



MEANINGFUL PARTICIPATION AS A GUARANTEE OF CITIZENS' CONSTITUTIONAL RIGHTS IN THE FORMATION OF LAWS AND REGULATIONS

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Abstract

The application of the principles and doctrine of meaningful participation is currently considered not to meet the needs of society. This is indicated by the dissatisfaction of several parties who are trying to submit a Judicial Review through a judicial review. The purpose of this article is to find out the application of the principles and concepts of Legislative Formation and meaningful participation in the Formation of Legislation. This research uses a normative juridical research type, with three approaches used, a statutory approach, a conceptual approach and a case approach. The results of this research show that the formation of good laws and regulations must fulfill concepts that are in accordance with the concept of the Pancasila rule of law. The doctrine of meaningful participation requires legislators to consider and respond to input or suggestions proposed by the public as a constitutional right of citizens as mandated in the 1945 Constitution, Article 27 paragraph (1) and Article 28C paragraph (2). The idea of meaningful participation exists to emphasize that in the process of forming legal regulations, community participation is the main thing and constitutes the validity of legal products. Thus, public participation in the formation of laws needs to be carried out in order to create real public participation and involvement. In the doctrine of meaningful participation, there are three mandatory prerequisites, including the right to have one's opinion heard (right to be heard), the right to have one's opinion considered (right to be considered) and the right to receive an explanation or answer to the opinion given (right to be explained).

Keywords: application of principles, meaningful participation, laws and regulations

A. Introduction

The formation of laws and regulations certainly requires a plan to determine in which direction the provisions of the laws and regulations will be formed. In planning

the development of laws and regulations, it is clear that we cannot extricate ourselves from the so-called concept. This concept will later play a positive role in the development of



laws and regulations that provide certainty, justice and benefit.¹

The legal system is built on basic rules, namely legal principles. According to Paul Scholten, principles are the basic thoughts, contained in and behind their respective legal systems formulated in laws and judges' decisions with respect to which individual provisions and decisions can be viewed as elaborated. While the principle of law is the tendency that underlies the moral view of law and is a general characteristic with its limitations as a general but must exist. A legal principle can be a legal norm that has a high position and many things depend on it and the principle can be a norm.²

The principles of the establishment of laws and regulations stipulated in Article 5 of Law Number 12 of 2011 concerning the

Establishment of Laws and Regulations can be called procedural requirements or formal legal principles.³In forming laws and regulations, it must be carried out based on the principles of the formation of good laws and regulations, which include: a. clarity of purpose; b. appropriate forming institutions or officials; c. conformity between types, hierarchies, and content materials; d. enforceable; e. usability and usability; f. clarity of formulation; and g. openness. Meanwhile, Article 6 is a substantial requirement or material legal principles in the formation of laws and regulations. The content of the Laws and Regulations must reflect the principles of: a. protection; b. humanitarian; c. nationality; d. kinship; e. intermediary; f. Bhinneka Tunggal Ika; g. justice; h. equality of position in law and

¹ Ferry Irawan Febriansyah, "The Concept of the Formation of Laws and Regulations in Indonesia" Perspective Volume XXI No. 3 of 2016 September Edition p. 221

² J.J.H.Bruggink, Reflections on Law (Bandung Citra Aditya Bakti, 1996), p.119

³ Law Number 12 of 2011 concerning the Establishment of Laws and Regulations



government; i. order and legal certainty; and/or j. balance, harmony and harmony.

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.⁴

The establishment of laws and regulations must pay attention to and prioritize equality before the law in accordance with the principle of equality *before the law*. It is everyone's right to obtain legal justice. The law does not look at everyone's social background, but it must provide equality for all people to obtain justice. The concept of forming laws and regulations emphasizes equality before the

law to protect the community from arbitrariness, so that through protection, the community can feel safer so as to realize justice. In addition, the concept of forming legislation must also be in accordance with existing principles and stipulated by law.⁵

The formation of laws must meet active and participatory elements. The basic problem is that community participation only meets formal requirements so that it has the potential to lose the essence and purpose of community participation. Therefore, not a few legal products are not accepted, causing conflicts in society. The formation of active and participatory laws has two meanings, namely about process and substance. The process is a mechanism for the formation of laws and regulations that must be carried out transparently so that public efforts and

⁴ Rokilah and Sulasno, "Application of Legal Principles in the Formation of Laws and Regulations" *Adjudication : Journal of Legal Sciences*, Volume 5 Number 2, December 2021. pp. 179-190

⁵ Belinda Putri Herawati and Yohanes Suwanto, "The Establishment of Good Laws and Regulations for Indonesia" *Sovereignty : Journal of Democracy and National Resilience* | Volume 1, Number 2, Year 2022



participation can contribute to the regulation of these problems. While substance is regulated material and must be intended for the interests of the wider community so as to produce democratic, participatory, and aspirational and responsive legal products. Therefore, participation, transparency and democracy in the formation of legislation are an integral unity and cannot be separated from a democratic state.⁶

Public participation is a prerequisite and representation for the implementation of a democratic government. In a government that is not accompanied by participation and based only on mobilization, it will certainly not be possible to achieve democracy in the government system. For this reason, good governance needs to work to improve the flow of information, 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 form of people's sovereignty, *meaningful participation* in the form of 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 both the process of implementing and supervising public policy. One of the important principles in the formation of laws and regulations must be carried out based on the principle of openness.⁷

Openness in decision making is very important because the government acts on behalf of the whole community and the public has the right to know what is happening and what policies are stipulated in

⁶ Joko Riskiyono, "Community Participation in the Formation of Legislation to Realize Prosperity" *Aspiration* Vol. 6 No. 2, December 2015

⁷ Sarah Malena Andrea Dondokambey, "Application of the Principle of Meaningful Participation in the Formation of Regional Regulations". *Lex Privatum* Vol.XI No.2 February 2023



the law. Not only has the right to know, citizens also have the right to participate in decision making, from drafting to enactment of laws.⁸

Historically, public participation in the legislative process has been regulated since the promulgation of Law Number 10 of 2004 concerning the Establishment of Laws and Regulations. In short, the public has the right to comment orally or in writing on the preparation of a draft law or subject of discussion. Then, in 2011 Law Number 12 of 2011 concerning the Establishment of Legislation (Law P3) was promulgated which repealed Law Number 10 of 2004. The law expands the regulation of community participation, namely that input provided by the community can be carried out through various forums such as Public Hearing Meetings (RDPU), Work Visits,

Socialization, and/or seminars, workshops, and/or discussions.

B. Problem Statement

Based on the background above, the problem that will be answered in this paper is how to apply the principles and concepts of Legislative Formation and *meaningful participation* in the Formation of Legislation.

C. Research Objective

The objectives of this study is to know how to apply the principles and concepts of Legislative Formation and *meaningful participation* in the Formation of Legislation

D. Research Methods

This article uses normative juridical research, with three approaches used, the *statutory approach (statute approach)*, which is carried out by reviewing the laws and regulations related to the discussion of this research. 2) *Conceptual approach* From the

⁸ Arfiani, "The Urgency of the Principle of Openness in the Formation of Laws and Regulations in

Indonesia" Pagaruyuang Law Journal, Volume 6 No. 2, January 2023



aspect of the legal concepts behind it, or even can be seen from the values contained in the norm. 3) Case approach, is an approach that aims to learn legal norms or rules that can be applied.

E. Research Results and Discussion

1. Application of principles in the formation of legislation

The establishment of laws and regulations is a stage of continuous activity aimed at creating laws.⁹ Basically, starting from planning, preparation, drafting techniques, formulation, discussion, ratification, to promulgation so that technically a good legislative program and adequate concept are needed.¹⁰

The formation of laws and regulations must meet a number of concepts. The concept

of forming legal regulations must be in harmony with the concept of the state of law Pancasila. The purpose of the legal concept of Pancasila is to implement the principles of justice, especially in the form of positive values contained in Pancasila, into legal norms. The interpretation of this concept requires that Pancasila values such as the values of truth and justice be spelled out practically in legal norms so as to create certainty, justice, and expediency. Legal certainty must be balanced with justice because legal certainty has adopted the truth values of justice contained in Pancasila, so that the benefits achieved are in accordance with the legal ideals of the Indonesian nation.¹¹

⁹ Aziz Syamsuddin, 2014. Process and Technique of Law Drafting, Jakarta: Sinar Grafika, p. 49

¹⁰https://ditjenpp.kemenkumham.go.id/index.php?option=com_content&view=article&id=232:prosespengharmonisasian-sebagai-upaya-meningkatkan-kualitas-peraturan-perundang-

<undangan&catid=100&Itemid=180&lang=en>

Retrieved October 30, 2023 at 13.40 WITA

¹¹<https://fh.umj.ac.id/arrah-pembangunan-hukum-nasional-menurut-undang-undang-dasar-negara-republik-indonesia-tahun-1945/>

Retrieved November 10, 2023 at 10.30 WITA



In essence, law is the product of rational judgments derived from human conscience about the fairness of human behavior and the situation of human life. An appreciation of justice gives rise to the judgment that in certain social situations, it should behave in a certain way, in order to fulfill the sense of justice.

The general problem that occurs is that laws are made not for the benefit and welfare of the community, but for the benefit of certain groups. The law still does not reflect social justice. The law being blunt is not enough to break down arbitrariness, is unable to uphold justice, and cannot be a guide to be followed in solving various problems that should be answered by the law.¹² Therefore, efforts need to be made to return the law to a

truly ideal goal, which is to create legal certainty, justice, and welfare.

Gustav Radbruch, a German jurist said that, "the law is the will to be fair" (*Recht ist Wille zur Gerechtigkeit*). Law as the bearer of the value of justice allows us to examine whether the law is just or not, because the value of justice is the basis of law. Therefore, justice has the normative and constitutive nature of law. Without justice a principle is not worthy to be law.¹³

People's lives are subject to written and unwritten rules. All actions of citizens are subject to applicable laws and regulations. Indonesia has laws both written and unwritten whose function is to regulate citizens in the life of society, nation, and state.¹⁴ Written law is a written regulation

¹² Moh. Mahfud MD, Political Law in Indonesia, Rajawali Pres, Rajagrafindo Persada, Jakarta, 2009, p. 9

¹³ Agus Riwanto, Realizing Justice Law Progressively from a Pancasila Perspective, Journal of Sharia and Law, Vol. 2, Number 2, 2017, pp.137-151

¹⁴

<https://www.mkri.id/index.php?page=web.Berita&id=11776> Retrieved November 10, 2023 at 22.03 WITA



issued by an authorized institution, such as laws and regulations. While unwritten law is an unwritten regulation used by the community in daily life or has become a community custom, passed down from generation to generation and not set by authorized state institutions, such as moral norms, decency norms and customary norms.

The existence of law in the state has a strategic and important position, both in terms of the concept of the rule of law and in terms of the hierarchy of legal norms and legal functions in general. In the concept of the legal state, law is a manifestation of the application of legal norms in state life. According to Paul Scholten, the law lies in the Laws and Regulations so that citizens must be given enough space.¹⁵

One of Hans Kelsen's students, Hans Nawiasky, developed his teacher's theory of the norm level theory in relation to a country. Hans Nawiasky in his book "*Allgemeine Rechtslehre*" says that in accordance with Hans Kelsen's theory, a legal norm is always multi-layered and tiered, that is, the norm below applies, is based, and comes from a higher norm and so on until a highest norm is called the basic norm. From this theory, Hans Nawiasky added that legal norms are also grouped. Nawiasky grouped into 4 major groups, namely: (1) Fundamental state norms (Staatsfundamentalnorn), (2) *Basic state rules* (Staatsgrundgezets), (3) *Formal laws* (Formell Gezets), (4) *Implementing rules and autonomous rules* (Verordnung and Autonome Satzung).¹⁶

¹⁵ Satjipto Rahardjo, 2006, Legal Sciences, Bandung: PT. The image of Aditya Bakti.

¹⁶ Principles and Theories of Legislation Formation by Rais rozali uploaded 12-september-2013

<https://zalirais.wordpress.com/2013/09/12/asas-asas-dan-teori-pembentukan-perundang-undangan/> accessed on October 20 , 2023 at 09.30 WITA



In the current development of laws and regulations, there is a tendency to place legal principles or principles for the formation of laws and regulations in the First Article or chapter of General Provisions as formulated in Law Number 2011 concerning the Establishment of Laws and Regulations. This is as explained in the background where in the provisions of Article 5 and Article 6, legal principles have been established as legal norms. If this is done, it is not in accordance with the opinion of Paul Scholten who states that the principle of law (*rechtbeginsel*) is not a rule of law (*rechtsregel*). To be said to be the rule of law, the principle of law is all too general. Or the Laws and Regulations have made a legal principle or the principle of the Formation of Laws and Regulations into a legal norm. As a legal norm, it will

result in a sanction if these principles are not met. Therefore, the Establishment of Laws and Regulations no longer makes the legal principle or the principle of the Formation of Laws and Regulations as a legal norm in the Laws and Regulations to be formed.

Unlike other norms, legal norms (*rechtnormen*) actually regulate internal *life* in a civilized and humanistic manner, and regulate interpersonal relationships in social processes, both directly and indirectly. The rule of law is aimed at personal happiness and peaceful coexistence, both through security and order and renewing behavior.¹⁷ According to Logemann, every legal regulation is essentially influenced by two important elements, namely: *First, the Real Element, because of its concrete nature, comes from the environment in which*

¹⁷ I Gde Pantja Astawa and Suprin Na'a, 2012, *Dynamics of Law and Legislation in Indonesia*, Bandung, Alumni, p. 25.



humans live, Second, the *Idil Element*, because of its abstract nature, comes from the human being itself in the form of reason / thoughts and feelings. The elements that affect this Legislation, in fact, are more accurately called principles.

A rule of law (*rechtsregel*) has a more detailed content and can be applied immediately. In contrast to legal principles that have indirect *effects*, which affect the interpretation of legal regulations. Legal regulations not only have more detailed content and can be applied directly, but legal regulations also have a specific nature. Moreover, the rule of law is also "*alles of niets character*".¹⁸ In contrast to legal principles that do not have this nature. Different legal principles can often be

applied to the same event, according to the role of the prevailing legal interpretation. In this case, it is necessary to determine which legal principles are most relevant.¹⁹

Often principles and norms are considered a unity that is not different. This assumption can certainly be said to be incorrect because principles and norms are something different. The difference between norms and principles can be seen as follows:

1. Principles are general and abstract rationales, while norms are real rules.
2. A principle is an idea or concept, while a norm is the elaboration of that idea.
3. Legal principles have no sanctions, while legal norms have sanctions.

¹⁸ Irwansyah, 2018, Diktat of Constitutional Law, State Islamic University of North Sumatra. Medan, p. 44

¹⁹ Dedy Triyanto Ari Rahmad, I Gusti Ngurah Wairocana, Ni Gusti Ayu Dyah Satyawati, The

Relationship Between Legal Norms and Legal Principles, in Jurnal Kertha Negara : Journal of Legal Sciences Vol. 01, No. 05, July 2013, p. 4.



4. Legal principles are the background of the existence of a real law, while legal norms are real laws themselves.

The term principle is a translation of the Latin "Principiu", the English "Principle" and the Dutch "Beginselen" which means foundation, principle or guideline. There are also those who interpret it as something that can be a base, foundation, support, fulcrum to clarify something.²⁰

Legal principles play an important role in the formation, application and development of law. For the formation of law, legal principles provide an overview of the provisions that should be included in the law. As for the application of law, legal principles are very helpful for the use of interpretation and discovery of law and

analogy. Meanwhile, for the development of legal science, legal principles are useful for expressing different legal regulations so as to create unity in the legal system.²¹

While the term norm, comes from Latin. Norms in Indonesian are translated as benchmarks, measures, rules, guidelines, for behavior or action that a person must adhere to in relation to his fellow man and his environment. Thus, norms are rules or rules that are used as a benchmark to assess a person's attitude to act. When viewed from its essence, rules are the formulation of a view (*oordeel*) regarding behavior or attitude.

Regarding the principle of the formation of laws and regulations, Bagir Manan said, in making legal regulations, they

²⁰ Lutfil Ansori, Legal Drafting, Theory and Practice of Drafting Laws and Regulations. Depok:Rajawali Press, 2022. p. 107

²¹ Soerjono Soekanto and Purnadi Purbacaraka, Regarding the Rule of Law, Bandung: PT Citra Aditya Bakti, 1989, p. 18



should refer to the points of the formation of laws and regulations, namely:²²

1. Juridical Foundation: namely legal provisions that become the legal basis (*rechts ground*) for making a Legislation or regional regulation.
 - a. Formal juridical foundation: that is, the basis that gives authority to certain agencies to make certain regulations.
 - b. Juridical foundation in material aspect: that is, the foundation that contains material or content as a legal basis for regulating certain things.
 - c. Technical juridical foundation: namely the basis that gives authority for certain agencies to make certain regulations regarding procedures for forming laws.
2. Sociological Foundation: is the sociological policy line that becomes the next basis for wisdom.
3. Philosophical Foundation: namely the views or ideas that become the basis of

the *circa-cita* when pouring the view of life and legal ideals into a draft Legislation covering the philosophy of the Indonesian nation derived from Pancasila and the Preamble to the 1945 Constitution.

In drafting laws and regulations, the government must be able to formulate possibilities, and potentials that will occur in the future and be able to identify opportunities and obstacles faced in the application of these legal provisions so that they can be minimized. The law must reflect the reality of people's lives, including people's tendencies and expectations.²³ The language used must be simple, straightforward, firm, concise, clear and easy for everyone to understand, not too long and not complicated, and the wording must be in harmony between norms and other norms.

²² Yuliandri, Principles of the Formation of Good Laws and Regulations, The Idea of Sustainable Law Formation, Raja Grafindo Persada, Jakarta, 2009, p.134

²³ Ali Marwan HSB, Discretion as a Basis for Consideration of the Formation of Laws and Regulations, Research Scientific Journal, Law Journal Volume I, Number 2 January, 2021 p. 4



The language in the Laws and Regulations must be in accordance with the rules of Indonesian governance, both in terms of words, sentences, writing, and spelling.²⁴

Public demands for comprehensive legal regulations create the need for regulations that are implemented according to specific methods that are certain, standard and binding on all institutions that have the authority to form legal regulations. In order to realize Indonesia as a state of law (*rechtsstaat*), the state is obliged to carry out national legal development in a planned, integrated, and sustainable manner to ensure the protection of constitutional rights and obligations of all Indonesian citizens based on the mandate of the Constitution of the Republic of Indonesia Year 1945.²⁵

Thus, the House of Representatives as the Institution for the Formation of Laws and Regulations, in addition to applying the principles / principles of the formation of laws and regulations, must also use its authority based on laws and regulations and general principles of good governance, so that the legal products born are always in accordance with the provisions of higher laws and regulations and in accordance with the public interest. If this is realized, then a law can be said to be effective juridically, sociologically and philosophically.

2. Constitutional Rights: Meaningful Participation in the Formation of Laws and Regulations

Indonesia as a democratic country applies the concept of the rule of law, as explained in Article 1 paragraph (3) of the

²⁴ Pipin Syarifin and Dedah Jubaedah, 2017. Statutory Science. Bandung: Pustaka Setia p. 213

²⁵ <https://fh.umj.ac.id/arrah-pembangunan-hukum-nasional-menurut-undang-undang-dasar-negara->

republiik-indonesia-tahun-1945/ Retrieved November 13, 2023 at 20.25 WITA



1945 Constitution.²⁶ The article puts sovereignty in the hands of the people. In this context, law plays an important role in regulating society, and making laws and regulations is an important part of carrying out the concept of the rule of law. The making of laws and regulations by the government has a direct impact on the interests of the community, but there are several problems related to participation, absorption, and accommodation of community interests in the process of forming laws and regulations. Therefore, it is important to ensure that the laws and regulations formed meet the ideal standards of laws and regulations and are able to accommodate the aspirations of the community. The establishment of laws and

regulations is also a tool of government legitimacy in running its government.²⁷

Jürgen Habermas came up with the idea of the importance of public space. Public space is a place where all members of society can interact, debate, and exchange ideas on public issues without any intervention from economic and political parties. In this public space, constituents can realize their rights and obligations as citizens so that democracy can run well. Habermas proposed the idea of "deliberative democracy," emphasizing that aspiring public policymakers should be tested through discussion or consultation in the public sphere.²⁸ Deliberative democracy formulated by Jürgen Habermas at least requires the existence of public space so that

²⁶ Constitution of the Republic of Indonesia Year 1945

²⁷ Sopiani and Zainal Mubaroq. Legal Politics of the Formation of Laws and Regulations After the Amendment of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. *Journal of LEGISLATION INDONESIA* Vol 17 No. 2 - June 2020 : p. 146-153

²⁸ Helmi Chandra SY and Shelvin Putri Irawan. Expanding the Meaning of Community Participation in the Formation of Laws After the Constitutional Court Decision. *Journal of the Constitution* Volume 19 Number 4, December 2022 p. 779



people can express every opinion related to the formation of a policy.²⁹

Social justice achieved through mutual agreement must be based on the best arguments. The public is defined as citizens who are aware of their rights and obligations, and the active participation of the public is essential in the practice of democracy. Deliberative democracy in the framework of Jurgen Habermas's thinking emphasizes how the laws that are formed gain legitimacy derived from a consensus as a result of an intersubjective process of discourse. Deliberative democracy emphasizes the importance of dialogical and synthetic community participation and jointly seeking truth based on facts, caring for community interests and non-doctrinal. Deliberative

democracy reflects the weakness of the voting mechanism created by liberal democracies, which places the top vote-getters as those who "have the right to determine common action". The nature of its deliberation legitimizes this model and government policies are tested through a comprehensive public consultation process. This comprehensive public consultation process automatically increases public participation in democracy.³⁰

The theoretical basis of Jürgen Habermas's theory of communicative action and consensus-oriented thinking, where Habermas assumes that the communication process must be the same in order to reach an agreement that is acceptable to all parties. In other words, Habermas believed social

²⁹ Liza Farihah and Sri Wahyuni, "Deliberative Democracy in the Process of Law Formation in Indonesia: Application and Challenges Ahead," Scientific Paper Institute for the Study and Advocacy for Judicial Independence (Leip), 2015, 7.

³⁰ Ahmad Suhelmi, Western Political Thought: A Study of the History of the Development of State, Society and Power Thought (Jakarta; Gramedia, 2001), 245-253



integration could be achieved. It is only through the process of communication activities that lead to consensus. In this regard, Habermas notes that communicative action should be interpreted as *"...reach understanding [verständigung] is considered to be a process of reaching agreement [einigung] among speaking and acting subjects... it has to be accepted or presupposed as valid by participants... a communicatively reached agreement has a rational basis; it cannot be imposed by either party, whether instrumentally through intervention in the situation directly or strategically through influencing the decision of opponents..."*³¹. This means that in order to reach an understanding and mutual agreement between subjects or participants in the forum can work, it must be ensured that

the communication is free from all forms of coercion or intervention from either party. If this happens, it will only be the fulfillment of personal instincts and goals and will not result in a consensus.

Community participation in state life is very important. This role can only be fulfilled if good communication is established between the community and leaders. The state must be able to provide space for the community to participate and contribute. This is what Jürgen Habermas's theory calls deliberative democracy. This theory has its roots in the theory of communicative action. According to Habermas, communication is a basic feature of human coexistence.³² In the establishment of laws and regulations, the public has the opportunity to participate. As affirmed in Article 96 of Law Number 12 of

³¹ Jürgen Habermas, —The Theory of Communicative Action: Reason and The Rationalization Of Society, Volume I (Boston: Beacon Press, 1984), 67.

³² F. Budi Hardiman, Towards a Communicative Society; Science, Society, Politics and Postmodernism According to Jürgen Habermas (Yogyakarta: Canisius, 1993), p. 126



2011 concerning the Establishment of Laws and Regulations. Public participation in the formation of legislation is now beginning to be developed. The community as stakeholders has the right to convey their ideas and aspirations both orally and in writing in accordance with the principle of openness in Article 5 letter g that in the formation of legislation is transparent and open. Oral and/or written input can be carried out by: (a) Public hearings; (b) Working visits; (c) Socialization; and (d) Seminars, workshops, and/or discussions.³³

The implementation of *meaningful participation* can help ensure that the policies taken reflect the interests and needs of all parties involved. Public participation in the formation of legislation aims to achieve strong collective intelligence, build a more

inclusive and representative legislative institution in decision making, strengthen citizens' confidence in the legislative institution, legitimacy and shared responsibility for every decision and action to strengthen and enhance understanding of the role of citizen participation as well as being able to express their interests and to create A more accountable and transparent parliament.

The parties involved should be given the opportunity to provide input and advice and be included in the decision-making process. By involving various parties in the decision-making process, policies and actions taken can be more easily understood and accessed by the general public. However, the application of *meaningful participation* is not enough just as a rule in law. Governments and various stakeholders need to work

³³ Riskiyono, Joko. 2015. "Community Participation in the Formation of Legislation to Realize Prosperity." *Aspiration*. p. 165



together to ensure that meaningful participation actually occurs in practice and that the various parties involved are given an equal voice and valued in decision-making processes.

Legal products play a strategic role as a tool to create the welfare and prosperity of society. Like the historical approach, this approach offers an overview of the purpose of the rule of law presented today, around the 9th century. The existence of the state is forced to participate in the complexity of social interaction in society, in the hope that it can act as an organizer to advance the welfare and prosperity of society.³⁴The formation of laws and regulations is carried out by paying attention to and prioritizing the aspirations of people from various groups, especially weak, isolated, or even social minority groups in the area where the laws

and regulations apply. This is clearly in accordance with the provisions of the constitution which originally aimed to limit state power in order to prevent arbitrariness and protect human rights.

Participation is not enough with just a few people sitting in representative institutions, because institutions and people who sit in representative institutions often use politics in the name of the interests of the people, to fight for their own personal or group interests. Direct community participation will have three important impacts, namely: *First*, avoid opportunities for manipulation of people's involvement and clarify what the community wants; *Second*, increase the added value of the validity of the planning formulation. The more people involved, the better; and *Third*, strengthen

³⁴ Philipus M. Hadjon, 1987, Legal Protection for the People, Surabaya, PT Bina Ilmu, p. 44.



citizens' political awareness and political skills".³⁵

Through open public control over the establishment of laws and regulations as a form of development and law enforcement, the weaknesses and gaps inherent in formal institutional mechanisms can be complemented by direct public participation in order to ensure justice. Public participation is important in the formation of these laws and regulations because Parliament as a system of community representation cannot be viewed as the only forum for people's aspirations. Therefore, the principle of representation in ideas *is distinguished from representation in presence, because physical representation alone does not necessarily reflect the representation of ideas or aspirations*.³⁶

To support the implementation of public participation, the state must guarantee citizens the freedom to express their ideas and ideas. Freedom of association and assembly, which allows expressing expressions and ideas orally and in writing, has been protected by the Constitution of the Constitution of the Republic of Indonesia Year 1945 Article 28E paragraph 3, "Everyone has the right to freedom of association, assembly and expression".

Public criticism and suggestions against the establishment of laws and regulations must be protected as a state obligation to guarantee independence or maintain a democratic atmosphere by opening dialectical freedom in public spaces. So that the term "public space", public space is informal and inclusive. In German, public

³⁵ Alexander Abe as quoted by Sirajuddin and friends in his book entitled "Legislative Drafting of Participatory Method Institutionalization in the

Formation of Laws and Regulations, Malang, Setara perss, 2016, p. 237.

³⁶ Jimly Asshiddiqie, Constitution and Constitutionalism, Jakarta, Sinar Grafika, 2010, p. 133



space is known as "*öffentlichkeit*" which means the state of being accessible to everyone and refers to the open and inclusive nature of this space.³⁷ The legitimacy of a law or public policy is obtained not on the basis of obtaining a majority vote, but is achieved through mechanisms that allow the achievement of a fair and equitable majority or unanimity.

The doctrine of *meaningful participation* is a manifestation of the application of the principle of *people's sovereignty* as well as the strengthening and application of the principle of openness in the legislative process.³⁸ The principle of openness refers to a series of processes for the formation of legal products that must be carried out openly and consider aspects of

transparency. This concept certainly opens up opportunities for the public to participate more actively in various kinds of Legislative Formation, so that the legal products produced are consistent and based on the foundations and principles of Laws and Regulations.³⁹

The right of the community to be heard and to be considered emphasizes that the community not only has the right to express its opinions, but must also be heard and taken into account, especially in the context of the formation of laws and regulations. This is an effort to balance the interests of several parties in drafting laws, where the voices and aspirations of the community are usually only

³⁷ Mind. F Hardiman, *Deliberative Democracy Considers the State of Law and Public Space in Discourse Theory Jurgen Habermas*, Yogyakarta, PT Kanisius, 2009, p. 135.

³⁸ Yahya Ahmad Zain, Ristina Yudhanti, and Aditia Syapriallah, 2016, *Legislative Drafting of Legislation*, Yogyakarta, Thafa Media, p. 155.

³⁹ I Gde Pantja Astawa and Suprin Na'a, 2012, *Dynamics of Law and Legislation in Indonesia*, Bandung, P.T. ALUMNI, p. 77.



listened to formally.⁴⁰ That is, people's aspirations and participation are often ignored because their level of participation is simply following the discussion of the legislative process. Citizen requests are often just decorations or something that is often ignored by the framers of the law. Furthermore, the right of the community to be carefully considered for their opinions and desires is actually related to the aspirations they receive from the community.⁴¹

F. Conclusion

The establishment of laws and regulations must be in line with the concept of the state of law Pancasila. Democracy and the rule of law are inseparable, law enforcement requires community participation in its implementation.

Therefore, the rule of law is a democratic state because the ultimate power is in the hands of the people. To determine whether or not a law is democratic, we can look at the extent of community involvement in its making. A democratic state will create appropriate laws and thus increase respect for the rule of law. On the other hand, when the state exercises its power authoritarily, it leads to laws that are orthodox, both in their making and in their application. The principle of transparency is the basis for ensuring legal protection for all levels of society who have the opportunity to contribute to the formation of legal regulations. In fact, community participation (*meaningful participation*) can be understood as a contribution or stimulus to the development of law. The doctrine of meaningful participation requires the

⁴⁰ A. M. F. Hesty Kartikasari, "Community Rejection of the Omnibus Law Ratification of Job Creation in the Perspective of Legal Sociology," *Doctrina*, vol. 4, no. 1, p. 43, 2021.

⁴¹ Suteki, *Legal Design in Social Space*, 1st ed. Semarang: Thafa Media, 2013.



legislature to consider and respond to public comments or suggestions 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 intended to emphasize that in the formation of legal regulations, the most important thing is community participation that determines the validity of a legal product. Therefore, community participation in the development of laws must be ensured to ensure real community involvement and participation. The doctrine of *meaningful participation*, has three mandatory prerequisites, including *the right to be heard, the right to be considered and the right to be explained*.

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