

TRI-HELIX PERSPECTIVE CONSTRUCTING MEANINGFUL PARTICIPATION IN MUNICIPAL BY-LAW REGULATING URBAN DEVELOPMENT

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Abstract

The assertion of meaningful participation in legislation-making has been rising in Indonesia, highlighted by the Verdict of the Constitutional Court No. 91/PUU-XVIII/2020, which encourages the Law on Job Creation of 2020 to be re-tabled in the legislative agenda and to fulfill the necessary procedures. The respective doctrine imposing “the right to be heard”, “to be considered”, and “to be explained” is supposed to be incorporated in the Law No. 13 of 2022, which is considered inadequate, including at the level of local government by-law-making (*Peraturan Daerah*). This study aims to contextualize the adoption of meaningful participation in municipal by-laws regulating urban development (hereinafter equal to spatial planning). An identification of current provisions, including those brought by the Job Creation Law 2020 and 2023, is provided to outline their lacunae. Chronologically, by applying a socio-legal approach, the author has been searching for a model of meaningful participation in municipal by-law decision-making, particularly in urban development, alongside the rise of similar doctrines developed in court hearings when reviewing the mentioned Job Creation Law. Thus, it deserves to reveal a compilation of tri-helix actors’ perspectives obtained from interviews with government elements, academia, and communities represented by selected civil society organizations. As a result, the study serves as a model of meaningful participation, primarily following a ‘Procedure’ pattern. It shall embed the phases of ‘Before’, ‘During’, and ‘After’ decision-making in processing municipal by-laws that regulate spatial planning.

Keywords: Meaningful Participation, Municipal By-Law, *Peraturan Daerah*, Spatial Planning, Urban Development.

I. INTRODUCTION

A. Background

Doctrine of meaningful participation (hereinafter MP) have been raising in Indonesia’s scholars discourses marked by the Constitutional Court Verdict No. 91/PUU-XVIII/2020 when reviewing the Law on Job Creation of 2020. Prominently, the Court endorses requirements to characterize MP in key features, such as “the right to be heard” (RtbH), “the right to be considered” (RtbC), and “the right to be



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explained" (RtbE).¹ As the decision encourages its elaboration, Law No. 13 of 2022 amends Article 96 under the Legislation-Making Law No. 12 of 2011 for the third time. Ever since, numerous analyses monitoring its adoption enrich the studies on meaningful participation in Indonesia. At the very minimum, studies examining normative interpretation are discussed by Artioko, 2022; Chandra Sy & Irawan, 2022; Fitriah, 2023; Moniung, 2015; and Prayugo et al.,² as well as added by the contentions offering the development of normative interpretation are represented mainly by Fajri and Zainal Arifin Mochtar.³

This present article attempts to specify the search on whether the previous studies provide enrichment on meaningful participation specifically in municipal by-law regulating urban development. Considering the above-mentioned ones, those studies focus on legislation-making in general and heavily on the primary legislation (*Undang-Undang*). For instance, M Nurul Fajri criticizes that the incorporation of the three rights in the LML 2022 remains seeking mere academic legitimacy instead of public legitimacy. Being deemed as a confirmation, openparliament.id released a report measuring a legislative performance index recorded in the 2020-2021. Two of the others are concerned about transparency and participation. The aspect of transparency scores 22.93 out of 100, representing 74 out of 92 sessions of the House of Representatives (DPR) that were not broadcast. Meanwhile, regarding participation (score 8.91 out of 100%), 5 bills were processed without public participation, and 6 bills lacked aspiration reports, accompanied by a note that the means of participation are inadequate and have not been professionally managed.⁴

To this point, only a few may contend that the crucial role of adequate management in engaging public participation would lack meaning without strong underpinning norms. Considering this is due to Wardana, Sukardi, and Salman's warning not to exclude public participation in the legislative process, as it was the central point of evaluation at the time. As it is acknowledged that public participation may varies, its criticality may surpass the fact of restricted channels of public

¹ Constitutional Court, Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020, Mahkamah Konstitusi Republik Indonesia at 393.

² Artioko, "Pengadopsian Partisipasi Masyarakat Yang Bermakna (Meaningful Participation) Dalam Undang-Undang Nomor 13 Tahun 2022 Tentang Perubahan Kedua Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan"; Chandra Sy and Irawan, "Expansion Meaning of Public Participation in the Formation of Laws After Decision of Constitutional Court"; Fitriah, "Rekonstruksi Perencanaan Pembentukan Undang-Undang Dalam Akselerasi Partisipasi Masyarakat"; Moniung, "Partisipasi Masyarakat Dalam Pembentukan Peraturan Daerah Berdasarkan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan"; Prayugo et al., "Partisipasi Publik Dalam Penyusunan Undang-Undang: Mendorong Keterlibatan Masyarakat Dalam Pembentukan Kebijakan."

³ Sjarif, "Perkembangan Strategi Mewujudkan Partisipasi Masyarakat Yang Bermakna Dan Bermanfaat Dalam Pembentukan Undang-Undang"; Fajri, "Legitimacy of Public Participation in the Establishment of Law in Lawmaking in Indonesia"; Mochtar et al., "From Meaningful to Meaningless Participation: The Tragedy of Indonesia's Omnibus Law on Job Creation"; Menini, Chakraborty, and Roady, "Public Participation in Seabed Mining in Areas beyond National Jurisdiction: Lessons Learned from National Regulators in the Terrestrial Mining Sector."

⁴ [Openparliament.id](http://openparliament.id), "Laporan Indeks Kinerja Legislasi DPR RI Tahun Sidang 2020-2021."

communication.⁵ Nonetheless, Wardana et.al skip the analysis of meaningfulness from public participation as amplified in the mentioned Constitutional Court Verdict.

Regardless of those starting point to evaluate the current elaborated provisions in this matter, the respected studies barely range local government level in the making of provincial and municipal/regency (simply municipal in this article) by-law (*hereinafter Peraturan Daerah-Perda*).

Indeed, studies investigating the MP in legislation-making at the local level are available, primarily under analysis of Eivandro Wattimury, 2025; and Pascal Wilmar Toloh, 2024. Wattimury embarked on similar assertion to advocate MP di municipal by-law, specifically in Seram Barat. Although so, his study fails to reveal the expected particular study, i.e., in Seram experience or archives. Instead, it remains repeating the references.⁶ The better, Pascal Wilmar Toloh complement the loopholes printed by Wardana et.al and Wattimury, by offering the features to emphasize meaningful participation as extracted from reviewing the several provisions.⁷

Toloh offers a framework to elaborate meaningful participation in regional by-laws making, as follows:

- a) To widen information access for broaden society regarding the agenda of by-law making;
- b) To accommodate “counter academic draft” proposed by society in the phase of preparation and open opportunity to absorb public aspirations in ensuring the right to be heard;
- c) Initiating debates in legislation-agenda based on the proposed draft along with consideration to include the respective “counter academic draft” in the discussion phase. This manner is expected to ensure the right to be considered;
- d) In sequent, to redrafting the draft of the By-Law along with explanation regarding the conclusions of decision. Such a manner is expected to actualize the right to be explained.

The above mentioned frame insightful to build meaningful participation in the making of local government by-law (*Perda Pemerintahan Daerah*) in general. Regardless of that, insufficiency remains possible as a specific sector, such as spatial planning strategic craves more specific characters to define meaningfulness of public participation.

This study investigates whether the legal framework on meaningful participation in municipal by-law regulating urban development has been discoursed in between the Job Creation Law 2020 (the first edition), its judicial review resulting in meaningful participation doctrine, and its incorporation through the LML 13 of 2022. For the purpose of this study, the author subscribes an opinion shared by Vanessa Watson on the perspective of urban development as equal to urban planning municipal by-law regulating urban development. Watson acknowledges the urban

⁵ Wardana, Sukardi, and Salman, “Public Participation in the Law-Making Process in Indonesia.”

⁶ Eivandro Wattimury, “Partisipasi Bermakna Dalam Pembentukan Peraturan Daerah Di Kabupaten Seram Bagian Barat.”

⁷ Toloh, “Formulasi Sistem Partisipasi Bermakna (Meaningful Participation) Dalam Pembentukan Peraturan Daerah Sebagai Penguatan Demokrasi Lokal.”

planning cluster distinguishing the regional, national, and supranational scale, and the character of the urban scale to be identical with urban development planning (interchangeably urban planning).⁸ Urban development that focuses on spatial planning is borne in mind as delineating the other sectoral in development. In this respect, UN-Habitat has distinct urban (and regional) planning from other schemes, such as economic or health planning.⁹ Inevitably, urban development remarks the role of municipal government in outlining urban planning justified by regulation. It functions to justify the rules for mediating stakeholder communication and negotiation by engaging in shared material and spatial localities,¹⁰ holding a perception, according to Alessandro Balducci and Raine Mäntysalo, that urban planning is “a trading zone.”¹¹

An incomplete analysis of whether previous studies address construction frameworks for meaningful participation in legislation-making is considered to confirm that the current underpinning laws have gaps. Only a few may argue that the pattern of legal construction regarding meaningful participation in municipal by-laws regulating urban development remains insufficient. Moreover, it is rare for the desired construction to be obtained from the actual actors, who may contribute to understanding and providing insight into defining meaningful participation in this context. In this attempt, the author relies on tri-helix actors involving the government elements, academia, and communities represented by selected civil society organisations. Preliminarily, the author conducted a study on the rise of the meaningful participation doctrine, as marked by Verdict No. 91/PUU-XVIII/2020. The further design of the research is provided in the methodology section.

B. Research Question

The above-mentioned introduction leads to defining research questions as follows:

- 1) To what extent is meaningful participation in Municipal By-Law Regulating Urban Development sufficiently regulated in the underpinning laws?
- 2) How can the proposed legal frameworks be constructed from the tri-helix perceptions during the development of the meaningful participation doctrine?

C. Research Method

Preliminarily, the author conducted a study on the rise of the meaningful participation doctrine, as marked by Verdict No. 91/PUU-XVIII/2020. The further design of the research is provided in the methodology section. The journey is reflected in a timeline as shown in Table 1.

⁸ Watson, *Planning and Development*.

⁹ Alvey et al., “Integrated City Development: A Holistic Approach to a Low Carbon and Resource Efficient Future.”

¹⁰ Balducci and Mäntysalo, 193.

¹¹ Balducci and Mäntysalo, *Urban Plan. as a Trading Zo.*

Table 1: The Parallel Timeline between the journey of Meaningful Participation Doctrine and the data collection

	2020	2021	2022
Job Creation Act	Promulgation 2 November 2020		<ul style="list-style-type: none"> Perpu proposed in 30 Desember 2022 UU Validation of Perpu into the Law, 31 Maret 2023
The rise of Meaningful participation doctrine	Petition for procedural review to CC 15 Oktober 2020	Decision 4th November 2021	13th June LMA 13/2022
Interviews		24th May	January

While the thesis draft was being written, the Job Creation Act 2023 was undergoing its second judicial review, registered in Case No. 54/PUU-XXI/2023, at the Constitutional Court of the Republic of Indonesia. This study reflects a socio-legal approach in manifesting tri-helix perceptions collected during the JCL judicial review. All respondents are coded and classified based on a category unit of analysis through the table 2 as follows:

Tabel 2. : Code of Tri-Helix Respondents

No	Category Unit of Analysis	Code of Respondents	
1	Central Government	Respondent 1	Team member in preparing to initiate the Bill on Public Participation
2	Agencies	Respondent 2	<ul style="list-style-type: none"> responsible for coordination function for national development planning in macro and controlling spatial development in particular. Coordinating Government agency for the Bill of Urban Law preparation
3		Respondent 3	<ul style="list-style-type: none"> responsible for preparing and exercising public infrastructure projects forwarded to Bappenas representing the government agency for the New Urban Agenda Preparation

4		Respondent 4	Responsible for conducting a study on human rights, investigating human rights violations, and mediating human rights cases
5		Respondent 5	Representing experienced in the institution in assisting the Commissioner to investigate queries for Persons with Disabilities
6	Legal and Urban Planning Academia		
	Indonesian Scholars	Respondent 6	Chairman of the Studies Center focusing on State laws and policy and has experience as an expert in Spatial Planning Law discussions.
7		Respondent 7	The invited expert in the debate of 1945 Constitutional amendment.
8		Respondent 8	experienced in assisting the Mayor of Bandung City in preparing the draft of the Bandung Declaration as the Human Rights City in 2015
9		Respondent 9	Expert in Regional Planning, focusing on community empowerment
10	Foreign Scholars	Respondent 10	Expert in the research topic of the right to the city, Constitutional Law, Urban Governance, and Human Rights.
11		Respondent 11	Urban Law expert. One spoke person at the UN-Habitat III Conference Invited expert in preparation for the New Urban Agenda.
12		Respondent 12	Indonesianist expert focussing on environmental and Spatial Planning Law.
13		Respondent 13	Expert in Urban Planning, Physical Planning, Urban Policy, and Evaluation
14	Communities-Civil Society	Respondent 14	actively serving in advocacy work mainly for the marginalized groups.
15	Organisation (CSO)	Respondent 15	Allies in advocating environmental issues and invited CSO in regional development planning deliberation (<i>Musrenbang</i>)
16		Respondent 16	unifying, gathering, and empowering women with disabilities in Indonesia in asserting their fundamental rights. With

		a broader service to women and children
17	Respondent 17	The prominent women's organization in Indonesia (West Java Board) contributed to a report on implementing SDGs. ¹²
18	Respondent 18	Allies in advocating Taman Sari eviction case, Bandung

Note: By using the pseudonym for all, Respondents 10, 11, 12, 13, and 14 are excluded from the report because the study focuses on Indonesians and their awareness of the assertion on meaningful participation alongside the development of enacting laws.

Data analysis process uses an instrument, i.e., *Atlast.ti 9* in coding and classifying the result of the interviews.

II. DISCUSSION

By arguing based on previous research, the author suggests that meaningful participation can be achieved if it incorporates the Rule of Law (RoL) standards and subscribes to participation as a human right. The rule of law norms serve as the foundation for protecting individual autonomy, freedom, and human rights, as well as limiting arbitrary power. It has specific criteria, such as openly accessible and predictable laws, effective protection of fundamental human rights, and the justifiable exercise of power without exceeding its limitations. Consequently, a Human Rights-Based Approach that defines everyone, among others, as right holders and duty bearers, along with their responsibilities and procedures, is critical. Therefore, some ideas may consider the international human rights norms. The standard of MP in this study is primarily motivated by the International Covenant on Civil and Political Rights,¹³ the New Urban Agenda, and the Aarhus Convention. In short, those instruments contribute to establishing standard recognition, procedures, and access to justice in standardizing meaningful participation. The recognition element is based on norms and guidelines under the International Covenant on Civil and Political Rights (ICCPR).

Meanwhile, the procedure will be primarily based on the Aarhus Convention.¹⁴ A procedure is critical in the RoL frame, as it ensures that the law is evident and

¹² Republic-of-Indonesia and Agency, "Voluntary National Review (Vnr): Eradicating Poverty And Promoting Prosperity in a Changing World," 56.

¹³ The International Covenant on Civil and Political Rights (ICCPR).

¹⁴ Aarhus Convention is relevant to human rights perspective as it affirms the commitment to improve the environment to ensure sustainable development. this Convention also recognises Affirming the need to protect, preserve and improve the state of the adequate protection of the environment is crucial to fulfil the fundamental human rights, particularly the right to life. The United Nations Convention recorded as Treaty Series vol. 2161, p. 447. "Status of Treaties: Chapter XXVII Environment" <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27> accessed 2 February 2021.

precise, enabling people to forecast which activities are prohibited and penalised.¹⁵ All of the mentioned instruments are extracted from the OHCHR Guidelines, which standardize the right to participate in public life and outline a procedure that sequences the phases of 'Before', 'During', and 'After' decision-making. The last frame, which is access to justice, is based on the ICCPR and the UN Declaration on the Right to Development.

This section is intended to discuss two main points: sub-topics 1) the extent that which meaningful participation is underpinned in the making processes of Municipal By-Law Regulating Urban Development; and 2) the framework contributed by the tri-helix perceptions during the development of the rise of meaningful participation doctrine through the Constitutional Court Verdict No. 91/PUU-XVIII/2020.

A. Participation in Municipal By-Law Regulating Urban Development

The above-mentioned insufficiency remains possible in specific sectors, such as spatial planning, which require more specific characteristics to define the meaningfulness of public participation. The incomplete analysis of whether previous studies serve as construction frameworks for meaningful participation in legislation-making is considered to confirm that the current underpinning laws present a gap.

In Indonesia, the legal framework regulating spatial planning decision-making processes is not codified in a single legislation. Instead, the legal framework is scattered across several pieces of legislation without sufficient adherence. Currently, the governance of spatial planning in Indonesia is primarily regulated by the Spatial Planning Law No. 26 of 2007, which should be read alongside the Job Creation Act of 2023. Besides, other related legislation must also be referred to.¹⁶ Hence, there is no single legislation that provides a comprehensive decision-making process involving public participation in urban development based on the human rights approach in Indonesia. In short, the standard of its meaningfulness imposes the salient features, i.e., 'Recognition,' 'Procedure,' and "Access to Justice," that shall be framed in the national legal system. Overall, the key findings indicate that meaningful public participation in urban development decision-making in Indonesia is inadequate.

By the 'Recognition' standard, the legal provisions embed public participation in urban development decision-making in no single but scattered legislation. However,

¹⁵ Wei, "Rule of Law or Not? A Critical Evaluation of Legal Responses to Cyberterrorism in the UK."

¹⁶ As introduced in Chapter Four, investigation of the legal framework in Indonesia necessitate a comprehension of the relevant primary legislations including:

1. The National Development Planning System (NDPS) Act No. 25 of 2004
2. The Spatial Planning Act (SPA) No. 26 of 2007
3. The Local Government Act (LGA) No. 23 of 2014
4. The Legislation Making Act (LMA) No. 12 of 2011 as amended by the LMA No. 13 of 2022
5. The Public Service Act (PSA) No. 25 of 2009
6. The Land Acquisition for Development on behalf of Public Interest (Pengadaan Tanah untuk Kepentingan Umum- LADPI) Act No. 2 of 2012
7. The Human Rights Act No. 39 of 1999 and its cluster
8. The Environmental Protection and Management Act No. 32 of 2009
9. The Job Creation Act (JCA) No. 6 of 2023

the foremost relevant provisions are centred in the Spatial Planning Law (SPL) No. 26 of 2007, which was amended through the Job Creation Law No. 6 of 2023, designating the core right to participate, particularly in the Municipal Bye-law making on the Master Plan. It is noticeable that the legal framework is somewhat intertwined with the other relevant legislation. Unfortunately, the legal position is uncertain regarding the right to participate. The SPL 2007 and JCA 2023 are unclear in guaranteeing that everyone is given the opportunity for public consultation when the municipality prepares the Master Plan. Instead, it narrows the scope of the right holders to individuals and businesses. Under the current framework, although the right to participate is recognised, it is only confined to specific interested parties (individuals) and businesses.¹⁷

In implementing international human rights norms, these particular political rights are more selection-based. It also suggests being incomplete because of the absence of an affirmative policy on the rights of vulnerable groups, those with special needs, and ensuring gender equality. Additionally, whether a human rights approach is incorporated in ensuring public participation in urban development is fuzzy. The worst, several derivative rights categorised as “the right to be heard,” “the right to be considered,” and “the right to be explained” are articulated but uncertain to be safeguarded by the following component of the standard, i.e., ‘Procedure.’

By the ‘Procedure’ standard, the recognised rights should be viable for operationalisation. The legislation and regulations entitling “the right to be heard”, “the right to be considered”, and “the right to be explained” are insufficient to frame the right to information as a prerequisite right at the “Before Decision-Making” phases. The legislation shows that public information is a part of public service, which the government, including the municipal authorities, shall provide at the initial stage. Nevertheless, its adequacy is scarcely guaranteed since meaningful information elaborating on public notice on the planning of publicity, accessibility to public consultations, and adequate information is incomplete to support community awareness.

The organisation of spatial planning involves establishing the roles of respected authorities in making decisions to manage and control land use. This includes both strategic (e.g., Master Plan and zoning laws) and operational (e.g., planning permission and environmental impact assessment).¹⁸ To promote public engagement, both strategic and operational planning decisions aim to emphasize the municipal authority's role in spatial planning organization. This section places a lot of emphasis on public involvement in the organisation of spatial planning to develop strategic planning decisions (regulation), as it demonstrates that everyone is eligible to participate. The latter feature, however, emphasises that certain parties are the only

¹⁷ Amendment of Article 65(3) of the Spatial Planning Act No. 26 of 2007 under the Job Creation Act No. 6 of 2023.

¹⁸ Weitzman, Lenore J., *Bringing the Law Back In* vol 11 (1986); Zanudin, Khalid, Ngah, Ibrahim, and Misnan, Siti Hajar, “Limitations on Community Participation in Planning Decision-Making in Peninsular Malaysia: A Review of Recent Studies”, (2019) 7 *International Review for Spatial Planning and Sustainable Development* 131.

ones who can participate in operational planning choices, such as obtaining building permit.

Under the SPL, mandatory municipal spatial planning is expressed in a Master Plan, which the municipal government shall promulgate in a Municipal Bye-law (*Perda*). It signifies that a *Perda* shall be passed by the Local Representative Body (*DPRD*). Master Plan functions as a general policy of spatial structure and pattern of land use planning.¹⁹ The SPA 2007 allows an elaboration of the Master Plan, which can be prepared in a Detail plan if the Master Plan is unable to guide urban planning.²⁰ Unfortunately, the Detail plan under the SPA 2007 is deemed conditionally, and (where available) it is only validated in a Mayor Regulation²¹ instead of being promulgated as the local ordinance (Municipal Bye-Law). For Indonesia, meaningful public participation in urban development should be represented in preparing a Detail plan containing the zoning rules, and it should be a mandatory gazetted municipal ordinance.

The deficiency of the legal framework is further evident in the lack of provisions underpinning how the right to participate in urban development decision-making is operationalised in a “Procedure” standard.

In the “During Decision-Making” phase, the inadequacy is especially pointed out in the lack of elaborated provisions to operationalise public participation in spatial planning decision-making procedural mechanisms. The absence of time-frames to submit comments during publicity and public consultation is the foremost inadequacy leading to uncertain legitimate expectations in supporting how participants manage themselves in the rally of prospective public hearings initiatives. The procedure provisions are also flawed in formulating affirmative clauses for gender equality, groups, and persons in vulnerable situations pursuing the right to participate in the planning process. Overall, regulatory frameworks are vague in empowering administrative authorities to take necessary measures in the operationalisation of public participation. The lack of administrative responsibilities leads to loopholes in attaining access to justice (AtoJ) since the detailed conditions of maladministration are less defined.

By the “Access to Justice” standard, the grounds for a review caused by infringement, denial, violation, impairment, or deprivation in achieving meaningful public participation in urban development decision-making are negligible. Respectfully, the institutional remedy mechanisms under the legal system in Indonesia are comprehensive. Regardless, the minimum specific grounds for complaint/review hard in Indonesia, the legal framework stipulates regular review of spatial planning legislations, which can be initiated more than once within the 20-year and five-year middle term.²² As long as urban spatial planning is promulgated in the

¹⁹ Article 14(4) and 17 (1) of the Spatial Planning Act (SPA) No. 26 of 2007.

²⁰ Article 14(5) of the Spatial Planning Act (SPA) No. 26 of 2007.

²¹ Article 18(2) of the Spatial Planning Act (SPA) No. 26 of 2007.

²² Article 26(6) and 28 of the Spatial Planning Act (SPA) No. 26 of 2007 as amended by the Job Creation Act (JCA) No. 11 of 2020.

Bye-law, the process will adhere to the legislation-making Act,²³ in which public participation is recognised, ly achieve meaningful and effective avenues in responding to dissatisfaction over the rights. Moreover, the scattered legislation on the respective standard without sufficient SPA 2007 provisions in bridging and adhering to the separate relevant Acts leads to exacerbating the ambiguities and confusion of the right holders to participate. Therefore, the researcher suggests that “Access to Justice” in securing meaningful public participation in urban development decision-making is less satisfactory.

The central government can also determine the changing of the Master Plan by enacting the national strategic projects (PSN)²⁴ located in a local territory more than once within five years.²⁵ Consequently, this one-sided policy of the president potentially exacerbates the meaningfulness of public participation in urban development since the PSN enactment skips stipulating the requirement of the right to participate. At the same time, the local government shall adjust the PSN by eliminating land appropriation jurisdiction in urban areas.²⁶ Considering this, the pattern of the national strategic projects (PSN) changing the Master Plan leads to undermining the consistency of the policy of local autonomy under Article 18(2) of the 1945 Constitution.²⁷ Thus, the principle of decentralisation is barely achieved because of the worsened deficiency in providing opportunities for meaningful public participation in urban development decision-making.

The grounds for reviewing the Master Plan under the SPA 2007 in Indonesia are not specific and detailed since it is interpreted solely under Article 66 (1) of the SPA 2007 that the aggrieved parties affected by the spatial planning implementation are entitled to dispute planning decisions about land use in urban areas.²⁸ Such a clause overlooks to provide further situations that may indicate infringement, impediment, or failure of municipal administration to ensure meaningful public participation in the

²³ Besides recognised in the respective SPA 2007, it has been discussed in Chapter Four that the right to participate in the legislation making is recognised in the Legislation-Making Act No. 12 of 2011 as amended by the Act No. 13 of 2022.

²⁴ PSN stands for Proyek Strategis Nasional.

²⁵ Article 26(6) d of the Spatial Planning Act (SPA) No. 26 of 2007 as amended by the Job Creation Act (JCA) No. 11 of 2020.

²⁶ “Respondent 15”; “Respondent 14”; “Respondent 6”; “Respondent 4”.

²⁷ Article 18(2) of the 1945 Constitution underpins that the local government (province, municipality, and regency) regulate and manage their own local affairs according to the principle of local autonomy and co-administration. The clause formulated in original Bahasa Indonesia is as follows:
(1) *Pemerintahan daerah provinsi, daerah kabupaten, dan kota mengatur dan mengurus sendiri urusan pemerintahan menurut asas otonomi dan tugas pembantuan.*

The PSN is said to be inconsistent with the principle of local autonomy, since the central government dictates the project plan at any time. Its decision-making process may paralyse the autonomy of local government to produce the municipal regulation governing the Master Plan, which has undergone public participation, regardless of its inadequacy.

²⁸ Article 66 (1) of the SPA 2007 formulates that:

(2) *The aggrieved party caused by spatial planning implementation is entitled to file a petition lodged to the court (Masyarakat yang dirugikan akibat penyelenggaraan penataan ruang dapat mengajukan gugatan melalui pengadilan).*

Master Plan. The SPA 2007 is also unclear whether the same question indicates maladministration adhering to the issue of disregarding *Asas-Asas Umum Pemerintahan yang Baik (AUPB)*.²⁹ It marks the stipulations underpinning grounds for reviewing the spatial planning because the situations causing the aggrievance to be integrated into the SPA 2007 are too general.³⁰ Insufficient provisions, thus, appoint the failure, infringement, or impediment due to the conduct of maladministration in public service to ensure the right to participate in municipal spatial plans as grounds to dispute the indicated aggrievance.

Of the full remarks, the study confirms the initial contention that the regulatory setting to achieve meaningful public participation in urban development decision-making in Indonesia is inadequate. The legal framework is far from reflecting the theory of public participation to endorse urban development decision-making to meet the needs for spatial justice in the city.³¹ Public participation can only be characterised as HRBA if it stipulates the effort to ensure a broadening range of participation for everyone. In this matter, the failure to elaborate procedure standards that should be accessible to everyone equally steers Indonesia's legal framework to remain insufficient recognition. Instead of ensuring that no one is left behind (SDGs principle), the respective provisions in Indonesia are interpreted as left behind the HRBA character to foster all development legislation marked by principles and standards established by international Human Rights treaties.³²

B. Constructing Standard of Meaningful Participation: Tri-Helix Perspectives

Based on the aforementioned lacunae underpinning the precise pattern of legal construction regarding meaningful participation in municipal by-laws regulating urban development, this section reveals tri-helix actors contributing to its characterization.

The entire response to building the notion of MPP might be directly integrated into the context of urban development decision-making. More than half of respondents (13 out of 14) build the notion of meaningful public participation (MPP) categorised in the element of opportunity to get involved, principles in participation, quality of participation, drawing a miniature of public interest, the role of Government or Local Government, and whether the participation is impactful or beneficial.

²⁹ The Government Administration Act No. 30 of 2014.

³⁰ As discussed in Chapter Four, an elucidation of Article 66(1) only mentions that the aggrievance shall include the failure to access spatial planning information caused by the unavailability of respective information.

³¹ As argued in Part 2.2.3 of Chapter Two, Romainville is one of the proponents that through public participation corresponding to upholding democracy, it allows the path to guarantee the freedom to determine self-preference in living an individual's life. Romainville, Céline, "Defining the Right to Participate in Cultural Life as a Human Right", (2015) 33 *Netherlands Quarterly of Human Rights* 405 at p 416.

³² As above introduced in Part 2.2.2.4. UN-Habitat, *Human Rights, Rule of Law and the New Urban Agenda: Urban Legal Case Studies*, (HS/012/20E, 2020) at p 72.

It is found that the interview results regarding the standard of meaningful public participation (MPP) in urban development decision-making (UDDM) have a similar character to the standard overall contention from the respondents, which reflects the components of *Recognition (R)*, *Procedural (P)*, and *Access to Justice (AtoJ)*.-

The Recognition (R) element desires legal recognition and equality measures for the vulnerable and marginalised group. *First*, in initial legal recognition, Respondent 8 denotes the classification of a right that will be entitled, which rights have to be prioritised, and how to determine such classification.³³³⁴ It does not suffice to entitle everyone, but respondent 4 promotes 'consent' and the 'free' to enjoy the right to participate.³⁵ Where it is found that an interpretation of certain clauses is in disparity, the Bandung Charter provides a model of alternative provisions guiding the relevant parties to accord reservation and enhancement of Bandung as a multicultural city.³⁶ In involving such a model, respondent 8 refers to the South African supreme law, which states that humanity and dignity shall be the highest consideration in interpreting the Constitution.³⁷

Second, the law is requested to share a space for equality and equity for marginalised and vulnerable groups. Three respondents from the group of CSOs, the Government, and comparative scholars agree on the importance of addressing inequality in accessibility to participation among right holders. Respondent 16 concerns the inequality of accessibility for a marginalised group, particularly in accessing benefits from the existing legal framework, due to uneven socialisation and awareness.³⁸³⁹ More concretely, those with special needs, e.g., persons with disabilities, have to be recognised that they require special needs in spatial planning in a particular typical space, not merely blended with other general groups.⁴⁰⁴¹

Procedural (P) matters in incorporating meaningful participation, since without which the Rule of Law is violated when the in situations that are supposed to embody these procedures are undermined or interfered with.⁴² Reflecting the tri-helix, perspectives, four respondents effloresce the coherent process of participatory decision-making. Respondent 2 recalls the participatory process of the Master Planning decision-making in Singapore facilitated by the urban development authority. The draft of the Master Plan must be "*prepared*" by the Planners technocratically. In sequence, the community has an opportunity to observe what their city would look like in the "*planning proposal*."⁴³ Several panels are divided into specific issues, e.g., transportation and open public spaces, to cluster specific comments. In "*channelling*" their comments, society can watch interactive proposal

³³ "Respondent 8."

³⁴ "Respondent 8."

³⁵ "Respondent 4."

³⁶ "Respondent 8."

³⁷ "Respondent 8."

³⁸ "Respondent 16."

³⁹ "Respondent 16."

⁴⁰ "Respondent 2."

⁴¹ "Respondent 2."

⁴² Waldron, *The Rule of Law and the Importance of Procedure*.

⁴³ "Respondent 2."

delivery, post a sort of sticky note if they disagree, and share comments on what is desired. Regardless, one can be uncertain whether the public comments will be fully accommodated, partially accommodated, or even rejected in the planning. The fundamental idea involves incorporating opportunities for widespread and inclusive responses to social inclusion and gender quality issues.⁴⁴⁴⁵ Respondent 14 asserts several phases in public participation, imposing at “before, during, and after” a development planning is established.

The above contention states that a standard element, particularly the Procedural (P) mechanism, serves as a venture to achieve sufficient operationalisation and organisation of the right to participate in decision-making processes.

Furthermore, a procedure necessitates distributing responsibilities among the government administrators and the elaborated phases. Regardless of various naming in the phases of public participation, the stages of Before, During, and After decision-making are highlighted in a procedure. For that purpose, 8 contributing respondents consist of 2 Government institutions, 3 CSOs, and 3 comparative scholars.

“Before decision-making”. Of the 7 contributing respondents, One Ministry, as a central government agency, and one CSO report a similar pattern regarding what should be available in the initial stage of public participation, i.e., conducting a survey and involving the community to determine the proposal for planning preparation.⁴⁶ One Respondent desires that the management of public participation be neither overly bureaucratic nor inaccessible in technical administration. Two respondents encourage the availability of information detailing when, where, the stages, and the protocol for participating in a decision-making process.⁴⁷ Three respondents emphasized the material to be discussed, such as which area will be developed.⁴⁸ Three respondents claim to gain information regarding the potential impact on the content of the planning proposal.⁴⁹ Four respondents also support publicising the planning draft in various media of information.⁵⁰ Henceforth, elaborated standards at Before-DM will overlap with subject matter for legal improvement; thus, it will be discussed further later therein.

“During decision-making”. Agenda-setting shall be well-informed among the participants in an ongoing consultation, hearing, or deliberation, but not be hidden in another irrelevant packaging program, such as “iftar”⁵¹ or a gala dinner.⁵² Therefore, a translucent flow of deliberative engagement is necessary, covering a (local) government presentation,⁵³ opening space for the public to let them show their

⁴⁴ “Respondent 2.”

⁴⁵ “Respondent 2.”

⁴⁶ “Respondent 3”; “Respondent 18.”

⁴⁷ 11, “Respondent 11.”

⁴⁸ “Respondent 17”; “Respondent 18”; “Respondent 2.”

⁴⁹ “Respondent 18”; “Respondent 2”; “Respondent 13.”

⁵⁰ “Respondent 12”; “Respondent 11”; “Respondent 2”; “Respondent 16.”

⁵¹ “Iftar” is an occasion when Muslim enjoy breakfasting cuisines at the end of their breakfast during Ramadhan

⁵² “Respondent 18.”

⁵³ “Respondent 18.”

problem and their aspiration,⁵⁴ discuss it interactively,⁵⁵ take it into consideration,⁵⁶ and validate the discussion back to the public,⁵⁷ and decided accordingly.⁵⁸ One central Government agency discloses the necessity of detailed input from the participant to allow a more reasonable chance of supporting a merit argument.⁵⁹ Consistent with the media use for publicity, the channel to participate also need to be varied and enriched by informal and spontaneous posts in multimedia, including electronically.⁶⁰

"After decision-making". Once an establishment of spatial planning is enacted, it is desired to open it for review.⁶¹ Hence, they should be aware of which spaces are allowed for everyone and entities to conduct physical activities and construction projects.⁶² The other opportunity for inhabitants to participate is in the process of monitoring and evaluating a development project in the neighbourhood.⁶³ It includes access to information and opportunities to comment on an environmental assessment impact (*Analisis Mengenai Dampak Lingkungan-AMDAL*) and other tools describing a community safety assessment caused by the project.⁶⁴ When an eviction in executing a government project, e.g., slum rejuvenation,⁶⁵ is inevitable, a rule of conduct must be considered, at least, under the World Bank standard and guidelines.⁶⁶ In addition, compensation, as impacted by a project, must be fair.⁶⁷ In the analytical procedure, ensuring fairness and justice in several processes, e.g., determining compensation, must involve the other state agencies, such as administrative and judiciary, which will be sequenced in a complaint mechanism element.

Discussing Access to Justice (AtoJ)⁶⁸ elements ensures that a State complies with human rights obligations, i.e., to respect, protect, and fulfil. Prior to this, defining *ground for complaint* elements remains challenging. However, an indication might be implied in a statement of the Ombudsman representation perspective through the statement:

...To prevent the administrative agents from conducting maladministration, a legal framework shall be adjusted or reconstructed by adding sanction clauses.⁶⁹

⁵⁴ "Respondent 11"; "Respondent 16."

⁵⁵ "Respondent 16."

⁵⁶ "Respondent 18"; "Respondent 16."

⁵⁷ "Respondent 16."

⁵⁸ "Respondent 18"; "Respondent 16."

⁵⁹ "Respondent 2."

⁶⁰ "Respondent 2"; "Respondent 11."

⁶¹ "Respondent 11."

⁶² "Respondent 12."

⁶³ "Respondent 2."

⁶⁴ "Respondent 18."

⁶⁵ "Respondent 18."

⁶⁶ "Respondent 18"; 11, "Respondent 11."

⁶⁷ "Respondent 18."

⁶⁸ Lucy, "Access to Justice and the Rule of Law."

⁶⁹ "Respondent 5."

As a sanction threatening specific conduct is imposed, a criterion of maladministration should be defined. The purpose is to facilitate the complaint proceeding mechanism.

4 respondents recommend involving legal institutions in sequencing as a result of monitoring and evaluating the right assessment. Taking a model from the Bandung Charter, which declares Bandung as the City of Human Rights, one Respondent questions the sequence of the monitoring and audit result mechanism.⁷⁰

In this conjunction, an audit instrument needs to define what the following steps should be tackled.⁷¹ The need to define the character of affecting situations, e.g., violation, denial, repression, or impediment of the right to participate in urban development, is then, again, evident. Due to the relation between violation and defending one's right to decide will defend and seek to have the protection of a right, one must be convinced what kind of violation or impact has been undermining their rights in the city.⁷²

Such a standard implies that the complaint mechanism shall be based on an audit, which can be enforced by judiciary and administrative State organs or other appointed government agencies. The following part will capture comprehension among respondents, excluding comparative scholars, on the legal framework in Indonesia constituting public participation in urban development decision-making.

III. CONCLUSION

The above discussion touched on the two primary concerns. *First*, the adoption of meaningful participation in the making processes of Municipal By-Law Regulating Urban Development under the current legal framework is inadequate, mainly due to the lack of procedural provisions. *Second*, the tri-helix perspectives engaging the government, academia, and community outline the construction of the MP doctrine, indicating that the development in legal improvement is promising. Therefore, the rise of the meaningful participation doctrine through the Constitutional Court Verdict No. 91/PUU-XVIII/2020 deserves continued assertion as a path to satisfy participatory municipal by-law making, specifically underpinning urban development.

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⁷⁰ "Respondent 8."

⁷¹ "Respondent 8."

⁷² 11, "Respondent 11."

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