

## Legal Recognition of Societal Organizations as Civil Society Representatives in Democratic Lawmaking

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### ABSTRACT

Public participation is an indispensable element of democratic lawmaking because it links statutory authority with social legitimacy. In Indonesia, societal organizations (organisasi kemasyarakatan, ormas) have a strategic position as intermediary institutions that aggregate collective interests and transmit them to state institutions. Although Law No. 12 of 2011 on Lawmaking, as amended most recently by Law No. 13 of 2022, recognizes public participation and introduces the language of meaningful participation, the statutory framework still does not expressly establish an enforceable obligation to involve societal organizations at each decisive stage of the legislative process. This article examines the legal consequences of that gap for democratic legitimacy, legislative accountability, and the quality of public control. Using normative legal research supported by statutory, conceptual, and comparative approaches, the article analyses Indonesian constitutional guarantees of association and expression, the legal functions of societal organizations under Law No. 17 of 2013, the doctrine of meaningful participation developed by the Constitutional Court, and selected comparative lessons from the Philippines. The study argues that the present Indonesian model remains vulnerable to procedural formalism because participation is frequently treated as access to consultation rather than as an institutionalized right to be heard, considered, and answered. The article recommends reformulating the Lawmaking Law by converting discretionary consultation clauses into mandatory provisions, establishing minimum procedural standards for consultation, requiring written feedback on civil society submissions, and creating a reviewable record of participation. Such reform would strengthen the rule of law by transforming societal organizations from occasional invitees into legally recognized partners in democratic legislation.

**Keywords:** civil society organizations; democratic legislation; legal recognition; meaningful participation; public participation; rule of law

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### INTRODUCTION

The maxim *het recht hinkt achter de feiten aan*—law limps behind social facts—captures a persistent challenge in modern legal systems. Social relations, political mobilization, digital communication, and collective action evolve more rapidly than positive law. A democratic legal system therefore cannot be assessed only by whether it produces formally valid statutes; it must also be evaluated by whether lawmaking procedures are sufficiently responsive to social change. In this sense, progressive legal thought is relevant because it treats law as an institutional instrument for human welfare rather than as a closed system of commands (Prabowo, 2025). When lawmaking fails to absorb public experience, the resulting statute may be valid in form but fragile in legitimacy. The substance of the law should be able to bring people to the idea that ideally it wanted (Al Uyun, 2014)

One of the most important institutional channels through which citizens participate in public affairs is freedom of association. International human rights law protects the rights to peaceful assembly, association, and expression, while the Indonesian

Constitution guarantees the right to associate, assemble, and express opinions under Article 28E(3) of the 1945 Constitution. These constitutional guarantees provide the normative foundation for the emergence of societal organizations (*organisasi kemasyarakatan*, hereafter *ormas*). In the Indonesian context, *ormas* are voluntary associations formed by citizens on the basis of shared aspirations and objectives to pursue the interests of members, society, the nation, and the state (Law No. 17 of 2013; Firoso, 2019; Setiawan & Riwanto, 2020). Their statutory functions include the channeling of public aspirations, a function that is directly relevant to legislative participation.

Democracy is characterized by three conditions: elections, public participation in government, and guarantees of civil and political rights by the state to its people (Zainudin *et.al*, 2025).

The democratic importance of *ormas* lies in their intermediary position. Individual citizens often face informational, financial, and procedural barriers when attempting to influence legislative agendas. *Ormas* can reduce these barriers by aggregating interests, producing policy knowledge, mobilizing affected communities, and presenting structured arguments to lawmakers. Civil society organizations also perform a checking function by monitoring whether legislation reflects constitutional rights, social justice, and public welfare (Herdiansah, 2016). In democratic theory, such participation is not merely an accessory to representative institutions; it is a mechanism through which representative democracy is complemented by deliberative and participatory democracy (Pateman, 1970; Habermas, 1996; Cohen, 1998).

Indonesia has formally recognized public participation in the lawmaking process. Article 96 of Law No. 12 of 2011 on the Formation of Laws and Regulations, as amended by Law No. 13 of 2022, provides that the public may give oral and/or written input and that public consultation may be conducted through public hearings, working visits, seminars, workshops, discussions, and other consultation activities. Following Constitutional Court Decision No. 91/PUU-XVIII/2020, Indonesian legal discourse has increasingly adopted the concept of meaningful participation, commonly understood as encompassing the right to be heard, the right to be considered, and the right to receive an explanation (Constitutional Court of Indonesia, 2020; Prastyo, 2022).

Nevertheless, a crucial normative question remains unresolved: does the existing framework merely give society an opportunity to speak, or does it impose an enforceable obligation on the state to involve representative civil society actors in a structured and consequential manner? This question is especially important because recent controversial statutes in Indonesia—including revisions to the Corruption Eradication Commission Law, the Job Creation Law, the new Criminal Code, the Capital City Law, and the Special Region of Jakarta Law—have generated public criticism regarding limited transparency and inadequate consultation. Such controversies indicate that a formal right to participate does not automatically produce meaningful participation.

This article therefore focuses on the legal recognition of *ormas* as representatives of civil society in democratic lawmaking. It argues that the Indonesian legal framework remains normatively incomplete because it does not expressly establish the mandatory, stage-based, and reviewable involvement of *ormas* in legislative formation. The research contributes to the literature in three ways. First, it clarifies the distinction between public participation as a general right and *ormas* involvement as a specific institutional obligation. Second, it links Indonesian statutory reform to theories of participatory and deliberative democracy. Third, it offers comparative reflections from the Philippines, while

carefully distinguishing constitutional and local-government participation mechanisms from national legislative mandates.

The article is guided by the following research question: how should Indonesian law formulate an enforceable obligation to involve societal organizations in the formation of legislation so that public participation becomes meaningful, accountable, and compatible with democratic rule-of-law principles?

## **Literature Review and Theoretical Framework**

### **1. Rule of Law, Legal Legitimacy, and Democratic Legislation**

According to the Theory of the State of Law, the State must be based on Law, not on power alone. Thus, the existence of rules to make legal order in the nation and State can be realized (Al-Fatih *et al*, 2023). The rule of law is not exhausted by legality, predictability, and institutional hierarchy. In a constitutional democracy, legality must be accompanied by legitimacy. Legislation gains legitimacy when it is produced through procedures that are transparent, inclusive, reason-giving, and open to contestation (Waldron, 2012). If lawmaking is monopolized by political elites, statutory validity may be achieved, but democratic authority weakens because affected communities cannot recognize themselves in the law. Public participation proves vital for improving state mechanisms (Zainudin, 2021)

Participatory democracy strengthens legal legitimacy by allowing citizens to move from being passive addressees of law to active participants in public decision-making. Pateman (1970) argues that participation has an educative function because it develops citizens' capacity to deliberate and govern collectively. Habermas (1996) places communicative rationality at the center of democratic legality: law is legitimate when it can be justified through public reasoning. Cohen (1998) similarly links democratic legitimacy to procedures in which participants can offer reasons under conditions of equality. These theories provide the normative ground for treating ormas as more than interest groups; they are institutional channels through which citizens enter the deliberative sphere of lawmaking.

### **2. Societal Organizations as Civil Society Intermediaries**

Civil society occupies the space between the family, the market, and the state. It is marked by voluntary association, relative autonomy from state power, and orientation toward collective interests. In Indonesia, ormas operate within this space. They may be organized around religion, profession, labor, education, environment, disability rights, customary communities, or other sectoral interests. Their legitimacy does not necessarily derive from electoral authorization, but from associational representation, proximity to affected communities, and capacity to articulate public concerns.

The intermediary function of ormas is legally significant. Law No. 17 of 2013 recognizes that ormas may serve as channels for public aspirations. This function becomes especially important when legislative issues are technical or when affected communities lack direct access to parliamentary procedures. Ormas can produce policy briefs, organize consultations, transmit local knowledge, and identify the distributive impact of proposed legislation. Their participation can therefore improve both epistemic quality and democratic accountability in the legislative process (Herdiansah, 2016; Wardana, Sukardi, & Salman, 2023).

### **3. Meaningful Participation and the Ladder of Participation**

The concept of meaningful participation is central to this article. It requires more than the opportunity to submit comments. Participation becomes meaningful when participants have access to relevant information, adequate time to respond, a fair

opportunity to be heard, a real possibility that their views will be considered, and a reasoned explanation when their input is accepted or rejected (Prastyo, 2022; Fajri, 2023). This approach is compatible with the Constitutional Court's formulation in Decision No. 91/PUU-XVIII/2020, which emphasized the rights to be heard, considered, and explained.

Arnstein's (1969) ladder of citizen participation remains a useful analytical tool. At the lower levels, participation can take the form of manipulation or therapy; at the middle levels, informing, consultation, and placation may allow citizens to speak without transferring influence; at higher levels, partnership, delegated power, and citizen control permit citizens to shape outcomes. The Indonesian model, as currently practiced, often remains at the level of consultation or informing. The challenge is to move toward partnership without transforming legislative authority into an unworkable veto system.

## METHOD

This study uses normative legal research. The method is doctrinal because it examines legal norms, legal principles, statutory provisions, constitutional guarantees, and judicial reasoning relevant to public participation in lawmaking. It is also analytical because it evaluates the internal coherence of Indonesian law and its adequacy in realizing democratic participation.

The research employs three approaches. The statutory approach examines the 1945 Constitution, Law No. 12 of 2011, Law No. 15 of 2019, Law No. 13 of 2022, Law No. 17 of 2013, and Constitutional Court Decision No. 91/PUU-XVIII/2020. The conceptual approach applies theories of participatory democracy, deliberative democracy, civil society, and meaningful participation. The comparative approach uses selected legal materials from the Philippines, including the 1987 Philippine Constitution, the Local Government Code of 1991, and administrative reforms related to public consultation and citizen participation. The comparison is functional rather than transplant-oriented: it seeks to identify mechanisms that may inform Indonesian reform without assuming institutional equivalence.

Primary legal materials consist of constitutions, statutes, court decisions, and official legal texts. Secondary materials include books, peer-reviewed articles, policy papers, and reports from institutions concerned with democracy, rule of law, and public participation. The analysis uses qualitative legal reasoning through grammatical, systematic, and teleological interpretation. The study's normative output is a proposed legal reformulation of the Indonesian Lawmaking Law to strengthen the position of ormas as recognized participatory actors.

## RESULTS AND DISCUSSION

### 1. Constitutional and Statutory Basis for Public Participation in Indonesia

Indonesia's constitutional structure supports public participation in lawmaking. Article 1(2) of the 1945 Constitution locates sovereignty in the people, while Article 28E(3) protects association, assembly, and expression. These provisions create a constitutional environment in which citizens and their organizations cannot be treated merely as objects of regulation. They are constitutional subjects whose collective voice is relevant to the formation of public norms.

At the statutory level, Law No. 12 of 2011, as amended by Law No. 13 of 2022, recognizes public participation in the formation of laws and regulations. Article 96 provides avenues for oral and written input and identifies forms of consultation such as

public hearings, visits, seminars, workshops, discussions, and other activities. The amended framework also expands the understanding of affected and interested groups. Importantly, the elucidation to Article 96 includes community organizations, professional organizations, non-governmental organizations registered with the authorized ministry, customary law communities, and persons with disabilities as groups that may participate.

This statutory recognition is important, but it remains incomplete. The language of participation is still predominantly framed as a right of society rather than as a binding procedural duty of lawmaking institutions. A right without a corresponding enforceable obligation risks being dependent on the goodwill of lawmakers. In practice, consultation may be held late, limited to selected invitees, or conducted without a written explanation of how submissions influenced the draft. The gap is therefore not the total absence of participation clauses; the gap is the absence of a sufficiently mandatory, structured, and reviewable mechanism for involving representative civil society actors.

## **2. Regulatory Inequality in the Involvement of Ormas**

Regulatory inequality arises when law acknowledges participation in general terms but leaves the concrete design of participation to administrative discretion. Under such conditions, different ministries, parliamentary bodies, and agencies may apply different standards regarding who is invited, how consultation is announced, how long the public may respond, and whether submissions are published. This inconsistency undermines legal certainty and makes participation vulnerable to political selectivity.

The problem is particularly serious for ormas that represent critical, marginal, or minority interests. If consultation is discretionary, public authorities may prefer organizations that are ideologically aligned, institutionally familiar, or politically non-confrontational. Organizations representing labor, environmental justice, disability rights, indigenous communities, or anti-corruption concerns may be consulted only after major policy decisions have already been made. This pattern resembles what Arnstein (1969) calls tokenism: citizens are allowed to speak, but the structure does not ensure that their voice affects the decision.

Regulatory inequality also affects the quality of legislation. Legislation produced without early and diverse participation is more likely to generate social resistance, constitutional challenges, and implementation problems. The controversy surrounding the Job Creation Law illustrates how procedural objections can become substantive constitutional questions. Constitutional Court Decision No. 91/PUU-XVIII/2020 did not merely address the technicalities of lawmaking; it revealed a broader democratic problem regarding public access, transparency, and the obligation to provide meaningful participation. The decision should therefore be read as a constitutional signal that participation must be transformed from a ceremonial stage into a legally accountable process (Prastyo, 2022; Fajri, 2023).

A further manifestation of regulatory inequality is the lack of a minimum feedback obligation. Without a requirement to produce a participation matrix or response document, lawmakers can receive submissions without explaining whether they were accepted, rejected, or partially incorporated. This weakens accountability because civil society cannot verify the causal relationship between participation and legislative revision. Meaningful participation requires not only input but also traceability.

## **3. Ormas as Subjects of Substantive Democratic Oversight**

Ormas should be understood as subjects of substantive democracy, not merely as social organizations operating outside the legal system. Their role in legislative oversight is different from, but complementary to, the role of political parties and elected

representatives. Political parties aggregate electoral preferences, while ormas often aggregate issue-based, professional, religious, cultural, or local interests. In complex societies, both channels are necessary.

The oversight function of ormas operates at several levels. First, they may provide epistemic oversight by supplying data, community experience, and professional knowledge that state institutions do not possess. Second, they may provide rights-based oversight by identifying whether a proposed statute threatens constitutional rights or discriminates against vulnerable groups. Third, they may provide distributive oversight by examining how legal burdens and benefits are allocated across social classes, regions, occupations, or communities. These functions are especially important in technical legislation, where formal parliamentary debate may not capture the lived consequences of regulatory choices.

Treating ormas as democratic subjects also reduces the tendency for public participation to shift into purely confrontational channels. When the official lawmaking process fails to provide adequate access, civil society actors may rely on street demonstrations, media campaigns, or judicial review. These forms of activism are legitimate in a democracy, but they often occur after legislative choices have hardened. A structured participatory mechanism would allow disagreement to enter the process earlier, when revision is still possible and social conflict can be mediated through reasons rather than merely through pressure.

The state should not view critical ormas as threats to legislative efficiency. Criticism is part of democratic quality control. An inclusive legal process may take more time at the front end, but it can reduce downstream costs such as litigation, public rejection, administrative non-compliance, and loss of trust. In this sense, mandatory participation is not an obstacle to efficient lawmaking; it is a preventive mechanism for producing more legitimate and implementable statutes.

#### **4. Comparative Reflection: Participation Mechanisms in the Philippines**

The Philippines offers a useful, although not identical, comparative reference. Article XIII, Section 16 of the 1987 Philippine Constitution provides that the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged, and that the state shall facilitate adequate consultation mechanisms. This constitutional language is stronger than a mere permission to submit input because it links participation with an affirmative state duty to facilitate consultation.

At the local-government level, the Local Government Code of 1991 recognizes the role of people's and non-governmental organizations in local governance and participatory bodies. These arrangements show that civil society participation can be institutionalized through accreditation, representation, and structured consultation. However, the Philippine experience should not be overstated. The proposed People's Participation Act has appeared in legislative discussions but should not be treated as a fully operative national legislative-participation statute unless enacted and implemented. Similarly, the Anti-Red Tape Act and the Ease of Doing Business reforms primarily address administrative efficiency, service standards, and regulatory management, rather than directly mandating civil society involvement in all national lawmaking processes (Republic Act No. 9485; Republic Act No. 11032).

The comparative lesson for Indonesia is therefore not that the Philippine model can be transplanted wholesale, but that constitutional and statutory design can move participation from abstract recognition toward facilitated mechanisms. Indonesia can

learn from the Philippine emphasis on participation at all levels of decision-making while designing a model suited to its own constitutional system, legislative procedures, and plural civil society landscape.

A careful comparison also helps refine the Indonesian reform agenda. Indonesia does not need to create a civil society veto over legislation. What it needs is a legal duty for lawmakers to map relevant stakeholders, publish draft materials, provide adequate time for submissions, conduct inclusive consultations, record the process, and provide reasoned responses. These procedural duties would give ormas a meaningful role without displacing the constitutional authority of the legislature and the president.

**Table 1. Comparative orientation of civil society participation in Indonesia and the Philippines**

Element	Indonesia	Philippines
Constitutional basis	People's sovereignty and freedom of association, assembly, and expression under the 1945 Constitution.	Article XIII, Section 16 explicitly protects effective and reasonable participation of people and their organizations in decision-making.
Statutory participation clause	Article 96 of the Lawmaking Law recognizes oral and written input and public consultation activities.	Local Government Code institutionalizes participation of people's organizations and NGOs in local governance structures.
Main weakness	No explicit, stage-based, enforceable obligation to involve ormas in every decisive phase of lawmaking.	Participation mechanisms are stronger at local governance level; national legislative participation still depends on specific institutional procedures.
Reform lesson	Convert discretionary consultation into mandatory, traceable, and reviewable participation.	Adequate consultation mechanisms can be framed as affirmative state duties rather than merely as voluntary opportunities.

**5. Reformulating the Lawmaking Law: From Optional Consultation to Enforceable Participation**

The central reform proposed by this article is the reformulation of participation clauses in the Lawmaking Law. The phrase that lawmakers may conduct public consultation should be replaced, for strategic stages of lawmaking, by mandatory language. The legal duty should apply at least to the planning stage, preparation of academic drafts, drafting of bills, discussion of bills, and finalization of policy choices that substantially affect public rights, obligations, or institutional design.

A mandatory model must be accompanied by procedural safeguards. First, lawmakers should be required to publish draft materials, academic papers, and explanatory summaries in accessible formats. Second, there should be a minimum consultation period, adjusted to the complexity and social impact of the bill. Third, responsible institutions should map affected stakeholders, including ormas, professional organizations, NGOs, customary communities, persons with disabilities, labor unions, business associations, and academic institutions. Fourth, consultation should combine offline and online methods so that organizations outside Jakarta can participate. Fifth, every submission should be summarized in a public participation matrix, followed by an official response explaining whether the proposal is accepted, modified, or rejected.

These safeguards would operationalize the three elements of meaningful participation. The right to be heard would be protected through access to information and consultation forums. The right to be considered would be protected through an obligation to review and classify submissions. The right to be explained would be protected through a written response and public record. In this way, meaningful participation becomes an administrative and legal routine rather than a rhetorical commitment.

The reform should also address the representativeness and credibility of participating ormas. Because Indonesia has a large and diverse associational landscape, not every organization can be given identical access in every legislative process. However, the state should not use administrative manageability as a reason to exclude critical voices. A balanced model can use relevance, affectedness, organizational track record, expertise, membership base, and representation of vulnerable groups as selection criteria. The criteria must be transparent and contestable.

Finally, the law should specify legal consequences for serious procedural violations. Not every defect in consultation should automatically invalidate a statute, but failure to conduct required participation in major legislation should become a reviewable procedural defect. This would align legislative procedure with constitutional accountability while avoiding excessive judicialization of politics. Courts should be able to examine whether participation was genuine, timely, inclusive, and reasoned, without replacing the legislature's policy judgment.

**Table 2. Proposed normative reformulation for meaningful ormas participation**

Regulatory problem	Proposed clause or mechanism	Expected legal effect
Consultation is often discretionary.	Use mandatory language: "The lawmaking institution shall conduct public consultation involving relevant societal organizations and affected groups."	Transforms participation from optional access into a procedural duty.
Participation often occurs after the draft is substantially fixed.	Require consultation at planning, academic-paper, drafting, and deliberation stages.	Allows input to shape policy options before institutional positions harden.
No clear feedback mechanism.	Require a public participation matrix and written response to major submissions.	Makes the causal link between public input and legislative revision traceable.
Selective invitation of organizations.	Establish transparent stakeholder-mapping criteria based on affectedness, expertise, membership, and representation of vulnerable groups.	Reduces political selectivity and strengthens representational fairness.
Limited access outside central institutions.	Mandate hybrid consultation and digital publication of drafts, minutes, and responses.	Expands geographic access and supports e-participation.
No remedy for serious procedural exclusion.	Recognize serious failure of meaningful participation as a reviewable procedural defect.	Strengthens accountability without giving civil society a veto over legislation.

## 6. Digital Participation and the Future of Democratic Lawmaking

Digitalization provides an additional opportunity to strengthen ormas participation. Online platforms can publish legislative agendas, draft bills, academic papers, consultation schedules, submitted comments, response matrices, and hearing minutes. Digital participation can reduce geographic inequality and enable regional ormas to contribute without bearing high travel costs. It can also improve transparency by creating a public record of legislative deliberation (Wardana & Bachtiar, 2023).

Digital platforms, however, cannot replace legal obligations. Technology can widen access, but it cannot guarantee influence unless institutions are required to consider and answer submissions. E-participation must therefore be designed as part of a legally enforceable participation architecture. The platform should not function as a suggestion box that disappears into bureaucratic silence; it should operate as a traceable deliberative system.

Digital participation also requires safeguards for accessibility, data protection, and inclusion. Organizations representing persons with disabilities, rural communities,

indigenous peoples, and groups with limited internet access may require offline consultation, plain-language documents, or facilitation support. Therefore, the future of democratic lawmaking in Indonesia should combine legal obligation, institutional design, and inclusive technology.

## CONCLUSION

This article has shown that the legal position of societal organizations in Indonesian lawmaking remains normatively underdeveloped. Indonesia recognizes public participation, and the concept of meaningful participation has been strengthened by Constitutional Court jurisprudence and the amendment of the Lawmaking Law. However, the existing framework still does not expressly transform ormas involvement into a mandatory, stage-based, and reviewable obligation of lawmaking institutions. This creates a strategic legal gap between formal recognition and substantive influence.

Ormas are not merely social groups outside the state. They are civil society intermediaries capable of aggregating aspirations, transmitting community knowledge, monitoring rights impacts, and strengthening legislative accountability. When their participation is left to discretionary invitation, democratic lawmaking risks becoming procedural formalism. When their participation is legally structured, legislation can become more legitimate, responsive, and implementable.

The article recommends reformulating the Lawmaking Law by replacing permissive consultation language with mandatory provisions for meaningful participation. The reform should require publication of draft materials, stakeholder mapping, minimum consultation periods, inclusive offline and online forums, participation matrices, written responses to public input, and judicially reviewable consequences for serious procedural exclusion. These reforms would not displace representative institutions; rather, they would deepen representative democracy by linking statutory authority with civil society deliberation.

Ultimately, a democratic rule of law is not only a state that writes valid statutes. It is a state that listens, reasons, responds, and allows organized citizens to participate in shaping the norms that govern them. Strengthening the legal recognition of ormas in legislation is therefore both a statutory reform and a constitutional commitment to a more substantive democracy.

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