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## Public Participation in Regulatory Design: A Public Service Perspective

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### ABSTRACT

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Regulations concerning DKI Jakarta Province no longer designate the area as the nation's capital. Issues arise when the formulation of regulations appears to lack optimal community engagement, suggesting the potential for regulations that benefit specific parties or groups. This study employs a qualitative methodology, specifically a literature review, which entails the aggregation of materials and data from various sources, including books, journals, and websites pertinent to the article's theme. The study's results demonstrate the essential and strategically important role of community involvement in the development of laws and regulations. This occurs because regulations and policies are formulated with the community's interests and objectives in consideration when they are actively engaged. Increased legislation and regulations favoring public interests will be enacted due to the recognition of the significance of public participation. Integrating the community into significant meetings related to law formation, including work meetings, committee sessions, drafting team discussions, and plenary assemblies as decision-making forums, is an effective method to guarantee public involvement in the legislative process. Public hearings, consultations, and additional avenues are equally significant. Moreover, to effectively align individuals' aspirations with legal standards, council members must authentically embody the ethos of public service. The public must be discerning and judicious in their choice of representatives who truly embody this spirit. Nonetheless, the populace ought to possess the greatest access to governmental procedures to facilitate their involvement in the formulation of laws and regulations. The public should have convenient access to this information and be able to obtain clear details through various offline and online sources.

**Key word:** Regulations; Community Involvement; Public Participation; Legislative Process; Public Interest.

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## **1. INTRODUCTION**

The development of government patterns in Indonesia today is becoming more dynamic. Initially, the pattern of government was more directed towards administrative patterns alone, however, with the demands of the community and the dynamics of government globally, the current pattern of government is more directed at service functions or with other meanings can be referred to as *New Public Services* (NPS). Starting with *the Old Public Management* (OPM) paradigm shifted to *New Public Management* (NPM) *and the last is the New Public Services* (NPS) paradigm. This paradigm shift is an implication of changes in views related to how the pattern of government and community relations should be in the implementation of government.

Observing the changing government pattern and wanting to organize DKI Jakarta into a business city, The government intends to relocate the State Capital (IKN), which was formerly located in DKI Jakarta, to East Kalimantan in 2022. President Soekarno initially proposed the concept of relocating IKN on July 17, 1957, selecting Palangkaraya as IKN due to its central location within the Indonesian archipelago and its extensive land.(Ayundari, 2022)

Although Sukarno's concept was never implemented, Soekarno likewise intended to demonstrate to the world that the Indonesian people could construct a contemporary IKN. However, there was also discussion about shifting the IKN to Jonggol during the New Order era in the 1990s, and the topic came up again during President Susilo Bambang Yudhoyono's administration because of the traffic and flooding that affected Jakarta.(Ayundari, 2022) The transfer of IKN has only been seriously worked on by President Joko Widodo. On April 29, 2019, Jokowi decided to move the IKN out of Java and included it in the 2020-2024 RPJMN.(Ayundari, 2022)

On the basis of the future transfer of IKN, DKI Jakarta will no longer be the capital of the country, so in the future it is necessary to re-examine the concept of Jakarta's specificity. The discourse was then responded by a number of parties to the concept of Jakarta in the future and one of the issues or phenomena that has emerged today is the discussion of the DKJ (Special Region of Jakarta) Bill, one of which is related to the election of the governor and deputy governor of DKI directly appointed by the President as stated in article 10 paragraph (2) of the draft bill which states that "the governor and deputy governor are appointed and dismissed by the President by considering the proposal or opinion of the DPRD". The discourse is contained in the Jakarta Special Region (DKJ) Bill which is a proposal of the House of Representatives (DPR) of the Republic of Indonesia. However, researcher from the Forum Masyarakat Peduli Parliament (Formappi) Lucius Karus said that "the discourse of electing the governor and deputy governor of DKI through direct appointment by the President is a form of democratic regression".(Farisa, 2023) The discourse emerged without strong critical argumentation from the DPR. In fact, the leader appointed by the President will give birth to a puppet leader. Moreover, if the power of the President tends to be authoritarian, the appointed official will be a pawn to realize the power lust of the Head of State.(Farisa, 2023)

During the plenary meeting of the ratification of the DKJ Bill as a DPR initiative bill, the PKS group in the House of Representatives of the Republic of Indonesia also expressed one of the other criticisms. Hermanto, a PKS member of the Legislative Body of the Republic of Indonesia's House of Representatives, rejected the bill for a variety of reasons.(Taher, 2023) First, they considered the bill seemed rushed and had the potential to cause many problems. Second, the DKJ Bill is considered to have not involved public participation.(Taher, 2023)

Looking at some of the statements described earlier, the author agrees with what was conveyed by Burhanuddin Muhtadi in a virtual public lecture of the State Administration Institute (LAN) in collaboration with the Tanoto Foundation, Thursday (9/9/23), a Lecturer at the State Islamic University Syarif Hidayatullah Jakarta (UIN) Faculty of Social and Political Sciences, clarified that based on his contacts with numerous government representatives, including those in parliament, they were more interested in the specifics of policy. Beginning with the creation of policies, it is important to remember that communication is a critical component throughout the entire process, from conception to implementation. It was further highlighted that one of the five problems on which policy communication is now circular is less effective at boosting public engagement.

It is well known that a proper strategy should preferably include community involvement and a thorough investigation. Because the general public is the target of a policy that is delineated by laws and regulations. For this reason, when creating rules and regulations at the governmental or legislative level, policymakers should take community participation into account. This is actually also stated in Article 96 paragraph (1) of Law Number 12 of 2011 as updated by Law Number 15 of 2019 concerning the Establishment of Laws and Regulations states that *"The public has the right to provide input orally and/or in writing in the Formation of Laws and Regulations"*.(Hidayat, 2022) Meanwhile, paragraph (4) states, *"To facilitate the public in providing input orally and/or in writing as referred to in paragraph (1), every draft law must be easily accessible to the public"*.(Hidayat, 2022)

When the DPR and the government amended Law Number 30 of 2002 concerning the Corruption Eradication Commission and revised Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court, the effects of a lack of community involvement or participation in the creation of laws and regulations could be investigated.(Hidayat, 2022) How the discussion of the two bills is far from the principle of openness and public assurance. The discussion of the two bills often tends to be closed and does not involve the public so that it is far from the frenetic discussion of the two laws. Instead of not involving community participation, but as if only limited to justification or formality alone causes the quality of policies in the form of regulations far from expectations. Another bad impact is that it leads to judicial review in the Constitutional Court.(Hidayat, 2022)

Based on the description described earlier, the author is interested in discussing further about the Role of the House of Representatives in Optimizing Public Participation in the Bill on the Special

Region of Jakarta. The questions of this study are *first*, how to implement the involvement of community participation in the formation of laws and regulations and *second*, what are the obstacles of the House Of Representative in involving the community in the context of forming laws and regulations.

## **2. METHOD**

This study uses a qualitative approach. In qualitative approach focused on problems related to humans and analyzed based on observation. According to Moleong, qualitative research aims to comprehend the phenomena that research subjects experience, including behavior, perception, motivation, action, and others, holistically. It does this by using a variety of natural methods and by describing the phenomena in words and language within a unique natural context. (Moleong, 2011). A qualitative approach is chosen because this approach tends to be more flexible when dealing with changing situations when research activities take place.(Moleong, 2007). Because it uses a qualitative approach and is a literature study or literature review, the author collects material and data from a number of literature such as books, journals and websites related to the theme of the article. While in conducting data analysis, the author refers to the qualitative descriptive analysis model, which is an analysis that describes a state or a phenomenon in words or sentences and then separated according to its category to obtain conclusions.(Moleong, 2011).

## **3. FINDINGS AND DISCUSSION**

### **3.1. Implementation of the Participation of Society in the Formation of Legal Regulations**

The word "government" is derived from the word "order," which becomes government when the prefix "pe" is added, and government when the suffix "an" is added. In this instance, the distinction between "government" and "government" is that the former refers to the body, institution, or organization in question, while the latter refers to various issues, actions, or things pertaining to the government itself.(Nengsih et al., 2023)

Based on the initial understanding of the word "government", the word government as in the book Jurdi (2014) can be interpreted as follows:(Nengsih et al., 2023)

1. In a broad sense is the act of governing carried out by legislative, executive and judicial bodies in a country in order to achieve the objectives of state administration.
2. In a narrow sense is the act of governing carried out by the executive body and its ranks in order to achieve the objectives of state administration.

Ndraha asserted that the government is the body with the authority to handle public services and the duty to procure civil services for all those involved in government relations, ensuring that all members of the community receive them when required and in compliance with the directives issued. (Ndraha, 2003)

Sawir argued that good governance will continue to strengthen its legitimacy by aspiringly to the people on how to pursue progress, providing fair services, resolving major conflicts of interest and providing direction on how best to accelerate the realization of people's expectations for socio-economic welfare.(Sawir, 2019)

Based on the aforementioned expert knowledge, it can be concluded that the broad understanding of government is the method or manner in which the government exercises its power in a variety of domains, including politics, economics, administration, and other areas. The goal of the procedure is to manage different governmental affairs for the good of the general public. In a more limited sense, government is described as all of the tasks, responsibilities, duties, and actions that are performed by executive institutions in order to fulfill the state's primary objectives.

Following an understanding of the definition of government, the doctrine of separation of powers will be explained in detail. The House of Representatives' responsibilities as a representative body of the people in governance are explained on the basis of the separation of powers.

John Locke and Montesquieu, two renowned thinkers from England and France, truly developed the idea of division of powers. The "Trias Politica" doctrine is the name given to the idea of separation of powers put forth by the two influential thinkers. According to John Locke, power was divided into three powers, namely:(Budiarjo, 2008)

1. Legislative power, charged with enacting laws and regulations
2. Executive power, charged with carrying out the laws outlined therein, including the authority to make decisions
3. Federative power, its duties include all measures to maintain state security in relations with other states such as making alliances and so on (today it is called foreign relations).

Furthermore, in the context of separation of powers, Mahfud MD stated that basically the constitution contains the following things:(M.D, 2000)

First, only constitutional provisions can legitimize public authority; second, the principle of universal and equal suffrage must be applied when exercising popular sovereignty (through representation); and third, democratic elections must be used to appoint the executive; Third, there are limitations on authority and a separation or division of authorities; Fourth, the presence of an autonomous judiciary capable of upholding justice and the law against both the populace and the monarch; Fifth, there is a mechanism in place to regulate the police and military in order to uphold the law and protect citizens' rights; Sixth, the preservation of human rights is guaranteed.

It is clear from some of the earlier justifications that Indonesia genuinely follows a system of separation of powers, which splits authority into three parts: the legislative, executive, and judicial branches. However, Professor Ismail Sunny of the University of Indonesia provided a more rigorous explanation of the three components in question, stating that the Republic of Indonesia's 1945

Constitution actually supports division of powers or separation of powers in the formal sense (division of power) rather than separation of powers in the material sense (separation of power). (Admin, 2021)

The division or separation of powers is very important so that there are no arbitrary actions from each government or institutions, formed in accordance with the concept of people's sovereignty which is oriented towards upholding *the rule of law*, controlling power, regional autonomy, and *checks and balances*.

Given the significance of power sharing, it is clear that one of the strategic roles of the legislative branch of government is to create laws or policies. This legislative function is said to have had the biggest impact on the growth of the Indonesian state, allowing the DPR to enact laws that support the aspirations of the populace. (Rasyid, 2002). Therefore, if observed in the concept of *trias politica* for Indonesia, the DPR acts as a legislative institution that functions to make laws and supervise the implementation of laws carried out by the government as an executive institution. As a result, the DPR serves as a legislative body that enacts laws and oversees their execution by the government, which is an executive branch. This is evident in Indonesia's idea of *trias politica*.

Based on the theory, the actual implementation of public participation in the formation of laws and regulations has been clearly stated in article 96 of Law Number 13 of 2022 concerning the Establishment of Laws and Regulations. The article has also regulated the mechanism or way for the community to be involved in the formation of laws and regulations. According to the notion, article 96 of Law Number 13 of 2022 concerning the Establishment of Laws and Regulations explicitly states how public participation in the creation of laws and regulations is actually implemented. Additionally, the article has governed how the community can participate in the creation of laws and regulations. Academic manuscripts as a basis for discussion are also required to facilitate access to the public to provide input on the draft law to be discussed. However, in the Draft Law on the Special Region of Jakarta, it seems that the House of Representatives and the government as executive institutions have not optimally conveyed the bill to the public or the public, especially for DKI Jakarta residents who are policy recipients.

The impression of closure and irregularities in the process of forming the bill will become an increasingly real problem, especially when in the end the public automatically knows the existence of a bill regarding DKJ and there is one article that regulates the election of the governor and deputy governor of DKI Jakarta carried out by the President instead of direct elections as before.

Meanwhile, if you look at the latest news, it seems that the government is still waiting for the letter and text of the Jakarta Special Region Bill or the DKJ Bill which has been agreed to become a DPR initiative proposal bill. (Rahayu & Saptowalyono, 2023) After receiving the letter and draft of the bill, President Joko Widodo will only appoint a number of ministers to discuss and draft an inventory list of problems (DIM) of the DKJ Bill. The preparation of DIM is said to be carried out openly to receive public

input. After that, the President will issue and send a presidential letter regarding the approval of the discussion of the bill to the House of Representatives.(Rahayu & Saptowalyono, 2023)

Because direct community engagement ensures that the outcomes of regulations or policies are produced in line with the community's requirements or goals, community participation is crucial and strategic in the creation of laws and regulations.

By understanding the importance of public participation, the content material in laws and regulations will be more pro-party for the benefit of the people. Riskiyono stated that the misappropriation of content material intended for the benefit of the people means denying the nature of the existence of laws in the midst of society.(Riskiyono, 2015) He further said that the enactment of laws that are not in favor of the public interest will be dangerous for the survival of the wider community.(Riskiyono, 2015)

Regarding the application of public involvement in the creation of laws and regulations, information about the bill should, in theory, also be well-informed. It is commendable that the DPR must also involve the community in the process of creating a specific Jakarta zone in order to create a Problem Inventory List beforehand.

This is required since the regulations that are created will dictate the type of province that DKI Jakarta would become. This used to be consistent with Law Number 13 of 2022's explanatory section on the creation of laws and regulations, which said that meaningful community interaction and participation needed to be strengthened. Three requirements must be met for meaningful community engagement to take place in an orderly and responsible manner: the right to be heard, the right to be taken into consideration, and the third right to receive an explanation or response on the money given.

The implementation of public participation in the formation of laws and regulations is an important aspect in maintaining public involvement, transparency, and accountability in the government decision-making process. The author analyzes several principles and steps that should be applied in the implementation of public participation in the formation of laws and regulations:

1. **Transparency**, which means that all information related to the formation of laws and regulations is easily accessible to the public, including when issuing these regulations
2. **Effective Communication** is defined as the need to make efforts to communicate with the community through face-to-face meetings, seminars, public consultations or social media
3. **Early Participation**, which means that it is necessary to involve the community from the beginning of the process of forming regulations, not just at the final stage
4. **Institutionalizing participation**, defined as the need to include formal provisions that regulate and encourage community participation in relevant laws or regulations. Build structured and organized participation mechanisms.
5. **Open Feedback**, understood as the existence of an open feedback mechanism to the community about how their input affects the rule-making process.

The government or legislators can guarantee public involvement in the creation of laws and regulations that are more inclusive, transparent, and effective by putting the aforementioned ideas into practice.

Especially if you look at the DKJ Bill which has the potential to be full of political interests where the initiator is the DPR, the role of community involvement or DKI DPRD which is a representation of the DKI community becomes important and must be done to hear whether the bill is in accordance with the needs of the community or especially DKI Jakarta residents. It can be understood that community participation in the discussion of draft laws is also a form of good governance in accordance with the principles of good *governance*, including: community involvement, accountability, and transparency.

Public participation in the formation of laws and regulations is expected to be more open. Formal consultations or face-to-face meetings, which are often difficult for the general public to access, have become the only means of public participation that were previously very limited. However, if we look closely at the current technological advances and government openness facilitated by various digital platforms, it ultimately allows the public to provide input directly not only through face-to-face but also through certain websites, social media, and applications that are used to capture the aspirations of policy recipients. Such changes make it easier and wider for the policy-receiving community to voice their opinions throughout the process of formulating laws and regulations.

The government can actually collaborate with various civil society organizations and non-governmental organizations, organize public discussion forums, online surveys, and open consultations that reach various segments of society. This effort aims to make the voices that come in more diverse, including from marginalized groups or communities that were previously underrepresented. This more inclusive approach allows the resulting policies to reflect broader needs and interests, not just specific groups or individuals who have easier access to the legislation process. With the previous process, the concept of transparency has become a new element that helps public participation in the formation of regulations to be better. The government must provide public access to the legislative documents that are being drafted, which include the stages of the process and inputs that have been approved. This will allow the public to track the progress of each stage of the process. In addition, the government began to take responsibility for responding to public input and giving them respect. Ultimately this clearer clarity increases public confidence in the rule-making process, which allows for better evaluation and public engagement in policymaking that is more relevant and meets the needs of society.

The House of Representative is one of the parties responsible for making laws. Thus, it does not hurt to know the public opinion about the quality of the laws made by the DPR. The changing political configuration is often followed by the legislature. Legislation is law because it is also a political product that follows the political rhythm played by its actors. Community involvement depends on each other. The DPR has the ability to take actions that encourage public participation. They have the right to participate in regulatory discussions, like any other citizen.



### **3.2. The obstruction of the House of Representatives in engaging the community within the framework of the formation of legal regulations**

In the era of globalization like today, the position of citizens, especially in countries with a democratic system before the government as the highest institution that governs the country is getting stronger. They are increasingly aware that sovereignty is in their hands.(Wasistiono, 2017) Therefore, the government can no longer arbitrarily or arbitrarily regulate society. Observing this, the concept of citizen-centric government.(Wasistiono, 2017).

Formally speaking, citizens' participation in the legislative process of writing laws and regulations is guaranteed under Article 96 of Law Number 13 of 2022 concerning the Establishment of Laws and Regulations. The community has the right to offer feedback verbally and/or in writing at every step of the creation of laws and regulations, according to Article 96, paragraph (1). Meanwhile, the method of providing input is contained in paragraph (2) of the same article which states that the provision of community input as referred to in paragraph (1) is carried out online and/or offline. Current conditions basically facilitate the process of providing input by the community in order to provide input to policy makers in their discussions. Furthermore, several ways of providing input are also emphasized through paragraph (6) of article 96 which states that "To fulfill the rights as referred to in paragraph (1), the framer of laws and regulations may conduct public consultation activities through:"

1. public hearings;
2. working visits;
3. seminars, workshops, discussions; and/or
4. other public consultation activities.

In actuality, though, achieving involvement in the legislative drafting process depends heavily on the House of Representatives' political will. It is not impossible for citizens to participate if the House of Representatives opens this avenue. The executive and legislative branches will also gain.

A requirement and symbol of the accomplishment of democratic governance is public engagement. The state government system's democratic name will surely not be realized without involvement and a reliance solely on mobilization. Good governance is therefore crucial in an endeavor to enhance information flow, accountability, public protection, and the ability of those most impacted by public policy to express their opinions.(Riskiyono, 2015)

The DPR should be able to voice its goals during the legislative process as the people's representative. The idea of public participation, however, frequently becomes a formality or is not given priority in the creation of laws and regulations when they are discussed. However, a variety of challenges that the DPR has as a representative of the people with a legislative function may also have an impact on the public engagement process.

The **first** problem faced is related to the **political will** of the DPR which still often does not involve the public in the discussion of legislative products. By creating opportunities for all societal segments to participate, people's desires to see successful legislation can be absorbed. According to Handoyo in Kurnia et al., the participation space consists of: 1) providing information about the law and regulation-drafting process to all community members, 2) creating the game's rules, particularly those pertaining to openness in the creation of proposed laws and regulations, 3) working with the DPR to create an honorary assembly with composition and to develop a code of ethics. Its members include members of the Republic of Indonesia's House of Representatives, the general public, scholars, and the media. (Kurnia et al., 2023).

The **second** problem is related to the **lack of participation space** for the community to express aspirations for the bill to be discussed. Public aspirations to legislate have been ignored in recent years. (The Indonesian Institute, 2021). This is evidenced by the discussion of Law Number 30 of 2002 concerning the Corruption Eradication Commission and Law Number 11 of 2020 concerning Job Creation which continues to run amid public protests asking the DPR and the government to stop it. Hemi Lavour Febrinandez, Legal Researcher of The Indonesian Institute (TII) regretted and criticized the attitude of the DPR together with the government that did not open the widest possible participation space for the public to provide input in the discussion of a law. (The Indonesian Institute, 2021). In the current context, when there is an idea about the DKJ Bill, it is good for the DPR to be able to open the widest possible space to the community or community groups, especially DKI Jakarta residents as policy recipients. This stage can be started at the stage of preparing academic manuscripts to discussing article by article. The mechanism that can be done can use means either directly by holding public discussions or with online or online media.

#### **4. CONCLUSION**

So far, public participation in bills directly related to the welfare and protection of people's rights has not been given much attention. Legislators should consistently determine the priorities of bill discussion based on the needs that matter most to the people. Of course, the greatest social benefits, social impacts, and usability should be considered, with adequate budgetary support.

In making national legislation programs, people's aspirations must be considered. It serves as a tool to organize a systematic, organized, and planned program of law formation taking into account national legal politics. By prioritizing national development goals over the vision of legal development. In carrying out their legislative functions, the DPR, DPD, and the government must consider and accommodate the wishes of the community. Planning, drafting, deliberating, ratifying or enacting, and promulgation are the first steps in the legal development and planning process. It is anticipated that national legislation programs will promote prosperity in general and serve as a model for national legal

change. Make ensuring that national long-term development priorities align with the policies decided upon by the administration, regional representative councils, and the House of Representatives by using effective law making planning.

It is important to ensure that public participation is accommodated in the material of the law, as long as it aims to be in the public interest and welfare. The legislative process can be aspirational or even elitist in nature, when there are allegations of interest groups participating in determining the legislative process. As an institution authorized to form laws, the House of Representatives, the Regional Representative Council, and the government are considered not aspirational in carrying out legislative functions based on the basic needs of the Indonesian people.

Beginning with the earlier findings and issues, several recommendations can be made. First, it is crucial to make sure that regulations governing the creation of laws and regulations in the future ensure that community participation is channeled not only through public hearings, consultations, and other means, but also that the community is involved in important meetings of law formation, including work meetings, working committee meetings, drafting team meetings, and most importantly, plenary meetings as a forum for decision-making. In order to channel people's ambitions into every legal norm, members of the House of Representatives must also genuinely possess a spirit of publicness. The public must be astute and pick members who genuinely possess this spirit. However, the government should be able to give the public as many opportunities as possible to be involved in the creation of laws and regulations. The public should have easy access to this information, which may be clearly obtained online and through a variety of offline channels.

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