

Formal Requirements for the Revision of the TNI Law from the Perspective of Public Participation

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Article Info

Article history:

Accepted: 21 November 2025

Publish: 8 December 2025

Keywords:

Formal Requirement;

Public Participation;

Lawmaker;

Judicial Review;

Revision of the TNI Law.

Abstract

The process of formulating legislation in Indonesia requires the fulfillment of formal requirements, one of which is public participation. Public participation is a crucial pillar in ensuring democratic legitimacy and the quality of the substance of laws. However, the 2025 revision of Law Number 34 of 2004 concerning the Indonesian National Armed Forces is considered to ignore this principle. The closed-door discussions, minimal socialization, and the absence of involvement of civil society, academics, and other stakeholders have given rise to criticism of the integrity of the legislative process. This study aims to analyze the formal requirements for the revision of the TNI Law from the perspective of Public Participation as stipulated in Law Number 12 of 2011 and the Constitutional Court Decision. The TNI Law revision process does not fully implement the principle of participation, thus potentially creating formal flaws that can become the basis for formal testing (judicial review), weaken legal legitimacy and threaten the principle of popular sovereignty in a democratic state. Therefore, this study emphasizes the need to strengthen legislative oversight mechanisms and institutionalize public participation as an absolute requirement in the process of formulating laws in Indonesia.

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1. INTRODUCTION

A democratic state based on the rule of law consistently involves the public in every aspect of lawmaking. This integration involves the integration of related entities, namely the public, government, and the business world, based on the noble concepts of humanity and civilization, while adhering to the principles of good governance, commonly used in democratic countries. The realization of these values is reflected in the creation of laws or statutes, demonstrating a spirit of creating inclusive, positive law. However, to create good laws, a legal order is required in the formal aspects of the lawmaking process.

In the formation of legislation, stages have been established that must be passed by the institution that forms the legislation so that the resulting legislation meets formal aspects. Ignoring the established stages can result in legislation being formally flawed (Eka N.A.M. Sihombing, 2016).

In Saldi Isra's view, the legislative system as regulated in Article 5 paragraph (1) and Article 20 of the 1945 Constitution, stipulates that the law-making process is a series of activities consisting of: (1) the initiative to submit a draft law; (2) discussion of the draft law; (3) approval of the draft law; (4) ratification of the draft law; and (5) promulgation in the state gazette (Idul Rishan, 2021).

In general, it can be concluded that the formation of legislation contains provisions regarding the principles of legislation (principles of formation, content material, types and

hierarchy), content material, formation of legislation, discussion and ratification, techniques for drafting legislation, promulgation and dissemination, and public participation in the preparation or discussion of draft regional regulations (Daniel Ehowu Zebuwa, 2022).

Some of the problems that arise in the formation of laws are formal, including public participation. He believes that public participation has not received better legal guarantees, particularly regarding mechanisms for following up on public aspirations and the results of those aspirations. The development of communication mechanisms or aspirations should be two-way (Wicipto Setiadi, 2019).

The role of participation, aspirations, and transparency is an obligation inherent in the rights of citizens, which will be regulated in a law. Therefore, in the theoretical concept of lawmaking, it can be said that this procedure is the heart of the legislative administration process. "Without procedures, law and legal institutions would fail in their purposes" (Galligan in Henny Andriani, 2023).

Public participation is a formal requirement that cannot be ignored in the process of revising laws. This was emphasized in the Constitutional Court Decision in case Number 32/PUU-VIII/2010 concerning the judicial review of Law Number 4 of 2009 concerning Mineral and Coal Mining. In its decision, the Constitutional Court stated that participation, or "paying attention to public opinion," cannot be done merely to fulfill formal procedural requirements. The Court stated that the primary purpose of participation is to respect, protect, and fulfill the economic and social rights of citizens (Lailani Sungkar, 2021). Furthermore, Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning the submission of a formal review of the Job Creation Law emphasized the importance of meaningful public participation as a formal requirement in the formation of a law.

In this regard, the revision of Law No. 34 of 2004 concerning the Indonesian National Armed Forces (TNI) has drawn much negative attention. In addition to public fears of the military's return to civilian life, the revision of the TNI Law was carried out without public involvement, a formal requirement: public participation.

Since its ratification, the bill has drawn much controversy and criticism from various elements of society, from activists, academics, to civil society. This criticism concerns substantive and procedural aspects, ranging from minimal transparency in the deliberations, limited public involvement, to the bill's content, which is considered to have the potential to enlarge the military's role in the civilian sphere. This is because the TNI Law is part of the law that not only regulates the TNI institution itself, but also the dynamics of civil-military relations and the national democratization process (Ummi Kultsum et al., 2025).

Furthermore, the discussions on the revised law were deemed clandestine, evident in the fact that the discussions took place in a hotel, not the House of Representatives (DPR) building. Therefore, this study aims to determine the formal requirements for revising the TNI Law from a public participation perspective. This will help determine whether the revision process contains formal flaws that could be subject to judicial review by the Constitutional Court.

2. RESEARCH METHODS

This research employs normative legal research, often referred to as doctrinal legal research. Normative legal research focuses on the study of applicable written legal norms and legal doctrines developed in the literature. The primary focus of this research is to analyze the formal requirements for revising the TNI Law from a public participation perspective to determine whether the revision process has met the formal requirements required for lawmaking.

3. RESEARCH RESULTS AND DISCUSSION

According to Allot, four conditions for good legislation can be applied effectively, namely, one, there is an adequate preliminary survey (*adequate preliminary survey*). Two types of communication, including socialization(*communication*). Three, there is acceptance from the community(*acceptance*). Fourth, through legal enforcement mechanisms (Dalam Mas, 2014). From these four requirements, it can be understood that the formation of a law must go through a clear legal mechanism and involve all levels of society as a form of openness or transparency (Dirman Nurjaman, 2021).

Law Number 12 of 2011 concerning the Formation of Legislation regulates the formal process for forming legislation. Article 5 of a quo Law states that the formation of legislation must be based on certain principles, including: clarity of purpose; appropriate institution or official; appropriateness of type, hierarchy, and content; enforceability; usability and effectiveness; clarity of formulation; and openness. The principle of openness has long been viewed as the foundation for transparency and public participation in the formation of legislation. This is a consequence of the concept of openness, which is transparent and allows for maximum input from all levels of society in the creation of legislation (Pran Mario Simanjuntak et al., 2022).

One of the formal processes required in creating legislation is strong public participation as a form of democratization of the process. Public participation means transparency or openness in the creation of legislation and accommodating public aspirations from the beginning until its enactment (Pran Mario Simanjuntak, 2022).

Nonet and Selznick explain that the exclusive role of the public in the formation of legal products must be reflected in the participatory process that involves various levels of society, whether directly related to the legal product or not, whether individuals or community groups. This participation must also be contextually aspirational, meaning that public opinion or involvement is assessed and considered more deeply, not just in the context of fulfilling legal obligations (Rahendro Jati, 2012).

In this regard, Article 96 of Law No. 13 of 2022 concerning the Formation of Legislation emphasizes and mandates public participation in the formation of legislation, ensuring that public input is fully considered. This can increase transparency and accountability in the legislative process.

Referring to the concrete objectives of the principle of public participation, conceptually, it aims to achieve inclusive and democratic participation, social justice, public consolidation, the formal requirements of a law, providing the public with an opportunity to understand their social problems, and realizing substantive and targeted regulations in terms of material. One important argument for public participation is that participation is an important goal in itself in a democratic society. There is a key role that participation plays in reflecting and shaping civic and public values. Many other potential benefits of effective and well-implemented public participation. While public participation requires resources such as skills, time, and money, it can generate many benefits (Martha S. Feldman and Kathryn S. Quick, 2009).

The importance of the principle of transparency in the formation of legislation can be seen from two perspectives. The first perspective is that the regulation and implementation of provisions regarding transparency constitutes a constitutional right of all Indonesian citizens, namely those affected by the enactment of legislation. Second, the existence of legislation that is not based on the implementation of the principle of transparency will fail

to realize efficiency in the administration of government in general (Angga Prastyo et al., 2020).

The revision of Law No. 34 of 2004 concerning the Indonesian National Armed Forces (TNI), which was implemented on Friday, March 14, 2025, by Commission I of the Indonesian House of Representatives (DPR RI), was carried out behind closed doors in the Ruby 1 and 2 meeting rooms of the Fairmont Hotel Jakarta. This became controversial not only because of public fears of the return of the ABRI's dual function, which could involve the TNI returning to civilian positions, but also related to the closed deliberation process and the lack of public participation.

The legislative process for Law Number 3 of 2025 concerning Amendments to Law Number 34 of 2004 concerning the Indonesian National Armed Forces (TNI) is considered problematic. This is because the process of drafting the law was carried out by authorized institutions, namely the government and the House of Representatives (DPR), without upholding the principles of openness and public participation as mandated by Law Number 12 of 2011 concerning the Formation of Legislation. The revision process is considered rushed, non-inclusive, and tends to close off space for criticism and healthy public discussion (Vita Ayu Romanti et al., 2025).

Criticism of the new TNI Law also includes the lawmaking process, which is considered to be less transparent and lacks public participation. As one of the world's largest democracies, Indonesia is expected to maintain an inclusive legislative process, where every major policy affecting the wider community must be discussed openly and involve various stakeholders. However, the deliberations on the TNI Law are considered to have insufficient input from civil society organizations, academics, and other critical elements. This indicates that there are certain political interests behind the revision of this law, particularly from groups seeking to restore military influence in civilian spaces (Muh. Syah Quddus, 2025).

The importance of public participation in lawmaking is not only about fulfilling democratic principles, but also closely related to the legitimacy of the law itself. Public participation has a direct impact on the decline of public trust in the legal system. When the public feels excluded from the legislative process, the resulting laws are perceived as not representing their aspirations. This leads to the delegitimization of state policies and weakens the authority of the law in the eyes of the public.

The Constitutional Court's Decision No. 27/PUU-VII/2009 stipulates that ignoring the principles of transparency and public involvement in the formation of laws constitutes a violation of the fiduciary duty (the duty of representation that is morally and legally responsible) held by the people's representatives. Therefore, any act of lawmaking that is not conducted fairly, honestly, and openly can be the basis for formal review because it violates the basic principles of popular sovereignty and procedural justice.

Although the Constitutional Court did not grant the petition for judicial review of the formal aspects of the TNI Law, it considered that the Constitutional Court's decision to conduct a formal judicial review case was still too cliché. In fact, the formal aspect also has supporting power regarding the quality of the TNI Law because it contains several core instruments within the formal aspect, which, if removed, would render a law without solid legitimacy. One of these is the aspect of public participation, which is a crucial element in a state based on the rule of law and democracy. Therefore, to realize participatory lawmaking, oversight mechanisms for the legislative process must be strengthened. Constitutional oversight is not solely the responsibility of the Constitutional Court but also the responsibility of the public as a whole. Public participation must permeate the entire lawmaking process, from the planning stage through discussion to enactment.

Strengthening the existence of the principle of public participation in the formulation of a legal product is a form of increasing public trust in their representatives in the legislature (Mohammad Syaiful Aris and Radian Salman, 2018). Thus, strengthening participation has implications for increasing public trust in the law-making process carried out by the DPR. Public participation will create a good relationship between the DPR and the public, thereby creating public trust in their representatives in the legislative institution, namely the DPR.

4. CONCLUSION

The revision process of Law No. 34 of 2004 concerning the Indonesian National Armed Forces (TNI) has revealed serious problems in fulfilling the formal requirements for lawmaking, particularly regarding the principle of public participation. Although Law No. 12 of 2011 and the Constitutional Court's ruling affirm that public participation is a mandatory element in the legislative process, the revision of the TNI Law was carried out behind closed doors, rushed, and without meaningful public involvement. The lack of public consultation, stakeholder involvement, and transparency in the legislative process reflects a violation of the principles of procedural democracy and the principles of sound legislative regulation formation.

Ignoring the principle of public participation not only has implications for potential formal flaws that could be subject to judicial review by the Constitutional Court, but also undermines legal legitimacy and public trust in legislative institutions. Therefore, to achieve democratic, transparent, and accountable lawmaking, public participation mechanisms need to be strengthened, from the planning stage through deliberation to enactment. Strengthening public participation is not only a formal requirement but also a foundation for building public trust in the DPR and ensuring the quality of legislation.

5. ACKNOWLEDGEMENT

With utmost respect and appreciation, I would like to express my deepest gratitude to the Rector of Halu Oleo University, Dr. Herman, S.H., LL.M., and the Dean of the Faculty of Law of Halu Oleo University, Dr. Guasman Tatawu, S.H. ,M.H., for their support and trust in completing this research. This support and trust are an important foundation for the development of legal science and for the advancement of the academic world in Indonesia. Hopefully, this synergy will continue to be maintained and developed to produce various innovations and scientific works that are beneficial to the wider community.

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