

## Juridical Analysis of the Constitutional Court's Decision Number 81/PUU-XXIII/2025 Rejecting the Formal Test of Law Number 3 of 2025 concerning Amendments to Law Number 34 of 2004 concerning the Indonesian National Army

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### ABSTRACT

Constitutional Court Decision Number 81/PUU-XXIII/2025, which rejected the formal judicial review of Law Number 3 of 2025 concerning the Amendment to Law Number 34 of 2004 on the Indonesian National Armed Forces (TNI), has sparked debate regarding the standards of law-making in a democratic rule-of-law state. This study analyzes the Court's legal reasoning in assessing the formal constitutionality of the TNI Law and examines its constitutional implications for the principles of due process of law, transparency, and meaningful public participation. This research employs a normative legal method using statutory, conceptual, and case approaches, focusing on an in-depth analysis of the Court's decision. The findings show that the Constitutional Court justified the legislative process by emphasizing the urgency of national defense policy and certain normative considerations, concluding that the planning, drafting, and deliberation stages formally complied with legal requirements. However, dissenting opinions from several Justices highlight procedural concerns, including the designation of the bill as a carry-over bill, revisions to the National Legislation Program (Prolegnas) without adequate evaluation, and the limited guarantee of meaningful public participation. Although the law was declared formally constitutional, the decision raises concerns about procedural flexibility that may weaken democratic legislative standards and affect the quality of constitutional governance in Indonesia.

## Introduction

On September 7, 2025, nine Constitutional Judges read Decision Number 81/PUU-XXIII/2025 in a plenary session open to the public. The decision is the end of a formal examination of Law Number 3 of 2025 concerning Amendments to Law Number 34 of 2004 concerning the Indonesian National Army (TNI Law). The application was submitted by six applicants consisting of legal entities and individuals. The test is focused on the procedural aspects of the formation of the law, not on the substance of the norm. In a democratic legal country, procedural aspects have the same importance as the content of the law. The principles of due process of law, transparency, and public participation are the main indicators of the legitimacy of legislation. The development of formal testing practices shows an increase in the public's constitutional awareness of the quality of law formation. The literature shows that procedural democracy is the foundation of legal legitimacy in a constitutional state (Pratama et al., 2025; Shirley & Shirley, 2025). Therefore, this ruling is

relevant to be analyzed in the framework of strengthening constitutional standards for the formation of laws.

In terms of the state of the art, research on formal testing in the Constitutional Court generally highlights the standard of proof and the limitations of the applicant's legal standing. A number of studies have concluded that the Court tends to be cautious in striking down laws on procedural grounds (Fadhillah et al., 2025; Naufal et al., 2024; Rabbani et al., 2026). This approach is seen as a form of respect for the law-making authority. However, there is criticism that such restrictive attitudes can weaken the principle of meaningful public participation. The literature also shows that there is a tension between the political discretion of the legislature and the constitutional control function of the Court. However, there have not been many studies that specifically examine Decision Number 81/PUU-XXIII/2025 in the context of security sector reform. In fact, the revision of the TNI Law has a historical dimension after the 1998 Reform. The vacancies of the study show that there are academic gaps that need to be filled. This research is here to answer this void.

The problem in this case starts from the five main reasons submitted by the applicants. These postulates place the legislative procedure as a crucial constitutional issue. In the perspective of deliberative democracy, public participation is a condition for legal legitimacy (Habermas, 2019). Information disclosure is the main prerequisite for meaningful participation. Therefore, allegations of non-disclosure and violations of the stages of legislation must be rigorously tested. Several studies show that symbolic public participation can reduce the democratic quality of legislation. In the Indonesian context, this issue is getting stronger as the formal test of legislation products increases. The petitioners' argument requires the Court to reaffirm the constitutional standard of the law-making procedure.

The expert testimony presented by the petitioners reinforces the importance of procedure in the modern legal state. Legislation procedures cannot be viewed as administrative formalities. It is part of the constitutional architecture that guarantees the accountability of power. Formal testing serves to maintain the rule of law and prevent abuse of authority. Transparency and public participation are the foundation of normative legitimacy. Contemporary legal literature confirms that the quality of the procedure determines the legitimacy of the substance (Abdullah, 2025; Pranotoputera et al., 2026; Sulastri, 2024). Therefore, the formal test has profound constitutional significance.

The court in its decision rejected the petitioners' arguments and stated that some of them did not have legal standing. This approach demonstrates the application of strict evidentiary standards in formal testing. In judicial review theory, there is a difference between the deferential approach and the active approach (Naufal et al., 2024). The deferential approach tends to leave wide room for legislative discretion. However, such an approach may raise questions regarding the effectiveness of constitutional controls. This debate is relevant in the context of Indonesia's constitutional democracy. Therefore, an analysis of the Court's considerations is important to assess the direction of development of the formal test doctrine.

Decision Number 81/PUU-XXIII/2025 is important to be studied because it concerns procedural democratic standards in the formation of laws. The issue of legal standing and the

construction of constitutional losses has given rise to a conceptual debate about access to constitutional justice (Azier & Dwi, 2025). In addition, the rejection of the non-disclosure postulate raises questions about the standard of proof of public participation. The literature shows a tension between respect for lawmakers and the Court's obligation to uphold democratic principles (Sukaca & Widodo, 2018). Therefore, it is important to critically examine the Court's legal considerations in this case. This study aims to analyze the formal testing standards used by the Court and its implications for the quality of democratic legislation in Indonesia. With this analysis, this research is expected to make a theoretical contribution in strengthening constitutional control over the law-making process and enriching the discourse on procedural democracy in the Indonesian legal state.

## Method

This research is a normative legal research that places law as a norm in laws and regulations, court decisions, and legal doctrine. The approaches used include the statute approach, the conceptual approach, and the case approach (Rishan, 2019).

The approach to laws and regulations is carried out by examining the 1945 Constitution, the Law on the Establishment of Laws and Regulations (Law P3), and the rules of the House of Representatives that regulate legislation procedures. This study aims to identify the constitutional standards of law formation, in particular the principles of openness, public participation, clarity of purpose, and compliance with the stages of law formation as developed in the Constitutional Court's formal testing practice (Nurkomalawati & Pujiyono, 2023; Sutrsino, 2025).

The conceptual approach is used by referring to the theory of due process of law, legislative due process, and democratic constitutionalism. The concept of due process of law is used to assess whether the procedure for forming laws has met the principles of procedural justice in the state of law. The theory of democratic constitutionalism is used to analyze the relationship between the law-making authority and the control function of the Constitutional Court in maintaining the supremacy of the constitution and public participation. This conceptual approach serves as an analytical knife in evaluating the postulates of procedural violations and the Court's legal considerations.

The case approach was carried out through an in-depth study of the Constitutional Court Decision Number 81/PUU-XXIII/2025 with a focus on aspects of legal standing, formal test evidentiary standards, and the construction of procedural violations. The integration of these three approaches allows for a systematic analysis of the consistency of the verdict with the principles of the democratic state of law.

## Results and Discussion

### 1. Considerations of Constitutional Court Judges

The Constitutional Court's decision in the formal examination of Law Number 3 of 2025 concerning Amendments to Law Number 34 of 2004 concerning the Indonesian National Army presents fundamental problems regarding the direction and depth of formal test standards in Indonesia. Structurally, the Court first affirmed its authority to adjudicate an application a quo and stated that the application was still within a 45-day grace period from the time the law was promulgated. At this point, the Court's consideration is relatively unproblematic because it is in accordance with the applicable normative framework (Sari & Wiraguna, 2025). However, the most decisive part does not lie in the affirmation of the authority, but in how the Court builds constitutional logic in assessing the postulates of procedural violations submitted by the applicants.

On the issue of legal standing, the Court stated that Petitioner I to Petitioner IV had legal standing because they were able to elaborate on their alleged constitutional losses and show the cause-and-effect relationship between the losses and the process of forming laws. On the contrary, Petitioner V and Petitioner VI were considered incapable of proving the existence of causal verband so that they were declared to have no legal standing. Doctrinally, this construction is in line with Article 51 paragraph (1) of the Constitutional Court Law which requires the loss of constitutional rights. However, in the context of formal testing, an approach that overemphasizes individual losses becomes problematic. The formal test basically tests the quality of the procedure for the formation of laws that are generally applicable and have a wide impact. The losses incurred are not purely personal, but concern the collective constitutional right to a transparent and participatory legislative process. Thus, when the Court applies a strict and individualistic standard of proof to procedural harm, it narrows access to constitutional control over the legislative process. This logic raises the question of whether the Court has consistently positioned the formal test as an instrument to safeguard procedural democracy or merely as a restrictively restrictive formal mechanism.

The next issue arises in the Court's consideration regarding the urgency of the revision of the law. The Court referred to the dynamics of national defense, the needs of the TNI organization, and the provision of the retirement age limit as a basis that strengthens the legitimacy of the discussion of priorities. Here it can be seen that the Court gives wide discretion to lawmakers in determining legislative priorities. However, conceptually, the urgency of substance cannot be used as an excuse to reduce or relax procedural standards. The principle of legislative due process emphasizes that the quality of the law-making process is an essential element in a democratic legal state. When the Court accepts justification of urgency without rigorously testing compliance with the planning and drafting stages, there is a risk that the standard of formal testing shifts from procedural oversight to policy justification. Within the framework of constitutional democracy, the Court should make a clear distinction between policy rationality (which is the realm of legislative politics) and procedural compliance (which is the realm of constitutional control).

Regarding the argument that the revision of the law is not a carry over and therefore cannot skip the planning and drafting stages, the Court considers that the termination of discussions in the previous period and the sustainability of the initiative in the next period can be understood rationally. The Court considers that the factor of changing the membership period of the House of

Representatives is a reasonable reason for this dynamic. However, from the perspective of the principle of legal certainty and the order of legislation, this argument leaves a problem. If a change in political composition or the end of the term of office is used as a justification for simplifying or reinterpreting the stages of legislation, then procedural consistency becomes highly dependent on political dynamics. This has the potential to undermine the principle that any law-making must be subject to systematic and objectively verifiable stages. The formal test should ensure that the legislative process is not only politically rational, but also constitutionally legitimate.

In terms of transparency and public participation, the Court stated that the existence of public hearing meetings, discussion forums, publication of documents on official websites, and broadcasts through official channels of the House of Representatives has fulfilled the principle of openness. This assessment shows a formalistic approach, namely by identifying the existence of participatory activities without evaluating their quality. A more profound constitutional question should be whether such participation provides an effective space for the public to influence the substance of the discussion, or whether it simply meets the administrative requirements. Deliberative democracy requires meaningful participation, not just symbolic participation. If strategic meetings are conducted in a context that factually limits public access, then the mere existence of online publications does not necessarily remove the issue of legitimacy. The absence of clear parameters regarding minimum standards of public participation suggests that the Court has not developed a progressive doctrine of the constitutional right to an open legislative process.

The court also rejected the allegations of excessive use of force in response to protests as well as allegations of withholding of revised documents. The court concluded that the incident could not be qualified as an excessive use of force and that the government had opened access to documents through various official channels. However, this consideration is again declarative without compiling measurable normative indicators. In the absence of clear evaluation standards regarding what constitutes adequate openness and protection of public participation, such assessments risk becoming administrative generalizations. In the context of the state of law, the Court should elaborate the constitutional parameters that can be used as a reference in similar cases in the future.

Overall, this ruling shows a tendency to reduce the meaning of formal tests to an examination of administrative compliance with the formal stages, rather than a substantive test of the quality of procedural democracy. A strong deferential approach to lawmakers shows the Court's prudence not to enter the realm of political policy. However, this caution has the potential to obscure the Court's function as a guardian of the constitution when testing standards become too minimalist. From the perspective of due process of law and constitutional democracy, procedures are not just a formality, but a mechanism of legitimacy that guarantees the accountability of power.

Thus, although the Court declared that all of the petitioner's arguments were unjustified according to the law, theoretically this decision raises questions about the consistency and progressiveness of the formal test doctrine in Indonesia. If the standards used tend to be administrative and differential, then the space to correct procedural defects in the formation of laws becomes increasingly limited. In the long run, this tendency can affect the democratic quality of legislation and reduce the effectiveness of constitutional control over the law-making process. This

decision is therefore not only important as a judicial precedent, but also as a reflection on the direction of the development of the doctrine of formal testing in the Indonesian constitutional system.

## 2. *Dissenting Opinion*

Dissenting opinions or differing opinions in a Constitutional Court decision have an important meaning in the dynamics of the constitution (Simanjuntak et al., 2023), because it shows that the decision-making process does not always take place in a single and uniform manner. In the case of the formal testing of Law Number 3 of 2025 concerning amendments to the TNI Law, a number of constitutional judges expressed different views that substantially highlighted the issues of openness, meaningful public participation, and compliance with legislation planning procedures in the National Legislation Program (Prolegnas). The dissenting opinion was conveyed by Constitutional Judges Suhartoyo, Saldi Isra, Enny Nurbaningsih, and Arsul Sani, among others, who each highlighted procedural flaws from a different point of view, despite the wedges of argument between them.

Constitutional Judge Suhartoyo emphasized that the public's right to provide input in the law-making process has been hampered. According to him, the lawmakers did not adequately inform the public about the process of forming and discussing the TNI Bill. The discussion meetings are said to take place behind closed doors or in locations that are difficult for the public to access, so that the public cannot easily follow the course of the discussion. In addition, the unavailability of official information on the DPR website regarding the TNI Bill, including academic manuscripts and other supporting documents, for strategic reasons, is considered unjustifiable. This reason is contrary to the principle of openness which is an essential principle in the formation of good laws and regulations. When the draft bill is circulated through unofficial channels, it causes multiple interpretations and hinders the public from providing appropriate and informed input.

Suhartoyo also highlighted the difference in substance between the draft of the TNI Bill dated May 28, 2024 and the draft after the bill's inclusion in the National Priority Prolegnas in 2025 until it was finally ratified in March 2025. This difference in substance, according to him, shows the non-fulfillment of the principles of openness and meaningful public participation. The implementation of three Public Hearing Meetings (RDPU) and one hearing in March 2025 does not necessarily prove the fulfillment of meaningful participation. Meaningful participation is not only measured by the existence of a participatory forum, but also by the evidence that public opinion is considered and the existence of explanations or answers to the inputs given. In his conclusion, Suhartoyo argued that the TNI Law contains formal flaws, but he disagreed if the law was declared unconstitutional in its entirety. According to him, the application should be granted in part.

Constitutional Judge Saldi Isra also underlined the problem of legislation planning in the Prolegnas. He questioned the consistency of the House of Representatives in including the Bill to Amend the TNI Law into the Prolegnas. If the House of Representatives wants to immediately complete the discussion of the bill from the beginning, this desire should be stated in the attachment to the decision containing the Priority Prolegnas (Appendix II), not included as part of the 2024–

2029 Prolegnas (Appendix I). In addition, the TNI Bill is not classified as a pass or carry over bill during the transition period of the change of the DPR membership period. In DPR Decree Number 64/DPR RI/I/2024-2025, according to Saldi Isra, there is no option to treat the bill as a carry over.

Saldi Isra then linked this to the provisions of Article 71A of Law Number 15 of 2019 which amends Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. The article requires two cumulative prerequisites for a bill to be categorized as a carry over, namely it has entered the discussion stage of the Problem Inventory List (DIM) and is re-entered in the National Prolegnas based on the agreement of the DPR, the President, and/or the DPD. According to him, the first condition was not met in the case of the TNI Bill. Therefore, he concluded that the Court should have granted the petitioners' request by stating that the process of forming Law 3/2025 contained procedural defects and ordered improvements by opening up space for meaningful public participation.

In contrast to Saldi Isra, Constitutional Judge Enny Nurbaningsih actually assessed that the TNI Bill in the 2020-2024 DPR period had not entered the discussion stage at all, so no DIM had been prepared. All available at that time were academic manuscripts and bills on the initiative of the House of Representatives. Therefore, according to him, the TNI Bill is indeed impossible to categorize as a carry over in the 2024-2029 Prolegnas. He also emphasized that the substantive changes in the proposed TNI Bill are very substantive, so the proposal procedure must indeed go through the Prolegnas mechanism, not through the "DKT door" or "carry over door." However, Enny still admitted that there were procedures that had not been fulfilled in the formation of the TNI Law. On the other hand, he underlined the urgency of amending the TNI Law, including to follow up on the Constitutional Court Decision Number 62/PUU-XIX/2021 regarding the regulation of the retirement age for TNI soldiers. Therefore, he argued that Law 3/2025 should be declared conditionally constitutional, as long as procedures are improved within two years from the date of the verdict.

Constitutional Judge Arsul Sani also expressed a different opinion by emphasizing that from the beginning the lawmakers did plan changes to Law 34 of 2004 not only to accommodate the Constitutional Court Decision Number 61/PUU-XIX/2021, but also to cover other content materials. Therefore, according to him, it is appropriate if the bill is included in the 2025 Priority National Legislation. However, the consequence of this choice is that the list of Priority National Legislative Projects for 2025 should be amended first according to the procedures in Law 12/2011 and the Rules of Procedure of the House of Representatives. He also highlighted the obstacles to meaningful public participation due to the difference in the links and draft content available, as well as the difficulty of the public accessing the official website of the House of Representatives related to the legislative process of the bill. Thus, according to him, there are shortcomings in the fulfillment of legislation procedures and obstacles to public access, so the application should be granted in part.

Looking at the overall dissenting opinion, the author tends to agree that there are serious problems in the formal aspects of the formation of Law 3/2025, especially related to the principle of openness and meaningful public participation. In a democratic legal country, the formation of laws is not only required to be formally legal in the sense of following the administrative stages, but must

also ensure adequate access to information and effective participation space for the public. When information about the text and discussion of the bill is not easily accessible, or when changes in substance occur without sufficient transparency, public trust in the legislative process can be eroded. However, given the urgent regulatory need, including to follow up on previous Constitutional Court rulings, a conditional constitutional approach with a procedural improvement order within a certain period of time seems more proportionate than the repeal of the entire law. This approach maintains the supremacy of the constitution and the principle of public participation, while avoiding legal vacuums that can have an impact on the governance of the country's defense.

### 3. Implications of the Verdict

The Constitutional Court Decision Number 81/PUU-XXIII/2025 presents significant implications in Indonesia's constitutional landscape, especially in the context of the formal examination of the formation of laws and their relationship with the principles of a democratic state of law. As a final and binding decision, the Court directly affirmed the validity of Law Number 3 of 2025 concerning amendments to the TNI Law from the aspect of formal constitutionality. The juridical consequence is that the debate on the procedural validity of the formation of the law is closed in the constitutional judicial forum. Within the framework of legal certainty theory, this strengthens the function of the Constitutional Court as the final interpreter of the constitution as well as the guardian of the constitution.

However, the implications of this ruling cannot be understood solely as formal legitimacy of the legislative product. From the perspective of the theory of the rule of law (*rechtstaat*) and the principle of constitutional supremacy, formal testing is an instrument of constitutional control over the procedure of law formation. This means that the legislative procedure is not just an administrative stage, but an integral part of the constitutional guarantee of procedural democracy. By still declaring the law *a quo* constitutional, the Court implicitly applies an approach that balances the stability of legal norms and the protection of the principles of participation and openness. This approach can be analyzed through proportionality theory, where the Court does not necessarily invalidate a law if a procedural defect is deemed not to have reached the degree of a serious and systemic constitutional violation.

The next implication is related to the precedent in the transition period of the 2019–2024 DPR membership to 2024–2029. The Court considered that the termination of the discussion by the Legislative Body of the House of Representatives before entering the discussion stage of the Problem Inventory List (DIM) with the government was an understandable action because of the expiration of the term of office of the members of the House of Representatives in the previous period. These considerations show the Court's recognition of the factual and institutional dimensions in the legislative process. From the perspective of institutional theory, legislation is the product of the interaction between legal norms and institutional political dynamics, including constitutional term limits.

Nevertheless, this precedent raises normative consequences that need to be observed. If the political transition is seen as a justification for the non-continuation of certain stages in the

legislation process, then stricter procedural standards are needed to ensure continuity and accountability. In the framework of checks and balances, the legislative branch of power remains bound by the principle of parliamentary constraint. The transition of periodization should not be a gray area that weakens procedural discipline in law-making. Thus, the implications of this decision encourage the need to strengthen the normative design of the legislation transition mechanism to remain in line with the principles of due process of law in the formation of laws and regulations.

The inclusion of the TNI Bill in the Priority National Legislation is seen by the Court as a form of good faith of the House of Representatives in seeking to resolve legislation that is considered urgent. From the perspective of deliberative democracy theory, this step can be interpreted as an effort to maintain the continuity of the public policy agenda. However, from the point of view of political representation, the membership regime of the House of Representatives 2024–2029 should not only continue the inherited agenda, but also conduct a substantive and procedural evaluation of the draft that has been prepared previously. This evaluation is a manifestation of the principle of prudence as well as the representative responsibility of legislative members who obtain a new mandate from the people.

Although there is no explicit obligation in the laws and regulations to re-evaluate the entire list of Prolegnas during the transition period, theoretically the practice is in line with the principle of constitutional due process. A democratic legislative process requires rationality, transparency, and accountability at every stage. Therefore, the implications of this decision underscore the importance of strengthening the internal mechanism of the House of Representatives to ensure that every bill that is continued in the new period has really gone through an adequate reassessment process, both in terms of urgency, substance, and public participation.

Another dimension that is no less important is the implications of the ruling on public participation standards in the formation of laws. The Court touched on the issue of access to information, official and unofficial agendas, and claims of public involvement by lawmakers. In the framework of meaningful participation theory, participation is not enough to be interpreted as the presence of a formal forum such as a public hearing meeting. Meaningful participation requires comprehensive access to information, adequate time to provide input, and feedback mechanisms that demonstrate that public opinion is rationally considered.

When the legislative agenda is not published transparently or there is a difference in information between official and unofficial channels, it has the potential to reduce the quality of public deliberation. From the perspective of democratic accountability theory, such conditions can create a gap between procedural claims and substantive quality of participation. The implications of this ruling, thus, are not only juridical, but also normative and institutional, as they encourage reflection on the quality of procedural democracy in the practice of national legislation.

Overall, the Constitutional Court Decision Number 81/PUU-XXIII/2025 affirms the enactment of Law 3/2025 while showing the limits of judicial intervention in formal testing. The Court takes a moderate approach while still respecting the policy space of the lawmakers, as long as there is no real and fundamental constitutional violation. From a constitutional design perspective, this position reflects a balance between judicial restraint and protection of the principles of a

democratic legal state. The long-term implications lie in the need to strengthen legislative procedural standards, the formulation of a more accountable periodization transition mechanism, and the institutionalization of truly meaningful public participation as part of living constitutional practice.

## Conclusion

Based on the overall analysis, the Constitutional Court Decision Number 81/PUU-XXIII/2025 affirms the formal validity of Law Number 3 of 2025 concerning amendments to the TNI Law while showing the limits of the Court's intervention in testing the legislation process. As a final and binding decision, the amar provides legal certainty for the enactment of a quo law. However, on the other hand, the Court's considerations and various dissenting opinions show that aspects of openness, meaningful public participation, and procedural consistency in the period of the DPR periodization transition still leave normative problems. This confirms that formal testing is not just an administrative issue, but part of a constitutional mechanism to maintain the quality of procedural democracy.

Thus, the implications of this ruling are not only juridical, but also institutional and theoretical. In the future, it is necessary to strengthen more measurable public participation standards, a more systematic mechanism for evaluating legislation during the transition period of DPR membership, and affirmation of the principle of prudence in each stage of law formation. Such efforts are essential to ensure that the legislative process truly reflects the principle of a democratic state of law, in which all branches of power, including the legislature, are subject to constitutional limitations and guarantee substantive public involvement, not just procedural formalities.

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