

MEANINGFUL PUBLIC PARTICIPATION AS THE ESSENCE OF CONSTITUTIONALISM IN LAW MAKING

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Abstract

Discourse on constitutionalism often emphasizes the existence of a written constitution as the foundation of democratic governance. Yet, constitutionalism is not merely about the text but it is about the lived practices that give substance to constitutional ideals. This article interrogates the extent to which participation moves beyond symbolic consultation to become a substantive mechanism that embodies constitutionalism in practice. The central research question is how can meaningful public participation be conceptualized and operationalized as the essence of constitutionalism in legislative processes? It examines constitutional provisions, statutory frameworks, and judicial interpretations in selected jurisdictions. The analysis is enriched by theoretical frameworks of deliberative democracy and participatory constitutionalism, which highlight the normative value of inclusivity, transparency, and accountability in law making. The article concludes that embedding meaningful public participation transforms law-making from a formal exercise of authority into a constitutional practice that legitimizes governance, strengthens democracy.

Abstrak

Wacana konstitusionalisme seringkali menekankan keberadaan konstitusi tertulis sebagai landasan pemerintahan yang demokratis. Namun, konstitusionalisme bukan sekadar teks, melainkan praktik nyata yang memberikan substansi pada cita-cita konstitusional. Artikel ini mengkaji sejauh mana partisipasi bergerak melampaui konsultasi simbolis menjadi mekanisme substantif yang mewujudkan konstitusionalisme dalam praktik. Pertanyaan penelitian utamanya adalah bagaimana partisipasi publik yang bermakna dapat dikonseptualisasikan dan dioperasionalkan sebagai esensi konstitusionalisme dalam proses legislasi? Penelitian ini mengkaji ketentuan konstitusional, kerangka perundang-undangan, dan interpretasi yudisial di beberapa yurisdiksi terpilih. Analisis ini diperkaya oleh kerangka teoretis demokrasi deliberatif dan konstitusionalisme partisipatif, yang menyoroti nilai normatif inklusivitas, transparansi, dan akuntabilitas dalam pembentukan undang-undang. Artikel ini menyimpulkan bahwa menanamkan partisipasi publik yang bermakna mengubah pembentukan undang-undang dari sekadar pelaksanaan kewenangan formal menjadi praktik konstitusional yang melegitimasi akuntabilitas demokrasi.



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Introduction

As a democratic state based on the rule of law, Indonesia places sovereignty in the hands of the people, the implementation of which is regulated by the Constitution. The principle of popular sovereignty is not merely a political adage, but a constitutional mandate that must be realized in every aspect of state life, especially in the process of forming legislation.¹ Public participation in this process is a direct manifestation of this sovereignty, transforming the people from passive objects into active subjects in determining the direction of state policy. Theoretically, public participation serves as a vital instrument to ensure that the resulting laws are not only procedurally legitimate but also responsive to the needs and aspirations of the people. Modern constitutionalism asserts that limiting state power is not sufficient through the separation of powers alone, but also through the creation of space for citizens to monitor and influence the course of government.² Thus, public participation is the essence of deliberative democracy and the main foundation for the establishment of a constitutional state.

Although the legal framework in Indonesia, as stipulated in Law Number 12 of 2011 concerning the Formation of Legislation and its amendments, explicitly mandates public participation, there is still a wide gap between the normative text and empirical practice. A common phenomenon is participation that is merely formal or ceremonial in nature, where public hearings are held only to fulfill legal requirements without any sincere intention to absorb and consider the input provided. This condition gives rise to what is known as "tokenistic participation" or "pseudo-participation," where the public is given a voice, but their voices have no power to influence the final substance of a legal product.³ As a result, many laws are born from a flawed participation process, triggering public resistance and even leading to *judicial review* in the Constitutional Court. This issue is urgent because *meaningless participation* not only delegitimizes legal products but also erodes public trust in democratic institutions.

The key concept central to this discourse is "meaningful public participation." Unlike formal participation, meaningful participation requires the fulfillment of several essential elements. First, *the right to be heard*, which includes equal and non-discriminatory access for all levels of society to express their aspirations. Second, *the right to be considered*, whereby lawmakers seriously examine

¹ APA, "'Constitutions without Constitutionalism' and Judicial Leadership in Kenya," in *American Psychological Association*, 2025, <https://doi.org/10.1080/17531055.2024.2375076>.

² Adriaan Bedner, *Administrative Courts in Indonesia: A Socio-Legal Study* (Leiden: Brill, 2021), <https://doi.org/10.1163/9789004481992>.

³ Dodi Jaya Wardana, Sukardi Sukardi, and Salman Radian, "Public Participation in the Law-Making Process in Indonesia," *Jurnal Media Hukum* 30, no. 1 (2023), <https://doi.org/https://doi.org/10.18196/jmh.v30i1.14813>.

all input received. Third, and most importantly, is *the right to obtain an explanation or a reason for the decision taken*, which means that lawmakers are obliged to provide a rational justification for why a piece of input is accepted or rejected.⁴ Without this third element, the transparency and accountability of the legislative process become null and void, and public participation loses its essence.

The urgency of discussing meaningful public participation has become increasingly prominent in the context of legislation in Indonesia in recent years. The discussion and ratification of several controversial laws, such as the revision of the Corruption Eradication Commission Law (KPK Law) and the Job Creation Law (Omnibus Law), have become monumental case studies. The process of drafting these two laws drew sharp criticism from various elements of civil society, academics, and affected groups because it was considered closed, rushed, and lacked substantive public involvement. The climax was Constitutional Court Decision Number 91/PUU-XVIII/2020 regarding the formal review of the Job Creation Law, in which the Court declared that the law was "conditionally unconstitutional," partly because the process of its formation did not fulfill the principle of meaningful public participation.⁵ This ruling is an important precedent that confirms that participation is no longer merely an ethical recommendation, but a constitutional obligation whose fulfillment can be tested legally.

From a constitutionalism perspective, meaningful public participation serves as a *bottom-up checks and balances* mechanism. It prevents the legislative and executive branches from slipping into a tyranny of the majority or oligarchy that only serves the interests of a small elite. Participation ensures that the laws made have a strong basis of social legitimacy, thereby increasing the potential *for compliance* and effectiveness of their implementation in society.⁶ Failure to systematically institutionalize meaningful participation will continue to produce laws that are alien to the community itself, creating a cycle of social conflict and ongoing legal instability.

Based on this background, this article argues that the institutionalization of meaningful public participation is an absolute prerequisite for the realization of the substance of the rule of law and the essence of constitutionalism in the process of forming legislation in Indonesia. This paper will

⁴ Bivitri Susanti, *Towards Meaningful Participation: A Practical Guide for Civil Society in Legislative Advocacy* (Jakarta: PSHK Press, 2022). 24

⁵ Fajar Nurdiansyah and Rizky Argama, "Civic Space Constriction and the Omnibus Law-Making in Indonesia," in *Proceedings of the 5th International Conference on Law and Governance* (Surabaya: Airlangga University Press, 2021), 88.

⁶ Amanda R. Kemala, "Legitimacy and Compliance: The Role of Meaningful Participation in Environmental Law Enforcement in Indonesia" (Gadjah Mada University, 2024).

analyze in depth the paradigm shift from formal participation to meaningful participation, using the jurisprudence of the Constitutional Court as the main analytical tool. Furthermore, this article will outline the standards and criteria for meaningful participation based on literature studies and comparative practices, as well as offer critical reflections on the challenges and opportunities for its implementation in Indonesia's political and legal systems. The aim is to formulate a conceptual framework that can serve as a guide for lawmakers in transforming the obligation of participation from a mere normative text into a living practice imbued with constitutional spirit.

Research Method

Normative legal research methods that are descriptive-evaluative in nature are well-suited for scientific journals because they allow for in-depth analysis of legal norms without empirical field data. Normative (or doctrinal) legal research focuses on bibliographic studies of laws, doctrines, and court decisions. Its descriptive-evaluative nature means describing (descriptive) legal norms as they are, then assessing (evaluative) their weaknesses or limitations.

The normative juridical approach is used with techniques and objectives for the statute approach to analyze relevant rules and the conceptual approach to explore legal principles. By applying descriptive-evaluative analysis, it is hoped that legal norms can be described systematically and evaluatively in terms of the effectiveness of norms, the identification of shortcomings, and recommendations for improvement (prescriptive).

Results and Discussion

Results

Prior to Decision No. 91/PUU-XVIII/2020, public participation in lawmaking was more often understood as a procedural requirement as stipulated in Article 96 of Law No. 12 of 2011. This article only states that the public "has the right to provide input," but does not specify how this input should be treated, to what extent lawmakers must consider it, and what the consequences are if participation is ignored. As a result, the dominant interpretation is minimalist: as long as there are public hearings, socialization, or online portals for input, the obligation to participate is considered to have been fulfilled. This practice creates a facade of democracy without substantive deliberation.⁷

⁷ Baharuddin Riqiey and Reza Maulana Hikam, "Constitutionality of Formal Testing of Draft Laws by the Constitutional Court," *Indonesian Journal of Law and Islamic Law* 7, no. 1 (2025): 27, <https://doi.org/https://doi.org/10.35719/ijlil.v7i1.450>.

Decision No. 91/PUU-XVIII/2020 was a monumental turning point. The Court not only examined the formal aspects, but also delved into the "spirit" or "substance" of participation itself. In its considerations, the Court explicitly stated that participation should not be reduced to mere mobilization of support or pseudo-legitimacy. Participation must be "meaningful," which legal experts then interpreted as a concept consisting of three cumulative rights for the public.

First, the right to be heard. This is the most basic level. The Court emphasized that access to the legislative process must be as open as possible, not only to experts or elites, but also to ordinary citizens, marginalized groups, and those most affected by a bill. Transparency of information regarding draft bills, academic papers, and discussion schedules is an absolute prerequisite for fulfilling this right. According to several studies, the use of digital technology can expand this reach, but we must be aware of the potential for a digital divide that could actually exclude vulnerable groups.

Second, the right to be considered. This is an escalation from simply being heard. Input received should not just be collected in a pile of documents, but must be seriously studied, discussed, and considered by lawmakers. The Court indicated that there must be evidence or a track record showing that public input has been taken into consideration in discussions in the House of Representatives and the Government. Without this element, participation is merely a "suggestion box" that is never opened.⁸

Third, and most transformative, is the right to be explained or the right to a reason. This is the essence of the Court's ruling that distinguishes meaningful participation from ceremonial participation. Lawmakers have an obligation to provide rational justifications or reasons to the public as to why a piece of input was accepted, rejected, or partially accommodated. This explanation creates a loop of accountability. The public no longer merely provides input and resigns itself to the outcome, but has the right to demand intellectual and political accountability for the decisions made. This obligation forces the legislative process out of the "dark room" of political negotiations and into the realm of accountable public deliberation. Thus, the Court has judicialized legislative politics, setting new constitutional standards that force the DPR and the Government to fundamentally change their practices.

⁸ Susanti, *Towards Meaningful Participation: A Practical Guide for Civil Society in Legislative Advocacy*. , p. 45.

Discussion

Although the Constitutional Court has set ideal standards, the transition from the text of the decision to actual practice faces various obstacles that are deeply rooted in Indonesia's political and legal systems. These obstacles can be grouped into three main categories.

First, political obstacles. The legislative process in Indonesia is often dominated by transactions and compromises between political party elites who are members of the government coalition. The public interest is often sidelined in order to maintain the solidarity of the coalition or accommodate the interests of oligarchic groups who have privileged access to power. In this kind of political culture, public participation is seen as a distraction that slows down the process and has the potential to open a "Pandora's box" of rejection. The "rapid" and closed discussion of the bill is a manifestation of the dominance of pragmatic political logic over deliberative democratic logic. Political unwillingness is the biggest obstacle because meaningful participation demands transparency and accountability, two things that are often avoided by political actors with hidden interests.

Second, legal and institutional barriers. The existing legal framework, even after the revision of the Law on the Formation of Legislation following Constitutional Court Decision No. 1/2014 (), still leaves room for ambiguity. There is no clear, measurable, and binding mechanism on how to "consider" and "provide explanations" for public input. There are no strict sanctions for legislators who ignore meaningful participation. In addition, the institutional capacity of the House of Representatives and the government to manage massive public participation is also limited. Processing thousands of inputs from various platforms (letters, emails, online portals, hearings) and providing rational responses to each input requires human resources, information systems, and standard operating procedures that have not yet been adequately developed.

Third, socio-cultural barriers. The level of legal and political literacy among the general public remains a challenge. Many citizens are unaware of their right to participate, or do not have sufficient knowledge to provide substantive input on draft bills that often use complex technical language. In addition, there are also unequal power relations; the voices of large corporations or industry associations are often heard more than those of farmers, fishermen, or indigenous peoples. Digital activism has indeed opened new channels for participation, but it is also vulnerable to disinformation and polarization, and is not necessarily able to reach groups that are digitally and geographically marginalized.

To bridge the gap between constitutional ideals and practical realities, a systematic and comprehensive framework for meaningful participation is needed. This framework must transform

the Constitutional Court's decisions into concrete working mechanisms for the legislative and executive branches. Several strategic steps can be proposed.

Therefore, it is necessary to reform the derivative regulations of the Law on the Formation of Legislation, particularly the DPR Regulation on Rules of Procedure. This regulation must explicitly adopt the three pillars of meaningful participation, namely heard, considered, and explained. It must be made mandatory for every commission or working committee on a bill to produce a "Public Participation Accountability Report." This report must be accessible to the public and contain a list of inputs received, an analysis of these inputs, and detailed justifications for the decision to accept or reject each significant point of input. This model will create an audit trail that allows the public and the courts to monitor the quality of participation.

Furthermore, an integrated and easily accessible digital public participation platform should be established. This platform should not only function as a digital "mailbox," but also as a space for two-way deliberation. Every draft bill and its academic manuscript must be uploaded to this platform from the planning stage. The public must be able to comment on each article or paragraph, and the government or DPR has an obligation to respond to these comments on the same platform. The use of technology such as *machine learning* can help classify thousands of inputs by theme to facilitate analysis.

Then, institutionalize mandatory and substantive "*Public Hearings*" for bills that have a broad impact. These public hearings must be held in various regions, especially in areas that will be most affected, not only in Jakarta. The mechanism must ensure the representation of vulnerable groups and indigenous peoples. The results of these public hearings must be documented transparently and become an integral part of the minutes of the bill's discussion in the House of Representatives.

The institutionalization of this mechanism is essentially an effort to strengthen the practice of constitutionalism. Constitutionalism does not only mean the existence of a constitution, but also the functioning of mechanisms to limit power in order to prevent arbitrariness.¹⁷ Meaningful public participation is one of the most fundamental forms of power limitation. It ensures that legislative power, which is a manifestation of people's sovereignty, is not distorted by the interests of the elite. By forcing dialogue and rational accountability, meaningful public participation encourages the formation of laws that are not only formally legal, but also fair and rooted in the public will, which is the ultimate goal of a progressive constitutional state.¹⁸

Conclusion

The journey of the concept of public participation in the Indonesian legal system has undergone a significant evolution, shifting from a mere procedural formality to a meaningful constitutional obligation. The culmination of this evolution was marked by Constitutional Court Decision Number 91/PUU-XVIII/2020, which definitively set new standards for the legislative process. The Court constructed meaningful public participation as a concept that encompasses three essential rights for the public: the right to be heard, the right to be considered, and the right to receive explanations. This new standard affirms that participation is no longer a matter of providing space, but of building an accountable dialogue between the state and its citizens.

However, the implementation of this ideal standard faces significant structural obstacles, including the dominance of pragmatic and oligarchic political interests, weaknesses in the legal framework and institutional capacity, and socio-cultural challenges such as low legal literacy and unequal access. These obstacles mean that participation practices are often trapped in ceremonialism, where the public voice is heard but not listened to. To turn the text of the decision into a living practice, a concrete institutional framework is needed. This includes reforming the DPR's internal regulations, developing interactive digital participation platforms, and requiring substantive public testing. These efforts are not merely technical improvements, but a fundamental project to strengthen constitutionalism. Meaningful public participation is a vital mechanism to ensure that the power to make laws is exercised in a transparent, accountable, and responsive manner, ultimately resulting in laws that have strong social and constitutional legitimacy.

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