

# PREVENTING TOKENISM IN THE FORMATION OF LEGISLATION THROUGH MEANINGFUL PUBLIC PARTICIPATION

Windy Virdinia Putri\*, Gumilang Fuadi\*\*, Nanik Prasetyoningsih\*\*\*

Master Program Law, Universitas Muhammadiyah Yogyakarta\*,\*\*\*

Jl. Brawijaya Yogyakarta 55183, Indonesia

Bureau for Legal and Cooperation Nasional Research and Innovation Agency\*\*

B.J. Habibie Building, Jl. M.H. Thamrin 8 10340, Jakarta Pusat, Indonesia

E-mail: windyvp@gmail.com\*, gumi001@brin.go.id\*\*, nanikpraetyoningsih@mail.umy.ac.id\*\*\*

Article	Abstract
<p><b>Article History:</b> Submitted: September 2024 Reviewed: October 2024 Accepted: December 2024 Published: December 2024</p> <p><b>Keywords:</b> Meaningful Participation; Public Sphere; Tokenism.</p>	<p><i>The Constitutional Court Decision Number 91/PUU-XVIII/2020 expands the meaning of public participation, namely that public participation in forming laws needs to be carried out meaningfully. The discussion about public participation is closely related to the relationship between the community and the state in forming policies that the state will issue to regulate its citizens. This paper analyzes the arrangements for meaningful public participation after the second amendment to Law Number 12 of 2011 concerning the Formation of Legislation (UUP3) with two objectives, first to find out the arrangements for meaningful public participation after the second amendment to UUP3 from the perspective of the Arnstein Participation Ladder. Two to knowing the meaning of meaningful public participation so as not to be in the area of tokenism. The results of the study show that the regulation of public participation is in the area of tokenism because there is no guarantee that decision-makers will accommodate the voice of the community. The way to increase public participation while at the same time encouraging community involvement far beyond tokenism is to arrange a public sphere mechanism for public debate to occur as the basis for drafting the National Legislation Program.</i></p>

## A. Introduction

This research focuses on Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Legislative Regulations (*UUP3*), emphasizing meaningful public participation. The government stated that the restructuring and improvement of *UUP3* is not only a follow-up to the Constitutional Court Decision Number 91/PUU-XVIII/2020, but also an improvement to several provisions in Law Number 12 of 2011 concerning the Formation of Legislative Regulations.<sup>1</sup> Previously, in the consideration section, the Government stated that one of them would be strengthening meaningful public involvement and participation.<sup>2</sup> The term public participation can be found in various terminologies. Some mention community participation, *inspraak* (Dutch) and public

<sup>1</sup> Central Government Indonesia, Law No 13 of 2022 regarding the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Legislative Regulations (2022).

<sup>2</sup> *Ibid.*

participation (English).<sup>3</sup> According to Yuliandri, public participation can mean that all parties within and outside the state and government structure can initiate ideas for forming laws. However, it is determined that official initiatives must come from the president, the People Representative Council (DPR), or the Regional Representative Council (DPD). Consequently, initiatives from other institutions or other parties must still be submitted through one of the three doors, namely the president, DPR, and DPD.<sup>4</sup> The Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning Formal Review of Law Number 11 of 2020 concerning Job Creation broadens the meaning of public participation. The decision states that public participation in forming laws needs to be carried out meaningfully (meaningful participation). The aim is to create genuine public participation and involvement.<sup>5</sup> Meaningful public participation has at least 3 prerequisites: first, the right to be heard; second, the right to have one opinion considered (right to be considered); and third, the right to receive an explanation or answer to the opinion given (right to be explained).<sup>6</sup>

Since the Constitutional Court effectively administered justice in 2003, there have been 1,603 Judicial Review Decisions (PUU) for both formal and material judicial review requests, 296 or 18.47% of PUU decisions contain orders granting the request, 602 or 37.55% of the decisions rejected, and 500 or 31.19% of the decisions did not accept the PUU application.<sup>7</sup> These legal facts show that there are still many laws that conflict with the constitutional rights of citizens or conflict with the will and desires of the people, one of the causes of which is the ineffectiveness of public participation.<sup>8</sup> The issue of public participation was previously raised in 2019 due to the assessment of some communities regarding the lack of community involvement as a form of participation in the discourse on the promulgation of the Draft Criminal Code and the Draft Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission, including the promulgation of a number of The draft law was rushed at the end of the 2014-2019 period of the House of Representatives of the Republic

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<sup>3</sup> Kamarudin, "Tinjauan Yuridis Partisipasi Masyarakat Dalam Proses Pembentukan Undang-Undang", *Perspektif Hukum* 15, no. 2 (2015): 184-203, <https://doi.org/10.30649/ph.v15i2.35>.

<sup>4</sup> *Ibid.*

<sup>5</sup> Helmy Chandra SY and Shelvin Putri Irawan, "Perluasan Makna Partisipasi Masyarakat Dalam Pembentukan Undang-Undang Pasca Putusan Mahkamah Konstitusi Expansion Meaning of Public Participation in the Formation of Laws After Decision of Constitutional Court", *Jurnal Konstitusi* 19, no. 4 (2022): 766-793, <https://doi.org/10.31078/jk1942>.

<sup>6</sup> M Jeffri Arlinandes, *et. al.*, "Rekonstruksi Tahapan Pembentukan Perundang-Undangan: Urgensi Re-Harmonisasi Dan Evaluasi Sebagai Siklus Pembentukan Undang-Undang Yang Berkualitas", *Jurnal Legislasi Indonesia* 19, no. 4 (2022): 548-564, <https://doi.org/10.54629/jli.v19i4.980>.

<sup>7</sup> Mahkamah Konstitusi RI, *Data Putusan Mahkamah Konstitusi RI* (2023).

<sup>8</sup> Angga Prastyo, "Batasan Prasyarat Partisipasi Bermakna Dalam Pembentukan Undang-Undang di Indonesia Limitation of Meaningful Participation Requirements In The Indonesian Law-Making Process", *Hukum dan Peradilan* 11, no. 3 (2022): 405-436, <https://doi.org/10.25216/jhp.11.3.2022.405-436>.

of Indonesia (DPR).<sup>9</sup> The culmination was Law Number 10 of 2020 concerning Job Creation, which generated a lot of polemics and rejection from the public because there was no public transparency, and people felt that their aspirations were not being listened to.<sup>10</sup> The latest is the revision of the Law on Regional Head Elections, which was rushed through by the Legislative Body of the People Representative Council the day after the Constitutional Court decision regarding the threshold for nomination of regional heads, is considered to be a sign that the practice of democracy in Indonesia is merely lip service.<sup>11</sup> Responding to this, the public strongly protested the DPR decision yesterday.<sup>12</sup>

Maria Farida Indrati further stated that guaranteeing public participation in forming the omnibus law is one of the conditions that cannot be negotiated when the omnibus law is adopted in Indonesia legal and regulatory system. One of the requirements that must be fulfilled is the principles of openness, prudence, and participation.<sup>13</sup> Nonet and Selznick stated that the importance of society in forming legal products must be seen in the participatory formation process by inviting as much participation as possible from all elements of society, both in terms of individuals and community groups. It must be aspirational, originating from the community wishes, not just the authorities will to legitimize their power.<sup>14</sup> The formation of aspirational and participatory laws contains two indicators: process and substance. This process implies a mechanism for forming legislation that must be carried out transparently so that the public aspirations can participate in providing input in regulating problems that exist in a country and

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<sup>9</sup> Angga Prastyo, *et. al.*, "Pengaturan Asas Keterbukaan Dalam Pembentukan Undang-Undang", *Jurnal Cakrawala Hukum* 11, no. 2 (2020): 125-135, <https://doi.org/10.26905/idjch.v11i2.4136>.

<sup>10</sup> Ary Fatanen, "Eksistensi Kewenangan Daerah Dalam Perlindungan dan Pengelolaan Lingkungan Hidup Pasca Diterbitkannya Undang-Undang Cipta Kerja", *Khazanah Hukum* 3, no. 1 (2021): 1-7, <https://doi.org/10.15575/kh.v3i1.10009>.

<sup>11</sup> Aryo Putranto Saptohutomo, "UU Pilkada Direvisi Usai Putusan MK, Pakar: Demokrasi Hanya Papan Nama", August 22, 2024, <https://nasional.kompas.com/read/2024/08/22/10155041/uu-pilkada-direvisi-usai-putusan-mk-pakar-demokrasi-hanya-papan-nama>, accessed on 24 September 2024.

<sup>12</sup> CNBC, "Isi Revisi UU Pilkada Pemicu Demo, Ini 2 Poin Penting Versi DPR & MK", August 23, 2024, <https://www.cnbcindonesia.com/news/20240823094111-4-565778/isi-revisi-uu-pilkada-pemicu-demo-ini-2-poin-penting-versi-dpr-mk>, accessed on 24 September 2024.

<sup>13</sup> Bayu Dwi Anggono, "Omnibus Law Sebagai Teknik Pembentukan Undang-Undang: Peluang Adopsi Dan Tantangannya Dalam Sistem Perundang-Undangan Indonesia", *RechtsVinding* 9, no. 1 (2020): 17-37, <http://dx.doi.org/10.33331/rechtsvinding.v9i1.38>.

<sup>14</sup> Rahendro Jati, "Partisipasi Masyarakat Dalam Proses Pembentukan Undang-Undang Yang Responsif (Community Participation in Order to Create the Responsive Law)", *RechtsVinding* 1, no. 3 (2012): 329-342, <http://dx.doi.org/10.33331/rechtsvinding.v1i3.88>.

that the regulations made can be by aspirations<sup>15</sup>— fulfilling the ideal legal needs of society by prioritizing the deliberative process as the key so that the law can be accepted by society.<sup>16</sup>

The principles of openness and public participation have been regulated in *UUP3*. However, *UUP3* is still very weak in terms of guarantees of public participation in the legislative process. Public participation is not included in one of the principles for forming legislative regulations in *UUP3*.<sup>17</sup> The principle of openness before the latest amendment to *UUP3* is regulated in Article 5, which explains that the formation of statutory regulations, starting from planning, preparation, drafting, and discussion, is transparent and open. Article 5 further confirms in Article 170 of Presidential Regulation Number 87 of 2014 that the government and DPR must disseminate the draft law from the drafting stage.<sup>18</sup> Before the latest amendment to *UUP3*, public participation was regulated in Article 96 paragraphs (1) to (4).<sup>19</sup>

The principle of openness is insufficient as a basis for obtaining effective public participation in forming laws and regulations. The principle of openness only requires legislators to be open or transparent so that the public can witness the process of forming legislative regulations; it does not guarantee that the public can determine or even control the legislative process.<sup>20</sup> Public participation is the primary basis in law formation, from the initiative to the enactment level. This effort reflected people willingness as the basis for working the social contract in legislative practice.<sup>21</sup> The discussion about public participation is closely related to the relationship between the community and the state in forming policies that the state will issue to regulate its citizens.<sup>22</sup> Tokenism was introduced by Sherry R. Arnstein when she launched an article entitled *A Ladder of Participation* in July 1969 as one of three degrees of public participation. Public participation (citizen participation) is interpreted

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<sup>15</sup> Nor Fadillah, “Penerapan Asas Keterbukaan Dalam Pembentukan Undang-Undang Tentang Cipta Kerja dan Undang-Undang Tentang Ibu Kota Negara”, *Lex Renaissance* 7, no. 2 (2022): 243-264, <https://doi.org/10.20885/JLR.vol7.iss2.art3>.

<sup>16</sup> Suryati, *et. al.*, “Tinjauan Hukum Terhadap Omnibus Law Undang-Undang Cipta Kerja”, *Simbur Cahaya* 28, no. 1 (June, 2021): 166-186, <https://doi.org/10.28946/sc.v28i2.902>.

<sup>17</sup> Mahaarum Kusuma Pertiwi, *et. al.*, “Putusan MK Terkait UU Cipta Kerja”, (*Policy Paper*, Universitas Gadjah Mada, 2022).

<sup>18</sup> Dirman Nurjaman, “Penerapan Asas Keterbukaan Dalam Proses Pembuatan Undang-Undang Omnibus Law”, *Khazanah Multidisiplin* 2, no. 2 (2021): 57-69, <https://doi.org/10.15575/kl.v2i2.13165>.

<sup>19</sup> Fiqih Rizki Artioko, “Pengadopsian Partisipasi Masyarakat Yang Bermakna (Meaningful Participation) Dalam Undang-Undang Nomor 13 Tahun 2022 tentang Perubahan Kedua Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan”, *Al-Qisth Law Review* 6, no. 1 (2022): 52-83, <http://dx.doi.org/10.24853/al-qisth.6.1.52-83>.

<sup>20</sup> Mahaarum Kusuma Pertiwi, *et. al.*, *Loc.Cit.*

<sup>21</sup> Idul Rishan, “Evaluasi Performa Legislasi Dalam Pembentukan Omnibus Law Cipta Kerja: Kajian Legisprudensi”, *Undang: Jurnal Hukum* 5, no. 1 (2022): 43-67, <https://doi.org/10.22437/ujh.5.1.43-67>.

<sup>22</sup> Suryati, *et. al.*, *Loc.Cit.*

as a category of community power (citizen power).<sup>23</sup> Tokenism in this study refers to tokenism, which in the Merriam-Webster dictionary is defined as “the policy or practice of making only a symbolic effort (as to desegregate)”. A loose translation is a policy or practice made only as a symbolic effort (as a desegregation effort).<sup>24</sup> Arnstein explained that “public participation is based on the community power to determine a final product, and the extent of community power in determining plans and programs”. Therefore, Arnstein created a ladder model of public participation, and in general, there are three degrees of public participation, namely: 1) Non-Participation; 2) Pseudo Participation (Degrees of Tokenism); and 3) Community Power (Degrees of Citizen Powers).<sup>25</sup>

Previous research related to public participation is as follows: Public Participation in the Process of Forming Responsive Laws<sup>26</sup>, this article aims to determine the need for public participation and to find out how to form laws that involve public participation to produce responsive laws. Next, Adoption of Meaningful Public Participation in Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulation<sup>27</sup> the formulation of the problem raised in this article is what is the adoption of meaningful public participation (meaningful participation) in Law No. 13 of 2022, it is by Constitutional Court Decision No. 91/PUU-XVII/2020. Moreover, how should meaningful participation be used to form laws and regulations in Indonesia. The research results show that the second amendment to Law Number 12 of 2011 did not adopt the entire mandate of Constitutional Court decision No. 91/PUU-XVII/2020. Another research is Public Participation After the Lawmaking Procedure Law of 2022<sup>28</sup> the formulation of the problem raised in this article is what is meant by meaningful public participation in law formation. Moreover, what are the ideal arrangements in Law Number 13 of 2022 concerning the Formation of Legislative Regulations to accommodate meaningful participation in law formation. This study found that Law Number 13 of 2022 cannot meaningfully accommodate participation because it is still a rights and not an obligation. Then, legislators must create

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<sup>23</sup> Sherry R. Arnstein, “A Ladder of Citizen Participation”, *Journal of the American Institute of Planners* 35, no. 4 (July, 1969): 216-224, <https://doi.org/10.1080/01944366908977225>.

<sup>24</sup> Merriam-Webster.Com, “Tokenism”, January 16, 2023, <https://www.merriam-webster.com/dictionary/tokenism#dictionary-entry-1>, accessed on 16 January 2024.

<sup>25</sup> Pundarika Vidya Andika, “Mengenal Arnstein’s Ladder Dalam Menata Partisipasi Publik”, January 11, 2022, <https://iap2.or.id/mengenal-arnsteins-ladder-dalam-menata-partisipasi-publik/>, accessed on 16 January 2024.

<sup>26</sup> Rahendro Jati, *Loc.Cit.*

<sup>27</sup> Fiqih Rizki Artioko, *Loc.Cit.*

<sup>28</sup> Fahmi Ramadhan Firdaus, “Public Participation After The Law-Making Procedure Law of 2022”, *Jurnal Ilmiah Kebijakan Hukum* 16, no. 3 (2022): 495-514, <https://doi.org/http://dx.doi.org/10.30641/kebijakan.2022.V16.495-514>.

information technology-based tools that help increase meaningful participation in lawmaking. Lastly is expanding the meaning of public participation in the formation of laws post-Constitutional Court Decision<sup>29</sup>, which discusses the form of expanding the meaning of public participation in the Constitutional Court Decision Number 91/PUU-XVIII/2020 and the impact of expanding the meaning of public participation in forming laws. The results of the study show that the form of expanding the meaning of public participation in the Constitutional Court decision Number 91/PUU-XVIII/2020 was carried out meaningfully by providing guarantees of participation for affected communities and the impact of expanding the meaning of public participation in the formation of laws, namely changing the paradigm of law formation, improving regulations and strengthening public participation as a basis for formal testing.

Based on the things explained above, the analysis of preventing tokenism in forming laws and regulations through meaningful public participation aims to determine the regulation of public participation after the second amendment to *UUP3* from the perspective of Arnstein Participation Ladder. Furthermore, it is also to find out the meaning of meaningful public participation so that it does not end up in tokenism. Therefore, this article can be helpful for legislators in interpreting meaningful public participation in the formation of responsive legal products.

## B. Method

This study adopts a normative perspective, employing conceptual and statutory regulatory frameworks.<sup>30</sup> Legal resources are classified into two categories: main legal materials, which consist of legislation, and secondary legal materials, which encompass expert opinions or doctrines derived from legal articles in law journals or relevant literature pertaining to the issues at hand.<sup>31</sup> In normative research, data is gathered through literature reviews or searches for legal documents, encompassing both primary and secondary legal materials in this study. Utilizing reading and technology for comprehensive online searches are methods to acquire these study materials and resources. The legal sources are subsequently selected, categorized, and descriptively assessed to generate arguments for the research findings. These arguments are subsequently converted into prescriptions or assessments, facilitating a

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<sup>29</sup> Helmy Chandra SY and Shelvin Putri Irawan, *Loc. Cit.*

<sup>30</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Jakarta: Kencana, 2005), 132-135.

<sup>31</sup> Mukti Fajar Nur Dewata and Achmad Yulianto, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Fakultas Hukum Universitas Muhammadiyah Yogyakarta, 2007), 111-113.

discourse on what is proper or erroneous, or what is appropriate within the legal context pertaining to the investigated issues, contingent upon the research outcomes.<sup>32</sup>

### **C. Analysis and Discussion**

#### **1. Meaningful Public Participation Arrangements After the Second Amendment to UUP3 Viewed from the Perspective of Arnstein Participation Ladder**

##### **a. Meaningful Public Participation Arrangements in the Second Amendment to UUP3**

After the second amendment to *UUP3*, Article 96 was changed to read as follows: The public has the right to provide input verbally and/or in writing at every stage of the Formation of Legislative Regulations (paragraph (1)); Providing public input is carried out online and/or offline (paragraph (2)); The public as referred to in paragraph (1) are individuals or groups of people who are directly affected and/or have an interest in the content of the Draft Legislative Regulations (paragraph (3)). Furthermore, to make it easier for the public to provide input, every Academic Manuscript and/or Draft Legislation can be easily accessed by the public (paragraph (4)). In implementing the rights as intended in paragraph (1), the legislators inform the public regarding the Formation of Legislative Regulations (paragraph (5)). To fulfill the rights as intended in paragraph (1), the legislators can conduct public consultation activities through: a) public hearings; b) work visit; c) seminars, workshops, discussions; and/or d) other public consultation activities (paragraph (6)). As intended in paragraph (6), the results of public consultation activities become material for consideration in planning, preparing, and discussing Draft Legislative Regulations (paragraph (7)). Makers of Legislative Regulations can explain the results of discussions on public input as intended in paragraph (1) (paragraph (8)). Further provisions regarding public participation, as referred to in paragraphs (1) to (8) are regulated in DPR Regulations, DPD Regulations, and Presidential Regulations (paragraph (9)).

The Constitutional Court Decision Number 91/PUU-XVIII/2020 asserts that substantive public participation necessitates three essential criteria: First, the right to express one opinion; Second, the right to have one opinion acknowledged; and third, the right to obtain a response or clarification regarding the expressed opinion. Participation is mostly aimed at community groups directly impacted or concerned about the proposed legislation

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<sup>32</sup> *Ibid.*

under discussion.<sup>33</sup> According to the Constitutional Court Decision, the stipulations regarding the right to be heard in Article 96, paragraphs (1)-(3) must not restrict the definition of the public eligible to provide input, as we operate within a democratic framework and a social contract characterized as a rational agreement, irrespective of the magnitude of state authority and the scope of citizens liberties. A social contract is established to ensure fairness and uphold high moral standards, grounded in the collective free will of all individuals. According to J. J. Rousseau, the establishment of a state and society necessitates the social contract hypothesis.<sup>34</sup> In essence, J. J. Rousseau posits that society does not confer complete rights upon the authorities within the social contract. Nonetheless, some of these are utilized by society to actively participate in the formulation of rules and regulations. This encompasses the notion of people sovereignty as a fundamental foundation of the state, as articulated in Article 1 paragraph (2) of the 1945 Constitution.

Moreover, community involvement is assured as a fundamental right under Article 27 paragraph (1) and Article 28C paragraph (2) of the 1945 Constitution, which affords citizens the opportunity to engage in governance and contribute to the development of society, nation, and state. Consequently, there should be no limitations or constrictions of Article 96, paragraph (3) concerning the freedom to offer feedback or be heard, as this is guaranteed by our constitution.<sup>35</sup> Moreover, Article 96 in *UUP3* solely references the term community engagement, omitting the term “meaningful”. Public involvement in *UUP3* is designed for individuals with an interest in a draft law, granting them the right to offer oral and written contributions via Public Hearing Meetings, site visits, outreach initiatives, seminars, workshops, or discussions. The stipulations of *UUP3* aforementioned do not explicitly assure involvement for “concerned individuals” as delineated in the Constitutional Court Ruling. Guarantees are exclusively provided to individuals or entities with a vested interest in the content of the proposed legislation. According to Article 96 paragraph (3) of *UUP3*, the term “groups of people” encompasses community groups or organizations, professional organizations, non-governmental organizations registered with the relevant ministry, customary law communities, and individuals with disabilities. This implies that individuals with concerns may not have the opportunity to participate in the legislative process, as those

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<sup>33</sup> Mahkamah Konstitusi RI, Salinan Putusan Nomor 91/PUU-XVIII/2020 (2021).

<sup>34</sup> Fiqih Rizki Artioko, *Loc.Cit.*

<sup>35</sup> *Ibid.*



with vested interests are not invariably worried, whereas those who are concerned undoubtedly possess interests.

Moreover, there are limitations imposed on non-governmental organizations registered with the relevant ministry, presenting an obstacle for several community groups. Indeed, assurances from legislators to the concerned public are the primary prerequisites for meaningful and full public participation.<sup>36</sup> Article 96 primarily focuses on governing the rights of the community in legislative creation, while also necessitating the regulation of parliamentarian's duty. For instance, under Article 96 paragraph (8), the term "may" could serve as a justification for legislators to refrain from consistently offering explanations regarding public input. This phrase should be revised to "must" since meaningful participation is an indivisible entity; the right to an explanation is an obligatory outcome of the right to be heard and the right to be regarded.<sup>37</sup> The enactment of community engagement as a public right in legislative formulation must also be recognized as a governmental obligation. When rights are conferred onto society and citizens by legislation, it becomes the state duty to uphold and facilitate the enforcement of such rights.<sup>38</sup>

#### **b. The Arrangement of Public Participation in Article 96 of the UUP3 from the Perspective of Arnstein Participation Ladder**

Arnstein established the concept of public involvement defined as a categorical phrase for citizen empowerment. This signifies a transfer of power that enables the underprivileged (have-nots) to be actively incorporated into the future, irrespective of political and economic processes. The fundamental aspect of public involvement is the redistribution of power, participation devoid of power redistribution is meaningless. Subsequently, Arnstein delineates the phases of community engagement aimed at impacting policy results as follows: initially, manipulation; subsequently, therapy; thirdly, informing; fourthly, consultation; fifthly, placation; sixthly, partnership; seventhly, delegated power; and last, community control (citizen control).<sup>39</sup>

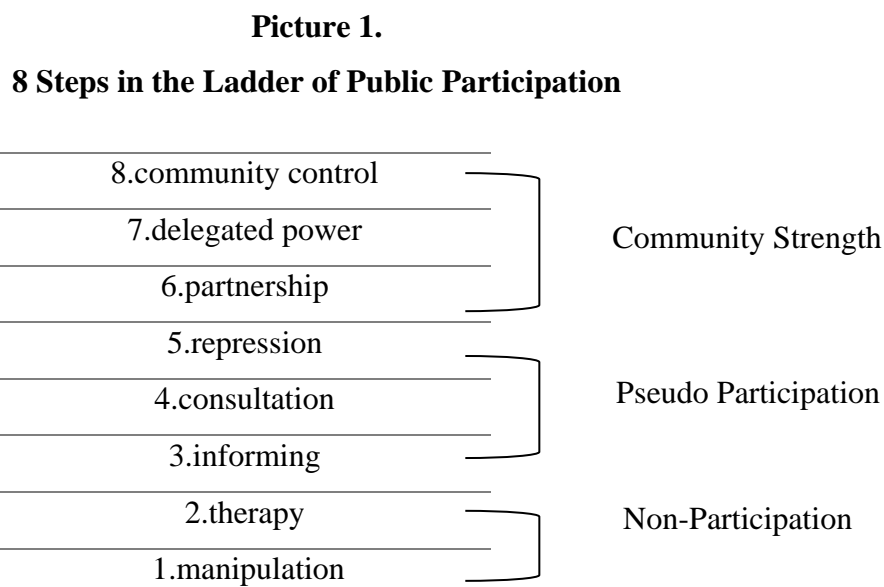
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<sup>36</sup> Helmy Chandra SY and Shelvin Putri Irawan, *Loc.Cit.*

<sup>37</sup> Fahmi Ramadhan Firdaus, *Loc.Cit.*

<sup>38</sup> Salahudin Tunjung Seta, "Hak Masyarakat Dalam Pembentukan Peraturan Perundang-Undangan", *Jurnal Legislasi Indonesia* 17, no. 2 (2020): 154, <https://doi.org/10.54629/jli.v17i2.530>.

<sup>39</sup> Sherry R. Arnstein, *Loc.Cit.*



**Source: 8 Steps in the Ladder of Public Participation<sup>40</sup>**

Sirajuddin categorizes the eight levels of engagement into three distinct tiers based on these stages. Initially, there is non-participation, denoting the extent of manipulation and therapy; thereafter, there is tokenism, indicating the degree of repression, consultation, and informing. Thirdly, it pertains to the community strength (extent of citizen empowerment), which denotes the degree of partnership, delegated power, and community control.<sup>41</sup> At the most fundamental level, there exists a hierarchy of manipulation and therapy that elucidates the phenomenon of “non-participation”, which is a contrived substitute for authentic engagement. The primary objective is not to facilitate public involvement in planning or program development, but to empower those in authority to educate or pursue alternative objectives.<sup>42</sup>

<sup>40</sup> *Ibid.*

<sup>41</sup> Joko Riskiyono, “Partisipasi Masyarakat Dalam Pembentukan Perundang-Undangan Untuk Mewujudkan Kesejahteraan Public Participation in the Formation of Legislation to Achieve Prosperity”, *Aspirasi* 6, no. 2 (December, 2015): 159-176, <https://doi.org/10.46807/aspirasi.v6i2.511>.

<sup>42</sup> Miko Ginting, “Koalisi Pemantau Peradilan: Refleksi Dari Masyarakat Sipil, Keterlibatan Tokenisme, Hingga Merajut Modal Sosial”, *Jurnal Peradilan Indonesia (Teropong)* 6, (July-December, 2017): 77-100, <https://mappifhui.org/wp-content/uploads/2018/02/Jurnal-Teropong-Vol-6-Juli-Desember-2017.pdf>.

The subsequent steps are the third and fourth, specifically informing and consulting. This tier is part of the tokenism framework that permits “those who possess nothing” to be heard and to cast their votes. At this level, persons in authority provide a spectrum of participation to facilitate listening and being listened to. Nonetheless, at this level, they still lack the authority to ensure their perspectives are acknowledged by those in positions of power. Limited participation does not ensure alteration of the existing state of affairs. Subsequently, placation represents the pinnacle of tokenism. Individuals experiencing poverty may offer suggestions. Nonetheless, the authority to make decisions remains with the power holder.<sup>43</sup> At the pinnacle is citizen power in shaping decisions. Where the degree of involvement can be incorporated in partnerships that enable “have-nots” to bargain with those in power. The apex consists of delegated power and citizen control, wherein the “have-nots” hold most decision-making positions.<sup>44</sup>

According to Arnstein Participation Ladder, the control of public participation in Article 96 of *UUP3*, which allows for verbal or written input to the DPR, is categorized as tokenism. Thus, the distribution of the input is contingent upon the goodwill of the DPR members. DPR members are not required to convey public input. Similarly, it is not highlighted that the avenue for public input may occur through plenary meetings as a decision-making forum.<sup>45</sup> Fadillah Putra underlined that public participation refers to the involvement of the people in decision-making forums, rather than merely attending hearings or consultations. The Plenary Meeting Forum serves as a decision-making platform where all stakeholders with an interest in the proposed legislation can articulate their concerns during the negotiation process. Participants in the community are encouraged to articulate their views until decisions are ultimately made through an open negotiating process. Each participant can observe how their argumentative process contributes to the formulation of the decisions made. Thus, citizen participation occurs comprehensively throughout the entire legislative process.<sup>46</sup> The optimal level of public participation in Indonesia law-making process is of the partnership kind, as it establishes lawmakers and the community as equal partners. The community possesses bargaining power, and discussions have occurred between the community and authorities during the formulation and implementation of legislation, as well as in monitoring and assessment processes. In this scenario, legislators

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<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> Kamarudin, *Loc. Cit.*

<sup>46</sup> *Ibid.*

will be more receptive to public goals as their roles are equal partners that enhance one another.<sup>47</sup>

## 2. Determining Meaningful Public Participation to Prevent Tokenism

The Constitutional Court articulates the objectives of public participation in law formation, which include: a) fostering robust collective intelligence to enhance the analysis of potential impacts and broader considerations in the legislative process, thereby improving overall outcome quality; b) cultivating a more inclusive and representative legislative body in decision-making; c) augmenting citizen trust and confidence in legislative institutions; d) reinforcing legitimacy and shared responsibility for every decision and action; e) enhancing citizen understanding of the role of parliament and its members; f) facilitating opportunities for citizens to express their interests; and g) establishing a more accountable and transparent parliament. responsible and clear.<sup>48</sup>

This objective underscores the significance of community involvement in the legislative process. There are multiple modalities of community involvement in the legislative process. The variations are as follows: a) The Pure Representative Democracy Model, wherein citizens engage through elected representatives who are entrusted with policymaking in parliament; b) The Basic Model of Public Participation, which encompasses community involvement not only through general elections but also through interactions with representative institutions; and c) The Realism Model of Public Participation, which closely resembles the basic model, but differs in the method of expressing community aspirations, as it includes articulation through specific organizations alongside general elections. Not all community members can establish direct contact with representative entities. The organization assumes a pivotal role in articulating aspirations. In practice, Indonesia does not comprehensively execute the aforementioned concept of community engagement. Indonesia embodies community engagement through its electoral process. During the general election, citizens possess the right to select their representatives to serve in parliament. The representative of the populace will enact legislation to govern the citizens. In drafting this legislation, the representative must take into account the desires of their constituents. This ambition will provide credibility for representatives in formulating policy<sup>49</sup>, what has been recognized as representative

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<sup>47</sup> Fahmi Ramadhan Firdaus, *Loc.Cit.*

<sup>48</sup> Mahkamah Konstitusi RI, Salinan Putusan Nomor 91/PUU-XVIII/2020 (2020).

<sup>49</sup> Septi Nur Wijayanti and Kelik Iswandi, "Pengaruh Parliamentary Treshold Terhadap Partisipasi Publik", in *Menagih Komitmen Pemerintah Mewujudkan Keadilan Sosial*, ed. Nanik Prasetyoningsih, Tanto Lailam, and Putri Anggia (Yogyakarta: LP3M Universitas Muhammadiyah Yogyakarta, 2018).

democracy. Jurgen Habermas presents the concept of deliberative democracy, which critiques the representational democracy paradigm that excludes constituents from the extensive law-making process. In this paradigm, constituents possess the political right solely to vote for parliamentary candidates, after which their constitutional function concludes. Deliberative democracy emphasizes the formation of legal procedures. The law, established in deliberative democracy, signifies a conversation between legislative processes and both formal and informal debates within civil society dynamics. Deliberative democracy creates a realm independent of the state administrative authority. The space constitutes a network for public discourse within civic society. A distinct association exists between democracy and deliberative democracy, which empowers people to participate in legislative processes inside public arenas.<sup>50</sup>

In deliberative democracy, legislation is established through discursive and consultative forums. Consequently, the initial step in formulating deliberative legislation is to provide a forum for discourse. The discourse space must facilitate two-way communication rather than merely one-way socialization. A one-way discourse space does not constitute a genuine discourse space, as a true discourse space involves a reciprocal exchange of arguments that is both rational and emancipatory. According to Arnstein Participation Ladder, one-way socializing constitutes an information-sharing process that remains inside the realm of tokenism.<sup>51</sup> The conversation must encompass perspectives from the public, including both proponents and opponents of the proposed regulation. Rational arguments can be derived from engaging in public debates regarding a regulation. This public debate is necessary to obtain reasoned arguments from the community. The legislative body maintains a neutral stance. The discourse advocating for legislative members ought to occur within the confines of the legislative assembly, rather than in public venues. Public debates must be open to all stakeholders and should articulate arguments grounded in rationality. This public discourse will provide the foundation for the development of the National Legislative Program until the completion of the legislative writing and enactment process.<sup>52</sup>

Habermas posits that a politically functional public sphere constitutes a communicative situation rather than an entity or organization with defined membership and obligatory regulations. Public space possesses informal and inclusive attributes, as the phrase public

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<sup>50</sup> Wimmy Haliim, "Demokrasi Deliberatif Indonesia: Konsep Partisipasi Masyarakat Dalam Membentuk Demokrasi dan Hukum Yang Responsif", *Jurnal Masyarakat Indonesia* 42, no. 1 (2016): 19-30, <https://doi.org/10.24843/kp.2008.v33.i01.p01>.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

space, or *Öffentlichkeit* in German, denotes a condition that is available to everybody and signifies the open and inclusive essence of this space. Legal legitimacy or public policy is determined not by the majority vote itself, but by the method by which that majority vote is secured. Public legitimacy is attained by a process of obtaining a fair and just majority or unanimous vote. Habermas posits that legitimate law is established through a fair and equitable process. All laws, rules, and public policies must undergo preliminary evaluation in public discourse.<sup>53</sup> The notion seeks to amplify citizen engagement in formulating ambitions and opinions, ensuring that the policies and laws enacted by authorities increasingly reflect the desires of the governed populace. According to Habermas, the formulation of legislation cannot occur in a state of glorious isolation, characterized by a clandestine environment devoid of critical public examination. Article 21 paragraphs (3) and (4) of the *UUP3* delineates that the National Legislative Program is established under the purview of the DPR and the government. The DPR conducts its activities by taking into account the recommendations and perspectives of its members, factions, commissions, united factions, and the public. The evaluation of public proposals should occur via an independent method, irrespective of the regulations governing the DPR. A provision should be established requiring the bodies selected by the DPR to engage in public debates concerning the legal needs of the community, as these needs form the foundation for the development of the National Legislative Program. This is confirmed in Article 18, letter h of the *UUP3*.<sup>54</sup>

Carson and Karp delineate three criteria for public policy formulation that might be classified as a deliberative process. For the law formation process to be informed by deliberation, the newly established procedure must: a. possesses the capacity to impact policy and decision-making; b. reflects the populace and embrace diverse values and perspectives, ensuring equitable opportunities for all participants; and c. foster an environment conducive to dialogue, demonstrate respect for differing opinions, and guarantee access to information.<sup>55</sup>

#### D. Conclusion

Regulation of meaningful public participation after the second amendment to *UUP3* is more inclined to regulate community rights in forming legislation. Ideally, it also needs to

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<sup>53</sup> Salahudin Tunjung Seta, *Loc.Cit.*

<sup>54</sup> Wimmy Haliim, *Loc.Cit.*

<sup>55</sup> Liza Fariyah Wahyuni and Della Sri, "Demokrasi Deliberatif Dalam Proses Pembentukan Undang-Undang Di Indonesia: Penerapan dan Tantangan Ke Depan", Lembaga Kajian & Advokasi Independensi Peradilan 3 (2015): 1-10, [https://leip.or.id/wp-content/uploads/2015/10/Della-Liza\\_Demokrasi-Deliberatif-dalam-Proses-Pembentukan-Undang-Undang-di-Indonesia.pdf](https://leip.or.id/wp-content/uploads/2015/10/Della-Liza_Demokrasi-Deliberatif-dalam-Proses-Pembentukan-Undang-Undang-di-Indonesia.pdf).

regulate the obligations of legislators. Because when people are given rights based on statutory regulations, it becomes an obligation for the state to support and guarantee the implementation of these rights. Public participation in *UUP3* is regulated in tokenism because decision-makers cannot accommodate the community voice. Ideally, the level of public participation applied in the law formation process in Indonesia to make it more meaningful is a partnership because, at this level, the position of the legislators and the community are equal partners. The way to increase public participation as an embodiment of the people while encouraging community involvement far beyond tokenism is to organize a public sphere mechanism for public debate as the basis for drafting the National Legislation Program. This is part of the concept of deliberative democracy, which places society in an emancipatory position to carry out legislative activities in the public sphere.

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