

# Public Participation in the Law Making Process in Change Era: A Comparative Study between Indonesia (East Java) and the United States (California)

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## 2 Public Participation in the Law Making Process in Change Era: A Comparative Study between Indonesia (East Java) and the United States (California)

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Keywords: Change Era, Law Making, Public, Participation.

Abstract: This article compares public participation in the lawmaking process in the U.S. and Indonesia, including mechanisms which can be used for public participation, legislative process, and modes of increasing public participation. Public participation in law making has some drawbacks such as unrealistic expectations, slowdown in the legislation process and the need budget. It brought more benefits to governments and societies. However, the legitimacy of the process, justice issues (equal opportunity to citizens and basic hu-10 rights), also create better regulations and finally it creates stronger quality of democracy so no doubt that public participation is prominent part of the legislation process in California and East Java. There are several different mechanism in legislative process in two countries in four areas, namely the legal basis, initiative mechanism, mandatory/ suggestion process and lobbyist organization. The future process should give more opportunity to public to participate by provided easier way to access information and also give more opportunity for marginalized people to participate in law making process. The participation is not only depend on lobbyists but also how public who might get direct impacts could participate in the process.

### 1 INTRODUCTION

Some people argue that public participation in the process of law-making in local governments is important because it will enhance the quality of democracy. Moreover, they also believe that it will give some benefits for the governments and societies. However, others claim that public contribution is a difficult process and it also has several drawbacks to the g-11 vernements and communities.

Public participation is “the involvement of people in a problem-solving or decision-making process that may in-12 test or affect them” (M.Bryson & R.Carroll, 2007). Public participation is a democratic process of engaging people in thinking, deciding, planning, and playing an active part in the development and operation of services that affect their lives. ” Public participation is important in lawmaking processes for local governments because they are the closest governmental institutions to the local citizens and they have potential ability to improve the quality of pub-13 6 participation (Nyalunga, 2006).

The application of participation in the legislative process can strengthen the local community’s

representative function and will positively impact the local rulemaking process because the process receives support and legitimacy from the people. Strengthening participation has implications for the improvement of public confidence in the lawmaking process that occurs in the political institutions. Participation will build a good relationship with the legislators and the citizens by strengthening ties between representatives and their constituents (Aris, 2013).

### 2 MATERIAL AND METHODS

This paper using comparative method to analyze the legislative process and the opportunity for the public to participate. The resources are US Constitution, Indonesian Constitution, California Constitution and East Java Bill. The comparative focus on the similarity and the differences-14 11 between both states and how find the best ways to improve the quality of public participation.

### 3 ADVANTAGES AND DRAWBACKS OF PUBLIC PARTICIPATION

Fung (2006) explained that there are two major points to support the public participation in legislation process, namely legitimacy and justice. Public policies such as regulations are legitimate when many citizens support them. In fact, some people complain that local regulations do not protect the rights of people and tend to harm the communities' rights. The second reason is about justice. Fung stated that "injustice often results from political in-equality" (Fung, 2006). It means that all citizens need an equal opportunity to participate in the process of law-making. In addition, by giving public the opportunity to involve in this process, it may lead to protect their rights. Public participation is also considered as a basic human right (Verschuuren, 2004). If governments do not fulfill the participation right, it means that they harm the citizens' rights.

Environment Transport Regions (n. d.) claims, "Public participation is vital in law-making processes" (Environment Transport Regions, 2000). There are two benefits, which are creating better regulations and stronger quality of democracy. First of all, involving communities can lead governments to make enhanced policies because the process uses a wide range of experiences from the societies. Societies will provide more views and considerations to analyze the draft of regulations before the governments fix the regulations. This is important for the local governments because it can minimize several problems in the governments' areas such as "conflict of interest, the weak network capacity and limited knowledge of the problems" (Praptanungga). Public participation might obtain useful inputs to the legislators to make commendable regulations because communities have an excellent understanding about their problems and their interests. The second point is related to stronger quality of democracy. One important basic principle in democratic countries is relationship among the governments and the citizens. If the governments have a great relationship with their societies, the governments have good quality in their democracy. Involving public in the process of law-making might show that the input from citizens is valued and essential. Thus, it can enhance the trust of the citizens to their governments.

Even though the public participation provides useful benefits for the governments and communities, others assert that it also has several drawbacks. Emmet as cited in Nampila claimed "community

participation does not guarantee success and there is no clear methodology of community participation" (Nampila, 2005). Furthermore, Lowndes, Pratchett and Stoker explained three common disadvantages of public participation, namely lead unrealistic expectations, slow down legislation processes and need more budgets. Public participation may give people the impression that everything will be changed very quickly" (Lowndes, Pratchett, & Stoker, 2001). The impression can be a dangerous perspective for the societies because they have high expectations to the governments and sometimes the government do not have sufficient resources such as budgets and legal authority to solve the problems. Another disadvantage is slow down process. Public participation could inhibit the legislation process due to the difficulties to reach consensus between the citizens and the governments. Increasing public contribution also needs additional cost during this process. Therefore, the governments need to allocate more budgets to implement it.

### 4 LEGISLATIVE PROCESS IN THE U.S. (CALIFORNIA)

The California legislature is comprised of two houses: the Senate and the Assembly. There are 40 Senators and 80 Assembly Members. Bills can be introduced by Senators or Assembly members. The public can participate in each process through the process. While people know that the State Legislature makes laws, many societies are unfamiliar with the actual lawmaking process and how they can influence the output of the legislation process. If citizens read something in the newspaper about a bill introduced in the California Legislature, they can get more information from each legislator since each Senator and Assembly member maintains an office in his or her district. This office exists to help public, especially constituents. Moreover, people are just "a telephone call away from everything you need to know about a bill, about when it will be heard in committee, about the amendments that have changed the bill, or about how to arrange an interview with your legislator to express your opinions in person (Assembly, 2018)."

The first step in California legislation is idea or suggestion for needed legislation. These ideas can come from agencies, citizens, governments, and lobbyists. "The process begins when either an individual or group persuades a member of the legislature to author a bill. The member then sends the

idea and the language for the bill to the Legislative Counsel's Office where it is drafted into the actual bill. The drafted bill is returned to the legislator for his or her review. Persons or groups that originated the idea for the bill may also review it to ensure that the provisions they desire are in the bill in the correct form. If the author is a Senator, the bill is introduced at the Senate Desk; if an Assembly member, at the Assembly Desk, where it is assigned a number and read for the first time (Assembly, 2018)."

After the bill is introduced a bill, the next step that persons or groups could involve in Policy Committee. People can find out where the bill is assigned by calling the author. The bill is not heard in policy committee until 30 days after it has been introduced and printed since it give time for the public to investigate a bill or contact to the legislator to communicate the position of the bill. Furthermore, "Each bill must appear in the Daily File for four days prior to being heard in a committee". Checking the File is prominent because people can keep track of bills that are being scheduled for committee so they can become involved in the hearing process. The public can choose their position on the bill, they can support and oppose the idea and the content of the bill. In addition, some groups sometimes work together because it is a good strategy to push or decline the bill.

In the life cycle of legislation, there is one important process which is "the committee hearing". In this process, the member of legislatures will hear some testimony from bill authors, citizens, experts and lobbies. Involving many varieties group in the hearing process could give more benefits to the legislator members because they could hear idea from both side, from support and opposite groups.

## 5 LEGISLATIVE PROCESS IN INDONESIA (EAST JAVA)

A bill can be proposed from executive and the Legislator, both of them have the same right to initiate new bill. The detail process of law making processes are based on Law of Republic of Indonesia No. 12 of 1971 on the formulation procedure for legislation and Law of Republic of Indonesia No. 23 of 2014 on Regional Government. East Java has special Law for legislation process that is Law No. 1 of 2015 on the procedure for local legislation. The regulations state that public participation is important process in law making proses. The legislators should give information to the public about the draft of bill so

public could understand the process and hopefully the societies will able to participate the process. East Java Law No. 1 of 2015 states that societies have the right to participate in the law making process by verbally or writing. There are several mechanisms maybe used by legislator such as public hearing, working visit, socialization, and / or seminars, workshops, and / or discussion.

East Java legislator uses a formal and informal mechanism to absorb public participation in law making process. The formal mechanisms are *kunjungan kerja* (parliament visiting), socialization and public hearing and reses aspiration. Parliament visits are designed by the legislative commissions to visit some areas in East Java province, other provinces or overseas. The goal of the visiting to get input from the societies to the draft of the bill and also to get comparison data from other places about the same issues. Socialization or public hearings held by committees in legislators. The purpose of public dissemination or hearing is a discussion draft of the bill in the East Java parliament. The parties involved in the hearing are agencies, on-Government Organization, communities, individual and experts. The recess period is time when the members of parliament visit their constituencies to obtain people's aspirations such as feedback, complaints, opinions, suggestions, and other issues related to community problems.

## 6 COMPARATIVE ANALYSIS

Both California and East Java legislatures believe that public participation is important part of legislative process. Enactment of participation in the legislative process can strengthen the local community representation function and will have a positive impact in the local rulemaking process because the process is getting the support or legitimacy from the people. Moreover, public involvement builds good relationships between the legislators and the citizens. Both of the institutions have mechanisms or procedures how to involve public participation in the process.

Both of the institutions have the same challenging problems in the participation process, especially related to providing an opportunity to be heard. Jack Davies, a state senator from Minnesota stated that "Not everyone who wants to be heard by a legislative is given that opportunity. Not even members have the privilege to say as much as they might want because time pressure is too severe" (Davies, 1986). The problem also occurs in East Java Province legislators,

they have to deal with many bills in every section so they don't have much time to heard testimony for every bill. As a result they select the bills which need a public hearing or just base on the draft or proposal the bill.

There are several differences between California Legislature process and East Java Province such as legal basis for the legislative process, the procedure requirement the member parliament initiative, lobbies mechanism and the accessible information.

### 6.1 The Legal Basis for the Legislative Process

The authority of the legislative power both of them are derived from Federal and National constitutions. However, the legal basis of the detail proses of the legislations are different, the detail of California legislative proses is from parliament guides such as California State Assembly Office the Chief Clerk, Legislative Procedure and Senator Legislative Procedure. The procedure provide detail of the life cycle of legislation in California. While the legislation process in East Java not only based on legislative guide but also based on East Java Law No. 1 of 2015(bill) on the formulation procedure for legislation. The bill of legislation process needs joint approval from the executive and legislative.

### 6.2 Initiative Mechanism the Bill

The initiative for a bill in California could be from individual or group in assembly members or senate. The members who initiate the bill become the author of the bill. In addition, executive (governor) does not have a right to introduce or initiate new bill in legislation process, they only have right to agree or disagree with bill from the parliament and also have right to veto. However, the East Java Parliament members only could initiate a new bill if they have minimal number members who support and sign the initiate bill, individual member could not have right to initiate new bill in legislation process. Moreover, the executive (governor) has the right to initiate a new bill in legislation process and also they not only have the right to sign a bill but also have the right to involve in discussion process in the process.

### 6.3 Public Participation in Legislative Process

In the California legislative process, public participation is a requirement of the process. a bill cannot pass the process without the public

participation. The committee has to invite public to participate including citizens, experts and lobbies. In East Java public participation is not an obligatory process. Parliament could decide which bills need to invite public or not. The decision is usually based on the controversial and the impact of the bills.

### 6.4 Lobbyists

Another differences is related to lobbyists. The Federal and States congress have formal lobbyist (registered lobbyists) in the process (Gelak, 2008), while in Indonesia does not have formal or registered lobbyists in National or Local parliaments, the lobbyists are considered as part of the political process. Furthermore, the lobbyists in the USA legislation process have become important actor in the process. "They are becoming more professionalized and becoming more full time occupation in a number of states. In addition, there has been increase significantly in the number of professional lawyer-lobbyist and lobbying firms that represent multiple clients have become more numerous" (Keefe & Ogul, 2001).

## 7 CONCLUSION

Even though public participation in law making has some drawbacks such as unrealistic expectations, a slowdown in the legislation process and the need budget, it brought more benefits to governments and societies. However, the legitimacy of the process, justice issues (equal opportunity to citizens and basic human rights), also create better regulations and finally it creates a stronger quality of democracy so no doubt that public participation is prominent part of the legislation process in California and East Java.

The future process should give more opportunity to public to participate by provided easier way to access information and also give more opportunity for marginalized people to participate in law making process not only depend on lobbyists but also how public who might get direct impacts could participate in the process. Thus, educating society is become the key element on improving public participation because they become aware with their rights and the legislative process.

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