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Public Participation Urgency As Efforts And Requirements For The Formation Of Good Law

Bayu Dwi Anggono[1], Fahmi Ramadhan Firdaus[2]
[1,] University of Jember, Jember – Indonesia, [2] University of Indonesia, Depok – Indonesia
E-mail: bayu_fhunej@yahoo.co.id/ fhmiramadhan@gmail.com

Abstract-- One of the requirements for a good law is participatory, this is needed in the hope that the law can be effectively implemented, because the aspirations of the needs of the public have been accommodated. However, it is not uncommon for the process of establishing laws in Indonesia to be considered to be less participatory. Although there is public participation, it is considered a formality and the people's aspirations are not substantially stated in the law. The problem discussed in this paper is, how a good law product should be and whether the urgency of public participation involvement in the formation of laws. The method of approach used in this paper is the conceptual approach, based on the concept of a democratic rule of law. In addition, this paper uses a comparative approach method, which compares and studies the involvement of public participation in the process of forming laws in several countries. This paper provides an overview of a good law product and the importance of public participation as an effort to form a good and effective law.

Keywords- Laws And Regulations; Rule Of Law; Public Participation

I. INTRODUCTION

As a civil law state, the existence of a laws and regulation is quite important as an instrument for the government to act and implement its functions. To optimalize the function of government in realizing the goals of the nation and state, it is need good legal instruments as well. According to Friedmann, there are 3 instruments that influence the successful implementation of law, namely the legal structure, legal substance and legal culture, which are then known as the legal system.[1]

Simply put, first, the legal structure relates to the apparatus or institutions that carry out the law. Second, legal substance is the whole legal principles, legal norms and legal rules, both written and unwritten, including court decisions, in the context of Indonesia which adheres to the principles of civil law system, the legal structure in question is applicable and binding laws and regulations. generally.

Third, legal culture is a human attitude towards the law itself. Legal culture is an atmosphere of social thought and social forces that determine how law is used, avoided, and misused. Legal culture is related to the legal awareness of the community. The higher the legal awareness of the community, a good legal culture will emerge and can change the public's mindset towards the law so far. The level of public compliance with the law is one measure of the functioning of the law.

Legal Substance, which is then interpreted as Legislation, must fulfill 2 aspects in order to produce a good product, the aspects in question are procedural aspects and substance aspects. The procedural aspect relates to the fulfillment of provisions or procedures in the formation of the law itself, while the substantial aspect relates to the content of the law in accordance with applicable norms and does not contradict with another Legislation, either vertically or horizontally.

One of the formal aspects in the legal formation process is public participation. Public participation in various fields including the process of forming the law is a logical consequence that must be fulfilled by a democratic rule of law because in conceptual terms, government must be from the people, for the people and to the people. This concept has actually been adopted by Indonesia in accordance with Article 1 paragraph 2 of the 1945 Constitution which reads *"Sovereignty is in the hands of the people and is exercised according to the Constitution"*.

Participation can be defined as participating, participating in an activity, from planning to evaluation. Public participation in the process of forming laws and regulations can be categorized as political participation. By Huntington and Nelson, political participation is defined as the activity of civil citizens (private citizen) which aims to influence decision making by the government.[2]

But in practice this does not manifest itself, including in the process of forming laws and regulations where the sovereignty in question is not visible, public participation is always ignored.

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Whereas Article 96 of Law no. 12 of 2011 has guaranteed space for the public to be able to participate in the process of forming laws and regulations. The public is not involved in the formation of laws and regulations, especially laws, which we can see during the process of forming Law No. 19 of 2019 concerning Amendments to Law No. 30 of 2002 concerning the Corruption Eradication Commission, Law no. 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining and the Cipta Kerja Bill which is currently being discussed.

There have been various objections to the formation of the law because its substance is considered to be detrimental and the public is not involved in the enactment process. In fact, as previously stated, public participation is a necessity in a democratic rule of law.

The absence of public participation in every stage of the formation of the law must be avoided, because it will have an impact on the quality of the law produced. In fact, the public function can be a control so that the substance of a law product is based on the public interest and does not harm the public.

A statutory regulation that is realized from the general will, will create a general goal, namely the public interest.[3] Therefore, if a certain society is formed laws and regulations that do not reflect the public interest, because they are not equally valid for all people, then that statutory regulation must be considered unfair.[3]

II. PROBLEMS

There are 2 (two) problem discussed in this paper, First, how good law products should be and Second, whether the urgency of public participation involvement in the formation of laws.

III. RESEARCH METHOD

The approach method used in this article is the conceptual approach. Based on the fact that public participation in various fields, one of which is the formation of laws and regulations, is something that is guaranteed in a democratic law state, public participation is absolutely necessary as an effort to establish good law. However, in practice the legislators are reluctant to involve public participation. Besides, this article uses a comparative approach method, by comparing and studying the best practices of the public participation in formation other country. By analyzing public participation in formation of law in South Africa, their actualization can be a role model for Indonesia to formation good law. Based on these objectives, the analysis method used in this study is qualitative, supported by data and analysis of studies from the laws and regulation, books, journal and doctrine regarding laws and regulations and public participation.[2]

IV. DISCUSSION

Good Law Requirements

Based on the theory of law and regulatory science, good regulations must meet the criteria for an orderly formation of legislation and an orderly substance of legislation. Orderly formation is related to the procedures or stages that must be passed and fulfilled in the formation of legislation from the stages of planning, preparation, discussion, ratification or stipulation and enactment of statutory regulations. An orderly guideline for the formation of laws and regulations is contained in Law no. 12 of 2011 (in conjunction with Law No. 15 of 2019), Perpes No. 87 of 2014, Permenkumham No. 23 of 2018 and Permenkumham No. 16 of 2015 (in conjunction with Permenkumham No. 31 of 2017) and Permendagri No. 80 of 2015 (in conjunction with Permendagri No. 120 of 2018) including those that must be fulfilled, namely the principles of forming good laws and regulations including conformity between types, hierarchy and content, openness.[5] It should be noted, this principle is cumulative in nature, meaning that even one of these principles is violated, then a law can already be called a formal defect in its formation.

The principle of openness means that in the Formation of Legislation starting from planning, preparation, discussion, ratification or stipulation, and promulgation are transparent and open. Thus, all levels of society have the widest possible opportunity to provide input in the Formation of Legislation. As a contrario, the principle of transparency is not fulfilled in the process of forming laws and regulations, which will make it difficult for public participation to take part.

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As a consequence law and regulations that do not comply with the orderly formation, formal review rights can be submitted to the Constitutional Court for laws and the Supreme Court for statutory regulations under laws which have implications for procedural defects and the annulment of all statutory regulations.

Laws and regulations that fulfill an orderly formation cannot be immediately said to be good legislation because they must comply with the substance of the laws and regulations which emphasize the content, paragraphs, articles and / or parts of statutory regulations in line with Pancasila, the Constitution 1945, laws and regulations of a higher or equivalent level, court decisions and the material principles of content of statutory regulations as stated in Article 6 paragraph (1) of Law no. 12 of 2011. Legislation that does not meet the criteria for an orderly substance may be filed for a judicial review which has implications for the cancellation of content, paragraphs, articles and / or parts of statutory regulations by the Constitutional Court or the Supreme Court.

The existence of Pancasila (grundnorm) as the source of all sources of law in Indonesia is very important for harmonization.[6] The substance of the formation of laws and regulations must be guided by the values of Pancasila. Efforts to concretise the values of Pancasila were carried out by lowering them into principles. Law Number 12 of 2011 concerning the Formation of Legislations, regulates several principles contained in the content of the legislation as referred to in Article 6 paragraph (1), namely: protection, humanity, nationality, kinship, nationality, diversity singularity, justice, equality in law and government, law order and legal certainty, balance, and harmony.

These principles must then be incorporated into every type of law and regulations starting from Laws, Government Regulations, Presidential Regulations, Provincial Regulations and Regency/City Regulations.

According to Lon Fuller, positive legal content must meet eight elements, including:[7]

a. There should be general rules to guide decision making;
b. The regulations which serve as guidelines for the authorities must be announced (published);
c. Laws (regulations) should not be retroactive;
d. The regulations are arranged in an understandable (clear) formula;
e. The rules must not conflict with each other;
f. The rules must not contain demands beyond what can be done (impossible to fulfill);
g. The rules should not be changed frequently;
h. There must be consistency between promulgated rules and day-to-day implementation (the government must strictly enforce these rules

Article 1 paragraph (3) of the 1945 Constitution instructs that Indonesia as a state of law (rechtstaat) should be interpreted as a state based on law or a state governed by law, not just a state consisting of laws alone. The logical consequence of this rule of law design is that legislators must obey the formal and material procedures for the formation of legislation to produce constitutional and quality legal products as a framework for state regulation.

Public Participation Guarantee In Democratic Rule Of Law

Democracy and rule of law are two conceptions of the power mechanism in running the wheels of state governance. The two conceptions are interrelated, which cannot be separated, because on the one hand democracy provides a basis and mechanism for power based on the principle of human equality, on the other hand, the rule of law provides a benchmark that those who rule in a country are not humans, but laws.

Democracy as a political system is closely related to law. Democracy without law will not be well developed, it may even lead to anarchy. On the other hand, law without a democratic political system will only become elitist and repressive.[8]

Utrecht distinguishes between two types of rule of law, namely a formal legal state or a classical legal state, and a material law state or a modern legal state. The formal rule of law concerns the definition of law which is formal and narrow, namely in the sense of written law and regulations. The task of the state is to carry out these laws and regulations to enforce order. This traditional type of state is known as the *nachtwakersstaat*. Material rule of law includes a broader definition including justice in it. The duty of the state is not only to maintain order by implementing the law, but also to achieve people's welfare as a form of justice.[9]

Since Amendment II to the 1945 Constitution, our country is a constitutional state and at the same

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time recognizes that the people in power (democracy). This can be read in Article 1 paragraph (2) and paragraph (3) of the 1945 Constitution, which reads *"Sovereignty in the hands of the people and is exercised according to the Constitution"* and *"The State of Indonesia is a state of law"*.

Based on this article, it is clear that the State of Indonesia is a rule of law that recognizes that the people are in power. So, Indonesia is a democratic constitutional state, not an authoritarian rule of law.

A democratic rule of law must fulfill the principles adopted in a rule of law and a democratic state, namely:[10]

I. Rule of Law Principle:
   1) The principle of legality, the limitation on the freedom of citizens (by the government), must be found based on laws which are general regulations. The will of the law must provide guarantees (to citizens) from arbitrary (government) actions, collusion, and various types of improper actions, the exercise of authority by government organs must be returned based on written law, namely law formal law;
   2) Protection of human rights;
   3) The government's attachment to law;
   4) Government coercion monopoly to ensure law enforcement; and
   5) Supervision by independent judges in the case of government organs implementing and enforcing legal rules.

II. Democratic Principle:
   1) Political representation. The highest political power in a country and in a lower legal society is decided by a representative body, which is filled by general elections;
   2) Political accountability. In carrying out their functions, government organs depend more or less politically, namely on representative institutions;
   3) Spread of authority. The concentration of power in society in one organ of government is arbitrary. Therefore, the authority of these public bodies must be spread over the different organs;
   4) Supervision and control (administration) of government must be controllable;
   5) Honesty and open to the public; and
   6) The people are given the possibility to raise objections

Jimly Asshiddiqie, emphasized that a rule of law that is based on a democratic system basically idealizes a mechanism that the rule of law must be democratic, and that a democratic state must be based on law. According to him, in a horizontal perspective, the idea of democracy based on law (constitutional democracy) contains 4 (four) main principles, namely:[11]

1. There is a guarantee of equality and equality in life together
2. Recognition and respect for differences or plurality;
3. There are rules that are binding and used as a source of common reference; and
4. The existence of a dispute resolution mechanism based on a regulatory mechanism that is adhered to in the context of state life, which also relates to the vertical dimensions of power between state institutions and citizens.

The rule of law must be supported by a democratic system because there is a clear correlation between the rule of law which is based on the constitution and the sovereignty of the people which is exercised through a democratic system. In a democratic system, people's participation is the essence of this system. However, democracy without legal regulation will lose its form and direction, while law without democracy will lose its meaning.

At the practical level, the principle of democracy or people's sovereignty can guarantee the participation of the community in the decision-making process, so that every statutory regulation that is implemented and enforced truly reflects the sense of community justice. Whereas in a state based on law, in this case the law must be interpreted as a hierarchical unit of legal norms that culminate in the constitution. This means that in a law state requires the supremacy of the constitution. The supremacy of the constitution, besides being a consequence of the rule of law concept, is also the implementation of democracy because the constitution is the highest form of social agreement.[12]

Based on social contract theory, to fulfill the rights of every human being, it is impossible to achieve each person individually, but must be together. Thus, a social agreement is made which contains common goals, the boundaries of individual rights, and who is responsible for achieving these goals and carrying out the

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agreements that have been made with the boundaries. The agreement is manifested in the form of a constitution as the supreme law of a state *(the supreme law of the land),* which is then elaborated consistently in state law and policy.[13]

Therefore, applicable laws and regulations may not be determined unilaterally by and or only for the benefit of the authorities. This is contrary to the principle of democracy, because law is not intended only to guarantee the interests of a few people in power, but to guarantee the interests of justice for all people so that the constitutional state being developed is not absolute *rechtsstaat*, but *democratische rechtsstaat.*[13]

Democracy requires recognition of the people's sovereignty which is manifested in the form of recognition of civil society as a pressure and balancing movement vis a vis the state. The people as the main element of civil society absolutely have a strategic position guaranteed by the constitution to carry out their roles as a form of active participation. A strong civil society encourages the state to strengthen itself so that there is a balance of power leads to checks and balances in the process of state administration.[15]

Public Participation In The Formation Of Laws

After the reform era, people's participation in the formation of laws was felt to have increased along with the political situation that was increasingly open in realizing democratization in Indonesia.

The Indonesian Constitution as the highest legal basis has constructed how to form constitutional laws. First, Article 1 paragraph (2) of the 1945 Constitution states that sovereignty is in the hands of the people and is exercised according to the Constitution. This value is constitutional morality which emphasizes the exercise of power based on the will of the people in the corridor of the constitution. Adhering to this article, the people entrust the mandate of state administration to their representatives in the legislative and executive bodies so that it is carried out based on the aspirations and needs of the people.

In principle, all parties within the state structure and outside the state structure can initiate ideas for the formation of laws and regulations.[16] The community space in the process of formally forming laws is regulated in Article 96 of Law No. 12 of 2011 concerning the Formation of Legislation, the public has the right to provide input orally and / or in writing in the Formation of Legislation. Verbal and / or written input can be made through public hearings, work visits, socialization and seminars, workshops, and / or discussions.[17]

Law No. 12 of 2011 states that the formation of statutory regulations includes the stages of planning, preparation, discussion, ratification or stipulation,[18] and enactment. In each stage of formation, the principle of openness must be upheld, which is transparent and open. Thus, all levels of society have the widest opportunity possible to provide input in the formation of laws and regulations.[19]

Both the DPR and the Government since the preparation of the National Legislation Program, drafting the Bill, deliberating the Bill, until the enactment of the law has the obligation to be disseminated, this is to provide information and / or obtain input from the public and stakeholders.[20] This section will describe public participation at each stage.

Phase I is planning, which is poured into the National Legislation Program (Prolegnas) which is arranged in a planned, integrated, and systematic manner. Prolegnas is a priority scale for the formation of laws in the context of realizing a national legal system.[21] The drafting of the list of bills is based on the order of the 1945 Constitution of the Republic of Indonesia, the order of the TAP MPR, other statutory orders, the National Development Planning System, RPJPN, RPJMN, government work plans and strategic plans, as well as people's legal aspirations and needs.

The preparation of the Prolegnas is carried out by the DPR and the Government which is coordinated by the DPR through the legislative body. The results of the drafting of the Prolegnas between the DPR and the Government are agreed to be the Prolegnas in a plenary meeting and are determined by a DPR Decree. Prolegnas is set for the medium term which is carried out at the beginning of the DPR's membership period as Prolegnas for a period of 5 (five) years, and annual Prolegnas is based on the priority scale for the formation of bills that are compiled every year, besides that at the end of the year, the annual Prolegnas can conduct an evaluation of the Prolegnas term medium.

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Based on DPR Regulation No. 2 of 2019 concerning Procedures for Preparation of Prolegnas, both in the preparation of the mid-term and annual Prolegnas, the role of the community is facilitated by the Legislation Body which is obliged to announce the plan for the preparation of the Prolegnas to the public through both print and electronic mass media, make work visits to absorb people's aspirations and receive input in the Legislation Body meeting. Public input is conveyed directly or by letter to the head of the Legislative Body before discussing the draft Prolegnas. Not only the preparation of the Prolegnas, from the preparation up to after the determination of the Prolegnas through a DPR Decree, the government and DPR and DPD are obliged to disseminate the Prolegnas, this is to provide information and / or obtain input from the public and stakeholders.

The next stage II is the preparation, a bill based on the priority Prolegnas list, then the bill is submitted by the President, DPR and DPD through the DPR. Each bill must be accompanied by an academic paper.[22] Academic paper are the results 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 Regulation, or Regency / City Regional Regulation Draft as a solution to problems and needs community.[23]

In the context of the bill submitted by the DPR, the public can be involved since the Academic Paper has been prepared, a public examination is carried out with relevant experts, practitioners, and stakeholders.[24] The results of this public test are then used as material for the improvement of the Academic Paper. Bills originating from the DPR can be drafted by members, commissions, joint commissions, the legislative body or the DPD. Since the drafting of a bill by a Member can ask for input from the public, the request for input is made through publication in the electronic media owned by the DPR. The same applies to bills prepared by the Commission, joint commissions, and the Legislative Body which can ask for input from the public since the drafting of the bill. Apart from soliciting input through dissemination, other ways that can be done include public hearings, work visits to regions or work visits abroad. Public hearings are conducted by inviting experts or stakeholders deemed necessary or related to the material of the draft law, whether individuals, groups, organizations or private bodies. Meanwhile, working visits to the regions are carried out to obtain input related to the content to be regulated in the draft law and its effects on the regional government and / or the community in the regions.

In order to ensure that the drafting of a bill is carried out in accordance with the procedures and techniques for drafting legislation, every bill submitted to the DPR by members of the DPR, commission, joint commission, or DPD must harmonize, unify, and strengthen the conception of the bill by the Legislative Body of the DPR RI.[25]

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 the Implementing Regulations of Law No. 12 of 2011 concerning the Establishment of Legislation. In drafting the bill within the government, the initiator forms an inter-ministerial and / or inter-ministerial committee consisting of ministries that carry out government affairs in the legal sector, ministries / non-ministerial government agencies and /or other institutions related to the substance regulated in the Draft Law and drafting Regulations Legislation originating from the initiating agency. Public involvement is only represented by practitioners, or academics who are familiar with the issues related to the draft law, who can be appointed by the initiator.[26] Furthermore, public participation is re-involved in harmonizing, unifying, and consolidating conception meetings with researchers and experts including those from higher education institutions to be asked for their opinions.[27]

Stage III, namely the discussion that is held after the draft bill is completed, discussions are held jointly between the DPR and the Government. The discussion of the Bill is carried out through 2 (two) levels of discussion, namely the first level talks in commission meetings, joint commission meetings, Legislation Body meetings, Budget Board meetings, or Special Committee meetings and second level talks in plenary meetings.[28]

Activities carried out at the first level discussion, namely introductory deliberations, in this activity the DPR provides an explanation and the President conveys the view that the bill, the DPR provides an explanation and the President and DPD convey their

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views if the bill relating to the authority of the DPD comes from the DPR, and vice versa if the bill is proposed by President. The second activity is discussing the list of problem inventory, which will be submitted by the President if the bill comes from the DPR and vice versa, the list of problem inventory will be submitted by the DPR if the bill comes from the President by considering the proposal from the DPD as long as it is related to the DPD's authority. The last activity as the culmination of the first level talks, namely the submission of mini-opinions delivered by factions, DPD, if the bill is related to the authority of the DPD and the President. In the first level talks, leaders of state institutions or other institutions can be invited if the draft law is related to other state institutions or institutions.[29]

Public participation in the discussion of laws is regulated in DPR Regulation No. 8 of 2014 concerning the DPR Standing Orders, where the public can be invited to a public hearing to get input on the draft law being discussed. In addition, the DPR can pick up the ball by making work visits to the regions in order to get input from the regional government and / or the local community.[30]

Furthermore, it will be continued at level II talks in plenary meetings with the agenda of submitting reports containing the process, mini-faction opinions, mini DPD opinions, and the results of first-level talks, statements of approval or rejection from each faction and members orally requested by the chairman of the plenary session and submission of the President's final opinion by the assigned minister.[31] At this stage, it will also be determined whether the bill is approved into law or not.

The next stage IV is ratification, community participation is no longer needed. Bills that have been jointly approved by the DPR and the President will be submitted by the DPR Leadership to the President to be ratified into Law within a maximum period of 7 (days) after being approved. After submission, it will be ratified by the President by affixing a signature within a maximum period of 30 (thirty) days from the time the bill is mutually approved. However, if the bill is not signed by the President within 30 (thirty) days from the time the bill is jointly approved, the bill will automatically become law and must be promulgated.[32]

The last V stage is the promulgation. As with the legalization stage, at the stage of promulgation, public participation is also not necessary because this is the full authority of the government. The enactment aims to make everyone aware of it, the authority is exercised by the minister who carries out government affairs in the field of the formation of laws and regulations, in this case the minister of law and human rights. Legislation is placed in the State Gazette of the Republic of Indonesia.[33]

Comparative Study Public Participation In The Formation Of Laws In South Africa

The legislative function in South Africa rests in the hands of the Parliament which in the 1996 Constitution, Parliament has the position of the national legislative power, where the parliament has the authority to formulate laws. This institution consists of the National Assembly and the National Council of Provinces. The National Assembly is elected to represent the people and ensure democratic government based on the constitution. Meanwhile, the National Council of Provinces is a regional or provincial representative to ensure that the interests of the province are taken into account in the national scope.

The formation of laws is regulated in Articles 73 - 82 of the 1996 Constitution. A bill can only be proposed in the House of Representative by the Minister, Deputy Minister, Parliamentary Committee, or individual members of Parliament. Generally, the bill is drafted by the government, especially the Minister regarding the material being prepared. This bill must first be approved by the Cabinet before being proposed to the DPR. Bills proposed by individual members of Parliament are referred to as special members bills. Before it becomes law, a bill must be discussed by both parties in Parliament.

Certain bills that have an impact on provincial areas must be explained in advance to the National Council of Provinces. The other bills were first presented in the National Assembly. Once discussed, the bill is directed to the relevant committee.

Bills are published in the Government Gazzette for comment by the general public unless they are very urgent. Debate on the committee and changes can be made. If it attracts great attention from the public towards the bill, the committee can hold a public hearing. When the content of the bill has been decided, the committee sits together in Parliament to

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discuss further and conduct elections. Bills can be withdrawn to the committee for review before an election is held. The bill is then asked for input or consideration to the National Council of Province. If the bill has been approved by both the National Assembly and the National Council of Province, then the bill is submitted to the President for ratification. When passed by the President, the bill becomes law drafted by Parliament.[34]

When the President has certain considerations after accepting a bill, the bill can be returned to the National Assembly for review. If the bill contains material related to provinces, then the National Council of Province must be involved in the review. If the bill that has been reviewed approves the President's consideration, then the President must pass the bill. But if the President's considerations are not fully accommodated, then the President must ratify or submit it to the Constitutional Court to decide what the position of the bill is against the Constitution. If the Constitutional Court decides that the bill is constitutional, the President must pass the bill. Laws that have been passed must be promulgated and valid since they are promulgated.

Public participation is regulated in the 1996 South African Constitution. The part that is directly related to public participation in the drafting of the Law is a bill of rights; public participation in the legislature; institutions supporting democracy; and parliamentary committee. There are various forms of community participation in South Africa, including the People's Assembly, the Taking Parliament to the People program, the Women's Parliament and the Youth Parliament (sectoral parliaments), public hearings, outreach programs, radio programs and broadcasts, television broadcasts , business and educational publications, newsletters, promotional material, the website, Facebook, Twitter and YouTube.[35]

The form of public participation in the formation of laws in Indonesia is almost the same as in South Africa, which in general is in the form of public hearings, work visits, outreach; and / or seminars, workshops, and / or discussions. The difference is that in South Africa, in practice, there are petitions, committee proceedings and house sittings, and the use of constituency offices.[36]

In Article 96 of Law no. 12 of 2011 has determined the forms that can be used are public hearings, work visits, socialization, seminars, workshops, and / or discussions. Although the 1996 South African Constitution does not explicitly stipulate, but regarding the authority to prepare documents before deliberation, the National Assembly can accept petitions, representations, or suggestions from related individuals or institutions. The 9th Edition of the Rules of National Assembly contains the procedures for petitions. Apart from that the form mentioned in the National Assembly rules is the public hearing.

Based on article 59 of the 1996 South African Constitution, it is stated that The National Assembly must facilitate community involvement in the legislative process and other processes in the Assembly and Committee. In contrast to Indonesia, where public participation in the formation of laws is still a right, in South Africa there is an obligation to involve the public participation in the process of forming laws.

V. CONCLUSION

Public participation in a democratic rule of law state is a necessity and as a manifestation of the people's sovereignty as mandated by the Constitution. One form of public participation that we can find in Indonesia is in the formation of laws, this participation is needed in order to fulfill formal requirements and guard aspirations so that laws conform to the legal needs of society. However, public participation in the formation of laws in Indonesia is still just a formality in several practices and is still a right, compared to South Africa which gives citizens the obligation to participate in the process of forming laws.

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REFERENCES

[1] M. F. Lawrence. *The Legal System, Asocial Secience Perspective*. New York: Russel Sage Foundation, 1975

Digital Repository Universitas Jember

[2] Hunington and Nelson. *Partisipasi Politik di Negara Berkembang*. Jakarta: Rineka Cipta, 1994.

[3] F. I., Maria. "Upaya Meningkatkan Kualitas Peraturan Perundang-undangan di Indonesia" *Jurnal Legislasi,* Vol. 4, Vol. 2., pp. 23, 2007.

[5] Article 5 Law No. 12/2011 tentang Pembentukan Peraturan Perundang-undangan

[6] Article 2 Law No. 12/2011 tentang Pembentukan Peraturan Perundang-undangan

[7] L. Fuller. *The Morality of Law*. New Haven: Yale University, 1964.

[8] Mahfud MD. *Hukum dan Pilar-Pilar Demokrasi*. Yogyakarta: Gama Media Offset, 1999.

[9] Utrecht. *Pengantar Hukum Administrasi Negara.Indonesia*. Jakarta: Ichtia, 1962

[10] Ridwan HR. *Hukum Administrasi Negara.* Yogyakarta: UII-Press, 2002.

[11] J. Asshiddiqie. *Demokrasi dan Nomokrasi: Prasyarat Menuju Indonesia Baru*. Kapita Selekta Teori Hukum (Kumpulan Tulisan Tersebar), Jakarta: FH-UI, 2000.

[12] J. Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, *Edisi Revisi*. Jakarta: Konstitusi Press, 2005.

[13] J. Asshiddiqie. *Menuju Negara Hukum Yang Demokratis*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstiusi, 2008.

[15] H. C. H. Benediktus. Hukum Tata Negara Indonesia. Yogyakarta: Univ. Atmajaya, 2008.

[16] J. Asshiddiqie. *Hukum Tata Negara dan Pilar-Pilar Demokrasi.* Jakarta: Konstitusi Press, 2005.

[17] F.R. Firdaus. "Pencegahan Korupsi Legislasi Melalui Penguatan Partisipasi Publik dalam Proses Pembentukan Undang-Undang" *Jurnal Legislasi*. Vol. 17, No. 3., pp. 282-293, 2020

[18] Article 1 number 1 Law No. 12/2011

[19] Explanation Article 5 alphabet g Law No. 12/2011

[20] Article 88 Law No. 12/2011

[21] Article 17 Law No. 12/2011

[22] Article 43 paragraph (3) Law No. 12/2011

[23] Article 1 number 11 Law No. 12/2011

[24] Article 3 paragraph 6 DPR Act No. 2 Tahun 2012

[25] Article 46 Law No. 12/2011

[26] Article 45 Presidential Decree No. 87/2014

[27] Article 52 paragraph (2) Presidential Decree No. 87 /2014

[28] Article 66 and Article 67 Law No. 12/2011

[29] Article 68 Law No. 12/2011

[30] Article 145 DPR Act No. 8 Tahun 2014

[31] Article 69 Law No. 12/2011

[32] Article 73 Law No. 12/2011

[33] Article 85 Law No. 15/2019

[34] Parliament of Republic of South Africa, *How a Law is Made*. [Online] Available: https://www.parliament.gov.za/storage/app/media/EducationPubs/how-a-law-is-made.pdf [Accessed August, 20, 2020

[35] Parliament of Republic of South Africa, *What Parliament Does*, [Online] Available: https://www.parliament.gov.za/what-parliamentdoes [Accessed August, 20, 2020]

[36] S. Hidayati. "Partisipasi Masyarakat dalam Pembentukan Undang-Undang (Studi Perbandingan Indonesia dengan Afrika Selatan)" *Jurnal Bina Mulia Hukum.* Vol. 3 No. 2., pp.. 224-241, 2019.