

## Public Participation in the Law-Making Process in Indonesia

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### ABSTRACT

Participation from the general public is an essential component that must be taken into account during the legislative process. It is essential to the operation of laws in a country and includes the participation of society in the legislative process. This is particularly important in terms of the rule of law, the hierarchy of legal norms, and the operation of the law in its entirety. The purpose of this research is to evaluate the significance of public participation in the legislative process in Indonesia as well as the potential repercussions of excluding this procedure from the legislative process. For the purpose of carrying out this research, normative legal research that takes both a statutory and conceptual strategy was utilized. According to the findings, public participation offers a variety of possibilities for involvement, in accordance with the requirements of Article 96 of Law Number 11 of 2012 on the Formation of Regulations (UU P3). Due to this, the importance of public participation cannot be overstated, despite the restricted channels through which members of the public can communicate their thoughts and goals.

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## 1. Introduction

Law is a form of communication between the government and the public. As such, the norms regulated need to be clear and be without any error during the law-making process. In this process, one crucial element is the existence of public participation, which is a right that should be accomplished in the preparatory and explanatory stages of law-making process.<sup>1</sup> In relation to the existence of public participation in law-making process, Article 96 of Law Number 11 of 2012 explained that the public had the right to entirely provide input at every stage of law-making process. This shows that public has a right to participate in the law-making process.<sup>2</sup>

Two interrelated elements are observed, namely process and substance. In this case, the process is a mechanism that needs to be transparently performed, subsequently leading to

<sup>1</sup> *Critical Theory and Society A Reader*, ed. by Stephen Eric Bronner and Douglas Mackay Kellner (Routledge, 2020) <https://doi.org/10.4324/9781003059509>

<sup>2</sup> *Constitutionalism and Democracy*, ed. by Richard Bellamy (Routledge, 2017) <https://doi.org/10.4324/9781315095455>

public participation in providing input to manage a problem.<sup>3</sup> Meanwhile, substances are materials that are regulated for the benefit of the wider public, towards the development law. Irrespective of these descriptions, the origin of the controversies are the lack of public participation on recent law-making processes.<sup>4</sup>

As an illustration, in the last few years, several laws have caused controversies in society, such as the bill promulgated by the House of Representatives (DPR) on the amendment to Corruption Eradication Commission (KPK).<sup>5</sup> This is not in line with Article 96 of Law Number 11 of 2012, where the public has the right to participate in law-making by providing input at every stages. However, the rejection by the public upon the amendment shows that participation from society has been lacking, with some seeing the need for public participation optimization.<sup>6</sup> Law-making process also needs to be observed in the formal legislative process, besides being limited to the legal material compilations guided by the establishment of good regulations. In this context, the existence of public participation also needs to be considered in obtaining a more democratic.<sup>7</sup>

Therefore, this research aims to evaluate the urgency of public participation in the law-making process. It also seeks to assess the encountered consequences without the involvement of the participatory process. To achieve the objectives, the following questions are expected to be analyzed, (1) what is the essence of public participation in law-making? and (2) What are the consequences of law-making without involving public participation?

## 2. Research Method

The research utilized a "black letter" methodology, also known as doctrinal legal research, which focuses on examining the text of the law rather than how it is applied in practice. In order to provide a descriptive and in-depth analysis, this research technique involved examining legal regulations from primary sources. The research also examined the legal framework using both statutory and conceptual approaches. In order to give a useful summary of the data that highlights any patterns or relationships between the data points, the findings and data were analyzed descriptively.

## 3. Result and Discussion

### 3.1. The Urgency of Public Participation in the Law Making

The Roman philosopher Cicero once said, "ubi societas, ibi ius," which can be interpreted as

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<sup>3</sup> Go Yoshizawa and others, 'ELSI Practices in Genomic Research in East Asia: Implications for Research Collaboration and Public Participation', *Genome Medicine*, 6.5 (2014), 39 <https://doi.org/10.1186/gm556>

<sup>4</sup> Saru Arifin, 'Illiberal Tendencies in Indonesian Legislation: The Case of the Omnibus Law on Job Creation', *The Theory and Practice of Legislation*, 9.3 (2021), 386-403 <https://doi.org/10.1080/20508840.2021.1942374>

<sup>5</sup> Ahmad Khoirul Umam and others, 'Addressing Corruption in Post-Soeharto Indonesia: The Role of the Corruption Eradication Commission', *Journal of Contemporary Asia*, 50.1 (2020), 125-43 <https://doi.org/10.1080/00472336.2018.1552983>

<sup>6</sup> Saldi Isra and others, 'Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia', *International Journal of Law, Crime and Justice*, 51 (2017), 72-83 <https://doi.org/10.1016/j.ijlcrj.2017.07.001>

<sup>7</sup> Cecilia Luttrell and others, 'The Political Context of REDD+ in Indonesia: Constituencies for Change', *Environmental Science & Policy*, 35 (2014), 67-75 <https://doi.org/10.1016/j.envsci.2012.10.001>

"where there is society, there is law."<sup>8</sup> This adage highlights the relationship between law and society, emphasizing that law and society are intertwined and cannot exist without each other. In other words, law is created by and for society. This idea is reflected in the concept of a legal relationship with the public, which means that laws are created to serve the needs and interests of the public. Thus, laws should be clear, understandable, and accessible to the public, and the public should have opportunities to participate in the law-making process. This legal relationship between the government and the public is essential for a functioning society where laws are respected and followed.<sup>9</sup>

Law and legislation serve as written forms of communication between the government and the public. It is crucial that the laws and regulations are clear and free of errors during the law-making process. Public participation is an important aspect of this process, as it ensures that the laws created serve the needs and interests of the public.<sup>10</sup>

Participation is closely related to the government's openness to creating space and opportunities for public aspirations. The concept of public participation emphasizes openness. It indicated the impossibility of the public to participate in government activities without transparency, leading to the consideration of openness as a constitutional principle in appropriate authoritative processes.<sup>11</sup>

In law-making process, the openness and transparency principle must be implemented in regards in the preparation, drafting, and evaluation of law-making process. The previous explained that all levels of the public had every opportunity and avenue to provide input in the process. In the governmental implementation in the reform era, public participation is one of the components of good governance, specifically in the creation of laws. It is necessary for democratic countries to develop a harmonious relationship between the state and its civil society.<sup>12</sup>

Legal materials play a significant role in shaping social policies and thus require public participation at all stages, including the evaluation period. Public involvement is crucial for achieving the standard requirements of good policies, as it ensures that local regulations align with existing societal realities and fosters a sense of ownership, responsibility, and accountability.<sup>13</sup> Additionally, public participation can help foster trust, respect, and recognition of local government, which is essential for effective governance. Therefore, it is imperative for policymakers to prioritize public participation in the law-making process, as it can lead to more inclusive and effective policies.

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<sup>8</sup> Monia Ciravegna, 'Ubi Societas, Ibi Ius: The Legal System', in *Damanhur* (Cham: Springer International Publishing, 2023), pp. 75-96 [https://doi.org/10.1007/978-3-031-10137-3\\_4](https://doi.org/10.1007/978-3-031-10137-3_4)

<sup>9</sup> *Readings and Cases in International Human Resource Management*, ed. by B. Sebastian Reiche and others (Routledge, 2016) <https://doi.org/10.4324/9781315668703>

<sup>10</sup> Margaret Scammell and Holli Semetko, *The Media, Journalism and Democracy*, ed. by Margaret Scammell and Holli Semetko (Routledge, 2018) <https://doi.org/10.4324/9781315189772>

<sup>11</sup> Carsten Greve, 'Ideas in Public Management Reform for the 2010s. Digitalization, Value Creation and Involvement', *Public Organization Review*, 15.1 (2015), 49-65 <https://doi.org/10.1007/s11115-013-0253-8>

<sup>12</sup> Stefan Toepler and others, 'The Changing Space for NGOs: Civil Society in Authoritarian and Hybrid Regimes', *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations*, 31.4 (2020), 649-62 <https://doi.org/10.1007/s11266-020-00240-7>

<sup>13</sup> *The Spectrum of International Institutions*, ed. by Kenneth W Abbott and Duncan J Snidal (Routledge, (2021) <https://doi.org/10.4324/9781003111719>

The significance of public participation in the law-making process is officially recognized in Article 96 of Law Number 12 of 2011 on the Making Legislation, which outlines the following provisions: Firstly, the general public has the right to provide input in the process of creating laws and regulations. Secondly, these inputs may be in the form of verbal or written communications, and channels of communication include public hearing meetings, comparative study, and socialization seminars, workshops, and/or discussions. Thirdly, the public refers to any individual or group with an interest in the contents of the draft legislation. Lastly, to facilitate oral input from the public, every Draft of Legislation should be easily accessible. These provisions underline the importance of public participation in the law-making process and ensure that the government engages with and incorporates the views of its citizens.<sup>14</sup>

This means that people have the legal right to participate in the process of making laws, and they can provide their input or suggestions at all stages of the process. The government needs to change how it interacts with the public, especially when it comes to making laws, as part of its effort to harmonize various state sectors. This change is needed to ensure that the government considers the public interest, particularly when it comes to creating social policies. When making laws, various aspects such as legal, social, and philosophical considerations are usually taken into account.<sup>15</sup> However, even if a law is philosophically sound, it may not be effectively implemented in reality.

It is emphasized on the idea of participation with also the importance of allowing interested parties to give input. This view is also emphasized in the United Nations Development Program which defined participation as a key aspect of good governance. According to this definition, every citizen, either directly or indirectly, should have a say in decision-making processes.<sup>16</sup> This definition focused on constructive involvement, as well as the freedom of association and speech.

Public participation is divided into the visible and invisible, leading to the development of greater effectiveness and efficiency in knowledge, creativity, skills, and organization. When the public is not provided with the opportunity to contribute these invisible resources, their motivation, willingness, and enthusiasm to develop other visible elements are liable to be lost.<sup>17</sup>

Public participation is an essential element for social change, and it includes various forms such as accepting, acknowledging, complying conditionally or rejecting decisions.<sup>18</sup> Development planning participation should be initiated in the public, and it emphasizes participation in technical and political decision-making processes. Additionally, public participation is required in the operational development implementation and obtaining,

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<sup>14</sup> Sofia Serra-Silva, 'How Parliaments Engage with Citizens? Online Public Engagement: A Comparative Analysis of Parliamentary Websites', *The Journal of Legislative Studies*, 28.4 (2022), 489–512 <https://doi.org/10.1080/13572334.2021.1896451>

<sup>15</sup> Maksymilian Del Mar, *Legal Theory and the Social Sciences*, ed. by Del Mar Maksymilian and Michael Giudice (Routledge, 2017) <https://doi.org/10.4324/9781315091891>

<sup>16</sup> Rajeev Sharma, Sunil Mithas, and Atreyi Kankanhalli, 'Transforming Decision-Making Processes: A Research Agenda for Understanding the Impact of Business Analytics on Organisations', *European Journal of Information Systems*, 23.4 (2014), 433–41 <https://doi.org/10.1057/ejis.2014.17>

<sup>17</sup> Alberto Díaz-Cayeros, Beatriz Magaloni, and Alexander Ruiz-Euler, 'Traditional Governance, Citizen Engagement, and Local Public Goods: Evidence from Mexico', *World Development*, 53 (2014), 80–93 <https://doi.org/10.1016/j.worlddev.2013.01.008>

<sup>18</sup> Jack Stilgoe, Simon J. Lock, and James Wilsdon, 'Why Should We Promote Public Engagement with Science?', *Public Understanding of Science*, 23.1 (2014), 4–15 <https://doi.org/10.1177/0963662513518154>

maintaining, and improving development outcomes.<sup>19</sup> Finally, it also highlights the need for participation in development assessment, which evaluates the extent to which the results meet public needs. From these descriptions, some interests were observed to attract each other in law-making, indicating that public participation was used to balance these diverse values.

### 3.2. Public Participation Absence and Its Consequences in Law Making Process

At the House of Representatives of the Republic of Indonesia (DPR RI) term for the 2014-2019 coinciding with the end of President Joko Widodo's term, the public was surprised by the by the Revision of Law Number 30 of 2002 on the Corruption Eradication Commission (KPK Law). Ideally, the revision of the KPK Law should make the KPK as an independent institution that eradicates corruption more professionally, intensively, and continuously. This is because corruption has hindered national development. However, the revision of the KPK Law raises concerns as it did not strengthen the KPK and has weakened its authority instead.<sup>20</sup>

The amendment of the KPK have raised debates in the wider society. The House of Representatives and the government revised the KPK law because of the following reasons: (1) it is not in accordance with the times, the dynamics of the law and the state administration system of the Republic of Indonesia; and (2) the practice of criminal law enforcement often encounters problems both in terms of regulations and in terms of substance and interpretation. However, some people regard that the House of Representatives and the government's reasons to revise the law are weakening KPK.<sup>21</sup>

This public assessment was put forward, among others, by Febridiansyah emphasizes that KPK did not function properly as an anti-corruption agency in Indonesia. According to the records of Indonesia Corruption Watch (ICW), various attempts to undermine KPK have been carried out. Some of them are the ideas of dissolving the KPK, dismantling the KPK authority by making a legislative review of KPK law, conducting a judicial review to the Constitutional Court, criminalizing and manipulating KPK leadership, sieging the KPK office, seizing cases handled by KPK, blocking the budget for KPK building development up to intervening the work meeting between the House of Representatives and KPK. Instead of strengthening the KPK function, the House of Representatives and the Government agreed to make changes to KPK Law that weakened the KPK instead.<sup>22</sup>

The amendment of the KPK Law did not involve public participation. Additionally, its substance is also considered to weaken this institution, the law is also known to be formally flawed. This was due to the law being rushed into the amendment process, as well as lacking

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<sup>19</sup> Siobhan O'Connor and others, 'Understanding Factors Affecting Patient and Public Engagement and Recruitment to Digital Health Interventions: A Systematic Review of Qualitative Studies', *BMC Medical Informatics and Decision Making*, 16.1 (2016), 120 <https://doi.org/10.1186/s12911-016-0359-3>

<sup>20</sup> Taufiqurrohman Syahuri, Gazalba Saleh, and Mayang Abrilianti, 'The Role of the Corruption Eradication Commission Supervisory Board within the Indonesian Constitutional Structure', *Cogent Social Sciences*, 8.1 (2022) <https://doi.org/10.1080/23311886.2022.2035913>

<sup>21</sup> Abdil Mughis Mudhoffir, 'The Limits of Civil Society Activism in Indonesia: The Case of the Weakening of the KPK', *Critical Asian Studies*, 2022, 1-21 <https://doi.org/10.1080/14672715.2022.2123019>

<sup>22</sup> Filip Stephanus Khurniawan and Yova Ruldeviyani, 'Twitter Sentiment Analysis: Case Study on the Revision of the Indonesia's Corruption Eradication Commission (KPK) Law 2019', in *2020 International Conference on Data Science and Its Applications (ICoDSA) (IEEE, 2020)*, pp. 1-6 <https://doi.org/10.1109/ICoDSA50139.2020.9212851>

public participation and transparency. Therefore, the amendment of the Law has naturally obtained rejection by various circles.<sup>23</sup>

Bagir Manan opined that a democratic country ignoring public opinion in policy making indicates a violation of the general principles of good governance. From the beginning, this amendment had obtained criticism from various circles of society. However, neither the Parliament nor the Government provided a good response, this action leads to the continuity of the KPK Law amendment process. Non-accommodation of participation is suspected due to the law review being quickly conducted in a relatively short period non-accommodation of participation is suspected due to the law review being quickly conducted in a relatively short period.<sup>24</sup>

Since the planning stage, the amendment to the KPK Law has been criticized by many groups who think that the KPK Law amendment is unclear and ineffective. In essence, the formation or change of the statutory regulations, according to Burkhardt Krems as quoted by Attamimi, is an activity that is related to the content or substance of the regulations, methods of formation, as well as the process and procedures for forming regulations. Each part of the activity must fulfill separate requirements so that the legal products can be applied properly juridically, politically or sociologically. Furthermore, Law Number 12 of 2011 on the Formation of Laws and Regulations as amended by Law Number 15 of 2019 confirms the stages of the law formation, namely planning, drafting, discussing, ratifying or stipulating, and invitation.<sup>25</sup>

The amendment of the KPK does not follow one of the procedures or stages, namely planning, because there is no openness, and it does not involve public participation. Openness has a consequence of an obligation for the House of Representatives and the government to disseminate the process of law-making process to the public from the beginning until the end. The purpose of the dissemination process is to provide information and obtain input from the public and the related stakeholders.<sup>26</sup>

The rejection of the proposed KPK Law revision arisen due to the absence of openness and transparency. This situation was acknowledged by the Minister of Law and Human Rights, Yasonna Laoly, which stated that “public opinion is very diverse, and many parties are against the amendment. In this outreach, the government and the House of Representatives will explain that the KPK Law amendment will not weaken KPK. Therefore, the parties who feel that this amendment weakens KPK will be invited. However, the objection must be based on intellectual, not emotional basis.”<sup>27</sup>

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<sup>23</sup> Muhammad Saud and Hendro Margono, ‘Indonesia’s Rise in Digital Democracy and Youth’s Political Participation’, *Journal of Information Technology & Politics*, 18.4 (2021), 443–54 <https://doi.org/10.1080/19331681.2021.1900019>

<sup>24</sup> Abdil Mughis Mudhoffir and Rafiqqa Qurrata A’yun, ‘Doing Business under the Framework of Disorder: Illiberal Legalism in Indonesia’, *Third World Quarterly*, 42.11 (2021), 2651–68 <https://doi.org/10.1080/01436597.2021.1967738>

<sup>25</sup> Sofie Arjon Schütte, ‘Keeping the New Broom Clean’, *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia*, 171.4 (2015), 423–54 <https://doi.org/10.1163/22134379-17104001>

<sup>26</sup> Johannes D. Widodojoko, ‘Indonesia’s Anticorruption Campaign’, in *The Changing Face of Corruption in the Asia Pacific* (Elsevier, 2017), pp. 253–66 <https://doi.org/10.1016/B978-0-08-101109-6.00017-4>

<sup>27</sup> Bambang Hartono, ‘Corruption Eradication Policy Judging from the Politics of Criminal Law (Law Number 19 of 2019 Concerning the Second Amendment to Law Number 30 of 2002 Concerning the Corruption Eradication Commission)’, in *Proceedings of the International Conference on Law, Economics and Health (ICLEH 2020)* (Paris, France: Atlantis Press, 2020) <https://doi.org/10.2991/aebmr.k.200513.106>

The House of Representatives and the government did not disseminate the amendment, resulting in strong resistance from the public, which subsequently led to public involvement. Therefore, the KPK Law does not fulfill democratic legitimacy. democracy, in principle, does not end when a representative institution is formed from the election results. Modern democracy is not only manifested in the form of participation in electing representatives, there must also be participation by the public in the making of decisions and legislation.<sup>28</sup>

The KPK Law should fulfill the function of a law, namely: (a) as a mean to rule society; (b) as a tool to limit power; (c) as a tool of social engineering; and (d) as a mean of beneficiary. As the ruler of society, laws function to regulate various interests of individuals and groups in the society by providing a legal certainty regarding rights and duties in various aspects of the society. Since the legal awareness in the society is not necessarily the same, laws must be able to accommodate varying interests, and develop the society so that the presence of the law can be amicable by everyone.<sup>29</sup>

In addition, the function of the law to limit power is intended to divide and restrict the powers held by state institutions with clear rules to prevent abuse of power. Without clear regulation by law, it will open opportunities for abuse of power by using the law as a tool to prevent power alone without considering the interests and welfare of society. The KPK as an institution that has direct interface with corruption cases were not invited to discussion on the amendment the KPK Law.<sup>30</sup> Based on Feri Amsari, the KPK should optimally be involved from the beginning of the review process, compared to its involvement after the passage of the law in the plenary session.

The Bill was also difficult to access publicly, as the government only provided a general description for the Law. This led to challenges for the public to provide input; causing suspicions about the reasons the preparation is closed. These were not in line with Article 96 paragraph (4) of Law Number 13 of 2022, where every legislation draft needs to be easily and firmly accessible for the public. Besides the difficulty of accessibility, the challenges of this regulation were also against the procedures and principles of the state administration due to the morality of democracy in Indonesia.

The process of the amendment was rushed, subsequently violating the provisions of Law Number 12 of 2011 on Law Making Process on the openness principle. In addition, the process of evaluating Law Number 19 of 2019 did not have an academic manuscript due to the short amount of time and therefore did not meet the analyzed quorum. When drafting a law, it is important to consider the opinions and input of relevant stakeholders in the legal process. This is because stakeholders are individuals or groups who have an interest in the outcome of the law and may be affected by its implementation. Stakeholders may include government agencies, civil society organizations, industry associations, labor unions, and community groups, among others.<sup>31</sup>

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<sup>28</sup> Simon Butt and Sofie Arjon Schütte, 'Assessing Judicial Performance in Indonesia: The Court for Corruption Crimes', *Crime, Law and Social Change*, 62.5 (2014), 603–19 <https://doi.org/10.1007/s10611-014-9547-1>

<sup>29</sup> Herlambang P Wiratraman, 'Constitutional Struggles and the Court in Indonesia's Turn to Authoritarian Politics', *Federal Law Review*, 50.3 (2022), 314–30 <https://doi.org/10.1177/0067205X221107404>

<sup>30</sup> Marcus Mietzner, 'Sources of Resistance to Democratic Decline: Indonesian Civil Society and Its Trials', *Democratization*, 28.1 (2021), 161–78 <https://doi.org/10.1080/13510347.2020.1796649>

<sup>31</sup> Luke McNamara and others, 'Understanding Processes of Criminalisation: Insights from an Australian Study of Criminal Law-Making', *Criminology & Criminal Justice*, 21.3 (2021), 387–407 <https://doi.org/10.1177/1748895819868519>

Consulting with relevant stakeholders can help ensure that the law is effective, fair, and reflects the needs and interests of all those involved. By seeking the input of various stakeholders, the law-making process can benefit from a wide range of perspectives and expertise, which can help to identify potential issues and unintended consequences that may arise from the law's implementation. Moreover, consulting with relevant stakeholders can also help to build trust and support for the law, as it shows that their voices have been heard and taken into account in the decision-making process. This can contribute to the legitimacy of the law and its acceptance by the public.<sup>32</sup> Incorporating relevant stakeholders' consultation in the law-making process is an important step in ensuring that the law is comprehensive, effective, and serves the public interest.

Therefore, the KPK Law does not fulfill the function of a law because of the following reasons: first, KPK Law does not accommodate various views and sense of justice. Second, KPK Law is used as a tool to protect the interests of power. This is related to the arrangement of the KPK as a part of the executive, thus, it is vulnerable to intervention. This provision contradicts the opinions and considerations of the Constitutional Court Decision Number 5/PUU-IX/2011 stated that KPK is an independent auxiliary state institution that is given special duties and powers, among others, to carry out some functions related to judicial powers to conduct investigations and prosecutions as well as to supervise the handling of corruption cases committed by other state institutions.<sup>33</sup>

The KPK Law has become a source of contention between the executive branch and the House of Representatives, with each seeking to control the agency's powers and jurisdiction. Unfortunately, this has resulted in a situation where individual interests within the government and the House can interfere with the KPK's work in the name of the state interest. Such interference can be concerning, as it could compromise the KPK's independence and effectiveness in fighting corruption. However, it is crucial to recognize the importance of the KPK's work in promoting the welfare of the country and the public interest. Any attempts to undermine its efforts should be opposed and criticized.<sup>34</sup>

It is therefore imperative for all stakeholders involved to prioritize the public interest and work together to ensure that the KPK can carry out its mission independently and effectively. This will require a commitment to transparency, accountability, and the rule of law, as well as a willingness to put aside individual interests and collaborate towards a common goal. In the Constitutional Court Decision No. 36/PUU-XV/2017 and Decision No. 40/PUU-XV/2017, stated that the implementation of KPK's duties can be categorized as part of the executive. Therefore, KPK is also a part of the House of Representatives' inquiry authority. This decision was then used as an argument by the House of Representatives and the Government to amend KPK Law.<sup>35</sup>

The issue mentioned above highlights four potential constitutional violations that occurred during the law-making process. The first violation involves disregarding the principle of

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<sup>32</sup> Tom R. Tyler, Phillip Atiba Goff, and Robert J. MacCoun, 'The Impact of Psychological Science on Policing in the United States', *Psychological Science in the Public Interest*, 16.3 (2015), 75–109 <https://doi.org/10.1177/1529100615617791>

<sup>33</sup> Hilaire Tegnau and others, 'Mining Corruption and Environmental Degradation in Indonesia: Critical Legal Issues', *BESTUUR*, 9.2 (2021), 90 <https://doi.org/10.20961/bestuur.v9i2.55219>

<sup>34</sup> Danang Kurniawan and others, 'Analysis of the Anti-Corruption Movement Through Twitter Social Media: A Case Study of Indonesia', 2021, pp. 298–308 [https://doi.org/10.1007/978-3-030-71782-7\\_27](https://doi.org/10.1007/978-3-030-71782-7_27)

<sup>35</sup> Francis Fukuyama, 'Corruption as a Political Phenomenon', in *Institutions, Governance and the Control of Corruption* (Cham: Springer International Publishing, 2018), pp. 51–73 [https://doi.org/10.1007/978-3-319-65684-7\\_3](https://doi.org/10.1007/978-3-319-65684-7_3)



popular sovereignty by neglecting the role of society in the creation of laws. The second violation is the failure to recognize the law as the primary legal product that should be formed democratically. The third violation concerns the denial of the democratic institutions of legislators and the government to consider public aspirations. The fourth and final violation pertains to law-making being treated merely as a platform for power struggle and domination, which can potentially compromise justice in the name of protecting citizens' rights. These violations demonstrate a lack of adherence to democratic principles and procedures in the law-making process, which can have negative implications for the legitimacy and effectiveness of the resulting laws.<sup>36</sup>

Therefore, as a legal norm that is under the 1945 Constitution of the Republic of Indonesia, if the formation or amendment of a law is not democratic and does not fulfill the main function of a law philosophically, it will have an impact on the constitution in causing violations of the constitutional value. According to Muhamad Ali Safa'at, there are four violations of constitutional values, namely: first, violating the principle of people's sovereignty because it negates the role of the highest authority in the formation of legal products that will form the basis of state administration and determine the people's fate. Second, denying that the law is the primary legal product that is democratically established. Third, denying the existence of legislators, the House of Representatives, and the government as democratic institutions that must always listen to, consider, and pay heed to the desires of the people they represent.<sup>37</sup> Allowing the formulation of laws as a battleground for power and dominance at the expense of protecting the rights of the people through justice is the fourth error.

According to Article 5 of Law Number 12 of 2011 on Law Making Process, the principles of good governance need to be emphasized, including within the law (1) The clarity of purpose, (2) The appropriate forming institution or official, (3) The conformity between types, hierarchies, and content materials, (4) Usability and effectiveness, (5) The clarity of formulation, and (6) Openness. To minimize the uninvolved public participation, this making was directed to the social life requiring certainty, consistency, and trust, indicating that sustainable development needed maintainable legislation. Therefore, the guidance of the principles establishing good policies is one aspect playing a major role in sustainable law production.

#### 4. Conclusion

For the development of effective governance, public participation in the legislative process is essential, as it provides a stronger basis for policy-making. This increases public confidence in the executive and legislative branches as a consequence of the public's knowledge of and participation in public policymaking. Given the social involvement and knowledge in policymaking, public policy socialization is also more efficient in terms of the use of resources. Active participation in law implementation oversight is a perpetuation of this process, but it is not the ultimate objective. The primary objective is to expand the public space for monitoring legal implementation through monitoring and evaluation, which functions as a mechanism for measuring the law's success. Regulations are not implemented as a result of disregarding

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<sup>36</sup> Chris Marsden, Trisha Meyer, and Ian Brown, 'Platform Values and Democratic Elections: How Can the Law Regulate Digital Disinformation?', *Computer Law & Security Review*, 36 (2020), 105373 <https://doi.org/10.1016/j.clsr.2019.105373>

<sup>37</sup> Peter Esaiasson and Christopher Wlezien, 'Advances in the Study of Democratic Responsiveness: An Introduction', *Comparative Political Studies*, 50.6 (2017), 699–710 <https://doi.org/10.1177/0010414016633226>

public participation and promulgating laws that are vehemently rejected by the community. Therefore, public participation in the legislative process is essential for ensuring the formulation and implementation of policies that serve the public interest.

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