

Strengthening Public Participation In The Law-Making

Sukardi

Faculty of Law, Universitas Airlangga Surabaya Indonesia
deviapriyanti99@gmail.com

Dodi jaya Wardana

(corresponding author)

Faculty of Law, Universitas Muhammadiyah Gresik Indonesia
ellypurwendah@gmail.com

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Abstract

The legal character of a democratic law is identical to its main characteristic, namely the participation of all groups in society. If democracy is defined as the participation of members or groups in society, then this is tantamount to accepting the position that democracy is only possible when the existing groups of people have relatively balanced political power. If one group of people is too strong, then the life of democracy will be threatened. At least, democracy depends on the will of the rulers. Community participation or participation is part of the principles of democracy. One of the main prerequisites for realizing this participation is openness or transparency. The principle of openness contains at least two main elements that allow community participation to occur, namely: First, the right to know. This right is a fundamental right in a democracy. That is, all matters relating to the public interest, then the public should know it completely, correctly and accurately. Second, the right to think. After the public has access to information about what is the public's right to know it, then the right of the community is also to be involved in contributing in order to support government policies.

Keywords: Strengthening Community, Participation, Law Establishment.

Introduction

Indonesia is a country based on the rule of law (nomocracy) and people's sovereignty (democracy). This is as stated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states "Sovereignty is in the hands of the people and is carried out according to the Constitution". The consequence of the commitment mentioned above is that the people have a role in every aspect of the life of the nation and state, one of which is involvement in the process of forming laws. In other words, the people have guaranteed their rights by the constitution to participate

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actively in the administration of the nation and state and the government, including playing a role or being involved in the drafting/formation of laws.(Saifudin, 2009)

As a country that has chosen the principle of democracy and combined it with the principle of the rule of law, Indonesia will organize an orderly life and life in society, nation and state using democratic legal rules. The Indonesian people will build an order of Living together in a democratic Indonesian state based on the rule of law. This means that the Indonesian people will put the principles of democracy and the principle of law as a complementary synergy in the concept of symbiosis-mutualism in realizing the existence of a democratic *national legal order in the country*.(Ramadhan, 2021) The existence of a law, which is a sub-system of the national legal system, occupies a very important role in the framework of the development of a democratic national legal system in Indonesia. One of the instruments in the national legal system is the formation of laws, which are also democratically formed.(Riskiyono, 2015)

In order to establish a state as a democratic national legal order, public participation in the formation of laws in the current reform era is felt to increase along with the increasingly open political situation in realizing democratization in Indonesia. It seems that the 1998 reform movement has opened and facilitated political communication between the people and their representatives in the House of Representatives in expressing their aspirations and opinions in a democratic manner. The existence of public participation in the formation of laws does not mean that the public does not trust the representatives of the people, who in this case are members of the People's Representative Council, but rather that the people want the formation of laws not only to satisfy the legislators, but also to be accepted by the wider community. Because, basically, the requirements for a good law to apply require three steps at once, namely philosophical, sociological, and juridical. Community participation in the process of developing the life of the nation and state, including the formation of laws, has now become an important issue in today's global context.(Iswari et al., 2020)

In connection with the formation of this participatory law, it contains two meanings, namely process and substance. The process is a mechanism in the formation of laws that must be carried out transparently so that the community can participate in providing input in regulating an issue. While the substance is the material to be regulated must be intended for the benefit of the wider community so as to produce a democratic law. Thus, between participation, transparency and democratization in the formation of laws is a unified whole and cannot be separated in a democratic country.

Efforts to make a unity between participation, transparency and democratization in the formation of laws seem rather difficult to do, because the formation of laws in Indonesia at this time both formally and materially is still prone to deviations (controversy) by not involving public participation and not open. This

will result in problems in the form of legislative corruption, buying and selling articles, law products with weak legitimacy to *Judicial Review*. Public participation in the process of forming laws is an important element, because laws that are formed in a participatory manner are in line with a democratic rule of law and meet the legal needs of the community. (Roza & Parlindungan S, 2019)

As an illustration that there has been fraud by not involving public participation and not being open in the formation of laws, namely the process of Revision of Law of the Republic of Indonesia Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission and the process the establishment of the *Omnibus Law* (Law on Job Creation). *Omnibus Law* is a new concept used in the Indonesian legal system. The legislation in the *Omnibus Law system* can replace several legal norms into one regulation or in other words one law that will revise several laws. Based on the description above, the formulation of the problem in this paper is how the formation of democratic laws and the formation of undemocratic laws.

Result and Discussion

Democracy which is defined as government from the people, by the people and for the people carried out through representative institutions, in its development demands a refinement of the concept by adding the word "with the people". Why does this need to get additional or serious attention, because democracy which means from, by and for the people has not been implemented or has not run optimally. In order to accommodate the word "with the people", because of that, what is called participatory democracy is understood as government of the people, by the people, for the people and with the people. Thus, the conception of participatory democracy requires the participation of the community in the decision-making process related to public policy. Therefore, the public must be given access to be able to find out various information related to public policy. In other words, in a participatory democracy there needs to be room for the public to participate in the process of state administration. (Nadilla, 2019).

The formation of participatory laws is one form of the adoption of participatory democracy. Therefore, the formation of participatory laws is an ideal in a democratic country. Through participatory democracy, life in society, nation and state is regulated and determined by representative institutions with the people through the existence of public spaces that can be accessed by the wider community.

However, the problem is whether the responsive or participatory law-making model can really be implemented. of course this is very difficult and not easy to answer just like that. Because, it is closely related to the arrangement of the constitutional system adopted in the 1945 Constitution of the Republic of Indonesia itself. In other words, the amendment to the 1945 Constitution of the Republic of Indonesia in 1945, according to Jimly Asshiddiqie, has organized the course of state

administration in a fundamental state structure in the form of: the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the President, the State Audit Board, The Supreme Court, the Constitutional Court as the state (higher) institutions that are principal or main, while the Judicial Commission, the Indonesian National Armed Forces, the Police of the Republic of Indonesia, the Minister of State, the Presidential Advisory Council and others as *auxiliary institutions*. Each state organ by the 1945 Constitution of the Republic of Indonesia is equipped with its duties and powers so as to give birth to a function in each state organ. (Sahbana, 2017)

In the context of the formation of laws, the 1945 Constitution of the Republic of Indonesia has given its power to the House of Representatives. However, each law must be discussed jointly by the House of Representatives with the president to obtain mutual approval as a condition for the formation of a law. Therefore, basically the legislators are the House of Representatives and the President. However, a draft law that has been mutually agreed to become a law is not ratified by the president, then within thirty days the law becomes law and must be promulgated. (Praptanugraha, 2008).

By looking at the description above, the 1945 Constitution of the Republic of Indonesia has not explicitly provided a constitutional basis for public participation in the formation of laws. Nevertheless, implicitly, public participation in the 1945 Constitution of the Republic of Indonesia can be referred to the adoption of the principle of people's sovereignty and the guarantee of freedom of expression both orally and in writing. In other words, public participation in the process of forming laws is a logical consequence of the choice of a democratic system in the life of society, nation and state.

The problem is when community participation can be carried out. Is public participation able to shift the legislators and what is the form of the democratically formed law? Therefore, these various phenomena or questions will be described further so that an understanding of public participation in the formation of democratic laws will be obtained as a whole (Saiya et al., 2021).

First, the opportunity for community participation in the formation of laws. Community participation as a form of community activity to fill public space in the process of forming laws, can be carried out from the beginning when the idea for the formation of a draft law is rolled out until the ratification of a bill into law. This means that as long as the process of forming the law is still ongoing, it means that the opportunity to provide public participation is still open. In other words, the public can choose to participate in the law-making process at the time of making academic manuscripts, drafting laws, discussing in commissions, legislative bodies, special committees, working committees, as well as at the time of decision-making in plenary meetings. Meanwhile, various forms of community participation that can be carried out by the community in the process of forming laws are contributions from research

results on objects to be regulated, academic texts, draft laws, throwing ideas or thoughts by coming directly to the House of Representatives or through the media. The accessories for the House of Representatives that can be found to convey public participation are members of the House of Representatives from commissions, or special committees, or working committees, the legislative body of the House of Representatives, Assistant I to the secretariat of the House of Representatives in the field of legislation, research and service centers. Information and fractions. In addition, this public participation can also be conveyed in writing through postal intermediaries and electronic letters addressed to the apparatus of the House of Representatives who are currently discussing a draft law. Therefore, there are many ways and ways to participate in the formation of laws and can be done from the beginning of the process of forming the draft law until the ratification of the bill into law.

Furthermore, the use of available opportunities in community participation will occur if it is supported by a conducive political order. This means that public participation in the process of forming laws will be related to transparency and public trust in the legislature. Because, in theory, there are four conditions that encourage or hinder the occurrence of political participation from the community, namely: (Jati, 2012)

- a. If someone has high political awareness and trust in the government, then political participation tends to be active;
- b. If a person's level of political awareness and trust in the government is low, then political participation tends to be passive-suppressed (apathetic);
- c. If political awareness is high but trust in the government is very low, it will give birth to radical militants; and
- d. If political awareness is very low but trust in the government is very high, it will give birth to inactive (passive) participation.

Based on the four conditions or circumstances mentioned above, it is clear that for active political participation to take place, it is necessary to have confidence in the government in power. That is, in the context of the process of forming laws, without public trust in the legislative power-holding institutions, there is little chance of community participation in the process of forming laws. However, the opposite will happen, namely, community participation will tend to be passively suppressed. In other words, transparency, participation, and trust are an integral part that cannot be separated in the direction of a participatory democratic process. However, public participation cannot be separated from the existence of internal environmental factors from within the country itself, as well as external environmental factors from the international community. *Second*, the position of community participation in the formation of laws. The issue of the position of public participation in the formation of laws basically cannot be separated from the question of who is authorized to make laws according to the 1945 Constitution of the Republic of Indonesia. This question

needs to be raised because the state is an organization of power in which there is a division of labor. Between state organs. In terms of the formation of laws, the 1945 Constitution of the Republic of Indonesia delegates its powers to the legislative body, namely the House of Representatives with the approval of the president. Thus, the constitutional authority of the legislative power is in the two organs simultaneously. This means that a law that is only made by the House of Representatives or the president will not be valid. (Yulianto, 2020)

Based on the description above, it should be emphasized that the constitutional authority to make laws rests with the legislature. Therefore, although community participation activities implicitly derive their foundation from the 1945 Constitution of the Republic of Indonesia, public participation can be positioned as a means to enrich discourse in the law-making process. This means that various inputs from public participation have no obligation for the legislature to accept or reject them. In other words, it can be said that the legislature is free to determine the attitude of the ideas or thoughts that are contributed through public participation. However, one thing that must be known and remembered by the legislature is that the product of a law that ignores the ideas or thoughts of the community and the community feels aggrieved by the existence of a law, then the public can request a *judicial review* to the Constitutional Court. If part or all of the material in the law is in conflict with the 1945 Constitution of the Republic of Indonesia and is later annulled by the Constitutional Court, then politically the legislature will lose its credibility in the formation of laws. That is, the existence of a decision by the Constitutional Court that annuls part or all of the material in the law, will result in a decrease in public confidence in the legislature. (Ramadhan, 2021)

Based on the description above, it can be seen that if a law is formed by the legislature where the substance of the law is not pro to the people or lacks elements of community participation in the process of forming the law, the people will reject and request *judicial review*. Even though it is not a guarantee that one hundred percent of the law that is filled with public participation will be implemented properly, at least the voice and rights of the community have been accommodated into a law, this is also a form of democracy.

Third, public participation will not shift the authority of the legislature. Community participation as a form of activity in filling the public space for the formation of laws, constitutionally will not shift the legislature. Because the existence of a legislative body is still needed in a participatory democratic system. Regarding the participatory democratic system, democracy is to ensure that the decisions made by the government include citizens who may be affected by those decisions. Therefore, the definition of democracy is to give encouragement to participate in making decisions that affect their lives. Thus, according to participatory democracy, it does not only want to realize democratic governance (*democratic governance*), but also democratic societies (*democratic societies*). In connection with that, Jimly Asshiddiqie

stated that in a *participatory democracy system*, people's sovereignty implies that government power comes from the people, for the people, by the people and with the people.

The involvement of community members in the process of making important decisions concerning themselves as in a *participatory democracy* that had occurred in ancient Greece is again an important reference. Among the important points to be offered by adherents of *direct democracy* or *participatory democracy* is the idea of the importance of public participation in the process of making and implementing decisions made by representatives who have authority. This cannot be separated from the view that a good democracy is not only related to procedures and *content*, but also to the results of the procedures and contents in democracy.

The relationship between the types of democracy and the formation of laws and regulations lies in the participation of the community in the process of forming laws and regulations, which is shown in the participatory democracy. It is impossible for the formation of laws to be fully submitted through public participation. In other words, if participation is widely opened and inputs must be received in the process of law making, then it is very likely that the law will fail to be agreed upon. Because, if community participation reaches a very large number with a variety of different inputs and demands, it will be difficult to satisfy all parties. Therefore, the existence of a representative institution, however, is still needed in order to represent the people in making laws. The only thing that needs to be emphasized is that the legislature should not walk alone in the process of forming laws without ignoring the inputs and demands of the community. Representative agencies really need to open themselves to ideas or thoughts from community participation. So, the legislature still occupies the first and foremost position in the formation of laws while still accepting input from public participation. Because the representative institutions in it are a collection of factions which are extensions of the political parties that have succeeded in entering the representative institutions. Therefore, it is unavoidable that the factions in the legislature, in other words, the factions sitting in the legislature will be more inclined to carry (inclined) the votes of political parties, meanwhile in society there are many representations of ideas that cannot be neglected in the law-making process. (Fadli et al., 2018)

Fourth, the form of a democratic and responsive law. The existence of a set of laws in a legal and democratic state is needed in order to regulate the orderly life of people in a country. Indonesia is a state of law (Rechtsstaats) and not a state of power (Machtsstaat). Therefore, laws as commanders in carrying out state administration must be made in accordance with the order of values and various interests that exist in a society. It is necessary to understand that it is impossible for all orders of values and interests in society to be accommodated in a law. However, since the shift of legislative power from the president to the House of Representatives through the amendment to the 1945 Constitution of the Republic of Indonesia, in a broad context,

the people are no longer considered as objects but must also be placed as subjects in the process of forming laws. law. In other words, the formation of laws must be carried out in a transparent, participatory and accountable manner so that the community can control the birth of a law in the midst of society. The existence of control or supervision from the community in the process of forming laws, it is hoped that it will give birth to laws that are democratic and responsive to the order of people's lives at large, so that what is the desire of the wider community will be caught in the law (Dwi et al., 2022).

Through the supervision and control of the community in producing a democratic and responsive law, the opportunities for abuse of power in the formation of laws will be relatively small. Because, since the beginning of the process of forming the law, the people have been involved through various criticisms and opinions in the formulation of the material content of a law. The involvement of the people in the process of forming this law is carried out by holding public hearings with the tools of the House of Representatives which handles the discussion of draft laws, submitting input on alternative draft laws from the community, providing criticism and written responses to the draft law. The law that is being discussed, holding a demonstration or demonstration as a form of rejection of the birth of a law which is considered the substance of the law is not pro or is not accompanied by public participation and so on. Therefore, legal products in the form of laws that are produced in a transparent, participatory and accountable manner are expected to provide more protection for the people, so that the legal character is democratic.

The legal character of a democratic law is identical to its main characteristic, namely the participation of all groups in society. If democracy is defined as the participation of members or groups in society, then this is tantamount to accepting the position that democracy is only possible when the existing groups of people have relatively balanced political power. If one group of people is too strong, then the life of democracy will be threatened. Or at least, democracy depends on the will of the rulers. Community participation or participation is part of the principles of democracy. One of the main prerequisites for realizing this participation is openness or transparency. The principle of openness contains at least 2 main elements that allow community participation to occur, namely: *First*, the right to know. This right is basically a fundamental right in a democracy. That is, all matters relating to the public interest, then the public should know it completely, correctly and accurately. *Second*, the right to think. After the public has access to information about what is the public's right to know it, then the right of the community is also to be involved in making contributions in order to support government policies. In addition, the process of forming laws must be based on the "Principle of Openness" which means that in the formation of laws and regulations starting from planning, drafting, discussing, ratifying or stipulating, and enacting laws are transparent and open. Thus, all levels

of society have the widest opportunity to provide input in the formation of laws and regulations. (Muchamad Ali Safa'at, 2020)

Conclusion

The legal character of a democratic law is identical to its main characteristic, namely the participation of all groups in society. If democracy is defined as the participation of members or groups in society, then this is tantamount to accepting the position that democracy is only possible when the existing groups of people have relatively balanced political power. If one group of people is too strong, then the life of democracy will be threatened. Or at least, democracy depends on the will of the rulers. Community participation or participation is part of the principles of democracy. One of the main prerequisites for realizing this participation is openness or transparency. The principle of openness contains at least two main elements that allow community participation to occur, namely: *First*, the right to know. This right is a fundamental right in a democracy. That is, all matters relating to the public interest, then the public should know it completely, correctly and accurately. *Second*, the right to think. After the public has access to information about what is the public's right to know it, then the right of the community is also to be involved in contributing in order to support government policies.

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