as guaranteed by the constitution. (Asshiddiqie, 2006)

Theoretically, public participation in the formation of laws serves various strategic functions. Public involvement can generate collective intelligence that enriches the analysis of the social, economic, and political impacts of a draft law. Furthermore, public participation also serves to strengthen democratic representation, increase transparency and accountability of legislative institutions, build public trust in state institutions, and strengthen the legitimacy of resulting policies. Through effective participation, the public has the opportunity to directly express their interests and aspirations, so that the legislative process not only reflects the will of the political elite but also accommodates the needs of the broader public. Therefore, public participation is an important indicator in assessing the quality of democracy and the quality of lawmaking in a country. (Haliim, 2016; Hidayati, 2019)

In the Indonesian constitutional system, the authority to form laws rests with the People's Representative Council as stipulated in Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. As an institution that holds legislative power, the DPR is not only responsible for producing legal products, but also ensuring that the process of forming them takes place in a democratic, open and participatory manner. The DPR's position as a representative institution requires that every legislative process be carried out by taking into account the aspirations of the people it represents. Therefore, the successful implementation of the principle of public participation in the formation of laws is highly dependent on the DPR's commitment to opening up space for dialogue and providing mechanisms that enable the public to participate effectively in every stage of legislation. (Asshiddiqie, 2014)

Regulations regarding public participation in the formation of legislation are currently stipulated in Law Number 12 of 2011, as most recently amended by Law Number 13 of 2022



concerning the Formation of Legislation. Through these provisions, the public is given the right to submit input, both verbally and in writing, in the process of forming legislation. Furthermore, public participation can be carried out through various mechanisms such as public hearings, seminars, discussions, workshops, working visits, and other forms of public consultation. The existence of these regulations demonstrates that Indonesian positive law has recognized the importance of public involvement in the legislative process as part of the principle of openness, one of the principles of the formation of good legislation. (Fadli, 2018; Farida Indrati, 2020)

However, the provisions on public participation in the Law on the Formation of Legislation still place more emphasis on providing space for participation than on the quality of that participation itself. Applicable norms primarily regulate how the public can express opinions, but do not comprehensively regulate how those opinions should be processed, considered, and acted upon by lawmakers. As a result, public participation is often understood merely as fulfilling procedural obligations without any guarantee that the input submitted actually influences the substance of the norms being discussed. This situation raises questions about the extent to which current public participation fulfills the principles of substantive democracy in lawmaking. (Arnstein, 1969; Riskiyono, 2015)

A significant development in strengthening public participation emerged through Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning the formal review of the Job Creation Law. In this decision, the Constitutional Court introduced the concept of meaningful participation as a constitutional standard that must be met in the formation of laws. The Court emphasized that public participation is not simply providing an opportunity to express opinions, but must fulfill three main elements: the right to be heard, the right to be considered, and the right to be explained. These three elements are an inseparable unit in realizing meaningful public participation in accordance with the principles of a democratic state based on the rule of law. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

The concept of meaningful participation demonstrates a paradigm shift in the understanding of public participation. Public participation is no longer understood merely as part of the principle of openness, but has evolved into a parameter for the constitutionality of lawmaking. This is evident in various Constitutional Court decisions that make the quality of public participation a crucial aspect in assessing the legitimacy of the legislative process. Thus, fulfilling the principle of meaningful participation is not only related to the quality of democracy but also directly related to the constitutional validity of a law. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)



However, upon closer examination, normative issues remain in the regulation of public participation following the issuance of Constitutional Court Decision Number 91/PUU-XVIII/2020. One of the main issues lies in the regulation of the public's right to an explanation (right to be explained) regarding the follow-up to input submitted during the legislative process. Article 96 of Law Number 13 of 2022 does accommodate the public's right to express opinions and incorporate the results of public consultations into lawmakers' considerations. However, this regulation does not explicitly require the House of Representatives (DPR) or other lawmakers to provide an explanation regarding whether public input was accepted, considered, or rejected, along with the underlying reasons. (European Center for Not-for-Profit Law, 2023)

This problem is further exacerbated by the use of the phrase "can explain" to the public the results of the discussion of the input provided in Article 96 paragraph (9) of Law Number 13 of 2022. From a legal theory perspective, the use of the word "can" indicates a facultative nature, thus not creating a binding legal obligation for the DPR to provide an explanation to the public. As a result, the fulfillment of the right to be explained element is highly dependent on the will of the legislators and lacks strong normative guarantees. This condition has the potential to make public participation merely formalistic because the public does not receive certainty regarding the follow-up to the aspirations that have been conveyed. Therefore, a more in-depth study is needed regarding the regulation of meaningful participation in the formation of laws by the DPR, particularly regarding the conformity of applicable regulations with constitutional standards formulated by the Constitutional Court, as well as the formulation of a more ideal regulatory model to realize substantive, accountable public participation, and oriented towards the principles of a democratic rule of law. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

2. RESEARCH METHODS

This research uses a normative legal research method that focuses on the study of norms, principles, doctrines, and legal concepts related to meaningful participation in the formation of laws by the House of Representatives (DPR). This approach was chosen because the research problem is oriented towards the analysis of positive legal regulations that regulate public participation in the legislative process, especially after the issuance of Constitutional Court Decision Number 91/PUU-XVIII/2020. The research was conducted using a statute approach to examine various regulations related to the formation of laws and regulations, including the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2011 as last amended by Law Number 13 of 2022 concerning the Formation of Legislation, Law Number 17 of 2014 concerning



the MPR, DPR, DPD, and DPRD and their amendments, as well as DPR Regulations and relevant Constitutional Court decisions. In addition, this research also uses a conceptual approach to examine the concept of meaningful participation and its elements, namely the right to be heard, the right to be considered, and the right to be explained, which have developed in legal theory and modern constitutional practice. (Fadli, 2018; Farida Indrati, 2020)

The legal materials used in this study consist of primary, secondary, and tertiary legal materials obtained through library research. Primary legal materials include laws and Constitutional Court decisions related to public participation in the formation of laws, while secondary legal materials include books, scientific journals, and expert opinions relevant to the research object. All legal materials are analyzed prescriptively by examining the suitability of the regulations on public participation in the formation of laws to the constitutional standards of meaningful participation formulated by the Constitutional Court. In the analysis process, this study uses the Responsive Legal Theory of Philip Nonet and Philip Selznick to assess the extent to which existing legal regulations reflect a legal character that is open and responsive to public aspirations, and Sherry R. Arnstein's Ladder of Citizen Participation Theory to identify the level and quality of public participation in the legislative process. Through this analysis, this study seeks to identify normative weaknesses in the applicable regulations and formulate a meaningful participation regulatory model that is more effective, accountable, and in accordance with the principles of a democratic rule of law. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

3. RESULTS AND DISCUSSION

Regulation of Meaningful Participation in the Formation of Laws by the House of Representatives

1. Regulation of Meaningful Participation based on Legislation

The concept of meaningful participation in lawmaking gained constitutional legitimacy through Constitutional Court Decision Number 91/PUU-XVIII/2020, which introduced new standards regarding the quality of public participation in the legislative process. The Constitutional Court emphasized that public participation can no longer be interpreted simply as providing an opportunity to express opinions, but must fulfill three main elements: the right to be heard, the right to be considered, and the right to be explained. These three elements must be present at all stages of lawmaking, from planning and drafting to discussion, to joint approval between the House of Representatives (DPR) and the President. Thus, public participation is no longer merely a procedural complement but has evolved into a constitutional standard that determines the quality of



democracy in the legislative process. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

Normatively, the concept of meaningful participation reinforces the principle of openness, long recognized in the Indonesian legislative process. This principle of openness essentially requires that the public be given access to all stages of legal formation, enabling them to understand, monitor, and provide input on draft regulations under discussion. However, developments in constitutional practice demonstrate that openness alone is insufficient to guarantee substantive participation. Therefore, the Constitutional Court broadened the meaning of public participation by positioning the public as subjects who not only have the right to express their aspirations but also the right to know how those aspirations are treated by lawmakers. This paradigm shift demonstrates that modern democracy no longer relies solely on political representation through the House of Representatives (DPR), but also requires direct public involvement in the legislative process. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

Although the 1945 Constitution of the Republic of Indonesia does not explicitly regulate public participation in the formation of laws, the constitutional basis for public participation can be found in Article 27 paragraph (1) and Article 28C paragraph (2) of the 1945 Constitution of the Republic of Indonesia. These two provisions guarantee that every citizen has the right to participate in the life of the nation and state and to fight for their interests collectively. This right is then further translated into various laws and regulations governing the formation of laws, particularly through Law Number 12 of 2011 which was later amended by Law Number 13 of 2022. The presence of these regulations shows that public participation has become an inseparable part of the national legislative system and is seen as an instrument to strengthen the legitimacy of the formation of laws. (Fadli, 2018; Farida Indrati, 2020)

Public participation is specifically regulated in Article 96 of Law Number 13 of 2022, which grants the public the right to provide input, both verbally and in writing, at every stage of the legislative process. This provision demonstrates that the state has normatively provided space for public participation in the legislative process. Furthermore, this participation can be conducted through various mechanisms, such as public hearings, seminars, workshops, public discussions, working visits, and online platforms provided by lawmakers. This diversity of mechanisms demonstrates efforts to expand public access to the legislative process, ensuring that it is not limited to specific groups. Therefore, in terms of providing space for participation, Indonesia's



positive legal regulations provide a sufficient basis for public involvement in the formation of laws. (Arnstein, 1969; Riskiyono, 2015)

When analyzed based on the parameters of meaningful participation formulated by the Constitutional Court, the provisions in Article 96 essentially accommodate the right to be heard. This right is reflected in the guarantee that the public can provide input, both verbally and in writing, on draft laws being discussed. This right is crucial because it provides the public with the opportunity to express their perspectives, needs, and interests before a norm is enacted into binding law. In the context of a democratic state governed by the rule of law, the right to be heard is a form of respect for popular sovereignty and a means to ensure that lawmaking is not carried out in a closed and exclusive manner by the political elite alone. (Asshiddiqie, 2006; Asshiddiqie, 2014)

In addition to the right to be heard, Article 96 paragraph (7) of Law Number 13 of 2022 also acknowledges the right to be considered. This provision states that the results of public consultations are taken into consideration in the planning, drafting, and discussion of draft legislation. Theoretically, this norm implies that lawmakers must not ignore public input. However, the phrase "taken into consideration" remains problematic because it lacks an obligation to explain how the input is processed and to what extent it influences the substance of the norms being discussed. Consequently, although the right to be considered has been normatively recognized, there is no instrument that can measure the quality of the DPR's consideration of public input. (Arnstein, 1969; Riskiyono, 2015)

The main problem in regulating meaningful participation lies in the right to be explained element. This right implies that the public has the right to receive an explanation regarding the follow-up to the input they have submitted, including whether the input was accepted, considered, or rejected, along with the underlying reasons. However, Article 96 paragraph (8) of Law Number 13 of 2022 only states that the legislators "may" explain to the public the results of the discussion of public input. The use of the phrase "may" indicates that this obligation is optional and not imperative. Consequently, the DPR does not have a binding legal obligation to provide an explanation to the public regarding the results of the discussion of the aspirations that have been submitted. This condition makes the fulfillment of the right to be explained highly dependent on the political will of the legislators and has not received adequate normative guarantees. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

Based on this overall analysis, it can be concluded that the regulation of meaningful participation in the formation of laws by the House of Representatives (DPR) has undergone significant development through strengthening the principle of openness and recognizing the



public's right to participate in the legislative process. The regulation contained in Article 96 of Law Number 13 of 2022 essentially accommodates the right to be heard and some elements of the right to be considered. However, the right to be explained element has not received adequate regulation because it still uses a facultative norm construction. As a result, public participation in the formation of laws still has the potential to be formalistic and does not fully meet the standards of meaningful participation as formulated by the Constitutional Court in Decision Number 91/PUU-XVIII/2020. Therefore, existing regulations still require strengthening so that public participation is not only a means of expressing opinions, but also an accountability mechanism capable of ensuring the realization of democratic, responsive, and public interest-oriented lawmaking. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

2. Forms of Public Participation in the Formation of Laws

Public participation in the formation of laws embodies the principle of openness in the formation of legislation and the implementation of the principle of popular sovereignty in a democratic state. In a democratic state governed by the rule of law, the public is positioned not only as an object subject to the law but also as a subject with the right to participate in the process of forming laws that will regulate their lives. Therefore, the formation of laws must be carried out through mechanisms that allow the public to express their views, aspirations, criticisms, and suggestions regarding the substance of the norms being discussed. This public involvement aims not only to increase the political legitimacy of a law but also to ensure that the norms formed truly reflect the needs and interests of the public. Therefore, public participation is a crucial instrument for connecting the legislative process with the social realities that develop within society, so that the resulting laws are not elitist and detached from the needs of the community. (Asshiddiqie, 2006; Asshiddiqie, 2014)

Current provisions regarding forms of public participation are stipulated in Article 96 of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation. This provision guarantees the public the right to provide input verbally and/or in writing at every stage of the formation of legislation. To realize this right, the law provides various participation mechanisms, including public hearings, seminars, workshops, discussions, public consultations, and various other participation facilities that utilize developments in information and communication technology. The existence of these various mechanisms demonstrates an expansion of access to public participation compared to previous regulations, which were more limited to conventional forums. Through these regulations, the



public is given broader opportunities to engage in the legislative process, both directly and through increasingly sophisticated digital platforms. (Fadli, 2018; Farida Indrati, 2020)

The diverse forms of participation stipulated in Article 96 demonstrate that lawmakers strive to provide diverse communication channels between the public and the legislative body. Public hearings enable direct communication between the public and the House of Representatives (DPR), allowing aspirations to be expressed openly in an official forum. Seminars, workshops, and discussions serve as a means to deepen the substance of regulations and gain academic and practical perspectives on a draft law. Meanwhile, public consultations enable the involvement of broader community groups, including vulnerable groups, civil society organizations, academics, and business actors with interests in the material being discussed. The use of information and communication technology demonstrates an effort to adapt to digital developments, so that public participation is no longer limited by geographic factors or the limitations of space and time. (Arnstein, 1969; Riskiyono, 2015)

The existence of these various forms of participation essentially demonstrates that Indonesian positive law has provided a sufficient legal basis for public involvement in the legislative process. This regulation is also in line with the principle of transparency as stipulated in Article 5 letter g of Law Number 12 of 2011, which places transparency as one of the principles for the formation of sound legislation. The principle of transparency requires that all stages of the law-making process be known and accessible to the public, thus enabling public control of the legislative process. In this context, the various available forms of participation are instruments for realizing transparency while strengthening the accountability of legislative institutions in carrying out their law-making function. (Fadli, 2018; Farida Indrati, 2020)

In addition to its relevance to the principle of transparency, the regulation of forms of public participation is also closely linked to the principle of meaningful participation introduced by the Constitutional Court in Decision Number 91/PUU-XVIII/2020. Through this decision, the Court emphasized that public participation must be understood as meaningful involvement and not merely a procedural formality. Therefore, the existence of various participation forums in Article 96 should not be viewed merely as administrative means to fulfill legal obligations, but rather as mechanisms capable of ensuring substantive public involvement in the lawmaking process. Therefore, the quality of participation is measured not only by the number of available forums, but also by the extent to which these forums are able to connect public aspirations with the substance of the norms being formulated. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)



However, the existence of these various forms of participation does not automatically indicate that the public has sufficient influence over the law-making process. Existing regulations still emphasize providing the means and access to participation rather than ensuring its influence on the substance of norms. While the public is given space to express opinions through various available forums, there are no explicit regulations governing how these opinions should be accommodated or considered in legislative deliberations. As a result, public participation often stops at the stage of conveying aspirations, with no certainty as to the extent to which those aspirations influence the final outcome of norm formation. This situation indicates that existing regulations are still oriented more toward access to participation than influence of participation. (Arnstein, 1969; Riskiyono, 2015)

This argument can be analyzed using the Responsive Law Theory proposed by Philippe Nonet and Philip Selznick. According to this theory, responsive law not only provides formal procedures for public participation but must also be able to make public aspirations an influencing factor in the law-making process. Responsive law positions the public as partners in policy-making, not simply recipients of policies established by the state. In the context of lawmaking, this theory asserts that the quality of participation is determined not by the number of available forums, but by the ability of these forums to create substantive relationships between the public and lawmakers. Therefore, the success of public participation must be measured by the extent to which public aspirations are able to influence the substance of the regulations being discussed. (Arnstein, 1969; Riskiyono, 2015)

This view aligns with Sherry R. Arnstein's Ladder of Citizen Participation Theory. According to Arnstein, the quality of public participation is determined by the level of public influence in the decision-making process. Participation that takes the form of consultation alone without any guarantee that public opinion will influence the final outcome still falls within the realm of tokenism. At this level, the public is given the opportunity to speak, but lacks sufficient power to influence the decisions made by policymakers. In the context of Article 96 of Law Number 13 of 2022, the existence of various forms of participation demonstrates open access for the public. However, because there is no adequate guarantee regarding the influence of public input on norm formation, such participation still has the potential to fall within the realm of tokenism and does not fully meet the standards of meaningful participation as formulated in Constitutional Court Decision Number 91/PUU-XVIII/2020. Therefore, strengthening the quality of participation is an urgent need so that the various forms of participation available serve not only as a means of



conveying aspirations but also as instruments capable of exerting a real influence on the formation of laws. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

Ideal Arrangement of Meaningful Participation in the Formation of Laws by the House of Representatives

1. Constitutional Standards for Meaningful Participation

In a democratic state governed by the rule of law, the formation of laws cannot be understood solely as an administrative process oriented only to fulfilling formal stages as stipulated in laws and regulations. The formation of laws is essentially a constitutional process directly related to the implementation of the principle of popular sovereignty as guaranteed in the 1945 Constitution of the Republic of Indonesia. Therefore, the quality of a law is not only measured by the fulfillment of formal formation procedures, but also by the extent to which the public is given the opportunity to participate effectively in the formation process. In this context, public participation is a very important instrument to ensure that the laws formed truly reflect the needs, aspirations, and interests of the community that will be the subject of its regulation. Public involvement in the formation of laws is also an important indicator in assessing the quality of democracy and the constitutional legitimacy of a legislative product. (Asshiddiqie, 2006; Asshiddiqie, 2014)

The development of the concept of modern constitutional democracy demonstrates that society is no longer positioned as an object merely accepting and implementing laws established by the state. Instead, society must be viewed as a subject with a constitutional right to participate in the law-making process. From this perspective, public participation is part of citizens' rights to participate in determining the direction of public policy that will affect their lives. Therefore, the legitimacy of a law is determined not only by the authority of the institution that created it, but also by the quality of public involvement in the process. The more open and participatory a legislative process is, the stronger the democratic legitimacy inherent in the resulting law. Conversely, lawmaking that is closed and involves minimal public participation has the potential to generate social resistance because it is perceived as not representing the interests of the wider community. (Arnstein, 1969; Riskiyono, 2015)

The constitutional standard for public participation in lawmaking was significantly strengthened through Constitutional Court Decision No. 91/PUU-XVIII/2020 concerning the formal review of the Job Creation Law. This decision marked a significant milestone in the development of Indonesian constitutional law, as it was the first time the Constitutional Court explicitly formulated constitutional parameters regarding the quality of public participation in the



legislative process. Prior to this decision, public participation was more often understood as fulfilling formal procedures through holding hearings, public consultations, or other discussion forums. However, the Court later emphasized that public participation must be understood as a constitutional right that requires effective, substantial, and meaningful involvement in the lawmaking process. Thus, the concept of meaningful participation has evolved from a mere democratic principle to a constitutional standard that lawmakers must meet. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

In its ruling, the Constitutional Court stated that meaningful public participation must fulfill three main elements: the right to be heard, the right to be considered, and the right to be explained. These three elements are interrelated and inseparable. The first element requires that the public be given adequate opportunity to express their opinions and aspirations. The second element requires that public opinions not be treated as an administrative formality but rather be truly considered in the legislative deliberation process. Meanwhile, the third element requires lawmakers to provide an explanation regarding the follow-up to public input, including the reasons for accepting or rejecting a proposal. With these three elements in place, public participation is no longer merely symbolic but becomes a mechanism that allows the public to have a real influence on the legislative process. (European Center for Not-for-Profit Law, 2023)

The right to be heard is the foundation of meaningful public participation. This right requires open access for the public to express their views, criticisms, and suggestions regarding draft laws being discussed. However, the right to be heard is not only related to the availability of a participation forum, but also concerns the accessibility of information that allows the public to understand the substance of the draft laws being discussed. Without open information regarding academic papers, draft laws, discussion schedules, and legislative agendas, the public will not be able to provide quality input. Therefore, fulfilling the right to be heard must be accompanied by guarantees of adequate information transparency so that the public has an equal opportunity to participate in the legislative process. (Arnstein, 1969; Riskiyono, 2015)

Furthermore, the right to be considered element means that every input provided by the public must receive serious attention and consideration from lawmakers. This right is crucial because the public is the party that will directly impact the enactment of a law. Therefore, public aspirations should not be treated as merely procedural complements, but must be part of the norm-formation process. In this context, the Constitutional Court emphasized that the quality of public participation cannot be measured solely by the holding of consultation forums or hearings, but also by the extent to which the substance of public aspirations is truly considered in the legislative



process. The right to be considered also functions as an instrument to prevent the emergence of autocratic legalism, namely a condition where laws are formally formed democratically but their substance only reflects the unilateral will of the lawmakers without considering public aspirations. (Arnstein, 1969; Riskiyono, 2015)

The right to be explained distinguishes symbolic participation from truly meaningful participation. This right requires the House of Representatives (DPR) and the government to provide a clear explanation regarding the follow-up to public input. This explanation can include the reasons for accepting a proposal, the reasons for rejecting it, or the arguments used in determining a particular policy choice. This right is crucial because it demonstrates the accountability of lawmakers to the public who have participated in the legislative process. Without an explanation of how public input is processed and considered, public participation has the potential to become an administrative formality that has no impact on the final outcome of norm formation. Therefore, the right to be explained is an instrument that ensures a reciprocal relationship between the public and lawmakers in the legislative process. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

Based on the overall description, it can be understood that meaningful participation is a constitutional standard that must be met in every law-making process in Indonesia. This concept connects the principles of popular sovereignty, openness, and the protection of citizens' constitutional rights within a unified framework. Through Constitutional Court Decision Number 91/PUU-XVIII/2020, public participation is no longer understood as a procedural formality, but rather as a constitutional right that must be effectively realized by fulfilling the elements of the right to be heard, the right to be considered, and the right to be explained. These three elements are the main parameters in assessing whether the legislative process has proceeded democratically and in accordance with the principles of the rule of law. Therefore, every regulation regarding public participation in law-making must be directed at ensuring the fulfillment of these three elements to create a legislative process that is transparent, accountable, and truly reflects the sovereignty of the people. (Asshiddiqie, 2006; Asshiddiqie, 2014)

2. Reconstruction of the Ideal of Meaningful Participation Based on Nonet and Selznick's Responsive Legal Theory and Arnstein's Ladder of Participation

In formulating the ideal meaningful participation regulation in the formation of laws by the House of Representatives (DPR), a parameter is needed to assess whether the current regulations reflect the principles of substantive democracy and the protection of citizens' constitutional rights. In this study, this parameter is built on the Responsive Legal Theory proposed by Philippe Nonet



and Philip Selznick and the Ladder of Citizen Participation Theory by Sherry R. Arnstein. According to Nonet and Selznick, good law not only functions to maintain formal order through adherence to procedures, but must also be able to respond to the needs and aspirations of the community that is the subject of its regulation. Therefore, the legitimacy of a law is not only determined by the authority of the institution that created it, but also by the quality of community involvement in the formation process. In the context of law formation, responsive law requires openness, accountability, and two-way communication between lawmakers and the community so that public participation does not stop at an administrative formality, but truly becomes part of the legislative decision-making process. (Asshiddiqie, 2006)

Based on this responsive legal perspective, public participation regulations that only provide the opportunity to express opinions without the obligation to provide a response and explanation for those opinions cannot be categorized as ideal. Such participation only fulfills procedural aspects because the public is given space to speak, but does not provide certainty regarding how their opinions are treated in the legislative process. As a result, the relationship between the public and lawmakers remains one-way. In a democratic state governed by the rule of law, ideal participation must establish a reciprocal relationship that allows the public to know how their aspirations are considered in the formation of norms. Therefore, ideal meaningful participation regulations must guarantee not only the right to express opinions, but also the right to know and evaluate the follow-up to opinions submitted to lawmakers. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

This view is reinforced by Arnstein's Ladder of Participation Theory, which measures the quality of participation based on the level of public influence on the decision-making process. According to Arnstein, participation that only involves providing information or consultation falls into the category of tokenism because the public has no real influence on decisions made by the government or policy-making institutions. In the context of lawmaking, this condition occurs when the public is only given the opportunity to express their aspirations without any guarantee that these aspirations will influence the substance of the norms being formed. In contrast, more ideal participation is at the partnership level, namely when there is a more equal relationship between the public and policymakers through a transparent and accountable two-way communication mechanism. Thus, the ideal regulation of meaningful participation must be directed at shifting the position of public participation from mere consultation to a partnership that provides a more tangible influence on the legislative process. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

When examined based on current regulations, the primary problem lies not in the lack of public participation rights, but rather in the inadequate legal guarantees regarding the quality and legal consequences of such participation. Law Number 13 of 2022 has indeed opened various channels for participation through public hearings, seminars, workshops, public consultations, and the use of information and communication technology. However, these regulations still emphasize the procedural aspect of providing space for participation rather than establishing mechanisms that guarantee real public influence on norm formation. As a result, public participation risks being reduced to a mere instrument of procedural legitimacy, simply demonstrating public involvement without ensuring that such involvement actually influences the substance of the laws being created. (Arnstein, 1969; Riskiyono, 2015)

The most fundamental normative weakness is evident in the absence of an imperative legal obligation for the DPR to respond to and explain public aspirations. The use of the phrase "may provide an explanation" in the regulation of public participation indicates that providing an explanation is still positioned as an optional authority, not a binding legal obligation. Consequently, the public is uncertain whether their aspirations are truly considered in the deliberations of the law or merely recorded as a formality of participation. From the perspective of meaningful participation, this condition is inconsistent with the principle of the right to be explained, which the Constitutional Court has affirmed as a constitutive element of meaningful participation. Therefore, the reconstruction of the regulation must be directed at changing the norm from an optional to an imperative one, so that the public's right to an explanation is no longer dependent on the political will of the legislators. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

In addition to changing the nature of norms, regulatory reconstruction must also include the establishment of a clear mechanism for considering public aspirations. To date, the results of public consultations have been simply stated as "material for consideration," with no regulations regarding how these aspirations are processed, assessed, and used in legislative deliberations. As a result, the public cannot know whether the input submitted is accepted, further considered, or rejected by lawmakers. Therefore, an ideal regulation should require documentation and reporting of all public input received during the legislative process. This documentation should include the substance of the input, the results of discussions on the input, and the reasons used by lawmakers in accepting or rejecting a proposal. With such a mechanism, the legislative process becomes more transparent, accountable, and subject to public scrutiny.

The reconstruction of meaningful participation regulations must also be supported by more concrete and measurable operational mechanisms. These regulations must at least include mandatory open access to draft laws and academic papers from the initial stages of deliberation, adequate time for the public to provide input, the provision of various easily accessible methods for conveying aspirations, and mandatory publication of the results of public participation. Furthermore, an integrated and widely accessible legislative information system must be established. This system will not only serve as a means of conveying aspirations but also serve as a medium for monitoring the progress of draft law discussions and follow-up on any input provided by the public. Thus, information technology will not only be used to expand access to participation but also as an instrument of transparency and accountability in the legislative process. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

Based on this overall analysis, it can be emphasized that the ideal reconstruction of meaningful participation in the formation of laws by the House of Representatives (DPR) must be directed at strengthening the influence and accountability of public participation in the legislative process. An ideal arrangement would not only provide space for participation but also ensure that such participation has real legal consequences for the decision-making process. From the perspective of Responsive Legal Theory, this reconstruction would encourage the formation of laws that are more open to the social needs of the community. Meanwhile, from the perspective of Arnstein's Ladder of Participation Theory, this reconstruction has the potential to shift the position of the community from the level of consultation to partnership, where the community is no longer merely a party expressing aspirations but also has a more real influence on the legislative process through mechanisms of consideration, explanation, and binding accountability. Thus, strengthening meaningful participation not only improves the normative design of lawmaking but also strengthens the quality of participatory democracy and the constitutional legitimacy of lawmaking in Indonesia. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

4. CONCLUSION

The regulation of meaningful participation in the formation of laws by the House of Representatives (DPR) has essentially been normatively based through Law Number 13 of 2022 concerning the Formation of Legislation and strengthened by Constitutional Court Decision Number 91/PUU-XVIII/2020. This regulation demonstrates recognition of the public's right to participate in the legislative process through various mechanisms such as public hearings, seminars, workshops, public consultations, and the use of information and communication



technology. Normatively, the right to be heard element has been relatively adequately regulated by providing access to the public to submit input verbally and in writing at every stage of the lawmaking process. Furthermore, the right to be considered element has also been recognized through provisions that place the results of public consultations as considerations in the legislative process. However, existing regulations are still more oriented towards providing space for participation (access to participation) rather than ensuring the influence of participation on the substance of the norms being formed. The most fundamental weakness lies in the lack of strong normative guarantees for the right to be explained. The use of the phrase "may" in Article 96 of Law Number 13 of 2022 means that explanations for following up on public aspirations remain optional and dependent on the will of the legislators. Consequently, public participation remains potentially formalistic and does not fully meet the constitutional standards of meaningful participation as defined by the Constitutional Court. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)

The ideal reconstruction of meaningful participation in lawmaking must be directed at strengthening the quality of public participation through a responsive legal approach and participatory democracy. Based on Philippe Nonet and Philip Selznick's Responsive Legal Theory, lawmaking must ensure a dialogical, open, and accountable relationship between the public and lawmakers so that public participation does not stop at merely fulfilling formal procedures. Meanwhile, based on Sherry R. Arnstein's Ladder of Participation Theory, the position of public participation in the Indonesian legislative system still tends to be at the level of tokenism, especially in the form of consultation, because the public has not received a guarantee that the aspirations expressed will influence the final outcome of the norm formation. Therefore, regulatory reconstruction needs to be carried out by changing norms from initially facultative to imperative, particularly regarding the obligation of the House of Representatives (DPR) to provide an explanation for the follow-up of public aspirations. In addition, a transparent mechanism is needed regarding the process of considering public aspirations, documenting and publishing the results of public consultations, and strengthening the legislative information system that allows the public to directly monitor the progress of the discussion of draft laws. Through this reconstruction, public participation is no longer positioned as an instrument of procedural legitimacy, but rather as a constitutional right that has a real influence on the formation of laws so as to be able to realize a more democratic, responsive, transparent and accountable legislative system in accordance with the principles of a democratic state based on the rule of law. (European Center for Not-for-Profit Law, 2023; Arnstein, 1969)



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