

Policy Consultation in Malaysia Public Service

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Abstract

The aim of this article is to discuss on the process of public policymaking and how the policy consultation helps to elaborate the processes involved in enhancing cooperation among government agencies. Existing literature indicates that there has never been any research that studies in detail on consultative process of the process of policymaking in the country's public service. The only available guidance is in the National Policy on the Development and Implementation of Regulations to improve the decision-making process for policy implementation. Therefore, a further reference has been done on a qualitative study on the policymaking process of the proposed National Halal Policy. The study indicates that an effective consultative approach must be able to act as either a vehicle of communication or stakeholder management in the policy process. The framework of negotiation-based of policy consultative informs clearly on what types of consultative process practiced by the country and how does it operate in promoting wider participation in the policy process.

Keywords: policy consultation, collaborative approach, negotiation in policymaking process

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1.0 INTRODUCTION

Good policy is produced with effective policymaking (Dror, 1998). According to Parsons (2001) an effective policymaking does not take place in a closed and rigid system, but involves a complex process encompassing interaction with and the management of many levels and different policy actors. Those types of interaction will not only able to explore arising policy issues but to resolve the differences among policy actors. On that premise, many literatures have begun to discuss on participation and engagement in the policy process in which as a result they emphasized on the importance of consultative process such as deliberative democracy, e-participation, public conversation, and collaborative policymaking (Bingham, Nabatchi, & O' Leary, 2005). In most of developed country, for example in United States of America (USA), negotiation as one of the tools under Alternative Dispute Resolution (ADR) has become part of legislative process (Perritt, 1986). Whereas in Malaysia, despite of the research on such area remains scarce, the country has established her own mechanism in developing any public policy (Fazni Mat Arifin & Nooraini Othman, 2018). In view of that, this article will further explore what types of consultative process practiced by the country and how does it operate in promoting wider participation in the policy process.

2.0 COLLABORATIVE APPROACH IN MALAYSIA ADMINISTRATIVE SYSTEM

The concept of participation, inclusiveness, or any collaborative approaches are not uncommon to the

process of public policymaking in the country (Salum Ali & Aini Suzana Arifin, 2018; Mohd Aizi, Shahizan, Mohd Farhan & Azizul Azhar, 2012; Abdul Gapar, 2010; Ho, 1992). Given the history and context of policymaking in Malaysia various events have deliberated on Malaysia's structure which in consequence succeeding in creating cooperation among policy participants. For examples on national policies relating to citizenship conferment for people of Chinese and Indian origin, and official status of Malay, English and other languages have been resolved amicably through consultative process (Horowitz, 1989). One of interesting examples is in the formulation of National Development Policy (NDP) in 1991. The NDP retains the thrust of New Economy Policy (NEP) in eradicating poverty and restructuring society with overriding objectives of political stability and national unity, while simultaneously it introduces the National Economic Consultative Council (Ho, 1992) to monitor the development of policy. The membership of Council was drawn from various stakeholders including political parties, chambers of commerce, government officials, corporate leaders, economists, professionals, individuals and minority groups. The policy thus marks a significant representation in promoting consultative approach in the policymaking process in the Malaysia Public Service (MPS).

Notwithstanding in recent years, many public policies enacted become culpabilities and liabilities to the government. For examples the implementation of Goods and Services Tax (GST) policy that aimed to increase efficiency of tax collection system created a lot of polemics and controversies. It was eventually repealed by the current government (Royal Malaysia Custom Department, 2014). Likewise, a foreign policy, namely Trans-Pacific Partnership Agreement (TPPA) that sought to lift tariffs on goods and services amongst participating countries also encountered strong resistance from diverse stakeholder groups in Malaysia (Ministry of International Trade and Industry (MITI), 2016), the enforcement of Automated Enforcement System (AES) (Road Transport Department Malaysia, 2012) has also been suspended several times as a result of the poor communication between the government and public to understand the ability of AES in reducing accident rates in the country (Reena Raj, 2017). This was also due to the poor engagement process with various stakeholders, which consequently led to the policy being met with tenacious resistance and strong protest.

3.0 NATIONAL POLICY DEVELOPMENT REGULATION IMPLEMENTATION, 2013

Those forms of policies are among examples of the implications of local public policymaking process that result in unresolved differences among policy participants. Despite the shortcomings, the government continues to improve the situations. In the country, MPS has been entrusted to formulate, design, or develop public policy (Normazny, 2010; Ahmad Sarji, 1996). MPS has continuously adopted constructive approaches to widely engage and consult various stakeholders to participate in the policymaking process in order to ensure that good policy is produced or to avoid making a policy that covers many issues. For example, the enactment of National Policy on the Development and Implementation of Regulations (NPDIR), 2013 is to improve the decision-making process for policy implementation. It mandatorily requires regulators to propose new regulations or changes to be carried out through consultations with affected parties (Malaysia Productivity Corporation (MPC), 2013b). The policy emphasises that regulators must ensure that stakeholders are effectively consulted in the course of developing regulations and they have an opportunity to participate in the regulatory development process.

Therefore, in facilitating the implementation of the NPDIR, the Best Practice Regulation Handbook (the Handbook) is issued. The guideline provides reference for Ministries and federal agencies in conducting their public consultation exercises. It is intended to clarify the role of stakeholders during public consultation (MPC, 2013a). The Handbook pinpoints all the parties influenced by the policy proposition, namely industries, non-governmental organisations (NGOs), society, administrators, and relevant government bodies. The Handbook further guides that in instigating a successful policy decision, the consultation should not just be a routine of fulfilling bureaucratic requirements, instead it has to give the impression that "the stakeholders' opinions and concerns are genuinely taken into account" (MPC, 2013a, p.36). In doing this, the stakeholders' participation in the consultation sessions must be incited by the agency handling the regulatory process to get the necessary inputs throughout the various phases of the regulatory process. The consultation process must also be carried out in an equal and fair manner, where no party is given the upper hand in the regulatory process. This can be achieved by giving all parties sufficient opportunity to voice out their views, including those from relevant ministries and agencies through inter-agency consultations.

The development and issuance of NPDIR and the Handbook indicated another step forward in Malaysian policymaking process. At least, to a certain extent, Malaysia is trying to vie with the innovative effort of developed nations in the policymaking process. At a glance the initiative reflects the intention of the government

to celebrate wider participation by encouraging effective communication between policy stakeholders. Nonetheless the NPDIR and the Handbook respectively likewise of other policies documents and instruments with general guidelines to be followed. The are some aspects in the Handbook provide with no clear and comprehensive guidance in the process of consultation. An effective consultative process is not only confined to achieving efficient decision-making or effective communication between policy stakeholders, but also to resolving disagreements within the process. An effective consultative mechanism also manages to play pivotal role in facilitating policymakers to comprehend the complex issues and human dynamics that exist behind important policy issues (Alfredson & Cungu, 2008).

4.0 QUALITATIVE STUDY ON POLICY CONSULTATION

Any guidelines relating to policy consultation must be able to act as either a vehicle of communication or stakeholder management in the policy process. Implementing policy documents with numerous unresolved issues is unwise. It does not only deprive the government of its good intention, but also brings about waste of resources. The main challenge in addressing this is that the process and procedures of developing a policy are not well-documented, and this provides huge gaps in the method or approach exercised by MPS. Secondly, very little is known about the extent of communication and the depth of exchange between public administrators and other stakeholders during the engagement. Hence, in examining and analysing a policy in the future, policy reviewers find it hard to understand what actually transpired during the process, and why it is designed in such a manner. The example of policies discussed above indicates that the struggles and challenges of policy development lies within the mechanism of policymaking process in the country. The gap apparently exists in the engagement process within the policymaking process.

Therefore, a study has been conducted to explore how it should be operated particularly in the policymaking process (Fazni, 2019). The case study on the proposed National Halal Policy (NHP) has been chosen due to the nature of the policy which involved various background of policy actors namely from the government, industrial, academicians and non-governmental organisations. The interviews with 15 policy participants from policymakers and stakeholders have indicated that they prefer to approach the process with integrative negotiation or in other words ‘win-win’ solution to affect effective communication. Besides the study also discloses several elements to manage the stakeholders within the consultation process. Significantly the finding concludes the two important dimensions above into the framework of negotiation-based policymaking framework as Figure 1 below:

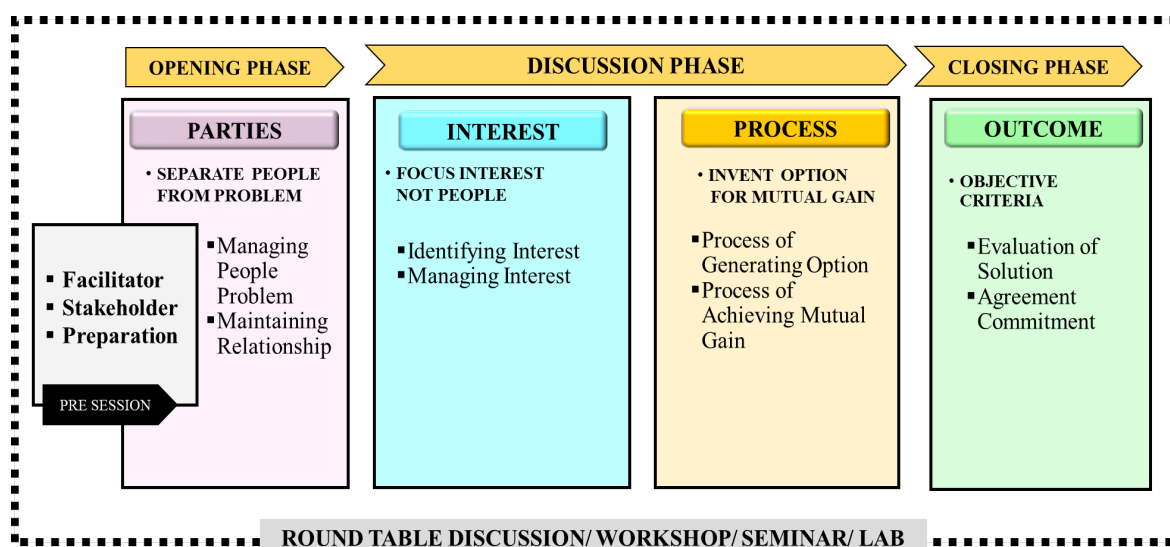


Figure 1 Negotiation-Based Policy Consultation Framework (Adapted from Negotiation based Policymaking Process Framework (Fazni, 2019)

The first dimension on stakeholders’ communication touches on the negotiation approach itself. It emphasises four significant pillars which are supported with four doctrines of principled negotiation in order to ensure the consultation process carries out by merit. In the context of policymaking, the type of negotiation may

offer a different perspective in terms of ensuring that a good agreement is achieved. This is because negotiations between organisations usually form part of the methods to resolve issues related to public policy conflicts. They are participated by stakeholders representing different establishments, namely political parties, business associations, administrative agencies, public authorities, private companies, and even non-profit organisations. Regardless of pursue of their organisational goals, the stakeholders also rely on the quality of the ongoing relationship among them. In other words, impartial and long-lasting resolution are also those that are beneficial. The four pillars as reflected in the Figure 1 are;

First Pillar: Negotiating parties with the principle of separate people with problem, which means parties need to solve the core problem, thus, anything that distracts from this focus should be removed or streamlined to ensure that the objective is achieved. The policy participants have indicated two important elements that were exercised along the sessions, namely (a) *managing people's problem*. Negotiating parties usually face three core problems, as experienced by the policy participants in the study. First is communication problem, which the finding suggested to use question to assist the other party in addressing and expressing needs and interest. Meanwhile, in dealing with those who might be difficult in the process, Ury (1991) recommended deflecting the other party's difficult behaviour by disarming him or her through positive and constructive communication and subtly expurgating the party's points and asking him or her to summarize and rephrase. Other suggestion is through the process of listening and speaking. In terms of listening, the act of "listening first", and is active listening, for instance, encouragement from the facilitators to the stakeholders to communicate by revising the sender's message and also the act of paraphrasing in guiding the stakeholders. In terms of speaking, two techniques were revealed by the participants, namely the delicate way participants convey messages and the use of simple language when giving explanation. The second problem is managing emotion, whereby the process of negotiation itself may create both positive and negative feelings. The participants in the study have shown several types of positive emotions such as flexibility, namely by asking forgiveness and giving way to others to talk more. Isen and Baron (1991) emphasised that negotiators who feel positive emotions are more likely to be flexible in how they arrive at a solution to a problem, and perhaps less likely to get caught up in escalating their commitment to a single course of action. A participant also displayed instances of negative emotions such as showing firmness in the stand that she held. Therefore, it is critical for any negotiator to track the emotions of other party and adjust their strategy accordingly. Thirdly, understanding the negotiator's perception. In the study, participants indicated several strategies in managing perception, namely by managing their own emotions to be more receptive and open, besides allowing some time to justify the perception established. And (b) maintaining relationship. If the above-mentioned three problems are not managed wisely, the process of rapport building will be affected (Kopelman, 2014). Participants seemed to appreciate the value of relationship established among the parties during the session because they felt it facilitated the interaction effectively. As opined by Sheppard and Tuchinsky (1996), negotiation is not always a way to discuss an issue, but a way to learn more about the other party and increase interdependence.

Second Pillar: Negotiating interest with the doctrine focus on interest, not people. Substantially it calls for parties to enter into the process with a greater consideration and an open mind about each other's need. In addition, behind opposed positions, there often lie shared and compatible interests as well as conflicting one. On that premise, two important principles adopted, which are (a) *identifying interest*. The participants showed their understanding towards the importance of knowing other parties' interest to achieve better negotiation whereby both negotiators need to pursue the other's thinking and logic to determine the factors that motivate them to arrive at the goals. Clyman and Tripp (2000) pointed out that there is more than one type of interest underlying a negotiation for example. substantive interest which is related to focal issues that are under negotiation (Lax & Sebenius, 1986); the process interest which is not solely focused on the issues under negotiation, but rather on the fact that every agency wants to show their commitment in addressing the main subject matters; and relationship interest where parties may derive substantive benefits from the relationship and do not wish to disrupt future benefits by souring it. Finally, Lax and Sebenius (1986) also explained the importance of interest in principle, such as what is fair, what is right, and what is ethical, among others because such interest can serve as the dominant guides to their action. Lewicki et al. (2010) clarified that if these interests could be brought to the surface, parties may begin to see that they care about very different things which could drive to solutions that address the interest of each negotiator. All types of interest classification may have its justification, nonetheless, according to Provis (1996), it is often difficult to define interest, and during the process, the act of overemphasising on interest identification may oversimplify the real dynamics of conflict. And (b) managing interest in which one of the stakeholders remarked that interest sharing is subject to the need of the discussion. She will only share her interest if she feels she can get more benefit from the sharing. However, in the event of uncertainty, she will not reveal the

interest to other parties. This type of feedback relates to the challenge in surfacing interest whereby negotiating with parties who are not even sure about their own interest (Lewicki et al., 2010). The participants disclosed their techniques in managing interest, namely imposing questions in which it helps negotiation parties to address and express their needs and interests; the role of non-verbal behaviour during the discussion. They declared that using body language is more helpful than voicing out their opinion for the facilitator to manage the interaction, and gathering information, which is commonly exercised by the negotiators in exploring interest. Additionally, the stakeholders pointed out that the informal session held within the break time was used by some stakeholders as an opportunity to explore more information in a more casual way. Moreover, managing interest also involves managing the position held by the participants. Most participants agreed that other parties' position was not a main concern for them, instead, they were more interested with the information brought by the participants. Finally, participants also utilised information on the types of interest employed by each party in managing the parties' interest to accommodate the negotiation process. Lewicki et al. (2010) underline that the technique on constantly stressing this larger goal will drive the parties to maintain focus on commonalities that will eventually lead to mutual gain.

Third Pillar: Negotiating process, with the doctrine inventing options for mutual gain where once the parties have agreed on a common definition of the problem and understood each other's interest, they need to generate a variety of alternative solution. Therefore, two important processes related to inventing options are addressed based on the response of the participants, which are (a) process of redefining the problem. The participants indicated the effort of redefining the problem by the attempt on realigning and coordinating the interests of every party. The facilitator also mentioned about her initiative to channel all the parties' interests to be under one platform by integrating all the parties' concerns under the policy. This tactic, according to Carnevale (2006), is useful in generating option, in the sense when parties are able to invent new options that meet all their respective needs, they have created a bridged solution. Furthermore, as observed by the facilitator, every stakeholder brings their agendas and directions to the table, and the highlight on what the government wants to achieve has efficaciously turned their interest into one focus. Second is by broadening the options since the participants have different interpretation on certification. While one party talked about the acceptability of Malaysia's Halal certification, other participants highlighted another advantage, namely of promoting the aspect of the certification. This identification of different interest under certain issue indicates the potential of arriving at more alternative solutions. Accordingly, Lewicki et al. (2010) describe this strategy of obtaining a simple solution as the condition of 'expanding the pie', which means enlarging the resources of the subject matter. The technique enables all parties to eventually discover the part that could satisfy their interest. And (b) process of generating alternative solution. The most important point in inventing solution is recognising that parties may decide prematurely on the options and so fail to consider alternatives. Fisher and Ury (1981) recommended a joint brainstorming session to tease out other solutions in a non-contentious atmosphere. The objective of brainstorming is to identify as many practical solutions as possible within the time available. Participants also seemed to appreciate the informal session to obtain more information and options for the discussion. Therefore, the participants would just need to wisely manage the ideas discussed during the informal brainstorming session. Undeniably, creative solutions often come from ideas that initially seemed wild and impractical, nevertheless, participants must know how to distinguish between the process of generating options and judging early solutions. The essence of the process stage is to avoid making any premature agreement (Adair and Brett, 2004)

Fourth Pillar: Negotiation outcomes with the doctrine of objective criteria. Fisher et al. (1991) stressed that decisions that are based on reasonable standards facilitate the parties to agree, and most importantly, parties could preserve their existing relationship. Therefore, two elements were extracted from the participants' feedbacks at the closing phase, namely (a) evaluation of alternative solution. The participants highlighted the final presentation where all options proposed by every group were gathered. Participants reported that the findings from every group were almost similar, which implied they were arguing on common issues. However, several considerations were taken by the participants before the final presentation such as the elimination of irrelevant suggestions as proposed by Lewicki et al. (2010) which requires the negotiation parties to narrow the range of solution options. Other guidelines refer to the task of creating a legitimate basis for agreement which requires both parties to agree with having a fair procedure for deciding the matter. Several efforts have been made by the participants to ensure the legitimacy of the agreement, for instance, participants informed that the suggestions were based on the agreement of all parties in the group. The participants also reported on some criteria set by the facilitators in the earlier session which have been expanded with the additional criteria from the stakeholders. Fisher et al. (1991) asserted that the parties appealed to objective standards in decision making, for example the precedents, industrial standards, or other objectively fair outcomes and processes that can be used as benchmarks for legitimising the

fairness of the decision. Additionally, the approach of referring on the state representative in the operation of Halal is in line with the recommendation from Fisher et al. (1991) that among the tactic to communicate firm flexibility to other negotiator is to demonstrate problem-solving capacity such as engaging experts in a negotiating team. And (ii) agreement commitment. The essence is the agreement can only last if all parties honour the commitments they have made (Alfredson & Cungu, 2008). This was clearly envisaged from the response of the participants, who believed that the government should not only consider their ideas but should implemented them. Fisher and Ertel (1995) reminded parties to negotiation to preserve the trust given by the parties during the process. One of the ways is to create a commitment structure that can be implemented in stages. Parties may be more willing to make a deal with an opponent when there is an opportunity to demonstrate that each side is honouring their commitments after the process.

The second dimension touches on stakeholder management which reflects on the organisation and administration of the consultation process itself for example (i) the engagement mechanism. The study found on the term such as 'Round Table Discussion', and 'Lab Discussion' The initiatives are in accordance with the requirement of the NPDIR to use the most appropriate approach in consulting for example meetings with interested parties, seminars, web forums, public surveys and focus groups (MPC, 2013a). Such mechanisms empower negotiation as a process that both citizens and stakeholders can exercise in getting their voice heard and in becoming more engaged in their communities (Bingham, 2006), and (ii) *the organiser of the session*. Peritt (1989) posited that an agency sponsoring the process should take part in the negotiation, in which in the proposed policy, the Secretariat who organises the session should also participate in the process. The participation also includes its role as the facilitator and administrator. However, the Secretariat is not involved in the process of decision-making. The process is governed by other committee members with a higher position.

The other important finding in policy consultation is to have different phases since Holmes (1992) noted that among the reasons of unsuccessful consultation, is the failure to proceed through the stages in order. Therefore, four stages involved in the session are identified as follows;

- (i) **Pre-session.** Participants highlighted that during the session, three important procedures are followed, which they include (a) the selection of stakeholders where the variety is not only confined to the types of agencies, but also the position ranks, (b) selection of facilitator, Wardale (2013) concluded that a facilitator can be an internal or external member of the organisation in which the work group operates, have no decision-making authority, and is formally recognised by group members to assist them with the completion of their task, and (c) the importance of *preparation* which includes setting the aspiration for negotiation outcomes and providing opening statement and position to ensure members are well prepared at the start of the negotiation. It covers key points like identifying who is at the table, determining whether coalitions can be informed, addressing what roles group members will take, understanding the consequence of no agreement, and constructing the agenda.
- (ii) **Opening or Initiation Phase.** Two factors were respectively highlighted by the participants, namely (a) briefing session. Participants described that a simple introduction is given by the Secretariat. They also informed on the efforts taken by the policymakers in engaging them, such as their attempts to convince the stakeholders of the purpose of the session, to find out what their expectation are, and to explain the reasons behind the proposed policy. Volkema (2012) emphasised that during the initiation process, individuals must first engage themselves in the discussion before requesting and optimising the next action, where such engagement could help to enhance the quality and effectiveness of decision-making. And (b) *ice-breaking slot*. The spirit behind the slot is relationship building. Kapoutsis, Volkema, and Nikolopoulos (2013) also pointed out the importance of establishing the relationships to better understand and manage this critical stage of negotiation. Moore, Kurtzberg, Thompson and Morris (1999), and McGinn and Keros (2002) likewise emphasised the significance of relationship building in the first quarter of a negotiation interaction. The ice-breaking slot held in the session is very useful for both the policymakers and the stakeholders as declared by the participants, as it allows their knowledge on the background of each party go beyond its respective portfolio.
- (iii) **Discussion Phase.** At this stage, any participant must manage the context as well as the process of negotiation to gain the cooperation of all parties. The main role at the initial discussion phase, hence, is played by the facilitator. This includes creating a free-flowing information, attempting to understand the other party's needs, emphasising commonalities between parties, and searching for solutions that meet the goals of both parties. The facilitators also need to uphold the principle of neutrality. Kaner (2007) and Schuman (2005), accordingly informed that a key requirement of effective facilitation is to support a group process without influencing the

content of group discussions, such as by drawing out contributions from different participants, one at a time, or leaving the floor open for all.

(iv) **Closing Phase.** Two important aspects emerged at this stage, namely (a) *method of achieving agreement*. The initial step is selecting the best solution. Participants from the policymakers' group seemed to listen to all types of opinion and they would finally select the opinion that can satisfy all members. On the other hand, participants from the stakeholders' group were flexible in accepting different opinions if the idea could justify their concern and consideration. Girad (1989) suggested a tactic of providing more alternatives that are more or less equivalent in value. It is a very effective technique since people is more comfortable with having more choices. Besides it is also helpful if two possible solutions are offered, in which the facilitator is required to provide a description of the cost and benefit of each. And (b) decision process where the findings from every group will be presented at the final presentation. The findings are put on the provided template, as required by the Handbook. The final finding is pending upon the agreement of higher authority. Thus, as recommended by Lewicki et al. (2010), a follow-up meeting should be scheduled in order to evaluate how the agreement is working. Schwartz (1994) also mentioned on the evaluation process that should be organised in different sessions. The process is important to address any concern on faulty process or incomplete outcomes.

5.0 THE FRAMEWORK AND THE PARTICIPATION

Two important dimensions reflected in the framework signify on the expansion of the involvement of numerous and various stakeholders or wider participation in policy decision. Dean (2019) opines that understanding participation preferences thus provides a lens through which to understand participatory reforms of policy institutions and their prospects for improving institutional and policy legitimacy. First, with negotiation process as vehicle of communication, which is based on the four doctrines adopted from integrative negotiation throughout the consultative process denote that the process celebrates and welcomes cooperation, joint decision and collective decision making. Those attributes according to Dean (2017) are associated with participatory democracy. Besides, the nature of integrative negotiation itself reflects good participatory decision making as described Webler, Tuler, and Krueger (2001), uses consensual decision-making which is open, focuses on evidence, and does not cut off the process with a premature decision.

Secondly, several elements on the stakeholder's management for example on selection of stakeholders and facilitators, the role of Secretariat, the administration in every phases of policy consultation as discussed above also reflects as what has been asserted by Baldwin (2018) that stakeholder engagement processes which encourage discussion among diverse stakeholders are more likely to influence policy decisions. Baldwin also views that stakeholders have more consistent policy influence when there is a clear connection between stakeholder engagement processes and final policy decisions. These conditions also demonstrate good participatory decision making as posit by Webler, Tuler, and Krueger (2001) that the design and operation of the process should be fair and unbiased. For them, fairness also represents the opportunities of the participants to speak and, to be heard, which relates to the roles of neutral and professional facilitation. They also underlined on the quality of the interaction for those that do participate rather than the quantity of the participants. The emphasis here is clearly on the process and not the implementation of the policy decision.

6.0 CONCLUSION

The exploration of the article on the type of consultative process practiced by the country and how does it operate in promoting wider participation in the policy process are thus reflected in the negotiation-based policy consultation framework. Two significant dimensions from the framework elaborated in the above discussion have proposed that negotiation approach has been adopted in the consultative process. The approach does not only promote effective decision making, but also capable in managing efficient participatory process among stakeholders. These two ingredients substantially contribute to effective policymaking process which may fill in some gaps in the existing practice relating to the process of policy consultation in the public administration of the country.

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