

ENHANCING MEANINGFUL PARTICIPATION IN THE LAW-MAKING PROCESS IN INDONESIA: A COMPARATIVE REVIEW

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Abstract

Public participation in forming laws shows variations in their application in Indonesia, the United States and the Netherlands. To find out about the urgency and implementation of public participation in the formation of laws and regulations, normative legal research is carried out based on the legal materials that have been collected. The legal material used is primary legal material related to statutory regulations governing the mechanism for forming statutory regulations. While the secondary legal materials used mainly come from scientific articles published in journals, which discuss popular sovereignty, democracy, community participation, and the mechanisms for forming legislation in various countries. The study results show that the urgency of public participation in the formation of laws and regulations is needed to carry out the teachings of people's sovereignty and democracy in a state, where the highest power lies with the people. Therefore, the people must be involved in forming laws as the legitimacy of government policies. The form of public participation in the formation of laws and regulations in Indonesia is carried out at the stages of preparing academic papers and discussing draft laws and regulations, either through direct participation or representatives.

Keyword: *Comparative, Democracy, Law, Legislation Process, Public Participation*

A. INTRODUCTION

Law is a rule that must be followed by everyone in a state, conducted by the government by its authority. Law formation should not be repressive but should consider the community's shared values. This aims to ensure the efficiency and effectiveness of law enforcement in society.¹ Law and society are interrelated and inseparable. Society needs law to regulate its daily life to achieve the goal of security and order. Meanwhile, the formation of law cannot be separated from society, as the object of law. The formation of law in a country must also refer to the legal needs of society which is based on the problems experienced by the community itself. According to Nonet and Selznick, this type of law is called a responsive type of law, namely a law whose formation is autonomous towards power but rejects the view that law is final and cannot be contested. The responsive legal type views law as a way to achieve goals, where the law aims to serve the social needs and interests experienced by the people.²

Responsive law is an effort to always adapt to new demands or pressures in a society that has characteristics shifting emphasis from rules to principles and goals, and the importance of populist character (populist) both as a legal goal and as a way to achieve it.³ Effort to develop law based on responsive legal formation are also being pursued in the legislative process, by involving public participation in the law formation process. The community is not only an object subject to law, but is also involved in the process of law formation from the initial stages of its formation to its implementation.

Responsive law adapts to the changing needs of society, ensuring that legal frameworks remain relevant and effective in addressing contemporary issues, not because of the political interests of the authorities or a particular group of people. Therefore, the formation of law requires a scientific study to determine the legal needs of the community based on the problems experienced by the community. This scientific study in the formation of laws and regulations in Indonesia is known as an academic text which describes an analysis of the legal needs of society based on scientific research principles that are rational, critical, objective and impersonal.⁴ The community is expected to be actively involved in the preparation of academic papers in order to produce representative and appropriate studies to outline the urgency of

¹ Christopher E. Stone, and Heather H. Ward. "Democratic policing: A framework for action." *Policing and Society: An International Journal* 10, no. 1 (2000): 11-45.

² Henry Arianto. "Hukum Responsif dan Penegakan Hukum di Indonesia." *Lex Jurnalica* 7, no. 2 (2010): 18013.

³ Pudjo Utomo. "Omnibus Law: Dalam Perspektif Hukum Responsif." *Nurani Hukum* 2, no. 1 (2020): 33-41.

⁴ Abdul Basyir. "Pentingnya Naskah Akademik Dalam Pembentukan Peraturan Perundang-Undangan Untuk Mewujudkan Hukum Aspiratif Dan Responsif." *Jurnal IUS Kajian Hukum dan Keadilan* 2, no. 5 (2014): 285-306.

law formation. Efforts to involve the community in producing responsive law are not only through the preparation of academic papers, but can also involve the community in the midst of the process of forming statutory regulations.⁵

The process of forming a law is not merely compiling and enacting a law, but also going through the stages of discussing the substance of the law to be formed.⁶ Discussion is the stage of law formation which involves public discussion in making a decision regarding the acceptance or rejection of the proposed law formation idea. The discussion is not only carried out by the legislature and/or the executive branch in authority, but must also involve the public to be heard as well as their opinions and views in order to improve the law that is formed.⁷

Discussion is a stage where the community can participate in conveying ideas (criticisms and suggestions) on the law that is formed, as a form of implementing the principle of transparency in the formation of laws and regulations.⁸ Community participation in Joko Riskiyono's view aims to ensure that the formation of laws and regulations has an associative and participatory character in order to support the state's goal of welfare for the community.⁹ In addition, it was also conveyed that public participation in the formation of laws and regulations is an effort to implement democracy in the discussion of laws and regulations and the implementation of the oversight function in the legislative process.¹⁰ Therefore the formation of laws is always directed at efforts to forming responsive law based on community needs which can be realized by way of community participation in law formation, especially statutory regulations.

Community participation in law formation should not become a discourse and formality in the mechanism for forming statutory regulations, but rather become a necessity that is practiced in law formation. There are various variations that can be made to involve the public in the formation of

⁵ Juanitha Raisha Tuhumena, Jemmy Jefry Pietersz, and Victor Juzuf Sedubun, "Partisipasi Masyarakat Dalam Pembentukan Undang-Undang Callychya," *Jurnal Ilmu Hukum* 1, no. 3 (2021), p. 248–56.

⁶ Dermina Dalimunthe. "Proses Pembentukan Undang-Undang Menurut UU No. 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan." *Yurisprudentia: Jurnal Hukum Ekonomi* 3, no. 1 (2017): 66-82.

⁷ Merdiansa Papatungan, and Syaiful Bakhri. "Menyoal Pemenuhan Partisipasi Masyarakat yang Bermakna dalam Pembentukan Undang-Undang tentang Ibu Kota Negara." *Al-Qisth Law Review* 6, no. 2 (2023): 274-300.

⁸ Mohamad Roky Huzaeni, and Wildan Rofikil Anwar. "Pelaksanaan Asas Keterbukaan Dalam Pembentukan Peraturan Daerah." *Jurnal Dialektika Hukum: Jurnal Ilmu Hukum* 3, no. 2 (2021): 213-230.

⁹ Joko Riskiyono. "Partisipasi masyarakat dalam pembentukan perundang-undangan untuk mewujudkan kesejahteraan." *Aspirasi: Jurnal Masalah-masalah Sosial* 6, no. 2 (2015): 159-176.

¹⁰ Joko Riskiyono. "Pengaruh partisipasi publik dalam pembentukan undang-undang: Telaah atas pembentukan undang-undang penyelenggara pemilu." *Perludem, Jakarta* (2016).

laws implemented by several countries, both those that adhere to the Civil Law legal system and the Common Law System.¹¹

The focus of this research study is the urgency of public participation in the formation of laws and regulations. Furthermore, it will also examine the various variations of public participation in the formation of laws and regulations in several countries. The results of this research are expected to be able to explain the importance of forming laws that are based on the needs of the community, as well as community participation in the process of its formation. So that an appropriate and effective mechanism can be developed to realize this participation, by comparing the mechanism of public participation in Indonesia with the participation of people in several other countries in the formation of laws and regulations.

B. RESEARCH METHODS

This research was compiled using normative legal research methods in order to find a description of the meaning of public participation and its implementation in the stage of forming laws and regulations. Normative legal research is used on legal issues caused by void norms, ambiguity of norms, conflict of norms, as well as incomplete regulation of legal norms. Normative legal research is a research method developed from pure legal schools and positivism. Soerjono Soekanto¹² emphasized that normative legal research is research that tends to describe law in its form as a prescriptive science based on the legal norms themselves. The themes used as topics in normative legal research are research on legal principles, legal systematics, legal synchronization, comparative law, and legal history. So, it becomes clear that research by comparing several laws is the realm of normative research methods.

Comparative law is the chosen approach in conducting legal research, which in the Black's Law Dictionary is known as comparative jurisprudence. Comparative law is a study to understand more deeply the basic principles of law by studying their arrangements in the legal systems of other countries. Comparison of laws is generally carried out to be able to find out about the similarities and differences regarding the legal arrangements of one country to another. However, R. Soeroso is of the view that the purpose of comparative law is more than that, namely to find out the factors that influence the similarities and differences of the legal systems being compared.¹³ The

¹¹ Choky Ramadhan. "Konvergensi Civil Law dan Common Law di Indonesia dalam Penemuan dan Pembentukan Hukum." *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 30, no. 2 (2018): 213-229.

¹² Depri Liber Sonata. *Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum. FIAT JUSTISIA*, 8 (1), 15–35. 2014.

¹³ R. Soeroso, *Perbandingan Hukum Perdata* (Jakarta: Sinar Grafika, 2014), p. 1–2.

elements that are often compared in the legal comparison method are regarding the legal structure which includes legal institutions, legal substance which includes a set of rules or regular behavior, and legal culture that includes the set of values adopted.¹⁴

Comparative law according to Rudolf B. Schesinger¹⁵ is a method of inquiry that aims to gain deeper knowledge about certain legal materials. Comparative law is not a set of rules or legal principles, nor is it a branch of jurisprudence. Comparative law is a technique for finding new solutions to a legal problem, through understanding foreign laws. Winterton also expressed the opinion that comparative law as a method is to compare a legal system and produce data from the legal systems being compared. Meanwhile, Gutteridge¹⁶ said that comparative law is a method that is used in almost all branches of law. Comparative law is basically a study of foreign law, but then finds similarities and differences through a process of comparing it with the national law.

This research as a normative legal research compiles arguments and research results based on legal materials, in the form of laws and regulations as well as books and related scientific articles. The laws and regulations used in this research are the Act of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislation as last amended by the Act of the Republic of Indonesia Number 13 of 2022 concerning the Second Amendment to the Law of the Republic of Indonesia Number 12 of 2011 concerning Formation of Legislation (here in after referred to as the Formation of Legislation Law). Meanwhile, books and scientific articles related to legislative drafting serve as secondary legal materials that help in the preparation of research results.

C. RESULTS AND DISCUSSION

1. The Meaning of Public Participation in the Formation of Laws and Regulations

The people are a constitutive element in the state so that it is impossible for a country to be formed without the people. Even in the theory of the social contract put forward by J. J. Rousseau¹⁷, that the formation of a state is caused by a social contract carried out by the people to form a state. The

¹⁴ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2016), p. 31.

¹⁵ Barda Nawawi Arief, *Perbandingan Hukum Pidana* (Jakarta: Rajagrafindo Persada, 1990), p. 17–18.

¹⁶ Ratno Lukito. "Compare But Not to Compare": Kajian Perbandingan Hukum di Indonesia." *Undang: Jurnal Hukum* 5, no. 2 (2022): 257-291.

¹⁷ Zira Zulvi Anjani, Nabila Safitri, Afriani Afriani, Iyang Ragel Harnesti, Nadya Hafizah, and Siti kholizah Nasution. "Konsep Kewarganegaraan dalam Pemikiran Tokoh Tokoh Politik Terkemuka." *Indonesian Journal of Innovation Multidisipliner Research* 2, no. 3 (2024): 248-255.

importance of the existence of the people for the state also positions the people as a source of legitimacy for power,¹⁸ in the state which gave birth to the theory of popular sovereignty and democracy.

The theory of popular sovereignty is a legal teaching put forward by J. J. Rousseau that the supreme power of the state remains with the people even though the people have surrendered some of their power to the state.¹⁹ People's sovereignty is implemented through representation and majority voting, establishing the people as the highest authority according to the theory. Jimly Asshiddiqie stated that the scope of the people's sovereignty concerns activities or activities related to the function of sovereignty.²⁰ While the reach of people's sovereignty is related to who is the subject and who has authority over that sovereignty. The implementation of popular sovereignty then leads to the people's authority to determine whether a legal provision applies or not and to carry out and supervise the implementation of that legal provision.²¹

The concept of the supreme power of the state that resides in the people then at first glance reveals the assumption that sovereignty comes from the people, by the people and for the people (from the people, of the people and for the people).²² This view then gave birth to the concept of democracy as a representation of the theory of popular sovereignty, where people's representation in government can be realized in the form of direct democracy and representative democracy.

Democracy is a form of administering government in a state based on people's sovereignty, in which the people are given the opportunity to make decisions related to state governance. Democracy according to Schumpeter is an institutional procedure in reach a political decision so that the individuals concerned can gain the power to make a decision.²³ The role of the people is positioned as voters who will determine the people who will make decisions

¹⁸ Rakhbir Singh, and Taufiqurrohman Syahur. "Teori Kedaulatan Rakyat Berdasarkan Konstitusi." *Triwikrama: Jurnal Ilmu Sosial* 2, no. 8 (2023): 11-20.

¹⁹ Zira Zulvi Anjani, Nabila Safitri, Afriani Afriani, Iyang Ragel Harnesti, Nadya Hafizah, and Siti kholizah Nasution. "Konsep Kewarganegaraan dalam Pemikiran Tokoh Tokoh Politik Terkemuka." *Indonesian Journal of Innovation Multidisipliner Research* 2, no. 3 (2024): 248-255.

²⁰ Jimly Asshiddiqie. "Gagasan kedaulatan rakyat dalam konstitusi dan pelaksanaannya di Indonesia: pergeseran keseimbangan antara individualisme dan kolektivisme dalam kebijakan demokrasi politik dan demokrasi ekonomi selama tiga masa demokrasi, 1945-1980-an." (*No Title*) (1994).

²¹ M Yuhdi, "Pergeseran Konsep Kedaulatan Rakyat Pasca Perubahan UUDNRI 1945," *Maksigama Jurnal Hukum* No. 1, 2016, p. 27.

²² Azmi Azmi. "Kedaulatan Rakyat dalam Perspektif Negara Hukum yang Berketuhanan." *Alqalam* 33, no. 2 (2016): 157-183.

²³ Sean Ingham. "Popular Rule in Schumpeter's Democracy." *Political Studies* 64, no. 4 (2016): 1071-1087.

on behalf of the people.²⁴ So that in this definition shows the form of implementation of representative democracy that is implemented in a country.

This form of representative democracy is also implemented in the government system in Indonesia through the existence of people's representative institutions, whose members are elected based on the results of general elections, both in the form of political representatives and people's representatives. The implementation of democracy in state government is not only related to people's sovereignty but is a form of respect for the people as taught in a rule of law. Democracy is a form of recognition and protection of human rights owned by the people, which include civil and political rights.²⁵ The people are given the freedom to express their views regarding the direction of government policy making, and can determine and/or promote themselves to become people's representatives in representative institutions.²⁶

People's participation in the context of implementing democracy cannot be separated from the process of forming laws and regulations as part of the legality of government policies. The formation of laws based on community involvement has the main objective of protecting the people based on legal needs. The formation of laws that involve community participation will make it difficult to use the formation of laws and regulations for the benefit of a group of parties.²⁷

Community participation in the formation of public policies contained in the form of laws and regulations is often referred to as public participation. Participation is a role or participation in supervising, controlling, and influencing as stated in the Indonesian Dictionary.²⁸ Community participation in government activities takes one of the forms in the form of conveying aspirations related to policies taken by the government with the aim of influencing the formation or change of policies in accordance with the interests of the community.²⁹

²⁴ Muten Nuna, and Roy Marthen Moonti. "Kebebasan Hak Sosial-Politik Dan Partisipasi Warga Negara Dalam Sistem Demokrasi Di Indonesia." *Jurnal Ius Constituendum* 4, no. 2 (2019): 110-127.

²⁵ Asmawi Asmawi. "Dewan Perwakilan Rakyat Daerah (Dprd) dalam Perundang-undangan Pemerintahan Daerah dan Lembaga Legislatif Daerah." *Jurnal Cita Hukum* 1, no. 1 (2014): 40813.

²⁶ Daud M. Liando. "Pemilu Dan Partisipasi Politik Masyarakat (Studi Pada Pemilihan Anggota Legislatif Dan Pemilihan Presiden Dan Calon Wakil Presiden Di Kabupaten Minahasa Tahun 2014)." *Jurnal LPPM bidang EkoSosBudKum (ekonomi, sosial, budaya, dan hukum)* 3, no. 2 (2016): 14-28.

²⁷ Huzaeni and Anwar, "Pelaksanaan Asas Keterbukaan Dalam Pembentukan Peraturan Daerah."

²⁸ W.J.S. Poerwadarminta, *Kamus Umum Bahasa Indonesia* (Jakarta: Balai Pustaka, 1998), p. 831.

²⁹ Joko Riskiyono. "Partisipasi masyarakat dalam pembentukan perundang-undangan untuk mewujudkan kesejahteraan." *Aspirasi: Jurnal Masalah-masalah Sosial* 6, no. 2 (2015): 159-176.

Kamil and Putera stated that there are 4 (four) concepts related to public participation in the formation of laws and regulations, namely:³⁰

- a. Participation as a policy, that participation is a procedure for consulting policy makers with the public as the subject of laws and regulations;
- b. Participation as a strategy, namely participation is seen as a strategy to gain public support for the credibility of policies set by the government;
- c. Participation as a communication tool, that participation is a government communication tool in knowing the will of the community;
- d. Participation as a dispute resolution tool, where participation can create tolerance for mistrust and confusion that occurs in society.

Community participation can be seen in the formation of laws and regulations as a form of implementing the principle of transparency, in which the community is given the opportunity to play a role from the planning stage to the evaluation of the laws and regulations that are formed. Public participation in Joko Riskiyono's view is an effort to ensure that the contents of laws and regulations are formed in favor of the community, while also requiring the existence of an autonomous and independent legislative body.³¹ Regarding this, Jimly Asshiddiqie then conveyed that the idea of forming laws and regulations must involve various parties in the constitutional system without exception. The DPR through its apparatus must absorb the aspirations of the people by visiting the regions or visiting the local government, DPRD and higher education institutions.³²

Community participation in the formation of laws and regulations ideally aims to produce responsive and aspirational laws and regulations. Satjipto Rahardjo explained that an aspirational legislation has the following characteristics:³³

- a. General and comprehensive in nature;

³⁰ Hamzah Kamil and Syahrul Putera, *Cara Praktis Menyusun & Merancang Peraturan Daerah (Suatu Kajian Teoritis Dan Praktis Disertai Manual): Konsepsi Teoritis Menuju Artikulasi Empiris* (Jakarta: Kencana Prenada Group, 2010), p. 110.

³¹ Joko Riskiyono. "Partisipasi masyarakat dalam pembentukan perundang-undangan untuk mewujudkan kesejahteraan." *Aspirasi: Jurnal Masalah-masalah Sosial* 6, no. 2 (2015): 159-176.

³² Jimly Asshiddiqie, *Perihal Undang-Undang Di Indonesia* (Jakarta: Sekretariat Jenderal Mahkamah Konstitusi Republik Indonesia, 2006).

³³ Satjipto Rahardjo, *Memahami Hukum: Dari Konstruksi Sampai Implementasi* (Jakarta: Rajagrafindo Persada, 2009), p. 114.

- b. Universal in nature, not only resolving current legal issues but also for other events in the future;
- c. Has the ability to correct and improve itself, through procedures for changing laws and regulations.

People's aspirations in law formation are believed to enhance the legitimacy, transparency, and responsiveness of laws, leading to more accommodative policies. In relation to Satjipto Rahadjo's views, Saldi Isra's opinion regarding community participation was stated as follows that it was very difficult to know the influence and significance of community aspirations and participation in the process of deliberating laws and regulations.³⁴ Even so, public participation is required as a stage that must be implemented in the formation of laws and regulations in Indonesia. The lack of public access to participate in the formation of laws and regulations can result in procedural defects in the formation of laws and regulations and can be revoked by the competent authority. This happened in the formal review of Act Number 11 of 2020 which was canceled by the Constitutional Court because it did not provide access for the public to participate in the process of its formation.³⁵

2. Public Participation in the Formation of Laws in Indonesia

Law is one form of law in the social order of society. Law is an order of norms that is deliberately formed by society and is always present in society. The formation of the law aims to limit individuals from committing acts that are contrary to the pattern of social life. Law actually develops even in primitive societies, as stated by B. Maninowski³⁶ that in primitive societies it is found that there are rules in the form of customary norms or mores which people follow because they are fun and there is no desire to violate these norms. In addition, there are also norms which are rules that cannot be implemented and every member of society is forced to comply. Meanwhile, for the flow of legal positivism, law formation can only be carried out by parties who are given the authority to carry out law formation. So that not all rules that apply in society are called law, but only those formed by authorized officials are declared as law.

³⁴ Saldi Isra, *Pergeseran Fungsi Legislasi Menguatnya Model Legislasi Parlementer Dalam Sistem Presidensial Indonesia* (Jakarta: PT. Raja Grafindo Persada, 2010), p. 127.

³⁵ Gugun El Guyanie and Okky Alifka Nurmagulita, "Omnibus Law Di Indonesia; Legislasi Nihil Transparansi Dan Partisipasi," *POLITICA: Jurnal Hukum Tata Negara Dan Politik Islam* VIII, no. II, 2021, (<https://journal.iainlangsa.ac.id/index.php/politica/article/download/3543/18031-16>).

³⁶ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum, Edisi Revisi* (Jakarta: Prenada Media Group, 2021), p. 44-50.

The formation of laws according to Maria Farida Indrati Soeprapto³⁷ is a stage of activity that is carried out on an ongoing basis to draft laws. Its formation begins with the process of forming an idea or ideas about the need to regulate an issue, which is followed by activities to prepare draft laws. Draft laws can be prepared by the House of Representatives (Dewan Perwakilan Rakyat/DPR), the Regional Representatives Council (Dewan Perwakilan Daerah/DPD), or the president. The next stage is the discussion of the draft law in the DPR. The discussion on draft laws is carried out by the DPR together with the president or government representatives who are assigned to obtain a mutual agreement that legalizes a draft law to be stipulated as law. After that, it was followed by ratification in the form of signing by the president, ending with the promulgation of the state gazette and additional state sheets.³⁸

The law is a valid law in the positivism flow because it is formed by the authorized legislative body, namely the DPR with the joint approval of the president. Laws are formed through the mechanism for forming statutory regulations through a series of processes that include the stages of:

- a. Planning or idea formation;
- b. Drafting;
- c. Discussing;
- d. Ratifying or stipulating; and
- e. Enacting or promulgation.

However, not all types of laws and regulations have the same process at every stage. Laws are a type of legislation whose formation process can take a long time, in contrast to other laws which are positioned hierarchically under the law. The length of time for the formation of a law is due to the various stages or procedures that must be passed. Starting from the planning stage by preparing a Draft Law which must be accompanied by research/study results (academic texts), then going through the discussion stage in the legislature to the promulgation stage. The stages or procedures that are long and require a long time are also due to the law that was formed aimed at regulating the interests of the wider community with all characteristics so that

³⁷ Andi Intan Purnamasari Supriyadi, and Andi Intan Purnamasari. "Gagasan Penggunaan Metode Omnibus Law Dalam Pembentukan Peraturan Daerah." *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (2021): 257-270.

³⁸ Farida Azzahra. "Rekonstruksi Kewenangan Presiden Dalam Pembentukan Undang-Undang Sebagai Upaya Penguatan Sistem Presidensial Indonesia." *Legislasi Indonesia* 18 (2021): 153-167.

it must be carried out carefully and precisely in accordance with the guidelines for the formation of applicable laws and regulations.³⁹

A different statement was made by Ahmad Redi who stated that the formation of laws and regulations is not merely a technical process of forming legal norms into a product of legislation. Formation of laws and regulations as an activity of channeling ideas from the drafter (designer) into articles contained in statutory regulations. That is, it does not only form or compile laws and regulations, but it also embodies the ideas and ideas that are to be realized. These ideas and ideas originate from drafters to organize social life or in order to solve problems that exist in society.⁴⁰

The view expressed by Maria Farida Indrati Soeprapto basically emphasizes that law formation is an activity of formulating laws which should be implemented continuously. Meanwhile, Ahmad Redi stated that legal formation is more than just drafting laws, but also an effort to realize ideas as an effort to solve problems in society. So, these two views have different paradigms in formulating legal assistance.

The formation of laws is influenced by the legal system in force in the country, because laws are part of a legal system.⁴¹ The formation of laws in Indonesia experienced significant differences after the amendments to the 1945 Constitution, where the authority to form laws that previously rested with the president was transferred to the authority of the House of Representative as a legislative body. The amendments also initiated a mechanism for forming laws that are based on needs, wishes, and in harmony with the values that exist in society. Therefore, through Act Number 10 of 2004 concerning Formation of Laws and Regulations began with the conception of academic texts as a condition for submitting a draft law. Until now this is still valid, namely the formation of laws when compared to other legislation has the privilege of forming academic texts as special conditions that must be met in submitting a bill.⁴²

The formation of laws is a long process and requires the participation of many parties involved in it. Formation of laws based on the Law on Formation of Legislation includes the stages of planning, drafting, discussing, ratifying, and enacting. Furthermore, all of these stages require public participation in its formation through the principle of transparency or

³⁹ Muhammad Fadli. "Pembentukan undang-undang yang mengikuti perkembangan masyarakat." *Jurnal Legislasi Indonesia* 15, no. 1 (2018): 51-61.

⁴⁰ Ahmad Redi, "Hukum Pembentukan Peraturan Perundang-Undangan" (Jakarta: Sinar Grafika, 2018), p. 3.

⁴¹ Evi Oktarina, *Kewenangan Eksekutif Dan Legislatif Dalam Pembentukan Undang-Undang Sebelum Dan Sesudah Amandemen Undang-Undang Dasar Tahun 1945* (Yogyakarta: Deepublish Publisher, 2021), p. 1.

⁴² Hikmahanto Juwana, *Penyusunan Naskah Akademik Sebagai Prasyarat Dalam Perencanaan Pembentukan RUU* (Jakarta: Departemen Hukum dan HAM Republik Indonesia, 2006).

openness. The community should have access as broadly as possible to convey input to legislators, but this community participation is still only partial and symbolic. Communication to certain community groups as an implementation of community participation is still in the form of a procedural formality that has carried out basic research which has become the basis for forming laws.⁴³

The basic research in question is an academic paper that is required to be prepared in advance through a scientific research and analysis of existing problems in society. The results of this research will describe the urgency of forming a law, the problems to be regulated in the law, the authorized institutions, theoretical studies of problem-solving efforts, and harmonization with other laws and regulations so as not to cause conflicts of norms.⁴⁴ The preparation of the research must be based on reality and involve community participation. Thus, public participation in the formation of laws is carried out from the planning stage to their promulgation, in addition to public participation is needed to disseminate the laws that have been passed.

Community participation in the stage of forming laws and regulations is not only at the stage of preparing academic texts, but also includes the stage of discussing draft laws. The discussion of the draft law is carried out in 2 (two) stage of discussion as stipulated in the provisions of the Law on the Formation of Legislation. Stage I discussions are discussions in commission meetings, joint commission meetings, Legislation Body meetings, Budget Committee meetings, or Special Committee meetings. Meanwhile, stage II discussions were carried out in a plenary meeting.⁴⁵

Stage I discussions start with an introductory deliberation where the proposing party explains their proposal, and other participants share their views. Next, an inventory list of problems submitted other than by the proposing party is carried out. The introductory deliberation stage ends with the delivery of a mini opinion delivered by the faction, the Senate (if the draft law is related to the regions), and the president. Stage I discussions can also include heads of state institutions or other institutions when the draft law being discussed relates to these state institutions or other institutions. Meanwhile, Stage II discussions are held in a plenary meeting as the decision-making stage in the form of:

- a. submission of reports containing processes, mini faction opinions, mini-Senate opinions, and results of level I discussions;

⁴³ Hasyim Asyari. "Asas Keterbukaan Dalam Pembentukan Peraturan Daerah (Study Kasus Di Kabupaten Lombok Tengah)." *Refleksi Hukum: Jurnal Ilmu Hukum* 2, no. 1 (2017): 81-96.

⁴⁴ Albert Pedé. "Eksistensi Naskah Akademik Dalam Praktik Pembentukan Peraturan Daerah." *JUSTITIA* (2014): 55.

⁴⁵ Dalimunthe, "Proses Pembentukan Undang-Undang Menurut UU No. 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan."

- b. statement of approval or rejection of each faction and member verbally requested by the chairman of the plenary meeting; And
- c. submission of the President's final opinion carried out by the assigned minister.

If the agreement of the factions cannot be reached by deliberation to reach a consensus, such as the objections conveyed by several factions in the House of Representative regarding the draft law being discussed. Then a decision will be made based on the majority vote (voting), which received the approval of the majority of members of the House of Representative institutions present. Furthermore, the president or Minister assigned to represent will deliver a final opinion to reach a joint agreement to ratify the draft law as law.⁴⁶

Community participation carried out in the stages of preparing academic papers and discussing draft laws shows differences from the forms of participation that are carried out. At the stage of preparing academic manuscripts, community participation is carried out directly where the community is directly involved as objects in legal research conducted to compile academic manuscripts. The academic writing team will involve direct aspirations from the public through empirical legal research methods by collecting primary data obtained through observation, interviews, and/or questionnaires. Furthermore, to test the validity of the research, a public test stage will also be carried out on academic manuscripts that are prepared by involving the relevant community components.

On the other hand, at the discussion stage of the draft law, community participation is carried out by the representative method by members of the people's representative institutions (the House of Representative and/or the Senate) who are involved at the discussion stage. Community participation will be conveyed in the level I and level II discussion stages in the form of conveying mini opinions and mini faction views on the draft laws being discussed. Until finally the public participation ended in the form of approval or rejection of the draft law being discussed to be enacted as law.

3. The Comparison of Public Participation in Forming Laws in Other Countries

The activity of comparing laws is not solely based on the similarity of the Civil Law legal system adopted between Indonesia and other selected countries. Legal comparisons can also be made for countries with different legal systems, but having similarities in the country's government system,

⁴⁶ Veri Junaidi, and Viola Reininda. "Relasi Presiden dan DPR dalam Pembentukan Undang-Undang pada Sistem Pemerintahan Presidensial Multipartai." *Jentera: Jurnal Hukum* 3, no. 1 (2020).

especially similarities in state institutions. Likewise, comparing with countries in the same Southeast Asia region by considering the similarities in the legal culture that Indonesia has with that country. Based on these considerations, there are 2 (two) countries selected as a comparative study of law in this study, namely the United States of America and the Netherlands. The United States is a country that has the same government system as Indonesia even though it applies a different legal system. While the Netherlands was chosen because the two countries apply a Civil Law legal system similar to Indonesia, and historically have influenced the formation of law in Indonesia.⁴⁷

Formation of Legislation in the United States

The United States is a country that is often used as a reference in implementing a presidential system for other countries, such as Indonesia. The administration of the state in the United States strictly separates the areas of legislative, executive and judicial powers through their respective authorities. However, this is not the case with Indonesia, which implements a presidential system of government in a different way. The administration of government in Indonesia does not purely apply the separation of powers as implemented in the United States.

Separation of powers which is organized based on the principle of checks and balances (supervision and balancing) is implemented through cooperation between sectors of power to carry out an authority. For example, the President's authority to participate in submitting, discussing, and ratifying a bill together with the House of Representatives.⁴⁸

Meanwhile Nurliah Nurdin observes the rivalry between the President and Congress in the presidential system of government in the United States. The formation of laws in the United States begins with proposed bills that can be proposed by members, so the formation of laws in the United States is the full authority of Congress. The president is tasked with implementing these laws. But the president can also use his veto power to overrule implementation of laws submitted by Congress.⁴⁹

The formation of laws in the United States as explained above is the main authority of the Congress as a legislative body. The United States Congress consists of 2 (two) chambers, namely the House of Representatives and the Senate. The House of Representatives is a chamber whose members are elected from representatives of political parties, while members of the

⁴⁷ Firdaus Muhamad Iqbal. "Kontribusi Sistem Civil Law (Eropa Kontinental) Terhadap Perkembangan Sistem Hukum Di Indonesia." *Jurnal Dialektika Hukum: Jurnal Ilmu Hukum* 4, no. 2 (2022): 180-200.

⁴⁸ Ribkha Annisa Octovina. "Sistem presidensial di Indonesia." *CosmoGov: Jurnal Ilmu Pemerintahan* 4, no. 2 (2018): 247.

⁴⁹ Nurliah Nurdin, *Komparasi Sistem Presidensial Indonesia Dan Amerika Serikat: Rivalitas Kekuasaan Antara Presiden Dan Legislatif 2004-2009* (Jakarta: MIPI, 2012), p. 227.

Senate are elected to represent the states in the United States. The United States Congress does not recognize an Upper and Lower House because the members of the two chambers have equal powers.⁵⁰ Nonetheless, the position of the House of Representatives in practice is under the Senate because in the process of forming a law, Senate approval is given after the draft law has been thoroughly discussed by the House of Representatives. So that Senate approval is an absolute thing that must be obtained so that the draft law can be submitted to the president for presentation and signature.⁵¹

The formation of laws in the United States begins with proposed bills that can be proposed by members of the House of Representatives and members of the Senate. The government is also authorized to propose a draft law called The Executive Communication in the form of an application letter for proposing a draft law accompanied by a proposed draft to the two authorized chambers.⁵² However, after the proposed bill is accepted, the bill is not recorded as a presidential proposal but a proposal from the House of Representatives or the Senate.⁵³

After the proposal for the draft law is accepted, a discussion stage will then be carried out which is carried out by a committee with the main objective of seeking input from several parties including relevant government departments or other state institutions, which is known as the first reading stage. If necessary, the committee can also schedule a public hearing which will be announced through the mass media at least a week before the event is held. Apart from that, the public hearing is also obliged to specifically invite certain groups of people who have an interest in the draft laws being drafted.⁵⁴

The draft law review committee is then tasked with compiling a written report based on the results of the first reading, which contains the issues or problems to be regulated, the purpose of the regulation, and the scope of the draft law being drafted. This report also contains at least the following:⁵⁵

⁵⁰ Pan Mohamad Faiz, and Muhammad Erfa Redhani. "Analisis Perbandingan Peran Kamar Kedua Parlemen dan Kekuasaan Kehakiman dalam Proses Pemberhentian Presiden (Comparative Analysis on the Role of the Second Chamber of Parliament and Judicial Power in the Process of Impeachment of the President)." *Jurnal Konstitusi* 15, no. 2 (2018): 406-430.

⁵¹ Nurlita Purnama, Aditya Ardiansyah, and Izdihar Chairunnisa. "Perbandingan Parlemen Di Indonesia Dengan Amerika Serikat." *Education: Jurnal Sosial Humaniora dan Pendidikan* 2, no. 2 (2022): 80-88.

⁵² Nurdin, *Komparasi Sistem Presidensial Indonesia Dan Amerika Serikat: Rivalitas Kekuasaan Antara Presiden Dan Legislatif 2004-2009*.

⁵³ Wahyu Tio Ramadhan, and Eddy Purnama. "Perbandingan Prosedur Legislasi Indonesia Dan Amerika Serikat." *Jurnal Ilmiah Mahasiswa Bidang Hukum Kenegaraan* 1, no. 2 (2017): 92-104.

⁵⁴ John V. Sullivan, "How Our Laws Are Made," *Congress.Gov*, 2007, <https://www.congress.gov/help/learn-about-the-legislative-process/how-our-laws-are-made>.

⁵⁵ Ibid.

- a. The final view of the draft law committee regarding the issues to be regulated along with recommendations in accordance with the facts found by the committee, especially during public hearings;
- b. A description of the implementation mechanism and general regulatory objectives, including the impact if the draft law is passed as a law; as well as
- c. Changes to the current government budget if the drafting of laws will have an impact on the state revenue and expenditure budget in the current year.

After confirming the urgency of forming a draft law, a second reading is then carried out which has entered the discussion stage article by article in the draft law being discussed. This discussion aims to obtain approval for the formulation in the draft law, but if it has not been fully approved, a review can be carried out by forming a Rises Committee. Meanwhile, if the approval of the formula has been obtained, then the report on the results of the second reading can be reproduced for distribution to members of the House of Representatives and the Senate.

The third reading stage is then carried out by conveying views either individually or in groups, members of the Senate will convey their views related to the draft law being discussed. Submission of this view can also be accompanied by a proposed change to the draft law being discussed. If the proposed changes submitted by the Senate are significant enough, then the draft law will be returned to the House of Representatives for re-discussion. Meanwhile, if the proposed amendment is not too different from the draft law submitted by the House of Representatives, then the draft law is deemed to have been accepted. The proposed draft law is then forwarded to the president for presentation.⁵⁶ A similar discussion stage is also carried out if the proposed bill is submitted by the Senate, where it is necessary to obtain approval from the House of Representatives before being submitted to the president.

The President will receive the draft law that has been approved by both chambers after going through 3 (three) stages of discussion as previously described. The bill will be submitted by the proposing chamber to the president through the Secretary of the White House. Submission of the draft law accompanied by a receipt document also shows that the draft law has been presented to the president. The draft law is then redistributed to the relevant government departments for their consideration and input. Furthermore, the president can immediately express approval of the draft law and sign it as a form of ratification. Conversely, if the president rejects the draft law submitted, the president can use his veto power to refuse to sign the draft law. The

⁵⁶ Ibid.

President then returns the draft law within 10 (ten) days, except Sunday, to the proposing chamber accompanied by the reasons for rejection as a subject for further discussion. Meanwhile, if the president does not return the rejected bill to the proposing institution, unless there are conditions that prevent the president from returning it, then the draft law will apply as law as if the president signed and ratified the draft law.⁵⁷

The president's rejection of the draft law will be responded to by parliament by holding a trial to determine whether the president's veto can be accepted or rejected through a voting process. Congress can overrule the president's veto if it gets the support of 2/3 of its members, so that the proposed bill can still apply as law. Bills that have been ratified as laws are then promulgated in The State at Large as a medium for disseminating laws. The promulgation is accompanied by the numbering of the law and a sign that the law has been effective.⁵⁸

The Formation of Laws in the Netherlands

The formation of laws in the Netherlands is unique because it was initiated by considerations from the Raad van Staten, a state institution tasked with providing advice on various policies, such as the authority of the Supreme Advisory Council in Indonesia before the amendment to the 1945 Indonesian Constitution. In addition, the draft law was also sent to the Staten General institution as stated in Article 37 paragraph (1) *Grondwet voor het Koninkrijk der Nederlanden* (Constitution of the Kingdom of the Netherlands).⁵⁹

Members of parliament have the right to propose bills, whether submitted by Eerste Kamer or Tweede Kamer, by first having been submitted to the Staten General for recommendations. The draft law that has received recommendations is then forwarded to the King as the head of state who will sign a royal message which will be attached to the draft law along with the recommendations of the Staten General. Along with the draft law is also attached a memorandum in the form of an explanation of the draft law which explains the purpose and content of each part of the draft law.⁶⁰

Tweede Kamer can examine the proposed law further by forming a special committee. Research on draft laws by a special committee is carried out using various methods, one of which is through public discussion (public

⁵⁷ Betsy Palmer, *Sponsorship and Cosponsorship of House Bills, How Laws Are Made in the U.S.A.* (Washington DC: Congressional Research Service, 2023), p. 146.

⁵⁸ *Ibid.*, p. 147.

⁵⁹ Suska, "Prinsip Regulatory Impact Assessment Dalam Proses Penyusunan Peraturan Perundang-Undangan Sesuai UU Nomor 12 Tahun 2011," *Jurnal Konstitusi* 9, no. 2, 2016, (doi:10.31078/jk926), p. 357.

⁶⁰ House of Representative, "How Parliament Works," *Houseofrepresentative.Nl*, 2009, http://www.houseofrepresentative.nl/how_parliament_works/legislation/index.jsp.

hearing). Parties related to the draft law may be presented by a special committee at public discussions to convey opinions and input on the draft law being discussed. Public discussions can be carried out by a special committee several times by choosing a different venue. In addition, the special committee is also allowed to request information from government advisory bodies or expert sources on topics regulated in draft laws. If the information obtained in the public discussion is deemed sufficient by the special committee, then the parties in parliament will then convey their views on the proposed draft law.⁶¹

The secretary of the special committee is then required to prepare a report in the form of considerations on the draft law providing input which, if necessary, can be attached to the draft law. The report was then sent by Tweede Kamer to the government for a response. The government must be able to provide answers to all notes or questions submitted by the special committee in the report sent. Furthermore, Tweede Kamer will order a plenary session to be held which aims to discuss draft legislation with the government. The government party is generally represented by the appointed Minister and State Secretary to explain the intent of the draft law at the plenary session in Tweede Kamer.⁶²

At this stage, members of parliament are welcome according to their rights to submit input regarding the draft law being discussed, and even amend it if deemed necessary. After the draft law is approved in the plenary session, Tweede Kamer will forward the draft law to Eerste Kamer who is given the right to reject or accept the approved draft law without being allowed to change it again. So that the draft law submitted to Eerste Kamer is permanent.⁶³

Discussion of the draft law after it has been submitted to the Eerste Kamer will be further discussed through a review by a committee from the parliament which determines whether the draft will be discussed directly between the two chambers or requires a preparatory stage. If preparation is required, correspondence is carried out between the research committee and government representatives in the form of a series of question and answer processes through a memorandum until deemed sufficient. However, there are also bills that are directly discussed by the two chambers without going through the preparatory stage.⁶⁴

⁶¹ Ibid.

⁶² Ibid.

⁶³ Organisation for Economic Co-Operation and Development, "Regulatory Reform in The Netherlands: Government Capacity to Assure High Quality Regulation" (Den Haag, 1999), 9, <http://books.google.es/books?id=8KAw8jyTOpAC>.

⁶⁴ Eerste Kamer der Staten-Generaal, "How Does the Senate Work," *Eerstekamer.Nl*, 2009, https://www.eerstekamer.nl/begrip/hoe_werkt_de_eerste_kamer.

The discussions carried out by Eerste Kamer can be in the form of internal consultations and external consultations. Internal consultations are carried out by parties in parliament with a committee that reviews draft laws. While external consultation is a discussion with community members or certain organizations related to the draft law. The consultation process was carried out by Eerste Kamer because this institution has the main task of assessing a draft law in order to provide a good assessment. Eerste Kamer usually reads many references in the form of legal documents, letters, reports and related articles before assessing the feasibility of a draft law.⁶⁵

The existence of a process of consultation and deliberation through an independent study shows that Eerste Kamer as the upper house of parliament has an important role in assessing the feasibility of a bill before it is passed as law by the King. Eerste Kamer shows the legislative process that considers aspects of accuracy and thoroughness in the formation of laws. The process of review and consultation is often an effort to create good laws according to the needs of society. Likewise with the external consultation process carried out by Eerste Kamer, by periodically receiving visits from community representatives to hear the community's perspective on the draft law being discussed. So that there is a process of public participation in the formation of a draft law before it is passed as law.

The draft law that has been accepted by Eerste Kamer is then submitted to the King for signature. The signing of the draft law that has been approved is also carried out by the Minister whose duties and authorities are related. The signing was also carried out by the Minister of Justice and announced in a law bulletin as the government's official journal for announcing the latest laws. The law has binding legal force after 20 (twenty) days since it was announced in the law bulletin.⁶⁶

The process of forming a law in the Netherlands, which starts from accepting proposals, shows a tiered legislative process and takes a long time. Approval of the proposed bill must go through review and approval from the main legislative body, namely Tweede Kamer. The discussion was accompanied by a discussion on the substance of the draft law between members of the Tweede Kamer and government representatives. The results of the discussion may also result in changes to the draft law. Tweede Kamer will hold a plenary session to approve the draft law that has been drafted, before handing it over to Eerste Kamer as co-legislator. Eerste Kamer then assesses the suitability, feasibility, applicability, and monitoring of the performance of the institutions proposing the draft law.

⁶⁵ Ibid.

⁶⁶ Ibid.

Eerste Kamer's consideration and approval is the final stage of the long process of drafting laws in the Netherlands, which involves reviewing discourse and voting in approval statements. Therefore, it can be said that there is no law that can be formed in a short and fast process without being known by the public. Even the draft law that has been signed by the King, related ministers, and the Minister of Justice does not immediately take effect. The law must be published in a government law bulletin and take effect after 20 (twenty) days.

The explanation of law formation in the United States and the Netherlands shows that community participation in law formation is something that must be done. Community participation is carried out through various stages of discussion and deliberation of various views. As is done in the United States, it requires at least 3 stages of discussion before discussion of a law can continue with discussion before the president. The discussion stage is not only carried out internally at Congress but also includes input from the public which has been compiled in a report by the draft law review committee.

Likewise, in the Netherlands, it shows that the process of forming laws takes a long time, where discussion and approval of draft laws is carried out in stages by the Tweede Kamer and Eerste Kamer. Public participation is carried out through the Eerste Kamer control function which ensures that each draft law is known to the public, and conveyed through bulletins or other mass media.

D. CONCLUSION

Based on the discussion regarding public participation in the formation of laws and regulations, it can be concluded that the urgency of community participation is needed in producing legislation that is aspirational, responsive, and adapts to the legal needs of society. Community participation in the formation of laws and regulations in Indonesia can be carried out in the stage of preparing academic texts through empirical legal research. In addition, public participation can also be carried out in the discussion stage of draft laws and regulations, either in the form of direct participation or representative participation. Forms of public participation are also carried out in the formation of laws in the Netherlands and the United States, in a different implementation from practice in Indonesia. In both the United States and the Netherlands, there is a public hearing session in discussing a draft law by a special committee, before the draft law is discussed by the parliament for approval. A comparison of public participation in law formation in the United States and the Netherlands can be used as input in efforts to improve law in Indonesia. Meaningful participation is not only in the form of academic texts but also requires various stages of discussion, hearings, socialization and open access to public information in the formation of laws in Indonesia.

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