IMPLEMENTATION OF MEANINGFUL PARTICIPATION IN THE FORMULATION OF REGULATIONS CONCERNING THE DANANTARA INVESTMENT MANAGEMENT AGENCY

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Abstract

Danantara, as Indonesia's leading investment management agency, is expected to play a considerable role in Indonesia's economic development, particularly in driving the operational and investment management of national state-owned enterprises. Due to its importance, Danantara's regulatory formulation requires public participation to achieve efficacy in Danantara's working system. This paper aims to investigate the institutionalized participatory procedures and mechanisms that can facilitate meaningful participation, which can then be applied to assess the presence of meaningful involvement in the enactment of Danantara's regulation. Using a normative approach, this paper concludes that Indonesian laws and precedents have focused more on procedural issues, which are not supported by the broadening of methods and mechanisms for public consultation and the dissemination of information. Consequently, public participation is arduous to achieve, including in the establishment of Danantara's Regulation.

Keywords: **Meaningful Participation, Danantara, Participatory Procedures, Regulatory Formulation**

I. BACKGROUND

A. INTRODUCTION

Indonesia, as a democratic nation led by the rule of law, upholds the principle of people's sovereignty, in which people are the legitimate owners and authorities of the source; thus, they control supreme power over such essential facilities. The principle places the people in a position to possess authority or power in a democratic nation, one led by a rule of law.[1] This concept is constructed under Article 1, paragraph (2) of the 1945 Constitution, which follows:

[1] Khairul Fahmi, "Prinsip Kedaulatan Rakyat dalam Penentuan Sistem Pemilihan Umum Anggota Legislatif," *Jurnal Konstitusi* 7, No. 3 (2016): 119, https://doi.org/10.31078/jk735.

"The nation's sovereignty is at the hands of the people and is done under the Constitution".

People's sovereignty, which gives birth to the concept of democracy, is highly adjacent with public participation during the process of policy-making. Public participation can be defined as the opportunity for the public to be involved in every decision making process.[2] Therefore, it is indispensable to ensure the broadest possible open participation space for every layer in the society alongside the guarantee that consistent efforts to encourage public awareness are conducted.[3] This principle is further reinforced by the constitutional rights guaranteed by the state to citizens, as outlined in Article 27, paragraph (1) and Article 28C, paragraph (2).

The principle of openness or public participation in state administration is not merely an option, but an obligation that must be fulfilled. Without public participation, the community will be unable to fulfill their role in the administration of government activities and the development of the nation. Public participation can be conceptualized as a mechanism for achieving democratic governance. The comprehension of democratic governance can be achieved through the following means:[4]

a. A novel approach to the study of governance, exploring the intricate relationship between the state, society, and the market
b. Empirical analysis and academic discourse on state governance in the context of globalization, democracy, and decentralization, with concurrent interactions between the state, society, and the market
c. Theoretical frameworks and case studies on governance reform, emphasizing the concept of good governance.

Public participation holds a key role in regulatory making. The Constitutional Court in Decision Number 91/PUU-XIII/2020 assessing the Job Creation Law (Decision 91/2020) explained that doctrinally, public participation aims to:[5]

a) Foster a strong collective intelligence that will facilitate better analysis of potential effects and broader considerations in the legislative process for higher quality outcomes overall;
b) Construct a more inclusive and representative legislature in decision-making;
c) Boost public confidence in the legislature;
d) Fortify legitimacy and collective responsibility for decisions and actions;
e) Enhance citizens' comprehension of the role of parliament and parliamentarians;
f) Give citizens a platform to express their interests; and

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2 Mandi Jo Hanneke, "Meaningful and Authentic Participation: What Does It Mean and How Can We Ensure It in Amherst?", Memo to Charter Commission, (2017), 1–9.

3 Hidayati, "Partisipasi Masyarakat dalam Pembentukan Undang-Undang (Studi Perbandingan Indonesia dengan Afrika Selatan", *Jurnal Bina Mulia Hukum* 3, no. 2 (2019): 224-241, https://doi.org/10.23920/jbmh.v3n2.18.

4 Yusdianto, "Partisipasi Masyarakat dalam Pembentukan Program Legislasi Daerah", *Fiat Justitia Jurnal Ilmu Hukum* 5, no. 2 (2012): 4, https://jurnal.fh.unila.ac.id/index.php/fiat/article/view/66/67

5 Constitutional Court Decision 91/PUU-XII/2020, p.393.

g) Establish a more transparent and accountable parliament.

Regulation as a tool to control the lives of society should be acknowledged and understood by the subjects of society, which are the people themselves.

Public participation is a process integral to the regulatory-making process. Law 12/2011 requires 5 (five) steps for a law to be created and enacted:

1) Planning: The Bill should be planned and listed under the Legislative National Program (*Program Legislasi Nasional/Prolegnas*).
2) Making: The Bill is made through the making of Academic Manuscript that is accessible to the public. An Academic Manuscript should contain a philosophical, juridical, and technical basis to support the relevance of the enactment of the Bill. Thus, it should display urgency, problem identification, resolutions, and reasons why alternative options are not necessary, thereby justifying the particular bill.
3) Discussing: DPR and the President will discuss the making of the Bill in the Discussion process. There are two stages of discussion:
    a) The first stage includes commission meetings, joint commission meetings, Legislative Body meetings, Expenditure Body meetings, or special committee meetings through Introductory Consultation, Discussion on Issue Inventory Lists, and Mini Opinion Conveyance.
    b) Meanwhile, the second stage includes a plenary session which encapsulates decision making by the House of Representatives.
4) Ratification: The approval of a Bill during the two stages of discussion will then be announced by the House of Representatives and ratified by the President. The announcement should be done 7 (seven) days after the approval of the Bill.
5) Enactment, which is published and displayed in the Republic of Indonesia's State Gazette and Republic of Indonesia's Additional State Gazette or Republic of Indonesia's Official Gazette or Republic of Indonesia's Additional State Gazette.

It shall be highlighted that the formulation of a law as an element of a broader legal system is subject to dynamic change and cannot be regarded as static.[6] Regulation is formulated in response to the needs of society, which is also subject to change. This perspective aligns with the adage *recht hinkt achter de faiten aan,* which means the law lags behind societal developments and changes over time. In this case, the legislative body, in its capacity as the regulating entity, is obligated to align its practices with the societal demands or evolving dynamics of society. This entails the active incorporation of societal aspirations into the legislative drafting process, thereby ensuring that the legislation reflects the evolving needs and interests of the society it is intended to regulate.

Where public participation is an opportunity to fulfill people's rights and obligations, including in regulatory formation, it is important that such opportunity be given completely. The fulfillment of rights can be classified in 2 (two) circumstances: active or **meaningful** participation, where the public is the subject to

6 Lawrence M. Friedman, *The Legal System, A Social Science Perspective*, (New York: Russell Sage Foundation, 1975).

and is involved in every decision making. Meanwhile, passive participation only involves the public during significant events such as the election. The judges in Decision 91/2020 mentioned that there are 3 rights that should be fulfilled by the government in order to achieve meaningful participation: the right to be heard, the right to be considered, and the right to be explained. The interpretations do not limit the quantity or roles of subjects in public participation – initially all parties within or beyond the state structure may initiate ideas in the formation of laws.[7]

According to Mahfud MD, a democratic political configuration will produce responsive or populist legal products, or in other words, they are shaped in accordance with the dynamics of the people.[8] On the other hand, an authoritarian political configuration will yield conservative or orthodox legal products.[9] In this condition, the needs and dynamics of the people are not regarded as something urgent, but rather legal products are designed to perpetuate authoritarian hegemony. Therefore, public participation does not only influence the product of legislation, but more than that, meaningful participation can determine whether the legal product is responsive or conservative, and determine the future direction of the nation's democracy.

Danantara is a *sui generis* body created by the President to support the efficacy of state-owned enterprises' (SOE) operational and investment management. Danantara holds the authority to accommodate tasks, including cross-subsidy to other SOEs to prevent losses, supporting asset utilization, involvement in national and international partnerships for investments, and encouraging economic growth. Due to its preeminent role in Indonesia, it is compelling for the people to understand the formulation of Danantara, as the regulation will determine its operation and governance system.

The Danantara Regulation (Law Number 1 Year 2025) highlights a persistent problem in Indonesia's regulatory process: participation in name, exclusion in fact, despite the constitution's promise of transparency and public input. Although public consultations were ostensibly held, it is unclear whether these procedures actually reflected the principle of meaningful participation or if they were merely done for procedural reasons. A deeper problem—the continued use of top-down policymaking that risks eroding the democratic legitimacy of regulation itself—is highlighted by the contradiction between participatory goals and their actualization.

To critically assess whether participation in the formulation of the Danantara Regulation was truly meaningful, this paper uses normative methodologies – sourcing from books, journals, laws, and articles – to answer 2 (two) research questions. *Firstly,* this paper would assess measures that are necessary to ensure the implementation of meaningful participation promised under Law Number 12 Year 2011 *jo.* Law Number 13 Year 2022 on the Formation of Law, including any legal loopholes on the regulation undermining the processes, any challenges in implementation, and different interpretations in between. *Secondly,* this paper would observe whether the legal

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7 Jimly Asshiddiqie, *Constitutional Law and the Pillars of Democracy*. (Jakarta: Konstitusi Press, 2005), 315.

8 Mahfud MD, *Politik Hukum di Indonesia*, (Jakarta: PT Raja Grafindo Persada, 2009).

9 *Ibid.*

challenges, loopholes, or lack of implementation exist during the formulation and establishment of Law Number 1 Year 2025.

B. RESEARCH QUESTION

1. **What measures are necessary to ensure meaningful participation?**
2. **How is public participation implemented during the making of the Danantara Regulations?**

C. RESEARCH METHOD

This research will employ a normative approach, examining how a legal product is applied to a specific legal event.[10] The use of the normative approach is evident in the assessment of Law 12/2011 on the Formulation of Law, Law 1/2025 on SOE, and other derivative regulations. This research will use a qualitative method, which is significant to comprehend the phenomena in Danantara Regulation formulation and governance, and also in a holistic manner, through verbal and linguistic description, in a unique natural setting, and by the use of different natural methodologies.[11] Furthermore, this research will use a descriptive approach, which is used to describe or analyze a result of a study without using it to draw broad conclusions.[12]

II. DISCUSSION

A. Necessary Measures to Ensure Meaningful Participation

Adopting Roscoe Pound's concept, law is a tool for social engineering, operating within society to provide societal needs and shape societal behavior into a specific objective or order.[13] Public participation is closely related to this concept; law is effective when it considers the public's opinions and aspirations to achieve such objectives and maintain order. Moreover, public participation encourages confidence in the efficacy of regulatory implementation, as it prevents deficiencies that may arise solely by relying on lawmakers' perspectives.[14]

Public participation is not an automatic or god-gifted right. It can be effective when the authority facilitates people in utilizing their rights. In Indonesia, the peak shift can be seen since the reformation in 1998, where citizens hold the utmost position

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10 Abdulkadir Muhammad, *Hukum dan Penelitian. 1st edn.* (Bandung: PT Citra Aditya Bakti, 2004), 52.

11 Moleong, *Metode Penelitian Kualitatif*, (Bandung: PT Remaja Rosdakarya, 2014).

12 Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif dan R&D*, (Bandung: Alfabeta, 2011).

13 Nazaruddin Lathif, "Teori Hukum Sebagai Sarana Alat Untuk Memperbaharui Atau Merekayasa Masyarakat", *Palar Pakuan Law Review* 3, no.1 (2017), h. 73–94. https://doi.org/10.33751/palar.v3i1.402.; M. Zulfa Aulia, "Hukum Pembangunan Dari Mochtar Kusuma-Atmadja: Mengarahkan Pembangunan Atau Mengabdi Pada Pembangunan?", *Undang: Jurnal Hukum* 1, No.2 (2019), 363–92. https://doi.org/10.22437/ujh.1.2.363-392.

14 Firman Freaddy Busroh, "Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan", *Arena Hukum* 10, no.2 (2017), 227–50. https://doi.org/10.21776/ub.arenahukum.2017.01002.4.

in law formation processes,[15] And the government is required for transparency. Government transparency involves the public in policy-making, serving as a strategy, a means of communication, a means of dispute resolution, or a form of therapy. These aspects are some of the characteristics of a democratic state. In this case, the concepts of democracy and the principle of openness are inseparable components. Mahendra P. Kurnia et al. quote Burkens (1997) in his book entitled *Beginselen van de democratische rechtsstaat*, which states that the principle of openness is one of the minimum requirements in the concept of democracy, as explained below:[16]

a. Every person has the same rights in free and confidential elections;
b. Every person has the fundamental right to be elected;
c. Every person has political rights in the form of freedom of expression and assembly;
d. The people's representative body influences decision making through the means of *(mede) beslissing-recht* or the right to participate in decision making and/or supervisory authority;
e. The principle of openness in decision making and the open nature of decisions; and
f. Respect for the rights of minorities.

In addressing the concept of openness as a fundamental component of democratic principles, S.W. Couwenberg expounds on the five democratic principles that underpin the rule of law. These principles encompass the concept of accountability, the principle of publicity (*openbaarheidsbeginsel*), the principle of representation, the principle of political rights, and the principle of majority rule.[17] Each of these principles is interrelated. The principle of openness serves as a conduit for the dissemination of ideas, the supervision of governmental administration, and an evaluative instrument. The results of this input are then followed up using the principle of accountability, together with other principles, to form a democratic government. Therefore, meaningful participation in the context of a democratic state is a *conditio sine qua non* (absolute requirement), especially in the formulation of law.

Similar principles are enshrined in Law 12/2011, as amended. Law 13/2022:

1) clarity of purpose;
2) appropriate institutional or forming officials;
3) conformity between types, hierarchies, and substances;
4) enforceability;
5) usability;
6) formulation clarity; and
7) openness.

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15 Sylvia Yazid and Aknolt K. Pakpahan, "Democratization in Indonesia: Strong State and Vibrant Civil Societ"', *Asian Affairs: An American Review* 47, no.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, no.1 (2021), 161–78. https://doi.org/10.1080/13510347.2020.1796649.

16 Mahendra Putra Kurnia, Jazim Hamidi, dan Sobirin Malian, *Pedoman Naskah Akademik Perda Partisipatif: Urgensi, Strategi, dan Proses bagi Pembentukan Perda yang Baik*, (Yogyakarta: Kreasi Total Media (KTM), 2007), 22.

17 Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia*, (Surabaya: PT Bina Ilmu, 1987), 76.

In a general sense, upholding these principles can provide certainty on how public participation can be viewed. Sirajuddin et al. (2006), citing Wingert (1979), expanded the view of public participation into several understandings, including:[18]

a. Public participation as a policy
   This understanding posits that public participation is an appropriate and beneficial policy to implement. This understanding is predicated on the notion that the people who have the potential to be sacrificed or victimized by a development project have the right to be consulted first.
b. Public participation as a strategy
   This understanding posits that public participation functions as a strategy to gain support from the people. This understanding is predicated on the notion that when the people perceive themselves to have access to decision-making and the people's concerns at each level of decision-making are well documented, then the decision is considered credible
c. Public participation as a form of communication tool
   This understanding posits that public participation serves as a tool to gather input in the form of information during the decision-making process. This understanding is predicated on the notion that the government is instituted to serve the public. Therefore, the views and preferences of the people are valuable inputs for making responsive decisions.
d. Public participation as a means of dispute resolution
   This understanding posits that public participation serves as a mechanism to mitigate conflict by seeking to achieve consensus from existing opinions. This understanding is based on the notion that the exchange of ideas and perspectives can foster greater understanding and tolerance, and reduce mistrust and confusion.
e. Public participation as therapy
   This understanding posits that public participation is organized to address psychological challenges within the people, including feelings of helplessness, diminished confidence, and a perception of being a marginal component of society.

Participation is only meaningful when it empowers, not when it merely informs. The principle of meaningful participation is not self-executing; it depends on the existence of clear legal frameworks, institutional commitments, and procedural safeguards. Without these measures, participation risks becoming symbolic, serving form over substance. Thus, identifying and implementing the necessary measures becomes a precondition for realizing the democratic ideals embedded in regulatory processes. As mentioned in Decision 91/2020, meaningful participation is a threshold that ensures whether a legal product has formally and materially settled issues in

[18] Mokh. Najih, Sirajuddin, Fifik Wiryani, dan Ana Sopanah, *Hak Rakyat Mengontrol Negara: Membangun Model Partisipasi Masyarakat dalam Penyelenggaraan Otonomi Daerah*, (Jakarta: Yappika, 2006), 14-16.

society. Meaningful participation can then be classified into several levels according to the degree of public participation in the running of a government, including:[19]

1. First Level
   At this level, the government does not provide any space for public participation in the state's administration. The concept of meaningful participation is intricately linked to the realms of manipulation and therapeutic intervention.
2. Second Level
   At this level, the public is presented with the opportunity to engage in active participation, articulate their perspectives, and express their concerns. However, there is no guarantee that these voices or opinions will receive serious consideration from legislators. Meaningful participation is exhibited at the level of pseudo-participation, consultation suppression, and information suppression.
3. Third Level
   At the final level, the conditions are delineated by the degree of citizen power. At this stage, meaningful participation is carried out in collaboration with the community within the policy-making process. Consequently, the extent of partnership, delegation of authority, and control includes the people.

Specifically, S. Arnstein's commonly used assessment, the Ladder of Citizen Participation, can be used to observe the degree of public participation efficacy covered under Law 12/2011. The assessment incorporates:[20]

1) Manipulation: People are put on advisory boards or rubber-stamp advisory committees to "educate" or "engineer" their support. The bottom rung of the ladder represents how powerholders have distorted participation into a public relations tool rather than actual citizen involvement.
2) Therapy: In specific capacities, group therapy—which is disguised as citizen participation—should be at the bottom of the ladder, as it is dishonest and conceited. Based on this supposition, the specialists subject the citizens to therapeutic group therapy while pretending to involve them in planning. This type of "participation" is particularly invidious because, even though citizens are actively involved, the emphasis is on fixing their "pathology" rather than addressing the racism and victimization that give rise to it.
3) Informing: The most crucial first step toward lawful citizen engagement may be educating the public about their rights, obligations, and choices. All too often, however, the focus is on a one-way information flow—from authorities to citizens—without any avenue for feedback or leverage in negotiations. Under these circumstances, especially if information is given late in the planning process. There are few opportunities for people to make an impact on the program that is "for their benefit." The news media, brochures, posters, and answers to questions are the most common forms of one-way communication.

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19 Sirajuddin, Fatkhurohman, dan Zulkarnain, *Legislative Drafting: Pelembagaan Metode Partisipatif dalam Pembentukan Peraturan Perundang-Undangan*, (Malang: Setara Press, 2015).

20 Arnstein, S. R. "A Ladder Of Citizen Participation", *Journal of the American Institute of Planners* 35, no. 4 (1969): 216–224, https://doi.org/10.1080/01944366908977225.

4) Consultation: Similar to educating people, asking for their ideas can be a valid first step toward gaining their complete participation. However, this step on the ladder remains a charade if other forms of engagement do not accompany consultation with them, as it does not guarantee that the public's opinions and concerns will be taken into consideration. Public hearings, neighborhood meetings, and attitude polls are the most common ways to consult people. When those in positions of authority only allow citizens to contribute ideas at this level, participation is reduced to a ceremonial act. The number of people who attend meetings, take brochures home, or complete a questionnaire is used to gauge participation, and people are essentially seen as statistical abstractions. Through all of this, citizens can demonstrate that they have "participated in participation." On the other hand, individuals in positions of authority can prove that they have taken the necessary steps to involve "those people."
5) Placation: Although tokenism is still evident, citizens start to exert some influence at this level.
6) Partnership: Negotiations between citizens and those in positions of authority actually redistribute power at this rung of the ladder. Through shared policy boards, planning committees, and methods for resolving impasses, they agree to share planning and decision-making responsibilities. The ground rules cannot be changed unilaterally once they have been established through a compromise. A community's organized power base, to which the citizen leaders report, the ability of the citizens group to hire (and fire) its own technicians, attorneys, and community organizers, and the financial means to compensate its leaders for their arduous work are all necessary for a partnership to be successful. Citizens have some real negotiating power over the plan's outcome with these ingredients (as long as both sides feel it is helpful to preserve the partnership).
7) Delegated Power: Citizens can also gain dominating decision-making authority over a specific plan or program through negotiations with public officials.
8) Citizen Control: There is a growing push for neighborhood control, black control, and community control over schools. It is crucial to distinguish between language and intent, even though no one in the country has complete control over either. People are merely asking for the level of authority (or control) that ensures residents or participants can run an institution or program, have complete control over managerial and policy matters, and be able to negotiate the terms under which "outsiders" may alter them.

Beneficial to achieving the third level of meaningful participation and at least at the stage of Partnership in the Ladder Level of Citizen Partnership accord to Arnstein's views, ideally 3 (three) rights should be fulfilled: 1) the rights of the people to be heard, 2) the rights of the people to be considered, and 3) the rights of the people to be explained. Moreover, the Court specifically highlighted that at least meaningful participation can be achieved in 3 (three) stages of the law formation process:

> "*i) submitting the draft of the bill; ii) joint discussions between the House of Representatives and the President, as well as the 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."

Article 96 of Law 13/2022 elucidates that these rights should be facilitated through the opportunity for the public to provide oral and/or written contributions at each stage of the legislative process.[21] Moreover, aspirations can be collected during the legislator's consultation, including public hearings, working visits, seminars, workshops, discussions, and other public consultation activities.[22] At the same time, academic manuscripts and/or legislation drafts must be readily accessible to the public.[23] The results of these public consultations are taken into account during the planning, drafting, and discussion of the Bill.[24]

The challenge of ensuring meaningful participation lies not in the absence of legal norms, but in their inadequate translation into practice. The authors found several legal loopholes that prevent the implementation of meaningful participation in Indonesia. Consequently, these obstacles have prevented Indonesia from advancing beyond the levels of informing or consultation, as defined by the Ladder Level of Citizen Participation.[25]

The initial question should be what is considered public? To what extent is the participation of the "public" considered?[26] Primarily, Article 96 of the Law 13/2022, as reformulated after Decision 91/2020, constructed the definition of "public" as an individual or group of people who are directly affected and/or have an interest in the substance of the regulation. Alas, the dichotomy between direct and indirect affected people, or those with and without interests in the law, is not explained further.[27] The narrow definition of the extension of directly or indirectly affected subjects in public participation can be manipulated, especially to disadvantage marginalized communities and minorities. It is necessary to determine what constitutes public participation because it influences how meaningful participation in regulatory formulation can be conducted. The determination of "public" is also connected to the influence that such regulation has in legalizing or formalizing the community's legal requirements and/or societal behaviors in pursuit of a specific objective.[28]

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21 Law Number 13 Year 2022 on the Second Amendment of Law Number 12 Year 2011 on Regulatory Formulation, Article 96 paragraph (3).

22 *Ibid,* Article 96 paragraph (6).

23 *Ibid,* Article 96 paragraph (4).

24 *Ibid,* Article 96 paragraph (7).

25 Zainal A. Mochtar, Yance Arizona, Faiz Rahman, Umar Mubdi, Garuda Era, dan Mochamad Adli, "From Meaningful to Meaningless Participation: The Tragedy of Indonesia's Omnibus Law on Job Creation", *Jurnal Media Hukum* 31, no. 2, (2024), https://doi.org/10.18196/jmh.v31i2.23557

26 *Ibid*.

27 Indonesian Center for Legislative Drafting (ICLD), "Upaya Terburu-buru Mengakomodir Bentuk Undang-Undang yang Diperkenalkan oleh Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja dalam Sistem Perancangan Peraturan Perundang-undangan", 12-13, https://icldrafting.id/wp-content/uploads/2022/02/CATATAN-KRITIS-ICLD-ATAS-RUU-PERUBAHAN-KEDUA-ATAS-UU1211.pdf.

28 M. Zulfa Aulia, "Hukum Pembangunan Dari Mochtar Kusuma-Atmadja: Mengarahkan Pembangunan Atau Mengabdi Pada Pembangunan?", *Undang: Jurnal Hukum* 1, no.2 (2019), 363–92. https://doi.org/10.22437/ujh.1.2.363-392.

In principle, everyone has the right to obtain data or information regarding the formation of law, without exception or limitation. At the same time, lawmakers must provide such access and participation.[29] Angga Prastyo, in his journal, mentioned that, practically, it is arduous to facilitate the needs of approximately 270 million citizens, specifically 190 million registered on the Permanent Voter List (Daftar Pemilih Tetap) in Indonesia, as of 2022.[30] He perceived that the above terminologies would not eliminate the rights to participation, but instead uphold efficiency and effectiveness in law formation. Therefore, he classified "directly affected people" as 1) Representation of the 'directly affected or interested people'; 2) Legal Analyst; 3) Academician and Researchers; Experts or Professionals; and/or 4) Non-governmental organization.

Despite the precise classification of "public" groups to which public participation can be offered, the authors still believe that legislators should reconsider the boundaries arising from these terms. Explaining who can contribute and who can be affected will actually determine whether the law can be effective and be generally applicable. On another note, the authors suggest that the above classifications are part of representations aimed at achieving efficacy and effectiveness, which have primarily contributed to the creation of Academic Manuscripts or other academic reports before the enactment of the Law (most often by academicians and professionals). Besides, in relation to the word "public", the authors view that the term can also include "fractions represented in the House of Representatives" or the "Executives or Legislatives". Does the public also include the government, which already possesses the authority to create, consider, and enact laws? Furthermore, the authors argue that by including the terms "effects" and "interests", the lawmaker inadvertently creates segmented groups.

Secondly, Law 13/2022 has established a benchmark for achieving public participation, including transparency, through consultation mechanisms. However, no further procedures are in place to ensure that consultations are moved forward to inform and evaluate decision-making.[31] So far, the Law also does not explicitly determine the quality and quantity criteria of public participation, which, in effect, contradicts the commandment of upholding people's sovereignty.[32] The absent mechanisms provided by the Law, nor Court Decisions, do not signal the fulfilment of people's sovereignty. Law 13/2020 should provide a baseline mechanism or methods that the government can use to consider community inputs. This indicates that Law 13/2022 prioritizes the formal aspects of regulatory formulation and does

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29 Hidayati, *Loc. Cit.*

30 Angga Prastyo, "Limitation of Meaningful Participation Requirements in the Indonesian Law-Making Process", *Jurnal Hukum dan Peradilan* 11, no.3 (2022), https://doi.org/10.25216/jhp.11.3.2022.405-436

31 M Nurul Fajri, "Legitimacy of Public Participation in the Establishment of Law in Indonesia", *Jurnal Konstitusi* 20, no.1 SE-Articles (2023) h: 127. https://doi.org/10.31078/jk2017.

32 Haliim Wimmy, "Demokrasi Deliberatif Indonesia: Konsep Partisipasi Masyarakat Dalam Membentuk Demokrasi Dan Hukum Yang Responsif", *Jurnal Masyarakat Indonesia* 42, no.1 (2016), h.19–30. https://doi.org/10.14203/jmi.v42i1.556.

not provide sufficient space to develop substantial criteria for assessing public participation.

Thirdly, the three rights of the people are not explicitly constructed in Law 12/2011; therefore, it leaves loopholes for the authority to attain such rights.[33] Consecutive used terms that are not obligatory/commandatory can be seen in provisions,[34] Such as "Academic Manuscript *can* be accessed publicly"; "the lawmaker *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 (...)".[35] This contradicts the fact that public participation is a right, which means that it is obligatory to provide transparency and accountability in regulatory formulation processes, from consultations to decision-making. The above terms also offer space for lawmakers to uphold, implement, and maintain open initiatives that facilitate public participation.

Lastly, the objective of Law 12/2011 appears to focus on formality rather than substance in public participation. Aside from the designated mechanisms of public participation, as stipulated under Article 96, the Court in Decision 91/2020 did not discuss the Academic Manuscript or any material related to amending the Job Creation Law carried out by the DPR. However, the focus of the assessment was to measure public participation in the formulation process. The draft of the Job Creation Law is considered only a formality to fulfill the requirements of drafting laws. Consequently, consultation mechanisms can be easily manipulated to satisfy requirements for public participation.[36]

The authors would like to cite Satjipto's statement that for a law to be aspirational and participatory, it has to be (i) general and comprehensive, and as such, specific and limited in its goodness and attributes; (ii) universal in nature, as laws are formulated with future events; and (iii) has power to correct and improve itself. In other words, an effective law should cover all types and characteristics of groups and interests when settling a societal issue.'' Correspondingly, the Government is urged to provide a wide array of mechanisms to accommodate public participation and evaluation of such involvement.

For instance, a study conducted by Santi Dwi Desy Lestari and Imam Yuadi titled "Mapping Sentiment towards Danantara: A Combined Clustering and Text-Based Predictive Model" inspected the people's opinions and sentiments on the establishment of Danantara.[37] They utilized a Text-Based Perspective Model with three different clusters of concerns: political criticism, neutral, and positive support

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33 Fahmi Ramadhan Firdaus, "Public Participation after the Law- Making Procedure Law of 2022", *Jurnal Ilmiah Kebijakan Hukum* 16, no.3 (2022): h. 495. https://doi.org/10.30641/kebijakan.2022.v16.495-514.

34 Lu Feng et al., "Decision-Maker-Oriented vs. Collaboration: China's Public Participation in Environmental Decision-Making"', *Sustainability (Switzerland)* 12, no.4 (2020). https://doi.org/10.3390/su12041334.

35 Zainal Arifin Mochtar, et.,al. *Loc. Cit.*

36 M Nurul Fajri, *Loc. Cit.*

37 Santi Dwi Desy Lestari & Imam Yuadi, "Mapping Sentiment towards Danantara: A Combined Clustering and Text- Based Predictive Model", *Journal of Law, Politic and Humanities* 5, No. 6 (2025), https://doi.org/10.38035/jlph.v5i6.2295

towards Danantara's formation, using the Cross-Industry Standard Process for Data Mining (CRIPS-DM) method. The study reflected that the majority of respondents (online users) are in the 'political criticism' and 'neutral' clusters. The high classification under the 'political criticism' cluster indicates that the existence of Danantara is still viewed skeptically by the public on social media, especially when it is related to corruption issues. On the other hand, users on the 'neutral' cluster believe that there has been sufficient transparency and open discussions about economic and efficiency. However, this cluster does not diminish the presumption of several sensitive issues, such as corruption and conflict of interest. While it is acknowledged that such data is limited to the collection of digital statements, the study has sparked an initiative to conduct evaluations of regulatory formulation in the digital realm. The authors suggested digital platforms should be increasingly used to obtain public trust in SOE's projects, informing and responding to negative sentiments, collaborating across sectors to expand the reach of policy messages and reduce public resistance, as well as using them for opinion polls and surveys to minimize prejudice-based mechanisms.

On another aspect, the authors insist that the formal procedures of ensuring public participation have been well established; however, it is also essential to corroborate their validity. Amending derivative regulations, for the purpose of expanding and strengthening physical and online public participation mechanisms, is necessary. Furthermore, additional inputs on crucial terminologies in Law 13/2020 constitute a significant part in determining objectives and targets in regulatory formulation.

B. The Implementation of Public Participation in the Formulation of Danantara Regulations

In a democratic society, the legitimacy of regulation does not rest solely on the authority of the state, but on the extent to which the voices of its people are heard in the lawmaking process. The formulation of the Danantara Regulation (Law No. 1 of 2025 on State Owned Enterprises) has brought renewed attention to the principle of public participation. Yet, the question remains: has the participation process in this regulatory framework been merely procedural, or has it truly embodied the spirit of meaningful engagement envisioned by Indonesia's constitutional principles?

To reiterate, one way to exert meaningful participation is to provide access to regulatory formulation processes, such as publishing Drafts and Academic Manuscripts transparently and including people in discussion forums. Initially, the public had not been exposed to Danantara's academic manuscript or Bill after the announcement of the National Legislative Program. In addition to that, transparency extends not only to the discussion part, but also to every regulatory formulation process. It can be seen that no further explanations are incorporated in the National Medium-Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional*/RPJMN) and the National Long-Term Development Plan (*Rencana Pembangunan Jangka Panjang Nasional*/RPJPN) about strategic, concrete, and comprehensive methods to encourage cross-SOE, corporations, and governmental

institution collaborations through Danantara in four years.[38] Moreover, such methods were not expanded when the RPJMN or RPJPN mentioned the Government's goals to leverage the national economy from 5.05% (five point zero five percent) to 8% (eight percent) until 2029.

Furthermore, the internal provisions of Danantara have also been very contradictory. The absence of a legislative draft can prevent the public from contributing to the context that will be legislated and deficiencies that arise in the formulation. For example, Article 33 of Government Regulation 10/2025 stipulates that for the first time, the President may appoint a minister who oversees government affairs in the field of investment as the chief executive of the implementing agency. This position stands in direct opposition to the stipulations outlined in Article 23 of Law 39/2008 on State Ministries, where ministers are prohibited from concurrently holding positions as other state officials in accordance with law and regulations, commissioner or director in state-owned enterprise or private companies, or leaders of organizations funded by the state budget and/or regional budget. Public participation plays a role in identifying and correcting cross-regulation contradictions.

In addition, Article 15B of Law 1/2025 also prohibits members of the board of directors of limited liability companies from holding concurrent positions, one of which is a structural and functional position in ministries/institutions of the Central Government or Local Government. Regarding the provisions concerning the hierarchy of laws and regulations in Indonesia, as delineated in Article 7 of Law 12/2011 on the Formulation of Laws and Regulations, the hierarchy mentioned above is explained as follows:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decrees of the People's Consultative Assembly;
3. Laws/ Government Regulations instead of Laws;
4. Government Regulations;
5. Presidential Regulations;
6. Provincial Regulations; and
7. Regency/ Municipal Regulations

According to Article 8, paragraph (2) of Law 13/2022, legislation is recognized as possessing binding legal force as long as it is mandated by higher legislation or formed based on authority. The principle of *lex superiori derogat legi inferiori*[39] is also promoted by Hans Kelsen's Stufenbau Theory, which states that the system of norms in a nation is fundamentally structured in tiers, where lower norms are constrained from contradicting higher norms.[40] In this case, lower legal norms, such as Government Regulations, cannot override prohibitions established in higher legal norms, such as Laws. In this case, the justification of *lex specialis derogat legi generali* cannot be applied, as this justification can only be invoked when the conflicting norms

[38] Presidential Decree Number 12 Year 20225 on National Medium-Term Development Plan, Appendix I p. 169.

[39] Bagir Manan, *Hukum Positif Indonesia,* (Yogyakarta: FH UII Press, 2004), 56.

[40] Eddie Mochtar, *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas, dan Filsafat Hukum*, (Yogyakarta: FH UGM Press, 2016), 146.

are of equal hierarchical rank.[41] This issue then raises its own debate, not only in terms of its content, but also because the drafting process was not open to the public. Public participation plays a role in identifying and correcting cross-regulation contradictions. As previously outlined, the closed drafting process has the potential to impact the quality and content of the legislation produced negatively. In this case, conflict can also arise because the drafting process is closed, so that the public only finds out after the regulation has been enacted, without being involved beforehand.

Furthermore, there are additional issues related to transparency and public participation in the establishment of Danantara. The Head and the Deputy Head of Danantara were appointed on October 22, 2024, through Presidential Decree No. 142/P of 2024.[42] This Presidential Decree preceded Law 1/2025 and Government Regulation 10/2025, which were issued later in February 2025. From a legal perspective, the appointment of public officials should be based on the authority stipulated by law.[43] In this case, Presidential Decree 142/2024 can be regarded as a state administrative provision (*Kebijakan Tata Usaha Negara*/KTUN) that must meet material and formal requirements to be considered valid.[44] Regarding the two requirements above, the Presidential Decree in question has not yet fulfilled the material requirements because, at the time the Presidential Decree was issued, there were no basic regulations to serve as a reference, as Law 1/2025 was issued afterwards.[45] The formal requirements were not met because the provisions governing the form of the decree, which should have been determined in the legislation that formed the basis for the issuance of the decree, did not exist at that time.[46] Additionally, the presidential decree was not publicly accessible at the time this article was written or published.

The *inaccessibility of the Presidential Decree also violates one of the principles contained in the General Principles of Good Governance (Article 10 of Law Number 30 of 2014 concerning Government Administration), which is the principle of openness, as well as* a component of meaningful participation. Even though a Presidential Decree is individual in nature, it does not inherently imply that access to information related to the decree is restricted to the public. This principle is further elaborated in the Explanation of Article 10 paragraph (1) letter f of the law, which states that the principle of openness is a principle that serves the public to obtain access to and obtain accurate, honest, and non-discriminatory information in the administration of government, while still paying attention to the protection of personal and group rights and state secrets. Thus, the principle of openness, as contained in Law 30/2014, and meaningful participation have not been fully implemented in the process of issuing the presidential decree.

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41 *Ibid.*

42 Biqwanto Situmorang, *Badan Pengelola Investasi Danantara berbeda dengan Kementerian BUMN*, Antara News, 2024, https://www.antaranews.com/berita/4415313/badan-pengelola-investasi-danantara-berbeda-dengan-kementerian-bumn.

43 Law 30 Year 2014 on State Administrative, article 5 point (a).

44 Ridwan HR, *Hukum Administrasi Negara*, (Yogyakarta: UII Press, 2003), 124-126

45 *Ibid.*

46 *Ibid.*

Alternatively, transparency in the legislative process can be classified as a part of public information. As stated in Article 1, paragraph 2 of Law 14/2008 on Public Information Disclosure, public information is defined as information that is produced, stored, managed, sent, and/or received by public agencies related to the administration of the state and/or public agencies, as well as other information related to the public interest. In such instances, the various stages in the formation of legislation, including academic manuscripts and bills, can be considered as public information. The legal framework under scrutiny acknowledges the right to information as an inherent human right and the disclosure of public information as a means of enhancing public oversight of the state's administration and its associated public agencies, as well as all matters pertaining to the public interest.

Reflecting on the findings above, the authors conclude that the Government has overstepped even the formal procedures of regulatory formulation covered under Law 13/2022, let alone the substantiality of formulating the Danantara regulation, such as conducting public hearings, seminars, work visits, or polls to collect public perceptions and aspirations. Consequently, precedents of body or law establishment may diminish and disrespect the regulatory formulation process as mandated under Law 13/2020, which affects the authority's power to create and enact laws according to their interests. With this, the authors recommend that the President and related lawmakers reformulate and ensure careful policy considerations legitimize internal operations.

III. CONCLUSION

It has been established that public participation is a vital component of democratic governance. The concept of participation that is emphasized is active or meaningful participation, with the public being involved in every stage of the legislative drafting process, which means it is not limited to voting, such as in general elections. To achieve meaningful participation, Constitutional Court Decision Number 91/PUU-XIII/2020 established a minimum threshold, delineating that the public has the right to be heard, the right to be considered, and the right to be informed. To eliminate mere ceremonial consultation and foster substantive involvement, the Court noted that aspirations can be collected through physical or digital methods via events, Such as work visits, seminars, and public consultations.

Alas, in practice, meaningful participation has not been achieved in every circumstance of regulatory making. This paper particularly utilizes Arnstein's "Ladder of Citizen Participation" Theory to measure the level of effectiveness of public participation, ranging from the stage of manipulation (where people are only used to justify lawmakers' abuse of power) to citizen control (where citizens hold the ultimate power in policy making). This paper finds that Indonesia is still at the level of informing or consultation, whereas it is ideal for a democratic state to be at least at the partnership level.

Despite the existence of regulatory provisions related to meaningful participation within the Indonesian legal framework, numerous obstacles impede the effective implementation of this concept. For instance, the employment of ambiguous

terms in the provisions on meaningful participation, as evidenced by Law 13/2022, which contains provisions that do not stipulate an obligation to disclose the outcomes of deliberations to the public, along with the ambiguous categorization of direct/indirect impact, interests, and the public, serve as salient examples.

Presently, Danantara was established as an institution to strengthen national investment. The establishment of the organization was guided by the principle of fostering meaningful participation at all stages of its operation. It is essential to highlight several key points regarding the promotion of meaningful participation in the establishment of Danantara. However, several legal deficiencies arise in the formulation Danantara Regulation, including the absence of Academic Manuscript and Draft of the Bill, the opposition between Government Regulation Number 10 Year 2025 with the principles under the Law 39 Year 2008 on State Ministries, and the overstepping of the Presidential Decree over the Danantara Regulation itself regarding the appointment of the Head and Deputy Head, which does not only fails to comply with the material and formal requirements for a State Administrative Decree, but is also regarded as lacking transparency due to its lack of public dissemination.

In view of this issue, it is essential to address existing formal loopholes, such as enhancing the use of multi-interpretative words in several provisions of Law 13/2022. To promote meaningful participation, the government can establish mechanisms that facilitate such participation, such as utilizing digital platforms to receive public feedback and concerns. Furthermore, legislators are strongly encouraged to reevaluate and potentially amend provisions that have been identified as problematic.

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