

From Meaningful to Meaningless Participation: The Tragedy of Indonesia's Omnibus Law on Job Creation

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ABSTRACT

Indonesia's Constitutional Court introduced the concept of meaningful participation in the lawmaking process, emphasizing the right to be heard, considered, and explained. This concept was institutionalized through amendments to the Law on Lawmaking Procedures (Law Number 13 of 2022). However, meaningful participation remains poorly implemented, as demonstrated by the lack of public involvement in the issuance of the Government Regulation in Lieu of Law legalizing the Omnibus Law on Job Creation and the Constitutional Court's ruling on Law Number 6 of 2023 (Job Creation Law 2.0), which deemed public participation irrelevant for emergency laws. These developments highlight inconsistencies in applying the principle of meaningful participation in Indonesia's legislative practices. This research evaluates the institutionalization of meaningful participation in Law Number 13 of 2022 and its practical application in Indonesia's lawmaking process. This research uses doctrinal legal research methods by examining library materials and secondary data to analyze the legal framework and its implementation. The findings reveal a significant gap between the theoretical framework of meaningful participation and its application in practice, particularly in emergency lawmaking. In conclusion, while the institutionalization of meaningful participation reflects a positive step, inconsistent application undermines its potential to enhance democratic governance in Indonesia.

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1. Introduction

Public participation in the lawmaking process is crucial for a thriving democracy. When citizens are actively involved in the lawmaking process, it ensures that the laws and policies

reflect the needs and values of the people they are meant to serve.¹ Public participation strengthens the laws' legitimacy and promotes transparency and accountability in decision-making.² It allows diverse perspectives to be heard and considered, fostering a more inclusive and representative democracy.³

In Indonesia, public participation in lawmaking has significantly shaped the country's democratic transition. Following the fall of authoritarian rule in 1998, Indonesia embarked on a path of democratization, and citizen engagement became a key component of the lawmaking process.⁴ The government introduced open hearings and public consultations to ensure that laws and policies informed the people's voices and concerns. However, in some instances, those in positions of authority can manipulate the implementation of open hearings and public consultations to create the appearance of citizen engagement. For example, a government may hold public consultations but only allow a select group of individuals or organizations to participate, excluding marginalized or dissenting voices.⁵ This selective inclusion can undermine the democratic process and give the impression of citizen engagement while suppressing alternative perspectives and maintaining control over the lawmaking process.⁶

In 2021, the Constitutional Court expressed optimism about increasing public participation in lawmaking. The Constitutional Court examines Law No. 11 of 2020 (Law on Job Creation) created by the Government and the House of Representatives, which was created using the omnibus method.⁷ The Law on Job Creation is ambitious because it amends 77 laws with a

¹ Dodi Jaya Wardana, Sukardi, and Radian Salman, 'Public Participation in the Law-Making Process in Indonesia', *Jurnal Media Hukum*, 30.1 (2023), 66-77. <https://doi.org/10.18196/jmh.v30i1.14813>; Sayantani Bagchi and Prakhar Raghuvanshi, 'Towards A Participatory Democracy – A Case For Inclusive Public Participation In Law-Making', *Statute Law Review*, 45.2 (2024). <https://doi.org/10.1093/slr/hmae029>.

² Luigi Bobbio, 'Designing Effective Public Participation', *Policy and Society*, 38.1 (2019), 41-57. <https://doi.org/10.1080/14494035.2018.1511193>.

³ 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>.

⁴ Sylvia Yazid and Aknolt K. Pakpahan, 'Democratization in Indonesia: Strong State and Vibrant Civil Society', *Asian Affairs: An American Review*, 47.2 (2020), 71-96. <https://doi.org/10.1080/00927678.2019.1701284>; 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>.

⁵ Benjamin van Rooij and Annemieke van den Dool, 'Lawmaking in China: Understanding Substantive and Procedural Changes', *China Law and Society Review*, 1.1-2 (2016), 5-60. <https://doi.org/10.1163/25427466-00101002>.

⁶ Yordan Gunawan and others, 'Does the Protection of Minority Groups in Xinjiang Fail?', *Sriwijaya Law Review*, 4.2 (2020), 205-20. <https://doi.org/10.28946/slrev.Vol4.Iss2.432.pp205-220>.

⁷ See, e.g., Yulia Neta, Malicia Evendia, and Ade Arif Firmansyah, 'Implications of Omnibus Law on Job Creation Towards Regulations in Decentralization Perspective', *Cepalo*, 6.1 (2022), 63-76. <https://doi.org/10.25041/cepalo.v6no2.2683>; Bagus Hermanto and Nyoman Mas Aryani, 'Omnibus Legislation as a Tool of Legislative Reform by Developing Countries: Indonesia, Turkey and Serbia Practice', *The Theory and Practice of Legislation*, 9.3 (2021), 425-50. <https://doi.org/10.1080/20508840.2022.2027162>; Sodikin, 'Paradigm of Law in the Omnibus Law Concept Relating to Legal Norm Applicable in Indonesia', *Rechtsvinding*, 9.April (2020), 143-60. <https://doi.org/10.1080/233323146.2024.4342342>.

single bill.⁸ The Law on Job Creation is divided into 15 chapters, 186 articles, and 1187 pages. The critical law was drafted without adhering to proper legislative procedures. The Constitutional Court declared for the first time that the legislative process was unconstitutional in ruling Number 91/PUU-XVIII/2020 on judicial review of the Law on Job Creation. The Constitutional Court made two primary claims. First, the Law on the Lawmaking Procedures does not govern the omnibus law method, so the Law on Job Creation cannot be implemented. Second, the Constitutional Court concludes that the public was not involved in creating the Law on Job Creation.⁹ These results are from several demonstrations against the law by labor unions and other community organizations.¹⁰

The Constitutional Court declared the process of making the Law on Job Creation conditionally unconstitutional. The Constitutional Court ordered the House of Representatives and the President to amend the law through a legitimate legislative process by the two-year deadline. Furthermore, the Constitutional Court supports the significance of public participation in legislative processes. The Constitutional Court introduced the concept of meaningful participation in the lawmaking process. The concept of meaningful participation consists of three categories of rights: the right of the people to be heard, the right to be considered, and the right to be explained. The Constitutional Court said that meaningful participation must be presented at every stage of the lawmaking process. In Indonesia, the stages of the lawmaking process consist of planning, drafting, deliberation, ratification, and promulgation.¹¹

In various literatures, the concept of meaningful participation emphasizes that public involvement in the legislative process is both essential and integral to the legitimacy of a legal regulation.¹² This approach is fundamentally an effort to balance the interests of specific parties in the legislative process, where, in practice, the voices and aspirations of the people are often only formally acknowledged. Substantive participation emphasizes the physical presence of the public and their active involvement, attention, and feedback regarding the

⁸ Bayu Dwi Anggono and Fahmi Ramadhan Firdaus, 'Omnibus Law in Indonesia: A Comparison to the United States and Ireland', *Lentera Hukum*, 7.3 (2020), 319-36. <https://doi.org/10.19184/ejrh.v7i3.19895>; Zuhri Umar Ma'ruf and Lita Tyesta Addy Listya Wardhani, 'Omnibus Law and Conflicting Norms And Their Relevance To Business Ease In Indonesia', *Journal of Private and Commercial Law*, 6.2 (2022), 100-113. <https://doi.org/10.15294/jpcl.v6i2.39616>.

⁹ Dirman Nurjaman, 'Penerapan Asas Keterbukaan Dalam Proses Pembuatan Undang-Undang Omnibus Law', *Khazanah Multidisiplin*, 2.2 (2021), 57-69. <https://doi.org/10.15575/kl.v2i2.13165>; Bani Pamungkas, 'Smart-Legislation for Meaningful Participation in Urban Policymaking: An Overview Post-Issuance of Act Number 13 of 2022"', *Journal of Interdisciplinary Law and Legal Issues*, 1.1 (2023), 25-42. <https://doi.org/journal.ugm.ac.id/v3/JILI/issue/view/463>.

¹⁰ Ilham Dwi Rafiqi, 'Criticisms toward the Job Creation Bill and Ethical Reconstruction of Legislators Based on Prophetic Values', *Legality: Jurnal Ilmiah Hukum*, 29.1 SE-Journal's Articles (2021), 144-60. <https://doi.org/10.22219/ljih.v29i1.14991>.

¹¹ Yordan Gunawan, 'Arbitration Award of Icsid on the Investment Disputes of Churchill Mining Plc v. Republic of Indonesia', *Hasanuddin Law Review*, 3.1 (2017), 14-26. <https://doi.org/10.20956/halrev.v3i1.948>.

¹² Bayu Dwi Anggono, 'Omnibus Law Sebagai Teknik Pembentukan Undang-Undang: Peluang Adopsi Dan Tantangannya Dalam Sistem Perundang-Undangan Indonesia', *RechtsVinding*, 9.1 (2020), 7. <http://dx.doi.org/10.33331/rechtsvinding.v9i1.389>; Alda Rifada Rizqi, 'Meaningful Participation in Local Regulation Making in Indonesia: A Study of Legislative Law', *Rechtsidee*, 10.2 (2022), 6-13. <https://doi.org/10.21070/jihr.v11i0.801>.

aspirations expressed during the legislative process.¹³ The concept of meaningful participation serves as a critique of the phenomenon of pseudo-participation, which frequently occurs in the drafting of legal regulations, particularly laws.¹⁴ The adverse effects of pseudo-participation include the emergence of regulations that are substantively undemocratic and tend to be discriminatory.¹⁵

This article discusses the concept of meaningful participation introduced by the Constitutional Court. Furthermore, this article will evaluate how the concept of meaningful participation is institutionalised into Law Number 13 of 2022 (Law on Lawmaking Procedures) and how this concept shapes the lawmaking process in Indonesia. In contrast, this article will show that the President diminished the concept of meaningful participation by creating a regulation that ignore public aspirations, in this case, related to the creation of the Government in Lieu of Law on Job Creation. Surprisingly, when the Constitutional Court reviewed this Regulation, the Constitutional Court considered that there was no need for a meaningful participation process in the formation of the Regulation. As a result, the concept of meaningful participation introduced by the Constitutional Court was exterminated by the Constitutional Court itself. This contrasting condition can occur due to changes in the composition of constitutional judges who are replaced during their tenure of office by the House of Representatives without following a legitimate procedure.

2. Research Method

This research uses doctrinal legal research methods by examining library materials or secondary data. According to Terry Hutchinson and Nigel James Duncan, doctrinal legal research is the most accepted and used method in legal research.¹⁶ Furthermore, Hutchinson and Duncan explained that doctrinal legal research is studied in two stages: first, the researcher looks for legal regulations related to and being studied in the research; second, the researcher will conduct a study, analysis, and interpretation of these legal regulations. One of the main objectives of legal research is to renew and strengthen the principles contained in an applicable legal regulation. The doctrinal legal research method is used to test a legal argument, so the data used in this research is intended to test a legal argument in a doctrine. Thus, doctrinal legal research can be said to be a research method that examines regulations and the relationship between regulations and studies legal regulations that will be enacted in the future (*ius constituendum*).

3. Result and Discussion

3.1. Institutionalising Meaningful Participation

Public participation is essential in a democratic society, as it could be a powerful means to

¹³ Zaid Zaid, Farouk Aisha Dawaki, and Sabit Kazeem Ololade, 'Should the State Control Tariffs?', *Journal of Governance and Public Policy*, 8.1 (2021), 22–36. <https://doi.org/10.18196/jgpp.811340>; Gamal Abdul Nasir, 'Kekosongan Hukum & Percepatan Perkembangan Masyarakat', *Jurnal Hukum Replik*, 5.2 (2017), 172. <https://doi.org/10.31000/jhr.v5i2.925>.

¹⁴ Arif Hidayat and Zaenal Arifin, 'Politik Hukum Legislasi Sebagai Socio-Equilibrium Di Indonesia', *Jurnal Ius Constituendum*, 4.2 (2019), 133. <https://doi.org/10.26623/jic.v4i2.1654>.

¹⁵ Muh. Afif Mahfud, 'The Relevance of Ronald Dworkin's Theory for Creating Agrarian Justice in Indonesia', *Yustisia Jurnal Hukum*, 8.3 (2020), 389. <https://doi.org/10.20961/yustisia.v8i3.27386>.

¹⁶ Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research', *Deakin Law Review*, 17.1 (2016). <https://doi.org/10.21153/dlr2012vol17no1art70>.

achieve key democratic values like legitimacy, justice, and effectiveness in governance.¹⁷ Moreover, public participation can allow the public to convey information to lawmakers, influencing the lawmaking process and filling lawmakers' knowledge deficiencies of the issues.¹⁸ Meaningful public participation could enhance the public's confidence in lawmaking and the laws formed. Therefore, the law governing public participation has significant legal implications, especially in how the law defines "the public," as it influences the interpretation of participation in the lawmaking process, including to what extent "the public" is meaningfully involved. Public participation is fundamentally linked to how the law operates within society, as conceptualized by Roscoe Pound, emphasizing the law's role as a tool for social engineering,¹⁹ which involves facilitating societal needs and influencing societal behavior toward specific objectives.²⁰ The concept of facilitating societal needs implies that the law serves as a mechanism to legalize or formalize the community's legal requirements; meanwhile, influencing societal behavior refers to the law's function in guiding individuals and communities toward specific actions or behaviors aimed at promoting the collective welfare of society.²¹

The Indonesian Constitution lacks robust legal provisions on the participation of the people in the legislative process. Law Number 12 of 2011 on Lawmaking Procedures does not designate public participation as a fundamental principle in the legislation. The principles governing the lawmaking process are as follows, as specified in this legislation: a. clarity of purpose; b. appropriate institutional or forming officials; c. conformity between types, hierarchies, and substances; d. enforceability; e. usability; f. formulation clarity; and g. openness. The principle of openness is frequently linked to public participation. However, it represents the most rudimentary tier on the hierarchy of public participation in the legislative process. The Constitutional Court ruling Number 91/PUU-XVIII/2020 on judicial review of the Law on Job Creation opened an opportunity to strengthen the legal framework regarding public participation in lawmaking. The Constitutional Court stated that:

"Therefore, in addition to using formal legal rules in the form of laws and regulations, community participation needs to be carried out meaningfully (meaningful participation) so that participation and involvement are created public in earnest. More meaningful community participation meets at least three prerequisites, namely: first, the right to be heard; second, the right to be considered their opinion (right to be considered); and third, the right to get an explanation or answer to the opinion given (right to be explained). Public participation is mainly intended for community groups directly affected or concerned about the draft law being discussed."

"If placed in the five stages of law formation described in the above legal considerations, meaningful public participation must be carried out, at least, in stages (i) of submitting draft laws; (ii) joint

¹⁷ Archon Fung, 'Putting the Public Back into Governance: The Challenges of Citizen Participation and Its Future', *Public Administration Review*, 75.4 (2015), 513–22. <https://doi.org/10.1111/puar.12361>.

¹⁸ Yunsoo Lee and Hindy Lauer Schachter, 'Exploring the Relationship between Trust in Government and Citizen Participation', *International Journal of Public Administration*, 42.5 (2019), 405–16. <https://doi.org/10.1080/01900692.2018.1465956>.

¹⁹ Firman Freaddy Busroh, 'Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan', *Arena Hukum*, 10.2 (2017), 227–50. <https://doi.org/10.21776/ub.arenahukum.2017.01002.4>.

²⁰ Nazaruddin Lathif, 'Teori Hukum Sebagai Sarana Alat Untuk Memperbaharui Atau Merekayasa Masyarakat', *Palar Pakuan Law Review*, 3.1 (2017), 73–94. <https://doi.org/10.33751/palar.v3i1.402>.

²¹ M. Zulfa Aulia, 'Hukum Pembangunan Dari Mochtar Kusuma-Atmadja: Mengarahkan Pembangunan Atau Mengabdikan Pada Pembangunan?', *Undang: Jurnal Hukum*, 1.2 (2019), 363–92. <https://doi.org/10.22437/ujh.1.2.363-392>.

discussions between the House of Representatives and the President, as well as joint discussions between the House of Representative, the President, and the Regional Representative Council insofar as they relate to Article 22D paragraph (1) and paragraph (2) of the 1945 Constitution; and (iii) mutual agreement between the House of Representatives and the President."

In short, the Constitutional Court explained that the concept of meaningful participation consisted of three types of rights: the right to be heard, the right to be considered, and the right to be explained. Unfortunately, the Court did not elaborate much on the meanings of these three rights. Furthermore, meaningful participation must be implemented in every stage of the lawmaking process, especially at (a) the drafting process, (b) deliberation between the President, the House of Representatives, and the Regional Representative Council, and (c) the mutual agreement process between the House of Representatives and the President. To accommodate the concept of meaningful participation in the lawmaking process, the President and the House of Representatives revised Law Number 12 of 2011 with Law Number 13 of 2022, especially by amending Article 96 as described in the following table.

Table 1. Meaningful Participation in the Law Number 13 of 2022

Community Rights	Article 96 of the Law Number 13 of 2022
Right to be heard.	(1) The community has the right to provide input orally and/or in writing at every stage of the Lawmaking Procedures.
	(2) The provision of public input, as referred to in paragraph (1), shall be carried out online and/or offline.
	(3) The community, as referred to in paragraph (1), shall be an individual or group of persons directly affected and/or have an interest in the material content of the draft legislation.
	(4) To facilitate the public in providing input, as referred to in paragraph (1), every Academic Paper and/or Bill of regulation can be easily accessed by the public.
	(5) In exercising the rights referred to in paragraph (1), the lawmaker of the laws and regulations informs the public about the Establishment of laws and regulations.
	(6) To fulfil the rights referred to in paragraph (1), the lawmaker of Laws and Regulations may conduct public consultation activities through: a. public hearings; b. working visits; c. seminars, workshops, discussions; and/or d. other public consultation activities
Right to be considered.	(7) The results of public consultation activities, as referred to in paragraph (6), shall be taken into consideration in the planning, preparation, and discussion of draft laws and regulations.
Right to be explained.	(8) The lawmaker of laws and regulations may explain to the public the results of the discussion of public input as referred to in paragraph (1).

The article above ordered different branches of government involved in the lawmaking process to create internal regulations to ensure public participation. Article 96, paragraph (9) stated, "Further provisions regarding public participation as referred to in paragraphs (1) to paragraph (8) are regulated in the internal regulation of the President, the House of Representatives, and the Regional Representatives Council respectively." Regarding these

provisions, as of the time this article was compiled, there have been no changes to the House of Representatives, the Presidential, and the Regional Representative Council provisions intended to adjust the concept of meaningful participation. Consequently, the author concludes that, from a normative standpoint, it is possible to observe that technical and implementation adjustments in settings have not been made in response to statutory-level regulations.²²

Notably, Law Number 13 of 2022 has provided some essential transformations. The first is an affirmation of the possibility of public participation in every stage of the lawmaking process. The second is an additional arrangement for the public to submit input online or offline methods. The third is an explicit criterion for the public to provide input, namely changing the phrase “having an interest in substance” to “directly affected and/or having an interest in the content of the regulation “. The fourth aspect concerns a provision to ensure the public can easily access Academic Papers and the Bill of Regulations. The fifth is an additional provision to ensure that input obtained in public consultations can be considered in the planning, preparation, and discussion stages. The final aspect is an additional provision enabling the lawmaker to explain to the public to respond to input from the public.

However, there are also some critics of the provision of meaningful participation in the new revised Law. First is that the regulation of the three rights of participating in the lawmaking process is not constructed as imperative, referring to the absence of an obligation for the lawmaker to realize the fulfillment of the three rights of the community.²³ This, for example, refers to the following regulatory construction: “(...) every Academic Paper and/or Draft Laws and Regulations can be accessed easily by the public”; “the lawmaker of the Laws and Regulations may conduct public consultation activities (...)”; “The results of the public consultation activities (...) be taken into consideration”; “The lawmaker of the Laws and Regulations can explain to the public (...)”. This kind of construction implies no significant change to implementing the concept of meaningful participation as it has been constructed as public participation.²⁴

Against this analysis, public participation is constructed as 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 House of Representatives. At this point, public participation is not mandatory in lawmaking. Similarly, Fajri emphasized that the regulations in Law 13 of 2022 concentrate on formality rather than a substantial aspect. In this case, Fajri argues that the participation channel in the public consultation mechanism can be manipulated to fulfill the requirements for public participation. Secondly, the lawmaker has no clear framework regarding changes in the methods and mechanisms taken to realize meaningful participation.²⁵ In this case, there is no description of the method of

²² Yordan Gunawan and Yovi Cajapa Endyka, ‘The Protection of Small and Medium Enterprises in Yogyakarta: The Challenges of ASEAN Economic Community’, *Pertanika Journal of Social Sciences and Humanities*, 25.October (2017), 199–206.

²³ Fahmi Ramadhan Firdaus, ‘Public Participation after the Law- Making Procedure Law of 2022’, *Jurnal Ilmiah Kebijakan Hukum*, 16.3 (2022), 495. <https://doi.org/10.30641/kebijakan.2022.v16.495-514>.

²⁴ Lu Feng and others, ‘Decision-Maker-Oriented vs. Collaboration: China’s Public Participation in Environmental Decision-Making’, *Sustainability (Switzerland)*, 12.4 (2020). <https://doi.org/10.3390/su12041334>. Fahmi Ramadhan Firdaus, ‘Public Participation after the Law-Making Procedure Law of 2022’, *Jurnal Ilmiah Kebijakan Hukum*, 16.3 (2022), 495–514. <https://doi.org/10.30641/kebijakan.2022.v16.495-514>.

²⁵ M Nurul Fajri, ‘Legitimacy of Public Participation in the Establishment of Law in Indonesia’, *Jurnal Konstitusi*, 20.1 SE-Articles (2023), 127. <https://doi.org/10.31078/jk2017>.

mapping affected or interested communities, no mechanism for considering input by the community, and no explanation mechanism by the lawmaker on input provided by the community. In his analysis, Fajri considered that there are important things that are not in the Law, namely the criteria that determine the quality and quantity of the reach of public participation. This critical note highlights the imperfections in legal politics which do not yet uphold the people's sovereignty, as reflected in how lawmakers draft legislation without substantially representing the people.²⁶ Based on this explanation, even though the Constitutional Court has decided on meaningful participation, its application still experiences obstacles.²⁷

3.2. Assessing the Meaningful Participation

Following the adoption of meaningful participation in Law Number 13 of 2022, assessing public participation in the Indonesian legal system using two analytical methods is crucial. The first is the level of participation is contextualized to examine how people can participate in science and technology policymaking through referenda, public hearings, public opinion surveys, focus groups, etc. On the other hand, the author believes that, in this instance, the evaluation criteria can be broadly contextualized to create legislation at the norm level. The analysis that follows is based on the Ladder of Citizen Participation.

Table 2. Reviews of Meaningful Participation Based on the Ladder of Citizen Participation

Ladder of Citizen Participation	Meaningful Participation in Law Number 13 of 2022
Manipulation: In the name of citizen participation, people are placed on rubberstamp advisory committees or advisory boards to "educate" them or engineer their support.	Clearly Not. There have been arrangements regarding public participation mechanisms, so this ladder level has become irrelevant.
Therapy: In some respects, group therapy, masked as citizen participation, should be on the lowest rung of the ladder because it is both dishonest and arrogant.	Clearly Not. There have been arrangements regarding public participation mechanisms, so this ladder level has become irrelevant.
Informing: Informing citizens of their rights, responsibilities, and options can be the most important first step toward legitimate citizen participation.	Possibly Yes. There are arrangements regarding the transparency of Academic Manuscripts and Draft Laws and other information on the formation of laws.
Consultation: Inviting citizens' opinions, like informing them, can be a legitimate step toward their full participation.	Possibly Yes. There is a public participation mechanism with a public consultation format.

²⁶ Haliim Wimmy, 'Demokrasi Deliberatif Indonesia: Konsep Partisipasi Masyarakat Dalam Membentuk Demokrasi Dan Hukum Yang Responsif', *Jurnal Masyarakat Indonesia*, 42.1 (2016), 19-30 (p. 23). <https://doi.org/10.14203/jmi.v42i1.556>.

²⁷ Eko Nursetiawan and Riris Ardhaniarwari, 'Meaningful Participation in Legislative Drafting as a Manifestation of a Democratic Rule of Law', *Jambe Law Journal*, 5.2 (2022), 251-70 (p. 266). <https://doi.org/10.22437/jlj.5.2.251-270>.

Placation: At this level, citizens begin to have some influence, though tokenism is still apparent.

Clearly Not. The regulation in the Law still stipulates the position of the community to be limited to providing input that will be taken into consideration, but not to the extent that it has the influence to influence the formation of the Law so that this ladder level becomes irrelevant.

Partnership: At this rung of the ladder, power is redistributed through negotiation between citizens and powerholders

Clearly Not. The regulation in the Law still stipulates the position of the community to be limited to providing input that will be taken into consideration, but not to the extent that it has the influence to influence the formation of the Law so that this ladder level becomes irrelevant.

Delegated Power: Negotiations between citizens and public officials can also result in citizens achieving dominant decision-making authority over a particular plan or program.

Clearly Not. There is no setting for equal negotiation opportunities, so this ladder level becomes irrelevant.

Citizen Control: Demands for community-controlled schools, black control, and neighborhood control are on the increase

Clearly Not. Control over the formation of the Act rests with the lawmaker, so this ladder level becomes irrelevant.

Based on the table above, it can be noted that the ladder level of participation in Law Number 13 of 2022 is still at the level of informing and consultation. This is based on the construction of Law Number 13 of 2022, which emphasizes only the formal aspects of participation but does not regulate substantial and methodological aspects to realize the formation of participatory laws. In this case, the regulation has also not been imperatively constructed against the lawmakers, so tokenism is still possible. The author believes that meaningful participation needs to be at least at the partnership stage so that there is a negotiation between citizens and lawmakers. In the partnership stage, the lawmaker still has the authority to decide whether input is received, so the construction of participation continues to work within the framework of representative democracy. Based on the conclusion that it is still at the level of informing and consultation; it is important to analyze it using the Evaluation Criteria described in the following table.

Table 3. Review of Meaningful Participation Based on Evaluation Criteria

Evaluation Criteria	Evaluation of Meaningful Participation in Law 13 of 2022
Acceptance Criteria	
Representativeness of Participants: The public participants should comprise a broadly representative sample of the affected public population.	Moderate. There have been arrangements regarding the criteria for communities, namely those directly affected and interested. Even so, there is no regulation on community mapping methods in these criteria,
Independence of True Participants: The participation process should be conducted in an independent, unbiased way	Moderate to low. Existing arrangements construct participation mechanisms by public consultation. In this case, the lawmakers can invite parties who agree on the premise of the Law.
Early Involvement: The public should be involved as early as possible in the process as soon as value judgments become salient	Potentially High. Community participation has been carried out at every stage of law formation. However, there is no imperative provision for the lawmakers to realize meaningful participation.

Influence on Final Policy: The output of the procedure should have a genuine impact on policy

Transparency of Process to The Public: The process should be transparent so that the public can see what is happening and how decisions are made.

Process Criteria

Resource Accessibility: Public participants should have access to the appropriate resources to enable them to fulfill their brief successfully

Task Definition: The nature and scope of the participation task should be clearly defined

Structured Decision-Making: The participation exercise should use/provide appropriate mechanisms for structuring and displaying the decision-making process

Cost-effectiveness: The procedure should, in some sense, be cost-effective

Variable but not guaranteed. There has been an arrangement that input from the community can be taken into consideration for the lawmaker. However, there is no guarantee that such input will be taken seriously.

Potentially High. There has been an arrangement that Academic Manuscripts and Draft Laws are easily accessible to the public. However, no regulation on the form of transparency will be carried out at each stage of the formation of the Law.

Potentially High. There has been an arrangement that Academic Manuscripts and Draft Laws are easily accessible to the public so that the public has sufficient resources to test the premises or concepts of the Law Plan. In addition, the public can submit input online to the lawmaker.

Moderate to Low. There is no regulation on the community's position, mechanism, and significance in public consultation channels.

Low. The arrangement does not construct the community involved in decision-making, but it constructs that the lawmaker will consider input.

Low. Public consultations without regulation of methods and mechanisms regarding community mapping can potentially cause large costs.

The table above indicates multiple variables that Law Number 13 of 2022's record of increasing public participation rules needs to consider. Cost-effectiveness, task definition, the independence of actual participants, and participant representation are all critical factors. These factors typically necessitate arrangements emphasizing community mapping approaches and efficient participation forms. Additionally, while the aspect is enough, there is still room for improvement regarding resource accessibility, public process transparency, and early involvement. These requirements have primarily been met since the legal requirements for participation have been set down, particularly about the transparency of the materials used to create the law and during that process.

3.3. The Government Regulation in Lieu of Law on Job Creation: An Ignorance of Meaningful Participation

It should be remembered that Constitutional Court Ruling Number 91/PUU-XVIII/2020 states that the Law on Job Creation contradicts the Constitution. The ruling was delivered on November 25, 2021, and the Government and Parliament were given two years to improve and guarantee public participation in amending the Law. However, instead of opening public participation, the President issued a Government Regulation in Lieu of Law to enact the Law on Job Creation on December 30, 2022. The Government Regulation in Lieu of Law is a kind of emergency regulation in Indonesia.

Article 22 of the Indonesian Constitution states that: (1) In the event of a compelling emergency, the President has the right to enact government regulations in lieu of laws. (2) The House of Representatives shall approve the government regulation in the following session. (3) the government regulation shall be revoked if approval is not obtained. However, the Government Regulation in Lieu of Law on Job Creation enacted by President Joko Widodo on December 30, 2022, was conducted without any public consultation and was ignorant of the preceding Constitutional Court ruling. The President utilized the global financial crisis as a consideration to enact the Government Regulation in Lieu of Law, citing the need to create a business and investment-friendly climate for entrepreneurs and foreign investors.²⁸

This regulation, which is expected to be able to answer the challenges of the global economic and financial crisis, has damaged public and business actors' trust in the quality of laws in Indonesia. The practice of lawmaking that violates procedures and ignores public participation is characteristic of autocratic legalism.²⁹ The Government Regulation in Lieu of Law on Job Creation adds to Indonesia's long list of problematic legislations, where the Government creates them immediately, ignores public participation, and only benefits large business groups. In several cases, lawmakers failed to provide good regulations, such as the Law on Nation's Capital, the Law on Commission Eradication Corruption, and the Law on Minerals and Coal.³⁰ This is a form of constitutional disobedience by the lawmakers.

To address the global financial and economic crisis, the Law on Job Creation has exposed serious shortcomings in Indonesia's stable legal governance. Effective regulatory policies are essential for a nation's economy to run smoothly and to achieve social and environmental objectives. Indeed, efficient regulatory procedures can contribute to reviving a country's economic expansion. This is because sound regulations can give firms and foreign investors legal certainty. A crucial aspect of good regulatory governance is ensuring adherence to legislative mechanisms on both formal and material norms and the implementation process.

The President should send The Government Regulation in Lieu of Law on Job Creation to the House of Representatives for approval. Because the President's political supporters dominate seats in the House of Representatives, it is not difficult for the President to get the approval of the House of Representatives. However, the problem lies in the sense of urgency. As mentioned earlier, the Government Regulation in Lieu of Law is emergency legislation in the Indonesian legal system. Therefore, the House of Representatives should deliberate the Government Regulation in Lieu of Law to get approval immediately in the upcoming session. The House of Representatives did not immediately enact the Government Regulation in Lieu of Law into Law in subsequent proceedings.

Nevertheless, it was delayed in several sessions and only passed at the fourth session. This obscures the essence of urgency from the Government Regulation in Lieu of Law. Consequently, the Government received much criticism because the reason for establishing

²⁸ Muhamad Haris Aulawi and others, 'Governing Indonesia's Plan to Halt Bauxite Ore Exports: Is Indonesia Ready to Fight Lawsuit at the WTO?', *Bestuur*, 11.1 (2023), 26–42. <https://doi.org/10.20961/bestuur.v11i1.69178>.

²⁹ See Zainal Arifin Mochtar and Idul Rishan, 'Autocratic Legalism: The Making of Indonesian Omnibus Law', *Yustisia*, 11.1 (2022), 29–41. <https://doi.org/10.20961/yustisia.v11i1.59296>.

³⁰ Ibnu Sina Chandranegara and Luthfi Marfugah, 'Regulatory Capture on Emergency Due Process of Law-Making', *Cogent Social Sciences*, 10.1 (2024), 2356382. <https://doi.org/10.1080/23311886.2024.2356382>.

the Government Regulation in Lieu of Law on Job Creation, considering the global economy, was manipulation. The Government Regulation in Lieu of Law was then transformed to Law Number 6 of 2023 on Job Creation (Law on Job Creation 2.0).

3.4. Meaningless Participation: Judicial Review of Law on Job Creation 2.0

Law Number 6 of 2023 (Law on Job Creation 2.0) was submitted to the Constitutional Court. Fifteen federations or associations of workers filed Case Application Number 54/PUU-XXI/2023. The petitioners are organizations that consistently advocate for workers' rights to raise living standards. The petitioner argued that the ratification of Law on Job Creation 2.0, incorporating the Government Regulation in Lieu of Law on Job Creation, violated the constitutional provision governing the legislative enactment process. This is because the Law on Job Creation 2.0 was not enacted during the first session of the House of Representatives from January 10 to February 16, 2023. Instead, it was signed into law on March 21, 2023. Hence, regarding meaningful participation, the implementation of Law on Job Creation 2.0 contradicts the principle of force crunch as outlined in Article 22 of the Constitution and Constitutional Court Decision Number 91/PUUXVIII/2020. The petitioner contended that the legislative procedure governing Law Number 6 of 2023 had reverted to an authoritarian and executive-centric framework reminiscent of the New Order era.

The Constitutional Court considered that the approval of the Government in Lieu of Law by the House of Representatives, not in the first session, could be tolerable because the House of Representatives needs more time to conduct deeper discussions and evaluation to approve the proposed regulation. Furthermore, the Constitutional Court stated that the deliberation of the bill on Job Creation based on the Government Regulation in Lieu of Law during the IV Session Period of the House of Representatives in 2022-2023 was not a waste of time. In short, the Constitutional Court stated that the deliberation of any Government Regulation in Lieu of Law to be enacted as a new Law can be conducted by the House of Representatives at any time. Consequently, the meaning of "the upcoming session", as referred to in Article 22 paragraph (2) of the 1945 Constitution, is not the first session after the enactment of the emergency legislation. However, it can be conducted in further sessions.

The Constitutional Court also argued that two mandates of the Constitutional Court Ruling Number 91/PUU-XVIII/2020 had been implemented by the President and the House of Representatives as addresses of the decision, namely by creating the legal basis for the omnibus method and improving the procedures for lawmaking process in Law Number 13 of 2022 before the period of two years expires. According to the Constitutional Court, constitutional norms provided legal policy choices (discretion) to the President as the holder of the highest government power (presidential leadership legal policy) whether to use Government Regulation in Lieu of Law or other forms in revising the previous Law on Job Creation. If the President uses Government Regulation in Lieu of Law, then the President's subjectivity assessment of compelling emergencies must then get the approval of the House of Representatives. The approval of the House of Representatives is required to carry out its supervisory function as a form of implementation of the principle of checks and balances, a

form of the implementation of people's sovereignty while providing legal certainty in a democratic rule of law.³¹

The Constitutional Court considered that approving legislation based on the Government Regulation in Lieu of Law by the House of Representatives does not necessarily involve meaningful participation from the people. This is due to the urgent circumstances that require the House of Representatives to approve promptly. In short, this Constitutional Court ruling undermines the meaningful participation process because it is irrelevant in the context of lawmaking of emergency legislation. This starkly contrasts with the Constitutional Court decision Number 91/PUU-XVIII/2020, which introduced meaningful participation. The Constitutional Court itself even diminished the concept of meaningful participation initiated by the Constitutional Court.

Meanwhile, four constitutional judges expressed dissenting opinions against the majority judges in the ruling: Wahiduddin Adams, Saldi Isra, Enny Nurbaningsih, and Suhartoyo). According to Constitutional Judge Wahiduddin Adams, establishing Law on Job Creation 2.0 contradicted the provisions and spirit in Article 22 and Article 28D paragraph (1) of the Constitution and the Constitutional Court Ruling Number 91/PUU-XVIII/2020. He stated that the Constitutional Court should have granted the petitioners by establishing the Law on Job Creation 2.0. contrary to the Constitution. Therefore, it has no binding legal force.

In a similar vein, Constitutional Judges Saldi Isra and Enny Nurbaningsih argued that the phrase "the upcoming session" should be interpreted limited to the first and immediate period of hearing at the House of Representatives office after the Government Regulation in Lieu of Law is created by the President. In addition, they also considered that the Law on Job Creation 2.0 contradicted the Constitutional Court Ruling Number 91/PUU-XVIII/2020 because it did not improve the process of lawmaking through meaningful participation. Constitutional Judge Suhartoyo further stated that the Law on Job Creation 2.0 could be referred to as "non-compliance" with the judicial institution decision, which was the Constitutional Court Ruling Number 91/PUU-XVIII/2020, and therefore creating legal uncertainty.

3.5. Capturing the Constitutional Court to Diminish Public Participation

As demonstrated in the previous section, Constitutional Court Ruling Number 91/PUU-XII/2020 introduced the concept of meaningful participation; however, Constitutional Court Ruling Number 54/PUU-XXI/2023 disregarded the preceding decision. The main big question to understand this condition is: Why did this happen? The political process that followed the Constitutional Court Ruling Number 91/PUU-XII/2020, which impacted the court's independence, must be examined to comprehend this issue comprehensively.³²

The House of Representatives and the Government are dissatisfied with Ruling Number 91/PUU-XII/2020, which declares that the Law on Job Creation conflicted with the

³¹ Martitah Martitah and others, 'Transformation of the Legislative System in Indonesia Based on the Principles of Good Legislation', *Journal of Indonesian Legal Studies*, 8.2 (2023), 545-94. <https://doi.org/10.15294/jils.v8i2.69262>.

³² Anjar Kususiyanah and others, 'Trends and Landscape of Omnibus Law Research: A Bibliometric Analysis', *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 7.2 SE-Articles (2024), 219-43. <https://doi.org/10.24090/volkgeist.v7i2.9633>.

Constitution. Hence, whenever the opportunity presents itself to impede the independence of the Constitutional Court or alter the composition of judges, they will seize that chance. On September 30, 2022, the House of Representatives recalled constitutional judge Aswanto, who rendered a null and void ruling on the Law on Job Creation.³³ There are nine constitutional judges in Indonesia. The Supreme Court, the House of Representatives, and the President propose the nomination of three constitutional judges. The House of Representatives selected Constitutional Judge Aswanto. Nevertheless, neither the Constitution nor the Constitutional Court Law contain a provision that grants the House of Representatives the authority to recall active constitutional judges.

The transition in the composition of constitutional judges significantly impacts determining the type of ruling in a decision. The best practice to explain this is a comparison in the Constitutional Court Decision No. 91/PUU-XII/2020 and the Constitutional Court Decision No. 54 No. 54/PUU-XXI/2023. The Constitutional Court Decision No. 91/PUU-XII/2020 is simply a decision on the formal review of Law Number 11 of 2020 concerning Job Creation, which gave birth to two important foundations in the formation of laws, namely the obligation to fulfill meaningful participation and the legal basis for the omnibus method. To clarify the context of this comparison, here is a list of judges who agree and disagree with the two a quo decision.³⁴

Table 4. Comparison of The Composition of Constitutional Judges in Two Judicial Reviews on Law on Job Creations

No.	Name of constitutional judges	Constitutional Court rulings	
		91/PUU-XII/2020 (Law on Job Creation 1.0)	54 Number 54/PUU-XXI/2023 (Law on Job Creation 2.0)
1.	Aswanto	Granted	Replaced by Guntur Hamzah
2.	Wahiduddin Adams	Granted	Granted
3.	Suhartoyo	Granted	Granted
4.	Saldi Isra	Granted	Granted
5.	Enny Nurbaningsih	Granted	Granted
6.	Arief Hidayat	Rejected	Rejected
7.	Manahan M.P. Sitompul	Rejected	Rejected
8.	Daniel Yusmic P. Foekh	Rejected	Rejected
9.	Anwar Usman	Rejected	Rejected
10.	M. Guntur Hamzah		Rejected

The table provides grounds for a minimum of two conclusions. First, constitutional judges are divided into two groups on the Law on Job Creation. Group I comprises constitutional judges Enny Nurbaningsih, Wahiduddin Adams, Aswanto, and Saldi Isra. These judges exhibit a protective stance towards the Law on Job Creation by establishing procedural requirements. Group II comprises constitutional judges M. Guntur Hamzah, Arief Hidayat, Manahan M.P. Sitompul, Daniel Yusmic P. Foekh, and Anwar Usman, who generally tolerate the Law on Job Creation's formation process. Second, constitutional judges maintain the same position in both rulings despite their differences in approach. The consistency

³³ Angelene Vivian Gunawan and Rasji, 'Political Recalling of Constitutional Judge by the House of Representatives (DPR): Interference Against the Independence of Indonesian Constitutional Court', *Journal of Law, Policy and Globalization*, 135.0 (2023), 94–112. <https://doi.org/10.7176/JLPG/135-11>.

³⁴ Rais Torodji and others, 'The Role of the Corporate Penalty System Environmental Regulation', *Journal of Human Rights, Culture and Legal System*, 3.3 (2023), 600–624. <https://doi.org/10.53955/jhcls.v3i3.179>.

above is evident in the positions taken by Group I, which opposes the Law on Job Creation, and Group II, which favors the Law.³⁵

Indeed, it is impossible to disentangle these patterns from the contentious issue surrounding the substitution of the constitutional judge Aswanto with M. Guntur Hamzah. The proposal from the House of Representatives to withdraw the former Aswanto constitutional judge follows the institution's decision. Numerous parties' replacement procedures are deemed non-compliant with relevant regulations, as constitutional judges must undergo a fit and proper examination in reviewing legislation.³⁶ Furthermore, the dispute surrounding the replacement of constitutional judges is regarded as a prerequisite for political intervention because constitutional judge Aswanto frequently renders decisions that contradict the intent of the House of Representatives. The constellation of constitutional judges evaluating the Law on Job Creation was subsequently altered. Before the majority change, they had all condemned the Law on Job Creation. However, they now support it following the change.³⁷

The analysis has two profound implications. First, the procedure for replacing constitutional judges sets an unfavorable precedent for the future. Because the processes and justifications for replacing constitutional judges lack legal foundations and legitimacy, this raises the concern that if constitutional judges disagree with the Law created by the House of Representatives, it will be simple to replace their composition.³⁸ Furthermore, as a systemic effect, the intervention of external powers in the judiciary becomes progressively more evident.³⁹ This will undoubtedly compromise the autonomy and objectivity of constitutional

³⁵ Muhammad Nurul Huda and others, 'Muhammadiyah Constitution Jihad Movement: A Case Study of the Omnibus Law on Job Creation', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 21.2 (2021), 177–96. <https://doi.org/10.18326/IJTIHAD.V21I2.177-196>.

³⁶ Surya Anogara and others, 'Analysis of the Mechanism for Dismissal of Judges of the Constitutional Court by the House of Representatives of the Republic of Indonesia', in *4th International Conference on Law Reform* (KnE Social Sciences, 2024), 492–501, <https://doi.org/10.18502/kss.v8i21.14765>; Andi Dewangga and Zuhad Aji Firmantoro, 'Legal Analysis Regarding the Dismissal of Judges During Their Term of Office', *Al-Bayyinah*, 8.2 (2024), 191–205. <https://doi.org/10.30863/al-bayyinah.v8i2.6780>.

³⁷ Nancy Arrington and others, 'Constitutional Reform and the Gender Diversification of Peak Courts', *American Political Science Review*, 115.3 (2021), 851–68. <https://doi.org/10.1017/S0003055421000071>.

³⁸ For comparison, the tendency of another branch of power to appoint like-minded constitutional judges or at least try to prevent the appointment of judges whose preferences they do not like is mentioned by Aydin-Cakir in Turkey's Constitutional Court Judges appointment from the President's side. Even though the appointment process differs from Indonesia, the article at least illustrates the tendency of other branches of power to "control" judicial institutions by ensuring that the judges have political preferences like those of the institution that selects them. See e.g., Aylin Aydin-Cakir, 'The Impact of Judicial Preferences and Political Context on Constitutional Court Decisions: Evidence from Turkey', *International Journal of Constitutional Law*, 16.4 (2018), 1101–20. <https://doi.org/10.1093/icon/moy087>.

³⁹ For comparison, see e.g., Malkhaz Nakashidze, 'Constitutional Court and Politics: The Case of Georgia', *ICL Journal*, 17.3 (2023), 337–56. <https://doi.org/10.1515/icl-2023-0036>. This intervention is also related to the "selection culture". The "selection culture" refers to whether the appointing institution primarily bases its choice of judges on ideological and partisan considerations or other factors such as qualifications and merit. Hence, a country's judiciary is considered highly politicised if the appointing institution chooses the judges based on partisan grounds.

judges. Attaining the status of the rule of law in Indonesia is meaningless if judges cannot render decisions founded on the highest standards of justice.⁴⁰

4. Conclusion

The Constitutional Court of Indonesia pioneered the principle of meaningful participation in the legislative process. The court elaborated on three facets of public participation: the right to be heard, the right to be considered, and the right to be explained. Following the court's decision, the president and the House of Representatives revised the Law on Lawmaking Procedures to institutionalize the participation of the general public in the legislative process. On the other hand, this concept has not significantly impacted the lawmaking processes in Indonesia. Even when it was at its height, the President issued a Government Regulation in Lieu of Law to get the Omnibus Law on Job Creation passed. The President did not open public participation in making this regulation even though a previous constitutional court ruling ruled it. When reviewing the Law on Job Creation 2.0, the Constitutional Courts concluded that the public's involvement in drafting emergency legislation was unnecessary. The course of the Law on Job Creation demonstrated how the subsequent decision of the Constitutional Court closed the space for public participation that the presiding decision had opened. The article not only finds the dynamics of institutionalization and deinstitutionalization of public participation in the lawmaking process, but it also provides an analysis of how the government and the House of Representatives capture the Court by recalling Constitutional Court Judges to control the Constitutional Court and narrowing public participation in the legislative process.

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⁴⁰ Luthfi Widagdo Eddyono, 'Independence of the Indonesian Constitutional Court in Norms and Practices', *Constitutional Review*, 3.1 (2017), 71–97. <https://doi.org/10.31078/consrev314>.

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