

THE SOCIO-CULTURAL ROLE OF THE COMMUNITY UPON FORMATION OF LEGISLATION (A Review of the Electoral Act)

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ABSTRAK

Background: Community participation in the formulation of laws is a form of political participation by society. Law number 12/2011 article 96 talks about the participation of the community in the process of making laws and regulations. In the context of lawmaking, participation means participating in or supervising, controlling, and influencing the community in a process of making laws and regulations, from planning to evaluating how well it is implemented. Based on the stages of lawmaking as explained in the laws and regulations, especially Article 96 of Law No.12/2011, these provisions must then be realized. The next issue is the development of laws that do not follow the stages or involve the community. In this case, society refers to individuals or groups of individuals who are interested in the content of the proposed legislation. Article 96 of Law No.96 12/2011 explains that the public has the right to provide input on the formation of laws and regulations both orally and in writing. Method: Normative legal research approaches: respectively law-based and conceptual approaches. Literature and research findings relating to the subject of the study are also used as additional sources of information.

Keyword : Culture, Law, Society, Legislation

ABSTRAK

Latar Belakang: Partisipasi masyarakat dalam proses pembuatan undang-undang merupakan salah satu bentuk partisipasi politik masyarakat. UU No. 12/2011 pasal 96 berbicara tentang partisipasi masyarakat dalam proses pembuatan peraturan perundang-undangan. Dalam konteks pembuatan peraturan perundang-undangan, partisipasi berarti keikutsertaan atau keikutsertaan masyarakat dalam mengawasi, mengontrol, dan mempengaruhi dalam suatu proses pembuatan peraturan perundang-undangan, mulai dari perencanaan sampai dengan evaluasi terhadap pelaksanaannya. Berdasarkan tahapan-tahapan pembuatan peraturan perundang-undangan yang telah dijelaskan dalam peraturan perundang-undangan, khususnya Pasal 96 UU No.12/2011, maka ketentuan-ketentuan tersebut kemudian harus direalisasikan. Persoalan selanjutnya adalah pembuatan undang-undang yang tidak mengikuti tahapan atau tidak melibatkan masyarakat. Dalam hal ini, masyarakat yang dimaksud adalah individu atau kelompok individu yang berkepentingan dengan materi muatan peraturan perundang-undangan yang diusulkan. Pasal 96 UU No.96 Tahun 2011 menjelaskan bahwa masyarakat berhak memberikan masukan terhadap pembentukan peraturan perundang-undangan baik secara lisan maupun tertulis. Metode: Pendekatan penelitian hukum normatif: pendekatan perundang-undangan dan pendekatan konseptual. Literatur dan hasil penelitian yang berkaitan dengan subjek penelitian juga digunakan sebagai sumber informasi tambahan.

Kata Kunci : Budaya, Hukum, Masyarakat, Legislatif

A. PRELIMINARY

As a democratic Unitary State of the Republic of Indonesia, Indonesia is a nation that protects the human rights of freedom of association, assembly, and expression, which must be protected to progress nationalism. Indonesia has been attempting to establish a democratic political system as a developing nation since 1945, when it declared its independence and sovereignty. The *Founding Fathers* have a deep desire for the Indonesian political system to produce a government that contributes to international peace, protects all of Indonesia's bloodshed, and promotes public welfare¹. The evolution of individual contributions in general election activities (elections) from the start of independence to the present demonstrates a type of respect and freedom to collect and convey public opinion from the state.

The individuals who issue simple commands are referred to as a democracy². defines democracy as a type of government in which the people rule either directly or through their elected representatives. The actual implementation of democracy varies throughout time, as it constantly adapts to the country's growth and progress. Every nation's democracy does not necessarily expand and mature in the same manner. In actuality, governments who do not exercise democracy can also impede the spread of democracy. implementation. Likewise, if the populace is unwilling to support and implement democracy.

The public's participation in the drafting of legislation is a type of political participation on the part of the populace. In a democratic system of governance in which the people hold sovereignty over their nation, there must be a space for public participation in lawmaking. This event is in compliance with Article 28 of the 1945 Constitution of the Republic of Indonesia, which defines "Independence" as the right to "associate, congregate, orally or in writing express thoughts, as well as other subjects prescribed by law." Article 96 of Law No. 12 of 2011 pertaining to the Formation of Legislation now regulates the

¹ Subakti, Ramlan. (2010). *Understanding Political Science*. Seventh Printing. Jakarta; PT Grasindo.

² Effendi, H. (2017). *Equality of Position before Law and Government Conception and Implementation* (16). Mujahid Press, Bandung.

notion of community participation, which is outlined in Law No. 10 of 2004.

There are currently no additional parameters that encourage contributions to the community. Due to this, legislators are unable to adhere to normal processes, rendering community involvement a formality. Article 96 of law number 12/2011 addresses the role of society during the legislative drafting process. A function that entails participating or monitoring, controlling, and influencing the community in a process of developing laws and regulations, from *planning* to evaluating their implementation, within the framework of making laws and regulations³. Then, these requirements must be implemented in accordance with the method for establishing legislation as described in the laws and regulations, namely Article 96 of Law No. 12/2011. Legal developments that do not follow phases or include the community are the second issue⁴.

In this context, society refers to individuals or groups of individuals who have an interest in the content of the proposed law. Article 96 of Law No. 96 12/2011 stipulates that the public has the right to contribute feedback on the formulation of laws and regulations vocally or in writing. So that those conducting research under the title *The Socio-Cultural Role of Society in the Formation of Laws* are at sea (a study of election laws). The objective of the research is to determine (1) the socio-cultural role of society in the establishment of election laws and (2) the legal ramifications of establishing laws without public input.

B. RESEARCH METHODS

This work employs a normative legal research methodology, in which each treatment is law-based and conceptual, because research operations are governed by statutory restrictions. Literature and research findings related to research subjects are also used as additional sources of information. Primary, secondary, and tertiary legal materials are used in the method of tracing legal

³ Risiyono, J. (2016). *The Effect of Public Participation in Law Formation: A Review of the Establishment of the Election Administration Act*. Jakarta: Perludem (29).

⁴ Lutfil, A. (2019). *Legal Drafting: Theory and Practice of Drafting Laws and Regulations*. Depok: Rajagrafindo Persada. (248) .

materials, and qualitative analysis is used in research analysis because what is analyzed is the basis of what has been studied.

C. RESULTS AND DISCUSSION

1. The Socio-Cultural Role of Society in Forming Election Laws

The tacit and explicit understandings of a group's decision-making and problem-solving procedures are known as its culture. There are three sorts of culture, according to⁵: 1) cultural structure as a grouping of concepts, ideas, values, and norms; (2) The form of culture, which is a gathering of individuals with a variety of determined activities and behaviors; Social change is a shift in people's lifestyles that has been accepted as a result of modifications in natural conditions, materials, culture, total population, assumed methods or ideas, and the introduction of numerous new discoveries about society⁶. 3) the shape of culture as a human-made thing.

The occurrence of a process in which the structure and order of society transforms is caused by social change. The structure in question consists of novel (innovation) patterns of reasoning, thinking, attitudes, and socialization that can assist individuals in living a more fulfilling and dignified life. Social modification is something that will occur in communal activities, either slowly, very quickly, or continuously. Specifically, changes that have an impact on social transformation in society and are continuing. societal change is unique⁷. Occasionally, societal development occurs rapidly in one place, but slowly in another. In this regard, there are a number of factors that influence societal transformation, such as the mindset and values of society. People's participation in government operations can be influenced by the mentality of the populace as it continues to grow through social culture.

A sophisticated type of government adheres to the ideals of good governance, which include community participation, accountability, and

⁵ Koentjaraningrat. (1997). *Methods of Community Research*. Jakarta: PT. Gramedia Main Library.

⁶ Lumintang, J. (2015). *The Effect of Social Change on the Progress of Community Development in Tara-Tara Village I*. *Journal of Acta Diurna*, IV (2), 1-9.

⁷ Rosana, A. (2011). *Modernization and Social Change*. *Journal of TAPIs*, 7(12), 31-47.

transparency, including community participation in the formulation of laws and regulations⁸. Participation from the public is required for the creation of all laws and regulations in this context. Two meanings can be derived from the method of participatory lawmaking: process and substance. In order for the public to contribute to and disseminate criticism regarding the management of a problem, a process for drafting legislation must be established out in an open manner.

To create responsive and populist democratic law, substance refers to the material that must be arranged to satisfy the requirements of the entire society. As a result, in a democracy, democratization, contribution, and clarity to the creation of laws are all considered to be one and the same thing. Every applicable law that does not advance the common good poses a risk to society's continued existence.

The development of law includes the formation of law. This development comprises the creation of a national legal system to fulfill state objectives, which is carried out rationally, systematically, and in accordance with a plan or program. The People's Representative Council (DPR), the people, and the president have lawmaking authority under the terms of the Constitution of 1945. State (nation-state) can be used to identify the constitutional identity of Indonesia. Due to its lengthy history of resistance against Dutch colonialism (decolonization) and Japan, Indonesia is classified as a postcolonial nation. Colonial constitutional identity based on the 1945 Constitution as a result of its postcolonial status. Consequently, Indonesia's constitutional identity is based on the historical goals that led to the formation of the Indonesian constitution.

The fundamental provisions of the 1945 Constitution of Indonesia indicate the identity of the postcolonial constitution. Beginning in 2011, the steps of drafting the law were governed by Law No. 12 of 2011. Several stages comprise the outline of the lawmaking procedure:

1. Preparation and scheduling in the government ecosystem, the House of Representatives, or the Regional Representative Council .

⁸ Santoso, A. (2001). *Good Government And Environmental Law*. Jakarta: ICEL (87).
<https://ejournal.unsrat.ac.id/index.php/politico/article/view/7100>

2. Procedures for review in the House.
3. Stages of presidential approval.
4. Stages of the appointment of ministers, belonging to the category of legislative duties and responsibilities.

As laws originating from the community are supposed to be durable and successful in resolving community problems, community involvement in the law-making process is crucial. In a democratic system, the most meaningful requirement is the best method to offer the widest possible space for involvement at all levels of society. Nonetheless, this assurance is complemented by continual efforts to raise public understanding of the government's role in its implementation.

Article 96 of Law No. 12 of 2011 concerning the norms for community engagement:

1. The public has the right to provide oral or written feedback on the creation of laws and regulations.
2. The following describes the procedure for providing vocal and/or written input as described in the paragraph: (a) public opinion gathering; (b) working visits; (c) interactions; and (d) debates, workshops, or seminars.
3. As stated in paragraph, the public is the individual or group of people who are interested in the substance of the Draft Legislation (1).
4. Each Draft Law and Regulations must be easily accessible to the public in order to encourage oral and/or written public input, as stated in paragraph (1).”

Articles 215-218 of DPR Regulation Number 1 of 2014 pertaining to the Code of Ethics outline how the public can engage in the legislative process. Article 215 of DPR Regulation No. 1 of 2014 stipulates that the public may provide input orally or in writing to the DPR during activities:

1. Preparation and selection of the National Legislation Program.
2. Drafting and Discussing the Constitution.

3. Discussion of the State Budget Bill.
4. Oversight of how the law is run.
5. Government oversight of policy implementation.

The lawmaking process, according to Franko⁹, is separated into three parts, and the public can engage in any one of these stages: pre-legislation, legislation, or post-legislation. According to Pataniari¹⁰, there are four types of community participation that can be implemented during the design and drafting phases of the legislation: assessments, discussions, workshops and seminars, initiative proposal submission, and designs. According to Iza¹¹, there are six sorts of bill discussion phases, including opinion and RDPU, alternative bills, input from print and electronic media, demonstrations and discussions, workshops and seminars, as well as various forms of community participation in the legislative process.

In its function as a representative organization, the DPR tries to communicate the desires of individuals who represent the community's interests during the development of a measure that will certainly have the support of DPR factions. The enactment of Law Number 13 (2006), which regulates the Protection of Witnesses and Victims, is another example of community participation in the design of the bill, as indicated by Maharanie's research. Prior to the RDPU, comparative studies on the deployment of protection regimes in other nations (Australia and the United States) already existed. Representatives from Australia, the United States Attorney General's Office, and the Corruption Eradication Commission were invited to the inaugural RDPU.

Experts in criminal law were invited to the second RDPU. The RDPU listed only KPK and criminal law specialists as connected factors. DPR is not affiliated with any other expert community. The delay in access to RDPU documents, brief reports, meeting minutes, and attendance lists is noticeable

⁹ Franko Johner, et al. (2018). Postcolonial Nation State as a Basis for Determining Indonesia's Constitutional Identity: A Study of the 1945 Constitution. *Journal of Bina Mulia Law*, 2 (2), 195.

¹⁰ Pataniari, Siahaan. (2012). *The Legal Politics of Law Formation After the Amendment of the 1945 Constitution*. Jakarta: Konpress Publishers.

¹¹ Iza Rumesten R.S. (2012). The Ideal Model of Community Participation in the Formation Local Regulations. *Journal of Legal Dynamics*, 12 (1).

according to the results of the study¹². According to a research performed by a coalition of Election Rescue Community Alliance civil society activists, community participation in the creation of laws and regulations remains extremely low Perludem. In addition, frequently shifting schedules make it difficult to track meeting success.

The five procedures that are typically used in the making of laws and regulations in Indonesia¹³ demonstrate that there are at least the following issues: The preliminary phase of developing the national legislation program. Participation of the community in the consultation and communication stages can bolster the National Legislation Plan (Ranlegnas). Because everyone on the forum is appointed by the government, identifying the community representatives is challenging. The drafting of the bill is also an initiative. Communities can take part in two stages: consultation forums and academic paper preparation. However, both are optional depending on the government's aim and desire in community involvement. Third, the legislative procedure of the DPR. Universities that have been authorized to write legislation by the Legislative Body of the DPR can play a role in society. Civil society organizations must be involved for community design to succeed. Design by DPR P3LI (Center for the Assessment of Information Services) and DPR General Secretariat, with contributions from academics or NGOs. Fourth, the nomination procedure for the DPR. At this stage, since the DPR just provides information, there is no public participation. Fifth, an examination of the DPR. Hearing Meeting (RDPU) is a location for community engagement. Unfortunately, the RDPU is primarily a DPR effort, hence community groups are unable to contribute feedback or be perceived as being heard.

A democratic nation exemplifies communal political engagement, in which citizens directly participate in elections. According to Mitchel¹⁴, citizens

¹² Maharanie. (2018). People's Sovereignty in the Formation of Public Policy (Case Study: Community Participation in Formation.

¹³ Riskiyono, J. (2016). The Effect of Public Participation in the Formation of Laws: A Review of the Formation of the Law on Election Organizers. Jakarta: Perludem.

¹⁴ Mitchell, B. (2015). Participatory Partnerships: Engaging and Empowering to Enhance Environmental Management and Quality of Life. *Social Indicators Research*, 71, 123–144. Law in Indonesia). Depok: University of Indonesia.

play a crucial role in the selection of state managers, who subsequently arrange the government and its actions. Political participation is an individual's willingness to play a role in political life through administrative activity, participation in various organizations, debate of various political topics with other parties, participation in various acts, and organization membership. They are independent, participate in efforts to promote awareness, and use their own skills to aid the environment¹⁵.

Participation in politics has advantages: (1) dispatching representatives or supporters to the authorities and the government, drafting statements asserting government favoritism, and electing candidates based on recommendations from political organizations.; (2) Demonstrating the government's shortcomings with the hope that the government will recognize, repair, or make adjustments to these flaws; (3) Participation as a challenge to the government in effecting structural changes to the political system and government Citizen involvement is the right of every citizen to evaluate and select leaders and to encourage political participation; a strong understanding of citizens based on their strategic position can enhance the quality of democracy¹⁶.

When progressive universal acknowledgment of legislative elections as a venue for sustaining representative democracy and conducting government transitions arises, this will be the case¹⁷. Legislative elections are held so that citizens can choose for themselves, based on their participation in the drafting of the election law, who they believe will represent the interests of all inhabitants most effectively. By granting complete authority to implement and elect regional leaders, direct regional head elections are viewed as a manifestation of the fundamental rights of the people's local sovereignty.

¹⁵ Arther Muhaling, (2014). Community Political Participation in Regional Elections in South West Siau District, Sitaro Regency. *Journal of Politico*, 3(2).

¹⁶ Liando, D. M. (2016). ELECTIONS AND POLITICAL PARTICIPATION OF THE PEOPLE (Study on the Election of Legislative Members d an Election of the President d an Candidate for Vice President di Minahasa District 2014). *LPPM Journal of EcoSosBudKum*, 3(2), 14–28. Retrieved from:
<https://ejournal.unsrat.ac.id/index.php/lppmekosobudkum/article/viewFile/17190/16738>

¹⁷ Rahmatunnisa, M. (2017). Supervisory Budget Issues in the 2015 Simultaneous Regional Head Elections. *Bawaslu Journal*, 3(1), 79–44.

2. Legal Implications of Making Laws Without Public Involvement

As a result of the fact that the law is a kind of recognition of the sovereignty of the people themselves¹⁸, a regulation's binding force is born when it is issued. If a statutory regulation is included in the Annex of the Republic of Indonesia, it is presumed to have the force of conduct and binding force on all individuals. In line with Article 24 paragraph 1 C of the Republic of Indonesia's 1945 Constitution, the Constitutional Court, or MK for short, has the authority to analyze laws. The judgement of the Constitutional Court concerning the constitutionality of laws is final. In terms of time, judicial review can be separated into two categories: before and after the formalization of the law. A priori testing, also known as judicial preview, is testing conducted prior to the establishment of a formal form. A priori testing is used to eliminate errors or discrepancies between hierarchical or even antisocial rules and regulations. This a priori criterion is not the responsibility of the legislator.

Article 96 of Law No.12/11, as amended, guarantees the people's participation in the legislative process by allowing them to express their desires regarding the formation of laws. However, Article 96 is optional, indicating that the public is not obliged to participate in the formulation of laws and regulations, and Article 96 of Law no. 12/11 is only a formality and does not have to be utilized or implemented in accordance with the law, it needs to be reviewed.

Due to the influence of laws that are still in effect, laws and regulations enacted by the competent authority, which is the DPR, which has the capacity to make laws, do not have legal effects. On the other hand, there is no public engagement in the creation of laws. In actuality, public participation is discretionary, and laws enacted without public participation are rescinded or repealed.

¹⁸ Yuliani, A. (2017). Binding Power of Promulgation of Laws and Regulations. *Journal of Indonesian Legislation* 14(4): 429–38. Retrieved from <https://ejournal.peraturan.go.id/index.php/jli/article/view/121>.

D. CONCLUSION

Keeping in mind that public participation is not a procedural requirement in the development of statutory regulations and that laws produced without public participation do not result in the emergence of law from statutes and are therefore still lawful. It is a requirement that the draft law pass through the stages of the community's involvement, as it contains legal standards that may be of an obligatory nature. Sociocultural elements also influence the thinking of the populace, hence influencing their role in lawmaking. The phenomena exhibited in modern society are presently undergoing transformations in behavior patterns as well as modifications to the scope of social life in society. Without them recognizing it, a consumerism culture has been in control of people's brains. People must restrain their urges for consuming since they are logical beings. So it is necessary to strike a reasonable and optimal balance between needs and wants. Society refers to individuals or groups of individuals who are interested in the contents of the proposed law. Article 96 of Law No. 96 12/2011 explains that the public has the right to provide input on invitational legislation orally or in writing.

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