

Illusion of Public Participation and Democratic Erosion: The Case of TNI Law Revision

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Abstract. The revision of the Indonesian National Armed Forces (TNI) Law is under intense scrutiny for its closed process and lack of meaningful public participation. This abstract critically analyzes how such legislative practices create an "illusion of participation," eroding the foundations of constitutional democracy. This normative-empirical case study analyzes legal documents, credible media reports, and official statements from institutions like Universitas Gadjah Mada, the National Commission on Human Rights, and Amnesty International. Findings reveal significant procedural flaws, notably the absence of a publicly accessible academic draft and minimal public consultation, creating a crisis of legal legitimacy. Analysis of problematic articles (Article 3, Article 47, Article 53, Article 65, and Article 74) concerning the expansion of military roles, accountability, and retirement age suggests a potential return of the military's dual-function doctrine (Dwifungsi ABRI) and weaker security sector accountability. Cumulative impacts include the erosion of checks and balances, the degradation of citizens from sovereign subjects to policy objects, and an increased risk of human rights violations. This study recommends reinforcing meaningful participation, strengthening legislative oversight, and implementing legal reforms with clear sanctions. These measures are crucial to enhance accountability, ensure a substantive democracy, and protect constitutional integrity.

Keywords: Public Participation, Democratic Erosion, Civilian Supremacy, TNI Law Revision, Legislation

Abstrak. Revisi Undang-Undang Tentara Nasional Indonesia (TNI) berada di bawah pengawasan ketat karena prosesnya yang tertutup dan kurangnya partisipasi publik yang berarti. Abstrak ini secara kritis menganalisis bagaimana praktik legislatif tersebut menciptakan "ilusi partisipasi," yang mengikis fondasi demokrasi konstitusional. Studi kasus normatif-empiris ini menganalisis dokumen hukum, laporan media yang kredibel, dan pernyataan resmi dari lembaga-lembaga seperti Universitas Gadjah Mada, Komisi Nasional Hak Asasi Manusia, dan Amnesty International. Temuan menunjukkan adanya kekurangan prosedural yang signifikan, terutama tidak adanya draf akademis yang dapat diakses publik dan minimnya konsultasi publik, yang menciptakan krisis legitimasi hukum. Analisis pasal-pasal yang bermasalah (Pasal 3, Pasal 47, Pasal 53, Pasal 65, Pasal 74) mengenai perluasan peran militer, akuntabilitas, dan usia pensiun menunjukkan potensi kembalinya doktrin fungsi ganda militer (Dwifungsi ABRI) dan akuntabilitas sektor keamanan yang lebih lemah. Dampak kumulatifnya meliputi terkikisnya mekanisme pengawasan dan keseimbangan kekuasaan, merosotnya status warga negara dari subjek yang berdaulat menjadi objek kebijakan, dan meningkatnya risiko pelanggaran hak asasi manusia. Studi ini merekomendasikan penguatan partisipasi yang bermakna, penguatan pengawasan legislatif, dan implementasi reformasi hukum dengan sanksi yang jelas. Langkah-langkah ini sangat penting untuk meningkatkan akuntabilitas, memastikan demokrasi substantif, dan melindungi integritas konstitusional.

Kata kunci: Partisipasi Publik, Erosi Demokrasi, Supremasi Sipil, Revisi Hukum TNI, Legislasi

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INTRODUCTION

Public participation is an essential element in modern democratic systems and a primary indicator of successful constitutionalism. In the context of a state under the rule of law (*rechtsstaat*), citizen involvement in the policymaking process is not merely a formality but a constitutional mandate to ensure a substantial and deliberative democracy. A healthy democracy demands space for the people's voice to be heard and meaningfully considered at every stage of legislation.¹ Meaningful participation requires comprehensive access to information, an inclusive and open space for dialogue,² and an assurance that policymakers will substantively consider public input.³

Indonesia, as a state under the rule of law stipulated in Article 1, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, affirms that governance is conducted based on legal rules. This concept is closely linked to a democratic system that adheres to popular sovereignty, where the people hold the highest authority in governing the state. The integration of the rule of law and participatory democracy is crucial; if public participation is neglected, it not only violates democratic principles but also weakens the very foundation of the rule of law itself.⁴ Openness and accountability in law-making are prerequisites for legitimacy in a democratic state under the rule of law, demonstrating that public participation is a fundamental pillar that binds the state to its legal principles.⁵

In practice, however, Indonesia's legislative process often presents fundamental problems, particularly regarding openness and meaningful public participation. This phenomenon indicates a pragmatism in policy formulation, where policymakers tend

¹ Desrinelti Desrinelti, Maghfirah Afifah, dan Nurhizrah Gistituati, "Kebijakan Publik: Konsep Pelaksanaan," *JRTI (Jurnal Riset Tindakan Indonesia)* 6, no. 1 (30 Juni 2021): 83–88.

² Susandi Decapriu Putra Pamungkas dan Gede Ngurah Darma Suputra, "Pemberlakuan Asas Pembagian Kekuasaan Dalam Prinsip Checks And Balances Berdasarkan Sistem Ketatanegaraan Indonesia Dan Amerika Serikat" 2, no. 2 (2023).

³ Andi Cudai Nur dan Muhammad Guntur, "Analisis Kebijakan Publik," (2019).

⁴ Rasji dkk., "Demokrasi yang Tergerus Oleh Dominasi Negara Atas Rakyat dalam Politik," *Jurnal Hukum Lex Generalis* 5, no. 10 (4 Oktober 2024).

⁵ Neni Nurhayati dan Arief Rahman, "Systematic Literature Review: Tata Kelola Kolaboratif Dalam Sektor Publik," *Jurnal Agregasi : Aksi Reformasi Government dalam Demokrasi* 11, no. 1 (15 Mei 2023): 1–22.

to seek instant solutions to emerging problems and undervalue policy research as a primary source of information. This legislative pragmatism can be the root of participatory erosion; when policymakers tend to seek shortcuts or instant solutions, the deliberative process that should involve public participation is often sacrificed.⁶ This creates an unhealthy cycle: a lack of appreciation for research and evidence leads to a closed process, which in turn produces low-quality policies that do not represent the public interest, thereby exacerbating the illusion of participation.⁷

One case that highlights this issue is the revision process of Law Number 34 of 2004 on the Indonesian National Armed Forces (hereinafter TNI Law). This revision has drawn widespread scrutiny from civil society and academics because it was conducted in a closed manner with minimal public participation. Universitas Gadjah Mada (UGM) stated that the bill's deliberation was conducted without adequate consultation mechanisms, raising concerns about the legal legitimacy of the revision's outcome. The academic community of UGM demanded that the government and the House of Representatives cancel the TNI Law revision, deeming it non-transparent, rushed, and neglectful of the public's voice, calling it a "constitutional crime." They called for campuses to jointly champion the public's voice and reject the military's dual-function (*Dwifungsi ABRI*).⁸

Not only is it procedurally problematic, but the substance of the TNI Law revision is also seen as potentially damaging to the constitutional order, especially the principle of civilian supremacy over the military. Several provisions in the revised law, such as the expansion of military roles into civilian positions and the addition of military functions in handling civilian affairs, are considered to revive the shadow of the *Dwifungsi ABRI*, long abandoned in the *Reformasi* era.⁹ Amnesty International has even stated that this revision could create a space for military impunity and weaken

⁶ Pundarika Vidya Andika, "Mengenal Arnstein's Ladder Dalam Menata Partisipasi Publik -," 11 Januari 2022.

⁷ Iman Amanda Permatasari, "Kebijakan Publik (Teori, Analisis, Implementasi Dan Evaluasi Kebijakan)," *TheJournalish: Social and Government* 1, no. 1 (25 Maret 2020): 33–37.

⁸ Annelies Larasati Gufron dkk., "Lack Of Transparency In The Formation Of The Tni Bill On The Principles Of The Rule Of Law And Civil Supremacy In Indonesia," *International Journal of Accounting, Management, Economics and Social Sciences (IJAMESC)* 3, no. 2 (30 April 2025): 652–62.

⁹ Syamsul Hilal dkk., "Pasang Surut Hubungan Sipil Militer Di Indonesia Dan Tantangannya Pada Masa Depan NKRI," *Jurnal Inovasi Penelitian* 2, no. 10 (15 Maret 2022): 3549–50.

accountability in the security sector. The National Commission on Human Rights also highlighted at least two articles that could threaten human rights principles and assessed that the revision process was conducted without adequate evaluation. This TNI Law revision serves as a barometer for the decline of *Reformasi*, which aimed to limit the military's role to national defence functions and abolish its formal political role since 1998.¹⁰

If this revision is passed with its problematic articles, it will not just be a partial setback but a strong signal that the 1998 *Reformasi* agenda, a cornerstone of Indonesia's democratization, is being betrayed or even systematically dismantled. This indicates that the TNI Law issue is a crucial case testing the state's commitment to democratic values and human rights in the post-New Order era.¹¹ Although many studies have discussed the importance of public participation in legislation and the dynamics of civil-military relations in Indonesia, most focus on general normative frameworks or case analyses that do not specifically examine the "Illusion of Participation" phenomenon within the context of revising laws involving the security sector. Previous research has tended not to comprehensively analyze how procedural flaws in participation can directly correlate with the erosion of constitutional principles, particularly civilian supremacy, in the specific case of this TNI Law revision. This limitation presents a gap in understanding the systemic threat to constitutional democracy that arises from legislative practices that neglect meaningful participation. Therefore, this study seeks to fill this gap by critically examining the TNI Law revision process as a concrete form of the illusion of public participation and democratic regression. The novelty of this research lies in its in-depth analysis that explicitly links the lack of public participation with substantive implications for civilian supremacy and constitutional values, as well as the formulation of a normative argument to strengthen checks and balances mechanisms in policy revisions involving military actors.

¹⁰ Yumna Sabila, Kamaruzaman Bustamam, dan Badri Badri, "Landasan Teori Hak Asasi Manusia Dan Pelanggaran Hak Asasi Manusia," *Jurnal Justisia : Jurnal Ilmu Hukum, Perundang-undangan dan Pranata Sosial* 3, no. 2 (26 Desember 2019): 205–24.

¹¹ Syamsul Hilal dkk.,

The objectives of this research are to: (1) Analyze the form of public participation in the legislative process of the TNI Law revision; (2) Evaluate whether the TNI Law revision reflects the principle of meaningful participation in a democratic state; (3) Examine the impact of the TNI Law revision on the principle of civilian supremacy and constitutional values. Through this research, it is hoped to make a significant scientific contribution to understanding the threats to constitutional democracy in Indonesia and to formulate concrete policy recommendations.

METHODOLOGY

This research adopts a normative-empirical approach to examine public participation in the revision of Law Number 34 of 2004 on the Indonesian National Armed Forces (TNI Law) and its implications for democratic erosion. The normative study analyzes legal norms related to public participation, civilian supremacy, and constitutionalism,¹² which is relevant given that the issues are tied to constitutional mandates. The empirical aspect employs a case study, focusing on the actual practice of the TNI Law revision and its impact on meaningful participation.¹³

Data was collected through document analysis, media analysis, and analysis of official institutional statements. Primary data include legal documents such as the draft TNI Bills, Law Number 34 of 2004 on the TNI, and other regulations governing the legislative process. Secondary data from credible national mass media are used to provide a chronological overview and gather various perspectives on the reportedly closed revision process. This data also includes official statements from authoritative institutions, such as UGM (highlighting a lack of consultation), Amnesty International (pointing to potential impunity), and the National Commission on Human Rights (identifying human rights threats). These sources are combined to construct a comprehensive, multi-perspective narrative.

¹² Annelies Larasati Gufron dkk.,

¹³ Muhammad Adlan Kamil, A Salman Maggalatung, dan Feni Arifiani, "Legalitas Anggota TNI Aktif Dalam Rangkap Jabatan Sipil: Studi Terhadap Undang-Undang Nomor 34 Tahun 2004 Tentang Tentara Nasional Indonesia," *JOURNAL of LEGAL RESEARCH* 4, no. 2 (6 Maret 2022): 287–308.

The study uses a qualitative, descriptive-prescriptive approach for its legal analysis. The descriptive analysis identifies and details the public participation practices, the lack of meaningful involvement, and the problematic articles' potential impact on the constitutional order, civilian supremacy, and human rights. Based on these findings, the prescriptive analysis formulates a normative argument, evaluates the legislative practice against principles of openness and participation, and proposes recommendations to strengthen checks and balances. Data validity and reliability are ensured through triangulation, comparing information from legal documents, media, and institutional statements, and through the precise interpretation of legal norms and constitutional principles.

RESULT AND DISCUSSION

The Form of Public Participation in the Legislative Process of the TNI Law Revision

The revision process of the TNI Law has drawn widespread attention for its lack of openness and meaningful public involvement. Various parties have highlighted the procedural flaws that could threaten the legitimacy of the resulting legal product. The revision of the Indonesian National Armed Forces Law (TNI Bill), discussed in 2025, has raised deep concerns regarding democratic legitimacy, primarily due to the minimal public involvement in the legislative process.

An empirical indicator reflecting the significant public response was the #TolakRUUTNI hashtag, which dominated Twitter trends with over 300,000 tweets, illustrating widespread public rejection of the closed-door deliberation process. Viral short videos on other social media platforms like TikTok questioned the absence of the draft document and academic manuscript several days after its deliberation began,¹⁴ reinforcing the narrative that the public was intentionally excluded.¹⁵ Furthermore, students from Universitas Indonesia filed a lawsuit with the

¹⁴ Fathoni Fathoni dkk., "Analisis Sentimen Public Twitter Terhadap Kebijakan Pemerintah Menggunakan Metode SVM (Studi Kasus : RUU TNI)," *JATI (Jurnal Mahasiswa Teknik Informatika)* 9, no. 4 (25 Mei 2025): 6322–29.

¹⁵ Umami Kultsum dkk., "Dinamika Opini Publik Terhadap Uu Tni Di Indonesia: Studi Kasus Kampanye Online Di Media X," *Jurnal Studi Multidisipliner Berkelanjutan* 9, no. 5 (30 Mei 2025).

Constitutional Court (MK) regarding the deliberation. They argued that the revision was conducted without a published draft and with minimal public participation, contradicting legal provisions for transparency in law-making.¹⁶ The combination of online protests, social media virality, and a formal lawsuit demonstrates that the public was not only uneasy but also took corrective action through available legal instruments.¹⁷

1. Procedural Flaws in Law-Making

The deliberation of the TNI Bill was conducted behind closed doors and seemed rushed, whereas the process should ideally be open to the public. Meetings were held secretly outside the House of Representatives Building, blatantly defying the Constitutional Court's ruling on the importance of meaningful public participation. This procedural violation, driven by the House of Representatives leadership, indicates non-transparent intentions. When a legislative process that should be participatory is instead conducted hastily and secretly, it suggests a deliberate effort to avoid public scrutiny and criticism, allowing certain interests to seek legitimization without proper democratic mechanisms.

The drafting process also did not include a publicly accessible academic manuscript, which was not found on the official websites of the House of Representatives, BPHN, or the Ministry of Defense.¹⁸ An academic manuscript is crucial as it shows the theoretical, sociological, and juridical foundation for a law. Its absence becomes a barrier to public deliberation, as civil society, academics, and even parliament members lack an adequate basis for critical analysis and substantive input. This effectively silences informed discussion, turning participation into an "illusion".

The Bills was thus drafted with limited space for civil society participation and a lack of transparency, contradicting democratic principles stipulated in Law

¹⁶ "UU No. 13 Tahun 2022," Database Peraturan | JDIH BPK, diakses 22 Juni 2025.

¹⁷ Juleha Juleha, Jusfira Yuniar, dan Nur Riswandi Marsuki, "Peran Media Sosial Dalam Dinamika Opini Publik dan Partisipasi Politik Era Digital," *Concept: Journal of Social Humanities and Education* 3, no. 1 (15 Januari 2024): 38–45.

¹⁸ Annelies Larasati Gufron dkk.,

Number 12 of 2011. Universitas Gadjah Mada specifically stated the deliberation lacked adequate consultation mechanisms, raising concerns about the outcome's legal legitimacy. This formalistic approach is a form of constitutional betrayal; when the law mandates public participation but it is ignored or conducted merely as a formality, the legislative process damages public trust and creates a dangerous "illusion of participation."

2. Perspectives of External Institutions and Civil Society

1) Academic Views

The academic community of Universitas Gadjah Mada (UGM) demanded that the government and the House of Representatives cancel the TNI Law revision, which they deemed non-transparent, rushed, and neglectful of the public's voice, calling it a constitutional crime.¹⁹ They called for campuses to jointly champion the public's voice and reject the dual-function of the TNI.²⁰ IAIN Ponorogo similarly assessed the deliberation as procedurally flawed due to the lack of expert and public input and its rushed nature, asserting that such flaws could be grounds for a challenge at the Constitutional Court (MK).²¹

2) Scrutiny from The National Commission on Human Rights

The National Commission on Human Rights highlighted the developments in the TNI Law revision and provided strategic recommendations to ensure security sector reform proceeds in accordance with human rights principles and accountable governance.²² The National Commission on Human Rights noted that the drafting process was not preceded by a comprehensive evaluation of the existing law, which hindered the identification of urgent needs for change. Consequently, The National Commission on Human

¹⁹ "Revisi UU TNI Coreng Demokrasi, Sivitas Akademika di Yogyakarta Aksi Tolak Dwifungsi Militer | tempo.co," Tempo, 18 Maret 2025.

²⁰ gusti.grehenson, "Revisi UU TNI Dinilai Minim Partisipasi Publik," *Universitas Gadjah Mada* (blog), 21 Maret 2025.

²¹ Ren Z, "Dari RUU Sampai Jadi UU TNI, Kaji Proses Legislasi," *Fakultas Syariah* (blog), 25 Maret 2025.

²² "Keterangan Pers Nomor 11/HM.00/III/2025 Komnas HAM Soroti Revisi Undang-Undang TNI dalam Kerangka Hak Asasi Manusia," diakses 17 Juni 2025.

Rights hoped the deliberation would be extended so that public aspirations could be discussed further.²³

3) Criticism from Civil Society Organizations

Amnesty International Indonesia stated that the revision is a step backward for democracy, particularly regarding the assignment of civilian posts to active soldiers, which would restore the TNI's dual-function.²⁴ Imparsial urged the House of Representatives not to continue the deliberation, citing the bill's highly problematic changes that would set back TNI reform.²⁵ KontraS, along with the Civil Society Coalition for Security Sector Reform, noted concerns that the revision would disrupt TNI professionalism, restore the dual-function of ABRI, and increase incidents of violence and human rights violations. The Coalition also submitted five critical notes to the House of Representatives,²⁶ demanding meaningful participation and questioning the expansion of military roles into civilian posts.²⁷

This critical consensus from various non-governmental actors becomes an indicator of collapsing legitimacy. When such a broad spectrum of credible actors (academics, human rights institutions, reform watchdogs) shares a critical view, it indicates the TNI Bill is not only procedurally flawed but also faces a deep crisis of legitimacy. This collective rejection reflects the government's and the House of Representatives failure to build trust and meet participatory democracy standards, which will ultimately undermine the law's sustainability and effectiveness.²⁸

From the explanation above, it can be concluded that public participation in the legislative process of the TNI Law revision was minimal and tended to

²³ "Komnas HAM Harap Pembahasan Revisi UU TNI Diperpanjang," diakses 17 Juni 2025.

²⁴ "Revisi UU TNI dibentuk Ugal-ugalan dan Bertentangan dengan Konstitusi: MK Harus Batalkan UU TNI • Amnesty International Indonesia," *Amnesty International Indonesia* (blog), 9 Mei 2025.

²⁵ "Kritik Revisi UU TNI, IMPARSIAL kirimkan Hasil Kajian atas RUU Perubahan atas UU No. 34 Tahun 2002 tentang TNI dan Permohonan Audiensi ke DPR RI – Imparsial," 10 Juni 2024.

²⁶ Ady Thea DA, "Koalisi Masyarakat Sipil Sodorkan 5 Catatan Kritis RUU TNI ke Pimpinan DPR," *bukumonline.com*, diakses 6 Juni 2025.

²⁷ diginusa studio, "Petisi Tokoh Dan Masyarakat Sipil 'Tolak Kembalinya Dwifungsi Melalui Revisi UU TNI,'" diakses 22 Juni 2025.

²⁸ "Revisi UU TNI Tuai Penolakan, Ini yang Menjadi Kekhawatiran Publik!," *Universitas Muhammadiyah Jakarta* (blog), diakses 6 Juni 2025.

be a formality, ignoring the principles of openness and meaningful involvement that characterize a constitutional democracy. This is evident from the closed process, the absence of an accessible academic manuscript, and the widespread rejection from various parties who felt they were not substantially involved.

Evaluation of Whether the TNI Law Revision Reflects the Principle of Meaningful Participation in a Democratic State

Based on the analysis of the TNI Law revision process, it can be concluded that this revision does not reflect the principle of meaningful participation. This principle demands more than formal attendance; it requires adequate access to information, an inclusive space for dialogue, and serious consideration of public input. The practice in the TNI Law revision, however, shows the opposite, creating an "illusion of participation."

From the perspective of Habermas's theory of deliberative democracy, a new regulation's legitimacy is valid only after passing through an inclusive, rational, and open public deliberation process.²⁹ The TNI Law revision process did not reflect this. The closed-door meetings of the House of Representatives 'Commission I, such as the one at the Fairmont Hotel on March 15, provided no room for public or academic participation to scrutinize the draft materials.³⁰ This illustrates a formalistic approach to participation, lacking any meaningful opportunity for substantive dialogue.³¹

This phenomenon creates a distortion between the form and substance of democracy. Public discourse emerging through social media and student actions represents an effort to expand the public sphere, but when formal legislative instruments deny access, the public must "force" a participatory space through alternative routes. The actions of civil society, such as unfurling a banner reading "Without Dialogue, the Bill

²⁹ Bayu Aryanto, "Demokrasi Deliberatif dalam Konsep Amandemen Konstitusi Indonesia," *Mulanarman Law Review*, 19 Desember 2020, 96–113.

³⁰ "Rapat RUU TNI di Hotel Dijaga Koopssus, Puan Maharani: Ada yang Masuk Tanpa Izin | tempo.co," *Tempo*, 17 Maret 2025.

³¹ Fx. Rudi Setiawan, "Peran Media Sosial Sebagai Ruang Publik: Tinjauan Filosofis Gagasan Ruang Publik Jürgen Habermas," *MELINTAS* 39, no. 3 (22 Maret 2024): 323–50.

is Illegitimate," and the repressive response from security forces, reveal the House of Representatives' tendency to view public participation as a nuisance rather than a democratic partnership. This reflects a lack of respect for good governance and the rule of law.

Institutionally, this situation leads to a dysfunctional checks and balances system. The House of Representatives finalized a regulation without presenting materials needed by the public to critique and assess its substance. Crucial aspects, such as the expansion of the military's role into the civilian sphere, were not discussed in inclusive forums,³² despite their direct implications for civilian supremacy and need for high social legitimacy.³³ Consequently, ignoring public participation disrupts the transfer of knowledge regarding the changes and their potential impacts. Without the draft and academic manuscript, media cannot educate, academics cannot evaluate, and civil society must rely on partial interpretations, contradicting the principle of public reason in a deliberative democracy.³⁴

This lack of meaningful participation directly correlates with the emergence of problematic articles. Without substantive input from various stakeholders, provisions that could undermine civilian supremacy and accountability tend to escape strict scrutiny. The closed process allows certain interests to be legitimized without passing through democratic mechanisms that should filter for quality and public acceptability. This suggests not merely a procedural oversight but a deliberate effort to avoid public criticism, which in turn weakens the resulting product's legal legitimacy.

Beyond a procedural crisis, the lack of public involvement raises deeper concerns about the future of Indonesian democracy. Within a democratic state that prioritizes civilian supremacy, the legislative process must be deliberative, not merely a legalistic procedure that closes off criticism. Therefore, the minimal public participation in the

³² Hino Samuel Jose, "Politisasi Agenda Keamanan Siber Pada Era Industri 4.0 di Forum Multilateral," *POPULIKA* 9, no. 2 (29 Juli 2021): 70–85.

³³ Bayu Karunia Putra, "Kontribusi Negara dan Masyarakat dalam Proses Demokratisasi di Indonesia," *Jurnal Ilmiah Publika* 10, no. 1 (20 Juni 2022): 53.

³⁴ Lesmana Rian Andhika, "Pemodelan Kebijakan Publik: Tinjauan Dan Analisis Untuk Risalah Kebijakan Pemerintah," *JURNAL RISET PEMBANGUNAN* 2, no. 1 (31 Desember 2019): 22–35.

TNI Law revision creates a serious crisis of legal legitimacy. A regulation born without a participatory and open process risks losing its normative and social basis. When the public cannot understand, critique, and influence policies, the legal product loses its moral and political validity. This closed process not only erodes public trust but also shrinks the space for public deliberation, the very foundation of constitutional democracy.

1) Implications of the TNI Law Revision for the Principle of Civilian Supremacy and Constitutional Values

The revision of a law concerning the defense sector is a politically sensitive event in Indonesia's post-reform constitutional dynamics. The revision of Law No. 34 of 2004 (TNI Bill) has raised widespread concern about the return of military dominance in civilian spaces, representing a serious setback to the spirit of the 1998 *Reformasi*. This revision concerns fundamental principles of the rule of law, civilian supremacy, and constitutional democracy. A critical analysis of its content is therefore crucial to prevent the re-emergence of authoritarian practices. This analysis will focus on key problematic articles: 3, 47, 53, 65, and 74.

From the perspective of civil-military relations theory, this debate touches on Samuel Huntington's distinction between subjective and objective civilian control. Subjective control brings the military into the political power structure, whereas objective control maintains military professionalism by limiting its role to defense. This revision appears closer to subjective control, as it expands military participation in civilian posts and law enforcement functions. In other words, it gives the military a strategic role in state management rather than subordinating it to civilian control, creating tension with the principles of constitutional democracy.³⁵

2) Article 3 (Expansion of Military Roles in Military Operations Other Than War - OMSP)

³⁵ Neni Nurhayati dan Arief Rahman.,

The revision to this article re-emphasizes the TNI's role in military operations other than war (OMSP), including law enforcement tasks such as counter-terrorism and drug eradication.³⁶ This functional expansion is problematic as it overlaps with the authority of the Indonesian National Police, the primary domestic law enforcement body. It risks reinforcing a coercive approach to civilian problems and threatens citizen rights. The absence of strict procedures and limits on the military's scope of action in OMSP suggests a state policy of "securitizing" civilian challenges.

3) Article 47 (Expansion of Military Roles in Civilian Positions)

Article 47, Paragraph (2) is a focus of concern as it could expand the placement of TNI soldiers in civilian positions, with proposals to add at least 6 new ministries/agencies. The proposed revision reportedly expands the scope from 10 to 15 ministries and agencies. Furthermore, the proposed phrase "as well as other ministries/agencies that require... active Soldiers in accordance with Presidential policy" is considered dangerous, as its broad interpretation allows for unlimited placement. Based on 2023 data from Babinkum TNI, 2,569 active soldiers already occupied civilian positions; this number would likely increase. This expansion risks reviving the "TNI's dual-function" (also known as and hereinafter *Dwifungsi*), which contradicts the People Consultative Assembly's Decision (also known as *Ketetapan Majelis Permusyawaratan Rakyat* or TAP MPR) Number VII/MPR/2000 and the principle of civilian supremacy. This practice was a New Order justification for military influence in government. The proposed expansion, especially the phrase "in accordance with Presidential policy," reintroduces *Dwifungsi* through a more centralized and discretionary mechanism,³⁷ allowing the president to place military personnel *ad hoc* anywhere. This creates a more flexible and less supervised form of the dual-function.

³⁶ E. T. Susdarwono M.Si S. Pd, S. H. dan Alma Wiranta M.Si (Han) S. H., *Pemikiran Di Sekitar Revisi Undang-Undang TNI* (Goresan Pena, 2025).

³⁷ Muhammad Adlan Kamil, A Salman Maggalatung, dan Feni Arifiani, "Legalitas Anggota TNI Aktif Dalam Rangkap Jabatan Sipil: Studi Terhadap Undang-Undang Nomor 34 Tahun 2004 Tentang Tentara Nasional Indonesia," *JOURNAL of LEGAL RESEARCH* 4, no. 2 (6 Maret 2022): 287–308.

This expansion risks disrupting the Indonesian National Forces (TNI)'s professionalism by involving soldiers in the civilian realm, similar to the New Order era. It could also degrade meritocracy in public institutions and eliminate job opportunities for civilians. This creates a dilemma between military professionalism and involvement in civilian affairs; the latter shifts their focus from core defence duties. Simultaneously, filling civilian posts with military personnel without clear meritocracy damages the civilian bureaucracy's quality and creates an unhealthy dependence on the military. The article also fails to specify transition mechanisms or term limits, increasing the potential for TNI politicization.

4) Implications for Accountability and Impunity (Article 65 and Article 74 of the TNI Law)

Article 65 of Law No. 34 of 2004 stipulates that soldiers are subject to military courts for military crimes and public courts for general crimes. However, Article 74 suspends this provision until a new military justice law is enacted, meaning soldiers remain subject to the 1997 Military Justice Law. Critics like Al Araf of Impartial have urged the deletion of Article 74, which would activate Article 65 and allow soldiers to be tried in public courts for general crimes, increasing transparency and accountability.

Amnesty International expressed concern that the revision could create a space for military impunity. For decades, the Military Justice Law has been a bastion of impunity, where commanders hold great authority over punishments. The military court can become a "fortress of impunity" that erodes the rule of law. If the revision maintains or expands the jurisdiction of military courts for general crimes, it fundamentally erodes the principles of equality before the law and due process. This creates a two-tiered legal system that deepens the crisis of public trust in justice.

5) Extension of the Retirement Age for TNI Soldiers (Article 53 of the TNI Law)

The proposed change to Article 53 raises the retirement age for soldiers. The National Commission on Human Rights and Impartial argue this risks causing

leadership stagnation, budget inefficiency, and a surplus of officers without positions. This surplus could create political pressure to place them in the civilian sector via the expansion of Article 47, exacerbating dual-function concerns. This shows the TNI's internal issues directly impact civilian supremacy. While technocratically intended to maintain command stability, this policy politically and sociologically hinders regeneration and can make personal loyalty to the ruling power more important than constitutional loyalty, thereby damaging meritocracy within the TNI.

When read together, these articles show a structural inclination to return the military to the center of state power as a political actor, not just a defense tool. The involvement in civilian affairs, ease of occupying bureaucratic posts, and extension of service blur the lines between defense and civilian government. The state appears to be formulating the military's role as an integral actor in state management, a form of soft authoritarianism wrapped in legality. This is dangerous as it could erase the achievements of reform and pave the way for a new authoritarianism.

It is also important to note that this revision did not occur in a deliberative and inclusive process. The discussion process conducted behind closed doors by the House of Representatives Commission I with the TNI and the Ministry of Defense in March 2025 ignored the principles of transparency and public participation, showing a strategy of legalization without participation where legislative power uses legal legitimacy to pass rules that actually contradict the basic principles of a democratic state. This is a concrete example of how law can be used as a tool of power rather than as an instrument of protection for citizens.³⁸ Considering all these things, it is clear that the revisions to Articles 3, 47, and 53 in the TNI Law are not only technically problematic but also substantively and ideologically. The security sector reform, painstakingly built post-New Order, is now threatened with being transformed back into a reconstruction of military dominance in civilian life. This revision reflects a

³⁸ Iman Amanda Permatasari.,

crisis in the direction of state policy in placing the military solely as a defense tool rather than as a governing actor. Without a concrete effort to review the substance of the revision and build a strong civilian oversight system, Indonesian democracy will continue to be under the shadow of covert militarism. Therefore, criticism of the TNI Law revision is not just part of academic vigilance but also a political and ethical responsibility to maintain the nation's democracy and constitutional integrity.

Implications for Democracy and the Rule of Law

This sub-chapter aims to discuss more broadly the implications of the previous findings—namely, the minimal meaningful public participation in the legislative process and the problematic articles in the revision of Law Number 34 of 2004 on the Indonesian National Armed Forces (TNI Law)—for the consolidation of democracy and the principle of the rule of law in Indonesia. This analysis will specifically link how the practice of the "illusion of participation" and the existence of such problematic legal provisions contribute to the erosion of constitutional democracy, the weakening of checks and balances mechanisms, and the serious impact on the protection of human rights. This discussion will also formulate a normative argument that serves as a logical bridge to concrete policy recommendations.

1. Erosion of Constitutional Democracy and Weakening of Checks and Balances Mechanisms

The revision process of the TNI Law, which was largely closed and had minimal public participation, substantially erodes the foundation of constitutional democracy in Indonesia. Constitutional democracy requires meaningful citizen involvement as a primary pillar to build a transparent and accountable system of government and to ensure the legitimacy of every legal product. When the people's voice is not heard or participation is merely a formality, the legislative process loses its basis of legitimacy, transforming society from a sovereign subject into a mere policy object. This not only creates an "illusion of participation" but also gives rise to a serious gap in legal

legitimacy, where the resulting law risks representing elitist interests rather than the broad aspirations of society.

Furthermore, the existence of problematic articles in the TNI Law revision, such as those indicated in relation to the expansion of the military's role in civilian positions or the addition of military functions in handling civilian affairs, directly threatens the principle of civilian supremacy and the checks and balances mechanism. The principle of civilian supremacy is a vital foundation in a democratic state under the rule of law, which asserts that the military is under the control of a democratically elected civilian authority. When provisions in a law open up space for the military to take over or dominate civilian functions, it could potentially revive the shadow of the dual-function of ABRI, which has long been abandoned since the *Reformasi* era, threatening a democratic backslide.

The most crucial implication is the shift in the balance of power that threatens the separation of powers. The legislative institution, which holds a constitutional mandate as the people's representative and a check on executive power and the security sector, seems to be ignoring these principles. The absence of a publicly accessible academic manuscript and the lack of public testing for the TNI Law revision further confirm the weakening of the House of Representatives' oversight and control functions as an embodiment of checks and balances. This condition creates greater room for potential abuse of power and military intervention outside the defense domain, as well as weakening institutional accountability as a whole.

The checks and balances mechanism is the first casualty of non-participatory legislation. Checks and balances are the oversight and equilibrium among branches of power to prevent constitutional violations. When the legislative process is conducted secretly and without accountability, the House of Representatives' oversight function (as an integral part of checks and balances) becomes paralyzed. This means the very mechanism that should prevent the abuse of power is weakened by the law-making process itself. Checks and

balances are not only threatened by the substance of the law that expands military power but also by the way the law is made, making it the first victim of the "illusion of participation."³⁹

2. Society as a Policy Object: The Illusion of Public Participation

When the people's voice is not heard or participation becomes a mere formality, the legislative process loses its basis of legitimacy, transforming society from a sovereign subject into a mere policy object. Mahfud Md. highlighted that public participation in democracy actually only lasts for about five minutes (when casting a vote in the ballot booth), after which power is fully in the hands of the political elite. The government often betrays the public's trust through the policies it makes, ignoring public aspirations and interests.⁴⁰ Electoral participation that is not followed by deliberative participation creates an empty "procedural democracy." If participation is limited to the electoral process (electing leaders) but does not continue into the deliberative process of policy-making, then the existing democracy is merely a "procedural democracy" devoid of substance. This creates the illusion that the people are in power, when in reality, they only function as legitimators of elite power, who are then free to make policies without listening to aspirations. This explains why there is a crisis of public trust in the government.⁴¹

3. Impact on the Protection of Human Rights

Besides the erosion of democracy and the weakening of checks and balances, the practice of the illusion of participation and the existence of problematic articles in the TNI Law revision also have a direct impact on the protection of human rights (HAM). When the legislative process is carried out secretly and with a lack of accountability, the risk of provisions emerging that could potentially limit or violate human rights becomes very high.⁴² The National

³⁹ Pamungkas dan Suputra, "Pemberlakuan Asas Pembagian Kekuasaan Dalam Prinsip Checks And Balances Berdasarkan Sistem Ketatanegaraan Indonesia Dan Amerika Serikat."

⁴⁰ Insan Harapan Harahap dkk., "Politik Dinasti Dan Erosi Partisipasi Publik Dalam Demokrasi Indonesia," *Journal of Entrepreneurship, Management and Industry (JEMI)* 7, no. 3 (14 Januari 2025): 109.

⁴¹ Rasji dkk.,

⁴² Yumna Sabila, Kamaruzaman Bustamam, dan Badri Badri.,

Commission on Human Rights has specifically highlighted that at least two articles in the TNI Bill have the potential to threaten human rights principles, and assessed that the revision process was conducted without an adequate evaluation of its human rights impact.

Similarly, Amnesty International also expressed concern that this revision could create a space for military impunity and significantly weaken accountability in the security sector, a condition that fundamentally contradicts the universal principles of human rights protection. This is reflected, for example, in the potential interpretation of Article 65 and Article 74 of the TNI Law (which may regulate military justice, jurisdiction, or specific immunities) that could lead to a lack of legal accountability mechanisms for military personnel suspected of violating human rights, or difficulties in bringing military personnel to civilian courts for common crimes.⁴³

The absence of meaningful public participation prevents the voices of vulnerable groups or those most potentially affected by the policy from being heard and accommodated. As a result, the regulations produced can be insensitive to the basic rights of citizens, and even potentially legitimize harmful practices. In the specific context of the military, the weakening of accountability as feared can lead to impunity, which in turn erodes the principle of the rule of law that guarantees justice, equality before the law, and legal certainty for every individual. There is a direct link between participation, accountability, and the protection of human rights. When public participation is ignored, the accountability of state institutions (especially the security sector) weakens. This weakening of accountability, coupled with potential impunity, directly creates an environment where human rights violations are more likely to occur and are difficult to hold accountable. This shows that public participation is not just about the political process, but is also a fundamental

⁴³ “Keterangan Pers Nomor 11/HM.00/III/2025 Komnas HAM Soroti Revisi Undang-Undang TNI dalam Kerangka Hak Asasi Manusia.”

preventive mechanism to protect the basic rights of citizens from the abuse of power.

4. Normative Argument and Bridge to Recommendations

Based on the descriptive findings and critical analysis above, a strong normative argument can be formulated. Legislative practices that ignore meaningful public participation and produce provisions that could potentially damage the principle of civilian supremacy and human rights are a form of violation against the constitutional mandate and the basic principles of a democratic state under the rule of law. Public participation in law-making is not merely an administrative procedure but a fundamental prerequisite for the substantive legitimacy of a legal product and a reflection of popular sovereignty. The case of the TNI Law revision becomes a concrete empirical case study, showing how the neglect of participation can directly correlate with the erosion of constitutional principles and the weakening of human rights protection.

To bridge the gap between the normative ideals mandated by the 1945 Constitution and various regulations related to public participation, and the reality of legislative practices that are less transparent and participatory, a fundamental transformation is needed in the approach to policy-making, especially those involving the security sector. This normative argument underlies the need for several strategic steps as a bridge to concrete recommendations:

a. Reaffirming the Principle of Meaningful Participation

Every legislative process must substantively open up space for inclusive, transparent, and accountable public participation, far beyond administrative formality. This includes providing a comprehensive and easily accessible academic manuscript, as well as conducting genuine and continuous public testing at every stage of law-making. This recommendation aims to shift from the "illusion" to the "substance" of participation. By emphasizing "substance" (access to information, genuine

public testing), it proposes a way out of the current "illusion of participation" towards a practice that truly empowers citizens.

b. Strengthening Checks and Balances Mechanisms

The legislative institution must proactively and independently carry out its oversight function over the executive power and the military sector, especially in the revision of laws that could potentially change the constitutional order. This includes the courage to reject or revise articles that clearly threaten civilian supremacy, human rights, and the principle of accountability. A proactive and independent legislature becomes the last bastion of democracy. In the context of democratic erosion, a proactive and independent legislature is very important to maintain the balance of power and protect the public interest. This recommendation is not just about procedural improvements but about reactivating the essential political role of the legislature in preventing the abuse of power and the return of authoritarianism.

c. Updating the Legal Framework for Participation

An evaluation and, if necessary, a revision of Law Number 12 of 2011 on the Formation of Laws and Regulations should be carried out to strengthen the aspect of meaningful participation by including clear sanctions or legal consequences if participation procedures are ignored. This will encourage higher compliance with the principle of participation. To overcome the "illusion of participation," it is not enough to simply mandate participation; there must be a strong enforcement mechanism. Adding sanctions or legal consequences for ignoring participation will change a moral/procedural obligation into a binding legal obligation, forcing policymakers to take the principle of participation seriously.

d. Increasing Public Awareness and Accountability of State Institutions

It is important to continuously improve political literacy and public policy among the public so they can participate more effectively and critically. On the other hand, state institutions, especially policymakers, must show a

high commitment to accountability and openness in every legislative process, rebuilding the public trust that has been eroded by pseudo-participatory practices. Restoring public trust eroded by the "illusion of participation" requires two parallel tracks: empowering the community through increased literacy to become effective overseers, and a real commitment from state institutions to be transparent and accountable. Without these two elements, legal and political reform efforts will continue to meet resistance and fail to build a substantive and sustainable democracy.⁴⁴

This normative argument becomes a strong basis for formulating concrete recommendations to encourage more participatory, transparent legislative practices that are in line with constitutional values in Indonesia, especially in policies involving military actors. Thus, democracy does not just become jargon but is realized as a system that serves justice and the welfare of the people.

CONCLUSION

This study firmly demonstrates that the revision process of Law Number 34 of 2004 concerning the Indonesian National Armed Forces (TNI Law) is a clear example of the "illusion of public participation" that impacts the erosion of democracy in Indonesia. Procedural flaws in the legislative process, such as a lack of transparency, the absence of a publicly accessible academic manuscript, and minimal public consultation, have undermined legal legitimacy and betrayed the constitutional mandate.

Problematic articles in the TNI Law revision, particularly concerning the expansion of military roles into civilian positions and the implications for accountability and impunity, have the potential to bring back the shadow of the dual-function of ABRI (*Dwifungsi ABRI*) and weaken civilian supremacy. The cumulative impacts of this

⁴⁴ Juleha Juleha, Jusfira Yuniar, dan Nur Riswandi Marsuki, "Peran Media Sosial Dalam Dinamika Opini Publik dan Partisipasi Politik Era Digital."

phenomenon are the weakening of checks and balances mechanisms, the transformation of society into policy objects, and an increased risk of human rights violations. To safeguard constitutional integrity and civilian supremacy, a comprehensive legislative reform is necessary. This includes reaffirming the principle of meaningful participation, strengthening checks and balances mechanisms with a proactive and independent legislative role, updating the legal framework for participation with clear sanctions, and enhancing public awareness and the accountability of state institutions. Only with a genuine commitment to these principles can democracy in Indonesia evolve into a system that truly serves justice and the welfare of the people.

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