

Public Participation in the Law-Making in the Digitalization Era

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Abstract

Technology can play an important role and provide a useful tool for creating informed and active citizens, thereby contributing to democracy from the ground up. The shift from e-governance to e-democracy has become an important example of the capacity of technology to influence public law as a whole. There are at least four methods that can be used to digitally participate in public participation in law-making, namely: Interactive Applications, Legislative Crowdsourcing and Utilizing Big Data. There are at least 2 (two) ways that the public can conventionally take to get involved in forming the law, namely active participation and passive participation. Through active participation, the public takes the initiative to participate in the process of forming legislation products by attending general meetings and public debates, as well as writing open letters in the mass media addressed to the apparatus in charge of discussing the Draft Law. Passive participation means that participation initiatives come from outside the public.

Keywords: *Public Participation; Law-Making; Digitalization Era.*



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A. INTRODUCTION

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*. The existence of the 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.

Public participation in the law-making in the current reform era is felt to increase along with the increasingly open political situation in realizing democratization in Indonesia. This is

according to Ria Casmi Arrsa's research (2007) cited in research ¹, because the 1998 reform movement opened and facilitated political communication between the people and people's representatives in the DPR in conveying their aspirations and opinions democratically. The existence of public participation in the formation of laws does not mean that the public does not trust the representatives of the people, in this case members of the House of Representatives, but that the public wishes that the formation of laws not only satisfies the legislators, but can also be accepted by the wider public. Because, basically, the requirements for a good law to apply require three steps at once, namely philosophical, sociological, and juridical.^{2,3} According to Moh. Mahfud MD (1993), public 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.⁴

In connection with the law-making of this participatory, it contains two meanings, namely process and substance.^{5,6} The process is a mechanism in the law-making that must be carried out transparently so that the public 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 public 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.^{7,8}

Efforts to make a unity between participation, transparency and democratization in the law-making 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 law-making is an important element, because laws that are formed

¹ Jazim Hamidi, "PARADIGMA BARU PEMBENTUKAN DAN ANALISIS PERATURAN DAERAH (STUDI ATAS PERDA PELAYANAN PUBLIK DAN PERDA KETERBUKAAN INFORMASI PUBLIK)," *JURNAL HUKUM IUS QUIA IUSTUM* 18, no. 3 (2011): 336–62, <https://doi.org/10.20885/iustum.vol18.iss3.art3>.

² Nur Ifitah Isnantiana, "Hukum Dan Sistem Hukum Sebagai Pilar Negara," *JURNAL HUKUM EKONOMI SYARIAH* 2, no. 1 (May 21, 2019): 19, <https://doi.org/10.30595/jhes.v2i1.4470>.

³ Taufik H Simatupang, "Disharmoni Peraturan Perundang-Undangan Di Bidang Pengawasan Perwalian Di Indonesia (Lintas Sejarah Dari Hukum Kolonial Ke Hukum Nasional)," *Jurnal Penelitian Hukum De Jure* 20, no. 2 (June 12, 2020): 221, <https://doi.org/10.30641/dejure.2020.V20.221-232>.

⁴ A Saifudin, "Partisipasi Masyarakat Dalam Proses Pembentukan UU Di Era Reformasi," *Ius Quia Iustum Law Journal* 13, no. 1 (n.d.): 1–26, <https://doi.org/10.20885/iustum.vol13.iss1>.

⁵ Rahendro Jati, "PARTISIPASI MASYARAKAT DALAM PROSES PEMBENTUKAN UNDANG-UNDANG YANG RESPONSIF," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 3 (December 31, 2012): 329, <https://doi.org/10.33331/rechtsvinding.v1i3.88>.

⁶ Fahmi Ramadhan Firdaus, "PENCEGAHAN KORUPSI LEGISLASI MELALUI PENGUATAN PARTISIPASI PUBLIK DALAM PROSES PEMBENTUKAN UNDANG-UNDANG," *Jurnal Legislasi Indonesia* 17, no. 3 (September 29, 2020): 282, <https://doi.org/10.54629/jli.v17i3.679>.

⁷ Eric Stenly Holle, Reny Heronia Nendissa, and Junior A N Lumintang, "Pembentukan Peraturan Negeri Yang Partisipatif Dalam Pelaksanaan Pemerintah Negeri Hutumuri Kecamatan Leitimur Selatan Kota Ambon," *AIWADTHU: Jurnal Pengabdian Hukum* 1, no. 2 (September 30, 2021): 106, <https://doi.org/10.47268/aiwadthu.v1i2.672>.

⁸ Bakhtiar Bakhtiar, "KONFIGURASI POLITIK DALAM PEMBENTUKAN HUKUM PERBANKAN SYARI'AH," *Alfiud: Jurnal Sosial Keagamaan* 3, no. 1 (September 9, 2019): 1, <https://doi.org/10.31958/jsk.v3i1.1579>.

in a participatory manner are in line with a democratic rule of law and meet the legal needs of the public.

One of the efforts to strengthen public participation in the process law-making in Indonesia is by utilizing existing technology and information. Utilization of technology and information in conducting public participation in the law-making is a method or method used in today's modern era in addition to the conventional use of public participation in the form of discussions, workshops, discussion group forums, and seminars.

Today, technology can play an important role and provide a useful tool for creating informed and active citizens, thereby contributing to democracy from the ground up. The shift from *e-governance* to e-democracy has become an important example of the capacity of technology to influence public law as a whole. Technology can support three levels of participation: *e-enabling* (a format that allows legal access and perception), *e-engaging* (supporting the discussion of policy issues) and *e-empowering* (law making as an open procedure).⁹

B. METHOD

This paper used a form of normative research.¹⁰ This study examined public participation in the law-making in the digitalization era. The approach used was the statutory approach and conceptual approach. The statutory approach was used to review the laws and regulations related to public participation in the law-making in the digitalization era.¹¹ Meanwhile, the conceptual approach was used to examine the views and doctrines related to public participation in the law-making in the digitalization era. The legal materials used in this study were primary and secondary legal materials. Primary legal materials were laws and decisions. Secondary legal materials included research results and scientific articles related to public participation in the law-making in the digitalization era.

C. RESULTS AND DISCUSSIONS

With regard to the use of technology and information in public participation in the formation of digital laws, there are at least four methods that can be used, namely: Interactive Applications, Legislative Crowdsourcing and Utilizing Big Data.

1. Interactive Apps

Through interactive applications, either laws can be found online, on official websites such as (www.legislation.gov.uk) or unofficial blogs, the use of interactive applications that visualize such data is a new way to utilize technology for the purpose of discovering or downloading law online. As stated on the EP website: "The application describes the usual legislative procedure using graphics with brief explanations. It is also possible to get a longer

⁹ Ann Macintosh, "Characterizing E-Participation in Policy-Making," in *37th Annual Hawaii International Conference on System Sciences, 2004. Proceedings of The (IEEE, 2004)*, 10 pp., <https://doi.org/10.1109/HICSS.2004.1265300>.

¹⁰ Johnny Ibrahim, "Teori Dan Metodologi Penelitian Hukum Normatif," *Malang: Bayumedia Publishing* 57 (2006): 295.

¹¹ Peter Mahmud Marzuki, "Penelitian Hukum, Cet.," *Jakarta: Kencana*, 2008.

and more detailed description by clicking on links and tabs. In addition, the application shows how long each step in the procedure takes, through this application the public can participate actively and can influence what policies are being formed/made by the government”. Of course, this application is very useful in carrying out public participation in the law-making such as during the Covid-19 Pandemic which is still happening today where access to gathering is very limited.

2. Legislative Crowdsourcing

Crowdsourcing or *crowdsourcing* in general is a model that allows a large number of people to contribute to an online activity to solve problems or generate innovative ideas. Nowadays, *crowdsourcing* has become easier because it is supported by information and communication as a result of technological developments. *Crowdsourcing* as online participation where individuals, institutions or companies propose to a group of individuals of various abilities through an *open call* to voluntarily perform a desired task. In its application, the use of *crowdsourcing* is to provide solutions to various tasks such as decision making or data processing which are generally difficult for computers to do but quite easy to do by humans.

If it is related to this discussion, then *crowdsourcing* is very useful to be applied/applied especially in participating in the formation of laws that require many people to be present in it, so that every individual, institution and interest group can communicate during the formation of the law. . In other words, a large group of people can contribute to an action online to provide input, criticism and suggestions for improvement in the drafting of legislation.

3. Leveraging Big Data

Today's technology has influenced various fields and joints of national and state life, including the process of forming laws. The majority of countries in Europe consider technology and information as supporting variables for *good regulation* . These benefits include:¹²

- a. The number of regulations that are managed is very large across fields and institutions, thus requiring technological support to facilitate updating and retrieval of regulatory data. Complex regulations can be implemented with the help of information technology;
- b. Technology is very useful for developing online public consultations through discussion forums and access to information, including information on the process of law-making. (This is very useful, such as during the Covid-19 Pandemic which is still happening today where access to gathering is very limited);
- c. Electronic consultation can be developed by establishing a website portal to support the government and parliament in opening interactive services to support the decision-making process for the formation of laws.

¹² Fatkhurohman Sirajuddin and Legislative Drafting Zulkarnain, “Pelebagaan Metode Parsitipatif Dalam Pembentukan Peraturan Perundang-Undangan,” *Trans Publishing Malang*, 2007.

The use of technology in the process of making law and databases of laws and regulations in Indonesia has been going quite well, especially in the form of website platforms, be it government, Non-Government Organizations (NGOs) and startups.

Regarding the database of laws and regulations in Indonesia, the government has provided a special page under the Ministry of Law and Human Rights with a link (<https://peraturan.go.id/>). In addition, there is a startup company engaged in law, namely Online Law, which also provides a database of laws and regulations that can be accessed at ([https://www. Hukumonline.com/centraldata](https://www.Hukumonline.com/centraldata)). In addition, the Ministry of Law and Human Rights through the National Legal Development Agency also manages the National Legal Documentation and Information Network Center which is a forum for joint utilization of legal documents in an orderly, integrated and sustainable manner, as well as a means of providing complete, accurate legal information services. , easy, and fast.

The National Legal Documentation and Information Network has the aim of ensuring the creation of an integrated and integrated Management of Legal Documentation and Information in various government agencies and other institutions, ensuring the availability of complete and accurate legal documentation and information, and can be accessed quickly and easily, then developing work effective cooperation between the network center and network members as well as among network members in the context of providing legal documentation and information, and improving the quality of national law development and services to the public as a form of good, transparent, effective, efficient and responsible governance.^{13,14}

4. Level Of public Participation In Conventional Law-Making

In research (Aprilia Theresia, 2015) it was stated that Wilcox distinguished the level of community participation into five types, namely: (1) providing information; (2) consultation; (3) joint/cooperative decision making; (4) take joint action and (5) support activities that arise on the initiative of the public.^{15,16} According to Wilcok, the level at which public participation will be carried out depends on what interests are to be achieved.¹⁷ For making strategic policies that affect the lives of many people, of course the public must be fully involved. Meanwhile, in making technical decisions, the provision of information to the public is very adequate.

Participation is closely related to the government's openness to creating space and opportunities for public aspirations. The concept of public participation emphasizes openness. It indicated the impossibility of the public to participate in government activities without

¹³ Taufik H Simatupang, "Analisa Yuridis Peran Kantor Wilayah Kementerian Hukum Dan HAM Dalam Pengelolaan Dan Pelayanan Database Peraturan Perundang-Undangan Di Daerah," *Jurnal Ilmiah Kebijakan Hukum* 12, no. 1 (March 29, 2018): 1, <https://doi.org/10.30641/kebijakan.2018.V12.1-19>.

¹⁴ Ahmad Jazuli, "Urgensi Pembentukan Jabatan Fungsional Dokumentalis Hukum Dalam Rangka Mendukung Jaringan Dokumentasi Dan Informasi Hukum Nasional," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 2 (July 23, 2019): 185, <https://doi.org/10.30641/kebijakan.2019.V13.185-200>.

¹⁵ Ismatullah Ismatullah and Gerry Katon Mahendra, "Partisipasi Masyarakat Dalam Pembangunan Infrastruktur Jalan Di Desa Kaligintung Kecamatan Temon Kabupaten Kulon Progo 2019," *Journal of Social Politics and Governance (JSPG)* 3, no. 1 (June 30, 2021): 1–11, <https://doi.org/10.24076/JSPG.2021v3i1.556>.

¹⁶ MG Cantiani, "Forest Planning and Public Participation: A Possible Methodological Approach," *IForest - Biogeosciences and Forestry* 5, no. 1 (April 30, 2012): 72–82, <https://doi.org/10.3832/ifer0602-009>.

¹⁷ Didik Sukriono, "Penguatan Budaya Hukum Dalam Penyelenggaraan Pelayanan Publik Sebagai Upaya Penegakan Hak Asasi Manusia (HAM) Di Indonesia," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 1, no. 2 (2014): 228–47, <https://doi.org/10.22304/pjih.v1n2.a2>.

transparency, leading to the consideration of openness as a constitutional principle in appropriate authoritative processes.¹⁸

In law-making, the principle of openness must be implemented regarding transparent and free planning, preparation, drafting, and evaluation. This explained that all levels of the public had the widest opportunity to provide input in the law-making process. Therefore, the public had the right to participate in law-making through planning, preparation, drafting, and evaluation.

In the governmental implementation of the reform era, public participation is a component of good governance as stated by Lubis (2021) regarding the 10 principles of good governance.¹⁹ Community participation is not only a component of good governance as stated by Lubis (2021), but also as a component in formulating laws. It was necessary for democratic countries to develop a harmonious relationship between the state and civil society.

This is in line with what was stated by Koenardi Hardjosoemantri that the main ideas underlying the need for public participation can be stated as follows. First, provide information to the government. public participation in particular will be able to increase the treasury of knowledge about a certain aspect that is obtained from the special knowledge of the public itself as well as from experts who are consulted by the public. Second, increasing the public's willingness to accept decisions. A citizen, who has had the opportunity to participate in the decision-making process and is not faced with a *fait accompli*, will tend to show a greater willingness to accept and adapt to the decision. Third, assist legal protection. If a final decision is taken taking into account the objections raised by the public during the decision-making process, then in most cases there will be no need to file a case in court; fourth democratize decision-making. Following this view, Guindling put forward his responses, namely (1) that democracy with a representative system is a form of democracy, not the only one; (2) that the representative system does not cover forms of direct democracy and (3) that it is not citizens, a group of citizens or organizations that actually make decisions, they only participate in the preparatory stages of decision-making.²⁰

The most important parties involved in the implementation of public participation are the public itself. What needs to be built is awareness of participation and participation activities through political education. Those responsible for political education for the people are public leaders and local organizations, either in the form of academic institutions, mass media, non-governmental organizations. The public can channel their aspirations at every stage of the formation of laws and regulations, actively or passively. Active participation in the sense that the public has its own initiative to participate in the formation of laws.

¹⁸ Yusdiyanto Yusdiyanto, "Kontruksi Kerjasama LSM Dan Pemerintah Dalam Pembangunan Daerah Perspektif Undnag-Undang Keormasan," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 6, no. 2 (October 21, 2015), <https://doi.org/10.25041/fiatjustisia.v6no2.325>.

¹⁹ Abdul Kahar Maranjaya, "Good Governance Sebagai Tolak Ukur Untuk Mengukur Kinerja Pemerintahan," *Jurnal Sosial Teknologi* 2, no. 11 (November 16, 2022): 929–41, <https://doi.org/10.36418/jurnalsostech.v2i11.474>.

²⁰ Aditia Syapriallah, "ASPEK HUKUM PEMBERDAYAAN MASYARAKAT DI SEKITAR HUTAN LINDUNG PULAU TARAKAN," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 4, no. 2 (August 31, 2015): 295, <https://doi.org/10.33331/rechtsvinding.v4i2.25>.

There are at least 2 (two) ways that can be taken/done by the public to get involved in forming the law, namely active participation and passive participation.²¹ Through active participation, the public takes the initiative to participate in the process of forming legislation products by attending general meetings and public debates, as well as writing open letters in the mass media addressed to the apparatus in charge of discussing the Draft Law. Passive participation means that participation initiatives come from outside the public. In this case, the legislative or executive institutions can hold public dialogues, hearings, socialization, working visits, seminars, and workshops. However, it should be noted that this last participation must be substantial, not just a formality and procedural.

There are two models/methods, both of which must continue to be carried out by the government and the House of Representatives. This means that the passive participation of the public is carried out by the legislators by facilitating the public in channeling aspirations and opinions regarding the formation of the law. With regard to active participation, this depends on the extent of the impact of the law being drafted on the public. So, this active participation is quite conditional, but when it comes to active participation the legislators must really accommodate substantially.

Law Number 12 of 2011 concerning the Establishment of Legislation which regulates normatively regarding the existence of public participation in the process of forming the law in Article 96 states that the public has the right to provide input orally and/or in writing in the Formation of Legislation and then the input is done through:

- a. public hearings;
- b. work visit;
- c. socialization; and/or
- d. Seminars, workshops, and/or discussions.

Following will explain further about public input in the formation of conventional laws and regulations:

- a. Public Hearing Meeting

Public participation in the form of Public Hearing Meetings at the House of Representatives can be carried out by the public either at a direct request from the House of Representatives or at the wishes of the people themselves (audience). If public participation is based on a request from the House of Representatives, then public participation is conveyed to those requesting a public hearing meeting. However, for public participation in the form of hearings on the direct wishes of the public, the public can choose the equipment for the House of Representatives which is expected to channel the aspirations of the public, such as Commissions, Special Committees, Fractions and so on. This Public Hearing Meeting can be held by the public either orally, in writing or a combination of oral and written.

- b. Socialization

²¹ Riza Multazam Luthfy, "Hubungan Antara Partisipasi Masyarakat, Pembentukan Undang-Undang Dan Judicial Review," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 9, no. 1 (April 18, 2019): 168–93, <https://doi.org/10.15642/ad.2019.9.1.168-193>.

In order to disseminate the product of the new law issued by the legislature, the public can participate in various activities related to the birth of the new law. The forms of these activities can be in the form of counseling, seminars, workshops, discussions, etc. In this way, the existence of a law is not only known by the elite who are directly involved in the process of forming the law, but will quickly become widely known by the public. So, socialization of the law to the wider public.

c. Discussions, Workshops and seminars

Public participation in the form of discussions, workshops, and seminars can be carried out by the public in order to obtain clarity on issues related to the material being discussed in the legislature. Because these discussions, workshops and seminars are carried out when the process of forming the law is entering the legislative stage, the speakers presented are not only from experts, academics, experts and observers, but should also bring in politicians who are directly involved in discussing a draft. Constitution. Thus, discussions, workshops and seminars will get a complete picture of the issues being discussed in the legislature.

If you look more deeply into the provisions above, it can be seen that the participation model that is being implemented is still limited to passive participation and this if it is linked or studied and analyzed based on Wilcok's theory. it can be categorized in the level of participation " *Consultation* " which at this level communication has been going well and there have been negotiations between the public and the government. The public is welcome to provide suggestions or plan proposed activities. However, the government retains the authority to assess the feasibility and existence of the proposal. The model or form that should be applied in the process of forming laws in Indonesia is the third type, namely " *joint/cooperative decision making* ", where the government and the public are equal partners. Power has been given and there have been negotiations between the public and the power holders, both in terms of planning, implementation, as well as monitoring and evaluation to people who have not had access to the decision-making process are given the opportunity to negotiate and conclude agreements.

In order for Wilcok's theory which is at the level of " *cooperative decision-making* " to be realized, the steps that can be taken are placing public participation in Article 96 of Law no. 12 of 2011 concerning the Establishment of Legislations is not only a "right" but an "obligation" that must be accommodated and taken into account in the preparation of a law. The consequences of these changes are expected to be able to form bonds and synergies between the legislators and the public. Because, if it is an obligation, then the legislators are bound by their obligations in order to facilitate or maximally implement the provisions of Article 96 of Law Number 12 of 2011 above. Then, for people who are directly affected by the law formed by the government together with the House of Representatives, the public has an obligation to participate in their opinions and provide input for the formation of a law that is good and effective in its application in the public, so that the interests or desires of the public and the Government can go hand in hand without any

conflicts of interest in hindsight. public involvement in the formation of laws which is manifested by the participation of the public in it is valued and respected as the right of the public in the law making, must also be interpreted as an obligation on the other side, namely the government

D. CONCLUSION

Technology can play an important role and provide a useful tool for creating informed and active citizens, thereby contributing to democracy from the ground up. The shift from *e-governance* to e-democracy has become an important example of the capacity of technology to influence public law as a whole. There are at least four methods that can be used to digitally participate in public participation in law-making, namely: Interactive Applications, Legislative Crowdsourcing and Utilizing Big Data. There are at least 2 (two) ways that the public can conventionally take to get involved in forming the law, namely active participation and passive participation. Through active participation, the public takes the initiative to participate in the process of forming legislation products by attending general meetings and public debates, as well as writing open letters in the mass media addressed to the apparatus in charge of discussing the Draft Law. Passive participation means that participation initiatives come from outside the public. In this case, the legislative or executive institutions can hold public dialogues, hearings, socialization, working visits, seminars, and workshops. However, what needs to be noted is that this last participation must be substantial, not just a formality and procedural.

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