

## PUBLIC PARTICIPATION IN THE PROCESS OF FORMING LAW NO. 3 OF 2022 CONCERNING THE NATIONAL CAPITAL

**Moh. Hatta\***

UIN Sunan Ampel Surabaya

Email: mohhatta@uinsa.ac.id

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### Abstract

The purpose of this study is to examine how well Pancasila-based legal principles and the actual application of community involvement in the National Capital Law's drafting correspond. A democratic concept and constitutional right, public involvement is ingrained in Indonesian law, particularly under the Pancasila legal framework. Participatory techniques in the drafting of legislation are required by Law No. 12 of 2011. However, questions about the level of public participation surfaced during the creation of Law No. 3 of 2022 about the National Capital. This study uses a statutory and conceptual approach, using a normative legal strategy. Constitutional clauses, national laws (particularly Law No. 12 of 2011 and Law No. 3 of 2022), and legal doctrines are the main sources of data. To evaluate the degree of conformity between the formal mechanisms of law-making and Pancasila principles, secondary data from scholarly works and academic journals were analysed using qualitative content analysis. The results show that there is a substantial discrepancy between the normative ideal of public engagement and how it occurs during the legislative process. Procedural shortcomings are shown in the fast legislative timeframe (43 days from proposal to ratification), the lack of substantive public hearings, and the lack of transparency in public access to records. Stakeholder participation was either completely ignored or extremely limited, especially from impacted indigenous populations. The absence of public responsiveness and participatory infrastructure undermines democratic legitimacy and runs counter to Pancasila's deliberative democracy.

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\* Corresponding Author.

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## Introduction

Community involvement in the mechanism of forming laws and regulations is a fundamental aspect of a state of law, moreover, the role of community involvement has also been regulated in the constitution. In addition, the role of community participation is also a form of good governance that is in line with the principles of *Good Governance*, namely community involvement, transparency, and accountability (Sofyani et al., 2022). There are four benefits to public participation in the formation of a legal product: information to the Government (Cortés-Cediel et al., 2021), an instrument so that the public can accept a decision, an effort to protect the law (Kiss et al., 2022), and a means of democracy in terms of decision-making (Eckerd & Heidelberg, 2020). In addition, Indonesia is a large country with a heterogeneous composition of society, making differences in opinions and ideas something that is very likely to happen and cannot be denied. Thus, these differences of views should be a source of ideological strength for the nation and State, so that the space for public discussion must also be protected (Wu et al., 2020). However, a good law is born from a public review process with an open discussion space.

Indonesia, as a country that adheres to the legal principles of Pancasila, has a special classification related to its concept of statehood, including the existence of equality, kinship, and consensus democracy (Nurdin, 2020). Thus, we can see the important role of community involvement in every aspect of statehood, especially in terms of the formation of laws and regulations as a noble value contained in Pancasila as the idea and ideology of the nation (Agustari et al., 2022). Moreover, in the constitution, the government provides comprehensive regulations on the mechanism of public participation in the formation of laws and regulations (Sant'Ambrogio & Staszewski, 2021). This is stated in detail in Law No. 12 of 2011, article 96, as follows; First, the community has the right to provide input either orally and/or in writing in the Establishment of Laws and Regulations. Second, oral and/or written input as referred to in paragraph (1) can be done through; Public hearings, Working visits, Socialization; and/or Seminars, workshops, and/or discussions. Third, the community as referred to in paragraph (1) is an individual or group of people who have an interest in the substance of the draft legislation. Fourth, To facilitate the public in providing input orally and/or in writing as referred to in paragraph (1), each draft law must be easily accessible to the public.

In this regard, we can see that the State, in this case gives legitimacy to the importance of the role of the community in the process of the mechanism for the formation of a law and regulation, which even becomes one of the principles that cannot be ignored (Lauria & Slotterback, 2020). This means that community participation cannot be judged as a process of bureaucratic formality alone. However, the formation of laws and regulations without public participation is a procedural error that violates the values contained in the State of Pancasila law

However, there are still legal products that are considered to ignore the principles as stated in the constitution, one of which is related to the establishment of Law No. 03 of 2022 concerning the National Capital. The establishment of the National Capital Law has indeed triggered many reactions in the community, including because of the short process of formation to ratification, as well as the lack of community involvement in the process of its formation. This study was made to see the extent of public participation in the process of forming Law No. 3 of 2022 and the position of community participation in the Pancasila legal system in Indonesia.

Some research on public participation in Indonesia's National Capital, Rizkiana Sidqiyatul Hamdani's findings indicate that the participatory wilayah process in the IKN project is based on tokenism or symbolism. It is hoped that this will provide evaluation in the execution of the Ibu Kota project, so helping to develop a more inclusive planning process at the subsequent stage of the project (Hamdani, 2020). Hariati Hariati and Annisa Saskia Saputri argue that the issue of relocating the national capital is not the only basis for the development of IKN, but it can also be seen as a means to prevent disparities and equalise welfare in various regions.

The development of IKN must be carried out firmly, steadfastly, and in favour of public participation. Emphasise the following principles of development: IKN development principles, economic development principles, social and human resource development principles, environmental protection and management principles, and land protection and management principles (Hariati & Saputri, 2022). Bakhrul Amal and Aditya Yuli Sulistyawan said that the relocation of the national capital from Jakarta to Kalimantan has gone through careful analysis. The process outlined by the Law on the Formation of Legislation has also been completed. There are many problems in this process, and one of them is that this process cannot involve the public effectively (Amal & Sulistyawan, 2022). Elsa Benia and Ghina Nabilah discussed the IKN Law; the politics of the law did not reflect the needs of the general public, and they based their analysis on academic research to the point of formal and material identification due to the hasty formation (Benia & Nabilah, 2022).

## Research Method

**Research** This research is normative legal research, where normative legal research is a process to find and identify legal rules, legal principles, and legal doctrines to answer a legal issue (Peter Mahmud Marzuki, 2010). Legal research is carried out by examining library data, which includes principles, synchronization, history, research on legal systems, and even comparative law (Soerjono Soekanto, 1995). This research was conducted using the Atatute Approach and Conceptual Approach, this approach was used to comprehensively examine how the concept of the Pancasila legal state provides space for community participation, and how community participation described in Pancasila is then implemented in the formation of laws and regulations, especially in Law number 3 of 2022 concerning the National Capital.

## Results and discussions

### State of Pancasila Law

The concept of the State of Law is not a concept born from the culture of the Indonesian nation; the concept of the State of Law was born in the Western world and was later adopted by the State of Indonesia (Arizona, 2010). There are various kinds of State law concepts implemented by many countries in the world today, and in Indonesia, the legal concept applied is Pancasila (Dedihasriadi & Nurcahyo, 2020). Of course, the concept of the Pancasila legal state is different from the concept of the Continental European legal state and *Anglo Saxon* as implemented by many countries in the world, where the concept of the Pancasila law state is based on the view of life and social conditions of the Indonesian nation (Wiratmadinata; Rani, 2020). The state of law of Pancasila is the concept of the State of law, which is based on the values contained in Pancasila itself as a *Staatsfundamentalnorm*. Besides *Staatsfundamentalnorm*, Pancasila in Indonesia has a function as an ideology, philosophy (*Philosophische Grondslag*), *Wetanschauung*, *Staatsidee*, and the mind of the law (*rechtsidee*) for the Indonesian nation (Notonagoro, 1983).

The content of Pancasila itself consists of the principle of divinity, namely the One and Only Godhead. The principle of humanity is just and civilized humanity. The principle of nationality, namely the Unity of Indonesia. The principle of citizenship with a consensus form of democracy, namely citizenship led by wisdom in representative consultations, and the principle of justice contained in social justice for all Indonesian people. The five precepts are used as an ideological philosophy to realize the goals and ideals of the State as stated in the preamble text of the 1945 Constitution paragraph IV, namely: (i) protecting the entire Indonesian nation and all Indonesian bloodshed, (ii) improving general welfare, (iii) educating the life of the nation, (iv) participating in implementing world order based on independence, lasting peace, and social justice.

Further related to the concept of the State of Pancasila law, there are several characteristics contained in it, namely: a) There is a relationship between the State and religion. b) principled on the principle of the One True Godhead. c) Freedom of expression of (religious) beliefs. d) There is no room for atheism and communism. e) The principle of kinship and harmony. e) Make Pancasila a staple element in the State. f) People's Consultative Assembly (MPR). g) Constitutional System, h) *Equality*, and i) Free Judiciary.

In addition, Philipus M. Hadjon gave a formulation related to the elements contained in the State of Pancasila law as follows: The first is the establishment of synergy between the Government and the people based on the principle of harmony. The second is the existence of proportional functional relations between State powers. The third is the instillation of the principle of dispute resolution based on deliberation, and making the judiciary the last step in dispute resolution. Fourth, there is a balance between rights and obligations (Hadjon, 1987).

This opinion, which formulated the elements in the Pancasila State law which is summarized as follows: Pancasila is the source of national law. In the sense that the State of Indonesia wants a national legal system that is built based on national insight, the MPR institution has the authority to amend as well as to enact the Constitution, where the Constitution is made the basis for all regulations under it., While the Law is formed by the DPR institution as a legislative institution with the approval of the President, which shows the typical legislative principles of Indonesia: Rule of law; Equal standing before the law; and Free and impartial judicial power (Putra & Veronica, 2022).

Participation etymologically means the attention, or contribution given by the participating group, which in this case is the community. It refers to taking part in, being part of, and working together for something (Ceccarini, 2021). The community is a person who occupies an area either directly or indirectly, interconnected as an effort to meet needs, and interconnectedness as a social unit with a sense of solidarity with the same political, historical, or cultural background (Frega, 2021). Thus, we can conclude that community participation is the role of the community in identifying problems and various potentials that exist in the community, besides that community participation also functions for decision making as an alternative in solving problems (Hügel & Davies, 2020).

Indonesia, as a country that makes Pancasila the ideology and philosophy of the nation, has provided a special space in terms of community participation, where Pancasila calls it consultative democracy. Yudi Latif argues that consultative democracy is based on deliberation as the ideal of political correctness and equal dialogue among Indonesian people, and public participation is valued by the level of community participation in deliberation. This means that deliberative democracy is not a tool to gather various interests, but is used as a place to solve a problem, and every discussion that is carried out must emphasize the substance aspect of the problem rather than the interests of the group, the discussion is also carried out by making ethical-moral "wisdom wisdom" as a guide (Latief, 2011). The space for community participation guaranteed by Pancasila as a philosophical value also reflects the urgency of community participation itself, giving space to community participation means also reflecting the principle of people's sovereignty itself ideally. In the context of the formation of laws and regulations, public participation is a form of people's political participation, where the people are not only limited to being voters in general election contests but also participate in determining policy directions through legal mechanisms. This is also as Hanington argues that political participation of the community is an activity of the civil state (*Private Citizen*) to influence decisions made by the Government, even the embodiment of the exercise of political power (Hunington, 1994).

There are two meanings contained and related to community participation, the first is the process or mechanism, and the second is the substance. The process is a mechanism to form laws and regulations that are carried out by prioritizing transparency, this is done so that the community can give and channel every aspiration. The substance is material contained in laws

and regulations and is intended solely for the benefit of the people so that it can produce legal products that are aspirational, participatory, democratic, and populist-responsive (Mahfud, 2010). There are no exceptions in this case, society, whether it is within the state structure or even outside, can initiate every idea in the formation of laws and regulations

Furthermore, public participation is also needed in addition to producing legal products, to bring up the principle of prudence for public officials who are authorized to make laws, as well as to bring out constructive social control over policies and legal products made. Several levels are commonly done in community participation, a) community involvement in the policy-making process, or also decisions, this must be done because it is related to the public interest. It contains discussions, transformations of thought, and rejection of something that is approved or disagreed with. b) Community participation in the implementation process, i.e., the community participates in implementing programs that have previously been planned and agreed upon. c) participation in benefit taking, which can be seen by the great quality and quantity of the success of the program that has been carried out, this can also be seen in three aspects of benefits, namely material, individual, and social aspects (Chitsa et al., 2022).

However, even though Pancasila as a value provides enough space for community participation, in its application, it is still often the process of community participation cannot run optimally. This is certainly a crucial issue considering the importance of the role of community participation as also described. In its application, not only is the government responsible for implementing community participation, but the community as citizens must also be responsible for the implementation of community participation in the administration of the State. Community apathy due to cultural or structural aspects towards the implementation of community participation is often an obstacle to being involved in the administration of the State, including in the formation of a legal product. This means that obstacles in the implementation of community participation can also be caused by the internal attitude of the community itself.

As for the formation of legislation, there are four concepts of community participation, the four concepts can be classified as follows; Community participation is a policy, this concept considers that participation is a consultation procedure for every policy maker on all citizens as subjects of regulations; Community participation as a strategy, is done to get the support of the whole community for the credibility of every policy produced; Community participation as a means of communication, this concept considers participation as an instrument of communication for the government to the community; Participation is a tool to resolve disputes, meaning that community participation is an instrument to resolve disputes that exist in the community (Ocloo et al., 2021).

Furthermore, the space for community participation as explained above, can be channeled through various mechanisms so that at the technical stage, participation can be carried out optimally, namely; open access to the widest possible information related to the process of drafting laws and regulations; formulate a form of regulation related to transparency in the drafting and formulation process in the draft law; in the early stages of monitoring, it is important to create a mechanism to organize ideas that emerge from the community; drafting a code of ethics which is then accompanied by the establishment of an honorary assembly in its member structure consisting of the House of Representatives, academies, the community, and also the mass media; and expanding cooperative relations among community groups or organizations of a nature *Hoc*, where the relationship is formed permanently and given the responsibility to monitor the process of formulating legal rules (Riskiyono, 2015).

Based on the description above, we can see that so broad and so comprehensive is the space for public participation provided by the State. This means that Pancasila as an ideology, realizes that the role and participation of the community in the process of drafting a legal product, is an instrument to strengthen the principle of people's sovereignty as well as a reflection of the social spirit of the Indonesian people to continue to be active in contributing to the progress of the nation and State.

### **Community Participation in the Establishment of Law No. 3 of 2022 concerning the National Capital in Indonesia**

Community participation reflects the relationship that occurs between the Government, both legislative and executive institutions, and the community. The role of community participation in the formation of laws and regulations is not only a constitutional right guaranteed by the state as stated in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations but as an implementation of the values contained in Pancasila to accept every idea and aspiration of the community that must be implemented. The importance of community participation is also a parameter for good or bad laws and regulations.

The Establishment of Law Number 3 of 2022 concerning the National Capital has indeed triggered a lot of reactions from the public, the reaction of the community arises of course because there are several things that the community values are not by the applicable legal mechanisms in the process of its formation, including the role of community participation in it. Indeed, the establishment of Law No. 3 of 2022 concerning the National Capital, which took only 43 days since the formation of the working committee on December 7, 2021, raises many questions in the community. How can the law related to the transfer of the national capital be so complex, which means that it needs comprehensive study and analysis, and can be completed in a short time? In short, the process must be studied substantially and comprehensively. Whether the process of forming Law Number 3 of 2022 is by the applicable mechanism, especially related to public participation because no regulation specifically regulates how long the formation of laws and regulations will take. So that whether or not the process of forming the law is short, is only limited to identification and is not a substantial thing.

Furthermore, to analyze whether the formation of Law Number 3 of 2022 concerning the National Capital is by the constitution, we need to look comprehensively at how the mechanism for forming the law is, and what the reality is when forming the law. Referring to Article 5 of Law Number 12 of 2011, there is a principle that contains the role of community participation, namely the principle of openness which in its explanation is explained that, "The principle of openness is the process of forming laws and regulations, which begins with planning, drafting, discussing, ratifying and promulgating which must be open so that all communities have broad opportunities to be able to provide input in the formation legislation". Furthermore, the principle of openness is explained in article 96 related to the mechanism of public participation in the formation of legislation, namely; The public has the right to provide input orally and/or in writing in the Establishment of Laws and Regulations; and Oral and/or written input as referred to in paragraph (1) can be made through: Public hearings; Working visits; Socialization; and/or; Seminars, workshops, and/or discussions. The community, as referred to in paragraph (1) is an individual or group of people who have an interest in the substance of the draft legislation. To facilitate the public in providing input orally and/or in writing as referred to in paragraph (1), each draft law must be easily accessible to the public. (UU Nomor 12 Tahun 2011 Tentang Pembentukan Perundang-Undangan, 2011)

Looking at the mechanism of community participation as described, we can see how the State provides such a large space for all people to participate in the process of forming a legal product. However, in reality, there are still many things and obstacles related to the application of community participation itself, ranging from bureaucracy, education, and the sociology of society to factors in how community participation can work.

Regarding the establishment of Law Number 3 of 2022, it is not significant how public participation in the process of its formation is. Both the government and the legislature tend to be passive in building public discourses. Even though the relocation project of the National Capital City is a giant project that has implications for various aspects of Indonesia, including politics, law, society, and economics. In addition, indigenous peoples who inhabit the location of the new capital city also Moreover, indigenous people who inhabit the location of the new capital city have minimal opportunities to convey their aspirations, even *in Public Hearings* It was

also never done until the location of the relocation of the national capital was announced, this was later judged as a neglect of community participation by a study from the Indonesian Forum for the Environment team (Hamdani, 2020).

Apart from the lack of community participation, another thing that is important and substantial is the lack of access to information for the public, this can also be seen in how the DPR as a legislative institution provides transparency to the process of Law Number 3 of 2022 concerning the National Capital, which from the 28 stages of discussion of the Draft Law, there are only seven agendas that information and documents can be accessed, This means that there are still 21 pieces of information that cannot be accessed by the public. In addition, there is also no special platform made by the government or the DPR to facilitate the delivery of aspirations by the community. Openness to information in the process of forming laws and regulations is part of the principle of transparency regulated by the Constitution (UU Nomor 12 Tahun 2011 Tentang Pembentukan Perundang-Undangan, 2011).

## Conclusion

According to this study, there is a structural discrepancy between the constitutional requirement of public participation and its actual execution, as evidenced by the creation of Law No. 3 of 2022 concerning the National Capital. The legislative process for this law overlooked important participatory norms, such as openness, inclusivity, and open discourse, despite Indonesia's embrace of Pancasila as its philosophical and legal underpinning, which emphasises equality, social justice, and consultation. By critically analysing how procedural shortcuts in lawmaking might erode public trust and legal legitimacy, the study adds to the conversation on constitutionalism and democratic governance. The results emphasise that stronger procedures are required to enable meaningful participation, particularly in legislation that has significant social, political, and economic ramifications. This study's theological focus and lack of empirical stakeholder interviews are its limitations. To capture community opinions and suggest participatory innovations for national lawmaking practices, future research should use empirical legal approaches like field observations or public opinion analysis.

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