



Meaningful Participation and Remedial Design in Indonesia's Omnibus Lawmaking

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Abstract

This study examines how Indonesian constitutional doctrine transformed public participation from a procedural opportunity into a reviewable component of lawmaking, and how that transformation interacts with the omnibus method. Using doctrinal legal research and structured case comparison, it analyzes the 1945 Constitution, Law No. 12 of 2011 as amended by Law No. 13 of 2022, Law No. 6 of 2023, and Constitutional Court Decisions No. 91/PUU-XVIII/2020 and No. 50/PUU-XXI/2023. The analysis codes participation duties across access, hearing, consideration, explanation, timing, and remedial consequence. Findings show that Decision No. 91/PUU-XVIII/2020 supplied a three-right constitutional vocabulary—being heard, considered, and explained—while the 2022 amendment translated parts of that vocabulary into statutory procedure. However, the legal effect of participation defects remains context-dependent, especially where emergency regulation and later legislative approval alter the sequence of public involvement. The article develops a remedial matrix distinguishing curable informational defects, deliberative defects affecting legislative legitimacy, and defects that undermine the constitutional formation process itself.

Keywords: Constitutional Review, Meaningful Participation, Omnibus Law, Public Participation, Legislation.



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INTRODUCTION

Public participation in legislation has moved from the margins of Indonesian legislative procedure toward the center of constitutional review. The shift became visible when the Constitutional Court reviewed Law No. 11 of 2020 on Job Creation in Decision No. 91/PUU-XVIII/2020 and treated the quality of participation as relevant to the validity of the legislative process. The Court articulated meaningful participation through three related entitlements: the right to be heard, the right to have submissions considered, and the right to receive an explanation or answer. This formulation linked participatory procedure to constitutional concerns about democratic lawmaking rather than treating consultation as a purely administrative courtesy (Constitutional Court of Indonesia, 2021; Prastyo, 2022).

The development is especially consequential for omnibus legislation because a single bill may amend, repeal, or reorganize a large number of statutory provisions across policy sectors. The omnibus technique can increase legislative coordination, but it also raises demands for intelligibility, document access, temporal adequacy, and traceability of public input. Comparative work on omnibus legislation shows that the technique is neither intrinsically democratic nor intrinsically defective; its legitimacy depends substantially on institutional safeguards surrounding drafting, deliberation, and amendment (Firdaus, 2023; Hermanto & Aryani, 2022). In Indonesia, those safeguards must be read together with the constitutional allocation of legislative authority under Articles 20 and 22A of the 1945 Constitution and the statutory framework governing the formation of legislation.

Law No. 12 of 2011, as amended by Law No. 13 of 2022, now provides an express statutory architecture for public participation. Article 96 recognizes the public's right to provide oral or written input at every stage of lawmaking and requires easier access to legislative drafts and academic papers for affected or interested groups. The 2022 amendment also formally recognizes the omnibus method, thereby bringing a previously contested drafting technique into the positive-law framework. This

combination creates a useful doctrinal question: whether codifying participation after Decision No. 91/PUU-XVIII/2020 merely regularized procedure or instead changed the standard against which future formal review should be conducted (Republic of Indonesia, 2011, 2022).

Participation, however, is not exhausted by the opportunity to speak. Deliberative-democratic scholarship distinguishes participation that merely records preferences from procedures that expose reasons to contestation, require institutional uptake, and make the path from input to decision visible (Fung, 2006; Dryzek et al., 2019). Lafont (2015) emphasizes the democratic significance of public justification, while Warren (2017) treats democratic functions as institutionally distributed rather than confined to electoral authorization. These approaches help explain why the Court's three rights are analytically cumulative: access without consideration can be ceremonial, consideration without explanation can be opaque, and explanation without timely access can arrive after the decisive policy choices have already hardened.

Indonesian scholarship has begun to test the consequences of this doctrinal turn. Prastyo (2022) identifies limits in the Court's formulation and the difficulty of translating meaningful participation into a judicially administrable standard. Wardana, Sukardi, and Salman (2023) emphasize participation as a condition of responsive legislative formation, while Mochtar et al. (2024) argue that later practice can reduce a formally recognized participation framework to procedurally thin engagement. Bontang (2023) situates the Lawmaking Act in a quasi-constitutional position because it structures the procedure through which statutes are produced. These studies converge on the importance of procedure but differ on how far courts should go in transforming participatory failures into invalidating defects.

The remedial dimension is therefore decisive. Formal review does not ask only whether legislators departed from a procedural rule; it also asks what legal consequence should follow from a proven departure. Decision No. 91/PUU-XVIII/2020 used a conditional-unconstitutionality structure and required correction within a specified period, demonstrating that the Court can tailor remedies rather than choose only between immediate nullification and complete validation. Later litigation over Law No. 6 of 2023, including Decision No. 50/PUU-XXI/2023, required the Court to address a different sequence in which an emergency regulation was issued first and subsequently approved by the legislature (Constitutional Court of Indonesia, 2023). The difference in legislative pathway complicates any attempt to apply a single participation remedy mechanically.

A further difficulty is measurement. The phrase meaningful participation is normative, but formal constitutional adjudication requires identifiable legal indicators. The statutory text, case law, and literature together permit at least six dimensions to be separated: access to documents, opportunity to be heard, evidence of consideration, reasoned explanation, timing before decisive action, and identification of affected constituencies. Regulatory-impact scholarship adds another useful dimension by asking whether consultation is connected to evidence and alternatives rather than performed after the preferred option is fixed (OECD, 2012; Rose-Ackerman, Egidy, & Fowkes, 2015). A structured doctrinal matrix can therefore make the constitutional standard more transparent without converting courts into substitute legislatures.

This article addresses two questions. First, how did Indonesian law restructure meaningful participation after Decision No. 91/PUU-XVIII/2020 and the enactment of Law No. 13 of 2022? Second, what remedial distinctions are legally defensible when participation defects arise in ordinary and omnibus lawmaking? The article contributes by integrating constitutional doctrine, statutory procedure, and remedial design rather than treating participation as a freestanding democratic ideal. Its central claim is descriptive and doctrinal: Indonesian law now contains a layered participation standard, but the legal consequence of non-compliance depends on the stage affected, the intensity of the defect, and the relation between that defect and the constitutional formation process.

RESEARCH METHODS

This study uses normative doctrinal legal research with statute, case, conceptual, and limited comparative approaches. Primary materials are the 1945 Constitution; Law No. 12 of 2011 concerning the Formation of Laws and Regulations; Law No. 13 of 2022 amending that Law; Law No. 6 of 2023 concerning Job Creation; and Constitutional Court Decisions No. 91/PUU-XVIII/2020 and No. 50/PUU-XXI/2023. The materials are read grammatically, systematically, and teleologically. Secondary sources were selected from peer-reviewed research on formal constitutional review, omnibus

legislation, deliberative democracy, public consultation, and legislative quality, with priority given to recent articles and established international journals.

The analysis applies a structured doctrinal coding framework. Each legal source is coded for six participation variables: document access, opportunity to be heard, institutional consideration, reasoned explanation, timing, and affected-group coverage. A second coding layer records the available or applied legal consequence: no judicial consequence, interpretive correction, prospective procedural duty, conditional unconstitutionality, suspension, or invalidation. The method does not score political desirability or legislative policy. It instead compares the legal conditions under which Indonesian institutions have recognized, specified, or remedied procedural defects, and uses comparative participation literature only to clarify concepts rather than to import foreign rules as binding standards.

RESULTS AND DISCUSSION

From Procedural Access to a Constitutional Participation Standard

Decision No. 91/PUU-XVIII/2020 altered the legal vocabulary of participation by linking public involvement to the constitutional validity of statutory formation. Before that decision, Article 96 of the Lawmaking Act provided channels for public input, but the doctrinal center of formal review remained the legality of legislative stages and institutional competence. The Court's formulation introduced an evaluative question about the quality of participation within those stages. The three rights identified by the Court are best read as connected procedural guarantees rather than independent boxes because each addresses a different failure mode in public consultation (Constitutional Court of Indonesia, 2021; Prastyo, 2022).

The right to be heard concerns practical opportunity rather than symbolic invitation. A legally relevant opportunity requires public access to an intelligible object of consultation, sufficient time to respond, and a forum through which affected groups can communicate views. This reading is consistent with Article 96 after the 2022 amendment, which strengthens access to draft legislation and supporting documents. It also reflects Fung's (2006) observation that participation design determines who can speak, what information is available, and how discussion is linked to authority.

Table 1. Participation Duties in Indonesian Legislative Law

Dimension	Primary legal source	Minimum observable indicator	Principal risk if absent
Document access	Law No. 13/2022, Art. 96	Draft and supporting material accessible before consultation	Participation without an intelligible object
Right to be heard	Decision 91/PUU-XVIII/2020	Opportunity for oral or written input	Ceremonial consultation
Right to be considered	Decision 91/PUU-XVIII/2020	Record showing institutional uptake of submissions	Input detached from decision
Right to be explained	Decision 91/PUU-XVIII/2020	Reasoned response to material issues	Opaque rejection or acceptance
Affected-group coverage	Law No. 13/2022, Art. 96	Inclusion of persons/groups directly affected or interested	Selective participation
Timing	Constitutional logic of formal review	Participation before decisive legislative closure	Ex post legitimization

Table 1 shows that the participation standard is composed of distinct legal functions. The indicators do not prescribe a preferred substantive outcome; they identify documentary conditions through which compliance can be assessed. The right to be considered addresses institutional uptake. It does not require legislators to accept public proposals, because representative bodies retain

constitutional responsibility for legislative judgment. It does require a process capable of showing that submissions were received within the decision structure rather than remaining outside it. This distinction preserves legislative discretion while giving the participatory guarantee a legal object that can be examined through records, minutes, explanatory documents, and revision histories (Wardana et al., 2023; Bontang, 2023).

The right to be explained supplies the accountability link between public input and legislative decision. Explanation can be individualized or categorical depending on the scale of consultation, but some traceable response is necessary if the right is to differ from mere receipt. Lafont (2015) treats public justification as a condition for citizens to assess reasons rather than simply outcomes. In legislative procedure, the functional equivalent is a record that identifies major contested issues, explains why alternatives were accepted or rejected, and permits later scrutiny of the decision pathway.

Law No. 13 of 2022 translated part of this constitutional vocabulary into positive statutory procedure. The amendment expands Article 96 and formally acknowledges the omnibus method, meaning that participation and omnibus drafting now coexist in the same legislative framework. This matters because the source of obligation is no longer only judicial elaboration; it is also statutory. Yet the Court's constitutional reasoning continues to matter because statutory compliance and constitutional adequacy are analytically distinct questions (Republic of Indonesia, 2022; Hermanto & Aryani, 2022).

Table 2. Doctrinal Development Before and After the 2022 Amendment

Period/source	Participation position	Omnibus position	Review implication
Law No. 12/2011 (original framework)	Public input recognized	No express omnibus architecture	Focus on statutory stages and procedure
Decision 91/PUU-XVIII/2020	Three rights articulated as meaningful participation	Omnibus process scrutinized in formal review	Participation defect may contribute to constitutional defect
Law No. 13/2022	Article 96 strengthened	Omnibus method expressly regulated	Participation duty receives statutory specification
Law No. 6/2023 and Decision 50/PUU-XXI/2023	Participation assessed in a different emergency-to-statute sequence	Job framework through approval	Creation retained Perppu timing

The sequence in Table 2 explains why later disputes cannot be resolved by quoting Decision No. 91/PUU-XVIII/2020 in isolation. The governing procedure and the institutional sequence must first be identified. The distinction between access and intelligibility is particularly important in omnibus bills. Publishing a voluminous draft can satisfy literal availability while still making it difficult for affected groups to identify amendments relevant to them. Comparative legislative scholarship treats transparency as more than the existence of documents; sequencing, version control, and explanation of changes affect the capacity to participate effectively (Rose-Ackerman et al., 2015; Firdaus, 2023). Indonesian formal review can therefore examine whether legally required documents were available in a form and at a time that made participation possible without judging the substantive merits of the bill.

Meaningful participation also has an equality dimension. Article 28D(1) of the 1945 Constitution guarantees fair legal certainty and equal treatment before the law, while Article 28C(2) recognizes participation in collective advancement. These provisions do not themselves prescribe a single consultation model, but they support an interpretation of Article 96 that resists selective access confined to organized insiders. Deliberative scholarship similarly warns that open forums can reproduce structural inequalities when information and access are distributed unevenly (Dryzek et al., 2019; Warren, 2017).

The resulting standard is layered. Constitutional doctrine defines the minimum logic of meaningful participation; statutory law specifies channels and documentary duties; legislative rules operationalize meetings and records; and judicial review determines whether proven defects reach constitutional significance. Treating these layers separately avoids two extremes: reducing participation

to a checklist or converting every procedural imperfection into constitutional invalidity. The more defensible approach is to connect the intensity of review to the function impaired by the defect.

Omnibus Lawmaking, Traceability, and the Evidence of Deliberation

The omnibus method magnifies the evidentiary problem of formal review because the procedural record can become more important as the number of affected statutes increases. A conventional bill may permit affected groups to follow a relatively bounded set of amendments, whereas an omnibus bill can redistribute obligations across multiple sectors at once. The legal issue is not the volume itself. It is whether the lawmaking record permits a court and the public to reconstruct what text was considered, when it changed, which groups were consulted, and how material objections were treated (Firdaus, 2023; Hermanto & Aryani, 2022).

Version control is therefore a constitutional-adjacent procedural concern. Where several drafts circulate without clear dates or authoritative status, the opportunity to comment may attach to text that is no longer operative. A meaningful hearing requires a reasonably identifiable legislative object. The same logic applies to academic papers and explanatory memoranda because their function is to state the problem, regulatory objective, and evidence underlying legislative intervention. The 2022 statutory framework strengthens the basis for expecting those materials to be accessible during participation.

Table 3. Evidence Matrix for Omnibus-Law Participation

Procedural question	Useful evidence	What the evidence can establish	What it cannot establish alone
Was the relevant text accessible?	Dated draft, public repository log, academic paper	Availability and timing	Whether readers understood every consequence
Were affected groups heard?	Invitations, attendance, submissions, hearing transcripts	Opportunity and participation	Agreement with the bill
Were submissions considered?	Issue matrix, committee minutes, revision notes	Institutional uptake	Correctness of legislative choice
Was an explanation provided?	Consultation report, explanatory statement, response matrix	Reasoned response	Political neutrality of reasons
Were major changes exposed?	Version comparison, amendment log	Sequence and material alteration	Need for a new hearing in every case

Table 3 separates evidence of procedure from evidence of policy quality. This distinction is critical to keeping formal review within a legal rather than political function. Traceability also clarifies the difference between consideration and agreement. Legislators may reject a submission for reasons of policy, constitutional interpretation, fiscal effect, or implementation feasibility. Meaningful participation does not give contributors a veto. What matters is whether the institutional record shows that significant objections entered deliberation and whether the reasons for rejection are capable of being reconstructed. This model protects representative discretion while reducing the risk that consultation becomes merely performative (Mochtar et al., 2024).

Legislative minutes, issue matrices, hearing transcripts, and change logs can serve as evidence of this process. No single document is constitutionally mandatory unless legislation or parliamentary rules require it, but a combination of records can demonstrate compliance with the functional rights recognized by the Court. Regulatory-governance literature supports the use of consultation summaries that distinguish the number of submissions from the substantive themes raised (OECD, 2012). Such a practice is especially valuable for large bills because numerical participation alone says little about whether contested legal effects were understood.

The identity of affected groups requires similar precision. Article 96 after amendment refers to persons or groups with direct interest in the substance of a draft, but broad public access remains important where legal effects are diffuse. An omnibus employment provision, environmental provision,

or licensing provision may engage different constituencies and therefore require different consultation channels. A generalized hearing cannot automatically substitute for sector-specific engagement when the legal changes produce materially different burdens. This conclusion follows from the structure of the statutory participation duty, not from a political preference about the bill's substance.

Table 4. Participation Risks Specific to Large Omnibus Bills

Risk	Legal relevance	Observable symptom	Doctrinal response
Document overload	Can defeat practical access	Thousands of amendments without change map	Require accessible supporting documentation under Article 96
Late textual substitution	May impair timely hearing	Material provisions altered after consultation	Examine timing and materiality of change
Sector aggregation	May exclude affected constituencies	One general hearing for legally distinct sectors	Assess affected-group coverage
Untraceable response	May undermine right to be considered/explained	No issue matrix or reasoned summary	Examine total record for uptake and explanation
Compressed deliberation	May reduce effective opportunity	Minimal interval between release and decision	Assess whether participation was practically possible

The table does not convert these risks into automatic grounds of invalidity. It identifies circumstances in which closer examination of statutory and constitutional participation duties becomes legally relevant. Comparative experience reinforces the value of disaggregating large legislative packages. Firdaus (2023) shows that omnibus techniques vary across jurisdictions and are mediated by different committee, publication, and legislative-control mechanisms. The relevant comparative lesson is institutional rather than transplant-oriented: procedural safeguards must match the information complexity created by the drafting technique. Indonesian constitutional review can use that insight to interpret domestic duties without treating foreign practice as a source of binding law.

Judicial review nevertheless faces an institutional-competence limit. Courts usually lack a legitimate basis to reconstruct every political compromise or to require legislators to answer every comment individually. A workable standard therefore distinguishes material submissions from repetitive or peripheral ones, and formal evidence from subjective satisfaction. Courts can ask whether a response mechanism existed, whether material categories of objections were addressed, and whether decisive changes were exposed to participation where legally required. They need not assess whether the legislature made the best policy choice.

This evidentiary approach also reduces uncertainty for legislatures. Clear records allow lawmakers to demonstrate compliance before litigation arises, while weak records increase the difficulty of defending a process even where substantial consultation occurred. Participation law therefore has an ex ante organizational function in addition to its ex post judicial function. The effect is to convert meaningful participation from an abstract constitutional phrase into a record-producing discipline of legislative administration.

Remedial Design in Formal Constitutional Review

The principal doctrinal problem after meaningful participation is not identifying that a defect occurred but determining the consequence. Formal defects vary in intensity. A missing hyperlink that is promptly corrected differs from the absence of a constitutionally required legislative stage, and a delayed consultation summary differs from a process in which the public never received the operative draft. Remedial design should therefore connect the response to the function impaired rather than use invalidation as a uniform sanction.

Decision No. 91/PUU-XVIII/2020 demonstrates the Court's capacity to craft intermediate remedies. The Court did not simply erase the Job Creation Law immediately; it declared the law conditionally unconstitutional and provided a period for correction while limiting new strategic action under the impugned framework. Whatever view is taken of that remedy, its structure is doctrinally important because it separates the finding of constitutional defect from the temporal and institutional design of relief (Constitutional Court of Indonesia, 2021; Hermanto, 2023).

Table 5. Remedial Forms Visible in Indonesian Formal Review

Defect type	Primary function	Impaired	Illustrative legal response	Condition for stronger response
Minor informational defect	Access		Prompt correction or additional disclosure	Defect persists into decisive stage
Inadequate hearing opportunity	Being heard		Renewed consultation or procedural reopening	No practical opportunity before enactment
No evidence of consideration	Being considered		Reasoned reconsideration / renewed deliberation	Systemic exclusion of material submissions
No meaningful explanation	Being explained		Consultation report or reasoned response	Opacity prevents verification of deliberation
Structural formation defect	Constitutional lawmaking process		Conditional unconstitutionality or invalidation	Required stage/textual identity cannot be verified

Table 5 organizes remedies by impaired function rather than by the political importance of the statute. The same framework can therefore be applied across policy fields. A first category consists of curable informational defects. These include incomplete publication metadata, temporary access failures, or missing explanatory attachments where consultation can still occur before decisive legislative action. The appropriate legal response may be prospective correction, adjournment of the relevant stage, or an order to complete disclosure where procedural law permits. Such defects are serious when they obstruct participation, but their remedial character depends heavily on whether time remains to restore the lost opportunity.

A second category consists of deliberative defects affecting the right to be considered or explained. These arise when public input is received but no mechanism shows institutional consideration, or when significant objections are ignored without any reasoned response. The harm is not merely informational because the participatory process has reached the decision institution but failed at uptake. Depending on timing, a court may treat these defects as requiring renewed deliberation or as one component in a broader finding that the legislative formation process was constitutionally deficient.

A third category concerns structural formation defects. These involve failures that compromise the identity of the enacted text, bypass constitutionally or statutorily required stages, or eliminate meaningful opportunity across the decisive period. Bontang's (2023) account of the Lawmaking Act as quasi-constitutional helps explain why some statutory procedures can acquire heightened significance: they organize the exercise of constitutionally conferred legislative power. Where the defect prevents verification that the enacted statute emerged from the legally prescribed process, a stronger remedy becomes doctrinally easier to justify.

Emergency legislation requires separate treatment because Article 22 of the 1945 Constitution authorizes the President to issue a government regulation in lieu of law under compelling urgency, subject to approval by the House of Representatives at its next session. Decision No. 50/PUU-XXI/2023 addressed formal challenges to Law No. 6 of 2023 following this pathway. The procedural sequence differs from ordinary bill formation, so the Court did not simply replicate every pre-enactment participation requirement from Decision No. 91/PUU-XVIII/2020. This does not make participation

irrelevant; it changes the legal point at which participation duties attach and the materials against which compliance is assessed.

Table 6. Proposed Judicial Sequence for Participation Challenges

Step	Judicial question	Evidence	Possible finding
1	Which legal pathway produced the statute?	Constitution; Lawmaking Act; emergency-law provisions	Ordinary, omnibus, or Perppu-approval sequence
2	Which participation duty applied at the disputed stage?	Article 96; court precedent; legislative rules	Defined procedural obligation
3	What function was impaired?	Access, hearing, consideration, explanation, timing	Character of defect
4	Can the lost opportunity be restored?	Legislative stage and chronology	Curable or non-curable defect
5	Did the defect compromise constitutional formation?	Complete procedural record	Minor, deliberative, or structural defect
6	What remedy corresponds to the defect?	Remedial precedent and proportionality	Correction, reopening, conditional relief, invalidity

The sequence in Table 6 keeps the remedial analysis tied to legal pathway, evidence, and procedural function. It is designed as an analytical framework rather than a prediction of how the Court will decide future cases. Remedial proportionality can therefore be expressed through three questions: which protected procedural function was impaired, whether the lost opportunity can still be restored, and whether the defect affected the constitutional identity of the lawmaking process. These questions are more administrable than an undifferentiated inquiry into whether participation was 'meaningful enough.' They also preserve institutional roles because courts review legality and procedural function while leaving substantive legislative choices to constitutionally competent lawmakers.

The resulting framework treats meaningful participation as a legal standard with differentiated consequences. It does not imply that every consultation failure warrants invalidation, nor that statutory compliance immunizes a process from constitutional scrutiny. The stronger proposition is narrower: once participation is legally required, courts need a transparent method for relating the type of defect to a remedy. A functional remedial matrix supplies that method and can reduce both under-enforcement and indiscriminate judicial intervention.

CONCLUSION

Indonesian law now contains a layered framework of meaningful participation. Decision No. 91/PUU-XVIII/2020 constitutionalized a three-part vocabulary of being heard, being considered, and receiving an explanation, while Law No. 13 of 2022 strengthened Article 96 and gave the omnibus method an express statutory basis. The resulting standard is neither a simple checklist nor an unlimited mandate for judicial supervision of legislative politics. Its legal content can be identified through document access, hearing opportunity, institutional uptake, reasoned explanation, timing, and affected-group coverage, all of which can be tested through the procedural record without asking courts to decide the substantive merits of legislation.

The central implication concerns remedies. Participation defects should be separated into curable informational failures, deliberative failures that impair consideration or explanation, and structural defects that undermine the constitutional formation process. Decision No. 91/PUU-XVIII/2020 shows that tailored relief is doctrinally possible, while Decision No. 50/PUU-XXI/2023 shows that the applicable participation sequence depends on the legal pathway through which a norm acquires statutory force. A function-based remedial matrix can therefore make formal review more predictable while preserving legislative discretion. Future research can test the framework against a larger set of post-2022 formal-review decisions and parliamentary records to determine how consistently the six participation dimensions are documented in practice.

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