



Legal reconstruction of community participation in the formation of state regulations based on justice values

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Abstract

The aim of this research is to analyze the weaknesses in relation to community participation in the Formulation of State Regulation and how to reconstruct it based on justice values. This research is non-doctrinal or sociological juridical research using descriptive-analytical research methods and using the constructivism paradigm.

The findings show a number of weaknesses because Community Participation is like a supplementary article in statutory regulations without any clarity regarding the procedures and mechanisms for community participation. Furthermore, it was found that there was a lack of clarity regarding the concept of community participation, including the content of the Pancasila values of democratic justice, there were different terms for participation and unclear definitions, and there was no obligation for the initiators of drafting laws and regulations to carry out public consultations with the community. For this reason, it is necessary to reconstruct the Community Participation regulations by adding provisions regarding Public Consultation as an instrument of Community Participation in the Law on the Drafting of Legislative Regulations, so that it will provide a better basis for the drafting of statutory regulations because citizens know and are involved in the formation statutory regulations and is expected to increase public trust in government administrators.

Keywords: Legal reconstruction, village fund, welfare, justice value

Introduction

In practice, provisions for public participation in drafting laws and regulations are still difficult to implement because they contain various existing questions or problems. Because the formulation of article 96 of Law no. 13 of 2022 still only contains very general norms and has not been completed, among other things, clarity regarding the nature of the community participation in question, whether the action is voluntary or mandatory for drafters of laws and regulations; what are the basic or main principles of community participation? Is the definition of society only limited to this formulation and what is the position of academics, NGO activists, professional groups, and legal or social observers who are not directly affected, and what is the mechanism for implementing community participation technically, what is meant by a public consultation that appears suddenly? in paragraph 6, and what is the definition of public consultation? There are still a number of questions that arise from the formulation of Article 96 of Law No. 13 of 2022.

In 2014 the Government issued Presidential Regulation Number 87 of 2014 concerning Implementing Regulations of Law Number 12 of 2011 concerning the Formation of Legislative Regulations. Although Law Number 12 of 2011 does not contain special delegation regulations for further regulation of public participation in the preparation of statutory regulations. However, this Presidential Regulation contains regulations regarding public participation, with a very simple formulation where in Article 188 it is stated that: "*the public has the right to provide oral and/or written input in the formation of statutory regulations, in the context of carrying out public consultations*". The following procedures for carrying out public consultations will be regulated in a Ministerial Regulation.

In essence, the Law and Presidential Regulations still do not clearly and completely regulate the provisions regarding community participation and public consultation in the formation of statutory regulations. From the formulation of the provisions of article 96 of Law no. 13 of 2022, it seems that the Government and DPR RI still do not understand the essence and important messages of the various considerations of the Assembly in the Constitutional Court Decision in the Formal Review Case of Law no. 11 of 2020 concerning Job Creation (Widodo, 2018) ^[8].

According to the author, a legal product or statutory regulation will be good and at the same time legitimate, only possible if public participation in the process of drafting the statutory regulation is carried out correctly, seriously, measurably, and with the widest possible area of participation with the main focus on interrelationships. and the influence and impact of regulation on society. Community participation itself can only be implemented if there are regulations that contain clarity regarding the community involvement process (Widodo, 2019) ^[9].

The limitations or perhaps the unwillingness of the Government and DPR RI and DPD RI to really regulate the issue of community participation must be changed, increased from passive community participation (Passive Participation) to the obligation of the Initiator to consult with the community who will be affected by a regulation (Active Participation), so that the process and implementation of Community Participation can run effectively.

Based on this problem, the author then formulate several problem discussed in this article, namely:

1. What are the weaknesses in the regulation regarding Community Participation In the formation of State Regulations in Indonesia currently?

2. How Is The Legal Reconstruction Of Community Participation In The Formation Of State Regulations Based On The Value Of Justice?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020) ^[6].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010) ^[1]:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research result and discussion

1. Weaknesses in the regulation regarding community participation in the formation of state regulations in Indonesia currently

The problem of community participation at the regulatory level is a domino effect on the implementation of the concept of community participation which is unclear, and the participation that is developed can even be called passive participation, merely formalistic and assigning the role of the community in the formation of laws and regulations, with the assumption that legislative members are representatives. and has represented the aspirations of the people.

However, if we look closely at the arrangements or formulation of provisions for community participation at the regulatory level, especially the provisions contained in Article 96 of Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 concerning the Formation of Legislative Regulations, there are problems in the legal substance aspects, including (Nansi, 2021) ^[4]:

- a. There are no terms, boundaries, or definitions of Community Participation. A regulation should provide an explanation of definitions and limitations regarding the matters to be regulated in the regulation. This is very important because the existence of clear definitions and boundaries in a regulation will prevent the public from having their own interpretations and provide legal certainty. The lack of clarity in the terminology is contrary to the provisions of Article 5 letter f of Law Number 12 of 2011 jo. Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations states that forming Legislative Regulations must be carried out based on the principles of forming good statutory regulations, which include the principle of clarity of formulation, which in the Explanation of the law explains that: "The principle of clarity of formulation is that every Legislative Regulation must meet the technical requirements for the preparation of Legislative Regulations, systematics, choice of words or terms, as well as legal language that is clear and easy to understand so as not to cause various interpretations in its implementation".
- b. Regulatory Disharmony. In paragraph (1), it is stated that the public has the right to provide input at every stage of the formation of statutory regulations. However, in paragraph (3) it only states "on the material of the Draft Legislative Regulations. Meanwhile, paragraph (4) also states that every academic manuscript and/or bill can be accessed by the public. With such an editorial or formulation, what document or documents can actually be accessed by the public, and which can be provided with input? The documents related to the formation of statutory regulations based on Law No. 12 of 2011 include Prolegnas/Prolegda documents, academic texts, and draft laws (RUU). Why is the Prolegnas Document not regulated? This will have implications for Presidential Regulation No. 87 of 2014 which contains regulations regarding public access to Prolegnas/Prolegda documents, apart from Academic Manuscripts and Draft Laws. Apart from that, if the public wants to request National Legislation Documents, for example, it can be rejected by lawmakers.
- c. Unclear terminology. In Paragraph (6) the term "*can carry out Public Consultation activities*" appears, which is not mentioned in the previous paragraphs, and there is also no understanding or explanation regarding what is meant by public consultation.
- d. Unclearness regarding procedures or mechanisms for community participation. If you look at the formulation of Article 96, in essence, community participation cannot be carried out because the mechanisms or procedures are not regulated in Law No. 13 of 2022. Even though the technicalities for the formation of Legislative Regulations are regulated in detail and completely, if the regulations are placed in Presidential Regulations or DPR Regulations, apart from the issuance process taking time, it is estimated that the nature of public participation will also not be mandatory or mandatory.
- e. That the legislators, in explaining to the public the results of discussion of public input, are optional or facultative in nature, and not mandatory. This means

that the phrase can explain, it also means that it can not explain. The formulation would certainly be different if it said it was mandatory to explain.

- f. There are no sanctions if community participation is not carried out by the legislators.
- g. Unclear time frame. UU no. 13 of 2022 does not explain the time frame, such as how much time is used for each stage of public consultation, both when the legislator asks for input from the public, how long it takes for the legislator to integrate various public input and how long it takes for an announcement to appear regarding the public's input. Accommodated or not.

The list above are issues of public participation in drafting laws and regulations at the regulatory level which also shows that there are still fundamental weaknesses or problems in carrying out public participation in the formation of laws and regulations.

As explained in the previous section, in 2021 the Government issued Regulation of the Minister of Law and Human Rights Number 11 of 21 concerning Procedures for Public Consultation in the Formation of Legislative Regulations, as an implementing regulation of Presidential Regulation Number 87 of 2014 concerning the Implementation of Laws. Law No. 12 of 2011 concerning the Formation of Legislative Regulations.

Problems with Permenkumham No. 11 of 2021 is about the definition of "*Public Consultation*" which is different from the definition of public consultation in general. Article 1 number 1 Permenkumham No. 11 of 2021 states that: "*Public Consultation is an activity carried out to receive input, responses or views from the public in order to create quality legislation*".

From the terminology, Public Consultation consists of two words, namely Consultation and Public. Semantically, the original word for consultation is consultation, according to the Black Law Dictionary, "*Consultation is the act of asking the advice or opinion of someone such as a lawyer*". According to the Oxford Dictionary, consultation is a meeting with an expert or professional such as a medical doctor in order to seek advice. These two definitions explain that consultation is basically an attempt to ask for someone's opinion or advice. Meanwhile, Public is also an absorption language from the word public (English), which originates from Latin, namely *Populus*, *Publicus*, and changes to people, or society (Toebagus, 2022) ^[7].

The next problem is that the Procedures for Public Consultation in Preparing Legislative Regulations are regulated in a Ministerial Regulation so that their application cannot reach the DPR or DPD. Even within the Government (executive) itself, it is feared that Permenkumham No. 11 of 2021 will not work effectively, for example in the process of forming Government Regulations or the formation of Presidential Regulations, because the institutions for their formation are basically in the hands of the President. So the question will be, how can a ministerial regulation regulate the technicalities of making a government regulation or a presidential regulation? According to researchers, the provisions for public consultation must be regulated at the statutory level, so that they are followed and binding, especially for the legislators, in this case, the DPR, DPD, and the President (Government) (Madjid, 2022) ^[3].

The next problem or weakness is related to the implementation of Public Consultation as regulated by Minister of Law and Human Rights Regulation No. 11 of 2021 is facultative, or in other words, it is not mandatory to implement. This means that those forming laws and regulations within the Government can carry out public consultations, or they may not do so.

The next problem or weakness is that there are no sanctions or consequences whatsoever if the Public Consultation is not carried out or is not carried out by the legislators. This fourth problem is basically a consequence of the third problem or weakness.

Basically, the regulation of public consultation procedures is a very good initiative because there are no technical regulations regarding public participation. However, as researchers note regarding a number of weaknesses in Permenkumham No. 11 of 2021, improvements need to be made, including by placing technical regulations at the statutory level, in addition to the need to develop an appropriate public consultation concept or paradigm.

In the legislative scope, it is not much different from what has been regulated in Presidential Regulation Number 87 of 2014, in DPR Regulation Number 1 of 2020 concerning Rules of Procedure which the researcher previously explained, the provisions of the DPR regulation also do not regulate the obligation to fulfill public participation expressly and are still limited to provisions that are optional to be implemented. This is, again, because the phrase used in the regulation is "*can*" and not "*obligatory*" to consult and involve the community actively from every stage of planning, preparation, discussion, and even dissemination (Paksi, 2022) ^[5].

Public participation must be emphasized to be carried out by law-forming parties or institutions through public consultation. Because, even though community involvement through the dissemination of various draft regulations has been stated to be disseminated according to Presidential Regulation Number 87 of 2014, DPR Regulation Number 1 of 2020 concerning Rules of Procedure, and DPR Regulation Number 2 of 2020 concerning Draft Laws, if the substance is examined critically, according to Bivitri Susanti from the Indonesian Center for Law and Policy Studies (PSHK) there is no fundamental difference with the pattern of receiving input that has been implemented by the DPR which has been empirically proven to only place the community participation mechanism as a means to reduce public aspirations.

When viewed from the theory of law formation, the necessity of public participation is the goal of the synoptic policy-phases theory. Based on this theory, the formation of laws is essentially an organized and well-directed process toward the formation of binding decisions that seek to seek and determine the direction of society as a whole. A policy is formed by an accountable institution that is expected to go through an open and responsible process so that the rules can be implemented (enforceability), adequate (adequacy), and implemented (implementability). In this way, all levels of society have the widest possible opportunity to provide input in the process of making laws and regulations.

To produce good laws or regulations, the process and stages of drafting them must also be carried out well, which in this case is carried out with community participation through a public consultation mechanism. A good process should open up opportunities for interaction between legislators and the public.

Legal reconstruction of community participation in the formation of state regulations based on the value of justice

Based on the weaknesses above, it can be concluded that the problem that needs to be corrected here is the formulation of community participation in the various laws and regulations as if they are merely complementary and merely cover up issues of recognition of the necessity of participation at the global level or as an awareness of its importance, community participation in the development process. This fact can be seen from the implementation of community participation which is not running and the formulation of provisions for community participation which is inadequate and does not yet reflect the values of justice for the community and there are still many weaknesses in the formulation of provisions which should contain clear and measurable concepts, definitions and mechanisms in statutory regulations to ensure that community participation is carried out effectively.

Therefore, the reconstruction of regulations on Community Participation in the formation of laws and regulations based on the values of justice must be directed at reconstruction that is fundamental, logical and systematic and in accordance with the principles of forming laws and regulations adopted by Indonesia to ensure that community participation is effective in producing regulations, good legislation that suits the needs of society and development.

Based on the Pancasila justice paradigm which must be grounded and presented in the midst of society, involving the community as subjects in the preparation of legislative regulations and not placing the community merely as the object of a law, is a concrete manifestation of the actualization of the values of justice contained in Pancasila. As stated by Yudi Latif (2022) ^[10], according to Pancasila Thought, divine values, human values, national values, and ideals, as well as deliberative democracy gain their full meaning as long as they can realize social justice. In the vision of social justice according to Pancasila, what is desired is a balance between fulfilling physical and spiritual needs, a balance between the role of humans as individual creatures (institutionalized in the market) and the role of humans as social creatures (institutionalized in the state), as well as a balance between fulfilling civil rights, and politics with economic, social, and cultural rights. In realizing social justice, each economic actor is given their own role which overall develops a family spirit (Hyronimus, 2022) ^[2]. The role of the individual (market) is empowered, while still placing the State in an important position in providing the legal and regulatory framework, facilities, provisions, and social engineering as well as providing social security.

To achieve material legal substance that suits the needs and spiritual atmosphere of the wider community, formal law is needed, which in this case is a procedure for creating, implementing, and enforcing laws that provide space for the community to participate. Doesn't this law apply to all citizens or people of a country wherever they are? Of course, it would be very unfair if a statutory regulation was promulgated, all of society is obliged to submit and obey. However, during the process of making it, the community was not involved and the makers of the legislation consulted adequately and effectively with the public or the community, including even the weakest communities.

In connection with these matters, conceptually, Effective Community Participation, apart from being based on formal principles and material principles, should include:

- a. The values of justice are the crystallization of the justice values of Pancasila, especially the Second Principle and the Fifth Principle.
- b. Clear guarantees between rights and obligations and provide goodness and benefits for everyone who has the right to get them.
- c. The law that is established must contain material content that is fair, meaning that the law contains substantive justice.
- d. Every person in society feels that they are treated equally by the state in all forms and are free from tyrannical acts.
- e. The end of thoughts and dreams about justice is actual justice in real life which is reflected in the structure of collective life in society. This means that the end of all ideas about legal justice and economic justice is real social justice, including in the administration of the State, including in the form of the right of every citizen to participate or participate in the formation of laws and regulations.

It is important to underline that the 1945 Constitution and its Amendments have formulated these points of justice into a number of articles concerning the rights of every citizen to develop themselves and to advance themselves in fighting for their rights collectively to develop their society, nation, and state (Article 28C), the right to recognition, guarantees, protection, and fair legal certainty as well as an equal treatment before the law (Art. 28D), the right to freedom of association, assembly, and expression (Art. 28E paragraph (3)), has the right to communicate and obtain information to develop his personal and social environment and has the right to seek, obtain, own, store, process and convey information using all types of available channels (Art. 28F), Everyone gets special facilities and treatment for obtain the same opportunities and benefits in order to achieve equality and justice (Art. 28H paragraph (2)).

To ensure that the values of justice are embodied in regulations on community participation and the substantive rights of citizens which are an integrative part of it, the legal reconstruction of the provisions of Article 96 of Law no. 13 of 2022 concerning the second amendment to Law no. 12 of 2011 concerning the Formation of Legislative Regulations which include:

- a. Concept of Effective Community Participation that Contains Justice Values
- b. The term Participation must be complemented by Public Consultation
- c. Understanding Community Participation and Community Scope
- d. Types, Hierarchy of Implementing Regulations as legal basis
- e. The nature of Public Consultation is Mandatory as an Instrument of Effective Community Participation.

Conclusion

1. In the Formation of Legislative Regulations Weaknesses in Public Participation Regulations which cause them not to be based on the values of justice, are caused, among other things, by the lack of clarity in the Law regarding conceptions and definitions as well as

clear and measurable mechanisms regarding community participation and the obligation to carry out public consultations. in the formation of laws and regulations, which causes weaknesses in terms of legal substance, the implementation of community participation and public consultations which are not carried out or simply because there is no obligation by law, this becomes a weakness in terms of legal structure as well as weaknesses in the aspect of legal culture which is caused by a legal vacuum regarding a clear and measurable mechanism for public participation, including certainty about whether input from the public on a draft legislative regulation will be accommodated or not.

2. Reconstruction of Community Participation Regulations so that they are based on the values of justice must be carried out, especially regarding Article 96 of Law no. 13 of 2022 concerning the Second Amendment to the Law Concerning the Formation of Legislative Regulations by including new legal norms that regulate the public's right to participate and the obligation of legislators to conduct public consultations in the preparation of statutory regulations which include: a. Concept of Effective Community Participation that Contains Justice Values, b. The term Participation must be complemented by Public Consultation, c. Understanding Community Participation and Community Scope, d. Types, Hierarchy of Implementing Regulations as legal basis, e. The nature of Public Consultation is Mandatory as an Instrument of Effective Community Participation.

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