



## Public Participation in The Process of Forming The National Criminal Code to Realize The Welfare State as a Responsive Law

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### ABSTRACT

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The formation of legal products becomes a necessity in responding to the interests of society. The formation of regulations determines whether they are able to distribute comfort and welfare to the public or cause conflict. Get aspirations and agreements from the public is a form of responsive law. The participation of all elements of society is important in the process of producing legal products, especially the National Criminal Code which has been drafted since 1963, but there are still many controversial articles and cause debate in society. This writing uses research methods and data collection techniques in a normative juridical way to find better law and offer solutions to legal problems, by descriptive critical analysis with document study. The DPR as the representative of the society has an important role in accommodating and following up on the aspirations of the society. Able to recognize the public's desire to realize the concept of a welfare state and responsive law. Further evaluation needs to be carried out in the legislative process by including the aspirations of the society.

### 1. Introduction

One of the crucial things in a government is the formation of a legal product, which is a necessity in responding to the interests of society. Looking back at the history of legislative regulations, starting from the insistence by the people in the field of political and constitutional systems that the state regulate a system of separation of powers or what is known as Trias Politica, pioneered by Montesquieu, the branches of power are divided into legislative, executive and judicial powers. Considering the form of power possessed by the executive, it provides the potential for more violations of citizens' rights.

Burkhardt Krems, as quoted by Attamimi<sup>1</sup> which holds the view that the process of forming a regulation has activities related to the substance and content of the regulation, the techniques in its formation and the procedures in the process of forming a regulation. In each of these activities, it is mandatory to fulfill the requirements so that they can be implemented properly juridically, sociologically and politically. Thus, Krems stated, the formation of statutory regulations is not an interdisciplinary activity, which means that the activity in forming a regulation requires the help of science to produce a legal product that is acceptable and gets public recognition.

According to Crabbe, the most important part of a legislative regulation is not the regulatory aspect but also the process of its formation.<sup>2</sup> The methodology in forming legislative regulations determines the achievement of targets, whether these regulations can provide comfort and welfare for society or create conflict within society.<sup>3</sup> Before making a policy that has an impact on the public, the executive is required to reach an agreement with the people. What is meant by the concrete form of policy in this case is legislation. As this legislation will become a contract between the organizers of executive power and the people, so that in making policies the government is obliged to obtain agreement from the people. So in terms of substance, the obligation to obtain agreement from the people aims to ensure that the legislation does not have a repressive character but rather a responsive character.<sup>4</sup> Thus, public participation becomes an important point in producing responsive legal products.

Nonet and Selznick are of the view that public participation is an important element in the legislative process by involving all elements of society, both individuals and public groups. Furthermore, what is no less important is that the aspirational nature originates from the desires of the public.<sup>5</sup>

Refer that recently the National Criminal Code (KUHP) has been passed, as it is known that criminal law itself produces very heavy types of legal obligations so it is difficult to deny that in general criminal sanctions are very detrimental and quite dominant in forcibly taking away rights. human rights, so that it can have serious impacts in the future if the manufacturing process is not carried out with caution and ignores the values contained in public.

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<sup>1</sup> A. Hamid S. Attamimi. (1990). *Proses Pembuatan Perundang-Undangan ditinjau dari Aspek Filsafat*. Semarang: Materi Kursus Penyegaran Perancangan Perundang-Undangan. Hlm. 5-6.

<sup>2</sup> Enny Nurbaningsih DKK. (2016). *Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan*. Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia. Hlm. 24.

<sup>3</sup> Khalid. (2014). *Ilmu Perundang-undangan*. Medan: CV Manhaji. Hlm. 18.

<sup>4</sup> *Ibid.*, Hlm. 10.

<sup>5</sup> Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia. (2015). *Partisipasi Masyarakat Dalam Penentuan Arah Kebijakan Penyusunan Peraturan Perundang-Undangan*. Hlm. 1.

However, in reality, the aspirations of the public as the basis for making laws are still not implemented properly so they are not in line with the principle of meaningful participation as stated in the Constitutional Court decision number 91/PUU-XVIII/2020, because until now there are several articles contained in the National Criminal Code that are still controversial and cause debate in society. Based on an evaluation carried out by the Indonesian Parliamentary Public Forum (Formappi) of the DPR, the finalization of the RKUHP, which was marked by a number of controversial articles, was allegedly due to the DPR's neglect of public participation in the legislative process.<sup>6</sup> The DPR should not only listen to the input submitted by the public but also provide explanations and consider the answers to the input, whether it is accepted or rejected. Public involvement in the formation of legislation has become a statutory mandate, therefore all elements of society from various communities need to be asked for input.

Starting from this background description, what is an interesting discussion in this research is related to how important public participation is as a form of responsive law in the formation of laws and how public participation in the process of forming the National Criminal Code to realize the welfare state as a responsive law.

There are several previous studies that are relevant to this writing, namely:

Research by Joko Riskiyono (2015) which examines public participation in the formation of legislation to create prosperity, which in this research discusses the realization of aspirational national legislation programs to achieve general welfare, but in this research it only discusses the role of public participation and involvement in the formation of legislative regulations in general and has not been explained further regarding which elements of society can be involved in the legislative process.

Furthermore, research by Saifudin (2009) which examines the process of forming laws: a study of public participation in the process of forming laws, which in this research discusses the process of forming laws in the reform era, in this research has been explained in relation to anyone who are the perpetrators of public participation in the process of forming laws and have also explained the form of their participation in the formation of several draft laws (RUU), this research is more specific to the National Education System Law, Election Law and Employment Law.

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<sup>6</sup> Nicholas Ryan Aditya. (2023). *Soal KUHP baru Formappi kritik tidak ada partisipasi publik*, <https://nasional.kompas.com/read/2023/01/06/22401361/soal-kuhp-baru-formappi-kritik-tak-ada-partisipasi-publik>, accessed on 5 July 2023 at 10.45 WIB.

There is further research by Rahendro Jati (2012) which examines public participation in the process of forming responsive laws, which in this research discusses the process of forming laws which is linked to public participation to produce responsive laws. In research conducted by Rahendro, he has explained the stages, mechanisms and parties who can be involved in the formation of laws. However, this research has not explained further regarding the elements of society involved in the law formation process.

Therefore, Novelty in this research is a deeper investigation related to public participation, especially what is a significant difference from previous research, namely that the researcher will focus on public participation in the process of forming the National Criminal Code in order to create a welfare state and responsive law.

The purpose of this writing is to show how the public was involved in the formation of the National Criminal Code and whether the aspirations of the public were properly heard, bearing in mind that creating legislation that is responsive and acceptable to all levels of society is an important point to invite The public participated in the process of forming the National Criminal Code.

## **2. Method**

Research methods are used in writing articles for give explanation regarding the steps in searching for data and answering questions from the problem formulation in this article. Normative juridical research methods are used by collecting data through literature<sup>7</sup> with various legal sources, regulations, doctrines and related theories for the purpose of finding better law, offering solutions to legal problems and providing standards in constructing legal regulations.

The technique used in collecting data is by get Secondary data sources are based on relevant literature and documents such as statutory regulations, decisions, books, journals and other materials that are relevant to the topic of this article. All of this data will be studied and analyzed to answer the problem formulation that has been described.

Data obtained from research results will be presented in descriptive analysis, namely by describing and revealing answers to existing problem formulation questions by compiling each data acquisition based on source existing data and theories with the concept of a thinking framework. Using this method is expected to produce a solution to each of these legal problems.

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<sup>7</sup> Bambang Sunggono. (2008). *Metode Penelitian Hukum*. Jakarta: PT Raja Grafindo Persada. Hlm. 133.

### 3. Results & Analysis

#### 3.1 The Urgency of Public Participation as a Form of Responsive Law in the Formation of Laws

The development of society is increasing, giving birth to a political society that channels its aspirations and packages them in demands for government policy. Indonesia as a democratic country has a goal so that its people can actively participate in achieving a balanced system that reflects the normative preferences of its citizens. The birth of the concept of democracy into a country is a good value for making the country more prosperous and for prioritizing the interests of groups, namely in this case the state and society itself.

Considering the origins of modern democracy in its growth in the 20th century, at the same time there are still many world societies governed by non-democratic regimes rather than by democratic regimes.<sup>8</sup> Indonesia is a rule of law country with democratic principles in which law and democracy are interrelated to work together towards one goal, namely advancing general welfare in accordance with the objectives of the Indonesian Constitution. This prosperity can be realized, one of the ways, is through the existence of legal products that are born, namely statutory regulations to regulate people's behavior in order to achieve certainty, justice and benefits in the life of the state and society.

Indonesia as an adherent of the civil law legal system has one characteristic, namely making laws the main legal basis in the country. So it is very important to understand the bill process, who carries it out and how the drafting of the bill should be carried out and who is involved in the process.

The House of Representatives (DPR) as a legislative institution which is the representative of the people in Indonesia has an important role in making laws, namely by preparing the National Legislation Program (Prolegnas) as well as drafting and discussing related bills together with the President and the government. As representatives of the people, the DPR also has the task and authority, namely to absorb, collect, accommodate and follow up on the aspirations of its people.<sup>9</sup>

The process of forming a statutory regulation basically starts from the stages of planning, preparation, drafting techniques, formulation, discussion, ratification, promulgation and dissemination. The aspirations and legal needs of the public

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<sup>8</sup> Arend Ljiphart. (1984). *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*. New Haven: Yale University Pres. Hlm. 36.

<sup>9</sup> Dewan Perwakilan Rakyat Republik Indonesia, Tentang DPR: Tugas dan Wewenang, <https://www.dpr.go.id/tentang/tugas-wewenang>, accessed on July 9 2023 at 10.00 WIB.

are one of the bases for preparing the National Legislation Program.<sup>10</sup> One of the important elements in the legislative process is that its formation needs to be based on the needs and interests of the people to be able to create legal products that have an impact on society. So there is a need for an obligation to disseminate every design, discussion and invitation to the public.<sup>11</sup>

The concept of democracy in a country was born because of people's sovereignty, namely the people are the highest source of power in a country as a form of resistance to abuse of power.<sup>12</sup> It is emphasized in Article 1 paragraph (2) of the 1945 Constitution that sovereignty is in the hands of the people, so it is important to have public participation in the implementation of government activities, especially in formulating policies. The characteristic of a democratic society is that there is an increasingly high and quality level of public participation in the formation of public policy.

Philipus M. Hadjon believes that public participation is related to the concept of openness, so that if the government does not have openness, the public cannot carry out its role in activities carried out by the government.<sup>13</sup> In state administration, the concept of participation was actually born as a consequence of the expected democratic political system. Democracy and participation are likened to two sides of a coin that cannot be separated.<sup>14</sup> Robert A. Dahl also expressed the close relationship between the two, in which he stated that the only way to build democracy is through participation, where there is equal opportunity for all citizens to participate and discuss existing problems and have a voice in making a decision.<sup>15</sup>

Public participation is very important in every process of forming a legal regulation, whether in the form of support, input or rejection. Confirmed in Article 96 of the UUPPP regarding public participation, it basically states that

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<sup>10</sup> Undang-Undang Nomor 13 Tahun 2022 tentang Perubahan Kedua atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan (Lembaran Negara Republik Indonesia Tahun 2022 Nomor 143, Tambahan Lembaran Negara Republik Indonesia Nomor 6801), Article 18 letter h.

<sup>11</sup> Ledia Hanifa, Anggota Tim Open Parliament Indonesia (Opi). (2021). *Partisipasi Publik Dalam Proses Legislasi*, <https://www.dpr.go.id/doksetjen/dokumen/-Regulasi-dan-Dokumen-Paparan-OPI-Partisipasi-Publik-Dalam-Legislasi-oleh-Hj.-Ledia-Hanifa-S.Si.-M.PSi.T-1622102422.pdf>, accessed on July 10 2023 at 15.00 WIB.

<sup>12</sup> Helmi Chandra SY dan Shelvin Putri Irawan. (2022). "Perluasan Makna Partisipasi Masyarakat dalam Pembentukan Undang-Undang Pasca Putusan Mahkamah Konstitusi". *Jurnal Konstitusi*, 19(4). Hlm. 767.

<sup>13</sup> Ni Made Ari Yuliartini Griadhi dan Anak Agung Sri Utari. (2008). *Partisipasi Masyarakat dalam Pembentukan Peraturan Daerah*, 1(1).

<sup>14</sup> Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia. (2015). *Partisipasi Masyarakat Dalam Penentuan Arah Kebijakan Penyusunan Peraturan Perundang-Undangan*. Hlm. 9.

<sup>15</sup> Robert A. Dahl. (2001). *Perihal Demokrasi, Menjelajahi Teori dan Praktik dan Demokrasi Secara Singkat*.

every public (individual or group) has the right to submit input offline or at every stage of its formation. it to society.

Through an autonomous legislative institution, the aspirations of the people have become an obligation for the DPR and the Government to accommodate and serve as material for consideration in the process of forming regulations. If state institutions understand the importance of people's aspirations, then of course the content contained in a regulation can be in the interests of the people.

The same thing is also stated in the Constitutional Court Decision Number 91/PUU-XVIII/2020, public participation must be carried out with meaningful participation to realize real public participation. In the decision, it is stated that meaningful participation from the public is at least possible to fulfill 3 (three) rights as a condition, namely that their opinions are heard, considered and obtain answers or explanations to the opinions they convey. This decision will illustrate that the main goal is to create genuine public participation and involvement.

It is reaffirmed in Article 243 of DPR-RI Regulation Number 1 of 2020 concerning Rules of Procedure<sup>16</sup> explains in detail that the public is given the right to submit written and/or oral input to the DPR during the process of drafting and enacting the National Legislation Program, preparation and discussion of the bill, discussion of the bill regarding the APBN, and supervision of the implementation of the law and supervision of the implementation of government policy. In the process, the public will attend public hearings, seminars or similar activities, through social media and visits to DPR-RI electoral districts so that the public can convey their input on the bill that is being prepared.

The aim of holding public participation in the preparation and discussion of the Bill is not only a formality requirement, but aims to involve the public together in solving every problem that concerns their interests, as well as to produce better and more responsive regulations based on Pancasila and the 1945 Constitution. Participation The public becomes an involvement of discourse in the legislative process, because with the involvement of the public, it can undoubtedly produce strong legitimacy.<sup>17</sup>

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<sup>16</sup> Peraturan Dewan Perwakilan Rakyat Nomor 1 Tahun 2020 Tentang Tata Tertib, Berita Negara Tahun 2020 Nomor 667, Article 243.

<sup>17</sup> Victor Imanuel W. Nalle. (2017). *Ilmu Perundang-undangan*. Yogyakarta: Suluh Media. Hlm. 94.

There are four models of participation related to the formation of PUU.<sup>18</sup>First, general participation (pure representative democracy), in this model the people are not directly involved in the formation of a policy but are represented by the people's representatives as the people's representatives are represented by the people's representatives in representative institutions, so that the people are directly involved in the process of forming a policy. Second, a basic model of public participation, where in this model the public is not only involved during elections, but has contact with representative institutions as well.

*Third, a realism model of public participation, where they don't just take part in general elections, but there is group interaction with representative institutions. Fourth, the possible Idea for South Africa model. In this model, the public is involved in elections, has contact with representative institutions, both individually and as organizations or groups, which makes it a vehicle for participation. The participation that we want to build is the concept of involvement of various forces for the purpose of making public decisions and in the process of forming laws.*<sup>19</sup>

As explained above, the public is allowed to participate in the formation of public legislation, namely at the planning, drafting and discussion stages. Saifudin divided the stages into Ante Legislative, Legislative and Post Legislative. The forms of participation in this stage have been described in Table 1.1, namely:

<b>Legislative Ante</b>	<b>Legislative</b>	<b>Post Legislative</b>
<ul style="list-style-type: none"> <li>• Study</li> </ul>	<ul style="list-style-type: none"> <li>• Hearing/RDPU at the DPR or DPRD</li> </ul>	<ul style="list-style-type: none"> <li>• Rally</li> </ul>
<ul style="list-style-type: none"> <li>• Discussions, FGDs, workshops, seminars</li> </ul>	<ul style="list-style-type: none"> <li>• Alternative Bill or Draft Regional Regulation</li> </ul>	<ul style="list-style-type: none"> <li>• Material test or formal test</li> </ul>
<ul style="list-style-type: none"> <li>• Submission of initiative proposals through the president or regional head, DPR or DPD or DPRD</li> </ul>	<ul style="list-style-type: none"> <li>• Suggestions and input via print and electronic media</li> </ul>	<ul style="list-style-type: none"> <li>• Socialization of regional laws or regulations</li> </ul>
<ul style="list-style-type: none"> <li>• Drafting a Bill or Raperda</li> </ul>	<ul style="list-style-type: none"> <li>• Rally</li> </ul>	

<sup>18</sup> Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia. (2015). *Partisipasi Masyarakat Dalam Penentuan Arah Kebijakan Penyusunan Peraturan Perundang-Undangan*. Hlm. 15.

<sup>19</sup>*Ibid.*, Hlm. 16.



- Discussions, FGDs, workshops, seminars.

**Table 1.** Public Participation in the Legislative Process

*Source:* Public participation in determining priority policy directions for drafting laws and regulations, National Legal Development Agency Ministry of Law and Human Rights of the Republic of Indonesia, 2015, p. 95.

In creating high public participation, conditioning must be done. The conditioning is open access to the public. W. Riawan Tjandra and Kresna Budi Sudarsono, in increasing public participation in the formation of a law or regional regulation, there are three aspects that must be disclosed to the public, namely:

- a. Access to information, to the right to access information actively or passively.
- b. Access to participation in making a decision, including:
  - 1) public rights in making decisions;
  - 2) public participation in development policies, plans and programs;
  - 3) participation in the formation of legislative regulations.
- c. Access to justice.

Indonesia as a country of law must have fair and competent laws that are able to recognize what the public desires to achieve justice for their country. The law must offer something more than just justice, namely by being able to be a responsive facilitator to every social need and aspiration. Philip Nonet and Philip Selznick revealed that responsive law can provide orderly, lasting and stable institutional guarantees to become a way to achieve state goals.<sup>20</sup>

Responsive law focuses on results to achieve a goal but not by force, but the law serves according to social needs and interests. Law enforcement in the image of responsive law cannot be done only half-heartedly. So that between *das sollen* and *das sein* or between regulations and reality must run straight so that the law can also run effectively.

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<sup>20</sup> Philippe Nonet dan Philip Selznick. (1978). *Law and Society in Transition: Toward Responsive Law* (New York: Harper & Row). Hlm. 39. Quoted through *Politics of Law 2* by Satya Arinanto, Faculty of Law, University of Indonesia, First Edition, Jakarta.

Justice pursued by responsive law cannot only be based on pure, rigid law but must also look at the social realities that occur in society. In this case, all forms of public aspirations regarding a policy have been carried out in a systematic and organized manner, so that law makers can listen to the messages conveyed by the public regarding their interests.

In realizing responsive laws involving public participation, legislative and government institutions must prepare the necessary steps to be able to respond to every input provided by the public. The form of these steps is:<sup>21</sup>

1. Providing access to any related information;
2. Formulate the main issues related to the bill;
3. Determine the most interested stakeholders;
4. Hold meetings with stakeholders to discuss issues related to their interests;
5. Provide information regarding the development of the discussion;
6. Open to any new, aspirational and innovative input;
7. Maintaining public trust, that every input submitted by them has been accommodated in decision making.

Law makers are considered aspirational and responsive if in the process of forming legislative regulations they pay attention to and listen to the aspirations of their people. It is hoped that public aspirations will increase responsiveness and transparency in order to produce an accommodative policy.

The DPR as an autonomous legislative institution is expected to be able to exercise its authority in representing the people's voice in the legitimation process. Public participation is becoming a political right of citizens that must be granted so that people can understand the state administration process and access public policies openly and freely.

Indonesia, a democratic country that wants to create responsive laws to achieve state goals, needs to also rely on public participation to create a democratic country. By implementing meaningful participation to realize real public participation based on empirical studies, it will undoubtedly give birth to good legislation because the aspirations of the public also influence the policy making process and not only from the wishes of the makers.

### **3.2 Public Participation in the Process of Forming the National Criminal Code to Realize the Welfare State as a Responsive Law**

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<sup>21</sup> Direktorat Harmonisasi Peraturan Perundang-Undangan. (2010). *Panduan Pengharmonisasian, Pembulatan dan Pemantapan Konsepsi Rancangan Perundang-Undangan*. Jakarta: Kementerian hukum dan HAM, Cappler Project. Hlm. 72-73.

Criminal law has been known and regulated in written regulations in Indonesia since January 1, 1918, which was a product of Dutch law in 1881. After Indonesia became independent in 1945, Law Number 1 of 1946 concerning Criminal Law Regulations was declared to apply to Java and Madura, while other regions are determined by the President. Based on Indonesia's struggle, the Criminal Code was finally declared to apply to the entire territory of the Republic of Indonesia through Law Number 73 of the Year 1958.

Efforts to reform the Criminal Code began in 1963 through the National Law Seminar I with initiation in the form of pressure to formulate a new Criminal Code which then continued until the end of 2022. After many developments in criminal law and which have become the ideals of the people, academics and practitioners, Indonesia has made history by ratifying the Criminal Code on December 6 2022, namely Law no. 1 of 2023 concerning the Criminal Code. A law that has been established and promulgated, quoting Jimly Asshidiqie, said that this regulation has gone through every process until finally it has been ratified which is public property and is open and binding on the public.<sup>22</sup>

The formation of legislation aims to provide prosperity and happiness for society as stated in the preamble to the Indonesian constitution, namely advancing general welfare. The interests of the people are an important element that is mandatory for countries to realize general prosperity. The public certainly gives more hope to legislative institutions and the Government so that they can create laws and regulations that can provide justice, order and general welfare based on Pancasila and the 1945 Constitution.

Based on the concept of a welfare state, the state is obliged to guarantee the creation of prosperity in the state and society with regard to economic, social, political, cultural and educational interests. Asshidiqie revealed that the concept of a welfare state is where the law is required to be responsible for the socio-economic problems being experienced by its people.<sup>23</sup> So this leads to the conclusion that the state must take part in social and economic problems to ensure the welfare of its people.

One of the roles of the state in realizing general prosperity and happiness for its people is by creating laws and regulations to achieve legal certainty, benefit and justice. In this case, the promulgation of the New Criminal Code as a legal umbrella for criminal law, to regulate what behavior and actions are permitted and prohibited by the state.

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<sup>22</sup> Muhammad Fadli. (2018). *Pembentukan Undang-Undang yang Mengikuti Perkembangan Masyarakat*, 15(1). Hlm. 50.

<sup>23</sup> Djauhari. (2006). "Kajian Teori Welfare State Dalam Perspektif Barat dan Islam". *Jurnal Hukum*, 16(1). Hlm. 32.

The birth of the New Criminal Code is a form of responsiveness from the government to the many aspirations, requests and demands of the people to fulfill the interests of its people. However, the question is whether in the process of forming the New Criminal Code there has been real public participation or not. As stated by Nonet and Selznick, public participation is very important in the formation of a legal product, involving all elements of society, both individuals and public groups.

Participation by only a few people in representative institutions is not enough, because political institutions are supposed to use politics in the name of the interests of their people to pursue the interests of their group. So there needs to be a public space that plays a role in the policy process in the activities of people's representatives. The main party involved in implementing public participation is the public itself.<sup>24</sup> Directly, people's participation will have an important impact on several things, namely: First, manipulation of people's involvement can be avoided and people can clearly know what the people want; Second, handing over legitimacy in the form of formulations in planning. Because the greater the number of people involved, the better; Third, people's political awareness and skills have also increased.<sup>25</sup>

Responsive law is also said by Nonet and Selznick, namely "responsive law presumes that purpose can be made objective enough and authoritative enough to control adaptive rule making", which means that the purpose of a responsive form of law is for objectivity and control arrangements in making regulations in country.<sup>26</sup>

Based on records obtained through Online Law, it is stated that the Government has made efforts to organize public dialogue to achieve meaningful public participation during the process of forming the RKUHP. This activity was held both online and offline and was attended by all elements of society with the aim of absorbing all input and opinions from the public to improve the Indonesian RKUHP.

Meaningfully involving the public in the process of forming a legal regulation is the mandate given in the Constitutional Court Decision Number 91/PUU-XVIII/2020. During the preparation process for the RKUHP, which began in 1963, it has taken a long time but still maintained legal rules, legal principles, as well as the principles and objectives of criminal law reform.

Positive law has also accommodated the public to get involved in the formation of laws and regulations. As confirmed in Article 139 paragraph (1) of Law No.

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<sup>24</sup> Hamzah Halim dan Kemal Redindo Syahrul Putera. (2009). *Cara Praktis Menyusun dan Merancang Peraturan Daerah*. Jakarta: Prenada Media Group. Hlm. 127.

<sup>25</sup>Alexander Abe. (2005). *Perencanaan Daerah Partisipatif*. Yogyakarta: Pembaruan. Hlm. 90-91.

<sup>26</sup> Philippe Nonet and Philip Selznick, *Op.Cit.*, Hlm. 48.

32/2004 and Article 53 of Law No. 10/2004 and the principle of openness in the Law is adhered to.

As for the explanation of this article, it has been said that the principle of openness means that the entire process in the formation of statutory regulations, from planning, preparation, preparation to discussion, is transparent and open. Therefore, all levels of society have the same opportunity to contribute ideas in the process of forming legislative regulations.

According to Hans, openness in the process allows the public to be involved in knowing (*meewten*), participating in thinking (*meedenjen*), deliberating (*meespreken*); and participate in decisions regarding implementation (*meebeslissen*) as well as the right to participate in decisions (*medebeslissinrecht*).<sup>27</sup>

In theory, all elements of society have the right to provide input and opinions in the process of forming regulations starting from law enforcement officials, public and religious leaders, legal academics, student organizations, legal professional organizations, press/media and other elements who take part and has relevance to these regulations.

At the end of 2022, during the process of refining the RKUHP, many crucial issues emerged in society that required intensive discussion. Some of these crucial points are regulations related to living law, the application of death penalty sanctions, criminal acts in the form of attacks on the honor and dignity of the President and Vice President, against the government and government power, contempt of court and criminal acts of decency.

Based on the points of this crucial article, there were nine factions who expressed their opinions through the Problem Inventory List (DIM) which was then followed up based on the public's views and input on the RKUHP. Prior to the ratification of the 2023 Criminal Code, a number of crucial issues had been adjusted to the existing substance by adding explanations, redactions and deleting crucial articles or substance. This is all done to suit the interests of society at large.<sup>28</sup>

However, returning to the facts that occurred in the field, based on the opinion of the Indonesian Parliament Concerned Public Forum (Formappi), in conducting an evaluation of the DPR regarding the ratification of the RKUHP into law, it was marked by many controversies and crucial articles contained in it, so that the RKUHP was finalized quickly.

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<sup>27</sup> Hamzah Halim and Kemal Redindo Syahrul Putera, Op., cit, Hlm. 107.

<sup>28</sup> Tim Publikasi Hukum Online. (2022). *Partisipasi Publik dalam Pembentukan KUHP Nasional*, <https://www.hukumonline.com/berita/a/partisipasi-publik-dalam-pembentukan-kuhp-nasional-lt639946fa2918c/?page=all>, accessed on July 5 2023 at 10.45 WIB.

Formappi believes that the DPR did not heed the principle of adequate public participation in the RKUHP legislative process. Because up to now there are several articles contained in the National Criminal Code that are still controversial and cause debate in society. This is thought to be due to the DPR's neglect of public participation in the legislative process.

Press Conference held by Formappi with the theme Evaluation Performance The DPR said that the final formulation of the RKUHP did not demonstrate the quality of public participation in the legislative discussion process. Due to the many criticisms of several articles in the RKUHP which have been criticized by civil society, what has been highlighted could potentially give rise to legal uncertainty in its implementation.

It was again stated that public representatives had been invited by the DPR to discuss the RKUHP, but this was considered only a formality and the recommendations given regarding several controversial articles were ignored. The data results that have occurred in the field illustrate that this has not yet been implemented law which is effective in its good implementation. Based on the theory of legal effectiveness proposed by Friedman, law enforcement consists of 3 components, namely legal structure, legal substance and legal culture.<sup>29</sup>

Where the legal substance has been well prepared, namely as regulated in Article 96 UUPPP Article 243 DPR-RI Regulations relating to the regulation of implementing public aspirations in drafting statutory regulations. This means that good legal substance may not necessarily work well if the legal structure as an institution or law implementing institution cannot implement the legal substance well. Because no matter how good the legal product is, if the authorities cannot maximize their performance then it will only be a pipe dream to realize the concept of a welfare state.

Not only is it based on perfect rules or regulations for a prosperous legal state to exist, but it also requires good legal practices or law enforcement to be realized together. So there needs to be a balance between legal substance and legal structure, as well as a legal culture that reflects the nation's social life regarding the values and attitudes that influence the operation of the law. With a balance of these three components, effective law can be created for a prosperous country and law that is responsive to the public.

It is necessary to carry out further evaluation of the implementation of the law establishing statutory regulations as well as the duties and authority of the DPR in drafting regulations relating to the inclusion of public aspirations in the

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<sup>29</sup>Lawrence M. Friedman. (2009). *Sistem Hukum: Perspektif Ilmu Sosial (The Legal System A Social Science Perspective)*. Bandung: Nusamedia. Hlm. 32.

legislative process. Because as representatives of the people, they must be able to recognize what the public wants and who can provide justice, in order to realize the concept of a welfare state and laws that are responsive to achieving state goals.

If you pay attention, there are a number of controversial articles contained in the National Criminal Code and it is felt that they still need to be addressed because there is still a lack of public participation. This is still not in accordance with one of the requirements for the formation of good legislation, namely a sociological basis where a legislation should be in line with general beliefs or legal awareness of the public. So that the formation of the law must be in accordance with the living law in society.<sup>30</sup>

Bearing in mind that public participation has a significant role in the formation of statutory regulations, in this case including the formation of the National Criminal Code, the benefits obtained from public participation in the formation of statutory regulations are:

1. Increase the legitimacy and strengthen the standards of the laws and regulations created;
2. Provide opportunities for success and implementation;
3. Increase compliance with the rules or regulations imposed voluntarily;
4. Expanding forms of partnership with citizens.<sup>31</sup>

There are 8 (eight) principles offered in order to optimize public participation in the process of forming laws and regulations, namely:<sup>32</sup>

1. There is an obligation to publish effectively;
2. Availability of information and documentation that is systematic and can be accessed easily;
3. Ensure that the public can participate in monitoring the process from the start of planning by creating transparent and efficient procedures and forums;
4. There are clear rules regarding basic documents that must be freely available and accessible to the public, such as academic texts and draft legal regulations;

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<sup>30</sup> Jazim Hamidi Ridwan Muliana. (2011). *Optik Hukum*. Jakarta: Prestasi Pustaka Publisher. Hlm. 7.

<sup>31</sup> Direktorat Harmonisasi Peraturan Perundang-Undangan. (2010). *Panduan Pengharmonisasian, Pembulatan dan Pemantapan Konsepsi Rancangan Perundang-Undangan*. Jakarta: Kementerian hukum dan HAM, Cappler Project. Hlm. 69.

<sup>32</sup> Hamzah Halim and Kemal Redindo Syahrul Putera, Op., cit, Hlm. 120.

5. Availability of guarantees for appeals if the formation of a statutory regulation is not carried out in a participatory manner;
6. The availability of sufficient time for the entire process of drafting, discussing the draft regional regulations and disseminating the laws that have been carried out and;
7. There is clear accountability for legislators who do not provide opportunities for the public to participate.

In planning and forming legal rules, it should be possible to reduce the problems that befall society, the nation and the state as a whole or as a whole (holistic). As for what is understood by law holistically, law is not only interpreted in the form of a legal text, for temporary purposes or only intended for the interests of a certain group, but must be placed in a broader context, namely Indonesian society. So that law is not only seen as abstract designs but as something complete and concrete which is not just rules but also organized human behavior (organic behavior). Therefore, in forming new laws, the values believed in society, the social system and the influence of the environment must be taken into account. If you pay attention, the law is always contextual to the problems and developments of society.<sup>33</sup>So, referring to the formation of the National Criminal Code, it would be better if the problems existing in society could be reduced.

The welfare state is part of the rule of law. Thus, the elements that form the rule of law remain inherent in this type of state, especially those related to legal requirements as the basis of state policy. The broad role of law in the welfare state shows that from the start, the welfare state was not something that needed to be addressed antagonistically. The way the law itself is used is the cause of the problem.<sup>34</sup>

In terms of realizing the formation of responsive legislation, especially in the formation of the National Criminal Code, where the interests of the people must be prioritized so that the concept of a welfare state will be easier to realize. Public participation is an important point to be heard, even though there are no regulations regarding follow-up to public aspirations that have been conveyed, legislators should provide explanations and reasons regarding whether or not the input given is accepted.

#### **4 Conclusion**

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<sup>33</sup> Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia. (2015). *Partisipasi Masyarakat Dalam Penentuan Arah Kebijakan Penyusunan Peraturan Perundang-Undangan*. Hlm. 29.

<sup>34</sup> Roy Sanjaya. (2019). *Mewujudkan Negara Kesejahteraan yang Ideal Melalui Pembatasan Hukum*, 5(1). Hlm. 6.



Public participation is crucial in every process of forming a legal regulation, whether in the form of support, input or rejection. All elements of society have the right to provide input and opinions in the process of forming a regulation starting from law enforcement officials, public and religious leaders, legal academics, student organizations, legal professional organizations, press/media and other elements that take part and have relevance to these regulations.

Further evaluation needs to be carried out regarding the implementation of the law establishing statutory regulations as well as the duties and authority of the DPR in drafting regulations relating to the inclusion of public aspirations in the legislative process. People's representatives must be able to recognize what the public wants and who can provide justice, in order to realize the concept of a welfare state and laws that are responsive to achieving state goals. To realize the formation of responsive legislation, especially in the formation of the National Criminal Code, where the interests of the people must be prioritized so that the concept of a welfare state will be easier to realize and in the formation of the National Criminal Code, the problems existing in society can be reduced.

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