

LACK OF TRANSPARENCY IN THE FORMATION OF THE TNI BILL ON THE PRINCIPLES OF THE RULE OF LAW AND CIVIL SUPREMACY IN INDONESIA

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Abstract

This research aims to critically examine and analyze the lack of transparency in the process of forming the Indonesian National Army Bill (RUU TNI) in 2025 and its implications for the principles of the state of law and civil supremacy in Indonesia. Using normative juridical methods with a qualitative approach and literature study, this study found that the formation of the TNI Bill was carried out behind closed doors, without adequate public involvement, and not accompanied by published academic manuscripts. The main findings include violations of the principle of legislative transparency, indications of the expansion of the TNI's authority into the civilian realm without strong civilian control, and inconsistency with the participatory principle in constitutional law. This undemocratic legislative process shows a regression in the system of checks and balances and threatens civil supremacy as the main pillar of a democratic state. This research suggests the need to reform the legislative process to ensure community involvement and maintain the integrity and constitutional legitimacy of the resulting legal products.

Keywords: TNI Bill, State of Law, Civil Supremacy, Public Participation, Legislative Process

1. Introduction

In a democracy, power is not only limited, but also supervised. Democracy is not just an electoral system, but an order that ensures that all state institutions work within the corridor of law, are supervised by the people, and are subject to the principle of transparency. Within this framework, the state of law and civil supremacy became the main and irreplaceable foundations. (Revan et al., 2022)

However, Indonesia today faces serious challenges. In the midst of efforts to reform the law and strengthen democratic institutions, there is a wave of concern about the process of forming the 2025 TNI Bill which is considered not transparent. A process that should have been open to the public, was instead held in closed spaces, away from civil society supervision. In fact, the TNI Bill is not an ordinary legal product. It concerns the position and role of the military in the life of the nation. Changes in it have the potential to greatly affect civil-military relations, an issue that has been a vulnerable point in the history of Indonesian democracy since the New Order era. Lubis (Lubis, 2022) It is important to ensure that any changes in this law take into account the principles of democracy and human rights, so that the role of the military can go hand in hand with the strengthening of civilians in society. This concern is even more justified when the substance of the revised bill shows indications of expanding the TNI's authority into the civilian realm such as domestic security, countering radicalism, and even involvement in

non-military political activities. This certainly hurt the spirit of the TNI's post-1998 reforms, which firmly placed the military under civilian control.

The bill discussed without public involvement and lack of transparency is not only a procedural technical violation, but a direct attack on the principle of the rule of law. This principle requires that laws be made in a participatory, accountable, and publicly testable manner. If this is ignored, then a legal product that is far from constitutional legitimacy is born. Grigorius (Grigorius, 2022) The existence of this illegitimate law can result in public distrust of government institutions and the judicial system, thereby weakening the foundations of democracy itself.

This secrecy in the legislative process reflects the deterioration of democracy. Instead of strengthening civilian supremacy, this process reinforces the dominance of military institutions over civilian policymaking. This is contrary to the spirit of the constitution which places the TNI as a means of state defense that is subject to civilian power. This phenomenon does not stand alone. It is part of a broader trend: weak parliamentary control, the strengthening of the practice of closed legislation, and the tendency to narrow civic space. Study by porto (Porto, 2018) shows that many revisions of the law in the last five years have been carried out exclusively, without adequate public scrutiny. This indicates the need for reform in the legislative process so that transparency and public participation can be prioritized, in order to maintain public trust in government institutions. Such reforms should include mechanisms that ensure the involvement of the public at every stage of lawmaking, so that public voices and aspirations can be effectively accommodated. This condition shows a regression of the principle of checks and balances, where parliament is no longer a place for people's deliberations, but a forum for the domination of certain powers. If left unchecked, the position of the civilian as the supreme controller of the state will be weakened, opening up a space for new styles of militarism (Huijzer, 2022).

The 2025 TNI Bill is also a symbol of the tug-of-war between the reform agenda and power conservatism. This article is here to dissect how the lack of transparency in the process of forming the bill is a real threat to civil supremacy. The urgency of this discussion is very high, considering that the global and regional context shows that the regression of democracy often begins with the neglect of legal procedures. The undemocratic establishment of laws is the first sign of an exclusive and dangerous consolidation of power. This discussion provides an idea of the concept of "Transparency in the formation of laws and regulations in Indonesia by accommodating the principle of deliberative democracy. The theory was popularized by the philosopher from the University of Frankfurt, Jurgen Habermas, who argued that public policy should be tested through public consultation and discourse in the "public space". This process aims to open up space for the community in the formation of public policies.

Rainer Forst adding that the legitimacy of political decisions comes from a deliberative process that is open to revision and argumentative discourse. Deliberative democracy is theoretically a form of criticism of liberal ideas. Its combination with the term "democracy" gives a special meaning to the concept of democracy. This discussion is no longer about the idea of the state of law, but rather about the process of forming the law itself. (Politics) & 2013, 2013) Indonesia has experienced a dark period when the military played a dominant role in all sectors of national life. The 1998 reforms brought great hope for the birth of civilian supremacy and military professionalism. This bill has the potential to reverse this progress. Therefore, academic discussions that are critical of the process and substance of the TNI Bill are very important. Not only to maintain the consistency of

the rule of law, but also to ensure that the military remains on the path that the constitution has outlined.

This article will discuss the process of forming the TNI Bill critically, focusing on issues of transparency, public participation, and threats to civilian supremacy. Normative and sociological approaches are used to photograph this phenomenon within the framework of constitutional law and democracy. Some of the key questions asked in this article include: How does the transparency of legislation affect the legitimacy of the law? Does the revision of the TNI Bill violate the principle of the rule of law? And to what extent is civil supremacy threatened by the substance and process of the revision? Through a literature review, critical analysis of official documents, and a review of legal norms, this article aims to voice the importance of maintaining the principles of the rule of law and civil supremacy in every legislative process, especially when it comes to institutions that have coercive potential such as the TNI.

2. Theoretical Background

2.1 The Principle of the Rule of Law

The rule of law is a fundamental principle of democratic governance that demands the subordination of all state actions to legal norms. Friedrich A. Hayek (1960) emphasized that the rule of law implies a government bound by rules announced beforehand—rules that make it possible to foresee how the authority will use its coercive powers. In the Indonesian context, the 1945 Constitution (Article 1 paragraph 3) firmly establishes that "Indonesia is a state based on the rule of law." This principle entails legal certainty, equality before the law, and the protection of fundamental human rights.

In the legislative process, the rule of law requires transparent and participatory procedures to ensure accountability and prevent arbitrary decision-making. The ideal of open government becomes crucial, particularly when dealing with sensitive issues such as national defense legislation.

2.2 Civil Supremacy over the Military

Civil supremacy is a democratic norm where the military remains subordinate to civilian political authorities. Samuel P. Huntington (1957) highlighted that effective civilian control is essential to maintain the military's apolitical stance and to ensure the primacy of democratic institutions. In Indonesia, the post-1998 political reform abolished the dual-function of the Armed Forces (*dwi-fungsi* ABRI) and reaffirmed civilian supremacy through legislative oversight and ministerial control, particularly via the Ministry of Defense and the House of Representatives (DPR).

Legislation concerning the military, such as the TNI Bill, must reflect this principle by ensuring that the process is led and scrutinized by civilian institutions, thus reinforcing democratic accountability.

3.2 Transparency and Public Participation in Law-Making

Transparency and public participation are key tenets of democratic governance and are integral to producing legitimate, inclusive, and accountable legislation. Theories of deliberative democracy, as proposed by Habermas (1996), argue that legitimacy arises from public reasoning and communicative processes in decision-making.

Indonesian Law No. 12 of 2011 on the Formation of Laws and Regulations (as amended by Law No. 13 of 2022) mandates public involvement at every stage of the legislative process. Lack of transparency—especially in drafting legislation like the TNI

Bill—undermines public trust and contradicts both the principles of the rule of law and civil supremacy.

3. Methods

3.1 Research methods

This study uses the normative juridical, which is a method that examines law as a system of norms. This approach focuses on the study of literature (Library Research), where law is understood as the normative rules that govern people's lives. The main goal is to examine the extent to which the 2025 TNI Bill is in line with the principles of the state of law and civil supremacy guaranteed by the constitution (Gorobets, 2020).

This method is combined with the Qualitative, which emphasizes on understanding meaning, interpretation, and context. This is because the issue of non-transparency in the formation of the TNI Bill is not only a normative legal issue, but is also closely related to political dynamics, public legitimacy, and the democratization process.(Cox & Cox, 2022)

3.2 Data and Data Sources

This study relies on two main categories of data sources: Primary data source and Secondary data sources. Both were strategically selected to ensure that the analysis of non-transparency in the formation of the 2025 TNI Bill has a strong legal basis and the relevant socio-political context as follows:(REGIONAL REGULATION NO. 5 OF 2023, 2023)

- 1) Primary data sources include official legal documents that are the normative foundation of the Indonesian legal system. These documents include:
 - a) Draft of the 2025 TNI Bill
 - b) Law Number 34 of 2004 concerning the Indonesian National Army
 - c) Constitution of the Republic of Indonesia of 1945 (1945 Constitution)
 - d) Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (Azzahra et al., 2022).

These documents provide an essential legal framework to assess the extent to which the legislation process of the TNI Bill is in accordance with the principles of the rule of law and civil supremacy. The draft of the 2025 TNI Bill is the main focus in this study because it is the object of study that is in the process of legislation. The analysis of this draft allows researchers to identify articles that have the potential to cause non-transparency and threaten democratic principles. Law Number 34 of 2004 concerning the Indonesian National Army provides a legal basis that regulates the role and function of the TNI in the Indonesian constitutional system.(Sawi, 2022) A comparison between this law and the draft of the 2025 TNI Bill can reveal significant changes that may lead to non-transparency or deviations from the principles of civil supremacy. Constitution of the Republic of Indonesia of 1945 (1945 Constitution) as the country's constitution is the main benchmark in assessing the conformity of the TNI Bill with the basic principles of the state of law, such as people's sovereignty, the rule of law, and human rights. Law Number 12 of 2011 concerning the Establishment of Laws and Regulations establish transparent and participatory law-making procedures and mechanisms. Article 96 of this Law, for example, emphasizes the importance of public participation in the legislation process, which is one of the indicators of transparency in the formation of the TNI Bill.

- 2) Secondary data sources consist of academic literature, scientific articles, constitutional law books, journals indexed on Google Scholar, as well as publications from civil society organizations such as ELSAM, YLBHI, and ICJR. These resources provide critical perspectives and in-depth analysis of issues of transparency, rule of law, and democratic legislative challenges in Indonesia. It is the main reference in this study. Suprasetya discussed the challenges of transparency in the legislative process in Indonesia, while Aryani highlighted the importance of the rule of law and public participation in democratic policy-making. These two studies provide a relevant theoretical and empirical framework to analyze the lack of transparency in the formation of the TNI Bill.(Susniwati et al., 2021). Publications from civil society organizations such as ELSAM, YLBHI, and ICJR provide critical data and analysis on the legislative process in Indonesia. Their reports often expose practices of non-transparency and military dominance in civilian policy formulation, which is the main focus of this study. Constitutional law books written by leading academics in Indonesia are also important sources in this research. The books provide an in-depth understanding of the structure and function of state institutions, as well as the basic principles in the Indonesian legal system, which are relevant in analyzing the position of the TNI in the constitutional system. By combining primary and secondary data sources, this study can conduct a comprehensive analysis of the lack of transparency in the formation of the TNI Bill in 2025. This approach allows researchers to not only evaluate the legal-formal aspects of the bill, but also to understand the socio-political context that influences the legislative process, as well as its implications for the principles of the rule of law and civil supremacy in Indonesia.

3.3 Data Collection Methods

This study relies on document studies as the main method of data collection, which involves a systematic review of documents relevant to the research topic. This method was chosen because it is able to provide a strong legal foundation as well as an in-depth contextual narrative, allowing researchers to understand the legislative process of the TNI Bill from various perspectives. Document studies are an important complement to qualitative research, which can increase the credibility of research results(Morgan, 2022)

The documents studied include primary legal sources such as the draft of the 2025 TNI Bill, Law Number 34 of 2004 concerning the TNI, Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, and the 1945 Constitution. In addition, non-legal documents such as academic manuscripts, House meeting minutes, opinion articles, and reports from civil society organizations such as ELSAM, YLBHI, and ICJR are also analyzed to obtain a comprehensive picture of the legislation process and the accompanying dynamics.

3.4 Data analysis techniques

Non-transparency in state institutions can undermine accountability and undermine public trust in the legal process. Data validity is strengthened by triangulating sources, which is comparing data from official documents with academic opinions and civil society statements. This is important so that the interpretation of the data is unbiased and remains objective. Data verification steps are also carried out by checking the consistency of the content of the bill with established constitutional principles. Principles such as *lex superior derogat legi inferiori*, due process of law, and public participation are used as benchmarks. One example of verification is carried out by comparing the process of

drafting the TNI Bill with the rules in Law No. 12 of 2011, especially Article 96 which requires the involvement of the community in the formation of laws and regulations.

This research also uses legal hermeneutics as an analysis tool, namely the interpretation of legal texts in depth based on the social and political context when the law was drafted. This approach is used to understand the substantive meaning behind each article in the TNI Bill. The legal analysis in this study is not purely dogmatic normative, but tries to see the political space and power that surrounds the formation of laws, as criticized by YLBHI (2023) in their report on military dominance in civil policy formulation.

4. Results and Discussion

Based on an in-depth study of the TNI Bill documents (draft and results of public monitoring), laws and regulations, as well as academic literature and civil society reports, a number of key findings were found that showed that there was an inequality between the process of forming the TNI Bill and the principles of the state of law and civil supremacy. These results are grouped into five key findings:

1) Seclusion in the Legislation Process

One of the most striking findings is the lack of transparency in the process of discussing the 2025 TNI Bill. There is no official information available publicly regarding the substance of the draft, the discussion schedule, and who are the parties involved in the drafting process. This is in direct contradiction to Article 96 of Law No. 12 of 2011 which states that the public has the right to provide input orally or in writing in every process of drafting laws and regulations. (Ezzerouali & Chami, 2023)

2) Potential for Expanding the Role of the TNI in the Civil Realm

Based on an analysis of the parts of the bill's contents leaked to the public through the media and monitoring agencies, it was found that there are articles that have the potential to expand the role of the TNI beyond the defense function, including in countering terrorism, domestic political stability, and other non-military activities. (Astar et al., 2023)

3) Violation of the Rule of Law Principle

The third finding shows that the process of drafting the TNI Bill does not follow the principles of due process of law and the principle of legality inherent in the state of law system. Without public involvement and without transparency, this bill loses its democratic legitimacy as a legitimate legal product.

4) Threats to Civil Supremacy

The lack of civilian involvement in the drafting of the TNI Bill directly reflects the decline of civilian supremacy. This is reinforced by the dominance of narratives from the military and the lack of deliberative space between the military, civilians, and the public. If the bill is passed under these conditions, civilian control over the military could be structurally weakened.

5) No Published Academic Manuscripts

A search of the websites of the DPR, BPHN, and the official website of the Ministry of Defense shows that the academic text of the TNI Bill was not published as it should be. In fact, academic manuscripts are important instruments that show theoretical, sociological, and juridical foundations in the drafting of laws.

The findings produced in this study show that the process of forming the 2025 TNI Bill is fraught with non-transparent practices that violate the basic principles of the rule

of law and weaken civil supremacy. At this point, we are faced with a fundamental question: how can democracy survive if the law as a manifestation of the will of the people is actually designed without the involvement of the people themselves?

1) Seclusion: The Antithesis of the State of Law

In doctrine Rule of law or the state of law, transparency is an absolute requirement. The law must not only be fair in substance, but also fair in the way it is formed. When the formation of the TNI Bill is not open and the public is not given access to academic manuscripts or drafts, the process fails to meet democratic legal standards. This is in line with the theory due process of law which requires every legal product to go through an open, participatory, and accountable procedure (Friedman, 1975). These findings strengthen the argument brought by Laela Aryani (2023) who states that good governance in legislation requires active community involvement. When the process is closed, it is not only procedurally flawed, but also morally flawed as public law.

2) Civil Supremacy: The Pillar of Shifted Democracy

Civil supremacy is one of the main indicators of a democratic system. In theory civilian control of the military, as explained by Huntington (1957), military power must be under the supervision of democratically elected civilian authorities. When the TNI Bill is formed with the dominance of narratives and military interests, without the involvement of the public and civilian institutions, the principle becomes fragile. Alfatoni (2024) states that the rule of law is only possible when the legislative process is open, deliberative, and ratified by responsible civilian representatives. In other words, without transparency, civil supremacy loses its substance.

3) Constitutional Implications: Threats to the Sharing of Power

The TNI Bill which has the potential to expand the military's role to the civilian realm without clear limits raises constitutional problems. This is contrary to the spirit of the 1945 Constitution Article 30 which expressly distinguishes between the defense functions (TNI) and domestic security (POLRI). If this boundary line is blurred, there will be a violation of the principle of separation of powers and the potential for overlapping functions between state institutions. This reinforces the opinion Gatot Suprasetya (2022) that the expansion of the military's role without civilian accountability is a form of deviation from the mandate of the 1998 reform.

4) Relevance to Legislative Practice in Indonesia

These findings do not stand alone. In the last five years, the trend of closure in the formation of laws in Indonesia has strengthened. The Criminal Code Bill, the Job Creation Bill, and now the TNI Bill are concrete examples of how the practice of legislation tends to be exclusive, fast, and non-participatory. Report from ELSAM (2023) and ICJR (2024) warned that this model of legislation encourages the formation of laws that are free from public accountability.

5) Social, Educational, and Democratic Implications

When the formation of the law is carried out behind closed doors, the public loses trust in the legal institution. The law is no longer considered as the result of the aspirations of the people, but as a product of elite power. This can have an impact on:

- a) Social life: the emergence of political apathy, protest or disinformation due to a lack of public involvement.
- b) The world of education: the crisis of trust in the legal system has an impact on the decline in the interest of law students in constitutional studies.
- c) Technology and public information: the process of digitizing legislation has not been running optimally to open public access to the law-making process.

- d) Civil liberties: are increasingly diminished if the military is mandated to operate in the civilian sector without adequate civilian oversight.
 - e) Critical Reflection: Democracy Is Not Just a Result, but a Process. Law is not only about the final result in the form of a law document that is passed. Law is a social process that represents the collective will of society. When the process is closed and dominated by a single force (in this case, the military and the executive), then the law loses its ethical function as a guardian of justice and a tool of power control.
 - f) This comes back to the fundamental question: do we want the law to be a tool of democracy, or do we want it to be a shield of power? The TNI Bill is a mirror of how legal practice can turn the tide if it is not guarded by openness and civil supremacy.
 - g) Contributions to Academic Literature
These findings enrich the study of constitutional law by showing that legislative procedures are a key element of legal legitimacy, not just administrative formalities. The study also corroborates the previous argument that
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- 7) Civil Supremacy: The Pillar of Shifted Democracy
Civil supremacy is one of the main indicators of a democratic system. In the theory of civilian control of the military, as explained by Huntington (1957), military power must be under the supervision of democratically elected civilian authorities. When the TNI Bill is formed with the dominance of narratives and military interests, without the involvement of the public and civilian institutions, the principle becomes fragile. Alfatoni (2024) stated that the rule of law is only possible when the legislative process is open, deliberative, and ratified by responsible civilian representatives. In other words, without transparency, civil supremacy loses its substance.
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These findings do not stand alone. In the last five years, the trend of closure in the formation of laws in Indonesia has strengthened. The Criminal Code Bill, the Job Creation Bill, and now the TNI Bill are concrete examples of how the practice of

legislation tends to be exclusive, fast, and non-participatory. Reports from ELSAM (2023) and ICJR (2024) warn that this model of legislation encourages the formation of laws that are free from public accountability. Social, Educational, and Democratic Implications When law formation is carried out behind closed doors, people lose trust in legal institutions. The law is no longer considered as the result of the aspirations of the people, but as a product of elite power. This can have an impact on:

- a) Social life: the emergence of political apathy, protest or disinformation due to a lack of public involvement.
- b) The world of education: the crisis of trust in the legal system has an impact on the decline in the interest of law students in constitutional studies.
- c) Technology and public information: the process of digitizing legislation has not been running optimally to open public access to the law-making process.
- d) Civil liberties: are increasingly diminished if the military is mandated to operate in the civilian sector without adequate civilian oversight.
- e) Critical Reflection: Democracy Is Not Just a Result, but a Process. Law is not only about the final result in the form of a law document that is passed. Law is a social process that represents the collective will of society. When the process is closed and dominated by a single force (in this case, the military and the executive), then the law loses its ethical function as a guardian of justice and a tool of power control.
- f) This comes back to the fundamental question: do we want the law to be a tool of democracy, or do we want it to be a shield of power? The TNI Bill is a mirror of how legal practice can turn the tide if it is not guarded by openness and civil supremacy.
- g) Contributions to Academic Literature. These findings enrich the study of constitutional law by showing that legislative procedures are a key element of legal legitimacy, not just administrative formalities. The study also reinforces the previous argument that civilian control of the military is not just about budget and policy oversight, but also about who has the legitimacy to shape the legal norms that govern the military itself.
- h) Trends in Military Involvement in Civil Government. The revision of the 2025 TNI Law expands the military's role in civilian government, allowing active TNI personnel to occupy positions in various civilian institutions without having to resign from the military. This revives the doctrine of "Dual Function of the Indonesian Armed Forces" in the New Order era, which gives a dual role to the military in the field of defense and civilian government.

5. Conclusion

The lack of transparency in the formation of the 2025 TNI Bill reflects a serious setback for constitutional democracy in Indonesia. A legislative process that sidelines openness, accountability, and public participation not only violates procedural standards but also threatens the principle of civil supremacy—an essential pillar of democracy. The expansion of military authority into civilian sectors, combined with the absence of meaningful public scrutiny, risks reviving the authoritarian practices once dismantled after the 1998 Reform era.

This study concludes that without transparency and civilian control, the legislative process loses both its constitutional legitimacy and democratic foundation. The recent amendments to Indonesia's military law, permitting active military officers to assume

civilian posts without resignation and expanding military influence in public affairs, exemplify a dangerous regression toward military dominance.

In safeguarding democratic order, it is imperative that the formation of laws, especially those involving the military, strictly adhere to the principles of transparency, public participation, and civilian supremacy. The supervision and critical engagement of the TNI Bill are therefore crucial, not only for legal scholars and human rights advocates but for all citizens committed to preserving Indonesia's democratic achievements.

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