

LEGAL POLITICS OF THE IDEAL DEFENSE SECTOR IN DEALING WITH GLOBALIZATION CHALLENGES

Sudarto¹, Abd. Rachmat Budiono², Herman Suryokumuro³, Setyo Widagdo⁴

¹ Doctoral Candidate at Faculty of Law, Brawijaya University, Malang;

^{2,3,4} Lecturer at Faculty of Law, Brawijaya University, Malang,
INDONESIA.

childa.ub@gmail.com

ABSTRACT

The purpose of this research is to find out what the ideal form of political legislation in the defense sector in dealing with the challenges of the Globalization Era. This type of research is normative legal research. This normative legal research is also known as doctrinal law research, using several theories, namely the political theory of law, the theory of popular sovereignty, the theory of authority, the theory of participation, the theory of national resilience. To sharpen the analysis, the writer uses the conceptual framework of state forms, government systems and defense concepts country. The results showed that the Indonesian national defense system had three functions, namely the deterrence function, the enforcement function, and the recovery function. The deterrence function is the integration of defense efforts to prevent or negate the intentions of certain parties who wish to attack Indonesia. Enforcement function is the integration of defense efforts to defend, fight and overcome any military action of a country that threatens the country's sovereignty, the integrity of the Unitary Republic of Indonesia, and ensures the safety of the nation from all threats. The recovery function is the integration of national defense efforts carried out both military and non-military, to restore the state's security conditions that have been disrupted as a result of security chaos due to war, rebellion, or separatist attacks, vertical or horizontal conflicts, riots, terrorist attacks, or disasters natural. The current defense law instrument has been strived to be integrated with various aspects of law in various other sectors, be it social, economic, business, culture, education especially with the dimension of opening access for foreign interests in Indonesia.

Keywords: Legislation, Political Law, the Defense Sector, Globalization, National Resilience.

INTRODUCTION

The threats faced by Indonesia are communal conflicts and separatist movements. Communal conflict is born not only because of differences in values and culture, but more fundamental is because entities or communities are not able to find a higher form of interaction that overcomes their communal ties. This problem is even worse because people do not feel the presence of the state and the forms of political and economic ties to which they offer loyalty. Another form of threat faced by Indonesia is social unrest. This will be born when the community faces a dead end to overcome the crisis, especially economic and social.

Until now the general policy of national defense has not been formally formulated. Not only is this a strategic and political imperative that will guide the formulation of defense policy through the Department of Defense, but it is also a legal imperative as determined by Law No. 3 of 2002 concerning National Defense. In formulating the President's National Defense General Policy, he is assisted by a national security council in Law No. 3/2002 is called the

National Defense Council.²⁸ In the future the name of this council must be changed to the National Security Council. Some people said that to carry out the functions of this council, the Wantannas could be formed based on Presidential Decree Number 101 of 1999. National Defense Department (DPN) is different from Wantannas or the cabinet. A national security council is tasked with analyzing issues of threats, where threats come from, and how to deal with these threats.

To be operational, the national defense policy must be translated into some more concrete policies, which are also called defense policies, which are the responsibility of the Department of Defense, led by the Minister of Defense.²⁹ The essence of defense policy is policy making and management (management). The explanation includes formulation of defense strategy policy, defense force development policy (including procurement or procurement, fostering defense potential, development of defense technology and industry, defense budget allocation policy, and general policy on the deployment and use of Indonesian national army (TNI) force.

To strengthen the Indonesian nation so that they are ready to face threats both from within and from outside and ready to take the initiative steps in preparing human resources so that they do not dissolve in the tide of global change, the Ministry of Defense will establish a Center for National Defense Education and Training. This State Defense Training Center was formed in order to realize the development of Indonesian character and identity education. Fostering awareness of the defense of the state is very important to be continually improved in order to instill the value of defending the country, loving the motherland, being aware of the nation and state and being confident in Pancasila and willing to sacrifice for the nation and state.

All of these steps are based on the consideration that there is always a gap between the objectives to be achieved and the availability of resources to achieve these goals (the condition of Das Sollen is not in line with the conditions of Das Solin), but also to fulfill the political principles of the rights and obligations of the people in defense efforts country. What the Department of Defense did with the initiative to propose a draft law on national defense and security is an attempt to translate these principles into an operational system. This step confirms two things namely first to emphasize the authority of political authority in managing national defense, including in mobilizing the potential for defense interests. Second, protecting the rights of the people as non-combatants in accordance with the principles of the 1949 Geneva Conventions and their Protocols.

If you look at the geographical condition of Indonesia, which is one of the largest archipelagic countries in the world. The Navy is the most important part in the concept of Indonesian sea defense. But the Indonesian Navy itself is like running out of breath in protecting the territorial waters. Until now, more ships and weapons for the navy have been imported or purchased from abroad. But arms trade between countries is very dependent on the international political situation.

Institutional aspects and relations of authority are sensitive aspects because they contain political problems and power relations. Although legally regulated political and operational authority, this legal provision has not been implemented. Relations between the Department of Defense and Headquarters are still overlapping. The position of commander directly under the President has political and psychological implications in his relationship with the Department of Defense. Moreover, the Department of Defense still faces weaknesses in

²⁸ Law No. 3/2002 concerning National Defense, Article 15.

²⁹ Ministry of Defense and Security. Kebijakan bidang pertahanan menurut Undang-Undang No. 3/2002 dalam Reformasi Sektor Keamanan Indonesia (Jakarta: ProPatria, 2004), p. 47-80.

human resources, especially the limited civil capacity within the Department of Defense. The same thing happened in the case of the police which appeared to be a relatively independent institution. The principle that all security and defense instruments must be under a political authority that has political responsibility for the function of the instrument has not yet been realized.

Therefore in the future the government must reformulate the institutional-authority relations between political accountability and operational accountability so that democratic principles in the defense and security function can be realized. This is where the politics of law that harmonizes the spirit of democracy, sovereignty and legal certainty need to be built. The unification of political and operational responsibility is very easy to lead to various violations, including violations using the tools of violence. However, this does not mean that the Indonesian National Army (TNI) Commander and the National Police Chief do not have a channel to contribute their thoughts in the formulation of defense and security policies. A mechanism has been provided for this, namely through the national security council which in Law 3/2002 on National Defense is called the National Defense Council.

A national security council is tasked with analyzing issues of threats, where threats come from, and how to deal with these threats. The National Defense Department (DPN) provides advice to the President in making general policy on national defense, develops policies on the deployment of the defense component, and examines the risks of the policies set. But there are more fundamental functions. The chairman of the national security council is also an advisor to the president in the field of security who communicates daily with the president. In a crisis situation the existence of National Defense Department (DPN) is very necessary, especially when the government faces an emergency or urgent situation which must immediately be dealt with with all its risks, including when having to use instruments of violence and impose an emergency. Based on this, the author will analyze the ideal style of political law in the defense sector to face the challenges of Globalization.

RESEARCH METHOD

This type of research is normative juridical research which is a process to find the rule of law, legal principles and legal doctrines in order to address the legal issues encountered.³⁰ The research approach used is the conceptual approach, historical approach and comparative approach.³¹ The legal concept developed in this research is the politics of national defense law in safeguarding Indonesia's sovereignty in the era of globalization. The source of legal material used is primary legal material (legal material that has a determined legal authority and has binding power, consisting of statutory regulations), secondary (legal material that provides an explanation of primary legal material, such as academic texts, the results of legal research and others) and tertiary (legal materials that can provide instructions or explanations to strengthen primary and secondary legal materials, such as those derived from encyclopedias and legal dictionaries).

The technique of collecting legal materials in this research was carried out through the study of laws and regulations related to an inventory based on the hierarchy of laws and regulations, through library studies by conducting literature reviews related to this research and through literature review, both manually and electronically via the internet.³² The

³⁰ Marzuki, Peter Mahmud. *Penelitian Hukum* (Jakarta : Kencana Prenada Media, 2011), p.35.

³¹ *Ibid*, p. 138.

³² Philipus M. Hadjon. *Pengkajian Ilmu Hukum Dogmatik (Normatif)*, dalam "Yuridika" No. 6 Tahun IX Nopember–Desember Tahun 1994, (Surabaya: Fakultas Hukum Universitas Airlangga, 1994), p. 6.

analysis technique in this research is the content analysis technique, which is done by describing as it is for a condition or position of legal and non-legal propositions.³³

RESULTS AND DISCUSSION

Synchronization of Defense Sector Regulations

Legislation is often identified with the law or people often interpret the law is a statutory regulation. Actually, laws and regulations are only part of the law, because outside the legislation, there is still much to be learned in relation to law. Even in the legal system, statutory regulations are only one part of the legal substance sub-system. Other sub-systems are legal structure, and legal culture. Legislation consists of several types, which can be broadly divided into statutory regulations at the central level and legislation at the regional level.

Bagir Manan indicated that many people considered the law, laws and regulations as the same thing.³⁴ According to Bagir Manan, the law is part of the legislation. Legislation consists of laws and various other laws and regulations, whereas law is not just a law, but also includes several other legal principles such as Customary Law, Customs and Jurisprudence Law. While Solly Lubis mentions another term, legislation. Legislation is the process of making state regulations.³⁵ In other words, the procedures start from planning (design), discussion, approval or stipulation and finally the enactment of the relevant regulation. Solly Lubis disagrees with the terms "statutory regulations" or "statutory regulations", according to which "statutory regulations" means regulations regarding the procedure for making state regulations, whereas if what is meant is "regulations that were born from legislation" simply referred to as only rules.

Legislation and regulations based on Article 7 of Law No. 12 of 2011 concerning the Formation of Legislation in the following order:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Government Act / Regulation in Lieu of Law;
- d. Government regulations;

This mistake does not only belong to those who lay. Among jurists there is a legal theory (jurisprudence) that introduces the teachings of legism or positivism taught by John Austin³⁶ and Hans Kelsen³⁷ which states that the law is solely the will of the authorities (command of the sovereign) in the form of statutory regulations. There are no laws outside the law or regulations. This notion applies not only to the scientific community, but also to the judiciary. Even though Austin and Kelsen do not give the meaning of the command of the sovereign so narrow it is only limited to the laws and regulations, but also the court's decision.

Synchronization is the alignment and harmonization of various laws and regulations related to the existing and currently existing legislation that regulates a particular field. The process of synchronizing regulations aims to see the harmony between one regulation and another. Harmonization should ideally be carried out during the drafting of legislation. Observing the terms of harmonization and synchronization as described above, it can be concluded that

³³ Abdlatif and Hasbi Ali. *Perihal Kaedah Hukum*, (Bandung: Citra Aditya Bakti, 2010), p.9.

³⁴ Bagir Manan. *Membedah UUD 1945*. Editor Moh. Fadli. (Malang: Universitas Brawijaya Press. 2012), p.35.

³⁵ Solly Lubis. *Serba-serbi Politik & Hukum*. (Jakarta: Softmedia. 2011).

³⁶ John Austin. *Karakteristik Penalaran Hukum Dalam Konteks ke Indonesiaan*. (Bandung: CV Utomo, 2006).

³⁷ Hans Kelsen. *Pengantar Teori Hukum (Introduction to the Problem of Legal Theory)*. (Bandung: Nusa Media, 2012).

these two terms have almost the same meaning, namely the effort to realize harmony and overcome differences or conflict of laws for the sake of the unity of the legal system, both to the draft laws and regulations that are being made as well as legislation. invitation that has been valid. Harmonization and synchronization of law as a process in the formation of laws and regulations, overcoming matters that conflict between legal norms in legislation, so as to form laws and regulations that are synchronous, harmonious, harmonious, balanced, integrated and consistent and consistent and obedient principle.

The Minister of Defense stressed the importance and need to prepare defense early on through the synergy of national and regional defense. Although the presence of regional autonomy gives broad authority to the regions in managing their own households, the Minister said, the problem of national defense is the responsibility of the central government which is not decentralized. UU no. 23 of 2014 concerning Regional Government also states that absolute government affairs are government matters which are fully the authority of the Central Government. The role of regions in national defense aspects is very important. Regions can be entry points for multidimensional non-military threats. So the need for the development of non-military defense postures in the regions, which have capabilities including early vigilance, national defense, science and technology, economic, social, moral, and support for national defense. For this reason, there is a need to synchronize national defense policies between the central and regional governments within the framework of developing national defense awareness, "Ryamizard said.³⁸

Ideal Law Enforcement in the Defense Sector to Uphold State Sovereignty

The most obvious impact of corruption in the defense sector is the weakness of defense equipment and human resources in the defense sector which leaves Indonesia vulnerable to external threats. The situation will also have implications for the weakness of national borders, which causes foreign fishermen often violate Indonesia's Exclusive Economic Zone (EEZ) and exploit the marine wealth in it. As stated by the Ministry of Fisheries that Indonesia suffered a loss of not less than 9.4 Trillion rupiah per year due to fish theft by foreign fishermen. Al Araf Imparsial researcher, as quoted by Republika Koran 20 September 2019, assessed that if the culture of corruption in the military is allowed to stand, it will threaten the country's security. This is because corruption in the military is closely related to the abuse of the budget for the purchase of defense equipment which is commonly used by soldiers in securing the state. Al Araf assessed that the potential for a culture of corruption in the military is huge. Because, the military itself gets a sizable budget allocation in the field of operations and procurement. Al Araf noted, from the data he got, there were at least Rp 95 trillion that the state had disbursed for the budget until 2019.³⁹

The case that was raised was the disclosure of a case of alleged corruption in the sale of a strategic Sealift Vessel (SSV) to the Philippines by the Corruption Eradication Commission (KPK). In that case the KPK arrested the Managing Director of PT PAL Indonesia, the shipbuilder. The case proves the vulnerability of the defense sector to become a land for corrupt acts of corruption, especially related to the procurement of defense equipment.⁴⁰

A hand arrest operation took place on December 14, 2016 around 12:30 WIB. At that time, HST and MAO met with ESH at Bakamla's office to hand over around Rp2 billion in US dollars and Singapore dollars. For parties suspected of giving bribes, namely HST, MAO and FD, were charged with Article 5 paragraph 1 letter A, and Article 13 of the Anti-Corruption

³⁸ Ryamizard Ryacudu. *Visi dan Misi Pembinaan Teritorial TNI AD*. (Jakarta: Mabes TNI AD, 2003).

³⁹ Al Araf, et. a.l. *TNI-POLRI di Masa Perubahan Politik*. (Jakarta: Program Magister Uniiveritas Indonesia, 2008).

⁴⁰ Imparsial. *Reformasi Peradilan Militer*. (Jakarta : Imparsial, 2007), p.55.

Law. Whereas recipients of ESH bribes were charged under Article 12 letters a or b or Article 11 of the Anti-Corruption Law.

The potential for corruption in the defense sector through the purchase of armaments systems is enormous, ranging from purchases to maintenance. Corruption patterns occur in various forms. For example inflated the purchase price of defense equipment, the purchase of defense equipment under the specifications or trimming maintenance costs. However, so far the KPK itself which has great authority in investigating and investigating corruption has been difficult in investigating various allegations of corruption in the defense sector involving the military. So far, criminal cases involving members of the Indonesian National Army (TNI) will be settled in a Military court. This is as regulated in Law number 31 of 1997 concerning Military Justice, so that institutions such as the KPK have difficulty investigating allegations of corruption involving Indonesian National Army (TNI) personnel. In the context of connectivity justice, the existence of a corruption court actually has a great opportunity in the enforcement of corruption in the defense sector.

Normatively based on Law no. 30 of 2002 concerning the Corruption Eradication Commission, the anti-corruption organization actually has a strategic function in eradicating criminal acts of corruption because the KPK coordinates all investigations of criminal acts of corruption. With its authority the KPK can actually accelerate through the function of supervision of a number of criminal acts of corruption in the defense sector involving Indonesian National Army (TNI) personnel.

Corruption in the defense and security sector is as dangerous as corruption in other sectors. In addition to wasting resources, it also decreases the ability of defense and security institutions to provide security and defense services. The high risk in the defense and security sector seriously endangers the security of citizens and the country's sovereignty. There is one case of corruption in the domain of defense and security that received public attention and was resolved properly. A military court sentenced General Djaja Suparman to a four-year prison term that was found guilty of corruption of Rp. 13.3 billion. The case involving Djaja is related to the release of Kodam V / Brawijaya land assets in the Dukuh Menanggal Village, Wonocolo, Surabaya, which was affected by the project of making the Simpang Susun Waru-Tanjung Perak Toll Road.

Allegations of corruption cases in the procurement of the main weapon systems have also surfaced. For example, a coalition of non-governmental organizations (NGOs) consisting of Indonesia Corruption Watch (ICW), Kontras and Imparsial in March 2012 reported defense and security institutions to the KPK for alleged corruption in the procurement of Sukhoi fighter aircraft. However, until now the report has not been followed up. Apparently, the KPK and also other law enforcement institutions have not given high priority to the prevention and eradication of corruption in the defense and security sector.

One important principle in democracy is civil supremacy over military institutions. The number of countries with high, very high and critical corruption risks shows that civil supremacy over the military still seems to be an illusion. In other words, civil society fails to control the policies and behavior of defense and security institutions in managing their resources and governance. This IT study also shows the function of parliamentary control over institutions and policies is very weak. There is ambiguity, acute fear, scarcity of resources, inadequate institutional framework in the parliament which causes the control function is not implemented properly. The transition to democracy and a strong civil society is indeed difficult. But that does not mean can not be achieved. South Korea presents an interesting experience. Together with Taiwan, South Korea is two Asian countries whose risk of corruption in the defense and security sector is relatively low. Previously, South Korea was also a military regime. The process and path of democratic transition that they have taken can

be used as inspiration. Defense and security institutions that are free of corruption will soon become a new international value. This will be the standard of behavior in developing the strength of defense and security. There are two things that must be done so that our risk rating for corruption and security improves. First, improve the ability of the public to control defense and security institutions. An important part of this effort is to improve the ability of civil society such as NGOs, professional associations, and the media to demand transparency and accountability of defense and security institutions. Secondly, improvement of governance and security of institutions. There are five areas that need to be improved, namely politics, finance, personnel, operations, and procurement of goods and services. Anti-corruption safety nets must be developed in each of these areas.

Overall, countries categorized as A (very low) and B (low) the risk of corruption is a good role model in overcoming the risk of corruption in the defense and security sector. So, if we want to seriously overcome the risk of corruption in defense and security institutions, both of these efforts need to be done optimally so that the security of citizens and the sovereignty of the country is more guaranteed.

CONCLUSION

To face increasingly complex global challenges, the defense sector must increasingly get the attention of the state, which is realized by increasing the defense budget, which must always be balanced. The political law of the defense sector has now been prepared to face the challenges of the development of defense modernization that better utilize the development of the information industry. The current defense law instrument has been strived to be integrated with various aspects of law in various other sectors, be it social, economic, business, culture, education especially with the dimension of opening access for foreign interests in Indonesia.

SUGGESTION

Global threats in the defense sector still originate from land, sea and air, but the strengthening of the air defense base is a necessity in line with the rapid development of information technology. The country must have more attention in strengthening the air space-based defense sector to ward off and anticipate air attacks that are not always conventional weapons but rather technological attacks. This was done by strengthening regulations on protection of Indonesia's airspace and through consistent law enforcement.

REFERENCES

- [1]. Abdlatif, and Hasbi, Ali (2010). *Perihal Kaedah Hukum*. Bandung: Citra Aditya Bakti.
- [2]. Al Araf, (2008). *TNI-POLRI di Masa Perubahan Politik*. Jakarta: Program Magister Uniiiveritas Indonesia.
- [3]. Bagir, Manan (2012). *Membedah UUD 1945*. Editor Moh. Fadli. Malang: Universitas Brawijaya Press.
- [4]. Hans, Kelsen (2012). *Pengantar Teori Hukum (Introduction to the Problem of Legal Theory)*. Bandung: Nusa Media.
- [5]. Imparsial, (2007). *Reformasi Peradilan Militer*. Jakarta: Imparsial.
- [6]. John, Austin (2006). *Karakteristik Penalaran Hukum Dalam Konteks ke Indonesiaan*. Translated by Shidarta. Bandung: CV Utomo.
- [7]. Marzuki, Peter Mahmud (2011). *Penelitian Hukum*. Jakarta: Kencana Prenada Media.
- [8]. Ministry of Defense and Security, (2004). *Tingkatan kebijakan bidang pertahanan menurut Undang-Undang No. 3/2002 dalam Reformasi Sektor Keamanan Indonesia*. Jakarta: ProPatria.
- [9]. Philipus, M. Hadjon (1994). Pengkajian Ilmu Hukum Dogmatik (Normatif), dalam “Yuridika” No. 6 Tahun IX Nopember–Desember Tahun 1994. Surabaya: Faculty of Law, Airlangga University.
- [10]. Ryamizard, Ryacudu (2004). *Visi dan Misi Pembinaan Teritorial TNI AD*. Jakarta: Mabes TNI AD.
- [11]. Solly, Lubis (2011). *Serba-serbi Politik & Hukum*. Jakarta: Softmedia.

Law and Regulation

- [11]. Republik Indonesia, Law No. 3 of 2002 concerning National Defense, Article 15.
- [12]. Republik Indonesia, Law No. 23 of 2014 concerning Regional Government.
- [13]. Republik Indonesia, Law no. 12 of 2011 concerning Formation of Regulations and Regulations, Article 7.