

# Can the Job Creation Law Solve the Lack of Public Participation in Indonesia's Spatial Planning?

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**ABSTRACT:** It has been long recognized that public participation plays a vital role in dealing with spatial planning laws. However, mechanisms for the inclusion of public participation have been criticized worldwide for lacking the hallmarks of actual participation, as this trend has also occurred in Indonesia. This paper aimed to analyze the significance of public participation in Indonesia's spatial planning and whether the current Job Creation Law can solve the lack of public participation. There are no legal consequences or sanctions if the government fails to conduct public participation, while the Job Creation Law is regarded to encourage public participation by enabling the public to be actively involved in every stage of spatial planning. By employing normative research, this paper shows that the Job Creation Law reiterates the same flaws by neglecting the importance of legal consequences for not conducting public participation. The implementing regulation rests uncertainty that can reduce and discourage public participation. As the Job Creation Law was highly expected to cope with the issue, it cannot involve the public properly in spatial planning.

**KEYWORDS:** Job Creation Law, Spatial Planning, Public Participation.



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## I. INTRODUCTION

Spatial planning laws are essential for ensuring the efficient use of limited spatial resources by balancing industrial and commercial development with existing resources such as natural resources, water, soil, and air.<sup>1</sup> It is critical to assure long-term development by avoiding development from which current and future generations will be unable to recover or will only be able to recover at a very high cost.<sup>2</sup> The goals of spatial planning laws that promote sustainable development are crucial in the Global South discourse in which countries in this group tends to emphasize the economic growth aspects of human development. Furthermore, as one of the Global South countries, Indonesia is an archipelago prone to natural catastrophes, where its spatial planning remains problematic. In this context, spatial planning laws are advised to offer direction for developing commercial, residential, industrial, and tourism regions to prevent placing them at high-risk locations.<sup>3</sup>

In light of such an important role, public participation takes a considerable part in achieving sustainable development in Indonesia's current regional autonomy.<sup>4</sup> This paper argues that public participation does not only reflect democratic ideas but also improves the quality of regulation. In particular, public engagement symbolizes the demands of society (when it has been done correctly), which is an essential purpose of the regulation, particularly when it comes to spatial planning.<sup>5</sup> For instance, in Singapore, the Planning Act allows for public participation at a macro level since there is a

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<sup>1</sup> Bernhard Brackhahn & Risto Kärkkäinen, eds, *Spatial Planning as an Instrument for Promoting Sustainable Development in the Nordic countries: Action Programme for 2001–2004* (Copenhagen: The Ministry of Environment Denmark, 2001) at 7.

<sup>2</sup> Bronwen Morgan & Karen Yeung, *An Introduction to Law and Regulation: Text and Materials*, 1st ed (Cambridge: Cambridge University Press, 2017) at 35.

<sup>3</sup> Małgorzata Krajewska, Sabina Żróbek, & Maruška Šubic Kovač, “The Role of Spatial Planning in the Investment Process in Poland and Slovenia” (2014) 22:2 *Real Estate Management and Valuation* at 53. See Zhu Qian, “Master Plan, Plan Adjustment and Urban Development Reality under China's Market Transition: A Case Study of Nanjing” (2013) 30 *Cities* at 77.

<sup>4</sup> Joko Riskiyono, “Partisipasi Masyarakat dalam Pembentukan Perundang-undangan untuk Mewujudkan Kesejahteraan” [Public Participation in the Formation of Legislation to Achieve Prosperity] (2015) 6:2 *Aspirasi* at 160.

<sup>5</sup> *Ibid.*

system for soliciting public input on proposed Master Plan revisions.<sup>6</sup> In South Africa, the Planning Act states that public participation in land use is critical, particularly in commercial, residential, public facilities, industrial, and open spaces.<sup>7</sup> In Indonesia, according to the Spatial Planning Law 26/2007, the government must involve the public in executing spatial planning whose goals are to create comfortable, safe, productive, and sustainable settings that will be considerably aided by public participation.<sup>8</sup> The important role of including methods for public participation in laws dealing with planning decision-making has long been discussed. However, mechanisms for including public participation have been criticized worldwide for lacking the hallmarks of actual participation, asserting that chances for public input are provided in formality only.<sup>9</sup>

The lack of public participation in spatial planning has occurred in Indonesia. Although Article 55 of Spatial Planning Law 26/2007 demands public participation, it is frequently overlooked. Even if public participation is done, it is primarily limited to information and consultation, which are merely formalities.<sup>10</sup> Spatial Planning Law 26/2007 also rests on the

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<sup>6</sup> Jack Tsen-Ta Lee, “We Built This City: Public Participation in Land Use Decisions in Singapore” (2016) 10:2 *Asian Journal of Comparative Law* at 213

<sup>7</sup> Lavhelani Kgobe, France Khutso, & John Mamokhere, “The Value of Public Participation in Land-Use Planning for Redeeming Congestion in South Africa Municipalities” (2021) 26 *Technium Social Sciences Journal* at 17.

<sup>8</sup> Law No. 26 of 2007 on Spatial Management, Article 3 (*'SPL 2007'*).

<sup>9</sup> Robert Stokes, “Defining the Ideology of Public Participation: Democracy, Devolution, Deliberation, Dispute Resolution and a New System for Identifying Public Participation in Planning Law” (2012) 8:2 *Macquarie Journal of International and Comparative Environmental Law* at 3. In Kenya, the Planning Law does not go into depth on the exact details and requirements that must be accomplished to ensure effective public participation or how the provisions are to be put into practice. See Sally A Maling'a, “Public Participation in County Governance in Kenya: A Withering Eucalyptus in a Desert Middle” (2017) *East African Law Journal* at 3. Similarly, in China, laws, and regulations requiring public engagement are sometimes too imprecise to be applied effectively. It is not always clear what kind of public participation is required or who should be invited to participate. See Otto Spijkers, Xian Li, & Liping Dai, “Public Participation in China's Water Governance” (2018) 2:1 *Chinese Journal of Environmental Law* at 28

<sup>10</sup> See, Irawati I & IBRA Sastha, *Peran Serta Masyarakat dalam Penataan Ruang: Studi Kasus Pengembangan Kawasan Primer Gedebage [Public Participation in Spatial Planning: A Case Study of Gedebage Primary Area]* (Yogyakarta, 2008) at 12; AAI Atu

question of when public engagement should take place. Therefore, this law needs to be revised in order to involve the public properly.

Job Creation Law 11/2020 on emphasizes the importance of public participation.<sup>11</sup> It amends Article 65 of Spatial Planning Law 26/2007 by emphasizing that spatial planning engages the public in the creation of the plan, the execution of the plan, and the oversight of the plan. This issue is interesting because Job Creation Law must be revised within two years. It is because the law was deemed conditionally illegal by the Constitutional Court due to a lack of public engagement and the failure to implement effective legislative mechanisms.<sup>12</sup> If the government fails to implement this decision promptly, the law will be nullified, and there will be major ambiguity about how public participation in spatial planning will be regulated in Indonesia.

The intended public engagement under this law, combined with the reality that public participation is absent throughout Indonesia, makes this an appropriate venue to assess if this Job Creation Law can address this issue. Hence, this paper aims to analyze whether the Job Creation Law can solve the current problem of the lack of public participation. Before answering this question, this paper will explain what effect public participation has played in spatial planning and what factors have caused public participation to be lacking?

This paper discusses the spatial planning law before the Job Creation Law, particularly what has been stated under Spatial Planning Law 26/2007 and its implementing regulations. Then, it focuses on the importance of public participation in spatial planning, identifying how the public is not involved and why the public is neglected under Spatial Planning Law 26/2007. The next part explains how public participation has been regulated under the Job Creation Law, analyzing what has changed, particularly compared to Spatial Planning Law 26/2007. Afterward, this paper analyzes whether the

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Dewi, *Partisipasi Desa Pakraman dalam Pembentukan Peraturan Daerah [The Participation of Local Community in the Law Making Process of Regional Regulation* (PhD Thesis, University Udayana, 2017) at 24.

<sup>11</sup> Indonesian Law No. 11 of 2020 on Job Creation (*Job Creation Law*).

<sup>12</sup> The Constitutional Court Decision No. 91 /PUU-XVIII/2020, Para [3.20.3] at 413.

Job Creation Law can solve the current problem of the lack of public participation. In supporting this analysis, it looks at other countries' practices regulating public participation. This paper concludes by analyzing whether the Job Creation Law is able or not to address the issue concerning the lack of public participation in spatial planning.

## II. METHODS

This paper employs normative legal research, analyzing problems derived from the regulations themselves, particularly the absence or vagueness of regulations, particularly in relation to public participation under Spatial Planning Law and the Job Creation Law. By employing qualitative analysis, this research identifies the problem and derives argumentative support through a collection of secondary sources on spatial planning governance. This research also employs a comparative legal method by considering other countries' practices to regulate public participation in spatial planning. It then enables the author to analyze whether Job Creation Law can solve the problem of the lack of public participation in the spatial plan.

## III. SPATIAL PLANNING BEFORE THE JOB CREATION LAW

### *A. Spatial Planning and Public Participation*

In the Torremolinos Charter, the European Conference of Ministers Responsible for Regional and Spatial Planning states that society's economic, social, cultural, and environmental policies are given geographical representation through regional/spatial planning. It is an academic field, an administrative practice, and a policy established as an interdisciplinary and holistic approach to balanced regional development and the physical organization of space following a long-term goal.<sup>13</sup> Spatial planning, as a regulatory mechanism, entails deliberate government activity

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<sup>13</sup> European Conference of Ministers Responsible for Regional/Spatial Planning, *Chartre Européenne de l'Amenagement du Territoire (Chartre de Torremolinos)*, adopted 20/05/1983 online: <[www.siseministerium.ee/public/terr.harta.ingrtf.rtf](http://www.siseministerium.ee/public/terr.harta.ingrtf.rtf)>.

at all levels<sup>14</sup> to allot, form, and harmonize space for different uses.<sup>15</sup> The critical legal concerns explored in spatial planning are boundaries and area jurisdiction; the 'who-does-what' question (inter-agency conflicts); the land question (who has control over the property and who assigns plots for development); planning procedures; and housing conditions and enforcement.<sup>16</sup>

Traditional conceptions of planning, which centered on land use distribution and design and prioritized restriction and control, have been transformed into more positive and holistic issues, necessitating multi-sectoral and multi-scalar viewpoints.<sup>17</sup> As a result, spatial planning regulation encompasses not just land use but also social, economic, and environmental concerns<sup>18</sup> through combining government policies related to agriculture, transportation, and energy production, among other things.<sup>19</sup>

According to Brackhahn and Kärkkäinen, spatial planning is a regulatory tool for balancing socio-economic growth by preventing environmental damage while preserving natural and cultural settings.<sup>20</sup> Spatial planning regulations, like many other law domains that attempt to protect species, animals, and nature as well as humans,<sup>21</sup> are probably superior to private law compensation claims, which are unreliable and limited in scope.<sup>22</sup> For example, Jones sees spatial planning regulation as a way of licensing nature

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<sup>14</sup> Phil Allmendinger & Graham Haughton, "The Evolution and Trajectories of Neoliberal Spatial Governance: 'Neoliberal' Episodes in Planning" (2013) 28:1 *Planning, Practice, and Research* at 6.

<sup>15</sup> Philip Boland, "The Relationship between Spatial Planning and Economic Competitiveness: the 'Path to Economic Nirvana' or a 'Dangerous Obsession?'" (2014) 46:4 *Environment and Planning A: Economy and Space* at 770.

<sup>16</sup> Wei-Ju Huang & Ana María Fernández-Maldonado, "High-tech development and spatial planning: comparing the Netherlands and Taiwan from an institutional perspective" (2016) 24:9 *European Planning Studies* at 1662.

<sup>17</sup> Alister J Scott et al, "Disintegrated Development at the Rural-Urban Fringe: Re-connecting Spatial Planning Theory and Practice" (2013) 83 *Progress in Planning* 1–52 at 4.

<sup>18</sup> N Taylor, "What Is This Thing Called Spatial Planning? An Analysis of the British Government's View" (2010) 81:2 *The Town Planning Review* at 201.

<sup>19</sup> *Ibid.*

<sup>20</sup> Bernhard Brackhahn & Risto Kärkkäinen, *supra* note 1.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid* at 22.

and prioritizing development control goals.<sup>23</sup> Tromans clarifies this development control purpose of spatial planning by stating that, depending on potential environmental difficulties in a given location, spatial planning can promote or prevent development.<sup>24</sup>

In the current era of regional autonomy, public participation is critical to achieving development goals.<sup>25</sup> Public participation not only reflects democratic principles but also improves the quality of regulation.<sup>26</sup> In particular, public participation represents societal needs, which is an essential goal of regulation, particularly in the context of spatial planning.<sup>27</sup> According to Spatial Planning Law 26/2007, governments must involve the general public in implementing spatial planning. Public participation will considerably help achieve spatial planning goals, creating comfortable, safe, productive, and long-term sustainable environments.<sup>28</sup>

According to Government Regulation 15/2010, methods for drafting the spatial plan must include public engagement in forming the spatial plan concept.<sup>29</sup> A central government regulation outlines how this public engagement will be carried out.<sup>30</sup> Initial efforts include, for example, drawing up a spatial plan, deciding on a regional development strategy, and identifying potential and problem areas for regional growth.<sup>31</sup> The public may help with spatial utilization by making policy recommendations and working with other stakeholders.<sup>32</sup> In spatial control, the public can

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<sup>23</sup> Gregory Jones, “The Impact of Environmental Law on Planning Decision-Making” (2012) 40 *Journal of Planning and Environment Law* at 22.

<sup>24</sup> Stephen Tromans, “Planning and Environmental Law: Uneasy Bedfellows?” (2012) 40 *Journal of Planning and Environment Law* at 73.

<sup>25</sup> Joko Riskiyono, *supra* note 4 at 61.

<sup>26</sup> I Gusti Ngurah Parikesit Widiatedja, “Fragmented Approach to Spatial Management in Indonesia: When it Will Be Ended?” (2021) 43:2 *Kertha Patrika* at 147.

<sup>27</sup> *Ibid.*

<sup>28</sup> Spatial Planning Law 26/2007, *supra* note 8 Article 3.

<sup>29</sup> Government Regulation, No. 15 of 2010 on the Management of Spatial Planning, Article 20. (*SPGR 2010*).

<sup>30</sup> Government Regulation No. 68 of 2010 on the Forms and Procedures of the Role of the Community in Spatial Planning (Indonesia) Article 5.

<sup>31</sup> *Ibid* Article 6.

<sup>32</sup> *Ibid* Art.8.

suggest improvements to zoning regulations and sanctions, monitor and supervise the implementation of the spatial plan, report to authorized agencies in the event of violations, and object to decisions of the competent authority on developments that are considered incompatible with the spatial plan.<sup>33</sup>

### *B. How the Public is not Involved*

According to Braithwaite, the law-making process in developing nations frequently overlooks the role of public participation, particularly NGOs, resulting in what is referred to as responsive regulation.<sup>34</sup> This trend is also seen in Indonesia, where community participation in spatial planning is routinely disregarded. Even if it is done, community participation is frequently confined to the supply of information and consultation, which are merely formalities. Specifically, Suciati points out that community participation in developing Pati's overall spatial design is still restricted.<sup>35</sup> To begin with, the nature of community participation is based on government activities rather than community initiatives.<sup>36</sup> The government does not use printed or electronic media to educate the public about upcoming public hearings.<sup>37</sup>

Some scholars also express similar concerns. According to Irawati and Sastha, the public was involved in developing the Gedebage spatial plan. However, instead of actively participating in producing such a draft, their involvement is still confined to offering feedback on the draft spatial plan.<sup>38</sup> In 2010, the Coalition of Jakarta Residents conducted a study of 3,000 people in five Jakarta municipalities and one district. The findings revealed

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<sup>33</sup> *Ibid* Article 9.

<sup>34</sup> John Braithwaite, "Responsive Regulation and Developing Economies" (2006) 34:5 *World Development* at 885. See Peter Drahos (ed), *Regulatory Theory: Foundations and Applications* (Canberra: ANU Press, 2017) at 122.

<sup>35</sup> Suciati, *Partisipasi Masyarakat dalam Penyusunan Rencana Umum Tata Ruang Kota Pati* [Public Participation in the Preparation of General Spatial Plan of the City of Pati] (Master Thesis, University of Diponegoro, 2006) at 167.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> Irawati I. & I.B.R.A. Sastha, *supra* note 10 at 12.

that 95 percent of respondents were not involved in developing Jakarta's spatial planning.<sup>39</sup> The level of community participation in constructing an ecotourism village in Wonorejo, Surabaya, is then determined by Idajati and Pamungkas.<sup>40</sup> According to Arnstein's notion of degree of involvement,<sup>41</sup> the level of participation is only in the therapeutic stage. It suggests that public involvement is undertaken only to modify or interfere with people's mindsets rather than to obtain input from them.<sup>42</sup>

Bali has been used as a case study in some publications. Specifically, Suyatna demonstrates that there is a lack of clarity regarding when public engagement should take place.<sup>43</sup> The government uses public input in several ways while creating regulations. The Bali Provincial administration, in particular, engages the public through disseminating draft rules throughout Bali's districts and municipalities.<sup>44</sup> When the initiating agency files a draft regulation, the Badung District administration holds a public hearing.<sup>45</sup> Before the document is submitted to the legislative body, the Tabanan District government asks for public comment.<sup>46</sup> Meanwhile, when a local legislative body special committee examines a draft regulation, the Bangli District government will invite the public to attend.<sup>47</sup> Moreover, Atu Dewi has looked into the law-making process for Bali's Provincial Regulation, particularly the Badung District Regulation regarding

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<sup>39</sup> Arimbi Ramadhani, "Survei: 95 Persen Warga Tidak Dilibatkan dalam Penyusunan RTRW Jakarta [Survey: 95 Percent Residents are not involved in the preparation of Jakarta's Spatial Planning]", *Kompas* (14 February 2017), online: <<https://properti.kompas.com/read/2017/02/14/142414821/survei.95.persen.warga.tidak.dilibatkan.dalam.penyusunan.rtrw.jakarta>>.

<sup>40</sup> Hertiaridajati, Adjie Pamungkas, & Vely Kukinul S, "The level of participation in Mangrove ecotourism development, Wonorejo Surabaya" (2016) 227 *Procedia - Social and Behavioral Sciences* 515–520 at 520.

<sup>41</sup> Sherry Arnstein, *A Ladder of Citizen Participation* (1969).

<sup>42</sup> *Ibid.*

<sup>43</sup> I Nyoman Suyatna, *Asas-asas Umum Pemerintahan yang Baik dalam Pembentukan Peraturan daerah* [Good Governance Principles in the Making of Regional Regulation] (PhD Thesis, University of Brawijaya, 2011) at 159.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

traditional villages or *desa pakraman* involvement.<sup>48</sup> Traditional village engagement is still restricted and tokenistic, she discovered. The administration only staged public participation as a symbolic event, involving a limited number of people from underrepresented populations to provide the impression of justice.<sup>49</sup>

In the Benoa Bay Reclamation Project, the link between lack of public participation and regulatory failure is apparent. The Coordinating Minister of Economic, the National Spatial Planning Coordinating Board, and the Bali Provincial administration held public discussions when the central government decided to change the presidential rule. This event was held to inform the public about their plans to modify Presidential Regulation No. 45 of 2011. They summoned local Bali communities who would be most affected by the regulation's amendment. Surprisingly, only those who had already been accepted to the Reclamation Project were invited. Local communities such as Kuta, Kedonganan, and Kelan,<sup>50</sup> as well as WALHI Bali, a renowned environmental NGO in Bali and a member of the Bali Provincial Spatial Planning Coordination Board were not invited.<sup>51</sup> When the Deputy Minister of Environment launched a public consultation about the plan for the Benoa Bay Reclamation, there was again a lack of public engagement in the environmental impact assessment (EIA) related to the project. This particular event did not include any of the affected communities.<sup>52</sup> Fishers' groups, who rely on Benoa Bay for their livelihood, were not invited.<sup>53</sup> Furthermore, local populations in Kelan and Sidakarya

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<sup>48</sup> A.A.I. Atu Dewi, *supra* note 10 at 76.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Surat Undangan Kementerian Koordinator Perekonomian No.UND-50/D.VI.M.Ekon/04/2014 of 10 April 2014* [Invitation Letter of the Coordinating Ministry of Economy No.UND-50/D.VI.M.Ekon/04/2014 of 10 April 2014].

<sup>51</sup> *Ibid.*

<sup>52</sup> ForBali, "'Pernyataan Sikap Tolak Reklamasi Teluk Benoa: Segera Batalkan Perpres 51 Tahun 2014' [A Statement of Attitude to Refuse the Reclamation of Benoa Bay: Promptly Annul the Presidential Regulation No 51 of 2014]", *ForBali* (24 March 2015), online: <<https://www.forbali.org/id/pernyataan-sikap-tolak-reklamasi-teluk-benoa-segera-batalkan-perpres-51-tahun-2014/>>.

<sup>53</sup> *Ibid.*

that had publicly opposed the Reclamation Project were not invited,<sup>54</sup> ignoring the concept of fair treatment of all parties concerned.<sup>55</sup>

In the case of the Tahura Project, there was yet another absence of public participation. The Governor of Bali chose to award a Tahura Ngurah Rai exploitation permission in secret. When WALHI publicized the Governor's plan to give the permit in the Bali press, it sparked an outpouring of support from locals in the Tahura Ngurah Rai area, particularly in Pemogan village. Although affected villages requested a public hearing, none was held, and the Governor issued the permit.<sup>56</sup> There was no public notification made regarding its issuance.<sup>57</sup> Furthermore, no explanation was ever offered as to whether the public was involved in the Tahura Zoning Map revision process. However, the entire revision process was not available to the public. What was discussed and what conclusions were made were unknown. Only the final product (the map revision) was made public.

The Badung District government engaged the public in the Mulia Project by announcing the project's plan. However, that was the only and final opportunity for public engagement, as the process of obtaining building permission was never made public. There were no regulations in place in 2010 that required the government to engage the public in spatial planning governance. Two central government laws governing public engagement in spatial planning (No. 15 of 2010 and No. 68 of 2010) had not yet taken effect. The investor enlisted the public's help by entering into two contractual agreements with local communities in Sawangan. However, these agreements aimed to persuade local populations to support the project by promising monetary compensation. This approach failed to quell public outrage, as significant protests erupted in October 2011, seven

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<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.* Article 22 point 5 of Job Creation Law will have the unfortunate effect of narrowing the possibilities for public participation in EIA even further than is already the case. This article states that only people from affected communities that have a 'direct impact' and are 'relevant' to the business plan can provide suggestions or opinions on the issuance of the EIA.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

months after the building permit was obtained, due to the project's negative environmental impact. Two contractual agreements indicate that investors use their financial clout to keep their ventures going. They simply pay people off if they want to establish a hotel. Furthermore, there is no legislation to safeguard local populations from this scenario or prevent investors from abusing their authority. As a result, investors continue to have a strong position, and they have been able to bribe government officials and influence local people by paying monetary compensation.

### *C. Why the Public is not Involved*

The public is rarely involved in formulating, implementing, enforcing, or revising spatial plans for various reasons. The first is that, although both central government Regulations No. 15 and No. 68 of 2010 demand public engagement, there are no legal implications or fines if it is not done. There was no public engagement in creating, executing, or updating the Tahura Zoning Map in the Tahura Project. Despite this, the project went ahead, and there were no consequences for the absence of public participation.

Furthermore, there is a lack of clarity as to when public engagement should take place. In particular, neither government Regulation No. 15 of 2010 nor Government Regulation 68 of 2010 mentions a duty for governments to involve the public in all stages of the spatial planning process.<sup>58</sup> Public engagement is only undertaken when the procedure is in the revision stage when the government wants to change the status of Benoa Bay from a conservation area to a general usage area, as it was in the case of the Reclamation Project. The public is not involved in the planning and implementation of the spatial plan. Finally, like in the case of the Reclamation Project, the regulations do not anticipate the typical situation

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<sup>58</sup> Article 23 of Law No. 32 of 2009 on Environmental Protection would be amended so that only businesses that have 'a significant impact on the environment, society, the economy, and culture' will have to pass an EIA. Unfortunately, the Job Creation Law does not define "major impact," leaving it to the government to decide. The law also reduces sanctions for environmental offenses. It amends Law No. 26 of 2007 on Spatial Planning, allowing the central government to issue a presidential decree to sort out overlapping land and forest use permits. These provisions will significantly assist unscrupulous plantation, logging, and mining businesses.

in Indonesia, where governments purposefully ‘rig’ the process by only inviting members of the public who are not opposed to the government's views. To summarize, the failure to fully involve the public in the decision-making process of the Tahura and Reclamation Projects illustrates that spatial planning regulations do not provide or demand fair, accessible, and open procedural processes. As a result, according to Braithwaite's broader regulatory theory, spatial planning regulations will not provide 'responsive regulation'<sup>59</sup>

#### IV. PUBLIC PARTICIPATION UNDER JOB CREATION LAW

The introduction of the Omnibus Bill on Job Creation is unusual in Indonesian regulation-making practice. It is more generally used in the common law system than in the Indonesian civil law system. On the other hand, the government maintains that this is the most significant way to enhance the regulatory structure, mainly the ease with which businesses can operate in Indonesia.<sup>60</sup> The goal of this bill is to de-regulate the overlapping, disparate, and conflicting rules that govern corporate activity. Finally, on 5 October 2020, the government enacted this Bill as Law Number 11 of 2020 on Job Creation.

The government is justified in claiming that Indonesia's quantity of laws and regulations has reached hyper-regulation levels. There are currently 1693 laws, 182 Government Regulations in lieu of laws, 4605 Government Regulations, 2109 Presidential Regulations, and 15971 Regional Regulations, to name a few.<sup>61</sup> Indonesia's competitiveness has suffered due to excessive regulation, making it unattractive to investors. According to the World Bank's 2019 Doing Business Index, Indonesia ranks 73rd out of

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<sup>59</sup> John Braithwaite, “Responsive Regulation and Developing Economies” (2006) 34:5 *World Development* 884–898 at 884.

<sup>60</sup> I Gusti Ngurah Parikesit Widiatedja, “Job Creation Law and Foreign Direct Investment in Tourism in Indonesia: Is It Better than Before?” (2022) 6:1 *Udayana Journal of Law and Culture* at 66.

<sup>61</sup> The Government of Indonesia, “Omnibus Law: the Solution and Legal Breakthrough”, *Gov Indones* (2019), online: <<https://www.indonesia.go.id/narasi/indonesiadalamangka/ekonomi/omnibus-law-solusi-danterobosan-hukum>>.

190 nations in terms of business ease. President Joko Widodo then established a goal for Indonesia to reach 40<sup>th</sup> place by his term in 2024.<sup>62</sup> The World Bank, through Satu Kahkonen, its Country Director in Indonesia, endorses this new strategy, claiming that the Law Bill might be a core structure for returning investment to Indonesia, especially in light of the economic downturn caused by the coronavirus outbreak.<sup>63</sup>

As previously stated, this Law changes and replaces around 74 laws, including Spatial Planning Law 26/2007 that are regarded as impediments to job development and investment in Indonesia. From the 80 articles covered by Spatial Planning Law 26/2007 45 have been left unchanged, 26 have been simplified, and 9 have been eliminated. This law seems to provide more room for public participation. Article 14 (3) states that the public should have easy access to the detailed plan in digital form, obtaining information on the suitability of the planned location of activities with the detailed plan. This law has also amended two articles from Spatial Planning Law 26/2007.<sup>64</sup> Article 60 of Spatial Planning Law 26/2007 is amended so that it reads as follows: everyone has the right to know the spatial plan, to enjoy the added value of space as a result of spatial arrangement; to obtain adequate compensation for losses arising from the implementation of activities developed under the spatial plan; to file a request to the competent authority against development in its territory that conflicts with spatial planning; and make a claim for compensation with the governments, and/or space utilization activity executors if development operations that are not per the spatial plan result in losses.<sup>65</sup>

The provision of Article 65 is amended so that it reads as follows: spatial planning is carried out by the central and local governments, with community participation. The community's involvement in spatial planning is carried out, among other things, through participation in the creation of the spatial plan, participation in spatial usage, and participation

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<sup>62</sup> *Ibid.*

<sup>63</sup> Indonesia Expat, "World Bank Supports Omnibus Law", *Indones Expat* (18 July 2018), online: <<https://indonesiaexpat.biz/news/world-bank-supports-omnibus-law-indonesians-resist>>.

<sup>64</sup> Job Creation Law, *supra* note 11, Article 14(3)

<sup>65</sup> Spatial Planning Law 26/2007, *supra* note 8, Article 60 (amended version)

in spatial control.<sup>66</sup> The urgency of public participation is addressed in Government Regulation No. 21 of 2021 on Spatial Planning Management. Article 16 states that the preparation of provincial spatial planning shall include public involvement.<sup>67</sup> This arrangement is also applied in the preparation of district spatial planning following Article 19.<sup>68</sup> Article 27 also emphasizes public participation, particularly in preparing the island or archipelagic spatial plan.<sup>69</sup>

For the first time, according to Article 220, this law establishes a special supervision mechanism if there are special conditions due to reports or complaints from the public regarding spatial planning governance. This mechanism will reconstruct the occurrence of special conditions, analyze impacts and predictions, and formulate alternative solutions for these conditions.<sup>70</sup> Article 234 then states how to increase the public's understanding and responsibility in the implementation of spatial planning. These will be undertaken through counseling in the field of spatial planning, giving lectures, public discussions, and public debates, the formation of community groups concerned with spatial planning, and the establishment of a complaint unit.<sup>71</sup>

## V. CAN OMNIBUS LAW SOLVE THE PROBLEM?

The enactment of the omnibus law on Job Creation has been criticized due to the lack of public participation. According to the Indonesian People's Faction (FRI), legislators in the House of Representatives (DPR) abolished public participation in their most recent deliberation of the Job Creation Bill. They claimed legislators had broken Article 96 (4) of Law No. 12 of 2011, which stated that every draft bill deliberation must be easily

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<sup>66</sup> *Ibid.*, Article 65.

<sup>67</sup> Government Regulation, No 21 of 2021 on the Management of Spatial Planning, Article 16. ('SPGR 2021').

<sup>68</sup> *Ibid.*, Article 19

<sup>69</sup> *Ibid.*, Article 21

<sup>70</sup> *Ibid.*, Article 220.

<sup>71</sup> *Ibid.*, Article 234.

accessible to the public as a form of public engagement.<sup>72</sup> The cancellation of any public participation has significant implications for the deliberation's legitimacy, and any documents generated by the DPR could be considered invalid.<sup>73</sup>

Other elements that have been perceived to significantly restrict public engagement in the motivation of the Job Creation Law include the exclusion of members of the public who participated in the deliberation via the chat app Zoom. Tommy Indriadi of the Indigenous Peoples Alliance of the Archipelago (AMAN) recounted being thrown out of the online debate and unable to reenter after claiming he was intentionally restricted.<sup>74</sup> This is only a small part of the facts about the lack of public participation in arranging the Job Creation Law, resulting in rejection from various stakeholders.<sup>75</sup>

Looking at the provisions of the Job Creation Law, public participation has been addressed in more detail. Article 60 of the amended version of Spatial Planning Law 26/2007 respects the people's rights in the spatial plan. When the spatial plan's activities have resulted in any losses, then the impacted party may request a kind of compensation. The public can express their disagreement to the competent authority when they believe a particular project has conflicted with the existing spatial plan. However, there is no explanation of how those things will be undertaken. Specifically, there is still unclear what kind of compensation is provided and to which government these complaints are submitted. Furthermore, when the public expresses their concerns or disagreement about a particular project, will the construction be stopped immediately until there is sufficient investigation

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<sup>72</sup> Petir Garda Bhwana, "DPR Job Creation Deliberation Lack Public Participation, says FRI", *Tempo* (21 February 2020), online: <<https://en.tempo.co/read/1333738/dpr-job-creation-deliberation-lack-public-participation-says-fri>>.

<sup>73</sup> Indonesian Law No. 12 of 2011 on Legislative Drafting, Article 96.

<sup>74</sup> *Ibid.*

<sup>75</sup> Musri Nauli, "Reading the Indonesian Omnibus Bill on Job Creation", *Heinrich Boll Stift Southeast Asia* (17 July 2020), online: <<https://th.boell.org/en/2020/07/17/reading-indonesian-omnibus-law-job-creation>>.

regarding the suitability of the proposed project and the existing spatial plan?

Article 65 also explains that public participation shall be conducted in every stage of spatial planning, namely the creation of the spatial plan, the implementation of spatial usage, and the supervision of the spatial plan. Compared to the old version of Spatial Planning Law 26/2007, this has provided more clarity as to when public participation should take place. However, there are no legal ramifications or penalties for breaking this rule. As a result, this system will be unable to anticipate the typical situation in Indonesia, in which governments 'rig' the process by only inviting members of the public who are not opposed to the government's viewpoints. The implementing regulation, Government Regulation No. 21 of 2021 on Spatial Planning Management, is expected to provide more clarification. However, in terms of public participation, this regulation is just a repetition of Article 60 dan Article 65. Although the public is involved in every stage of spatial planning, there are no legal effects or sanctions to be imposed when the government does not appropriately conduct this mechanism.

It is true if this regulation, following Article 220, instructs the government to establish a special supervision mechanism if there is an exceptional condition due to a report or complaint submitted by the public concerning spatial planning governance. This mechanism will reconstruct exceptional conditions, analyze impacts and predictions, and formulate alternative solutions for these conditions. However, these still provide obscurity whether this mechanism is *ad hoc* or it will be integrated under the existing governing body. It is unclear which government institution or independent body will establish this mechanism. Moreover, can this mechanism stop the ongoing project when this mechanism is established, and the inquiry is being conducted? What if the project is a government project and considered a strategic one? If the ongoing project disregards the finding of this process, what are the legal consequences?

As a comparison, Hong Kong's planning law has been changed to demand public engagement at all phases of the spatial plan. The former law, the 1997 Town Planning Ordinance, mandated so-called 'public inspection'

once a draft was submitted to the Town Planning Board for review. However, the new rule, the 2004 Amendment to the Hong Kong Town Planning Ordinance, allows for plenty of public input.<sup>76</sup> The Board's Planning Department creates a 'concept plan' and a 'preliminary layout plan,' which must include public participation through seminars, roadshows, and radio broadcasts.<sup>77</sup> Following public feedback, the Board will draft an 'outline zoning plan,' which will be open to official public inspection and consultation for two months.<sup>78</sup> Before this phase is completed, the proposed project is not allowed to start construction.<sup>79</sup> This example demonstrates how the public can participate actively in developing a spatial plan.

There is a creative way to involve the public in spatial planning actively. A lecturer from the Malang Institute of Technology ('ITN') has created an Android-based app called 'Urban and Regional Watch ('UR-Watch') to allow the general people to participate actively in spatial planning.<sup>80</sup> Although this software is currently in its early stages of development, its concept should be supported. When users start the app, it shows them a map of a general spatial plan, indicating which areas are protected and which are used. They can file a report if they come across commercial buildings in protected zones. As administrators, this software can be utilized with the district spatial planning agency and the district legislative council. Users can later review their account history to determine if the government took any action in response to the report. This type of application can also be used to ensure that all parties involved are treated equally. As previously stated, Indonesian governments frequently invite only those members of the public who expressly support the planned tourism initiative. The app will provide the public with more ways to

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<sup>76</sup> Yim King Penny Wan & Bill Bramwell, "Political Economy and the Emergence of a Hybrid Mode of Governance of Tourism Planning" (2015) 50 *Tour Manag.* at 324.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> Hilda B Alexander, "Dosen ITN Malang Ciptakan Aplikasi Pengendalian Tata Ruang" [A Lecturer of ITN Malang Created An Application for Controlling Spatial Plan], *Kompas.com* (8 May 2017), online: <<https://properti.kompas.com/read/2017/05/08/171644221/dosen.itn.malang.ciptakan.aplikasi.pengendalian.tata.ruang>>.

express their dissatisfaction. Even if individuals are not invited to public consultations, they can use this application to express their concerns and provide ideas.

When the UR-Watch app is ultimately up and running, legislation should require governments to use it to increase public participation. In Indonesia, there is a good example of how Android-based applications have increased public participation.<sup>81</sup> The 'Qlue' application, which is tied to the Jakarta Smart City program, has been effectively used by the Special Region of Jakarta.<sup>82</sup> It allows the public to report anything related to Jakarta's public services.<sup>83</sup> The report is sent directly to the Governor's office, and the Governor will ask the relevant agency to respond to the report the same day. The Governor's office monitors the progress of the report, which is readily visible on television.<sup>84</sup> This app will reflect responsible and transparent ideals as a part of good governance if implemented effectively.<sup>85</sup> Finally, it will aid Indonesia's fight against corruption. The effectiveness of using this app remains to be seen as Indonesia continues to struggle with a lack of capability among its government workers. Given the widespread usage of apps in Indonesian daily life, such as car-sharing, food delivery, and courier services, this app is expected to become widespread and widely used.

The claim that the Job Creation Law did not involve the public properly in the law-making process is confirmed by the latest Constitutional Court decision. The law was finally declared conditionally unlawful, and the Court gave the House of Representatives and the administration two years to modify the law using a law-making procedure that includes more public

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<sup>81</sup> Liputan6, "Sosok Minggu Ini: Rama, Pencipta Qlue Aplikasi Laporan Warga DKI" [Man of the Week: Rama, the Creator of Qlue, An Application for Public Report in Jakarta], *Liputan6* (17 April 2016), online: <<https://www.liputan6.com/news/read/2485566/sosok-minggu-ini-rama-pencipta-qlue-aplikasi-laporan-warga-dki>>.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> See John Graham, Bruce Amos, & Tim Plumptre, *Principles for Good Governance in the 21st Century* (Institute on Governance).

input.<sup>86</sup> Zainal Arifin Mochtar, a constitutional law expert, states that this ruling has been questioned since it does not expressly declare Job Creation Law unconstitutional. The Constitutional Court should declare that anything under Job Creation Law with broad and strategic consequences is suspended and that the law is no longer in effect.<sup>87</sup> The government can continue to use the Job Creation Law and its subsidiary or implement regulations due to the ambiguous ruling. As a result, the government might use obscurity to further muddy the waters.<sup>88</sup> In terms of the regulation of public participation, this Constitutional Court decision may create legal uncertainty or confusion because the government will no longer be able to enact technical regulations, notably addressing the importance of public participation in spatial planning. Governments should complete any required official procedures first within two years. They should make it clear right away that the point of the decision is only about the law-making procedure, not the content of the law.

## VI. CONCLUSION

Laws governing spatial planning must encourage public participation if they are to succeed in encouraging sustainable development. Spatial Planning Law 26/2007 mandated public participation, yet it was ineffectual and only a formality. More options for public participation are offered under the Job Creation Law. The public has the right to know about the spatial plan and to receive financial compensation for losses incurred due to the preparation and execution of the spatial plan. Job Creation Law seems to perpetuate the same faults despite its attempts to include the public. There are no penalties or legal repercussions for improper public involvement. Furthermore, there is no assurance that the government will stop a current project to allow for a transparent examination to confirm

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<sup>86</sup> The Constitutional Court Decision, *supra* note 12.

<sup>87</sup> Nurhadi Sucahyo, "Ketidakjelasan Bayangi Putusan MK Soal UU Cipta Kerja", *VOA Indones* (Desember 2020), online: <<https://www.voaindonesia.com/a/ketidakjelasan-bayangi-putusan-mk-soal-uu-cipta-kerja-/6338052.html>>.

<sup>88</sup> *Ibid.*

conformity with the spatial plan when the public voices its concerns or opposition to a particular project.

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## COMPETING INTEREST

The authors declared that they have no competing interests.

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