



THE URGENCY OF REHARMONIZATION IN CONSTRUCTION OF THE STAGE FORMATION OF LAW

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ABSTRACT

Indonesia is a state of law that relies on a rule of law formed as a basic rule in the state and society. The law as the primary basis must be made following the principles of the Formation of good law so that it is expected that later it can be applied and has binding legal force for all levels of society. However, the current situation is far from the expectation of the formation of good law. For example, the Formation of a job creation law which is considered not to involve the community actively, many articles are contrary to legal principles, disharmonized and unsynchronized between law. The formation of law seems in a hurry so there are many errors in writing (typo) and many other things. Therefore, it is necessary to reconstruct the stages in making good law. This paper uses normative research with a statutory approach, a comparative approach, and finally concludes with a conceptual approach where concepts that are considered suitable can be applied in Indonesia. This article provides two conclusions. First, the practice of harmonization, synchronization and consolidation of conceptions that have been well implemented but only exist at the planning and drafting stages of the Bill. While after the discussion/mutual agreement (plenary), no further harmonization and synchronization are carried out. Second, the post-discussion (plenary) re-harmonization stage can provide space for the implementation of educational facilities, consultations and publications of pre-validation and enactment of law that will be ratified in the form of meaningful public participation.

Keywords: Reharmonization; Study; Stages

INTRODUCTION

The concept of a state of law or often referred to as the rule of law is a concept that prioritizes law as the basis for carrying out an action taken by the state. Indonesia as a state of law is stated in Article 1 paragraph (3) of the 1945 Constitution, which reads, “*The state of Indonesia is a state of law.*” This understanding is a teaching that says that the highest power lies in the Law or there is no other power except the Law.¹

The characteristics of the rule of law According to Julius Stall²:

1. Protection and recognition of human rights
2. The state is based on trias political;
3. Government is held based on the Law (wetmatig bestuur); and
4. The existence of a state administrative court tasked with handling cases of unlawful acts by the government (*onrechmatige overheidraad*).

On this basis, one of the highlights is regarding the Act, which is referred to as the law, which will become the primary basis for administering the government. To ensure that law can support the Formation of the rule of law, at least two rules are needed, namely the basic order of law and the orderly formation of law. Orderly basic law related to principles, types, hierarchies, and content. While orderly formation of law related to planning, preparation, discussion, validation, and enactment.³ Therefore, the law must be made

¹ Ida Bagus Rahmadi Supancana, An Idea About Grand Design of Indonesian Regulatory Reform (Atmajaya, 2017), accessed April 20, 2022, http://catalog.danlevlibrary.net/index.php?p=show_detail&id=17441&keywords=.

² *Politics: Aristotle / Penejermeah, Saut Pasaribu | OPAC National Library of Indonesia.*, nd, accessed April 18, 2022, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1070635>.

³ Bayu Dwi Anggono, “Order, Types, Hierarchy, and Content of Legislation: Problems and Solutions,” Legal

following the principles of establishing good laws contained in Article 5 of Law Number 12 of 2011 concerning law-making, namely clarity of purpose, proper institution or forming organs, conformity between types and content of content can be implemented, efficiency and effectiveness, clarity of formulation and openness as well as orderly Formation that is following statutory law.

The current practice in the formation of laws often results in several problems the Formation of laws, which often result in hyper-regulation, conflicting, overlapping, multi-interpretation, inconsistency, ineffectiveness in the Formation of Law, unnecessary burden, and high-cost economy.⁴ This is compounded by the egoistic nature of the legislators who seem indifferent so that instead of the current state of Covid-19, it blurs and even eliminates the transparency process, which is a must in the Formation of a law. Following article 96 of the Law, the public has the right to provide input verbally and in writing in the formation of law and Law in various facilitated forums such as public hearings, work visits, socialization, seminars, workshops, and discussions.

For example, the formation of the Job Creation Law which requires a conflict of interest, with the excuse of COVID-19, the concept of public participation is set aside. This should not rule out the process of transparency and the means of public participation in the formation of a law to not function properly. Openness in the Formation of laws is essential, it should be in the formation stage, and the collection of opinions from the community should not only be at the time of drafting a law (public consultation) but should also be in realizing openness (transparency) that there is a legal requirement that is being discussed.

The principle of prudence in the formation of law occurred at the time of the formation of the Job Creation Act, namely the case of typos that occurred in several articles that should have been in the formation of the law so that the sacredness of a law that was formed was violated⁵. Each of these

Problems 47 (2018): 1–9.

⁴ Ida Bagus Rahmadi Supancana, *An Idea About the Grand Design of Indonesian Regulatory Reform*.

⁵ Vera Bararah Barid M. Jeffri Arlinandes Chandra, Rofi Wahanisa, Ade Kosasih, et al., “Juridical Review of the Formation of Systematic, Harmonious and Integrated Legislation in Indonesia,” *Indonesian*

stages must, of course, be guarded and ensured so that they are not carried out in a perfunctory manner but is carried out thoughtfully and with a complete sense of responsibility.

The fact that is happening at this time is the case of the job creation law, which lacked transparency and openness at the time of its formation, giving rise to a polemic, namely the case of typos.⁶ Related to what happened in several articles of the job creation law, there must be principles that need to be considered in the formation of the law, namely prudence, so that the sacredness of the law that is formed will be meaningful. Moreover, there are claims to delete articles without changing substance, namely after they were ratified in the plenary meeting of the House of Representative and not yet signed by President Joko Widodo. The government and the House of Representatives claim that there are articles that should be deleted in the job creation law.

Presidential Special Staff for Legal Affairs, Early Purwono, admitted that the State Secretariat deleted one article in the work creation law. The deleted article was the provision for amending Article 46 of Law Number 22 of 2001 concerning Oil and Gas. In the 812-page work creation law, which is submitted by the House of Representatives to the President, the provision is contained in Article 40 point 7, which amends the provisions of Article 46 of the Oil and Gas Law. However, the article is not stated in the latest 1,187-page version of the job creation law, which the government submitted to community organizations such as the Indonesian Ulema Council (MUI), Nahdatul Ulama (NU), and Muhammadiyah. Dini said the article was deleted under the agreement in the working committee meeting between the House of Representatives and the government. “The point is that Article 46 should not be in the final text because it was decided to return the article to the

Legislation Journal 19, no. 147 (2022): 1–11, <https://undang-jurnal.peraturan.go.id/index.php/jli/article/view/790>.

⁶ Kompas.com, “Ultimately Creative Job Creation Law: Article Deleted, Typing Mistakes, Up to Court Reasons Page All, - Kompas.Com,” accessed April 20, 2022, <https://nasional.kompas.com/read/2020/11/04/07252691/Law-copy-of-work-ugal-again-article-deleted-wrong-type-until-reason-palace?page=all>.

rules in the existing law at the committee meeting. That provision is contained in Article 40 point 7, which amends the provisions of Article 46 of the Oil and Gas Law.

The practices that occurred during the formation of the job creation law, of course, gave rise to the assumption that there were parties who intentionally included or tucked the draft into the work job creation law and this practice may have been happening for a long time and afflicted the existing law. Another possibility that can occur is that the results of the discussion of the bill between the House of Representatives and the government may be misinterpreted and interpreted differently from the results of the agreement by people who have an interest so there must be a strict monitoring mechanism regarding the results of the meeting as outlined in the bill. Laws to be promulgated.

Therefore, there is a need for a new mechanism (reconstruction) of the stages in the Formation of Law to accommodate the precise openness of each Stage. If we look at the practice (Best Practice) that occurs in France, namely the necessity of pre-ratification testing by the Constitutional Council Institution so that if it does not get approval, then the Law cannot be enacted, it also provides opportunities for public consultation and education before being passed.

In accordance with the mandate of Article 5 of Law 12/2011, one of the principles for forming good Law is openness. Elucidation of Article 5 of Law 12/2011 explains that the “principle of openness” is that in the Formation of law starting from planning, preparation, discussion, validation, and enactment as transparent and open. so that the absorption of aspirations is not only in the formation of the law but is present at every stage. Participation in each stage provides opportunities for the community to be able to provide their opinions and input on the law to be passed.

This kind of practice in France, needs to be imitated and practiced in Indonesia, so even though Indonesia there is a testing mechanism after it has been promulgated by the Constitutional Court if there is some kind of post-discussion review so that there is a media for public consultation and public education that occurs after the discussion before being promulgated.

The review mechanism is expected to be a form of meaningful community participation,

namely that there are at least three prerequisites.⁷: First, the right to be heard (right to be heard), Second, the right to be considered (proper to be considered), and third, the right to get an explanation or answer to the opinion given (right to be explained).

RESEARCH METHOD

The research method that will be used in this research is normative research taken from library materials, especially those related to legal issues,⁸Which is then an approach that emphasizes the search for norms contained in the provisions of the Legislation (PUU) and existing legal theories and uses a legal research approach⁹. The statutory approach is research that prioritizes legal materials in the form of PUU as primary reference material research. The statutory approach is used to examine a PUU in normalization until its practice still has problems (legal issues) to obtain an excellent legal concept. Then it is concluded with the concept of a conceptual approach, which is a type of approach in legal research that provides an analytical point of view of problem-solving in legal research seen from the aspects of the legal concepts that lie behind it or even can be seen from the values contained in the normalization of a regulation. Relation to the concepts used.

DISCUSSION

1) Stages of Legislation and the Role of Public Participation

The stages of the formation of law in Indonesia are contained in Law No. 12 of 2011 in conjunction with Law 15 of 2019, conjunction with Law No. 13 of 2022, concerning the second amendment to the Law on the Formation of Legislation. In theory, the Formation of law is divided into three major stages, namely the ante-legislative which includes Research, Submission of Initiative Proposals, Design, Submission of

⁷ *Constitutional Court Decision Number 91/PUU-XVII/2020*, 2019.

⁸ “Normative Legal Research: A Brief Overview/ Prof. Dr. Soerjono Soekanto, S. LAW., M. LAW., Sri Mamudji, S. LAW., MLL | OPAC of the National Library of Indonesia,” accessed April 18, 2022, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1174906>.

⁹ Peter Mahmud. Marzuki, *Legal Research (Kencana, 2005)*.

law drafting, and the legislative Stage, which includes discussion, a stipulation of bills into Law, ratification and the post-legislative Stage includes promulgation, enforcement, law enforcement.¹⁰

The stages in the Law making process, namely planning, preparation, discussion, attestation, and validation. Can be explained as follows:

A. Planning and Law Drafting

The planning process is related to the activities of preparing proposals for submitting bills and also academic texts in proposing a draft which will be prepared by the institution proposing the bill, namely the House of Representatives, Regional Representatives Council, and the Government, which will be set forth in a joint agreement between the House of Representatives. The People and the Government in the plenary session are then set forth in the Decree of the House of Representatives concerning the Medium-Term National Legislation Program and the Annual Priority National Legislation Program. To prepare/propose a bill so that it can be discussed in a plenary meeting, each proposing institution may submit a bill on the initiative of the proposing agency (the origin of the bill), namely through the House of Representatives,

Each proposer, namely the House of Representatives, Regional Representatives Council, and the government is obliged to harmonize, unify, and consolidate the conception of the bill covering the technical aspects, substance, and principles for the Formation from House of Representative carried out in the agencies appointed as implementing agencies. The preparation is the House of Representatives through the Legislation Body, the Regional Representatives Council through the Law Drafting Committee, and the government

through the Ministry of Law and Human Rights.

The role of public participation in the drafting stage, whose initiative is the House of Representatives, is seen in the preparation of the National Legislation Program, both in the preparation of the medium-term and annual National Legislation Program. The role of the community must be facilitated by the Legislative Body, which is obliged to announce the plan for the preparation of the National Legislation Program to the public through the mass media, both printed and electronic. Conduct working visits to absorb people's aspirations and receive input in Legislation Board meetings. Public input is submitted directly or by letter to the leadership of the Legislative Body before discussing the National Legislation Program draft. Not until only the preparation of the National Legislation Program, from the preparation until after the determination of the National Legislation Program through the Decree of the House of Representatives,¹¹

In law drafting within the government, the initiator forms an inter-ministerial and inter-non-ministerial committee consisting of ministries that administer government affairs in ministries/non-ministerial government agencies and other institutions related to the substances regulated in the Bill and drafters. Legislations originate from the initiating agency¹². Public involvement is only represented by practitioners or academics who master issues related to the material of the bill and who can be appointed by the initiator.¹³ Furthermore, public participation is re-involved in the meeting of

¹⁰ Vera Bararah Barid M Jeffri Arlinandes Chandra, Rofi Wahanisa, Ade Kosasih, Theory and Concepts of Formation of Legislation in Indonesia, 2022, accessed April 20, 2022, <https://books.google.co.id/books?id=4EJpEAAAQBAJ&pg=PA78&lpg=PA78&dq=Jufrina+Rizal,+Sociology+Legislation,+paper+presented+in+Education+and+Training+Manpower+Technical+Legislation+Secretariat+General+DPR+RI,+Jakarta,+1998/1999.&source=>

¹¹ "Regulation of the DPR Number 1 of 2014 concerning Orders," and

¹² Fahmi Ramadhan Firdaus, "Prevention of Legislative Corruption through Strengthening Public Participation in the Law-Forming Process," Indonesian Legislation Journal 17, no. 3 (September 29, 2020): 282, <https://undang-jurnal.peraturan.go.id/index.php/jli/article/view/679>.

¹³ Article 45"Perpres No. 87 of 2014 concerning the Implementing Law of Law Number 12 of 2011 concerning the Formation of Legislation [JDIH BPK RI]," accessed April 19, 2022, <https://peraturan.bpk.go.id/Home/Details/41581/prepres-no-87-year-2014>.

harmonization, unanimity, and consolidation of conceptions together with researchers and experts, including from the university environment, to be asked for opinions.¹⁴

B. Discussion on Law Drafting

The discussion of the bill is carried out jointly between the House of Representatives and the government. If the Bill concerns regional bills, the Regional Representatives Council is also involved in the discussion. The discussion of the Bill is carried out through 2 levels of discussion, namely level 1 discussions in commission meetings, joint commission meetings, Baleg meetings, budget board meetings, or special committee meetings, and law level discussions in plenary meetings of the House of Representatives.

In the discussion at the low level, there will be introductory activities for deliberation, discussion of the problem inventory list, and the submission of mini opinions. The introductory deliberation activity is an activity where the initiator of the Bill initiative conveys an explanation to the legislators. For example, the bill is an initiative of the House of Representatives, and the President gives his views/opinions (if the Bill concerns the authority of the Indonesian Regional Representative Council/RUU is regional, then The Regional Representative Council of the Republic of Indonesia also provides views on the proposed bill). Alternatively, if the Bill is the initiative of the President, the President provides an explanation, and the House of Representatives of the Republic of Indonesia provides views/opinions (as well as if the Bill on this initiative concerns the authority of the senate also conveys its views), and if the Bill from the Indonesian Regional Representatives Council will be given views by the Indonesian House of Representatives and the President. The next activity at the legal level is the discussion of the problem inventory list. The problem inventory list will be submitted by the viewer to the initiator/proposer of the bill initiative. The last activity in the discussion at the law level is the submission of mini opinions, mini opinions submitted by factions, the President,

and the Regional Representatives Council of the Republic of Indonesia if the bill relates to the authority of the Regional Representative Council of the Republic of Indonesia. If in a mini opinion, the Indonesian Regional Representatives Council does not express a view, then the discussion at the law level will still be carried out, and in the mini opinion activity, the leaders of state institutions or other institutions can be invited if the material for the bill relates to state institutions or other institutions.

The discussion at the legal level is the decision-making of the House of Representatives of the Republic of Indonesia together with the government in a plenary meeting whose activities are:¹⁵

- a. Submission of reports containing the process, mini-faction opinions, mini-opinions of the RI Regional Representatives Council, and the results of discussions at the law level;
- b. Statements of approval or rejection from each faction and members of the House of Representatives verbally requested by the leadership of the plenary meeting; and
- c. The final opinion of the President is submitted by the assigned Minister.

Decisions from the results of the plenary meeting are made by deliberation and consensus, but if it is not reached, then the decision is made employing a majority vote (voting). Decisions that have been reached on the discussed law drafting are then sent to the president for validation.¹⁶

Role Community participation in this Stage is very minimal according to the Regulation of the House of Representatives no. 8 of 2014 concerning the Rules of the House of Representatives that the public “can” be invited to public hearings to get input on the bill that is being discussed. In addition, the House of Representatives can pick up the ball by holding a working visit to the region in order to get input from the

¹⁴ Article 52 paragraph (2),Ibid.

¹⁵ “DPR Regulation No. 1 of 2014 concerning Order.”

¹⁶ Firdaus, “Prevention of Legislative Corruption through Strengthening Public Participation in the Law-Forming Process.”

regional government or the local community. The phrase “can” is interpreted when needed by lawmakers who are often ignored so that they can only monitor from a distance the ongoing discussions through the media facilitated by legislators.

C. Validation of Law Drafting and Enactment

However, if the bill is not signed by the President within 30 (thirty) days of the mutual approval of the bill, the bill will automatically become bill and must be promulgated. In this process, there is no longer any role for community participation in the final process in the Formation of Law, namely Validation and Enactment.¹⁷

2) The Urgency of Reconstruction of the Stages of the Formation of the Law through the Review of the Law after the Discussion (Plenary)

There are several crucial issues that are a concern in the urgency of reconstructing the stages of forming the current law, namely the planning, preparation, discussion, validation, and enactment stages, but there needs to be an additional stage after the discussion, namely the review stage. These stages function not only as a means of verification and cross-checks but also as a further harmonization and synchronization activity as well as a means of education and socialization of the bill that will be ratified in order to realize meaningful participation. The following describes various issues regarding why the Stage of review is an obligation in the Formation of a law.

A. The Only Harmonization, Synchronization, and Consolidation of Conceptions in the stages of Planning and Drafting Laws

Literally, the term harmonization comes from the word “harmony.”¹⁸, which is actually a term in the world of music to indicate the existence of harmony or harmony and beauty of the tones. In the English-Indonesian Dictionary, “harmony” means compatibility. While synchronization in Indonesian comes from the word “synchronous” which means it occurs or applies at the same time

simultaneously, while synchronization is defined as “simultaneous,” or “adjustment.” It is literally known as “coherence,” consistency, and compatibility.¹⁹

Synchronization activities can be carried out in 2 ways, namely²⁰:

- a. Vertical synchronization is done by looking at whether a statutory regulation that applies in a particular field does not conflict with each other. In addition, the hierarchy of laws and Law must be considered. Vertical synchronization must also pay attention to the chronology of the year and the number of stipulations of the relevant legislation.
- b. Horizontal synchronization is done by looking at various laws and Law that are equal and regulate the same or related fields. Horizontal synchronization also continues to be carried out chronologically in accordance with the order in which the relevant laws and Law are enacted.

At this time, harmonization, synchronization, and consolidation of concepts are only carried out in the Formation of several forms of legislation, namely Bills, Draft Government Law (RPP), Presidential Law (Perpres), and Draft Regional Law (RaPerda). The obligation to carry out harmonization, synchronization, and consolidation of conceptions in the Formation of laws is regulated in articles 46-48, which can be concluded that these activities are carried out in 3 stages, namely: First, harmonization at the Stage of preparation of academic documents, second, harmonization at the National Legislation Program Stage, and third, harmonization at the Draft Bill Planning Stage.

Therefore, it is necessary to have a precise control mechanism in further

¹⁷ *Ibid.*

¹⁸ “The Meaning of the Word Harmonization - Big Indonesian Dictionary (KBBI) Online,” accessed April 18, 2022, <https://kbbi.web.id/harmonization>.

¹⁹ MH. Dr. Rudy, SH., LL.M, and Dr. Hieronymus Soerjatisnanta, SH., “Reconstruction of Protection-Based Legislation,” accessed April 20, 2022, <https://123dok.com/document/yj0lnpkz-laporan-akhir-hibah-kompetensi-z.html>.

²⁰ Legislation, “Harmonization and Synchronization of Legislative Law” (2011): 1–10.

analyzing the law that have been discussed and agreed upon by the legislators themselves in an accurate review system. This also provides an opportunity for improvement in cases of human error so that the sacredness of a law that will be formed is maintained and protected constitutionally. For example, the case of a typo that occurred in the draft Article 170 of the Job Creation Bill which states as follows:²¹:

Article 170 Paragraph (1)

“In the context of accelerating the implementation of the strategic policy on job creation as referred to in Article 4 paragraph (1), based on this law, the Central Government has the authority to amend the provisions in this Law or amend the provisions in the Act which are not amended in the Act. This”.

Article 170 Paragraph (2):

“Changes to the provisions as referred to in paragraph (1) shall be regulated by a Government Regulation”.

This kind of thing should not happen because at the level of applicable legal norms, it is valid that the higher law beat the lower ones (*lex superior derogate legi inferiori*). The contradiction that occurs is that the Law stipulated in the law state that government Law can change laws that are basically not in accordance with applicable legal norms because, in the PUU hierarchical system, the position of the Law is clearly higher than government law. This is intentional, or an omission should not occur in the Formation of a sacred law so that there is a need for double protection (double protection) in the Formation of a law that is in accordance with the principles of establishing good law. The review mechanism should exist after the discussion is finished as the final door to see the negligence, oversight, omission, or intentionality of certain elements which have an interest in a stipulated article.

²¹ “Article 170 of the Omnibus Law on Job Creation is considered to be in conflict with the 1945 Constitution. Page All - Kompas.Com,” accessed April 20, 2022, <https://nasional.kompas.com/read/2020/02/17/13172871/pasal-170-omnibus-law-of-work-judging-contrary-to-uud-1945?page=all>.

B. Public Involvement in the Formation of Law

Public involvement in the Formation of laws must still be accommodated at every Stage of the Formation of law. Eventhough the House of Representatives of the Republic of Indonesia is a representation of the people, the direct involvement of the people in the Formation of Law is significant. According to Satjipto Rahardjo, he once reminded all parties that the process of law formation (legislation) is a relatively essential process as it is relatively vital to see the process of implementation and enforcement itself. This is because the processes that occur in the formation of the law will somehow influence the process of implementing and enforcing the law Mistakes in the law-making process can have fatal consequences.²².

Participation can be defined as the participation of the community, either individually or in groups, actively in determining public policies. Samuel P. Huntington and Joan M Nelson in their book *No Easy Choice; Political Participation in Developing Countries*, define public participation as an “activity by private citizens designed to influence government decision-making.” (public participation becomes one of the tools in expressing the values that develop in society to be poured into a regulation)²³. According to Mahendra Putra Kurnia, the primary purpose of participation is to generate helpful input and perceptions from the community and public interest in order to improve the quality of decision-making because by involving the community, decision-makers can capture the views, needs, and appreciation of the community and the group. To then pour it into a single concept.

²² “The Other Sides of Law in Indonesia | Ministry of Women’s Empowerment and Child Protection,” accessed April 19, 2022, <https://inlis.kemennppa.go.id/opac/detail-opac?id=2463>.

²³ et al Bivitri Susanti, *Notes on the Legislation Performance of the DPR 2005 | DPR RI Library*, accessed April 19, 2022, http://opac.dpr.go.id/catalog/index.php?p=show_detail&id=25672.

In addition, Lothar Gündling explained several reasons for community participation as follows:²⁴:

- a. *Informing the administration*(providing information to the government);
- b. *Increasing the readiness of the public to accept decisions (increasing the public's willingness to accept decisions)*;
- c. *Supplementing judicial protection (assisting legal protection)*;
- d. *Democratizing decision-making (democratic decision-making)*.

Community participation is guaranteed as a constitutional right based on Article 27 paragraph (1) and Article 28C paragraph (2) of the 1945 Constitution which provides opportunities for citizens to participate in government and build society, nation, and state. If the Formation of laws with processes and mechanisms actually closes or distances the involvement of community participation to participate in discussing and debating its contents, it can be said that the Formation of laws violates the principle of people's sovereignty.

Doctrinally, public participation in the Formation of Law aims, among other things, to:²⁵:

- a. Create solid collective intelligence that can provide better analysis of potential impacts and broader consideration in the legislative process for higher overall quality of outcomes,
- b. Building a legislature that is more inclusive and representative in decision-making;
- c. Increased trust and confidence of citizens in the legislature;
- d. Strengthen the legitimacy and responsibility (legitimacy and responsibility) together for every decision and action;
- e. Improved understanding of the role of parliament and members of parliament by citizens;

- f. Provide opportunities for citizens (opportunities for citizens) to communicate their interests; and
- g. Creating a more accountable and transparent parliament.

Based on Article 96 Paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislations, it is stated that "The public has the right to provide input orally and in writing in the Formation of Legislation." Community participation will assist in the good law-making process and will help determine which articles will be problematic and will have an unacceptable impact on the community and then be submitted to the Constitutional Court as a law assessor. In the formation of a well-organized and directed law, it is hoped that an open and responsible process will be able to achieve the accuracy (enforceability), balance (adequacy), and implementation (implementability) of a rule.²⁶.

Through public participation, it is hoped that the law will have advantages in terms of effectiveness in the community. In addition, participation also provides legitimacy or political support from the community for the Formation of statutory Regulation. This more meaningful community participation fulfills at least three prerequisites, namely: first, the right to be heard; second, the right to be considered; and third, the right to get an explanation or answer to the opinion given (right to be explained). This public participation is primarily intended for community groups who are directly affected or have a concern about the bill being discussed.²⁷.

The House of Representatives of the Republic of Indonesia as the holder of legislative power, is required to open the door as wide as possible for public participation if it

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Alek Karci Kurniawan, "Judicial Preview as a Mechanism for Verification of the Constitutionality of a Bill," *Journal of the Constitution* 11, no. 4 (2014): 632, accessed April 20, 2022, <http://ran.bill.mahkamahkonstitution.go.id/index.PHP?page=web.RekapPUU>.

²⁷ *Constitutional Court Decision Number 91/PUU-XVII/2020*.

is agreed that political reform in Indonesia is a stage of the development of democratization in Indonesia. This is because members of the House of Representatives of the Republic of Indonesia are the embodiment of the people's political representations and must be sensitive to the aspirations of the people who have voted for them.²⁸

Currently, the practice of public participation is only a prerequisite for the formation of law without looking at the input and views submitted by the community so that it is not considered further. So that the current community participation is quasi-participation or "tokenism."²⁹by inviting stakeholders who have no direct impact/inviting, or only inviting experts who are pro to the proposed bill and do not listen to opposing opinions.

For example, in the Formation of the Job Creation Act, namely, participation is not divided into several clusters, while the Job Creation Act includes 11 laws that can be adapted to clusters, so many clusters do not experience the enrichment of discourse, and adequate participation contributes so much to the debate. And substantive errors in it. Should there be so many clusters, in the end, many parties must be asked to participate, and an analysis of this law did not occur, so it can be concluded that participation was not sufficient. This kind of thing should not happen because law-making institutions are judged based on their performance in the Formation of quality, targeted, and effective laws.

Therefore, of course, community participation in the formation of law must be fully involved so that the objectives in the Formation are achieved and can be realized without any side effects such as rejection and testing of the law by the judiciary. Related to meaningful public participation, namely the right to be heard through forums for public hearings (RDPU), working visits, socialization or seminars, workshops, and or

discussions, second, the right to be considered. His opinion (right to be considered), namely the results of these views, can be seen in the discussion at every level, and the legislators provide public space to take a closer look at various modes of publication; third,

3) Reviewing the Law as a Means of Reharmonization, Education, Confirmation, Consultation, and Publication to the community (*meaningful participation*)

Reconstructing the uncontrolled situation, it is necessary to take tangible steps in a stage of forming legislation so that legislators are obliged to carry out post-discussion re-harmonization, which aims to prevent problematic articles (disharmonization and synchronization) and also to realize meaningful public participation.

Furthermore, if the Joint Committee still cannot reach an agreement, then more authority is given to the National Assembly to make decisions. Then control over certain bills relating to state institutions (organic laws) is carried out with the need for a statement that the bill does not conflict with the constitution by the Constitutional Council before being promulgated if there is a difference of opinion between the National Assembly and the Senate. Control over the Formation of the Bill on Finance is carried out by giving a time limit for deliberation to the two parliamentary chambers, and if within the stipulated time limit the parliament cannot reach an agreement, the government will regulate it in the form of a Government Regulation as a balance. Then control over certain bills relating to state institutions (organic laws) is carried out with the need for a statement that the bill does not conflict with the constitution by the Constitutional Council before being promulgated if there is a difference of opinion between the National Assembly and the Senate. Control over the Formation of the Bill on Finance is carried out by giving a time limit for deliberation to the two parliamentary chambers, and if within the stipulated time limit the parliament cannot reach an agreement, the government will regulate it in the form of a Government Regulation as a balance. Then control over certain bills relating to state institutions (organic laws) is carried out with the need for a statement that the bill does not conflict with the constitution by the Constitutional Council before being promulgated if there is a difference

²⁸ Kurniawan, "Judicial Preview as a Mechanism for Verification of the Constitutionality of a Bill."

²⁹ *Constitutional Court Decision Number 91/PUU-XVII/2020*.

of opinion between the National Assembly and the Senate. Control over the formation of the Bill on Finance is carried out by giving a time limit for deliberation to the two parliamentary chambers, and if within the stipulated time limit the parliament cannot reach an agreement, the government will regulate it in the form of a Government Regulation as a balance.³⁰

Table 1. Comparison of Legislation in Indonesia and France

Aspects of Similarities	Indonesia	French
Government Initiative Rights	The government's right of initiative is proposed by the President	The government's right of initiative is proposed by the Prime Minister (specifically the bill on finance and social security must be submitted to the National Assembly, the bill on the organization of territories and on the institutions that represent the French nation in abroad must be submitted to the Senate)
First Chamber/ Lower House initiative right	The right of initiative originating from the House of Representatives is proposed by members of the House of Representatives / Commissions/ Combined Commissions..	The right of initiative originating from the National Assembly is submitted by the Members of the National Assembly)

Second Chamber/ High Council initiative right	The right of an initiative proposed by the Regional Representative Council only concerns bills relating to regional autonomy, central and regional relations, the formation and expansion and merging of regions, management of natural resources and other economic resources, as well as relating to the balance of central and regional finance.	<i>Senate</i> has the right of initiative over all laws.
Discussion and Consideration	The discussion of the bill is only carried out by the House of Representatives and the President, except for the bill relating to regional autonomy, central and regional relations, the formation and expansion and amalgamation of regions, management of natural resources and other economic resources, as well as relating to the balance of central and regional finance, including the Regional Representative Council.	The discussion of the bill is carried out by the Prime Minister in one of the chambers/ assemblies, while the other assemblies only give consideration for mutual consent. However, if these considerations are different after 2 (two) discussions, the Prime Minister may form a Joint Committee with a balanced number of members. However, if the Joint Committee cannot reach an agreement then the final decision rests with the National Assembly. Especially in the discussion of the organic (institutional) bill, if there is a difference of opinion between the two chambers, then the approval is in the hands of the National Assembly.

³⁰ UU. Rosy Al Atok, "Checks and Balances in the Formation of Laws with a Bicameral System in 5 (Five) Unitary Countries," Indonesian Legislation Journal 13 (2016): 261–272, accessed April 20, 2022, [HTTPS:// audit-regulation.peraturan.go.id/index.php/jli/article/view/158/pdf](https://audit-regulation.peraturan.go.id/index.php/jli/article/view/158/pdf).

Approval of bills into law and legislation	Approval between the House of Representative and the President on a bill is ratified by the President and promulgated no later than 30 days after it is approved.	A bill that has been approved by the National Assembly and the Prime Minister can only be ratified and promulgated into law after a statement is made does not conflict with the constitution of <i>Constitutional Council</i> .
Right to Test (Toetsingsrecht)	Constitutional Court	<i>Constitution Council</i>
Testing Mechanism	Testing of the Law (Review)	Testing of the Bill (Preview)

Source: processed by the author, 2022

From this action, it can be said that France conducts a re-analysis/testing/cross-check regarding the bill that will be formed, this process minimizes the existence of a tug of war (articles in a bill that are formed) which is challenging in a discussion of the draft. Legislation, the thick political process, occurs at the discussion stage (level 1 and level 2). Therefore, it is necessary to carry out a joint analysis of the bill that was formed so as not to deviate from the wishes of the constitution.

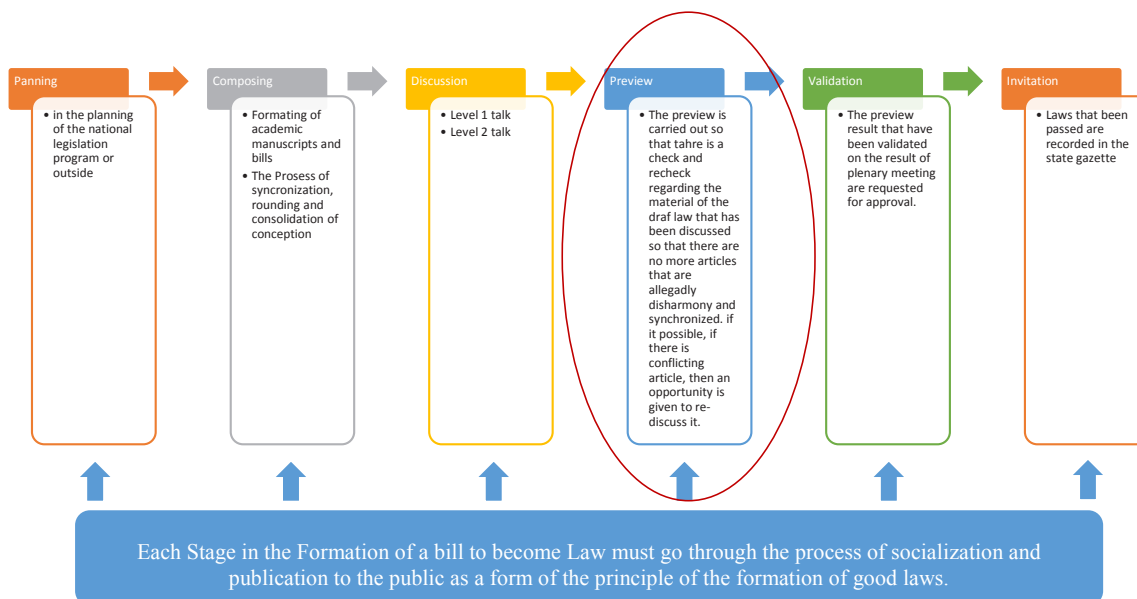
The need to accommodate the stages of review in the formation of law is stated in the plan

to amend law Number 12 of 2011 concerning the Formation of legislation which states that there is a need for an analysis mechanism regarding the bill that has been completed, namely in Article 73 which reads.³¹:

- (1) In the event that the bill has been submitted by the leadership of the House of Representatives to the President as referred to in Article 72, it is still a technical error is found, the ministry that carries out government affairs in the field of state secretariat together with the ministry that discusses the bill makes improvements by involving the leadership of the House of Representatives who discusses the bill.
- (2) The Bill as referred to in Article 72 or the bill as referred to in paragraph (1) shall be ratified by the President by affixing his signature within a period of no later than 30 (thirty) days from the date the Bill is jointly approved by the Council. Representatives of the People and the President.
- (3) In the event that the Bill as referred to in paragraph (1) is not signed by the President within 30 (thirty) days of the mutual approval of the Bill, the Bill shall become Bill and must be promulgated.

Therefore, in general, the function of the stages of the study can be described in the following diagram:

Chart 1. Construction of the study in the stages of law formation



Source : processed by the author, 2022

³¹ *Second Amendment to Law No. 12 of 2011 (Version 29 January 2022 at 18.00 WIB), 2022.*

The review is carried out jointly by a special team forming (government, House of Representatives, and Regional Representative Council) which then provides recommendations regarding the results of the evaluation of articles to be ratified. The disharmony and synchronization became further discussions for improving the articles based on fundamental reasons. The bill being reviewed regarding its material can be distributed to the public so that the responses and views of the community can be seen as a form of public participation at every stage of law formation.

The preview of the agreed bill becomes a mechanism for public disclosure in the formation of laws because the aspirations that have been given at the planning and preparation stages in various absorption methods and are accommodated in the preparation and discussed together will be a means of confirmation to the public regarding the views of the legislators. In responding to the inputs (public opinion) given that have been accommodated and then given a clear reason why it is not / cannot be accommodated further. This will be fair and also become a means of education, consultation, and also publication to the public that there will be a bill that will be passed to regulate an interest with the perspective taken. This will certainly increase public confidence in legislators. Invite that their aspirations are really heard and have been maximized and if not given a logical reason and supported by accurate data.

CONCLUSION

The formation of laws must be in accordance with the principles of prudence so that the sacredness of a law that is formed will be meaningful and also eliminate conflicts between law (conflicting) and overlapping law (overlapping). Comparing the concepts carried out by France and reviewing the bill by the Constitutional Council. This needs to be imitated and applied in Indonesia through a review process carried out by legislators to ensure that there are no articles that conflict with legal principles and typos so that the sacredness of the Bill is protected. The benefits of the review are included in the stages in the formation of the law as follows:

- a. As a means of cross-checking the details and completeness of the law to be ratified;
- b. As a means of harmonization and re-synchronization (re-harmonization and re-synchronization) of the articles that have been agreed upon so as not to violate legal principles;
- c. As a means of confirming to the public the input that has been accommodated and the extent to which it has been accommodated in the agreement resulting from the discussion;
- d. As a means of consultation regarding the community's views on the agreement resulting from the discussion;
- e. As a means of educating the public because a new law will be promulgated;
- f. As a means of publication that the enactment of the new law will provide new arrangements for the community (legal fiction).

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