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The Notion of Public Participation in the Making of Government Regulation in Lieu of Law (PERPU) in Indonesia

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Abstract: After the Constitutional Court Decision Number 91/PUU-XVIII 2020, public participation must be present in every legislative formation. As one of the regulations in Indonesia, PERPU has the same hierarchy and content material as the Law. Therefore, it is also important to question the opportunity for public participation in the PERPU formation process. In order to obtain answers to this study, this research uses normative legal research with a statute approach and conceptual approach. This research shows that in the formation of PERPU there are two processes that must be passed, namely first the process of formulating and determining PERPU by the President and second the process of submitting to the DPR for approval or not. Public participation can be present in both processes but has different doses. In the first process, public participation is only in the form of information provided to the public regarding the reasons for the 'compelling urgency' of the PERPU stipulation by the President. Meanwhile, in the second process, public participation is presented when the PERPU is submitted and the discussion stage is carried out by the DPR level I and II. As for the implementation of public participation in the formation of PERPU in both processes, it can utilise technology, because PERPU is an emergency regulation and races with time constraints in its formation, technology can be an option used.

Keywords: Public Participation, Government Regulation in Lieu of Law (PERPU), Interim Emergency Law.

1. Introduction

As a form of democracy in the formation of laws and regulations, public participation for modern legal states is now a necessity. Because at the end of 2022, President Joko Widodo issued Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation. Then, it drew public attention and caused pros and cons.[1] It should be critically noted that the President used the PERPU to revive Law Number 11 of 2020 on Job Creation after the Constitutional Court (MK) had declared the law conditionally unconstitutional in MK Ruling Number 91/PUU-XVIII/2020.

One of the central issues explored in the ruling is public participation. Therefore, there is a concern that the President would use PERPU as a short cut not to engaging the public in lawmaking. For instance, the President would issue a PERPU under the pretext of compelling exigencies to revive a law, the making of which violates public participation or openness. According to Zainal Arifin Mochtar, the government decides to make PERPU, instead of law, to avoid judicial review by MK, being disobedient to the constitutionality of adjudication.[2]

Government Regulation in Lieu of Law (PERPU) is part of the hierarchy of laws and regulations in Indonesia, and it is equivalent to statute.[3] Making PERPU is the President's attribution authority under Article 22 paragraph (1) of the 1945 Constitution, which says "In the event of compelling exigencies, the President is entitled to enact a government regulation in lieu of law". This article remains unchanged after the amendment to the 1945 Constitution.[4]

Article 22 of the 1945 Constitution gives the President grounds for issuing PERPU. What is PERPU? Prior to the amendment, the Elucidation of Article 22 of the 1945 Constitution says:

> "This Article pertains to the 'noodverordeningsrecht' of the President. This provision was made so that the Government can act immediately and accurately to guarantee the safety of the State. However, the Government shall be supervised by the House of Representatives. Therefore, the Government Regulation, which has the same legal force as law, shall also be approved by the House of Representatives."

In other words, PERPU is issued to deal with a state of emergency because

1 Willa Wahyuni, "Banyak Pro Kontra, Pemerintah Jelaskan Urgensi dan Tujuan Perppu Cipta Kerja", Hukumonline, 13 January 2023, https://www.hukumonline.com/berita/a/banyak-pro-kontra--pemerintah-jelaskan-urgensi-dan-tujuan-perppu-cipta-kerja-lt63c1162de18ac/, accessed on 20 April 2024.

2 Zainal Arifin Mochtar in his expert opinion in MK Ruling Number 40/PUU-XXI/2023 on the Formal Review of Law Number 6 of 2023 on the Enactment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law against the 1945 Constitution, p. 186.

3 Article 7 paragraph (1) Law Number 12 of 2011 on Lawmaking (State Gazette of the Republic of Indonesia of 2011 Number 82) in conjunction with Law Number 15 of 2019 the Amendment to Law Number 12 of 2011 on Lawmaking (State Gazette of the Republic of Indonesia of 2019 Number 183, Supplement to State Gazette Number 6398) in conjunction with Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on Lawmaking (State Gazette of the Republic of Indonesia of 2022 Number 143, Supplement to State Gazette Number 6801).

4 Article 1; Article 2 paragraphs (2) and (3); Article 4; Article 5 paragraph (2); Article 10; Article 12; Article 13 paragraph (1); Article 17 paragraph (1); Article 22; Article 25; Article 26 paragraph (1); Article 27 paragraphs (1) and (2); Article 28; Article 29; Article 33 paragraphs (1), (2), and (3); Article 35; and Article 36 remain unchanged after the amendment to the 1945 Constitution.

"noodverordeningsrecht" is a term in Dutch. According to Abdul Ghoffar, who refers to S. Wojowasito in "Kamus Umum Belanda Indonesia", "*noodverordeningsrecht*" is comprised of three words. First, "nood" means a state of emergency; difficulty; danger. Second, "*verordening*" carries the meaning of "government regulation". Third, "*recht*" means "law".[5] According to those definitions above, "*noodverordeningsrecht*" is a regulation made in a state of emergency.

Over time, the use of PERPU in Indonesia's constitutional system deserves attention. *First,* PERPU is issued to deal with a state of emergency and made under normal circumstances.[6] Second, PERPU is assessed by the House of Representative (DPR), which prioritises its political relations with the President. These two things are quite dengerous, because PERPU is issued to deal with compelling exigencies from the President's perspective. For this reason, there is a concern that the government would use PERPU to protect their power.[7] PERPU is equal to law. In addition, they contain the same subject matter. Therefore, PERPU has the same legal force.[8]

Despite those similarities, the making of PERPU is different from the making of law because PERPU is made by the President without the role of House of Representative (DPR). House of Representative (DPR) plays a role after PERPU is enacted, has legal force, and is submitted for its assessment. It is possible that the PERPU contains a subject matter which grants the government immunity from being held accountable for making policies, for example PERPU Number 1 of 2020 on the State Financial Policy and Financial System Stability to Control *Coronavirus Disease* (COVID-19) Pandemic and/or Respond to Dangerous Threats to the National Economy and/or Financial System Stability.[9] This PERPU, particularly Article 27 paragraphs (2) [10] and (3)[11], reflects authoritarianism. The article is deemed to protect those in power from any lawsuit, criminal proceedings, and accountability for their actions or policies, and it is against the principle of equality before the law.[12]

PERPU is probably issued to revive a law invalidated by the Constitutional Court for violating the constitution because of no public participation in its making, such as PERPU Number 2 of 2022 on Job Creation. Under close scrutiny, public participation is often ignored in an ordinary legislative procedure. Moreover, if the subject matter of a law is revived through PERPU, there are no strict regulations on public participation.

This study therefore attempts to propose a notion of public participation in the

5 Abdul Ghoffar, 2009, Perbandingan Kekuasaan Presiden Indonesia Setelah Perubahan UUD 1945 dengan Delapan Negara Maju, Kencana, Jakarta, p. 138.

6 Daniel Yusmic Pancastaki Foekh, 2021, *Perpu dalam Teori dan Praktik*, RajaGrafindo Persada, Jakarta, p. 263.

7 Janpatar Simamora, "Multitafsir Pengertian "Ihwal Kegentingan yang Memaksa" dalam Penerbitan Perppu", *Jurnal Mimbar Hukum,* Vol. 22, No. 1, 2010, p. 59.

8 Jimly Asshiddiqie, 2010, *Perihal Undang-Undang,* PT RajaGrafindo Persada, Jakarta, p. 59.

9 Gelora Mahardika Ahmad, "Potensi Penyimpangan Hukum dalam Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020, *Jurnal Hukum Ius Quia Iustum* No. 2 Vol. 27 May 2020, p. 264 – 284.

10 Article 27 paragraph (2) reads "Members of the KSSK, Secretary of the KSSK, members of the KSSK secretariat, and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority, and the Deposit Insurance Corporation, and other officials, related to the implementation of this Government Regulation in Lieu of Law, may not be sued or prosecuted if they carry out their duties in good faith and in accordance with the provisions of laws and regulations."

11 Article 27 paragraph (3) says "All actions including decisions taken under this Government Regulation in Lieu of Law may not be sued in the administrative court."

12 Gelora Mahardika Ahmad, *Op.cit.*

making of PERPU in Indonesia, allowing the public to be involved in each stage of lawmaking in Indonesia. This study aims to answer these research questions How is public participation in the making of Government Regulation in Lieu of Law (PERPU) in Indonesia and How should the public be involved in the making of Government Regulation in Lieu of Law as interim emergency law in Indonesia.

2. Methodology

This normative legal research aims to shed a light on public participation in emergency law and look at the potential for public participation in the making of PERPU in Indonesia as a legislative model for emergency law. To answer the research questions, this study employed the conceptual approach and statute approach. The conceptual approach is used to examine the concept of public participation and the concept of PERPU as regulation in Indonesia. Meanwhile the statute approach is used to examine the rules governing the provisions of public participation and PERPU in Indonesia.

3. Public Participation in the Making of Government Regulation of Law (PERPU) in Indonesia

3.1. The Making of Government Regulation in Lieu of Law (PERPU)

Government Regulation in Lieu of Law (PERPU) is one of the regulations in the system of laws and regulations in Indonesia. As the name implies, as a substitute for law, PERPU has Important points, namely:. First, PERPU is equal to law: they are below the 1945 Constitution and MPR Decree. [13] Second, PERPU contains the same subject matter as law.[14] However, it should be noted tha PERPU can only be used onthe condition taht there is a "In the event of compelling exigencies", which is constitutionally regulated in Article 22 of the 1945 Constitution as follows:

1. Says "In the event of compelling exigencies, the President is entitled to enact a government regulation in lieu of law.
2. Such government regulation shall obtain the approval of the People's Representative Council in its next session.
3. If such government regulation fails to obtain approval, it shall be revoked.

Referring to Article 22 of the 1945 Constitution, it can be understood that in the formation of PERPU there are two institutions whose roles cannot be separated, namely the President and the House of Representative (DPR). For the reason, n the formation of PERPU there are two processes that cannot be separated, firstly the process of formulating and stipulating PERPU by

13 Article 7 paragraph (1) Law Number 12 of 2011 on Lawmaking (State Gazette of the Republic of Indonesia of 2011 Number 82) *in conjunction with* Law Number 15 of 2019 on the Amendment to Law Number 12 of 2011 on Lawmaking (State Gazette of the Republic of Indonesia of 2019 Number 183, Supplement to State Gazette Number 6398) *in conjunction with* Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on Lawmaking (State Gazette of the Republic of Indonesia of 2022 Number 143, Supplemet to State Gazette Number 6801).
14Article 11, *Ibid.*

the President and secondly the process of submittin PERPU to House of Representative (DPR) for approval or not.

The first process of formulation and stipulation of PERPU by President departs from the requirements of the exixtence *"In the event of compelling exigencies".* In this regard, there are many doctrines that try tointerpret it, but as the guardian of constitution the Constitutional Court in its Ruling Number 138/PUU-VII/2009, lays down the conditions for issuing PERPU to deal with compelling exigencies:

There is an urgent need to solve a legal issue in accordance with law;

The necessary law does not exist, and it creates a legal vacuum; or if it exists, it is not sufficient;

The legal vacuum cannot be filled by issuing a law under normal and lengthy procedures, and the urgent need must be met with certainty.

As for the preparation of the draft PERPU, the President appoints the relevant minister to formulate PERPU or referred to as the Proponent, and cordinates between institutions if the substance of the PERPU is related to the other institutions.[15] Once the draft is finalised, the ministry responsible for drafting it submits it to the President and then enacts it.[16] In addition to drafting the PERPU, the proponent also drafts two bills, namely on the stipulation of the PERPU (if the PERPU is accepted) and the Revocation of the PERPU (if the PERPU is not accepted/rejected) to be submitted together with the draft PERPU at House of Representative (DPR).

After going through the first process, continues to the second process namely submission of PERPU at House of Representative (DPR). In Process, president through the initiating ministry, submits at House of Representative (DPR) for review,which results in two decissions: approval or disapproval (rejected).[17] The stage that is passed in the DPR when a PERPU is proposed is the discussion. The procedure for the discussion of the draft law on the stipulation of PERPU is the same as the procedure for discussing the draft law, which consists of level I and level II discussions, if the PERPU is not approved the discussion procedure is differentiated from the accepted draft or uses a special procedure.[18]

After the discussion procedure is completed, the process of approval and attestation is continued. In principle and the provisions of the rules are the sam as the procedures and ratification of the draft in general, namely the draft law stipulating PERPU which is discussed jointly by the DPR and the President and has been approved, the leadership of the DPR submits it to the President to be ratified into law and promulgated in the statate Gazette of the Republic

15 Articles 57 and 58 of Presidential Regulation Number 87 of 2014 as the Implementing Regulation of Law Number 12 of 2011 on Lawmaking.
16 Article 114 of Presidential Regulation Number 87 of 2014 as the Implementing Regulation of Law Number 12 of 2011 on Lawmaking.
17 Article 71 of Law Number 12 of 2011 on Lawmaking.
18 Article 71 paragraph 1 – 3 of Law Number 12 of 2011 on Lawmaking.

of Indonesia.[19] If all of the above procedures have been passed, it means that a law has been issued to enact the PERPU.

3.2. Position of Public Participation in the Making of Government Regulation in Lieu of Law (PERPU)

Under Article 96 paragraph (1) of Law Number 13 of 2022 on the Second Amendment to Law Number 12 of Lawmaking, the public may be involved in each stage of lawmaking. In particular, according to MK in Ruling Number 91/PUU-XVIII/2020, there should be meaningful participation when a bill is proposed, discussed, and jointly approved.

Therefore, the public should be involved in the deliberation of the bill on the enactment of PERPU into law at House of Representative (DPR). Meaningful participation, according to MK, encompasses the right to be heard, the right to be considered, and the right to be explained.

After MK issued its ruling, the Law on Lawmaking contains new provisions for public participation, i.e., the right to be heard (Article 96 paragraphs (1) to (6)), the right to be considered (Article 96 paragraph (7)), and the right to be explained (Article 96 paragraph (8)).[20] Those three rights play a pivotal role in making the public informed about why PERPU is made.

The reasons for the need for public participation in the formation of PERPU can be seen from the following reasons: first, after the Constitutional Court Decision Number 91/PUU-XVIII 2020 on the formal testing of Law Number 11 of 2020 on job creation, it affirmed that public participation must be present in every legislative formation. Then the provision was institutionalised in Law Number 13 of 2022 concerning the second Amendment to Law Number 12 of 2011 concerning the formation of laws and regulations. second, PERPU as a regulation has the same position and content material as a law; third, looking at the latest practice, namely the stipulation of PERPU is used by the President to reborn a law that was formally decided by the Constitutional Court to be problematic regarding community participation. The fear is that in the future the PERPU will be used as a compass cut by the President to hit the absence of public participation in the formation of laws and regulations.

Previously, it has been described that the formation of PERPU is divided into two processes, namely the formulation and stipulation of PERPU by the President and continued with its submission to the DPR for approval or not. During the process of formulating and stipulating PERPU by the President, emergencies that result in time constraints become the main concern, so that the space to implement public participation as mentioned in Article 96 of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation is considered not implemented.

However, when analysed more deeply, Article 96 paragraph (5) states: 'In exercising the right as referred to in paragraph (1), the formulator of

19 Article 72- 74 of Law Number 12 of 2011 on Lawmaking

20 Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on Lawmaking (State Gazette of the Republic of Indonesia of 2022 Number 143, Supplement to State Gazette Number 6801).

laws and regulations shall inform the public about the formation of laws and regulations'. This provision states that public participation can be done by providing information to the public regarding the formation of laws and regulations. The juridical logic of this rule can be applied when formulating and stipulating PERPU by the President. After the stipulation of the PERPU, in addition, the President through the ministry that initiated the preparation of the PERPU can inform the reasons for the stipulation of the PERPU, so that the public knows the cause of the urgency that forces the birth of the PERPU, so that this is done as a form of public participation.

To provide information the public on the existence of 'matters of compelling urgency' resulting in the stipulation of PERPU by the President, because so far the main problem of the stipulation of PERPU is that the reasons for the 'matters of compelling urgency' for the stipulation of PERPU are not very clear and the assessment is subjective, so only the President can explain it all.[21] This effort is expected to be a step towards creating an open space between policy makers (the President) and the public.

According to the above, it can be understood that the position of public participation referred to in the formation of PERPU when the process is in the President does not occur during the formulation but after the determination. Public participation is carried out by informing about the reasons and causes of the birth of PERPU, especially the existence of 'In the event of compelling exigencies", so that the public does not question the reasons anymore.

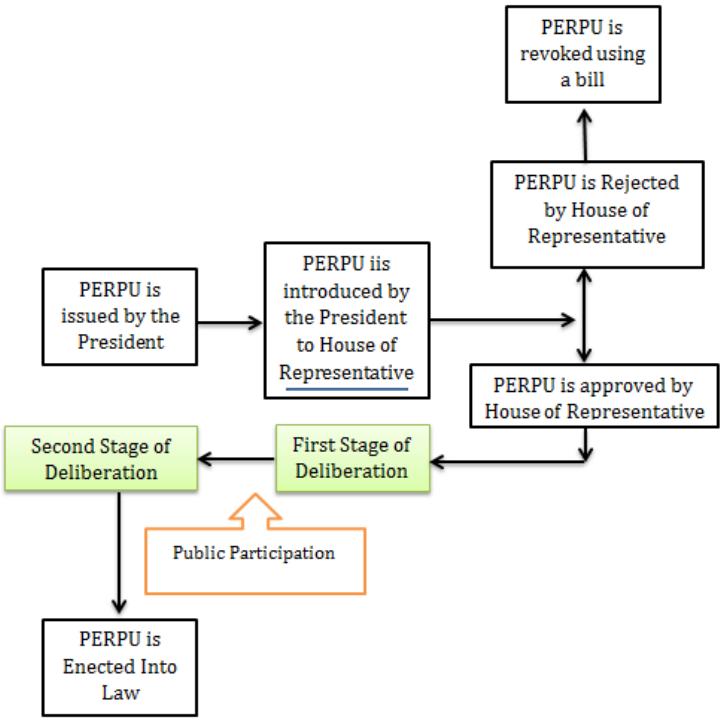
Furthermore, in the process of submitting a PERPU to the DPR, it has been mentioned that there are stages of discussion, approval and ratification. Of the three stages, community participation can be presented during the discussion stage. This departs from the logic of PERPU being equated with a law, one of the stages of PERPU formation that is the same as a law is the discussion stage. In the formation of PERPU, the discussion stage by the President and the DPR is carried out when the PERPU is submitted along with the stipulation bill. The discussion mechanism of the PERPU stipulation bill is the same as the discussion mechanism of the ordinary bill proposed by the President, and it is during the discussion of the PERPU in the DPR that meaningful public participation space must be opened. And public participation is carried out by following all the provisions stipulated in Article 96 Paragraphs (1) to (9) of Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on Lawmaking.

On the other side, PERPU shall immediately be deliberated at DPR under Article 22 paragraph (2) of the 1945 Constitution, which says that the PERPU shall be approved by the House of Representatives in its next session. Therefore, PERPU should immediately be deliberated at House of Representative (DPR). In accordance with Article 52 paragraph (1) of Law Number 12 of 2011 on Lawmaking, after the President issues PERPU, it shall be introduced to be

21 Janpatar Simamora, "Multitafsir Pengertian "Ihwal Kegentingan yang Memaksa" dalam Penerbitan Perppu", *Jurnal Mimbar Hukum,* Vol. 22, No. 1, 2010, p. 68.

assessed by House of Representative (DPR).[22] Then, a law on the enactment of the PERPU into law is made. A bill on the enactment or revocation of PERPU is a bill on the open cumulative list to fill a legal vacuum.[23] The notion of public participation in the making of PERPU is described as follows:

Public Participation in the Making of PERPU



Source: Reviewed by Authors, 2024.

Through the space for public participation in the stages of discussion above, it is hoped that it can be utilised by the DPR as much as possible. It is understood that the DPR's authority in the procedural formation of PERPU is a fundamental part. The DPR exercises this authority as a form of control over the stipulation of PERPU by the president, so that the purpose of using PERPU is only for the benefit of the people. According to Lutfil Ansori, there are two reasons why DPR assesses PERPU:[24] (1) the assessment aims to reflect popular sovereignty because PERPU is enacted to fill a legal vacuum; (2) DPR supervises the President in enacting PERPU so that the President defines compelling exigencies more carefully when issuing PERPU.

When representing the people, DPR does not have to reject PERPU.

22 Under Article 52 paragraph (1) of Law Number 12 of 2011 on Lawmaking, PERPU shall be proposed in the next session of DPR after it is issued. On the other hand, pursuant to Article 22 paragraph (2) of the 1945 Constitution, in the next session DPR approves or does not approve the PERPU. There is a debate over whether in the next session the PERPU shall be introduced and assessed or introduced only. Sometimes, PERPU was approved after the next session of DPR subsequent to its issuance.

23 Article 27 paragraph (1) of Regulation of the House of Representatives Number 2 of 2020 on Legislation.

24 Lutfil Ansori, 2023, *Pengujian Peraturan Pemerintah Pengganti Undang-Undang untuk Mewujudkan Mekanisme Checks And Balances dalam Sistem Ketatanegaraan Indonesia,* Dissertation Executive Summary, Law Studies Program, Doctoral Program of the Faculty of Law Universitas Islam Indonesia, Yogyakarta, p. 255.

Likewise, when DPR approves PERPU, it does not mean that DPR is the political ally of the President. However, when assessing PERPU, it should offer checks and balances to ensure that the PERPU is democratic. It does not mean that the deliberation of the bill on the enactment of PERPU into law can be disentangled from politics. According to Mahfud MD, the political configuration should be democratic to allow public participation. Therefore, the public, through their representatives, can criticise government policies.

Meaningful participation in the deliberation of PERPU at DPR can be used to: (1) explain why PERPU is made; (2) provide input into whether DPR should approve the PERPU or not; and (3) legitimise the PERPU. Through these three means, it can strengthen legitimacy and social roots in society, so that there is a sense of ownership in the community over a law and regulation.[25]

4. Implementation of Public Participation in the Making of Government Regulation in Lieu of Law (PERPU)

One of the challenges to public participation in lawmaking is limited time. The reason is that PERPU is a regulation used to overcome emergencies, so its formation must be done as soon as possible. However, technology can be utilised to respond to it. To deal with limited public access to lawmaking, Cary Coglianese, in his study in the United States, offers online participation or e-rulemaking.[26]

E-rulemaking is aimed at allowing public participation in lawmaking. If necessary, technology, such as electronic media, is used to streamline it under the provisions of human rights in the constitution.[27]

Under Article 96 paragraph (1) of Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on Lawmaking, the public may be involved in each stage of lawmaking. There are two stages: (i) PERPU is issued by the President; and (ii) the PERPU is introduced to DPR. There should be public participation when PERPU is deliberated at DPR. The deliberation of PERPU by the House of Representative (DPR) takes an average of 2 months or one session, during which the public can participate.

The public can participate online and/or offline.[28] This stipulation allows the use of technology to receive the public's input into lawmaking. As the representatives of the people, House of Representative (DPR) can allow public participation through aspiration houses under Article 238 paragraph (4) of Standing Orders Number 2 of 2020, which says "to allow public participation in accordance with paragraph (2),

25 Salahudin Tunjung Seta, "Hak Masyarakat dalam Pembentukan Peraturan Perundang-Undangan", *Jurnal Legislasi Indonesia* Vol. 17, No. 2, Juni 2020, p. 160.

26 Cary Coglianese, "Citizen Participation In Rulemaking: Past, Present, and Future", *Duke Law Journal* Vol. 55, No.5, 2006, p. 967.

27 Patniari Siahaan, 2012, "Politik Hukum Pembentukan Undang-Undang Pasca Amandemen UUD 1945", Konpress, Jakarta, p. 429.

28 Article 96 paragraph (2) of Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on Lawmaking (State Gazette of the Republic of Indonesia of 2011 Number 82) *in conjunction with* Law Number 15 of 2019 on the Amendment to Law Number 12 of 2011 on Lawmaking (State Gazette of the Republic of Indonesia of 2019 Number 183, Supplement to State Gazette Number 6398) *in conjunction with* Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on Lawmaking (State Gazette of the Republic of Indonesia of 2022 Number 143, Supplement to State Gazette Number 6801).

Members can make aspiration houses". The aspiration houses are made to bridge the communication gap between House of Representative (DPR) and the public.

Since the aspiration houses were founded in 2009 under Regulation of House of Representative (DPR) Republic of Indonesia Number 1 of 2009 on Standing Orders, they have needed improving. Despite the huge sum of money allocated on the aspiration houses, their performance is poor.[29] However, they allow offline public participation.

In addition, House of Representative (DPR) has the Legislative Information System (SILEG),[30] which the public can access online to provide input into lawmaking. The public can also use the platform of Partisipasi Masyarakat dalam Perancangan Undang-Undang (Public Participation in Bill Formulation/SIMAS PUU), run by the Centre for the Formulation of Bill on Economy, Finance, Industry, Development, and People's Welfare of the Expertise Board of House of Representative (DPR).[31] Furthermore, the National Law Development Agency (BPHN) has the online media of PARTISIPAKU to allow public participation.[32]

Due to various online media to allow public participation, a short time frame is no longer an excuse for not involving the public in lawmaking. Likewise, the online media allow public participation in the making of PERPU despite the short time frame.

5. Conclusions

Public participation in the formation of PERPU as one of the laws and regulations in Indonesia needs to be considered. First, after the Constitutional Court Decision Number 91/PUU-XVIII 2020 on the formal testing of Law Number 11 of 2020 on job creation, it affirmed that community participation must be present in every formation of laws and regulations. second, PERPU as a regulation has the same position and content material as a law; third, looking at the latest practice, namely the stipulation of PERPU used by the President to reborn a law that was decided formally by the Constitutional Court was problematic regarding community participation. In the formation of PERPU there are two interrelated processes, (i) the process at the President in the form of formulation and stipulation; (ii) the process of submission to the DPR for approval or not. These two processes have different public participation positions. The formation of PERPU in the Presidential process is carried out after its stipulation, with a form of public participation in the form of efforts to inform the public by the President regarding the reasons for the stipulation of PERPU and the occurrence of 'In the event of compelling exigencies".

Meanwhile, the position of public participation in the submission process to the DPR is carried out at the discussion stage with complete participation as

29 Pusat Perancangan Undang-Undang Bidang Ekonomi, Keuangan, Industri, Pembangunan, dan Kesejahteraan Rakyat - Badan Keahlian DPR RI, "SIMAS PUU," accessed January 28, 2026, https://puuekkukesra.dpr.go.id/simas-puu/index.

30 Open Parliament Indonesia, "Sistem Informasi Legislasi," accessed January 28, 2026, https://openparliament.id/sistem-informasi-legislasi/.

31 Partisipasi Masyarakat dalam Perancangan Undang-Undang (Public Participation in Law Drafting/SIMAS PUU), https://puuekkukesra.dpr.go.id/simas-puu/index

32 Badan Pembinaan Hukum Nasional, "Tentang Kami," Partisipasiku!, accessed January 28, 2026, https://partisipasiku.bphn.go.id/tentang-kami.

regulated in Article 96 paragraph (1) of Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on Lawmaking. As for the implementation of public participation to overcome time constraints because PERPU is an emergency regulation, utilising technology such as the PARTISIPASIKU platform from BPHN and SILEG from the DPR can be an option used.

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