

# Tokenism in Legislation: A Critical Analysis of Public Participation in Legal Reform in Indonesia

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## Abstrak

Artikel ini mengkaji fenomena tokenisme dalam partisipasi publik pada proses legislasi di Indonesia. Dengan menggunakan pendekatan yuridis normatif dan kerangka konseptual tokenisme, penelitian ini menelaah sejauh mana keterlibatan publik dalam pembuatan undang-undang mencerminkan partisipasi substantif atau sekadar prosedural. Hasil penelitian menunjukkan bahwa meskipun ada kerangka hukum yang mendukung, pelaksanaan partisipasi publik dalam praktik masih dominan bersifat simbolik. Analisis ini menyoroti pentingnya reformasi sistem legislasi yang lebih inklusif, deliberatif, dan akuntabel agar partisipasi publik dapat berkontribusi secara nyata terhadap kualitas hukum di Indonesia.

**Kata Kunci:** Tokenisme, Partisipasi Publik, Legislasi

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## Abstract

*This article examines the phenomenon of tokenism in public participation within the legislative process in Indonesia. Employing a normative juridical approach and the conceptual framework of tokenism, this study analyzes the extent to which public engagement in lawmaking reflects substantive participation or is merely procedural. The findings indicate that despite the existence of a supportive legal framework, the implementation of public participation in practice remains predominantly symbolic. This analysis highlights the importance of reforming the legislative system to be more inclusive, deliberative, and accountable, enabling public participation to contribute tangibly to the quality of law in Indonesia.*

**Keywords:** Tokenism, Public Participation, Legislation

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## 1. Introduction

Public participation constitutes a pivotal element in the democratization process, specifically focusing on policy formation and legislative drafting within the context of a rule of law such as Indonesia. Community engagement is regarded not merely as a normative obligation but as an instrumental tool for ensuring the legitimacy and accountability of the resulting regulations. For instance, research by Klein and Arts demonstrates that although legislative frameworks may emphasize the importance of public participation, the outcomes are frequently symbolic, failing to deliver tangible impacts on the decision-making process

(Klein and Arts 2021). This indicates that legal frameworks alone are insufficient to ensure meaningful engagement; the quality and methods of participation are equally critical (Halili and Berisha 2023).

A study conducted in Poland by (Pawlewicz and Cieślak 2022) reveals that while legislative initiatives possess the potential to foster community participation, their implementation remains limited to specific regions. These findings highlight the challenges in institutionalizing equitable participation within the legislative process. Conversely, (Behbahani et al. 2021) assert that effective public participation not only yields higher-quality policies but also fosters a sense of public ownership over decisions and strengthens participatory motivation. Therefore, public participation should be positioned as a valuable deliberative practice rather than a mere administrative formality.

The significance of public participation in the legislative process is further underscored by studies indicating that transparency and consultative processes enhance public acceptance of regulations. For example, analysis suggests that when public consultation is conducted effectively, the community feels heard, which in turn can bolster trust in government institutions and the legality of the resulting policies (Albrecht, Pietilä, and Saarela 2022). This aligns with broader arguments regarding participatory democracy, where participation facilitates not only legitimacy but also clarity and accountability (Wardana 2018).

Since the 1998 reform era, the agenda of legal reform in Indonesia has become an integral part of the democratization process, with the expectation of establishing a government that is more inclusive and responsive to societal needs. However, despite formal efforts to encourage public participation in legislation—such as public hearings and open consultations—many argue that the implementation of such participation is often purely symbolic and lacks substantive influence on the laws being debated (Nadilla et al. 2019). This view is supported by research indicating that while the public is involved in procedural forms, the outcomes of such participation frequently remain confined to decisions predetermined by authorities (Rahmawati et al. 2019).

Upon deeper analysis, this issue can be attributed to participatory approaches that are often inadequate in building authentic community engagement. Research indicates that structural aspects and power dynamics within the decision-making process frequently determine the final outcome of participation. In many instances, public participation is reduced to a formality to satisfy transparency requirements, without a genuine commitment to listening to and considering public input (Gaghunting and Bermuli 2023).

Various studies also highlight other challenges impeding the effectiveness of public participation, including skepticism regarding the government's capacity and goodwill to implement the results of consultations (Rahmawati et al. 2019). For instance, despite initiatives to implement participatory budgeting at various levels of government, implementation challenges often lead to an erosion of public trust in the legislative process (H. Prabowo 2022). Consequently, there are concerns that public participation in the Indonesian legislature functions merely as a symbol of legitimacy rather than as a tool for enhancing policy quality that is truly responsive to community needs.

Furthermore, to address this phenomenon of tokenism in public participation, it is crucial to enhance political capacity and facilitate deeper dialogue between the public and decision-makers. This involves revamping existing structures to create space for genuine participation, rather than mere formality. The link between participation and decision-making must be established using mechanisms that are more inclusive and democratic, enabling public participation to contribute to better and more representative policymaking (Farichan et al. 2022).

While a number of prior studies have highlighted the importance of public participation in Indonesia's legal reform, these studies generally have not explicitly utilized the conceptual framework of tokenism as a

primary analytical tool. This absence indicates a theoretical and empirical gap in Indonesian legal literature, particularly in critiquing the meaning and quality of public participation in legislation.

Based on this background, the primary question this research seeks to answer is: Does public engagement in Indonesia's legal reform process reflect meaningful participation or merely a practice of tokenism? To answer this question, this study aims to analyze the forms and quality of public engagement in the legislative process in Indonesia, identify indications of tokenism practices in legal reform, and provide a more critical evaluative framework regarding the implementation of public participation in lawmaking.

This research offers a relatively novel critical approach within Indonesian legal studies by applying the concept of tokenism to assess the quality of public participation in the legislative process. The concept of tokenism in legislation refers to a situation where public involvement in policy development, while ostensibly present, exerts no significant impact on decision-making. In Indonesia, this practice is frequently observed in legislative processes marred by issues such as corruption and elite power dominance, which diminish the quality of public participation in legal reform. Research by Hidayati and Suwanda shows that local governments, such as in Surabaya, attempt to increase community participation through central media; however, persistent obstacles continue to hinder the effectiveness of such participation (Hidayati and Suwanda 2022).

This approach is significant because participatory practices have historically been understood in a normative-legalistic manner without an evaluation of their depth and effectiveness. Thus, this research contributes not only theoretically by expanding the horizon of participation studies in law but also practically by providing a foundation to drive legislative system reform that is more inclusive, deliberative, and accountable in Indonesia.

## 2. Method

This study employs a normative legal approach by integrating the conceptual framework of tokenism as a critical analytical tool. The primary focus of the research is to assess the quality of public participation within Indonesia's legislative process, as well as to identify indications of tokenism practices across various strategic legal instruments.

Legal sources comprise two categories. First, primary legal materials, namely statutory regulations such as the 1945 Constitution, Law No. 12 of 2011 (and its amendments), and sectoral statutes such as the KPK Law, the Job Creation Law (*Omnibus Law*), and the Draft Criminal Code (RKUHP), including meeting minutes and academic drafts. Second, secondary legal materials, consisting of scholarly articles, books, reports from legal research institutions, and publications from civil society organizations relevant to the issue of public participation.

Data collection was conducted through library research and digital literature screening, utilizing databases such as Google Scholar, HeinOnline, and national legislation portals. The analysis was performed using a descriptive-analytical method, evaluating normative provisions and legislative practices through a normative-critical approach.

The findings of the analysis are utilized to construct prescriptive legal arguments, aiming to provide an assessment of public participation quality and to offer normative recommendations for a more democratic and inclusive legislative system reform.

## 3. Conceptualizing Tokenism in Legislation

Tokenism in the context of public participation and legislation is a complex issue that requires deep understanding. It refers to situations where certain groups are involved in decision-making in a symbolic way, without having real power or influence over the outcomes. This is especially relevant in the study of deliberative democracy, which highlights the importance of genuine citizen participation in policymaking (Canosa, Graham, and Simmons 2022).

Arnstein, in her well-known work "A Ladder of Citizen Participation," describes different levels of participation that reflect how much power is given to the community in decision-making. At the lower levels, such as manipulation and therapy, participation does not involve actually giving power to the public; meanwhile, at higher levels, public input is more fully incorporated into the legislative process. According to Arnstein, tokenism occurs when participation is only consultative, with the public's voice not truly affecting the final decisions made by the government (Arnstein 2020).

Within the framework of law and good governance, tokenism contradicts the principles of substantive participation guaranteed by various human rights instruments. For instance, genuine participation is not viewed solely by the frequency of public engagement; conversely, it must be measured based on the impact and quality of societal contributions to the legislative process. This encompasses how input from the public is received, processed, and ultimately integrated into the formed regulations. Therefore, when analyzing public participation in Indonesia, it is crucial to employ indicators capable of assessing the extent to which the practice reflects procedural democracy versus the elite domination that often undermines the effectiveness of public participation (Fatlolon 2023).

The local context in Indonesia, where dynamics encompass diverse cultures and social systems, indicates that many participatory initiatives can become trapped in the practice of tokenism. For example, if traditionalism and local power structures are not accommodated within formal policy, their involvement may be viewed as a mere formality, bringing no meaningful change to the community (Zamisa and Mutereko 2019). Several studies indicate that, despite progress in facilitating public participation, such participation is frequently still regarded as a merely symbolic act (Nevescanin and Walczak 2023).

Moving forward, to achieve substantial and meaningful participation in the legislative process, there is a need for more intensive efforts to educate the public and eliminate the prevailing habits of tokenism. Consequently, it is essential to build a system that allows citizens to have tangible and influential access to the steps of law formation.

#### **4. The Normative Framework of Public Participation in Legislation in Indonesia**

Public participation in the legislative process in Indonesia possesses a robust foundation within the prevailing constitutional and legal frameworks. Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that sovereignty lies in the hands of the people, which implicitly demands active participation from the community in political decision-making and lawmaking. This consistency is supported by Law No. 12 of 2011 concerning the Formation of Statutory Regulations, which has been updated by Law No. 13 of 2022; both regulate the mechanisms for community involvement in the drafting of regulations through public hearings and the submission of written input (Muttaqin and Hikam 2024). In the context of international law, the right to participate is further reinforced by various international human rights instruments, particularly Article 25 of the International Covenant on Civil and Political Rights (ICCPR), which affirms participation as a vital aspect of democracy (Jayanti 2023).

However, the execution of public participation in legislative practice frequently falls short of the expected ideals. Although the normative framework exists, numerous reports indicate that community

participation is often limited to formal processes without any guarantee that the input provided will be integrated into the substance of the policy (Pratama 2022). This creates a disparity between existing legal norms and the reality faced on the ground. This phenomenon can be regarded as a form of tokenism, where community involvement is merely symbolic without any tangible reflection in the resulting policies (Muttaqin and Hikam 2024). In this analysis, it is crucial to focus on the development of mechanisms that are more transparent and responsive to public input, thereby realizing more meaningful and effective participation in the legislative process (Wibawa 2019).

To establish better participation, concrete measures must be taken. For instance, expanding the understanding and application of the principles of meaningful public participation is a critically important step (N. Prabowo 2023). Democratic education also serves as a key to increasing public awareness and understanding regarding the importance of their role in the policymaking process. By enhancing knowledge, the public can be more actively involved and contribute at every stage of legislation (Erlina, Damanik, and Tarigan 2021). Furthermore, it is essential to ensure that every step in the legislative process, from inception to conclusion, involves active community participation so that the decisions taken truly reflect the aspirations and needs of the people (Dini and Firdaus 2024).

In this context, this analysis demonstrates that while the legal framework for public participation is in place, its implementation in the field remains far from expectations. Therefore, more serious efforts are required from all parties, both the government and society, to create space for more effective participation in the legislative process in Indonesia.

## 5. Critical Analysis of Legislative Practices in Indonesia

Legislative practice in Indonesia demonstrates a clear discrepancy between the normative framework and implementation reality, resulting in forms of public participation that are frequently tokenistic in nature. Although there are formal guarantees for public participation in the legislative process, in reality, various enactment processes of laws in Indonesia—such as Law No. 19 of 2019 regarding the Second Amendment to the KPK Law, the Job Creation Law (Law No. 11 of 2020), and the new Criminal Code ratified in 2022 exhibit a number of serious practical issues. These processes are often conducted within very limited timeframes, without adequate transparency, and tend to disregard input from civil society, academics, and vulnerable groups (Gusman and Syofyan 2023)(Huzaeni and Nada 2022).

Public consultations are generally ceremonial in nature and do not provide sufficient space for deliberation that would allow the public to exert a tangible influence on the content of said regulations. This creates the impression that these activities are merely procedural obligations executed without a sincere intent to involve the community as the holders of sovereignty (Wardana, Sukardi, and Salman 2023). In this context, it is not uncommon for the dominance of political elites and economic interests to lead to unilateral legitimacy for decisions already made. Consequently, there is a disjunction between "*das sollen*" (what ought to be) and "*das sein*" (what is), where regulations that are supposed to be participatory are not consistently implemented (Pakpahan, Farabi, and Rachmania 2023).

This phenomenon is further exacerbated by the legal system's inability to accommodate principles of democracy and justice, where the resulting legislation remains far from the spirit of *Pancasila*, Indonesia's philosophical state foundation (Sofian and Riskiyono 2019). Furthermore, research indicates that despite efforts to enhance public participation, the applied processes and designs often fail to create a genuine participatory climate, leaning instead towards practices that minimize actual community involvement in decision-making (Huzaeni and Nada 2022).

Addressing these challenges, various studies advocate the need for reform to create more deliberative discussion spaces within the legislative process, where public participation can be interpreted more substantially rather than merely symbolically (Pakpahan, Farabi, and Rachmania 2023), as well as to ensure that the legislative process is grounded in values of social justice and true democracy (Benuf 2018). Thus, this analysis asserts that to achieve high regulatory quality, it is essential to strengthen meaningful and constructive public participation in the legislative process in Indonesia.

## 6. The Impact of Tokenism on Legislative Quality and Legal Legitimacy

Tokenism in the legislative process in Indonesia not only diminishes the meaning of public participation but also has the potential to degrade the quality of law and reduce the legitimacy of law-making institutions. When community involvement is conducted merely at a procedural level without substantial influence, the final legislative outcome tends to be unresponsive to actual social needs. Consequently, this results in the enactment of laws that are not only procedurally flawed but also substantively problematic, as they fail to reflect diverse public aspirations (Saputra, Zaid, and Triasari 2023). Data indicates that these legislative practices exacerbate the public crisis of trust in the parliament and government, as reflected in the various waves of public protests against the Corruption Eradication Commission (KPK) Law, the Job Creation Law, and the Draft Criminal Code (RKUHP) (Wardana, Sukardi, and Salman 2023).

Legal legitimacy, which should function as a morally and socially binding norm, is increasingly eroded because the public perceives a lack of ownership over the laws governing their lives (Wardana, Sukardi, and Salman 2023). Tokenism in participation undermines the principle of the rule of law, wherein laws should be formed through fair, participatory, and accountable processes. This is crucial because the theory and practice of public participation demonstrate that without meaningful engagement, legal legitimacy can be compromised, which in turn can lead to political instability and the emergence of legal conflicts within society (Ahmić and Isović 2023).

In the long term, this condition not only hinders efforts towards democratic legal development but also opens space for social resistance potentially triggering political instability. Research also indicates that society is becoming indifferent toward this legislative process, which tends to be formalistic and procedural. Thus, it is important to remember that public participation should not be viewed merely as a technocratic instrument, but rather as an ethical and political foundation for creating a legitimate and sustainable legislative system (Hidayat, Yunus, and Helmi 2023). Therefore, designing and implementing reforms to create tangible public participation in the drafting of statutory regulations must become an integral part of strategies to improve legal quality and enhance public trust in government institutions (Wardana, Sukardi, and Salman 2023).

## 7. Comparison with International Practices

The legislative process in Indonesia currently presents numerous challenges, particularly regarding public participation, which is frequently merely symbolic. In this context, several other democratic nations have adopted more inclusive, deliberative, and substantive participatory mechanisms. For instance, in Norway, every draft bill is required to undergo formal public consultation conducted within an adequate timeframe and integrated into an open digital legislative system. This system enables real-time public access, commentary, and monitoring, thereby creating a more effective participatory environment (Biale and Ottonelli 2018).

Meanwhile, in Canada and Germany, parliaments actively organize public hearings and foster collaboration with civil society and academics to investigate the multidimensional aspects of each bill. In this regard, public participation is regarded not merely as a procedural obligation but as a primary means to enhance social legitimacy and the technical quality of a regulation (Curato, Hammond, and Min 2019). Thus, these mechanisms demonstrate that meaningful public participation requires supportive institutional design, transparency, sufficient time, and political will from legislators (Scudder, Ercan, and McCallum 2021).

In contrast to Indonesia, which tends to treat participation as an administrative formality, practices in these countries offer valuable lessons on how regulations can be formed through collaborative, transparent, and responsive processes. These international experiences highlight the importance of adopting international best practices to strengthen the foundation of substantive democracy in Indonesia and to build a more participatory and equitable legislative system (Elstub, Ercan, and Mendonça 2019). In the long term, the implementation of these models is expected to enhance not only the quality of the resulting laws but also public trust in law-making institutions, which will ultimately contribute to stability and social welfare (Caluwaerts et al. 2023).

In this context, the challenge for Indonesia is to transform from symbolic legislative practices toward a more substantive participatory model that values the voices and needs of the community in the policymaking process (Junius and Matthieu 2022). Consequently, the resulting public policies will better reflect the people's aspirations and establish stronger legitimacy for the legal rules framing the daily lives of the community.

## 8. Conceptual Evaluation: Is Public Engagement in Indonesian Legislation Tokenistic?

Based on the analysis of the normative framework, legislative practice, and international comparisons, it can be concluded that public engagement in Indonesian legislation currently tends to be tokenistic. Although there is a legal foundation guaranteeing public participation, the actual implementation of such participation frequently becomes a formality rather than a substantive process influencing the final legislative outcome. This is evident in various legislative cases, such as the Job Creation Law and the revision of the KPK Law, where public consultations were more ceremonial in nature and did not provide adequate space for the public to influence the substance of the regulations. Furthermore, the limited time available to submit input, coupled with the lack of mechanisms to follow up on public aspirations, further reinforces this tokenistic character.

In this context, the legislative process more closely reflects the dominance of political and economic forces seeking to control key decisions without effectively involving public participation. Therefore, even though formal participation procedures have been adhered to, the resulting legislation often does not reflect broad public interests but rather tends to favor the interests of elite groups. Thus, it can be concluded that public engagement in the Indonesian legislative process remains at a symbolic level, fulfilling only administrative obligations without contributing significantly to the quality and legitimacy of the law.

## 9. Conclusion

This research demonstrates that while Indonesia possesses a strong legal framework supporting public participation in the legislative process, its implementation in practice remains predominantly symbolic. Cases such as the Job Creation Bill and the revision of the KPK Law illustrate that public participation is frequently treated as a mere administrative formality devoid of tangible influence on the content of

legislation. This condition stands in contradiction to the principles of deliberative democracy and substantive participation guaranteed by the Constitution and international law, and concurrently undermines legal legitimacy and public trust.

Observing practices in advanced democracies that have adopted more inclusive and deliberative participatory mechanisms, it is evident that there is an urgent need for Indonesia to reform its legislative system. This reform entails the adoption of participation models grounded in transparency, accountability, and genuine political will to act upon public input. The ultimate objective is to establish legislation that is not only procedurally legitimate but also equitable and responsive to societal aspirations.

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