

## PUBLIC PARTICIPATION IN THE LAW-MAKING PROCESS: QUESTIONING 'DIRECTLY AFFECTED PARTIES' IN THE DRAFT LAW

Riris Ardhanariswari<sup>1</sup>, Fathimah Azzahro<sup>2</sup>, Enny Dwi Cahyani<sup>3</sup>, Muhammad Syaiful Anwar<sup>4</sup>

<sup>1234</sup>Faculty of Law, Universitas Jenderal Soedirman, Purwokerto, 53122, Jawa Tengah, Indonesia

\*Email: riris.ardhanariswari@unsoed.ac.id

**Abstract.** This research examines the urgency of public participation in the legislative process, focusing on the existence and role of 'directly affected parties' as mandated in Article 96 paragraph (3) of Law Number 13 of 2022 on the Establishment of Laws and Regulations. Amid efforts to enhance transparency and accountability in law drafting, public participation is often limited to feedback forms, without ensuring the active involvement of groups directly affected by regulations. The research problem formulation highlights: (1) how the involvement of directly affected parties in the legislative process works, and (2) what the ideal regulation of 'directly affected parties' is in the process of law formation in Indonesia. The research methodology employs a normative legal approach, a conceptual approach, a statutory approach, and a comparative approach. It is complemented by case studies on several strategic draft laws that directly involve vulnerable groups or specific sectors. Secondary data is analyzed qualitatively to identify the gap between legal norms and practical implementation. Research results show that although the Law on the Establishment of Laws and Regulations has accommodated the principle of inclusive participation, the implementation of Article 96 paragraph (3) is still weak due to ambiguities in the article's wording, bureaucratic resistance, and the dominance of political elites in the legislative process. The ideal regulation for those directly affected requires a clear definition, a systematic identification mechanism, and guarantees of substantive, rather than just procedural, access.

**Keywords:** Public Participation, Legislation, Directly Affected Parties.

### 1. Introduction

Public participation in the legislative process is one of the main pillars of a constitutional democracy. Through public participation, the legislative process is expected to be not just a formal arena for the political elite, but also a forum for the aspirations and interests of the wider community who will live under the resulting legal norms. In a modern context, public participation is viewed not merely as a procedural formality but as a substantive instrument to ensure the quality, legitimacy, and accountability of legal products.[1] In Indonesia, this concept gained a strong normative foundation with the enactment of Law Number 13 of 2022, the second amendment to Law Number 12 of 2011 on the Establishment of Law and Regulation (*hereinafter*, Law 13/2022). This regulation explicitly establishes meaningful participation as an important principle in every stage of the legislative process. Article 96 of Law 13/2022 grants the public the right to provide input, either orally or in writing, on every draft regulation being formulated (Art. 96 2).

However, despite this normative strengthening, legislative practice in Indonesia still faces serious challenges regarding the limitations on who is entitled to participate. In many

legislative processes, public participation is often restricted solely to directly affected parties (*pihak yang terdampak langsung*). This construct becomes problematic because, conceptually and practically, it can exclude societal groups that actually have legitimate interests, whether moral, social, or academic in the issue being regulated, but do not fall into the 'directly affected' category in the narrow sense (3). For example, during deliberations on several Draft Laws, such as the Draft Law on State Ministries and the Draft Law on the Presidential Advisory Council, the public consultation process was deemed minimal because lawmakers assumed that the substance of the draft laws concerned only internal government affairs. Such a narrow view potentially diminishes the meaning of public participation and erodes the spirit of transparency that is the essence of the post-1998 legal reforms. Consequently, the public is often positioned merely as spectators, rather than as subjects who help determine the direction of legal policy.

From a constitutional law perspective, this raises serious questions about the extent to which the 'directly affected' concept aligns with the principle of participatory democracy guaranteed by the constitution. The Constitutional Court, in several of its decisions, such as Decision No. 91/PUU-XVIII/2020, affirmed that law-making must involve meaningful participation, which includes three important elements: the right to be heard, the right to be considered, and the right to receive an explanation for the views submitted [4]. Thus, public participation should not be narrowly interpreted as a formal or ceremonial consultation, but rather as a deliberative process that opens a space for dialogue between lawmakers and the public.

From a comparative perspective, inclusive participation models are also adopted in various international instruments. One of the most prominent is the 1998 Aarhus Convention, adopted by the United Nations for environmental affairs. The Convention introduces the term "public concerned," which includes not only the public directly affected but also anyone who has a concern or interest in a particular issue. This approach provides an important lesson that public participation should be viewed as a democratic right, not an administrative privilege granted only to specific groups. In the Indonesian context, restrictions on who is considered 'parties entitled to participate' pose not only theoretical but also practical problems. The absence of technical implementing regulations for public participation, as mandated by Article 96 of Law 13/2022, weakens the implementation of this principle. The House of Representatives and the government are deemed not yet to have established consultation mechanisms that are open, transparent, and accountable. The legislative process, which is often conducted behind closed doors or invites only specific groups, indicates lingering resistance to openness and public collaboration [5].

Furthermore, the limited capacity and access of the public to participate also present distinct obstacles. Many civil society groups, academics, and local communities lack sufficient resources or information to engage effectively in public consultations [6]. As a result, the participation process is often filled out only by actors with close political ties or specific economic interests. This leads to the phenomenon of pseudo-participation (*partisipasi semu*), in which public involvement is undertaken solely to fulfill legal formalities, rather than to listen to genuine aspirations.

This condition highlights a gap between the normative ideal and the empirical practice of implementing public participation in Indonesia. In theory, meaningful public participation can improve the quality of laws, increase policy legitimacy, and encourage social compliance with resulting regulations [7]. Therefore, it is important to review the conceptual and juridical basis for the use of the term 'directly affected parties' in the legislative process. The question that arises is not only about who is allowed to participate, but also how the design of public participation can be structured to be inclusive, representative, and effective without sacrificing

legislative efficiency. Thus, this study becomes relevant for examining the consistency between the principle of participatory democracy and the practice of law-making in Indonesia within the framework of constitutional law.

## **2. Methods**

This research is normative juridical research, which involves several important steps. It uses a conceptual approach and a statute approach[8]. The research specification is prescriptive, aiming to provide recommendations on the legal problem under analysis [9]. The types of data used include primary legal materials such as laws and regulations; secondary legal materials such as doctrine, journals, and legal literature, as well as tertiary legal materials, which include supporting reference sources [10]. Legal materials were collected through library research using relevant literature search and collection techniques as a basis for analysis [11]. The collected data is then processed through classification and verification to ensure the relevance and validity of the information for use [12]. The research results are presented as a narrative that comprehensively describes the juridical analysis [13].

## **3. Results And Discussion**

### **3.1 The Involvement of Directly Affected Parties in the Law-Making Process**

The implementation of public participation in the legislative process in Indonesia underwent a significant normative shift following the Law 13/2022 [14]. The main focus of this change is the strengthening of meaningful participation, as mandated by the Constitutional Court's decision. One of the key instruments to achieve this goal is through Article 96, which specifically identifies and mandates the involvement of the 'directly affected public'[15].

Conceptually, this mechanism of involving 'directly affected parties' is designed to shift the legislative process from one that previously seemed elitist and closed to one that is more responsive and accountable [7]. This is a legislative effort to ensure that those who bear the greatest consequences of a law have a priority opportunity to be heard. In practice, the mechanics of this involvement begin at the planning and drafting stages. Stakeholders (the Government or the House of Representatives) are required to identify who potentially constitutes the 'directly affected parties.' Ideally, this identification is based on a comprehensive analysis within the Academic Draft. Once identified, the lawmakers are obliged to proactively reach out to these parties, not just passively wait for input, but formally invite them to various consultation forums [16].

The forms of engagement stipulated in this law cover various methods. The most common mechanisms include Public Hearings at the House of Representatives, public outreach, seminars, workshops, or focus group discussions. In these forums, "directly affected parties" are given the opportunity to convey views, alternative data, and criticism regarding the substance of the draft law. Law 13/2022 seeks to ensure that this is not merely a formality by adding a provision requiring lawmakers to seriously consider such input [17].

However, herein lies the problem. First, the phrase 'directly affected parties' itself is fraught with interpretative ambiguity. The law and its explanatory section do not provide a rigid and measurable definition of who qualifies as 'directly affected.'[18]. Must this impact be economic? Or are environmental, social, or cultural impacts also counted? Who has the final authority to determine this affectedness?[19] This lack of a clear definition leaves significant room for subjectivity among the initiators of the Draft Law. They control how relevant someone is considered to be invited. As a result, the process is vulnerable to the 'cherry-picking' of participants, in which only groups whose views align with or are cooperative with the lawmakers' agenda are given access, while critical or opposition groups are excluded under the pretext of not being directly affected [20].

Second, another crucial aspect is the power asymmetry among the ‘directly affected parties’ themselves. In practice, not all parties have equal capacity to participate. Industry groups or large business associations possess abundant resources, such as legal teams, lobbyists, and supporting data, to influence the draft law[21]. Conversely, civil society groups, farmers, or indigenous communities often lack the resources to formulate technical policy input, or even just to finance the trip to Jakarta to attend a public hearing [22].

Lastly, the verification and accountability mechanisms for this involvement remain weak. Although Law 13/2022 emphasizes the importance of access to information and participation, the sanctions or corrective mechanisms, should this process fail to be implemented substantively (for example, if crucial ‘directly affected parties’ are deliberately excluded) have not been effectively tested. This places the public in a difficult position to challenge formal flaws in the legislative process, even when they feel the promised participation is merely an illusion. Overall, while Article 96 of Law 13/2022 demonstrates good intentions to democratize the legislative process by focusing on ‘directly affected parties’, its implementation is fraught with challenges[23]. The ambiguity of the definition, the risk of exclusion of the wider public, power asymmetry, and the weakness of accountability mechanisms for the input provided are all critical issues that must be addressed. Without improvements in practice and interpretation, this mandate for meaningful participation risks being reduced to the mere fulfillment of formalistic procedures[24].

### **3.2 The Ideal Regulation of ‘Directly Affected Parties’ in the Law-Making Process in Indonesia**

Public participation in law-making in Indonesia is enshrined in several provisions. Article 28D paragraph (3) of the 1945 Constitution guarantees every citizen the right to equal opportunity in government, including the legislative process[25] [26]. Public participation in legislation is not viewed merely as procedural compliance with democratic principles, but as a main prerequisite for achieving substantive democracy. This aligns with the theory of deliberative democracy, in which legal legitimacy derives from inclusive dialogue and deliberation rather than mere majority approval.

Aspects of democracy, as put forward by Verschoor in Gun Gun Heryanto, state that the three aspects of the idea of democracy are (1) the collective relationship of government and the common good, (2) the legitimate condition of collective self-government, and (3) the value of individual autonomy. It seems this 19th-century distinction remains highly relevant to understanding Indonesia's contemporary political landscape. A democratic system is a democratic procedure and democratic government management, including a democratic legal system, a democratic government bureaucracy, and democratic legislation for public decisions[27]. The landscape of public participation in the legislative process in many countries is often characterized by generic, symbolic models of participation. These models, despite appearing procedurally inclusive, are in practice often dominated by actors with significant organizational capacity, resources, and political access.

Through public participation, the creation of legal products that are elitist, closed, and potentially at odds with the principle of social justice can be prevented. Public participation strengthens the accountability and transparency of state institutions in the law-making process, while also enriching the substance of regulations with the experiences, needs, and social values emerging in society. Although public participation has been normatively recognized as a constitutional right of citizens and a fundamental principle in the formation of laws and regulations in Indonesia, the reality of legislative practice in recent years precisely reveals a very serious crisis of public participation. This situation indicates a widening gap between the ideal legal framework and the actual state governance practices[28]. Therefore,

this causes the policy dialogue space to become unbalanced, where the voices that best understand the real and operational impacts of a regulation are precisely marginalized, which in turn impacts public participation in the process of forming laws and regulations.

Public participation in the policymaking process is one of the main pillars of a country's democratic system. This concept emphasizes the importance of active public involvement in the decision-making process that affects their lives. Public participation not only strengthens the legitimacy of public policy but also ensures that the public's interests and aspirations are reflected in government decisions. As a critical response to the distortions above, the concept of directly affected parties emerged. This concept does not merely expand the list of consultation participants, but rather fundamentally reorients the meaning of participation itself. The National Legal Development Agency (*Badan Pembinaan Hukum Nasional*) explains that the availability of public space is intended to accommodate and receive public opinions and input. The space referred to is an absolute requirement for realizing deliberative democracy, or democracy with healthy public involvement. In the context of law-making, this space must be available at the stages of "... planning, drafting, deliberation, enactment or stipulation, and promulgation" as per the definition of the formation of laws and regulations in Article 1, point 1 of Law 12/2011[29]. This concept intentionally shifts the focus from participation based on capacity to participation based on material impact. In other words, the legitimacy to speak does not stem from organizational strength, but from direct experience intersecting with the substance of the regulation [30].

The ultimate power lies with the people, which should involve the public in accordance with the principle "from the people, by the people, and for the people." Therefore, the public must be fully involved in the planning, regulation, implementation, oversight and evaluation of the executive's exercise of power. The government is also expected to be open (or act transparently) for the welfare of the people [31]. Muhammad Ardian Maulana Azmi and Akhmad Zaki Yamani also explain that public participation is not only limited to opening spaces for participation, but also includes methods for collecting aspirations and providing space to accommodate them until it is clear how the results of those aspirations are incorporated into the decisions taken. It also includes restoring the principle of transparency within the law-making process itself[32].

The involvement of directly affected parties also helps balance the information asymmetry inherent in the policy process. Policymakers possess information about political objectives and legal frameworks, while interest groups have organized information. Directly affected parties contribute a third crucial type of information: information on 'real impact'. By integrating these three types of information, the legislative process becomes more evidence-based and comprehensive[33]. Public participation in the legislative process is an important factor in ensuring that the resulting regulations align with the public's needs and aspirations. Public participation can enrich the substance of the draft law under discussion and provide greater legitimacy to the resulting legal product[34]. The ideal regulation of directly affected parties requires a clear, comprehensive, and measurable definition as its main foundation. Without an operational definition, public participation in legislation risks becoming a mere formality, lacking inclusivity, and proving ineffective in accommodating the aspirations of those who feel the impact of a law.

In the modern democratic paradigm, law-making is no longer seen as an elitist, closed process [35] but rather as a participatory process that involves the public. However, in practice, the term 'directly affected parties' often becomes ambiguous. The absence of a standard definition creates uncertainty about who must be invited to hearings in the House of Representatives, who is entitled to provide written input, and which groups need to be prioritized. As a result, participation is often dominated by groups that are already organized



and have access, while the grassroots communities, who are actually the most impacted, are marginalized.

The ideal regulatory mechanism for 'directly affected parties' in the law-making process in Indonesia is carried out in several ways, including the following:

### 1) Systematic Identification Mechanisms

To realize inclusive and meaningful public participation, the law-making process requires a mechanism that ensures the regulation-forming process is aimed more at fulfilling public needs. This mechanism begins with the systematic and transparent Mapping of Affected Parties. Identifying the affected parties is not an additional or incidental activity but rather a procedural obligation undertaken at the earliest stage, namely during the drafting of the academic draft.

With integration at this phase, the mapping becomes an analytical foundation that informs the importance of regulating a specific matter, rather than merely a way to fill an attendance list for public consultations later on. This obligation is imposed on the Law-Makers, the House of Representatives, and the Government as part of their constitutional responsibility to ensure the state's presence in hearing from all layers of society. For the mitigation process to have a multidimensional perspective, the involvement of independent institutions or universities (academics) as third parties is a necessity. These parties, with their research capacity, established methodology, and neutrality, act as guarantors of objectivity, prioritizing a scholarly field as the basis for conducting mitigation in the law-making process.

The final result of this mapping process must be a credible database of directly affected parties. This list is not an internal document; rather, it must be publicly announced and accessible to the public through the official portals of the relevant institutions and ministries. This mapping data has a strategic function in the regulation-forming process, including serving as a reference source or referral document in the law-making process. This also serves as a preventive measure against data manipulation and ensures authentic representation in the process of developing a regulation that affects the livelihoods of the general public. The mapping results, when included in a reference database, definitively increase public accountability and trust by basing the identification process on building public legitimacy and confidence in the entire legislative process, both future and ongoing. This becomes a crucial requirement for forming laws and regulations that possess strong public legitimacy.

### 2) Substantive Access Guarantees (not just procedural)

Accessibility in public participation is one way to include the public in the legislative process for a regulation. To ensure the participation of affected parties is not merely ceremonial but truly substantive, several systematic stages or strategies are needed to ensure accessibility, capacity, and understanding for stakeholders, including the following:

**First**, Diversification of Public Participation Channels. The concept of public participation is often constrained by the formality of stagnant forums, which narrows the channels for absorbing aspirations. Therefore, providing additional participation channels can increase the uptake of public aspirations. This includes structured, digitally based online consultation services that open digital public participation platforms, allowing the public to provide detailed written input on every article, complemented by a Q&A forum with the law-drafting team. **Second**, sustainable

focus group discussions are a structured discussion method that involves affected groups in discussing specific topics. The mechanism involves small-group discussions held in the affected communities, allowing for a more in-depth and personal exploration of the law's impact than formal meeting formats. This is important for the active absorption from affected communities.

**Third**, a real-time special complaints mechanism. The purpose is to open special channels (such as a website or social media) for the public to report when they feel their right to be heard is being ignored or when potential negative impacts are not being addressed. This allows the wider public to provide views or constructive suggestions on legislation affecting the impacted communities. This strategy aims to deconstruct procedural barriers and create participation spaces that are less intimidating, more flexible, and more inclusive.

Thus, the ideal regulation for directly affected parties can no longer rely on a vague, voluntary approach, as it must usher in a paradigm shift from participation as a procedural obligation to participation as a substantive empowerment process [36]. A clear definition, a systematic identification mechanism, and the guarantee of substantive, not just procedural, access represent a progressive breakthrough in the legislation of a regulation. With systematic implementation, the law-making process will not only be more democratic, but will also produce regulations that are more fundamental, legitimate, and socially just.

#### 4. Conclusion

Article 96 of Law 13/2022, which mandates the involvement of ‘directly affected parties’ for meaningful participation in legislation, faces serious implementation challenges. The main problem lies in the ambiguity of the definition of direct effect, which allows lawmakers to select participants subjectively, coupled with the power asymmetry between strong industry groups and weak civil society. Without clear accountability mechanisms, this involvement is at great risk of being reduced to mere procedural formalities.

The ideal regulation of public participation in Indonesian legislation, which is often trapped in elitist formalities, must shift towards substantive empowerment by focusing on directly affected parties. To prevent ambiguity and exclusion, this concept requires two main pillars: first, a systematic, transparent, and objective identification mechanism from the early stage of drafting the Academic Draft to determine who is affected; and second, a guarantee of substantive (not merely procedural) access through the diversification of participation channels, such as digital platforms. The implementation of these three things is crucial for balancing information asymmetry, ensuring the legislative process is grounded in real impact, and producing laws that are democratic and socially just.

#### 5. Acknowledgement

The author expresses gratitude to Jendral Soedirman University, particularly through the Institute for Research and Community Service (LPPM) Unsoed, which has provided facilities and research funding support through the Unsoed BLU (Public Service Agency) scheme, enabling this research to be completed.

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