



## **Community Participation in Making Public Policy According to the Perspective of Constitutional Law**

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### **Abstract**

In the legal process, it is necessary to have community participation in making public policies, it is not enough just for the government's authority. This is because the community can rationalize public policies made because they are the affected parties. Therefore this study aims to analyze community participation in public policy making from the perspective of constitutional law. Based on relevant laws and regulations, such as Law Number 25 of 2009 concerning Public Services, Law Number 12 of 2011 regarding the development of laws and regulations, and Law Number 23 of 2014 relating Regional Government, this study adopts a normative legal approach. The findings of the study indicate that public involvement in determining public policy is crucial for ensuring that decisions are made in line with community needs and desires. However, there are still many obstacles in implementing public participation in public policy making in Indonesia, such as the lack of public understanding of the policy making process, and the lack of space for participation provided by the government. In the perspective of constitutional law, public participation in making public policies is regulated in various laws and regulations, but efforts are still needed to strengthen the implementation of these rules.

### **KEYWORDS**

Community Participation, Public Policy, Constitutional Law.

### **Introduction**

Law is an instrument of community regulation. At the beginning of its development, law under a feudal culture with an Absolute Monarchy government system became a tool for the authorities to use to destroy anyone who was deemed to threaten the sustainability of the status quo (Seta, 2020). In addition, the organs

of government under the Absolute Monarchy government system do not recognize checks and balances so that the power to form and interpret laws rests with the power of the Monarchy, namely the King/Queen. This was the reaction for the emergence of the ideals of a rule of law state in the XVII Century (Andriyan, 2016).

It is with the restraint and arbitrariness of absolute power that the ideals of a rule of law state are born with the aim of limiting state power as an entity that tends to be able to use its power arbitrarily in the absence of a control mechanism (Seta, 2020). Constitutionalism emerges as an understanding of limiting power by using a constitution, whether written or unwritten, in which the constitution guarantees political rights and organizes the division of state power in such a way that executive power is balanced by parliamentary and judicial powers (Hakim, 2018) .

In a democratic rule of law, governance is always carried out through public policies. The process of public policy in a constitutional democracy implies the involvement of elements of the government, the business world and the wider community, which is based on and encouraged by noble human and civilizational values , and is carried out by heeding the values and principles of good governance. (Mustopadidjaya, 2003).

Politics and public policy are intricate and ever-changing systems. The policy process is where our observations will have the greatest impact due to its complexity and dynamics. (Sadhana, 2011). Policy formation, policy implementation, and policy performance evaluation are the three primary components of the policy process from a managerial viewpoint. (Mustopadidjaja, 2003). First and foremost, effective government performance depends on well-formulated policies. High performance cannot be achieved without strong policy implementation systems and processes, and good policy formulation is essential to achieving both of these goals. (Rahim, 2013).

The birth of a policy product does not automatically achieve its idealization even though it has gone through all the stages as stated in the rational-comprehensive concept. The essence of public policy actually lies in the relationship between the state and society (Widodo, 2021). A rigid and unresponsive public policy paradigm is a reflection of a rigid and unresponsive relationship between the state and society. Conversely, a flexible and responsive public policy paradigm will be the output of a flexible and responsive relationship between the state and society (Mariana, 2015).

In order to build a public policy paradigm that is oriented towards the aspirations and needs of the people, it is necessary to develop an alternative paradigm that no longer places public policy in the realm of the superstructure or the rulers, but as a process of balanced interaction between the superstructure and the political infrastructure. This balanced interaction process requires the existence of open public spaces for community participation in policy making (Iskandar, 2017).

Such a model for channeling aspirations is a characteristic of representative

democracy. Problems then arise when these representative institutions are more oriented to their interests than to the public interests they represent (Rajab, 2004). The oligarchic system that still dominates power relations in political institutions is also one of the causes of distortion of aspirations because it is the elite that determines which aspirations will be fought for, not based on an objective priority scale. Instead of fighting for public aspirations, what happened was distortion of aspirations, so that inputs sourced from the public were different from the policies that came out of the conversion process (Fachrudin, 2022).

These constraints then encourage public policy-making by involving the public in the policy-making process. Community participation in public policy making is considered an effective way to strengthen policy legitimacy and ensure that policies are made relevant to community needs (Andhika, 2019). Community participation in making public policies in Indonesia is regulated in various laws and regulations, such as Law Number 25 of 2009 concerning Public Services and Law Number 23 of 2014 concerning Regional Government. However, there are still many obstacles in the implementation of public participation in public policy making in Indonesia, such as the lack of access to information needed by the community, the lack of public understanding of the policy-making process, and the lack of space for participation provided by the government (Farihah & Wahyuni, 2015).

Therefore, research on public participation in public policy making from the perspective of constitutional law is very relevant to do. This study aims to analyze public participation in public policy-making according to the perspective of constitutional law. Thus, this research is expected to provide input and recommendations to improve the implementation of public participation in public policy-making in Indonesia.

### **Method Top Of Form**

Based on the problems above, this research is a normative juridical research by examining literature or secondary data and is intended to explain various laws and regulations (Diantha, 2016) related to community participation in public policy making according to the perception of constitutional law. While the approach used is a socio-legal approach so that it can have a broader perspective by looking at community participation in relation to public policy making.

### **Results And Discussion**

#### **Society participation**

The community has the right to be involved in all phases of development, from planning to execution to monitoring to environmental protection, and this right must be respected. In this case, the community is not only a target of sustainable development but also a direct beneficiary of the advantages and amenities provided. (Kusmanto, 2014). In addition to the foregoing, Mulyadi

(2009) defines community involvement as "participation in the decision-making process and running a programme in which the community also benefits from the programme's policies." Furthermore, the community must be involved in conducting an evaluation in order to enhance community welfare.

Mulyadi (2009) states that in community participation there are several stages of participation that are more real in the community, including:

- a. Participation in decision making. Is community involvement in the formation of decisions through development plans. Such as participation in attending village development meetings, giving opinions in village meeting activities, providing information at village development meetings, and also participating in the decision-making process.
- b. Participation in implementation. It is community involvement in village development implementation activities not only at the planning stage. At this stage of implementation, the community can make more concrete contributions such as contributions with labor, contributions with money, contributions with materials.
- c. Participation in benefits. It is a manifestation of the community's role in participating in their village. Can their participation provide more positive benefits for the development of the government and village communities? The form of community participation can be in the form of participating in activities in maintaining the cleanliness of the house and the environment around the residence, participating in religious activities, participating in activities to maintain environmental security voluntarily, and also participating in activities held by the village such as business groups in the economic sector,
- d. Participation in participation in conducting evaluations. It is community involvement in monitoring and providing an assessment of the implementation of results from the planning stage to the implementation stage. Community participation is in the form of criticizing the development process, providing arguments and suggestions for the development process, and most importantly providing an assessment which is then submitted to the village government as material for evaluation.

Mubyanto in ndraha (1990) that in a community participation of course there are various forms of community participation in it. Among them namely.

- a. Participation is carried out by direct contact between individuals as an initial form of social activity in the community.
- b. Participation is able to absorb and receive information, either accept or reject the information received.
- c. Participation aims to take part in a decision-making planning and implementation of development.
- d. Participation moves by using the concept of implementation of development.

Basrowi in Dwiningrum (2011) states that the form of community participation is divided into two parts, namely physical participation and also non-

physical participation. Which physical participation is the effort of community groups or parents in the form of education such as organizing and establishing schools. While non-physical participation is community involvement in determining educational goals in order to acquire knowledge through educational institutions.

According to Huraerah (2011) there are several forms of community participation, namely: participation in the form of thoughts, in the form of energy, in the form of property or objects, in the form of expertise or skills, in the form of social. Based on the above opinion, it can be concluded that community participation is divided into several forms including : participation in the form of thoughts, participation in the form of energy, participation in the form of thoughts and energy, participation in the form of expertise, participation in the form of goods and participation in the form of money.

### **1. The Importance of Public Participation in Making Public Policy**

In addition to being a right of the community, having a voice in shaping public policy should be seen as a duty of the government. When citizens are granted rights in accordance with their participation in shaping public policy, the state is obligated to help ensure those rights are respected. Rights of the community, in this example, community participation in the creation of public policies, are meaningless without official assistance and assurances to carry out commitments for the execution and protection of community rights. (Ramdhani & Ramdhani, 2017).

Information disclosure from the government that will affect the interests of society at large is especially crucial in the modern day. According to Moh. Mahfud. MD, the Pancasila Legal System constructs public policies in which nothing is done by "chasing around" or covertly. If there is something the public sees as wrong with the current procedure, they will be made aware of it and have an opportunity to provide feedback.

When public policies are developed and enforced in an open or socially controlled manner, the flaws and shortcomings of the official institutional mechanism for ensuring justice can be compensated for by the direct participation of the community. Because the people's representation system can never serve as the lone conduit for the people's goals, it is crucial that there be public participation in public policy making. Because mere physical presence does not always reflect the representation of ideas or ambitions, the principle of representation in ideas is separated from the principle of representation in presence. (Asshiddiqie, 2011)

General elections for the President and Vice President and for seats in the Representative Body are not seen as the sole means by which democracy is implemented. One of them is ensuring that everyone who cares about or is affected by public policymaking has a voice in the process, is able to voice their hopes and fears, and has access to information about the decisions that are made. When information is made available to the public, people are better able to voice their opinions and influence the direction of public policymaking. This form of local

governance ensures that public policy decisions benefit the greatest number of people possible. (Jumadi, 2019).

Aside from being connected to transparency in the procedure of creating new laws and regulations, providing public support for the execution of public involvement in the development of public policy is also how the state ensures the autonomy of its citizens when it comes to expressing or speaking their ambitions. The Constitution of the Republic of Indonesia, which was ratified in 1945, ensured that its citizens have the right to freely assemble, form associations, and communicate verbally and in writing about their ideas. Critique and input from the general public should be preserved in the process of formulating public policy in the form of the state guaranteeing independence or preserving a democratic climate by allowing dialectical freedom in public space.

Public space is capable of performing political functions, as stated by Jurgen Habermas (2020). The political public space as conditions of communication rather than an institution or an organization with specific membership or regulations that must be followed. Because the phrase "public space" or "ffentlichkeit" in German signifies that it is available to everyone and alludes to the open and inclusive aspects of this place, it is important that public space has informal and inclusive characteristics. It is not the majority vote that determines legal validity or public policy; rather, it is the act of getting a majority vote that determines legal legitimacy or public policy. The essential idea here is that a democratic body can only be considered legitimate if it can win a vote by an honest and unanimous majority or win by a unanimous tally. Legitimate law, in Habermas's view, is law that results through processes that are fair and just. Every proposed change to an existing public policy must first be subjected to open debate. Therefore, according to Habermas, what we mean when we talk about deliberative democracy is a process of acquiring legitimacy through a discursive process in the political public arena.

The presence of a pluralistic society provides an exceptionally abundant resource for the growth of social activity in a community. However, before these extremely rich resources can be accessed, the plurality that exists in the form of differences in opinions, perspectives, concepts, or thoughts must first be sensibly expressed. The ability to communicate on political issues without being dominated by one party or another is one of the fundamental conditions that must be met in order to preserve the broad social integration order of society.

As a result, the existence of a public space that is characterized by conditions that are fair and reasonable must be safeguarded by the state in accordance with the constitution. Because valid public policies are produced out of a process in which the public scrutinizes the process, or an open process in which the public participates and in which there is free discussion in the public sphere. And not the other way around, which is born from a process that involves playing "chase and mouse" with the people in the process of drafting laws or rules.

## **2. Public participation in making public policy according to the Perspective of Constitutional Law**

Effectiveness and efficiency in society serve as the foundation upon which public policy is built. By involving communities affected by policies and interest groups (interest groups), decision-makers can capture the views, needs, and appreciation of the community and these groups, and then translate them into a single concept, improving the quality of decision-making is the primary goal of community participation. Article 96 of Law No. 12 of 2011 about the Formation of Legislation provides for public participation in the process of drafting laws, rules, or public policies. The public has the right to contribute oral and/or written input in the Formation of Legislation so long as the law is transparent. There are a variety of ways to provide feedback, both verbally and in writing, including: a. a public hearing meeting; b. a visit to the workplace; c. socialization; and d. seminars, workshops, and conversations.

According to the principles of good governance, which include community involvement, accountability, and transparency, citizen participation in the creation of public policy is also a kind of good governance. (Arisaputra, 2013). Transparency and public participation in public policymaking, as argued by Yusdiyanto (2011), are necessary for neutrality. Conflicting social forces and interests create an environment where neutrality signifies fairness, justice, and protection for everyone, especially the community. The democratic process is strengthened by the decisions and outcomes that are reflective of the community's needs and wants.

Meanwhile, Law 25 of 2009 regarding Public Services is crucial in governing citizens' ability to weigh in on policymaking decisions. Policymakers, service managers, and evaluators are all required by law to solicit input from the people they serve. This demonstrates that public involvement is essential at every level of public policymaking, not only at the beginning when ideas are being tossed around. To guarantee that the public services given are up to the standards of the community, it is crucial to include members of the community in the process of monitoring and evaluating these services. The accountability and openness of government agencies can be improved by encouraging public involvement in monitoring and assessing their services.

In practice, public participation in formulating public policies in the field of public services can be carried out through various mechanisms, such as complaints, suggestions and criticism from the public, as well as through public consultation mechanisms and interactive dialogue with the public. The government can also utilize information and communication technology to facilitate public participation in public policy formulation, for example by providing applications or online platforms that enable the public to provide input and opinions on policies to be made. Law Number 25 of 2009 concerning Public Services provides clear directions regarding the importance of public participation in the formation of public policies, especially in the field of public services. This shows that the government needs to



ensure that public participation is properly accommodated in every stage of public service delivery, so as to improve the quality and effectiveness of public services for the community.

At the local government level, community participation in the formation of public policies is also specifically regulated in local government laws. Law Number 23 of 2014 concerning Regional Government contains provisions relating to public participation in the formation of public policies at the regional level. In accordance with this Law, regional governments are required to involve the community in formulating regional development policies and planning through deliberations and public consultation mechanisms.

Public participation in deliberations and public consultation mechanisms is very important to ensure that the public policies taken take into account the needs and aspirations of the community. Through deliberations and public consultations, the community can provide input and opinions on development policies and programs proposed by the local government. In addition, public participation in deliberations and public consultation mechanisms can also improve the quality of public policies produced. By involving the community in the decision-making process, local governments can obtain diverse inputs and consider different perspectives, so that the resulting policies are more inclusive and in favor of the interests of society at large.

In practice, local governments can utilize various facilities and infrastructure to facilitate community participation in public deliberation and consultation mechanisms, such as community group forums, consultation meetings, or the use of social media and online platforms. This allows wider community participation and involves all members of the community, including those in remote or hard-to-reach areas. Law Number 23 of 2014 concerning Regional Government provides clear directions regarding the importance of public participation in the formation of public policies at the regional level. By facilitating public participation in deliberations and public consultation mechanisms, it is hoped that the resulting public policies will be more responsive to community needs, as well as improve the quality of life and welfare of the community at the regional level.

Broadly speaking, the mandate for the community to participate in a regional policy can be systematized as follows:

- a. Every new regional policy making, whether in the form of a regional head decision or a regional regulation, is always obliged to involve the local community to participate;
- b. Any new regional bylaws that do not involve the local community can cause the regional bylaws to be canceled by the superior government;
- c. The community has the right to criticize and evaluate an existing regional policy, and if deemed necessary, can submit suggestions so that regional policies deemed by the public are not in accordance with the interests of the community and the demands of the situation/time, are reviewed and if necessary can be proposed for repeal;



- d. DPRD has the duty and authority to accommodate and follow up on regional and community aspirations;
- e. The public has the right to seek, obtain, and provide information on the administration of the state (including the administration of regional government), as well as to convey suggestions and opinions on state administration policies (including the administration of regional government). (Prasetyo , 2002: 3) **Conclusion**

Based on research on public participation in public policy-making according to the perspective of constitutional law, it can be concluded that public participation is very important in the process of forming public policy. Through public participation, the resulting public policies can be more responsive to the needs and aspirations of the community, as well as improve the quality of life and welfare of society at large. The government in carrying out its function as a policy maker must pay attention to and accommodate the aspirations of the people. Starting from the planning and formation of public policy, which includes the stages: planning, drafting, discussing, ratifying or establishing, and implementing. Community participation in making public policies that are directly related to the welfare and protection of people's rights has not received adequate attention. Public policy-making should be consistent in determining priority for discussion of policy-making based on the most basic needs of the people. Of course by considering the greatest social benefit that can be achieved, the resulting social impact and efficiency; supported by an adequate budget.

Article 96 of Law No. 12 of 2011 on the Formation of Legislation regulates, from the perspective of constitutional law, public participation in the formulation of public policies, laws, and regulations. Which describes the public's right to provide oral and/or written input during the Formation of Legislation. Through: a. a public hearing meeting; b. a work visit; c. socialization; and D. seminars, workshops, and/or discussions, verbal and/or written input can be provided. In addition, Law Number 25 of 2009 on Public Services provides clarification on community participation: This law mandates that all providers of public services must involve the community in the policy-making, monitoring, and evaluation processes. Community participation at the regional level is also governed by Law Number 23 of 2014 concerning Regional Government, which contains provisions regarding community participation in the formulation of regional public policies. Regional governments are mandated by this law to engage the public in formulating regional development policies and plans through deliberations and public consultation mechanisms.

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