

The Meaning Of The Concept Of Meaningful Public Participation In The Decision Of The Constitutional Court (MK) No. 91/PUU/XVIII/2020 Formal Review Of Law No. 11 Of 2020

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Abstract

The decision of the Constitutional Court (MK) Number 91/PUU-XVIII/2020 provides an appreciable view of the size of public participation to be recognized as fulfilling the requirements for drafting laws. Although the President and the DPR have proven the existence of public participation through socialization, webinars, and so on. However, the Constitutional Court (MK) considers that the parameters of public participation must be meaningful participation. Therefore, activities that are mere formalities and do not produce any value are not considered public participation. This paper focuses on how to interpret meaningful public participation in the formation of laws using the Omnibuslaw method in Indonesia as intended in the Constitutional Court's decision No. 91/PUU/2021. The research method used is normative juridical with a legislative and conceptual approach. The need for the public to participate in the formation of laws is part of the constitutional mandate that places the principle of popular sovereignty as the main pillar of the state, as stated in Article 1 paragraph (2) of the 1945 Constitution. Furthermore, public participation is guaranteed as a constitutional right based on Article 27 paragraph (1) and Article 28C paragraph (2) of the 1945 Constitution, which provides an opportunity for citizens to participate in governance and building society, nation and state. If the law-making process is conducted in a closed manner without involving public participation, it can be said that the law-making process violates the principle of people's sovereignty.

Keywords: Public participation, Job Creation Law, democracy

I. INTRODUCTION

On November 25, 2021, the Constitutional Court (MK) through its decision Number 91/PUU-XVIII of 2020 has stated that Law Number 11 of 2020 concerning Job Creation is declared Conditionally Unconstitutional.

The Constitutional Court (MK) in the decision considered that the process of forming the Job Creation Law was not based on the means and methods, as well as the systematics of forming laws, then there were changes in the writing of several substances after the joint approval of the DPR and the President which were contrary to the principles of the formation of laws and regulations, so that the Constitutional Court (MK) stated that the formation process of Law No. 11 of 2020 did not fulfill the provisions of the 1945 Constitution so that it had to be declared Formally Defective.

Conditional unconstitutional grounds were decided by the Constitutional Court on the grounds that the Constitutional Court must balance the requirements for the formation of laws that must be fulfilled as formal requirements so as to give birth to laws that have legal certainty, expediency and justice and consider the strategic objectives of the establishment of the Job Creation Law.

In its decision, the Constitutional Court (MK) also ordered that a standardized legal basis be immediately established as a guideline in the formation of laws using the omnibus law method, to respond to this, the government and the DPR have revised Law 12 of 2011 concerning the Formation of Legislation which was later promulgated into Law Number 13 of 2022. However, this does not mean that with the revision of the Law, the requirements requested in Decision Number 91/PUU- XVIII of 2020 are automatically fulfilled, because in the decision it is requested to include maximum and more meaningful public participation in the process of making Law Number 11 of 2020 concerning Job Creation. Therefore, the Job Creation Law must be revised so that it meets a definite, standard, and standard method or method, and fulfills the principles of law making, especially the principle of openness by including maximum and more meaningful public participation.

The understanding of meaningful public participation is still debatable, for this reason it is necessary to clarify the measure of meaningful public participation as desired by the Constitutional Court Decision Number 91/PUU-XVIII in order to fulfill the requirements for drafting laws using the concept of omnibus law.

II. METHODOLOGY

Research on the concept of meaningful public participation in the decision of the Constitutional Court (MK) No. 91/PUU/XVIII/2020 formal test of Law No. 11 of 2020 is a *normative law research*. Normative law research is a legal research on legal rules, norms, and principles, including legal doctrines that develop and are relevant to the research theme. According to Soerjono Soekanto, normative legal research is directed at research that draws on legal principles, legal systematics, synchronization of laws and regulations, comparative law, and legal history.¹

The legal materials used in this research are divided into three, namely primary, secondary and tertiary legal materials. Primary legal materials are Law No. 11 of 2020 concerning Job Creation, Law 12 of 2011 jo. Law No. 15 of 2019 Jo. Law No. 13 of 2022 concerning the Formation of Legislation, Constitutional Court Decision (MK) No. 91 / PUU-XVIII of 2020. Secondary legal materials are all legal references that are not included in official state documents such as books, dissertations, theses and so on that intersect with the research theme. In addition, to complement the two legal materials above, several legal terms and foreign terms contained in several dictionaries, encyclopedias and expert opinions on research topics are needed as part of tertiary legal materials.

The approaches used in this research are *statute approach* and *conceptual approach*. The statutory approach is to examine *prescriptively* the principle of a statutory arrangement, while the conceptual approach is to build a complete concept of this research both by refining existing and non-existing concepts. The technical

¹Soerjono Soekanto, Pengantar Penelitian Hukum, (Jakarta: UI Press, 2007), h. 51.

analysis used is synchronization and harmonization using the theory of authority and the principle of *lex specialist*.

III. RESULT AND DISCUSSION

1. Meaningful Public Participation in Constitutional Court Decisions (MK) No. 91/PUU/XVIII/2020.

The Constitutional Court (MK) stated that the process of forming the Job Creation Law (Ciptaker) was problematic. The Court assessed that the legislators, namely the DPR, did not provide maximum space for public participation. "Meanwhile, with regard to the principle of openness, the trial revealed the fact that the legislators did not provide maximum space for public participation," read the Constitutional Court's decision read out by the constitutional judges in turn at the Constitutional Court session on November 25, 2021.²

Although meetings had been held with various community groups, the meetings had not discussed the academic papers and materials for the amendments to the law, which had been made by the DPR.³ The Constitutional Court said that this meant that the people involved in the meetings did not know what material changes to the law would be incorporated in Law 11/2020. As stated in Decision No. 91/PUU/XVIII/2020, mention of public participation can be found among others:

First, in paragraph 3.17.8, the Constitutional Court mentions the importance of public participation in the formation of laws as a constitutional mandate that places the principle of popular sovereignty as the main pillar of the state, as stated in Article 1 paragraph (2) of the 1945 Constitution.⁴

Furthermore, the Constitutional Court said that public participation is guaranteed as a constitutional right based on Article 27 paragraph (1) and Article 28C paragraph (2) of the 1945 Constitution, which provides an opportunity for citizens to participate in governance and building society, nation and state.

If lawmaking shuts out or prevents the public from participating in discussing and debating its contents, it can be said that the lawmaking process violates the principle of *people's sovereignty*.

Second, the Court explained that doctrinally, public participation in lawmaking aims to, among other things, (i) create a strong collective intelligence that will provide better analysis of potential impacts and broader considerations in the legislative process for higher quality outcomes overall, (ii) build a more inclusive and representative legislature in decision-making; (iii) increased citizen trust and confidence in the legislature; (iv) strengthened legitimacy and collective responsibility for decisions and actions; (v) improved

² MK: Pembentuk UU Ciptaker Tak Beri Ruang Partisipasi Publik Secara Maksimal" selengkapnya <https://news.detik.com/berita/d-5827692/mk-pembentuk-uu-ciptaker-tak-beri-ruang-partisipasi-publik-secara-maksimal>.

³ Constitutional Court Decision No. 91/PUU/XVIII/2020 page 120.

⁴ Ibid. p. 392.

understanding of the role of parliament and parliamentarians by citizens; (vi) provided opportunities for citizens to communicate their interests; and (vii) created a more accountable and transparent parliament.⁵

In addition to being based on formal law, public participation needs to be done in a *meaningful way*. Meaningful public participation fulfills three prerequisites: the right to have one's opinion heard, the right to have one's opinion considered, and the right to have one's opinion explained or answered.

Third, public participation is mainly intended for groups of people who are directly affected and who have concerns about the bill being discussed. When placed in the five stages of law formation, more meaningful public participation must be carried out, at least, in the stages of submitting a bill, joint discussion between the House of Representatives (DPR) and the President, as well as joint discussion between the DPR, the President, and the DPD as far as related to Article 22D paragraph (1) and paragraph (2) of the 1945 Constitution, as well as in joint approval between the DPR and the President.

Fourth, transparency of public participation, as stipulated in Article 96 of Law 12/2011 on the formation of laws and regulations, explains that (i) the public has the right to provide input orally and / or in writing in the formation of laws and regulations, (ii) the public is an individual or group of people who have an interest in the substance of the draft regulation, (iii) to facilitate the public in providing oral and / or written input, each draft regulation must be easily accessible.⁶

Fifth, in legal considerations paragraph [3.20.2], the Constitutional Court states that the Job Creation Law is conditionally unconstitutional, due to the absence of public participation when making it. However, the Court gave the government the opportunity to improve it in the next two years. If there is no improvement during that period, the Job Creation Law is permanently unconstitutional.⁷

From the five findings on public participation in the Constitutional Court's decision, it can be understood that the implementation of various meetings with various community groups, the meeting has not discussed the academic paper and the material for amending the law, which has been carried out by the DPR, is not considered as a meaningful public participation, which means that public participation carried out in the drafting of the Job Creation Law by the DPR is considered only as a formality to fulfill the requirements for drafting laws.

2. Public Participation in the Law Making Process

In the formation of laws and regulations, where is the position and authority of the public and the community to be asked for their opinions in the formation and drafting of these laws? In principle, all parties within the state structure and outside the state structure can initiate ideas for the formation of laws and regulations.⁸ Public space in the process of forming laws is formally regulated in Article 96 paragraph 6 of Law No. 12/2011 jo. Law No. 13 of 2022 on the Formation of Legislation, the public has the right to provide input orally and/or in writing in the Formation of Legislation. Oral and/or written input can be done through

⁵ Ibid. p. 393

⁶ ibid

⁷ Ibid. pp 413-414

⁸ Jimly Asshiddiqie. 2005. Constitutional Law and the Pillars of Democracy. Jakarta: Konstitusi Press, p. 315.

public hearings, working visits, socialization and seminars, workshops, discussions and/or other public consultation activities.⁹ The involvement of community aspirations in the lawmaking process requires a planning stage because it is placed in the context of a written public policy (Riant 2003: 121).

Law No. 12/2011 states that the formation of laws and regulations includes the stages of planning, preparation, discussion, ratification or stipulation, and promulgation.¹⁰ In each stage, the formation must uphold the principle of openness, which is transparent and open. Therefore, the entire community has the maximum opportunity to provide opinions and input in the process of making laws and regulations. The definition of "the principle of openness" is that the Formation of Laws and Regulations starting from planning, preparation, discussion, ratification or stipulation, up to legislation, including Monitoring and Review must provide the widest possible access to the public who have an interest and are directly affected to be able to access information and / or provide input at each stage of the process of Formation of Laws and Regulations which can be done either orally or in written form through electronic media (online) or giving their opinions directly (offline).¹¹

Both the DPR and the Government, from the preparation of Prolegnas, drafting of bills, deliberation of bills, to the promulgation of laws, have an obligation to disseminate, this is to provide information and/or obtain input from the public and stakeholders.¹² This section will explain public participation at each stage.

Phase I is Planning, which is outlined in the National Legislation Program (Prolegnas) which is prepared in a planned, integrated and systematic manner. Prolegnas is a program that is prioritized in the law formation program in order to realize a good national legal system.¹³ The preparation of the list of bills is based on the 1945 Constitution of the Republic of Indonesia, the MPR Decree, other laws, the National Development Planning System, RPJPN, RPJMN, government work plans and strategic plans, as well as the aspirations and legal needs of the community.

The drafting of Prolegnas is carried out by the DPR and the Government, coordinated by the DPR through the legislative body. The results of the preparation of Prolegnas between the DPR and the Government are agreed upon in a plenary meeting and stipulated by a DPR Decree. Prolegnas is set for the medium term at the beginning of the DPR's membership period as Prolegnas for a period of 5 (five) years, and annual Prolegnas based on the priority scale of the formation of bills prepared annually, besides that at the end of the year, annual Prolegnas can evaluate the medium-term Prolegnas.

Based on House Regulation No. 02/2019 on the Procedures for the Preparation of Prolegnas, in the preparation of Prolegnas, public participation is accommodated by the Legislation Body, which has the obligation to announce the plan for the preparation of Prolegnas to the public either through print or electronic media, conduct working visits to absorb public aspirations and receive input in the Legislation Body meeting. Then the input from the public is submitted directly or by letter to the leadership of the Legislation Body before the discussion of the draft Prolegnas is carried out. This is done until the preparation until the determination of Prolegnas through the Decree of DPR, the government and DPR and

⁹ Law No. 13 Year 2022 article paragraph 6.

¹⁰ Article 1 number 1 of Law No. 12 Year 2011.

¹¹ Explanation of Article 5 letter g of Law No. 13 Year 2022.

¹² Article 88 of Law No. 12/2011

¹³ Article 17 of Law No. 12/2011.

DPD are obliged to socialize Prolegnas, this is done to provide information in order to obtain input from the public and stakeholders.

The next stage II is the drafting, the bill is based on the priority Prolegnas list, then the bill is submitted by the President, DPR or DPD through DPR. Each bill must be accompanied by an Academic Paper.¹⁴ Academic Paper is the result of research or legal studies and other research results on a particular problem that can be scientifically accounted for regarding the regulation of the problem in a Draft Law, Draft Provincial Regional Regulation, or Draft Regency / City Regional Regulation as a solution to the problems and legal needs of the community.¹⁵

In the context of bills proposed by the House of Representatives, the public can be involved since the Academic Paper has been completed and public tests have been conducted with relevant experts, practitioners, and stakeholders.¹⁶ The results of this public test are then used as material for improving the Academic Paper. Bills originating from the DPR can be drafted by Members, Commissions, joint commissions, Legislation Body, or DPD. Since the drafting of a bill by a Member can request input from the public, the request for input is carried out through publication in electronic media owned by the DPR. The same thing also applies to the bill prepared by the Commission, joint commission, Legislation Body which can request input from the public since the drafting of the bill. In addition to soliciting input through dissemination, other methods include public hearings, working visits to regions or working visits abroad. Public hearings are conducted by inviting experts or stakeholders who are deemed necessary or related to the material of the draft law either individuals, groups, organizations, or private bodies. Meanwhile, working visits to the regions are conducted to obtain input related to the content material to be regulated in the draft law and its effect on local governments and/or communities in the regions.

To ensure the preparation of the bill is carried out in accordance with the procedures and techniques of drafting legislation, each bill submitted to DPR by members of DPR, commissions, joint commissions, or DPD must be harmonized, rounded up, and stabilized by the Legislation Body of DPR RI.¹⁷

Much different from the DPR. Normatively, the drafting of bills within the government lacks public involvement, this can be seen in Presidential Regulation No. 87 of 2014 concerning Implementation Regulations of Law No. 12 of 2011 concerning the Formation of Legislation. In drafting a bill within the government, the proponent forms an inter-ministerial and/or inter-ministerial committee consisting of the ministry that organizes government affairs in the field of law, ministries/non-ministerial government agencies and/or other institutions related to the substance regulated in the Bill and drafters of laws and regulations from the proponent agency. Public involvement is only represented by practitioners, or academics who master issues related to the material of the Bill that can be appointed by the initiator.¹⁸ Furthermore, public participation is re-engaged in the meeting of harmonization, rounding, and stabilization

¹⁴ Article 43 paragraph (3) of Law No. 12/2011.

¹⁵ Article 1 paragraph 11 of Law No. 12 Year 2011.

¹⁶ Article 3, paragraph 6 of House Regulation No. 2/2012.

¹⁷ Article 46 of Law No. 12/2011.

¹⁸ Article 45 of Presidential Regulation No. 87 Year 2014.

of conception together with researchers and experts including from the university environment to ask for opinions.¹⁹

Phase III is the discussion that is carried out after the Draft Law is completed, the discussion is carried out jointly between the DPR and the Government. The discussion of the Draft Law is carried out through 2 (two) levels of discussion, namely level I discussion in a commission meeting, joint commission meeting, Legislation Body meeting, Budget Body meeting, or Special Committee meeting and level II discussion in a plenary meeting.²⁰

Activities carried out at level I talks are introductory deliberations, in this activity DPR gives an explanation and the President expressed his views if the bill comes from DPR, DPR gives an explanation and the President and DPD expressed their views if the bill relating to the authority of DPD comes from DPR, and vice versa if the bill is proposed by the President. The second activity is the discussion of the inventory list of problems, which will be submitted by the President if the bill comes from DPR and vice versa, the inventory list of problems will be submitted by DPR if the bill comes from the President by considering input from DPD as long as it is related to the authority of DPD. The last activity as the culmination of level I talks is the delivery of mini-opinion delivered by the faction, DPD, if the bill is related to the authority of DPD and the President. In level I talks, leaders of state institutions or other institutions can be invited if the material of the bill is related to state institutions or other institutions.²¹

Public participation in the deliberation of laws is regulated in House Regulation No. 1 of 2020 on the Rules of Procedure of the House of Representatives, where the public can be invited to a public hearing to obtain input on the draft law being discussed. In addition, the DPR can pick up the ball by organizing working visits to the regions in order to get input from local governments and/or communities in the regions.²²

Furthermore, it will be continued at level II talks in a plenary meeting with the agenda of submitting a report containing the process, mini faction opinion, mini DPD opinion, and the results of level I talks, then a statement of approval or rejection from each faction and member is done verbally and the delivery of the President's final opinion conducted by the minister assigned.²³ In this stage, it will also be determined whether the bill is approved into law or not.

The next stage IV is Ratification, where public participation is no longer required. A bill that has been jointly approved by the DPR and the President will be submitted by the Leader of the DPR to the President to be passed into law within a

maximum period of 7 (seven) days from the date of approval, with the signature of the President within a maximum period of 30 (thirty) days from the date the bill is jointly approved. However, if the bill is not signed by the President within a maximum period of 30 (thirty) days from the date the bill is jointly approved, the bill automatically becomes a law and must be promulgated.²⁴

¹⁹ Article 52 paragraph (2) of Presidential Regulation No. 87 Year 2014.

²⁰ Article 66 and Article 67 of Law No. 12/2011.

²¹ Article 68 of Law No. 12/2011.

²² Article 156 of House Regulation No. 1 of 2020.

²³ Article 69 of Law No. 12/2011.

²⁴ Article 73 of Law No. 13 Year 2022.

The last Stage V is promulgation. As with the ratification stage, at the promulgation stage public participation is also not required because this is the full authority of the government. Promulgation aims to make everyone aware of it, the authority is carried out by the minister who organizes government affairs in the field of forming laws and regulations, in this case the minister of law and human rights. The promulgated law is placed in the State Gazette of the Republic of Indonesia.²⁵

In the preparation of Law 11 of 2020, the Constitutional Court decision No. 91/PUU/XVIII/2020 states that:

- 4.24 That while if we look at the process of forming the Job Creation Law, it does not meet the requirements of public participation, including access to easily obtain the Job Creation Bill is not fulfilled, especially with the circulation of 5 Manuscripts of the Job Creation Bill with different substances. very many sheets which further confuse the public (individuals or groups of people) to provide input.
- 4.25 That if the principle of openness is not implemented, it will result in a lack of public awareness in applying the law. The existence of rejection demonstrations is an implication of carelessness in the making of the Omnibus Law.

Based on the entire description in subpart B above, it has been proven that the Establishment of the Job Creation Law is not in accordance with the provisions of Article 22A of the 1945 Constitution which is further regulated in Article 5 letter a, letter e, letter f, and letter g of Law 12/2011."²⁶

The Job Creation Law made by the Omnibus law method which combines 78 laws into 1 (one) law, public participation is more needed so that the law can be accepted by the community, because if in 1 (one) law at least needs to involve at least from the community, academics, stakeholders, mass organizations related to the law, then with 78 laws incorporated in the Job Creation Law, more massive public participation is needed in accordance with the specificity of the incorporated law. But apparently this was not done, so the Constitutional Court ruled that the Act was formally defective.

After the decision of the Constitutional Court No. 91/PUU/XVIII/2020, the DPR then revised Law No. 12/2011 on the Establishment of Legislation into Law No. 13/2022. Article 96 of Law No. 13 of 2022 describes public participation as follows:

- a. The public has the right to provide input orally and / or in writing at every stage of the Formation of Laws and Regulations.
- b. Providing public input as referred to in paragraph (1) is carried out online and/or offline.
- c. The public as referred to in paragraph (1) is an individual or group of people who are directly affected and/or have an interest in the content material of the Draft Legislation.
- d. To facilitate the public in providing input as referred to in paragraph (1), each Academic Paper and/or Draft Legislation can be easily accessed by the public.
- e. In exercising the right as referred to in paragraph (1), the legislator shall inform the public about the formation of laws and regulations.

²⁵ Article 85 of Law No. 13 Year 2022...

²⁶ Constitutional Court Decision No. 91/PUU/XVIII/2020 4.24-4.25 pp. 6

- f. To fulfill the rights as referred to in paragraph (1), the legislator may conduct public consultation activities through:
 - 1) public hearing;
 - 2) working visit;
 - 3) seminars, workshops, discussions; and/or
 - 4) other public consultation activities.
- g. The results of public consultation activities as referred to in paragraph (6) shall be taken into consideration in the planning, drafting, and discussion of Draft Legislation.
- h. The Formator of Legislation may explain to the public the results of the discussion of public input as referred to in paragraph (1).
- i. Further provisions regarding public participation as referred to in paragraph (1) through paragraph (8) are regulated in DPR Regulations, DPD Regulations, and Presidential Regulations.

However, currently Law No. 13 of 2022 on the Second Amendment to Law No. 12 of 2011 on the Establishment of Legislation is subject to Judicial Review in case No. 82/PUU-XX/2022. The Petitioners consider that the second revision of Law Number 13 of 2022 does not qualify as an open cumulative bill. This is because the Law is not a form of follow-up to Constitutional Court Decision Number 91/PUU-XVIII/2020 because the decision does not mention that Law Number 13 of 2022 is contrary to the 1945 Constitution. This is because the practice of participation in the formation of the revision of Law No. 12/2011 only reaches the stage of information that is only provided in one direction from the legislator to the public without any channel to provide feedback and no power to negotiate. The communication tools often used for this communication are only news media, pamphlets, posters, and other simple communication tools.²⁷

This indicates that the practice of implementing public participation in the formation of laws has not met the ideal parameters in accordance with the will of the public. In the provisions of the Law, public participation is a "right", so it can be interpreted that the stage of public involvement will only occur if there is an initiative from the public and/or can be carried out at the initiative of the DPR. This implies that public participation is not mandatory in the process of forming laws and regulations.

The formation of laws is considered aspirational and participatory, if in the process it takes into account the aspirations of the community. According to Satjipto Raharjo, a law is said to be aspirational and participatory, if it can produce regulations that have the following characteristics:²⁸

- a. It is general and comprehensive, and as such, it is specific and limited in its goodness and attributes;
- b. universal in nature, as laws are formulated to deal with future events. Therefore, laws cannot be formulated to address specific events only; and
- c. has the power to correct and improve itself.

There are two meanings in participatory lawmaking, namely process and substance. Process is a mechanism in the formation of laws that should be carried out transparently so that the public can participate in conveying aspirations in formulating policies or solving problems. Substance is the subject matter of the

²⁷ <https://www.mkri.id/index.php?page=web.Berita&id=18484>

²⁸ Satjipto Rahardjo. 1986. *Hukum dan Masyarakat*. Bandung: Angkasa, hlm. 114.

rules that are actually intended for the interests of the wider community so that a democratic law product is formed that is responsive.²⁹ In practice, there are still legislation products produced without public involvement, which results in the legislation products not being effective and not meeting the legal needs and welfare of the community, which in fact creates legal uncertainty and injures the rights of the community. This also happened in the formation of Law 11 of 2020 on Job Creation which was made using the omnibus law method, so that the Law was rejected by the community, especially *stakeholders* who then filed a *Judicial Review*.

Indonesia needs to learn from the Netherlands, which is quite transparent and provides easy access to draft laws. Since 2009, the Netherlands has implemented internet-based consultation initiated by the Ministry of Justice and Security by publishing the draft act of parliament that is being drafted including the implications of the act on the website for 12 weeks and anyone can provide aspirations on the draft *act of parliament*.³⁰ The model is also implemented by Australia, Canada, Denmark and the UK.³¹

Even in Venezuela, participatory lawmaking is affirmed in its constitution at *Article 211* which reads:

"During the process of debating and approving bills, the National Assembly or Standing Committees shall consult the other organs of the State, the citizenry and organized society to hear their opinion about the same. The following shall have the right to speak during debates on proposed laws: the Cabinet Ministers, as representatives of the Executive Power; such justice of the Supreme Tribunal of Justice as the latter may designate, to represent the Judicial Power; such representative of Citizen Power as may be designated by the Republican Ethic

Council; the members of the Electoral Authority; the States, through a representative designated by the State Legislative Council; and the representatives of organized society, on such terms as may be established by the Regulations of the National Assembly."

In this provision, we can understand that in the process of discussing draft laws, the National Assembly or Standing Committee must consult other state institutions, citizens, and community groups.³²

IV. CONCLUSION

In Decision Number 91/PUU-XVIII of 2020, the Constitutional Court (MK) considered that the process of forming the Job Creation Law was not based on the means and methods, as well as the systematics of forming laws, as well as the lack of meaningful involvement of public participation in the formation process, this was contrary to the principles of the formation of laws and regulations, so that the Constitutional Court (MK) stated that the formation process of Law No. 11 of 2020 did not fulfill the provisions of the 1945 Constitution so that it had to be declared Formally Defective.

²⁹ Moh. Mahfud MD. 1993. *Perkembangan Politik Hukum: Studi tentang Pengaruh Konfigurasi Politik Terhadap Produk Hukum di Indonesia*. Disertasi UGM, hlm. 66.

³⁰ OECD. 2009. *OECD Reviews of Better Regulation in the Netherlands*. Paris: OECD, hlm. 64.

³¹ Akhmad Adi Purawan. 2014. *Korupsi Legislasi dalam Pembentukan Peraturan Perundang-undangan*. *Jurnal Rechtsvinding* Volume 3 Nomor 3, hlm. 361.

³² Saldi Isra. 2010. *Pergeseran Fungsi Legislasi*. Jakarta: Raja Grafindo Persada, hlm. 93.

This indicates that the practice of implementing public participation in the formation of laws has not met the ideal parameters in accordance with the will of the public. In the provisions of the Law, public participation is a "right", so it can be interpreted that the stage of public involvement will only occur if there is a public initiative and/or can be carried out at the initiative of the DPR. This implies that public participation is not mandatory in the process of forming laws and regulations.

The Job Creation Law made by the Omnibus law method which combines 78 laws into 1 (one) law, public participation is more needed so that the law can be accepted by the community, because if in 1 (one) law at least needs to involve at least from the community, academics, stakeholders, mass organizations related to the law, then with 78 laws incorporated in the Job Creation Law, more massive public participation is needed in accordance with the specificity of the incorporated law.

REFERENCES

Books/Journals:

- Asshidqie, Jimly. Konstitusi dan Konstitualisme, Jurnal Fakultas Hukum Tata Negara.*
- Asshidqie, Jimly. Hukum Tata Negara dan Pilar-Pilar Demokrasi. Jakarta: Konstitusi Press.*
- Asshidqie, Jimly. (2020). Omnibus Law dan Penerapan di Indonesia. Jakarta: Konpres.*
- Isra, Saldi. (2010). Pergeseran Fungsi Legislasi. Jakarta: Raja Grafindo Persada*
- Mahfud MD, Moh. (1993). "Perkembangan Politik Hukum: Studi tentang Pengaruh Konfigurasi Politik Terhadap Produk Hukum di Indonesia", Disertasi UGM.*
- Mahkamah Agung. (2009). Pedoman Pelaksanaan Tugas dan Administrasi Pengadilan Dalam Empat Lingkungan Peradilan (Buku II).*
- OECD. (2009). OECD Reviews of Better Regulation in the Netherlands, Paris: OECD*
- Purawan, Akhmad Adi. (2014). Korupsi Legislasi dalam Pembentukan Peraturan Perundang-undangan, Jurnal Rechtsvinding Volume 3 Nomor 3.*
- Rahardjo, Satjipto. (1986). Hukum dan Masyarakat, Bandung: Angkasa.*
- Riskiyono, Djoko. (2016). Pengaruh Partisipasi Publik Dalam Pembentukan Undang-Undang: Telaah Atas Pembentukan Undang-Undang Penyelenggara Pemilu, Jakarta: Pruledum.*
- Soekanto, Soerjono. (2007). Pengantar Penelitian Hukum, Jakarta: UI Press.*

Legislation and Regulation:

- 1945 Constitution
- Constitutional Court Decision No. 91/PUU/XVIII/2020
- Law No. 13 of 2022
- Law No. 12 of 2011
- House Regulation No. 2 Year 2012
- Presidential Regulation No. 87 Year 2014
- House Regulation No. 1 of 2020

Website:

- <https://news.detik.com/berita/d-5827692/mk-pembentuk-uu-ciptaker-tak-beri-ruang-partisipasi-publik-secara-maksimal>.
- <https://www.mkri.id/index.php?page=web.Berita&id=18484>