

## Meaningful Participation in the Formation of Regional Legal Products: An Ideal Model of Local Regulation In the Implementation of Regional Autonomy

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### *Abstract*

*Meaningful* participation in lawmaking can be understood as important input or suggestions to ensure the validity and relevance of legal products. The idea of meaningful participation emphasizes the importance of the community's role in the law-making process, especially in the formation of ideal local regulations (Perda) to support the implementation of regional autonomy. This research aims to examine the application and implications of meaningful participation in the formation of ideal local regulations, using a juridical-normative approach through three approaches: 1) statutory approach, by examining relevant regulations; 2) conceptual approach, by examining the values contained in the underlying legal concepts. This research uses primary, secondary, and tertiary legal materials to produce an ideal local regulation model in the implementation of regional autonomy. The results show that meaningful community participation is a crucial element in creating local policies that are inclusive, transparent, and responsive to community needs. The process of local regulation formation must substantially involve the community, expand public participation mechanisms, and increase transparency and the role of the legislature. Thus, meaningful participation will strengthen the legal and social legitimacy of regulations, and support the creation of democratic and accountable regional autonomy. The formation of ideal local regulations not only ensures the achievement of effective and transparent governance, but also strengthens public trust in local governments. Public participation is not just a procedure, but must be understood as the core of democracy that emphasizes the right of the people to be heard, considered, and explained for the decisions taken.

## I. Introduction

Indonesia has explicitly adopted the conception of the rule of law into its constitutional system (Ridwan, 2020). We can find this in the Indonesian constitution in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945), which reads: "The State of Indonesia is a state of law." Thus, the conception of the rule of law has been agreed upon by the founders of this country to be a guide in the administration of state life, especially for government administrators in planning, implementing, and evaluating the actions and policies they issue. The conception of the rule of law was also chosen on the basis of confidence to be able to ensure the achievement of the objectives of the formation of the Indonesian state that was aspired to. As a consequence of the concept of the rule of law, every government action must be based on the applicable laws and regulations.

The formation of laws and regulations must pay attention to and prioritize the principle of *equality before the law* in accordance with the principle of *equality before the law*, active and participatory (Herawati dan Suswanto, 2022). The fundamental problem is that community participation is often only a formality that has the potential to eliminate the essence and purpose of participation itself. As a result, many legal products are not accepted by the community, which can lead to conflict. Therefore, participation, transparency and democracy in the formation of legislation are inseparable from the principles of a democratic state (Riskiyono, 2015).

Public participation is a condition and representation for the realization of democratic governance. In a government that does not involve participation and relies solely on mobilization, the achievement of democracy in the government system becomes impossible. Therefore, good governance needs to improve information flow, accountability, provide protection to the public, and give voice to those most affected by public policies. As one of the principles of good governance and a manifestation of popular sovereignty, meaningful participation in public policy-making must be guaranteed by the constitution or laws and regulations. This guarantee is needed to show that the public has the opportunity to be involved in the process of implementing and monitoring public policies (Dondokambey, 2023). One of the important principles in the formation of laws and regulations is that their implementation must be based on the principle of openness from the drafting to the enactment of the law (Arifiani, *et al.*, 2013).

Legal principles in the formation of legal regulations are values that become the basis for integrating norms or regulatory content into the expected form and structure of legal provisions, using appropriate methods and following established procedures (Rokilah dan Sulasno, 2021). In addition, the concept of the formation of laws and regulations must also be in accordance with the principles that have been established and stipulated by law (Herawati dan Suwanto, 2022). Therefore, it is important to ensure that the Laws and Regulations that are formed meet the standards of ideal Laws and Regulations and are able to accommodate the aspirations of the community. The establishment of Laws and Regulations is also a means of legitimizing the government in running its administration (Sopiani dan Mubaraq, 2020).

In essence, community participation (*meaningful participation*) can be understood as input or suggestions for the formation of laws. The doctrine of *meaningful participation* requires lawmakers to consider and respond to input or suggestions proposed by the public as a constitutional right of citizens mandated in the 1945 Constitution Article 27 paragraph (1) and Article 28C paragraph (2). The idea of *meaningful participation* is present to emphasize that in the process of forming legal regulations, public participation is the main thing and is the validity of legal products. Thus, public participation in the formation of laws needs to be done in order to create real public participation and involvement. In the doctrine of *meaningful participation*, there are three mandatory prerequisites, including the *right to be heard*, the *right to be considered* and the *right* to get an explanation or answer to the opinion given (Elviandri dan Safitri, 2024). Thus, openness in decision-making is very important because the government acts on behalf of the entire community and the community has the right to know what is happening and what policies are regulated in the law. Not only do citizens have the right to know, they also have the right to participate in decision-making, from the drafting to the enactment of the law (Arfiani et al., 2023). Through the formation of planned, aspirational, and quality regional legal products, it can create a hope for substantive improvements in various fields of community life (Dayanto, 2019). The legal policy of the central government in viewing regional government affairs after the reformation, in fact, must continue to be adjusted and refined so that it can more optimally accommodate the needs of the people in the regions (Indra, 2022).

The urgency of this research lies in the importance of involving the community meaningfully in the process of forming local regulations (Perda). This model is expected to be able to answer the challenges of the increasingly complex dynamics of regional autonomy, so that the resulting local regulations are more relevant, responsive, and can strengthen the principles of regional autonomy. Thus, the formation of regional legal products will be more in line with the interests of the community, and strengthen the joints of state life through the implementation of more democratic and inclusive regional autonomy.

## **2. Research Method**

This research is based on normative juridical research methods, which include positive legal inventory research, research on legal principles and legal research *in concreto*, legal systematic research, legal history research and legal comparisons. Secondary data in this normative legal research is in the form of primary legal materials, secondary legal materials and tertiary legal materials (Soekanto, 2006). The approach used in solving this research problem uses a Juridical-Normative approach with two approaches used; 1) *Statutory approach*, which is carried out by reviewing laws and regulations related to the discussion of this research. 2) *Conceptual approach* from the aspect of legal concepts behind it, or even can be seen from the values contained in the norming (Marzuki, 2008). By basing such a problem-solving approach, in the final stage it is expected that an Ideal Model of Regional Regulation in the Implementation of Regional Autonomy will be found.

## **3. Results and Discussion**

### **1. Meaningful Participation in Regional Formation**

Local regulations are often seen as a representation of political will manifested in the form of local policy products. In the formation process, the regional head has a key role. The commitment of the regional head to the substance of the regulations to be made greatly influences the smoothness of the legislative process. However, in practice, community participation in the formation of local regulations is often only a formality to fulfill administrative requirements.

The phenomenon of "pseudo-participation" often occurs in this process. The people involved are not those directly affected by the formulated policy, but only general representatives chosen to fulfill procedural obligations. As a result, people who are directly affected often do not know the substance of the local regulations that have been determined, resulting in rejection or

revocation of these regulations. This gives the impression that regional policies are used as a manipulation tool that does not really favor the public interest (Patra, 2019).

The spirit of regional autonomy, which should be the foundation of local democracy, is often distorted when local regulations accommodate certain political interests rather than the needs of the wider community. Lack of transparency and low public understanding of the importance of involvement in the legislative process are the main causes of low levels of community participation (Muhiddin, 2013).

According to Lothar Gundling, public participation in policy development has several very important reasons. *First*, community participation provides valuable information to the government, which can help ensure that policies are based on a broader understanding of the needs and conditions of the community. *Secondly*, by involving the community in the decision-making process, the level of willingness of the community to accept the decisions made is higher, because they feel involved in the process. *Third*, community participation can also help in legal protection, because by involving various parties, the resulting policies tend to be more legally valid and can reduce the potential for rejection or legal challenges in the future. *Fourth*, public participation plays a role in democratizing decision-making, making it more inclusive and ensuring that people's voices are heard, which in turn strengthens democratic principles in governance. Thus, public participation not only improves the quality of policies, but also supports the process of democratization and social justice in governance (Paputungan dan Bakhri, 2023).

The process of forming laws and regulations in Indonesia, which is carried out by the government and legislative bodies, has a direct impact on the interests of the community. However, there are various challenges, such as limited public participation, low absorption of public aspirations, and lack of accommodation of public interests in the legislative process. An inclusive and egalitarian communication process allows social integration to occur through consensus based on collective rationality (Candra dan Irawan, 2022). Therefore, it is important to ensure that every legislation not only meets the standards of legality and ideality, but also reflects the needs and aspirations of the wider community. In addition, laws and regulations also serve to legitimize the government in exercising its power and policies (Sopian dan Mubaraq, 2020). This can strengthen the function of the rule of law as a protector of citizens' rights and freedoms, while supporting the creation of democratic and transparent governance (Liza dan Sri, 2015).

The existing legal framework has actually provided space for *meaningful participation*. Article 166 paragraph (1) of the Minister of Home Affairs Regulation Number 120/2018 states

that the public has the right to provide input, both orally and in writing, in the formation of regional regulations, regional head regulations, and DPRD regulations. In addition, Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation, explains the structuring and improvements in this Law, apart from being a follow-up to the Constitutional Court Decision Number 91/PUUXVIII/2020, it has also improved several aspects related to the formation of laws and regulations, including strengthening community involvement (Wati *et al.*, 2023).

Prior to the issuance of Constitutional Court Decision Number 91/PUU-XVIII/2020, the application of public participation in the decision-making process in Indonesia was still very limited and not optimally implemented. Nevertheless, several steps have been taken to increase public participation, especially in the process of forming policies and legislation. One of the steps taken is the organization of public consultations by various government and non-government institutions. This public consultation aims to obtain input from the community regarding policies or programs that will be implemented. In addition, public participation is also accommodated in the legislative process, where several laws provide opportunities for the public to contribute to the formulation of legislation. Some members of Parliament are also active in conducting field visits and dialoguing with the public to explore issues relevant to their lives. In addition, efforts to improve information disclosure are also made by the government to ensure that the public has easier and more open access to information related to policies and programs that are being implemented.

However, despite these measures, there are still major challenges in increasing community participation. Several obstacles such as lack of access to information, technical limitations in implementation, and low public awareness to actively participate are still often encountered. With the issuance of Constitutional Court Decision No. 91/PUU-XVIII/2020, this provides new hope that the various shortcomings that exist in the implementation of public participation can be better addressed. The decision emphasizes the importance of the right to public participation in the process of drafting legislation, which in turn can improve the quality of democracy and public involvement in decision-making.

In implementing more meaningful community participation, there are several steps that need to be taken.

*First*, it is important to increase transparency and accountability in the law-making process. One way is to provide wider access to the public to access information related to lawmaking, such

as draft law documents, meeting agendas, and the results of decisions taken. In addition, the public also needs to be given the opportunity to provide input and opinions on the draft laws being discussed, so that their voices are heard in the legislative process.

*Second*, there needs to be encouragement for members of the DPR, DPD, and DPRD to actively participate in lawmaking. For this reason, the role of the leaders of the Legislative Body and Working Committee must be regulated in such a way as not to hinder the participation of other members. In addition, training and quality improvement for legislative members in drafting laws is needed.

*Third*, public participation in the law-making process needs to be expanded by providing more opportunities for them to express their input and opinions. This can be done by building mechanisms that make it easier for the public to participate, such as through social media, online forums, or direct meetings. With these steps, it is hoped that public participation in lawmaking will be stronger, more meaningful, and have a positive impact on the democratic process in Indonesia (Pakpahan *et al.*, 2023).

This effort is expected to create laws and regulations that are more inclusive, effective, and responsive to community needs and support good governance through strengthening *meaningful participation*, by fulfilling three main requirements: *The right to be heard. The right to be considered. The right to be explained.* Strengthening meaningful community participation must be done in an orderly and responsible manner. Local governments need to involve community groups that are directly affected by the regulations formed, not just fulfilling administrative requirements. This process must be carried out transparently, by providing space for the community to truly understand and voice their needs.

Thus, regional regulations are not only legally valid but also have social legitimacy, and are able to meet the needs of the wider community. This effort will support the creation of truly democratic and accountable regional autonomy.

## **2. Implications of *Meaningful Participation* in the Formation of Ideal Local Regulations in the Implementation of Regional Autonomy**

Local Regulation (Perda) is one of the important legal instruments in the implementation of regional autonomy. Local regulations function to regulate the implementation of government affairs that fall under the authority of the region according to the needs and characteristics of the region. However, in practice, local regulations often face various problems and complex issues,

including in terms of their annulment. Based on data from the Ministry of Home Affairs, by the end of 2016 there were more than 3,000 Local Regulations (Perda) that had been canceled, while thousands more were recommended to be evaluated or canceled. The most frequently canceled local regulations are generally related to local taxes and levies. Prior to the enactment of Law No. 32/2004 to Law No. 23/2014 on Local Government, around 8,000 local regulations on taxes and levies had been issued, with more than 3,000 of them indicating problems (Barlian, 2016).

The annulment of these local regulations is mostly due to inconsistency with higher laws and regulations. These local regulations are often considered to impose high economic costs and hamper the investment climate. In addition, many of these local regulations that regulate local levies are considered burdensome to communities and businesses, thus contradicting the principles of economic efficiency and social justice. The reasons for the annulment of local regulations can generally be grouped into three main categories. *First*, technical juridical reasons, such as errors in the legal basis used to form the local regulation. *Second*, substantial reasons, where the content or material of the local regulation contradicts higher laws and regulations. *Third*, principled/basic reasons, such as where the local regulation contains discriminatory provisions, violates human rights, or is not in line with national objectives. *Fourth*, the lack of a structured relationship and mechanism in the implementation of duties and authorities between the Local Government and the DPRD is one of the main obstacles in the process of forming Local Regulations (Perda). In practice, Draft Local Regulations (Raperda) that have gone through joint discussions and been approved by the Local Government and DPRD often still face potential legal problems. Before a draft local regulation is discussed, consultation with the relevant authorities should be conducted thoroughly to ensure that the draft does not conflict with higher laws and regulations (Partiwi *et al.*, 2023). *Fifth*, Local Regulations (Perda) that conflict with the public interest or higher laws and regulations are a threat to legal harmony and good governance.

The annulment of local regulations through the Decree of the Minister of Home Affairs (Kepmendagri) does not provide an opportunity for local governments to file a legal challenge to the Supreme Court (MA). The standard of review used by the government is different from that applied by the Supreme Court, especially with the inclusion of "public interest" as a normative benchmark. This raises new legal issues.

On the other hand, the regulation of Perda review by the Supreme Court also still faces various problems, including inconsistencies in normative standards. There is a contradiction between Law Number 5 Year 2004 in conjunction with Article 31A paragraph (2) of Law Number

3 Year 2009 with Perma Number 1 Year 2004 and Perma Number 1 Year 2011. Perma No. 1/2011, as a *lex specialist*, ignores formal requirements as part of the standard of review. In fact, both laws explicitly require that local regulation testing must pay attention to both formal and material aspects. This inconsistency creates legal confusion in the judicial review process of local regulations.

The process of canceling local regulations should be carried out through three main legal instruments, namely Presidential Regulations, Minister of Home Affairs Regulations, and Governor Regulations, according to their respective levels. These instruments are designed to ensure there is a structured mechanism in addressing local regulations that contradict higher legal norms or potentially harm the public interest. However, in practice or *de facto*, the cancellation of local regulations has generally been done through the Decree of the Minister of Home Affairs, which has become the main tool in managing regulatory disharmony at the regional level.

The annulment of these local regulations is not only about revoking problematic policies, but also a strategic step to create harmony between local and national regulations, while ensuring that the interests of the community are protected from the negative impact of inappropriate regulations. This step reflects the importance of coordination and supervision in the formation of regulations so that every regional policy continues to support inclusive and law-based development (Bunga, 2020).

In order for local regulations in the future to no longer cause polemics and problems in formal and substantial legality, it is necessary to form ideal local regulations in accordance with the interests of the community and can be implemented based on the principles of regional autonomy and the content material of local regulations should not conflict with the public interest and higher legislation and prioritize meaningful community participation.

Community participation in the formation of local regulations (Perda) is often considered part of the democratic process, but in practice, it is often limited to procedural formalities. The process should go beyond fulfilling administrative obligations, with communities genuinely involved in policy-making that affects their lives. The phenomenon of pseudo-participation occurs when those involved are not those directly affected, but only general representatives who do not represent the interests of the wider community. As a result, affected communities often do not understand the substance of the resulting regulations, which can lead to rejection of the policy.

To realize *meaningful participation*, several steps need to be taken. *First*, increase transparency and accountability in the legislative process by facilitating public access to

information on draft laws and opening space for input and opinions. *Second*, encourage the active participation of members of the DPR, DPD, and DPRD by regulating the role of legislative leaders so as not to hinder the involvement of other members. *Third*, expand opportunities for public participation through community-friendly mechanisms, such as social media, online forums, or direct discussions.

*Meaningful* participation has very important implications in the implementation of regional autonomy in Indonesia. In the context of the formation of local regulations (Perda), substantial community participation not only fulfills procedural obligations, but also ensures that the resulting policies reflect the needs and aspirations of the community. By actively involving the community in every stage of local regulation drafting, from formulation to evaluation, the legislative process becomes more inclusive, transparent and democratic.

The main implication of meaningful participation is that it improves the quality of local policies. Communities that are directly affected have the opportunity to provide relevant input, so that the resulting local regulations are more targeted and appropriate to local conditions. In addition, community participation also strengthens the legal legitimacy of the local regulation, because the policy taken is considered legitimate and accepted by the public. In the implementation of regional autonomy, meaningful participation strengthens the principle of decentralization, where local governments are given the authority to make policies that are more responsive to local needs. This supports the creation of more transparent and accountable governance, and increases public trust in local governments. As a result, public participation in the formation of ideal local regulations plays an important role in realizing more effective and democratic regional autonomy.

The formation of ideal regional regulations in the implementation of regional autonomy by implementing *meaningful participation* can be carried out with stages stages and steps based on the implementation of meaningful participation:

1. Stage One: Planning

The planning stage, which requires an in-depth study of whether the resolution of a regional problem should be regulated by regional regulation, is a stage that requires special attention from the formulators of regional regulations.

2. Phase Two: Drafting

Prepare or draft local bills accompanied by academic papers

3. Stage Three: Discussion

Discussing the draft Raperda and Academic Paper through public hearings; working visits; seminars, workshops, discussions; and/or; other public consultation activities with the principle of *meaningful participation*:

- a. The public has the right to provide input orally and / or in writing at every stage of Raperda Formation
- b. Provision of community input
- c. conducted online and/or offline.
- d. To facilitate the public in providing input, each Academic Paper and/or Draft Raperda can be easily accessed by the public.
- e. To fulfill the rights of the community on the Draft Regional Regulation through public consultation activities:
  - 1) public hearing;
  - 2) working visit;
  - 3) seminars, workshops, discussions; and/or
  - 4) other public consultation activities.
- f. The results of public consultation activities are taken into consideration in the planning, drafting, and discussion of the Raperda.
- g. Raperda Formation can explain to the public about the results of the discussion of public input

#### 4. Fourth Stage: Determination

Draft Regional Regulations that have been given a registration number are submitted by the Minister of Home Affairs to the Governor and for Regency / City Regional Regulations submitted by the Governor to the Regent / Mayor for stipulation and promulgation. The signing of the draft local regulation is carried out by the regional head.

#### 5. Fifth Stage: Promulgation

Regional regulations that have been stipulated are promulgated in the regional gazette. Promulgation is a formal notification of a regional regulation, so that it has binding force on the community.

#### 6. Stage Six: Dissemination

Dissemination of local regulations is carried out by the local government and DPRD. The dissemination of local regulations that have been formed is carried out so that they can be known and binding in the community.

#### 4. Conclusion

Meaningful community participation is an important element in the formation of local regulations (Perda) to ensure inclusive, transparent and responsive policies to public needs. This participation goes beyond administrative formalities by involving communities, especially those directly affected, in every stage of the legislative process. Measures such as increased transparency, access to information, and effective public participation mechanisms are essential to encourage active engagement. The implications of meaningful participation include improving the quality of local policies that are more in line with local needs, strengthening legal and social legitimacy, and strengthening the principle of decentralization in regional autonomy. The ideal stage in the formation of local regulations involves careful planning, transparent drafting, inclusive discussion, and effective dissemination so that policies are not only legally valid, but also have social legitimacy.

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