

Local Government Policies in Formulating Harmonious and Democratic Regional Regulations



Samsul Arif¹, Rhiti Hyronimus²

¹ Postgraduate Law Student, Faculty of Law, Atma Jaya University Yogyakarta, Indonesia

² Lecturer of Postgraduate Law, Faculty of Law, Atma Jaya University Yogyakarta, Indonesia

ABSTRACT: Regional Regulation is one of the legal products in the region that greatly affects the welfare of the people, therefore the formation of regional regulations by the Regional Government should be participatory. The purpose of this research is to see how democratic laws and regulations are used to make local regulations. Components of the legal framework, especially the local government and DPRD, do not provide space for the community to express their aspirations, resulting in local regulations that are only ceremonial in nature.

Similarly, the principle of democracy outlined in the Law on the Formation of Legislation is still a formality due to the fact that the publication of local regulations to the public is not an obligation and the legal culture of the community and the role of democratization of formation have not been implemented. The problems in this research are 1) How is the implementation of democratic legislation in accordance with the needs of society? 2) Has the formation of local regulations involved public participation? The results of this research show that relevant institutions need to oversee how bureaucrats' participation works, in line with the mandate of Law Number 12/2011 on the Formation of Legislation, the formation of local regulations that are not participatory has resulted in several local regulations that are not in accordance with the demands of the community so that revisions need to be made. To ensure that local regulations are participatory and meet the needs of the community, the government must involve the community, accommodate aspirations, and capture as much community input as possible.

KEYWORDS: Local Regulation Formation, aspiration and participation.

I. INTRODUCTION

Regional Regulations (Perda) are rules made by representatives of the people in charge of making decisions for a region formed by the Regional Representatives Council (DPRD) at both the convention and regency/city levels together with the Regional Head (Governor / Regent / Mayor). These rules help to ensure that the region can carry out the task of regional autonomy to accommodate the special conditions of the region. Law formation, in the sense of the substance of the interpretation of the law is the most urgent activity in a state of law, because the law is the basis of legality for all elements of the state, especially for state administrators to manage and systematize in managing the state. No government action can be taken without a legal basis because Indonesia itself adheres to the civil law system. The law is made by the people's representatives on the basis of being elected by the people and the people's representatives should listen to the aspirations of the people themselves. With the amendment to Article 18 of the 1945 Constitution of the Republic of Indonesia (UUD NKRI 1945), the implementation of regional autonomy has gained a solid constitutional foundation. Regional regulations, later referred to as PERDA, have been recognised as one type of legislation in Indonesia, even in Article 7 paragraph (1) of Law No. 12/2011 on the Formation of Legislation. Regional governments regulate and manage government affairs according to autonomy and shared governance, in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia. The purpose of granting broad autonomy to the regions is to improve the realization of community welfare through improved services, empowerment and participation. In addition to this point, it is assumed that through increasing democracy, equality, justice, specialty and specificity as well as the potential and ability of the region within the framework of a sovereign state with increased competitiveness, to increase the efficiency and effectiveness of the implementation of regional autonomy, regional administration must pay attention to the interaction between government structures and regional governments, as well as the potential and diversity of the region.

In order to realize the national legal system, the process of forming laws and regulations is dynamic and adapted to the dynamics of community development. Coordinated steps and based on preparation methods that are set as standards for all entities with the authority to form laws and regulations need to be followed.¹ According to Law No. 12 of 2011 on the

¹ Aziz Syamsuddin, Law Drafting Process & Techniques, 2nd Edition Cet. 3rd Edition, Sinar Grafika, 2015, Page, 8.

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Establishment of Legislation as amended by Law No. 13 of 2022 on the Second Amendment to Law No. 12 of 2011 and Law No. 32 of 2004 on Local Government, the establishment of local regulations must be based on the principles of the establishment of Legislation including: a. Establishment of appropriate institutions or institutions; b. Suitability between types and content; c. Clarity of purpose; d. Usefulness; e. Execution; f. Usefulness; e. Execution; f. Execution. Usefulness; e. Execution; f. Clarity of purpose. Therefore, the 1945 Constitution creates a solid legal foundation for the formation of local regulations that must become a reference document for the formation of local regulations. These laws and regulations are regulated by the central government. According to Soenobo Wirjosoeigito, these regulations are local regulations (in a broad sense), so this opinion is the same as Jimly Asshiddiqie's opinion, stating that local regulations and laws are "the same" in their form of enactment and action.² The position of regional regulations should be seen as equivalent to laws made by the Legislature because regional regulations when viewed from the same position as laws.³

Local regulations are one of the policy guidelines, functioning to provide services, encourage participation in projects, and empower groups in order to improve the welfare of the community in each independent region. So, theoretically, local regulations are rules that are officially given to local governments to be used in regulating the region. In addition, as a form of democracy in a country, local regulations need to contain relational involvement so that aspirations can emerge as a supply of regulatory products that are in accordance with the wishes of the community. This is affirmed in Article 28 of the 1945 Constitution of the Republic of Indonesia, which gives the prerogative to hold assemblies and the freedom to express certain aspirations and criticisms, in a country that adheres to the concept of democracy which is characterized through several characteristics, namely: the life of freedom of opinion, the selection of management is decided through human means with the idea of honesty, justice and transparency. Because the principles of democracy can guarantee the people's right to determine the direction of government, democracy has a very important meaning for those who implement it. Since democracy is the cornerstone of state life, it is clear that the people at the highest level make decisions about important matters that affect their lives, including state policy.

Organizationally, a democratic state is a state that is governed by the people themselves or by the consent of the people, because sovereignty is in the hands of the people. A democratic state can be understood as a government in accordance with the will of the people, the importance of a scope of Local Government in the form of local policies to implement autonomy and management responsibilities with the people. Given that autonomy is a manifestation of the implementation of democracy, it is important for the authority to create legislative and legal norms that guide regional policy making, whether in the form of laws and regulations, presidential policies, or ministerial policies, all of which serve as guidelines for regional governments in preparing legal products for their regions. Regional Regulation (Perda) is a type of legislation, constitutionally the authority to form it is regulated in the 1945 Constitution Article 18 paragraph (6) that "Regional governments have the right to establish proximate policies and different policies to carry out the tasks of autonomy and joint management." The function of local policies is very important in the implementation of regional autonomy, so the way in which they are formed needs to be considered in efforts to form local regulations and policies, systematically organized based on positive methods and parameters, and stimulated through imaginative means and assignments of the local authorities concerned.⁴

II. METHODS OF RESEARCH

The type of research in this paper is normative legal research. Normative legal research is legal research that focuses on research on written rules or legislation (law in books) or research based on rules or norms that apply in society.⁵ The normative legal research process to find the truth based on normative substance by taking a conceptual approach and Legislation. Seeing the object of the problem to be studied concretely about regional legislation, of course doctrinally examining the basis of rules and legislation regarding the manifestation of power in the formation of both vertical and horizontal.

This research has the aim of trying to find concrete facts about the rule of law in accordance with legal norms that live in society, whether legal norms that provide obligations and sanctions are in accordance with the principles of legal norms. The findings of legal principles, and indeterminate legal findings, are complemented by empirical observations of how the law operates in

² Jimly Asshiddiqie, *Matters Of Law*, (Jakarta: Konstitusi Press, 2006) Page. 24

³ Ni'matul Huda, *Regional Autonomy, History Of Development And Problematics*, (Yogyakarta: Pustaka Pelajar, 2009), Page. 238.

⁴ Marthen Arie, *Legisprudence Approach In Assessing The Quality Of Legislation*, Harlev, Vol. 2 Issue 3 December 2016, Page. 383.

⁵ Muhammad Siddiq Armia. *Determination Of Legal Research Methods And Approaches*, Indonesian Institute For Constitutional Studies (Lkki) 2022, Page. 8.

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society. The legal sources used are obtained through literature sources and use the Statute Approach and Conceptual Approach. Sources and legal materials needed for research include primary legal materials that are sought, including legal sources that are considered valid according to their authority, such as laws and regulations, letters in the process of making laws and regulations, and judge decisions. Secondary legal materials include legal publications, legal periodicals, cases, expert opinions and research results of expert symposiums. Analysis for problem solving is carried out by synthesizing secondary legal materials and primary legal materials. This empirical juridical approach shows that in analyzing the problem using secondary and primary legal materials.

This research examines some formulations and implementation of certain legal events that occur in society as an explanation of what is studied and understood. Thus, legal findings can cause controversy that must be resolved through a scientific truth. Johnny Ibrahim said that normative legal research is a way to find the truth using scientific logic from a certain point of view. This point of view is not just about following the rules made by politicians or authorities. Instead, it looks at whether the rules are in line with other legal principles and whether people's actions follow the rules.

III. RESULT AND DISCUSSION

A. Application of democratic principles of legislation in accordance with the needs of society

The process of forming regional regulations, hereinafter abbreviated as Perda, is the same as the formation of laws, except that it differs in the level and authority of implementation. The standardized basis for the formation of legal guidelines and policies remains the same. For example, in making laws and regulations, philosophical, sociological, and juridical foundations are used. Local Regulation is part of the legislation and is a legal provision of the Indonesian state based on Pancasila. Currently, local regulations have a very strategic function because they are given a constitutional basis that is expressly regulated in Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia. The provisions regarding its making are the same as the making of a law, but the institution that establishes it and the level of the institution are different. Nevertheless, normative juridical substance and ethical demands for local regulations are still considered so that local regulations have high juridical, philosophical and social validity.

The ideological, philosophical and ethical source for local regulations is Pancasila. Meanwhile, the operational juridical source of local regulations is the basic law, namely the 1945 Constitution, which is also the constitutional basis for local regulations. Its making is based on certain principles as mentioned in Article 5 of Law No. 12/2011 and Article 137 of Law No. 32/2004. These principles are clarity of purpose, the principle of institutional or appropriate forming organs, the principle of usefulness, the principle of conformity of hierarchy and content material, the principle of implementation, the principle of clarity of formulation and the principle of openness.⁶

One of the principles that can fulfill the wishes of the community is the principle of openness, which must be seen since the draft of the regulation, in the process of making which is open and democratic. Openness and democracy are intended so that the ideas or aspirations of the community can be channeled in the local regulation. The principle is that the local government and DPRD must listen to what the people want and be willing to accommodate the ideas, ideas or aspirations of the local community.

According to Van der Vlies, the concept of good legislation must be based on formal and material principles. Formal principles include: "the principle of clarity of purpose, the principle of suitability of persons and institutions, the principle of the need for detail, the principle of implementation, and the principle of consensus". Substantive principles include: "correct terminology and systemic principles, identifiable principles, principles of equal legal treatment, principles of legal certainty, and principles of law enforcement in the region".⁷ Regional level regulations are regional regulations promulgated by the Regional Government or one part of the Regional Government that has the constitutional authority to enact laws and regulations at the regional level.⁸ Legislation is essentially the establishment of legal norms that apply externally and are very broad in scope. Laws and regulations are written decisions made by the state or government in providing instructions or patterns of behavior that are usually generally binding.⁹ According to Bagir Manan, to form legislation, make laws (including local regulations) strong and

⁶ Joko Riskiyono, *Community Participation In The Formation Of Legislation To Realize Welfare*, Global Journal, Indonesia, 2015.

⁷ A. Hamid S. Attarnimi, *The Role Of The Presidential Decree Of The Republic Of Indonesia In The Implementation Of State Administration*, Dissertation, Lti, Jkt. 1990, Page. 330.

⁸ Bagir Manan, *System And Technique Of Regional Legislation Making*. (Bandung: Lppm Universitas Islam Bandung, 1995), Page. 1

⁹ Maria Farida Indarti, *Science Of Legislation Types, Functions And Content*, (Yogyakarta: Kanisius, 2007), Page. 10

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quality laws, the preparation of laws can be based on three foundations, namely: first, the legal basis (juridische gelding); second, the sociological basis (sociologische gelding); third, the Philosophical Foundation The importance of these three basic elements in forming a law in order to form a law that has legal rules (legal validity), and the rules apply for a long time.¹⁰

In the book The Liang Gie where in his book explains that a principle is a general thesis stated in general terms without specifying a specific way of implementing it, its application is a series of actions to be the right guide for action.¹¹ While in Satjipto Rahardjo's view, legal principles are the heart of the rule of law itself. Articles 5 and 6 of Law Number 12/2011 define the principles of developing effective laws and regulations as follows:

1. Purpose. This concept indicates that all rules and regulations must have a specific purpose to be effective.
2. Appropriate institutional or institutional arrangements. This concept asserts that laws and regulations are valid if they are promulgated by a legal institution/official as referred to in the 1945 Constitution. These rules and regulations can also be declared null and void if they are made by an illegal entity.
3. Conformity between type, hierarchy, and content substance. This concept intends that every form of legislation must pay close attention to the substance of the content that is adjusted to the type of hierarchy of legislation. The hierarchy shows that the laws and regulations prepared do not conflict with the laws and regulations concerned, while the content material requires conformity to the type, function, and hierarchy in the laws and regulations.
4. Implementability. This principle emphasizes that every legislation must consider the effectiveness in people's lives, both in terms of philosophical, legal and sociological thinking.
5. Usefulness and usefulness. This principle states that every regulation is promulgated because it is really necessary and useful in regulating the life of society, state and nation.
6. Clarity of formulation. The meaning of this principle emphasizes that each legislative regulation must be in accordance with the requirements and technicalities, so that the systematics and terms in legal language must be firm, not easily interpreted, and not cause various interpretations in its implementation.
7. Transparency. This idea is reflected in the preparation of laws and regulations which, according to the explanation of Article 5 letter g of Law No. 12/2011, must be open or transparent starting from the planning, preparation, preparation, discussion, ratification, and decision processes.

Article 6 paragraph (1) emphasizes that the content material of laws and regulations must reflect the principles of, among others:

- a. Protection; every content material of laws and regulations must guarantee the right to protection of its people in the
- b. Humanitarian Principles; the substance of laws and regulations must respect the rights and dignity of every citizen.
- c. Nationality; every content material of laws and regulations must describe the pluralistic nature that is in line with the character of the Indonesian nation while maintaining state unity and harmony.
- d. Family concept; every part of the Legislation must prioritize debate to build consensus on policy decisions.
- e. The archipelago principle; every content material of laws and regulations always pays attention to the interests of the entire territory of Indonesia.
- f. Bhinneka Tunggal Ika concept; the content of laws and regulations must be based on the diversity of cultures, religions, ethnicities, and groups so that there are no sensitive issues in the unitary state of the republic of Indonesia.
- g. The principle of justice; all content material of laws and regulations must be equal, equal, and defend the rights of others.
- h. The concept of equality in law and government; every content material of laws and regulations must not have a purpose that distinguishes based on background, including but not limited to, culture, ethnicity, religion, gender, race, class, and social position.
- i. The idea of order and legal certainty; every material substance of laws and regulations provides guarantees to citizens that there is protection to protect justice.
- j. The principle of balance, harmony, and harmony; every material substance of laws and regulations must maintain balance, harmony, and harmony between the interests of the people and society by prioritizing the interests of the state.

¹⁰ Bagir Manan, *Constitutional Basics Of National Legislation*. (Padang: Faculty Of Law Andalas, 1994), Page. 13

¹¹ Sudikno Mertokusumo, *"Knowing Law An Introduction"* (Yogyakarta: Maha Karya Pustaka, 2019). Page. 42.

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B. Implementation of local regulation formation policies with community participation and aspirations.

Public participation has a very important urgency as a source in providing policy for the formation of laws and regulations in the context of the current era of democracy and decentralization. Public participation is a prerequisite and representation of the realization of democratic governance.¹² In the rules that apply in a normative context, the community is given guarantees both individually and collectively to participate in providing aspirations. This is regulated in Law No. 12 Year 2011 in Article 96 stating that "The public has the right to provide input orally or in writing in the formation of laws and regulations",¹³ by participating in meetings, work visits, socialization or seminars and discussions. Explicitly, the guarantee of the right to public participation is also regulated in the 1945 Constitution Article 28E paragraph (3), which states that everyone has the right to freedom of association, assembly and expression. These rights have a constitutional meaning to play a role in government administration such as the formation of local regulations to provide input, suggestions and views and even criticism to legislators (Regional Head and DPRD).

The government in the process of forming local regulations must include community involvement in the process of forming local regulations, as well as their implementation and supervision. Thus, the purpose of forming local regulations to realize welfare can be realized. Community aspiration is a series of actions carried out in the form of requests or "resistance" to a policy in a planned and coordinated manner.¹⁴ The goal is to influence the formation or change of policies in an effort to convey the interests of the community in making regulations in order to represent ideas, there is effective communication between the community and the Regional Government and DPRD as the authorized institution in forming regional regulations, The people still have the freedom to express themselves through various media, both social media, electronic, and other traditional media, as provided by the constitution in the context of respecting human rights. By understanding the importance of the people's ambitions, the content material will be more in favor of the people's interests. The misuse of content material designed for the benefit of the people means rejecting the essence of the existence of laws in society.¹⁵

Public participation in the formulation of laws and regulations can be done in various ways depending on the level of political development of a country. The following are some models of public participation:

1. Representative Democracy

This is a pure model of public participation to invite public participation as citizens in making public policies in elections to make decisions on the election of legislative representatives purely by heart.

2. Basic Model of Public Participation

The concept of people's participation by interacting with the representative institutions concerned so that there is an exchange of new ideas and ideas, so that people do not only interact in the decision-making process during general elections.

3. Realism Model of Public Participation

In building participation interactions, actors tend to dominate bringing interest groups and organizations in following the context of elections in the realm of representative institutions. Some citizens do not participate in building interactions with institutions that have interests or some organizations.

Nonet and Selznick put forward the notion of three main conditions of law in society, namely Repressive Law, Autonomous Law, and Responsive Law, in relation to community involvement in legal development within the framework of a unitary state system. Repressive law has the aim of order, comfort and the basis of its influence is public safety. The rules are detailed but less binding on decision makers, so discretion often occurs. Coercion appears to be widespread and weakly constrained, while what develops is an "ethic of coercion". The law is subject to power politics and the expectation of obedience is unconditional and disobedience is seen as an aberration.

The rationale for regulation under autonomous law is legitimacy, which is based solely on procedural fairness. Rules bind the ruler and the ruled, while regulations limit access to information. Criminal limitations are used to regulate coercion, and morality is institutional morality. The rule of law is "independent" of politics. Compliance demands are substantially lower and justified by the application of rules, such as manipulating rules. Fixed processes are used to limit public engagement.

¹² Hestu Cipto Handoyo. 2008. *Principles Of Legal Drafting And Academic Manuscript Design*. Yogyakarta: Publisher Of Atma Jaya University Yogyakarta, Page. 153.

¹³ Article 96 Of Law No. 12/2011 On The Formation Of Legislation

¹⁴ Joko Riskiyono. 2015. Community Participation In The Formation Of Legislation To Realize Welfare, Global Journal. Indonesia.

¹⁵ *Ibid*

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In responsive law, the validity of law is based on substantive justice and rules are subject to principles and discretion. The validity of the rules is mainly based entirely on the main judiciary and the rules are situations for command and discretion. Discretion is exercised if you want to achieve the goal. Coercion is more visible in the form of overwhelming choice together with incentives or independence structures. The obvious morality is the "morality of cooperation", even when crime and political aspirations are in one. Disobedience is judged in terms of length and great harm and is considered a growing legitimacy problem, simply put, there are different types of laws. In some, the aim is to maintain order and security, but the person in charge has a lot of power to make decisions. In others, the rules apply to everyone equally and are based on fairness.

The Constitution is the highest form of legal norm in a country, in accordance with the idea of constitutional supremacy, and the entire state, including representative institutions, is bound by and subject to the rules in the Constitution. As an institution of the highest standing, the provisions of the Constitution can be tested by the judiciary through what is known as judicial review.¹⁶ The regulation of lawmaking is mandated by law to the Legislature, where the Legislature must actualize democracy that results in the participation of all interests in the governance process. Furthermore, legislative understanding is needed to carry out reforms. Efforts to democratize the formulation of laws and regulations are one of the drivers to enable public participation and oversight in the preparation of laws and regulations. Participation can be defined as taking part in an activity, from preparation to assessment. It is hoped that by improving the DPR's function in the field of legislation, representatives of the people can produce legal products that involve public involvement. To address this, the DPR amended its Standing Orders. Previously, the discussion session of the bill was considered closed unless the chairman of the session stated otherwise. This should be reversed; in general, bill deliberation meetings are open unless closed for certain reasons, in the implementation of this transparency has not functioned properly.

Local Regulation Formation is the process of making local regulations based on planning, discussion, drafting techniques, formulation, ratification, enactment and dissemination. In the process of preparing the discussion and ratification of draft local regulations into local regulations, it is very important to refer to the applicable laws and regulations. Although the principle of legality, as stipulated in Articles 136-147 of Law No. 32 of 2004, is the main foundation, there are some additional things that need to be agreed upon to make local regulations more operational. One of the things suggested is the preparation of an academic paper prior to the formation of local regulations. Based on Article 58 paragraph (2) of Law Number 12 Year 2011 Jo Law Number 15 Year 2019 concerning the Formation of Legislation: "The harmonisation, rounding, and stabilisation of the conception of the Draft Provincial Regulation originating from the Governor is carried out by the ministry or institution that carries out government affairs in the field of the Formation of Legislation" Article 36 paragraph (3) states that "the preparation of Prolegda within the Provincial Government is coordinated by the Legal Bureau and can involve related vertical agencies".

Within the framework of the rule of law, the law has the highest position because there is an equality in the eyes of the law itself, the application of the principle of legality in all practices. The democratic system has given birth to the principle that the law itself is built and enforced on the basis of the source of the law itself, namely the law. Therefore, the principle of the rule of law should be built on the principles of democratic principles and developed on the basis of popular sovereignty, so that the principle of the rule of law as legal sovereignty itself in substance comes from the wishes of the people.¹⁷ The implementation of regional development is divided into four stages: planning, budgeting, implementation, monitoring and assessment. PP No. 45/2017 demands that local governments are authorized to encourage community involvement as a result of the whole process. This is necessary to realize co-creative growth in the future, which is development based on shared ideas, resources, goals and actions.

Participation is a form of community desire in overseeing the Formation of Legislation in accordance with the wishes and needs of the community, the role of the community in channeling their aspirations, thoughts and interests in the implementation of local government, the community has the right to provide input both orally and in writing in the formation of Perda, Perkada or DPRD Regulations, it is guaranteed in article 166 paragraph (1) Permendagri 120/2018. The government has drafted a policy in response to the discussion of the Local Government Law Number 23 of 2014, which indicates that community involvement is needed to accelerate the fulfillment of community welfare. Article 354 requires local governments to encourage community participation in the administration of local government by:

¹⁶ Indrati, Maria Farida. Tt. "Proses Penyiapan Rancangan Undang Undang Dari Pemerintah," [Http://www.Parlemen. Net/Site/Ldetails](http://www.parlemen.net/site/details), Diakses 20 Oktober 2015.----

¹⁷ Khairuddin Tahmid, *Democracy And Autonomy In Village Governance*, (Publishing Section Of Fak. Sharia Iain Raden Intan, Bandar Lampung), 2004. Page. 9.

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- a. Transparency of information through information systems, print/electronic media, notice boards, or direct requests to the local government concerned.
- b. Encouraging the active participation of community groups and organizations.
- c. Institutionalization and decision-making mechanisms that allow community groups and organizations to interact effectively.
- d. Community involvement in policy or decision making.
- e. Other initiatives based on needs and developments in the region.

Thus, it is hoped that the executive and legislative branches will be able to convey the views and demands of the community, which are then outlined in local regulations. It should also be noted that there are several factors that contribute to the relevance of community involvement in the development of local laws and policies: (1). Provides a more solid foundation for public policy making. (2). Ensures more effective implementation as the community takes an active part in the formulation of public policy. (3). Increase public confidence in the executive and legislative branches of government. (4). Resource efficiency, because by integrating the community in the formulation and implementation of public policies, resources are spent on socializing public policies.

IV. CONCLUSIONS

The process of forming laws is almost the same as the process of forming local regulations, only different at the level and authority that has the authority to implement it, the formation of laws and regulations is essentially the formation of legal norms that apply generally in a broad sense. Local regulations are written decisions of the state or government that contain instructions or patterns of behaviour that are generally binding, community participation must be involved in the formation of local regulations, as well as in the implementation and supervision of these regulations. Community participation in the formation of local regulations can be done in various models of participation options depending on the level of development of a dynamic community environment. Public participation in the formation of local regulations is guided by the political system adopted by the state, therefore changes in the constitutional paradigm have consequences for changes in the meaning and implementation mechanisms of public participation in the formation of local regulations. In the reform era, the frame of transparency is articulated as participation which is given the meaning of community involvement in the broadest possible political process, especially in the formation of laws and regulations, be it the laws above or below.

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