

REALIZING MEANINGFUL PARTICIPATION IN THE FORMULATION OF REGIONAL REGULATIONS IN INDONESIA

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Abstract

Public participation is one of the key factors for the successful implementation of decentralization and regional autonomy. The formulation of Regional Regulations (Perda) that prioritizes political interests over public concerns will undermine the spirit of autonomy in creating democracy at the regional level. Regional Regulations are part of the legislative framework in Indonesia, governed by Law No. 12 of 2011 on the Formation of Legislation. The development of Perda requires public input to ensure the regulations are responsive and accountable, thus preventing conflicts within the community. The aim of this study is to analyze the importance of realizing meaningful public participation in the formulation of Perda in Indonesia. Research method: This study employs a qualitative approach with a legislative and conceptual perspective. Secondary data was collected through a literature review and analyzed progressively using data display, data reduction, and conclusion drawing techniques. The results of the study show that achieving meaningful participation in the formulation of Perda emphasizes the principles of transparency and public involvement, resulting in regulations that are responsive, able to meet the community's expectations, and effective in addressing local issues. The public (interest groups), as subjects, must have the right to be heard, the right to have their opinions considered, and the right to receive explanations or responses to their input. This study aims to encourage the development of responsive and accountable Regional Regulations that meet the needs of the community and regional development, as well as provide recommendations to stakeholders on establishing specific and transparent forms of public participation.

Keywords: *Public Participation, meaningful, formulation, Regional Regulations*

Background

The formulation of legislation requires public participation to fulfill the mandate of the constitution, upholding the principle of popular sovereignty. This commitment is enshrined in Article 1, Paragraph (2) of the 1945 Constitution. Specifically, public participation as a constitutional right can be found in Article 27, Paragraph (1), and Article 28C, Paragraph (2) of the 1945 Constitution, which provide citizens the opportunity to participate in governance and contribute to the development of society, the nation, and the state. If the formation of legislation, including Regional Regulations (Perda), occurs without or with minimal public participation in discussing and debating its content, it can be said that the formation of such legislation violates the principle of popular sovereignty. Democracy in practice requires the rule of law to support it. Democracy and the rule of law are inseparable. A rule of law state necessitates public involvement in its implementation. Therefore, a rule of law state is a democratic state, as ultimate power rests in the hands of the people. This includes the process of lawmaking [1]. Political participation takes various forms, both individual and collective. The higher the level of political participation in a country, the more it indicates that the people of that country are fully aware of their rights, and vice versa [2].

The Constitutional Court Decision No. 91/PUU-XVIII/2020 on the Formal Review of Undang-Undang No. 11 of 2020 on Job Creation (Undang-Undang Cipta Kerja), which declared the Undang-Undang Cipta Kerja unconstitutional and formally flawed, marks the beginning of the recognition of the importance of meaningful participation. This was considered in the Court's ruling, where it found cumulative inconsistencies with the principles of clarity of purpose, utility and effectiveness, clarity of formulation, and transparency as outlined in Article 5, letters a, e, and g of UU No. 12 of 2011 (UU No. 12 of 2011), forming the basis for the issuance of this decision.

Many laws and regulations in Indonesia face both formal and material issues, as evidenced by the number of cases brought before the Constitutional Court. According to the Constitutional Court's report, between 2003 and 2023, the Court registered 1,790 judicial review cases, issued 1,739 rulings, granted 309 petitions, and reviewed 356 laws, with 9 laws declared entirely unconstitutional (2003-2023) [3]. Additionally, 3,143 Regional Regulations (Perda) were annulled by the Ministry of Home Affairs, with the aim of strengthening regional autonomy and realizing effective, efficient, clean, and transparent local governance that adheres to the rule of law and the Unitary State of the Republic of Indonesia (NKRI) to

maximize the welfare of the people [4]. Research by Sarah Malena AD et al. found that public participation in the formulation of Perda was low due to limited government outreach, lack of public understanding of the essence of Perda, and low public awareness to participate [5]. From this perspective, public participation becomes crucial in the process of drafting regional regulations to reflect societal demands and meet the sense of justice. Marten Bunga concluded that the ideal model for regional regulations in the implementation of regional autonomy is based on the principles of transparency, public participation, and the harmonization of regulations to avoid overlaps [6]. The Regional Government's policy in drafting Regional Regulations should be harmonious and democratic [7]. Regional Regulations made by local governments should involve the local community, incorporating the local wisdom of each region [8]. M. Nurul Fajri argues that current public participation only fulfills formalities rather than substantive involvement in the legislative process, serving as a tool for academic validation but lacking in aspirational or public legitimacy [9]. The purpose of this study is to analyze the importance of realizing meaningful public participation in the formulation of Perda in Indonesia.

Discussion

Regional Regulations as Part of the Legislative Subsystem

The relationship between regional autonomy and regional regulations, as classified by Enny Nurbaningsih, can be categorized into three aspects [10]. First, regional regulations serve as the operational basis for regional autonomy, providing guidelines and direction for the implementation of regional autonomy. Second, regional regulations, as a manifestation of regional autonomy, must allow regions as much creativity as possible in regulating, managing, and formulating policies in their respective areas. Third, regional regulations represent only a small part of regional autonomy, meaning the existence of regional regulations does not necessarily indicate that regional autonomy has been fully realized [11].

The substance of Regional Regulations consists of material that is both attributed and delegated from the content of higher-level legislation. The content of Regional Regulations governs the implementation of Regional Autonomy and the application of higher-level laws, while also accommodating the specific conditions of the respective region [12]. Regional Regulations are laws established by provincial or regency/city governments. They are enacted by the Regional Legislative Council of the province or regency/city with the joint approval of the regional head [13]. The process of formulating Regional Regulations consists of three stages: a. The preparation stage, which involves drafting the Regional Regulation within the legislative council or local government (in the case of an initiative bill). This process includes

drafting the initiative text, academic text, and the legal draft of the regulation. b. The approval stage, which involves deliberations within the Regional Legislative Council. c. The ratification stage, where the regional head approves the regulation and the regional secretary officially promulgates it [12].

Article 5 of the Law on the Formation of Legislation encompasses: clarity of purpose, the appropriate institution or official authorized to form the regulation, consistency between the type, hierarchy, and substance, applicability, utility and effectiveness, clarity of formulation, and transparency [14]. According to Maria Farida, the principle of transparency means that the legislative process—from planning, preparation, drafting, deliberation, approval or enactment, to promulgation—must be transparent and open [15]. The public must be given the broadest possible opportunity to provide input throughout the legislative process.

The Concept of Meaningful Participation

The importance of realizing meaningful participation has significant implications for developing participatory and democratic public policy. Inadequate implementation of meaningful participation can result in the state failing to accommodate its citizens' needs, as ineffective participation may obstruct the flow of accurate information regarding the needs and desires of society. The concept of meaningful participation should be embraced by regional governments when drafting regional legal products, particularly in formulating regional regulations. Meaningful participation should be proportionally considered in the process of drafting regional regulations, with careful attention to local wisdom and regional nuances [11]. The government can facilitate deliberative discussion spaces and use clear nomenclature in legislation to avoid potential government overreach in upholding citizens' constitutional rights [16]. The idea of regional autonomy emphasizes the independence, participation, and active engagement of regions in governing and managing their own areas [17]. Therefore, regional autonomy requires a legal framework to govern and manage the region, both to achieve national policy objectives and to realize local programs effectively.

The objectives of meaningful participation are: (i) to create strong collective intelligence that can provide better analyses of potential impacts and broader considerations in the legislative process, leading to overall higher quality outcomes; (ii) to establish a more inclusive and representative legislative body in decision-making; (iii) to increase citizens' trust and confidence in legislative institutions; (iv) to strengthen shared legitimacy and responsibility for each decision and action; (v) to improve citizens' understanding of the role of parliament and its members; (vi) to offer opportunities for citizens to communicate their interests; and (vii) to create a more accountable and transparent parliament [18].

The use of formal legal mechanisms in the form of legislation is insufficient to address emerging issues. Public participation situates the principle of popular sovereignty as a fundamental pillar of the State, as mandated by Article 1, Paragraph (2) of the UUD 1945. For meaningful public participation and engagement, three essential conditions must be met: first, granting the public the right to be heard; second, the right to have their views considered; and third, the right to receive explanations or responses to their expressed views [18]. Relevant research emphasizes the importance of acknowledging power differences between government and citizens in the participatory process and considering social and cultural contexts when developing meaningful participation programs [19]. Lothar Gundling outlines several reasons for public participation in policy formulation: (1) providing information to the government; (2) increasing public willingness to accept decisions; (3) aiding legal protection; and (4) democratizing decision-making [20].

Establishing Responsive Regional Regulations through Meaningful Participation

Oligarchic practices are indeed present in the policy-making process at both national and regional levels [21]. The implementation of recesses, aside from gathering public aspirations, allows DPRD members to provide political education to their constituents [22]. According to C. F. Strong, there are three models of direct popular checks: referendum, initiative, and recall [23]. The referendum model involves a direct poll by the public to determine whether an issue (regional or national) discussed publicly can be implemented. Second, the initiative model enables citizens to initiate, propose, or draft legislation, which can then be included by legislative members in the national or regional legislative program. This method also applies to public involvement in the creation of regional regulations. The third model is recall. Recall is used by the public to act against legislative members who can no longer address public needs and interests, who disappoint the public, or who are deemed to have deviated from their political promises. The recall model has been applied in the United States, particularly in the State of Oregon [22].

Participation positions the public not only as recipients (objects) but as primary actors (subjects) in various policy-making activities [24]. The creation of responsive regional regulations requires public participation in every stage of the process, with the public regarded as an interest group (subject) holding significant bargaining power [22]. Therefore, the voices of the public (interest groups) as subjects must be heard and prioritized (right to be heard), their opinions must be considered (right to be considered), and they must receive explanations or responses to the views they have provided (right to be explained).

Since Indonesia gained independence in 1945, its Constitution has affirmed freedom of expression in Article 28, further reinforced in Article 28 and Article 28E, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945), which states, 'every person has the right to freedom of association, assembly, and expression.' This indicates that the recognition of such freedom has a history as long as the country itself. The legal documentation supporting freedom of expression is also present in the Universal Declaration of Human Rights (UDHR), which asserts that everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers [25]. However, in exercising these rights, every individual has obligations to the community in which they freely and fully develop their personality, and they must adhere to restrictions prescribed by law, aimed at securing recognition and respect for the rights and freedoms of others to satisfy fair requirements of morality, public order, and general welfare in a democratic society [26].

There are three main elements of government transparency, including regional governments, which enable public participation: a. Understanding the decision-making or planning process; b. Collaborating openly with the government on decisions or plans undertaken by the government; and c. Jointly making decisions with the government [27]. In state theory, the formation of a successful state requires citizens who are capable of participating [28]. Being a good citizen involves meaningful engagement in state affairs. For Aristotle, the best state is a combination of aristocracy and democracy. He adopts a middle path in his view of an ideal state, asserting that a good state requires good citizens. The state establishes a constitution to govern its citizens, which is essential as long as it promotes justice and happiness, the highest aims of society [29]. The state is its body, and society is its soul, constituting the essential elements of a state. The creation of laws, including regional regulations, aims to realize goals and ideals that meet regional needs [30]. Laws serve two functions: to express values and to fulfill an instrumental function [31].

A citizen exercises rights and obligations according to their status, covering at least the following aspects: (1) norms related to an individual's position within society, namely, rules that guide individuals in social life; (2) actions that an individual can perform within society as an organization; and (3) individual behaviors that are essential to the social structure of society [28]. The rights and obligations of citizens arise from or are rooted in the state. This means that it is the state that grants or imposes these rights and obligations upon its citizens. This granting or imposition is codified in legislation, providing both citizens and state administrators with a clear role in the application and enforcement of these rights and obligations [32].

The importance of social ethics regarding rights and obligations, as expressed by Bernard L. Tanya [33] “ Rights should not be understood solely as claims over others, but also as containing the obligation to respect the rights of others. Rights always imply obligations. My right to possess implies my obligation to respect others’ property. My right to freedom implies my obligation to respect others’ freedom. The key concept is shared responsibility.” Rights play a crucial role in human positions within the life of the state, as individuals are subjects of law. According to K. Barents [34] rights are claims made by one person or group upon another person or society. A person with rights can demand that others respect those rights. Therefore, rights constitute a legitimate or justifiable claim, as merely stating a claim is clearly insufficient. In practice, we often encounter claims that cannot be justified. Meanwhile, Theo Huijbers [35]. explains that, in a broad sense, a right can be seen as an invitation, calling upon generosity, compassion, and so forth, such as a right arising from mutual love. In a narrower sense, a right is an absolute demand that cannot be infringed upon, for instance, a right when a person is in a dangerous situation. The components of a right primarily lie in personhood, freedom, and responsibility. Only individuals granted freedom and obligations by moral law can possess rights. Beings that act spontaneously, without freedom or responsibility, have no need for such rights [36].

Meanwhile, Franz Magnis Suseno explains that something becomes my right when I can demand that it be granted to me and when others are obligated to provide what I am demanding [37]. Rights serve as normative elements that function as guidelines for behavior, protecting freedom, immunity, and ensuring opportunities for individuals to uphold their dignity and worth [38]. According to Bartens, a right can be limited due to conflicts between rights or overridden by another right. This means that such a right is restricted because others also hold rights, resulting in an individual's freedoms never being absolute [39].

Conclusion

Realizing meaningful participation in the formulation of regional regulations in Indonesia hinges on positioning the community not merely as recipients (objects) but as primary actors (subjects) while avoiding mere formalities. The people hold a strong bargaining position to have their opinions heard, considered, and prioritized in decisions with transparent arguments. The ideal model of regional regulation in the implementation of regional autonomy is based on the principles of openness and community participation, leading to the establishment of responsive regional regulations that effectively address the desires of the community and serve as solutions to local issues. The overarching idea of meaningful

participation needs to be reinforced through regulations and policies that acknowledge and encourage significant involvement in the drafting of local legal products, as this can enhance the quality and legitimacy of regional regulations while strengthening community participation in decision-making processes at the local level. Furthermore, democracy at the local level develops effectively, underpinned by the fundamental logic that power originates from the people and political decisions must reflect the will of the majority.

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