

Strengthening democracy through meaningful participation in the legislative process in Indonesia

Fortalecimiento de la democracia mediante la participación significativa en el proceso legislativo en Indonesia

Fortalecendo a democracia por meio da participação significativa no processo legislativo na Indonésia

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Abstract

This research examines the concept of meaningful public participation in the legislative process in Indonesia, emphasizing its importance in achieving democratic governance and ensuring legislation reflects the people's will. The study uses a normative legal research method, analyzing laws and doctrines related to participatory democracy and the principles of public involvement. The findings highlight that public participation in Indonesia remains limited to consultative and informative levels, as reflected in the legislation process regulated by Law No. 12 of 2011 and its amendments. The study identifies gaps in implementation and proposes adopting principles from deliberative democracy and public participation theories to enhance legislative inclusiveness and effectiveness. The research concludes that meaningful participation requires clear mechanisms and parameters to balance legislative decision-making with public aspirations.

Keywords: Meaningful participation, public involvement, legislative process, deliberative democracy.

Resumen

Esta investigación examina el concepto de participación pública significativa en el proceso legislativo en Indonesia, destacando su importancia para lograr la gobernanza democrática y garantizar que la legislación refleje la voluntad del pueblo. El estudio utiliza un método de investigación jurídica normativa, analizando leyes y doctrinas relacionadas con la democracia participativa y los principios de participación pública. Los hallazgos destacan que la participación pública en Indonesia sigue limitada a los niveles consultivo e informativo, como se refleja en el proceso legislativo regulado por la Ley N° 12 de 2011 y sus modificaciones. El estudio identifica lagunas en la implementación y propone adoptar principios de la democracia deliberativa y las teorías de participación pública para mejorar la inclusión y la eficacia legislativas. La investigación concluye que la participación significativa requiere mecanismos y parámetros claros para equilibrar la toma de decisiones legislativas con las aspiraciones públicas.

Palabras clave: Participación significativa, participación pública, proceso legislativo, democracia deliberativa.

Resumo

Esta pesquisa examina o conceito de participação pública significativa no processo legislativo na Indonésia, enfatizando sua importância para alcançar a governança democrática e garantir que a legislação reflita a vontade do povo. O estudo usa um método de pesquisa jurídica normativa, analisando leis e doutrinas relacionadas à democracia participativa e aos princípios do envolvimento público. As descobertas destacam que a participação pública na Indonésia permanece limitada aos níveis consultivo e informativo, conforme refletido no processo legislativo regulamentado pela Lei nº 12 de 2011 e suas emendas. O estudo identifica lacunas na implementação e propõe a adoção de princípios da democracia deliberativa e teorias de participação pública para aumentar a inclusão e a eficácia legislativa. A pesquisa conclui que a participação significativa requer mecanismos e parâmetros claros para equilibrar a tomada de decisões legislativas com as aspirações públicas.

Palavras-chave: Participação significativa, envolvimento público, processo legislativo, democracia deliberativa.

INTRODUCTION

Law has the primary purpose of establishing order, balance, and justice within society. Mochtar Kusumaatmadja (2012) stated that achieving order in society can protect human interests. A similar perspective was expressed by Mertokusumo (2019), who emphasized the function of law in safeguarding individuals from harm while also regulating relationships among individuals to prevent and resolve conflicts. Rahardjo (2014) further explained that law serves to integrate and coordinate conflicting interests.

The achievement of the objectives of law begins with the formulation of legislation by authorized institutions, such as the House of Representatives (DPR), the Regional Representatives Council (DPD), or Regional Legislative Councils (DPRD), through the legislative process. Ideally, this process should be both responsive and aspirational, meaning it must absorb the legal needs of society. Public participation in this process is a critical element to producing regulations that reflect the living values within the community, as highlighted by Eugen Ehrlich in his concept of *the living law*. Thus, a compromise between written law and the living law in society becomes essential to produce effective and meaningful legislation (Rasjid & Wyasa Putra, 1993).

However, legislative practices in Indonesia reveal significant disparities. Despite the post-reform era's adoption of the doctrine of popular sovereignty as the foundation of democracy, the process of lawmaking is often influenced by transactional politics (Hestu Cipto Handoyo, 2008). This results in public involvement that is merely a formality rather than substantive (Mochtar, 2015). This situation contradicts the principle of transparency as stipulated in Article 96 of Law Number 12 of 2011, which guarantees the public's right to participate both orally and in writing through various forums, such as public hearings, seminars, and discussions.

Sherry Arnstein's *Ladder of Citizen Participation* theory illustrates a hierarchy of public participation, ranging from the lowest level, *inform* (merely providing information), to the highest level, *empower* (involving the public in decision-making) (Government of Canada, 2018). According to this theory, public participation in Indonesia's legislative process currently remains at the inform and consult levels, falling short of achieving the more meaningful empower level (Arnstein, 2019).

The Constitutional Court's decision in case Number 91/PUU-XVIII/2020 on the judicial review of the Omnibus Law (*Undang-Undang Cipta Kerja*) emphasized the importance of meaningful participation. The Court outlined three key elements to achieve meaningful participation: the right to be heard, the right for opinions to be considered, and the right to receive explanations. However, to date, there are no clear

parameters on how meaningful participation should be effectively implemented in the legislative process.

METHOD

The type of legal research conducted is normative juridical, where law is conceptualized as what is written in legislation (*law in books*) or as norms and standards that serve as guidelines for human behavior deemed appropriate (Amiruddin, 2012). In normative studies, the law in question is not limited to statutory regulations but also encompasses theoretical frameworks, philosophies, comparative analysis with other countries, structures, and the detailed composition and explanation of each article of the law.

Thus, normative legal research is no longer solely associated with statutory regulations. Instead, it extends to various aspects related to the normative system as its object of study, such as ideal legal values, legal theories, legal principles, legal doctrines, court decisions, and legal policies (Irwansyah, 2020).

This research employs a statutory approach to analyze legal products relevant to the research topic, as well as a conceptual approach to explore legal doctrines and concepts addressing aspects not explicitly regulated. The combination of these two approaches is expected to provide an in-depth and comprehensive analysis. The legal material analysis technique used is *content analysis*, a systematic procedure aimed at examining the content of the information obtained (Cheng et al., 2018).

RESULTS AND DISCUSSION

Etymologically, participation refers to the act of taking part in an activity; involvement; engagement; or the observation of activities in research through active observation and participation in the field or within the observed object. Meanwhile, *meaningful* signifies being significant, important, or carrying substantial value. Thus, meaningful participation can be interpreted as genuine public involvement or participation, which goes beyond mere formality (Fishkin, 2011).

According to Gaventa and Valderrama, the concept of participation is closely related to *citizens' rights* and democratic governance (Konisky & Beierle, 2001). The development of meaningful public participation initially gained traction in Canada around the year 2000, particularly in environmental issues. This was based on the realization that participation is an actualization of the fundamental principles of democracy

and strengthens the democratic fabric of society (Kiss, 2014). Environmental Impact Assessment (EIA) is positioned as a platform for public communication, allowing communities to participate directly in decisions that affect them. In other words, Environmental Impact Assessment prioritizes the empowerment of individuals and communities.

The shift in understanding the importance of actualizing public participation in decision-making has extended beyond environmental impact assessments to encompass all *policies* formed by members of the Canadian Parliament. This reflects the recognition that public participation is regarded as an obligation, or in other words, as "active public participation" with procedures emphasizing the "institutionalization of public participation" in the legislative process.

Meaningful Public Participation in Concept

Essentially, public participation in the legislative process, which has grown and evolved in the modern and democratic era of the 21st century, cannot be separated from the discourse shaped by Western philosophers. Bertrand Russell comprehensively elaborates on the connection between ancient thought and the socio-political conditions of the modern era (Arnstein, 2019). Scholars classify the history of philosophy into three distinct eras: ancient philosophy (Greek and Roman), medieval philosophy (Christian Europe), and modern philosophy. The emergence of a legally orderly civilization began with the search for a system suitable for human life, ranging from monarchy, aristocracy, oligarchy (timocracy), to democracy.

The monarchical system is recognized as one of the oldest and most enduring forms of governance in human civilization. It is characterized by the rule of an absolute monarch, who legitimizes their descendants as heirs to the throne. Additionally, there is aristocracy, a system of government in which power is concentrated in the hands of a small, privileged elite. In contrast, timocracy is a form of governance based on honor and merit, where rulers are selected according to their virtues and achievements. Over time, the debate on the ideal system of governance continued to evolve, ultimately leading to the development of a state governance model based on the will of the people.

In the 19th century, the two dominant systems were monarchy and democracy, each challenging and claiming to be the most aligned with the will of the people. The development of democracy, however, dates to Ancient Greece and was later expanded upon by Enlightenment thinkers such as Thomas Hobbes, John Locke, Jean-Jacques Rousseau, Immanuel Kant, and Montesquieu. The core of their ideas focused on the

relationship between individuals, society, and the State to understand reality (Sartori, 1994). The emergence of democracy was accompanied by the ideal conception of a legal state (*Rechtsstaat* or *rule of law*), which has been a subject of debate since Ancient Greece and continues to the present day. While these terms differ linguistically, they share the same fundamental meaning: a state founded on the rule of law (Isra et al., 2017).

The concept of democracy was born out of unease with a world filled with unchecked freedom, wars, and oppression among humans. Over the past three centuries, democracy has been regarded as an ideal system for maintaining social order, gradually replacing other forms of government. Democracy originates from the Ancient Greek words “Demos” (people) and “Kratia” (rule or governance). In English, it is often translated as “rule of law by the demos or people power”. This concept was later popularized by Abraham Lincoln’s terminology: “government of the people, by the people, and for the people” (Carr, 1961).

Substantively, this terminology reflects the idea that the life of a state is governed by the values and will of the people, determining all aspects of governance, including its laws. Here, “the people” refers to a community within a unified demographic, sharing a common historical background, perspectives, and goals. This shared foundation can be conceptualized and manifested in the principle that the state must act in accordance with the will of the people. This “will” is rooted in *virtue*, aimed at the *common good* for all citizens. Thus, freedom and equality among all people in participating in governance must be realized based on just public policies. These principles ensure that every citizen has an equal role and opportunity to contribute to governance, fostering fairness and inclusivity (Firdaus, 2015).

In Indonesia, democracy based on the constitution has evolved through three distinct phases of implementation, as follows:

- a) The First Republic of Indonesia: This period featured a democracy characterized by the dominance of the parliament and political parties, known as parliamentary democracy
- b) The Second Republic of Indonesia: This era saw the emergence of guided democracy, a form of democracy during the Old Order that deviated from constitutional democracy principles.
- c) The Third Republic of Indonesia: Known as the era of Pancasila democracy, this phase marked the rise of constitutional democracy with a strong emphasis on presidential democracy. It was characterized by the fall of the New Order regime and Indonesia’s entry into the reform era, beginning with

constitutional amendments that prioritized greater political freedom and the strengthening of the presidential system (Suny, 1978)

Any system of government, regardless of its ideology, has both strengths and weaknesses. While democracy is often claimed to be a system “of the people, by the people, and for the people,” in practice, it frequently provides loopholes for rulers to act arbitrarily. Giorgio Agamben refers to this phenomenon as a *crisis of sovereignty*, which he describes as the logical consequence of the paradox inherent in modern democracy (Mills, 2014).

Agamben dismantles our conventional understanding of democracy, revealing that beneath its surface lies a sovereign power that perpetuates the continuity of authority from authoritarian eras, rather than reflecting the genuine will of the people. Democracy may appear to embody the people’s will, but there often exists an entity exercising absolute power behind the scenes. This critique highlights the persistent presence of concentrated authority even within systems that are ostensibly democratic (Agamben, 2008).

Firdaus (2015) comprehensively describes why such a situation occurs naturally. He argues that even within the realm of democracy, there exist competing forces vying for influence, often creating the impression of friction between them. The outcomes of this competition are shaped by the subjects involved in it. This dynamic presents an ethical problem in the world of democracy, where democracy intersects with justice, yet the two are challenging to implement simultaneously. The inherent tension between these principles underscores the difficulty of balancing democratic processes with equitable outcomes.

According to Firdaus (2015), emphasizing the concept of “justice” serves as a solution for resolving various conflicts by distributing rights and obligations as boundaries that regulate the behavior of both the government and the governed in a democracy. However, the concept of justice remains abstract and challenging to comprehend in technical terms (Firdaus, 2015). Therefore, the researcher argues that the issue is not solely about creating justice within democracy to preserve the pure will of the people. Instead, it involves establishing “balance” as a corrective measure for governmental actions. This balance aims to ensure that democratic governance remains accountable and aligned with the people’s aspirations.

The effort to achieve balance essentially aligns with the principle of *checks and balances* among state institutions, a concept widely implemented in countries adhering to the separation of powers (*Trias Politica*). However, the separation of powers does not always result in optimal *checks and balances*. For instance, in Indonesia’s

democratic system, the implementation often reveals dysfunctions within the *Trias Politica*, preventing the effective realization of *checks and balances*. This dysfunction undermines the intended equilibrium and accountability among branches of Government (Kurnia, 2020).

Doubts about democracy and the effectiveness of *checks and balances* have led to the emergence of a new approach to understanding democracy, known as deliberative democracy. This approach critiques the elitist tendencies of contemporary democracy and offers a different interpretation, inspired by Habermas' idea that political decisions derived from public discourse remain subject to continuous questioning, testing, and reformulation through systematic and rational argumentation (Wattimena, 2007). Held (2006) provides a broad definition of deliberative democracy, describing it as a concept that places public deliberation among free and equal citizens as the primary source of legitimacy for political decision-making and self-governance. This framework emphasizes the importance of inclusive, reasoned dialogue in shaping legitimate and just political outcomes.

The concept of deliberative democracy views democracy differently, asserting that governance based on the will of the people cannot simply be delegated to other institutions. Classical teachings agree that laws, as the crystallization of the people's will, only have legitimacy if that authority aligns with the will of the people, who are the true holders of core power. This perspective emphasizes that the essence of democracy lies in ensuring that decision-making processes genuinely reflect and respect the people's collective aspirations (Budi Hardiman, 2009).

The current state of democracy occasionally needs to be questioned, as disharmony between the parliament and society often arises, leading to contradictions and differing opinions. This discord has paved the way for alternative approaches to understanding democracy. Deliberative democracy offers a conception distinct from contemporary or liberal democracy, which tends to focus solely on institutional sources as the basis for policy legitimacy. Deliberative democracy emphasizes dialogue, public reasoning, and the active involvement of citizens in decision-making, aiming to bridge the gap between institutional authority and societal will. This approach seeks to foster policies that are not only procedurally legitimate, but also substantively just and reflective of the collective aspirations of the people.

According to Habermas, power obtained and built on the illusion of democracy can be considered a form of legislative power. He questions why the mobilization of collective consent itself is not similarly recognized as a form of power. Habermas views the process of communication as a *locus* where this legislative power is continuously produced and reproduced (Budi Hardiman, 2009). In his perspective, communicative

processes, such as public discourse and deliberation, play a crucial role in legitimizing power. These processes serve as the foundation for collective decision-making, where the legitimacy of laws and policies is derived not merely from authority but from the ongoing engagement of free and equal participants in rational dialogue. This dynamic reaffirms the importance of discourse as the core mechanism for creating and sustaining legitimate governance (Budi Hardiman, 2009).

Deliberative democracy differs from participatory democracy in its emphasis and requirements. Deliberative democracy prioritizes the agreement of free and equal members of society, achieved through communicative rationality and the testing of discourse within the public sphere. This approach seeks to produce rational political decisions that are mutually beneficial for all members of society. In contrast, participatory democracy is often associated with direct democracy. It typically provides mechanisms for the people to exercise governmental power and hold political positions directly. While deliberative democracy focuses on rational dialogue and consensus-building, participatory democracy emphasizes active engagement and direct involvement of citizens in governance and decision-making processes (Muzaqqi, 2019).

Deliberative democracy is not merely an alternative to contemporary democracy, nor does it involve the public in a meaningless way, such as reducing participation to the mere aggregation of preferences through voting. Instead, deliberative democracy aims to ensure that the genuine voices of the public are seriously considered, requiring representatives to set aside their subjective interests before making political decisions. True democracy becomes more meaningful when every individual has equal access to decision-making processes. For this reason, deliberative democracy is generally seen as an effort to incorporate elements of *popular democracy* into *representative democracy*. This integration seeks to enhance the legitimacy and inclusivity of democratic governance by emphasizing rational discourse and equal participation in shaping public decisions.

The concept of deliberative democracy should not be narrowly interpreted as merely formal meetings between policymakers and the public. Rather, it emphasizes a mechanism for meaningfully managing aspirations as an effort to address the needs of society. At the constitutional level, for instance, France and Thailand entrusted their proposed constitutions to the public for approval through national referendums.

Conceptually, public participation in democracy, such as in the formation of constitutions or laws, is a well-established subject and an inevitability in modern democracies. Beyond strengthening the legitimacy of policies, public participation reflects a state's commitment to all citizens without exception, serving as a communicative

bridge between the rulers and the governed. However, implementing the ideas of deliberative democracy poses significant challenges, as states must meet and understand the aspirations of their citizens.

Furthermore, the responsibility of government extends beyond managing aspirations and formulating policies to include the distribution of regulations. This process is equally critical, as it must account for groups with specific needs, such as individuals with visual impairments. Consequently, deliberative democracy, according to researchers, should not only be considered a communicative or consultative medium between the government and its people but also as a shift toward the empowerment of all members of society without exception.

Thus, the logic underpinning *meaningful participation* has strong conceptual and philosophical foundations. In fact, several democratic nations have begun incorporating this concept into practical governance, striving to create inclusive and empowering democratic systems.

Meaningful Public Participation in Theory

Exploring the meaning of participation at the theoretical level serves as a foundational basis to demonstrate that the mechanism of meaningful public participation in lawmaking is not merely a concept but can also be formulated into a structured system for managing aspirations. At the theoretical level, public participation can be explained through its “meaningfulness” and “functionality”.

This means that with the help of theory, the depiction of public participation becomes clearer, as theory provides solutions to problems that cannot be addressed solely within a normative framework. Two notable theoretical concepts relevant to meaningful participation are the deliberative democracy theory and the participation ladder theory. These concepts highlight not only the importance of involving society in policymaking processes but also the mechanisms and frameworks needed to ensure that such participation is both meaningful and functional, bridging the gap between theoretical ideals and practical implementation.

Parkinson and Mansbridge (2012), who systematically developed deliberative democracy through her book titled *“Deliberative Systems: Deliberative Democracy at the Large Scale”*, identified three functions in the implementation of the deliberative democracy concept: the political function, the ethical function, and the epistemic function.

The political function is an inclusive and egalitarian political process in which diverse opinions, interests, and concerns are actively heard and considered. The ethical

function involves mutual respect, the prevention of coercive power dynamics, and the encouragement of active public participation. This means that society is not merely considered “objects of legislation” or “passive subjects to be ruled”, but as active participants in governance. The epistemic function refers to decision-making outcomes that are based on reasonable arguments and consider the preferences of affected groups (Parkinson & Mansbridge, 2012). These two theoretical concepts mutually reinforce each other, addressing questions about how public participation should be incorporated into policymaking without disrupting ongoing political processes.

Meanwhile, in the theory of the ladder of public participation by Arnstein, she wrote her article based on her experience working at the Department of Housing and Urban Development from 1967 to 1968 as chief advisor for citizen participation in development projects. The concept of the public participation ladder was an initiative for participation in the development of urban models in the United States. Due to the lack of clarity in public participation norms within legislation, Arnstein sought to capture various forms of public participation through a hierarchical framework (Parkinson & Mansbridge, 2012).

The adoption of the public participation ladder theory in legislative formation has become an initiative in Latin American states through the Joint Parliament of Latin American and Caribbean States. This initiative arose in response to increasing public demands regarding the dynamics of modern democracy, which is often perceived as insufficiently participatory. The idea is part of a transparency agenda and is not intended to diminish or replace the role of parliamentarians but to enhance it through constructive dialogue while mitigating risks in its implementation (Government of Canada, 2018).

The Global Initiative for Fiscal Transparency identifies ten principles of public participation, emphasizing openness, transparency, and reciprocity, while fostering respect for self-expression and inclusiveness. These principles ensure proportionality, accessibility, and complementarity in participatory processes. Sustainability and timeliness are also integral, ensuring that public participation remains effective, relevant, and aligned with democratic goals (Government of Canada, 2018).

Openness is a principle emphasizing transparency, particularly in the legislative process, covering the stages of planning, deliberation, and enactment. It involves providing comprehensive information on objectives, scope, constraints, desired outcomes, processes, timelines, and the actual results of public participation. This ensures that stakeholders are well-informed and can engage meaningfully throughout the legislative process (Government of Canada, 2018).

Transparency involves providing relevant information to support every instance of public engagement. It highlights and informs key choices and trade-offs, identifies potential social, economic, and environmental impacts, and incorporates diverse perspectives. Additionally, it ensures timely and specific feedback on public input, explaining how such input was included or omitted in a draft law, thereby fostering accountability and trust in the legislative process (Government of Canada, 2018).

Reciprocity emphasizes the responsibility of societal subjects, including groups or community organizations, to be transparent about their missions, the interests they aim to achieve, and whom they represent. Additionally, they must adhere to agreed-upon rules. This principle ensures that mutually agreed mechanisms are respected as part of the public discourse, fostering mutual understanding and cooperation within the public space (Government of Canada, 2018).

Respect for Self-Expression requires acknowledging and valuing the expressions of all members of society, whether individuals or communities, as they voice their opinions and articulate their interests in their ways. It also allows them to choose their preferred method of engagement, provided their participation represents the interests of directly affected groups. This principle ensures inclusivity and respect for diverse perspectives in public discourse (Government of Canada, 2018).

Inclusiveness emphasizes the protection and security of minority, traditional, and marginalized groups, ensuring that there is no discrimination based on nationality, race, ethnicity, religion, gender, sexual orientation, disability, age, or caste. This principle upholds the objective consideration of public input, fostering equal opportunity for all voices to be heard in the decision-making process (Government of Canada, 2018).

Proportionality ensures that the mechanisms for public involvement are appropriately scaled to match the magnitude and impact of the issues being considered (Government of Canada, 2018). Accessibility focuses on facilitating broad public participation by disseminating draft legislation, discussion reports, and all related data in formats that are easy to access, understand, and utilize. It emphasizes presenting information in ways that are relevant and meaningful to diverse communities, ensuring inclusivity and engagement for all (Government of Canada, 2018).

Complementarity ensures that public participation mechanisms and citizen engagement act as complementary processes designed to enhance the effectiveness of existing governance systems and accountability frameworks. This principle emphasizes the integration of public input to strengthen, rather than replace or undermine, the established systems of governance (Government of Canada, 2018).

Sustainability emphasizes regular and ongoing engagement to enhance knowledge and foster mutual trust over time. It advocates for institutionalizing public

participation when it proves to be appropriate and effective. This principle also includes routinely evaluating experiences to improve the quality and effectiveness of future engagement processes (Government of Canada, 2018).

Timeliness refers to providing sufficient opportunities for public participation at various stages of the legislative process. It ensures that input is solicited early when multiple options are still open and, if necessary, allows for more than one engagement opportunity to maximize inclusivity and effectiveness (Government of Canada, 2018).

The fundamental principles outlined above serve as standards and benchmarks for the implementation of public participation. In other words, public participation can be considered meaningful if it adheres to these fundamental principles. It is not merely a matter of rights but also about how the provided facilities enable these rights to be exercised meaningfully in the legislative process.

From the ten fundamental principles, the researcher categorizes them into two groups: general principles and specific principles. The researcher argues that general principles are essentially accommodated by all democratic countries and form the foundational aspects of participation. However, what is often overlooked are the specific principles, which are crucial for adoption by democratic nations as they highlight the “meaningfulness” of public participation. These specific principles ensure that participation goes beyond mere formality, embodying genuine engagement and impact in democratic processes.

From the ten principles above, they can be grouped into two categories as follows:

Table 1. Meaningful Participation

Principle Meaningful Participation	
General Principles	Special Principles
<i>Openness</i>	<i>Respect for Self Expression</i>
<i>Transparency</i>	<i>Inclusiveness</i>
<i>Reciprocity</i>	<i>Accessibility</i>
Proportionality	
Complementarity	
Sustainability	
Timeliness	

Source: Government of Canada, Toolkit: Citizen Participation in The Legislative Process.

In the framework of the legislative process in Indonesia, public participation is anchored on a single principle: the principle of openness. This principle, as explained,

only seeks to ensure transparency in the legislative drafting process and public participation rights at each stage of legislation in Indonesia. In comparison, Latin American and Caribbean states have progressed toward realizing meaningful participation by adopting the ten principles mentioned above.

The principles above determine whether public participation is conducted meaningfully or not. Respect for Self-Expression embodies a non-rigid principle, allowing flexibility in consultative grievance mechanisms with exceptions for directly affected communities. This means that any directly affected individual or community can submit and express their concerns using their preferred mechanism. The freedom implied in this principle is, of course, bounded, as it specifically refers to freedom of expression. The basis for acceptable aspirations is not limited to research findings but also includes potential social phenomena that may arise and remain overlooked. In this way, expressions from the public are considered more authentic, and the existence of these communities is given due recognition.

Inclusiveness and Accessibility are two interconnected and complementary principles in realizing meaningful participation in the legislative process. Inclusiveness directly relates to legal protection for minority and marginalized communities, ensuring that their aspirations are objectively considered. Additionally, this principle reinforces the fundamental human right to freedom of expression, emphasizing that all voices, regardless of social status, deserve recognition and respect in the legislative process. Together, these principles strengthen the foundation of equitable and inclusive participation, ensuring that no group is excluded or overlooked.

Why are these principles important in realizing meaningful participation? The answer is relatively straightforward: in practice, the diversity of aspirations is accompanied by differing backgrounds. This diversity is often referred to as a “plural society” or “pluralistic society”, both of which carry the same meaning societies composed of various ethnic groups or communities characterized by diversity. These principles ensure that the legislative process acknowledges and accommodates this diversity, fostering inclusivity and fairness across all segments of society (Taneko & Soekanto, 2015).

Soekanto (1985), in his book, elaborates in detail on the ongoing conflicts, ranging from theoretical and doctrinal debates to practical implementation. The approach utilized extends beyond legal studies, incorporating sociological perspectives as well. For instance, the term sovereignty is often juxtaposed with these debates because the theory inadequately considers the various types of rights, interests, and developments of diverse groups or factions within the state. This highlights the

importance of integrating interdisciplinary approaches to address such complexities in understanding and resolving these conflicts.

It often appears that state sovereignty represents the stronger party imposing its will on the weaker, in this context, it becomes evident that marginalized groups, including traditional indigenous communities and minorities, must be protected through procedural mechanisms and the awareness of lawmakers. This protection ensures the creation of justice and legal certainty for these communities, safeguarding their rights within the framework of a just and inclusive legal system.

Accessibility is a principle related to the public's right to access every stage of the legislative process. While it may not directly link to "meaningfulness" and "participation" in legislation, the ease of access to information serves as a benchmark for the success of transparency. Even if mechanisms for collecting public aspirations are managed participatively during the planning and deliberation stages, this does not necessarily mean the process can be categorized as "meaningful" in legislative efforts.

An equally important aspect is ensuring public access to every stage of the legislative process. This principle highlights the significance of distributing all information related to legislation in accessible formats and through user-friendly mechanisms. Today, lawmakers rely on advancements in technology to facilitate the distribution of information, making it easier for the public to engage and access the legislative process.

In the Indonesian context, accessing information on all legislative products is relatively easy through the internet. This is facilitated by the National Legal Development Agency (*Badan Pembinaan Hukum Nasional* or BPHN), an institution established to support the core functions of the Ministry of Law and Human Rights. Among its responsibilities is the development and management of a legal documentation and information network (*Jaringan Dokumentasi dan Informasi Hukum* or JDIH) and a legal library.

Under BPHN, the distribution and transparency of information are managed through a digitization system that allows the public to download and access every stage of the legislative process, from the central to regional levels. This demonstrates the Indonesian government's commitment to transparency.

However, based on the researcher's review of the JDIH digital platform, it appears that there is no dedicated space or features designed for individuals with sensory disabilities, particularly those with visual impairments, who experience functional limitations in one or more of their senses. This highlights a gap in accessibility for people with disabilities in accessing legal information.

Meaningful Public Participation in Constitutional Court Decisions

The establishment of the Constitutional Court is an effort to realize popular sovereignty, as the Court's authority is directly linked to upholding the rule of law and providing maximum protection for democracy and the fundamental rights of citizens through constitutional supremacy.

In the context of constitutional supremacy, the Court plays a vital role in ensuring that legislation aligns with and does not conflict with the constitution. This concept is based on the right of judicial review, which, in theoretical terms, can be divided into two forms: formal review (*formele toetsingsrecht*) and material review (*materiele toetsingsrecht*). The Court's function ensures that legislative products comply with constitutional principles, thereby safeguarding the rights and aspirations of the public.

Essentially, the Constitutional Court explicitly positions public participation as a constitutional mandate, upholding the principle of popular sovereignty as one of the main pillars of the state, as outlined in Article 1(2) of the 1945 Constitution of the Republic of Indonesia (*UUD NRI 1945*). Furthermore, it is guaranteed as a constitutional right under Article 27(1) and Article 28C(2) of *UUD NRI 1945*, which provide citizens the opportunity to participate in governance and contribute to building society, the nation, and the state. Therefore, if the legislative process employs mechanisms that exclude or distance public involvement in discussing and debating its content, such lawmaking can be deemed a violation of the principle of popular sovereignty. This principle ensures that the public has a meaningful role in shaping laws that affect their lives, reflecting the essence of a democratic and participatory state.

In Decision No. 91/PUU-XVII/2020, the Constitutional Court declared that the Omnibus Law (*Undang-Undang Cipta Kerja*) was formally flawed, rendering it unconstitutional and devoid of binding legal force. This decision marked the first time the Court ruled that the legislative process for a law was in conflict with the 1945 Constitution of the Republic of Indonesia (*UUD NRI 1945*), leading to the conclusion that the Omnibus Law was problematic. The Constitutional Court identified six key benchmarks for determining formal flaws, which include:

1. Unclear Title [3.18.1.4] The title of the law, "*Cipta Kerja*" (*Job Creation*), gives the impression that it is a standalone, newly enacted law. However, its provisions amend 77 different laws and repeal one law. This lack of clarity in the title contradicts the *Law on the Formation of Laws and Regulations (UU PPP)*, which mandates that if a law is intended as an amending law, it must adhere to the guidelines set forth in *UU PPP*.

2. Unclear Legal Principles Between the Omnibus Law and the Laws It Amends [3.18.1.6] The Constitutional Court noted inconsistencies between the new principles introduced in the *Omnibus Law (Undang-undang Cipta Kerja)* and the principles in the existing laws amended by it. These discrepancies result in unclear formulations, which the Court deemed contrary to the principle of clarity of formulation as mandated by the *Law on the Formation of Laws and Regulations (UU PPP)*. This lack of coherence undermines the legislative framework and violates the required standards for drafting legislation.
3. Formatting Errors Between a New Law and an Amending Law [3.18.1.7] As previously mentioned in relation to the title, the *Omnibus Law (Undang-undang Cipta Kerja)* does not conform to the proper format. While its title uses the format of a newly enacted law, its content functions as an amending law. This inconsistency violates the standard legislative drafting practices outlined in the *Law on the Formation of Laws and Regulations (UU PPP)*.
4. Unrecognized Method in the *UU PPP*, The Constitutional Court found that the *omnibus law* method used in the *Omnibus Law (Undang-undang Cipta Kerja)* is not recognized under the *Law on the Formation of Laws and Regulations (UU PPP)* and, therefore, cannot be applied as a method for drafting legislation. The Court compared the simplification approach in the *Omnibus Law* to that of Law No. 32 of 2004 on Regional Government and Law No. 7 of 2017 on General Elections. In the latter laws, the original laws being amended were explicitly repealed and replaced with a single consolidated law. In contrast, the *Omnibus Law* allows the amended laws to remain in force, creating inconsistencies and confusion in its implementation.
5. Non-Participatory Drafting of the *Omnibus Law* [3.18.4] The drafting process of the *Omnibus Law (Undang-undang Cipta Kerja)* was deemed non-participatory. The lawmakers failed to provide adequate opportunities for meaningful public participation. According to the Constitutional Court, this violates the principle of openness, as public involvement is a fundamental requirement in the legislative process to ensure transparency and inclusivity.

The Court mentioned the benefits of public participation based on doctrine, including the following:

1. Creating strong collective intelligence that provides better analysis of potential impacts and broader considerations in the legislative process, resulting in higher overall quality outcomes.

2. Building a more inclusive and representative legislative body for decision-making.
3. Increasing citizens' trust and confidence in legislative institutions.
4. Strengthening shared legitimacy and responsibility for every decision and action.
5. Improving citizens' understanding of the role of parliament and its members.
6. Providing opportunities for citizens to communicate their interests.
7. Creating a more accountable and transparent parliament.

The benefits outlined by the Constitutional Court reflect the expansive nature of the public sphere in a democracy, which is inevitable. Whether consciously recognized or not, the public sphere significantly influences decisions that are made. Similarly, according to Habermas, legitimate law is created through fair and just procedures. All laws, regulations, and public policies must be subjected to public discourse, ensuring their validity and alignment with collective interests. Habermas's concept of deliberative democracy refers to a process of achieving legitimacy through discursive procedures within the political public sphere.

Therefore, the researcher argues that meaningful participation, as defined by the Constitutional Court, does not merely emphasize the mechanism for achieving a majority vote but also on how that majority is obtained. Thus, an adequate mechanism becomes the most critical issue. Consequently, participation in the legislative process is not merely about representative democracy or public endorsement but rather an effort to transform free public opinion into a legitimate reality.

The Constitutional Court has proposed at least three prerequisites for achieving more meaningful participation, namely: first, the right to be heard, which ensures that opinions are listened to; second, the right to be considered, which requires that opinions are taken into account in the decision-making process; and third, the right to be explained, which provides individuals with explanations or responses to the opinions they have expressed.

The consequence of embracing the democratic system is the emergence of diverse views, opinions, ideas, and approaches. While the process of synthesizing these varied perspectives into policy formulas may slow down decision-making, this reality should not be an excuse to exclude public involvement. On the contrary, the Constitutional Court argues that the public sphere should be widely open and actively debated. However, among the five stages of the law-making process—(a) submission, (b) deliberation, (c) approval, (d) ratification, and (e) promulgation—the Court requires meaningful participation to be present in at least three stages, which include:

1. The submission of draft legislation.
2. Joint deliberations between the House of Representatives (*DPR*), and deliberations involving the *DPR*, the President, and the Regional Representative Council (*DPD*), as long as they are related to Article 22D paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia (*UUD NRI 1945*).
3. Joint approval between the *DPR* and the President.

In this case, the Constitutional Court does not rule out the possibility of implementing legislative referendums, which are increasingly considered important by modern society. This is particularly significant given public dissatisfaction with the Court's decisions to uphold amendments to the *KPK Law*, which weakened the position and authority of the anti-corruption agency, and to approve the *Minerba Law*, which was hastily enacted to benefit certain mining companies.

It is true that normative regulations regarding legislative referendums have not yet been established, but the Constitutional Court should explore the possibility of applying legislative referendums, as practiced in countries like Switzerland and the Netherlands. The online petition signed by 1.3 million Indonesians opposing the *Omnibus Law (Undang-undang Cipta Kerja)* serves as evidence that the enthusiasm and attention of the Indonesian public regarding legal issues have reached a peak of political awareness. This indicates that the pandemic at the time did not hinder the public's ability to express their views.

Indeed, the model of legislative referendums is one manifestation of meaningful participation and represents the highest form of public participation in the legislative process, as it gives the people a veto power to determine the validity of a regulation. While the option of implementing legislative referendums is not an easy issue, it is important to balance growing political awareness with the maturity of thought.

The researcher's exploration of *meaningful participation* in the legislative process leads to the following conclusions: At the conceptual level, *meaningful participation* is part of the concept of deliberative democracy, which is based on achieving legitimacy through discursive processes in the political public sphere. At the theoretical level, the creation of meaningful participation in the legislative process is based on the principles of public participation. According to the Constitutional Court, *meaningful participation* is formed through public discourse within a participatory space, facilitated through adequate mechanisms during the stages of submission, deliberation, and approval of laws.

The researcher's conceptual framework on the "meaningfulness" of public participation leads to the identification of ten principles of public participation, which are

elaborated through the theory of the ladder of public participation. These principles will serve as a parameter for assessing the “meaningfulness” of public participation in the process of lawmaking. This parameter will function as a benchmark to evaluate whether a legislative process genuinely incorporates meaningful participation or not.

CONCLUSION

Meaningful participation in the legislative process in Indonesia is an integral part of the democratic principle that places the people as holders of sovereignty. However, the implementation of such participation remains far from ideal, being limited to consultative and informative levels as regulated in Article 96 of Law No. 12 of 2011 and its amendments. This research shows that, despite the recognition of the principle of openness normatively, its actual mechanisms have yet to substantively achieve meaningful participation.

Through an analysis of deliberative democracy theory and the Ladder of Citizen Participation, meaningful participation requires three key elements: the right to be heard, the right to be considered, and the right to be explained. In addition, this research identifies ten principles of public participation that can serve as parameters for measuring the meaningfulness of participation in the legislative process.

In conclusion, the application of meaningful participation in Indonesian legislation requires a more inclusive, transparent mechanism oriented toward the empowerment of the public. This is crucial to ensure that regulations reflect the will of the people and possess strong democratic legitimacy. Therefore, further reforms are needed, including the potential consideration of implementing legislative referendums as a higher form of public participation.

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