Reconstructing the Legal Framework for Public Participation in Indonesian Lawmaking: Integrating the Rights to Be Heard, Considered, and Explained

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Abstract: Public participation is a basic feature of democratic law making but legal recognition of public participation does not necessarily mean de facto involvement in legislative decision-making processes. This study discusses the legal basis of meaningful public participation in Indonesia after the Constitutional Court Decision No. 91/PUU-XVIII/2020 and the promulgation of Law No. 13 of 2022 on the Amendment to Law No. 12 of 2011 on the Formation of Laws and Regulations. This research is normative legal research by using statutory approach, conceptual approach and case approach. The objective of this research is to analyze the relationship between the legal provisions and substantive demands of public participation. The analysis is based on three dimensions: the right to be heard, the right to have opinions considered and the right to receive an explanation. The results suggest that procedural opportunities alone are not enough without transparent consideration of public submissions and accountable explanations. This study suggests clear procedural rules, systematic documentation, accessible participation channels and more transparency to strengthen the public accountability in Indonesian lawmaking.

Keywords: Meaningful participation, public participation, law making, legal reconstruction.

Introduction

Law-making is not merely a technical process of drafting legal provisions and obtaining parliamentary approval; it is also a constitutional process through which public authority is exercised and democratic legitimacy is established. It is also a constitutional process through which public authority is exercised and democratic legitimacy is established. In a democratic

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constitutional state, legislation also reflects the relationship between public authority and the citizens whose lives may be affected by legal rules. Therefore, not only does the validity of a law depend on the formal adoption of a law, but also on the extent of the opportunities for meaningful public participation in the legislative process (Drinóczi & Cormacain, 2021; Sarson, 2022). It gives citizens the opportunity to raise their concerns, to contribute relevant knowledge and to challenge policy choices before they become legally binding. When people are involved in making laws, laws are more likely to meet the needs of the public and protect democratic accountability.

Public participation has become an increasingly important issue in discussions about the quality of legislation and constitutional democracy in Indonesia. Law making process also contains institutions that have the formal authority to make and pass laws. Citizens and civil society organizations seek opportunities to shape decisions that affect their interests. Tensions can arise when the pace of the legislative agenda exceeds the public's ability to access, review and react to proposed regulations. Citizens don't get to influence the substance of a bill here, although there are formal opportunities for citizens to participate in this process. The crucial issue, therefore, is not only whether public consultation takes place, but whether it is accessible, timely, inclusive and able to inform legislative decisions (Fukuoka & Thalang, 2014; Hall, 2019; Porras-Gómez, 2021).

The problem is compounded when legislation involves broad social, economic and institutional interests. Those directly impacted by a proposed law may possess practical knowledge that may not be fully reflected in government documents or parliamentary deliberations. The Civil society organizations, academics, professional associations and vulnerable communities may highlight legal implications that need further consideration. If these opinions are not taken sufficiently into account, the legislative process risks producing rules which are valid in form but not sufficiently adapted to the circumstances of the people to whom they apply. Meaningful participation must be understood as more than just attending public meetings or submitting written comments. This requires a process by which public inputs can be conveyed, examined and addressed in an open fashion (Dirhamsyah, 2006; Phelps et al., 2017).

The issuance of Constitutional Court Decision No. 91/PUU-XVIII/2020 has a significant development in the Indonesian legal system in which meaningful public participation is essential in the law-making process. The ruling focused on three basic rights – the right to be heard, the right to have opinions considered and the right to be given an explanation about how those opinions are treated (Huda et al., 2021). These are different aspects of public participation, but they are related. If the opinion is not really taken into consideration, then the chance to express an opinion is not enough. The absence of an explanation of the reaction

of the law-making institution makes it difficult to assess consideration. Together these rights provide a framework to determine if public participation has substantive value, rather than just being a procedural box to tick (Garoupa et al., 2021; Passaglia, 2022).

This was responded to in the legislation in Law Number 13 of 2022 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Laws and Regulations (Kisswani & Farah, 2022). The amendment brought together the legislative framework on public participation, including provisions on community participation in the legislative process. The presence of a legal provision does not guaranty that participation will be uniformly applied across legislative institutions and stages. There are also issues about the practical standards that are used to determine adequacy of participation, how public submissions should be recorded and evaluated and what form of accountability should be applied when significant public concerns have not been responded to in a meaningful way. Such questions bring the question of formal legal recognition into the heart of the present study and the question of effective institutional implementation into the heart of the present study.

A major challenge is the potential gap between procedure and real discussion. Consultations can be held, documents can be published, selected stakeholders may be invited. However, a legislative body has still a lot of discretion as to which opinions actually will be put into the final text. Access to information, time, expertise and institutional resources may also vary, impacting the equal participation of different groups. The problem is particularly acute where those affected, or communities have higher barriers to entry into the legislative process than actors with established political or economic connections. Without transparent criteria on how public input is considered and how legislative decisions are justified; consultation may turn into a ritualistic process with no clear impact on the content of legislation.

The question also brings up the broader issue of legal accountability. Meaningful participation is not only a general commitment to openness, but also having procedures that make the handling of public input sufficiently transparent to be assessed. Legislative bodies need a clear framework for recording proposals and for indicating whether they are accepted or rejected and the reasons for important decisions. The legal consequences of the procedural deficiencies should be considered carefully at the same time. In the reconstruction of the legal framework, it is necessary to differentiate between desirable institutional reforms, obligations that can be created within the framework of existing legislation and proposals that require statutory amendment or further constitutional interpretation. This distinction is needed to be able to guaranty that recommendations are legally reasoned and do not present proposed reforms as binding rules.

The earlier discussions of public participation are susceptible to several complementary perspectives, including legal politics, deliberative democracy and theories of citizen participation. Such perspectives can help us understand the importance of public involvement, the extent to which power relations shape opportunities for participation and why consultation may be superficial despite formal procedures. However, the relationship between these perspectives and the detailed legal design of participation needs further exploration. In particular, the three rights that constitute meaningful participation need to be evaluated not only as democratic principles, but also as part of a legal framework that can inform legislative procedures and institutional accountability. The core question of this study is how these rights can be incorporated into a consistent framework without disregarding the legal limitations and institutional arrangements that govern Indonesian law-making.

This study addresses three questions against this background. First, how is the regulation of meaningful public participation in the making of laws in the Indonesian legal system after the enactment of Law No. 13 of 2022 (Sahri et al., 2020). Second, what are the normative and institutional failures that might prevent the rights to be heard, to be considered and to be explained from functioning effectively at all stages of the legislative process. Third, how can the legal framework be rebuilt to promote accountability of legislative institutions and stimulate substantive public deliberation. The questions are analyzed by means of normative legal research focusing on relevant legislation, decisions of the constitutional court and legal concepts related to public participation and legislative accountability. The analysis concerns the legal structure and its implications, not the measurement of public opinion, nor does it make claims of empirical findings which the research design cannot support.

The study seeks to construct a legal framework to link the three rights of meaningful public participation with clearer procedural standards and accountability mechanisms in Indonesian law-making, it contributes by viewing these rights as interconnected: the right to express views, a meaningful process to consider those views, and an accountable account of how they have been taken into consideration (Sudarwanto & Kharisma, 2021). On this basis, proposals are developed for the regulation of public consultations, for the documentation and evaluation of public submissions and for the legal evaluation of deficiencies in legislative participation. The proposed framework is intended to allow for a more transparent and responsive legislative process and to differentiate between normative recommendations and obligations that exist under current law. Ultimately, the study seeks to understand how meaningful public participation can move beyond formal consultation and become a more accountable part of democratic law-making in Indonesia.

Research Method

This research is normative legal research that discusses the regulation of meaningful public participation while making laws in Indonesia after the enactment of Law Number 13 of 2022 concerning the Amendment to Law Number 12 of 2011 concerning the Formation of Laws and Regulations (Patlis, 2005; Perlaviciute & Squintani, 2020). The analysis considers the opportunities for public participation outside the formal consultation, and substantive participation in the legislative process within the current legal framework. The present study is doctrinal and does not try to assess the public participation through surveys or interviews. Instead, the focus is on the relevant legal rules, the principles on which they are based and what these rules mean for democratic law-making (Lai et al., 2021; Nursetiawan & Ardhanariswari, 2022).

This can be done in three ways, the statutory method, the conceptual method and the case method. The statutory approach is embodied in the regulations concerning public participation in the preparation of laws, especially in article 96 of Law No. 12 of 2011 amended by Law No. 13 of 2022, and other relevant provisions (Lee, 2023; Widiatedja et al., 2023). The conceptual approach draws on legal politics, deliberative democracy and theories of public participation to identify the normative criteria for meaningful participation. The case approach discusses the Constitutional Court Decision No. 91/PUU-XVIII/2020 as a significant constitutional reference of understanding meaningful participation in the legislative process (Sanjaya, 2022). These approaches are synthesized to interrogate the nexus between statutory demands, constitutional principles and substantive expectations of public participation (Morgera & Lily, 2022).

Legal materials are divided into primary legal materials and secondary legal materials. The main sources of law are the applicable law and the decision of the Constitutional Court. Secondary legal materials Academic books, peer reviewed journal articles and scholarly publications on legislative processes, democratic governance, public participation and constitutional law. The materials are selected based on their relevance to the research questions and their contribution to the interpretation of the legal framework. These materials are gathered and assembled through documentary research. The analysis distinguishes between binding legal provisions and academic interpretations and reform proposals developed by the author.

The legal materials collected are then subjected to a qualitative analysis in the sense of legal interpretation and normative evaluation. The analysis starts with the establishment of the legal basis and the scope of the opportunity for public participation in the legislative process . It then reviews the relevant provisions in the constitutional and conceptual bases for

meaningful participation. The analysis is structured around three dimensions: the right to be heard, the right to have submissions considered and the right to an explanation. These dimensions are used as evaluation criteria for the purpose of assessing the adequacy of the legal framework in terms of opportunities to express views, the treatment of public submissions and accountability because submissions are treated. The study also distinguishes between procedural compliance and substantive participation, without assuming that a statute is per se invalid because of procedural defects.

The final phase is normative reconstruction. The study recommends strengthening the regulation and implementation of meaningful public participation based on the identified legal and institutional issues. The proposed measures are aimed at establishing clearer procedures for participation, proper documentation of public submissions, increased transparency of their consideration and mechanisms to assess compliance with the applicable requirements. The recommendations are evaluated for their legal coherence, institutional feasibility and consistency with democratic law-making. Figure 1 presents the research process from describing the legal problem to making recommendations for rebuilding the framework for effective public participation in Indonesia.

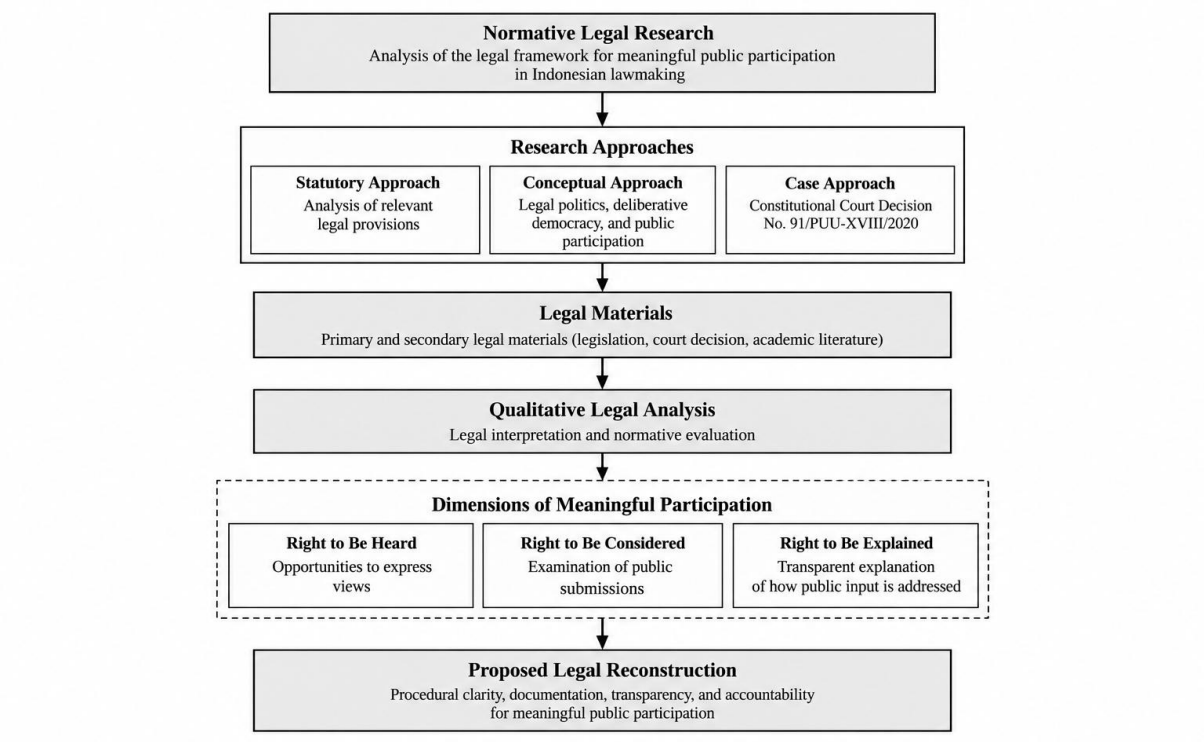


Figure 1 Research Method Framework

The research flow is depicted in Figure 1, starting from the study of the legal framework to the assessment of the meaningful public participation in Indonesian lawmaking. The statutory, conceptual and case approaches form the basis for the interpretation of the relevant legal

materials. The discussion then turns to three aspects of participation: the opportunity to be heard, the treatment of public submissions, and the standard description of the way public input is handled. These dimensions are instrumental to the normative evaluation of the current framework and to the proposed legal reconstruction, especially concerning procedural clarity, transparency and accountability.

Result and Discussion

The Legal Framework for Public Participation After Law No. 13 of 2022

Decision No. 91/PUU-XVIII/2020 of the Constitutional Court is a very good starting point of study for meaningful public participation in the Indonesian legislative process. The decision stressed the link between legislative procedure and public participation, particularly the right to express views, to have them considered and to be explained the way they had been dealt with. Then Law No. 13 of 2022 amended Law No. 12 of 2011 on the Formulation of Laws and Regulations, including on its provisions regarding public participation.

The new law cites article 96 as a legal basis for public participation in the legislative process. The new provision gives a more developed account of public participation than the earlier framework, specifying who may participate and how public input may be submitted. To understand the legal significance of this change, it is helpful to look at the language of the provision and how well the framework links public input to legislative deliberation and accountability. Table 1 Comparison of the public participation framework for selected aspects before and after the enactment of Law No. 13 of 2022 The comparison is related to the eligible participants, degree of participation, recognition of meaningful participation and the accountability arrangements.

Table 1 Comparison of public participation under law no. 12 of 2011 and law no. 13 of 2022

Legal aspect	**Law No. 12 of 2011, before amendment**	**Law No. 13 of 2022, after amendment**
Public participation	Article 96 recognizes the public's right to provide oral and/or written input.	Article 96 provides a more developed framework for public participation, including persons affected by or having an interest in the proposed legislation.
Scope of participation	Public input is provided within the legislative stages specified in the original provision.	The amended provision expands and clarifies opportunities for public involvement in the formation of legislation.
Meaningful participation	The three dimensions are not expressly formulated in the original text of Article 96 in the	The elucidation of Article 96 refers to the rights to be heard, to have opinions considered, and to receive an explanation.

	same manner as in the later explanatory provision.	
Accountability	The provision does not establish a comprehensive, uniform mechanism for documenting how every public submission is addressed.	Questions remain regarding the consistency of procedures for documenting submissions and explaining how public input is treated.

The amendment established the statutory framework for public participation as shown in Table 1. But the existence of a legal opportunity to submit opinions is not in itself evidence that those opinions have been considered during legislative deliberation. Another question relates to the relationship between the operative provisions of Article 96 and its elucidation, which refers to the three dimensions of meaningful participation. This relationship deserves careful legal interpretation. Interpretation of a statute is meant to explain its provisions; it is not to be regarded as a substitute for clear operative rules governing rights and obligations. This positioning of the three dimensions raises the question of the extent to which the principles of meaningful participation are translated into procedures that legislative institutions can apply and the public can assess. So, the question is not just whether participation has been acknowledged in law. The question is whether the legal framework provides sufficient clarity on how to access draft legislation, how submissions are handled and how reasons for decisions are communicated. This is the basis of the assessment of the difference between formal consultation and substantive participation.

The Gap Between Formal Consultation and Substantive Participation

The analysis highlights a distinction between consultation and the quality of participation. A public hearing or consultation meeting may allow citizens to express their views, but the meeting does not show that these views have made a difference in the legislative deliberation. What matters in participation is paying attention to what happens before, during and after a public consultation. The first problem is the availability of information. The public should have adequate access to pertinent draft legislation and supporting documents to understand the proposed rules and comment accordingly. If materials are hard to get or are made available too late, the opportunity to take part is less useful. This is especially the case of those people and groups who do not possess the resources to analyze complicated legal documents in a timely fashion.

The second problem is representation. Those whose interests are affected by the proposed legislation do not always attend formal meetings. Different barriers to participation may be faced by workers, indigenous communities, persons with disabilities, local communities, civil society organizations and other affected groups. If you don't address these barriers, your

process may only receive input from a narrow set of voices. The third issue concerns submissions from the public. The first procedural step is to take opinions and not as the final measure of participation. Contributions may imply legal inconsistencies, implementation problems or consequences for affected groups. These issues have to be considered in the legislative process, even if the recommendations made are not considered in the final decision.

The fourth problem is the lack of a clear and accessible record of the handling of major submissions. Without such a record, participants may find it hard to know whether their arguments have been considered and the reasons for not adopting a proposal. Documentation and reasoned explanations would enhance transparency of the process and provide a basis for evaluating the meaningfulness of participation. These can be explained by distinguishing between procedural compliance and substantive deliberation. Compliance with procedures relates to whether the required opportunities and stages have been provided. Deliberation is substantive when participants have a fair opportunity to contribute and when relevant contributions are transparently processed. The two are related but not the same. The analysis does not conclude that all post-2022 legislative processes have not met these standards. Instead, it points to weaknesses in the legal and institutional framework that could lead to formalistic consultation. The actual performance of legislative processes will require the study.

Three Dimensions of Meaningful Participation

Right to Be Heard

The right to be heard relates to the opportunity for affected members of the public to express their views during the legislative process. This right entails more than the formal commencement of a consultation. Participants need access to relevant information, sufficient time to prepare submissions and opportunities to communicate their views to be able to provide their views. The quality of this right is in part dependent on the timing and availability of consultation. If a draft is available only shortly before a legislative decision, participants may not have the opportunity to study its provisions in detail. A consultation format that relies only on attendance at a particular place may likewise exclude people who face financial, geographical or other barriers. These difficulties can be addressed by different participation mechanisms. Depending on the subject and the potential effects of a bill, written submissions, public hearings, accessible digital platforms and targeted consultations may complement one another. The hope is not that every consultation will follow the same model. But that the model that is chosen gives a real opportunity for the relevant groups to express their views. And thus, the right to be heard becomes the entry point for meaningful participation. But the mere opportunity to express an opinion is not enough if the legislative process provides no reasonable assurance that the opinion will be heeded.

Right to Have Opinions Considered

The right to be heard is about what happens to the public input after it has been submitted. It draws a line between deliberation and just collecting comments to show consultation has been done. Legislative bodies are the decision makers, but that authority ought to be exercised in a process where relevant submissions can be properly considered. Legislature is not bound to accept all the recommendations made to it. The proposed measure may be defeated for constitutional reasons, conflicting other laws, practical problems with implementation or conflicting policy goals. The key difference is between an informed decision not to take up a proposal, and no visible process for considering it. It would be better if there is a submission matrix to keep track of the key issues raised by the public, the legislative provision being referred to and the response given during deliberation. Where appropriate, the matrix could also show whether a proposal was accepted, amended, rejected or addressed in another provision. It would more accurately reflect the connection between legislative decision making and public input. The accountability tool proposed here is such a matrix. It cannot be framed as a generic statutory duty which already applies to all legislative processes unless there is some specific legal provision which requires it to do so. “It helps with traceability and assessment of public submissions.

Right to Receive an Explanation

The right to receive an explanation refers to the way the legislative institutions communicate the treatment of the public submissions. It is closely related to the right to have one's opinions considered, but they are of different use. Consideration is the review of public input; explanation is the transparency of the reasoning behind the subsequent decision. An explanation is particularly important where a submission raises a serious question about constitutional rights, legal consistency, or the possible effect of a proposed rule on groups. Where a recommendation is not adopted an explanation can shed light on the reasons for that decision. It can also indicate whether the issue was addressed by alternative language or elsewhere in the bill.

A written record of responses to major public submissions would lead to increased accountability. This would allow participants to see how the legislative body addressed the main issues raised – without each individual comment having to be individually and lengthily responded to. The level of detail may relate to the complexity of the bill and the importance of the issues involved. The three dimensions are interrelated. The right to be heard gives access to the process, the right to have opinions considered concerns the treatment of contributions received and the right to receive an explanation increases the transparency of the outcome. A weakness in one dimension may cheapen the others in practice. Meaningful participation

should therefore be assessed as a connected process and not as a checklist of separate consultation activities.

Deliberative Weaknesses in the Legislative Process

The above analysis can be classified into three interrelated areas: access to participation, consideration of submissions and accountability for legislative responses. Table 2 shows the analytical relationship between the three dimensions of meaningful participation and the weaknesses detected in the legal framework.

Table 2 Analytical Matrix of Meaningful Participation

Dimension	Normative expectation	Potential procedural weakness	Proposed improvement
Right to be heard	Accessible information and a genuine opportunity to submit views.	Late access to draft legislation, limited consultation channels, or barriers affecting some groups.	Timely publication of materials and accessible participation channels.
Right to be considered	Relevant public submissions receive appropriate examination during deliberation.	Submissions may be collected without a clear record of their treatment.	Documentation of submissions and their consideration through a matrix or equivalent record.
Right to receive an explanation	Important decisions concerning public submissions can be understood through reasoned responses.	The public may lack an accessible explanation of how significant issues were addressed.	Publication of responses or a deliberative accountability statement addressing principal issues.

Table 2 is an analytical synthesis rather than a statistical account of legislative practice. It identifies the relationship between the principles of meaningful participation, potential procedural weaknesses, and possible institutional responses. Claims that a particular bill or legislative institution has displayed these weaknesses should be supported separately by evidence from the relevant legislative records. The matrix also shows that each dimension requires a different response. Improving access to draft legislation will not, on its own, ensure that public submissions are considered. Similarly, documenting submissions will not provide full accountability if the record fails to explain the treatment of important issues. The legal framework must therefore connect the opportunity to participate with procedures for consideration and explanation. This analysis also helps distinguish the present legal position from the proposed reform. The applicable legislation provides a basis for public participation, while a systematic submission matrix and a published statement explaining the treatment of significant public input are proposed here as measures to strengthen implementation. Their adoption would require appropriate legal or institutional arrangements.

Reconstructing the Legal Framework for Meaningful Participation

The results show that reconstruction should be about the relationship between statutory standards, institutional procedures and constitutional accountability. The idea is not to substitute legislative decisionmaking for public approval of each provision. It is to ensure that participation is clear enough, accessible enough and accountable enough to support democratic lawmaking. At the normative level, the three dimensions of meaningful participation should be based on clear operative rules. The framework could cover minimum expectations for the publication of draft legislation, opportunities for affected groups to provide input, documentation of submissions and explanations related to how significant issues were treated. More precise provisions would remove uncertainty about institutional responsibilities but would also allow for consultation methods suited to the different types of legislation.

At the institutional level, legislative bodies may develop a consistent procedure for recording and responding to public input. A record available to the public could identify the major issues raised, the provisions involved, and the basis for accepting, modifying, or rejecting proposals. Such documentation would allow the public to follow the development of a bill and would provide a basis for a review of the quality of participation once the legislative process had been completed.

This could be facilitated by digital platforms that allow access to draft legislation and the possibility of submitting comments by participants on provisions. But digital participation must not be seen as a silver bullet. Alternative channels remain important for those who experience barriers with connectivity, accessibility, language or online literacy. Electronic devices should be used for two-way communication, not just for document publication. Another recommendation is that there should be a deliberative impact assessment before a bill is finalized. Such an assessment might consider whether the relevant groups had an opportunity to participate, whether submissions of significance had been recorded and whether the major concerns raised had been met with a reasoned response. It would be a procedural evaluation tool, not a guaranty that all public recommendations must be accepted. Constitutional accountability needs special attention. Decision No. 91/PUU-XVIII/2020 of the Constitutional Court is an important reference in understanding meaningful participation in the making of Indonesian law. However, the legal consequences of a procedural deficiency shall be determined in accordance with the applicable constitutional doctrine and the circumstances of the case. Accordingly, this study suggests more rigorous standards for identifying participation deficiencies but does not assume that the absence of an explanation will, in and of itself, invalidate a statute.

The reconstruction proposed here has three interlocking objectives: clarifying legal obligations; increasing transparency in the institutional handling of public submissions; and providing a clearer basis for assessing compliance with participation requirements. They would preserve the legislature's prerogative to make decisions while increasing accountability to the public whose interests are affected by legislation. The more important point is that the right to comment alone does not guaranty meaningful participation. Whether it is useful depends on whether the public has access to the process, whether relevant submissions are considered and whether important decisions can be explained. The more these ties are strengthened, the more Indonesian lawmaking will shift from a largely procedural understanding of consultation to a more transparent and deliberative one.

Conclusions

To summarize, the legal framework of public participation in Indonesian law-making has been developed and meaningful participation is acknowledged in Constitutional Court Decision No. 91/PUU-XVIII/2020 and the further amendments of Law No. 12 of 2011 by Law No. 13 of 2022. But legal bases for participation, while necessary, are not sufficient to ensure that public involvement is meaningful. The success of participation also depends on opportunities to provide input, the consideration of public submissions and the communication of the response to such submissions in the legislative process. The analysis identifies three interlinked dimensions of meaningful participation: the right to be heard, the right to have your opinion count and the right to an explanation. These dimensions are to be understood as inter-related procedural requirements, and not as separate formalities. It is not enough to allow for the submission of opinions if the relevant input is not demonstrably considered. When the reasons for legislative decisions are not adequately communicated, it is difficult to find consideration. Substantial involvement therefore requires procedures that ensure access to information, inclusive participation, traceable consideration of submissions and clear explanations of the way significant public concerns are considered. Therefore, this study proposes a reform of the normative framework, with more explicit procedural guidelines, systematic registration of public comments, accessible participation channels and more lucid explanations of legislative choices. The point of these moves is to put people on the hook without requiring legislators to take every idea from the public or to believe that any procedural defect automatically invalidates a statute. The main aim is to enhance the link between public participation and the outcomes of legislators. More empirical research is needed to investigate how the proposed standards function in real legislative processes and whether they enhance the quality and accountability of lawmaking in Indonesia.

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