

Problems of Formal Review of the TNI Law: Analysis of the Principles of Public Participation and Transparency in the Formation of Legislation

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Abstract

Lawmaking is one of the fundamental instruments in realizing legal certainty and justice in national and state life. In practice, the legislative process in Indonesia still often sparks debate, both regarding substance and procedure. One of the prominent issues is the formation of the Indonesian National Army Law (UU TNI), which is being questioned due to alleged formal defects in its formulation stage. In this study, the type of research used is normative legal research or library research. The approaches used in this study are the statute approach, the conceptual approach, and the case approach. The main issue underlying the formal review of the TNI Law is the alleged failure to meet the principles of public participation and transparency in the legislative process, which has implications not only for the technical aspects of the law but also touches upon the dimensions of legitimacy and the quality of procedural democracy in Indonesia. Formal review of the TNI Law within the framework of constitutional oversight of the legislative process certainly faced much debate. Out of the 10 cases submitted, all were rejected because the Constitutional Court found that the TNI Bill did not violate the law regarding its non-inclusion in the national legislation program, that the TNI Bill was a carryover, that the TNI Bill was in accordance with TNI reform, that the discussion of the TNI Law was transparent and accountable, that there was no limitation on document access or information access, and that the other 5 cases were still in the trial process.

Keyword: Lawmaking, TNI, Formal Review, Constitutional Court

Abstrak

Pembentukan undang-undang merupakan salah satu instrumen fundamental dalam mewujudkan kepastian hukum dan keadilan dalam kehidupan berbangsa dan bernegara, dalam praktiknya, proses legislasi di Indonesia masih sering menimbulkan perdebatan, baik terkait substansi maupun prosedurnya. Salah satu isu yang mengemuka adalah pembentukan Undang-Undang Tentara Nasional Indonesia (UU TNI), yang dipersoalkan karena dugaan adanya cacat formil dalam tahap perumusannya. Pada penelitian ini, Jenis penelitian yang digunakan adalah penelitian hukum normatif atau penelitian kepustakaan. Pendekatan yang digunakan dalam penelitian ini yakni pendekatan perundang-undangan (*statute approach*), pendekatan konseptual (*conceptual approach*), dan pendekatan kasus (*case approach*). Permasalahan utama yang melatarbelakangi pengajuan uji formil UU TNI adalah dugaan tidak dipenuhinya prinsip partisipasi publik dan keterbukaan dalam proses legislasi dan berdampak tidak hanya berhenti pada aspek teknis hukum, tetapi juga menyentuh dimensi legitimasi dan kualitas demokrasi prosedural di Indonesia. Pengujian Formil terhadap Undang-Undang TNI dalam Kerangka Pengawasan Konstitusional terhadap Proses Legislasi tentu saja mengalami banyak pro dan kontra, dari 10 perkara yang diajukan semuanya tidak dapat diterima dengan alasan Mahkamah Konstitusi menilai bahwasannya RUU TNI tidak melanggar hukum terkait dengan tidak terdaftar prolegnas, RUU TNI merupakan *carry over*, RUU TNI sesuai dengan reformasi TNI, Pembahasan UU TNI sudah transparan dan akuntabel, tidak ada keterbatasan akses dokumen dan akses informasi dan 5 perkara lainnya masih dalam proses persidangan.

Kata Kunci: Pembentukan Undang-Undang, TNI, Uji Formil, Mahkamah Konstitusi

A. Introduction

The formation of laws is one of the fundamental instruments in realizing legal certainty and justice in national and state life. The legislative process is not only a formal means of producing legal norms but also a reflection of the quality of democracy and state governance. In this context, the process of lawmaking is a tangible manifestation of the aspirations and will of the people.¹ Every stage of law-making must be based on the principles of clarity of purpose, transparency, public participation, and consistency between form and substance, so that the resulting legal products are procedurally valid, have strong legitimacy, and are accepted by the public. In practice, the legislative process in Indonesia still often

¹ Maria Farida Indrati S., *Ilmu Perundang-Undangan 1 Jenis, Fungsi, dan Materi Muatan* (Sleman: PT Kanisius, 2024), hlm. 144.

sparks debates, such as in the formation of the TNI Law, which has been contested due to alleged formal defects and minimal public participation. This issue highlights compliance with Law Number 13 of 2022 as well as the role of the Constitutional Court in formal review as constitutional oversight of the legislative process,² Civil society organizations such as KontraS consider the process of revising the TNI Law to be non-transparent and accompanied by intimidation, making this research important to strengthen legitimacy and procedural validity in the formation of laws, particularly in the field of defense and security.

The process of making laws regarding the Indonesian National Armed Forces (TNI) has become a battleground for various interests and ideas. The most influential political forces may seek to strengthen their control through this regulation, while different societal groups and political parties might advocate for more stringent democratic reform plans.³ As a result, the dynamics of the regulation formation not only reflect the formal legislative process but also become an arena of competing interests between the military, the government, and civilian political actors. Differences in views regarding the limits of military authority, soldiers' terms of service, and the involvement of the Indonesian National Armed Forces (TNI) in civilian positions have sparked lengthy debates affecting the substance and legal legitimacy of the legislative products. This situation demonstrates that the process of forming laws concerning the TNI is often more influenced by political considerations than by adherence to the principles of sound legislative drafting.

This research differs from previous studies, which generally focused on the substance of the revision of the TNI Law, such as the expansion of duties, civil positions for active soldiers, and its impact on the principle of civilian supremacy. This study focuses on procedural aspects, namely examining the conformity of the process of forming the TNI Law with the provisions for the formation of legislation and assessing the role of the Constitutional Court in formal review as a form of constitutional oversight. With this approach, the study offers a new perspective on legal certainty, procedural validity, and the role of the Constitutional Court in strengthening constitutional democracy in Indonesia, while also providing

² "Pakar di Jogja Kritik Pengesahan UU TNI, Singgung Kemenangan Elite Politik," diakses 20 September 2025, https://www.detik.com/jogja/berita/d-7833327/pakar-di-jogja-kritik-pengesahan-uu-tni-singgung-kemenangan-elite-politik?utm_source=chatgpt.com.

³ Cahyo Nugroho, "Politik Hukum RUU TNI/Polri: Antara Kepentingan Geopolitik dan Tekanan Masyarakat Sipil," *Maliki Interdisciplinary Journal (MIJ)* 5, no. 2 (2025): hlm. 787, <http://urj.uin-malang.ac.id/index.php/mij/index>.

academic and practical contributions to the development of constitutional law studies.

B. Research Methods

The type of research used is normative legal research or library research.⁴ The approaches used in this study are the statutory approach, the conceptual approach, and the case approach.⁵ The types and sources of legal materials used in this study consist of primary legal materials, namely Law Number 3 of 2025 concerning Amendments to Law Number 34 of 2004 concerning the Indonesian National Armed Forces; secondary legal materials consisting of books and journals; and tertiary legal materials consisting of dictionaries and articles. The method of collecting legal materials used is library research. The documentation study examines research results, legislation, and literature reviews as secondary data, especially related to the recording of legal events.⁶ The data analysis technique applied in this study is qualitative juridical analysis, in which the researcher evaluates the results of non-numerical data processing.

C. Discussion and Research Results

The Concept of Formal Review in the Indonesian Legal System

Formal review in the Indonesian legal system is a form of constitutional oversight that focuses on assessing the process of law-making, rather than its substance. Its purpose is to ensure that every regulation is created in accordance with procedures and the principles of a state governed by law, including transparency, public participation, and accountability. In this context, the Constitutional Court serves as the guardian of the constitution, ensuring that the legislative process is conducted according to constitutional provisions and does not deviate from democratic principles. Through the authority of formal review, the Constitutional Court not only upholds constitutional justice but also strengthens legal legitimacy and maintains a balance of power among state institutions, ensuring that the governance process remains transparent, accountable, and based on law.⁷

⁴ Sri Mamudji Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2004), hlm. 14.

⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021), hlm. 133.

⁶ Saifullah, *Tipologi Penelitian Hukum (Sejarah, Paradigma dan Pemikiran Tokoh Indonesia)* (Bandung: PT Refika Aditama, 2018), hlm. 162.

⁷ Yosephus Mainake, "Polemik Kewenangan Uji Formil di Mahkamah Konstitusi," *Pusat Penelitian Badan Keahlian Sekretariat Jenderal DPR RI* 13, no. 21 (2021): hlm. 2.

The existence of the Constitutional Court initially aimed to exercise the authority of judicial review, whereas the emergence of judicial review itself can be understood as a development in modern constitutional law and politics. From a political aspect, the existence of the Constitutional Court is understood as part of the effort to realize a mechanism of checks and balances among branches of state power based on democratic principles. This is related to two authorities usually held by Constitutional Courts in various countries, namely reviewing the constitutionality of legislation and resolving disputes over the constitutional authority of state institutions.⁸

The Constitutional Court can conduct two types of judicial review of laws, namely formal review and material review. Formal review assesses the process or procedure of law-making. In this review, the Constitutional Court evaluates whether the law-making process has followed the procedures stipulated in the 1945 Constitution and the laws whose enactment is mandated by Article 22A of the 1945 Constitution. Some provisions in the 1945 Constitution that regulate the process of law-making are Article 5 paragraph (2), Article 20, Article 22A, and Article 22D.⁹ Essentially, formal review is a legal instrument to ensure that the procedure for forming a law is not carried out according to the free will of its makers. The hope is that through this mechanism, the public receives a guarantee that the enacted law proceeds in an accountable, participatory, and transparent manner. The consequences of formal review at the Constitutional Court are most apparent in laws proven to have formal defects, because if the formal review of a law is granted, it will result in the annulment of the law in its entirety.¹⁰

The Constitutional Court is authorized to assess the conformity of the legislative process, but the limitations of the 1945 Constitution, which does not establish clear standards, make public participation a key factor in legal legitimacy. Public involvement is not merely a formality, but a reflection of the people's aspirations that determines whether a law truly represents the will of the

⁸ Tim Penyusun Hukum Acara Mahkamah Konstitusi, *Hukum Acara Mahkamah Konstitusi* (Jakarta Pusat: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2010), hlm. 3.

⁹ Harly Stanly Muaja Yez Gabriel Nelwan, Josepus Julie Pinori, "Kekuatan Hukum Putusan Judicial Review Mahkamah Konstitusi Terhadap Perubahan Undang-Undang (Uji Materiil UU Pemilu Mengenai Batas Usia Presiden dan Wakil Presiden Putusan MK 90/PUU-XXI/2023)," *Jurnal Fakultas Hukum Unsrat* 15, no. 1 (2025): hlm. 23.

¹⁰ Mainake, "Polemik Kewenangan Uji Formil di Mahkamah Konstitusi," hlm. 4.

public.¹¹ The formation of good legislation reflects democratic, fair, and responsive state governance that addresses the needs of society. Regulations must be drafted transparently and participatively to have strong legitimacy and to be able to respond to social, political, and economic challenges. In addition, clarity of norms and legal certainty need to be maintained to ensure effective implementation and to prevent multiple interpretations in their application.

The Principle of Public Participation and Legislative Transparency

Legislation, as written law that tends toward positivism, is consciously created by authorities that have the power to do so. In its application, written law does not always align with the values that live and develop within society, or it is unable to keep up with societal developments. Such weaknesses of written law have led legal scholars specializing in legislation to focus their attention on the aspects of the formation of legislation.¹²

The 1945 Constitution grants legislative authority to the House of Representatives (DPR) through Article 20 paragraph (1), which states that "The DPR holds the power to enact laws." Furthermore, Article 20 paragraph (2) asserts that every Draft Law (RUU) must be discussed by the DPR and the President to obtain joint approval.¹³ The House of Representatives (DPR) has a central role in the legislative process in Indonesia. As a legislative body, the DPR is responsible for drafting, discussing, and enacting laws. Following the amendments to the 1945 Constitution of the Republic of Indonesia, the role of the DPR has been further strengthened with the implementation of the principle of checks and balances, aimed at controlling executive power and preventing abuse of power.¹⁴

¹¹ Heni Susanti Moza Dela Fudika, Ellydar Chaidir, Abdul Hadi Anshary, "Tinjaun Yuridis Pengajuan Formil Undang-Undang di Mahkamah Konstitusi," *UIR Law Review* 6, no. 1 (2022): 2022, https://doi.org/10.20935/AL189%0Ahttps://www.researchgate.net/publication/269107473_What_is_governance/link/548173090cf22525dcb61443/download%0Ahttp://www.econ.upf.edu/~reynal/Civil_wars_12December2010.pdf%0Ahttps://think-asia.org/handle/11540/8282%0Ahttp.

¹² Rokilah, "The Role of the Regulations in Indonesia State System," *Ajudikasi : Jurnal Ilmu Hukum* 4, no. 1 (2020): hlm. 30, <https://doi.org/10.30656/ajudikasi.v4i1.2216>.

¹³ Pasal 20 ayat (1) dan (2) "UUD Negara Republik Indonesia Tahun 1945" (n.d.), <https://www.mkri.id/index.php?page=web.PeraturanPIH&id=1&menu=6&status=1>.

¹⁴ H. Hendra Arjuna Ilham Nur, "Peran Lembaga Legislatif dalam Pembentukan Peraturan Perundang-undangan di Indonesia," *SYARIAH: Jurnal Ilmu Hukum* 1, no. 4 (2024): hlm. 284, <http://jurnalistiqomah.org/index.php/syariah/article/view/1740%0Ahttps://jurnalistiqomah.org/index.php/syariah/article/download/1740/1418>.

According to I.C. van der Vlies, the principles of good regulation consist of two groups: formal principles and material principles. The formal principles include clear objectives, appropriate institutions, regulatory necessity, enforceability, and the presence of consensus. Meanwhile, the material principles involve the use of correct terminology and systematics, ease of recognition, equal legal treatment, legal certainty, and the application of law that considers individual conditions.¹⁵ The procedure for drafting good legislation greatly determines the quality of its substance, because ideally the process should be based on the correct principles and foundations of regulation formation.¹⁶ These principles are outlined in Article 5 of the Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Legislation, which includes: clarity of purpose, appropriate institutions or officials responsible for drafting, consistency between type, hierarchy, and content, implementability, effectiveness and efficiency, clarity of formulation, and transparency.¹⁷

Public participation in a democratic country is important because it serves to convey public aspirations and needs to the government, encourages the government to accommodate the people's voices, provides protection and legal certainty, and helps in the formulation of policies that are responsive to the interests of society.¹⁸ Law Number 12 of 2011, as amended by Law Number 13 of 2022, emphasizes the importance of public participation in every stage of the legislative process, from planning to enactment, with the aim of realizing a legislative process that is planned, integrated, sustainable, and participatory. One formal aspect of lawmaking is the importance of public involvement. Public involvement means having clarity or accessibility in lawmaking and accommodating the public's wishes throughout the drafting process until it is enacted. M. Bryson and R. Carroll state that public participation is essentially the engagement of the public in solving problems or in making decisions that affect the community itself. According to Anchor Fung, the legislative process can be realized and supported by two key elements, namely legitimacy and justice. Public

¹⁵ S., *ILMU PERUNDANG-UNDANGAN 1 Jenis, Fungsi, dan Materi Muatan*, hlm. 308-309.

¹⁶ Alsyam dan Yunita Sofyan, "Model Omnibus Law Dalam Penyusunan Peraturan Perundang-Undangan Yang Berlaku Di Indonesia," *UNES Law Review* 5, no. 3 (2023): hlm. 837, <https://doi.org/10.31933/unesrev.v5i3.423>.

¹⁷ Pasal 5 "Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan" (n.d.).

¹⁸ Izza Difanda Hanania, "Analisis Hukum Partisipasi Masyarakat Dalam Proses Pembentukan Peraturan Perundang-Undangan," *Jurnal HAK Kajian Hukum Administrasi & Komunikasi* 2, no. 1 (2025): hlm. 19, <https://doi.org/10.30656/jhak.v2.i1.10312>.

policies such as laws are considered legitimate when they receive broad support from the public.¹⁹ Public participation in the formulation of legislation is based on Article 1 paragraph (2) of the 1945 Constitution, which affirms the sovereignty of the people.

Public participation in the formation of legislation is a manifestation of democratization and the application of the principles of good governance. Public involvement is not merely a formality, but a form of oversight and tangible contribution in the legislative process to ensure that regulations reflect the aspirations of the people. Through forums such as RDPU, seminars, and public discussions, broad and inclusive participation can strengthen legitimacy, transparency, and accountability within the Indonesian legal system.²⁰ The formation of the TNI Law serves as an important example in assessing compliance with legislative principles and procedures, given its role in regulating the position and function of the TNI within the constitutional system. However, the process sparked controversy as it was considered to be insufficiently participatory, lacking in transparency, and rushed, thereby raising issues of formal legitimacy and prompting the submission of a formal review to the Constitutional Court.

The main issue underlying the submission of a formal review of the TNI Law is the alleged failure to fulfill the principles of public participation and transparency, as the discussion of the TNI Law is considered rushed and minimally involves civil society, thus being deemed a violation of the principle of transparency in the formation of legislation.²¹ Criticism is also directed at the limited access to information for the public to fully follow the discussion process, which ultimately raises questions about the formal legitimacy of the law. The Civil Society Coalition even filed a formal review by submitting 98 initial pieces of evidence, highlighting the lack of public participation and alleged procedural flaws in the formation of the TNI Law.²² However, the Constitutional Court decided not to accept the five lawsuits because the petitioners were deemed not

¹⁹ Yunita Syofyan, "Pelibatan Publik dalam Pembentukan Peraturan Perundang-Undangan dalam Mewujudkan Idealitas Kehidupan Demokrasi," *JIHHP: Jurnal Ilmu Hukum, Humaniora dan Politik* 5, no. 1 (2024): hlm. 636, <https://doi.org/10.38035/jihhp.v5i1.3072>.

²⁰ Hanafi; Damayanti; Nazulfa, "Penerapan Partisipasi Masyarakat Dalam Pembentukan Peraturan Perundang-Undangan" 3, no. 2 (2024): hlm. 201.

²¹ Pasal 5 huruf g Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan.

²² Maulani Mulianingsih, "Koalisi Masyarakat Sipil Ajukan Uji Formil UU TNI ke MK, Bawa 98 Bukti Awal," diakses 21 September 2025, <https://news.detik.com/berita/d-7904209/koalisi-masyarakat-sipil-ajukan-uji-formil-uu-tni-ke-mk-bawa-98-bukti-awal?utm>.

to have legal standing.²³ In its decision, the Constitutional Court also emphasized that the petition could not proceed to the substantive examination stage because the formal requirements of the petition were not met.²⁴ Constitutionally, the Constitutional Court is indeed authorized to review laws against the Constitution, including from a formal aspect as affirmed in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia²⁵ and Article 51 paragraph (3) of Law Number 24 of 2003 concerning the Constitutional Court.²⁶

Analysis of Formal Review Case of the TNI Law

The Constitutional Court, in its role as the guardian of the constitution, holds a crucial role in understanding and applying the constitution in a country. One of its various responsibilities is to analyze and determine whether laws, regional regulations, and other statutory regulations are in accordance with the provisions of the constitution. When there is a discrepancy between a law and the constitution, the Constitutional Court has the authority to declare that the law is invalid and cannot be enforced. This is an essential action to uphold constitutional supremacy and ensure that laws do not conflict with the principles enshrined in the constitution.²⁷

The legal basis for the establishment of the Constitutional Court is regulated in Article 24 paragraph (2) of the 1945 Constitution, and Article 24C paragraphs 1 to 6 of the 1945 Constitution. Accordingly, the authority of the Constitutional Court, which states that the Constitutional Court has the authority to adjudicate at the first and final levels with decisions that are final to review laws against the Constitution, is explicitly mentioned in Article 24C paragraph (1).²⁸ The review of laws against this constitution is a task that overwhelmingly

²³ Harumbi Prastya Hidayahningrum, "MK Tak Terima 5 Gugatan Uji Formil UU TNI, Pemohon Tak Sah," diakses 21 September 2025, <https://www.beritasatu.com/nasional/2893673/mk-tak-terima-5-gugatan-uji-formil-uu-tni-pemohon-tak-sah?utm>.

²⁴ "MK Putuskan 5 Gugatan Uji Formil Revisi UU TNI Tidak Diterima," diakses 21 September 2025, <https://nu.or.id/nasional/mk-putuskan-5-gugatan-uji-formil-revisi-uu-tni-tidak-diterima-IDvkj?utm>.

²⁵ Pasal 24 c ayat (1) UUD Negara Republik Indonesia Tahun 1945.

²⁶ Pasal 51 ayat (3) "Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi" (n.d.)

²⁷ Amirul Fahmi Yusuf Aqila Shanza Ammara, Auroria Salsabila Aprialy Winardi, Putri Tiara Sari, Akbar Avatar, Eric Andhika, "Sosialisasi Peranan Uji Formil Mahkamah Konstitusi Dalam Menegakkan Keadilan Konstitusional," *Veteran Society Jpurnal* 5, no. 2 (2024): hlm. 180.

²⁸ Abdul Latif, *Bahan ajar Hukum Acara Mahkamah Konstitusi* (Yogyakarta: Total Media, 2020), hlm. 27.

dominates the Constitutional Court. In the review of laws, there are two forms of review, namely formal review and material review. Material review examines the substance or content of a law that conflicts with the 1945 Constitution. The second is formal review, which examines whether the procedure of law-making complies with constitutional provisions and the legislation regarding the formation of regulations.²⁹

To maintain legal certainty and limit state power, the constitution must regulate the authority and functions of state institutions for government stability. The principle of constitutional democracy asserts that the constitution regulates government power while guaranteeing the people's freedom. Within this framework, the separation of powers, or trias politica, consisting of the executive, legislative, and judicial branches as proposed by John Locke and Montesquieu, forms the basis for the creation of a stable and balanced government.³⁰

Issues and Evaluation of the Formal Review of the TNI Law

The process of forming Law Number 3 of 2025 concerning Amendments to the TNI Law is alleged to deviate from the principles of legality and legitimate legislative procedures, as it was included in the National Legislative Program (Prolegnas) without official discussion and was not listed in official documents. This violation contradicts Articles 20 and 22A of the 1945 Constitution, which emphasize the importance of an open and deliberative legislative process, thereby creating substantive defects in the principles of constitutional democracy.³¹ The TNI Law was ratified without going through an adequate drafting stage and does not meet the criteria as a carry-over bill. DPR Decision Number 64/DPR RI/I/2024-2025 did not list it as a carry-over, while the President has also not sent a Presiding Letter and DPR Note. Furthermore, the process was not transparent and had minimal public participation because the draft bill was never officially published. As a result, public input was not substantive, and the ratification of the TNI Law is considered to violate procedures and undermine its

²⁹ Latif, hlm. 35.

³⁰ Indrianti Arif N Fuqaha, "Stabilitas Pemerintahan Pasca Pemilihan Umum di Indonesia antara Checks and Balances dan Demokrasi Transaksional," *Jurnal Ilmu Hukum* 3, no. 2 (2019): hlm. 158.

³¹ Dewi Haryanti Muhammad Rizki Kurniarullah, Hotmauli Silalahi, Talitha Nabila, "Abusive Law Making dalam Proses Pembentukan Undang-Undang Republik Indonesia Nomor 3 Tahun 2025 tentang Perubahan atas Undang-Undang Nomor 34 Tahun 2004 tentang Tentara Nasional Indonesia," *Jurnal Pendidikan Tambusai* 9, no. 2 (2025), hlm. 76.

legal legitimacy.³² The TNI Law was enacted without going through an adequate drafting stage and does not meet the requirements to be considered a carry-over bill. DPR Decision Number 64/DPR RI/I/2024-2025 does not list it as a carry-over, while the President has not yet sent the Presidential Letter and DIM. Furthermore, the process was not transparent and had minimal public participation because the draft bill was never officially published. As a result, public input was not substantive, and the enactment of the TNI Law is considered to violate procedures and undermine its legal legitimacy.³³

In review laws, formal review is the review of laws related to the formation of the 1945 Constitution, which consists of discussion, approval, promulgation, and enactment. This law review essentially evaluates Articles 20, 20A, 21, and 22A of the 1945 Constitution. More detailed procedures for the formation of laws are regulated in legislation and the rules of procedure of the House of Representatives.³⁴ Article 28D paragraph (1) of the 1945 Constitution guarantees everyone the recognition, protection, and fair legal certainty, as well as equality before the law. Therefore, formal review at the Constitutional Court must be conducted in accordance with the correct procedures, including fulfilling the requirement of legal standing. Based on Article 51 paragraph (1) of the Constitutional Court Law, only parties whose constitutional rights or authorities are harmed by a law may file a petition, namely Indonesian citizens, existing customary law communities, public or private legal entities, and state institutions.³⁵

In the formal review of the TNI Law, the Constitutional Court rejected the petition and deemed the formation of the law lawful even though it was not included in the Prolegnas. However, several judges expressed dissenting opinions: Judge Suhartoyo considered public participation to be insignificant, Judge Saldi Isra highlighted a lack of transparency, Judge Enny Nurbaningsih stated that the carry-over status was not in accordance with Article 71A of Law 15/2019, and Judge Arsul Sani argued that the 2025 Prolegnas should have been revised first. In fact, the procedure for forming the TNI Law was not implemented

³² "Revisi UU TNI Melanggar Tahapan Perencanaan dan Penyusunan Peraturan perundang-undangan - pshk.or.id," diakses 18 Oktober 2025, <https://pshk.or.id/aktivitas/revisi-uu-tni-melanggar-tahapan-perencanaan-dan-penyusunan-peraturan-perundang-undangan/>.

³³ "MK tolak uji formil UU TNI – Apa alasannya dan bagaimana dampaknya? - BBC News Indonesia," diakses 17 Oktober 2025, <https://www.bbc.com/indonesia/articles/c89devjzjejo>.

³⁴ Latif, *Bahan ajar Hukum Acara Mahkamah Konstitusi*, hlm. 30.

³⁵ Latif, hlm. 92.

according to the regulations, as seen from ten formal review cases at the Constitutional Court (45/PUU-XXIII/2025 to 79/PUU-XXIII/2025) which were all rejected because the petitioners were considered to have no clear legal standing and failed to demonstrate specific constitutional harm. The activities of academics, students, NGOs, and civil society are considered not directly related to the legislative process of the Military Law, although this contradicts Article 28D paragraph (1) of the 1945 Constitution, which guarantees equality and legal certainty. This shows that the effectiveness of the Constitutional Court's oversight of the legislative process depends on the clarity of legal standing and the constitutional harm of the petitioner. As a result, the substance of the issues is often overlooked, making legislative reform necessary to strengthen public participation, transparency, and accountability in accordance with the principles of a democratic constitutional state.

D. Conclusion

The Constitutional Court (MK) has an important authority in reviewing laws against the constitution, as stipulated in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Article 51 paragraph (3) of Law Number 24 of 2003 concerning the Constitutional Court. This authority underscores the crucial role of the Constitutional Court in overseeing the legislative process and ensuring that the formation of laws complies with the applicable constitutional principles. However, in practice, it still faces several limitations, such as strict requirements regarding legal standing that restrict access for individuals or organizations to submit petitions for judicial review of laws. Additionally, a formalistic approach in reviewing laws can overlook the substance and legal impacts on society, and the implementation of public participation and transparency principles in the law-making process has not yet been maximized, as seen in the formation of the TNI Law. This can affect the legitimacy and quality of the laws produced.

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