

Implications of making legal products (Legislation) that do not involve public participation

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Abstract

In general, this study aims to formulate (1) the process of forming legislation that involves community participation, and (2) the implications of making legal products (legislation) that do not involve community participation. Public participation in the formation of legislation is a manifestation of the implementation of the principle of transparency which is one of the principles in the formation of legislation that eventually will provide essential benefits in terms of the effectiveness of the enforcement of legislation in society. In a country that has adopted a representative system; public participation is still needed to embody good governance. Based on the results of research and discussion, the researchers conclude that: Firstly, the process of forming a law that involves community participation – namely in the stages of planning, drafting, discussion – can be through providing oral or written input. Secondly, if the process of forming legal products does not involve the public, it will result in lower effectiveness of public policies, low quality of the resulting legislation, reduced compliance with the implementation of this legislation voluntarily, and diminished public trust in the government.

Keywords: implications, legal products, participation, society, government

Introduction

Legislation is a form of legal norm formulation in a constitutional state. The legislation has a strategic and important position with the existence of law in a country, both in terms of the concept of a state of law, hierarchy of legal norms, as well as seen from the function of legislation^[1]. Regulating community in which there are many human individuals in all its dimensions is one of activities of the formatting of the legislation. Therefore, designing and forming law that is acceptable to the wider community is a difficult endeavor^[2]. The difficulty lies in the form of communication between the legislative power holders and the community in a country^[3].

In a democratic government structure, public participation requires involvement in the decision-making process which is increasingly important in the era of regional autonomy^[4]. In particular, one of community involvement in the formation of legal products is the formation of legislation. In the formation of legislation, transparency from the government is required. Being open to the community, it is possible for the public to participate in terms of both from the process of drafting regulations to the enactment of a regulation. Therefore, community participation's goal is to generate input and perceptions that are useful for people with an interest in improving the quality of decision making. In the process of formulating participatory legislation, there are two interrelated things, namely process and substance.

The definition of process is a method or mechanism in the formation of legislation that must be carried out openly so that the public can participate in providing inputs or suggestions in regulating an issue. Whereas, the meaning of substance is the materials to be regulated must be aimed at the interests of the wider community to produce responsive legislation^[5].

The concept of openness is related to the concept of community participation. That is the opinion of Philipus M. Hadjon. The point is that if the government is not open, it is impossible for the community to participate in government activities. The concept of participation related to the concept of democracy is called participatory democracy. In this concept, the right of the community is to participate in deciding the process of government decision-making. One of the minimum requirements in the concept of democracy is the principle of openness or participation. It means that the community cannot participate in government activities if the government is not open. Thus, this theory demands not only to achieve democratic governments but also democratic societies. M Hadjon argues that good openness is "*openheid* and *openbaarheid*". This is very important in the implementation of a good and democratic government. *Openheid* has a meaning as a mental attitude in the form of the availability to provide information and accept other people's opinions, while *openbaarheid* is a state of openness^[6].

Article 28 of the Constitution of the Republic of Indonesia and Article 96 of Constitution Number 12 year 2011 amended in Constitution of the Republic of Indonesia Number 15 year 2019 concerning Amendments to Constitution Number 12

¹ Laurensius Arliman S, Partisipasi Masyarakat Dalam Pembentukan Perundang-undangan Untuk Mewujudkan Negara Kesejahteraan Indonesia, Jurnal Politik Pemerintahan, Agustus 2017, Volume 10, No. 1, Agustus 2017. Hlmn 59

² Saifudin. Partisipasi Publik Dalam Pembentukan Peraturan Perundang-undangan, UII Press. Yogyakarta. 2009. Hlm 1

³ Pierre Andre Cote. The Interpretation of Legislation in Canada, 2nd Edition, Quebec: Les Editions Yvon Balais, Inc. 1991. Hlmn 4

⁴ Tomy M Saragih. Konsep Partisipasi Masyarakat Dalam Pembentukan Peraturan Daerah Rencana Detail Tata Ruang Dan Kawasan. Jurnal Sasi Vol. 17 No. 3 Bulan Juli-September 2011. Hlmn 11

⁵ Mahfud, MD. Perkembangan Politik Hukum: Studi tentang Pengaruh Konfigurasi Politik Terhadap Produk Hukum di Indonesia. Raja Grafindo. Jakarta. 2010. Hlmn 363

⁶ Philipus M. Hadjon. "Keterbukaan Pemerintahan Dalam Mewujudkan Pemerintahan Yang Demokratis", Pidato, diucapkan dalam Lustrum III Ubhara Surya. 1997. Hlmn 4-8

year 2011 concerning the Formation Legislation have provided the right orally and / or in writing to the public to participate in the formation of legislation. It's just that in the implementation, this right has not been implemented properly. Limited public access and reluctance from legislators to give space both formally and substantially to the community still appear to be obstacles in implementing community participation. Therefore, it is necessary to study more deeply about the implications of legal products (legislation) that do not involve public participation and the process of forming those by involving the community.

Problem Statements

Based on the description above, this study focuses on two problem statements: (1) the process of forming legislation that involves community participation and (2) the implications of making legal products (legislation) that do not involve community participation.

Object of the Study

This study aims to determine two things: *firstly*, the process of making legislation that involves community participation. *Secondly*, the implications of making legal products (legislation) that do not involve community participation.

Research Method

This study is a juridical-normative legal study that is intended to determine and formulate legal arguments through analysis of the subject matter. The collecting data method was conducted with literature study. The approach used was statute approach. The objects in this study are primary and secondary legal objects.

The primary legal object are the Constitution of the Republic of Indonesia Year 1945 and Constitute Number 12 Year 2011 concerning the Formation of Legislation which have been amended in Constitute Number 15 Year 2019 Amendments to Constitute Number 12 Year 2011 Concerning the Formation of Legislation, while the secondary legal object include textbooks written by legal experts, legal journals, articles and object from the internet and other sources that have a correlation to support this study, namely explaining the process of forming laws that

Involves community participation and the implications of legal products which is not participatory.

Findings and Discussion

The process of forming legislation that involves community participation

Participatory democracy theory, in relation to the existence of community participation, states: "citizens, both individually and in groups, are not merely consumers of satisfaction, but require opportunities and encouragement for self-disclosure and development. Participatory democracy theorists reject the assumption that citizens are always in a state of conflict of interest, but on the contrary think that the essence of human personality is complete each other in collective life so that people can harmonize with each other individual interests with social interests in acceptable ways^[7].

Community participation is one form of community political participation that is important in order to create good governance. The opportunity for the community to participate in the process of forming legislation has been accommodated in positive legal provisions, namely Article 28 of the 1945 Constitution of the Republic of Indonesia and Article 96 of Constitute No.12 of 2011 which has been amended in Constitute of the Republic of Indonesia Number 15 of 2019 concerning Amendments to Constitute Number 12 of 2011 concerning the Formation of Legislation. The community has the right to provide an oral and / or written input in the Formation of Legislation by adhering to the principle of transparency in these laws. Verbal and / or written input can be done through^[8]:

- a. Public disciplinary hearing
- b. Work visit
- c. Socialization
- d. Seminar, workshop and/or discussion

To obtain responsive legal products / legislation is to open space for community participation at every stage of the formation of legislation. In other words, community participation in the formation of legislation can be carried out at the following stages:

⁷ Irfan Setiawan.Rekonstruksi Birokrasi Pemerintahan Daerah. Institut Pemerintahan Dalam Negeri. 2014 Hlmn 160

⁸ Rahendro Jati, Partisipasi Masyarakat Dalam Proses Pembentukan Undang-Undang Yang Responsif, Jurnal Rechtsvinding, media pembinaan hukum indonesia, Volume 1 Nomor 3, Desember 2012.hlm 363

Stages of Forming Legislation

Table 1

Stages	Mechanisms	Parties involved	Result
Planning of Constitutes	<ul style="list-style-type: none"> Medium-term National Legislation Program Annual National Legislation Program. 	Legislation council of House of Representative, Minister of Laws and Human Rights, based on Ministry/ LPNK proposal, fraction, commission, Regional Representative Board and community	House of Representative Act of National Legislation Program on Prioritized Constitute Draft
Drafting of Constitute	<ul style="list-style-type: none"> Academic Drafting Script of Drafting of Constitute Harmonization 	Constitute Draft of Government Initiative: Ministry/LPNK with involvement of experts, involved institute, college, and community along with socialization to obtain input from community. Constitute Draft of House of Representative’s Initiatives: Members, Commissions, Commission’s Consolidation, Legislation Council assisted by functional council and academicians. Constitute Draft of Government Initiative: Committee inter-ministries consisting of ministry element/ LPNK related with Constitute Draft substance and legal experts along with socialization to obtain input from community Constitute Draft of House of Representative’s Initiatives: Committee consisting of members, commission, commission’s consolidation, or legislation council assisted by functional council and input from community Constitute Draft of Government Initiative: coordinated by Minister of Laws and Human Rights Constitute Draft of House of Representative’s Initiative: coordinated by Legislation Council.	Academic Draft Constitute Draft Constitute Draft of Harmonization Result
Discussion	<ul style="list-style-type: none"> Discussion Stage I Discussion stage II 	Commission, Commission Consolidation, Legislation Council, along with Ministry represent President and Regional Representative Board. Community can provide input by delivering the materials in written form. Whole members of House of Representative and Ministry assigned by President.	Constitute Draft of Discussion Stage I result Approved Constitute by House of Representative.
Validation		President	Approved Constitute by President.
Promulgation		Minister of Laws and Human Rights	Enactment with placement in National Gazette and addition of national institution in so that people can recognize it.

Legal expert Sofwan stated that phenomena of laws are rejected by the public because these laws were made without involving the public. Sofwan appealed that, in carrying out its legislative function, the DPR will not only pursue quantitative targets, but also qualitative or quality of the legal products produced. Sofwan sees that so far the DPR is still oriented towards quantitative targets so they do not care whet her the legal products produced are implemented or not ^[9]. So, public participation in the formation of laws and regulations is very important because it will determine the quality and acceptance of these laws in society.

Conclusion

This study concludes that, first, the process of ordering legislation / legal products that involves community participation in the stages of preparation, preparation, and discussion that can provide oral and written input. Second, the implications of non-participatory legal products are: low effectiveness of public policies, low quality of legislation produced, random decrease adherence to these laws and diminished public trust in the government. The author

suggests that the legislators, namely the legislative section, must have a strong will to carry out community participation. The awareness to form responsive laws that have long-term effectiveness and effective use for the benefit of all levels of society must become the basis for the attitudes and perspectives of legislators.

Reference

- Alexander Abe. *Perencanaan Daerah Partisipatif*, Yogyakarta: Pembaruan, 2005.
- Irfan Setiawan. *Rekonstruksi Birokrasi Pemerintahan Daerah*. Institut Pemerintahan Dalam Negeri, 2014.
- Mahfud MD. *Perkembangan Politik Hukum: Studi tentang Pengaruh Konfigurasi Politik Terhadap Produk Hukum di Indonesia*. Jakarta: Penerbit Raja Grafindo, 2010.
- Saifudi. *Partisipasi Publik Dalam Pembentukan Peraturan Perundang-undangan*, Yogyakarta: UII Press, 2009.
- Pierre Andre Cote. *The Interpretation of Legislation in Canada*, 2nd Edition, Quebec: Les Editions Yvon Balais, Inc, 1991.
- Laurensius Arliman S. *Partisipasi Masyarakat Dalam Pembentukan PerundangUndangan Untuk Mewujudkan Negara Kesejahteraan Indonesia*, Jurnal Politik Pemerintahan, Agustus 2017, Volume 10, No. 1, Agustus, 2017

⁹ <https://www.hukumonline.com/berita/baca/hol10167/pakar-hukum-tegaskan-perlunya-partisipasi-publik-dalam-pembentukan-undangundang>, diakses pd tgl 23 Juni 2020

7. Rahendro Jati, Partisipasi Masyarakat Dalam Proses Pembentukan Undang-Undang Yang Responsif, *Jurnal Rechtsvinding*, media pembinaan hukum indonesia, Volume 1 Nomor 3, Desember, 2012.
8. Tomy M Saragih. Konsep Partisipasi Masyarakat Dalam Pembentukan Peraturan Daerah Rencana Detail Tata Ruang Dan Kawasan. *Jurnal Sasi* Vol. 17 No. 3 Bulan Juli-September, 2011.
9. Joko Risyono, Partisipasi Masyarakat Dalam Pembentukan Perundang-Undangan Untuk Mewujudkan Kesejahteraan, *Public Participation In The Formation Of Legislation To Achieve Prosperity*, *Aspirasi* Vol. 6 No. 2, Desember, 2015.
10. Philipus M Hadjon. “Keterbukaan Pemerintahan Dalam Mewujudkan Pemerintahan Yang Demokratis”, Pidato, diucapkan dalam Lustrum III Ubhara Surya, 1997.
11. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
12. Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan yang telah diubah dalam Undang – Undang No 15 tahun 2019 Perubahan Atas Undang-Undang Nomor 12 Tahun Tentang Pembentukan Peraturan Perundang-Undangan, 2011.
13. <https://www.hukumonline.com/berita/baca/hol10167/pakar-hukum-tegaskan-perlunya-partisipasi-publik-dalam-pembentukan-undangundang>