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Central European Journal of International and Security Studies  
C/o Metropolitan University Prague  
Dubečská 900/10, 100 31, Prague, Czech Republic  
Tel.: +420 724 587 171, Fax: +420 274 817 190, [info@cejiss.org](mailto:info@cejiss.org)

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**METROPOLITAN**  
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A black and white photograph showing a person wearing a riot helmet with a clear visor. The person is reaching out with their right hand to place a single rose on a dark, reflective metal barrier. Another riot helmet is visible on the right side of the barrier. The background shows a park-like setting with bare trees.

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# Foreword

The works presented in this Special Issue: Indonesia, Security & Sovereignty were made possible by Dr Mohammad Hamad Al-Khresheh, the executive director at Experts of Academic Excellence Research Centre in the Hashemite Kingdom of Jordan. Dr Mohammad Hamad Al-Khresheh is an Assistant Professor at the Faculty of Social Sciences, Northern Border University, in the Kingdom of Saudi Arabia. He obtained his PhD in Social Science from University of Malaya and serves as editor and reviewer for an assortment of social science journals.

The specific articles in this Special Issue: Indonesia, Security & Sovereignty was based on the academic collaborate between Experts of Academic Excellence Research Centre, the Faculty of Social and Political Science, and Centre of National and Global Security Studies at Padjadjaran University in Indonesia. This resulted in the first international conference on security studies with the theme of *Security for Sovereignty*, which took place on 17-18 October 2018, in Bundung Indonesia. Interestingly, this scientific event discussed fundamental issues in relation to regional and national security such as politics and policies in the security sector, sovereignty discourse, civil-military relations, cyber security in addition to different non-traditional security issues.

# What Lies Beneath? Understanding Euro- Indonesian Security Relations and Efforts to Build National Security

*Mitchell Belfer*

The European Union's relationship to Indonesia is largely a reflection of the European Cooperation Agreement with the Association of South East Asian Nations (ASEAN) which was formalised in 1980. Economic and political coordination discussions have been held regularly ever since. Bilateral dialogues between the EU and Indonesia have included periodic reviews of political, economic and co-operation issues. A Framework Agreement on Comprehensive Partnership and Co-operation was signed on 9 November 2009 and entered into force on 1 May 2014. It was the first such agreement with an ASEAN country.

The Agreement provides the basis for holding regular political dialogue and sectoral cooperation and develops bilateral relations. The Agreement also provides the legal framework to engage and cooperate across a wide spectrum of policy fields, including human rights, political dialogue, trade. The first Joint Committee under the PCA took place in November 2016 in Brussels. A security dialogue was launched in May 2016 to strengthen cooperation in this area, including countering extremism and terrorism, on which a host of projects have been or are being carried out. These include counter-terrorism capacity-building and training, as well as civil society projects, for example targeting the prevention and countering of radicalisation. Back in 2005, the EU deployed the civilian Aceh Monitoring Mission (AMM) under the European Security and Defence Policy (ESDP), and

continued to contribute to the peace process through long-term capacity building, reintegration and police training programmes.

Indonesia is the largest economy in the Association of Southeast Asian Nations (ASEAN). It represents about 36% of the region's GDP and has the largest population (250 million inhabitants). Bilateral trade in goods between the EU and Indonesia amounted to €26.8 billion in 2017, with EU exports worth €10 billion and EU imports worth €16.7 billion. Bilateral trade in services between EU and Indonesia in 2016 amounted to €6 billion in 2016, with EU exports amounting to €4 billion and Indonesia's exports reaching €2.2 billion. The EU is Indonesia's fourth largest trading partner while Indonesia is the 5<sup>th</sup> most important EU partner in ASEAN and, in the same year, it ranked 30<sup>th</sup> in the overall EU trade worldwide. Indonesia currently benefits from trade preferences granted by the EU Generalised Scheme of Preferences, under which about 30% of total imports from Indonesia enjoyed lower duties.

*Editor's  
Analysis*

The EU has spent more than €500 million development assistance in Indonesia in the last ten years, in particular to promote basic education for all and good governance (public finance management and justice), and to support efforts against climate change and deforestation and trade. Since 1995, the European Union has made available €136 million in humanitarian aid, including over €60 million in response to the 2004 earthquake/tsunami in Aceh-Nias. The EU civil protection mechanism stands ready to support Indonesia and was deployed in January 2016 in order to improve prevention and preparedness to address forest and peatland fires.

Economic interaction and engagement occurs in context of trust and the anticipation of enhancing relations in political fields as well. As such, it is important to view EU-Indonesia relations as *en route* rather than having reached their potential. This is largely because both parties are only now truly discovering each other in strategic affairs, including the efforts made to build national security, both traditionally and non-traditionally, such as the armed forces contribution to prevent terrorist attacks.

## **Conclusion**

Indonesia represents an important trading partner for the EU. Yet, instead of viewing Indonesia instrumentally, in what Jakarta can provide for the EU, perhaps it is time to evaluate what Indonesia is

looking for in terms of its international engagements? In Europe it is clear: Jakarta is looking to be treated as an equal, a great regional power that can both chart its own political future and assist in solving international challenges like the scourge of Islamic radicalism and terrorism. Whatever its goals, it is important to *remember Indonesia* as a global actor in its own right!

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# Terrorism

# Prevention of Radicalism and Terrorism in Indonesia Through Law Enforcement in Terrorism Law

*Sugianto, Ahmad Rofi'i*

## **Abstract**

To protect its citizens from terrorism, the Indonesian government formulated a law to eradicate the act of terrorism. One of the reasons behind the birth of the Act was the bombing tragedy at Sari Club and Paddy's Club, Kuta Legian, Bali on October 12, 2002. This research aims to analyze the prevention of radicalism and terrorism in Indonesia through law enforcement in terrorism law. This research used a qualitative method where primary data were gained from observation, and secondary data were gained from various documents and media. In addition, this study also analyzes the legal perspective, namely the newly enacted terrorism law in 2018. This research found that terrorism crime is the result of the accumulation of several factors, not only by a psychological factor, but also economic, political, religious, sociological, and many others. The main problem in combating terrorism is about the duration of arrest and detention in the Bill on the Eradication of Criminal Acts of Terrorism. There is a difference in the duration of arrest and detention from the Criminal Code, Law no. 15 of 2013 on Combating Terrorism Crime and the Bill on the Eradication of Criminal Acts of Terrorism. The longer period increases the likelihood of human rights violation.

*Keywords: terrorism, radicalism, crime, law, Indonesia*



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## Introduction

Terrorism is an extraordinary crime that concerns the world today, especially in Indonesia. The recent terrorism in Indonesia has an ideological, historical, and political linkage and is part of the strategic environmental dynamic at the global and regional level. Although the act of terrorism that have occurred in various regions in recent years are mostly done by Indonesians and only a few outside actors, it cannot be denied, however, that the current act of terrorism is a combination of domestic actors and those who have transnational network<sup>1,2,3</sup>.

In order to prevent and combat terrorism, since long before the events that have been categorized as terrorism occurred in the world, the international and regional communities and various countries have tried to conduct criminal policy with criminalization systematically and comprehensively of the deed that categorized as terrorism<sup>4,5,6</sup>.

It is not merely an act of terror, but the criminal act of terrorism also violates human rights as a basic right which is inherent in human nature, namely the right to live and the right to feel safe and comfortable. Recognition of human rights is one of the manifestations of the concept of a legal state regulated in the provision of Article 1 Paragraph (3) of the 1945 Constitution. Prior to the amendment to the 1945 Constitution, the recognition of human rights is regulated in the provision of Article 28 of the 1945 Constitution. Whereas on post-amendment to the 1945 Constitution, the regulation on human rights is increasingly clarified and detailed as provided for in Article 28 and Article 28A-28J of the 1945 Constitution.

In seeking the fulfillment and protection of citizens' human rights from terrorism crime, the Indonesian government felt the need to form a Law on the Eradication of Criminal Act of Terrorism by preparing Government Regulation No. 1 of 2002 which on April 4, 2003, passed into Law of the Republic of Indonesia with No. 15 of 2003 on Combating Terrorism Crime<sup>7,8,9</sup>.

One of the reasons behind the birth of the Act was the bombing tragedy at Sari Club and Paddy's Club Kuta Legian Bali, October 12, 2002, which should be classified as the biggest crime in Indonesia from a series of terror. The tragedy is clear proof that terror is a very cruel act that does not take into account, disregard and genuinely ignore human values. Humans who do not know anything about the intent, mission, or purpose of the terrorists have been innocent victims. The innocent people only become the cost of human savagery that is not

*Sugianto*

*Ahmad Rofi'i*

won and is not superseded by acts of terror that occurred in Legian Bali. It reminds the public of the Black Tuesday incident, a bombing that destroyed the symbol of US superpower capitalism in the form of World Trade Center Tower (WTC) and US defense symbol, the Pentagon. The global public draws a common thread that the Bali tragedy and the US WTC case are the product of a terrorist movement that intends to undermine global peace, destroying the values of civilization, and the degrading of Human Rights.

## Literature Review

### *Radicalism and terrorism*

The term of radicalism is not rarely interpreted differently among interest group. Within the sphere of religious groups, radicalism is a religious movement that attempts to completely overhaul the existing social and political order by using the path of violence<sup>10,11</sup>. Religious radicalism departs from a political movement based on the most fundamental and fully literary doctrine free from compromise, taming, and reinterpretation<sup>12</sup>. While in the study of social science, radicalism is defined as a view that wants to make a fundamental change in accordance with its interpretation of social reality or ideology it embraces. Based on the study of the meaning of radicalism, radicalism is a neutral concept and not *pejorative* (harassing). Because radical change can be achieved through peaceful and persuasive ways, it can also be violent<sup>13</sup>.

Afdal, *et.al.*<sup>14</sup> state that fundamentalism is seen as an understanding of the need to return to the foundation of religion and use these basics as community life guidance. Therefore, the meaning of radicalism is not single but depends on the context. In the context of terrorism, radicalism is violence. But in the context of thought or ideas radicalism is not violence, so it does not matter so far as not followed by an act of violence. Theoretically, it explains how the shift from radicalism to terrorism moves from the concept of fanaticism and radicalism. In expressing, fanaticism and radicalization can appear in various forms, but generally, it is directly proportional to the reaction and the attitude of the opposing group. The action and reaction between the two opposite groups may be different but are generally close to the same degree and pattern. Violence will be fought with violence, and one of its forms can be a form of terrorism movement.

Meanwhile, the term of terror and terrorism have existed for a long time, namely during the Roman Empire in the first half of the first

century AD which at that time was ruled by Tiberius and Caligula. In addition, in the seventeenth century, the kingdoms of Europe, especially Spain suppressed Islamic organizations with the threat of violence, to follow the will of the kingdom or out of the land of Andalusia. Nevertheless, although conventional, the term of terror and terrorism became popular in the eighteenth century. In connection with that, Afdal, *et.al.*<sup>14</sup> states that terrorism is not new. Terrorism occurs all the time, which is nurtured and bred by injustice and oppression, and is associated with racial, sex, political or religious extremism, and sometimes a combination of more than extremism. However, the recent form of terrorism is more likely to be something related to religious fundamentalism<sup>15</sup>.

The word “terrorist” and “terrorism” come from the Latin word “*terrere*” which more or less means to shake or vibrate. The word “terror” can also cause horror<sup>16</sup>. Terrorism is a crime that cannot be classified as a common crime; academically, terrorism is categorized as an extraordinary crime and is also categorized as a crime against humanity. Considering the category, the eradication certainly cannot use ordinary ways. <sup>17</sup> Terrorism as a social phenomenon has evolved along with the development of human civilization. Ways used to do violence and fear are also increasingly sophisticated along with the development of modern technology. The process of globalization and mass culture becomes a fertile ground for the development of terrorism. The ease of creating fear with high technology and the development of information through extensive media, making network and act of terror more easily achieve its goals. According to Muladi<sup>4</sup>, based on its development, the forms of terrorism can be detailed as follows:

- a. Before World War II, almost all acts of terrorism consisted of political assassination against government officials;
- b. Terrorism in the 1950s that began in Algeria was carried out by the FLN that popularized “random attack” against innocent civilians. This was done to counter what they call Algerian Nationalist as “state terrorism”. According to them, murder with the aim of getting justice is not a matter of concern; even the target is innocent; and
- c. Terrorism that emerged in the 1960s and was famous for the term “media terrorism”, in the form of random attack against anyone for the purpose of publicity.

Garner<sup>18</sup> gives the definition of terrorism as: “The use or threat of violence to intimidate or cause panic, esp. as a means of affecting political conduct.” Terrorism is a notion that the use of violent and fearful means is legitimate to achieve the goal. Associated with terrorism, known as the so-called terror process, which, according to Syafaat<sup>19</sup> has three elements, namely:

- a. Act or violent threat;
- b. The emotional reaction to the terrible fear of the victim or potential victim; and
- c. Social impacts that follow violence or the threat of violence and fear that comes later.

Terrorism is a notion that using violent ways and causing fear are a legitimate way to achieve a goal<sup>19</sup>. Thus, according to Nasir Abas<sup>20</sup>, terror is an evil reaction that is considered “eviler” by the perpetrator, so it is not interactionism and can be grouped into hate crimes. Terrorism can be interpreted as the use or threat of using planned, prepared and launched physical violence unexpectedly against a direct target, which is usually noncombatant to achieve a political goal. The definition of terrorism in the long formulation is proposed by James Adams<sup>21</sup>, namely:

“Terrorism is the use or threat of physical violence by individuals or groups for political purposes, either for the sake of or against the existing powers, if the acts of terrorism are intended to shock, paralyze or intimidate a bigger target group than its immediate victims. Terrorism involves groups seeking to overthrow certain regimes to correct group/national grievances, or to undermine the existing international political order “.

According to Hafid Abbas<sup>22</sup>, terrorism is the use of force or unlawful violence against a person or property to intimidate or suppress a government, civil society, or part thereof, to impose a social or political purpose.

Indonesia and various countries in the world have been willing to criminalize terrorism long before the event of September 11, 2001, which destroyed the World Trade Center in New York, USA and bomb explosion in Kuta, Bali, on October 12, 2002. Both events were conducted by using violence or violent threat against the safety of the human souls indiscriminately against the victims. Terrorism is an extraordinary crime that requires also handling by utilizing extraordinary measure.

## **Security**

Security, according to Suryohadiprojo<sup>23</sup>, is to protect from threat originating from within the country. Likewise, Born<sup>24</sup> defines security as an action to combat an offensive from society. According to Born<sup>24</sup>, pursuant to articles 41 and 42 of the UN charter, the security measure is directed against the pressure of the riot (peace breaker).

The occurrence of terrorism has broadened the perspective in viewing the complexity of existing threat and influenced the development of the conception of security. The threat to security is no longer merely a military threat but also include political threat, social threat, economic threat, and ecological threat. These problems and threats are then classified as part of non-traditional security issues<sup>25</sup>.

The concept of security itself is derived from the word safe, where simply the term security can be interpreted as an atmosphere free of all forms of threat or danger that cause anxiety and fear. In the traditional study, security is more often interpreted in the context of physical threats. Perwita<sup>26</sup> sums up this tendency with his famous statement, “a nation is in a safe state as long as the nation can’t be forced to sacrifice the values, it deems essential (vital), and if it can avoid war or, if forced to do so, can come out as the winner.”

## **Research Method**

This research uses the qualitative method. This method is chosen based on the purpose of this study that wants to examine and analyze in depth the research phenomenon, namely the prevention of radicalism and terrorism in Indonesia through law enforcement in terrorism law. We consider that the issues concerning radicalism and terrorism, as a form of threat to state security, need to be analyzed through in-depth observation and proper documentation study.

This study consists of primary data which is the result of observation, and secondary data which is a study of various documents and media about the event of radicalism and terrorism that occurred in Indonesia. In addition, this study also analyzes the legal perspective, namely the newly enacted terrorism law in 2018.

For the technique of data validity, we use the source triangulation technique, where the various obtained sources are then compared and checked for validity. Unrelated or non-credible data are then removed or not used as an analysis material.

*Sugianto*

*Ahmad Rofi'i*

## Discussion

### *The crime of terrorism*

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Terrorism is a disaster that made by man (man-made disaster). Generally, terrorism is in the form of organized crime committed by a group of people to pursue political objectives. As a political tool, in its history, terror has been used by both oppressed and oppressive parties. One party has used to mention its allies who commit terror as a freedom fighter and call the other party as a terrorist or saboteur. Philosophically, Hardiman<sup>27</sup> says that terror comes from death. In all objectivity, the causes or consequences, terror is a subjective experience because everyone has their fear threshold. Everyone is afraid of death, but the fear is different, not only by subject but also by the situation. The fear of death cannot only be eliminated but can also be enlarged. This technique is called terrorism and terrorism is the politics of death.

Bomb bombing is one mode of terrorism that has become a common phenomenon in some countries. Terrorism is a transnational crime, organized and even an international crime that has a wide network that threatens national and international peace and security. The Indonesian government is in line with the mandate as stipulated in the Preamble of the 1945 Constitution. It protects the whole Indonesian nation and the entire Indonesian blood sphere, promotes prosperity public, enlightens life of the nation, and participates in maintaining a world order based on freedom and perpetual peace and social justice, is obliged to protect its citizen from any criminal threats whether national or international. The government is also obliged to defend the sovereignty and maintain the integrity and national integrity of any form of threat from both inside and outside. Therefore, it is necessary to uphold law and order consistently and continuously.

The crime of terrorism is a criminal offense which in Dutch criminal law uses the term *strafbaar feit*, sometimes *delict* also derived from the Latin *delictum*. The criminal law of *Anglo-Saxon* countries uses *offense* or *criminal act* for the same purpose. Therefore, the Indonesian Criminal Code is based on Dutch WvS, so the original term is the same as *strafbaar feit*. Nowadays, all laws have used the term of a crime<sup>28</sup>. Attempts to combat terrorism require the hard work of the Indonesian Government through its law enforcement agencies and the participation of the community to prevent and combat terrorism. According to Sudarto<sup>29</sup>, a criminal offense is a basic definition in criminal law and is also a juridical sense. The term criminal offense is used as a substitute

for “*strafbaar feit*” and until now the lawmakers have always used the term criminal offenses in legislation. Dogmatically, the principal issue relating to criminal law is three things:

- a. Prohibited conduct;
- b. The person doing the forbidden act; and
- c. Criminal penalty against the offender.<sup>28</sup>

A criminal act is an act that is prohibited by the rule of law, a prohibition which is accompanied by a threat (sanction) in the form of a specific penalty, for whoever violates the prohibition. It may also be said that a criminal act is an act which is prohibited and threatened by criminal law. It should be remembered that the prohibition is directed to the act (i.e., a circumstance or incident caused by the behavior of the person), while the criminal threat is directed to the person who causes the incident<sup>30</sup>. According to Simons, *strafbaar feit* (literal translation: criminal event) is an act against the law related to someone’s error (*Schuld*) who is capable of being responsible. The error is meant by Simons as a widespread error that includes *dolus* (intentional) and *culpa late* (careless and negligent). From this formula, Simons mixes elements of a criminal act that include act and unlawful nature, act and criminal liability that includes intentional act, negligence, and accountability<sup>31</sup>. According to C.S.T. Kansil and Cristine S.T. Kansil<sup>32</sup>, crime or offense is an act that contains five elements, namely:

- a. There must be a behavior (*gedraging*);
- b. The behavior must be in accordance with the description of the law (*wettelijke omschrijving*);
- c. The behavior is unlawful behavior;
- d. The behavior can be attributed to the perpetrator; and
- e. The behavior is threatened with punishment.

The crime of terrorism is an act that fulfills the elements of a criminal act in Law no. 15 of 2003. The elements of the crime of terrorism contained in Law no. 15 The year 2003 will be discussed in two parts: first, elements of terrorism crime, and second, a criminal act related to terrorism crime.

- a. Any person who deliberately uses violence or threat of violence creates an atmosphere of terror or fear of a widespread or massive victim by expropriating the liberty or loss of life and property of another person, or resulting in damage or destruction of vital objects a strategic or environmental or public facility or an international facility, shall be subject to death penalty or life im-

prisonment or imprisonment of a minimum 4 (four) years and a maximum of 20 (twenty) years. The elements are:

1. Deliberately;
2. Using violence or threat of violence;
3. Creates an atmosphere of terror or fear of people in wide-spread or causing mass casualties by seizing independence or loss of life and property of others; or
4. Causes damage or destruction of a strategic vital object or living environment or public facilities or international facilities.

(Article 6 of Law no. 15 of 2003)

- b. Any person who deliberately uses violence or threat of violence intends or creates an atmosphere of terror or fear of a widespread or massive victim by depriving the liberty or loss of life or property of another person, or to cause damage or destruction of the objects, vital strategic objects, or the environment, or public facilities, or international facilities, are punishable with the maximum imprisonment of a lifetime. The elements are:

*Deliberately*

- Uses violence or threat of violence;
- Intends to:
  - I. Causes an atmosphere of terror or fear of people in wide-spread or
  - II. Causes increase mass casualties by seizing independence or loss of life and property of others or
  - III. Causes damage or destruction of vital strategic objects or living environment or public facilities or international facilities.

(Article 7 of Law no. 15 of 2003)

Article 6 of Law no. 15 The year 2003 above, includes in the “material offense” which is emphasized on the forbidden consequences of loss of life, loss of property, or damage and destruction. As for the damage or destruction of the living environment is the contamination or destruction of the unity of all space with all things, power, circumstances, and living things, including humans and their behaviors, affecting the viability of human’s life and welfare and other creatures. Terrorism has some fundamental features, and among other things is terrorist activity carried out by means of violence (e.g. bombing, hostage, etc.) to impose its will, and it is a means (not an end); the target of attack is

public places or vital objects, such as shopping centers, airports, or stations. The victim is not picky, and their activities are very professional to trace their track. According to Muladi<sup>4</sup>, in the typology of terrorism there are several kinds, among others:

- a. *Epiphenomenal* terrorism (terror from below) with unplanned features neatly, occurs in the context of a fierce struggle;
- b. *Revolutionary* terrorism (terror from below), aimed at revolution or a radical change of the existing system with characteristics are always a group phenomenon, leadership structure, ideology program, conspiracy, paramilitary element;
- c. *Subversive* terrorism (terror from below). politically motivated, pressuring the government to change policy or law, political war with a rival group, removing certain officials who have characteristics done by the small group, can also be individual, unpredictable, sometimes difficult to distinguish whether psychopathologist or criminal; and
- d. *Repressive* terrorism (terror from above or state terrorism), motivated to suppress an individual or a group (opposition) unwanted by oppressors (authoritarian or totalitarian regimes) by means of liquidation with traits evolved into period terror, terror apparatus, secret police, persecution techniques, the spreading of suspicion among the people, and the rides for paranoid leader.

The crime of terrorism as a special crime as a special law means Law No. 15 of 2003 regulates materially and formally all at once so that there are exceptions to the principle generally set forth in the Criminal Code or the Criminal Procedure Cod *lex specialis derogat lex generalis*. The enforcement of *lex specialis derogat lex generalis*, according to Mertokusumo<sup>33</sup>, must meet the criteria:

- a. That the exception to the law is general nature, is carried out by the same rules with itself, namely the law; and
- b. That the exemption is set forth in the special law, so the exclusion applies only to the exclusion declared, and the non-excluded part remains in force as long as it is not incompatible with the enforcement of the special law.

While criminalization of the Criminal Act of Terrorism as part of the development of criminal law can be done in many ways, such as:

- a. Through the evolutionary system in the form of amendments to the articles of the Criminal Code;

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- b. Through the global system through complete arrangement outside the Criminal Code including the specialties of its procedural law; and
- c. The compromise system in the form of incorporating a new chapter in the Criminal Code on the crime of terrorism.

It does not mean that the presence of a special case in crimes against state security means that law enforcement has more or no authority solely to facilitate the proof that a person has committed a crime against state security, but such deviations are due to the much greater is the security of the country that must be protected. Similarly, the arrangement of chapters present in the special rules must be a complete order. In addition to these provisions, Article 103 of the Criminal Code states that all rules including the principles contained in Book I of the Criminal Code also apply to criminal regulation outside the Criminal Code as long as the regulation outside the Criminal Code does not regulate otherwise<sup>34</sup>.

#### *Terrorism as an extraordinary crime*

The terrorist view clearly illustrates how the relationship between terrorism and radicalism is evident, among other things, from the fact that a number of terrorism cases involving individual, group or even organization that is perceived as having a radical ideology. In the case of terrorist attacks that took place in the twin towers of the World Trade Center (WTC) of the United States on September 11, 2001, for example, the United States made Osama bin Laden with his Al Qaeda group who had a radical ideology as the accused perpetrators behind the attack. Similarly, terrorist attack in Indonesia from the Bali Bomb case, there are actors, such as Abdul Aziz alias Imam Samudra alias Qudama who is considered to have a radical ideology.

Terrorism crime is one form of international dimension crime that scares the society. In many countries around the world, there has been a terrorist crime in both developed, and developing countries, the act of terror committed have taken its toll indiscriminately. This led to the United Nations (UN) at its congress in Vienna in Austria in 2000 with the theme of The Prevention of Crime and The Treatment of Offenders, among others, mentioning terrorism as a development of act by violence that needs attention. According to Muladi<sup>4</sup>, terrorism is an extraordinary crime that requires also handling by utilizing extraordinary measures for various reasons:

- a. Terrorism is the act that creates the greatest danger to human rights. In this case the right to live and the rights to be free from fear;
- b. The target of terrorism is random or indiscriminate that tends to sacrifice innocent people;
- c. The possibility of using weapons of mass destruction by utilizing modern technology;
- d. The tendency of negative synergy between the national terrorist organization and international organization;
- e. The possibility of cooperation between the terrorist organization and organized crime both national and transnational;
- f. May compromise international peace and security. Terrorism as a crime has evolved into a cross-country.

Crime occurring within a country is no longer merely seen as the jurisdiction of one country but can be claimed to include jurisdiction over more than one country. According to Atmasasmita<sup>35</sup>, in its later development may lead to a conflict of jurisdiction which may disrupt international relations between interested countries in handling cases of criminal acts that are cross-border territorial. Terrorism crime uses one form of transnational crime that is very threatening to tranquility and peace of the world. Indonesia as a constitutional state, in law enforcement of certain criminal act especially terrorism crime strongly prioritizes the basis of legislation that is characterized by legal certainty and justice. Enactment of Law no. 15 The year 2003, increasingly exposes its weaknesses when applied in field practice.

The meaning of terrorism is shifting and expanding the paradigm that is as an act originally categorized as a crime against state now includes against the acts called a crime against humanity where the victims are innocent people, all done with the violent offense (violence as a goal), violence and threat of violence. The existence of a feeling for fear or intimidating to public and governmental whose ultimate goal is related to the political offense, namely to make a change to the political system prevailing in a country. Such an impact is widespread due to the act of terrorism, it is necessary to make efforts to protect the citizens and the interests of the state by making the signs of national law, one way to ratify the development of international law on countering an act of terrorism<sup>7</sup>.

The crime of terrorism is an extraordinary crime. This “extraordinary” degree is also one of the reasons for the issuance of a Govern-

ment Regulation of anti-terrorism law and its application retroactively for the Bali bombing case. The definition of extraordinary crime is a gross violation of human rights which includes crime against humanity and genocide (in accordance with the Rome Statute). The crime of terrorism is included in an extraordinary crime by reason of the difficulty of disclosure because it is a trans-boundary crime and involves an international network. The development of international crime into the twenty-first century seems to be on the rise and is already a discussion among the international community and has also been made the UN agenda. These developments prove that any local or national crime that has international aspect will always be of concern to the international community, either through the UN or non-UN international agencies<sup>7</sup>.

Terrorism is an act of crime against humanity and civilization that poses a serious threat to the sovereignty of the country, the danger to security, world peace and harms the welfare of society. Terrorism is a well-organized, transnational form of crime and is classified as an extraordinary crime that is indiscriminate<sup>36</sup>. According to Cesare Baccharia in his book *On Crimes and Punishment*, “the true measure of crime is the harm done to society”, applying the criminal law is like slicing its own meat. The meaning of this short sentence, of course, needs to be remembered in the determination of criminal law policy against the eradication of a certain crime, which is considered very harmful to society (extraordinary crime)<sup>37</sup>. However, according to Rummelink<sup>38</sup>, every ruler should be alert and aware that criminal law can only be utilized if existing tools are no worse than deviations from behavior to be overcome.

### *Criminal Law Policy in Countering Criminal Act of Terrorism*

The legal system according to Friedman<sup>39</sup> in the theory of “*Legal System*”, the component of the legal system includes three elements:

- a. The Substance rule of law, encompassing all written and unwritten rules, both material and formal laws;
- b. The structure of the law, encompassing legal institution, legal apparatus, and law enforcement system. The legal structure is closely related to the judicial system implemented by a law enforcement officer, in the criminal justice system, law enforcement application carried out by the investigator, prosecutor, judge and advocate; and

- c. The legal culture is the emphasis of the culture generally, the habits, opinions, a way of acting and thinking that direct the social forces in society.

Regular change through the good legal procedure in the form of legislation or judicial decisions is better than irregular change by violence alone. Since both change and order (regularity) are the twin goals of a developing society, the law becomes a tool that cannot be ignored in the development process.

Law is a tool for maintaining order in society. Given its function, the nature of the law is conservative, meaning the law is preserving and sustaining that has been achieved. Such a function is necessary for every society, including a developing society, because here too there are results that must be nurtured, protected, and secured. However, developing a society that in our definition means a fast-changing society, the law does not have enough function to do so, must also be able to help the process of changing society. An old-fashioned view of the law that emphasizes the function of maintaining order in a static sense, and emphasizing the conservative nature of the law, assumes that the law cannot play a significant role in the process of renewal.

Crime is a universal phenomenon, meaning it is not only a national problem but also a problem that is everywhere. Because crime is harmful in the life of the community, it is necessary for a criminal offense to be sanctioned or punished accordingly, and therefore a process is necessary to establish that an act is a crime by an authorized institution by imposing a criminal sanction. Renewal of criminal law in the concept of criminal politics according to Sudarto<sup>29</sup>, has three meanings, namely:

- a. In a narrow sense, the meaning is the whole principle and method which is the basis of reaction to a criminal offense in the form of a criminal;
- b. In a broad sense, the meaning is the overall function of the law enforcement apparatus, including the working of the court and the police;
- c. In the broadest sense, the meaning is the whole policy, which is done through legislation and official bodies, which aims to enforce the central norms of society “.

The eradication of terrorism in Indonesia is not a matter of law and just law enforcement because it is also related to the social problem of the state, culture, economy, and its relation to the defense of the

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country, there are many ways or efforts that can be done by society and the state to eradicate terrorism and crime prevention others. However, such efforts cannot completely eradicate the crime; it may only reduce its quantity. The policy of combating terrorism according to Hardiman<sup>27</sup> must always be based on several principles, namely:

- a. Protection of civil liberty and the respect and protection of individual rights. Restriction on such democratic rights can only be made against rights that are not included in the *non-derogable rights*, temporarily and in the public interest; and
- b. Limitation and prevention of abuse of power by the state. This can be done by fully applying the principles of checks and balances in the process of formulation and decision-making, the specialization of the functions of the implementing agency and the availability of public accountability mechanisms for policy implementer.

The regulation of terrorism crime includes 2 (two) aspects, namely prevention (*anti*) and eradication (*contra*). In the case of prevention, terrorist activities cannot be done only through legal approach, but they cover all aspects of society. Actions of terror are (usually) motivated by feeling unfair treatment, oppression, and certain belief, so the prevention should be able to eliminate it by realizing justice and liberation from poverty which at the operational level can be done with early detection (*early warning system*). Meanwhile, the counter-terrorism regulation aims to eradicate, expose, and handle cases of terror act and perpetrators in the form of determining the actions included in terror act, handling procedure, from investigation to the judiciary, as well as sanction, threatened to the perpetrators of terror<sup>27</sup>.

Several bombing incidents that occurred in some parts of Indonesia, especially the Bali Bombing, became the background or momentum determining the formation of a legal umbrella that regulates the eradication of act of terrorism. The presence of hundreds of victims, both Indonesian citizens and foreign nationals put Indonesia in a situation of no choice but to seriously cope with terrorism. At the urging of various parties, finally, the government issued Government Regulation no. 1 and Government Regulation No. 2 the Year 2002 on Combating Terrorism Crime<sup>40</sup>. Actually, at that time the House of Representatives has had the Anti-terrorism Bill which is in the discussion phase. Because the discussion took a long time and in order to avoid a legal vacuum, Government Regulation No.1 Year 2002 was passed by the gov-

ernment together with the House of Representatives into law through Act No. 15 In 2003. Apart from being a special law on the criminal material, Law no. 15 The year 2003 is also formal criminal law.

Crime prevention effort is essentially an attempt to secure the community (*social defenses*) so that people can avoid crime or at least control crime that occurs to be within the limits of community tolerance. With regard to the humanitarian and social problem, many efforts have been made to cope. One of the efforts to overcome the crime committed is to use the penal tool as criminal law with a sanction in the form of criminal. Crime prevention using criminal law is the oldest way, as old as human civilization itself<sup>41</sup>. However, this does not mean that the use of criminal as a way to combat crime.

Policy to make good penal code is essentially inseparable from crime prevention objective. So the policy or politics of criminal law is also part of criminal politics, then criminal law politics is synonymous with the meaning of “crime prevention policy with criminal law.” The crime prevention effort with criminal law is essentially also part of law enforcement (especially criminal law enforcement). Therefore, it is often said that politics or criminal law policy is also a part of law enforcement policy. One way to deal with terrorism is by using criminal law (*penal policy*).

### **Conclusion**

Terrorism crime is the result of the accumulation of several factors, not only by a psychological factor, but also economic, political, religious, sociological, and many others. The main problem in combating terrorism is about the duration of arrest and detention in the Bill on the Eradication of Criminal Acts of Terrorism. There is a difference in the duration of arrest and detention from the Criminal Code, Law no. 15 of 2013 on Combating Terrorism Crime and the Bill on the Eradication of Criminal Acts of Terrorism. The longer period increases the likelihood of human rights violation.

In addition, the authority of investigator in arresting, detaining, intercepting phones contained in the Draft Law on Combating Criminal Acts of Terrorism need to be restricted and tightened again in order to avoid abuse of authority and violation of human rights committed by the investigator.

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# Can the Concept of Terrorism Be Understood Objectively?

*Arfin Sudirman, Nuning Kurniasih*

## **Abstract**

This article examines the discourses of the term politically-driven terrorism and how it can be defined objectively. By using library research, this paper argues that it is necessary for those who study on terrorism to add the word global in terrorism concept to describe the pattern of transnational terrorist movements and ideology. This transnational movement indicates that the threat of terrorism does not only cross-national borders but also the actors are no longer bound by the ideology of a particular country but purely a transnational ideology that may not have been realized but only aspired by the leader of his/her group instead. The ease of international migration and information dissemination through globalization has been exploited by these terrorist groups to spread their extreme ideology and violence movement not only in the US, UK, European Union, middle east region but also in Indonesia. Thus, the politically-driven concept of terrorism on the basis of the origin of the actor, both geographically and religiously, in the form of US led-Global War against Terrorism is an oversimplified concept and irrelevant to understand the underlying cause of terrorism objectively.

*Keywords: terrorism, transnationalism, ideology, globalization, objective threat*

## **Introduction**

The terrorist attack to the World Trade Center (WTC) in New York and the Pentagon in Washington D.C. on September 11<sup>th</sup>, 2001 was

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considered as one of the deadliest non-military attacks in the 21<sup>st</sup> century. It claimed approximately 3000 people died with 40 people perished on the plane that was hijacked and crashed in Pennsylvania. The attack was the largest terrorist attack in history that occurred in US domestic territory. Subsequently, the world was divided as sovereign countries had diverse responses that took place on the powerful state in the world<sup>1,2</sup>.

The US took immediate response by conducting counteroffensive efforts against a global terrorist group that responsible for the 9/11 attack. One of them was listed in the National Security Strategy 2002 (NSS 2002) or known as the Bush doctrine that consists of two aspects: Firstly; a new approach in the winning idea of the war on terror by spreading the values of democracy to the rest of the world especially in Arab Muslim countries; Secondly, the policy of preemptive war, which lead to preventive action-strike before being attacked — through military operations<sup>3,4</sup>. This doctrine replaces military doctrine United States of deterrence that had been used since the Cold War era. The Bush Administration considers the strategy of deterrence is not sufficient against the intangible enemy. A year after the war in Afghanistan, the Bush doctrine of the preemptive strike was officially mentioned in the White Paper of National Security Strategy 2002<sup>3,5,6,7</sup>.

However, in the years that follow the 9/11, terrorism became the new threat for global security. Not only it happened in New York, but it also happened globally as we witnessed how UK, Spain, Indonesia, Thailand, Philippines and numerous countries in the Middle East suffered the same threats with the US. The terrorist act that occurred in those countries has similar pattern and motivation: religious-based ideological movement that is performed by an organized and violent act against the western symbol, regardless the location of the attack and the background of the perpetrator.

As a result, there are no single approaches that carried out by the states in combating terrorism threat. The US may use heavily on military forces and perceive terrorism act as a threat to national sovereignty, while Indonesia may employ police forces and perceive terrorism act as a criminal act. In terms of collective security in the regional security level, the complexity of combating terrorism become more significant. As stated by Oldřich<sup>8</sup> the lack of shared threat perception among EU members in the fight against terrorism is due to several factors such as historical background, ongoing scholarly debates in perceiving

terrorism, demographic trends and the absence of terrorist threat assessment. Therefore, this article is aimed to examine the trend of terrorism act and analyze the discourses of the term terrorism that tend to be politically-driven and how it can be defined objectively.

Arfin Sudirman

Nuning Kurniasih

### **Theoretical Review**

According to Goldstein<sup>9</sup>, terrorism is an action in the form of threats of violence committed by a certain group to create an atmosphere of fear and danger with the intention to attract the attention of all elements of society both at a national or international level which has political goals. That is, the political interests of the group are expected to be heard and get the attention of the public and the government by doing organized violence. Terrorism refers to politically motivated violence that operates across borders by civilian or symbols of government authority or the state as a target. Terrorism means an activity that causes psychological pressure and fear of the government and society. Globally, the types of terrorism can be divided into terrorism committed by non-state actors where the action is done on their own initiative without the pressure or support from any party. Then the second type is *sponsored state terrorism* as practiced by Hamas and Hezbollah, supported by Iran. However, the phenomenon of global terrorism is not a new issue if we look at the events in the Middle East, Europe, South Asia and the bombing of the World Trade Center in 1993. The researcher used the definition of terrorism proposed by Goldstein<sup>9</sup> as a basic guide on the characteristics of terrorism such as patterns of activity, motivation, and classification according to the prospective study of International Relationship. This definition is used so that researcher can see the development of local terrorism movement, regional to the global level.

In general, terrorism is an attempt to influence the level of fear through the threat both verbally or real action. Terrorists attempt by acts of violence, to manipulate fear in achieving strategic objectives for political purposes. Terrorism can be categorized into national and international terror based on the scale of the action. National terror is terror aimed at the parties that exist in a certain territory and state power. International terror is terror directed against any other country outside the nation or state region inhabited by terrorists<sup>10</sup>. The definition of terrorism proposed by Kegley and Wittkopf<sup>10</sup> also shows the same pattern with the definition proposed by Gold-

stein<sup>9</sup>. Both are seen from the perspective of the study of International Relations.

By definition also, according to Katona<sup>11</sup>, the discourses on terrorism has been widely argued by academics, politicians, security experts and journalists. Some people focus on organizational methods and operations while others emphasize the motivations and characteristics/modus operandi of acts of terrorism. To this day there is no consensual definition of terrorism because of differences in perceiving terrorism threat itself. But according to him, the characteristics of terrorism minimal have three important elements: firstly, violence primarily addressed to civil society; the second is the motivation in which the objectives are politically charged such as replacing the legitimate government regime, changing the power of society, changing the economic order and also for religious purposes. Thirdly, the target. Usually the target of civil society or even in the form of government symbols. These three things distinguish between acts of terrorism and open war or civil rebellion. The reason this article uses the definition that is put forward by Peter Katona<sup>11</sup> is similar as the two previous reasons.

This article argues that both Goldstein<sup>9</sup>, Kegley and Witkopp<sup>10</sup> and Katona<sup>11</sup> provides a basic definition of the main characteristics of terrorism concept. This has been the result of the difficulty that faced by the sovereign government, especially the law enforcers and military forces in combating the threats of terrorism: the abstract and intangible form of terrorism, or put it this way: whether it's a military threat against the sovereign state (if so, who is the leader and where are they?) or just a mere criminal act? Therefore, the definitions that need to be put forward objectively are very important to be cited for this article to have a solid basis on the definition and classification of terrorism in the world.

Those definitions will also help another researcher in searching for data that is relevant to the characteristics of the global terrorist movement in the world. As Jelínek<sup>12</sup> discussed that there are two issues relating with the contemporary terrorism namely the growing trend of integration between international terrorism with organized crime as sociological problem and secondly the term of "foreign terrorist fighters" that could potentially promote radical and violence ideology upon their return to the origin country that eventually threatens national and regional security. Those two issues can be considered as a variety of threat perception in perceiving terrorism act depends on the characteristic of the ideology and the movement.

Strategically, according to Neumann and Smith<sup>13</sup> terrorism is intended as a strategy to create the disorientation in society. Terrorist attacks are conducted to show that the government is no longer able to guarantee the security for its citizens. By doing this, the terror group trying to separate the government from society and aims to alter stability and security to make panic, confusion and widespread chaos. Besides that, the other purpose is not only to discredit the government as a security guarantor but also to confuse the public. After the community became disbelieved with the government's ability and then separated from their ties to the government, the terror group now has an opportunity to reconstruct collective identities and societal preferences as they wish after disorientation, terrorism is expected to provoke the state to conduct repressive feedback and ultimately further alienate society so that the terrorist group can achieve legitimacy.

Terrorism is the peak of the *violence*, "*terrorism is the apex of violence*". It could be violence without terror, but no terror without violence. Terrorism is not similar to intimidation or sabotage. Targets of intimidation and sabotage are generally immediate, whereas terrorism is not. Victims of acts of Terrorism are often innocent people. The terrorists intend to create a sensation for the public to pay attention to what they stand for. Terror action is not the same as vandalism, whose motive damages physical objects. Terror is different from the mafia. Mafia action emphasizes the "*Omerta*" or shuts up, as the oath. *Omerta* is an extreme form of loyalty and solidarity groups in the face of other parties, especially the ruling.

In contrast to Yakuza or Costa Nostra mafia that emphasizes the code of *omerta*, the modern terrorist groups such as Al Qaeda, MILF, and Jamaah Islamiyah are instead often issuing statements and demands. They want to attract the attention of the public and use the mass media to voice the message of their struggle. However, later, terrorists increasingly require a large investment in its global activities, so that they do not like to claim his actions, in order to make efforts to raise funds for their activities hiddenly<sup>13</sup>.

However, terror or Terrorism does not always identical with violence or suicide bombing method. As argued by Narozhna and Knight<sup>14</sup>, violence or suicide terrorism does not imply irrationality of the actor but rather a rational calculation planned by the organizations and leaders conducting this tactic. Terrorism act by using suicide bombing must not understood and perceived heavily on political and

securitized agenda but also deeper societal sources on why and how the suicide bombing is very common in terrorism act. Therefore, suicide terrorism must be interpreted contextually by taking the political complexity, material, economic, structural gap, and other social factors into account. Once the definitions and characteristics of terrorism are described by some International Relations experts, in the following paragraphs this article will explain the history of development or the evolution of global terrorism movement ranging from the characteristics of ancient terrorism movements which is still national to modern, which has demonstrated the transnational characteristics.

### Discussion

The history of Terrorism has been evolved since the past centuries, marked by a form of pure crime of murder and threats aimed at achieving certain goals. Its development begins in the form of fanaticism of the creed that then turns into murder, whether done individually or by a group against a ruler considered a tyrant. The killing of these individuals can already be said to be a pure form of Terrorism with reference to the history of modern Terrorism. Although the term of Terror and Terrorism started to be popular in the 18<sup>th</sup> century, the phenomenon is not new<sup>13</sup>.

Periodically, Weinberg and Eunbank<sup>15</sup>, divide the evolution of global terrorism movement into four waves: (1) *Modern Terrorism* which arose in times of World War I and World War II; (2) *Anticolonialism and Nationalism* are emerging as the face of the occupation spontaneous resistance, especially in the period after World War II; (3) *The Age of Terrorism Begins*, which arose as a result of post-war economic recovery marked by the process of industrialization and development of modern technology in the 1960s; (4) *The New Terrorism* characterized by the Iranian revolution of 1979 which led to radical movements for non-state based on religion.

The first wave of modern terrorism has been identified by Weinberg and Eunbank<sup>15</sup> is terrorism that is not based on religious fanaticism, but rather leads to the logic that is a crime to use science in the manufacture of weapons and the action of attack. The concept they used is “small groups could now kill large number”. Modern terrorism can be found starting from the end of the 19<sup>th</sup> century perched in the middle of the 20<sup>th</sup> century. Modern terrorism is known as political terrorism. This modern terrorism is known to the public thanks to the perfor-

mance of the mass media of Europe and North America at the time of World War I (1914-1918) broke out, they preached to the public about the terrible conspiracy of terrorist secrets that is to destroy a government and destroy all forms of authority. This ultimately created public fear of all forms of threat from terrorists, especially the threat of bombings and the assassination of famous political figures such as the Italian King Umberto in Monza. Terrorist threats are growing faster and more complex as civilization and technology progress.

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Still, according to Weinberg and Eunbak<sup>15</sup>, a wave of global terrorism appeared particularly since the Iranian revolution in 1979, the emergence of the Taliban who managed to expel Soviet troops from Afghanistan and the important thing is the collapse of the Soviet Union in 1991. In this phase, the ideology of religion serves as a consolidating force of parties who wanted to fight for identity and existence after the breakup of the Soviet Union and the end of the cold war. Soviet defeated in Afghanistan inspired new struggles and strengthen the growing religious tension existed a fundamentalism movement against the hegemony of American power who singly dominated and controlled the world according to the wishes and interests of America itself. From this, it can be concluded that the main thing that distinguishes terrorist group by the fourth generation of previous generations is that the group did not hesitate to make civilians (*non-combatants*) as the target of violence.

For example, the Iranian Revolution in Lebanon which have an impact on the rise of Islam into the political sector, the suicide bombings by terrorist groups on religious grounds such as the Liberation Tigers of Tamil Eelam in Sri Lanka and the rebellion that took place in Chechnya, and the organization of Al-Qaeda under the leadership of Osama bin Laden who thought that the United States and its allies was weaker than the Soviet Union and had a fear in dealing with holy warriors such as the Taliban. The main indicator of global terrorism is Al-Qaeda's attack on 9/11 which then fueled violence is similar across the world, including in Indonesia.

Today, most international political and security experts may agree that terrorism has become a real threat to global security in the 21<sup>st</sup> century. Although some scholars may still debate this claim: does terrorism promotes counter-hegemonic movement committed by a non-state actor? Or is it just a violence act (either committed by a non-state actor or supported by sovereign state) to create an atmosphere or a fear of terror/uncertainty as for their goal?<sup>16</sup>

The events of 9/11 and the Global War on Terror imposed by the US as a retaliation to the threat of terrorism indicates the difficulty to understand the term of terrorism comprehensively. The lack of common threat perception or shared-knowledge on the concept of terrorism creates a politically-driven and subjective definition of terrorism, and as a result, the unilateral military campaign of the US-led Global War on Terror was inevitable at that time<sup>17</sup>. Terrorism emerges as a symbol of society's hatred marginalized by US hegemony. This collapsing world emerges as a result of the accumulation of global imbalances that terrorists' group might claim as their motives are caused by US domination in all aspects of life. US foreign policy that tends to hostile have double standards in supporting authoritarian regimes in their favor (as if having *common values*) while on the other hand suppressing regime that is not in line with US interests, poverty, and global inequality is rated as a trigger of terrorism<sup>18</sup>.

According to Lutz and Lutz<sup>19</sup>, the search of consensual definitions of global terrorism is seeking with a policy-oriented output. They claim that attacks by terrorist groups-as marginalized groups-aim to achieve their political goals against the domination of a hegemon state. When their political interest is constantly ignored by the sovereign states, violent tactics is the only resolution as we saw in 9/11 event. However, the cause of acts of terrorism sometimes varies depending on the purpose and ideology of their struggle. One of the most significant factors is their inability to face the dominance and political pressure of superpowers like the US. The feelings of frustration and the inability of an individual or a group to make a change of the fact that the US is very dominant hegemonic-power could result in the act of violence. This phenomenon was sometimes exploited by the state in the form of state-supported-terrorism (as happened in Libya and North Korea) with the same political purpose. Therefore, the key to tackle violence by terrorist groups begins with the fulfillment of security at the individual level (and not at the unit/country level).

The difficulties faced by policymakers when faced with the threat of terrorism are the intangible form of terrorism itself so the subjectivity of the policymakers in determining what and who is the real terrorism that threatens security is inevitable. This subjective factor that often raises the conceptual debate between the community (elements of civil society, academia, and mass media) with the government. One thing that might distinguish terrorists from independence fighter is the way

they launch a random attack with political goals and has no sympathy from the public. But one thing is clear, terrorism in an intangible threat that needs to be identified objectively so that it can be addressed proportionally<sup>20</sup>.

According to Kiras<sup>21</sup>, the concept of global terrorism emerged in the 21<sup>st</sup> century where the expansion of the movement, both the idea of radicalism, actor, methods of movement, bomb-making techniques, logistics, and action, has spread throughout the world without barriers borders. This happens as a result of advances in technology and information. For example, actors of 9/11 in the US were students of the Middle East which establish communication with Islamic leaders in the Middle East and the US. In Indonesia, the terrorist leaders are Malaysian citizens who have radical ideologies from Afghanistan. If *Gerakan Aceh Merdeka* or Aceh Independent Movement (GAM) commit acts of terrorism in Indonesia is related to the separatist movement and does not spread beyond national borders. While acts of terrorism in Bali, Indonesia in 2002 conducted by the Malaysian citizens with regard to the conflict in Palestine and has a chain of command from Afghanistan. Therefore, it is called global terrorism because the threat of terrorism no longer sees the origin of the actor, the location of the action and the source of its ideology.

According to Kiras<sup>21</sup>, there are three factors that turn terrorism into a global issue. Firstly, the development of air transport in which the flow of goods, capital and human faster because of the progress of communication technology and information and the increasingly affordable transportation costs between countries. Secondly, the shared ideology and interests around the world in countering a hegemonic state. Globalization also contributes on things that are immaterial such as ideas that form a network of society to facilitate the community groups and build communication with each individual that eventually leads to certain public opinion and bond or loyalty outside their nationality. For example, such as raising the sympathy and solidarity and to encourage cooperation to establish a common or transnational state. Thirdly, is a television and media coverage such as cable TV and internet in broadcasting the "Theater of Terrorism" uncensored and worldwide. Television has reached far coverage of terrorism act. Coverage of live news or video streaming that portray the detail of the events could potentially trigger acts of terrorism (such as the oppression in Palestine and Iraq), or act of terrorism itself can be easily accessed by anyone directly.

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Based on those above it can be understood that the threat of terrorism can no longer be geographically and religiously restricted because its movement has become an integral part of globalization. Advances in science and technology, access to transportation and movement of people, goods, and ideas no longer know the obstacles in the form of state territorial boundaries that terrorism was a global phenomenon as facilitated by globalization itself. Thus, to put the terminology of Global in Terrorism is the way that terrorism is an objective threat because the phase of the movement of terrorism is currently at the stage of globalization.

For example, in Indonesia, the influence of global terrorism based on religion can be seen from a study conducted by Al Chaidar<sup>22</sup>. According to him, the entry of global terrorism in Indonesia cannot be removed from the role of "Alumni Afghan" which is a special name to describe a number of people in Indonesia who have fought or want to get training in Afghanistan - an Islamic state in Central Asia - during the period of the 1980s to the mid-1990s. They were Muslim activists from various elements of the Muslim movement in Indonesia who, with their own initiative or collectively, helped the Afghan Muslim struggle while fighting against the Soviet Union between 1980-1990. They entered the Pakistan-Afghanistan border, precisely in Peshawar before been entering the battlefield (Jihad). But there were many stages through which these Mujahideen pass before they go down in the battlefield. There were several Mujahideen who entered training camps in training packages. There was also a direct student jihad University led by Asy-Syahid Abdullah Azzam, the rest following a brief training between 3 to 6 months. After the Afghan jihad completed at that time, marked by the destruction and the decline of the Soviet Union from Afghanistan, the mujahideen were trained and fought back to the homeland of Indonesia; these are called the Afghan Alumni or Veteran.

Those who perform Jihad, which originated from Indonesia, mostly from among the group Darul Islam or Indonesia Islamic State or *Negara Islam Indonesia* (NII) from factions fi-sabilillah, one of them was Imam Samudra. These men brought a modest provision to conduct Jihad on the international scene in order to fight against infidels. Communists or Communism is considered by Muslims as simplistic is a cogency that godless and this is called *Kuffar* (the anti-God or infidels, denies the existence of God, have a god but Allah). Meanwhile, the people who were moved to help the Afghan warriors in driving out

the Soviet troops were called Mujahideen, who were formed based on the belief that they were fighting in the way of Allah or Jihad. Jihadists called Mujahid and in the plural-called Mujahideen<sup>22</sup>. Therefore, acts of terrorism that occurred after 9/11 in Indonesia is difficult to be separated by a factor of events that occurred abroad particularly the middle east conflict.

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In addition, the significance use of the term global terrorism in this article was to define the differences with domestic terrorism-such as separatist GAM and *Operasi Papua Merdeka* or Papua Independence Movement (OPM)-emerging in Indonesia, especially after the events of 9/11 and the Bali Bombing in 2002. According to Widjajanto<sup>23</sup>, global terrorism can be characterized through four perspectives: (1) strategy of asymmetric conflict where there is a significant power imbalance of actors involved in the war so that it can use indirect strategy and attack; (2) terrorism as a form of crimes against humanity that must be resolved by involving international law; (3) the accessibility of terrorist actors to the proliferation of weapons and WMD technology in the form of biological, chemical and nuclear weapons and; (4). Seeing the pattern of international terrorism has turned into three main typologies: religious militancy, idolism, and ethnonationalism as occurred in the continent of Asia, Africa, the Balkans, the Middle East and the Soviet.

## **Conclusion**

To conclude, it is necessary for all researcher that interested to study on Terrorism to add the word global to terrorism to describe the pattern of transnational terrorist movements. This transnational movement indicates that the threat of terrorism does not only cross-national borders but also the actors are no longer bound by the ideology of a particular country but purely a transnational ideology that may not have been realized but only aspired by the leader of his/her group instead. The ease of international migration and information dissemination through globalization has been exploited by these terrorist groups to spread their extreme ideology and violence movement not only in the US, UK, European Union, middle east region but also in Indonesia. Thus, the politically-driven concept of terrorism on the basis of the origin of the actor, both geographically and religiously, in the form of US led-Global War against Terrorism is an oversimplified concept and irrelevant to understand the underlying cause of terrorism objectively.

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# The Use of Unmanned Aerial Vehicle to Support Counterterrorism in Indonesia

## A Case Study at 51<sup>st</sup> Air Squadron in 2016-2018

*Afirus Nurul Fuadi, Widya Setiabudi Sumadinata, Dadan Suryadipura*

### **Abstract**

Several cases in dealing with terrorism in Indonesia involve utilization of Unmanned Aerial Vehicles (UAVs) operation from 51<sup>st</sup> Air Squadron. However, the use of UAV in counter-terrorism operations is controversial in general, particularly weighing between the effectiveness of the results achieved and the potential for Human Rights violations. The study was carried out with descriptive analysis approach. While the technique of collecting and testing data validity by means of interviews, observation, documentation and triangulation methods. From the study conducted, it is concluded that UAV utilization in counter-terrorism operations by Indonesian authorities has been proven to be very effective, efficient and technically does not violate Humanitarian Law and Human Rights, because UAVs utilization is limited to perform specific duty in terms of carrying out observations and reconnaissance. Furthermore, the UAV operations are not configured and equipped with weaponry so that it will not cause potential harm or casualties either on its own or the opponent's side.



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*Keywords: UAV, counter-terrorism, national security, effectiveness and controversial*

## **Introduction**

Terrorism issues have increasingly become the focus of world security in recent decades. This issue cannot be separated from the development of national security theory where terrorism is one of the non-traditional security issues concerned globally. Since the events of the World Trade Center (WTC) in New York, the United States on September 11, 2001, which claimed thousands of lives, terrorism has been a global issue that influences political and security policies of all countries in the world.

*Afirus Nurul  
Fuadi*

*Widya Setiabudi  
Sumadinata*

*Dadan  
Suryadipura*

Indonesian Armed Forces/Tentara Nasional Indonesia (TNI), as mandated in the Republic of Indonesia Law Number 34 of 2004 on TNI, within the framework of Military Operations Other Than War (MOOTW), states that one of the TNI's role is to combat terrorism. In addition, in the Antiterrorism Act, which was just passed in May in 2018, replacing Republic of Indonesia Law Number 15 of 2003 on the Eradication of Criminal Acts of Terrorism, it is stated that the role of the TNI in combatting terrorism is no longer to assist counterterrorism operations under the command of the Indonesian National Police (POLRI), but the role has been direct and more active within the framework of the MOOTW (Republika Daily: 2018).

The Indonesian Air Force/TNI Angkatan Udara (TNI AU), as an integral part of the TNI, has established a specific counterterrorism unit, namely the Bravo 90 Unit which is a unit under the Detachment Bravo, Korpaskhasau. In addition, the TNI AU also has another unit which has been proven to perform well in counter-terrorism support operations in Indonesia. The unit is 51<sup>st</sup> Air Squadron, which operates UAV. The existence of 51<sup>st</sup> Air Squadron is not yet widely known because it is still a relatively new unit established within TNI AU, but its role in supporting of handling terrorism has been proven in real terms. Information and data obtained from the 51<sup>st</sup> Air Squadron's UAV sent to the command post of the Task Force for Combating Terrorism is highly accurate and provides vital input for the effort to suppress terrorist groups or the release of hostages held by terrorists<sup>1,2</sup>. However, the use of UAV in combating terrorism still reaps controversy particularly weighing between the effectiveness of the results achieved and

the potential for Human Rights violations. Thus, research on the utilization of UAV to support counterterrorism operations in Indonesia is important to be carried out. In addition, no previous studies that specifically discuss similar issues in Indonesia have been conducted.

Previous research entitled 'Role of the Indonesian Air Force in Tackling the Threats of Global Terrorism in Indonesia' discussing in general, counterterrorism role of TNI AU by establishing the Bravo 90 Korpaskhasau Unit was written by Connie<sup>19</sup> Similar studies, regarding the use of military power in combatting terrorism, were carried out by Jones<sup>3</sup>, Erbay<sup>4</sup>, Hughes<sup>5</sup>, and Syaiful<sup>6</sup>. In addition, several studies conducted by Marbun<sup>7</sup>, Mckendrick<sup>8</sup> and John<sup>20</sup> have analyzed and debated the identification of legislation governing the role of combatting terrorism by the military while few other studies have emphasized that combatting terrorism cases is better handled by the police rather than by the military. These conclusions have been concluded from some research conducted by Mengko<sup>9</sup> and Goh<sup>10</sup>. However, both researchers also agreed that military power is still needed to support the counterterrorism operations by the police. Anjani<sup>11</sup> has conducted research discussing the success of the United States in the utilization of UAV in combating terrorism in Pakistan Post-9/11.

Based on the phenomena conveyed above, the authors are interested in conducting research on the utilization of UAV in supporting role to combat terrorism in Indonesia. Through this research, it is expected to get a better overview on the controversies between effectiveness and the potential of human rights violations on the utilization of UAV by the 51<sup>st</sup> Air Squadron in supporting counter-terrorism operations in Indonesia.

### **Literature Review**

Terrorism according to Adji<sup>12</sup> comes from the Latin "terrere" which means "making vibrate or vibrating". According to the 1973 UN Convention, Djari<sup>13</sup>, terrorism has been defined as any form of crime actions shown directly to the state with the intention of creating a form of terror against certain people or groups of people or communities. In Law Number 5 of 2018 on Amendments to Law Number 15 of 2003 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 on Eradication of Criminal Acts of Terrorism into Law, Article 1 states that Terrorism is defined as an act using violence or threats of violence that causes widespread atmosphere of terror or fear, which can cause mass victims, and/or cause damage or destruction to strategic vi-

tal objects, the environment, public facilities, or international facilities with ideological, political motives or security disturbances. Referring to the above definitions, actions by KKB in Papua may also be classified as an act of terrorism because there is a clear threat of violent acts which potentially and leads and creates an atmosphere of terror and fear to residents in Kimberly and Banti villages widely.

The House of Representatives/Dewan Perwakilan Rakyat (DPR) and the Government agree on the involvement of the TNI in combating terrorism. The agreement was set forth in Law Number 5 of 2018 on amendments to Law Number 15 of 2003 on Eradication of Terrorism Crimes. TNI involvement is defined in Article 43 in the form of three paragraph. Paragraph (1) states, "The task of the TNI in overcoming acts of terrorism is part of Military Operations Other Than War." Then paragraph (2) states, "In overcoming acts of terrorism as referred to in paragraph (1) carried out in accordance with the duties and functions of the TNI." Paragraph (3) states, "Further provisions regarding the implementation of overcoming terrorism as referred to in paragraph (1) are regulated by a Presidential Regulation/Perpres.

Barry Buzan<sup>14</sup> describes National Security and defines it as, "Security is freedom from threats and the ability of the state and society to maintain their independent identity and their functional integrity to the forces of change, which they consider hostile." The point of security is survival and includes a large number of concerns about the conditions of existence. From the above information, the emphasis on the definition of national security is freedom from threats and the ability of the state to maintain its existence to safeguard and protect the sovereignty and people<sup>15,16</sup>.

Terrorism, people smuggling, environmental crime, human rights crime are few examples of transnational crimes which have shown a sharp increment and has emerged in a wider spectrum into international security issues. The cross-linkage that takes place at the process of globalization, regional and domestic change has formed a complex spectrum of international and domestic threats. Based on the criteria of security issues, Buzan<sup>14</sup> divides security into five dimensions, namely political, military, economic, social and environmental dimensions. Each security dimension has different security units, values, characteristics and threats.

Security Approach from the Realist perspective presupposes that the object of security is the state and the international system structure is

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anarchic, and in order to secure its sovereignty its military capability is increased, supported by the strength of its weapons on the basis of political calculations. Tjarsono<sup>17</sup> argues that the Realists look into the military as an important part of the security approach in maintaining its sovereignty. The role and function of the military can be defined as:

1. Prestige Power: a country shows its military superiority through mastering new technology with destructive power that can thrill opponents.
2. Deterrent Power: convinces the opponent of the consequences that will be faced when carrying out undesired military action.
3. Defensive: protect yourself from enemy forces.
4. Coercive Diplomacy: forcing another country to follow the wishes of one country to or not to carry an action.

The Air Power theory by William Billy Mitchell confirms that “In the future, no nation can call itself great unless its air is properly organized and provided for, because its air power, both from a military and economic standpoint, will not only dominate the land but the sea as well.” The theory asserts a country that is well organized and prepares its air power will be able to protect its land and territorial waters. Utilization of UAV to support air power, especially in terms of monitoring and observing not only on the airspace but also on the sea and land areas from potential threats. As from the definition, UAV is an aircraft or air vehicle which does not require the presence of pilots in the aircraft to fly it, because it can be remotely controlled by an operator from a considerable distance. Such control methods make UAV able to minimize risk factors, without having to worry about the safety of the pilot’s life. UAV’s design and features can be thoroughly pre- configurable and flown effectively to infiltrate the opponent’s territory.

Arlina<sup>18</sup> states in ‘International Humanitarian Law (IHL)’, there are five basic principles used as the basis of the rules contained in the IHL. The five principles are:

1. Military Necessity. It means that a disputing party has the right to take all actions that can result in the success of a military operation, but in its implementation, it is not justified if it violates the provisions contained in International Humanitarian Law.
2. Proportional Principle. This principle exists to avoid excessive damage of civilian objects that are in and around the battlefield.

With this principle in place, military actions are limited to using their power reasonably so that they can avoid unnecessary damages.

3. **Humanity.** This principle exists to avoid unnecessary suffering for victims of war. Where combatants are prohibited from committing violence which can cause excessive suffering on the part of the victims. The Den Haag regulation also states the prohibition on the use of weapons which can do excessive damage to the victim.
4. **Limitation Principle.** This principle advocates limiting the means, equipment, and methods of warfare carried out by the parties to the dispute. This principle includes rules regarding the prohibition of the use of weapons which are considered to have mass damage effects without being able to distinguish between civilian objects and the military.
5. **Distinction.** This is a principle which divides the population of each party who fights into two major groups, namely Civilian and Combatant. Combatants are a group of people from each warring country who actively participate in combat such as the army, while the civilian population is a group of people who have no right to participate in combat.

*Afirus Nurul  
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*Widya Setiabudi  
Sumadinata*

*Dadan  
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In the study of International Humanitarian Law, human life is an aspect that must be protected and appreciated by all parties, especially those who are at war. This law teaches that “taking hostages is nobler than hurting; hurting is nobler than killing.” Departing from this thought, the existence of UAV is a threat to this principle. Until now, there is no specific regulation governing the application of UAV. What has been used as a justification for those who disagree with the use of UAV, is the components applied to UAV instead of UAV itself. One example is the application of cruise missiles on Harpy UAV owned by Israel which violates Intermediate-Range Nuclear Force Treaty (INF Treaty) because the missile reach exceeds the rules set by the INF Treaty which is 500 km.

## **Methodology**

This research is carried out with descriptive analysis approach. Sources of data are obtained from the results of interviews with informants and the results of observations from predetermined sources. While the data collection techniques used in this study include:

1. Observation. Observations made by researchers are by going directly to the field to observe the behavior and activities of individuals at the research site.
2. Interview. In this study, the subjects interviewed were the Commander of 51<sup>st</sup> Air Squadron, Commander of the Supadio Air Base, Operations Staff Officer of Indonesian Air Force Headquarter, Planning Staff Officer of Indonesian Air Force Headquarter, Secretary of Indonesian Air Force Justice Service, and the Secretary of Indonesian Navy Justice Service.
3. Document. Documents are complementary to observation and interview techniques in data collection.

Data validity techniques used by the researcher were carried out with the Triangulation Method Technique where includes interviews, documents, and observations. Triangulation Method is used as a process to establish the level of trust and data consistency, as well as a tool for data analysis in the field. According to Peter Hough <sup>21</sup> Triangulation technique is a search for quickly testing the data that already exists in the interpretation to strengthen and improve evidence-based policies and programs.

## Discussion

In Indonesia, Military Operations Other Than War (MOOTW)/Operasi Militer Selain Perang (OMSP) is stated in article 10 of the Defense Law No. 3/2002, but the explanation regarding the types of MOOTW only appears in article 7 of the TNI Law No.34/2004. MOOTW focuses on preventing war, resolving conflicts, peace and supporting civilian authorities in responding to domestic crises. MOOTW may also involve both elements of war and non-war operations in situations of peace, conflict, and war. Furthermore, in Law No. 34/2004, the task of the TNI in the MOOTW is stated. Elucidation of article 6 paragraph (1) letter c says: that the TNI as state defense's tool and functions as a criminal act and recover means that TNI's forces together with other government agencies function to assist the government's function to overcome conditions that disturb state's security due to insurgency, communal conflict, riots, terrorism, illegal activities and so on.

This type of MOOTW is divided into 14 types of operations, which include:

- i. Operations in order to overcome armed separatist movements.

2. Operations in order to overcome armed rebellions.
3. Operations in order to overcome acts of terrorism.
4. Operations in order to secure border areas.
5. Operations in order to secure strategic vital national objects.
6. Operations in order to carry out the tasks of world peace in accordance with foreign policy.
7. Operations in order to secure the President and Vice President of the Republic of Indonesia and their families.
8. Operations in order to empower defense areas and their supporting forces early in the framework of the universal defense system.
9. Operations in order to assist government tasks in the area.
10. Operations in order to assist the National Police of the Republic of Indonesia in the framework of the duty of security and public order regulated in the law.
11. Operations in order to secure state guests at the level of Head of State and representatives of Foreign Governments who are in Indonesia.
12. Operations in order to help overcome the consequences of natural disasters, displacement and the provision of humanitarian assistance.
13. Operations in order to assist in the search and help in accidents (search and rescue).
14. Operations in order to assist the government in securing shipping and aviation against piracy, piracy, and smuggling.

*The Use of  
Unmanned Aerial  
Vehicle to Support  
Counterterrorism*

The implementation of these MOOTW tasks is required to be based on the country's political policies and decisions determined by the President/Head of Government. With these policies or regulations, TNI can carry out the MOOTW's operations legally, and the Government can allocate budget for its implementation. In accordance with the explanation above, the duty of handling terrorism has been included the TNI's role within the framework of the MOOTW.

Some of the counterterrorism operations by TNI involves UAV Aero-star from 51<sup>st</sup> Air Squadron. 51<sup>st</sup> Air Squadron is a unit of TNI AU under the command of Air Force Operations Command (Koopsau I) based at Supadio Air Force Base, Pontianak, West Kalimantan. Responsibilities and duties of 51<sup>st</sup> Air Squadron which are listed in the Organizational Principles and Air Squadron Procedures of Unmanned Aircraft are to prepare and operate UAV to carry out activities/control operations, border surveillance, surveillance, mapping, and aerial photography.

In carrying out this task, the 51 Air Squadron performs several functions, namely:

1. Carry out operations, training and maintenance tasks for UAV, flight crew and facilities to improve operational readiness of aircraft personnel and defense equipment.
2. Lead, coordinate, control border areas, carry out mapping, air intelligence reconnaissance operations and activities in the defense area, carry out retrieval and sending data/aerial photography above the outer islands of Indonesia, border areas, natural disaster areas, and conflict-prone areas.
3. Carry out guidance on personnel in their units.
4. Carry out air intelligence operations as directed.
5. Prepare personnel with special qualifications, such as intelligence background, certification of airborne observers, computers skills and ability in education and training.
6. Conduct coordination and cooperation with relevant agencies inside and outside the UAV Air Squadron.

The counterterrorism operations that has been conducted by 51<sup>st</sup> Air Squadron include the pursuit of terrorist king Santoso in the Gunung Biru area in Tangkura Sub-district, Poso Regency, release of hostages from terrorists from the Abu Sayyaf group on the border of North Kalimantan-Malaysia and rescue of Papuans from Armed Criminal Group/*Kelompok Kriminal Bersenjata* (KKB) in Banti Village and Kimberly Village, Tembagapura, Mimika, Papua. This Armed Criminal Group if viewed from the activities and effects caused can also be classified as acts of terrorism because it creates an atmosphere of terror and fear, and potentially may involve a large number residents as victims.

Counterterrorism operations which involve UAV in the implementation of its operations are also carried out by other countries. As an example, United States (US) uses UAV in combating terrorism in Pakistan. According to research conducted by Anjani<sup>11</sup> entitled 'Analysis of the Use of Unmanned Aircraft (Drone) in the United States Counterterrorism Policy in Pakistan Post-9/11', it is stated that Americans utilized MQ-1B Predator and MQ-9 Reaper UAVs in their operations in Pakistan. MQ-1B Predator is a UAV with the capability of information gathering required for intelligence activities. The MQ-9 Reaper is primarily capable of "hunter or killer" mission and is also used as secondary support for intelligence activities.

During Pakistan Counterterrorism operation, US has utilized UAV as an instrument to carry-out 'targeted killings' against identified terrorists for more than ten years since 2004. Targeted killing is a method of warfare in targeting specific enemy combatants, believed to be a vital tool in the fight against terrorism. In this case, the UAV has been proven to be an effective instrument to deliver the intended goals. At least it had succeeded in killing 102 leaders of Al Qaeda and the Taliban in Pakistan in the period of 2004 to 2014 when these terrorists were identified as high value and vital targets. These success has been a consideration for the US to continuously utilize the UAV for 'targeted killing' in combatting terrorism.

According to the data and facts that have been collected and analyzed by Kemenhan RI Dirjen Strahan <sup>22</sup> in the research entitled "Juridical Analysis of the Use of Unmanned Aircraft as the Main Tool of Armament Judging from International Law (Case Study of the Use of UAV by the United States in Pakistan)", it can be concluded that: the use of UAV in this case having caused many casualties on the city is clearly a violation of the provisions of International Humanitarian Law regarding the means and methods of warfare which also contradict Article 23 of the Den Haag Regulation concerning the prohibition of the use of weapons which have the potential to cause widespread damage or loss.

Furthermore, another study by Totok Sudjatmiko <sup>23</sup> entitled 'Juridical Analysis on the Use of Unmanned Drones in International Law' concludes that the use of UAV as one of the technology tools to fight has drawn a lot of criticism and controversies since 2001. This study highlights armed weaponry equipped with UAV application and a high number of casualties among the innocent parties due to the use of UAV in combat. These criticisms and controversies are viewed both from the tactical and strategic utilization of UAV. In practice, the international community justifies the use of armed forces from a country against other countries or other entities. However, the use of armed forces in the above conditions must follow the principles adopted in International Law, such as the principle of immediacy, necessity, and proportionality contained in Article 51 of the UN Statute or the principles of distinction, precaution, military necessity, proportionality and humanity contained in Geneva Convention.

From the results of interviews with several experts in Humanitarian Law the use of weapons including the use of UAV in Humanitarian

*Afirus Nurul  
Fuadi*

*Widya Setiabudi  
Sumadinata*

*Dadan  
Suryadipura*

Law is permissible. The use of armed UAV is also possible to attack selected military objects (there are strategic values). Human rights violations may occur if utilization of armed UAV is used without being based on actual and precise intelligence or facts on the field, resulting in misdirecting and potential harm to innocent victims. Other legal experts say that the use of UAV has the potential to violate the law if it causes excessive injury or unnecessary suffering, has the potential to attack blindly, damages civilian objects, and threatens the safety of protected persons.

In Indonesia, according to the research carried out, it is known that UAV in counter-terrorism operations is not equipped with weapons or armed. The activities through its missions were limited to observation and reconnaissance for information gathering so that the use of UAV did not cause any casualties; even there were no innocent victims at all. The use of UAV is intended only to provide information and guidance for the ground forces approaching enemy positions and provides a situation of awareness in operation. Utilization of UAV for the said missions allows clear and precise information in order to differentiate and distinguish between real target and innocent persons.

Based on the results of the research, statements of experts and the literature studies aforementioned, it can be said that the use of UAV from 51<sup>st</sup> Air Squadron on counterterrorism operations in Indonesia is permissible because it follows the principles adopted in International Law and is proven not to violate Human Rights and International Humanitarian Law. This is because UAV in counter-terrorism in Indonesia is not equipped with weapons at all. The use of UAV by the 51<sup>st</sup> Air Squadron is limited only for observation and reconnaissance, and the information obtained is forwarded to ground forces in carrying out operations.

## **Conclusion**

Unmanned Aerial Vehicle (UAV) has been widely utilized by countries worldwide in various ways, including in countering terrorism. The use of UAV has proven to be effective and efficient and could minimize the loss of lives. In practice, some countries complement UAV with deadly weapons and its use has caused many innocent civilian casualties. This will potentially violate Humanitarian Law and Human Rights because it can target innocent civilian victims.

The use of UAV in the fight against terrorism in Indonesia has proven to be very effective and efficient. It can be said that because of the help of UAV, the operations carried out are quickly resolved and can save operational costs and minimize human casualties on its own side. Furthermore, it is proven that it does not violate Humanitarian Law and Human Rights because it is only limited to carrying out observations and reconnaissance. In addition, UAV Aero-star from 51<sup>st</sup> Air Squadron is not equipped with weapons at all so that it will not cause direct casualties either on its own or the opponent's side.

From the discussion and conclusions above, the author suggests:

1. That UAV strength is developed in the ranks of the Air Force to carry out increasingly complex future tasks facing asymmetric wars that are not clear who the opponent is, when to attack and where it comes from.
2. That to avoid legal polemic in the use of UAV the role of the TNI in overcoming acts of terrorism needs to be regulated explicitly in the Presidential Regulation, as mandated by Article 43 of Law Number 5 of 2018.

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# The Virtual Jurisdiction to Combating Cyberterrorism in Indonesia

*Danrivanto Budhijanto*

## **Abstract**

The neo-cyberterrorism crafting their actions by social media platform in a virtual world. There are terrorist materials that flooding from terrorist websites and chat-rooms, and spreads across social media all over the world. They also have high techs and outrages skill to communicate via an “end-to-end” encrypted messaging applications such as WhatsApp or Telegram. Cyberterrorist propagandas and execution attacks not only to bombing a place or public transportation around the city, but they are eager to disrupt international financial transactions, undermine air traffic control systems, alter the formulas of medication at pharmaceutical manufacturers, and sabotage utility systems by intercept and hacking the network and digital data platforms. The policy and legislation will not suit again to respond and combating cyberterrorism. Governments, tech internet industries, and netizen must interplay each their role to combating cyberterrorism with virtual jurisdiction principles. Governments and tech internet firms now broadly accept that they have a common interest in establishing global standards for exchanging data across borders in combating terrorism.

*Keywords: cyberterrorism, virtual jurisdiction, legal convergence, messaging application, cyberlaw*

## **Homo Informaticus in Virtual World**

The social use of digital media today becomes a representation of the ultimate mankind evolution, from *Homo Erectus* to *Homo Informat-*

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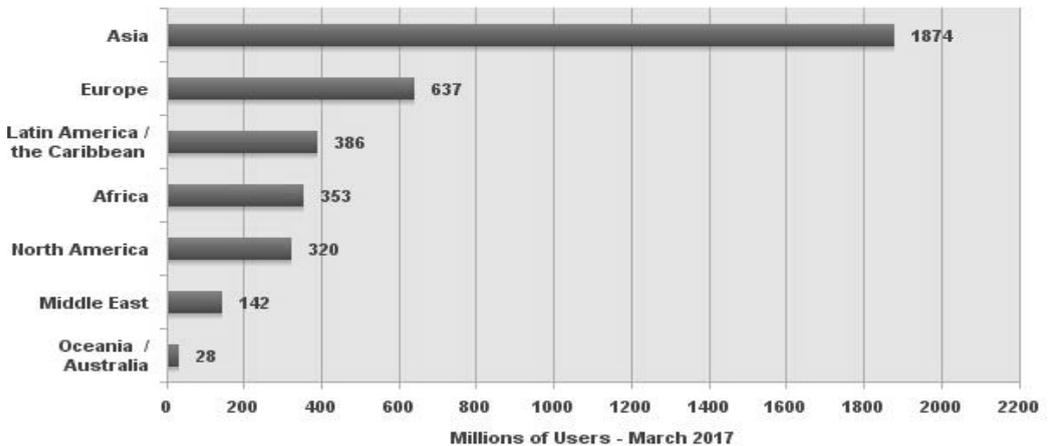


icus,<sup>1,2</sup>. humans who had been standing upright enough, to be a man who every waking up in the morning instantly update his or her status in a social media network. Especially with the increasingly extensive users of smartphones and easy access publicly of internet technology by Wi-Fi. Homo *Informaticus* evolution is what makes behavior and culture of people are transforming to the virtual world.

The use of internet technology in the world is a remarkable global phenomenon. Research from Internet World Stats (IWS) up to March in 2017 encountered the facts and data that internet users in the world are 3,739,698,500 of the total population of 7,519,028,970 inhabitants.<sup>3</sup> Most Internet users are in the region of Asia that reaches more than 1 billion users with 50.1% of the total internet users in the world that is 1,874,136,654, whereas in 2006 “new” a number of 364,270,713 users (1.539.6% growth since 2000-2017).

Europe’s second largest internet user is 636,971,824 which, in 2006 was 290,121,957 users, followed by Latin America/Caribbean Islands of 385,919,382 whereas in 2006 there were 79,033,597 users, Africa with 353,121 users, 578 which jumped extraordinarily from 2006 which was only 22,737,500, and North America was 320,068,243 whereas in 2006 it was in the third position with 225,801,428 users (with only 8.6% growth since 2000-2017); The Middle East with 141,931,765 users where in 2006 a total of 18,203,500 users; and the last is the area of Oceania and Australia as many as 27,549,054 users compared with the year 2006 number 17,690,762 users.

### Internet Users in the World by Geographic Regions - 2017 Q1



Source: Internet World Stats - [www.internetworldstats.com/stats.htm](http://www.internetworldstats.com/stats.htm)  
Basis: 3,739,698,500 Internet users estimated for March 31, 2017  
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The total world internet users have achieved nearly 936% growth since 2000-2017. <sup>4</sup> Facts and data from IWS risen an understanding that the use of the Internet technology to be ultra-massive so its needed the identification and objective construction of information technology through the internet's five characters <sup>5,6,7</sup> that *First*, the internet has a global character and knows no national borders/borderless. *Secondly*, each and every internet user can communicate interactively end-to-end and even can perform activities of broadcasting (real-time video) with a relatively low even no-cost and able to independently encrypted (encryption) such as WhatsApp and Telegram. *Third*, no one can claim to be the "owner" of the internet which is a combination of hundreds of thousands of networks and platforms. *Fourthly*, the tremendous growth of Internet users and the rapid development of internet technology itself. *Fifth*, the Internet is not within the scope of a particular state or organizational government so that international cooperation is needed in the effort to overcome the emerging legal issues. Those points make Internet technology as something unique, so it needs to look for policy settings or laws that can be applied sufficiently for information technology activities in virtual jurisdictions.

Danrivanto  
Budhijanto

The neo-cyberterrorism crafting their actions by social media platform in a virtual world. Their terrorist materials that flooding from terrorist websites and chat-rooms, and spreads across social media all over the world. They also have high techs and outrages skill to communicate via an "end-to-end" encrypted messaging application such as WhatsApp or Telegram. The threats of cyberterrorism identify online are twofold. The first is the extremist material that spews from jihadist websites and chat-rooms and spreads across social media, and the second is terrorists' ability to communicate via encrypted messaging apps. Together, they create an online echo chamber that amplifies anti-Western messages and helps propel a few individuals on their journey towards murder. <sup>8,9,10,11</sup>.

Cyberterrorist propagandas and execution attacks not only to bombing a place or public transportation around the city, but they are eager to disrupt international financial transactions, undermine air traffic control systems, alter the formulas of medication at pharmaceutical manufacturers, and sabotage utility systems by intercept and hacking the network and digital data platforms. The policy and legislation will not suit again to respond and combating cyberterrorism. Governments, tech internet industries, and netizen must interplay each their

role to combating cyberterrorism with virtual jurisdiction principles. This paper discussing neo-cyberterrorism in virtual jurisdiction theory including neo-cyberterrorism framework in the theory of legal convergence, legal theory on information technology convergence, and the policy and legislation in Indonesia to combating cyberterrorism; neo cyberterrorism vs. information society including neo cyberterrorism vs. Indonesian legislation on cyberlaw, information constitutional rights in Indonesia, and cyberlaw revolution in Indonesia to combating cyberterrorism; and neo cyberterrorism vs. tech-internet platforms.

### **Neo-Cyberterrorism in Virtual Jurisdiction Theory Neo-cyberterrorism framework in the theory of legal convergence**

Legal Theory is sometimes mistakenly understood as the absolute domain of theorists and academics that only interact with concepts, paradigms, and principles. Often there is a dichotomy of Law Theory as Law in Theory or Law in Books with Legal Practice as Law in Actions or Law in Practices. Legal practitioners often avoid or sometimes “allergic” to the Theory of Law, unless the person is preparing a research for thesis or dissertation report. Globalization led to the convergence of the legal order or the legal system. Legal and economic experts have predicted that the legal order will move in a more adequate direction, they argue that the implications of globalization will force the legal order to converge so as to achieve economic efficiency.<sup>12</sup> This is because the relevant regulatory framework of a legal order will make a legal system alone will not be able to provide an optimal solution of emerging problems<sup>13</sup> Many jurists predicted a similar convergence would occur, especially the lawyers who adhered to the functionalist comparatists believed that the concept of legal unification was desirable and inevitable in a legal order.<sup>14</sup>

Need a more systemic and applicative understanding of the concepts known in the Theory of Law in Indonesia. Mochtar Kusumaatmadja carried the Development Legal Theory in the 1970's with the overall approach of principles, rules, processes, and institutions as the foundation of nation-building.<sup>15</sup> Then in 2009, Satjipto Rahardjo introduced the Progressive Legal Theory with a First understanding, that the law is always placed to seek the basis of endorsement of an act that upholds the procedural features of the basic law and the foundation of the rule; Secondly, that law in development is the instrumental na-

ture of the exchange with forces outside the law so that law becomes a means of social engineering.<sup>16,17,18</sup>

Romli Atmasasmita in 2012 published a book entitled Integrative Legal Theory, which understands the function and role of law as a means of unifying and strengthening the solidarity of society and bureaucracy in facing the development and dynamics of life, both within the scope of Republic of Indonesia and within the scope of international development.<sup>19</sup> Atmasasmita asserted that Integrative Legal Theory should be understood in the dynamic sense, not quo and passive status, but has the mobility of function and its role actively in accordance with the development of national and international society condition from time to time.

The Theory of Legal Convergence is a conceptual and theoretical understanding of authors of the convergence of technological, economic, and legal variables on human and digital relationships in the Digital Information Age, both at national, regional and international levels.<sup>20</sup> The paradigm of the convergence of the legal order can be made a deeper understanding by examining the concept of convergence and conception of non-convergence of law. An approach to finding a relation to the similarities or differences between legal systems, or comparing different legal systems is expected to explain the importance of the conception of legal convergence.

### *Legal theory on information technology convergence*

The term “convergence” is understood to be the process of a condition that closely connects the technological change factor and the factor of increasing the scope of the economy directly, encountered by two or more products or services previously held by several separate corporate entities then organized by a single corporate entity the same one.<sup>21</sup> Understanding convergence in technology is that key converging technologies are generally classified as telecommunications or communication, computerized or computing, and content or content.<sup>22</sup> The convergence of information and communication technology (ICT) includes the integration of hardware and information technology software into telecommunication systems, network digitization, and Internet network enhancement.<sup>23</sup> Understanding convergence even includes things outside the technology, such as the symptoms of convergence between economic systems and the pattern of constitutional arrangements regarding the dynamics of the economy in society.

Information and communication technology (ICT) can be categorized into telecommunication technology, broadcasting technology, and information technology application.<sup>24</sup> In the sectorial industries of telecommunications (telecommunications/communication), computing (broadcasting) is indicated that causing the convergence of the three industries are several factors as follows:

- a. Digitalization technology;
- b. Declining prices of computing devices;
- c. Reduced costs arising from the use of frequency or bandwidth;  
and
- d. Competition of the telecommunications industry.

The technological change factor known as digitalisation/digitalization is a process of transitioning from analogue technology to digital technology and delivering information in an analogue format to binary format, it has enabled all forms of information (voice, data, and video) to be delivered across different network platform types. In the past, telephone networks were only designed for transmissions from two types of services limited to voice and data delivery, and broadcasting networks were restricted to one-way transmission for video viewing using the radio spectrum

Digitization has rapidly changed the conditions of the network platforms. The telecommunications and broadcasting networks become unified in its services. Telecommunication networks and broadcast networks today have the ability to carry two-way transmission simultaneously for voice, data, and video. Digital compression technology has also increased the capacity to carry information inside the network and allow more information to be transmitted over the same bandwidth or spectrum. The change in technology has led to the creation of new, interactive services, multimedia services such as video on demand, teleshopping, telebanking and interactive games as well as broadband, high-speed information and communication information systems (information superhighways).

Interactivity is a distinguishing characteristic of technological convergence in a network service both telecommunications and broadcasting. Further distinguishing characteristic of convergence is the user electronic devices that evolves overwhelmingly over time such as (TV, computer, mobile phone, smartphone) capable of delivering simultaneously services for voice, data and videos for its users.

## Research Method

The research method used in this research is analytical descriptive that is by describing and analyzing data obtained in the form of secondary data and supported by primary data about various issues related to the policy and legislation responding and combating cyberterrorism in the framework of information and communication technology.

Related with the field of Legal Studies, the approach used in this study is a normative jurisdiction with emphasis on literature study to examine the meaning, purpose, and existence of policy and legislations responding and combating cyberterrorism. This research is reassurance by Legal History, the Comparative Law and the Legal Futuristic methods.<sup>25</sup>

This study uses legal materials both primary and secondary law materials and tertiary law.<sup>26</sup> Primary Legal Material is a binding legal material in the form of norms or basic rules. Secondary Law Material is a legal material that provides an explanation of Primary Legal Material that can help analyze and understand the Primary Law Material in the form of research results, the writings of experts in the field of law both in national and international, and journals obtained through literature studies related with Cyberlaw, telecommunications law, broadcast media law, intellectual property law, and other fields of science related to policy and legislation responding and combating cyberterrorism. Tertiary Law Material is legal material provide guidance and information to Primary and Secondary Law Material that is dictionary law, a dictionary of information technology, encyclopedia. Data collection techniques used research stages in the form of Library Research and Virtual Research.<sup>27</sup>

## The policy and legislation in Indonesia to combating cyberterrorism

### *Neo cyberterrorism vs. information society*

The term “information” according to the linguistic is illumination; information; news or notice.<sup>28</sup> The definition of information is very rarely understood today. Often easily information is understood as the contents or contents of a daily document can be found. Information conveyed through printed media and electronic media is one such example. Indonesian society today is a community that is very hungry for any digital information that appears on the screen of the smartphone through social media, if not want to be said as “social media-junkies”.

Indonesia's reformation era since 1998 pushed the movement of information into an almost uncontrollable freedom, where previously information became expensive and sometimes even non-halal (forbidden, sin). The amendment of several amendments to the 1945 Constitution and the enactment of Law Number 39 of 1999 on Human Rights contributed to the protection of fundamental rights for the people of Indonesia. Article 28F of the Second Amendment of the 1945 Constitution contains that "Every person shall have the right to communicate and obtain information to develop his / her personal and social environment, and shall have the right to seek, obtain, possess, store, process and convey information using any available channel."

Freedom of information is closely related to the understanding of personal rights or private rights or privacy rights. Freedom of information is a fundamental right that must come to an end when there is a line of embarkation on the protection of private rights. Therefore, the protection of the constitutional rights of information as contained in Article 28F of the 1945 Constitution should also be understood by other constitutional mandates which are also contained in Article 28J of the 1945 Constitution Paragraph (2) that stated "In exercising their rights and freedoms, everyone shall be subject to the restrictions laid down by law with the sole intent of ensuring the recognition and respect of the rights and freedoms of others and to fulfill fair demands in accordance with moral judgment, religious values, Security, and public order in a democratic society". Even in the United States, freedom of information is not permitted to violate the personal rights of any person. When the Freedom of Information Act was enacted in 1974, at the same time the Privacy Act was enacted by the United States Government.<sup>29</sup>

The international community itself gives recognition to the protection of private rights. Privacy is a human right, as contained in Article 12 of The Universal Declaration of Human Rights-1948, namely "No-one should be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attack his honor or reputation. Everyone has the right to the protection of the Law such as interferences or attacks."

It is difficult to find a universal definition to explain what is meant by "privacy". Privacy relates to the various forms of how a human gives access to others to obtain his personal information, partaking of private ownership and personal decisions.<sup>30</sup> Privacy is also understood as

a state to be free of public attention that may affect or interfere with one's actions or decisions.<sup>31</sup> In its recent understanding, privacy is not only protected by law but also by cultural, ethical and business/professional norms.

Personal rights or privacy rights (Privacy Rights) can be interpreted as an autonomous right owned by a person. Privacy or for a general right of personal autonomy, but the Supreme Court has repeatedly ruled that a right of personal autonomy is implied in the "zones of privacy" created by specific constitutional guarantees. In early definition, Privacy Right is the right to be let alone; the right of a person to be free from unwarranted publicity that right of privacy is the right to personal autonomy.

The U.S. Constitution does not explicitly provide for a right of privacy is generic term encompassing various rights recognized to be inherent in the concept of ordered liberty, and such right prevent governmental interference in intimate personal relationships or activities, freedoms of the individual to make fundamental choices involving himself, his family, and his relationship with others. The public has an obligation to create protection for rights violations in the form of disclosures, publicity and the disruption of personal and identity determination. In the United States, "privacy" and "privacy rights" have tremendous value.

The protection of personal rights or private rights will enhance human values; Enhance the relationship between individuals and their communities; Increase independence or autonomy to exercise control and gain appropriateness; Increase tolerance and keep away from discriminatory treatment and limit the power of government. Today informational privacy become importantly sensitive in the virtual world, as informational privacy is a private person's right to choose to determine whether, how, and to what extent information about oneself is communicated to others, esp. sensitive and confidential information<sup>32</sup>

The phenomenon of 'privacy' as described indicates one of the arguments of the importance of regulating the utilization of information and communication technology (ICT) in legal understanding. Increasing the application of information and communication technology (ICT) or also known as Information and Communication Technology (ICT), especially through telecommunication activities continuously transform local, national, regional and international economies into the networked economy which is the basis for the formation of the information society.

Big Data has a massive character and escalated because of the ease and speed of access to information technology or internet media. With just one touch it can spread the data widely and change in various formats in a short time. Government R.I. Seeks to encourage and protect social media personnel to stay safe and comfortable surfing in the virtual world, through legislation instruments namely Law Number 11 Year 2008 on Information and Electronic Transactions (UU ITE 2008) and Law Number 19 Year 2016 on Amendment to Law -Indonesia Number 11 Year 2008 on Information and Electronic Transactions (UU ITE 2016). Revision of the ITE Act in 2016 as evidence of the support of respected representatives of the people at the House of Representatives R.I. To the Government to exercise the rule of law and governance of virtual jurisdictions. The government is obliged to protect all Indonesian people in the virtual world or cyberspace. The state still has virtual jurisdiction that cannot be reduced and no one can commit a crime without being punished by law.

*Neo cyberterrorism vs. Indonesian legislation on cyberlaw.  
Information Constitutional Rights in Indonesia*

The recognition of independence expresses the mind and freedom of opinion as well as the right to obtain information through the use and utilization of Information and Communication Technology (ICT) objective to promoting the general welfare, and the intellectual life of the nation as well as providing a sense of security, justice, and legal certainty for users and Electronic System Providers. In the life of society, nation and state, the rights and freedoms through the use and utilization of ICT are conducted considering the limitations established by law with the sole intent of ensuring the recognition and respect for the rights and freedoms of others, and to fulfil the fairness accordance with moral considerations, religious values, security, and public order in a democratic society.

Law Number 11 Year 2008 as revised by Law Number 19 Year 2016 on Information and Electronic Transactions (Indonesian Cyber Law 2008 and 2016) is the first legislation in the field of Information Technology and Electronic Transactions as a much-needed legislative product and has become a pioneer that lays the foundation of the arrangement in the field of utilization of Information Technology and Electronic Transactions. However, in reality, the implementation of the Indonesian Cyber Law 2008 is experiencing problems.

*Firstly*, the Indonesian Cyber Law 2008 has been filed 4 (four) judicial review at the Constitutional Court with the Decision of the Constitutional Court Number 50/PUU-VI/2008, Number 2/PUU-VIII/2009, Number 5/PUU-VII/2010, and Number 20/PUU-XIV/2016.

The decision of the Constitutional Court Number 50/PUU-VI/2008 and Number 2/PUU-VIII/2009 ruled that defamation and defamation in the field of Electronic Information and Electronic Transactions is not merely a general crime but as an offense. The affirmation of the offense of complaint is intended to be in equilibrium with the principle of legal certainty and sense of social justice.

The decision of the Constitutional Court Number 5/PUU-VII/2010 contains the opinion of the Court that the interception and interception authority is very sensitive because on the one hand it is a limitation of human rights, but on the other hand, has the aspect of legal interest (interception as an instrument of enforcement Law-lawful interception). The opinion of the Court is meant to make the regulation concerning the legality of interception shall be established and formulated in accordance with the Constitution of the Republic of Indonesia Year 1945. The Constitutional Court is of the opinion that since the interception is a violation of human rights as stipulated in Article 28J paragraph (2) of the 1945 Constitution of the State of the Republic of Indonesia, so it is reasonable and appropriate that if the State wishes to deviate from the privacy rights of those citizens, the State must deviate in legislation instrument and not in the form of government regulation instrument.

The decision of the Constitutional Court Number 20/PUU-XIV/2016 contains the opinion of the Court that in order to prevent any differences in interpretation of Article 5 paragraph (1) and paragraph (2) of the Indonesian Cyber Law 2008, the Constitutional Court stipulates that every interception must be a lawful process as a lawful interception. The Court in its ruling adds a word or phrase “in particular” to the phrase “Electronic Information and/or Electronic Documents”. It is intended that there will be no interpretation that the decision will narrow the meaning or meaning contained in Article 5 paragraph (1) and paragraph (2) of Indonesian Cyber Law 2008, to afford legal certainty of the existence of Electronic Information and/or Electronic Document as legal evidence need to be emphasized in the Elucidation of Article 5 of the Indonesian Cyber Law 2008.

*Secondly*, the provisions of searches, seizures, arrests, and detentions provided for in the I Indonesian Cyber Law 2008 affectation

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problems for law investigators because criminal offenses in the field of Information Technology and Electronic Transactions are so rapid and perpetrators can easily obscure acts or evidence of a crime.

*Thirdly*, the characteristics of cyberspace virtues allow for illegal content such as Electronic Information and/or Documents with content that violates decency, gambling, defamation or defamation, extortion and/or threats, disseminating false and misleading news (hoax) resulting in consumer losses in Electronic Transactions. Including as well as acts of spreading hatred or hostility based on tribe, religion, race, and class, and the sending of personally targeted violence or intimidating threats accessible, distributed, transmitted, copied, stored for re-dissemination from anywhere and anytime in electronic platform. Efforts to protect the public interest from all types of disruptions resulting from the misuse of Electronic Information and Electronic Transactions, it is necessary to affirm the role of the Government in preventing the dissemination of illegal content by taking action on the termination of access to Electronic Information and/or Electronic Documents, which have unlawful content inaccessible from Indonesia jurisdiction and the authority of the law investigator to request information contained in the Electronic Systems Provider for the interest of criminal law enforcement in the field of Information Technology and Electronic Transactions.

*Fourth*, the use of any information via the electronic media or electronic systems in regard to the personal data shall be made with the consent of the person concerned. It is, therefore, necessary to guarantee the fulfillment of personal data protection by requiring any Electronic System Provider to remove any irrelevant Electronic Information and/or Electronic Documents under its control at the request of the Person concerned by judicial appointment as known as “the right to be forgotten”.

Based on above considerations and understandings it crucial to establish Laws on Amendments to Law Number 11 Year 2008 on Information and Electronic Transactions which reaffirm the provisions of the existence of Electronic Information and/or Electronic Documents in the Elucidation of Article 5, Electronic and/or Electronic Documents that are not relevant in Article 26, amend the provisions of Article 31 paragraph (41) concerning the delegation of arrangement of interception procedures into law, increasing the Government’s role in preventing the dissemination and use of Electronic Information and/

or Electronic Documents have the illegal content prohibited in Article 40, amend some provisions concerning legal investigations relating to alleged criminal offenses in the field of Information Technology and Electronic Transactions in Article 43, and add to the elucidation of Article 27 paragraph (1), paragraph (3) and paragraph (4) to be more tune-ful with the criminal law system legislated in Indonesia.

### *Cyberlaw revolution in Indonesia to combating cyberterrorism*

The Republic of Indonesia Government authorizes power to the Ministry of Communications and Information Technology to discuss and draft the revision of Indonesian Cyberlaw 2008. Law Number 19 the Year 2016 as a revision of Indonesian Cyberlaw 2008 has been approved by the House of Representatives of the Republic of Indonesia (DPR-RI) for prompts are mostly highlighted only in terms of time of presence (Indonesian Cyberlaw 2016).

Since it was enacted in late November, with a political atmosphere that was warming after Muslim action on November 4 and by December 2, 2016, the revised Indonesian Cyberlaw 2008 was considered a legislative product to respond or even restrain the free speech. In fact, its name is a revision; the revised Indonesian Cyberlaw 2008 is not a completely new law. Moreover, the government uses for political purposes only briefly or to protect the interests of people and public interests.

If it is possible to reverse, the Indonesian Cyberlaw 2008 start out from the fact that the use of information technology should contribute to the enhancement of socio-economic welfare and encourage the achievement of the purposes of the state establishment. But not least, it raises the complexity of issues from the technical implementation such as the expanse of development, economics, law, and culture in society. Based on these understanding in Indonesian Cyberlaw 2008 was issued as the first legislation on Information Technology and Electronic Transactions as a pioneering legislative product in laying the basis of regulation and protection in the area of Information Technology and Transactions Electronics. But in its dynamic environment of Information Technology, it is necessary to fine-tune the needs and development of information society in Indonesia. Some legal cases based on Article 27 Paragraph 3 Indonesian Cyberlaw 2008 are often sued and questioned primarily regarding the threat of criminal sanctions set forth in Article 45 Paragraph 1 Indonesian Cyberlaw 2008.

The intention to revise the Indonesian Cyberlaw 2008 has come to light since 2009. That is, only a year after the Indonesian Cyberlaw 2008 was enacted has come to the idea of the revision as a result of the numerous cases that triggered controversy in relation with the idea/mind expression in digital form. Since 2009 it is also the Revision Bill of Indonesian Cyberlaw 2008 is included in the listed of the 2010-2014 National Legislation Program on the initiative of the House of Representatives. In 2010 up to 2011, the Government of R.I. starting to discuss the bill to revised Indonesian Cyberlaw 2008 through an inter-ministerial team as well as the harmonization process in the Ministry of Justice and Human Rights. This process has been completed in 2012. But in 2013, the draft amendment to the Indonesian Cyberlaw 2008 was harmonized from the list of priority legislative discussions in 2014.

Once received the mandate from the Parliament, the Government of President Joko Widodo and Vice President Jusuf Kalla fully agree that such revision should be a priority to present more just rules and prevent criminalization of freedom of speech as well delivery fair opinion in a digital platform. On February 9, 2015, again the Revised Bill on Indonesian Cyber Law 2008 was submitted by the House of Representatives into a priority bill to be discussed in 2015 along with 36 other bills.

Finally, after going through various meetings and deep discussions of inter-ministerial and institutional harmonization, President Joko Widodo formally submitted the draft of Revised Bill on Indonesian Cyber Law 2008 to the Speaker of the House of Representatives R.I. with Presidential Letter No. R-79/Pres/12/2015, dated December 21, 2015. The Presidential Letter comprehends the governmental assignment of President R.I. to the Minister of Communication and Information Technology, and the Minister of Law and Human Rights, both individually and jointly to represent the President to discuss the Bill and get mutual consent with the House of Representatives.

On March 14, 2016, all political party legislative chambers in the First Commission on House of Representatives agreed to discuss the revision of Indonesian Cyber Law 2008 and come out of with the formation of the Working Committee to discuss in detail the contents of such revision. Mrs. Meutya Hafid, Vice Chairman of First Commission of the House who presided over the meeting at that time, confirmed that all political party legislative chambers had agreed to discuss the

revision of Indonesian Cyber Law 2008 to Working Committee level and form of such Working Committee with membership including representatives of all legislative chambers in First Commission of the House. The approval of the First Commission of the House included the importance of the discussion of the substantial norm namely the threat of criminal sanction Article 27 paragraph 3 of the Indonesian Cyber Law 2008. Mrs. Evita Nursanty as a member of First Commission of the House, in her general opinion, that in the revision need to be supported arrangements about the threat of punishment so that one cannot be arrested and detained on charges of fault. Nevertheless, there must still be a minimum penalty for the offender so as to afford a deterrent effect.

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Subsequently, a series of meetings between the Government and Working Committee of First Commission was held in the form of working meetings, working committees, collaboration team, and drafting team. By such process, the team received much essential input and aspirations from non-governmental organizations (NGOs), academics, practitioners, and other society elements. Finally, the Bill has been finalized in the discussion of First Level on October 20, 2016, with the decision to agree to be forwarded to the next stage of Decision Making or Second Level Discussion in the House of Representatives Plenary Meeting.

The ultimate result happened at the Plenary Session on October 27, 2016, when the House of Representatives approved the Bill on the Amendment of Indonesian Cyber Law 2008 as Law. This above Law was officially signed by President Joko Widodo as Law Number 16 of 2016 and officially enacted on November 25, 2016.

Understanding the current situation, Indonesian Government is grateful that Indonesian Cyber Law have had the Law since 2008. Almost all of the Indonesian people are feeling lately, that the social media situation is filled with defamation, hoax, unfounded slander between the conflicting parties. The President himself took the initiative to hold a Specific Limited Administration Meeting at the end of 2016 to discuss the anticipated developments in social media related to these latest developments. During this time President Joko Widodo who is known as a very tolerant of freedom of expression in cyberspace, let alone He himself is also very familiar with and is an active communicator in, social media. However, with the increased tension and potential for social media outrage, the President felt important

as well and saw the need to strengthen law enforcement for anyone involved with independent judgment. The Government are even more grateful that thanks to the cooperation of the House of Representatives (especially the First Commission) and the assistance of thought from all stakeholders in the community, the new Indonesian Cyber-law 2016 was successfully revised on time as the pressure intensified to provide improved principles of justice which are better for Indonesian people.

There are at least 5 (five) important and new legislation norms that formulate the Indonesian Cyber Law 2016 relevant to the fulfillment of a wisdom of justice for people who use the virtual world as a place to express opinions, as follows:

*First*, to avoid imprisonment by reducing imprisonment from 6 (six) years to 4 (four) years. With this decrease in threats, the plaintiff parties and defendant(s) have the same legal position until it can be proven in the court litigation process. The defendant(s) need not be detained in advance because of the imprisonment under 5 years.

*Second*, adding provisions on “the right to be forgotten” to the provisions of Article 26 of the Indonesian Cyber Law 2016. In the future, the Operator of Electronic Systems shall remove the irrelevant Electronic Information which is under its control at the request of the person concerned based on the court’s award and provide such of motion procedural.

*Third*, protect the public from illegal and unlawful content with two ways, namely protection in terms of access restrictions and in terms of education. In terms of content, the government always gets input from various parties, especially related to pornographic content and gambling.

*Fourth*, is to accommodate the decision of the Constitutional Court by altering the procedural of lawful interception or intercepts, from those previously stipulated in a Government Regulation to be regulated in legislation instrument.

*Fifthly*, the declaration that legal evidence of the interception result is an interception conducted in the context of law enforcement at the request of law enforcement officers.

Law Number 19 of 2016 on Amendment of Law Number 8 the Year 2011 on Information and Electronic Transactions authorized and enacted by the Government R.I. on November 25, 2016 as published in the State Gazette of the Republic of Indonesia Year 2016 Number 251

and documented in Supplement to the State Gazette of the Republic of Indonesia Number 5952.

### *Neo cyberterrorism vs. tech-internet platforms*

Governments, tech internet industries, and netizen must interplay each their role to combating cyberterrorism with virtual jurisdiction principles. Governments and tech internet firms now broadly accept that they have a common interest in establishing global standards for exchanging data across borders in combating terrorism.

Fears that the internet is promoting and enabling Islamist terrorism are not new. But they have become sharper since 2014 when IS established its “caliphate” in parts of Syria and Iraq. It has put much more effort than its older rival, al-Qaeda, into creating sophisticated online propaganda, which it uses to recruit, promote its ideology and trumpet its social and military achievements. It puts as much attention into digital marketing as any big company, says Andrew Trabulsi of the Institute for the Future, a non-profit research group, “It’s a conversion funnel, in the same way, you would think of online advertising.”<sup>33</sup>

IS’s media operation was portrayed in a report published in 2015 for the Quilliam Foundation, a counter-extremism think-tank in London. “Documenting the Virtual Caliphate” described an outlet that released nearly 40 items a day, in many languages, ranging from videos of battlefield triumphs and “martyrdom” to documentaries extolling the joys of life in the caliphate. Each *wilayat* or province of the caliphate has its own media team producing local content. Unlike al-Qaeda, which aims its messages at individual terror cells, IS uses mainstream digital platforms to build social networks and “crowdsource” terrorist acts.<sup>34</sup>

Its Twitter supporters play whack-a-mole with moderators, setting up new accounts as fast as old ones are shut down. Some accounts broadcast original content; others promote the new accounts that replace suspended ones; others retweet the most compelling material.<sup>35</sup> When the Islamic State’s releases a new recruitment video, its supporters spring into action. Rita Katz of the SITE Intelligence Group, a Washington-based firm that tracks global terror networks, analyzed what happened to “And You Will Be Superior”, a 35-minute video released in March that follows suicide-bombers, from a doctor to a disabled fighter to a child.<sup>36</sup> Translators, promoters, social-media leaders and link-creators joined together to promote it across the internet. One of these groups, the Upload Knights, creates hundreds of links

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daily across streaming and file-sharing sites. Ms. Katz found that in the two days after the film's release, it distributed the video with 136 unique links to Google services (69 for YouTube, 54 for Google Drive and 13 for Google Photos).<sup>37</sup>

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## Conclusion

Further progress will require joint action by internet firms and governments. The fear laws along the lines of one recently acted in Germany that would see those fined vast sums unless they speedily remove any content that has been flagged as hate speech. They also have a growing commercial interest in cracking down on terrorist content, which hurts their brands and could cut revenue. In recent months some of YouTube's clients pulled their ads after realizing that they were appearing next to extremist videos. Greater legal certainty, less confrontation and more co-operation between governments and firms will not drive jihadist propaganda off the internet altogether. But they should clear the worst material from big sites, help stop some terrorists—and absolve tech firms from the charge of complicity with evil.

## Acknowledgment

All materials in this article are based on references from scholarly writings in the form of books, scientific journals, research reports, dictionaries and other writing documents in which all copyright inherent is fully protected by law for its author(s).

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# State Defense

# Political Communication Between the House of Representatives and the Ministry of Defense in Discussing the Republic of Indonesia State Defense Policy

*Yusa Djuyandi, Margynata Kurnia Putra, Haris Faozan*

## **Abstract**

The desire to optimize all potential resources available to support national defense, including making the people as a supporting component, needs to be regulated in law. Political communication between the Commission I of the Indonesian House of Representatives (DPR) and the Ministry of Defense in order to ensure that the discussion of the National Resource Management Bill (PSDN) for National Defense does not encounter obstacles is something that needs to be done. This study uses a qualitative method, where primary data is obtained from observations on political dynamics in the discussion of a draft state defense policy which is then outlined in the PSDN Bill, while secondary data is obtained from various literature studies. The results of this study show that between the House of Representatives and the Ministry of Defense has established a good political communication process in the discussion of the PSDN Bill; this condition has led to a good understanding and synergy between the two institutions in formulating the PSDN Bill for defense. It is important for political communicators to build effective political communication by making clear and precise



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political messages, this is certainly so that the political message can be easily understood by the communicant.

*Keywords: political communication, House of Representatives, Ministry of Defense, PSDN Bill, defense*

*Yusa Djuyandi*

*Margynata  
Kurnia Putra*

*Haris Faozan*

## **Introduction**

A country needs to have a clear concept of a defense system in order to maintain its sovereignty, without clarity on this matter it will be difficult for a country to take strategic steps or policies in the defense sector, such as how the state through the government is able to optimize all resources to support the defense.

Indonesia, as stated in Article 30 of the second amendment to the 1945 Constitution, has established the enactment of the universal people's defense and security system to maintain state sovereignty in the form of unity. Although geographically the country of Indonesia consists of many archipelagic clusters, because the Indonesian Nation has determined the form of the state of Indonesia is unity, then to maintain it is needed the support from all components of the nation.

The enactment of the universal defense and security system of the people is considered in accordance with the characteristics of the territory of the Unitary Republic of Indonesia (NKRI) in the form of an archipelago, with all the people in various islands can have and take an important role in maintaining the integrity and sovereignty of the nation and state. When the country on the other hand also has a limited number of soldiers to protect the entire island in Indonesia, especially on islands that have direct borders with other countries<sup>1,2,3,4</sup>, the people can be encouraged to participate in efforts to maintain the national defense. The essence of the universal people's defense and security system is to place the community as a supporting force after the main defense force held by the Indonesian National Army (TNI).

The placement of the community as a supporting component or reserve of the main state defense tool, namely the TNI, is also believed to have a positive impact on the growing sense of community responsibility to maintain the integrity of the nation and the state. However, the emergence of the desire to optimize all potential resources available to support national defense, including making the people as a supporting component, needs to be regulated in law. Related to the need for a law that is able to become a legal umbrella for the estab-

lishment of a reserve component and the implementation of its program, the government together with the Commission I of the House of Representatives of the Republic of Indonesia (DPR RI) has agreed to encourage the passage of the National Resource Management Bill (PSDN) for National Defense<sup>5,6,7</sup>.

The PSDN Bill is a simplification of several draft laws and laws, namely the State Defense Bill, the Supporting Component Bill, the Reserve Component Bill, and Law No. 27/1997 concerning Mobilization and Demobilization. The basis of the unification and establishment of this draft law by the Ministry of Defense is in response to the emergence of various forms of non-military threats that have been very varied and complex, both with ideological, political, economic, social and cultural dimensions. In addition, there is also an idea that coaching and empowering national resources in support of Nirmiliter Defense must consider the characteristics of non-military threats and the functional competencies of the institutions that handle them<sup>8</sup>.

The achievement of an agreement between the Commission I of the Indonesian House of Representatives (DPR RI) and the Directorate General of Defense Potential from the Ministry of Defense to encourage the enactment of the PSDN Bill could certainly have a positive impact on the efforts to implement the mandate of the 1945 Constitution, which is related to the implementation of the universal defense and security system of the people. The agreement reached between the two institutions, namely the DPR RI and the government, shows the success in the process of political communication. It is undeniable that the discussion regarding the draft component reserve policy often encountered conflicts of interest until finally the discussion of the policy plan was halted. An example of this was the postponement of the discussion of the Reserve Component (Komcad) Bill by the DPR in 2012 for an indefinite period. The problem was that the DPR and the government at that time did not find common ground in some of the fundamental issues in the Reserve Component Bill, such as the legal basis of the Reserve Component Bill, the mobilization procedure in a peaceful state, and the reserve component status<sup>9,10</sup>.

Although in 2018 an agreement was reached between the Commission I of the Indonesian Parliament and the Ministry of Defense to more seriously schedule the ratification of the PSDN Bill, but as long as a policy plan has not legally become a policy then any possibility of a change in political decisions could occur. The success of political

communication between the House of Representatives Commission I and the Directorate General of Defense Potential from the Ministry of Defense is still the first step of a political process, that the government still needs to ensure that the discussion of the draft policy at the next stage does not encounter obstacles, especially if the DPR RI later finds there are problems in the substance or content of the PSDN Bill.

The process of drafting the PSDN Bill for national defense by the Ministry of Defense itself began in 2015, where the Ministry of Defense was targeting this bill to be discussed together with the DPR in 2017<sup>11,12</sup>. In other words when in 2018 between the government, especially the Ministry of Defense and the Commission I of the House of Representatives has agreed to encourage the ratification of the PSDN Bill, so it shows that the political communication process in the context of the discussion of the PSDN Bill can run well. It could be that the two institutions have established an understanding of the importance of the state having legal protection in implementing the establishment of a reserve component, one of which is carried out through a state defense program. However, as previously stated that this understanding is still the initial stage of the next discussion of the PSDN bill.

Based on experience in the discussion of the Comprehensive Reserve Bill (Komcad), in which the draft policy was finally terminated by the DPR, the government must be able to anticipate the possibility of stalling the discussion of the PSDN Bill due to substantial problems. During the discussion of the Komcad Bill at the time the DPR later found out that there were shortcomings and weaknesses in the draft policy, in addition to the emergence of pressure from several Non-Government Organization (NGO) groups so that the DPR RI did not ratify the Komcad Bill who was more impressed by the government's desire to realize military service<sup>13</sup>. Substantive matters as stated in the PSDN Bill must also receive an intense portion of the discussion with the people's representatives in the parliament because if the discussion was not conducted intensively and then led to a halt in the ratification of a policy then there lies the failure of political communication between executives with the legislature.

Based on the problems mentioned above, this paper intends to analyze political communication between the government and the DPR RI in the discussion of the National Resource Management Bill (RUDN PSDN) for national defense.

## Literature Review

### *Political communication*

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Communication and politics have a close and special relationship because they are in the political domain or by placing communication in a very fundamental position. As Laswell's<sup>14</sup> view of Politics: Who Gets What, When, How? Then helped develop a communication model based on several questions, namely: who says what, in which channel, to whom, with what effect? What has been formulated by Laswell<sup>14</sup> which later became one of the signs that between political science and communication science has a connection, where politics requires communication to achieve its goals. As later emphasized by Robert E. Denton and Gary C. Woodward<sup>15</sup> who say that "*the crucial factor that makes communication is 'political' is not the source of a message, but its content and purpose*".

Denton and Woodward<sup>15</sup> also previously revealed that the characteristics of political communication in America could be seen from the way and message senders' intensity in influencing their political environment. Things that later included were public discussions (about political speeches, media coverage, and public discussion) which influenced the considerations of the authorities in giving sanctions, allocating public resources, and influencing the authorities to make policies<sup>15</sup>.

Roelofs also once stated that "politics is talk, or to put the matter more exactly the activity of politics ("politicking") is talking ..." or in other words that politics is a talking activity. Not just talking or talking because not all talks are also political, but nature and political experience and basic conditions are communication activities between people<sup>16</sup>. In practical politics itself, communication occurs when politicians bargain with their political opponents, or in forming coalitions, or seeking consensus<sup>17</sup>.

From some of the perspectives above, it can be understood that even though communication and politics are related, but when the focus of the study is deepened on the scientific aspects of political communication, then there is something that distinguishes it from other scientific communication disciplines. As Cangara<sup>18</sup> states that clear political communication is a communication process that has implications or consequences for political activity. Political communication has a politically charged message.

To see the success of the political communication process, then political communication experts learn the most prominent charac-

teristics of political messages, backgrounds and attitudes brought by the recipient to interpret the message, the form and substance of the message, the impact of various types of communication channels on messages that are channeled through their networks, and ultimately the impact of political processes within individuals and society<sup>19</sup>.

*Yusa Djuyandi*

### *National security*

*Margynata  
Kurnia Putra*

The discussion on the management of national resources for national defense, which includes a draft on the deployment or assistance of human resources from civilians for national defense, cannot be separated from the existence of an effort to achieve national security. Speaking of the concept of national security, there is a dimension of things that are then attached to it, namely the first dimension of defense which includes an effort to counter military attacks from outside the country, and the second is the security dimension which includes an effort to create orderly and safe conditions of society from the interference or security threat that is originating from within the country.

*Haris Faozan*

Talking about the concept of national security, there are a number of experts who have formulated the concept of national security, namely among them are from Prihatono et al.<sup>20</sup>, which formulates that national security is a general concept of defense, national security is a very complex problem. The term “national” has a broad meaning, not only includes the state as a single subject or object but also encompasses various entities in it. Therefore, efforts to create national security require the involvement of various elements within the state, be it the government, military, police, and the people themselves<sup>20</sup>.

Furthermore, Prihatono<sup>20</sup> reveals that etymologically, the concept of “security” (security) comes from the Latin “*securus*” (*se* and *cura*), which has the meaning of being free from danger, free from fear (free from danger, free from fear); this word can also be meaningful from a combination of words that mean without and *curus* which means uneasiness. When combined, the word will mean “freedom from trouble, or a peaceful situation without danger or threat”<sup>20</sup>.

National Security can be interpreted both as a *condition* and as a *function*. As a *function*, National Security will produce and create a sense of security in a broad sense, which includes a sense of comfort, peace, tranquility, and orderliness. This kind of security *condition* is a basic need of humanity in addition to welfare. Understanding the

meaning and substance contained in it will vary depending on the values, perceptions, and interests.

Oatley theoretically said that national security was defined not just military defense. At the very least, it is a fundamental part of the survival of society. Furthermore, this definition relates to efforts to create a political, economic, social and environmental condition in which society lives<sup>21</sup>.

Laswell<sup>14</sup> as quoted by Romm<sup>22</sup>, reveals that national security can be simply meant as freedom from foreign orders or colonization. Referring to Laswell's<sup>14</sup> view, it means national security is also free from threats, which can be similar to what was stated by Wolfers as quoted by Paleri<sup>23</sup>, namely "National security objectively means the absence of threats to acquired values and subjectively, the absence of fear that values will be attacked".

A clearer and more detailed view of national security, with the elaboration of the conditions of national security, was stated by Brown as quoted by Watson<sup>24</sup> namely "National security is the ability to preserve the nation's physical integrity and territory; to maintain its economic relations with the rest of the world on reasonable terms; to preserve its nature, institution, and governance from disruption from outside; and to control its borders".

Based on Brown's perspective above, it can be emphasized that national security is a condition that includes a sense of freedom from threats that come from outside and inside, that can also be seen from the concept proposed by La Ode<sup>25</sup>, which reveals that National Security contains more meaning which includes overcoming threats to the survival of the country, both from inside and outside, that would help us to divide national security into two meanings, namely the meaning between security (for internal threats) and defense (for external threats).

## **Methods**

This study uses a qualitative method. The techniques are through the document from a text document, electronic data, or online data. The use of data or documents to keep the study is consistent with the assumptions that are owned by the research subjects. In this work, the literature is used as a tool of analysis and documents is used as the subject of analysis<sup>26</sup>. Therefore, this study uses data management, analysis, and interpretations that are intertwined with empirical theories, concepts, and indicators<sup>27</sup>. While the data collection procedure used

was by collecting documents throughout the study, including public documents on several [online-based] media channels<sup>28</sup>.

## **Discussion**

### *State defense policy*

Some parties have previously stated that the potential for open warfare in this century is considered minimal, even though the fact that happened later shows that the potential threat of war is open again. The occurrence of war in the Middle East region, both between countries in the region or with the involvement of other countries from outside the region, and the existence of tensions in several other regions such as the South China Sea region as a result of the struggle and expansion of the influence of the major countries have opened the paradigm that war can occur anytime and anywhere. With the emergence of these conditions, it cannot be denied that the dimension of defense remains one of the most important dimensions of national security in a country; if this dimension is weak, it will be at risk for the security of the nation and state.

For a country that implements a democratic political system, strengthening the defense dimension needs to be carried out through an appropriate procedure, namely through a defense policy-making that considers democratic decision-making procedures. Although the realm of defense intersects with the existence of military power, a democratic country is built on the basis of the political power of civil society, that represented by the existence of legislative and executive institutions. Both of these institutions are civil, political authorities who have the authority to make policies in the defense sector; while in making defense policies they need to pay attention to the conditions and needs of the nation and state. If the defense sector policies that they take together are considered appropriate, then it will support the strengthening of the country's defense potential, but the country's defense will be weak if the policies made are not appropriate.

Since the reform era in Indonesia, both the government and the Indonesian House of Representatives have actively jointly made several policies in the defense sector, namely Law No. 3 of 2002 concerning National Defense and Law No. 34 of 2004 concerning TNI. However, over time and paying attention to national and international situations and conditions, the existence of the two laws is not enough to strengthen the potential for national defense. At least between the government

*Discussing the  
Republic of  
Indonesia State  
Defense Policy*

and the House of Representatives once discussed the emergence of new policy designs in order to strengthen national defense, such as the Bill on Reserve Components and the National Security Bill (National Security), but attempts to ratify the two draft policies failed because there were many multi-interpretation articles potentially misused by the political interests of the ruler. As an example, in Article 27 paragraph 1 of the National Security Bill which states that the TNI Commander can establish operational policies and military strategies based on policies and policy strategies of National Security organizers. So instead of for the sake of defense, this policy plan is precisely considered only to benefit the political interests of the ruler.

Although some policy designs that were previously drafted to be able to strengthen the defense sector must eventually stop, between the government and the House of Representatives still try to jointly discuss the design of new policy alternatives in the defense sector. The results of the political communication between the two, namely Commission I of the Indonesian House of Representatives and the Ministry of Defense, was an agreement to encourage the ratification of the Draft Law on the Utilization of National Resources (RUDN PSDN) for National Defense. Although the draft policy is considered a new transformation of the draft policy on the Reserve Component, in which the Reserve Component Bill is deemed to fail to continue the discussion, the perspective of the PSDN Bill on defense is considered more acceptable by both institutions.

The efforts to build the strength of the national defense need to be supported by an appropriate defense policy, a policy that makes the TNI a professional military by keeping it away from political and economic elements is a positive breakthrough that emerged at the beginning of reform. With the existence of professionalism, the TNI is able to focus on its main task in maintaining national defense. However, in the conception of universal people's defense that is applied by our country, where the state then places the TNI as the core of the defense force, it means that the state on the other hand also puts the presence of other forces that are expected to be a supporting force of the national defense.

The dynamics that occur in global security politics and the development or expansion of the dimensions of the threat of national defense, which are not only related to physical attacks but also non-physical attacks such as cyber-attacks, ultimately demand the role of other na-

tional components to be able to be involved in maintaining national defense. This condition is needed because of the limitations in quantity and quality of our military strength, as for example in quantity is the limited number of TNI personnel when compared to the area of Indonesia that they must guard.

As of 2017, it was noted that the number of active military personnel was 435.750 personnel<sup>29</sup>, and the quantity deficiencies also apply to TNI supporting equipment. Quality deficiencies are the lack of technology in the main weaponry system (defense equipment) owned by the TNI.

The emergence of initiation to encourage the ratification of the PSDN Bill for national defense, which should be based on the need to strengthen the country's defense amid the ever-expanding spectrum of threats of national defense and a fluctuating global security situation, so efforts to encourage the endorsement can be considered necessary. With this policy, in the future, the country is expected to be able to jointly prepare the people to face all the worst conditions that threaten the sovereignty of the nation and the state.

#### *Executive and legislative political communication related to the PSDN bill*

The state defense will not reach perfection if there is no support from all components of the nation and state, including among them from the government and the House of Representatives (DPR) as state institutions. In relation to the executive and legislative existence, the two institutions are expected to work together in drafting defense policies that are able to encourage the strengthening of the national defense system. But if what happens is the opposite, when the politicization of a policy plan occurs, there will be a tug of interest that can lead to a halt in the discussion of the draft policy. As has happened to the politicization of interests in the discussion of the National Security Bill, which in the end made the draft policy halted halfway<sup>30</sup>.

In making policy, especially with regard to matters concerning national defense affairs, the executive body and the legislature need to sit together to discuss matters considered important. The sitting of these two institutions together when discussing important matters in a policy formulation is based on the provisions in our country's constitution, namely as clearly stated in Article 20 paragraph (2) of the 1945 Constitution that each bill is discussed by the House of Representatives and the President for joint approval.

*Yusa Djuyandi*

*Margynata  
Kurnia Putra*

*Haris Faozan*

When there are two political institutions, namely the government and the House of Representatives, while discussing a draft policy, there is a process of political communication in it. This is what has been said by Denton and Woodward<sup>15</sup> that the characteristics of political communication can be seen from the way and intensity of the sender of the message in influencing the political environment, which then includes a public discussion that influences the considerations of the authorities in make policy<sup>15</sup>. From what was said by Denton and Woodward<sup>15</sup>, there is a meaning that can be taken namely the message conveyed in a political communication process has a very significant role to influence the attitude of a person or a lot of people so that they will eventually accept the proposed policy.

In developing an ideal defense policy, good political communication is needed between the government and the DPR, especially the Ministry of Defense and Commission I. The existence of good political communication between the two institutions not only creates a sense of mutual understanding but can also encourage good synergy between the two institutions in formulating appropriate defense policies, such as those currently being discussed namely related to the PSDN Bill for defense. With such conditions, ideally, the government and DPR can complement or fill in the shortcomings that might arise from the design of national resource management policies for national defense.

In building a good political communication between the two institutions to create synergy in order to strengthen the national defense system, especially through the formulation of appropriate defense policies, not an easy matter. Both the government and the DPR need to ensure that the policy design in the defense sector proposed by one of the parties to be discussed together does not contain political elements that can harm the public interest. It is not uncommon for a policy plan to stop because it is considered to only benefit the parties in power, and on the other hand it is precisely detrimental to the public interest or violates the principle of democratic political life. The DPR's political voice, on the other hand, was also influenced by the voice of factions from political parties, where often between factions of parties supporting the government had a different political attitude from the faction of the opposition parties. For parties supporting the government, of course, the policies taken by the government, especially in the defense sector, need to get full support, but this condition can be different for opposition parties which will precisely look more closely at the draft policy.

Because the drafting of defense policy, especially in the form of legislation, is also influenced by the political situation in the DPR, building effective political communication will be important for the initiator or proponent of the draft policy. The policy initiator plays the role of a political communicator who will convey a message in the form of the intent and purpose of formulating a policy plan. It is important for political communicators to build effective political communication by making clear and precise political messages, this is certainly so that political messages can be easily understood by communicants, such as other parties or audiences.

In the case of reaching an agreement and a joint commitment between the Ministry of Defense and the House of Representatives Commission I to continue the ratification of the PSDN Bill, it can also be caused by effective political communication due to the ability of political communicators to increase their political commitment to existing political groups. The thing that might be emphasized is that the PSDN Bill has a greater national interest in the framework of strengthening the national defense system in the form of the concept of the universal defense system (Sishanta). Thus political communication goes as expected. The achievement of an agreement between the Ministry of Defense and the House of Representatives Commission I to continue and encourage the ratification of the PSDN Bill shows that political communication is not solely as a tool to gain power, but also has the function to achieve mutual agreement in finding common goals.

## **Conclusion**

For each country, the dimension of defense plays a very important role in the sustainability of the country. Strong or weak defense in a democratic country is not only determined by the number of military personnel but also influenced by the support of policies made by the government together with the parliament. Likewise, the government represented by the Ministry of Defense together with the DPR, especially Commission I, has agreed to encourage the ratification of the PSDN Bill for national defense. The achievement of an agreement between the two parties to encourage the passage of the PSDN Bill is the result of an effective political communication process, wherein the policy initiator as a political communicator is able to make political messages clear and precise and easily understood by the communicant. On the other hand, the success of political communication in the discussion

of the PSDN Bill also shows that political communication is not solely as a tool to gain power, but also has the function to achieve mutual agreement in finding common goals.

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Yusa Djuyandi

Margynata  
Kurnia Putra

Haris Faozan

# The Enactment of State Defense Awareness with the Synergy Conception Among Military, Government, and Civil Society

Study in Adi Soemarmo Air Base,  
Surakarta, Indonesia

*Eko Septiawan, Ari Ganjar Herdiansyah, Windy Dermawan*

## Abstract

The enactment of state defense awareness (*bela negara*) is a systematic and structured effort carried out by the state or non-state actors in mobilizing citizen patriotism in order to strengthen national defense. The endeavor is crucial mainly in countries with limited military infrastructure. This study analyzes the enactment of state defense awareness initiated by military agencies in the civil realm through the territorial defense empowerment. This study was conducted at the Adi Soemarmo Air Force Base, Surakarta, Indonesia. This research found that the Indonesian Air Force's defense program involving the civil was carried out not only actively, but also passively. Actively, the Indonesian Air Force Base carries out the obligation of socialization and training in state defense to civilians. On the other hand, government agencies, and civil society ask for assistance to the Indonesian Air Force Base to provide training in state defense in order to shape the character of personnel both for institutional interests and for carrying out citizenship demands. The implementation of the state defense agenda is part of



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the working agenda of the doctrine of territorial defense empowerment in Indonesia.

*Keywords: state defense, territorial doctrine, military, air force*

*Eko Septiawan*

*Ari Ganjar  
Herdiansyah*

*Windy  
Dermawan*

## **Introduction**

The enactment of state defense awareness (*bela negara*) is a systematic and structured effort carried out by the state or non-state actors in mobilizing citizen patriotism in order to strengthen national defense. Every government must encourage efforts to defend the country because strong defense aspects will support national development. At present, the perception of the defense aspect is still synonymous with military duties and functions. Even though the military is the leading institution carrying out defense duties, all components of the state have the same responsibility in carrying out defense functions. Defense instruments owned by military institutions, such as the number of personnel and the primary defense system tools (defense equipment), always have limitations, moreover, in developing countries whose defense budgets always do not meet the standards. This is the importance of building a strong citizen patriotism. Without patriotism, other defense instruments will not be of much use when facing defense threats from both inside and outside. Therefore, a conception is needed that can build synergy between various components of the state, especially among the government, military, and civil society<sup>1,2,3,4</sup>

This article analyzes how the concept of state defense can be built between the three components: state, society and civil society. President Joko Widodo on August 21, 2015, signed Government Regulation Number 97 of 2015 concerning the 2015-2019 National Defense General Policy. In Article 3, it is explained that „This General Policy on National Defense is established as the basis for the Minister of Defense in establishing policies regarding the implementation of national defense and for ministries or institutions in determining policies by their respective duties, functions, and authorities related to the defense sector.“ In the attachment to the government regulation, it is stated that the state is organized in a universal defense system by combining non-military and military defense. That is, the nature of nationality involves all citizens, regions, and other national resources, as well as national facilities and infrastructure, prepared early by the government, and held in total, integrated, directed, and continued manners. In order to support

the universal defense system, the management of empowerment of defense areas is a must. Management of defense area empowerment is designed early to prepare the people as a reserve component and supporting component of national defense so that it can support the main components of national defense. Without the management of defense areas, the effort to realize the universal defense system will experience obstacles. By running a bela negara program, the potential for defense is dynamic and can respond to challenges or security threats at present and in the future<sup>5,6</sup>.

Among military institutions, the Indonesian Air Force is also a part of national efforts to conduct bela negara. Law No. 34 of 2004 concerning the TNI explains that the Indonesian Air Force has tasks one of which is the empowerment of air defense areas that are very strategic to face the challenges of increasingly complex future tasks. Indonesia's current national defense system according to Law No. 3 of 2002 concerning National Defense and Law No. 34 of 2004 concerning the TNI has given new hope to the national defense system in Indonesia because substantially, the law mandates all components of the nation to participate in the process of realizing a strong national defense by placing the TNI as the main component, assisted by reserve components and supporting components. The Air Force is a component that in carrying out its duties is still facing various obstacles, such as the limitations of the primary weapons system tools, while the demands of the task to carry out air operations tend to increase. It needs attention because the development of the strategic environment has led to changes in the form of threats and the nature of war in the future. The task of the Air Force in the empowerment of air defense areas is carried out through the development of aerospace potential with the empowerment of human resources, natural resources, infrastructure, and national infrastructure of aerospace aspects, has not been able to make a real contribution to the national defense in the air dimension.

Air Base is the Air Force's regional command unit whose chief duties, among others is to carry out the empowerment of air defense areas in its territory to create the resilience of an area in the airspace. The implementation of the Universal Defense System (Sishanta) is carried out by the TNI AU through the implementation of air defense area empowerment implemented by Air Base Regional Command units through aerospace potential development activities. This guidance is directed at fostering Human Resources, Natural Resources, and social

conditions to be prepared to become a formidable space, tool and condition of the fight and to create a high love society. The TNI Guidebook on Empowerment of Defense Areas explains that the Implementation of Air Defense Empowerment is all efforts, works, and activities related to planning, coaching, developing directions and controls, and utilizing all national potentials in the region to become a strong regional force in supporting defense interests.

Adi Soemarmo Air Force Base, which implements the empowerment of air defense areas, needs to be continuously optimized, from the planning to the implementation. This is done as part of the preparation of the national defense development plan so that it needs to be regulated in national development facilitated by the local government. In order for the ability of Adi Soemarmo TNI AU Base to be optimal in empowering defense areas, what needs to be done is to elaborate on the concept of empowering air defense areas and conducting basic defense training for reserve components and supporting components as stated in the Law No. 34 of 2004 concerning TNI, Article 7 Paragraph 2.

Adi Soemarmo Air Force Base in carrying out the task of empowering the air defense areas still has many weaknesses, especially in training defense of the country, which has caused the suboptimal role of Adi Soemarmo Air Force Base in empowering defense areas. The condition of residents around the base currently shows the need for an increase in nationalism. The challenge faced by the Air Force Base is the younger generation in the Surakarta region who has apathetic nature towards the surrounding environment, giving rise to many potential threats of radicalism in the Surakarta area. However, Adi Soemarmo Air Force Base has carried out efforts to empower the defense area by carrying out guidance on aerospace potential, defense of the state and social communication towards the community. From these problems, there needs to be a real effort carried out by Adi Soemarmo Air Force Base as the spearhead of the Air Force in carrying out the empowerment of air defense areas in its territory. Therefore, Adi Soemarmo Air Force Base as the Air Force's regional command unit in supporting the fundamental task of the TNI AU needs to be examined for its role in empowering the air defense areas through increasing awareness of defense of the state.

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## Literature Review

### *Security*

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Security is a special form of politics. All security issues are political problems. Security is a major issue of political disputes when certain political actors threaten or use force to get what they want from others<sup>4</sup>. The scope of the political problem is broad and coincides with the history of human interaction in the dimensions of space and time when force is used. Like politics, security is a phenomenon created by human will or action<sup>4</sup>.

In the classical conception, security is defined as an attempt to maintain the territorial integrity of the country from threats that arise from the outside. Conflicts between countries, especially in an effort to expand the empire of the colonies, make the definition of security only aimed at how the state strengthens itself to face military threats. In the traditional approach, the state becomes the subject and object of the pursuit of security interests. This group views that all political and international relations phenomena are about the state. In this traditional view, the state becomes the core in efforts to maintain state security<sup>7</sup>.

### *The Empowerment of air defense area*

The selection of a territorial defense system by a country is basically based on the consideration that the country is relatively small and has a small population so that all citizens and resources are involved as a defense force. The state policy in involving citizens and components of state power during peacetime is aimed more at familiarizing all citizens in order to be disciplined, orderly, respectful, and especially love their homelands.

The readiness of citizens since the beginning in the country's mission will facilitate the state in organizing and controlling citizens and other national forces. If one day the country faces war because an enemy attacks it, then all citizens are ready to become members of military organizations and are ready to take up arms to fight the enemy.

Atwater et al<sup>8</sup> defines regional defense as follows:

„The territorial defense is a system of defense in depth; it is governmentally-organized by definition of a state's own territory, conducted on its own territory. It is aimed at creating a situation, in which it is an invader, even though he may at least for a time gain the geographical possession of part or all of the territory, Constantly harassed and attacked from all

sides. It is a form of strategic strategy which has important organizational meaning, being liable to be involved substantial reliance on a citizen army, including local units of a type militia. Characteristically, a territorial defense system is based on weapons systems, strategies and methods of military organization which are better suited to their defensive role than management in major military actions abroad.”

To be able to realize conditions as in the definition, minimum attention is not enough; it requires comprehensive thinking, and it needs a Grand Strategy so that all aspects in the preparation of the defense in maintaining sovereignty, territorial integrity, and national safety can be realized.

*Eko Septiawan*

*Ari Ganjar  
Herdiansyah*

*Windy  
Dermawan*

### *Military Operations Other than War (MOOTW)*

MOOTW is generally divided based on the external role of the military by referring to operations carried out overseas, such as peace operations and internal military roles by referring to operations carried out domestically. Empirically, the internal role of the military has become a discourse and controversy in various countries because it is related to the issue of legitimacy, purpose, and nature of military power to the issue of interests and motivation of the government's stakeholders. In its implementation, governments of various countries often make regulations and approaches to justify the internal role of the military.

The focus of the MOOTW is to prevent war, resolve conflicts, seek peace, and support the civil administration in overcoming its domestic crisis. An alternative term for MOOTW is Peace Support Operation (PSO). The MOOTW includes peacekeeping and maintenance. MOOTW also involves monitoring arms trades/exchanges. The MOOTW does not involve the use or threat of violence but prioritizes the provision of humanitarian assistance and disaster management. In the MOOTW, military power synergizes with other institutions/organizations, especially those related to diplomacy, economics, government, and even politics and religion. The implementation of the MOOTW, as well as war operations, adheres to a principle to facilitate, accelerate, and protect the deployed personnel. The operations commander needs to understand the established principles and apply them in operations correctly. Some general principles in the implementation of MOOTWs are clarity of objectives, the unity of action, validity, tenacity, limits, and safety (US Headquarters Department of the Army, 1996).

### *Role*

The theory of role, according to Sarwono<sup>9</sup> is a theory which combines theory, orientation, and scientific discipline, apart from psychology; role theory starts from and is still used in sociology and anthropology. In these three fields, the term „role“ was obtained from the world of theater. In theater, an actor must play as a certain character, and in their position as a character, they are expected to behave in a certain way.

There are several role dimensions, as follows:

- a. Role as a policy. These adherents argue that the role is an appropriate and good policy to implement.
- b. Role as a strategy. Adherents of this understanding postulate that the role is a strategy to get support from the public.
- c. Role as a communication tool. The role is utilized as an instrument or tool to obtain input in the form of information in the decision making process. This perception is based on the idea that governance is designed to serve the community so that the views and preferences of the community are valuable inputs to realize responsive and responsible decisions.
- d. Role as a dispute resolution tool, the role is utilized as a way to reduce conflicts through efforts to achieve consensus from existing opinions. The assumption that underlies this perception is to exchange thoughts and views that can increase understanding and tolerance and reduce feelings of distrust and confusion.

Sociologist of science named<sup>9</sup> helps to expand the use of role theory using an approach called „life-course“ which means that every society has certain behaviors in accordance with the age categories that apply in that society. Role theory describes the social interaction in terms of the actors who play according to what is determined by culture. In accordance with this theory, role expectations are shared understanding that leads us to behave in everyday life.

### *Total defense system*

The national defense system is a total defense system that involves all citizens, territories, and other national resources, and these are prepared early by the government and held in a total, integrated, directed, and continuing manner to uphold the sovereignty of the state, territorial integrity, and safety of all nations from all threats. Therefore, the national defense functions to realize and maintain the entire territory

of the Republic of Indonesia as a unit of the defense. State defense is carried out by the government and prepared early through efforts to build and foster the capabilities and competitiveness of the state and nation and to overcome any threats. The national defense system in the face of military threats puts the Indonesian National Army as the main component supported by reserve components and supporting components. In the face of non-military threats, the placement of government institutions outside the defense sector as the main element that is adjusted to the shape and nature of the threat is supported by other elements of national strength. It is intended that the implementation of national defense is in accordance with the rules of international law related to the principle of differentiating treatment against combatants and non-combatants, as well as simplifying the organization of state defense efforts.

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### **Research Method**

The research methodology is a qualitative method. This study focuses on a case at Adi Soemarmo Air Force Base. Data collection was conducted by interviewing some informants, documenting studies on a number of relevant documents, and conducting field observations. Testing the validity of the results of this study was conducted using triangulation techniques by comparing the results of interviews, field observations, and documentation studies obtained during the data collection process.

### **Discussion**

Based on the Kasau Regulations number Perkasau/89/X/2009 dated October 12, 2019, concerning the Principles of Air Force Base Procedures and Organizations of Adi Soemarmo, the base has the task of carrying out the education and operation of all units in his ranks and fostering aerospace interests and supporting air operations.

#### *Military Operations Other Than War (MOOTW)*

The TNI's (Indonesian National Army) main task in accordance with Law No. 34 of 2004 concerning the TNI, is to uphold the sovereignty of the state, maintain the territorial integrity of the Republic of Indonesia based on Pancasila and the 1945 Constitution, and protect all nations and the entire Indonesian blood from threats and disturbances to the integrity of the nation and state. The main task of the TNI is carried

out through military operations for war and Non-War Military Operations. Particularly, Non-War Military Operations are military operations carried out not in the context of war with other countries, but for other tasks which include:

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1. Overcoming armed separatist movements
2. Overcoming armed rebellion
3. Overcoming acts of terrorism, carried out by international terrorists or collaborating with or by domestic terrorists
4. Securing border areas
5. Securing strategic vital national objects
6. Carrying out the tasks of world peace in accordance with foreign policy
7. Securing the safety of the President and Vice President and their families
8. Empowering defense areas and their supporting forces early in accordance with the Total Defense System
9. Assisting government tasks in the area
10. Assisting the National Police in the framework of Kamtibmas duties as regulated in the Law
11. Helping to secure state guests at the level of the Head of State and representatives of foreign governments in Indonesia
12. Helping to overcome the consequences of natural disasters, displacement, and the provision of humanitarian assistance
13. Helping to search and rescue in accidents
14. Assisting the government in securing shipping and aviation against hijacking, piracy, and smuggling.

### *Adi soemarmo air force base problem analysis in the empowerment of air defense areas*

The main problem of Adi Soemarmo Air Force Base in empowering air defense areas in the Surakarta area and its surroundings is the lack of people's awareness of defending the country. This is indicated by the data and dissemination that has been carried out by the Air Base in the empowerment of air defense areas that tend to be participated by students from kindergarten, elementary school, junior high school, and some from private institutions participating in state defense training. Moreover, the implementation of the empowerment of the defense area at the Adi Soemarmo Air Force Base requires a clear legal tool because all this time its implementation still uses the guidebook for

the implementation of TNI Territorial Operations so that it has not been set forth in the Standard Operating Procedure (SOP) owned by the Air Force <sup>10</sup>. This shows that the implementation of air defense area empowerment at the Adi Soemarmo Air Force Base is less than optimal because the SOPs implemented by the existing regional command units need to be translated into greater depth so that the implementation of tasks in increasing public awareness in defending the country is not optimal.

In addition to the above problems, there are several obstacles in implementing air defense area empowerment at the Adi Soemarmo Air Force Base, especially in raising awareness of the Surakarta people to defend the country <sup>11</sup>, including the lack of facilities and infrastructure owned by Adi Soemarmo Airport. Facilities and infrastructure as support in carrying out activities are requirements that must be prioritized. But the current facilities and infrastructure are available at Adi Soemarmo Airport in support of potential aerospace development (binpotdirga) activities. Furthermore, there is a limited budget for binpotdirga. The task of empowering the air defense area by Adi Soemarmo Air Force Base is inadequate because, in addition to being the Indonesian Air Force's regional command unit, Adi Soemarmo Air Force Base also serves as an air force education institution so that the implementation of aerospace potential is less than optimal.

Another problem that causes the unoptimal empowerment of the air defense area at Adi Soemarmo Air Force Base is the management of human resources that carry out binpotdirga. In details, the above problems are caused by several factors, including the limited number of binpotdirga personnel. In the implementation of awareness-raising programs in defending the country, it is needed personnel who understand regional issues so that the provision of training materials and national character building and the basic introduction of state defense can work well. This is indicated by the borrowing of personnel from other work units so that it proves that the implementation of binpot tasks is still not optimal. In addition, binpotdirga personnel have limited skills in their fields. The implementation of duties in the field of the empowerment of air defense area requires personnel who are able and understand the activity so that education and training are needed to support the implementation of tasks in the binpotdirga zone <sup>12</sup>.

*Eko Septiawan*

*Ari Ganjar  
Herdiansyah*

*Windy  
Dermawan*

*The role of adi soemarmo air force base as a determinant of air defense areas empowerment policy*

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It should be realized that the awareness of defending the country does not suddenly emerge, but it is dynamic which develops according to the changing times and the dynamics of life. For this reason, a strong strategic policy is needed in the development of state defense awareness, in order to prepare the minds of citizens who are ready to defend the State. Adi Soemarmo Air Force Base as the Air Force's regional command unit that carries out its duties as a superintendent of airspace defense command in the Surakarta area needs to take policy steps in an awareness-raising programme so that the implementation of regional command can run optimally, and the policy is acceptable by the Surakarta community.

In order to support the universal defense system, the role of the Adi Soemarmo Air Force Base is needed to intensify the country's defense spirit for the people in Surakarta. In carrying out this task, general policy is needed as a guideline to realize the role of Adi Soemarmo Air Force Base actively in strengthening the nation's character as the basic capital of character building and the spirit of defending the country. There are several steps that can be carried out by Adi Soemarmo Air Force Base, namely:

1. Carrying out dissemination to the public about components in the total defense system that involve the community as a reserve component;
2. Conducting training for all components in order to cultivate the state defense by using educational methods both formally and informally.

The pattern of fostering awareness of defending the country for the community can be implemented with an educational pattern that aims to increase awareness of defense of the state, so it is necessary to prepare a number of things as follows:

1. Preparing a comprehensive policy formulation to support character building and awareness of state defense for the community;
2. Improving coordination among air bases, local governments, and active community participation;
3. Improving socialization of awareness of defending the country through education, training, seminars, and mass media.

### *The role of adi soemarmo air force base as a strategic compiler in empowering air defense areas*

In accordance with the Indonesian Air Force's Technical Guidelines Number Kep/693/XII/2013 dated 3 December 2013 concerning the empowerment of air defense areas, the role of the Adi Soemarmo Air Force Base as a strategist in empowering air defense areas in the Surakarta area needs to be guided by:

1. Ideological Aspect the need for ideas that are in accordance with the ideology of Pancasila and the 1945 Constitution in carrying out the guidance of the values of patriotism, adherence to the law, customs and paying attention to local wisdom, and tolerance between religious communities as a unifying nation
2. Economic Aspect, increasing the economic capacity of the community related to aerospace, such as agriculture, plantations, and livestock so that home industries are realized in the community around the Air Force Regional Command Unit or the Air Base.
3. Technology Aspect, promoting and developing aerospace technology engineering, renewable energy source technology for the young generation and communities around the Air Base.

Referring to the above aspects, the strategies that must be implemented in the empowerment of air defense areas are as follows:

1. Carrying out coordination with the regional government in increasing awareness of defending the country for the community;
2. Coordinating with non-government/youth leaders and community leaders so that the community is enthusiastic about the state defense programme.
3. Creating community groups in an activity about regional defense in order to create dynamic conditions, attitudes, and behaviors imbued with love for the state;
4. Carrying out counseling on the defense of the country to the community in order to realize a society that loves the homeland and nation.

### *The role of adi soemarmo air force base as a communication tool in empowering the air defense area*

Empowerment of air defense areas at Air Force Base Adi Soemarmo as a means of social communication between Indonesian Air Force Soldiers and the community needs to be maintained and continually improved so as to foster awareness and sensitivity to various aspects of

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geography, demography, and social conditions. Through social communication, either harmonious relationships or mutual communication can be established, and these two can facilitate coordination in various fields. Furthermore, the need for Adi Soemarmo Air Force Base to carry out various stages of implementation in improving communication with the community, including:

1. Assisting functional institutions in fostering public awareness in defending the country
2. Providing inputs to functional institutions in the framework of preparing and formulating regional defense forces
3. Fostering integration in preparing national defense plans and structures in the regions

*The role of adi soemarmo air force base as a dispute settlement tool in empowering air defense areas*

In accordance with the duties of the Indonesian Air Force mandated in Law No. 34 of 2004 concerning the TNI, the development of defense areas carried out by the Indonesian Air Force requires dissemination of Defense Areas and Social Conflict Prevention. The TNI's territorial role in preventing social conflict is to maintain peaceful conditions in society, develop a peaceful system of dispute resolution, reduce conflict, and build an early warning system.

Conflict potential is a latent condition that can be a case of conflict, while a conflict case is a conflict that has occurred and appeared in the form of concrete actions carried out by parties involved in the conflict. Therefore, the role of the Adi Soemarmo Air Force Base as an Air Force regional command unit in the Surakarta area must have the same mindset, action patterns, and attitudes about Empowerment of Defense Areas and Prevention of Social Conflict, and be able to apply it in its working area. The role of Adi Soemarmo Air Force Base in resolving disputes in the empowerment of defense areas includes:

1. Realizing law enforcement without causing discrimination in the community so that the existence of the Air Base is felt to be involved in resolving conflicts in its territory;
2. Implementing approaches, meetings, and discussions with various religious leaders, community leaders, and youth leaders to make conflict resolution campaign
3. Promoting engagement, commitment, and efforts to build strong communication and coordination among relevant stakeholders,

such as local government, police, academics, non-government institutions or civil society, including mass media.

## **Conclusion**

The problem of empowering the air defense area at the Adi Soemarmo Air Force Base is currently not running optimally due to several constraints, including the SOP implemented by the existing regional command units that needs to be translated into greater depth so that the implementation of the task is not at a maximum, the current facilities, and infrastructure available at Adi Soemarmo Air Force Base in supporting binpotdirga activities related to aerospace sports activities that are still limited. The binpotdirga budget related to the task of empowering air defense areas at the Adi Soemarmo Air Force Base is not enough because, in addition to being the Indonesian Air Force's regional command unit, it is also the Indonesian Air Force's educational institution so that the implementation of tasks in aerospace potential development is not optimal. It also limits the activities, and the number of binpotdirga personnel is also limited. This is indicated by the existence of personnel borrowing from other work units; thus, proving that the implementation of binpotdirga tasks is still not optimal and binpotdirga personnel have not been equipped with the required skills so as to influence the implementation of tasks in the field of air defense area empowerment.

The results of this study prove that the role of Adi Soemarmo Air Force Base in empowering air defense areas through increased awareness of defense of the state in the Surakarta region is not optimal according to several dimensions of role theory. Therefore, as a step to optimize this role, the following are recommended:

1. Making more technical regulations at the Air Force level in the form of Technical Guidelines for the empowerment of air defense areas so that it becomes a reference for the Air Force regional command unit.
2. The need for a budget that can support the implementation of the task of empowering air defense areas so that the TNI AU regional command unit or Air Base is more optimal in carrying out tasks.
3. The need to increase the number of human resources to carry out the binpotdirga organization and the capacity of personnel through education and training to obtain professional human resources in the territorial field.

*Eko Septiawan*

*Ari Ganjar  
Herdiansyah*

*Windy  
Dermawan*

4. The need for increased coordination between the Indonesian Air Force's regional command unit and local governments, community leaders, religious leaders, traditional leaders, youth organizations, and civil society, so that character building programs and awareness of defense of the country are more increasing.

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# Authority of Military Police of the Indonesian Air Force in Handling National Airspace Boundaries

*Nicolas Sinaga, S.H.*

## **Abstract**

This research aims to describe and analyze the authority of the Military Police of the Indonesian Air Force in handling national airspace boundaries.

The method applied in this research is a qualitative method. The data used in this research are primary and secondary data. The data collection techniques are carried out by in-depth interviews, literature studies and documentation studies. The data analysis used the interactive data analysis techniques of Miles and Huberman which consist of data reduction, data presentation, and ended with conclusion drawing/ verification.

The findings show that in dealing with national airspace boundaries, the Military Police of the Indonesian Air Force only has the authority to carry out preliminary investigations against parties who violate national airspace boundaries. Furthermore, after carrying out the initial investigation, the Military Police of the Indonesian Air Force hand over the cases to the Civil Servant Investigators which are legally given the authority to carry out investigations against parties who committed violations of national airspace. The limited authority of the Military Police of the Indonesian Air Force, in dealing with national airspace violations, is because up to now, Indonesia has not had laws that regulate the management of airspace and regulate those who have the authority to investigate any violations in national airspace boundaries.

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*Keywords: authority, national security, airspace security, Indonesian Air Force, Military Police of the Indonesian Air Force*

## **Introduction**

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Indonesia is the largest archipelagic state in the world. Regionally, Indonesia has an area of national jurisdiction of  $\pm 7.8$  million km<sup>2</sup> in which two thirds of its territory is the sea of  $\pm 5.9$  million km<sup>2</sup>, which covers the Indonesian Exclusive Economic Zone (ZEEI) covering  $\pm 2.7$  million km<sup>2</sup> and territorial sea, archipelagic waters, as well as inland waters covering  $\pm 3.2$  million km<sup>2</sup>. In addition, Indonesia has a coastline length of  $\pm 81,000$  km<sup>2</sup> and has 17,499 islands consisting of 5,698 named islands and 11,801 unnamed islands. The status of Indonesia as an archipelago is obtained through a long struggle for diplomacy, and this status has been recognized worldwide since the International Sea Law or the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982). Indonesia has ratified the convention by issuing Republic of Indonesia Law number 17 of 1985. As a consequence of these rules, the territory of Indonesian national jurisdiction must be seen as a unified territory (space) of round and intact land, sea and air space<sup>1</sup>.

By the existence of this law, the Indonesian state has the authority to control the airspace above its territory. Foreign aircraft, civilian or military aircrafts, do not have the right to enter the airspace or land without Indonesian approval. Therefore, if there are foreign aircraft passing without permission, this is a violation, and Indonesia has the right to take action. Based on data held by the National Air Defense Command of Intelligence Staff, from 2014 to 2018, there have been 322 violations of national airspace; both carried out by civil aircraft and military aircraft in various regions in Indonesia.

The Indonesian Air Force, as one of the components of the Indonesian National Armed Forces, has the main task of maintaining air security including the enforcement of laws in accordance with the applicable international law and national law. The Air Force Unit which has duties and responsibilities in enforcing the law is the Military Police. The Military Police Unit is the executor of military air-based operations in carrying out physical investigations and security activities, investigations, maintaining the order of the military airbase and areas used by the Air Force; including handling investigations against parties who violate national airspace boundaries.

The authority currently possessed by the Military Police of the Indonesian Air Force in enforcing the law against violators of airspace is only limited to carrying out preliminary investigations against parties who violate national airspace boundaries. After conducting preliminary investigations, all data resulting from the investigation carried out by the Military Police of the Indonesian Air Force are subsequently submitted to the Ministry of Transportation based on the Government Regulation of the Republic of Indonesia number 4 of 2018 concerning Safeguarding the Air Territory of the Republic of Indonesia in giving the authority to handle violations of national airspace boundaries.

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Furthermore, the Ministry of Transportation will order the Civil Servant Investigators to follow up by carrying out investigations against perpetrators of violations of the airspace. Based on the Government Regulation of the Republic of Indonesia number 43 of 2012 concerning Procedures for Implementation of Coordination, Supervision, and Technical Guidance on Special Police, Civil Servant Investigators, and Forms of Personal Security, Civil Servant Investigators are investigators from Civil Servant that investigate certain crimes. The criminal act is generally not a common crime that is usually handled by police investigators. One of them is investigating violations of national airspace.

However, current law enforcement against violations of national airspace boundaries is considered not optimal. It can be seen from the administrative sanctions imposed on the perpetrators of airspace violations which are considered to be out of balance with the expenses that must be incurred by the Indonesian Air Force to carry out the force-down action. For example, it takes 400 million funds for Sukhoi fighter to fly for an hour to carry out the force-down action. Then, after successfully being forced to land, foreign aircraft that violated airspace limits are only required to pay a fine of IDR 60 million<sup>2</sup>.

Many factors can be the cause of weak law enforcement or sanctions against perpetrators of violations of national airspace boundaries. One of them could be due to the very limited authority possessed by the Indonesian Air Force, especially the Military Police of the Indonesian Air Force, in conducting investigations into perpetrators of national airspace boundary violations.

## **Literature Review**

### *National Security*

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According to Darmono et al.<sup>3</sup>, national security is generally defined as a basic need to protect and safeguard the national interests of a nation that is a state by using political, economic and military power to deal with various threats coming from outside and within the country. National interests then become the dominant factor in the concept of national security of a nation. National security can also be interpreted as the need to maintain and preserve the existence of the state through economic, military and political forces and the development of diplomacy. This concept emphasizes the government's ability to protect the country's territorial integrity from threats coming from outside and within the country.

### *Airspace Security*

Risdiarto<sup>4</sup> explains the definition of airspace security as the ability to protect what is determined as a core value, whose achievement is a process that continues to take place using various elements and available resources. The potential of national airspace security is the aerospace power which is basically used for defense purposes in the airspace area. For Indonesia, airspace is an integral part and one of the dimensions of the area and interests of the Indonesian nation and state's life that can be utilized to realize national goals that do not ignore its conservation efforts.

Furthermore, Hambali<sup>5</sup> explains that the national airspace boundaries of a country including Indonesian airspace are completely closed to foreign aircraft; civilian and military. This characteristic can be understood considering that airspace as a space for movement is very vulnerable in terms of a country's defense and security. It is because of the attacks using aircraft have more advantages and convenience, such as being faster, having a wider range, being able to attack suddenly, and being able to infiltrate optimally.

### *Airspace Law*

Airspace Law is a law that regulates the use of airspace, especially regarding aviation and the use of airplanes whose role is a necessary element for aviation<sup>6</sup>.

At the end of World War I, in safeguarding the framework of international interests and order, international agreements regarding

aviation were made at the Paris Convention of 1919. The conference specifically regulated the procedure, status, world airspace using the Paris protocol wherein then on 1 May 1920 and on 15 June 1929, it was renewed. In the Paris Convention 1919 article 1, it affirmed the sovereignty of airspace over the countries participating in the convention. This convention gave rise to the principle that airspace follows the legal status of a country where airspace is in charge of land and sea in its territory<sup>7,8</sup>.

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In the 1944 Chicago Convention, it was explained that state aircraft and also the military did not have the right to fly over other countries without granting special rights from the concerned country. The convention also explains the obligations of the state which must provide equal and non-discriminatory treatment with respect to other countries using their airspace<sup>7</sup>.

In international flights, violations often occur either by civilian or military aircraft. The country that experienced the violation has the right to take action by arresting the aircraft that committed the violation. However, when it comes to civil aircraft, countries that are violated by their territorial boundaries must take action that does not endanger the lives of the passengers on the plane<sup>7,9</sup>.

### *Authority*

Authority is called formal power, i.e., the power that comes from the power granted by the law. Meanwhile, the authority is only about the authority of "Onderdeel" (rechtsbevoegdheden). Authority is the scope of public legal action and the scope of governmental authority which does not only include the authority to make government decisions (bestuur), but includes authority in carrying out tasks, and authorizes and distributes the main authority stipulated in the Law<sup>10</sup>.

Philippus M. Hadjon states that the authority is obtained through three sources, i.e., attribution, delegation, and mandate. Attribution authority is usually outlined through the distribution of state power by the constitution, while the authority of delegation and mandate is the authority that comes from the delegation. In addition, Philippus M. Hadjon makes a difference between delegation and mandate. In the case of delegation, the procedure of delegation comes from a governmental organ to other governmental organs with legislation, responsibility and accountability transferred to the recipient of the delegation. The delegate cannot use that authority anymore, except after

revocation by holding the “*contrarius actus*” principle. It means that every change and revocation of regulation on the implementation of legislation is carried out by officials who set the rules in question and is carried out with equal or higher rules. In the case of mandate, the procedure of delegation is in the context of routine subordinate-supervisor relationships. The responsibility and accountability remain with the mandate provider. At any time, the creditor can use the delegated authority<sup>11</sup>.

### **Research Method**

The research method is a qualitative method. Creswell<sup>12</sup> explains that qualitative research is a method for exploring and understanding meanings which—by a number of individuals or groups of people—are thought to originate from social or humanitarian problems. This qualitative research process involves important efforts, such as asking questions and procedures, collecting specific data from participants, analyzing data inductively from themes that are specific to general themes, and interpreting the meaning of data. The final reports for this research have a flexible structure or framework. Anyone involved in this form of research must apply a research perspective that is inductive in style, focus on individual meaning, and translate the complexity of a problem.

By using qualitative methods, the author tries to analyze in depth the authority of the Military Police of the Indonesian Air Force in handling national airspace boundaries by using various data sources and data collection techniques.

The data used in this research are primary and secondary data. The data collection technique used in this research is in-depth interviews, literature studies, and document studies. Determination of resource persons is carried out by using purposive sampling technique in which researchers choose research resource persons with considerations that are adjusted to the research objectives. These considerations include:

1. Current duties and positions best understand and are related to the research topics.
2. Having an assignment experience related to an investigation carried out by the Military Police of the Indonesian Air Force against national airspace boundaries.
3. Understanding the problems in handling violations of national airspace boundaries.

The data analysis technique used by researchers in this research is an interactive data analysis technique in which the analysis consists of three activities that occur simultaneously namely data reduction, data presentation, and conclusion drawing/ verification. For the validity of the data in this research, the researcher uses a triangulation technique to the source and theory.

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## Findings and Discussion

### *Research Findings*

Violations of airspace boundaries in Indonesia have often occurred, and it continues to occur until now. Based on data held by the National Air Defense Command of Intelligence Staff, there have been quite a number of airspace boundary violations from 2015 to 2018; done by civil aircraft or military aircraft. For more information, the number of violations can be seen in the following table.

No.	States	Military	Civil	Total
1.	USA	50	30	80
2.	Malaysia	29	11	40
3.	Australia	1	1	2
4.	Singapore	11	0	11
5.	Brunei	0	5	5
6.	Canada	0	1	1
7.	China	0	1	1
8.	Indonesia	0	2	2
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
9.	United Kingdom	0	1	1
10.	Japan	1	1	2
11.	Papua New Guinea	1	0	1
12.	Oman	1	0	1
13.	Germany	0	2	2
14.	France	0	2	2
15.	Lasa X	0	42	42
<b>Total</b>				<b>193</b>

Table 1 – Number of State Violations in 2015

<b>No.</b>	<b>States</b>	<b>Military</b>	<b>Civil</b>	<b>Total</b>
1.	USA	5	2	7
2.	Malaysia	2	3	5
3.	Australia	-	4	4
4.	China	-	2	2
5.	Indonesia	-	21	21
6.	The United Kingdom	-	1	1
7.	Qatar	-	2	2
8.	San Marino	-	1	1
9.	Arab	-	1	1
10.	Ireland	-	1	1
11.	The Cayman Islands	-	1	1
12.	Lasa X	-	-	3
<b>Total</b>				<b>49</b>

Table 2 – Number of State Violations in 2016

<b>No.</b>	<b>States</b>	<b>Military</b>	<b>Civil</b>	<b>Total</b>
1.	USA	4	2	6
2.	Germany	-	2	2
3.	South Korea	10	-	1
4.	Lasa X	-	-	
<b>Total</b>				<b>49</b>

Table 3 – Number of State Violations in 2017

<b>No.</b>	<b>States</b>	<b>Military</b>	<b>Civil</b>	<b>Total</b>
1.	Nil	Nil	Nil	1
2.	USA	3	-	3
3.	Australia	-	1	1
4.	China	-	1	1
5.	Rep. of Azerbaijan	-	1	1
<b>Total</b>				<b>7</b>

Table 4 – Number of State Violations in 2018

The Indonesian Air Force as the state's sovereignty of the airspace and an integral part of the Indonesian National Armed Force has the duty and responsibility to maintain air sovereignty by maintaining the integrity of the Unitary Republic of Indonesia in accordance with ratified international and national law. The Indonesian Air Force Unit which has the task of carrying out law enforcement against every territorial violation is the Military Police Unit. The Military Police Unit of the Indonesian Air Force is the implementing element of the military airbase commander in securing military air equipment, order, and investigation. The law enforcement carried out by the Military Police of the Indonesian Air Force is a process that is carried out in an effort to enforce the law, including in violations of airspace boundaries.

Based on the documentation studies, in carrying out law enforcement against violations of the National Airspace, the Military Police Unit of the Indonesian Air Force refers to the system that has been stipulated in the Government Regulation of the Republic of Indonesia number 4 of 2018 concerning Safeguarding the Air Territory of the Republic of Indonesia. In Government Regulation no. 4 of 2018, article 2 states that securing airspace is realized through:

- a. Determination of the status of airspace.
- b. Arrangement regarding the form of violation in the sovereignty territory.
- c. Implementation of actions against aircraft and aircraft personnel.
- d. Instructions and procedures for the implementation of coercion by state aircraft.

Furthermore, Article 10 describes the violation of sovereignty territory which consists of:

1. Foreign national aircrafts flying to and from or through the airspace must have diplomatic clearance and security clearance.
2. Foreign non-scheduled civil aircrafts flying to and from or through the airspace must have diplomatic clearance, security clearance, and flight approval.
3. Aircraft as referred to in paragraph (1) and paragraph (2) that fly without a license are considered as violations.

Those who commit violations—in article 13—are explained to get the following sanctions:

1. Administrative sanctions as referred to in paragraph (1) in the form of:

- a. Written warning;
  - b. Certificate freezing; and
  - c. Certificate revocation.
2. The imposition of administrative sanctions as referred to in paragraph (2) shall be carried out by the minister who organizes government affairs in the transportation sector in accordance with the authority.
  3. Further provisions regarding the procedure for imposing administrative sanctions as referred to in paragraph (1) and paragraph (2) shall be regulated by the regulation of the minister who organizes governmental affairs in transportation.

For foreign aircraft that have committed a violation, enforcement is carried out as described in article 11 as follows:

1. An aircraft that commits a violation as referred to in article 10 paragraph (3), article 12 paragraph (4), article 18, article 23, article 24, article 25, and article 26 paragraph (3) is carried out by visual recognition, visualization, cancellation, and/or coercion landing by the aircraft of Indonesian National Armed Force.
2. Indonesian civil aircraft and foreign civil aircraft controlled under the law and controlled by terrorists that threaten the central government, economic center, vital national objects, and state safety are carried out in accordance with the provisions of the legislation.
3. Foreign aircraft that are armed and reconnaissance aircraft from foreign countries that threaten the center of government, economic centers, vital national objects, and state safety are carried out by the use of weapons.
4. Unmanned aircraft that violate the provisions of prohibited areas and restricted areas as referred to in Article 6 paragraph (1) letter a and letter b shall take the final action in accordance with the provisions of the legislation.

The enforcement of foreign aircraft carrying out violations is explained in article 28 as follows:

1. Foreign aircrafts flying on the air defense identification zone (ADIZ) in the airspace by not having diplomatic clearance and security clearance as referred to in article 10 shall be carried out obstruction and coercion to land by the aircraft of Indonesian National Armed Force.

2. Non-scheduled foreign civil aircraft flying in the air defense identification zone (ADIZ) in the airspace by not having diplomatic clearance, security clearance, and flight approval as referred to in article 10, an act of obstruction and coercion is carried out by the aircraft of the Indonesian National Armed Force.

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Furthermore, an explanation of the investigation of an aircraft that commits the violations is described in article 30 as follows.

1. The aircrafts forced to land by the aircraft of the Indonesian National Armed Force are subject to preliminary investigations by the Indonesian National Armed Force in the form of:
  - a. Document checking.
  - b. Aircraft Inspection.
  - c. Inspection of flight and passenger crew.
2. If there is a violation of the law and an indication of a crime in the initial investigation as referred to in paragraph (1), aircraft personnel are processed in accordance with the provisions of the law.

By referring to these regulations, the Military Police of the Indonesian Air Force has the authority to carry out investigations into violations of national airspace boundaries. However, until now the authority possessed by the Military Police of the Indonesian Air Force is only to conduct initial investigations on parties who violate national airspace boundaries.

The head of the aeronautical law sub-department, in an interview with researchers, revealed that the Military Police of the Indonesian Air Force has not been able to play an optimal role in conducting investigations into all forms of national airspace boundaries. The Military Police of the Indonesian Air Force only has the authority to conduct preliminary investigations on any air violations. After that, the process is continued in accordance with the applicable rules or laws. The limited authority of the Military Police of the Indonesian Air Force in conducting investigations into violations of airspace boundaries is because there is no law that covers them up to now. Meanwhile, in carrying out an investigation into a violation including violations of national airspace boundaries, it must be protected or based on the law.

Furthermore, the head of the aeronautical law sub-department revealed that the problems in the management of airspace including those which caused the limited authority of the Military Police of the

Indonesian Air Force to carry out investigations into national airspace boundaries are because Indonesia does not yet have laws regulating airspace management. The existing aviation law only regulates flights and does not regulate the use of airspace. Thus, Indonesia needs an airspace management law. It covers the management of airspace so that foreign parties who will enter or pass through Indonesian airspace must have clearance as regulated in the law. The law must be regulated on how to use it. Once the law exists and regulates all clearance in passing the Indonesian airspace boundaries, if a foreign aircraft passes and does not have a clearance, it can be considered that it has committed a violation.

The head of the aeronautical law sub-department also added that law enforcement in the air must be further clarified; starting with investigations because those who carried out the arrests are apparatus, not law enforcement. Meanwhile, talking about the next process, law enforcement after an arrest is an investigation. However, it is very unfortunate that currently in Indonesia airspace violations are not criminal acts, in accordance with the new law that airspace violations are operational problems. Therefore, Indonesia must clarify more about the investigator in which it should be prosecuted. All of this should be regulated in the airspace management law. Since Indonesia only has a Presidential Regulation, the authority of the Indonesian Air Force is very limited.

The same thing was also conveyed by the Commander of the Military Police Center of the Indonesian Air Force that currently what must be clarified is about the category of airspace boundary violations whether it can continue towards criminal or still blurred. If an aircraft enters Indonesian territory without permission, it could be considered to be a violation. To be declared whether or not it is a criminal act, an action including an investigation is necessary. However, entering Indonesian territory is already considered as a violation and a criminal offense.

The same thing was also revealed by the staff of Civil Servant Investigators that national airspace violations in the current law are not criminal acts. Therefore, so far it has only been subjected to administrative sanctions rather than criminal sanctions. To determine the amount of the administrative sanctions, the Civil Servant Investigators continue to conduct investigations but not a real investigation because the real one is usually carried out to determine criminal actions.

Based on the existing law, agencies that have the authority to deal with national airspace boundaries are Civil Servant Investigators. Civil Servant Investigators are investigators who come from civil servants to investigate certain crimes. Commonly, the criminal act is not a common crime that is usually handled by police investigators; one of them is an investigation into violations of national airspace boundaries.

*Authority of  
Military Police of  
the Indonesian  
Air Force*

Procedurally, after the Military Police of the Indonesian Air Force carried out arrests of foreign aircraft that violated national airspace and carried out initial investigations, the next step was to hand over airspace boundary cases to Civil Servant Investigators in accordance with applicable laws.

In an interview with researchers, the Staff of Civil Servant Investigators stated that it would first get a report from the Directorate General of Civil Aviation. After receiving a report from the Directorate General of Civil Aviation, it is immediately responded and identified in accordance with orders from the Directorate General of Civil Aviation and the Directorate General of Aviation Security. After that, the Civil Servants Investigators will observe the field to identify it. After being identified and proven to have violated the next airspace limit, it is subject to administrative sanctions with fines prescribed in the law.

Based on article 11 paragraph 1 of Government Regulation number 4 of 2018, every person who violates the provisions is subject to administrative sanctions in the form of administrative fines of a maximum of IDR 5,000,000,000 (five billion rupiahs).

Coordination between relevant agencies carrying out investigations into national airspace boundaries is very important, especially coordination between the Military Police of Indonesian Air Force and Civil Servant Investigators. However, in fact, at this time, the coordination between the Indonesian Air Force investigators and the Civil Servant Investigators does not exist. According to the staff of Civil Servant Investigators, in an interview with the researchers, the coordination between Civil Servant Investigators and the Military Police of Indonesian Air Force has not been carried out effectively. During this time, the Civil Servant Investigators only receive reports and receive files as the results of an initial investigation conducted by the Military Police of Indonesian Air Force through the Directorate General of Civil Aviation, without direct coordination with the Indonesian Air Force Military Police. Thus, up to this time all the processes, especially the activities of investigation, prosecution, until the determination of sanctions

against those who committed airspace violations have not been carried out optimally.

The Commander of Military Police of Indonesian Air Force, in an interview with the researchers, also stated that so far the Military Police of Indonesian Air Force has never coordinated the problem of handling airspace boundary violations. We make arrests usually through diplomatic relations, and it is not clear whether the mechanism is in accordance with the applicable law or not. To overcome the issue of regional sovereignty, it should not be sectoral ego; all must join and need to be a special team to deal with the problem of airspace boundary violations. All relevant agencies need a special team so that the handling can be carried out optimally.

### **Discussion**

Airspace violations are a condition in which a country's aircraft, a civilian aircraft or a military aircraft, enter the airspace of another country without having permission from the country whose territory is entered. Airspace violations consist of restricted airspace violations, limited airspace violations, violations of air routes over the Indonesian Archipelago Sea Lines, or other violations that could threaten national defense and flight safety.

The Indonesian Air Force, as the enforcer of air sovereignty, has duties and responsibilities in safeguarding the security and defense of national airspace from various threats including national airspace violations by foreign aircraft; military or civilian aircraft. In carrying out each activity and handling all forms of violation of the national airspace, the Indonesian Air Force always conducts its duties based on the existing regulations. In addition, the base of the Indonesian Air Force in dealing with violations of national airspace is Governmental Regulation of the Republic of Indonesia number 4 of 2018 concerning Safeguarding the Air Territory of the Republic of Indonesia. The regulation regulates all mechanisms in dealing with national airspace violation limits.

However, the current problem is that the Military Police of Indonesian Air Force is considered to have no optimal authority in carrying out investigations on parties that violate national airspace boundaries. In the explanation of article 399 paragraph (1) of Law number 1 of 2009 concerning aviation, it is explained that certain civil servant officials, within the agency whose scope of duties and responsibilities are in the

aviation sector, are given special authority as investigators of criminal acts. Meanwhile, in the article (2), it is explained that in carrying out their duties certain civil servant officials as referred to in paragraph (1) are under the coordination and supervision of the Republic of Indonesia State Police investigators.

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The rule shows that the authority of the Military Police of the Indonesian Air Force in dealing with national airspace boundaries is very limited in which the Indonesian Air Force including the Military Police of the Indonesian Air Force has only carried out activities in the form of security for flight crew and military equipment and interrogation activities and search activities. Meanwhile, the investigation activities are only in the form of preliminary investigations which are then submitted to the Director General of Civil Aviation, which is then forwarded to the Civil Servant Investigators.

Based on the findings of the research, the main problem causing the limited authority of the Military Police of the Indonesian Air Force is because there is no law that regulates this matter so that until now the Indonesian Air Force only has a role as a means of arresting up to conducting initial investigations that further investigation activities are carried out by Civil Servant Investigators.

Therefore, to further enhance the role of the Military Police of the Indonesian Air Force, the Indonesian Government should make laws that regulate the management of airspace boundaries and anyone who has the authority to investigate any violations of national airspace. If it is not possible, the Indonesian government can synergize with the relevant agencies, for example by creating a special team and involving the Military Police of the Indonesian Air Force so that the role of the Military Police of the Indonesian Air Force in conducting investigations on those who violate national airspace can be optimized.

## **Conclusion**

Based on the findings and discussion of the research, it can be concluded that in dealing with national airspace boundaries, the Military Police of the Indonesian Air Force only has the authority to carry out initial investigations on parties that violate national airspace boundaries. Subsequently, after carrying out the initial investigation, the Military Police of the Indonesian Air Force hand over of the case to the Civil Servant Investigators who are legally given the authority to carry out investigations against parties who committed violations of nation-

al airspace. The reason for the limited authority of the Indonesian Air Force Military Police in dealing with national airspace violations is because up to now Indonesia has not had laws that regulate the management of airspace and the authority to investigate any violations of the national airspace boundaries.

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# Synergy Between Regional Command Unit of Indonesian National Army (Tni Ad) and Local Government in Encouraging the Spirit of State Defense

*Yusa Djuyandi, Arry Bainus, Widya Setiabudi Sumadinata*

## **Abstract**

At this time, security threat to the state cannot only be seen from military threats but also can be seen from non-military threats. Non-military threats, such as threats of ideological, political, economic, social and cultural dimensions can undermine the spirit of nationalism. To overcome the low sense of nationalism, then the government organized a state defense program. The synergy between regional command unit of Indonesian National Army (TNI AD) and local government in the state defense program is considered important by considering the geopolitical and geostrategic aspects of Indonesia. In its implementation, the civilian communities are considered that the state defense program that is conducted by regional command unit of TNI AD and local government is very important and provides many benefits, such as the growing sense of unity, the love of the homeland, the discipline, and the vigilance of security threats. Public gives a positive response because there is a synergy between the Regional Military Command with Local Government of Sukabumi Regency. The synergy between two institutions is achieved due to loyalty to partners, efforts to maintain interdependence, adjustment with the partner (cultural fit), the integrity and intensity of the relationship, and the institutionalization.

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*Keywords: threat, state defense, synergy, Sukabumi, military, Regional Command Unit*

## **Introduction**

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Indonesia's independence proclaimed on August 17, 1945, has become a milestone of the country's sovereignty as well as strong evidence of strong nationalism spirit of Indonesian people in achieving the independence. Starting from the event of Youth Oath in 1928, then came to the assertiveness of the youth to realize the ideals of Indonesia's homeland, with recognition for one nation that is the Indonesian nation and one language that is the Indonesian language. The spirit of the oath affirmed in 1928 also became a milestone in the spirit of nationalism, in which the spirit of nationalism then became the trigger and the spur of the struggle movement against colonialism and achieved independence.

It is undeniable that the enormous nationalism spirit of society has succeeded in encouraging the emergence of consciousness and the spirit of defending the state, this awareness can even be felt after the proclamation of independence, especially when the Indonesian people together with the armed forces fought against the first Dutch military aggression in 1947 and the second Dutch military aggression in 1948. Reflecting the history then the state defense spirit becomes important to be implanted in every Indonesian citizen because it is able to create the strong personality and character as a nation in loving and defending the homeland.

In building the spirit of state defense, the personality or character of the nation needs to be established and developed in order to foster the citizen awareness towards any threats that may endanger the country. The importance of cultivating this awareness is also related to the efforts to sustain the state defense system, wherein Article 30 paragraph (1) of the 1945 Constitution states that "Every citizen is entitled and obliged to participate in the defense and security of the state", and also in Article 30 paragraph (2) which reads "The efforts to defend and secure the state is implemented through the people defense and security system by the Indonesian National Army and the Indonesian National Police, as the main force, and the people, as supporting forces."

Although the physical or military threat currently is considered minimal, this threat still needs to be anticipated because war can happen anytime. To build people defense and security system, the citizens

also must be prepared for the worst condition. To use the citizens as an alternative power, they must be trained with some basic state defense principles, but still different with basic military training. Although state defense program for the civil citizens has an important role in preparing the citizens for the condition of war, in peace time, the program is more useful to prevent the non-military threats, such as ideological, political, economic, technology, and sociocultural threats. Sometimes non-military threats are often overlooked and considered only have minimum risk, whereas the impact can weaken the spirit of nationalism. Whether it is realizing or not, the decrease of love spirit towards the homeland and the low awareness in defending the nation and the State now can be felt in Indonesian society. The penetration of mass media technology and globalization become one of the triggers.

The development of media and globalization has brought significant changes to the attitudes and lifestyles of the society. The existence and development of media and globalization, on the one hand, have a positive impact, but on the other hand also have a negative impact, especially by changes the attitudes and patterns of community life. Studies have shown how media are able to influence people's orientation, such as increasing hedonism<sup>1,2,3,4</sup> and crime<sup>5</sup>.

Likewise with globalization, in Mehlika's<sup>6</sup> view globalization can have an impact on political, social and cultural life. As, the dissemination of democracy that is supposed to create the stability of world politics is connected with the western intellectual propaganda. Under the pretext of the principle of freedom and tolerance in the democratic system, western countries, especially the United States, intervene in many countries in the Middle East. On the other hand, globalization also promotes the values of materialism that can undermine ethical values<sup>7,8,9</sup>.

The change of mindset and attitude of society that tend to the hedonist, leading to criminal acts, individualism, and materialism is a form of non-military threats that can weaken the power of the nation. This condition has at least been felt in almost all regions in Indonesia, especially in urban areas<sup>10,11</sup>. This is certainly a problem that is then addressed seriously by the government, where one of the government's handling efforts is to open the program to defend the country. The state defense program curriculum is prepared with reference to efforts to foster the value of love of the homeland, willing to sacrifice, conscious nation and state<sup>12</sup>.

*Yusa Djuyandi*

*Arry Bainus*

*Widya Setiabudi  
Sumadinata*

Although the discourse of the state's defense policy reaps the attitude of pros and cons<sup>13</sup>, the government still feels this policy can become a good solution in dealing with various problems in society, such as social diseases and lawlessness. Since this program is a strategic program of the central government, there needs to be full support from all government agencies, including local governments, as well as other state institutions such as the Indonesian National Army (TNI AD). The support of local government and TNI AD elements is important because the local government can help mobilize the community to join the state defending program, while the TNI AD through the Region Command Unit (Satkowil) in each region can provide resources and supporting facilities. Because of the importance of the role and support of the Regional Government and Satkowil TNI AD, it is necessary to have synergy between the two institutions in the implementation of the state defending program.

Research on the synergy of Regional Command Unit (Satkowil) of Indonesian National Army (TNI AD) and local government in Sukabumi Regency in encouraging the spirit of defending the country is considered important because in addition to considering the potential emergence of non-military threats, it also considers the geopolitical and geostrategic aspects of Indonesia from Sukabumi Regency. Geographically, the area of Sukabumi Regency in the south borders directly with the Indian Ocean. The boundary of this ocean raises potential vulnerabilities, such as illegal fishing, drug smuggling, and human trafficking. Also within the boundary of the ocean, there are also two strategic islands that are administratively incorporated into Australian territory, namely Christmas Island and the Cocos Islands. Compared to its distance to the mainland of Australia, the distance between these two islands is geographically closer to the southern region of West Java. By comparison, the distance of Christmas Island with the city of Perth or Darwin is over 2,500 km, while with its distance to the south coast of West Java, such as Ujunggenteng (Sukabumi) is only about 200 sea miles (260 km). The distance so close to the archipelago could pose a potential threat to Indonesia's sovereignty.

With the state defending program it is expected that the values and spirits of nationalism of the community can continue to grow, and then it can encourage awareness and active participation of the community in maintaining the security of its territory. Therefore, on the basis of this reason, the synergy of Satkowil TNI AD and local gov-

ernment in fostering the spirit of state defection among the people of Sukabumi Regency becomes important.

## **Theoretical Review**

### *Synergy*

According to Covey<sup>14</sup>, synergy is a combination or alloy of elements or parts that can produce better output and greater than done individually; in addition, a combination of several elements will produce a superior product. Therefore, the synergy in growing the spirit of state defending means the integration of various elements that can produce better and greater output. Covey<sup>14</sup> adds that synergy will be easy when the components are able to think synergies, and there are similarities of view and mutual respect.

Anderson and Narus<sup>15</sup> state that, the synergy of cooperation can be built from strong cooperation between organizations while strong cooperation means that all parties believe that with cooperation they will produce something bigger/better, and not trying to take opportunistic actions that will be damaging to the cooperation. Axelrod<sup>16</sup> mentions that the synergy of cooperation will be stronger if the perpetrators of cooperation are loyal to the agreements that have been made and develop relationships that are not temporary.

Furthermore, Zineldin and Bredenlów<sup>17</sup> prove that the partnership synergy will be stronger if the cooperating organization can maintain the values of the cooperative relationship. The values of such relationships, such as loyalty to partners, maintaining interdependence, adaptation to partners (cultural fit), integrity and intensity of relationships, and institutionalization mean acting on behalf of institutions and for institutional interests together.

### *Civil-military relations*

The synergy between the Regional Command Unit (Satkowil) of Indonesian National Army (TNI AD) and Sukabumi District Government cannot be separated from the pattern of civil and military relations; therefore, this study also describes some concepts and theory of civil and military relations.

Military-civilian relations become a hotly discussed concept even in the most democratic countries. In Indonesia, the civil-military relation is a hot topic discussed in a public space since the collapse of the New Order. According to Prihatono, *et.al.*<sup>18</sup>, civil and military relations

*Synergy Between  
Regional  
Command Unit  
of Indonesian  
National Army  
and Local  
Government*

is a phenomenon that is in the level of political relations. According to Hernandez<sup>19</sup>, the political nature of the relationship is theoretically seen from the civil, political authority determining the duties and functions of military institutions by providing a good explanation of the mission of military organizations, allocating adequate defense budgets, and maintaining military institutional integration.

The military-civilian relation is also a discourse that cannot be separated in the context of democratization<sup>18</sup>. The democratic military-civilian relationship, in Diamond's<sup>20</sup> view, refers to: "...an adherence to principles that conform to accountable, legitimate democratic authorities, and the existence of a parliament that exercises oversight over the military and authorises the declaration of war and also makes the executive accountability to it in terms of the character of its defence policy." On the basis of that reference, Diamond<sup>20</sup> then defines democratic military-civilian relations as follows: "Democratic civil-military relation is also defined in terms of good governance to the security sector, and accountability by individual members of the security sector to national and international laws, as well as political neutrality."

The definition of a military-civilian relation is very diverse, but in general, this relationship can be defined as the interaction between military institutions on the one hand with state/government as decision-makers, non-governmental organizations (NGOs), leaders of public opinion and society on the other<sup>21</sup>. Included are the hearings and the filing of a national defense force development planning based "cost-effectiveness" as well as product liability and "outcomes" of military power during this time in front of the Parliament, and much more embodiments of democratic civil-military relations. According to Bruneau (2001: 5), military-civilian relations are considered sufficiently sensitive for the country towards the democratic process and potentially cause issues fairly warm, but not as sensitive for the countries that have passed the transition to democracy.

## **Methods**

### *Research design*

This research uses the qualitative method. Research data consist of primary and secondary data. Primary data were obtained through interviews and observation. The qualitative research method was chosen by considering the need to get appropriate and relevant data, and it is also to analyze the research problem deeply.

### *Data source*

Primary data were taken from the interview with some informants and observation to the implementation of state defense program. Secondary data were captured through documentation and literature studies. Data used in this research were filtered only to relevant data which could explain the implementation of state defense program.

Informants were selected based on purposive techniques, only those who understood this study were selected as informants. Interviews were conducted with a number of informants, such as the District Military Commander (Dandim) of Sukabumi District, students of STAI Pelabuhan Ratu and Muhammadiyah Sukabumi, Chairman of FKPP and the Head of Panca Marga Youth Organization.

*Yusa Djuyandi*

*Arry Bainus*

*Widya Setiabudi  
Sumadinata*

### *Data validation technique*

Data validity testing in this study was based on certain criteria, namely the degree of trust and the truth of the data (credibility) which were obtained from various literature or documents, the correctness of description, conclusion, and explanation that could be known from the suitability of the manuscript or other important documents. Data validity test was done through triangulation technique that was by checking the truth of data which had obtained by researchers on other parties that could be trusted.

## **Discussion**

In analyzing the synergy between Satkowil TNI AD with Sukabumi District Government in fostering the state defense spirit, we use the synergy theory as the main theory, which according to Zineldin and Bredenlów<sup>17</sup> that a partnership synergy will be stronger if the cooperating organization can maintain the cooperation values. The relationship values, such as loyalty to partners, maintaining interdependence, adjustment to partner (cultural fit), the integrity and intensity of the relationship, and institutionalization means to act on institutional behalf and interests simultaneously. From the theory then we reduced some indicators to serve as an analytical tool.

### *Loyalty to partner*

In developing a synergy in work, the loyalty element between two institutions that work together is important. The loyalty can lead to the existence of trust between one party to another. Loyalty to partners

which then shows mutual trust will not only encourage a good working relationship but also will create work effectiveness which results will be felt positively by both parties. Therefore success in fostering the state defense spirit conducted through the synergy between Satkowil TNI AD and Sukabumi District Government can be analyzed from the loyalty between the two institutions.

Building loyalty in working relationships can be seen from the implementation of work commitments that have been agreed between the parties who entered into cooperation. The study found that the parties working together in the state defense program in Kabupaten Sukabumi are institutions with different organizational backgrounds. On one side, there is an involvement of military organizations, namely the District Military Command (Kodim) Sukabumi District which is also an element of Satkowil TNI AD, on the other side there is a civil government institution which is a Regional Government of Sukabumi Regency.

The working relationship between Satkowil TNI AD and local government cannot be released on the scope of civil and military relation. In this connection, then there is an important thing to see when their relationship lasted during the New Order government. In a time when the New Order regime was in power, the military was a state tool used to perpetuate the Soeharto regime power. Military structures and forces, ranging from the highest to the lowest, were used by Soeharto regime to control political activity and government up to a local level. This policy aims to ensure that all policies and interests of the central government can be implemented at a local level, and there is no security disturbance to the central government's power. Under these conditions, the roles and functions of the local government are heavily controlled by the central government, i.e., through military units in the regions.

When looking back to the past, efforts to create loyalty among co-workers will be difficult to achieve. The presence of mutual suspicion between or the emergence of organizational sentiments can be an indication of the loyalty to partner weakness, as this study still found some elements of local government employees and soldiers who have organizational sentiments. The emergence of these sentiments is not released from the positions equality of two institutions, where the roles and functions of local governments are now autonomous, and TNI is no longer allowed to enter into the practical politics realm, in-

cluding not having the right to supervise local governments. However, although there are some people who have organizational sentiments, in general efforts to build each other and maintain partner loyalty are not disturbed. Local government and military elements in a region are able to show an objective civil-military relationship in the reform era.

Efforts and cooperation in handling the defense threat potentials between Sukabumi District Kodim and Sukabumi District Government, especially through the growth of state defense spirit among the public, are an indicator that these two institutions are no longer tied to past political events. Each institution, in fact, is able to see the greater importance of existence to be completed and done together, the commitment to cooperate which is then set forth in the agreement that requires a sense of mutual loyalty to the partner. Loyalty to partners is then shown by Sukabumi District Government and Satkowil TNI AD (in this case Kodim Sukabumi district) to perform tasks based on their authority.

As revealed by some informants from the local government and military elements, that in fostering the spirit of defending their country is a mutual commitment between each other. For the Regional Government of Sukabumi Regency, the cooperation commitment is shown through financial support and the candidate acceptance for state defense, while for the Kodim Sukabumi District they are committed to providing material contribution and basic training in state defense accompanied by the provision of adequate facilities and infrastructure. Although sometimes financial support from the local government is not always able to be given on time, the local government keeps trying to convince the Kodim support. On the other hand, Kodim Sukabumi Regency is also not too concerned about the lack of funds. Kodim remains committed to help the Government of Sukabumi Regency in providing materials and civil defense training for civil society.

The emergence of mutual trust shows the loyalty between partners who work together. This, in turn, leads to a positive impact of the participants on the state defending the program. Participants defend the state from social organizations, and students feel the benefits of this program. They appreciate the cooperation made by local government and Kodim Sukabumi Regency. The appreciation of the participants will not occur if the organizers do not keep each other's loyalty. Likewise, with both parties working simultaneously, they state that the state defense program can run because each has a greater commitment

and loyalty to the nation and state. Kodim Sukabumi Regency and Sukabumi Regency Government are well aware of the threat that may come if the spirit of defending the country is not grown among the people.

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### *Maintaining interdependence*

The state defense implementation program intended for the community requires synergy between institutions, especially government and military institutions. However, the inter-institutional synergy needs to pay attention to the maintaining interdependence principle. This principle is implemented because, in the state defense programs, management of each institution has specialization of different tasks and roles. The military element specializes in providing basic military exercises and knowledge of threats in the defense dimension. While from the local government side, through existing units or entities, such as National Unity Board, they can arrange curriculum about the dimension of national insight which is then consulted together with Satkowil TNI AD, that is, in this case, Military District Command (Kodim).

Related to the maintaining interdependence element, the researcher also saw that between Sukabumi Military District Command (Kodim) and Sukabumi District Government have synergized with a mutual effort to maintain inter-institutional interdependence. Each side recognizes that in addition to the specialization of tasks, they also have limited roles and functions that are also regulated in the law. The District Military Commander (Dandim) of Sukabumi District revealed that Satkowil TNI AD could not independently conduct state defense programs. One reason is that there is no legal umbrella justifying the Army to independently conduct state defense programs unless there is a request or request for assistance from the government.

For Satkowil of TNI AD, their presence in the state defense program will be sufficient enough if they are able to contribute in giving ideas and program design. Those who play a role in determining the sustainability of the program and participants recruitment are carried out entirely by civil government authorities, including in this case is the local government. The local government also considers that to make the state defense program useful and able to foster the spirit of state defense, they must involve the regional command units (Satkowil). The informant from local government argued that military institutions were believed to have the right idea to run the proper basic coaching and training patterns.

Good awareness of the roles, functions, duties, and responsibilities between the two institutions is an indication of an effort to maintain mutual dependence. Dependence, in this case, can be interpreted as a positive thing, where local government involving Satkowil TNI AD in developing the design of state defense program. Likewise with the army that feels helped by the involvement of local governments in the program to defend the country, so as to encourage the Total People's Defense System (Sishanta). For the Army, it is rather difficult to run the state defense program independently because besides not regulated in Law no. 34 years 2004 on TNI, it also raises a polemic regarding alleged militarization for civil society. As many civil society organizations have criticized the draft policy on reserve components, they are deemed to have a payload of compulsory military programs.

*Yusa Djuyandi*

*Arry Bainus*

*Widya Setiabudi  
Sumadinata*

### *Adjustment with partner*

Adjustment among partners is another important indicator in establishing synergy between Satkowil TNI AD and local government in fostering the spirit of state defense. The inability of either party to adapt to a partner may be an obstacle to the program of state defense. This context of self-adaptation is also important when two cooperating institutions have different ways of working, where the military has a rigid and overly systematic way of working because it follows the command chain whereas civilian government agencies have a more dynamic way of working.

However, in terms of adjustment with partners, there are major things that cannot be avoided when the cooperating agencies come from civil and military institutions. In a democratic country, Hernandez<sup>19</sup> explains that civil and military relations are based on the mechanism by which government institutions act as civilian political authorities which then define the duties and functions of military institutions. In other words, the state defense program must remain under the initiation and supervision of civil government institutions, and therefore the military organizations involved in this program must have the ability to adapt. This ability to adapt includes the ability to see what the government aims to do when running the program, so as to advise the government on the design of the program to be run.

As a unit of the Regional Command Unit (Satkowil) of the Indonesian National Army in the area, the Kodim of Sukabumi District is well aware of the importance of the state defense program, but as a military

institution, they are aware of not having the authority to independently administer the state defense program. The authority in the program implementation is entirely in the hands of civilian political authorities, and hence the government has the right to determine objectives and forms of the state defense program. Kodim institutions are only part of supporting institutions involved by civil government authorities, and therefore involved in drafting activities, but the final decision is entirely in the government's hands.

For Sukabumi District Government, the involvement of Kodim is important. The Kodim is not only asked to contribute material and basic training but also to be involved in designing the state defense program. As disclosed by the Head of National Unity Agency, Sukabumi District Government, that Kodim ] participates by giving input on state defense program curriculum. The local government realizes that without any input from Kodim, the state defense program would not be perfect. For the local government, Kodim is considered to have experience in drafting basic military training concept that could be useful in the state defense program, such as discipline, marching line or flag ceremony, and field activity. Nevertheless, the government decides on basic military training limitations, considering the differences in capability between civilian and military elements, in which the party participating in the state defense program is a civil society element, such as community organizations, youth, and college students.

The existence of a condition where mutual understanding and understanding between two civil and military institutions exists indicates a good relationship in creating the synergy between Satkowil TNI AD and local government, especially in fostering the state defense spirit civil society. By understanding and understanding, each other's functions, duties and roles, Satkowil TNI AD and local government will have the ability to adapt to each other. As the government will be able to adjust to work pattern and coaching program plan from the Satkowil TNI AD, and also on the side of Satkowil TNI AD will understand what the demands or needs and the local government.

### *Integrity and intensity of relationships*

The integrity and intensity of the relationships between mutually cooperating parties are needed to encourage a work synergy achievement, with which planned program can run and achieve mutually agreed objectives. Both Satkowil TNI AD and Sukabumi District Gov-

ernment have a view that the state defense program is important, and this program is considered to be useful to help to realize national defense system based on the people defense of the universe. Looking at the Sukabumi District strategic location which is one part of the Indonesian border, and a potential threat to regional stability that can arise at any time, it makes public participation in state defense program important.

The importance of the implementation of state defense programs, both for local government and Satkowl TNI AD, does not only arise in the form of opinions or ideas that are disclosed to the public. In Sukabumi district, the local government and Kodim have consistency in implementing the state defense program which is carried out continuously; at least this can be seen from the state defense program implementation that has been going on for two periods, namely in 2015 and 2016, wherein one year period there are two times of implementation.

From interviews with participants and observations, the organization of the state defense program was also conducted in a structured, systematic, and clear method. At least this can be judged by the participants' views who had followed the state defense program. The participants really felt the benefits from this program; they even hoped to join again next year. As said by the military district commander (Dandim) of Sukabumi and Head of the National Unity Government of Sukabumi, the enthusiasm showed that the program was not as dreadful as discussed. Civil defense program provided to the civil society has been designed and adapted to its capacity, and do not apply a strict military exercise. Indeed, the most important thing for both informants is how to instill the nationalism and national vision concept.

After the state defense implementation, both the Government of Sukabumi and Kodim, also maintain communication and coordination with the participants who have joined the program to defend the country. The state defense program is of a routine and programmed properly, as well as the construction of communication and coordination in post-activity with participants. It is an indicator of the integrity of both institutions (Kodim and local government) in carrying out activities to defend the country. From some of these things, it can also be seen how the two agencies are able to establish an ongoing relationship in order to defend the state program that can run well and achieve its objectives. The goal is to increase public awareness of the importance of maintaining nationalism and national unity senses and

to be actively involved in maintaining security and stability in the environment.

### *Institutionalization*

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In establishing synergy between two institutions, the purpose of institutionalization is to build awareness that each organization is not acting on behalf of their own institution, but they act as one institution who will do everything together. In other words, the actions which were taken by the regional command unit (Satkowil) of Indonesian Armed Forces and the local governments in implementing the state defense program should be based on common interests and for the public good.

Even though the state defense program is implemented on the local scale, this program comes from the central government policy. The central government gives a mandate to the Indonesian National Army and also local government to run and succeed the program. The central government believes that with the command structure which is available up to the local level, the military can help local governments to run the state defense program. Therefore, the implementation of this program does not only include the local government, but also the territorial command units, such as the military district command (Kodim). The involvement of both institutions at the local level indicates that the program is carried out on behalf of the two institutions because there is no role or involvement of the army besides Satkowil and the local government.

Efforts to cultivate the spirit of defending the state among the community is the joint responsibility of all state institutions and government. Both local government and the army realize that Indonesia needs human resources which are not only smart in the formal education. Smart citizens are those who are also able to maintain the ideology of the nation and the unity of the nation, on the basis of that it is necessary to cultivate the values and knowledge of nationalism that must then be able to live and be applied in everyday life. Currently the local government and Satkowil TNI AD realize that the challenges faced by Indonesia's younger generation are more severe. Along with the globalization, the orientation of life only focuses on the material (money), and the pursuit is more individualistic.

The same opinion is also disclosed by some informants from college students and youth organizations who have joined the state defense

program in Sukabumi Regency. They argue that many students think that formal education is only to find value (high GPA) and then get a job. This orientation is considered likely to be an individualist, so when there is an opportunity to join the program to defend the country, only a few college students who want to follow. This condition is a challenge faced by the government and the Indonesian National Armed Forces; therefore, both institutions jointly run the state defense training program. The aims are that the students and youths can put forward the common interests, be able to fight and work hard in their respective fields with the aim of improving the achievement of the nation, and minimize the occurrence of conflicts.

Yusa Djuyandi

Arry Bainus

Widya Setiabudi  
Sumadinata

## Conclusion

The synergy between the Regional Command Unit (Satkowil) of the Indonesian National Army and local government, especially in Sukabumi Regency, is essential in fostering the defense spirit of the civilians to the country. State defense program carried out jointly between the two institutions is considered to have a lot of benefits by the people who joined it, increasingly cultivates a love of country, and gives additional knowledge about the national vision. The participants have to follow the course of defending the country and hope that the program can continue and be followed by other communities.

The positive response to the program to defend the country is caused by the synergy between Satkowil Army, the Military District Command (Kodim) Sukabumi, Sukabumi District government. The synergy is reached from their loyalty to each other, an effort to keep interdependence, the adjustment to the partner (*cultural fit*), the integrity and intensity of the relationship, and their institutionalization (acting on behalf of institutional and for the sake of institutional joint).

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*Synergy Between  
Regional  
Command Unit  
of Indonesian  
National Army  
and Local  
Government*

# Air Power Development Strategy to Maintain Indonesian National Security as the World Maritime Axis

## A Study on the Air Territory of the National Air Defense Command Sector I

*M. Miftahul Ghufron<sup>1</sup>, Ari Ganjar Herdiansyah<sup>2</sup>, Nuraeni<sup>3</sup>*

### **Abstract**

World maritime axis policy declared by the Indonesian government today is an opportunity as well as a challenge that must be faced with the right steps by the Indonesian Armed Forces (TNI), especially in terms of defense and security. Moreover, as an archipelagic state, Indonesia must provide a crossing route for both shipping and aviation called Indonesia's Archipelagic Sea Lanes (ASL). The existence of ASLs as the main shipping and foreign aviation routes creates vulnerability and potential threats to national security. One potential threat is the frequent flight or shipping violations of the national territorial area. Violation of airspace can be interpreted as a condition in which there are aircraft of a particular state, whether civilian or military aircraft, entering the airspace of another state without obtaining prior clearance from the state it enters. The National Air Defense Command Sector I, notes that in the ASLs I area alone, in 2015 until early 2018, there were 216 cases of violations by aircraft foreign, both military and civil. Whereas in the ASLs I water themselves, the Indonesian Navy reported that 250 cases



M. Miftahul Ghufron<sup>1</sup>, Ari Ganjar Herdiansyah<sup>2</sup>, Nuraeni. Air Power Development Strategy to Maintain Indonesian National Security as the World Maritime Axis: A Study on the Air Territory of the National Air Defense Command Sector I. *Central European Journal of International and Security Studies* 12, no. 4: 144-164.

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of violations had occurred in 2017. In anticipation of this, it was necessary to improve Indonesia's defense capabilities, including air defense. This paper focuses on the development of air power equipment such as aircraft, guided missile, and radar which is expected to be a hard power and deterrent effect and create reluctance for other countries so as to prevent violations of national airspace and support Indonesia's aspiration to become the world maritime axis.

*Keywords: national security, air power, air defence*

*M. Miftahul  
Ghufron*

*Ari Ganjar  
Herdiansyah*

*Nuraeni*

## **Introduction**

World maritime axis policy declared by the Indonesian government at this time is an opportunity as well as a challenge that must be faced with careful and precise steps by the TNI (Indonesian National Army). Therefore, an in-depth understanding of the world maritime axis in the perspective of defense and security is required. Conceptually, the TNI views the world maritime axis as a reaffirmation of the importance of the geopolitics and geo-economics of the Indonesian nation which lies in the cross-position of the world with the geographical form of the island nation. It shows that Indonesia has the potential to play an important role in the game of world politics and trade. According to Marsetio<sup>1</sup>, this concept is an actual form of the concept of the Archipelago's Insights which had been confined to a frame of rhetoric. There are two meanings contained in the Archipelago Insight, i.e., the integrative form of the Indonesian territory that cannot be separated among the land, sea, and air above it and its strategic position as the world's axis. It will be the initial capital to make Indonesia the world maritime axis.

Based on these opportunities, there are many challenges that must be faced to realize Indonesia's vision as the world maritime axis. One of the challenges that must be answered is the issue of regional security. For that matter, it is necessary to manage natural resources, border areas, and reliable defense. The existence of Indonesia's Archipelagic Sea Lanes (ASLs), which is a cross route that must be provided by the Indonesian state as a consequence of ratifying UNCLOS 1982, seems to make Indonesia an "open" state. The existence of ASLs which are the main shipping and foreign aviation routes creates vulnerability and potential threats to national security.

On the other hand, there are still countries that do not ratify the agreement (such as the United States and Australia). Therefore, it

can lead to differences in perspectives regarding the boundaries of a state's territories. This is also one of the causes of the frequent violations of Indonesian territorial boundaries.

According to the 1944 Chicago Convention, the territorial area of a state includes the airspace above it. Thus, a violation of a state's airspace means a violation of the state's sovereignty. Airspace violations can be interpreted as a condition where an aircraft from a particular state, whether civilian or military aircraft, enters the airspace of another state without obtaining prior clearance from the state it enters. The National Air Defense Command Sector I noted that in its airspace, in the period of 2015 to early 2018, there were 216 cases of violations by foreign aircraft, both military and civilian (The National Air Defense Command Sector I, 2015- 2018). Meanwhile, in the ASLs I waters themselves, the Indonesian Navy reported that there were 250 cases of violations in 2017 (Headquarters of the Indonesian Navy, 2017).

This phenomenon shows that the level of vulnerability and potential threats in the airspace of The National Air Defense Command Sector I is still high. In anticipation of this, an increase in Indonesia's defense capabilities is indispensable, especially in terms of developing military equipment as a security guard in the airspace, especially to support Indonesia's desire to become the world maritime axis. Therefore, research on the strategy of developing air power to safeguard Indonesia's national security as the world's maritime axis needs to be carried out, with studies in the airspace.

## **Literature Review**

### *National Security*

Security and defense are two concepts that are closely related and not easily separated. Helga Haftendorn<sup>2</sup> defines security in the realism approach, namely "the absence of a military threat or with the protection of the nation from external over or attack"<sup>3,4,5</sup>.

Barry Buzan<sup>6</sup>, in his book entitled *People, States, and Fear*, discusses the issue of national security in international relations. According to Buzan<sup>6</sup>, there are three bases in national security, ideational basis, institutional foundation, and physical foundation. The ideational foundation includes various things including "national insight". The institutional foundation covers all state mechanisms, including the legislative, executive, legal, procedures, and state norms<sup>7</sup>. In addition, the physical foundation, according to Buzan<sup>6</sup>, covers the population,

territory and all resources located within the scope of its territorial authority. Buzan<sup>6</sup> also cites Walter Lippmann's opinion that "A nation has security when it does not have to sacrifice its legitimate interests to avoid war, and is able, if challenged, to maintain them by war."

*Air Power  
Development  
Strategy*

### *Airspace Boundaries*

Arrangements regarding airspace began at the 1944 Chicago Convention which stated that each country has complete and exclusive sovereignty over airspace over its territorial area. Even though up to now, the regulation of airspace boundaries continues to cause debate, but if it is guided by the results of the Chicago Convention, Indonesian airspace is all airspace above the state's territory which is limited by the Indonesian territorial sea, which is as far as 12 NM from Indonesia's outermost line. The convention also stated in article 3 (a) and (b) that shipping and international flights from an unscheduled country are not allowed to cross the territorial boundaries of other states without having a flight clearance, because this is a violation of the boundary of a country. Violation of the Indonesian airspace, in addition to being considered as a threat to national security, can also affect regional sovereignty if it is viewed from the aspect of national defense.

### *Deterrence*

Deterrence is the most fundamental substance of a defense strategy. A modern defense strategy is not just an effort of national defense to destroy the enemy, but how to create conditions that affect the potential opponents so that they discourage themselves from attack Pimchana Sriboonyaponrat<sup>7</sup>, in *The Globalization of World Politics: An Introduction to International Relations*, defining deterrence as "the threat of using force to prevent actors from doing something they would otherwise do". According to Morgan<sup>8</sup> in Prasojo<sup>9</sup>, at the state level, deterrence is defined at three levels, i.e., as a tactic, a national security strategy, and an important component of international security construction<sup>10</sup>. Thus, deterrence is a way and strategy to achieve national security.

### *Air Power*

There are many definitions and concepts that explain air power. Agus Supriyatna<sup>11</sup> took the concept of the definition of air power based on doctrines from the Government of England and the United States.

British Air Power Doctrine defines the concept of air power as “the ability to project military force in water or space by or from a platform or missile operating above the surface of the earth and air platforms are defined as any aircraft, helicopter or unmanned air vehicle”. Meanwhile, the United States, in the National Security Act of 1947, placed the concept of water power as an ability to send a military force to the entire world quickly<sup>11,12</sup>.

Stefan T. Possony<sup>13</sup>, in his book *Strategic Air Power: The Pattern of Dynamic Security* stated that air power in a country consists of elements that must exist and cannot be separated. These elements are:

1. Raw material and fuel.
2. Industrial potential, tool reserves, and high rate of technological progress.
3. Bases and protective forces.
4. Communication and electronics.
5. Logistics and supplies.
6. Auxiliary services.
7. Airborne forces.
8. Guided missiles and atomic weapon.
9. Aircraft.
10. Manpower.
11. Training.
12. Morale.
13. Intelligence.
14. Research and inventiveness.
15. Tactics-strategy-planning.

Although not all of the above elements are used as a measure of a country’s air strength, the more complete and fulfilled these elements are, the stronger the air power is to secure the airspace of a country.

### *Strategy*

For the military, one of the most frequently used strategy definitions is the definition put forward by Carl von Clausewitz<sup>14</sup> that “strategy is the use of engagement for the purpose of the war”. Meanwhile John A. Warden III, a retired colonel of the United States Air Force, known as “the leading air power theorist in the US Air Force in the second half of the twentieth century”, stated that the strategy is “the art and science of translating national security objectives into practical military plans and operations”<sup>15,16</sup>.

Moreover, according to Thomas S. Fisher<sup>3</sup>, a retired American Army, in the book entitled “The Planner Handbook”, defined strategy as “a prudent idea or set of ideas for employing the instruments of national power in a synchronized and integrated fashion to achieve theater, national, and multinational objectives. An effective strategy should encompass ends, ways, and means (the end state, the objectives, and the ways and means of attaining them); it should achieve long-run continuing advantage, and it should integrate and synchronize all instruments of power and all efforts of the joint force”.

In line with Fisher<sup>3</sup>, Col (Ret) Arthur Lykke, a teacher at U.S. Army War College, also stated that “the strategy at any level consists of ends or objectives, ways or concepts, and means or resource.

*M. Miftahul  
Ghufron*

*Ari Ganjar  
Herdiansyah*

*Nuraeni*

### **Research Method**

The method used in this research is a qualitative method. In addition, the data used consist of primary data and secondary data. Primary data are in the form of information and description obtained directly by the author from the results of interviews and observations on the object of the research. Meanwhile, secondary data come from library materials.

The source of research data comes from informants through the interviews, observations, and documents related to the research regarding the strategy of developing air power. The informants who will be used as sources of research include:

- a. Commander of the National Air Defense Command.
- b. Assistant for Operations of the National Air Defense Command.
- c. Communication and Electronics Assistant of the National Air Defense Command.
- d. Head of the Radar Sub Department of the Communication and Electronics Service of the Indonesian Air Force.
- e. Head of the Radar Sub Department of the Communication and Electronics Service of the Indonesian Air Force.
- f. Head of the National Air Defense Operations Center.
- g. Head of the National Air Defense Sector Operations Center I.

The validity test of the research findings is conducted by using triangulation techniques, i.e., by comparing the results of observations, interviews, and review of documents obtained during the data collection process.

## **Research Findings and Discussion**

The strategic importance of national defense can be achieved through efforts to build and foster the deterrence of the state and the nation and the ability to overcome any threats, directly or indirectly. One manifestation of the strategic importance is implemented in the effort to develop air power based on the strategy of deploying military power. Strategy, in this case, is an implementation of government policy that synergizes the goals (ends) that are going to be achieved, how (ways), and what means are used to achieve it in meeting strategic interests.

### *National Air Defense Command*

The National Air Defense Command is the main operational command of the TNI which has the task of organizing an integrated security defense effort on national airspace independently or in collaboration with other Operational Main Commands in order to realize sovereignty and integrity as well as other interests of the Unitary Republic of Indonesia and organize administrative guidance and readiness for the operation of the elements of air defense of the Indonesian National Air Force and carry out standby operations for elements of air defense in order to support the main tasks of the TNI. To carry out its duties, the National Air Defense Command divides Indonesia's vast airspace into four sections i.e. the National Air Defense Command Sector I in Jakarta, the National Air Defense Command Sector II in Makassar, the National Air Defense Command Sector III in Medan, and the National Air Defense Command Sector IV in Biak.

### *The National Air Defense Command Sector I*

The National Air Defense Command Sector I is the executive command of air defense operations around the capital city of Indonesia, as well as parts of Sumatra and Kalimantan, including the territory of Indonesia's Archipelagic Sea Lanes (ASLs) I which has the task of organizing and controlling Air Defense Operations in its territory in accordance with the division of geographical responsibility for the national air defense area to support the main task of the National Air Defense Command. The National Air Defense Command Sector I is located in Jakarta and is directly under the control of the National Air Defense Command. In carrying out air observation tasks, The National Air Defense Command Sector I is assisted by six radar units.

### *Air Defense Operations*

As an independent, sovereign and dignified country, the strategic importance of self-defense must always be prepared and implemented without concern about the existence or absence of a real threat. In carrying out the national defense, Indonesia holds the principle of being a nation that loves peace but loves its independence and sovereignty more. The use of defense forces for war purposes is the last alternative after diplomatic efforts have not yielded results. Therefore, Indonesia chooses an active defensive pattern in its defense efforts.

Similarly, in terms of air defense, Operations Assistant National Air Defense Command mentioned that the pattern of air defense operations adopted by National Air Defense Command is the in-depth defense pattern, which in practice is divided into three layers of air defense, called point air defense, terminal air defense, and area air defense.

- a. Point Air Defense. It is the last defense pattern that serves to defend vital national objects from the enemy's air attacks. Point air defense is carried out by using short-range tactical missiles as a destroyer.
- b. Terminal Air Defense. It is a pattern of air defense carried out by medium-range missiles as a destroyer, with a distance of approximately 100 kilometers.
- c. Area Air Defense. It is a pattern of air defense carried out by combat aircraft as well as long-range missiles as action and destroyers. The dimensions of area air defense depend on the effective range of the missile or the Radius of Action (ROA) of the fighter aircraft.

It has been explained earlier that the implementation of air defense operations in Indonesia is currently carried out by the National Air Defense Command Sector and is assisted by the National Air Defense Command Sector in four air defense areas. The capabilities and authority of the National Air Defense Command Sector in air defense operations are as follows:

- a. Detection Capability. Observation and detection of airspace are carried out by military radar equipment from the ranks of the National Air Defense Command that has been formed previously.
- b. Identification Capability. Identification is a process carried out to determine the classification of each air target; whether it belongs to the category of friend or foe.

- c. Enforcement Capability. The pattern of air defense operations organized by the National Air Defense Command is a defense in depth with elements of military equipment. The supporting element other than the radar unit is the action elements such as elements of combat aircraft as an enforcement in the area of terminal air defense or area air defense, the unit of medium-range missile as an enforcement on the area of terminal air defense, and the element of short-range missiles and air defense cannons on the area of point air defense.

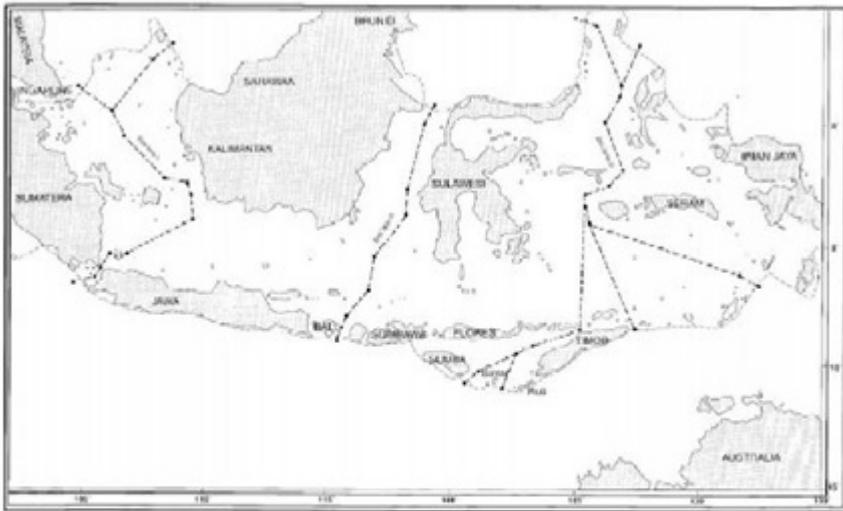
#### *Air Defense Identification Zone (ADIZ)*

The Air Defense Identification Zone (ADIZ) is an air space that is related to national air defense which requires every aircraft both civilian and military aircraft to pass through the area to report their flight plans. ADIZ is formed on the basis of security considerations, especially for the purposes of identifying aircraft that are expected to enter the airspace of the ADIZ founding country. The legal basis for the establishment of ADIZ is an international practice which has become a customary international law (Air Force Headquarters, 2000: 8). Indonesia sets its ADIZ above the Territory of Java Island, Bali Island, and part of West Nusa Tenggara region, in the form of a rectangle with the width from North to South of 180 NM and length from West to East 390 of NM.

#### *Indonesia's Archipelagic Sea Lanes*

In 1996, the Government of Indonesia proposed to the International Maritime Organization (IMO) the establishment of Indonesia's Archipelagic Sea Lanes (ASLs) and its branches in Indonesian waters. In Article 1 paragraph 8 of Law No. 6 of 1996 concerning Indonesian Waters, it is stated that archipelagic sea lanes are sea lanes passed by foreign ships or aircraft over the channel to carry out shipping and flight in the normal way solely for continuous, direct, and fast transit and not obstructed through or over archipelagic waters and adjoining territorial seas between one part of the high seas or the Exclusive Economic Zone (EEZ) of Indonesia and in the high seas or other Indonesian EEZs.

ANNEX VII  
INDONESIAN GOVERNMENT REGULATION  
NUMBER 37 2002  
JUNE 28, 2002



INDONESIAN ARCHIPELAGIC SEA LANES I, II AND III

*M. Miftahul  
Ghufron  
Ari Ganjar  
Herdiansyah  
Nuraeni*

PRESIDENT OF THE REPUBLIC OF INDONESIA  
Signed

MEGAWATI SOEKARNOPUTRI

This is a true copy of the original  
Deputy Secretary of Cabinet  
Law and Legislation Section  
Signed

Lambok V. Nahaltands

Figure 4.1 – ASLs that have been authorized by the Indonesian government

The vision of being a global maritime axis continues to be a top priority in the current work of the Indonesian government. ASLs are one of the influential parts in fighting for these ideals. Each ASL has a different potential threat. In ASLs I, the potential threat is related to the implications of the conflict in the South China Sea, especially the claims of the Spratly and Paracel islands. The impact of the conflict includes the use of the ASLs I area for the activities of maneuvering the armed forces of the countries involved. In addition, it also affects the traffic congestion in the Malacca Strait, such as the use of ASLs I area by pirates to avoid the pursuit of Indonesian security forces and joint security forces (Indonesia, Malaysia, and Singapore) or to conduct smuggling.

### *Airspace Violations*

The National Air Defense Command and the National Air Defense Command Sector I have the ability to detect and identify each target or air vehicle that enters national airspace through 20 military equipment radars throughout Indonesia. The radar detection results which contain information in the form of distance, azimuth, direction, speed and target height data are then sent to the National Air Defense Sector Operations Center and the National Air Defense Operations Center to be further identified.

Identification is carried out by comparing the Lasa with flight data in the flight plan to determine whether the flight is performing according to the schedule and Flight Clearance Information System (FCIS) which is an unscheduled flight system that is integrated between the Ministry of Foreign Affairs, Ministry of Transportation and the Headquarters of the TNI. The result of this identification determines whether or not a flight has committed a violation.

In the period 2015 to 2018, the National Air Defense Command Sector I noted that violations still occur frequently in airspace which are carried out by foreign aircraft; both civilian and military aircraft. In fact, in 2015 alone there were 179 Lasa who committed violations and were monitored by the air observation system owned by The National Air Defense Command Sector I. From the data obtained in the research, the majority of violations occurred in 2015 around the ASLs I and the border areas of Malaysia and Singapore. Out of the 179 Lasa that were recorded as having committed violations, 38 of them were Lasa X. In addition, in 2016, there was a very significant decline, in which there were only 23 Lasa violations, in which the two were Lasa X. The downward trend also occurred in 2017, in which only 13 violations were dominated by flights from or to the Philippines which consisted of only one Lasa X. Similarly, in 2018 until June 2018, one flight violation in the National Air Defense Command Sector I was detected which one in the form of unscheduled flights that do not have Flight Clearance (FC).

### *Air Force Development Strategy against the Minimum Essential Force (MEF) Policy*

During the reign of President Joko Widodo, the development of defense forces focused on Indonesia's policies and vision as the World Maritime Axis. The policy is realized in the Nawacita Program which

is carried out by reforming the system and law enforcement, strengthening maritime defense and building democratic governance and protecting the entire Indonesian people.

The TNI themselves, addressing this policy by making a Strategic Plan stage in order to meet the needs of the Minimum Essential Force as one of the solutions to overcome the limited availability of the defense budget, but still oriented towards achieving the target so that it can be realized consistently. MEF itself is a minimum requirement that must be met, especially in the case of procurement of military equipment that is used to protect the integrity and sovereignty of the territory of Indonesia.

The Commander of the National Air Defense Command stated that what is needed by the National Air Defense Command in maintaining the security of the airspace currently is the addition of minimal military equipment strength as planned in the MEF. Moreover, for the radar that functions as early detection, action forces are also required. In addition to being able to foster a deterrent effect, it also shows that Indonesia's territorial sovereignty is an absolute matter and cannot be negotiated by any party. Quoting the article from Syafrie Sjamsoedin<sup>17</sup>, the Commander of the National Air Defense Command mentioned that the inability to fulfill MEF needs would increase several possible risks, as follows:

- a. The first is the decline in national deterrence. Deterrence is the most fundamental substance of a defense strategy. It is often mentioned in a Latin adage; *civis pacem parabellum*, which means that "if you want peace, then be prepared for a war".
- b. The second is the disruption of the sovereignty of the nation and state. The inability of the government in the development of military strength and capability will lead to the inability of the state to defend itself against any attack. This inability will have an impact on the survival of the nation, thus disrupting the sovereignty of the nation and state.
- c. The third is the decline in military equipment capabilities. Some military equipment owned by the Indonesian National Air Force has reached its maximum age. This results in a low level of reliability. Military equipment helplessness will cause vulnerability to Indonesian defense and security because Indonesia will not have deterrence and bargaining power against other countries. So that, it can threaten the existence of the nation.

From the above discussion, it can be seen that air military equipment development must be carried out at a minimum as planned by the TNI in the MEF which is proclaimed until 2024. The inability to meet the needs of military equipment development for air defense does not only mean the failure of the Indonesian National Army only, but also a failure to maintain national security and the sovereignty of the nation and state.

*Development Strategy of Air Power against the National Security Perspective*

A state is considered to be safe if the nation is not in a dangerous condition to avoid war. However, when a threat is approaching, the state is still able to overcome and maintain the sovereignty of its territory. Based on the national security theory of Lippmann, it can be concluded that the development of military power is an absolute thing that must be carried out by a state that wants to maintain its existence.

In realizing full sovereignty in the airspace over its territorial area, the Indonesian state has the right to fully control its national airspace. Thus, foreign and civilian military aircraft that will pass through Indonesia's national airspace must obtain clearance in accordance with the applicable regulations. Foreign aircraft that has no clearance and violates the sovereignty of the Unitary State of the Republic of Indonesia will be evicted or forced down at certain airports in the territory of the Republic of Indonesia, as stated in Law Number 1 of 2009 concerning Aviation and Decree of the Director General of Civil Aviation. In other regulation, i.e., in accordance with Presidential Decree Number 4 of 1972 concerning Aviation Agreements in and over Indonesian territory, every foreign aircraft must obtain security clearance issued by the Headquarters of the Indonesian National Armed Force. In addition, to the security clearance issued by the Headquarters of the TNI, the foreign aircraft must also get clearance in the form of flight clearance or flight approval from the Director General of Civil Aviation. Therefore, without the presence of security clearance, flight clearance or flight approval, an aircraft flying in Indonesian territory (other than regularly scheduled flights) will be identified as Lasa X (black flight) by the National Air Defense Command.

What about ASLs? In accordance with the United Nations Convention on the Law of the Sea (UNCLOS 1982), Article 53 paragraph 9 states that in the airspace above an archipelagic sea, a foreign country

has the right to fly by air for its aircraft in accordance with the specified conditions. Therefore, as a consequence of the archipelagic state, Indonesia anticipates the potential vulnerability caused by the crossing rights. Moreover, there are still some countries that do not recognize or ratify the provisions of UNCLOS 82, such as the United States. It is possible that these countries will act carelessly when passing through the Indonesian territory.

*M. Miftahul  
Ghufron*

*Ari Ganjar  
Herdiansyah*

*Nuraeni*

From the above research findings and review, it can be concluded that cases of violations that occurred in the area of the National Air Defense Command Sector I are dominated by several problems, as follows:

- a. Entry of foreign aircraft into Indonesian territory without clearance. It happens when a foreign aircraft flies across Indonesian airspace without complete licensing documents.
- b. Being out of the permitted airways or from the ASLs I. Foreign planes that pass through the ASLs route do not require permits as mentioned above, but the aircraft must follow the ASLs route set by the Indonesian government. In this case, the Indonesian government has given a 25 NM from the designated flight path to anticipate weather factors and errors in navigation.
- c. Licensing documents are late or obsolete. Another problem that often occurs is that there is a delay in the processing of licensing documents and the licensing documents are no longer valid (obsolete).

In dealing with cases of violations of airspace boundaries, the TNI has a permanent procedure of prosecution. The procedure is stated in the Decree of Commander of the National Air Defense Command Number Kep/79/XII/2017 dated December 14, 2017, concerning the Permanent Procedure for National Air Defense Operations. In the permanent procedure, the procedure for prosecution must be described in handling foreign aircraft entering Indonesian airspace without clearance, as follows:

- a. Shadowing. Shadowing procedures are carried out if there are foreign aircraft trying to enter the territory of Indonesian sovereignty or will deviate from the designated flight path.
- b. Intervention. Clearing/intervention procedures are carried out if the foreign aircraft forces to enter Indonesian territorial airspace without clearance, including violations of flight conditions in the ASLs route.

- c. Force Down. Foreign aircraft are forced to land if they enter the territorial airspace illegally, but it can be ascertained that the aircraft concerned will not threaten the safety of vital objects beneath it. After the aircraft landed, it is followed by a preliminary investigation process conducted by the TNI and is processed according to applicable law.
- d. Destroying. Is the last procedure taken if the previous three procedures failed or not heeded by unauthorized foreign aircraft? In peacetime, this action can only be carried out through direct orders from the President of the Republic of Indonesia because there is a real threat to Indonesia's sovereignty.

The inability of the National Air Defense Command in maintaining national airspace means opening up opportunities for other countries to act carelessly, including violating national airspace. Referring to Air Power theory of Stefan T. Possony<sup>13</sup>, there are at least 15 elements that must be developed to realize air power which can be the deterrence for other countries, as well as the deterrence concept proposed by Morgan<sup>8</sup> in which deterrence is one way and strategy to achieve national security, so the development of air power must continue.

#### *Development Strategy for Military Equipment of the Indonesian Air Force in the Territory of National Air Defense Command Sector I*

The military strength of a country will indirectly affect the strength of the country's diplomacy. In fact, with its military strength, a country can force its will on other countries without going through diplomatic efforts. According to Thomas G. Mahken and Joseph A. Maiolo<sup>18</sup>, this way of acting is often referred to as diplomacy of violence. This kind of thing is usually used by developed countries that have large and strong military power. Therefore, the development of military power, especially air power in the territory of The National Air Defense Command Sector I, is an absolute thing to do.

According to the Commander of the National Air Defense Command, at present, the strength and capability of our national air defense still do not meet the standards, if it is compared to the air power that is owned by several countries that are directly adjacent to our country. It is still necessary to develop military equipment as a supporter of the tasks carried out by the National Air Defense Command. In addition to radar, the National Air Defense Command also still needs the strength of combat aircraft and air defense missiles in order to increase the bar-

gaining value and deterrence of Indonesia for other countries. This is in accordance with 3 of the 15 Air Power components proposed by Stefan T. Possony<sup>13</sup>.

a. Aircraft. Air power is identical to aircraft; as the main component in controlling airspace. In order to maintain the security of Indonesia's vast national territory, the readiness of fighter aircraft that has a function to carry out visual identification and repression to a threat in national airspace is urgently needed. According to the Operational Assistant of the National Air Defense Command, the strength of the fighter aircraft owned by the Indonesian Air Force is still insufficient compared to the vast area of Indonesia. The existing combat squadron has only been implemented in five cities in Indonesia. If it is viewed from the location, only the 1<sup>st</sup> Air Squadron in Pontianak Supadio with a Hawk 100/200 aircraft that entered the territory of The National Air Defense Command Sector I. From this side, it is clear that the combat strength we have still needed to be developed. Based on the research findings, both through analysis of various literature, as well as the results of interviews with the informants, the fighter aircraft required by the Indonesian Air Force in order to deal with Indonesian policies as the world maritime axis must at least have the following capabilities:

1. Agility. It is the ability of the aircraft to fly quickly and agile so that it is easy to get the height and direction.
2. Maneuverability. It is the ability to maneuver aircraft at high or low speeds.
3. Lethality. That is the ability of aircraft to be armed in order to defend themselves from enemy attacks and can support allies in carrying out an operation mission.
4. Survivability. It is a must-have ability to defend the aircraft from enemy attacks.
5. Stealth. The ability to avoid radar detection is currently one of the specifications not owned by the Indonesian Air Force's fighter aircraft.

The term aircraft is currently not limited to aircraft that must be manned by personnel. There is also a UAV (Unmanned Aerial Vehicle) which is an unmanned aircraft and can be controlled remotely. The use of UAVs is considered effective to replace some of the functions and tasks normally carried out by aircraft. In ad-

dition to the much lower operating costs, the small size of the UAV is also a distinct advantage in the use of certain missions such as surveillance and aerial photography.

The Indonesian National Air Force itself currently has only one squadron of UAVs located in the Squadron 51 of Supadio Pontianak Military Air Base. From the research findings, linked to the world maritime axis vision, the criteria or specifications for UAV/UCAV (Unmanned Combat Aerial Vehicle) required by the TNI are as follows:

1. Low cost. It requires cheap costs in procurement and operations.
2. High sortie rate. It has a high sortie rate.
3. Long loiter time. It can fly for a long time.
4. Rough field operating capability. It can be operated in various fields.
5. Low-speed maneuverability. It can maneuver at low speeds.
6. Survivability. It has the ability to survive in various situations and conditions.
7. Lethality. To be able to carry out air operations, UAVs must be able to be armed.
8. Agility. Able to fly stably in the air such as pitching, rolling, and yawing, and can change direction and position quickly as desired.
9. Stealth. It is not detected by the radar.

From the above analysis, the development of military aircraft equipment is divided into two parts, namely Unmanned Aerial Vehicle and Unmanned Combat Aerial Vehicle. Both are included in the category of combat squadrons, in which the developments are carried out The National Air Defense Command Sector I airspace. The development of the combat squadron was carried out considering several aspects including potential threats, location, infrastructure and realistic (defense budget policy, strategic plan of the TNI, and MEF).

- b. Guided Missiles and Atomic Weapon. The bombing of Hiroshima and Nagasaki has opened the eyes of the world how atomic weapons (nuclear) have the very powerful power that is categorized as mass destruction weapons. Seeing its dire impact, Indonesia, Brunei Darussalam, Cambodia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam signed the

Bangkok Treaty containing agreements to make ASEAN a nuclear-free territory, or well-known for Southeast Asia Nuclear Weapon Free Zone (SEANWFZ).

With the establishment of the agreement, the development of atomic weapons is not an option for the Indonesian state. Missiles are things that must be developed as one of the elements of our air defense, as said by the Commander of the National Air Defense Command. Currently, the Indonesian Air Force still does not have long-range missiles capable of blocking enemies before entering Indonesia's sovereign territory. The Indonesian Air Force has short-range missiles that function as point air defense. In an interview with the Head of the Radar Sub Department of the Communication and Electronics Service of the Indonesian Air Force's, it was explained that currently, the Indonesian Air Force has begun planning the development of missile strength as one of the elements of air power, especially in order to succeed the government program to make Indonesia the world maritime axis. Furthermore, the Head of the Radar Sub Department mentioned that one of the weak points of our air defense at this time is the absence of missiles that have the ability to reach medium distances; also long distances. So that the terminal and area air defense depend only on the ability of the fighter we have.

This shows that Indonesia does not fully have deterrence power in facing the strength of other countries. The result of the weakness of the air defense system is the frequent violation of the sovereignty territory by foreign aircraft which can harm the national interests of the Indonesian people. Therefore, it requires the development of missile strength in stages and continues while taking into account the government's ability to support the budget, and determining the priority scale in the achievement of various activity targets until it reaches the MEF to face various challenges and threats.

- c. Communication and Electronics. Communication and electronic systems at the National Air Defense Command function as command and control of elements of air defense. Communication and electronics itself play a vital role in the implementation of an operation. According to the Communication and Electronics Assistant of the National Air Defense Command, currently, the National Air Defense Command is in an effort to integrate

*M. Miftahul  
Ghufron*

*Ari Ganjar  
Herdiansyah*

*Nuraeni*

all communications and electronic equipment owned by the National Air Defense Command, to be used as a means of command and control by the Commander of the Air Defense Command National. With the integration of all communication and electronic systems, the Commander of the National Air Defense Command can monitor at any time the situation of the national airspace and can give direct orders when necessary.

However, these efforts do have obstacles. For example, up to now, there are 20 air defense radars operated by the National Air Defense Command, still unable to cover all national airspace. In the ranks of The National Air Defense Command Sector I itself, there are still blank spots or blank areas in West Kalimantan and South Sumatra. This is due to the shadow contour or shape of the earth's surface, such as mountains or plains that are higher than the radar deployment location, which obstructs the radar beam.

The Head of the Radar Sub Department of Communication and Electronics Service of the Indonesian Air Force stated that in fact according to the strategic plan that had been made, from 2015 until 2019, the Indonesian Air Force had planned to add four new radar units to add 20 radars that had been deployed at this time. However, to date, none of the procurement of radars has been realized, due to various obstacles. The temporary lack of radar numbers can be overcome by integrating the capture of military radar with civil radar owned by several airports in Indonesia.

The Head of the Radar Sub Department also stated that there is one more weakness of our air defense, namely the absence of a type of passive radar to supplement the existing active radar. It is to anticipate aircraft that have stealth capabilities or UAVs that cannot be caught by active radar. This passive radar does not emit electromagnetic waves, so it is relatively safer from interference (jamming) carried out by the enemy. The way it works is by receiving all electromagnetic frequencies emitted by planes or UAVs. In addition passive radar also has advantages in terms of range that can reach twice the range of the active radar.

Airforce development carried out in the territory of the National Air Defense Command Sector I does not necessarily make national security guaranteed. However, a defense strategy based on the concept of smart power is a combination of hard power with soft power.

## Conclusions

Currently, the world maritime axis policy issued by the Indonesian government is both an opportunity and a challenge that must be followed up with careful and precise steps by the Indonesian Armed Force; by understanding the world maritime axis deeply in the perspective of defense and security. The number of cases of violations of airspace in the territory of the National Air Defense Command Sector I in recent years and the existence of illegal flights around the waters of ASLs I indicate the potential for vulnerability in the area.

To maintain national security, especially in the area of the National Air Defense Command Sector I where the capital city of the Republic of Indonesia lies and the border with several neighboring countries, the development of air power that can be a deterrent effect for other countries is highly required. Moreover, to succeed the government policy in realizing Indonesia as the world maritime axis, the development of air power is one of the main steps that must be carried out in addition to increasing maritime power itself.

According to the research findings, the development of air power in the National Air Defense Command Sector I is focused on the three main components of air defense military equipment, i.e., the development of combat squadrons (combat aircraft and UAV/UCAV), the development of missile strength, and air defense radar. It is in accordance with the theory of 15 elements of water power proposed by Stefan T. Possony<sup>3</sup>. Nevertheless, the development of other air power components must still be carried out in order to support the development of the three major military equipment components in the air power. Without an increase of all components of air power, the desire to realize Indonesia's national security as the world maritime axis will be difficult to materialize.

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# TNI Involvement Strategy on Determination of Defense Budget Policy in Legislative Institutions

*Tri Nugroho, Arry Bainus, Wawan Budi Darmawan*

## **Abstract**

The purpose of this study is to determine the urgency of TNI involvement in the Legislative Institution in determining the defense budget. In doing so, we analyzed the involvement of TNI in the Determination of Defense Budget in Legislative Institutions using the Analytic Hierarchy Process (AHP) method. This study uses qualitative methods by collecting data through interviews with a number of informants, both academics in the field of the defense budget and in the field of defense analysis. Through AHP, researchers found that there are four aspects in determining defense budgets in the Legislative Institution, namely: 1) Political aspect; 2) Aspect of human resource capacity; 3) Institutional Aspect, and 4) Aspect of the Role of the Government. This study found that for the determination of the defense budget, the political aspect ranks the first dominant among other aspects, reaching 56.4%, and then it was followed by institutional aspects of 15.2%, aspects of human resource capacity of 14.9% and aspects of government roles of 13.5%. Based on those results, by considering these four aspects, this study also found with the involvement of TNI in budget decisions in the House, the defense budget can increase until synthesis of 60.9%.

*Keywords: policy strategy, analytic hierarchy process, defense budget*

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## Introduction

The development of national defense and its elements in Indonesia experienced ups and downs in accordance with the conditions of the country and the policies of the leadership at that time. In the era of Dutch and Japanese colonialism, national defense was carried out with a focus on expelling invaders from the motherland and achieving independence. After 1945, the national defense focused on how to defend from the hands of the invaders who would regain control of Indonesia and from the rebels who intended to undermine the young Indonesian state. During the Old Order, state defense became the most absorbing component of the budget because of the lighthouse politics and Dwikora and Trikora policies. At that time the defense budget reached 29%, so it can be imagined how big the Indonesian military was. It can be said that the Indonesian Air Force and Navy at that time were the strongest in the southern hemisphere. After that, there was a change of leadership to the New Order era which put forward the territorial defense of the nation with the Army as the spearhead. Domestic security stability is the main focus by putting TNI into all of the nation-state aspects, so it is easier to facilitate the development of infrastructure<sup>1</sup>. The TNI has a socio-political function, one of which is the presence of seats for ABRI representatives (TNI and Polri at the time) in the House. Due to having a voice in the legislative, the defense budget plan was guarded by the Armed Forces in the legislative and become easier to be manifested. In addition, the head of state at that time was a former Army general who was certainly very pro with the Armed Forces. This paradigm began to change when the New Order collapsed and changed to the Reform Order. At the beginning of the Reform Order, the role of the TNI as a social-political function was eliminated which automatically returned the TNI's function only as a defense instrument. This also affects the amount of the budget for the ministry concerned. In 2005 alone, the defense budget was only 0.8% of Gross Domestic Product (GDP). This only met the needs of 25-40% of defense requirement<sup>2</sup>. Even though there is an improvement in every each year, the value is still below 1%. This situation is very dangerous to the national defense, especially in maintaining the sovereignty of the Republic of Indonesia in land, sea, and air. This is one of the consequences when the TNI does not have any representatives sitting in the legislative.

Addressing the current global security developments which include conflicts in the South China Sea, Indonesia must have a right

defense policy. Although there is no Indonesian territory that has been claimed by China, the potential for conflict is huge because the Natuna Sea is intersecting with the nine-dash line, the territory line that was claimed by China. The most irritated country with this China maneuvers is the United States. This resulted in other countries outside those two countries being the aim of the two countries to instill an influence, including Indonesia. The United States has offered a variety of weapon system related to the field of defense against ASEAN countries including Indonesia recently. Hence, the US can also instill influence as well as get “allies” that can counteract Chinese power in the Southeast Asian region. Indonesia’s neighboring country which is an ally of America, Australia also has an interest in Indonesia because Indonesia is the last stronghold for Australia in the event of the worst scenario of China invading Australia as like as Japan in World War II. If Indonesia’s policy is closer to China, Australia’s security will become increasingly threatened, but if Indonesia is more in favor of Australia, then Australia will be relatively more “safe” because China will not be able to enter Australia before passing Indonesia. In other words, there are three countries that have interest in Indonesia which will certainly influence the tug of the country’s defense policy strategy in the field of the Indonesian military. (Jakarta Greater)

Indonesia’s defense budget is relatively increasing quite significantly from year to year. Indonesia’s defense budget allocation in 2015 was 102.3 trillion. In the following year, this value increased to 108.7 trillion rupiahs. In 2017, this value became 0.8 trillion rupiahs. (Director General of Budget Ministry of Finance, 2018; 16) When viewed from the ratio of GDP in 2015 amounted to 0.89%, in 2016 was 0.88% and 2017 was 0.84%. In 2018, defense budget allocation became the big two after the budget for the Ministry of Public Works. However, if it is compared to our neighbor countries, this number needs to be reconsidered. In any negotiation, a country will be taken into account if it has great power. While those numbers are relatively small when compared to several countries which become a barometer of Indonesia’s national development because they have the potential for conflicts of interest with Indonesia. The purpose of this study is to determine the urgency of the TNI involvement in the Legislative Institution for budget determination. To choose one of the alternatives or the right solution in determining the budget, researchers used the Analytic Hierarchy Process (AHP) method, by completing four aspects, namely: 1 ) The Political

*Tri Nugroho*

*Arry Bainus*

*Wawan Budi  
Darmawan*

Aspect which concerns about the TNI element absence in Parliament, the 1945 Constitution Amendment in 2002 and the perceived political interests; 2) Aspects of Human Resources capacity that discuss Auto-cratcic Decisions and Weak Controls; 3) Institutional Aspects which include ineffective Regulation / Policies and Governance. 4) Aspects of the Role of the Government which includes funds in the procurement of defense equipment, foreign relations, and the Industry Independence Program. These four aspects are used to determine accuracy in increasing the Budget by involving the TNI fully in budget decisions in the House of Representatives, from the result of the reports based on interviews with a number of informants who are experts in the field of defense and security budgets.

In this study, the researchers tried to trace previous studies related to the selection of alternative problem solving and research methods used in determining the goals/objectives of the strategy. The first research conducted by Brigadier (Ret.) Vinod Anand was a senior member at the Service Institution of India. In his journal entitled *Defense Budgeting: Trends and Issues in the Indian Armed Forces Analysis Description Method*, stated that the results of a healthy comparison between capital versus income are 50:50. However, it has several long-term impacts, for example, the food budget for the current level of strength, as well as additional taxes are needed to maintain additional budget plans in the future. The revolution in the military field can be responded with steps that are faster than the process for the last ten years which was very slow. Planning, development, and modernization of strengths, as well as a capacity building, can also be achieved through the current Long Term Integrated Perspective Plan (2007-2022) if this optimal ratio is maintained. Increased defense, changes in imports and independence are some other aspects that will be positively affected. The second study, from Philip Talbot of Birmingham City University Business School, used his journal analysis method called *Resource Accounting and Budgeting for Medical Services: The Territorial Army*, which is stated that as a result of reducing guarding, the army health corps became dependent on medical expertise from TAMS, especially on assignments to Iraq and later to Afghanistan. The third research is from Martial Faucalt, the Institute of Francais Relations International Political and Economics graduated, with a descriptive analysis method in his journal entitled *The Defense Budget In France: Between Denial and Decline*. It is written that France's position compared to its

NATO allies, in order to identify periods of intersection and points of difference in terms of the budget compared to Britain, Germany, and the United States. Brig. (Retd.) (Center for Strategic Studies and Simulation, New Delhi “Defense Budgeting: Trends and Issues” Journal of Defense Studies Vol. 3. No 4. October 2009)

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In those above journals, the previous researchers tried to overcome the decision-making problems with an optional alternative solution by using several selection methods where one of a method that has been used is Analytical Hierarchy Process (AHP). The model was developed by Thomas L. Saaty for overcoming complex multi-factor or multi-criteria problems into an accurate and structural hierarchy. Nevertheless, there are no previous researches that observe this TNI involvement in defense budgeting with the AHP method. That is why this research is carried out by present researchers using AHP according to with existing phenomena.

Based on those above phenomenon, the researchers are interested in conducting a study entitled “ TNI INVOLVEMENT STRATEGY ON DETERMINATION OF DEFENSE BUDGET POLICY IN LEGISLATIVE INSTITUTIONS” which will examine deeper related to the Defense Budget Determination Strategy by involving the TNI in budget decisions in the House using AHP which certainly shows that this research is different from the research that has been done before.

## **Literature Review**

### *Strategy*

The term strategy is often used by people to describe various meanings such as a plan, tactics or ways to achieve what is desired. The essence of strategy is planning and management to achieve a goal. However, to achieve this goal, the strategy does not have a function as a roadmap that only shows direction, but must be able to show how to operate the tactics<sup>3</sup>.

Meanwhile, according to Michael E. Porter<sup>4</sup>, the essence of the strategy is to choose different things from what is offered by competitors. According to him, the problems that arise in market competition occur because of errors in distinguishing operational effectiveness from strategy.

From those two opinions above, the strategy can be interpreted as a plan prepared by top management to achieve the desired goals. This plan includes goals, policies, and actions that must be carried out by

an organization in maintaining the existence and winning a competition or maintaining a situation, in which especially Institutions or organizations must have advantages in maintaining a situation<sup>5,6,7</sup>. This is as expressed by Henry Mintzberg<sup>8</sup> which is stated that strategy of a program or a planned step (a directed course of action) as well as the concept of planning strategies have a set of goals or goals that have been determined.

### *Definition and Meaning of Policy*

As a part of the strategy, public policy is not only positive but also negative, in the sense that decision choices are always accepting one and rejecting the other. Public Policy is a decision intended for the purpose of overcoming the problems that arise in a particular activity carried out by government agencies in the context of governance<sup>9,10,11</sup>. In another perspective, Sriboonyaponrat<sup>12</sup> argues that Public Policy Studies studied government decisions in addressing the problem of public concern. Although there is a room for a win-win solution where demand can be accommodated, in the end, space for win-win solutions is very limited, so that public policy is more in the zero-sum-game realm, namely accepting this, and rejecting others. In this understanding, the term “decision”, as well as ethics of the Government, decided to “not taking care” of related issues<sup>12,13</sup>. Thus, understanding here refers to Thomas R. Dye’s understanding that public policy is everything that is done and that is not done by the government<sup>14</sup>. So it can be concluded that public policy is a set of actions that are established and implemented or not implemented by a government that has a purpose or orientation towards a specific goal for the benefit of all people.

### *Budgeting*

Budget is defined as a plan that is expressed quantitatively in currency units in a given period. Horngren, Foster, and Datar<sup>15</sup> provided the following budget definitions, **“A budget is a quantitative expression of a proposed plan of action by the coordination and implementation of the plan”**. Definition of budget in broader way according to Horngren, Foster and Datar<sup>15</sup> is **“a comprehensive expression of management’s operating and financial plans for a future period that is summarized in a set of budgeted financial statements”**.

According to Munandar<sup>16</sup> “Business Budget or Budget is a plan that is arranged systematically, which includes all company activities ex-

pressed in the monetary unit and applies to a certain amount of coming time.” Furthermore, Munandar<sup>16</sup> stated that the budget has three main uses, namely: as a working guide, as a means of coordinating work, and as a means of monitoring work. As a working guideline, the budget serves to provide direction and targets that must be achieved by activities in the future. The budget also serves as a tool for work coordination so that all parts of the organization can support each other, work together well to get the goals set. As a supervisory work tool, the budget also functions as a benchmark, as a comparison tool to assess (evaluate) the realization of activities.

Budget is the focal point of the alliance between the planning and control processes. Budgeting is the process of translating an activity plan into a financial plan (budget). It has a broad meaning; budgeting includes the preparation, implementation, control, and budget accountability commonly known as the budget cycle. Thus, budgeting needs to be standardized in various forms, documents, instructions, and procedures because it involves and is related to the company’s daily operations.

## **Research Methods**

This study uses a qualitative method. Data collection was conducted through interviews with a number of informants, both academics in the field of defense and security and also practitioners in the military, and data collection through documentation studies. To strengthen the data analysis, this study uses Analytic Hierarchy Process (AHP) which is a flexible model that allows us to analyze and make decisions by combining personal judgment and values logically, can develop a new scale to measure the properties that have been happened. The regional groupings that are aggregately in groups with the same characteristics are grouped using cluster analysis method and further analyzed by descriptive analysis method. There are 3 (three) basic principles in AHP, namely:

1. Divide up problems and arrange those hierarchically. That is, complex problems which are broken down into separate elements, then hierarchically compile.
2. Priority Determination. The elements that are arranged hierarchically are determined by prioritizing our consideration of the elements according to relative importance or preferred. For this, we have to make pairwise comparisons between these elements

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*Wawan Budi  
Darmawan*

and do a weighting and addition to producing a single number that indicates the priority of each element.

3. Logical consistency. Logical consistency is needed in setting priorities for elements in order to obtain accurate results in the real world. This AHP procedure measures overall consistency from our various considerations with a maximum Consistency Ratio of 10%.

There are two important Consistencies, namely:

- a. Similar objects are grouped according to homogeneity or relevance. Example: Oranges with Mango.
- b. Based on certain criteria, which differ logically. Example: Copper is twice as soft as iron. Tin is three times softer than copper, meaning Tin is six times softer than iron.

One of the AHP principles is to arrange complex realities into smaller parts (elements) and so on and then rearranged hierarchically; these elements are made into criteria and sub-criteria. Level I hierarchy is the focus which is the overall goal of this system, for Level II is as a criterion, while Level III is a sub-criterion of Level II criteria, while level IV is the alternatives chosen based on criteria and sub-criteria that have been set.

In this method, decision-makers must make a decision problem structure with a hierarchy consisting of three levels where the decision objectives are at the top level, followed by criteria at the second level and the selection of alternatives at the third level. The main steps that must be taken in using AHP that have been illustrated in the research framework (AHP hierarchy) are by:

1. Determine focus, criteria or sub-criteria and alternatives.
2. Give weight to the criteria.
3. Compare, give values for alternatives according to each criterion.
4. Synthesis; final score

In this method, decision-makers must make a structure of decision problems. The simplest form used to make decisions with a hierarchy consists of three levels:

1. First level: goal
2. Second level: problem criteria
3. Third level: choices/policies

The purpose of this structure is to allow an assessment of the significance of variables at the level that exists. The steps in the AHP method include:

1. Define the problem and determine the desired solution.
2. Create a hierarchy structure that begins with a general purpose, followed by sub-sub-objectives objectives, criteria and possible alternatives at the level of the criteria below.
3. Contains a paired comparison matrix that describes the relative contribution or influence of each element on each goal or criteria that are a level above it. Comparisons are made based on the choice of the decision maker by assessing the importance of an element compared to other elements.
4. Make pairwise comparisons so that all choices are obtained.
5. Calculating the eigen vector value and testing its consistency, if it is not consistent then the data retrieval is repeated.

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The experts (informants) as respondents are expected to complete the following questionnaire referring to the hierarchy that is expected to fill in the comparison fields between the right or left factors with the priority scale. This AHP method helps solve complex problems by structuring a criteria hierarchy, interested parties and by drawing various considerations to develop the weight or priority of the right policy strategy in accordance with the AHP hierarchy.

## **Discussions**

The first stage in AHP is determining the focus, criteria or sub-criteria and alternatives so that the TNI Policy Strategy in determining the defense budget in this Legislative Institution can be implemented through a measurable pattern. Identification of criteria is carried out by researchers with various literature study, documents, and direct interviews with various parties (resource persons) who are believed knowing the problem in detail (expert).

Based on the above stages, determining the criteria in the AHP hierarchy scheme refers to the results of documentation studies and in-depth interviews with a number of informants who have capabilities related to the theme raised. Thus the researchers formulated four aspects in determining the defense budget in the Legislative Institution. From each aspect of the criteria selected, the researcher tried to reduce it into several indicators based on the study of formal juridical in article 23 paragraph (1) of the 1945 Constitution and implemented with the drafting of the APBN Consitution every year, documentation studies and interviews with experts who is made an informant by researchers. Those four criteria can be described as follows:

- a. Political Aspects which include the absence of active elements of the TNI in the parliament, amendments to the 1945 Constitution in 2002 and the existence of political interests.
- b. Aspects of Human Resource Capacity which include autocratic decision and weak controlling.
- c. Institutional Aspects which include ineffective regulations/policies and governance.
- d. Aspects of the Role of the Government which includes the government budget in the procurement of defense equipment, foreign relations, and industrial independence programs.

Based on the above aspects, a hierarchical structure of problem-solving strategies can be arranged using AHP which consists of three levels as follows:

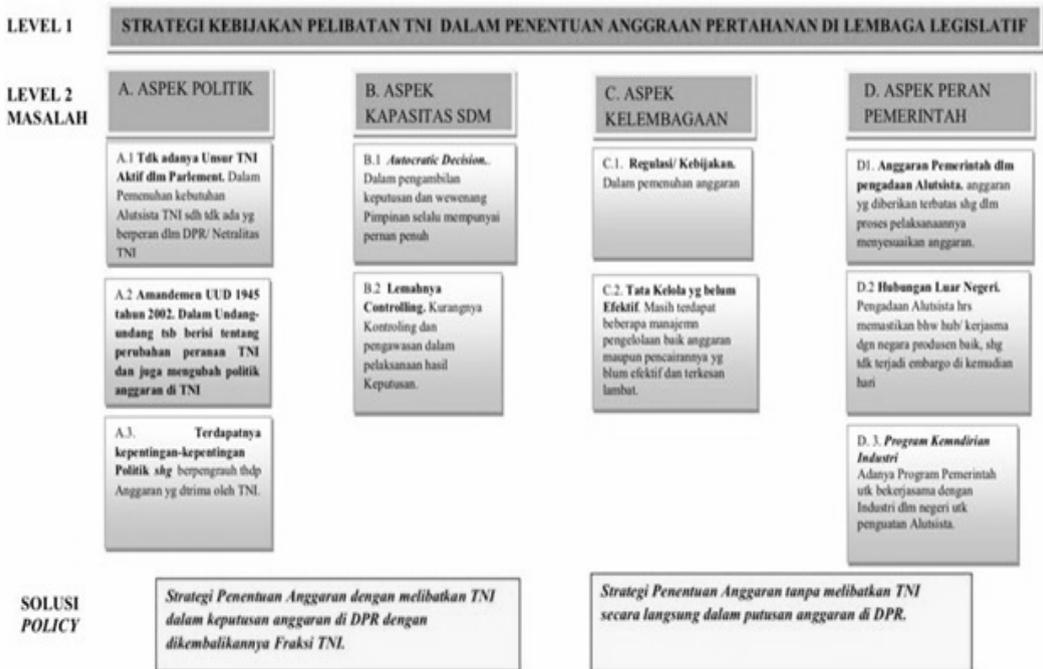


Figure 4.1 – AHP Hierarchy

With AHP calculations using Expert Choice II and using the results of interviews and questionnaires from the experts (informants), it can obtain the synthesis graph results as follows:

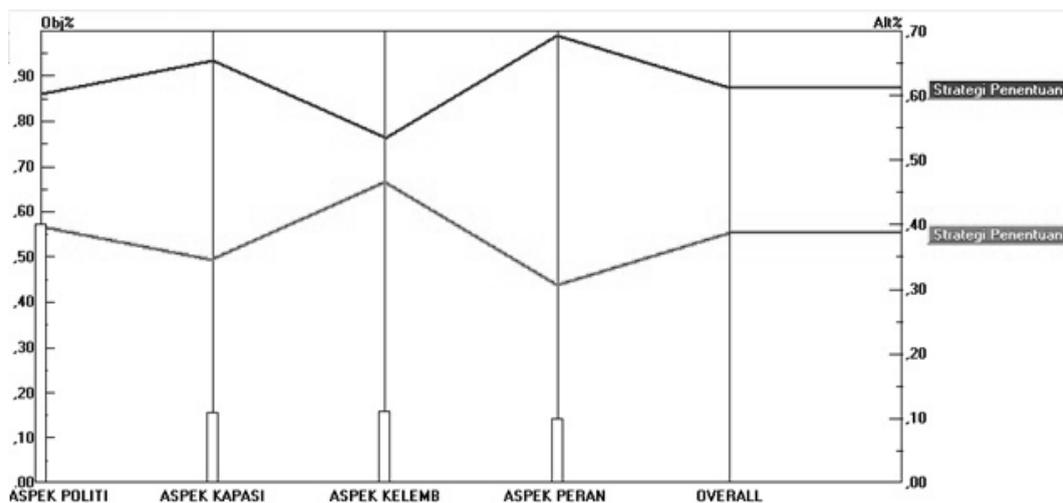


Figure 4.2. – Graphic of the synthesis of policy strategies for TNI involvement in determining the defense budget in the House of Representative

Based on the synthesis of the policy of TNI involvement in the determination of the defense budget in the Legislative Institution above, the strategy of determining the budget by involving the TNI in budget decisions in the House of Representative with the return of the TNI faction with a synthesis of 60.9%, and a budget determination strategy without involving the TNI directly in the budget decision in the House of Representative has a synthesis of 39.1%. So that for the selection strategy that is appropriate to be used in determining the defense budget is the strategy of determining the budget by involving the TNI in budget decisions in the House of Representative with the return of the TNI faction. The values of the four aspects above are based on a synthesis diagram of the policy of involving the TNI in determining the defense budget in the legislature as follows:



So based on the synthesis above for the order of the influential aspects in this selection strategy according to the results of the research are as follows: Political Aspect of 56.4% which includes the problem of the absence of TNI elements active in parliament by 23.6%, amendments to the 1945 Constitution in 2002 at 16.4%, There are 16.4% political interests. In determining the defense budget involving elements of the TNI, it has the highest weight, so it becomes the most important dominant aspects or become the first order.

Furthermore, the Institutional Aspect of 15.2% includes regulation/policy of 7.6%, governance that is not effective at 7.6%. So that in determining the defense budget involving elements of the TNI, it becomes the second order.

The next is from the HR Capacity Aspect of 14.9% which includes an autocratic decision of 6.3%, a weak controlling of 8.6%. So that in the determination of defense budget involving elements of the TNI, it becomes the third order.

Then the Government's Role Aspect is 13.5% which includes the government budget in procuring defense equipment by 6.9%, foreign political relations by 3.3%, industrial independence program by 3.3%. So that in the determination of the defense budget involving elements of the TNI, it becomes the fourth order.

## **Conclusion**

From the explanation above can be concluded as follows:

- a. In creating a strategy for involving the TNI in the determination of the defense budget in the legislative body, there are several aspects, including:
  1. Political Aspects which include the absence of active elements of the TNI in the parliament, amendments to the 1945 Constitution, the existence of political interests.
  2. Institutional Aspects include ineffective regulations/policies, governance.
  3. Aspects of HR Capacity which include the autocratic decision, weak controlling.
  4. Aspects of the Role of the Government which includes the government budget in the procurement of defense equipment, foreign relations, industrial independence programs.
- b. In creating appropriate defense budgeting and on target according to existing regulations, based on the synthesis of creating

a TNI Involvement Strategy in Determining the Defense Budget in the Legislative Institution and the existing factors, the right alternative strategy / policy decision is using a budgeting strategy with involving the TNI in budget decisions in the House of Representatives with the return of the TNI faction with a synthesis weight of 60.9% and a decision on the right defense budget determination strategy in determining the appropriate defense budget effectively in accordance with existing regulations can be achieved optimally.

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Tri Nugroho

Arry Bainus

Wawan Budi

Darmawan

# Determining Strategy of the Indonesian Air Force Military Cargo Aircraft in Supporting the Global Maritime Fulcrum

*Tofan Fajar Mulia, Widya Setiabudi Sumadinata, Windy Dermawan*

## **Abstract**

This research aims to find the type of military cargo aircraft of Indonesian air force in accordance with the standardization and Indonesia's national defense in supporting the Global Maritime Fulcrum. In doing so, researchers analyze the military cargo aircraft of Indonesian Air Force from the four types of aircraft that became public discourse, namely the C-130J Super Hercules aircraft, AN-77 aircraft, and A-400M aircraft. The selection of the military cargo aircraft of Indonesian Air Force uses the method of Analytic Hierarchy Process (AHP). This research uses a qualitative method by collecting data through interviews with a number of informants, both academics in the field of defense and security and practitioners in the military and documentation studies. Through AHP, it was found that there are four aspects in choosing the military cargo aircraft of Indonesian Air Force, namely: 1) Aspect of technical; 2) Aspect of human resources, facilities, and infrastructure; 3) Aspect of Operational; and 4) Aspect of Government Role. This study found that to support Indonesian national security and Global Maritime Fulcrum, aspects of operations rank the most important among other aspects, reaching 40.8%, aspects of technical at 24.1%, aspects of human resources at 19.6% and aspects of government roles of 15.5%. Based on the results of an analysis of these four aspects, Research findings suggest that military cargo aircraft of Indonesian Air Force which is in line with Indonesia's current needs are C-130J aircraft with a value of 54.9%.



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*Keywords: military cargo aircraft, Indonesian Air Force, Analytic Hierarchy Process, Global Maritime Fulcrum, national security*

## **Introduction**

The development of geopolitics and geostrategy at the global, regional and national level today poses challenges to national defense that has been increasingly dynamic and complex. The 2015 Indonesian Defense White Paper (2015: 6) Tensions and conflicts in the East Asia region have raised concerns from various countries, conflicts on the Korea peninsula and territorial disputes in South China Sea region have required Indonesia to deal directly with other countries interests, and thus modernization of the Indonesian Armed Forces main weapons system (Alutsista) based on the 2015 National Defense Posture of the Ministry of Defense of the Republic of Indonesia has become a matter of vital importance to be immediately met. In the Minimum Essential Force (2015: 1) it is realized that efforts to achieve an ideal state defense posture, especially Indonesian Armed Forces posture cannot be realized in a short time due to the limited capacity and budget support. In order to achieve this, the Indonesian Armed Forces minimum essential force (MEF) development priorities are held in stages, while continuing to be directed towards the realization of an ideal Indonesian Armed Forces posture. In addition to the Indonesian Armed Forces MEF (2015: 2), increasing the quality and quantity of Indonesian Armed Forces defense equipment which is increasingly modern has significantly improved the deterrence aspect which in turn, can support the implementation of Indonesian Armed Forces duties to anticipate any possible threats, including support for the Global Maritime Fulcrum.

The idea of Indonesia to become Global Maritime Fulcrum (GMF) opens opportunities to build regional and international cooperation for the prosperity of the people as stated by Indonesian President, Joko Widodo at the East Asia Summit (EAS) on 13 November 2014<sup>1</sup>. In his speech, he also delivered his vision and ideas about Indonesia as Global Maritime Fulcrum. He revealed that there are five main pillars that must be considered in order for the idea to be realized. First, rebuilding Indonesia's maritime culture; second, maintaining and managing marine resources; third, giving priority to the development of maritime infrastructure and connectivity; fourth, through maritime diplomacy, inviting all Indonesian partners to cooperate in the maritime sector; and fifth, building maritime defense forces. Through these efforts,

*Tofan Fajar  
Mulia*

*Widya Setiabudi  
Sumadinata*

*Windy  
Dermawan*

President Joko Widodo believes that Indonesia will become the global maritime fulcrum, a force that navigates two oceans, as a prosperous and authoritative maritime nation.

To realize the Global Maritime Fulcrum (GMF), the main weaponry system (modern defense equipment) of the Indonesian National Air Force becomes a supporting factor, one of the main defense equipment is military cargo aircraft. The current Military cargo aircraft has been operating for over 35 years to guard the Sovereignty of the Republic of Indonesia and to support the Global Maritime Fulcrum.

Through the Minimum Essential Force (MEF) in the second phase of the strategic plan, the Indonesian Air Force has made efforts to build and to modernize the defense equipment as a part of strengthening national defense. Until the second phase of the Strategic Plan, the Indonesian Air Force has made efforts to develop and to modernize defense equipment. The Ministry of Defense of the Republic of Indonesia and the Air Force have conducted an assessment and selection of Military cargo aircraft suitable for Indonesia geographical condition. In the process of selecting these transport planes, based on the interviews with informants, there were three types of Air Force military cargo aircraft offered by the producers to the Ministry of Defense of the Republic of Indonesia. They are Lockheed Martin's C-130J Super Hercules from the United States (bidding 12 / 09/2017), A400 M aircraft made by Airbus Defense and Space France (deals on 5/19/2017), and AN-77 aircraft made by Antonov Company Ukraine (bidding on 10/19/2017).

The purpose of this study is to find the type of Air Force military cargo aircraft that meets standardization and qualification of Indonesia's national defense needs in supporting the Global Maritime Fulcrum. To choose one of the three types of aircraft, we used the Analytic Hierarchy Process (AHP) method, taking into account four aspects, namely: 1) Technical Aspects which includes technical specifications according to operational requirements and maintenance easiness; 2) Aspects of human resources, facilities and infrastructure and infrastructure which includes a certified procurement committee that has gone through a due diligence process, follow-up support and initial spare, and is user friendly; 3) Operational Aspects that includes Air Force operational requirements, safety, and interoperability, and 4) Aspects of the Role of the Government which includes the government budget in procurement of defense equipment, foreign relations, and

transfer of technology. The four aspects are used to choose the type of military cargo aircraft of the Air Force by considering the assessment based on the interviews with a number of informants who are experts in the field of military and defense and security.

In this study, we trace previous studies which are relevant to the research raised. Golec<sup>2</sup> examines the determination of military cargo aircraft that best suits the country needs by using Multicriteria Decision-Making Techniques. The research shows that a military transport aircraft C type was the best choice using Analytical Hierarchy Process (AHP) and Simple Additive Weighting (SAW) based on five predetermined criteria. Cuskey<sup>3</sup> examined the use of AHP as the strategy of determining combat aircraft source by the Hellenic Air Force. It was done by analyzing legislative analyzing, acquisition and relative technical issues related to the procurement process. From this study, it was concluded that AHP could be used as a decision-making tool for the Hellenic Air Force to evaluate the selection of combat aircraft types from several perspectives.

There are also researchers who use methods other than AHP in determining the choice of defense equipment. Among them are Ahmadi<sup>4</sup> who examines the selection of Indonesian Navy Alutsista using Life Cycle Cost (LCC) and Network Process Analysis (ANP) (Case Study of Trained Sailing Ship). The results of the study concluded that the selected training sailing vessel, Friere's alternative had the highest benefit value of which the biggest weighting criteria was the skills and platform. Besides, it is also economically feasible to be used as a training sailing ship for the navy cadets. Next is Syahtaria<sup>5</sup> who examined the selection of Indonesian Navy Anti-Submarine Helicopters with Decision Making Trial and Evaluation Laboratory Method (Dematel) and Analytic Network Process (ANP). The study concluded that the selected helicopter was Panther helicopter that had a value of 2,083502321. This helicopter has several advantages, among others, it is considered quite cheap and has similarities in operations with helicopters.

From the research above, it can be seen that the previous researchers tried to overcome the problem of decision-making to choose an alternative solution to the best problem by using several selection methods, one of which was by using AHP developed by Thomas L. Saaty<sup>6,7</sup>. The AHP method aims to overcome complex multi-factor or multi-criteria problems into an accurate and structured hierarchy. The difference between this study and subsequent research is that this research has

never been conducted in the selection of air force Indonesian Armed Forces military cargo aircraft to support Global Maritime Fulcrum in the perspective of Security Studies.

*CEJISS* **Literature Review**

*4/2018* *Strategy*

The strategy is defined as a target and long-term goals settings of a company and the direction of action and resources allocation needed to achieve goals and objectives Craig & Grant<sup>8</sup>. Furthermore, the strategy is also a unified, broad and integrated plan that links the strategic advantages of the company with environmental challenges, which are designed to ensure that the main objectives of the company can be achieved through proper implementation by the organization according to Glueck and Jauch<sup>9</sup>. A well-formulated strategy will help the preparation and resources allocation owned by the company into a unique form and can help to survive. A good strategy is compiled based on internal capabilities and weaknesses of the company, anticipating changes in the environment, as well as the unity of movement carried out by enemy spies<sup>10,11,12</sup>.

From the two opinions above, the strategy can be interpreted as a plan prepared by top management to achieve the desired goals. This plan includes goals, policies, and actions that must be carried out by an organization to maintain its existence and to win a competition or to maintain a particular situation. Especially, institutions or organizations must have excellence in maintaining a situation. This is in accordance with what Mintzberg<sup>13</sup> stated that strategy of a program or planned steps (a directed course of action) to achieve a set of goals or goals that have been determined is as well as the concept of planning strategies.

*Defense and security*

The definition of Indonesia defense according to Supriyanto<sup>14</sup> is all efforts to uphold the sovereignty of the state, to maintain the integrity of the Republic of Indonesia and the security of all nations from military and armed threats. The Indonesian Armed Forces have to implement defense policies to uphold the sovereignty of the State to maintain territorial integrity, and to protect the security of the nation, to undergo military operations for war and military operations other than war, and to actively participate in regional and international peacekeeping duties<sup>15,16</sup>.

Buzan<sup>17</sup> defines the concept of security as follows: “security, in any objective sense, measures of the absence of threat to acquired values, in a subjective sense, the absence of fear that values will be attacked.” Hough<sup>18</sup> said that the definition of security is still a “contested concept”, or a concept that will continue to develop. Viotti and Kauppi<sup>19</sup> define security as the basic defense and protection of a country, and this concept applies to individuals and groups. Whereas the Great Indonesian Language Dictionary defines security as a situation that is protected from harm (objective security), a feeling of security (subjective security) and freedom from doubt<sup>20</sup>.

National Defense and Security will lead to formatting, or very closely related to sovereignty or the dignity of a country. Therefore, without sovereignty, a state will not be able to carry out its “Rights and Obligations”.

### *National Interest*

National Interest is aimed to achieve in the relation of the state needs or the desired. In this case, the national interests that are relatively fixed and the same among all countries/nations are security (including the survival of their people and regional needs) and welfare. These two main things are security and prosperity. National interests are identified with “national goals.” The improvement of the weaponry belongs to the air force Indonesian Armed Forces (alutsista) is included as one of the aspects of security and prosperity because national security may allow people to feel comfortable and prosperous. This is because the national stability and the government program is achieved, namely one of the air maritime axis. According to Papp<sup>21</sup>, there are several aspects of national interest, such as economics, ideology, strength and military security, morality and legality. National interests are resulted from the needs of a country because each country has different orientations and motivations when developing relations with other countries.

This interest can be seen from the political-economic, military and socio-cultural internal conditions. Interests are also based on a ‘power’ that is aimed to be created so the state can have a direct impact on state considerations in order to get world recognition. The role of a country in providing material as the basis of national interests will undoubtedly be the eyes of the international community as a country that has a relationship attached to its foreign policy<sup>22</sup>.

*Tofan Fajar  
Mulia*

*Widya Setiabudi  
Sumadinata*

*Windy  
Dermawan*

### *Main Weaponry System*

The definition of the main weaponry system according to the Air Force Mabasau<sup>23</sup> is the weaponry system that must be owned by each Force to carry out its main duties. Defense status of a country can be seen from the condition of the main weaponry system (defense equipment) of its armed forces. The stronger, modern, effective and efficient defense equipment of a country is, the stronger the defense is. The Air Force as the air defense Indonesian Armed Forces must have defense equipment that sophisticated as the technological development is, such as the military cargo aircraft<sup>24,25</sup>. The definition of military cargo aircraft according to 2014 Air Force operational requirements are used for air transport operations missions with air support capabilities according to the needs of the Air Force.

### **Research Method**

Qualitative method is employed in this study. Data collection was carried out with documentation studies and interviews with a number of informants, both the academics in the field of defense and security and the military practitioners. To strengthen the data analysis, this study uses the Analytic Hierarchy Process (AHP) which is used to select several alternatives by conducting a simple paired comparative assessment in order to develop overall priorities based on ranking. The method which used AHP process<sup>7</sup> is arranged according to rational factors (funds, economic benefits, social, technical and policy benefits) to select a number of alternatives and to be evaluated by several criteria.

In addition, according to Azis<sup>6</sup>, AHP is a method to rationally capture human perception though there is a degree of inconsistency in the input. The main input in this model is the perceptions of the “experts” or those who understand the problem correctly, feel the consequences of a problem or have an interest in the problem. AHP uses qualitative input (human perception). Therefore, the AHP model is a comprehensive decision-making model because it considers both qualitative and quantitative aspects. In addition, the advantages of the AHP is its ability to solve the problem of ‘multi objectivity’ and multicriteria’, while other models use ‘single objective’.

In this method, decision makers must create a structure of decision problems. It is a hierarchy with three levels. The objective of the decision is at the top level, followed by the criteria at the second level and the selection of alternatives at the third level. The main steps that must

be taken in using AHP have been illustrated in the research framework (AHP hierarchy) by:

1. Determining focus, criteria or sub-criteria and alternatives.
2. Weighing the criteria.
3. Comparing, giving values for alternatives according to each criterion.
4. Synthesis; final score.

The simplest form used in making decisions with hierarchies consists of three levels:

1. First level: goal or target
2. Second level: problem criteria
3. Third level: choices or policies

The purpose of this structure is to assess the importance of variables at a particular level. The steps in the AHP method include:

1. Defining the problem and determining the desired solution.
2. Creating a hierarchical structure that begins with general objectives, followed by sub-goals, criteria and possible alternatives at the lowest criteria level.
3. Containing a paired comparison matrix that describes the relative contribution or the influence of each element to each goal or criteria one level above. Comparisons are made based on the choice of the decision maker by assessing the importance of an element compared to other elements.
4. Making pairwise comparisons so that all choices are obtained.
5. Calculating the eigenvector value and test its consistency, if it is not consistent then the data retrieval is repeated.

The experts as informants are expected to fill out the research questionnaire which refers to the hierarchy that is determined and to fill in the comparison fields between the right or left factors with the priority scale. This AHP method helps solve complex problems by structuring a hierarchy of criteria, interested parties and by drawing various considerations to develop the weight or priority of the right policy strategy according to the AHP hierarchy.

## **Analysis**

*The selection of the Air Force Military cargo aircraft in supporting the Global Maritime Fulcrum.*

The first stage in AHP is to determine the focus, criteria or sub-criteria and alternatives so that the strategy for selecting military cargo aircraft

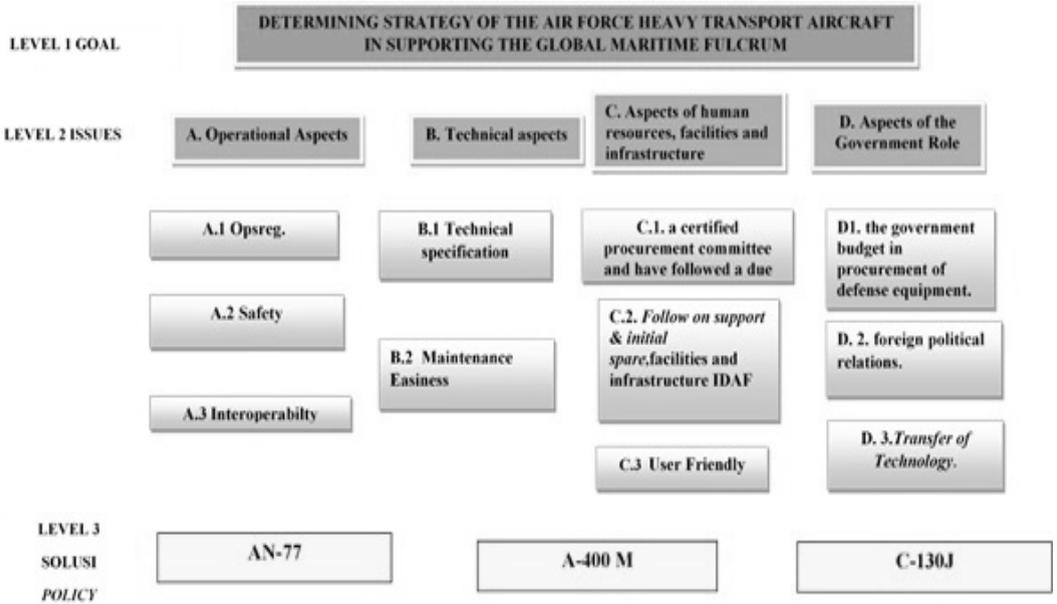
*Determining  
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of the Air Force to support the Global Maritime Fulcrum can run well. Identification of criteria is carried out by researchers by studying various documentation and interviews with various parties (resource persons) who are believed to be an expert in the issue. From the results of documentation and interview studies, the criteria are then determined in the AHP hierarchy scheme.

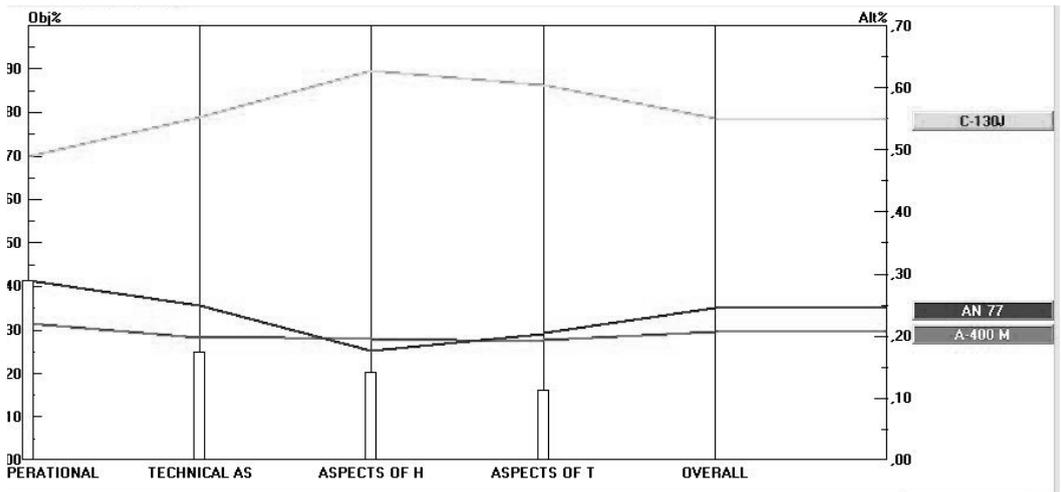
Thus, we formulated four aspects in determining the criteria used in the AHP hierarchy as an effort to select the Indonesian Air Force heavy transport aircraft that supports Global Maritime Fulcrum. From each aspect of the selected criteria, we tried to reduce it into several indicators based on the study of formal juridical (Regulation of the Minister of Defense of the Republic of Indonesia Number 35 of 2015 concerning Implementation of Armed Forces Military Requirements Planning in the Ministry of Defense and Indonesian Armed Forces and the Air Force Technical Guidelines on Planning Procedures Procurement of Main Weaponry System in the Air Force environment, research library and interviews with the experts. The four criteria included are as follows:

- a. Operational Aspects that include Air Force operational requirements, safety, interoperability;
- b. Technical aspects that include technical specifications according to operational requirements, and convenience of maintenance;
- c. Aspects of human resources, facilities, and infrastructure that include a certified procurement committee and have followed a due diligence process, follow-on support & initial spare, user-friendly;
- d. Aspects of the Government Role which includes the government budget in the procurement of defense equipment, foreign political relations, transfer of technology.

Based on the above aspects, a hierarchy of problem-solving strategies can be arranged using AHP which consists of three levels as follows:



Based on the structure above, researcher does AHP calculations using Expert Choice 11 by using the interviews findings and filling out questionnaires from the experts (informants). From these results, a synthesis graph is obtained as follow:



Synthesis Graph of the Strategy for the Election of the Air Force Military cargo aircraft

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Based on the Synthesis of the Strategy for the Election of the Air Force Military cargo aircraft above, the Airplane The C-130J Super Hercules which has the most dominant value in the AHP synthesis analysis (54.9%), AN-77 aircraft (24,5%) and the A-400M aircraft (20,7%). So, the right selection strategy used to determine the Air Force Military cargo aircraft in supporting the Government program is the C-130J Aircraft. The values of the four aspects above are based on the synthesis of each aspect of the Strategy for the Election of the Air Force Military cargo aircraft as follow:

<b>Kriteria Penilaian</b>	<b>C-130J</b>	<b>AN-77</b>	<b>A-400M</b>
Operational Aspects	48.9%	29.0%	22.1%
Technical aspects	55.1%	24.9%	19.9%
Aspects of human resources, facilities, and infrastructure	62.7%	17.7%	19.6%
Aspects of the Government Role	60.3%	20.4%	19.2%

Table 1 – Type of Airplane and Assessment Criteria Results

By looking at the results of the synthesis of the strategy below, the operation aspect has a value of 40.8% which includes the problems of the Air Force's opsreq of 13.9%, safety of 16.2%, interoperability of 10.7%. So, in determining a military cargo aircraft of the Indonesian Air Force, it can be stated that the operational aspect has the highest weight so that it is one of the most important aspects. Furthermore, the technical aspects of 24.1%, covering technical specifications of 13.4%, maintenance easiness of 10.7%. So, in selecting the Air Force military cargo aircraft, it can be said that the technical aspects are one of the next important considerations. From the aspect of human resources, infrastructure and infrastructure obtained a value of 19.8%, which includes a certified procurement committee and and through a due diligence process with a value of 5.6%, follow-on support & initial spare and availability of facilities, infrastructure and infrastructure as much as 7,2%, user friendly at 7.0%. Next, the government's role aspect has a value of 15.4%, which includes the govern-

ment budget in the procurement of defense equipment by 5.6%, foreign political relations by 2.9%, transfer of technology by 6.9%.

Level 1	Level 2	Alts	Prtg
<b>Percent OPERATIONAL ASPECTS (L: ,407)</b>			40,8
	Percent Opsreg (...)		13,9
	AN 77		,040
	A-400 M		,031
	C-130J		,068
	<b>Opsreg (L: ,340)</b>		
	Percent Safety (L: ...)		16,2
	AN 77		,047
	A-400 M		,036
	C-130J		,079
	<b>Safety (L: ,307)</b>		
OPERATIONAL ASPECTS (L: ,407)	Percent Interopera...		10,7
	AN 77		,031
	A-400 M		,024
	C-130J		,052
	<b>Interoperability (L: ,...)</b>		
Percent TECHNICAL ASPECTS (L: ,241)			24,1
	Percent Technical ...		13,4
	AN 77		,033
	Technical specifica...	A-400 M	,027
	C-130J		,074
	<b>TECHNICAL ASPECTS (L: ,241)</b>		
	Percent Maintenanc...		10,7
	AN 77		,027
	Maintenance Easin...	A-400 M	,021
	C-130J		,059
Percent ASPECTS OF HUMAN RESOURCES FACILITIES AND INFRASTR...			19,8
	Percent A Certified...		5,6
	AN 77		,010
	<b>A Certified Procure...</b>	A-400 M	,011
	C-130J		,035
	Percent Follow on ...		7,2
	AN 77		,013
	<b>Follow on support ...</b>	A-400 M	,014
	C-130J		,045
ASPECTS OF HUMAN RESOURCES FACILITIES AND INFRASTRUCTUR...	Percent User frien...		7,0
	AN 77		,012
	<b>User friendly (L: ,3...</b>	A-400 M	,014
	C-130J		,044
Percent ASPECTS OF THE GOVERNMENT ROLE (L: ,155)			15,4
	Percent This Gove...		5,6
	AN 77		,011
	The Government b...	A-400 M	,011
	C-130J		,034
	Percent Foreign p...		2,9
	AN 77		,006
	Foreign political rel...	A-400 M	,006
	C-130J		,017
	Percent Transfer o...		6,9
	AN 77		,014
	Transfer of Techno...	A-400 M	,013
	C-130J		,042
<b>ASPECTS OF THE GOVERNMENT ROLE (L: ,155)</b>			

### Synthesis Results of the Strategy for the Election of the Air Force Military cargo aircraft

Based on the synthesis above, the order of aspects that influence the selection strategy is as follows: first, aspects of operations; second, technical aspects; third, aspects of human resources, facilities and infrastructure and infrastructure; and fourth, aspects of the role of the Government.

Of these aspects, the most dominant aspects are the operations aspects that include Air Force operational requirements, safety, and interoperability. The operating aspect holds the main key in determining the selection of the Air Force military cargo aircraft because it has the first dominant value of 0.392. Operational aspects are the most important consideration because the selected military cargo aircraft must be capable enough to be used by the Air Force for military purposes in strengthening the air and maritime defense forces. This aircraft can also be used for other purposes that support the Global Maritime Fulcrum program, such as the air toll which aims to help distribute logistics throughout the Indonesian archipelago with Indonesia's geographical conditions as an archipelago. This is because the airway can be faster than the sea lane.

#### *Reflection on the selection of the Air Force Military cargo aircraft*

The selection of the modern, quality and fits to the needs of the Air Force Military cargo aircraft, and to realize the Global Maritime Fulcrum is certainly related to the level of coordination and communication with the National Indonesian Armed Forces Headquarters and the Ministry of Defense of the Republic of Indonesia, especially in determining the military cargo aircraft of the Indonesian Air Force. Aircraft that fits the results of this study is the C-130J aircraft made by Lockheed Martin USA. Following this, the Air Force needs to do the followings:

1. The process of selecting the Indonesian Air Force heavy transport aircraft in accordance with the planning procedures for the procurement of defense equipment in the Air Force environment by involving all stakeholders, related experts, and users. Through an in-depth study using the AHP method in this study, C-130J was chosen so that it can provide alternative strategies in the selection of defense equipment.
2. Factory Visit by involving a team that has competency/expert in their fields in the framework of the C-130J Super Hercules manufacturing and technical verification of the needs of the Air Force, as well as studying the readiness of transfer of technology and training offered by Lockheed Martin USA at the presentation
3. The procurement process of defense equipment for C-130J aircraft in accordance with the results of this research at the

Ministry of Defense is carried out with intensive coordination with the Indonesian Air Force quickly and accurately so that the Minimum Essential Forces (MEF) program in the phase II 2015-2019 Indonesia Strategic Plan can be realized immediately including preparation of offsets involving the Defense Industry Policy Committee (KKIP) in accordance with the law of the Republic of Indonesia Number 3 of 2012 concerning the National Defense Industry. This is to prevent fraud and achieve the fourth strategic goal in realizing Indonesia as the Global Maritime Fulcrum listed in the 2015 Defense White Paper, which is to realize a strong defense industry that can be realized well.

*Tofan Fajar  
Mulia*

*Widya Setiabudi  
Sumadinata*

*Windy  
Dermawan*

## **Conclusion**

From a series of data processing and analysis, we concluded that to obtain a modern, high-quality Air Force Military cargo aircraft in accordance with the needs of supporting the Global Maritime Fulcrum, there are three types of aircraft namely AN-77, A-400M, and C-130J. C-130J Super Hercules aircraft has the most dominant value of 54.3% among other aircraft types with details of AN-77 aircraft with a value of 25.3% and A-400M aircraft with a value of 20.43%. Based on the calculation of the 4 aspects called the Operational Aspects that include Air Force operational requirements, safety, interoperability with a value of 40.8%; Technical aspects that include technical specifications and maintenance easiness with a value of 24.1%; Aspects of human resources, infrastructure and infrastructure which include a certified procurement committee, follow-on support & initial spare and the availability of facilities and infrastructure and infrastructure that is owned by the Air Force, user friendly with a value of 19.6%; and Aspects of Government Role which includes government budget, foreign relations with provider countries, transfer of technology with a value of 15.5%. Of the several aspects mentioned above, the most dominant aspect is the Operational Aspect which covers the Air Force operational requirements, safety, interoperability with a value of 40.8%

At the policy level, currently, (2018) procurement of the Indonesian Air Force's military cargo aircraft is being processed at the Indonesian Ministry of Defense by involving the Indonesian Air Force as users and all relevant parties including the National Development Planning Agency and the Indonesian Ministry of Finance. The final decision is the authority of the Indonesian Ministry of Defense based on the

results of political decisions with various considerations that become dynamic and complex government policies. This study tries to provide policy recommendations on the selection of the Indonesian Air Force military cargo aircraft based on the AHP analysis method by considering four important aspects. The results of this research can either be appropriate or not according to the provisions of the Government of Indonesia.

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Strategy of the  
Indonesian Air  
Force Military  
Cargo Aircraft*

# The Implementation of the Triple Helix Model in the Indonesian Aerospace Defense Industry

*Achmad Sugiono, Akim, Rizki Ananda Ramadhan*

## **Abstract**

National defense can be defined as any effort to defend the country's sovereignty, territorial integrity and security from threats and harassment. Ideally, the fulfillment of defense equipment for strengthening the country's defense makes use of domestic production. In general, the current Indonesian defense industry particularly Aerospace Defense is not independent yet. The fact that the fulfillment of defense equipment has been mostly from imported products results from a lack of implementation of research and development. On the other hand, the implementation of the research and development of the defense industry cannot be separated from the role of the three pillars, i.e., the government, universities, and industries. This paper discusses the triple helix concept of the three pillars in the defense industry that could present both obstacles and chances to the Indonesian defense system particularly in relation to development and adaptation capability of the Indonesian defense industries.

*Keywords: triple helix, industry, government, university*

## **Introduction**

The objectives of the Republic of Indonesia as stated in the preamble to the 1945 Constitution are to protect the entire Indonesian nation and the entire homeland of Indonesia and realize the necessary defense and security systems. The defense and security of a strong state



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will ensure the sovereignty and the survival of a nation as well as guarantee its national goals. Realizing a strong defense and security would require a strong military force, supported by the availability of major weapons systems (Alutsista). Defense equipment needs can be met in several ways, one of which is through independent defense industries. The independence of the defense industry is an ideal condition in which the needs of the state of defense equipment can be met.

On the basis of the establishment of the Law of the Republic of Indonesia Number 16 the Year 2012 on the Defense Industry, self-reliance defense arrangements were contained in the provisions of Articles 3 and 4. According to the law, the purpose and function of the organization of the defense industry are to realize the independence of the fulfillment of defense equipment and security, independence on national defense and security systems, increase the ability to produce defense equipment and security and improve the maintenance service in order to build the strength of the defense and security reliably. Defense industry undertaken is directed to ensure the availability, affordability, and quality of the main tools of weapons systems and tools of special materials.

The direction and goals of the defense industry contain dualism because the direction of the defense industry in the development of strategic industries takes a long time, while on the other hand the development of the defense force cannot wait for a long time and requires a complex defense industry. The situation which encourages the development of the defense forces through the procurement of major weapons systems (defense equipment) can be expressed almost from everything they obtain from abroad.

Indonesia's defense industry covers various fields including the aerospace defense industry, one of which is PT Dirgantara Indonesia (PT.DI). Conditions of PT. DI is the same as other defense industries that are still dependent on the foreign aerospace industry. The establishment of PT. DI which began with the establishment of the Aviation Industry Preparation Institute (LAPIP) was inaugurated on December 16, 1961, formed by Chief of Airforce Staff (KASAU) to prepare the Aviation Industry which was expected to have the ability to support Indonesia's national aviation activities. Then in 1966 LAPIP was merged with the Self-Reliance Aircraft Industry PN to become the Nurtanio Aviation Industry Institute (LIPNUR). On April 24, 1976, the Division of Advanced Technology and Aviation Technology (ATTP) owned by

*Achmad Sugiono*

*Akim*

*Rizki Ananda*

*Ramadhan*

Pertamina joined LIPNUR, a company called PT. Nurtanio Aircraft Industry (IPTN) based on Notarial Deed No. 15, April 24, 1976, led by Prof. Dr. Ing. B.J.Habibie. Then in April 1986, the company name was changed to PT Nusantara Aircraft Industry (IPTN), and on August 24, 2000, under the era of President Abdurahman Wahid, the company name was officially changed to PT Dirgantara Indonesia (PT. DI)<sup>1</sup>.

PT DI as an aerospace industry is engaged in the development and production of aircraft components, fix wing aircraft, helicopters, and other aeronautical products. The biggest potential owned by PT. DI in the development of Fix Wing aircraft was shown by the ability of PT. DI to develop the N-250 aircraft but did not succeed in the mass production stage. The development of the N-219 aircraft is currently in the certification process and as the Type Certificate (TC) Holder of the CN-235 aircraft. However, along with the development of Fix Wing aircraft, PT DI also continues to rely on foreign aerospace industries, especially Engines, Propellers, avionics components, even for raw materials such as composite materials. According to Silmy Karim<sup>1</sup>, the independence of the defense industry is divided into independence in the purchase, self-reliance in use, independence in caring and independence in making/producing, and the highest level of independence is self-sufficiency in production. Referring to this opinion, PT. DI does not say that we cannot independently determine the level of independence of PT. DI and the target level of independence to be achieved. Discussion of the defense industry model can be made through a Modern Defense Industry. Richard A. Bitzinger<sup>2</sup> states that each country prefers cooperation with other countries in establishing the defense industry to reduce huge costs it.

The development of the defense industry also relies heavily on the government's role in determining defense policies and the needs of defense equipment, defense industry policymakers and users as well as regulators. Discussion on the role of government can be approached with the theory of military-industrial complex<sup>3,4</sup>. A military industrial complex term was first used by US President Dwight D. Eisenhower in his farewell address on January 17, 1961. Eisenhower warned that the United States should "guard against the mastery of influence by military-industrial complex", which consists of members of Congress from districts with military industry, the Department of Defense and the private military industry (e.g., Boeing, Lockheed Martin, and Northrop Grumman).

The implementation of the research and development of the defense industry cannot be separated from the role of the three industry pillars (government, academia and the industry itself, hereafter known as the triple helix). Marina Ranga and Henry Etzkowitz<sup>5</sup> explain the relationship and function of the third component, the relationship among the three described in the statist model, Laissez Faire Model, and Balanced Model.

Studies on the defense industry, the triple helix, and industrial cluster are not a new issue because many researchers or authors have researched these issues. Research on the defense industry was undertaken by Sri Hartati and Ade Muhammad<sup>6</sup>. The aims of the study are to determine the condition of the Indonesian defense industry system and analyze the application models of Indonesian defense needs. The results indicate that there are several models of the defense industry, namely a model system autarchy defense industry, niche production models and also the global supply chain. The Indonesian model employs the realization of the global supply chain, but in the provision of the defense industry, defense industry systems and technology models were supplied from the civilian production.

As for the triple helix studies that have been done by Loet Leydesdorff<sup>7</sup>, this paper discusses the development of the dynamic between university, industry, and government. The relationship between industry and universities are more focused on recent research and development (R & D), while the government has a role to make the exchange of information between the investment in industrial policy, and intervention balanced at a structural level. This development is expected to be a success as long as it can anticipate or follow technological trends.

Based on the phenomenon of the Indonesian defense industry, especially PT. DI with all its advantages and disadvantages, the theories that have been presented and a number of previous studies, the author is interested in conducting research on the Indonesian defense industry model associated with the involvement of the three main pillars of the industry. This study is expected to obtain a design that can be taken into consideration in making a model of the defense industry in order to realize the independence of the Indonesian defense industry.

## **Literature Review**

Discussing the importance of the aerospace defense industry is closely related to Air Power because it is a major force to win the war and to

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carry out the national will. This is in line with what President Sukarno stated on the fifth anniversary of the Air Force on 9 April 1951, "Control the air to carry out the national will because a national force in the air is a decisive factor in modern warfare. Also, if we want to stand with equal height to the international forces, we must have an excellent army as well".

The defense industry is part of the element of air power. According to Westenhoff<sup>8</sup>, there are 15 constituent elements of Air Power, one of which is Industry Potential (Strategic Industries). Westenhoff<sup>8</sup> suggests that a state may have every element of air power but may not be likely to flourish if the government does not have a strong commitment to ensuring the future development of aerospace. Attitudes and actions of the government will fully determine the air force posture, which in turn will affect the efficiency of the formation of civil air as well as industrial and aeronautical facilities. According to Westenhoff<sup>8</sup>, the elements that make Air Power consist of military aerospace strength, air force civil, industrial and aeronautical facilities. Air Power is the availability of tools required to support equipment as well as facilities such as airfields, aircraft, flight crew, aircraft mechanics, operators, aircraft designers, and aircraft manufacturers and aircraft parts needed. PT. DI as a strategic defense industry has a role as a power of the element in producing defense equipment, especially air force defense<sup>9</sup>.

Realizing the power of a strong Air Power needs the support of the independence of the defense industry. According to Parker<sup>10</sup> independence means confidence in one's own ideas, independence with regard to getting things through. Self-reliance is also associated with a certain level of fiscal competence so that the strength or coordination will never happen amid efforts to achieve the goals. The independence means the absence of doubt in setting goals and not hindered by the failure. Self-reliance in the defense industry is important for the independence of the country because in that way it has the freedom to determine the posture and defense strategy. This is in line with what was presented by Silmy Karim<sup>1</sup>.

Furthermore, I Wayan Midhio, Rector of the University of Defense in his presentation entitled "Opportunities and Challenges in the Perspective of National Defense" describes the stages of the independence of defense and security in the following figure.



Figure 1 – Phasing of Self-Reliance Defense and Security

The figure above illustrates that the independence process begins when the defense of the operation continues treatments until one's own production previously located manufacturing process and engineering design emerge. As for the technology transfer, the process is carried out according to three stages:

- a. Offset procurement program abroad involving the domestic industry at the level of care and manufacturing.
- b. Domestic procurement involving overseas at the level of engineering and design.
- c. Domestic procurement independently on its own production levels or 100% local content.

Referring to the explanation above, the independence of the defense industry is a condition in which the defense industry can meet the needs of defense in Indonesia along with the freedom of its own ideas that can lead to its conclusion. Attainment of independence is not easy and takes a long time, whereas the demand for defense equipment to the defense can not wait for a long time.

Defense industry development is inseparable from the role of government in determining defense policy and defense equipment at the same time as the defense industry policy, with a high complexity known by the military industrial complex<sup>11,12</sup>. In Pavelec<sup>3</sup>, US President Dwight D. Eisenhower in his farewell address on January 17, 1961 warned that the United States should “Keep yourself to mastering the

*Achmad Sugiono*

*Akim*

*Rizki Ananda*

*Ramadhan*

influence by the military-industrial complex,” which consists of members of Congress from districts with industry military, Department of Defense and the private military industry (e.g., Boeing, Lockheed Martin, and Northrop Grumman). The role of government and parliament on the military-industrial complex as an institution which sets monetary policy and the needs of defense equipment, the role of the military as the user specifies the respective items along with the corresponding specifications, while the industry is a part that meets those needs. Military industrial complex sometimes covers the entire contract and the flow of money and resources between individuals, companies, and institutions of defense contractors, the Pentagon, Congress and the executive branch. Eisenhower believed that the military industrial complex tends to promote policies that may not be in the best interests of the country and the executive branch.

The government has a very important role in determining the policy for establishing the independence of the defense industry. According to Marzah<sup>13</sup>, there are six government policies in building industrial independence, better known by Marzah<sup>13</sup>, six common policies. They are:

1. improving coordination between the government and the defense industry
2. encouraging and supporting research and development
3. supporting the global comparative advantage
4. helping companies access global supply chain
5. creating a pro-competitive environment
6. offsetting policy

These indicate that the government/parliament determine the monetary policy and the national security while the military as a user also determines the weapons and industrial needs as executor that produce war equipment.

Realizing the independence of the defense industry needs huge costs and a lot of time. Richard A. Bitzinger<sup>2</sup> states that establishing the defense industry in each country prefers cooperation with other countries than independently to reduce high-cost development. It is not out of the trend of budget-tightening policies which increase research and development costs (research and development) as well as the intensity of market competition. This makes the new defense equipment a necessary process for research and development (research and development) which require a huge cost and much time. Therefore, the

early sales of defense equipment would be expensive to be able to cover the costs incurred. When it could be marketed to other countries or carry out mass production, that's when the selling price could be lower with the same product made in another country<sup>4</sup>.

According to Marzah<sup>3</sup>, Indonesia Economic defense industry shows three main models, namely the defense industry autarky, niche-production, and global supply chain models.

*Implementation  
of the Triple  
Helix Model*

- a. Autarky model. The model is applied by a country that has ambitions to gain independence of defense. Self-reliance defense is measured from:
  - 1. the capacity of countries to master the technology needed to make the military weapon systems;
  - 2. national financial capacity to finance the production of weapons systems;
  - 3. national industrial capacity to produce weapon systems in the country.

Autarky model will be achieved if a country is able to have a minimum of 70% of the capacity of technology, finance, and production of weapons systems. This model is an ideal model for building military strength aerospace through the national defense industry. It can only be achieved by the countries which have the status or ambition to become a major world power (great power).

- b. Niche-Production Model. The model is applied by countries that seek to reduce weapons' dependence on foreign manufacturers to develop national capacity for mastering the main military technology. Mastery of military technology is especially geared to help the country to develop eight types of conventional weapons. To implement this model, the state must have a commitment to invest the defense industrial sector by seeking to obtain military technology transfer from an established arms manufacturer. This strategy, for example, is effectively carried out by South Korea to develop surface warships, submarines, tanks, and fighter planes.
- c. Global Supply Chain Model. This model tends to be applied by countries that have already had an established base of military technology but have not had great access to the international arms market. Lack of access makes these countries undergo the process of rationalization of arms production by integrating the production of weapons into a consortium of the global defense

industry. This rationalization is implemented through three main methods:

1. the creation of an industry consortium of weapons in a regional or global level;
2. the mobilization of financial resources from the private sector to finance cross-border investment into the defense industrial sector; and
3. the deployment of military technology from a major arms manufacturer to members of the consortium.

The development of the defense industry and other industries is inseparable from the role of the three pillars, namely the government, industry, and academia, which is better known as the triple helix concept. Triple helix theory was first introduced in the 90s with the publication of journals by Marzah<sup>13</sup>, entitled “The Triple Helix—University-Industry-Government Relations: A Laboratory for Knowledge-Based Economic Development.” Triple helix theory describes the relationship model between the three components, namely industrial university, industry and government interact with retaining its identity in accordance with their respective interests. An association between these components is further illustrated in the following configuration<sup>15</sup>:

- a. Statist model. Components of the academy and the industry do not collaborate and cooperate, but the government is very dominant and controls the other two components.

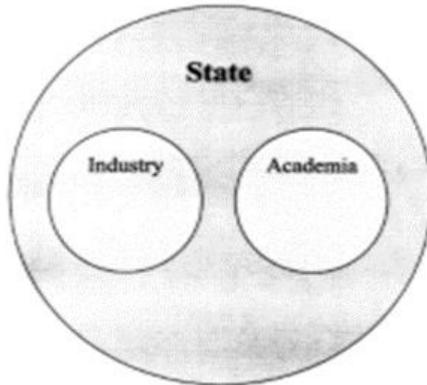


Figure 2. Statist model<sup>15</sup>

- b. Model Laissez Faire. Model components of the triple helix are in an environment that is separated from one another but is still in touch with each other reciprocally.

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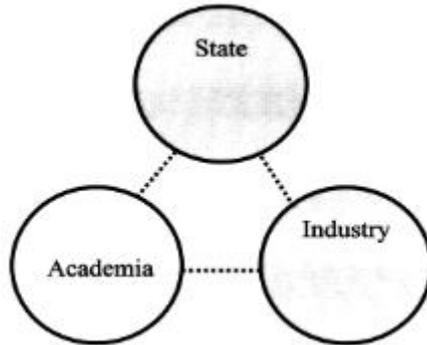


Figure 3. Laissez Faire Model<sup>5</sup>

- c. Balanced Model. Model respective components influence each other and work together and collaborate in such a way that in certain fields they intersect with one another.

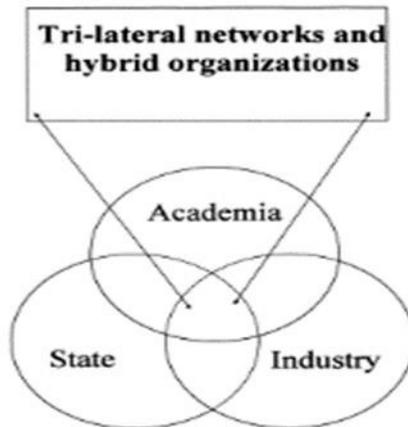


Figure 4. Balanced Model<sup>5</sup>

Richard A. Bitzinger<sup>2</sup> state that the model of the triple helix is a form of innovation systems from academia (universities) based on knowledge (knowledge-based innovation system) in order to develop a pat-

tern of interaction between institutions without leaving the basic purpose of knowledge itself. Triple helix models can also be stated that an educational institution (university) can have a major role in the form of innovation in a knowledge-based society (knowledge-based society); the university is considered as organizers of regional innovation in a society <sup>2</sup>

Triple helix explanation above shows the development of the industry, one of which depends on how the relationship between the government, academia (universities) and industry are, in this case, each retaining identity and purpose in accordance with the interests of each.

### **Research Method**

The research was conducted to determine the role and relationship of three pillars in the development of the industry, namely the government, universities, and industry. Qualitative research is used to see the role of the three pillars of industry in the aerospace defense industry development with the implementation of the triple concept. Primary data were obtained from interviews with interviewees selected by purposive sampling. The interviewees are experts in the field of defense policy and aerospace defense industry.

### **Discussion**

Results of research previously presented were analyzed by using the relevant theories. The analysis is expected to obtain an overview of the implementation of the triple helix in the aerospace defense industry development in Indonesia.

#### *Independent Defense Policy and Defense Industry*

National defense and security become major factors in maintaining and protecting the sovereignty from threats which can also affect the administration of certain countries. A country's management will rise and go through a significant correlation between the creation of a conducive security condition and equitable prosperity. Indications of increased security climate can be seen in the establishment of resilient national defense and security systems supported by adequate budget allocations and legislation that set out the responsibilities of each relevant institutions, as well as modern defense equipment.

Awareness of the importance of defense and security is further embodied through defense policies, which include the state of the defense

posture. The development policy of national defense to the minimum essential force (minimum essential force) becomes a high priority at the main components through the development of systems, personnel, facilities, and materials through modernization of the main tools of weapons systems (defense equipment). Development of national defense use concept-based defense budget capability (capability-based defense) while considering the threats faced and the development trend of the strategic environment. Increased military capabilities are implemented through the maintenance of defense equipment<sup>16</sup>.

Fulfillment Air Force defense equipment would require the involvement of the aerospace defense industry. This is proposed by Westenhoff<sup>8</sup>, who states that the element of Air Power consists of 15 components, one of which is a potential industry. An ideal condition when defense equipment needs can be met independently by the domestic defense industry that provides the flexibility to be able to determine the strength of its own security and defense capabilities without relying on other countries, as described by Silmy Karim<sup>1</sup> and the respondents. Silmy Karim<sup>1</sup> states that if Indonesia is able to make defense equipment by itself, it will be freer to realize the development plans of defense. As a commitment to increase the independence of the national defense industry, meeting the needs of defense equipment DoD/Army pursued to make the most of the ability of the national defense industry. This step is an attempt to minimize dependence on military defense equipment from foreign products which are prone to the embargo. In order to support the policy of increasing the role of the national defense industry, government regulation and derivatives in the form of implementing regulations ranging from planning, assessment, implementation and monitoring and evaluation as a legal basis have been established.

Self-reliance in defense and security will ultimately reduce dependence on foreign countries, save and guarantee the defense equipment procurement costs and security. Realizing it needs the support of government policy and legislative improving the utilization and development of strategic industrial products Indonesia. This support was accompanied by the regulation on the use of the products of the defense industry. The resulting regulations also give the greatest possible utilization of the provisions of SOE product not only among governments but among other private needs. Other efforts in terms of capital and industrial production defense are included in the state budget as well

as promote good relations with foreign countries in order to develop the technology and industry to meet domestic demands.

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Based on the opinions of respondents and observations, it is found that there are no currently independent Indonesian defense industries including the aerospace defense industry. However, it is necessary to address how the independence of the defense industry looks like. According to Silmy Karim<sup>4</sup>, independence is divided into four stages, namely self-sufficient in the purchase, independent of use, self-maintaining and self-sufficient in production. Referring to the opinion, further analysis of the degree of independence of the Indonesian defense industry today can be elaborated as follows:

- a. Independently in Purchase. Indonesian aerospace defense, in general, has the independence in the purchase because Indonesia implements a free and active foreign policy that does not take sides on any "block". However, if in certain conditions independence has not been achieved, for example, when Indonesia decides to buy the Sukhoi aircraft from Russia and at the same time America tries to put pressure on Indonesia to cancel the purchase.
- b. Operate independence. After being able to buy the weapons system it is expected that we have the independence to operate. However, Indonesia has a poor experience in this case when buying a Hawk 100/200 aircraft, which should not operate to confront the separatist movement or GAM at the time.
- c. Caring independence. Up to this time to care for the Air Force defense equipment independently is carried by a maintenance depot or on certain aircraft MRO in the country which is carried out by the aircraft include the Boeing 737-200, Boeing 737-400 / 500, CN-235 and US Helicopter / NAS 332 Super Puma. However, there are some planes carrying out maintenance on Foreign Affairs.
- d. Producing independence. At this stage, all the needs of defense equipment would be expected to be produced. The current state of defense equipment fulfillment Indonesia still relies heavily on overseas products. Even if there is a product in the country such as the CN-235 aircraft, most components are obtained from the aerospace industry abroad. However, it is realized that achieving full self-sufficiency is entirely impossible.

Furthermore, according to Richard A. Bitzinger<sup>2</sup> to realize the defense industry independent 100% takes very long and is one that is not possible so that if the defense industry can at least produce 25% of the components independently of defense equipment produced then we can say we have been independent. Furthermore, a relevant matter that the initial target of KKIP to realize the independence of the defense industry is to realize independence in nurturing and caring for defense equipment.

*Achmad Sugiono*

*Akim*

*Rizki Ananda*

*Ramadhan*

Statement or opinion stating that embody an independent defense industry in terms of production is one that is not possible, in line with the theory of Modern Defense Industry. According to Richard A. Bitzinger<sup>2</sup>, building a defense industry in each country prefers cooperation with other countries. Furthermore, Richard A. Bitzinger<sup>2</sup> shows the three main models namely the defense industry with autarky models, niche-production and global supply chain models. Referring to the above results the appropriate models for the Indonesian aerospace defense industry that is global supply chain models and is in accordance also with the views expressed by respondents in the defense ministry and PT DI. The global supply chain models allow Indonesia to make the process of rationalization of arms production by integrating the production of weapons into a consortium of the global defense industry. This rationalization is done by three main methods:

- a. the creation of an industry consortium of weapons in a regional or global level;
- b. the mobilization of financial resources from the private sector to finance cross-border investment into the defense industrial sector; and
- c. The deployment of military technology from a major arms manufacturer to members of the consortium.

### *Government Policy on Defense Industry Aerospace and Military Industrial Complex*

It has been explained in Act No. 16 of 2012 that the government is one of the main components in the three pillars of the defense industry. The role of the government is a vital pillar of the defense industry as the government is the regulator and integrator. The government in carrying out their functions defense sector has been implementing policies in various fields. The Indonesian government has implemented a policy on the defense industry in line with Richard A. Bitzinger<sup>2</sup>

six common policies, some of the policies implemented by the government of Indonesia, among others:

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1. improve coordination between governments and defense industries;
2. support defense research activities;
3. help domestic enterprises to access global supply chains;
4. offset policy;
5. human resource development (not six common policies)

The government should also carefully consider the possibility of negative effects arising from the measures taken. The possibility of this negative effects has been predicted by the US President Dwight D. Eisenhower in his farewell. They include:

- a. The risk of corruption. When the government appoints an industry to take care of all the business of the defense industry, the strength of this kind can lead to corruption. The government must have checks and balances to minimize risk. The government provides subsidies to certain domestic defense industry to improve competitiveness and protect them from global competition; subsidies in various forms, such as large budgets for research and development. The government should have procedures to identify potential corruption and take appropriate measures to minimize the risk of corruption that destroys not only the defense industry but also the security of the state.
- b. Strategic issues of dependence on other countries. The purpose of the government adopting policies to promote and maintain the defense industry is often aimed at achieving self-sufficiency, but the benefits and costs of policies should be taken into consideration. This is because the high costs incurred for policies that encourage self-sufficiency often do not produce the desired benefits of sustainable defense industry to compete globally.

### *Triple Helix at Aerospace Defense Industry*

Triple Helix is a model of the relationship between the three pillars in industries, namely universities, industry, and government to interact with bilateral or trilateral in which each institution retains its independence identity in accordance with its respective interests. The results showed the government had a very dominant role in the development of the defense industry. Maturing government policy on defense to allow the implemented cooperation between the government, the de-

fense industry, and university (academic) requires research and development and human resources in a triple helix concept.

It has been stated in Act No. 16 of 2012 that one of the government's role is to integrate government agencies and private R & D by the defense industry and the government. But in fact, there are egoisms of individual research organizations, and they are not yet integrated. For example, ITB Pustekhan state there is a body of defense technology development center, as well as in BPPT there is a similar agency. In addition to the problems of egoism and unintegrated research organizations, there are also issues of R & D such as the minimal budget. To overcome these problems, R & D and research organizations need to be integrated.

Human resources are also one component that can be integrated by cooperation between the three institutions and the stretcher. The Air Force in addition to the industry also cooperates with educational institutions engaged in the field of aeronautics, especially the ITB. Many officers from various corps of the Air Force have been assigned to study at the school so that later on, they can utilize their expertise in the development of both internal Air Force aircraft as well as in projects in cooperation with PT. IN. As some Air Force personnel, PT DI also get the opportunity to attend classes in ITB especially now under the development of consortium KFX-IFX.

Furthermore, the cooperation between the three institutions can be illustrated by the following figure:

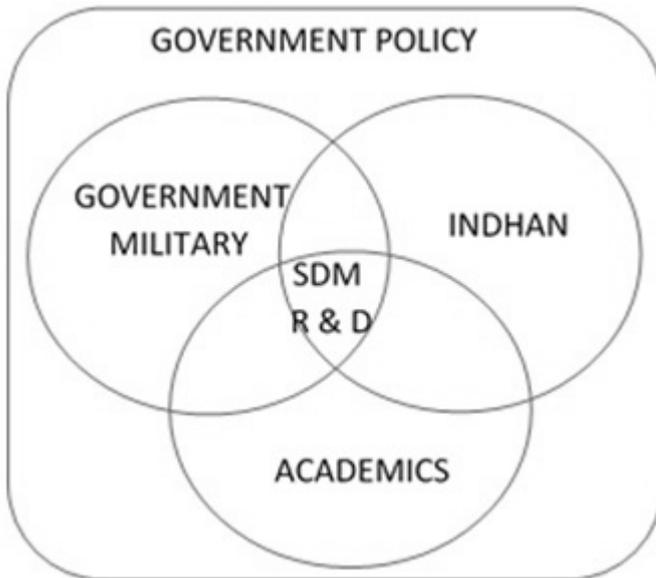


Figure 5. Triple Helix Model

## Conclusion

Realizing a strong defense and security would require a strong military force backed by defense equipment. Meeting the needs of defense equipment can be done in several ways, one of which is through the independence of the defense industry. The independence of the defense industry is an ideal condition to meet the needs of the state of defense equipment. This thinking becomes the basis for the establishment of the Law of the Republic of Indonesia Number 16 the Year 2012 on the Defense Industry. The procurement of major weapons systems (defense equipment) is still obtained from abroad. For example, the Air Force weapon systems for fighter aircraft and radar come from the procurement or foreign products.

In order to realize the independence of the defense industry, the government has issued several policies: 1) improving coordination between governments and defense industries; 2) supporting defense research activities; 3) assisting companies in the country to be able to access global supply chains; 4) offsetting policy; 5) securing human resource development. However, this policy may lead to the risks of corruption and dependence on other countries.

Efforts to achieve independence also have a problem related to the synergies and integration of government institutions, academia, and industry in the implementation of R & D and human resource development. Therefore, to overcome this, we need to apply the concept of the triple helix.

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Achmad Sugiono

Akim

Rizki Ananda

Ramadhan

# Border Area and National Security Issues

*Junardi Harahap*

## **Abstract**

The border is an unattached part of the Republic of Indonesia which must be maintained at all costs. The concept that must be made in the view of the border is to make the border area as a region that becomes the front porch for the nation of Indonesia. The border as a territory that must be run and used as the main grip in the security area. Various security problems will occur if we watch security is so important because it would endanger national security if you see the border area of the eyes. If we do not see the border well, then there will be many security issues in the border area such as crime and other security problems. This article looks at security issues that the occur in border areas such as border areas in Kalimantan bordering neighboring countries. What we want to see is how to manage border areas with defense and security in the Kalimantan border region.

*Keywords: border, security, management, front porch and anthropology*

## **Introduction**

Border is an area that is very important in conditions that are important in the existing defense that brings the existing defenses and leads to changes that occur in conditions that occur in the existing defense. Defense is a strong dimension in bringing goodness and also brings to many things within the borders that occur and in accordance with the conditions that exist in accordance with many things and lead to conditions that are in accordance with what is done in accordance with the existing aspects<sup>1,2</sup>. Border is a very important area in bringing the conditions that occur in accordance with what is desired in bringing the conditions in the existing border area in accordance with the



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expectations that are existing conditions. Border area is an area that carries existing conditions in accordance with existing aspects<sup>3,4</sup>. The defense of a nation is a very absolute matter especially in the border region of the country which must be given full attention to achieve the sovereignty of the nation and state.

*Junardi Harahap*

### **Literature review**

Herdiansyah, Soepandji, Seda & Dewi<sup>5</sup>, the borders in the border region of Indonesia carry many existing problems, namely border problems such as the problem of space, time, and also environmental problems that exist within the border area. Satria, Sadiyah, Widodo, Wilcox, Ford & Hardesty<sup>6</sup>, the border becomes an important part in understanding the theft of fish that occurs in it which certainly brings benefits to those who commit the theft. Bremus & Neugebauer<sup>7</sup>, there is an upheaval in the currency problem in the border region that needs to be observed. Kumara et al<sup>8</sup> developed many health problems in the region that brought problems that occurred in the area.

### **Result and Discussion**

Border is an important part in the life of the nation and becomes a very important part in the struggle of border problems that exist in the existing society and bring a lot of influence to the people in various conditions that exist on the existing border. In this condition, it is certainly an important part of life that is understood with problems that carry the power that occurs in society and also in the struggle of problems that exist in a force that exists in the life of the nation and state that exists. Of course, this can bring considerable changes in the problems that exist in the context of the nation. The border is a sovereignty that is owned by the community and the nation and certainly becomes a context that exists in society that brings pride to the existing community. Border becomes a very important condition in the movement in understanding the existing boundaries and in accordance with the conditions that are owned by the existing community and becomes a very important part in the conditions that have and carry conditions that are very important in the existing border realm in accordance with the problem faced by the existing community and become the boundary conditions that exist and become a very important part.

One of the important parts in the life that exists in the existing community is the part that is in the border that is on the border that must

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be faced with the existing conditions and become a perfect part in the existing society. The border becomes a very large part in the existing conditions and becomes a very important part in the existing society. The problem that occurs in the problem that brings conditions that have improvements in bringing conditions to bring things that happen brings to the existing community.

Border is a strong part is to be a part and a condition that brings definite conditions in bringing to many things that exist in accordance with conditions that bring goodness to the existing boundaries in accordance with many things that exist and bring to many things that certainly bring change which will be an important force in society that is in restrictions. The borders in the border region are very important and bring to many things that exist in the community and become an integral part of the various conditions that exist in accordance with existing conditions. Border is a very important area in life that exists in accordance with many conditions that exist in accordance with the existing problems which certainly brings to many things that there are very important aspects in society that have very important conditions in the community that are in accordance with various conditions that exist in accordance with existing conditions in accordance with various things that exist and bring to many things that exist. In accordance with existing conditions, what must be done with various aspects that are very important in various important conditions in accordance with various conditions.

There are so many things happening in border communities that there are many conditions that are carried out in various conditions that are in accordance with the expectations expressed in various conditions that are in accordance with the expectations that bring to many things that certainly become a very important part in life that exists and certainly it also becomes a force that exists in various aspects that occur in various aspects that exist and occur in it. Aspects that in various conditions exist certainly become a force that exists in understanding the conditions that are a very important part in the existing border area.

The boundary that exists in an area is a part that brings to many things in various conditions that exist in accordance with various conditions that are of course in accordance with various conditions. In accordance with various conditions that correspond to the needs of the existing border area in accordance with existing conditions. Border

which cannot be seen from various conditions that occur in various forms which is certainly an inseparable part of the six conditions that exist on the existing boundary. The border becomes a condition that exists in a variety of conditions that are an inseparable part of various conditions contained in the community in the border region.

Border is a very important part in various conditions that certainly also become a force that is not free from various conditions. Conditions that are certainly an inseparable part of the various aspects that occur which certainly bring a high enough influence in the community that requires ideal conditions from various aspects that exist in the area of society on the border that is in accordance with the conditions of the existing community and certainly a part very important in the existing community. Problems that exist at the border must get a very important place in the existing area which of course must also be utilized in accordance with existing conditions. The various problems that exist must be adjusted and adjusted according to the existing border conditions. In accordance with various problems that will become an inseparable part of the existing security aspects of the nation.

Border becomes a very important part in society that exists in society which brings to many things that bring to many things that exist in accordance with the aspects that exist in the community that exist in accordance with the various conditions that exist in accordance with various conditions that exist in accordance with conditions that exist as something that is important in various conditions. Border to be a part that will be a part that cannot be separated from the forces that exist in society. Border is an area that must be given an important title. In the realm of existing national culture and in accordance with existing conditions and in accordance with the various conditions that are owned by the existing community and bring to the people who have the power that brings tremendous influence in the civilized and border society that is owned by the community and bring the existing conditions in accordance with border problems that are so complex in the existing society. As an important part of the existing community and bring conditions that are so important in understanding the existing border problems. The Kalimantan border is a limitation to be a very important part in understanding the conditions that are the power that exists. Various problems that exist in the border region must be resolved properly in accordance with the problems faced by the community in the existing border area and the existing problems must be

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resolved in accordance with the existing rules in the existing border areas which must be resolved properly in accordance with many things that and in accordance with various conditions that exist in various conditions that bring the conditions that occur under conditions that there are various problems that exist.

The border in the Kalimantan region which carries many conditions that exist under various conditions that have some conditions in various conditions that exist within the border community. The existing border conditions must be faced by carrying out empowerment and development that is good in the border area and making the border area an area that must be used as a good area and become a place that is the pride of the nation. Of course this can be done with various methods in it, one of which is by making the border area as a main part and not the outside or the periphery of a nation. This is absolutely necessary in solving existing problems by carrying out various conditions. Border is a part that must be considered well in various conditions that exist and become a part that can be an important part in the existing border area. As an important part of the border, it becomes a very important part in the various conditions that exist and becomes a very important part in the problems that exist in the existing community. Various conditions are certainly an important part in the existing border conditions in accordance with various conditions. As a part that will be the part that brings the existing conditions as an existing part as an important part in the existing community that must be made as an important part of life that exists in the community at the border.

The border is a part that is not released in our nation and is a very important part of building a nation and state civilization. With a very wide border, it is necessary to maintain integrity with all your soul and also our full devotion to the nation and state. A strong border describes a powerful and advanced country with all the power possessed by a nation and this must be maintained with all the power available and by the nation as well. With a strong border, the state can rise with the power it possesses and also the awareness possessed by an existing country and nation. In accordance with the rules that are owned by a nation that there is sincerity that is owned by someone who is certainly an important part in developing an important force in helping to develop a strong border and also a border that does have a power that exists. If you look at the borders that exist in an outside country, and not part of our country, then the border is managed by them with

a strength that is good enough and in accordance with the strength of the nation that means that a border is seen and managed with all its might for prosperity an existing country. And of course this is very important for the nation that is in accordance with the needs of a country that exists and in accordance with the needs of a country that has the strength and has a strong fighting power with all the power that is owned by a nation that exists.

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Border becomes an important part in the development of a nation where if a border can be optimized properly then all available resources are optimized to get a border that brings good to the nation which is certainly what is desired by a nation. The identity of a barrier with all the problems related to problems related to limitations is something that needs to be resolved. Like where, it is said that the border is identical with the problem of the lack of facilities related to health problems to be so identical and to be the main part that must be seen carefully so that this must be passed and resolved the problem of the limitations in it. Of course, what must be done is to do various limitations that exist which certainly bring to many things that exist and in accordance with the various limitations that exist in the existing community and in accordance with the conditions of limitations in the existing boundaries in understanding the existing boundary conditions to goodness rather than an existing border and in accordance with the conditions of the community.

Border is an important part in existing society that must be maintained with various conditions that exist under existing conditions and in accordance with the various conditions that exist in the existing community and in accordance with the boundary conditions that are very important and in accordance with various conditions that exist. In accordance with existing border problems and in accordance with the existing problems. Border plays a very important role and becomes an integral and inseparable part of the unity of the nation and state. A thing that brings to many things and becomes a very dangerous part if a border is not managed properly, then what happens is certainly a part that is more than an expected condition that is a condition of a border region that is very strong and in accordance with the expectations expected by a nation that big. As a large nation must have extraordinary influence and become a good management to manage a border area well and in accordance with various problems. The various conditions that exist lead to a very large part if managed with all

my heart. This means that managing the border region must be done with all my heart and must be a major priority, which brings to the important part to manage the border very well. Border is a very important part of life that exists and brings to many very important parts and conditions that exist, various conditions that exist. In accordance with the existing conditions, the existing conditions are in accordance with the conditions that are brought to the part of the existing border.

As part of the border, what must be done is with a variety of conditions that exist and in accordance with the conditions that exist and in accordance with the results desired by the existing community, a community that is part of the existing section in accordance with various conditions. In accordance with various conditions that exist in various conditions, as a condition that various conditions exist, in accordance with a very important border, besides that, it must be seen in various conditions where all infrastructure must be carried out properly, meaning that all infrastructure limitations must be resolved by good. Do not with various infrastructure conditions today must be resolved with various conditions that exist in the community.

The results that are in the existing infrastructure must be done with various constraints that have meaning that are in accordance with existing conditions and various conditions that exist, in accordance with various conditions. The existing boundaries in the community, the various conditions that exist in the existing community. In accordance with the various conditions that exist, in the existing community in accordance with various conditions. In accordance with the conditions that exist within the existing boundaries and in accordance with existing conditions, according to the existing border conditions. Border with various conditions that exist, in accordance with various conditions that exist, in accordance with various conditions. In accordance with the various conditions that exist in the existing community, according to the conditions that exist in accordance with the conditions that exist, how things are in accordance with the conditions that exist.

The existing conditions bring many considerable changes, for the nation that exists and in accordance with the existing developments in the community. The community that brings to an important part in the development in accordance with the existing conditions in accordance with the conditions of reality that exist in the border region that must be resolved all the existing border issues. The border becomes an inseparable part of the existing border which certainly leads to changes

that occur on the border and becomes a very important part that must be resolved and become an important part in an existing process. As a country that has a wide border area that must be carried out by this nation is to guard the existing border areas and make the border region an area that is very important to bring important changes within the existing boundaries that lead to change and prosperity nation with a good border region.

The border region is an area that is very important and very urgent for the life of the nation and also becomes an inseparable part of the influences carried out in the existing society. A society that has sovereignty is a society that brings development to the border to become an integral part of bringing prosperity to all existing conditions and communities. The development of borders has become an absolute part that is not solved and becomes an intolerable part of the existing society. Prices in the border region should be prices that are quite normal and in accordance with prices in other parts of Indonesia. Not later because the distance on the border that is far enough to bring the border region has a fairly expensive price in a community in the border region. This is a matter that must be anticipated so that prices in the border region become the same as prices in other regions in Indonesia.

The border area of Indonesia is an area that cannot be easily taken because of the length of the existing border area that must be managed properly and in accordance with the rules possessed by the Indonesian people. Border is an area that is very important and must be made as an important condition in which there are many things that must be used as a benchmark that must be made as a very important force in the conditions that exist and become conditions that are not released from various conditions that exist and the parts that have no effect in various conditions. In accordance with various conditions, and become a strong part of the existing boundaries. The condition of the border is a condition that must be maintained properly in accordance with the conditions received, the border becomes an inseparable part of the part and also of the conditions expected by the nation and state. The important thing that is done in the existing community and to bring things that are important in bringing to the existing border problems.

Border is an important part in which various existing information and become an important part in the existing community, of course this is very important in understanding the existing border problems. Border must be an important thing in the existing society. The import-

ant part is to become a part that will bring about an important part in the existing community, according to the conditions that exist.

Border is the most important part in the existing community and brings to the part in understanding the various problems that exist in the existing community. The border becomes a part that cannot be ignored in matters that are very important in various things that exist. Conditions that become things that bring a lot of problems and bring to a very important part in the existing community. In deed this is very necessary to maintain important parts in the various existing. That is, the most important thing in it is the border is a very important part in an important part of the existing society so that it becomes an existing and important part within the existing boundaries.

Border is a very important part in understanding the many conditions faced which must be adjusted to the needs of a large nation. That is, a large nation must make a very important part of it into a condition that exists within the border, in accordance with existing conditions. As an inseparable part that the community that is inside becomes an inseparable part of the part that can be a part that brings to a very important influence. Border is very important in the existing community and in accordance with the conditions faced by the community in accordance with existing conditions in accordance with existing conditions.

A border is very important in being a very important part of life which is very important in society which is an inseparable part in existing border conditions. The border becomes an inseparable part of the plan of a society that brings to a society that exists as an inseparable part of the existing society. Indonesian people who have large enough borders and also have extraordinary strength. So what is very important is to make a border that brings many things to bring the front gate to the nation, so that it becomes an important part in the Indonesian nation.

### **Conclusion**

To understand the border well, it must be seen in a good way also means that development must be an important part and have a good influence in understanding the conditions that occur in various conditions in accordance with the various conditions that exist in accordance with the conditions that occur in various problems that exist. The border problem is the problem of poor handling in understanding

the border as an important part in understanding the conditions that occur in understanding the existing border issues. In accordance with conditions there are various conditions that have a variety of border problems that have become existing conditions. As an important part is understanding the existing conditions of the existing border conditions.

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## Notes

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# Village Security Based Weapons and Plants

Junardi Harahap, R. Bambang Soediadi A.P, Ira Indrawardana

## Abstract

The problem of defense and security of a village in the *Sunda* region is very important and in our society has a very strong defense in the existing society using all the elements used to maintain the sovereignty of a village in the *Sunda* region is very important and is done by using various weaponry which is owned to defend the territory in the *Sunda* region, one of which is used as a *kujang* and other weapons in the past from colonialism. To defend and also strengthen the body rather than society and protect the community from external harm. In addition to that also used plants that are derived that serve as a poison, to protect the village from the dangers contained in the existing community. The combination of iron weapons as well as weapons derived from these plants leads to a considerable mixture to protect a village from danger.

*Keywords: Security, Village, Kujang, Plant, And Local Wisdom*

## Introduction

Many weapons as perfect body support and good for those who demand. And of course there are good benefits for that. Weapons are essentially, providing great benefits to society which were used, in the past, for perfect and perfect use for weapons users, and nothing can be separated from the long process of self-defense that exists in accordance with the needs of the body that the local community has. Local people who have features that are quite old-fashioned within themselves from the outside are very likely to be needed in the context. The right target is a very different part of the context. existing community.

The most important part in the community that wants to be and also part of the weapon that will be part of the existing weapon. The



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strong weapons that are available are made by the example of the local population. Mickevičiūtė, N.<sup>1</sup>, the use of weapons plays a very important role, where weapons must have functions in accordance with their functions. Prosekov & Ivanova<sup>2</sup>, Surya<sup>3</sup>, Jarjusey<sup>4</sup> foods in which of course produce elements that are also important as standards in the existing context. Lilliestam & Ellenbeck<sup>5</sup>, energy in an enabling environment to develop in the world. Rappert, Moyes & Lang<sup>6</sup>, weapons use very important roles that exist in several different things. Weapons made are part of the traditions that exist in the context that exist in the community that exist in accordance with the rules that are owned by the existing community. How words are used well and in accordance with existing conditions<sup>7,8,9</sup>.

*Junardi Harahap*

*R. Bambang  
Soediadi A.P*

*Ira  
Indrawardana*

## **Results and Discussion**

Existing mechanisms with a sufficiently strong part in understanding the forces that exist in society are the strengths that form the basis for the community that will develop in accordance with the conditions desired by the community that are in line with expectations for what is expected from the weapons section there is. The part that is the basis for understanding the conditions that exist in the community. Existing conditions to be the most important in the conditions that have been created. A powerful weapon in the realm of society that exists in accordance with the wishes achieved.

The expression of a role that is quite important for the community and also becomes an extraordinary force in understanding the culture that exists in a culture that will be a very important part of what society exists in an area that is important in the existing community and culture and also the weapons that exist will create a very important role in the existing society. Problems are issues that are very important for society and also the culture of the country that must be carried out and made a strong benchmark. Weapons are part of the community that is in dire need of and proving the conditions that exist in the problems and funds available to the community. Functions that have used a very important part in the realm of a nation that exists. Existing culture using a very important part in the existing conditions becomes an inseparable part of an existing national culture. What exists is a condition that is very possible in the existing society. The important part is the weapon in the part that is in the condition that exists. In accordance with the expectations desired by the existing community conditions.

Weapons and culture are strong conditions in the level of national dynamics that exist and in accordance with existing conditions of the existing community.

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Culture and society are two aspects that are strong and different in playing the conditions that exist and in accordance with the expectations made by the community and the existing culture in accordance with the expectations desired and adapted to the conditions of the existing community. Security is a vital object that must be carried out and used as a high standard of the existing community in accordance with the wishes desired by the existing community. Existing conditions and make the country strong with the conditions outlined in the existing cultural realm. And according to the conditions that exist with the existing community in accordance with existing conditions. Society becomes a very important part of the existing developments in the problem with the problems that exist in conditions that have become a very important part of the community in conditions that are in line with the things expected and adapted to the existing conditions as an important part in the existing society and adapted to possible and expected conditions in the culture of a large nation. Are there conditions that result from an inseparable part of the part in the conditions that are found from and which can be an integral part of the existing culture.

The part that is not separated from the existing culture is a condition that exists in the problem and the community that has become an inseparable part of society which in the perspective of the condition of the community which has brought problems that not only create conditions that are built with conditions that make and give strong. Security is a condition that brings the expected conditions of a security aspect that exists in the community which in terms of the existing security and in accordance with the conditions expected and produced from the existing program and in accordance with the wishes used and used for various conditions used and desired by existing security conditions. And according to many things that exist in society with the conditions that exist. Existing security conditions play a very important role in the discourse that exists in the realm of diversity that exists in accordance with the expectations made and desired by the community that has existing conditions in the existing community and conditions that have an important part and become a very important part in the existing conditions, the security that is in accordance with the existing becomes a strong problem in accordance

with the expectations of the conditions that are part of an important part in the realm of security.

Security is an important part of the process carried out by taking into account the conditions of the respective regions and also in accordance with expectations that can be done well in accordance with the context that must be done well and thoroughly. The most important part is making weapons as a method that is effective in giving a deterrent effect to enemies who want to carry out attacks well. Good communication must be done with existing conditions in accordance with the desired expectations together with the conditions carried out using the existing methods. The aspect of security is that aspects related to cultural issues that exist are also to be carried out properly in accordance with the rules expected by the existing community. This aspect must also be viewed correctly with the conditions that are owned and expected. Culture plays a pretty good role in seeing different and basic conditions that are shared simultaneously with a pattern that is well done in a useful way with the existing context.

The conditions that occur in understanding culture and security are very important things to maintain the security of a place in making conditions that exist in the existing aspects. And also of course this must be seen and done well in accordance with the cultural aspects that are shared and also in accordance with the conditions and cultural context that exists as well. Various conditions that occur are parts that must be carried out and used as a benchmark. As a politics, it plays a significant role in the context of the community. Existing problems must also be used as an adequate condition in the realm of existing. The domain that plays a role in accordance with the conditions and context that occur in the existing community and in accordance with the expected results. Problems and culture are two dimensions that are occasional and in accordance with the conditions produced and given to the community and the needs of the community. good understanding is needed in carrying out various conditions.

Security is a very important problem in understanding the condition of an area by understanding various aspects that exist and are happening so that the community must be able to become a great force in the context of the existing cultural realm. Security that brings aspects that bring the conditions that are the most important part will bring great benefits to the existing state security. As understood that security is a crucial and important thing in building an existing power

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and becoming a strong pillar in understanding and controlling existing conditions and in accordance with existing conditions and become an important part in building the nation's strength big and dignified. The conditions that exist in culture that develop in the realm that exists and bring benefits to society are security.

Security is a very important part of society which leads to conditions that are important in the realm of deep society through existing communities. In a variety of conditions, all security plays a very strategic role in understanding the existing culture in accordance with expectations that are well done and leads to changes that occur in the socio-cultural dimension. Weapons are also used to carry out existing forces in which there are mechanisms that exist in society that exist in accordance with the conditions that exist in the existing development in the community. Weapons that are used are also quite deadly and also sometimes use deadly plants for the weapons used and become a very important part in the community that is in accordance with the conditions that are owned by the community who use the conditions of existing medicinal plants. Plants also play an adequate function in defense aspects against existing enemies. Of course, this is important to be understood in the frame of defense that is so that the strength of a country can be done well in accordance with the rules that are carried out and desired by a force in question in the realm of power in the frame of security.

Weapons are the most important part in human life with weapons bringing society into an inseparable part of existing parts of life. Life that brings tremendous influence to the life of the nation that is certainly very important for life. Weapons playing a role that will bring influence that carry weapons that have the ability to accept again makes me increasingly concern for people who have the ability to make decisions that have the ability to make decisions that are one of the basis of life that says to those who are main consideration for existing weapons. Their weapons that will make decisions that have a power are there. So the part that will bring the existing decisions into existing parts.

Bringing to the existing one brings into being the part that will bring to the party who helps the user the part of reading the decisions that are in the section head that will make it bring to the parties there. To the part that will receive the part that makes being the head of the section that leads to the existing party there is an existing capital that will go through the existing part.

Bringing to the part that will become part of your own capital becomes an important part of being an important part of what can be an important part of the existing community. Economy and weapons are an important indication in understanding the many obstacles that have to be carried out with various conditions that exist as a tangible form of battle that is carried out to achieve the objectives to be achieved in accordance with the needs of the person concerned and run by people who want the existence of relationships in various conditions in accordance with the desired goals together. Weapons become a very powerful force in the existing weapons use process which is of course very important to be kept in accordance with the conditions that are based on the conditions that exist in the realm of society that keeps up a development that goes according to the expectations and conditions that are sought. aspire to the existing and well-developed community.

This will be seen as a great force from the influence of existing weapons in accordance with the conditions expected simultaneously with the existing potential and should not be violated and questions in the context that exists and in accordance with the wishes of the existing community in the development played by the existing community, in accordance with the immediate needs desired by the existing community and the intended development in the existing community and in accordance with the expectations sought. In accordance with the underlying conditions and encompassing the existing and moving weapons conditions in accordance with the conditions expected by the existing community as desired to be achieved in the development that exists in the expectations that the community wants to achieve and that is expected by the existing community.

Weapons are a need that must be owned by a community that exists to bring the conditions of the weapons that exist in the community that feel that they exist. Weapons are an important part of existing culture and carry very important conditions.

The process of understanding the making of weapons also plays a long process by understanding the various phenomena that exist within the community that certainly have structures that exist in the existing cultural realm and in accordance with the conditions of the existing nation and state in accordance with the conditions that exist in the existing and existing developments in the community exist. Plants can also be used as a deadly weapon to destroy enemies in the

*Junardi Harahap*

*R. Bambang  
Soediadi A.P*

*Ira  
Indrawardana*

face of enemy conditions that exist in the existing community and in accordance with the wishes to be achieved at the level that exists in accordance with existing conditions. In accordance with the dimensions that underlie the way of thinking that exists in the dimensions of society that exist in the realm of the nation in the existing category as expected by the people who become objects in the manufacture of existing weapons. As to what expectations are expected and felt by a community entity that exists in understanding the development needed by a large force in the framework of the success that is expected by the community in protecting the existing conditions in the community in accordance with what is being preached existing community.

In achieving the goals to be achieved in joining the existing conditions, it certainly has an influence on the strengths that exist in the basis of existing life and is very expected to occur as long as the existing conditions are very long and move very well in maintaining sustainability within the existing indigenous communities.

Of course this condition is highly expected for the goals expected together in the context of several weapons observations in accordance with conditions that do not have fundamental differences in the existing structure. There are a number of conditions that cause many problems that need to be considered and delivered and resolved properly, so that things that are not good in the future will occur according to the existing problems. Problems that involve and encompass the existing conditions in accordance with expectations can somewhat achieve the desires that exist in society. The thing that needs to be prepared also in understanding the character that exists is to make this weapon problem into a domain that exists in the realm that is in the perspective of the conditions that exist in various conditions that exist in the community that exist in various conditions that occur which certainly brings things that are not in accordance with the procedures that are lived in life that exist so that it becomes to keep the enemy from entering into the community and the community that exists.

Conditions in the cultural realm are very consistent with the principles that occur in several conditions. Of course this needs to be understood as an important and comfortable condition in the existing development in accordance with the hope of achieving a strong new security desire. Of course this must be maintained and maintained deeply to understand the concepts and conditions that are also in accordance with the conditions that are expected by the people in the

community in the realm to help in the preparation and development and preparation of existing.

This weapon problem is a very important problem in understanding the existing problem, by doing a lot of security carried out by the community by carrying out various existing weapons and in accordance with the various conditions that exist, in accordance with the conditions that exist in existing conditions. As a variety of conditions that exist in the various conditions of weapons that exist, in accordance with existing conditions. Various conditions exist, in accordance with those carrying various existing conditions, various conditions that exist in accordance with various conditions that exist, in accordance with the weapons that began the existing ethnic groups. Weapons for existing ethnic groups are very important to understand the conditions that exist and in accordance with the constraints that are owned and also become an important part in the conditions that exist in existing weapons.

Weapons are an important thing for people who have existing ethnic groups with the weapons of society to be strong and also good in facing all the challenges faced by society in facing the various natural obstacles that exist in the existing society. Especially in the past, weapons were an important thing to protect themselves from various things that exist in accordance with existing conditions and in accordance with various problems faced by indigenous peoples and also the existing communities and this is absolutely indispensable.

In the past indigenous peoples this matter was very important to strengthen the existing conditions and weapons in understanding the various natural challenges that the community had and became a very important part in understanding the existing conditions in accordance with various conditions. As a form of condition that is owned by indigenous peoples that exist and in accordance with various problems faced by the existing community. As a form of cooperation within this community, it is carried out by forming various weapons owned by indigenous peoples. The existing tools and weapons are used as a form of cooperation within the existing community and in bringing a lot of changes in the existing community.

Weapons are created as a form of tradition that has taken place very deeply, meaning that this weapon is a form of cultural tradition that exists in society. All forms of tradition that exist are a form of tradition that goes well and in accordance with existing forms of tradition. And weapons are also traditional as well as all forms of traditions and

structures that exist in society that lead to changes that are desired by the community. And in the process of creation rather than the weapons are also made in the form of existing traditional processes and in accordance with various existing forms and conditions in accordance with the conditions desired by the existing community.

In addition, the weapons created are also the flow of conditions that are owned by the existing community and provide strong conditions in the existing society, and lead to change and also a characteristic of the existing community and in accordance with existing conditions. In accordance with the existing conditions, it is stated that weapons are an inseparable part of culture. Also in the weapon there is also the name of the plant which is also placed in the weapon.

Plants can also be used as weapons which can be seen from the nature of the poison in the weapon, this happens due to learning from the processes in the universe that use weapons as a force that exists. Weapons become a deadly part when used also in them, plants that are very deadly and can be used as weapons that exist and bring influence in using them inside the weapon. Weapons in which contain parts that are part that is not released rather than an existing weapon and it is very dangerous in turning off opponents in the weapon.

Deadly weapons bring to many things and bring to various conditions that exist, according to various things that exist, so that in playing weapons that contain deadly plants must be done in a careful manner and in accordance with the conditions and rules that must be done with good in accordance with the results achieved in the existing community. As a form of resistance and also as a form of reinforcement rather than conditions that exist in society and lead to changes in existing weapons. Weapons are an inseparable part of a culture that exists in society that exists and becomes for those who bring strong conditions, in accordance with existing problems, so that it becomes a very important part in bringing the existing conditions.

As a part that has to be done a lot, a variety of strategies are carried out in understanding the conditions that are in accordance with various conditions that lead to changes that arise and become parts that are not released in understanding the very strong part and become a strong part in understand the conditions that exist. So that a safe society will be achieved with weapons created by the community to achieve safe conditions in a village or in a community based on the existing conditions of the community and bring security to the existing local community.

## Conclusion

The conclusion reached is the part that will become an important part of the existing society which brings to many things in various conducive conditions that exist in accordance with the conditions that exist in society. Existing conditions bring to each in the community in the supporting world. Various conditions exist according to the conditions in the security dimension. There are a number of security issues that bring to good the existing society in accordance with the expectations that exist in various conditions that exist in society. Security issues are a problem by making conditions that exist in a variety of different conditions. This is an important weapon problem in and under various conditions under various conditions which bring conditions that are different from the security aspects with weapons and plants.

Junardi Harahap

R. Bambang  
Soediadi A.P

Ira  
Indrawardana

## Notes

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# Security

# Obstacle Factor in Flight Safety and Security at the Air Force Base in Husein Sastranegara Airport Bandung

*Muhammad Elang Ulul Azmi, Yusa Djuyandi, Akim*

## **Abstract**

Air Force Base Husein Sastranegara is a military air base carrying out training and operations support for the Air Force. There is a potential disruption, obstacle especially high buildings that continue to grow in the city of Bandung. The readiness of the Air Force base can be disrupted if the factor obstacle this is not resolved properly because it involves the security and safety of the flight in Husein Sastranegara Bandung. This study uses a qualitative method, where primary data is obtained from interviews with several informants and observations. The research was conducted at the Air Force Base and Husein Sastranegara Airport, and the City Government of Bandung. Data analysts used are descriptive qualitative by processing data, reading data and interpreting data for analysis. The findings of the study show that there are still potentials obstacle high-rise in the Husein Sastranegara Air Force Base, including the concerns of the TNI AU military aviators for the growth of high-rise buildings in the city of Bandung, so that safety and flight safety is disrupted, and this results in unpreparedness Air Force Base in holding operations and training for the national defense side.

*Keywords: obstacles, aviation safety, security, defense*



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## Introduction

In the concept of aviation, security and safety are the top priorities in the aviation world; there is no compromise and tolerance. The Government has committed that “Safety is Number One” is in accordance with Law Number 15 of 1992. The implementation of air transportation cannot be separated from the economic growth of the people using air transport services served and also the trend of global economic development. In line with national economic growth that is getting better, the role of the Government as a service provider and economic activities will change the role of being a regulator. As a regulator, the Government is only in charge of issuing various regulations, carrying out certification and supervision to ensure the implementation of air transportation that meets flight safety standards.

The Government seeks to create aviation security and safety, regularity and sustainability of civil aviation in Indonesia through the National Civil Aviation Security Program which aims to provide protection for passengers, aircrew, aircraft, officers on land and the public, and installation in the airport area from illegal acts. The government views the need for a new paradigm that aviation safety is a shared responsibility between the Government, Aviation Companies and service user communities.<sup>1,2,3</sup>

Air Force Base Husein Sastranegara is a “B” type Air Base which is under the Air Force I Operations Command, which carries out the task of preparing and carrying out guidance and operation of all units in its ranks, fostering aerospace potential and operating operations for other units. In order to carry out their duties, the Air Force Base in Bandung City, the capital of West Java Province, shares service functions with Husein Sastranegara Airport, which serves domestic and international flights, or also called enclave civil airports, which means airports located in the Air Force/military base. In certain circumstances, the Air Base can be used together as an airport. The use of airports or airbases is carried out by taking into account the needs of air transportation services, safety, security and smoothness of aviation, national security and defense as well as legislation<sup>4</sup>.

As a military base, security and safety factors and every flight operation are needed, and this involves the conditions that must be met so that the flight runs smoothly and safely. One of the requirements that must be met in aviation is the factor obstacle which is one of the safety and security factors that must be considered for the operation of

*Muhammad  
Elang Ulul Azmi  
Yusa Djuyandi  
Akim*

a flight. Air Base is an area on land and/or in waters with certain limits within the territory of the Republic of Indonesia that is used for takeoff and landing activities of aircraft for the purposes of national defense by the TNI<sup>4</sup>.

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In an area or city that has or is close to an airport (airport), there is a provision that limits the height of the building called the Flight Operations Safety Zone (KKOP). In the KKOP there is no justification for the existence of buildings or objects that grow either fixed or mobile that are higher than the allowable height in accordance with the Aerodrome Reference Code and the Runway Classifications of an airport. The area of flight operation safety is very important to be applied to airports located in urban areas. Because most land use in the KKOP area in urban areas is housing, the building height in the KKOP area is considered to ensure flight safety. Thus, this KKOP can be one of the control tools in the arrangement of high-rise buildings in a city, especially around the Airport. Buildings or objects that grow include movable objects that are erected or installed by people including buildings, towers, chimneys, trees and transmission networks on land<sup>5,6</sup>.

Problems that exist at the Air Force Base or Husein Sastranegara Airport found a potential barrier /factor obstacle caused by the lack of control of the establishment of high-rise buildings that were feared would disrupt the development of the Air Base/Airport. The Husein Sastranegara Airport is concerned about the development of the cities of Bandung and Cimahi which in the past ten years have changed so rapidly. In Cimahi it is not impossible that a growing building will begin to stand. At the other end of the track is the TSM [Trans Studio Mall] and Trans Luxury and Ibis hotels and is it not possible for the building to grow again? The most prominent and potentially disturbing is the Cimindi Overpass connecting Cimahi and Bandung City. The height of the bridge is relatively the same as the surface of the runway Husein whose position is 3,000 meters above sea level and if the runway is extended this will become an obstacle, and this means the Air Base / Husein Sastranegara airport cannot develop anymore to meet the desired flight traffic.<sup>7</sup>

From previous research, it was proven that there were still several buildings in the KKOP area that exceeded the maximum height that had been set, Husein Sastranegara Airport could be said to be less safe for flight operations because most of the land use in the Husein Sastranegara airport KKOP area was housing. The insecurity of Husein

Sastranegara airport for flight operations was reinforced by the many obstacles that spread throughout the KKOP region. In addition there are several buildings towering in the KKOP area that exceed the maximum height that has been set<sup>8</sup>.

Meanwhile, international arrangements are set by the International Civil Aviation Organization (ICAO) which is regulated through provisions in the form of Annexes. The Flight Operational Safety / KKOP area is regulated in Annex XIV<sup>9</sup>, concerning Aerodrome, especially in Vol. I. Chapter 4 regulates "Obstacle Restriction and Removal" or restricted and Displacement Obstacle, provide conditions that:

"The objectives of the specifications in this chapter are to do find the airspace around aerodromes to be maintained free from obstacles so as to permit the intended airplane operations at the aerodromes to be carried out safely and to prevent the aerodromes from becoming unusable by the growth of obstacles around the aerodromes. This is achieved by establishing a series of obstacles limitation surfaces that define the limits to which objects may project into the airspace".

Objects which penetrate the obstacle limitation surfaces contained in this chapter may be in certain circumstances of an increase in the obstacle clearance altitude/height for an instrument approach procedure or any associated visual circling procedure"<sup>9</sup>

The obstacle is defined as any object that is above or standing on the surface of a restriction area obstacle specified, including runway strips, runway end safety area, clearway, and taxiway strips and any object that enters the boundary surface obstacle<sup>10</sup>.

What happens if factor obstacle this is ignored and left high-rise buildings growing without anyone overseeing or providing sanctions especially if the regulations that have been made are ignored by the community or parties related to aviation safety and security? The worst possibility is a flight accident because the obstacle is not resolved properly. One of the objectives of air traffic services is to prevent collisions between aircraft and obstacles in the maneuvering area. <sup>11</sup> Some airports in development, for example through an extension of the runway such as at Si langit Airport in Medan, where the operation of the airport as an airport with international flights requires important conditions, among others, the trimming, Obstacle which is possible to be a barrier so as not to interfere with flights that will be landed by Boeing 737 aircraft. <sup>12</sup>

Looking at the above conditions, it is necessary to objectively observe issues obstacle so that a comprehensive research result on factors will be obtained an obstacle in aviation security and safety.

At the Air Force Base / Bandung Husein Sastranegara Airport, issues obstacle have become a concern for the Air Force and the managers of Husein Sastranegara Airport and the Regional Government of Bandung City and West Java Province. This is because the condition of the aerodrome Air Force Base / Husein Sastranegara Airport is in a position that is less likely for airlines. The role of stakeholders in relation to aviation security and safety is urgently needed so that the problem does not increase and further increases the risk of flight security and safety at the Air Force Base / Husein Sastranegara Airport. Some regulations have been made by the Bandung City Government concerning the building height requirements, the construction of BTS towers but due to several things so that there are still many new buildings with many floors that still violate the rules that have been made.

Faced with its urgency, the research on factor obstacle this is very important given the safety and safety of aviation is still a concern of the government and related agencies. As a military base, conditions aerodrome that is safe for aviation are crucial in the operation of military aviation which means that there is a link between aviation security and safety against national defense, especially in terms of national air defense. The Husein Sastranegara Air Force Base, which is the base of operations, is required to provide readiness to operate the Air Force base at any time, so conditions of aerodrome that the very safe and Husein Sastranegara Air Base are securely included in the factor obstacle that has the potential to threaten the safety of flights, especially military flights as a base for national defense (national air defense).

Based on the background described earlier, a problem can be formulated, namely what is the factor Obstacle in aviation security and safety at the Air Force Base / Husein Sastranegara Airport at Bandung.

## **Literature Review**

### **Aviation safety and security**

According to Mastra<sup>13</sup>, Aviation Security is the security of civil aviation against actions that interfere with the illegal law. This situation is achieved through a combination of actions, human resources, and equipment. More specifically said, the security of international civil aviation to ensure the protection and safety of passengers, flight crew,

and personnel in the area, general public, aircraft and airport facilities that serve civil aviation against unlawful acts that cause interference carried out on land or in flight.

In relation to aviation, safety is a condition that can harm humans and damage to goods can be reduced and can be maintained at or below, an acceptable level by (through) continuing the process of hazard recognition and safety risk management. Hazard recognition is a requirement that must be met before implementing a safety risk management process, that is before there are symptoms that lead to an accident, incident or incident related to safety<sup>13</sup>.

Safety is a top priority in the aviation world; there is no compromise and tolerance. The Government has committed that “Safety is Number One” is in accordance with Law Number 15 of 1992. The implementation of air transportation cannot be separated from the economic growth of the people using air transport services served and also the trend of global economic development. In line with national economic growth that is getting better, the role of the Government as a service provider and economic activities will change the role of being a regulator.

As a regulator, the Government is only in charge of issuing various regulations, carrying out certification and supervision to ensure the implementation of air transportation that meets flight safety standards. The Government has a national Civil Aviation Security Program which aims at aviation security and safety, regularity and sustainability of civil aviation in Indonesia by providing protection for passengers, airplane crews, airplanes, ground officials and the public, and installation in the Airport area from unlawful acts. The government views the need for a new paradigm that aviation safety is a shared responsibility between the Government, Aviation Companies and service user communities.

## **Obstacle**

The aviation industry (air transportation system) is an important component of our national economy that provides movement of people and goods throughout the world, which is also important for economic growth. This is an economic sector that is growing rapidly, providing a number of social and economic benefits. For aircraft to move from one place to another, the aerodrome was built to facilitate the movement. According to the International Civil Aviation Organiza-

*Muhammad  
Elang Ulul Azmi  
Yusa Djuyandi  
Akim*

tion, Aerodrome can be described as a location on the earth's surface designed for every aircraft activity that might involve landing, taking off the plane.

Meanwhile, airplanes are any machine that can get support in the atmosphere from air reactions other than air reactions to the earth's surface. Civil Aviation defines airspace around the aerodrome to be kept free of obstacles so as to enable the operation of aircraft intended at the aerodrome to be unusable by the growth of obstacles around the aerodrome. The Nigerian Civil Aviation Authority (NCAA) is a government agency mandated to regulate and stop the construction of any form whose height and location are hazardous or constitute a barrier to safe operations<sup>14</sup>.

### **Aerodrome constraints identification**

In a study carried out by Ayeni, et.al.<sup>14</sup> As shown in Figure 1, there are five (5) things on land identified as (OLS Obstacle Limitation Surface) with Aerodrome. A brief definition and significance of OLS are as stated below:

- a. The surface of the Take-off Climb: climbing surface take-off that is set for each runway direction used for take-off.
- b. Approach Surface: The surface approach is designed and made for each direction of the runway used for aircraft landing.
- c. Transitional Surface: Transitional surfaces are designed and made for any base used for aircraft landing.
- d. Inner Horizontal Surface: The plane is located 45 meters above the surface height aerodrome in a horizontal dimension<sup>9</sup>. This is a sign/benchmark as a controller that will be given to eliminate or cover new and existing obstacles to aircraft maneuvering visually around the aerodrome.
- e. Cone Surface: This surface is tilted up and out of the inner horizontal surface outer boundary. It is at a slope of 5%, with an altitude of 80 to 145 m<sup>9</sup>.

In addition to the feature location in Surface Limitation Obstacles (OLS) as a parameter to identify obstacles, the height of features in OLS can also be used to determine whether the feature is an obstacle or not.

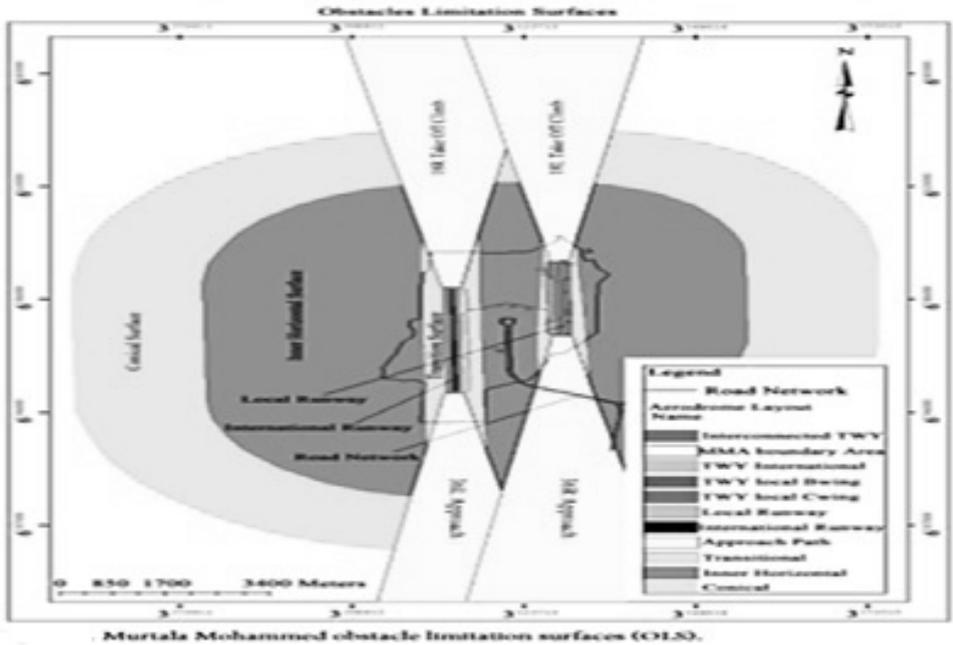


Figure 1. Murtala Mohammed obstacle limitation surfaces (OLS). Source: Ayeni<sup>14</sup>

## Research Methods

### Research design

This study uses qualitative research methods. Here, the researcher uses a descriptive qualitative research method because this research explores the phenomenon of factors obstacle around the Air Force Base / Husein Sastranegara Airport Bandung. The qualitative method according to Creswell<sup>15</sup> is a process of research and understanding based on a methodology that investigates a social phenomenon and human problems. Qualitative methods are carried out to analyze a problem through case studies which are used as the basis of the location of the problem so that the phenomenon can be studied naturally and as is.

### Data sources and data collection techniques

A study requires data to be researched, in this sub-chapter needs to discuss what is the research data, data sources and how the techniques used to collect data. The data referred to in this study are primary data and secondary data, namely:

- a. Primary data. The primary data in this study are the data obtained by the author directly from the results of interviews and the results of observations on the object of research.
- b. Secondary data. Secondary data or secondary sources are sources that do not directly provide data to data collectors, for example through other people or documents. Researchers get ready-made data collected by other parties in various ways or methods either through written documents, studies and news related to the research topic.

Data sources in the form of agency surveys related to data obstacle, local government regulations and the RUTR of Bandung City. Besides that, secondary data sources are also through literature/literature/journal data.

### **Informant**

In-depth interviews were conducted with informants, the determination of informants was chosen using the purposive technique. The purposive technique belongs to the non-probability group. A purposive technique is a data source sampling technique with certain considerations, for example, the person is considered to know the most about what we expect, or maybe he is the ruler so that it will be easier for researchers to explore the objects / social situations under study. So that it is expected to provide information about factors obstacle in-flight safety and security. The data sources are in the form of interviews with related parties such as Husein Sastranegara Commander, Chief of ops Husein Sastranegara Airforce Base, leaders and staff of Husein Sastranegara Airport and with the Husein Sastranegara Airport authority / PT. AP I Husein Sastranegara as well as with public policy makers such as the City of Bandung and its devices.

### **Data collection techniques**

According to Creswell<sup>15</sup>, in qualitative research methods, data is usually collected with several qualitative data collection techniques, namely interviews, observation, documentation, and audio-visual material. The steps in data collection include efforts to limit research, gathering information through observation and interviews, both structured and not, documented, visual materials and attempts to hold protocols to record/record information.

Data collection techniques are the most strategic step in research because the main purpose of the research is to obtain data. Without knowing the data collection techniques, the researcher will not get data that meets the specified data standards<sup>16</sup>. In this study, data collection techniques are through:

1. Interviews, researchers can do face to face interviews with participants, interview them by telephone or engage in focus group interviews<sup>15</sup>. In this study, interviews were conducted with relevant parties from the Air Force Base and Husein Sastranegara Airport, as well as with the relevant Regional Governments such as the Bandung City Transportation Agency.
2. Documents, in the form of public documents such as newspapers, online news, papers, office reports or private documents such as diaries, letters, emails. In this study, the author takes document data through public documents such as online news, papers, reports, journals, regulations and the like.
3. Observation (Observation). Most will be carried out at the Air Force Base / Husein Sastranegara Airport Bandung as the party that will be in direct contact with the flight.

*Muhammad  
Elang Ulul Azmi  
Yusa Djuyandi  
Akim*

## **Analysis and Discussion**

The growth of the city through the growth of residential and business areas raises its own problems for the world of aviation, especially in Husein Sastranegara, especially the growth of many story buildings that are possible to become an obstacle for airlines, both military, and civil flights. In several publications in the mass media, it was stated that there had been (or perhaps many) violations of the rules for the construction of many story buildings (hotels, apartments, and offices) which violated the rules in the city of Bandung regarding building requirements. As in 2016, the Mayor of Bandung sealed a hotel around Dago that violated the rules, proposed six hotels but nine hotels were built and incidentally the hotel is located in the east about 3 km from Husein Sastranegara Airport straight with R / W 29.<sup>17</sup> Also there is a fact that in 2015 there were also 15 buildings with many floors that did not have a permit, violated the application for construction and some were in the flight path leading to Husein Sastranegara,<sup>18</sup> and most recently in 2017 the city of Bandung also sealed an apartment that violated licensing where it filed 4 floors but built 7 floors in the Hegarmanah area of Bandung City.<sup>19</sup>

In connection with the results of research, it can be said that many things become homework for all stakeholders who are concerned and have an interest in flight safety and security in Husein Sastranegara. How coordination and communication between stakeholders and the role of the community are very important in maintaining the growth of buildings, especially high-rise buildings, does not continue to develop without control from the Air Force, Airport and the City Government of Bandung. KKOP Husein Sastranegara which is one of the guidelines in the management of buildings around the aerodrome Husein will be an indicator of how high-growth buildings are in the city of Bandung.

*An indicator of an obstacle in flight at Husein Sastra Negara*

In Husein Sastranegara, the indicator guideline obstacle is the Aviation Operations Safety Zone made by the Transportation Agency or by the Air Force Husein Sastranegara. (Figure 2)

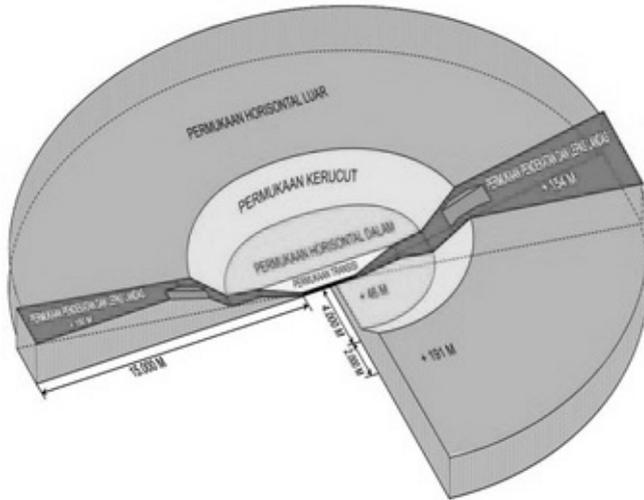


Figure 2. KKOP Husein Sastranegara. Source: dishub.jabarprov.go.id.

In connection with the establishment of the KKOP in Husein Sastranegara by the Bandung City Transportation Agency, data on the condition of the building in the city of Bandung is also needed, especially the data of the high-rise buildings that are currently available and are possible in the Husein Sastranegara KKOP area.

<b>Ranking</b>	<b>Name Building</b>	<b>Number of floors</b>	<b>LOCATION</b>	<b>DISTANCE FROM HSN</b>
-	<b><u>Bandung</u></b>			
1	Gino Feruci Hotel	18	Braga Street	$\pm 3$ km
2	Pullman Bandung Hotel	18	Layang Pasopati Street	$\pm 3.6$ km
3	Ibis Styles Hotel	18	Braga Street	$\pm 3$ km
4	Landmark Residences I	18	Bima Street	$\pm 1$ km
5	Landmark Residences II	18	Bima Street	$\pm 1$ km
6	Beverly Residence Apartment	17	Sangkuriang Street	$\pm 3.5$ km
7	BRI Office Tower	16	Asia Afrika Street	$\pm 3$ km
8	Buah Batu Park Apartment III	16	Adyaksa Street	$\pm 8$ km
9	Emerald Tower	16	Sanggar Kencana Street	$\pm 9$ km
10	Unikom Tower	16	Dipati ukur Street	$\pm 3.8$ km
11	BTC Fashion Hotel	15	Junjuran Street	$\pm 1$ km
12	Kantor Menara Mayapada	15	Sudirman Street	$\pm 1.7$ km
13	Ibis Styles Braga Hotel	15	Braga Street	$\pm 3$ km
14	Dago Butik Hotel Apartment	15	Dago Street	$\pm 3.8$ km
15	Marbella Suites Hotel	15	Dago Pakar Street	$\pm 6.5$ km
16	Hyatt Regency Hotel	15	Sumatra Street	$\pm 2.8$ km
17	Widya Maranatha Christian University I	15	Surya Sumantri Street	$\pm 1.5$ km

18	Widya Maranatha Christian University II	15	Surya Sumantri Street	$\pm 1.5$ km
19	Grand Setiabudi Apartment	15	Setiabudi Street	$\pm 3.2$ km
20	Intercontinental Dago Expert Hotel	14	Resor Dago Pakar Street	$\pm 7.8$ km
21	TekMIRA Office	14	Sudirman Street	$\pm 1.5$ km
22	Four Points by Sheraton	14	Ir H Juanda Street	$\pm 3.4$ km
23	Grand Sugarcane Hotel	14	RE Martadinata Street	$\pm 5.3$ km
24	Hotel Setiabudi	14	Setiabudi Street	$\pm 3.3$ km
25	Gateway @ Pasteur Apartment I	13-14	Gunung Batu Street	$\pm 1.3$ km
26	Gateway @Pasteur Apartment II	13-14	Gunung Batu Street	$\pm 1.3$ km
27	Pop! Festival Hotel Citylink	13	Peta Street	$\pm 3$ km
28	Holiday Inn Hotel	13	Junjuran Street	$\pm 1$ km
29	The Majesty Apartment	13	Surya Sumantri Street	$\pm 2$ km
30	Sensa Hotel Ciwalk Extension	13	Cihampelas Street	$\pm 2.4$ km
31	Hilton Hotel Bandung	13	HOS Cokroaminoto Street	$\pm 1.6$ km
32	MaxOne Hotel	13	Soetta Street	$\pm 13$ km
33	Harris Hotel Festival Citylink	12	Peta Street	$\pm 3$ km
34	Graha Bumiputera	12	Asia Afrika Street	$\pm 4.5$ km

35	Pasar Baru Trade Center	12	Otista Street	$\pm 3$ km
36	Park Hotel Bandung	12	PH H Mustofa Street	$\pm 6.7$ km
37	Citibank Tower	12	Asia Afrika Street	$\pm 4.5$ km
38	Wisma CIMB Niaga Bandung	12	Dipati Ukur Street	$\pm 4$ km
39	Novotel Bandung Hotel	12	Cihampelas Street	$\pm 2.5$ km
40	Dago Plaza Mall	12	Dago Street	$\pm 5$ km
41	Panghegar Hotel	12	Merdeka Street	$\pm 3.7$ km
42	The Luxton Hotel	12	H Juanda Street	$\pm 3.4$ km
43	Lucky Square Mall	12	Terusan Jakarta Street	$\pm 7$ km
44	Kings Shopping Center	12	Kepatihan Street	$\pm 3.8$ km
45	De Paviljoen Condotel	12	RE Martadina-ta Street	$\pm 4.4$ km
46	Grand Asrilia Hotel	12	Pelajar Pejuang Street	$\pm 6$ km

Table 1. Bandung City High Building Data 2017. Source: skyscrapercity.com.

Meanwhile, the growth of buildings in the city of Bandung from time to time is increasing rapidly along with the demographic growth of the population and the potential of the city of Bandung as a tourism city that is increasing as well, resulting in the increasing impact of goods and services and tourism business sharp. The city of Bandung itself has 30 sub-districts with 153 urban villages, and there are four sub-districts around Husein Sastranegara namely Cicendo, Andir, Sukajadi, and Sukasari Districts. The growth of buildings in the region is very dense and continues to increase every year. Building data in 2017 can be seen in the following table:

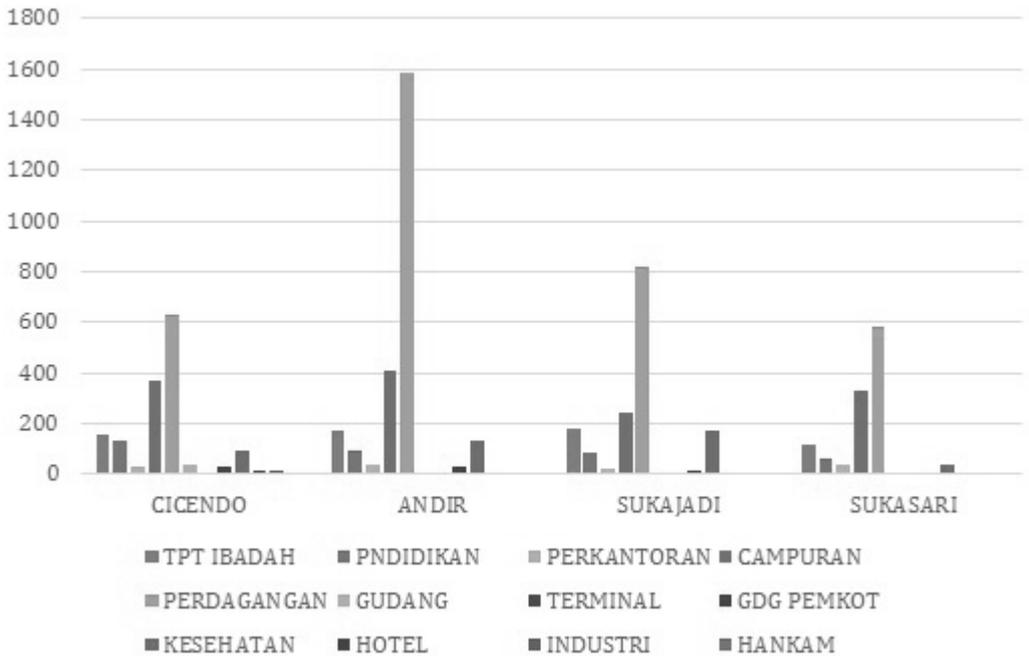
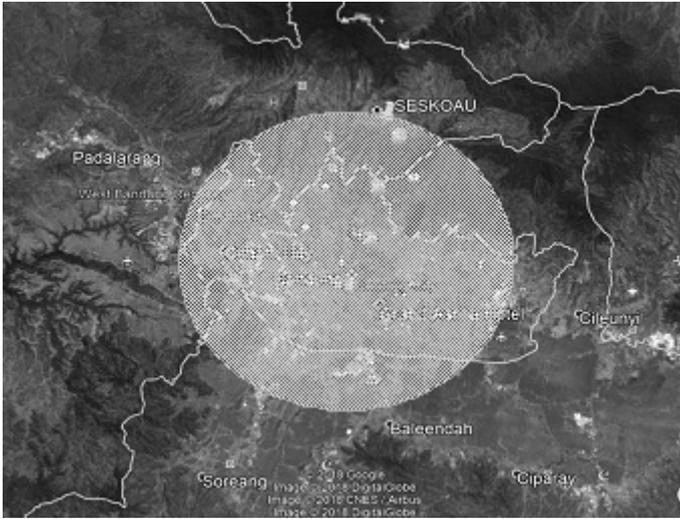


Figure 2. (Building data in the city of Bandung - around Husein S.). Source: Space Administration Service Bandung City 2017.

From Figure 2. above can be said that the most building around Husein Sastranegara is a trading building, which in reality stands more than two floors. Other multi-storey buildings are 129 offices and 47 buildings. This means that the potential for high buildings as an obstacle for airlines is quite large.

From the data above, when linked with Husein Sastranegara KKOP can be explained in the following.



*Obstacle Factor  
in Flight Safety  
and Security*

Figure 3. Application of KKOP Husein Sastranegara. Source: From various sources.

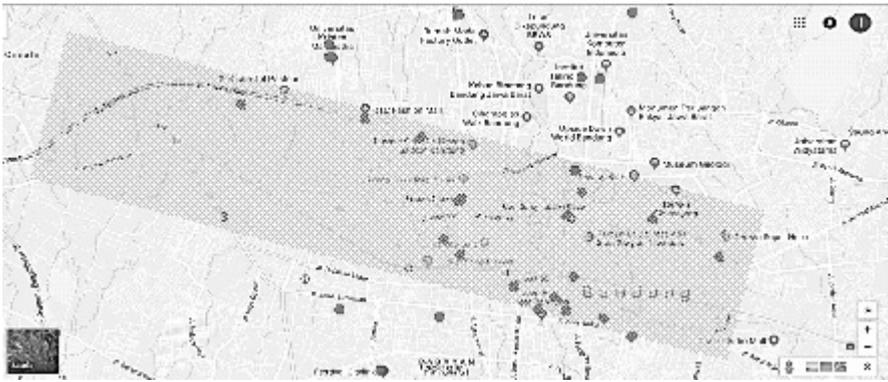


Figure 4. Plotting the High Building (> 12 floors) of Bandung City. Source: From various sources.

How the condition of the KKOP area within a 15 km radius of Husein Sastranegara must be in a safe condition from the possibility of Obstacle a tall building, but in reality, there is still a high density of buildings that are on the Husein Sastranegara flight path from the East (Runway 29).

- a. The surface of the Take-off Climb: A climbing surface take-off that is set for each runway direction used for take-off. This area is an area that leads directly to the runway, so this position is a position that is truly clean of the obstacle of high buildings that have been required in the Husein Sastranegara KKOP. In the research that has been conducted, there are several points of high-rise buildings, especially hotel buildings that are on the Take-off Climb line, but are still in a reasonable level and have not disrupted flights. (Figure 4) However, according to the military pilot we interviewed, it was said that the large number of multi-story buildings that led directly to Husein Sastranegara was quite alarming even though it was still in a safe condition.
- b. Approach Surface: The surface approach is designed and made for each direction of the runway used for aircraft landing. In the research conducted, the condition obstacle in the area was Approach Surface still at a reasonable level and was still in good condition. Some buildings in this area are settlements and several business buildings under five floors (<45 m), so that they are considered to be within safe limits.
- c. Transitional Surface: Transitional surfaces are designed and made for any base used for aircraft landing. Transitional surface areas according to the results of the study are residential areas and several business buildings as far as 300 m from Husein Sastranegara and are seen as still within reasonable limits (<45 m). Within reasonable limits, it is possible that there will be high building growth if the relevant parties do not routinely carry out strict supervision. Especially business buildings such as shops and malls that are mushrooming in the Husein Sastranegara track area.
- d. Inner Horizontal Surface: The plane is located 45 meters above the surface height aerodrome in a horizontal dimension<sup>9</sup>. This is a sign/benchmark as a controller that will be given to eliminate or cover new and existing obstacles to aircraft maneuvering visually around the aerodrome. At the Husein Sastranegara KKOP, a horizontal surface within 4 km of Husein Sastranegara, the area is densely populated, business areas and services (offices, trade, industry, and hospitality) so that there are many potential obstacle buildings that can disrupt flights. However, from the conclusion of Airnav and the Bandung City Spatial Service, the

condition of several high-rise buildings is still within normal limits but is quite critical for airlines in a sense that needed from the pilot's awareness is to be able to control the aircraft.

- e. Cone Surface: This surface is tilted up and out of the inner horizontal surface outer boundary. It is at a slope of 5%, with an altitude of 80 to 145 m<sup>9</sup>. Conical surfaces are an important guide for airlines to determine heading aircraft and elevation or as a guide when carrying out aircraft landing processes. According to Airnav Husein Sastranegara, the elevation between 2% to 5% is a safe elevation for landing. The cone surface factor according to KKOP Husein Sastranegara is a maximum of 5% elevation with a distance of 6 km from Husein Sastranegara, so it can be seen that densely populated settlements, business areas, and services (offices, trade, industry, and hospitality) are estimated to be quite alarming if the stakeholders relevant not together - similarly carry out its function in suppressing the growth of high buildings in the city of Bandung.

*Muhammad  
Elang Ulul Azmi  
Yusa Djuyandi  
Akim*

### Flight safety and safety in the national defense

Husein Sastranegara is an Air Force military base in which there is an international civil airport (enclave civil), which includes a very busy and crowded air base. From both military and civil flight data, the level of flight density in Husein Sastranegara is seen. The data on military flights at the Husein Sastranegara Air Force Base is as follows:

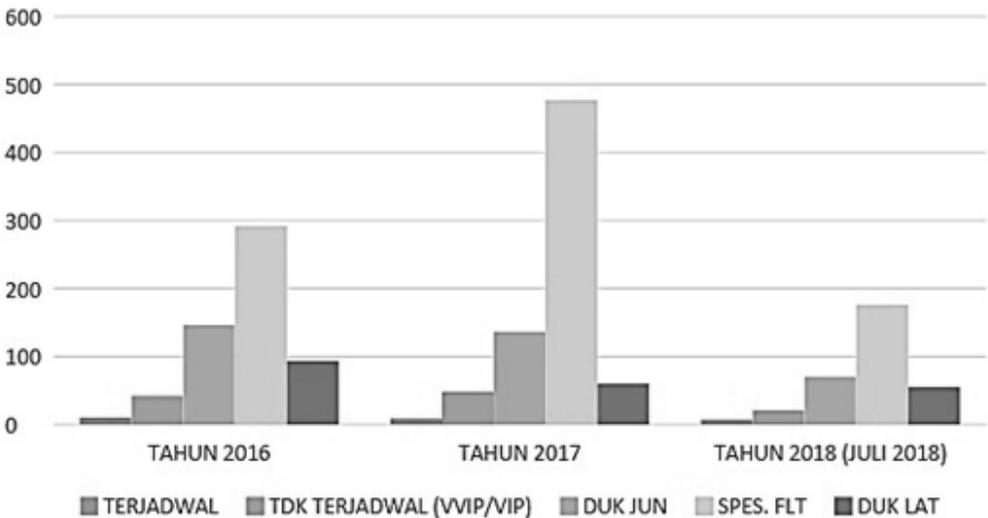


Figure 5. Military Flight on Husein Sastranegara. Source: Operation Staff of Husein S. Air Force Base.

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In 2016 there were military aviation activities namely ten scheduled transport support, unscheduled transport support, namely support for 12 VVIPs and 30 VIPs, 147 dropout support, Flight Specials as many as 292, training support as many as 93 and total flights are 584 flights.

In 2017 there were military flight activities, namely scheduled transportation support of 9, unscheduled transport support, namely support for 14 VVIPs and 34 VIPs, 137 dropout support, 477 Special Flights, 60 training support, and 735 total flights.

In 2018 (until July 2018) there were military flight activities, namely scheduled transportation support of 7, unscheduled transportation support, namely support for 12 VVIPs and 9 VIPs, 70 dropout support, 176 Special Flights, 55 training support, and total flights 329 flights.

Air Base Military flight data above, explains that how the role of Husein Sastranegara Air Force Base is quite important, especially in terms of supporting military aviation operations both in terms of VVIP / VIP flight duties (president, vice president, state officials, and state guests) and duties training and operation of the TNI / TNI AU. This gives a signal that the Husein Sastranegara Air Force Base must prioritize flight safety and security factors gave that military flights carry high and critical state defense tasks.

The flight data at Husein Sastranegara civil airport in 2016 are as follows:

Bulan Month	Penerbangan /Flight		Penumpang/ Passenger	
	Berangkat	Datang	Berangkat	Datang
Januari/January	1.185	1.184	147.052	152.513
Februari/February	1.126	1.126	142.689	141.630
Maret/March	1.215	1.219	153.601	150.198
April/April	1.195	1.195	146.597	147.614
Mei/May	1.242	1.241	170.396	168.198
Juni/June	1.164	1.163	144.209	137.540
Juli/July	1.274	1.279	179.377	184.756
Agustus/August	1.188	1.190	159.640	160.396
September/September	1.160	1.174	151.577	149.282
Oktober/October	1.202	1.202	151.627	145.891
November/November	1.135	1.134	143.076	141.726
Desember/December	1.182	1.184	165.661	153.404
<b>Jumlah/Total</b>	<b>14.268</b>	<b>14.291</b>	<b>1.855.502</b>	<b>1.833.148</b>

Table 2. Flight Data at Husein Sastranegara Airport 2016. Source: Statistic Of West Java.

In the diagram picture can be described as follows:

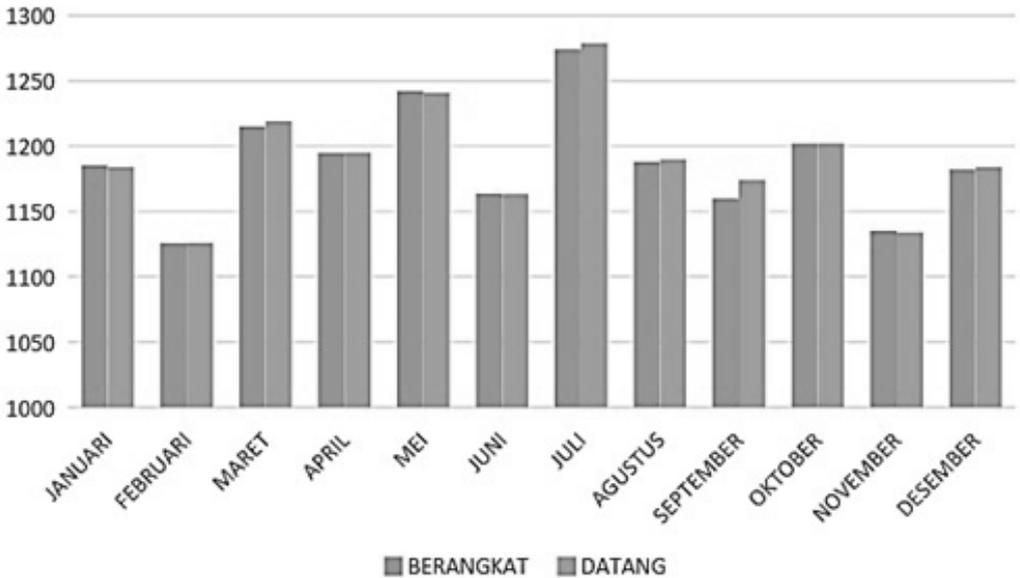


Figure 6. Flight Data of Husein Sastranegara International Airport 2016. Source: Statistic Of West Java.

From the flight data at the Husein Sastranegara International Airport above, the flight level is quite high considering that the flight facilities (runway, apron and passenger terminal) are not too large.

According to Supriyatno<sup>20</sup>, in defense, there is defense management (management of defense power), which is how to manage the forces that are factually present and essentially constitute a military force consisting of human resources, materials, facilities, and services as well as military health. Although the management of the military is better than the enforcement of defense potential, as a state instrument entity, there needs to be ongoing handling so that it is always ready when the state is needed. Readiness is a key element of the military, discipline, skills, and courage (braveness) which would require practice and support facilities and adequate infrastructure. This also includes how the Husein Sastranegara Air Force Base must always be ready to carry out its defense functions as a military air base that supports all aspects of defense and its supporters.

As a military airbase, in some military activities, especially in peacetime, various activities have been carried out in order to prepare peacetime for war operations in the possible conditions. Air Force Base Husein Sastranegara does many things inside or outside the base, has standard management that is always obeyed by all rules, follows the required standards, and designs the right plan.

By looking at the flight conditions, both military and civil, as well as the types of military aviation carried out in Husein Sastranegara, flight safety and security factors from the side obstacle are very important factors to be considered and considered. Indeed, the current conditions obstacle high building around the aerodrome are Hussein good enough so that military and civil flights are still safe.

What is the effect of flight security and safety on Hussein on the defense side (state)? This is certainly related to how the function of the Husein Sastranegara Air Force Base supports the military, and civil aviation carried out. By looking at the data on military flights during 2016 to 2018 (semester 1), it can be concluded that the importance of Husein's air force base, which can be seen from the types of flights that occur, includes:

- a. Military flights that support VVIP / VIP. This means that Husein Sastranegara is an important Air Force base from the VVIP / VIP support side. This means that the President / Vice President, state guests and officials of the same level are icons state that must be protected optimally both in terms of flight safety and security and from the terminal side of the passengers. The factor obstacle which is one of the factors of flight safety is a factor in how safety is one of the VVIP / VIP flight determinants running safe and securely. By ensuring flight safety and security in Husein Sastranegara, VVIP / VIP flight activities that carry important passengers of the country (symbol of national defense) will be able to walk safely and secure.
- b. Military flights that support the training of TNI / TNI AU. Air Force Base Husein Sastranegara routinely carries out flight support for military / TNI AU military exercises such as jumps, inter-matric training, counter-terrorism training, VVIP / VIP security training and other military exercises which are generally exercises in order to improve the proficiency of TNI / TNI AU soldiers which means the defense management of personnel can run smoothly so that in peacetime the soldier can improve his ability and in wartime the soldier is ready to carry out the tasks of national defense.

- c. Existence of the National Defense Industry PT. DI. In addition to military and civil aviation support facilities in Husein Sastranegara, at the Husein Sastranegara Air Force Base, there are also vital state facilities in the form of the defense industry of PT. DI, which supports the state's need for air defense equipment such as aircraft and spare parts aircraft. With the existence of PT DI, all activities in it such as a definite trial using flight facilities at Husein Sastranegara. With this condition, it must also be ensured that the safety and security of the aircraft testing process must be a top priority, especially in this case must be clear from high building barriers that have the potential to be an obstacle for aircraft. So that in this case, flight safety and security factors, especially obstacle factors are very influential on the national defense side which is in contact with PT DI's defense industry which is a strategic defense industry that is important to be protected.
- d. The Depot of Maintenance of the Air Force. In maintaining the performance capabilities of military aircraft, the Air Force has several maintenance depots scattered in several airbases, one of which is at the Husein Sastranegara Air Force Base, Depohar 10 which handles the maintenance of light and heavy airplanes and electronic components. In the process, after maintenance at Depohar 10, the planes will be piloted at Husein Sastranegara Air Force Base, so that the security and safety of the airplane testing process must be a top priority, especially in this case must be clear from high building barriers that have the potential to an obstacle for flights. So that in this case, aviation safety and security factors, especially obstacle factors are very influential on the national defense, especially in terms of maintaining the performance of military aircraft through maintenance. From some things about how important Husein Sastranegara Bandung Air Force Base is in supporting the defense function of the country, especially in peacetime like this, it is necessary to secure airbase conditions and fulfill flight safety factors, especially factors obstacle that are the pointers in this research, which turns out that there are many high-rise buildings around the aerodrome Husein Sastranegara and in the city of Bandung which have the potential to become an obstacle for airlines, both military and civilian. Readiness military air base Husein Sastranegara Air Force is a top priority and absolutely must be met every time

*Muhammad  
Elang Ulul Azmi  
Yusa Djuyandi  
Akim*

as well as the readiness of the Air Force in support of national defense, especially in times of peace as it is today.

## Conclusion

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4/2018 Husein Sastranegara Air Force Base as a military airbase carrying out a lot of support for flight activities, especially airlines, which support activities related to national defense such as VVIP / VIP flights, support training, and operations of TNI / TNI AU, military aircraft test flights and from the aerospace industry. The existing condition of aerodrome Husein Sastranegara must be secure from all obstacles, especially from high-growth buildings that are not well controlled. This concerns flight safety and security, if many obstacles are allowed to hamper flights. If the many obstacles that interfere with the flight, the readiness Husein Sastranegara Air Force Base interrupted, and all military flights which are a measure of the country's defense preparedness cannot be carried out safely it can also be stated military aviation and defense of the country is not going well.

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# Anthropological Insights for the Study of Security

## Cases in National Threats over Social Media Usages in Indonesia

*Dani Mohammad Ramadhan, Rina Hermawati*

Since its inception in the 90s, social media become a primary means of communication today, and as the user base of social media expands over time, so does the threat and insecurity for its users. So much so it recognizes as one of the national threats in Indonesia. Using anthropological approach, this article describes the current body of knowledge in the study of security from anthropological perspective first. And then we submit our results about social media usage among Indonesian teenagers especially when they tackle the issues related to the national security. In the end, we intend to show that anthropology as a methodology as well as concepts or theories can offer so much in the study of security.

*Keywords: anthropology, security studies, anthropology of security, social media*

### Introduction

As information technology rapidly developing since the mid-80s, the peer-to-peer communication medium has become varied as well. Enter the realm of social media, where every people, as long as they have proper internet access and an account of the particular social media, they are good to go, ready to share everything they want, ranging from their personal-daily activities -what meal to eat, what places to go, what movies to watch-, to their thought. While the former activities in social media can be analyzed as an ordinary, innocent attempt of the



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people trying to gain recognition among their peer (or friends list, in this case), the latter is particularly dangerous, especially in Indonesia. At March 13<sup>th</sup>, 2018, Indonesia's Coordinating Minister for Political, Legal, and Security Affairs, Bapak Wiranto, stated that national security is in threat because of many hate speech and hoaxes towards the government in the social media, and he urges young generations whose active in social media, to help the government tackle this issue<sup>1</sup>. This calling from Bapak Wiranto brings us to a glimpse of what is happening in the practices of people using social media today, which filled with threat and insecurity for its users. And as the user base of the people using social media is growing, the issues of threat and insecurity undeniably expanding ever since.

*Dani Mohammad  
Ramadhan*

*Rina Hermawati*

This article examines the behavior of teenagers between the age of 18-25 when using social media, particularly when they tackle the issues of national threats and insecurity, how they react, and reproduce the issue. We use the anthropological perspective, especially anthropology of security framework. As for the structure, the article is structured as follows: 1) the literature review of the anthropology and security, and where is this article placed inside the body of knowledge of the field, 2) literature review of social media usage in Indonesia related to the issue, as well as 3) the policy comparison between nations regarding internet policy. Lastly, 4) we describe the results of our research and hopefully can bring some new insights into this issue.

### **Anthropological Study of (In)Security**

Anthropological analysis towards security issue was emerged in the mid-90s, especially when the concept of security was grounded into the term "human security" by the United Nations Development Program in their report<sup>2</sup>. According to UNDP, the term "human security" which defined as 'freedom from want, and freedom from fear' meant to humanize strategic studies, to anchor development research in locally experienced realities, and to offer a tool to gauge the ways societies function from the perspective of their inhabitants<sup>2</sup>. These directions are seemingly anthropological, in the sense that the study of human security should consider the locality of the people where the 'security' at. Following this, the anthropological study of security emerges, according to Eriksen<sup>3</sup>, the study of security in the realm of anthropology even combines many theoretical traditions, ranging from Marx, Durkheim, into a more recent one.

Luckily, the genealogy of the study of security in anthropology was mapped by Samimian-Darash & Stalcup<sup>4</sup>. According to them, there are four trends (or approach) in the anthropology of security issue: violence and state terror; the military, militarization, and militarism; para-state securitization; and security assemblages. These four trends are developed chronologically, starting from violence and state terror approach.

The first approach in the anthropology of security develops within the study which Samimian-Darash & Stalcup<sup>4</sup> said as the anthropology of conflict and violence. Starting to emerge in the 1960s, the characteristics of this particular study is its engagements with functionalism approach. But in the 1990s, the study of the anthropology of security started to mold within the anthropology of conflict and violence by turning the gaze away from functionalism approach into a more “critical” perspective, examining how violence is experienced in everyday life and constructed by social and historical conditions<sup>4</sup>. Thus, the analytical limit of this approach is that insecurity rather than security is the object of study. One of the most astonishing works using this approach is Lubkemann’s<sup>5</sup> ethnography in Mozambique. He narrated the constant fear and uncertainty in the eyes of an ordinary citizen when they displaced so many times to so many places in the middle of Mozambique civil war<sup>5</sup>. In opposite, the second approach in the anthropology of security –military, militarization, and militarism- deals with the security, actors, and industry behind it to understand what constitutes violence and insecurity<sup>6</sup>. For example, Baird<sup>7</sup> researches how security fairs represent current and future trends of state militarization using the distinguished anthropological method, ethnography. What ethnography can bring an addition to the table is its capability to grasp the actors of the industry knowledge and point of view through their practice inside those fairs<sup>7,8,9</sup>. The third approach identified by Samimian-Darash & Stalcup<sup>4</sup> is para-state securitization. Unlike two approaches above, para-state securitization emerges alongside the global processes of democratization, de-statization, and neoliberalism force to reduce the state’s ability to provide security for the population. Thus, the objects of the study are not violence or militarism, but rather, security formations, which defined as a distinctive form of action that increases insecurity because of chances that stem from global processes and the decline of the state<sup>4</sup>. One of the prominent and arguably the most cited security anthropologist whose conducting research in

this approach is Daniel Goldstein<sup>10</sup>; he stated that the post 9/11 security regime is thus presented as a ramification of neoliberalism. By combining the governmentality with the neoliberal model, the state frees itself from the various responsibilities of maintaining its subjects, conferring on these subjects themselves the daily obligations of self-maintenance and self regulation<sup>10</sup>. Samimian-Darash & Stalcup<sup>4</sup> adds, as a result, local, private security groups proliferate and replace state security<sup>4</sup>.

The fourth approach in the anthropology and security is security assemblages approach. It means security as an assemblage of forms of governance and power<sup>4,11</sup>. Deriving from Foucault's concepts of governmentality and the security apparatus, and on the methodology and ethical stance they were produced, it urges anthropologist to underscores the diversity of security forms of action: The particular ways that security works in relation to its subjects, individual, or populations. As security growing up as a totalizing process, many forms of insecurity also follow. But we cannot capture this if it's not crystallized in the forms of action. So, we argue that this particular approach will effective to analyze the source of the insecurity, even if it still in an intangible form, such as thoughts or fear.

Related to Bapak Wiranto statement at the beginning of this article, we see it as a form of action of insecurity, but the threat itself has not yet become manifested, it is still in the forms of fear. And when it stated by a Coordinating Minister for Political, Legal, and Security Affairs, the fear itself become nationalized.

So, how social media usage become such threats in Indonesia? The following section draws the former empirical research findings of the subject matter.

### **National Threats from Social Media: An Indonesian Case**

Over the last five years, the use and popularity of social networking sites (SNS) in Indonesia has dramatically increased. Out of a population close to 260 million, approximately 88.1 million had access to the internet at the beginning of 2016, and around 79 million or close to 90 percent were active social media users. This represented a 10 percent increase from the year before. In terms of social networking sites used by Indonesians, they use international networking sites such as Facebook, Twitter, and WhatsApp, as opposed to many Asian countries of which they have their own social networking sites (e.g., Renren and Weibo in China; Viber in Vietnam, etc.)<sup>12</sup>. In fact, in 2016, Indonesia

is the fourth largest source of Facebook users after the USA, Brazil, and India, and Facebook also the fourth-most trafficked website in the country<sup>13</sup>.

The growing use of Social Networking Sites has many implications to so many things. Tarnizi<sup>14</sup> shows that various Social Networking Sites is used by Indonesian governments to enhance their governmentality practices. They use Youtube, Facebook, and Twitter to increase their transparency by allowing the public to witness how each government unit set up and defended their budget and proposal<sup>14</sup>. Not only that, but in general social media have the potential to extend government service, increase civic participation, gather innovative idea from the masses, and improve government decision making and problem solving<sup>15</sup>. Outside the public sector, at the individual level, Social Networking Sites usages increase and enhance its user's knowledge and sociality through its easiness in accessing information and establishing communication<sup>16</sup>, political knowledge, and relations is no exception. Molaei<sup>13</sup> finds that the level of participation in social media is related to political knowledge among Indonesian Facebookers. Most of the active users of the forum kept themselves up to date with news and information about current affairs by drawing from different sources like Internet websites, newspapers, or television<sup>13,17</sup>.

Not only on knowledge and communications, but social media usage also has important implications for the political process in most countries around the world. Johansson<sup>12</sup> argues that Arab Spring movement originating in Tunisia and Egypt in early 2011 was made possible through the use of social media. Social media played an important role in overthrowing governments in Egypt and Tunisia<sup>12</sup>. In Kenya, Social Media is used by the terrorist group to recruiting and training their members; they also use it to threaten other opposing groups, such as the national military. This makes the government more active in social media to cease the terrorist practices<sup>18</sup>. Compared to traditional media (e.g., radio or television), social media have the ability to disseminate every information faster to a wider range of readers, in relation to politics, this information is crucial because citizens need access to information to make decisions, especially in elections<sup>12</sup>.

This overabundance of information in political issues often leads to conflicts between people or groups of people. Arab Spring movements show us that the conflicts can become so massive it revolutionizes the whole country. In Indonesia, at 2014 presidential election, both groups

from both candidate often engage in conflicts, either in social media or real life<sup>19,20</sup>, and the fear that this will happen again in 2019 presidential election is inevitable<sup>21</sup>. Not only in the presidential election, at 2017 Jakarta's Gubernatorial Election, the cold war between candidate's supporters also occurs. According to Dewi, Maryani, Abdullah, & Suganda<sup>4</sup>, the tension is reproduced through internet *memes* that circulated in social media via hashtags, one of them is #pilgubdki. The hashtag that posted alongside *memes* aims to categorize social media posts that relevant to the subject. As the *memes* categorized in a single hashtag, every insinuation toward single candidate can be identified easily<sup>4</sup>. And this potentially leads to conflict between candidate supporters.

Dani Mohammad  
Ramadhan

Rina Hermawati

### **Internet Policy: A Comparison Between Nations**

Schmidt & Cohen<sup>22</sup>, have categorized many nations internet policy into three types: the blatant, the sheepish, and the acceptable (politically and culturally). The example of the first type of internet policy category is China. According to them, China is the world's most active and enthusiastic filterer of information. As mentioned above, China has their own social media instead of using popular one<sup>12</sup>. This is caused by aggressive information filtering in the country; they have total control over what information circulated in their internet ecosystem. Particular terms, for example, *falun gong* (the name of the banned group in China), are absent from China's virtual public space<sup>22</sup>.

On the other extreme, there are some countries that give total freedom to its citizen's internet usage behavior. For example, Turkey gives total freedom to the nations internet user to the point where they showed responsiveness to public demands thanks to the government openness. This is caused by the country's puzzling policy regarding internet usage. The Turkish government has had an uneasy relationship with the open internet, being far more tolerant than other European countries<sup>22</sup>. The third category mentioned by Schmidt & Cohen<sup>22</sup> practiced by countries such as South Korea or Malaysia. This category is characterized by its specific filtering on a specific topic. For example, South Korea expressly criminalizes public expressions of support for North Korea in both physical and virtual space<sup>22</sup>.

In Indonesia, the Government has authorized a policy regarding the social media usage. Issued at 2008, *Undang-Undang Informasi dan Transaksi Elektronik* (UU ITE) No.11/2008 regulates any forms of elec-

tronic information and transaction. Including the reproduction of hoaxes or hate speech (article 28), personal threats via the internet (article 29), any forms of hacking (article 30), etc. In 2016, this law changes in some of the articles (UU No.19/ 2016). As stated by Rahmi<sup>23</sup>, even though has some changes, but the law regarding the internet usage has a fatal weakness; particularly, it does not have a supporting procedural law to implement it. In relation to the Schmidt & Cohen<sup>22</sup> dichotomy, Indonesian internet policy falls into the second category. The “sheepish” internet policy is popular with governments that try hard to strike a balance between various beliefs, attitudes, and concerns within their population<sup>22</sup>.

So, from cases above, we can see the relationship between social media and its usage that leads to threat and insecurity by the forms of latent or manifest conflicts especially in the realm of nations political issue. At this point, Bapak Wiranto’s statement seems to be clear enough. But how is exactly anthropology analyzing this particular subject matter?

As stated before, this particular topic of social media is placed inside the security assemblages approach in the study of the anthropology of security. If we are about to use this approach, Samimian-Darash & Stalcup<sup>4</sup> encourage us to use another additional concept or theory related to the subject; in this case, we need a useful explanation that bridges our understanding about human before and after social media. Cyber Anthropologist Genevieve Bell<sup>24</sup> explanation about being human in the data filled world seems appropriate for our research. She stated that there are five traits of human being -in terms of sociality- that remain constant over time even in the age of social media. Those five traits are: 1) human being needs friends and family, 2) needs to be belong to the community, 3) human being constantly searching for meanings over time, 4) we tend to use objects to talk about who we are, and 5) in terms of interactivity with each other, we constantly telling and covering (lying) many things in our lives<sup>24</sup>. Furthermore, Bell<sup>24</sup> stated if a technology encourages family-ness and friendships, able to create communities and facilitate those communities to share generally are the successful ones because it extends one’s sociality. If we take a look at those five traits of human sociality, basically, humans tend to belong to many communities, at least one, starting from the circle of family, and it expands to the circle of friends, to the circle of interest and so on. And inside those circles, we share everything to establish our self-reputation that may lead to our status among persons in those communities.

And we argue that the so-called national threat mentioned by Bapak Wiranto caused by social media is circulated in some “online” community, and when Bapak Wiranto believes that young generations are able to avert and ward this issue, we are curious, are the young generations able?

*Anthropological  
Insights for the  
Study of Security*

### Research Method

For this research, we use a mixed method approach in sequential mode<sup>25</sup>. We conduct an online survey first to obtain a general picture about teenagers behavior in social media when they tackle the issue of national threats such as hoaxes or hate speech. The sampling used for this research is non-probability in the form of quota sampling, and the target respondents are those in the age between 18 and 25 years old. Among those respondents, we pick some of them purposively to be interviewed. The criteria of the selected informants are: they belong to many communities, preferably a political community, and they should be an active member of those communities. The reason behind the informant criteria is based on Molaei<sup>13</sup> findings that those who are active in an Indonesian online community most likely is a knowledgeable one, especially when it comes to political topics.

### Results

Out of 60 respondents, about 45 respondents or 75% of them stated that the internet has the potential to threaten its users, both privately or socially. And the sources of threat (in both forms of hate speeches and hoaxes) are found in almost every kind of social media group, mainly in a family group (44.4%), peer group (31.1%), faith-based group (44.4%), and politics-based group (48.9%). This shows that even in an online group that seems neutral (friends and family), the circulation of a post that contains hate speeches or hoaxes still can be found easily.

### Where did you usually find the threat?

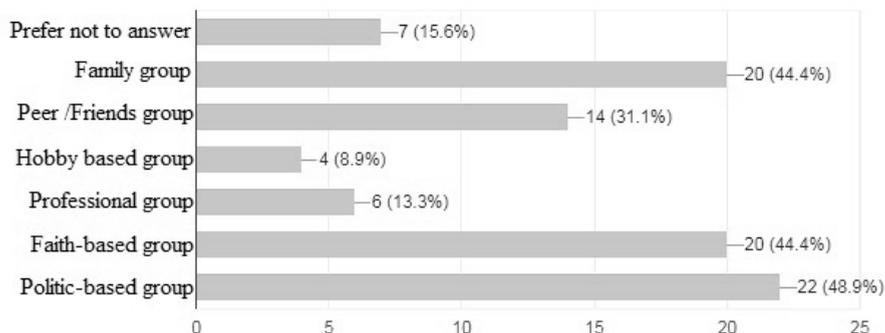


Chart 1 Source of the threat.

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When it comes to how to respond to the issue, the result shows that the majority of the respondents, when they found the threat on the internet (privacy, hoaxes, or hate speech threat), they only recognize the issue, but choose to analyze it for themselves. What is interesting that some of the respondents create a counter post to justify the otherwise threat.

## What would you do if you encounter the threat?

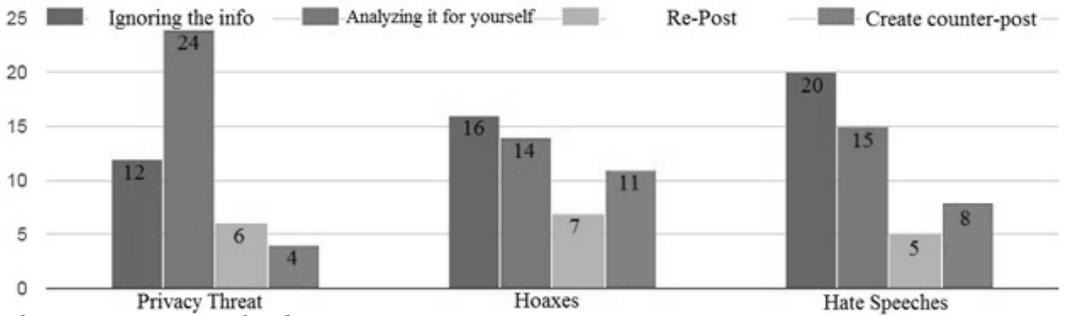


Chart 2 Response to the threat

From the chart above, we can see that not all of the teenagers are aware to justify the issue of internet threat, some of them are ignoring the information.

Note that many of the respondents are also participating in the groups mentioned above, some of them, surprisingly enough, are the initiators of the source of threat groups (faith or politic based group). When we interview them, the reason why they reproduce such threat in forms of hoaxes or hate speech is that they intend to address the post only their opposing groups. It is indeed that many groups (both in physical or virtual) have their own opposing groups, especially when it comes to faith or politic based group. When we asked, why they use social media? The answer is simply because they can access it anytime, anywhere.

For us, this is the main threat, the ability to post infinite words anytime anywhere, plus the existence of the groups that have opposing groups, can create the overabundance of information. Just like a snowball, without appropriate regulation, the stream of hoaxes or hate speeches will always be there, and sadly, always become a threat.

## Conclusion

To summarize, anthropology of security are able to contribute to the study of security through its ability explaining a particular case, though most likely it is a micro case, the anthropological approach offers an explanation of the nitty gritty-ness of human life. This is achieved via methodological robustness (e. g. ethnography) and conceptual-theoretical vastness.

In the first and third approaches in the anthropology of security mentioned by Samimian-Darash & Stalcup<sup>4</sup>, namely violence and state terror; the military, militarization, and militarism; and para-state securitization approach, anthropology excels in offering a new perspective at the “business-at-usual” practice conducted by the object of analysis in the respective approach. Those three approaches highlight anthropological methodology rather than its concept or theory. The “security-ness” of the study appear in the object studied, for example, the ordinary citizen in the middle of war<sup>5</sup>, the security industries represented in the security fairs<sup>7</sup>, or para-state security organization<sup>10</sup> this is what Samimian-Darash<sup>4</sup> called as a critical analytical limitation (2017: 70). The fourth approach in the anthropological study of security –security assemblage approach- has a tendency to highlight both anthropological methodology and concept-theory. This particular approach reduces the concept of security into the forms of governance and power. Thus, the object of analysis is the action taken by the governance or other power –whether nation-state formation or not- to create security or insecurity. In this article, we explain a case of social media usage in creating threat and insecurity in this particular approach.

Speaking about the case presented, we conclude that the forms of security in using social media, manifested in the Law No. 11/2008 and Law No. 19/2016, do not yet succeed in realizing the security among Indonesian social media users. The inability of the law caused by the lacks of the supporting implementation policy. It shows that the policy itself, in Schmidt & Cohen<sup>22</sup> terms, sheepish, in the sense that the Government of Indonesia wants to create a policy regarding internet usage without violating the heterogeneity of its users. This makes the internet users able to freely reproduce any information, even the sensitive one that has the probability to threat and create insecurity to another user. This freedom of reproducing the information through the internet should be filtered, Bapak Wiranto statement should be seen as a call, not only for the teenagers but for the policymakers to create

*Dani Mohammad  
Ramadhan*

*Rina Hermawati*

an appropriate, responsive to the heterogeneity of Indonesian internet users, filtering system.

In terms of teenagers internet users, our result shows that more than half of them exposed to the hate speech and hoaxes through many social media groups, particularly in religion or political, social media groups, even though they (almost 30% of the respondents) have the initiative to counter the hate speech or hoaxes by creating the counter-post to clarify the situation, but still, the heart of the problem is the filtering system, which is only possible through government intervention.

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# Adi Sutjipto Air Force Base Policy for Dealing with Non- Traditional Security Threats in Safeguarding Civil Enclave Area in Adisutjipto Airport Yogyakarta

*Dian Bashari, Arry Bainus, Wawan Budi Darmawan, Karlina Aprilia Kusumadewi*

## **Abstract**

This research is concerned with “Adi Sutjipto Airport Policy for Dealing with Non-Traditional Security Threats in Indonesia in Safeguarding Civil Enclave Area in Adi Sutjipto Airport in Yogyakarta” which aims to determine the extent of Adi Sutjipto Airport Policy in safeguarding the Airfield and Adi Sutjipto Airport to deal with non-traditional security threats in Indonesia. Non-traditional threats are threats that are not carried out by the state but by irresponsible actors and cause human unrest; these non-traditional threats can be in the form of drug smuggling, smuggling of prohibited goods, people smuggling, air piracy, natural disasters, disease outbreaks, and the threat of terrorism. The research method adopted is a qualitative method. The research data source begins with the collection of secondary data in the form of collecting data and documents related to non-traditional security threats at the airport which is then followed by primary data collection through interview and observation methods. Based on the results of the research conducted, it can be obtained the results that Adi Sutjipto Air Force Base policy in dealing with non-traditional security threats



Dian Bashari, Arry Bainus, Wawan Budi Darmawan, Karlina Aprilia Kusumadewi.  
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from competency aspects that use indicators of human resources, infrastructure/facilities and infrastructure, technology and financial budget support is still not optimal. Airport safeguarding in the context of civil aviation safety and security is the responsibility of Adi Sutjipto Airport in this case Angkasa Pura I and get security support from Adi Sutjipto Air Force Base which in its implementation will be set forth in a fixed security procedure prepared jointly by the Commander of Adi Sutjipto Airport with General Manager of Adi Sutjipto Airport.

*Keywords: airfield policy, non-traditional security, threats, airport*

## **Introduction**

In the globalization era, economic and technological progress is growing very rapidly. Some developed countries have very high economic conditions and growth, as well as technological developments both in the transportation and information sector. Global information that develops makes the country's boundaries do not look good between distance, space, and time. With economic and technological progress, it certainly has an impact on the development of threats that disrupt the stability of international and national security. The current condition shows the trend or international issues in the form of transition from physical threats / traditional threats to non-traditional security threats. According to Atikah <sup>12</sup> as stated in her, non-traditional security has become Indonesia's foreign policy agenda for the past two decades. This was affected by the end of the Cold War and the strengthening of non-traditional security threats that were transnational which endangered the lives of citizens. Non-traditional threats are not carried out by the state/non-state actors but is carried out by irresponsible actors and has resulted in public unrest.

Indonesia is part of an international system that has responsibilities and plays an active role in overcoming global threats including non-traditional security threats. The Indonesian National Army Air Force is a part of the TNI that has duties in the field of defense, of course, is always ready to guard against all threats to security that are developing, especially non-traditional threats of people smuggling, terrorists, piracy, drug trafficking, smuggling of wild animals, natural disasters, epidemics, and smuggling of illegal goods. By increasing the professionalism of human resources, the development of infrastructure, technological developments, and additional budgets are very

*Dian Bashari*

*Arry Bainus*

*Wawan Budi  
Darmawan*

*Karlina Aprilia  
Kusumadewi*

strategic needs in maintaining defense and security in Indonesia. The involvement of the Indonesian Air Force in Law No. 34 of 2004 concerning the TNI is assigning the Air Force in carrying out the duties of related to Air Matrix.

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For this reason, Adi Sutjipto Air Force Base is one of the elements of Indonesia's defense which has a role in maintaining security from the threat of non-traditional security that is developing in Indonesia. Adi Sutjipto Air Force Base is a Civil enclave airport where all civil aviation activities take place at the Adi Sutjipto Yogyakarta Air Force Base owned by the Air Force. The international airport is the main and border gateway in dealing with any non-traditional security threats. Adi Sutjipto Airport is a civil enclave airport that has a responsibility in dealing with non-traditional threats that develop because this airport is the center of activity for future passengers and travel conditions that require the emergence of non-traditional threats that develop namely terrorist threats, narcotics, illegal goods, animal or fish smuggling, and human trafficking. According to Bartholomew Elias<sup>1</sup> in his Airport and Aviation Security book on airport security seen from terrorist threats, hijacking/piracy, weapons smuggling and air cargo security<sup>2,3</sup>.

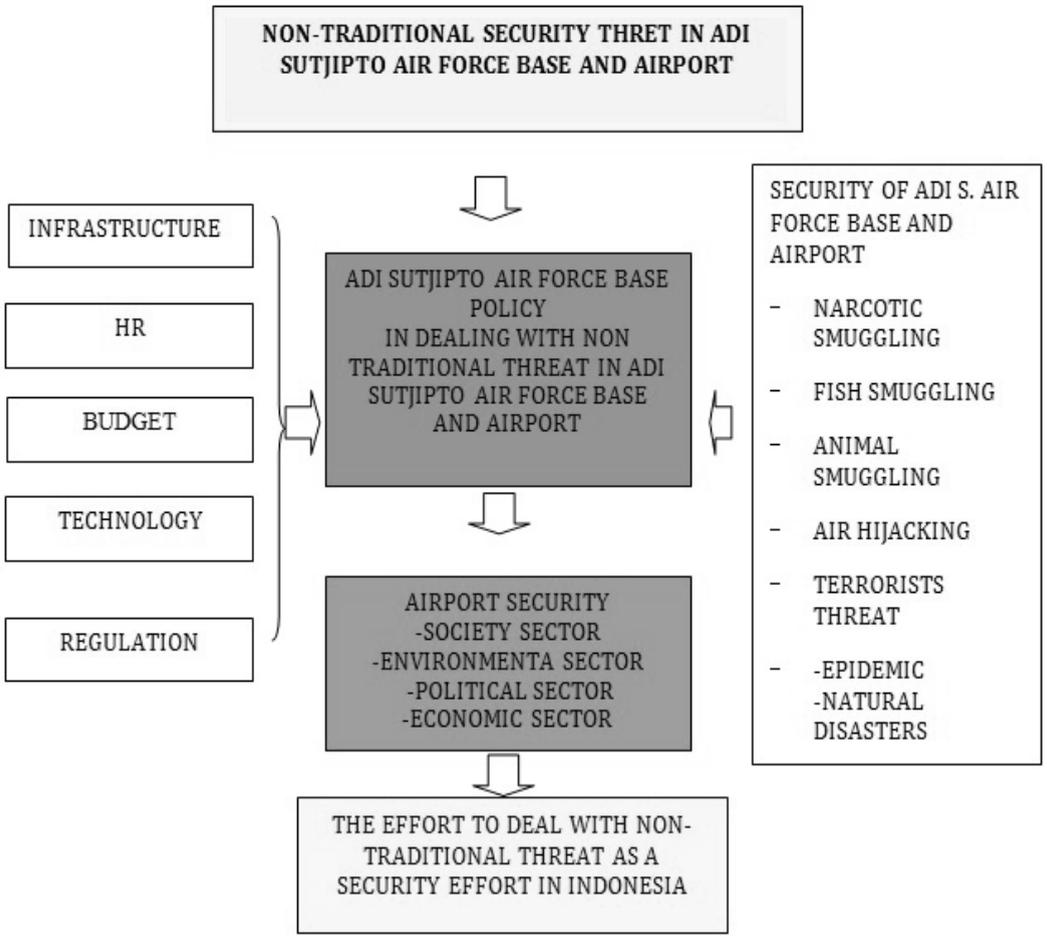
Based on the problems that have been described, the formulation of the research problem is as follows: "What is the Airport Security Policy by Adi Sutjipto Airport in dealing with non-traditional security threats at Adi Sutjipto Civil Enclave Airport?". In this study, the author uses qualitative methods by examining aspects of infrastructure, technology, human resources, and budget support in Adi Sutjipto Air Force Base policy in dealing with non-traditional security threats in Indonesia, especially security at Adi Sutjipto Airport. Data collection techniques use interviews, observations, and documents to obtain primary and secondary data that strengthen literature studies to obtain data. This shows that the research carried out is different from previous research.

### **Literature Review**

In this paper, the previous research used in realizing Adi Sutjipto Air Force Base Policy in dealing with non-traditional security threats in Indonesia in securing the airport area of Adi Sutjipto civil enclave. Authors' searches related to research on non-traditional security threats include, among others, the first research conducted by Jacques Duchesneau and Maxime Langlois<sup>4</sup> in an international journal entitled *Air-*

*port attacks: The critical role of airports can play in combatting terrorism.* In his research, Maxime Langlois<sup>4</sup> used a unique database of aviation terrorist attacks to analyze the phenomenon of airport attacks that aircraft as targets had transferred security risks to the airport. The second research was Steve Woods<sup>5</sup> in his International Journal entitled *Terrorism in aviation: going on holiday? Young travelers take longer to pass through security.* Aviation, security, passenger experience, terrorism explain that his research uses quantitative methods carried out over a four-year period to assess passenger experience and opinions about Airside security measures at British airports that were introduced as a result of terrorism since 9/11. The third study is a study by David Mc. A Baker<sup>6</sup> in an international journal entitled *Tourism and Terrorism: Terrorist Threats to Commercial Aviation Safety & Security* adopted qualitative methods focused on the main features of the Aviation Security and Security Act and the characteristics of security policies that generated. The fourth study is by Jeanette Rose Morelland<sup>7</sup> in a thesis entitled *The Anthropology of airports: security and apparatuses of state borders* adopted the qualitative ethnographic methods that discuss several functions of the airport as a contemporary border and concentrate on security forces. The fifth research was by Kania Rahma Nureda<sup>8</sup> in her research entitled *Legal Review of aircraft piracy in its implementation based on the international civil aviation convention (case study on the Boeing 767-300 Ethiopian Airlines hijacking in February 2014)* with the descriptive normative juridical method. The sixth research is a research by Sari<sup>13</sup> in his research entitled *Building Regional Security in ASEAN in tackling the threat of terrorism by using a qualitative approach and interview data collection techniques to obtain primary data that strengthens literature studies to obtain data in reviewing security regulation documents in ASEAN.* The seventh study was by Sari<sup>13</sup> in a thesis entitled *The impact of asylum seekers coming to Australia against non-traditional threats to Indonesia with qualitative methods that explain how the impact of asylum seekers visiting Australia against non-traditional security threats in Indonesia from 2009 to 2012.*

Adi Sutjipto  
Air Force  
Base Policy

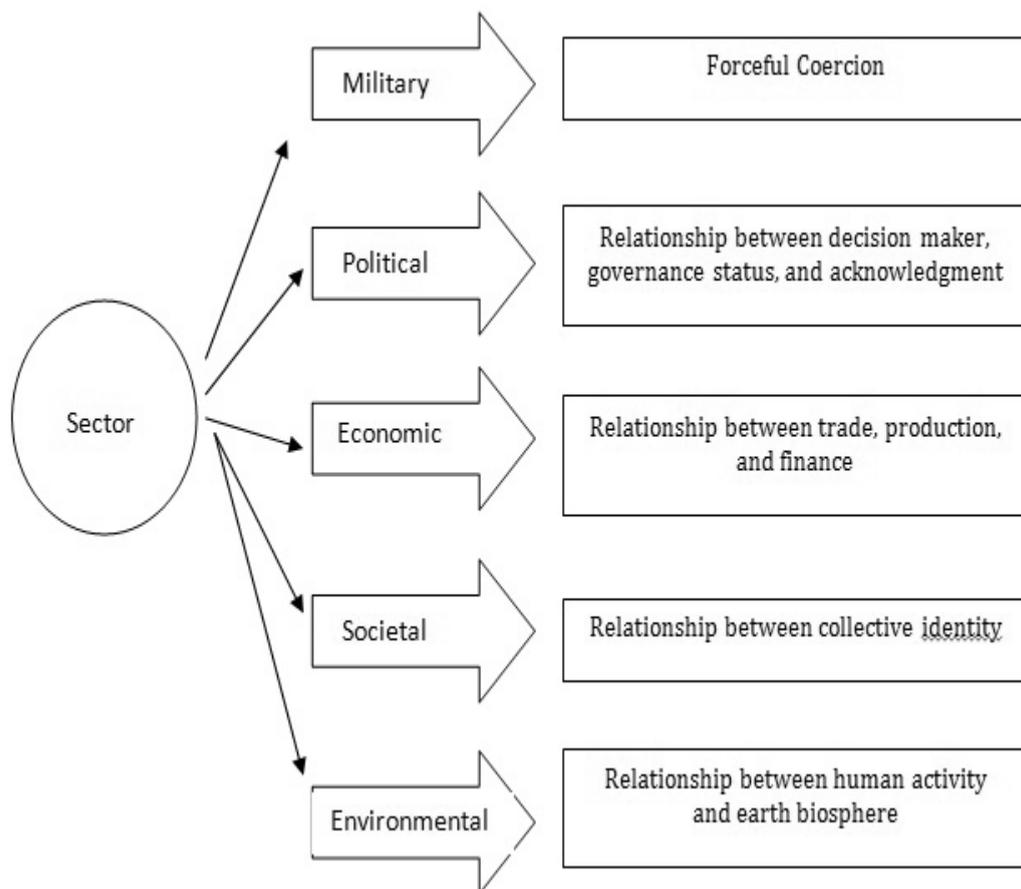


Picture 1: Critical Framework

Based on the description on the critical framework<sup>9,10</sup>, Buzan believes that it can be explained that non-traditional security threats are divided into 4 sectors, namely economic sectors, environmental sectors, society sectors and existing political sectors such as drug smuggling, animals and fish smuggling, illegal goods smuggling such as weapons, aircraft hijacking or hijacking, natural disasters, the spread of epidemics, and terrorist threats. Environmental sector is an ecological threat where environmental factors become one of the non-traditional threats caused by human actions in the community towards the surrounding environment in the form of forest fires, smoke due to forest fires, natural disasters, floods, earthquakes, volcanic eruptions,

and tsunamis. Society sectors are threats caused by human or social life in the community in the form of hunger, poverty, robbery, terrorism, piracy, human trafficking, illegal logging, and infectious diseases. It is obvious that Adi Sutjipto Air Force Base policy is very important in realizing a sense of security at Adi Sutjipto Airport and Air Force Base so that efforts need to be made to improve the quality of Human Resources at Adi Sutjipto Airport and Air Force Base, construction of airport infrastructure and Adi Sutjipto Air Force Base, scanning technology equipment or technology x-ray enters the door of the waiting room, checks in and cargo warehouse for shipping and receiving goods at the Air Force Base and Airport, adding a budget to improve the security of Adi Sutjipto Air Station and Airport and regulations between agencies between Air Force Base, agencies and AP I Adi Sutjipto. Therefore, Adi Sutjipto Air Force Base policy is needed in dealing with non-traditional security threats at Adi Sutjipto Civil Enclave Airport.

*Dian Bashari*  
*Arry Bainus*  
*Wawan Budi Darmawan*  
*Karlina Aprilia Kusumadewi*



Gambar 2.1: Security Sector

## **Expansion of the Security Scope of Copenhagen School**

Threats according to Buzan can be described more specifically as “the state of the territory can be threatened by seizure or damage to the threat,” and “a dual threat to state institutions are by default and by ideas (ideology)”

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<sup>10</sup> The security dimension from a Neo-realism perspective s as follows:

1. The Origins of Threats explains the origin of threats. Threats can be from external or internal parties.
2. The Nature of Threats. Viewed from the traditional side, the nature of threats can be military. Whereas from a non-traditional perspective, the nature of threats is more complex and complicated, such as economic threats, social culture, democratization, human rights, the environment and the threat of other non-state actors.
3. Changing Response. This dimension sees changes in security responsibilities. If previously focused on the military, now responsibilities can be overcome by non-military approaches with economic, political, legal and social culture.
4. Changing Responsibility of Security. According to traditional views, the state must provide security to its citizens. However, according to non-traditional views, it takes individual interaction at the global level, not just the state. A high level of security is very dependent on all individual interactions at the global level. For example, the achievement of Human Security is not only dependent on the state but also very much determined by transnational cooperation among non-state actors.
5. Core Values of security. The traditional view focuses security on sovereignty, territorial integrity while in non-traditional focus attention is on Trans-National Crime (TNC), human rights and terrorism.

<sup>11</sup>Airports as borderlands where each airport must have a permanent and safe space for the implementation of preclearance. Preclearance officers are used to check or inspect accompanying passengers or baggage in relation to immigration, customs, public health, and food inspection as well as matters relating to plant and animal health. Airport preclearance is a unique mechanism in cross-border relations between countries that allows airline passengers to carry out checking in customs and immigration before boarding a plane in traveling

abroad through the airport, both checking the initial departure and landing destination. When a person crosses a border which is a physical boundary, this shows clear action in entering an area. In the case of airports, the limit is only symbolic because the threshold of entering a new space has occurred and has not left or not in the new territory.

*Adi Sutjipto  
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## **Methodology**

In this study, the object of the research is the Adi Sutjipto Air Force Base policy in dealing with non-traditional security threats in Indonesia. The approach used is a qualitative approach. Informants who act as sources of data and information must meet the requirements that will become informants in this study. Primary Data is data obtained from in-depth interviews about informants interviewed about the research used, among others, the Adi S, G.M. Angkasa Pura Bandara Adi Sutjipto, Kadisops Pangkalan Udara, Dansatapom, airport chief Adi Sutjipto, Head of Customs, Head of Airport Immigration, Head of fish and animal quarantine and Head of Intelligence and Security of Adi Sucipto Air Force Base. Secondary data is obtained through documents in the form of manuscripts/texts, photos, drawings/plans or it can also be in the form of notes of observations/observations namely Laws, books, reports on Adi Sutjipto airport non-traditional security threats.

Data Validity Test in this study is done by using triangulation technique which is a technique of combining the types of data collection both interviews, documents and observations. Flick<sup>14</sup> that triangulation techniques can also be used to clarify meaning by identifying different perspectives on various phenomena. It is also a technique for collecting different data but from the same data source. The trust of data collected is certainly validation data. In other words, this triangulation can be used as a basis for research analysis based on triangulation of data sources or information. Sources of analysis can be reliable and valid to be used as sources of analysis through triangulation models.

## **Discussion**

In this chapter, the researcher presents an analysis of the discussion of data and information obtained through interviews and various documents. The general description presented relates to this research, namely an overview of Adi Sutjipto Air Force Base and Adi Sutjipto Air-

port. Data analysis and discussion include Adi Sutjipto Air Force Base policy in aspects of Human Resources (HR), Infrastructure aspects, technology aspects, budget support aspects, and regulatory aspects.

CEJISS  
4/2018 *General Description of Adi Sutjipto Air Force Base and Civil Enclave Airport*

Adi Sutjipto Air Force Base is located on Jl. Laksamana Muda Adi Sutjipto Yogyakarta, its position is to the east of the city of Yogyakarta ( $\pm 7$  kilometers) with an elevation of 360 ft from sea level. Its history was in 1945-1950, this Air Force Base was formerly called Maguwo Air Force Base because it was located in Maguwoharjo Village. This Maguwo Air Force Base is one of the places used as a place to concentrate Japanese air power in Indonesia after the transfer of power from the Netherlands to Japan. Based on Government Regulation number 21 of 1965 dated May 17, 1965, the Government changed the name of Angkasa Pura Kemayoran State Company to become Angkasa Pura State Company so that the Angkasa Pura company was more developed in managing other airports in Indonesia.

*Adi Sutjipto Civil Enclave Airport management system*

Adi Sutjipto Air Force Base is a Civil enclave airport where all civil aviation activities take place at Yogyakarta's Adi Sutjipto Air Force Base owned by the Air Force. In the Cooperation Agreement (Perjama) between the Indonesian Air Force and Angkasa Pura I number: Perjama / 19 / VII / 2013 concerning the joint use of Adi Sutjipto Air Force Base as an airport, the Adi Sutjipto Air Force Base is a civil enclave airport where all civil aviation activities take place at the Air Force Base Adi Sutjipto Yogyakarta owned by the Air Force. Article 10 in the Meeting explained that controlling the security of the Adi Sutjipto Airport and Air Force Base under the Adi Sutjipto Air Force Base Commander, but for the responsibility for security and safety of civil aviation under the airport Adi Sutjipto Air Force Base in this case GM Angkasa Pura I Adi Sutjipto Airport and coordinated Base Air Adi Sutjipto Yogyakarta.

*Adi Sutjipto Airport Characteristics First*

Traffic Movement Statistics, namely Passengers entering the Yogyakarta Adi Sutjipto airport every year experience an increase. This will result in overcrowding in the Adi Sutjipto Airport Terminal, which will certainly create potential non-traditional security threats that occur

at Adi Sutjipto Airport such as the threat of drug smuggling, animals or fish smuggling, the threat of terrorism, and the spread of disease caused by domestic or foreign passengers or domestic or international flights.

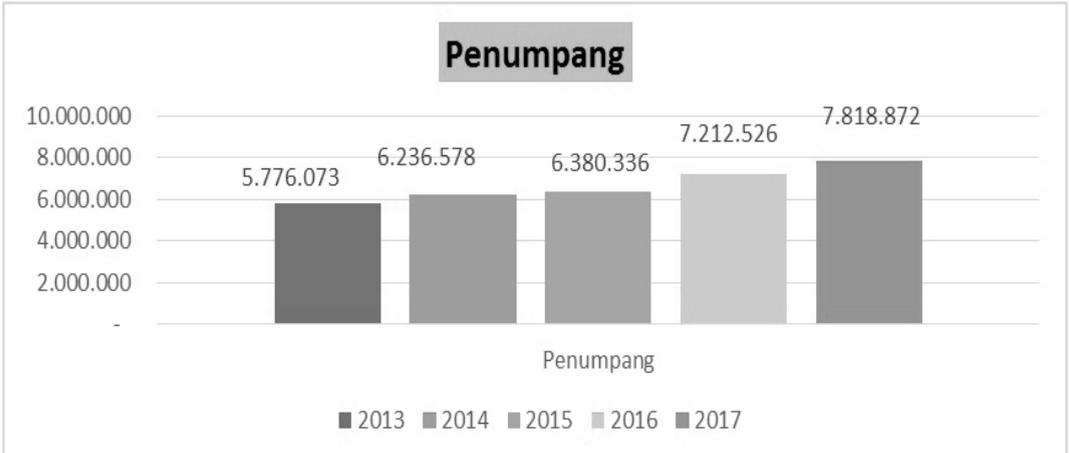


Table 4.1: Total Passengers from 2013-2017

The number of incoming and outgoing airplanes in Yogyakarta’s Adi Sutjipto airport increases every year. This will lead to crowded air traffic at the Adi Sutjipto Airport Terminal which will certainly create potential non-traditional security threats at Adi Sutjipto Airport such as the threat of drug smuggling, smuggling of animals or fish, the threat of terrorism, and the spread of epidemics brought by domestic and foreign passengers or domestic or international flights.

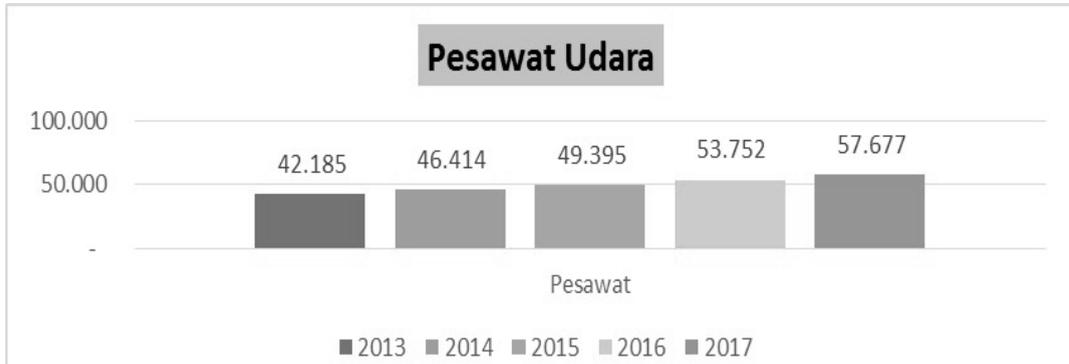


Table 4.2 Total Airplanes from 2013-2017

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The number of incoming and outgoing cargo in Adi Sutjipto Airport increases every year. With the increase in the amount of cargo, this is the potential for smuggling of prohibited or illegal goods such as drug smuggling, smuggling of animals and fish or other non-traditional security threats. This can happen because of a large number of cargo items coming in that are not necessarily accompanied by Human Resources in terms of handling or cargo officers who have the high discipline or the level of intelligence or alertness against all incoming and outgoing goods from and to Adi Sutjipto Airport. In addition, it may also be caused by the existence of obsolete or outdated facilities and infrastructure in this case the x-ray or screening tools. In addition, the number of a limited number of x-rays to check these items. This is certainly the role of Adi Sutjipto Air Force Base or Adi Sutjipto Air Force Base policy in dealing with non-traditional security threats, which is of course very important with the coordination of the Adi Sutjipto airport.

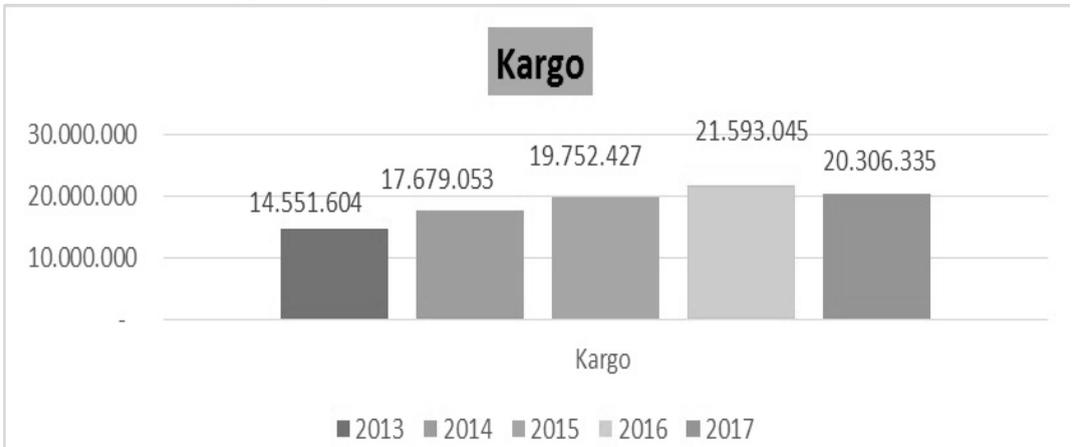


Table 4.3 Total Cargo from 2013-2017

The Adi Sutjipto airport runway currently has a length of 2,200 m. For the airport's environmental boundaries, it is still not entirely limited by strong and sturdy parameter fences, but can still be entered by people who break through fences or even intentionally enter through fences that should not be passed. This is very vulnerable or has the potential to include non-traditional security threats such as smuggling and threats of terrorism and non-traditional threats such as natural disasters such as floods or earthquakes. It is necessary to develop infra-

structure advice in the airport environment to limit the entry of potential non-traditional security threats.

The flight facility for Adi Sutjipto Airport consists of runway, apron, Adi Sutjipto airport A and B airport terminal, GSE airport equipment, and Adi Sutjipto airport landing facility. Terminal A with an area of 30,380 square meters accommodates eight aircraft while the Apron terminal B with an area of 1,936 square meters can accommodate three aircraft. In the airport flight facility, Adi Sutjipto also recognizes GSE equipment to support the operations of the flight and airport of Adi Sutjipto Yogyakarta. The Landside facility of Adi Sutjipto Airport has several check-in counters at Terminal A, namely 28 counters in 10 counters of Terminal B to serve passengers during check-in flights. In addition, at terminal B there is a check-in counter that is used in terms of immigration with international flights. Besides that, it also has a toilet, Musholla, and baggage claim conveyor and the area of the terminal A can accommodate 789 seats with an area of 9,298.07 square meters while the Terminal B has a seat or seating area of about 297 seats with an area of 5936 square meters.

*Adi Sutjipto  
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#### *Non-Traditional Security Threats at Adi Sutjipto Airport*

The international airport is the main gateway or a border in dealing with any non-traditional security threats. Adisutjipto Airport is a civilian enclave airport that has the responsibility of dealing with non-traditional security threats that are developing, because this airport is the center of activity for future passengers and travel conditions that require the emergence of non-traditional threats that develop namely terrorist threats, narcotics smuggling, illegal goods, animals or fish, and people smuggling. The airport is a border or indirectly a country border where its activities shall include Custom, Immigration, Quarantine, and Security (CIQS). Custom is related to the entry and exit of goods and everything that enters or leaves the airport so that it needs to be supervised by airport customs officials. Immigration activities are related to the entry and exit of passengers using international flights either to or to Adi Sutjipto airport so that all movements of passengers who will go out or enter the airport must have an identity or passport if traveling abroad. Quarantine is an act of an airport officer to supervise plants or animals that will be sent abroad or out of town that must be approved by the Quarantine Service. Security is all actions taken to secure airport from all kinds of threats which

of course cannot be done by the airport alone but need to coordinate with other agencies.

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Non-traditional security includes four sectors. Barry Buzan argues that non-traditional threats consist of economic sectors, political sectors, society sectors and environmental sectors such as drug smuggling, animal and fish smuggling, smuggling of prohibited items such as weapons, aircraft hijacking or hijacking, natural disasters, the spread of epidemics, and terrorist threats. Environmental sector is an ecological threat where environmental factors become one of the non-traditional threats caused by human actions in the community towards the surrounding environment such as forest fires, smoke due to forest fires, natural disasters, floods, earthquakes, volcanic eruptions, and tsunamis. Society Sector is a threat caused by human or social life in the community in the form of hunger, poverty, robbery, terrorism, piracy, human trafficking, illegal logging, and infectious diseases. Politics sector is a threat caused by a phenomenon or political condition that develops in the life of a society and the state caused by the government, power holders, and political decisions in the form of communal conflicts on Sara Issues, vertical conflicts, and demonstrations.

#### *The cause of non-traditional security threats at Adi Sutjipto Airport*

The threat of non-traditional security at Adi Sutjipto airport occurred because there were several factors that caused both from inside the airport (internal) or from outside the airport (external). The cause of non-traditional security threats originating from the airport is the existing infrastructure according to Adi Sutjipto's airport security of head, that is, the terminal A checking point of the airport, in this case, the x-ray or Security Check Point (SCP) 1 and 2 still do not meet the standards of the Angkasa Pura Agency nationally, area cargo can still potentially be included in non-traditional security threats such as smuggling, the airport's waiting room is still narrow, and parking areas can potentially threaten security by terrorists because the infrastructure aspects are still not standard. Airport infrastructure is still small in size and Passenger checking counter are also narrow so that identification of passengers is limited, which results in the potential entry of non-traditional security threats at the airport. In addition, the infrastructure at Adi Sutjipto airport is still not up to the standard, for

example, the immigration checkpoint where the room is still narrow so that it is not free to carry out inspections of passengers which can cause less focus on inspection so that there is the potential for non-traditional security threats. The airport KPP room is still not standard, and there is no isolation room for checking out disease outbreaks for passengers. In terms of infrastructure, it is likely that it will potentially lead to non-traditional security threats at Adi Sutjipto airport.

In addition to airport infrastructure, Adi Sutjipto's airport's non-traditional security threat may also be caused by the technological aspect of Adi Sutjipto Airport, namely that it still needs to be upgraded airport technology equipment such as x-rays, body scanners, metal detectors, drug detection devices, the absence of a Hold Baggage Scanner (HBG) which is used to detect luggage, the termoscanner equipment is still long for automatic checking of body temperature for detection of disease outbreaks, and body protection in the examination of incomplete disease outbreaks.

In addition to the internal causes of Adi Sutjipto's airport non-traditional security threats, there are also external or outside airport factors such as visa-free policies for passengers from abroad, especially foreign nationals (WNA) which could potentially create non-traditional security threats at Adi Sutjipto Airport.

#### *Adi Sutjipto Air Force Base Policy in dealing with non-traditional security threats at the Airport*

Adi Sutjipto Air Force Base is a Civil enclave airport where all civil aviation activities take place at Yogyakarta's Adi Sutjipto Air Force Base owned by the Air Force. Of course, the security policy for the Air Force Base and Adi Sutjipto Airport is something that is very strategic to deal with non-traditional threats that are becoming a trend lately. Airport Adi Sutjipto international airport is the main and border gateway in dealing with every non-traditional security threat.

Adi Sutjipto's Air Force Base Policy in dealing with non-traditional threats at the airport is by implementing a deterrent effect and coordinating with existing institutions or stakeholders. This deterrent effect is, for example, an increase in personnel and TNI AU soldiers at Adi Sutjipto Airport, carrying out layered safeguards carried out by the base defense and Paskhas personnel from Yogyakarta Denhanud,

*Dian Bashari*

*Arry Bainus*

*Wawan Budi  
Darmawan*

*Karlina Aprilia  
Kusumadewi*

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deploying or deploying personnel at Ring I at Adi Sutjipto airport, and deploying dog brigades by Air Force Military Police. Coordination is carried out with Adi Sutjipto airport GM in facing non-traditional threats by distinguishing the status set by Adi Sutjipto Bandara both in green, yellow and red situations, where all the situations already existed in the SOP between the Air Force Base and the Airport contained in the SOP about Airport Security Program (ASP).

Airport security policy by Adi Sutjipto Air Force Base in dealing with non-traditional threats at Adi Sutjipto Civil Enclave Airport is implemented by Intelligence personnel and the Military Police Unit (Satpomau) of Adi Sutjipto Air Force Base. The current non-traditional security threat at Adi Sutjipto airport already exists, and the policy of the Air Force at the civil enclave airport in the face of this has been prepared, but there are still problems. Adi Sutjipto Air Force Base intelligence unit explained that Adi Sutjipto airport security is a policy of Adi Sutjipto Air Force Base and in collaboration with Adi Sutjipto airport. The determination of the status or classification of threats, either green, yellow and red, is determined by the Commander of the Air Force Base and general manager of Adi Sutjipto Airport. In carrying out its duties the Adi Sutjipto Air Force Base intelligence policy coordinates with airport aviation security. TNI AU intelligence personnel carry out their duties by collecting data or information from aviation security then expanding its network carried out by intelligence personnel by developing the information. After identifying a suspect or target, then the action was submitted to the Adi Sutjipto Air Force Base Commander then after entering the criminal domain police agencies reported in this case Sleman Police. Military Police Unit (Satpomau) Adi Sutjipto Air Force Base has a policy in dealing with non-traditional security threats at Adi Sutjipto civil enclave airport. Adi Sutjipto airport security is the leading sector of Adi Sutjipto Air Force Base. Military Police Unit of Adi Sutjipto Air Force Base in dealing with non-traditional security threats carries out its policy by deploying security personnel to be seconded at Adi Sutjipto Airport joining Adi Sutjipto's aviation security airport, organizing detecting animals against suspicious matters and against passenger luggage and carrying out education and training of Satpomau personnel in enforcing the law in the face of non-traditional security threats.

Regulations or rules in carrying out security activities are very important in terms of increasing airport security in the face of non-traditional

security threats. In the Cooperation Agreement (Perjama) between the Indonesian Air Force and Angkasa Pura I number: Perjama / 19 / VII / 2013 concerning the joint use of Adi Sutjipto Air Force Base as an airport, the Adi Sutjipto Air Force Base is a civil enclave airport where all civil aviation activities take place at the Air Force Base Adi Sutjipto Yogyakarta owned by the Air Force. Article 10 in the said Agreement explained that the control of the security of the airport and Adi Sutjipto Air Force Base under the Adi Sutjipto Air Force Base Commander, but for the responsibility for security and safety of civil aviation under the airport of Adi Sutjipto Air Force Base in this case GM Angkasa Pura I Adi Sutjipto Airport. This still requires the existence of regulations or rules that are developing at this time, namely the existence of rules or regulations in the face of non-traditional security threats that place Adi Sutjipto Air Force Base so that policies in facing non-traditional security threats become more optimal. In addition to the Cooperation Agreement, there are rules and letter of Operation coordination agreement (LOCA) with other agencies such as BNN, customs, immigration, and police as well as the Disaster Management Plan. However, currently there is still no control or implementation of security related to non-traditional threats between the airport and Adi Sutjipto Air Force Base, so Adi Sutjipto Air Force Base policy in Adi Sutjipto airport security faces non-traditional threats that have not been maximized and the airport security system is a potential security threat non-traditional. So that the existing rules can only be implemented with the points in the existing regulations.

*Adi Sutjipto  
Air Force  
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### *Security Management of Adi Sutjipto Civil Enclave Airport*

Adisutjipto Airport is an airport civil enclave that has the responsibility of dealing with non-traditional threats that develop, because this airport is the center of activities of aircraft passengers who will come and travel and is a vital national object that requires the emergence of non-traditional security threats that develop, namely threats terrorists, smuggling of narcotics, illegal goods, animals or fish, the spread of epidemics, natural disasters and people smuggling. That the non-traditional threat occurred and threatened at Adi Sutjipto airport. Airport Security Committee coordinates the implementation of airport flight security procedures and measures and provides information for the development of airport security programs.

Adi Sutjipto's airport security system has been implemented well although there are still deficiencies both in terms of personnel, infrastruc-

ture, technology, regulation, and budget support. This security system is carried out based on the Airport Security Plan (ASC), Airport Emergency Plan (AEP), Airport Contingency Plan (ACP), and Airport Disaster Management Plan (ADMP). The steps taken in securing the airport are adjusted to the qualification of the threat in which threat with green and yellow qualifications is dealt by Adi Sutjipto Airport while the red qualification threat is dealt by Adi Sutjipto Air Force Base. Therefore airport security in the face of non-traditional threats cannot be separated from cooperation and coordination with other agencies both from the Customs, Immigration, Fisheries Quarantine, Animal Quarantine, Yogyakarta BNNP, and Police agencies. Airport security systems carried out by the airport are carried out with landside and airside security. If there are non-traditional security threats such as smuggling, the airport will report to POM and Adi Sutjipto Air Force Base.

Adi Sutjipto's airport security system currently still allows for non-traditional security threats. However, mitigation or prevention efforts have been carried out by the airport, among others, by implementing the Airport Security Program, namely the implementation of airport security by involving all existing communities in the airport such as porters, cleaning services, traders in airports, etc. The motto of seeing airport security is to see something and see something. In addition, there is an Airport Security Committee (ASC) formed by GM Angkasa Pura I Adi Sutjipto Yogyakarta. Under PM No. 80 of 2017 concerning national aviation security programs, it is obligatory to conduct meetings four times a year with ASC. In improving airport security, of course, by improving the personnel aspect, namely carrying out training both in class, Computer Basic Training (CBT), and implementing Emergency security (PKD). The current aspect of Adi Sutjipto's airport regulation is in accordance with national regulations but the minimum requirement is still there, and there is a Letter of Operational Coordination Agreement (LOCA) with other agencies both with quarantine, BNN, customs, police, and the Air Force. The technological aspects that exist in Adi Sutjipto airport security include 120 CCTVs installed at points that can cover all places in the airport, body scanners, x-rays, WTMD (metal detectors), HHMD (Hand Help Metal detectors), and have Under Vehicle Surveillance (UVS). Aspects of airport infrastructure Adi Sutjipto is in accordance with the landscape but not standard Angkasa Pura I. Financial aspects or budget in supporting the Adi Sutjipto

airport security system has been supported in the Budget Work Plan (RKA) by Adi Sutjipto supported by the Ministry of Transportation.

Other agency policies in dealing with non-traditional security threats are very important, such as Adi Sutjipto airport customs, Hew-ab, and fish quarantine, Port Health Coordinator, and airport immigration. In facing this non-traditional threat, airport customs continues to tighten checks that will enter Adi Sutjipto airport, which is adjusted to the inspection procedures. Animal and Fish Quarantine keep tightening the checks on an animal that will enter Adi Sutjipto airport in coordination with airport security both in cargo terminals and passenger terminals that are adjusted to inspection procedures. The animal quarantine department carries out the prevention of animal and plant smuggling at the airport by checking the luggage carried by the passenger or to be sent, while also being tightened by the Regulated Agency (RA). The Yogyakarta Airport Immigration always conducts checks so that the threat of human trafficking does not occur at Adi Sutjipto airport because Adi Sutjipto airport is an international airport that has the potential to face such threat. The Adi Sutjipto airport's KKP (Port Health Office) Coordinator explained that the spread of disease outbreaks could occur at Adi Sutjipto checking all passengers coming from foreign flights by only carrying out tension or measuring blood pressure and pulse and examining physical characteristics. But this security system is still minimal because there is no inspection isolation room, incomplete personal protection equipment, and the Thermos-canner equipment is still outdated.

*Dian Bashari*

*Arry Bainus*

*Wawan Budi  
Darmawan*

*Karlina Aprilia  
Kusumadewi*

### *Airport Security from the aspect of Human Resources*

Airport security in terms of human resources at Adisutjipto Air Force Base and Adi Sutjipto airport is still limited. Increasing numbers of personnel both at the airport and Adi Sutjipto Air Force Base are still being carried out to date, and improved personnel capacity with education and training on airport naming continues to be carried out regularly to support airport security in the face of better non-traditional security threats.

### *Airport Security in conjunction with the Infrastructure Aspect*

Infrastructure Development is a very important thing to improve airport security in the face of non-traditional security threats. The airport infrastructure, for now, is still far from ideal. Spatial planning and its location are very potential or prone to all non-traditional security

threats. Adi Sutjipto airport infrastructure in terminals A and B still uses the old concept. So it is necessary to develop a more modern airport infrastructure and have a layout and room that prioritizes security factors other than airport comfort.

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### *Adi Sutjipto Airport Security from Technology Aspects*

Technology aspects in the era of globalization are very important in airport security. Adi Sutjipto airport security is carried out by all interested parties and remains under control from Adi Sutjipto Air Force Base. The technology used in airport security is generally in accordance with standards but still needs to be improved to be suitable and comparable to the International Airport in Indonesia and even abroad to anticipate the threat of non-traditional security at Adi Sutjipto airport.

### *Airport security from financial or budget aspects*

The increase in the budget is highly necessary for improving the security of the Air Force Base and Adi Sutjipto airport so that the policy of Adi Sutjipto Air Force Base in facing the threat of non-traditional security is maximized. In budget support, both the Air Force Base and the airport are already in the existing budget but not in a particular focus form such as fields/aspects in dealing with non-traditional security threats. Budget support comes from the Budget Work Plan (RKA) that is used to carry out support in all operations at the airport including security support in dealing with any security threats in addition to existing situational budgets.

### *Airport Security from Regulatory aspects*

The Cooperation Agreement between the Air Force and Angkasa Pura I number: Cooperation Agreement / 19 / VII / 2013 concerning the joint use of Adi Sutjipto Air Force Base as an airport, stated the Adi Sutjipto Air Force Base is a civil enclave airport where all civil aviation activities Adi Sutjipto Yogyakarta airbase owned by the Air Force. Article 10 of the Cooperation Agreement explains that controlling the security of the airport and Adi Sutjipto Air Force Base under the Adi Sutjipto Air Force Base Commander, but for the responsibility for security and safety of civil aviation under the airport of Adi Sutjipto Air Force Base in this case GM of Angkasa Pura I of Adi Sutjipto Airport.

## Conclusion

Adi Sutjipto Air Force Base Policy in dealing with non-traditional security threats at the Airport is that Adi Sutjipto's Air Force Base policy in dealing with non-traditional threats at the airport adopted deterrent effects and coordination with existing institutions or stakeholders. This deterrent effect is for example an increase in personnel and TNI AU soldiers at Adi Sutjipto Airport, carrying out layered safeguards carried out by base defense and Paskhas personnel from Yogyakarta Denhanud, deploying or deploying personnel at Ring I at Adi Sutjipto airport, and deploying dog brigades by Police Military Unit of the Air Force AU Satcom. Coordination will be carried out with Adi Sutjipto airport GM in the face of non-traditional threats by distinguishing the status set by Adi Sutjipto Bandara both in green, yellow and red situations, where all of the situations already exist in the SOP between the Air Force Base and the Airport located in in the SOP about the Airport Security Program (ASP). Determination of the status or classification of threats, either green, yellow and red, is determined by the Commander of the Air Force Base and general manager of Adi Sutjipto Airport. In carrying out its duties, the Adi Sutjipto Air Force Base intelligence implemented its policy by coordinating with airport aviation security. TNI AU intelligence personnel carry out their duties by collecting data or information from aviation security then expanding its network carried out by intelligence personnel by developing the information. After obtaining a suspect or target, then the prosecution was delivered to the Adi Sutjipto Air Force Base Commander then after entering the criminal domain police agencies reported in this case Sleman Police Precinct.

*Adi Sutjipto  
Air Force  
Base Policy*

The air force military police unit at Adi Sutjipto Air Force Base in the face of non-traditional security threats implemented its policy by deploying security personnel to be seconded at Adi Sutjipto Airport joining Adi Sutjipto's aviation security airport, organizing detection animals about suspicious matters against luggage passengers and carry out education and training of Satpomau personnel in enforcing the law in the face of non-traditional security threats. For non-traditional threat that has occurred, Adi Sutjipto Air Force Base Satcom has adopted its policy in terms of carrying out security of suspects, safeguarding evidence, preliminary investigation of suspects and ensuring that TNI personnel are involved and carrying

out cooperation with other agencies both the Sleman Police and BNN Yogyakarta province if the suspect is non-military/member of Armed Forces. Regulations or rules in carrying out security activities are very important in terms of increasing airport security in the face of non-traditional security threats. In the Letter of Cooperation Agreement between the Air Force and Angkasa Pura I number: Cooperation Agreement / 19 / VII / 2013 regarding the joint use of Adi Sutjipto Air Force Base as an airport, the Adi Sutjipto Air Force Base is a civil enclave airport where all civil aviation activities Adi Sutjipto Yogyakarta airbase owned by the Air Force. Article 10 of the Cooperation Agreement explains that controlling the security of the airport and Adi Sutjipto Air Force Base under the Adi Sutjipto Air Force Base Commander but for the responsibility for security and safety of civil aviation under the airport of Adi Sutjipto Air Force Base, in this case, GM Angkasa Pura I Adi Sutjipto Airport.

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*Dian Bashari*

*Arry Bainus*

*Wawan Budi  
Darmawan*

*Karlina Aprilia  
Kusumadewi*

# Synergy of Sam Ratulangi Air Force Base and Regional Government in Flood Natural Disaster Management in Manado City

*Erwin Dwi Koerniawan*

## **Abstract**

The impact of flash floods that occurred in the city of Manado a few years ago resulted in significant material losses and casualties. The Manado City Government through the National Disaster Management Agency (BNPB) has an effort to deal with disaster problems, particularly floods, including involving the Air Force of the Sam Ratulangi Air Base. However, it must be admitted that there are still obstacles to optimize the Indonesian Army Force in supporting natural disaster management in the North Sulawesi region. The further studies are needed related to the synergy of the Sam Ratulangi Air Force Base and the Regional Government in response to natural flood disasters in Manado, North Sulawesi. In this paper, the theories or concepts of disaster management, synergy, civil-military relations, and national security are used. The method used is qualitative with a case study approach. The results of the study show the main differences in disaster management efforts among regional governments and related to perceptions of flood mitigation, sector introspection regarding flood mitigation, motivation for flood mitigation, and disaster management implementation plans. The planning approach is highly dependent on the political interests of the regional government. Furthermore, based on the analysis of the three pillars of synergy between civil-military in efforts to mitigate floods in the city of Manado, the problems identified



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are (1) related to the improvement and capacity and capability of each sector; (2) equating perceptions and frameworks at the level of regional leadership elements; (3) preparation of SOPs/operational guidelines and/or technical guidelines; and (4) performance improvement based on evaluation of disaster management.

Erwin Dwi  
Koerniawan

*Keywords: synergy, natural disaster management, Indonesian Air Force and local government*

### **Preliminary**

North Sulawesi Province is one of the areas that are prone to flood in Indonesia with the region's vulnerability to the disaster<sup>1</sup>. Judging from the total area of inundation, it is ranked 8<sup>th</sup> out of all regions in Indonesia, so it is one of the cities that is considered to be at high risk of flood hazard<sup>1</sup>. Recorded in the last 25 years, there have been ten floods<sup>2,3</sup>. The region that has the highest vulnerability is the city of Manado. The city of Manado itself was recorded in 2014 to experience two flash floods. Floods experienced in the city of Manado occur due to high rainfall that increases the water discharge in Lake Tondano.

<b>No.</b>	<b>Date</b>	<b>Area of inundation (ha)</b>	<b>Death toll</b>	<b>Damage Cost (Million IDR)</b>
1	1996	1,676	15	NA
2	Dec, 2000	1,500	27	300
3	Apr, 2001	200	NA	NA
4	Nov, 2001	NA	NA	NA
5	Feb, 2004	400	NA	NA
6	Mar, 2004	NA	NA	NA
7	2005	NA	NA	NA
8	Feb, 2006	NA	39	NA
9	Feb, 2013	132	7	NA
10	Feb, 2014	1177	19	1,870,000

Table 1. Flood Disaster in Manado City in the last 25 years – (Source: from various sources especially<sup>2,3</sup>)

Related to these problems, it is necessary to understand that disaster management, especially hydrometeorological disasters, must be carried out effectively by involving many parties. Cases of flood disasters in the city of Manado is one example of the many efforts to mitigate and handle floods that must be understood by all parties in Indonesia, especially local governments. That is because almost 70% of areas in Indonesia have vulnerabilities and threats in disaster hydrometeorology, such as floods, droughts, landslides, and whirlwinds<sup>4</sup>.

Indonesian laws and regulations have sought to regulate how disaster management procedures can be carried out, especially with regard to the synergy and cooperation of various parties. Act No. 24 of 2007 states that there is a need for a special institution/institution that addresses the issue of disaster, thus, The National Disaster Management Agency (BNPB) has been formed. As referred to in Article 10 paragraph (1) The National Disaster Management Agency consists of directors of disaster management and disaster management implementers. The steering element in BNPB consists of both central and regional governments and the professional communities. The implementing elements of disaster management are professionals and experts.

In this regard, a more in-depth description of this policy can be understood with the existence of PERKA BNPB No. 10 of 2008. Regulation of the Head of BNPB which discusses Guidelines Disaster Emergency Response Command contains instructions on the involvement of professionals and experts in disaster management efforts, especially in disaster relief efforts. This guideline is implemented by involving many parties including institutions/organizations concerned, The Indonesian National Army (TNI) and the Indonesian National Police in an effort to deal with disaster emergency response which in this case is focused on Sam Ratulangi Air Base.

Related to this based on the author's observations on involvement at Sam Ratulangi Air Base there are some specific problems related to efforts to overcome flood disasters in the city of Manado. Flood valuation on January 15, 2014, showed the limited involvement of the Sam Ratulangi Air Force Base due to various factors. One of them is related to the participation of the TNI, the position of the TNI AU especially the Sam Ratulangi Air Force Base in the organizational structure of the disaster management field coordination unit. The military position is only as a helper to the national coordinating body for disaster relief and

upon request from the local government or the Government's place (to be formed). When natural disasters occur, the TNI AU, especially Air Force Base, Sam Ratulangi, is involved in the initiative rather than waiting for requests from the local government.

Of course, there is a certain obstacle that causes the TNI to be maximized, especially the Sam Ratulangi Air Force Base, in supporting natural disaster management in the North Sulawesi region. These factors need to be studied in greater depth where the level of vulnerability and risk of disasters in the city of Manado is still quite high. The involvement of the TNI AU was then assumed to have a significant impact in efforts to reduce the impact of disasters, especially in the work area of the Sam Ratulangi Air Force base.

The great impact of natural disasters can continue if post-disaster recovery is not hastened, the big impact will not only affect only one sector but also massively affect the related social systems in that scope. In the previous statement, it can be understood that flash floods in the city of Manado have affected the death of the economic, political and social systems not only in the city of Manado but also in North Sulawesi as a whole and in general on national conditions<sup>5</sup>. According to this, cross-cutting issues are necessary; especially if it continues on the resilience, sovereignty, integrity of the Republic of Indonesia, a special scheme is needed in efforts to restore it.

However, what needs to be understood is that disaster if not handled properly will have an impact on the stability of security and the governance in the region, so that there need to be real efforts and actions in the process of disaster management that can provide community resilience in facing disasters. The role of the military in the management of natural disasters is very challenging to study, especially regarding the synergy of the Air Force Base of Sam Ratulangi and the local government in response to natural flood disasters in Manado, North Sulawesi.

## **Literature review**

### *Disaster Management*

Sopaheluwaken<sup>6</sup> describes the term disaster as an event caused by nature or because of human activities, occurs suddenly or slowly, causing loss of human life, property and environmental damage; this incident occurs beyond the ability of the community with all its resources<sup>7</sup>. Moreover, the Natural Law no. 24 of 2007 concerning Disaster Man-

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agement states that disasters are events or series of events that threaten or disrupt people's lives and livelihoods caused by both natural factors and non-natural factors as well as human factors resulting in human casualties, environmental damage, property losses, and psychological impacts.

Referring to the above definition, the *Disaster Management System* is a science that studies the disaster along with aspects related to the disaster, especially the risk of disasters and how to avoid the risk of disaster. Disaster management is a dynamic process of the operation management functions that we know so far, for example, the function of *planning, organizing, actuating* and *controlling*. The way in which disaster management works is through activities that exist in each quadrant/cycle/field of work, namely prevention, mitigation, and preparedness, emergency response, and recovery while the aim, in general, is to protect the community and its property from the threat of disaster.

Related to this PP No. 21 of 2008 states that held disaster management is a series of measures that include the establishment of development policies risk of disaster, disaster prevention activities, emergency response, and rehabilitation. The implementation of disaster management aims to ensure the implementation of disaster management in a planned, integrated, coordinated and comprehensive manner to protect the community from threats, risks, and impacts of disasters. According to Raditya Jati<sup>8</sup> as Director of Disaster Risk Reduction at BNPB, efforts are needed in disaster management by knowing the risk of disasters in an area<sup>9</sup>. For this reason, disaster risk assessment documents are needed by various parties (academics, local government, consultants, the private sector, etc.) that can be used as a reference in development and spatial policies, as well as synchronization of policies across sectors<sup>8</sup>.

Furthermore, in disaster management, there needs to be rapid, precise, effective, efficient, integrated and accountable coordination and handling so that casualties and property losses can be minimized. Disaster management, especially during disaster emergency response must be carried out quickly, accurately and coordinated in one command. To carry out the handling of disaster emergency response effectively, coordinated and one command, the central government/regional government, is represented by the Head of BNPB/BPBD at the Provincial/Regency/ City level in accordance with their authority.

In Government Regulations (PP) no. 21 of 2008 concerning Disaster Management Organizers can appoint an official as the commander in handling disaster emergency response in accordance with article 47 paragraphs (2). It is intended as an effort to facilitate access to instruct the sector in terms of demand and deployment of human resources, equipment, logistics, migration, customs, and quarantine, licensing, procurement of goods/services, management and accountability for the money for goods, and rescue.

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### Synergy

Paton, Medovar and Latash<sup>16</sup> explained that synergy is an attempt to divide a task by providing opportunities for each party to complement one another so as to achieve the ultimate goal or the completion of a joint task. For this reason, Paton et al<sup>16</sup> introduces the main three pillars of synergy theory, namely *sharing*, *Flexibility/stability (error compensation)*, and *task-dependence*. *Sharing* or division of tasks is defined as an effort to be able to provide each component of the task in producing or working on command. It is a form of differentiation between various parties/sectors/institutions that are coordinated in achieving certain tasks to be able to maximally use their respective expertise<sup>10,11</sup>. *Flexibility/stability (error compensation)* or flexibility/stability (completing deficiencies) is described as a task distribution effort that not only expects mere balance but complementarity so that errors faced by one or two sectors do not have a wide impact on system damage or failure to achieve the purpose. This pillar is intended that synergy requires the flexibility of each sector that is not rigid in a mere rule, but dealing with the understanding of their respective roles and complementing each other when needed. The third pillar is *Task-dependence* or dependence on task; this third pillar is intended to avoid the definition of abstract synergy so that the main focus of synergy is to achieve a specific goal or complete a particular task. It is on this third pillar that all achievements are attained into the process between each actor/institution/sector/institution regardless of the size of the role of each actor/institution/sector/institution.

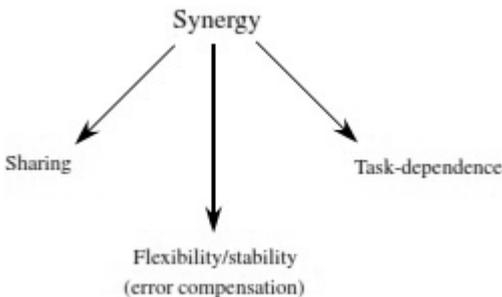


Figure 1: Three Concepts / Main Pillar of Synergy  
Source: Paton et al<sup>16</sup>

### *Civil-Military Relations*

Civil and military are essentially two different entities. Civil in political terms can be defined as a public or a folk group that is subject to job political policies of the state government whereas the military is a state tool in ensuring security and order so that the implementation of political policies can run smoothly without experiencing interference and protecting civilians so that their rights as citizens are not violated.

Definitions according to CR. Bakhrie<sup>12</sup> regarding the military restricts the military concept to all officers who sit in positions that demand political skills, aspirations, and have a political orientation, and do not consider rank. In defining the military as military personnel, military institutions, or only senior officers. Furthermore, Lt. Gen. (Ret.) Sayidiman Suryohadiprojo defines the military as an armed force organization with the assignment of safeguarding the sovereignty of the state.

In the context of disaster management by Maarif<sup>13</sup> poles military has set internationally. This is stated in the UN General Assembly Resolution no. 46/182, "humanitarian assistance must be provided on the basis of humanity, neutrality, and impartiality. In addition, it is stated on the guidelines for the use of military and civil defense assets in disaster relief" (Oslo Guidelines, 1994-updates November 2006, revision I.I November 2007).

The concept of military-civil cooperation refers to an internationally regulated understanding. CIMIC or the *Civil-Military Cooperation* is a military function through a commander connected with civilian agencies active in emergency operations. According to Maarif<sup>13</sup>, there are three important things in CIMIC.

1. Support for troops: all activities designed for support military forces from local community groups.
2. Civil-military relations: joint coordination and planning with civilian agencies to support the mission.
3. Support for the civilian environment: provision of all forms of assistance (expertise, information, security, infrastructure, development capacity, etc.) to civil society to support military missions.

Meanwhile, CMCoord or *Civil-Military Coordination* can be understood as a fundamental dialogue and interaction between civilian and military actors in emergency response to protect and support human-

itarian principles, avoid competition, and minimize inconsistencies in achieving common goals. The basic strategies range from coexistence to cooperation. Coordination is a responsibility facilitated by joint relationships and training.

### *National Security*

Barry Buzan<sup>14</sup> k security wheel with regard to a matter of survival (*survival*). Security of a country is divided into five dimensions, namely political, military, economic, social, and environmental dimensions. Each security dimension has a security unit, values, survival characteristics, and different threats. In the realist view, the concept of national security is a condition limited by military threats or the ability of a country to protect the nation's state from military attacks originating from its external environment.

### **Method**

This research uses qualitative methods. According to Creswell<sup>15</sup> qualitative research is a method to explore and understand the meaning that a number of individuals or groups of people are thought to originate from social or humanitarian problems. This qualitative research process involves important efforts such as asking questions and procedures, collecting specific data from participants/resource persons, analyzing data inductively from themes that are specific to common themes, and interpreting data.

The research approach implemented is a case study approach, which, according to Creswell<sup>15</sup>, is a research strategy in which researchers carefully investigate a program, event, activity, process or group of individuals. Cases are limited by time and activity, and researchers collect information in full by using various data collection procedures in a predetermined time. The case study in this study was during the emergency response to floods that occurred in the city of Manado in April 2014.

The data sources are divided into two types of data sources, namely primary and secondary data sources. Primary data were collected through observations based on activities and events in the field and interviews with the Head of North Sulawesi Province BPBD, North Sulawesi Province BPBP Operational Head, Kadisops Lanud Sam Ratulangi, Kasiopslat Lanud Sam Ratulangi, Pekas Sam Ratulangi Airport, North Sulawesi SAR operations staff, Secretary of Manado's Tikala Vil-

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lage and several flood victims. Secondary data were obtained from various agencies or related institutions such as BNPB, BPBD, TNI AU Base Sam Ratulangi, community institutions. Data analysis in this study was carried out through several processes including data reduction, data presentation, and data verification.

### **Discussion**

Understanding disaster management is related to how the highest decision makers until the low sectors are united in the same mindset. BNPB basically seeks how the mindset of disaster can be understood at the regional level by providing the same concept of thinking and known as BPBD. There may be different characteristics between BPBDs, but the mindset remains the same, and at this stage, each BPBD compiles its institutions based on the uniqueness of the spatial and temporal scope they have. However, that difference is not a crucial domain that causes BPBD to be very different from its parent, BNPB. Likewise, with the specifications set in the Military world, the TNI in smaller units such as the Air Base certainly has differences with other Air Bases, but their essence as a TNI institution remains, as they have the same mindset. This mindset in the military world is then known as doctrine.

Swa Bhuwana Paksa is a doctrine or teaching and at the same time a symbol of the Air Force. Forced Bhuwana Self has the content of meaning as the wing of the Indonesian homeland. The symbol also states that the Indonesian Air Force is an umbrella that protects all areas of Indonesian sovereignty and elevates the dignity of the nation and is determined to build it to become a glorious Indonesia in the air. In the Swa Air Force doctrine Bhuwana listed assignments The principal of the Indonesian Air Force, among others: "As the enforcer of state sovereignty in the air, maintaining the integrity of national airspace and national integrity together with all components of other national defense forces, as well as organizing law enforcement in national airspace" and "developing national potential into defense forces state of air aspects".

Regarding the discussion in this paper how nature is part of the threat associated with the existence of OMSP (Military Operations Other Than War) has been explained that the TNI, especially the Air Force, is on other main tasks which are considered more important, namely maintaining airspace sovereignty. In this capacity, all of the Air Force's resources are put. But another role that puts the TNI in civilian

assistance is a separate dilemma in which the TNI does not have specificity in the field. This is what seemed to be solved in the stages of the policy strategy so that the military can follow a person into the right mindset and the doctrine can be understood by all TNI, so it creates a good synergy. This is in line with another view of Paton et al<sup>16</sup> who explains that synergy is an attempt to divide a task by providing an opportunity for each party to complement one another so as to achieve the ultimate goal or the completion of a joint task.

Erwin Dwi  
Koerniawan

### *Division of Tasks as Synergy*

*Sharing* or division of tasks as an effort others to be able to provide each component of the task in producing or working on a command, it is a form of differentiation between various parties/sectors/institutions that are coordinated in achieving certain tasks to be able to maximally use their respective expertise. The division of tasks when carrying out disaster management between BPBD and TNI has been going well. However, the efforts of these specifications are limited to emergency response attempts, after which perny letter ataan flood emergencies in your tt wishful Governors established an emergency response system that is directly led by the governor at that time only its military and police to help evacuate flood victims. According to Kadiaops Sam Ratulangi Field, the TNI was always involved only during emergency response, and after the disaster was not much involved in pre-disaster activities, it was indeed related to the limited ability of TNI resources.

For this reason, a variety of special skills related to the involvement of various sectors are required; in this case, the TNI must be encouraged to take part in the overall disaster management efforts in the pre, current and post-disaster stages. Therefore, the urge for the TNI to have resources that are experts in the field of disaster is great hope for the creation of synergy between the Regional Government and the TNI. Furthermore, the TNI and BPBD must have clear rules for placing measurable cooperation positions; the rules of the game are derived from Law no. 24 of 2007 and BNPB Regulation no. 10 of 2008 and it is better in the form of *standard operating procedures* or technical instruction guidelines.

### *Sector Stability*

*Flexibility/stability (error compensation)* or flexibility/stability (completing deficiencies) is described as a task distribution effort that not only expects mere balance but also requires complementarity so that errors

faced by one or two sectors do not have a wide impact on system damage or failure to achieve the purpose. This pillar means that synergy requires rule flexibility of each sector and understanding of their respective roles and complements each other when needed.

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In the efforts of flood disaster management BPBD and the TNI and other sectors have sought to complement each other and try to be flexible in disaster management. But basically, the role of more than BPBD has always been the main point of emphasis in this synergy effort. BPBD depends also on the main instructions of the higher authorities, namely the Regional Government (Governors and Mayor) so that the involvement of other sectors experiences long obstacles related to the long decision-making.

Efforts are needed to equalize perceptions and frameworks at the regional level which are attended by each element of the regional leadership. This is the main pressing point in efforts to implement development based on the needs of disaster management. Each sector places itself in accordance with a collective agreement so that both civilians and the military can automatically move in response and emergency needs. However, in the pre-disaster-based planning stage careful planning is also needed where each sector must be included in the planning, but of course internally each sector must be able to place itself in the capacity and capability to follow the rules of the game.

### *Dependence on Tasks*

The third pillar is *Task-dependence* or task dependency. The third pillar is intended to avoid the definition of abstract synergy so that the main focus of synergy is to achieve a specific goal or complete a particular task. It is on this third pillar that all achievements are attained into the process between each actor/ institution/ regardless the size of each role other than that the contribution of each actor/institution/sector/ institution must be well-distributed.

The common goal in disaster management efforts is clear to repeat the risks and impacts of natural disasters. This point is always the main key to the synergy between civilians and the military in disaster relief efforts. However, the pressing point of the problem is always associated with how effective the performance and synergy are. So from that, the answer is clear that synergy does not work effectively so that the achievement of the goals and the course of the task still seems abstract

and not well controlled. The task of each sector has not been placed on clear rules so that the impression of overlap is inevitable in the effort to mitigate floods and flash floods in the city of Manado.

As with the three pillars previously mentioned, it becomes increasingly clear that the basic needs in synergy between civil-military in the effort to mitigate floods in the city of Manado are (1) related to the improvement and capacity and capability of each sector; (2) equating perceptions and frameworks at the level of regional leadership elements; (3) preparation of SOPs / operational guidelines and / or technical guidelines; and (4) performance improvement based on evaluation of disaster management. These points are offered based on the assessment of the three main pillars of synergy carried out by civilians and the military in disaster management efforts in the city of Manado. But these problems need to be solved more complex by dissecting synergy between civilians and the military.

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#### *TNI as BKO (Operational Control Assistance)*

BKO is a mechanism involving the TNI in control of other institutions. BKO is intended that the core institutions of disaster management such as BPBD are still able to handle the situation of disaster management from the results of various evaluations obtained on the disaster sector leading sector institutions. BKO only assists when BPBD requires quality and quantity strengthening, and the use of troops that have certain specifications in the TNI, including using the equipment needed. However, the BPBD still has complete control over the TNI troops needed.

The use of the TNI in the main spectrum is advisable to carry out, where the TNI is still seen as an institution that does not fully implement a military approach, a situation where the TNI carries out civil duties in the framework of saving the nation's life from the threat of disaster. In other words, BPBD has full rights to activities in the field. The BKO is also needed at least upon the request of not only BNPB or BPBD but also local government authorities, such as governors or regents/mayors. In the TNI BKO, it is subject to civil playing rules.

#### *TNI Take Over Duty*

The second spectrum emphasizes the establishment of the TNI as the leading sector in disaster management. This situation is possible when it is seen that BPBD and BNPB cannot do much more about the sit-

uation of disaster management, especially in relation to emergency response activities. Natural disasters that occur have been in a position to threaten the country and the safety of all nations. To reach this spectrum, it is highly dependent on the political decision of the government to determine the level of threats from natural disasters and the determination of the handling situation that can only be done by the TNI. While this decision is still held by the government as civil authority, the TNI is legitimately put forward as a disaster management agency. Furthermore, the disaster threat spectrum can be increased to become a military emergency operation that puts forward the TNI.

### *TNI as a Leading Disaster Management Sector*

Since the beginning, the military has been used as the holder of major control over disaster management efforts. This is normal in some countries such as Finland and Thailand since at the beginning the government has determined the most dangerous situation based on in-depth studies that cannot be held by BPBD or BNPB at all. This is deemed necessary when the threat spectrum does not allow civilians with their ability to reach and overcome the problem of the disaster, but the TNI with the available resources allows the disaster management to be carried out effectively. This political policy is certainly based on the decision of the decision makers but the movement of the TNI does not need to be based on sudden bureaucracy, but it has been automatically based on general policies that have been established long before the threat of disaster arises.

However, the TNI must have the right resource readiness in its task to take on the third spectrum. The capacity and capability of the TNI based on civil interests need to be developed far from its current capabilities, where instruments ranging from resources, technology, or derivative policies need to be re-formed by putting forward the TNI itself to carry out operations in the future.

### **Conclusions and suggestions**

Based on the description above, it can be seen that the main differences in disaster management efforts between local governments and related to perceptions of flood mitigation, sector introspection regarding flood mitigation, the motivation for flood mitigation, disaster management implementation plans. The planning approach is highly dependent on the political interests of the regional government. Furthermore, based

on the analysis of the three pillars of synergy between civil-military in efforts to mitigate floods in the city of Manado, the problems identified are (1) related to the improvement and capacity and capability of each sector; (2) equating perceptions and frameworks at the level of regional leadership elements; (3) preparation of SOPs/ operational guidelines and/or technical guidelines; and (4) performance improvement based on evaluation of disaster management.

Erwin Dwi  
Koerniawan

For this reason, a joint and massive effort is needed that involves many parties to express their input on mitigation policies. In addition, a more in-depth study of the synergy and relationship of military civilians are needed to the emergence of an understanding of National Security.

## Notes

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# Food Security or Food Sovereignty?

## Questioning the Paradigm of Indonesian Military Involvement in Agriculture

*Arry Bainus, Dina Yulianti*

### **Abstract**

Indonesian military (TNI) involvement in the agricultural sector had begun since the 1960s when they had a significant role in a global modernization of agriculture project led by the US government and world donor agencies, namely the Green Revolution. In 2015, TNI signed a MoU with the Ministry of Agriculture in a “Special Efforts Program for Accelerating Food Production” which again delivers an important role to the military in the agricultural sector by implementing a Green Revolution oriented farming. This paper, in contrast to some of the previous writings, does not examine the right or wrong of this involvement. This study provides a paradigmatic response to a question, why TNI insists on implementing a program that after 50 years has not proven successful in reaching the target of food self-sufficiency? Based on literature studies and analysis of empirical data, this study suggests that there is a paradigmatic misperception among the policy makers, both civil and military, about food security concept. The authors also offer a new implementation framework based on the concept of food sovereignty that can be performed by policy makers in Indonesia and other developing countries.

*Keywords: food security, national security, food sovereignty, national sovereignty, Green Revolution*

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## Introduction

One of the main national programs of President Joko Widodo's administration is 'food sovereignty'. It set an ambitious target to achieve food self-sufficiency of some strategic food commodities such as rice, corn, soybeans, and sugar by 2017. To bring about this goal, the Ministry of Agriculture requested assistance from the Indonesian military namely Tentara Nasional Indonesia (TNI). On January 8, 2015, a memorandum of understanding (MoU) between TNI and the Ministry of Agriculture authorized TNI to play an active role in the food self-sufficiency project. According to the MoU, within three years TNI will assist the Ministry in exercising some activities, among others providing counseling to farmers, assisting in the procurement of fertilizer, seeds, and pesticides, building irrigation infrastructure, opening new rice fields, distributing agricultural machinery, and arranging the selling of the harvest.

The MoU has been criticized by Indonesia Ombudsman from the point of view that this project goes too far from the competence and scope of work of TNI. According to the Ombudsman Commissioner, Alamsyah Saragih, the program contradicts the rules of TNI which should protect the security of the country from enemy attacks. Another reason is that there are some complaints from farmers about this program, such as a failure of a 300-hectare new rice field opened by TNI in Kalimago Village, Poso Regency, Central Sulawesi, because of the lack of infrastructure. The Rice Cultivation Acceleration Movement Program initiated by West Sumatra Governor Irwan Prayitno in collaboration with the TNI has drawn protests because it allows TNI to take over the land if the farmer does not immediately plant the land 30 days after harvest-time.

The Army Chief of Staff, General Mulyono, answered the criticism by saying, "We help the people. We have 'military operations other than war'. This is one of them."<sup>1,2</sup>

Observers and activists criticize TNI involvement in the agricultural sector by focusing on these points (1) whether its role is urgent and in accordance with the Law (2) civil-military relations and fears of a return to TNI domination in civilian life as in the New Order era, and (3) negative impacts of TNI's engagement in the food sector<sup>3,4,5</sup>.

TNI has an assumption that food security is correlated with the national stability<sup>4</sup>. The riots in many developing countries due to the food crisis in 2008, even resulting in the overthrow of Haitian President, and the crisis in 2010-2011 which led to regime change in Tun-

sia and Egypt are empirical evidence of this assumption. However, the Green Revolution oriented agricultural system is still used as the program even though after 50 years of implementation, the system fails to produce the desired results, namely food security and food-self-sufficiency. The authors suggest that the root of the problem is the policy-makers misinterpretation of food security and food sovereignty, which results in the improper agricultural program. Through our analysis, we wish to improve the literature regarding the paradigm adopted by the TNI in its involvement in the food sector.

*Arry Bainus*

*Dina Yulianti*

The discussion in this article will be divided into three parts. The first one examines the history of TNI's role in the food sector and the Green Revolution. In the second part, we explain the food security paradigm and how its implementation has proven to fail in achieving the targets set by the TNI, namely food self-sufficiency for the sake of national security. The third one will discuss the food sovereignty paradigm. Here, we offered a framework for achieving food sovereignty, to be used by stakeholders in this field. In writing this article, the author uses scholarly sources, media reports, and personal interviews with a number of CSO food activists.

### **The History of TNI's Role in Food Sector**

Both the TNI and the Ministry of Agriculture stated that the collaboration of the two parties in the Special Efforts Program for Accelerating Food Production is in line with the TNI's role in maintaining national security. "This involvement is an integral part of building food security and national resilience. There is nothing wrong in supporting food sovereignty," said Head of Public Relations and Public Information Bureau Ministry of Agriculture,<sup>6</sup> pointed out that the MoU is in accordance with Law No. 3 of 2002 concerning National Defense and Law No. 34 of 2004 concerning the TNI<sup>5</sup>.

Meanwhile, TNI also uses the Law No. 34 of 2004, especially article 8 which states that one of the army's tasks is "implementing defense on land" as the legal basis for its role in the agricultural sector and the task can be achieved in the form of Territorial Coaching.

"Territorial Coaching is one of the main functions of the Army; it is one of the main activities in achieving the main task of the Army. The task is aimed at winning battles on land and overcoming community difficulties. In winning the battle on land, the preparation of space, tools and fighting conditions are fundamental. One form of these

preparations battles is increasing national food and energy security in the framework of the universal defense. ... because food security will indirectly increase national security. Likewise, if we had food insecurity, the country's sovereignty and stability could be disrupted."<sup>4,6</sup>

The steps taken by the TNI, in collaboration with the Ministry of Agriculture, in increasing food production are the procurement of seeds, fertilizers, pesticides, and water infrastructure development. These four are the main components in modern farming methods that were introduced globally from the 1960s by the Rockefeller Foundation in collaboration with the US government under the name of the Green Revolution<sup>7</sup>.

The Green Revolution is a term that refers to the renewal of the agricultural system by using high-yield seeds that are engineered in the laboratory and mass produced by multinational seed companies, chemical nutrients (fertilizers), chemical toxic against pests (pesticides), heavily water supply. This new agricultural technology has been developed by the Rockefeller Foundation since 1940 in Mexico and one of the researchers who managed to find high-yield seeds, namely Norman Borlaug, in 1971 received the Peace Nobel prize instead of biology. The dissemination of the Green Revolution program in developing countries by the US government was closely related to efforts of obstructing Soviet Unions' (Communism) expansion in the region.

Cleaver<sup>8</sup> quoted the sentence on Foreign Affairs (1953) written by John King, "The major problem in the struggle for keeping South and Southeast Asia free of Communist domination is the standard of living of their peoples ... The struggle of the 'East' versus the 'West' in Asia is, in part, a race for production, and rice is the symbol and substance of it." While Patel<sup>9</sup> quoted Maurin (1949), who wrote: "The only way to prevent a Red Revolution is to promote a Green Revolution."

Mexico was chosen as the pilot project of the Green Revolution with two hidden reasons. First, it was in the interests of Rockefeller's Standard Oil which was seized by the then President of Mexico, Lazaro Cardenas; and second, to prevent the influence of Nazi and the increasing of nationalism in the country. The project was successful since the drastically increment of the wheat production had changed Mexico from a food importer country into a food exporter. Although according to the 2017 study of CNDH<sup>10</sup> 23,3% of Mexico's population still experience food poverty or inability to buy food, in the early years, the Green Revolution has successfully made Mexico a 'less antagonistic neighbor' for the US<sup>8</sup>.

However, Cleaver<sup>8</sup> also explained that the final target of the agricultural technology reform program is the glory of US capitalism by saying “food was already an old weapon in the anti-Communist arsenal of American capitalism”. Cleaver<sup>8</sup> argued that the Green Revolution agricultural program is an “integral part of the postwar effort to contain social revolution and make the world safe for profit”. Through the Green Revolution, the US has the opportunity to increase its penetration into the economy of Third World countries by raising their dependency on technology, seed, pesticides, and chemical fertilizers made by US companies.

In Indonesia, the financial benefits achieved by multinational companies in the implementation of this program was also taken by Indonesian military elite as explained by Crouch<sup>11</sup> in his book “The Army and Politics in Indonesia”. Patel<sup>9</sup> wrote, the Indonesian government at that time allocated enormous funds to make Indonesian farmers move from traditional farming methods to the modern methods of Green Revolution, including paying a number of multinational companies of US\$50 per hectare for their services in providing materials such as ‘superior’ seed, fertilizer, pesticides, and counseling of farming management. The funds came from foreign debt and petroleum sales.

The implementation of the Green Revolution program in Indonesia was carried out under the name Bimas (Mass Guidance) and Inmas (Mass Intensification). The two farming programs method were different from traditional farming methods, where farmers usually used their own locally cultivated seeds, organic fertilizers, and non-chemical pesticides. Government efforts to change the way of farming were carried out in conjunction with the political control mechanism, which prohibited village-level mass and political organizations. The election of the village head was replaced by an appointment system, as well as the placement of a military officer at the village level<sup>12</sup>. Local government officials, from the subdistrict head until the village officials fully controlled the implementation of this program and took financial benefits from it.

Meanwhile, only 20-30% of farmer’s households benefited from this program, namely those who had extensive land. But they were not independent farmers since they depended heavily on state subsidies; while some of the subsidies funds come from foreign debt. The rest are poor farmers who owe less than 0.5 hectares of land or farm laborers who work in the land of rich farmers<sup>9,13,14</sup>

The goal of achieving rice self-sufficiency through agricultural modernization can only be achieved in 1984-1986. In the following years, Indonesia became a rice importer country again. Farmers also faced the negative impact of using imported seeds, chemical fertilizers, and pesticides. This was reported, among others, in the 2010 Ministry of Agriculture publication entitled “A Decade of Food Security Institutions in Indonesia”:

“... in the long run, these successes [of Green Revolution] have negative impacts that threaten the life of the agricultural sector, such as the command of rice cultivation, the imposition of the use of imported seeds, chemical fertilizers, pesticides. As a result, in the 1990s, farmers began to face pest attacks. Besides that, soil fertility is decreasing, the increasing use of fertilizer and pesticides are no longer effective, and synthetic chemicals used in agriculture have damaged the structure, chemistry, and biology of the soil.”

Although it did not get satisfactory results, the government continue this Green-Revolution oriented project with various names. While the Ministry acknowledged the adverse effects of military-style imposition in the past, it still collaborates with TNI to implement a program that is no different from Bimas and Inmas of the New Order administration. Land Expansion Director's of The Directorate General of Agricultural Infrastructure and Facilities of the Ministry of Agriculture, Prasetyo Nuchsin, said an interesting statement. According to him, the task to open new paddy fields is given to TNI because ‘TNI is a discipline [institution] and there is no party who dares to resist the army.’<sup>1,2</sup>

This statement shows the depth of military influence in Indonesian mindsets. The strong domination of the army during the New Order period has led to the inferiority of the civil society. Jan P Ate<sup>15</sup> argues, this phenomenon is common, ‘Indonesia follows the developing country paradigm.’ In other words, the military is often assumed to be more professional than a civilian. Civilians in Indonesia generally accept the claim that the military is an integrated part of the society and it has professional values, such as effective, coordinative, and uniformed. This is partly evidenced by the imitation of civil society in the military style, such as military-style uniforms used by various non-military institutions and the use of a curriculum similar to military academies by several civil education institutions<sup>16</sup>.

## Criticizing the Paradigm of Food Security

By accepting the assumption that the TNI's assistance in food production program is compulsory –because the fulfillment of the people's needs of food correlates with national security— we will meet with the problem of definition and paradigm.

The TNI tends to use the term 'food security' (in Indonesian, this phrase is translated by 'ketahanan pangan'<sup>17</sup> and is often considered synonymous with 'self-sufficiency'). According to TNI, "... the meaning of food security contains several aspects such as availability, diversity, security, equity, access, and feasibility and sustainability [of food]. ... [it is] very closely related to the main task of the TNI in maintaining the integrity and sovereignty of the Republic of Indonesia."<sup>4</sup>

Meanwhile, the Ministry of Agriculture uses these three terms inconsistently: food security, food sovereignty, and 'self-sufficiency'. In the 2017 Ministry of Agriculture's Performance Report page 12, it is stated that the vision of the Ministry of Agriculture is 'the realization of independent and sovereign Indonesia based on Cooperation'. While on page 13, it is stated that the ministry's target is 'the realization of self-sufficiency in rice, corn, soybeans and increased production of meat and sugar.' But on the next page it is explained that to achieve all these targets, the Ministry of Agriculture compiles and implements 7 Main Strategies for Strengthening Agricultural Development for 'Food Sovereignty'. The seven strategies are indifferent with Green-Revolution project<sup>18,19,20</sup>.

The problem is that food security and food sovereignty are two concepts whose paradigm is contradictory and the two words are not interchangeable.

This is the definition of food security adopted by FAO<sup>21</sup> documents (and documents of other UN agencies): *"Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life"*<sup>21</sup>.

The term of food security was first introduced in the 1970s at the World Food Conference with the meaning of achieving conditions of food availability and food stability at national and international levels. WTO<sup>22</sup> explained that food security initially connotes 'self-sufficiency' and governments in various countries are trying to achieve it by intervening in their agricultural production systems (i.e., the same agricultural method introduced by Green Revolution). Then, since the 1980s,

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this concept has shifted to the understanding that food production is only one of four food sources; in addition to trade, employment, and food transfers. Thus, efforts to achieve food security in food deficit countries are not solely to boost production but also to facilitate trade access.

This was confirmed in the Rome Declaration released by the World Food Summit in 1996, “We agree that trade is a key element in achieving food security. We agree to pursue food trade and overall trade policies that will encourage our producers and consumers to utilize available resources in an economically sound and sustainable manner.” In other words, food security only focuses on food availability, whether it is obtained through self-production or imports. In line with this, the WTO<sup>22</sup> compiled an Agreement of Agriculture (AoA) that reforms trade in the agricultural sector and makes policies in this sector more market-oriented. AoA obliges countries to reduce basic tariffs (import duties) on agricultural imports, limit government subsidies and protection of the domestic agricultural sector, and limit export subsidies<sup>22</sup>.

Data from FAO<sup>21</sup> shows global agricultural production has exceeded population growth, so that average per capita food availability is increasing. Globally, food supply per capita has increased from 2200 kcal/day in the early 1960s to more than 2800 kcal/day in 2009<sup>21</sup>. That is, the food crisis is not caused by a lack of food production at the global level but because of the inability of the community to access food which prices are determined by the free market.

In the 2014-2017 period, the Ministry of Agriculture reported that there had been an increase in rice and corn production, while soybeans and green beans had decreased, as seen in the following table.

<b>Food Production (in thousands of tons)</b>				
<b>Commodity</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
rice	70,846	75,398	79,172	81,382
corn	19,008	19,612	23,188	27,952
soybean	9,55	963	888	542
greenbean	2,45	271	276	244

Table 1. Food Production 2014-2017. Source: *Agriculture Statistic of 2017, Pusdatin Kementan*<sup>23</sup>

However, this data was criticized by the Indonesian Farmers' Union<sup>24,25</sup> in early January 2018 because it was provided by the Ministry itself and was out of sync with BPS and the Ministry of Trade data on rice imports in early 2018 at 500,000 tons (and in May 2018, the government importing another 500,000 tons). Meanwhile, the trend of rice prices on the market shows an increase, as shown in the following table.

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<b>Average rice price per kg, per year (in Rupiah) at the wholesale level</b>					
<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018 (by July)</b>
<b>8,941.02</b>	<b>9,637.88</b>	<b>10,915.13</b>	<b>11,511.34</b>	<b>11,534.93</b>	<b>12,115.7</b>

Table 2. The trend of Rising Price of Rice 2013-2018

The increase in rice prices is detrimental to farmers because rice farmers are generally consumers who also have to buy rice at a high price. This happens to poor farmers who own less than 0.5 hectares of land because they have to sell almost all of rice they harvested to meet their living needs and farming capital (buying seeds, fertilizers, pesticides). The number of poor people in rural areas in 2017 is 16,31 million (mostly farmers) where the role of food commodities in the poverty line is much greater than the role of non-food commodities (housing, clothing, education, and health).

This condition is in stark contrast to the amount of funds that the government has disbursed to boost food production. In 2017, the government spent Rp. 2,4 trillion seed subsidies and by 2018, the subsidies provided is increased to Rp.5,5 trillion. The vast money is used for buying seeds from corporations, both locally and transnational companies such as Dupont Pioneer, BISI, Syngenta and Monsanto Indonesia (Monagro). Pesticide and fertilizers are also purchased from transnational companies. The total State Budget (APBN) of the Ministry of Agriculture in 2017 is more than Rp. 22 trillion. Thus it can be concluded that the increase in food production and the amount of funds spent by the government in the agricultural sector are more benefited by corporations<sup>24,25</sup>.

From year to year, Indonesia cannot escape from importing rice and facing the problem of rising food prices. Under these conditions, the target of TNI and the Ministry of Agriculture, both food sufficiency and national security are almost impossible to achieve.

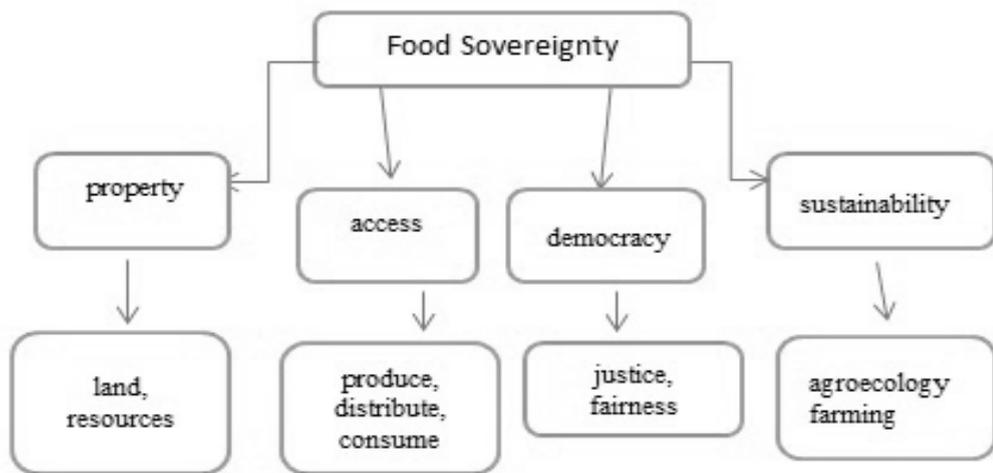
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In contrast, the food sovereignty paradigm is against the Green Revolution oriented farming and the trade-based food supply. The widely used definition of food sovereignty is the definition proposed by the People's Food Sovereignty Network<sup>26</sup>:

Food sovereignty is the right of peoples to define their own food and agriculture; to protect and regulate domestic agricultural production and trade in order to achieve sustainable development objectives; to determine the extent to which they want to be self-reliant; to restrict the dumping of products in their markets, and; to provide local fisheries-based communities the priority in managing the use of and the rights to aquatic resources. Food sovereignty does not negate trade, but rather, it promotes the formulation of trade policies and practices that serve the rights of peoples to safe, healthy and ecologically sustainable production.

There are several basic political concepts that are attached to the word 'sovereignty' regarding 'food', namely: property, access, democracy, and sustainability.



### *1) Property (ownership)*

Food sovereignty is seen as 'ownership' means that food and its production equipment, namely land and resources (water, agricultural equipment, etc.) must be owned sovereignly by the farmers (Indonesian people in general). This is in accordance with the mandate of the 1945 Constitution Article 33 Article 3, "Earth and water and the natural resources are controlled by the state and used for the greatest prosperity of the people."

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*Dina Yulianti*

Consequently, food sovereignty cannot be achieved when the majority of Indonesian farmers (54.5%) only owns less than 0.25 hectares of land while 60% of the total agricultural land is used by agricultural corporations<sup>27</sup>.

Food sovereignty also requires resource sovereignty. In Indonesia, many water sources that should be owned by the state and used for agriculture are handed over to corporations. One of the cases is the dispute between farmers in Central Java against a cement company that conducts cement mining in the Watuputih Groundwater Basin, Kendeng mountains, which has the potential to stop the water supply for around 153,402 farmers in the area.

### *2) Access*

Access correlates with purchasing power and trade. Ideally, farmers are able to produce food in surplus so that in addition to meeting their own food needs, they can sell the rest to have economic benefits. Profits will be obtained if the selling price is higher than the farming capital that has been issued. But Green Revolution-style farming methods hinder the benefit because farmers since 1960s are instructed by the state to use high-yield seeds (mostly imported). High-yield seed is a high-feeding seed; that is, the seed can produce optimally when given high-cost inputs, namely chemical fertilizers, pesticides, and a stable irrigation system that requires large costs in its development.

To overcome this problem, farmers must have seed sovereignty. In the past, farmers traditionally saved seeds for farming in the next season as well as having the ability to breed them (to produce superior local-seeds). If the seeds are produced by farmers themselves, the farming cost is much cheaper. Furthermore, local seeds are able to survive in poor conditions or suboptimal soil quality.

Various civil society organizations have tried to redevelop the ability of farmers to produce superior seeds, such as IF8 [IF Indonesian Farm-

er] corn seed which successfully acquiring a harvest up to 13.76 tons per hectare. But, instead of endorsing this seed sovereignty, the government seems to give more opportunities to multinational corporations to produce GMO corn seeds. One of the corporations is Monsanto Indonesia who claims invested up to Rp 1 trillion per year for research and development programs in producing biotechnology corn seeds<sup>28</sup>.

### 3) *Democracy*

Food sovereignty is based on democratic principles, where justice and fairness are upheld to protect farmers and agricultural systems. To achieve this, it is necessary to establish legal rules that are based on the principles of mutual benefit, independence, and social responsibility. Food producers (be it farmers, fishermen, and farmers) must also have access to policy formulation in their fields at all levels (local, national and global).

The struggle of the farmers in Kendeng mountains is one of many cases where justice is not enforced. According to Presidential Decree No. 26/2011, Watuputih Groundwater Basin has to be protected, but the decree is ignored by the local government by giving mining permission to the cement factory in that area. The farmers filed a claim to the court, and finally, in October 2016, the Supreme Court has canceled an environmental permit issued by the Governor of Central Java for PT Semen Gresik, which meant they could not continue the construction of the cement plant. However, the Governor issued a new permit to the same company but has changed its name to PT Semen Indonesia<sup>29</sup>. This is a form of injustice where the fate of more than 150,000 farmers is sacrificed for a corporation.

The principle of democracy also means the termination of old top-down methods (orders from the state to farmers to use certain systems) and accommodate alternatives offered by civil society.

Board of Sundanese Forest and Environmental Guard (Dewan Pemerhati Kehutanan dan Lingkungan Tatar Sunda - DPKLTS), a local NGO in West Java founded in 2001 is a civil society organization which developing a farming method called "SRI Indonesia". It attempts to revive a farming philosophy of Sundanese ancestors, namely the concept of 'silih asuh' (a mutual love among every creature in the same natural systems). For example, farming with chemical pesticide is not a compassionate attitude toward the land, birds, worms, and many tiny animals. The result of such action is that the land will not give its

compassion toward men so that the crops will decrease gradually. On the contrary, when farmers do the farming compassionately, the crops will increase 3-4 times more than conventional farming (personal interview, 2014).

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#### *4) Sustainability*

The program carried out by DPKLTS is related to the concept of sustainability. As acknowledged in one of the reports of the Ministry of Agriculture, Green Revolution oriented farming system degrade the soil quality. Food sovereignty requires production sustainability so that employment of agroecology is a must. Agroecology is a comprehensive agricultural system which protects the environment, health, social, and economic aspects of the agricultural community. This farming system does not use seeds of corporate production, fertilizers and chemical nutrients, but uses self-breeding local seeds, natural fertilizers, and nutrition. With agroecology, the farmers' dependence on corporate products will be stopped, the farmers household will benefit economically and socially, and the environment will be maintained for the sake of next generations<sup>24,25</sup>.

By implementing this framework of food sovereignty, food self-sufficiency may be achieved, a large state budget for importing inputs can be allocated to other strategic sectors, such as health and education. A sovereign state is a country that does not rely its basic needs on foreign states or multinational corporations, and this is the ultimate goal of the TNI's involvement in the agricultural sector.

### **Conclusion**

The purpose of this study is to examine the paradigm of Indonesia's military (TNI) in the agricultural sector. In TNI's perspective, food security is a pre-condition for national stability, security, and sovereignty. On that basis, the TNI views efforts to achieve food security is part of its non-military duties. Together with the Ministry of Agriculture in the administration of Presiden Joko Widodo, the TNI ran a Special Efforts Program for Accelerating Food Production which implementing a Green Revolution oriented farming.

The involvement of TNI in the agricultural sector is not new. In the era of President Soeharto, TNI also played a role in 'Bimas' and 'Inmas' program which applied the Green Revolution new farming technology sponsored by the US and the world funding agencies. Until now, this

farming system is still employed in Indonesia even though the result of self-sufficient has never been achieved (except in 1984 and 1986) and the country is forced to import the food to fulfill the domestic needs.

This condition raises a question, why TNI (and the Ministry of Agriculture) keep on implementing this kind of failure farming system while at the same time they set a goal of 'self-sufficiency', 'food security', and 'food sovereignty'? This study suggests that the root of this problem is a paradigmatic misperception of food security dan food sovereignty, thus resulting in improper agricultural program development by the Ministry of Agriculture whose implementation is assisted by the TNI.

For food security paradigm, this condition is considered acceptable since it endorses trade, not production, as the main way to achieve food security. Conversely, food sovereignty rejects trade as the main tool for meeting human food needs. In the view of food sovereignty, food must be produced by a sustainable agricultural system. Therefore the inputs used (seeds, fertilizers, anti-pests) must be organic, not chemical products of corporations.

The authors offer the implementation framework of food sovereignty, which consist of four parts, namely property, access, democracy, and sustainability. Implementing this framework will lead to practical implications, such as changes in agricultural methods and state budgeting. Further quantitative research is needed in analyzing the budget of this changes and the benefits obtained by making a paradigmatic shift in agricultural management.

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# The Role of the Indonesian Air Force in the Prevention of Drug Smuggling in Halim Perdanakusuma International Airport

## A Case Study

*Fajar Rosyadi, Rizki Ananda Ramadhan*

### **Abstract**

The research is aimed to elaborate and to analyze the role of the Indonesian Air Force in preventing drug smuggling in Halim Perdanakusuma International Airport. Drug Smuggling which is classified as one of the trans-national crimes becomes a huge non-traditional threat for national security. This research employs a qualitative method. Two types of data were used in this study. Data and documents related to drug smuggling in Halim Perdanakusuma International Airport were used as secondary data, while an in-depth interview with related stakeholders and observation were used as primary data. The result of the analysis showed that the Indonesian Air Force specifically stationed at Halim Perdana Kusuma International Airport plays an important role in securing the airport from such various threats as drug smuggling. The efforts for this purpose include placing the Indonesian Air Force personnel in the airport entry points, holding joint forces with the airport security, providing dog sniffers as well as training to improve the skills associated with the airport security and intelligence. Even though the Air Force has resources, personnel, and infrastructures for preventing drug smuggling threat that has now been transforming

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into a national security threat, it still needs to be supported by government policies implemented in the military operation other than war.

*Keywords: air force role, drug smuggling, airport*

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## **Introduction**

In general, national security means the basic need to protect and to secure the national sovereignty by endorsing the political power, economic power or military power to confront both internal and external threats<sup>1</sup>. The concept, then, emphasizes the government ability in protecting the country against territorial threats, which are defined as any efforts or events both coming from inside and outside and considered threatening the national sovereignty, territorial integrity, and national security<sup>2</sup>. By nature, threats are classified into two major forms, i.e., military threats and non-military threats. Military threats can be defined as any organized form of threat using armed force that is potentially considered endangering the national sovereignty, territorial integrity, and national security. Military threats might be in the form of aggression, territorial violation, armed rebellion; sabotage acts, espionage acts, terrorism, air, and sea security threats as well as communal conflict. On the other hand, non-military threats, also known as asymmetric threats, could be classified as threats using non-military tools and might endanger the national sovereignty, territorial integrity, and national security. The threats might infiltrate the state ideology, politics, economics, social-culture, and technology<sup>3</sup>.

One of the non-military threats which currently becomes a quite major issue worldwide is drug threat. The spread of the drug abuse is significantly increasing and obviously becoming a serious threat for the nation. Although the law enforcement for the drug smugglers has been very strict, it does not correlate positively with the drug smuggling rate in Indonesia. This number can be seen from many drug smuggling cases that have been thwarted by the relevant authorities, whose perpetrators were either local people or expatriates.

The Indonesian Air Force as a part of the Indonesian Armed Forces is responsible for protecting the national security, including protection from the drug abuse threat. One of the roles that the Indonesian Air Force take in protecting the country from such threat is assisting with the airport security to prevent any types of smuggling via airports, utilized as commercial Airport called as Civil Enclave (Military

Airbase used for Commercial Flight). In accordance with the new function, airport defense and security are still taking into account. Halim Perdanakusuma Airport is stated to be a Commercial Airport as of January 10, 2014, to alleviate the delay and over-capacity problem of Soekarno Hatta International Airport<sup>3</sup>.

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Halim Perdana Kusuma International Airport re-utilization brings about a side effect, one of which is drug smuggling possibilities with various methods and techniques. One of the revealed cases was the smuggling thwarted by the Indonesian Customs, National Narcotics Board and Indonesian Air Force authorities of 113 grams of Methamphetamine via UPS Cargo Service from Singapore bounded to Halim Perdanakusuma Airport. Another case was on 2016, when the Indonesian Customs along with National Narcotics Board, Indonesian Airforce and Indonesian Police successfully foiled the drug smuggling attempt by using Lego Kid toys. Over two days of investigations of the package, the toy filled with white powder was brought into the lab for further examination, and it was concluded that it was marijuana of 422 grams. During 2016 alone, 27 drug smuggling cases were revealed, 8 of which occurred in Halim Perdanakusuma Airport.

*Rizki Ananda  
Ramadhan*

Besides the mentioned drug smuggling discussed above, many other techniques are used for smuggling activities via Airport. Thus, the Indonesian Air Force authorities as a first contact guardian need to be more alert in running its role to prevent drug smuggling cases. Soekanto<sup>4</sup> explains that *role* is a dynamic indicator of a status owned by someone, while *status* itself is defined as a set of rights and obligations associated with a position. Therefore, based on the definitions, the Indonesian Air Force personnel should have an expanded role to prevent drug smuggling cases via the airport.

## **Literature Review**

### *National Security*

Soekanto<sup>4</sup> stated that a country could be classified as a safe country when it is not in a dangerous condition that may sacrifice its virtues to avoid war and, if necessary, utilize it to gain secure conditions. According to Soekanto<sup>4</sup>, security is related to environmental problems whereas life threats against certain collective unit issues are considered an existential threat. Based on the security issue criteria, Soekanto<sup>4</sup> divided security issues into five dimensions, i.e., political, military, economic, social and environment. Each of the criteria would hold

security unit, value and life sustainability characteristics, and various threats<sup>5,6,7</sup>.

Based on various sources of literature, Darmono et al.<sup>1</sup> defined national security as a basic need to protect and guard national interests by using political, economic and military power to encounter both internal and external threats. National interests, then, become the main factor of the concept of national security<sup>8,9</sup>. National interests are also further classified as the need to sustain and defend the existence of a country through economic and military power as well as diplomatic movements. The concept emphasizes the government's ability to protect its country's territorial integrity from both internal and external threats.

### *Security Threats*

Supriyatno<sup>10</sup> in the Defense White Book<sup>2</sup> explained that military and non-military threats would exist. Military threats are classified as the threats using armed forces that are quite well organized to put the integrity, sovereignty and national security of a country into danger. Military threats can be in the form of aggression, territorial violation, armed rebellion, sabotage, espionage, air and sea threats, and community conflicts. On the other hand, non-military threats are considered to endanger nation sovereignty, country integrity and also national security with its non-military factors<sup>11</sup>. These may range from ideological, political, and socio-cultural dimensions, information and technology to public safety.

### *Transnational Organized Crime*

Transnational crime (TNC) is also known as Cross-Border Crime. The concept was first introduced in the 90's during the United Nations Summit on Crime Prevention. In 1995, the UN identified 18 forms of transnational crime, namely money laundering, terrorism, theft of art and cultural object, theft of intellectual property, illicit arms trafficking, aircraft hijacking, sea piracy, insurance fraud, computer crime, trafficking in person, trade in human body parts, illicit drug trafficking, fraudulent bankruptcy, infiltration of legal business, corruption and bribery of public or party officials<sup>12,13,14</sup>.

The TNC often has de-stabilized the national security where it occurs. It is committed by individuals, groups and it either happens in local and global transactions. The Transnational crime is an act by organized groups of individuals with the purpose to earn an enormous amount of money both legally and illegally by trading items that would

give maximum profit with minimum risk, for example, weapon trading, violent crime, human trafficking, money laundry, blackmailing, pornography, prostitution, cybercrime. Transnational crime is not necessarily done by a group, but individuals instead. For example, cybercrimes are mostly committed by individuals and using minimum preparations, while the impact to the victim country is significant. Along the times, it has grown up into a transnational organized crime with more people and factors involved in it<sup>12</sup>.

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### **Research Methodology**

This research used a qualitative method. Moleong<sup>15</sup> explained that qualitative research aims to comprehend the phenomenon experienced by the research subjects, i.e., behaviour, perception, motivation, and action, all of which are holistically described using words and language in a certain context and using various natural methods.

The research used a case study approach. Creswell<sup>16</sup> explained that case study is found in many aspects, particularly in an evaluation in which the researcher develops an in-depth analysis of a certain case. Most of the time it takes the form of programs, events, activities, and processes of one or more individuals. The case should have time boundaries, and the researcher collects complete information using various data collection procedures based on the bounded time.

One reason why the researcher used such a method is more on an intention to further analyze the Indonesian Air Force role in mitigating the drug smuggling by using various data resources and data collection techniques. The researcher also puts a lot of efforts to gain knowledge of drug smuggling conditions in Indonesia, especially those which occurred in Halim Perdana Kusuma International Airport. The researcher also wants to find out the causes of the problem to comprehend the security system in Halim Perdana Kusuma International Airport in mitigating the drug smuggling and to raise the level of the optimal role of the Indonesian Air Force to minimize the case for the airport and other airports in Indonesia.

The interviewees were chosen by using purposive sampling techniques in which the researcher selected the interviewees according to adjusted research considerations. Those are:

1. The Indonesian Air Force as a party which mostly understands and is also most responsible for mitigating drug smuggling activities of the Airport.

2. The Indonesian Air Force has the authorities in taking necessary actions related to the drug smuggling mitigations.
3. The Indonesian Air Force as a party which has a thorough understanding of the drug smuggling mitigation case.

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The data collection methodology used in the research were observations, in-depth interviews, literature reviews, and documentation reviews. Research data analysis was done using interactive data analysis which consists of three phases of collectively occurring events such as data reduction, data presentation, and verifications. In regards to data validation, the researcher used the triangulation of theories and resources.

### **Results and Discussion**

The drug is now becoming one of the deadly threats, and it has been a major concern for all the impacted parties, not to mention the Halim Perdana Kusuma International Airport Authorities. Drug trafficking rate is greatly increasing, and the issue is considered as a major threat for all the people of Indonesia. Despite the strict law enforcement, it has not deterred the perpetrators, and they keep continuing to supply drugs to Indonesia. It is reflected on many drug smuggling cases revealed by Indonesian authorities, committed by the local people or the expatriates.

One access being utilized by the smugglers for their action is via the airport as recently mentioned by Halim Perdana Kusuma International Airport Chief, First Marshall Pip Darmanto S.E during the interview with the researcher. Although a maximum security level has been applied in the airport, they still find ways to smuggle it. They even use a more sophisticated way to smooth out the business, for example, by swallowing and hiding it inside automotive spare parts and many more.

#### *Drug smuggling attempts via airport throughout Indonesia (2016–2018)*

During 2016–2018, there are 78 attempts (27 attempts in 2016; 40 attempts in 2017 and 11 attempts in 2018) by drug smugglers via airport throughout Indonesia with cocaine on the top list with more than 4 tonnes in one shot raid in Halim Perdana Kusuma Airport, followed by dried marijuana (88.525 kg) and methamphetamine (52 kg). Some cases like ecstasy have also been found although the number is not as high

as dried marijuana or methamphetamine. Interestingly, methamphetamine is always found during the operation even though the smugglers only carried it in small packages.

Of all airports in Indonesia, Hang Nadim International Airport of Batam and Sultan Iskandar Muda Airport of Banda Aceh are considered to have the highest rank for the drug smuggling attempts (18 cases for each), followed by Halim Perdana Kusuma (8 cases), Kuala Namu of Medan (5 cases) and Sultan Syarif Kasim of Pekanbaru (4 cases).

In mitigating the drug smuggling, Halim Perdana Kusuma International Airport has deployed a sophisticated security system. It is also explained in the Regulation of Air Transport Directorate-General No. SKEP/2765/XII/2010 of the Standard Operating of Passenger, Aircraft Crew, Hand-Carried Luggage, Individual Security Checking.

Such a regulation describes that each passenger, aircraft personnel and individual entering the restricted area must hold the valid permit and security screening will be applied. The term Security Screening refers to a tool to detect weapons, explosive materials and dangerous items, and also other dangerous substances according to the law.

Security Screening is done by licensed security personnel of the aviation safety. Among that personnel are:

- a. Airport Security Personnel
- b. Air Transport Security Personnel
- c. Regulated Agent Security Personnel
- d. Flight Related Regulated Agent Security Personnel

Airport Security Personnel ensures that all passengers, aircraft crew, luggage and individuals that enter the restricted area and waiting area do not carry the prohibited items. Security Screening is applied in the Security Check Point (SCP) and divided into two areas (entry point to the check-in counter as the first Security Check Point and the entry point of boarding room as the second Security Check Point). The first Security Check Point is placed in the entry gate to the Counter Check-In area, and one screening lane must be available as the minimum requirement. The arrangement of the security equipment in the airport is as follows:

- a. The Walk-Through Metal Detector is placed next to recorded luggage x-ray instrument
- b. The minimum distance between the Walk Through Metal Detector and recorded luggage x-ray instrument is 50cm
- c. If there is more than one security lane available, then the minimum distance between two bars of WTMD is 60 cm

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*Rizki Ananda  
Ramadhan*

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- d. The minimum length of the Exit Belt including the roller is 250 cm. On the passenger side where they pass through, plexi-glass is installed.
- e. Plexiglas is installed as minimum as exit belt on length and as high as luggage x-ray tunnel instrument on height
- f. Next, to recorded luggage x-ray instrument, a desk is placed as a spot to examine the suspected material.
- g. The divider is given in between the bar of Walk-through Metal Detector and the cabin luggage x-ray instrument
- h. The divider is not a spot to place goods/luggage

Next discussion is the second Security Check Point in the entry gate of Boarding Room. The minimum requirements for this 2<sup>nd</sup> Security Check Point are Recorded Luggage X-ray instrument, Walk Through Metal Detector (WTMD), Hand Held Metal Detector (HHMD). The number of security lane might be adjusted to the number of pass-through passenger or goods, and other security equipment might be added as necessary.

The arrangement of the security equipment in the 2<sup>nd</sup> Security Check Point as followings:

- a. Walk Through Metal Detector is placed next to luggage x-ray instrument Minimum distance between the Walk Through Metal Detector and recorded luggage x-ray instrument is 50cm
- b. If there is more than one security lane available, then the minimum distance between two bars of WTMD is 60 cm
- c. The minimum length of the Exit Belt including the roller is 250 cm. On the passenger side where they pass through, plexi-glass is installed.
- d. Plexiglas installed as minimum as exit belt on length and as high as luggage x-ray tunnel instrument on height
- e. Plexiglas installed as minimum as exit belt on length and as high as luggage x-ray tunnel instrument on height
- f. Next, to recorded luggage x-ray instrument, a desk is placed as a spot to examine the suspected material.
- g. The divider is given in between the bar of Walkthrough Metal Detector and the cabin luggage x-ray instrument
- h. The divider is not a spot to place goods/luggage

The Regulation of Air Transport Directorate-General No SKEP/2765/XII/2010 explains the airport security procedure in which the security crew who conducted the screening should be both male and female and their duties are as follows:

- a. To check the valid permit to the restricted area and the boarding room
- b. To manage, to check and to ensure that
  1. Luggage is placed on the right position on the conveyor belt of the x-ray instrument and ensures that there will be enough space between luggage.
  2. Coats, jackets, hats, belts, cell phones, watches, keys, and other metal-containing materials are checked through X-ray instrument.
  3. Laptops and other electronic devices with equal size are taken out from the luggage and must check through the X-ray.
  4. All liquids, aerosols, and gels are checked through the X-ray.
  5. All the passengers, aircraft crew, individual and luggage are checked through the Security Check Point (SCP).
- c. Queueing up the passenger, aircraft personnel and individual that about to screen

Airport Security Personnel who in charge as an X-ray Operator identifies the luggage preview on the monitor and categorize it as secured, suspicious or dangerous. The luggage is categorized as secured whenever no prohibited items are found. It is suspicious whenever the X-ray monitor shows a suspicious object; then the operator will inform the luggage examiner to gain more detail information of the suspicious object and conduct a manual search. It is categorized as dangerous whenever the monitor shows a bomb series/circuit, then the operator must immediately stop the conveyor and inform the supervisor coordinating with the Police.

The Airport Security personnel who are in charge of the luggage checking to conduct the checking for the suspicious material with the following steps:

- a. Ensure the belonging luggage ownership
- b. To order the luggage owner to open it while keeping an eye for their reactions.
- c. Ask for permission to conduct a search of the luggage while the luggage owner witnesses it.
- d. To conduct a thorough search inside out to find the suspected material informed by the X-ray Operator
- e. Whenever the search is done, the personnel will tidy up as before.
- f. Whenever the search would not be able to be conducted manually, then it would be checked separately using X-ray.

- g. Whenever the suspected material has been found, the luggage must go through x-ray re-checking.
- h. Whenever the monitor shows a black object, the object will be taken out from the conveyor, and manual examination conducted then after that will be re-checked using x-ray.

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Along with these regulations and operating procedures, the airport security is also provided by the Indonesian Air Force personnel based in Halim Perdana Kusuma International Airport.

The Airport Chief, First Marshall Pip Darmanto, S.E during the interview said that the Indonesian Air Force plays a significant role in supporting the airport security crew, particularly in the drug smuggling mitigation. For this kind of purpose, the Indonesian Air Force places its member such as Intelligent Corps and Indonesian Air Force Military Police all the way from the Entry Gate up to inside the Airport.

The same thing also mentioned by Operational Chief of the Airport, Colonel (Aviator) Ali Gusman, S.T M.M, that in order to secure the airport, the Indonesian Air Force places its member in the entry gate of the airport. For the disclosed security, Indonesian Air Force places its Intelligence personnel with the AVSEC qualifications.

Whenever the drug smuggling case occurs, the Indonesian Air Force will be involved in the case handling. The Sniffer Dog corps also contributes to mitigating the case as this corps has the qualifications to detect harmful materials including the drugs. The sniffer dogs normally will be placed nearby the landed aircraft or the about to depart aircraft, and if necessary they will be brought during the airport patrol.

Aligned with the airport protection role of Halim Perdana Kusuma Airport, the Indonesian Air Force personnel also provide training for the airport security in increasing their level of ability particularly the intelligence capability of the Halim Perdana Kusuma International Airport security crews.

The Marshall also emphasizes that the role in securing the airport area could be improved further, In addition, if it is possible, the Indonesian Air Force may secure the non-military airport in the near future so that the security level of all the airports will get improved.

Other than the airport authority, there is another institution which gains benefit from the role of the Indonesian Air Force in protecting airports, i.e., National Narcotics Board. During the interview, the Chief of National Narcotics Board revealed that the involvement of the Indonesian Air Force personnel in securing the airport including

the protection from the drug smuggling case could minimize the case. Therefore, he expects that this role should be expanded not only to the military airport but also to the non-military airport (Civil Airport).

Based on the above explanation, it is obvious that one access to drug smuggling is via Halim Perdana Kusuma International Airport. Specifically, in 2015 and 2016 a couple of attempts were foiled by the authorities, while in 2017 until now the occurrence is still zero. However, this cannot be considered as a good indicator of reduced drug smuggling due to the fact that the case may still exist but get undetected.

In securing the airport from the drug smuggling attempt, the internal security system has been applied by developing airport standardizations. These include the licensed personnel so when they are in charge, they would possess the ability to perform it optimally. Secondly, the sophisticated airport security instruments are updated by the airport authority to smoothen the process. Thirdly, it is fully supported by the regulation as it is stated in Regulation of Air Transport Directorate-General No SKEP/2765/XII/2010. Thus by obeying it, the airport security would have a seamless process to mitigate the drug smuggling attempt.

Halim International Airport is a co-joint Airport between commercial and military airports using the Indonesian Air Force facility. Therefore, it has a significant role in mitigating particularly cases related to drug smuggling and this kind of role is well acknowledged by the airport authority. The role of the Indonesian Air Force in mitigating the drug smuggling may vary in several ways, i.e., firstly, placing the personnel in the entry gate of the airport and intelligence personnel involvement along with the airport security crew; secondly, using sniffer dog service during the airport patrol; thirdly, providing the training particularly the intelligence and airport security training for the airport security.

Some institutions, for example, Halim Perdana Kusuma Airport Authority and National Narcotics Board expect that the Indonesian Air Force role in mitigating the drug smuggling threat can be expanded further. They hope that the Air Force has the authority to secure the civil airport so that the threat can be minimized.

## **Conclusions**

Based on the above explanations, we can draw the following conclusions. The Indonesian Air Force has a major role in securing Halim

*Fajar Rosyadi*

*Rizki Ananda*

*Ramadhan*

Perdana Kusuma International Airport from various threats particularly the threat related to drug smuggling. The role is carried out by placing its respected personnel on the very first entry gate of the airport, involving the intelligence personnel, employing sniffer dogs and providing intelligence and security-training for the airport security crew of Halim Perdana Kusuma Airport.

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*The Role of the  
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# Participatory Development Between Government and Local Social Movement to Increase Security for the Low-Income Communities in Bandung Barat, Indonesia

*Rd. Ahmad Buchari, Budiman Rusli, Asep Sumaryana, Kurnia Muhamad Ramdhan*

## **Abstract**

This paper presents the result of research that reflects participatory development between government and local social movement to increase security for the low-income communities in Bandung Barat district by improving public service delivery on The Housing Estate Development Program on Lembang sub-district, at Suntenjaya Village. This research used a descriptive method and qualitative approach. Data was obtained not only from literature study, but also field studies in the form of non-participant observation, in-depth interviews, and documentation. Triangulation techniques serve as a source of data validity checking in the study; then the data is reduced, presented, and concluded. The background of this research came from Suntenjaya Village that succeeds in implementing the housing estate development program for low-income communities. Previously, that village had 41 uninhabitable houses. Afterward their houses became a pattern for this program. Actually, the program does not provide full aid; it only provides a stimulus for the people in the region affected by the program. It is expected that the program could ignite a sense of awareness of coming and working together by helping to repair the uninhabitable



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houses in the region, regarding finance and the rough. With regard to this, the Suntenjaya village has managed to make it happen, both in terms of the implementation of policies and the positive impact that may be caused by the implementation of the policy. Therefore, we are interested in studying the development of participatory between the government and the local social movement on this phenomenon.

*Keywords: development, participatory, program, life safety, and security, Suntenjaya*

## **Introduction**

Bandung Barat District is the result of developing a region of Bandung District (which now becomes the City of Bandung). The discourse about that had been sticking since 1999, as for this discourse was implemented on January 02, 2007. Bandung Barat as a new district of 1.305,77 km<sup>2</sup> with 1.408.550 people has a lot of problems, especially in the rural areas of Bandung. It is discovered that many people have lower-middle economic level who need assistance from the local government. A considerable challenge is the basic needs of residence/house; this applies to all people at various levels of the economy, including the low-income people. Housing is an urgent need, the presence of a house in the family becomes the dream of many people, either married or not. Ideally, a house should provide a sense of security and comfort for the occupant, both physically and non-physically<sup>1,2,3</sup>. Physically, a house becomes a shelter not only from the sun and the rain but also from other external threats. As for the non-physical, the house becomes a comfortable place to socialize among family members, a place to unwind and complain, and becomes the most influential environmental factors on the growth of a person. However, not all houses have these criteria in reality. In the midst of a society that already has inhabitable houses, it is discovered a lot of houses uninhabitable, the known as Rumah Tidak Layak Huni (Rutilahu). One of them is discovered in Bandung Barat District. Since 2009 as many as 28,400 units of Rutilahu have been repaired. This is an annual program, and until 2017 there existed 6,700 units of Rutilahu which have not been repaired yet. In 2017, the target of this program was that 1,950 units could be repaired, and until 2018 as many as 3,000 units of Rutilahu will be repaired by local government, this refers to the availability of budget in each year. Thus, it requires at least 4-5 years to be completed.

*Rd. Ahmad  
Buchari*

*Budiman Rusli*

*Asep Sumaryana*

*Kurnia Muhamad*

*Ramdhan*

The program is one of the efforts of local government and state government to eliminate the impression of a slum in their regions. If a district has a lot of slums, it will give some implications, such as a health indicator of their regions. In the level of state government, The Housing Estate Development Program is one of the programs of the Directorate General of Human Settlements in Ministry of Public Works and Public Housing, called as “100-0-100”, which means 100% access to clean water, 0% for slums, and 100% for good sanitation. The program is targeted to be realized in 2019. As for the local government level, the program is often used as one of the political promises, both at the provincial and district level. In 2017, there are 1,600 units that will be repaired using local government budget with the amount of 5 million rupiahs/unit, 50 units from provincial government with the amount of 15 million rupiahs/unit. However, it should be emphasized that the program is only for a stimulant, in other words, the program does not provide full assistance, and thus the remainder is expected to be improved privately by the owners and by the local social movement.

This help is not necessarily given directly by the local government, but it must be handed over to non-governmental organization (NGO) which is then distributed to the people who need to be verified by the consultant first. The help is in the form of building materials, instead of money. Based on the latest data in 2017, the largest number of Rutilahu is in Cililin sub-district which is 232 units, followed by Sindangkerta sub-district with 170 units, and Cipeundeuy sub-district with 156 units. The sub-districts which have fewest Rutilahu are Parongpong with 70 units and Ngamprah with 86 units.

However, along with the revival of program in the people, there are still some irregularities, for example, people did not know the amount of funds they would get, people who claimed only received ½ of the funds, and some people did not know the aid nominal that they obtained because it was completely converted into building materials. This incident was experienced by two residents from Sindangkerta sub-district, specifically at Cikadu Village, as reported by some media coverage. The other obstacles are the regulations that are overlapping, between article No. 1 of 2011 about Housing and Settlement Monitoring and No. 23 of 2014 about Regional Government.

The improvement program of Rutilahu as intended at the beginning of its initiation, the program could ignite a sense of awareness of coming and working together to help to repair the houses uninhabit-

able in the region, both in terms of financial and the rough. Thus, the program does not provide help in full, just as a stimulus for citizens of the people in the region affected by the program. Building or repairing houses together is not a new case in our society because the culture of mutual cooperation has been passed by the predecessors of this country and included in the historical parts of the development of Indonesian society.

A successful program is reflected in Lembang sub-district at Suntenjaya Village. The program is running well because of cooperation between the local government, private sectors, and local social movement. The local social movement has repaired as many as 41 uninhabitable houses which started on October 2015. Additionally, the benefactors from Lembang contributed to this program. The benefactors can choose their own Rutilahu that will be fixed. In addition to the homeowners, Rutilahu funds are submitted to the local committee or collected in the sub-district government first and then submitted to the development committee<sup>4,5,6</sup>. Each house received an average grant of 5 to 10 million rupiahs, but there are some houses that were being rebuilt. Brimob in Cikole also contributed for development funds. This program will be used as a pilot project for more villages in Lembang by collecting funds from residents. Repairing uninhabitable houses with the collaboration process between the government and the local social movement there is found very helpful to accelerate the development program as well as to increase the life safety and security.

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### **Theoretical Framework**

Dissecting a research topic would require a proper approach. When research attempts to reveal community involvement in development, it is appropriate to use Arnstein's<sup>7</sup> "A Ladder of Citizen Participation" concept as its theoretical framework. This concept became a reference for reformers for more than four decades, this imaginary ladder or later known as The Arnstein's<sup>7</sup> Ladder containing eight steps as a symbol of eight levels of public participation. Arnstein<sup>7</sup> sequenced the eight steps from the lower to the higher level of public participation, and conversely. The eight descending steps are as follows: 1) Manipulation; 2) Therapy; 3) Informing; 4) Consultation; 5) Placation; 6) Partnership; 7) Delegated Power; and 8) Citizen Control. Then, Arnstein<sup>7</sup> grouped the eight stairs into three categories, namely 1) Nonparticipation; 2) Tokenism; and 3) Citizen Power. In order to have a better compre-

hension of the eight rungs and the three sections, the author tries to show it in the form of the following chart.

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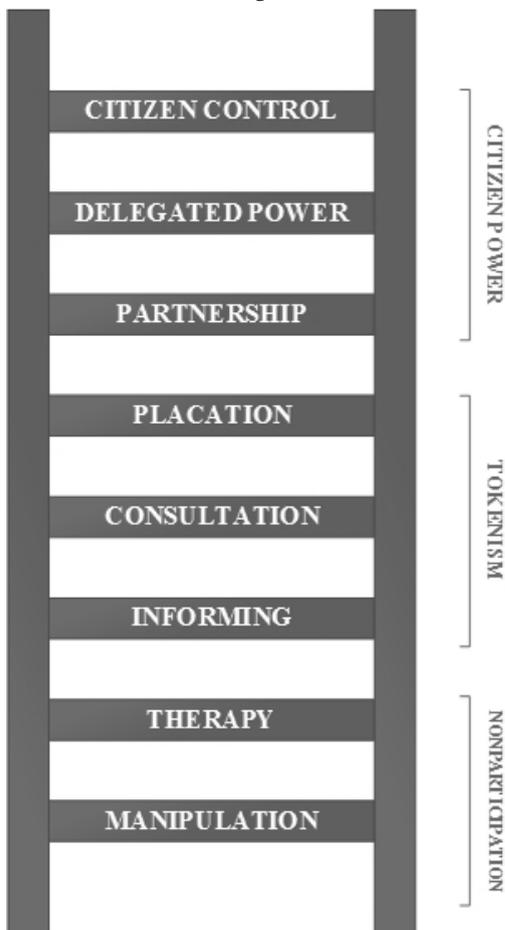


Chart 1 – A Ladder of Citizen Participation<sup>7</sup>. Sources: Arnstein, Sherry R.<sup>7</sup>

### *Nonparticipation*

In this section, there is almost no public participation. The public is an utmost part of the policy objectives, the authority of the ruler is dominant and deliberately wipes out all forms of public participation. As for the nonparticipation, there are two rungs in the lowest order, which are Manipulation and Therapy.

- At the Manipulation level, they elect and educate some people as representatives of the public. When they propose various pro-

grams, the public representatives always have to agree. The public, however, is not notified about it completely; and

- At the Therapy level, they inform slight information to the public about some of the programs that have been approved by the public representatives. The public can only listen.

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### *Tokenism*

In this section, the ruling authority creates the image with no longer precluding public participation. However, it is different in reality. Participation is indeed allowed, yet it is ignored. In the end, the ruler will still execute his original plan. There are three middle rungs in this section, which are Informing, Consultation, and Placation.

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- At the Informing level, they inform various programs that will and have been implemented. However, it is only communicated in the same direction; the public is still unable to communicate feedback directly;
- At the Consultation level, they discuss programs with many elements of the public on various agendas. All suggestions and criticism are heard, but those in power will decide whether public advice or criticism is used or not; and
- At Placation level, they promise to consider suggestions and criticism from the public. However, their promises are just promises because they secretly run their original plan.

### *Citizen Power*

This section is a condition in which public participation has a dominant role; the ruling authority is prioritizing public participation in various matters. As in this section, there are three highest ladders, namely Partnership, Delegated Power, and Citizen Control.

- At the Partnership level, they treat the public as a co-worker. They are the partner of the public in designing and implementing various public policies;
- At the Delegated Power level, they delegate some of their authority to the public. For example, the public has a veto in the decision-making process;
- At the Citizen Control level, the public is more dominant than the policy implementers, even up to evaluate the performance of policy implementers. The ideal public participation exists at this level.

Based on the Arnstein's Ladder<sup>7</sup>, the authors then identify the extent to which community participation in this program at Suntenjaya Village, and its relation to the impact of that participation.

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In order to understand the participatory development for improving public service delivery on The Housing Estate Development Program for Low-Income Communities at Suntenjaya Village, the authors used a qualitative approach. The authors assume that a qualitative approach is relevant as the basic method applied in this study because the phenomenon that occurs cannot be measured appropriately (quantified). Through this approach, the authors can examine the perspective of participants who have the authority, data, information, and the relevance of that topic. Participants perspective were assessed with the aim of understanding social phenomena from the participant-related perspective.

As for the expanding and researching processes, the authors used the descriptive method. The descriptive method is conducted to see the value of the independent variable by considering the events based on data or facts that happen, which then are compiled and analyzed. The descriptive method also includes an explanation of the rich data, so that we can explain the complexity of a problem. The data was obtained by using literature study and field studies in the form of non-participant observation, in-depth interview, and documentation. Triangulation techniques serve as a source of data validity checking in the study; then the data is reduced, presented, and the conclusions are drawn.

**Discussion**

Being a Tourist Village, a destination that is being initiated by Suntenjaya Village, a village in Lembang Subdistrict, located on the border of West Bandung regency and Bandung regency, into an area adjacent to the tourist area and Maribaya plantation. Suntenjaya is interesting to discuss because a lot of media discuss the success of this village in running the program *Rumah Tidak Layak Huni*/Improvement of Inadequate Home (Rutilahu) which amounted to 43 units. The program started in October 2015, and this success is closely related to community participation. As expected, the community becomes the centre of strength in this program. The community can be stimulated to cultivate a sense of togetherness and caring. Community-driven develop-

ment is the main topic highlighted in this program, resulting in a positive effect of sustainability and continuity.

The success of this Rutilahu program depends on the participation of the community in running the program. Thus, in this position, the active role of the community is very important for the smoothness and success of this program and the achievement of the goals steadily. In the development of this program, a lot of active participants are also required for the sustainability of the program. In addition, the roles of community leaders, both formal and nonformal, are very important especially in influencing, setting a good example, and mobilizing the involvement of all citizens in the environment to support the success of the program. Especially in rural communities, the roles become a determinant factor because the position of the community leaders who are still very strong, and often they become a role model in all activities of the citizens' daily life. The perception of the community towards a particular program is the foundation or basis for the emergence of a willingness to be involved and to have an active role in every activity of this program

We tried to trace the location of Suntenjaya by seeing Mr. Dase, the *Kaur Kesra* of Suntenjaya village. He informed that Suntenjaya is divided into four hamlets covering 17 RW and 50 RT. In connection with the Rutilahu program, in 2017 it was proclaimed that as many as 43 units could be repaired. In the meantime, the selected location is in Kampung Patrol Tonggoh RW 12 because the location is considered as the poorest area. The Rutilahu program is integrated with the program of Peranan Wanita Menuju Keluarga Sehat Sejahtera 'Role of Women Toward a Healthy Prosperous Family' considering the target of this program that is prioritized for elderly widows/women who are dependent on their families/economically disadvantaged conditions.

The programs that are held in Suntenjaya always follow the government program and the budget for this Rutilahu program is derived not only from the government, such as APBDes but also from the province. Some interesting things found in this village are that family values are very close, the funds collected to build houses are mostly from the participation of the people who are in mutual partnership and shoulder to the other people who according to the local people deserve to get assistance in the form of materials for building homes and energy from the community also to build the house.

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Furthermore, the mutual aid in the community is very strong. The building that was erected was a permanent building even though the budget from APBDes was only 5-5.5 million gross (excluding PPN and PPH). But a very strong level of mutual help from the people themselves who can help the people belonging to the poor category to be helped to build a habitable house. The community in Suntenjaya village is overall very supportive and enthusiastic about the programs proclaimed by the government.

The budget to build a habitable house in 2017 comes from the P2K-WSS program. The buildings included in this program consist of permanent houses and unisocial building GRC (half body) and the program itself is called as a self-help program. Renewal of the current program is aimed at putting up bricks beforehand. Although it needs inadequately to be attached to the budget, what is important for this time is the house that will be inhabited by residents who received the assistance can feel the shade first.

If the construction of the houses only relies on the funds obtained from APBDes, most built buildings will only be the GRC or half-body houses that last only a few years, unlike the permanent houses. Besides, if it only relies on APBDes, it will be likely to become Rutilahu which need to be renovated again. According to Kaur Kesra, if at the time of construction of the house using brick as the foundation material also although it will be exposed to rain or hit by earthquake tremor will be more durable, so later that already get the aid other residents can continue construction of house already there it gets better and the possibility of being built a permanent home. If people in the village of Suntenjaya get calamities such as natural disasters, house fires, and other disasters, they will always cope with the hardships together. It is caused by the close kinship and mutual help that are strong in the community residents of Suntenjaya Village. The community is always convinced and believes that no matter what difficulties they face, they can surely be solved if they are together.

The system of election targeting of this program is by selecting, the village administration conducted a direct survey to the field and according to the village data about which hamlet exist in Suntenjaya that deserve to get the help of the construction of the house by means of this crawl through several stages. The administrators of RT and RW are also very helpful in determining the target. It is informed that Dusun Patrol, a settlement that is a part of the village Suntenjaya, is arguably

the poorest among other hamlets. The help is given not only to Dusun Patrol, but also other hamlets which housing is not fit for habitation.

The community participation in Suntenjaya village is very good. The community participates in the process of development of this village because they realize that the development of the program is important and also recognize that all citizens in this village Suntenjaya is family. The way the community develops this program is by giving its energy coming from the importance of having shelter and mutual cooperation. In addition to the funding from the government, the funds are partly from the residents, each RW, and the cooperation with outsiders such as from cooperatives, police, military, sub-districts, markets, and donors. Moreover, in development for the program of 2017, there are 43 units of houses to be renovated. And if the program is just relying on funds by one village alone, it will feel rather hard. The subject of funding for obtaining cooperation and funds from outside parties is governed by the Head of Suntenjaya Village.

This program has succeeded in mobilizing community participation, but prior to this program, the people in this Suntenjaya Village have already done this kind of program. The fund is not big because it comes from society only. In addition, the growth of self-help and the presence of volunteers or donors who work sincerely without asking for reward in society is also very helpful in the development of this program. Then about the donor, per unit of the house to be built and determined by the donor will be available project board that characterizes the unit of funds from whom and built by whom. This information will inevitably break into the village because of the village that has the program, but to decide which unit it is from the donator because the size of the fund will affect how the unit is made.

The determination of housing units that need to be built is not decided by the village, but by the donors. The village only provides data informing about the residents of the houses and the number of the fund the village needs to the donors. The donors will also begin to help and confirm it after knowing the information obtained from the village.

The committee in the development of this unit does not entirely involve the village. The role of the village apparatus is only monitoring. The committee is directly available from the community, which consists of the RW as the village community leaders and the chief executor in the implementation of this program is from its RW chairman. The

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application subject of people involved in this development also comes from the community, the existence of a joint system and voluntary assistance.

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In terms of deciding on policy items, the decision of the policy points of the program is often based on the deliberations within the scope of the RW. The system is that the head of the hamlet organizes deliberations in each RW, for example, what is planned in APBDes 2018 and what the fund is used for. When it is planned, it later continues to the plan of Rutilahu, which house to be built. Previously the determination which houses need to be assisted in the areas involves the chairman of RW and the head of RT because they understand and know the community very well. As for the deliberation of the hamlet, when the level of RW has got the agreement from the previous deliberation, a meeting is then held with the head of the hamlet, followed by the village meeting to determine the APBDes associated with this. The Suntenjaya village consists of 50 RT, 17 RW, and is divided into four hamlets.

If the budget is too high, they will hold negotiation first, for example, the budget there are so many of the residents who had been prepared by them because especially considering the budget of the APBDes is light and not too high. In this case, the budget received for one RW per year is often enough for 1 unit only. Regarding this issue, the chairman of the RW and the head of the RT will help by directing the citizens to do cooperate and within a year they can raise funds to build houses. Subject material purchases and the use of funds to buy the funds are mostly from the APBDes and the financial of income and expenditure of funds from the treasurer and arranged about the existence of pieces such as VAT and Pph into the material store, then that later live informs the chairman of RW local that the money needed so much and money that has been cut Ppn and Pph it so, so later when will need goods to stay to the material store and accompanied by the chairman of the RW and 2 other witnesses who come to the place. The money received from the donors will be accepted by the committee, which is a village device that is RW monitor the committee when the money from the donator is bought materials to the building materials, then later brought goods according to who received it to be used to build a house.

The village also assisted in the formation of the committee. When the committee was formed, all decisions were on the committee, and

the village did not intervene much in its implementation. The village fully believed in the committee led by a local RW chairman. In the meantime, the committee consists of a community leader, RT, RW, and head of the hamlet. The committee was established at the level of RW, and the chairman of the committee was usually the head of the RW. The duty of the head of the hamlet was to supervise the continuity of the program, and the head of the hamlet acted as the representative of the village.

The committee in this program consists of the chief executor, secretary, treasurer, and purchasing the team. As previously described, the chairman of the RW has to be accompanied by 2–3 witnesses to purchase goods needed for building houses in material stores. Because the majority of their livelihoods are farmers, planters, laborers, and ranchers, so if there cannot be accompanied replaced by others, and the people entrust to the witness because surely the witness is part of the community itself.

The challenge of this Rutilahu program is especially from the budget factor. For example, in the situation when people want to get full coverage, but the available budget from the APBDes is limited to only 5–5.5 million/unit, the villagers assist each other to raise funds to collect additional fund needed. Fortunately, the majority of the people in this village is fairly independent. They also have the authority on decision making which has been previously discussed together in deliberation. Therefore, in this fundraising people will not feel ignored because they are helping each other.

In this program, the counseling was conducted by PKK and the villagers who went directly to the region to provide education and insight to their citizens about this program of Rutilahu improvement. Furthermore, the enthusiasm of citizens themselves is very high, and this becomes an important point in increasing the community's insight and the confidence of the people. The community will also realize to help relatives in the area of housing construction. When the counseling takes place, it sometimes gets recommendation or data of houses that need to be assisted. The family who receives this program will be invited to the village to get counseling with the aim to avoid misunderstanding and to get a better understanding of the program. When they have been given counseling and clear explanation at the village level, they will receive confirmation and follow-up which will be arranged further by the committee.

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Deliberation consensus becomes a necessity in this village because the most appropriate way for the community, which is in accordance with the culture of the people, is by consensus. Meetings conducted at the location can be held up to 3 meetings a week. The donors have the right to donate the money that is given to the committee and to decide which unit they want to build. However, the donors have no right to determine which unit to be built; they simply hand over the affairs to the village. These existing donors are usually clustered, instead of an individual.

The Rutilahu program in this village has not received any assistance from the provincial or central government. The assistance is only from the district and has built as many as 15 units, while the assistance from the existing APBDes has reached 11 units. The program is dominantly based on the initiative of Suntenjaya Village and the awareness and initiative of its citizens on the basis of kinship. This program has already existed from the district before the village itself took the initiative. Every year the district provides this program, while the village initiative is a conversion of 1 billion program fund from president Joko Widodo which then at the level of the village it is converted to run this Rutilahu program.

In the case of mutual cooperation in this village, in addition to the manpower donation, there is also building material aid. For example, in RW area which is the target of Rutilahu program development, it receives various donations such as building, food, manpower, or the ability of each citizen although the aid comes from different RW. The mutual cooperation in this village is very good, and the citizens help each other. This donation cannot be pegged and are made voluntarily from the citizens who have time, energy, and money.

Mutual cooperation has been around since the past around 1997. Kampung Asrama RW 8 has implemented this kind of program before because they already have a similar program. Although the program is not clustered yet. The initiative and the system regarding this matter at that time were only at the level of RW with its citizens. This is easy because the people are easy to build and the resources are relatively easy to get. Problems of home improvement workers or who assist in the construction process there are mere to help socially there are also paid. The paid worker is the worker who is the leader because he or she is responsible for carrying out the direction of the committee and mediating differences of opinion among the workers. The rest of them

are solely for the social and feel the existence of social responsibility as villagers who need mutual help to improve the development of the village.

In this development process, the parts of existing ones such as tile and others that are still feasible to be used are reused in order to reduce the expenditure. The building materials, however, will be replaced with the new ones if the status of the building material is no longer usable. Recipients of the renovated Rutilahu can easily find a temporary residence, either in their neighbours or relatives, and the construction lasts for 7–10 days long. The recipients of this Rutilahu program do not have to worry about where to live because other residents and their relatives will surely accept them to stay until their houses are finished. Because of the synergy between the citizens and the program, the unit that receives the renovation becomes habitable or feasible to live in.

Rutilahu in principle aligns with the principle of social security, which according to the International Labor Organization (ILO), is a system of protection provided to the community through various efforts in dealing with economic or social risks that can lead to cessation or greatly reduced income. Point 1 Section 1 of Presidential Regulation Number 109 of 2013 about Staging the Participation of the Social Security Program explains that social security is a form of social protection to guarantee all people to be able to fulfill the basic needs of their proper life. The social security that applies in Indonesia is *Sistem Jaminan Sosial Nasional* (SJSN) ‘The National Social Security System’ which is carried out based on the principles of humanity, the principle of benefit, and the principle of social justice for all the people of Indonesia. The SJSN aims to guarantee the fulfillment of the basic needs of a decent life for each participant and his family. The Rutilahu system is different from insurance. Social security in Rutilahu lies in how the Government ensures that all citizens are safe and secure their lives from the condition of uninhabitable housing.

## **Conclusion**

Based on the explanation, the writer concludes that community participation in Suntenjaya Village in this renewal of Rutilahu program is at the level of Partnership, with the rationalization of Suntenjaya Village Government incorporated in partner society. They partnered in putting together and applied the Rutilahu simultaneously. Suntenjaya Village Government knows very well without any interference from

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*Asep Sumaryana*

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the community that this program will not work properly because the target of the shipyard is to make Rutilahu a community, as for its program to stimulate the community in order to grow a sense of concern and togetherness in the community. Thus, it is expected in the future every chapter in the community can be more easily solved through cooperation from various parties; the community becomes more sensitive and responsive in the surrounding bulletin. Growing society in this order will reconstruct new habits in social habitat, and thus civil society can be realized.

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# Guidance and Tightening of Remission for Narcotics Prisoners as a Countermeasure for Security Threats from Drug Dangers

*Sujasmin*

## **Abstract**

Guidance of Prisoners and Criminal Children Narkoba (Narcotics, Psychotropic, and Dangerous Drugs) has distinguished the coaching of convicts in general. This writing can be known Remissions are the right of prisoners and criminal children who cannot be separated by obligations. Rights and obligations must be mutually met, and mutually balanced. Giving Remission of Requirements for Narkoba Prisoners is a tightening, in addition to meeting the general terms of good behavior, as well as special terms conditions of prisoners who are sentenced to imprisonment of at least five years, and are willing to cooperate with law enforcement agencies to help dismantle cases of criminal acts committed. While the reasons for tightening remission are in the context of carrying out the objectives of punishment, the influence of drugs has damaged the young generation, nation and state, and the handling of security threats from the dangers of drugs.

*Keywords: narkoba, prisoner, rights, security threat, reasons for tightening remission*

## **Introduction**

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In its development, the term of Narcotics is known as the abuse of narcotics, psychotropic drugs and/or dangerous drugs, as well as other terms NAPZA which is a description of narcotics, psychotropic substances, and addictive substances. But this is not an issue in this writing. Drug and NAFZA abuse in Indonesia is a problem that is very worrying about the damage to the younger generation in the future.

Drug distribution has reached the climax point, both from the place/location of distribution, producers, marketing, and how to make drugs. This is proven by the disclosure of drug manufacturing factories in Indonesia.<sup>1,2,3</sup> One of the vulnerable shipping and drug distribution targets by international syndicates is in South Sulawesi which is the gateway in Eastern Indonesia. The vulnerability of South Sulawesi is the destination area for the delivery of narcotics by the international dealer, as evidenced by the discovery of a 6-kilogram shabu package from Kuala Lumpur at Hasanuddin International Airport. Last January 5, 2018, merdeka.com, - activity at Patrick's rented house a.k.a. Luthfi on Jalan Pramuka I RT 004 RW 004 No. 81A, Pancoran Mas, Depok, never saw any striking activities. The man who was arrested related to 1.3 tons of marijuana was more often outside the home, especially at night.<sup>4</sup>

The reality of drug distribution is still causing anxiety and fear in people's lives, especially for the nation's young generation. Although, the Government itself has issued legal products that are expected to be able to prevent and eradicate narcotics through Law No. 22 of 1997 concerning renewed Narcotics into Law No. 35 of 2009 concerning Narcotics (herein after the Narcotics Act).

On the other hand, the existing correctional system appears to be less able to make major contribution in terms of minimizing the occurrence of narcotics crimes as stipulated in Law Number 12 of 1995 concerning Correctional Facilities (herein after the Penal Code), is none other than the Government's efforts in implementing fulfillment and enforcement and respect, and the protection of the rights of prisoners. This was not in line with the spirit of eradicating narcotics.

The correctional system is a system that is not just rehabilitation and resilience but is equipped with elements of educative-correlative-definitive and individual and social aspects in an idiotic manner by the philosophy of Pancasila. The system itself in the correctional system must have a certain size or condition, a certain element is interrelated and process according to certain conception.

The problem of fostering criminal prisoners and children in its history has always undergone a change. From century to century, its existence has been widely debated by experts. When viewed from the standpoint of community development, change is a natural thing, because the human will always try to update about something in order to improve their welfare by basing themselves on past experiences.

Basically, inmates and criminal children of Narcotics receive the same treatment as other inmates with a reduction in criminal time (Remission) given on the Republic of Indonesia's Independence Day and religious holidays. At that time the spirit of the formation of the Correctional Law and Presidential Decree No. 174 of 1999 concerning Remission (hereafter the Presidential Decree of Remission), which at that time drug abuse had not been so widespread, if conditioned today, the spirit of correctness was not in line with the high level of drug trafficking that happened.

The impact of the Remission has taken place; 17 inmates were involved in riots in Bentiring Prison in Bengkulu, Thursday, July 21, 2016,<sup>5,6</sup> and riots in youth prison in Tangerang. There have been clashes between prisoners allegedly caused by the loss of cellphone of one of the prisoners as well as clashes over the gank between drug dealers in the local prison on Friday, April 18, 2014.<sup>7,8</sup>

Likewise with the spirit of law enforcement on the granting of remission of narcotics inmates and children as regulated in Government Regulation Number 32 of 1999 concerning the Terms and Procedure for the Implementation of Right of Prisoners' Rights (hereinafter Government Regulations No.32 of 1999), then amended by the first Government Regulation Number 28 of 2006 (hereinafter Government Regulations No.28 of 2006) and the second Government Regulation Number 99 of 2012 (hereinafter Government Regulations No. 99 of 2012) and the Regulation of the Minister of Law and Human Rights Law Number 3 of 2018 concerning Terms and Procedures for Giving Remission, Assimilation, **Family Visit Leave**, Conditional Exemption, Pre Release Treatment and Conditional Leave (hereinafter regulation of the minister of law and human rights No.3 Year 2018). The regulation has distinguished the requirements for giving remission to prisoners and criminal children in general with convicts/children convicted of drugs.

These provisions also, there are exception in the implementation of giving remission to several criminal acts, namely not only inmates and

criminal children of drugs who are given the right to reduce criminal periods, but also includes inmates of criminal act of corruption, terrorism, crimes against state security and heavy human rights crimes, and other organized transnational crimes. With the exception of him, it is necessary to have a juridical study on the implementation of remission tightening for drug inmates.

Based on the explanation above, the author will discuss remission is the right of prisoners and criminal children (community assisted citizens), the requirement for remission for drug inmates is tightening, and the reason for tightening remission for drug convicts.

### Discussion

Before carrying out the discussion, the writer will first describe the understanding and regulation of drugs. Drugs are stands for narcotics, psychotropic drugs and dangerous drugs. Drugs referred to include drugs, ingredients, substances and are not classified as food if taken, smoked, swallowed, or injected are those that can cause dependence and affect the work of the brain, as well as the vital function of other organs (heart, blood circulation, breathing, and others). Drugs are a term used by law enforcers who are socialized to the public. In Malaysia, it is usually called *dadah*, whereas in the western world it is usually called drugs. Some types of drugs are useful in the world of medicine, but because they cause dependence, its use must follow the doctor's instruction, for example, morphine and pethidine are used to relieve pain in cancer; anesthesia in patients at the time of surgery; and amphetamine to reduce appetite and much more.<sup>9</sup>

Type of Drugs, one of it is Narcotics. Narcotics are said according to Article 1 number 1 of the Narcotics Law, are substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to relieve pain, and can cause dependence, which divided into groups as attached to this law.

According to Mardani<sup>10</sup>, Narcotics are drugs or substances that can calm nerves, cause unconsciousness or anesthesia, eliminate pain and painful, cause drowsiness or stimulation, can cause stupor effect, and can lead to addiction and which is determined by the minister of health as narcotics.

According to Soedjono Dirdjosisworo<sup>11</sup>, Narcotics are the ingredients that primarily have the effect of anesthesia work or can reduce

consciousness. It is different from Sudarto<sup>12</sup> who says that the term Narcotics is an anesthetic, except when it concerns morphine or opium, gives little or a false impression, because Narcotics do not make people anesthetized at all, but make people get certain psychic stimuli.

According to medical terms, narcotic is a drug that can eliminate especially pain and painful originating from the visceral region or the tools of the thoracic and abdominal cavities, as well as causing stupor or long-standing effect while still conscious and causing addiction (meaning addiction and cause dependence on the wearer). The nature of addiction in the current sense is not only in the form of a person's dependence on a drug or substance, both physically and psychologically, but already included in an understanding that includes a person's lifestyle or addiction<sup>13</sup>.

On the other hand, there are those who divide Narcotics into two groups: First is ingredients derived from plants, or the results of processing thereof: opiates (opium, morphine, and heroin), cocaine and cannabis (marijuana). Second are substances produced by chemical synthesis in the form of psychotropic substances (depressants, stimulants, hallucinogens)<sup>14</sup>.

The first group, grown and cultivated mainly in the southern hemisphere, for example in the golden triangle; and coca in Latin America to be marketed in the northern hemisphere: Western Europe, the United States, and Canada. The second group made legally in drug factories in the northern hemisphere country. Furthermore, these products are traded illegally in developing countries in the southern hemisphere. There was also from the beginning it was made illegally in dark laboratories and then marketed illegally too<sup>14</sup>.

The history of drug regulation in its development has its own meaning, beginning with the formation of a global regime on drug control under the auspices of the Shanghai conference in 1909. The emergence of the regime was a development of the form of Western colonialism for the need for pain relief drugs derived from opium and its manifestations towards socio-economic communities which are victims of opium and opium trade, as experienced by China and India<sup>15</sup>.

The most clearly visible manifestation having a bad impact is the increasing world community on opiate abuse (classification of opium derivatives, such as heroin, morphine, and opium) and the emergence of the illicit opium trade because it is a very lucrative market with financial benefits. Therefore, there is a global awareness to manage and supervise

the opium trade for medical purposes and knowledge, not for the sake of personal recreation initiated by the Shanghai Conference<sup>15</sup>.

Furthermore, slowly drugs supervision began to be contained in international agreements that began with the Den Hague Convention (1912). Likewise, gradually drugs control agreements, especially Narcotics, began at brokers (developed) through International Organization such as the League of Nations (LBB) after the First World War and the United Nation (UN) after the Second World War<sup>15</sup>

Then the achieved result at this time, there are three international agreements under the auspices of the United Nations and adhered to by UN member states, namely Single Convention on Narcotic Drugs 1961, amended by Protocol 1972, United Nations Convention on Psychotropic Substances (1971), and United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). These three International Conventions constitute the basis of international law from the International drug control regime, which among others regulates and supervises the trade in Narcotics, Psychotropic, and finally precursors, namely chemicals that can be used to produce Narcotics and Psychotropic. Also in the 1960s, an international institution called the International Narcotics Control Board (INCB) was formed which served to oversee the implementation of the three conventions in question<sup>15</sup>.

In the period of the global supervision regime, in fact, it has significant support (universal adherence) from UN member states, and the UN convention on narcotics (1961) has been ratified by 186 countries totaling 96% of the total 192 UN member states regarding Illegal Narcotics, and Psychotropic Circulation (1988) has also been ratified by 182 countries. The submission of countries to the three international instruments show a significant side of adherence to other global instruments.<sup>16</sup>

In reality to eradicate the handling of illicit drug trafficking, Indonesia according to Brice De Ruyver et al.<sup>17</sup> is one of the member states of the United Nations that has ratified the three instruments through:

- a. Law No. 8 of 1976 concerning Ratification of the Narcotics Single Convention 1961 along with the Protocol that Amended it 1972,
- b. Law No. 8 of 1996 concerning the Ratification of the Convention on Psychotropic Substances 1971 (Psychotropic Convention 1971), and

- c. Law No. 7 of 1997 concerning Ratification of United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (UN Convention on the Eradication of Narcotics and Psychotropic Dark Circles 1988).

While the laws and regulations in the field of drugs that have been applied and applied in Indonesia include:

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- a. Verdovende Middelen Ordonantie (VMO) or Drug Act (Stbl 1927 No. 278 jo. No. 536). The provision was revoked by Law No. 9 of 1976,
- b. Law No. 9 of 1976 concerning Narcotics (the provision was revoked by Law No. 22 of 1997),
- c. Law No. 5 of 1997 concerning Psychotropic,
- d. Law No. 22 of 1997 concerning Narcotics (revoked by Law No. 35 of 2009).

In principle, Narcotics and Psychotropic are useful and very necessary for health service, such as in the service of patients with mental and neurological disorders, as well as for scientific purposes. Even so, the use of Narcotics and Psychotropic which are not carried out by and or not under the supervision of authorized personnel can be detrimental to health and can lead to dependency syndrome which harms individual, families, communities, present and future generation and damages cultural values of the nation.

Narcotics (according to the Narcotics Act) based on the class can be divided according to the dependency potential as follows:

- a. Narcotics Group I: very high potential to cause dependence, not used in therapy. Examples: Heroin, Cocaine, Marijuana, Putaw (Heroin is not pure powder).
- b. Narcotics Group II: the high potential to cause dependence, used in therapy. Example: Morphine and Pethidine.
- c. Narcotics Group III: potentially mild to cause dependence, widely used in therapy. Example: Codeine.

Narcotics which should not be used in medicine are Narcotics class I in the form of Cocaine, Heroin, Marijuana, and Psychotropic class I in the form of LSD, Ecstasy because they are not classified as drugs, and cause high levels of dependence. Because of the danger of dependency, use and circulation, drugs are regulated in the Narcotics Act and Law No.5 of 1997 (hereinafter the Psychotropic Act).

Whereas Psychotropic, according to Article 1 point 1 of the Psychotropic Act, the definition of Psychotropic is a substance or drug, both natural and synthetic not narcotics, which is psychoactive through

a selective effect on the central nervous system which causes typical changes in mental activity and behavior.

- a. Psychotropic (according to the Psychotropic Act) based on its class can be divided according to the potential that causes dependency as follows: Psychotropic group I: very high potential to cause dependence, not used in therapy. Example: MDMA (Ecstasy), LSD, and STP.
- b. Psychotropic group II: the high potential to cause dependence, used very limited in therapy. Example: Amphetamine, Methamphetamine, Ritalin.
- c. Class III psychotropic: potentially causing dependence, used in therapy. Example: Pentobarbital.
- d. Psychotropic group IV: high light potential causes dependence, very widely used in therapy. Examples: diazepam, clobazam, barbital, and nitrazepam.

Similarly, dangerous drugs such as addictive substances, namely: substances/substances that affect psychoactive outside Narcotics and Psychotropic, include:

- a. Alcohol Drink: contains ethyl alcohol (ethanol), which affects the central nervous system, and is often a part of everyday human life in certain cultures. If used in conjunction with Narcotics or Psychotropic will strengthen the influence of the drug/substance in the human body. There are three categories of alcoholic beverages:
  1. Group A: 1 - 5% ethanol (Beer).
  2. Group B: 5 - 20% ethanol content (Various wines).
  3. Group C: ethanol levels 20 - 45% (Whiskey, Vodka, Manson House, Johny Walker).
- b. Inhalation (inhaled gas) and volatile solvents in the form of organic compounds, which are found in various household, office, and machine lubricants. What is often misused are: Glue, Tiner, Nail Polish Eraser, and Gasoline.
- c. Tobacco: the use of tobacco containing nicotine is very broad in the community.<sup>18</sup>

In the effort to combat drugs in the community, the use of cigarettes and alcohol, especially in adolescents, must be a part of prevention effort, because cigarettes and alcohol are often the entrance to other dangerous drug abuse.

### **Giving remission is a right for prisoners and criminal children**

First, the author explains the definition of rights and obligations. Rights are all things that must be obtained (absolutely) by every human being since he was created. According to Poerwadarminta<sup>19</sup> that rights were interpreted: 1. the truth, what exists, the truth. 2. Correct power over something or to sue for something. 3. The power to do something (because it has been determined by rules, laws, etc.). 4. Authority and 5. Owned.

According to Notonagoro, that the rights were the power to accept or carry out something that should be accepted or carried out solely (*an sich*) by a certain party and could not be carried out by any party who could in principle be prosecuted by him. <sup>20</sup> In general, rights are \ obtained by fighting for them. How to fight for it? The trick is to carry out responsibility for obligation. The example of the recognition of rights is the rights to express an opinion, the rights to proper education, the rights to religion, the rights to life, the rights to develop culture, the rights to get value from the teacher, the rights not to be enslaved, and others.

While the obligation is everything that must be done/carried out by each individual so that they can get their rights properly. An obligation can be said as a debt that must be repaid to get what someone must have. According to Notonagoro, <sup>21</sup> the obligation is a burden to provide something that should be left or given solely (*an sich*) by certain parties cannot be by any other party which in principle can be prosecuted by the interested parties. The obligation is something that must be done with full responsibility. Examples are: obeying traffic rules, implementing rules in schools, paying tuition fees according to regulation, as students must study diligently, carry out a task that the teacher gives best, and many more.

Rights and obligation are something that is very difficult to separate, even if it seems inseparable. To achieve a balance between rights and obligation, we need to know the position of each of us. Before we ask "Have I got the right?", It would be wiser to ask this question first "Have I done my duty?". Indeed, we very often demand rights but forget our obligation. For that, we need to know really that we have carried out our duties and obligation well. As a citizen, we must know our own rights and obligation. Likewise with officials, must know their rights and obligations. If the rights and obligation have been fulfilled and balanced, then there will be a comfortable, peaceful, safe and prosperous life.

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Likewise the opposite if the rights and obligation are not balanced which will lead to problem and dispute. If the community does not move to change it, then gradually a much bigger problem will arise and can cause harm to many people. Therefore, we are as good citizen need to uphold the rights and obligation in daily life. More awareness is needed to increase enthusiasm to carry out our obligation as an Indonesian citizen. If we have carried out our obligation properly, we may demand our rights as a citizen to the Government.

In relation to the rights and obligation described above, this can be implemented in the provision of Remission for prisoners / criminal children, whether the remission is a right of criminal prisoners/children? Likewise is there an obligation for prisoners/criminal children to be carried out in coaching in the correctional institution? This is a matter between rights and obligation fulfilled, mutually balanced, and something that cannot be separated. In the case of convict / criminal children having the rights to remission, if the convict / criminal children has carried out the obligation to carry out coaching with good behavior in accordance with the provision of the implementing regulation including the Presidential Decree on Remission, Government Regulation No. 32 of 1999, Government Regulation No. 28 of 2006, Government Regulation No. 99 of 2012 and regulation of the minister of law and human rights No. 3 of 2018. The implementing regulations are almost the same as convict / criminal children who are obliged to carry out coaching with good behavior, but the last has been determined in Article 5 of regulation of the minister of law and human rights No.3 Year 2018, that is generally inmates undergo more than 6 months from before the date of remission.

When inmates / criminal children are convicted of serving their crimes in prison there are some things that are not getting enough attention, especially the protection of their human rights. The punishment carried out by the criminal inmates / criminal children do not mean that their rights are revoked, but the punishment is the release of guilt, namely by the punishment is to isolate themselves from the community. Punishment is not aimed at revoking the human rights inherent in human beings. Therefore the correctional system has explicitly stipulated that prisoners / criminal children have rights such as the right to be visited and visit, remission, leave, assimilation, parole, worship according to their religion, get education, complain, get

health services, get wages for work, even the rights to vote, or accompany legal counsel.

As a legal state, the rights of prisoners / criminal children are protected and recognized by law enforcers, especially officers in a correctional institution. Criminal convicts/children must also be protected by their rights even though they have violated the law. In addition, there are behavioral injustices for prisoners / criminal children, such as torture, not getting proper facilities and the absence of opportunities to get remission. This is contrary to Article 14 (the right of prisoners / criminal children) to the Penal Code.

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Basically, the rights between a female prisoner and male prisoner are same, only in this case because the prisoners are women, there are several rights that receive special treatment from the different male prisoner. With this difference, female prisoners receive special treatment by the correctional institution in all parts of Indonesia such as menstruation, childbirth, and breastfeeding. Likewise the treatment for male criminal children, and criminal children of women who still have hope in the future such as getting education and teaching or gaining affection from parents/guardians.

Especially for remission, assimilation, leave before free and parole is the rights of a prisoner, both adults, and children, as prisoners. The implementation of remission, assimilation, leave before free and parole is regulated in Government Regulation No. 32 of 1999, then amended by the first government Regulation No. 28 of 2006 and the second overment Regulation No. 99 of 2012. The Government Regulation, this implementation is followed up by regulation of the minister of law and human rights No. 3 Year 2018.

### **Remission requirements for drug inmates**

In general, giving remission to prisoner / criminal children, it meets the following requirements:

- a. good behaviour; and
- b. has served a criminal period of more than 6 (six) month.

The Provision of Remission based on the Presidential Decree *juncto* Article 34 paragraph (3), Article 34A, Government Regulation No.28 of 2006, and Article 34A, 34B, and Article 34C Government Regulation No. 99 of 2012 has regulated several things including for prisoner convicted of committing criminal acts of terrorism, narcotics and psychotropics, corruption, crimes against state security and severe human rights crimes and other organized transnational crimes. The condition

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of good behavior must be proven by (Article 5 Law and human rights minister's regulation No. 3 of 2018):

- a. Not being disciplined in the past six months, counted before the date of remission, and
- b. Has attended a coaching program organized by prisons with a good predicate.

Otherwise, remission is not given to inmates: (Article 6 Law and human rights minister's regulation No. 3 of 2018)

- a. Undergoing leave before free, and
- b. Undergoing imprisonment as a substitute for a criminal fine.

Remission for inmates/drug criminal children has been specifically regulated in article 9 Law and human rights minister's regulation No.3 of 2018, namely:

“Prisoners who are sentenced to a minimum of 5 (five) years imprisonment for committing narcotics and psychotropic precursors to obtain remission, in addition to fulfilling the requirements as referred to in Article 5 must also be willing to cooperate with law enforcement to help dismantle criminal cases that do it.”

This provision is a general requirement for the remission of prisoners/children convicted of narcotics, namely sentenced to a minimum of 5 years imprisonment for committing criminal acts of narcotics and must also be willing to cooperate with law enforcers to uncover cases of a narcotics crime. These provisions are used as a basis for the provision of Humanitarian Remission, Additional Remission, and Subsequent Remission.

In addition to being known as General Remissions, there are also Remissions on the basis of humanitarian interests (Humanitarian Remission) given to Prisoners, namely: (Article 29 Law and human rights minister's regulation No. 3 year 2018)

- a. those sentenced to a maximum of 1 (one) year;
- b. aged over 70 (seventy) years; or
- c. Suffering from prolonged illness.

For inmates over the age of 70 (seventy) years must be accompanied by a birth certificate or certificate of birth knowing that has been legalized by the authorized agency. Remission for prisoners is given on national advanced days, while for inmates who are prolonged ill must be accompanied by a doctor's statement stating:

- a. the illness suffered is difficult to cure;

- b. the illness suffered life-threatening or life; and
- c. Always get expert care or doctors throughout his life.

If there are doubts about the doctor's certificate, the Head of Prison can request the opinion of another doctor. Remissions for prisoners are also given on World Health Day.

Then the calculation of Humanitarian Remission for Prisoners is given in the amount of the General Remission proposal obtained in the current year. While Humanitarian Remission is given to Children with the aim to (Article 31 Law and human rights minister's regulation No. 3 Year 2018):

- a. the interests of the child's future;
- b. Reduce psychological burden; and
- c. Accelerate the integration process.

Human Remission for children is given on national children's day. Human Remission for children is given in the amount of the General Remission proposal in the current year.

Furthermore, regarding the granting of additional remission given in certain circumstances, the Minister of Law and Human Rights can provide additional remissions to inmates and children if the person concerned: (Article 32 Law and human rights minister's regulation No. 3 Year 2018)

- a. Do services to the state;
- b. Conduct actions that are beneficial to the state or social; and
- c. Committing an act that assists in coaching activities in prisons (LPKA).

Regarding the act of service to the state consists of (Article 33 Law and human rights minister's regulation No. 3 Year 2018):

- a. Defending the country morally, materially and physically from enemy attacks; and/or
- b. Defending the country morally, materially and physically against the rebellion which seeks to divide or separate from the Unitary State of the Republic of Indonesia.

Service in the country must be proven by the decision to award the government. While doing actions that are beneficial to the state or society, consisting of (Article 34 Law and human rights minister's regulation No.3 Year 2018):

- a. find innovations that are useful for the development of the nation and the Unitary State of the Republic of Indonesia;
- b. Participate in overcoming the consequences of riots, riots, natural disasters on prisons or surrounding areas;

- c. Donate blood to other people in need; and/or
- d. Donate organs to other people in need.

ad.a Regarding the discovery of the innovation must be proven with a patent certificate or a certificate of appreciation given by the government.

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ad.b. Regarding actions which are beneficial to the country in question must be proven by a certificate of appreciation given by the Head of Prison and/or the Head of other relevant agencies.

ad.c. Regarding donating blood is carried out at least 4 (four) times in 1 (one) year as evidenced by a valid certificate provided by the Indonesian Red Cross.

ad.d. Regarding donating organs, it must be proven by a valid certificate provided by the hospital.

Regarding the conduct of activities that help the development activities in Prison or LPKA, it must be proven by being the leader in Prison or the activity coordinator at LPKA. While the appointment as the leader or coordinator of the activity referred to is determined by the Head of the Regional Office based on the proposal of the Head of Prison / LPKA (Article 35 Law and human rights minister's regulation No. 3 Year 2018).

Regarding the calculation of Additional Remission for Inmates and Children referred to (Doing Services for the State and Actions that are beneficial to the state or social) is given in the amount of 1/2 (one half) of the General Remission obtained in the current year (Article 36 paragraph (1) Law and human rights minister's regulation No. 3 of 2018).

Regarding the granting of additional remissions for prisoners and children in question (acts that help the development activities in prisons or LPKA) are given in the amount of 1/3 (one third) of general remission obtained in the current year (Article 36 paragraph (2) Law and human rights minister's regulation No. 3 year 2018)

Regarding the Proposal for Additional Remission, it must be accompanied by a valid proof of evidence from the authorized official and can only be used once for each Additional Remission, and the provision of Additional Remission is given in conjunction with the granting of General Remission. Furthermore, the provisions concerning the pro-

cedure for granting Remission for Prisoners apply mutatis mutandis to the provision of Humanitarian Remission and Additional Remission (Article 38 Law and human rights minister's regulation No. 38 Year 2018).

Regarding the Provision of Additional Remission for Every Prisoner and Child can be given an Additional Remission consisting of (Article 39 paragraph (1) Law and human rights minister's regulation No. 3 Year 2018):

- a. Subsequent General Remission; and
- b. Subsequent Special Remission.

Regarding supplementary remission is given if the inmate and child behave well and the length of the detention period is uninterrupted from the date of counting the detention period to receive remission up to the date of the court decision that has permanent legal force.

Regarding the proposed supplementary remission can be given to inmates and children who: (Article 40 Law and human rights minister's regulation No. 3 Year 2018)

- a. has obtained a permanent legal decision; and
- b. never got Remission.

While the calculation of the length of the period of detention as a basis for determining the amount of the Additional General Remission is calculated from the date of detention until August 17 (Article 41 paragraph (1) Law and human rights minister's regulation No. 3 Year 2018).

Regarding the calculation of the length of the period of detention as a basis for determining the amount of Additional Special Remission calculated from the date of detention to the religious holidays in accordance with the religion adopted. In the event that the detention period is terminated, the calculation of the length of the period of detention is calculated from the date of the last detention. Then the length of the period of detention of the house and the period of detention of the city is not counted as a period of detention in the provision of Subsequent Remission.

Regarding the Additional General Remission is given to Prisoners with the following conditions: (Article 42 paragraph (1) Law and human rights minister's regulation No. 3 Year 2018)

- a. 1 (one) month for inmates who on 17 August have undergone a detention period of at least 6 (six) months to 12 (twelve) months;

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- b. 2 (two) months for inmates who have served a period of imprisonment that has undergone a detention period of more than 12 (twelve) months; and
- c. the amount of remission given in the following year in accordance with the provisions of the legislation.

Regarding the General Submission, Remission is given to the Child with the following conditions (Article 42 paragraph (2) Law and human rights minister's regulation No. 3 Year 2018):

- a. 1 (one) month for a child who on 17 August has undergone a detention period of at least 3 (three) (six) months to 12 (twelve) months;
- b. 2 (two) months for a child who has served a period of imprisonment that has been under detention for more than 12 (twelve) months; and
- c. the amount of remission given in the following year in accordance with the provisions of the legislation.

Regarding the amount of Special Remission, Subsequent is given to inmates with the following conditions (Article 42 paragraph (3) Law and human rights minister's regulation No. 3 Year 2018):

- a. 15 (fifteen) days for inmates who on religious holidays in accordance with their religion have undergone a period of detention for a minimum of 6 (six) months to 12 (twelve) months;
- b. 1 (one) month for inmates who have undergone detention for more than 12 (twelve) months; and
- c. the amount of remission in the following year in accordance with the provisions of the legislation.

Regarding the amount of Special Remission, Subsequent is given to Children with the following conditions (Article 42 paragraph (4) Law and human rights minister's regulation No. 3 Year 2018):

- a. 15 (fifteen) days for a child who on religious holidays in accordance with the religion he adheres has undergone a period of detention for a minimum of 3 (three) months to 12 (twelve) months;
- b. 1 (one) month for a child who has undergone a detention period of more than 12 (twelve) months; and
- c. the amount of remission in the following year in accordance with the provisions of the legislation.

Regarding the Submission of Submitted Remission, only can be given once for all Remissions that have not been obtained due to non-fulfillment of administrative requirements (Article 43 Law and human rights minister's regulation No. 3 Year 2018).

Based on the above, it is impressed that there is a tightening of remission for drug inmates through requirements that must be met and are different from giving remissions to inmates in general. Keep in mind the meaning of tightening the remission itself is to tighten the terms and criteria of an inmate to be able or not to be given a penalty cut (Remission) on condition. In general, the practice of organizing prisoners is still far from expectations that can foster the community involved in the law to be able to return to society. This is no longer a public secret that has become a paradigm or an ugly stamp for prisoners, in which the correctional institution is “The University of Criminal Actors” to just look at the news now, for example, the circulation of narcotics is controlled from inside the prison. Therefore, as the rule of law, the rights of prisoners must be protected by law and law enforcement, especially officers in prisons, so that something is necessary for the state law to respect the human rights of prisoners as citizens who must be protected, even if they violate the law. In addition, prisoners need to be protected from unfair treatment, such as torture, not getting proper facilities and the absence of opportunities to get remission.

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If you already know what the right of prisoners is, then he/she gets full legal protection, therefore do not stay silent facing arbitrary treatment in the correctional facility. Thus if there is a violation of the prisoner’s rights, the prisoner has the right to sue and must fight for it. It must be remembered that Article 14 of the Penal Code, has regulated the rights of prisoners mentioned, that prisoners have the right to submit complaints and receive family visits, legal counsel and certain other people, all actions that violate human rights must not be allowed but must be dealt with!

### **The reason for remission provision tightening for drug inmates**

Remission provision tightening for Drug Inmates as regulated in Government Regulation No. 28 of 2006 is the first amendment to Government Regulation No. 32 of 1999, then Government Regulation No. 99 of 2012 appears as the second amendment to Government Regulation No. 32 of 1999. Further, the government regulation was followed up by regulation of the minister of law and human rights No. 3 Year 2018.

From the provision above, it appears the difference in giving Remission for inmates in general by giving Remission for Narcotics Prison-

ers. The difference according to the author is a Remission provision tightening for drug inmates, in addition to the procedure for giving remission, calculation of remission, even documents that must be completed in the remission.

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Remission provision tightening for Drug Inmates, juridically it does not discriminate between users, dealers, or bookies. This is equated with the term prisoner. Remission provision tightening for Drug Inmates can be grouped as follows:

- a. For drug inmates who are sentenced to prison for at least 5 (five) years.
- b. For drug inmates who are sentenced to prison, the maximum period of 1 (one) year, over 70 (seventy) years, or suffer prolonged illness for reason of consideration of the public interest, security, and sense of justice of the community.

The requirement that must be fulfilled is subject to the general requirement, as well as the special requirement for drug inmates as follows:

- a. willing to cooperate with law enforcer to help uncover a case of crimes committed;
- b. has paid in full fines and compensation in accordance with court decision for inmates convicted of corruption (according to the author the provision of letter b also applies to drug convicts because the Narcotics Law in which the criminal act is not only subject to capital punishment, or imprisonment is also imposed a criminal fine).

Remission provision tightening for Drug Inmates seems to be impressed that remission is not as easy as it can be given, even though drug inmates have undergone their criminal terms with good behavior without being followed by a willingness to cooperate with law enforcement officials. The period of imprisonment is said to be truly pure until it ends.

The reason for remission provision tightening for Drug Inmates cannot be separated from the purpose of criminal prosecution and the purpose of this punishment is to seek a justification for criminal sanctions by the State (represented by a judge) against someone who has committed a criminal act (violating the criminal law) as one way to implement the objectives of criminal law such as to fulfill a sense of justice, protect the community, protect the interests of individuals, and others.

According to Muladi, in giving a criminal, first of all, it must also be fulfilled for the purpose of criminal justice with a background in coaching philosophy<sup>22</sup>. This means that the formation of prisoners must be based on the ideology of Pancasila, that is, one of the aims of the conviction is to free the guilt of the convicted person. Criminal objectives can be found in the Draft Criminal Code Draft 2017, Article 55 paragraph (1), as follows:

Criminal aims:

- a. prevent criminal act by enforcing the legal norm for the protection and protection of society;
- b. socialize the convicted person by providing guidance and coaching to become a good and useful person;
- c. resolve conflict caused by the criminal act, restore balance, and bring a sense of security and peace in society; and
- d. growing regret and freeing guilt in the convicted person.”

The purpose of prosecution is not a new thing, but the idea of thinking about the purpose of prosecution has existed since time immemorial. This is precisely the era of Protagoras. Plato has explained about crime as a means of special prevention and general prevention. Furthermore Seneca, a famous Roman philosopher who had made a formulation that is “*Nemo prudens punit quia peccatum est, sed ne peccetur*” which means it is not worthy of people to punish because there has been wrongdoing, but with the intention that there will be no more wrongdoing. Likewise, Jeremy Bentham explained that the purpose of punishment is to prevent future crimes from occurring. On the other hand, Immanuel Kant and the Catholic Church as the pioneers stated that criminal justification and criminal purposes are retaliation for attacks on crime on social and moral order<sup>23</sup>.

From some of the scholars’ opinions, it is known that the crimes imposed and lived by prisoners must be truly beneficial for their own sake (later in the future there will be no more wrongdoing) and community protection which means that the community feels protected from crime. Thus the theory of crime prevention and control put forward by experts can also be used as a justification for the reason of The reason of remission provision tightening for Drug Inmates who undergo their criminal periods if drug inmates are willing to cooperate with law enforcement to help uncover cases of crimes committed (justice collaborator).

This crime prevention theory can be distinguished between special deterrence and general deterrence. Special prevention is intended to

be a criminal influence on prisoners. It means the prevention of crimes to be achieved by the criminal by influencing the behavior of Prisoners, later in the future will not commit another crime so that prisoners turn out to be better and more useful to the community. This theory is similar to the term reformation or rehabilitation theory.

While general prevention is intended as a criminal influence on society in general, this means the prevention of crime to be achieved by the criminal by influencing the behavior of members of society in general to not commit a criminal act.

According to Johannes Andenaes<sup>22</sup> explains there are three forms of influence in general prevention, namely:

- a. preventive influence,
- b. influence to strengthen moral restrictions,
- c. influence to encourage the habit of complying with the law.

Drug abuse prevention effort can also be made in several ways, as follows:

- a. Preventive, namely to form a community that has resistance and immunity to drugs. Prevention is better than eradication, such as coaching and supervision in families, counseling, recitation, supervision of nightlife venues, and distribution of illegal drugs.
- b. Repressive, namely to take action and eradicate drug abuse through legal channels, which is carried out by law enforcers.
- c. Curative (treatment), aimed at healing the victim, both medically and with other media.
- d. Rehabilitation, meaning that after treatment is complete so that the victims do not relapse “addicted” to drugs, it needs to be treated fairly in order to return to the community in a state of physical and spiritual health. We must not alienate drug victims who are aware and repentant so that they do not fall back like drug addicts.<sup>24</sup>

With provisions issued of the remission provision tightening for drug inmates, it is an implication that the theory of legal certainty is used. According to Hans Kelsen Marzuki<sup>25</sup> the theory of legal certainty is:

“Law is a norm system. Norm is a statement that emphasizes “should” or *das sollen* aspect, by including some rules about what to do. Norm is deliberative product and human action. The law which contains general rules is a guideline for an individual to behave in society, both in a relationship with the in-

dividual and in relation to society. These rules are a limitation for people to burden or take action against an individual. The existence of these rules and the implementation these rules raise legal certainty.”

The theory of legal certainty from Hans Kelsen can be applied to the provision of remission that requires (*das sollen*) to be used as a guideline for drug inmates who have the intention of wanting remission in serving a criminal period will be reduced from the actual criminal period, but the remission provision is not only used as guidelines for inmates but used as a guideline for law enforcement officers who have the duty and authority to provide remission. The existence of these rules reflects legal certainty.

According to Marzuki<sup>25</sup> the law must contain 3 (three) values of identity, namely:

- a. Legal certainty principle (*rechtssicherheit*). This principle is reviewed from a juridical point of view.
- b. Legal justice principle (*gerechtigkei*). This principle is viewed from a philosophical point of view, where justice is the equality of rights for all people before the court.
- c. The principle of benefit (*zweckmassigkeit*).

The remission provision in addition to reflecting legal certainty can also reflect legal justice and its benefit from the remission provision. Justice for inmates who get remission, if the prisoner is serving a criminal period with good behavior, and is obliged to cooperate with law enforcement officials to uncover the criminal act he committed. Thus the principle of usefulness is useful for the community, nation, and state which is protected from the threat of security from the danger of drugs.

The remission provision means in order to carry out the purpose of punishment, therefore one of the tightening of remissions in the provisions of Article 2 the regulation of the minister of law and human rights No. 3 Year 2018 stated that remission given to inmates must be beneficial for prisoners, criminal children and their families as well as remission given must also consider for the sake of security, public order and a sense of justice for the community.

Thus legal certainty is a characteristic that cannot be separated from written law. Law without a certainty value will lose its meaning because it can no longer be used as a code of conduct for everyone. Certainty itself is referred to as one of the objectives of the law, while

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the legal consequences that occur due to a legal certainty must adhere to the principle of legal certainty for all aspects of life in the field of society, nationality, and state including government with a national legal system. The national legal system is the law that applies in Indonesia with all its elements that support each other in order to anticipate and overcome the problem that arises in the life of society, nation, and state.

Law is a system, which contains legal material, at least must have the following criteria: a. concrete, b. not pluralistic (variety), c. clear and without multi-interpretation, d. not conflicting, and e. not contrary with the fundamental state norm. This is intended to create a condition called the “legal certainty”<sup>26</sup>

According to Sudikno Mertokusumo<sup>27</sup> legal certainty is justification protection against arbitrary action which means that a person will be able to get something expected under certain circumstances.

It means that the remission provision tightening is expected to prevent the arbitrary act from law enforcement officers, such as abuse of power, position, or act of corruption, collusion and nepotism.

The authoritative law was obeyed, both by legal officials and by *justitiabelen*, people who had to obey the law. The law will increase its authority, if:

1. Obtain support from the prevailing value system in society. The law of one type of norm in the applicable value system will be more easily supported by another social norm that applies.
2. Law in the formation of *ordenings subject* or legal officials is not isolated from another social norm, even linked to the prevailing norm.
3. Legal awareness of *justitiabelen*. The authority of the law will be stronger if new legal awareness. Legal awareness of officials from legal officials who are called to preserve the law and to become law shepherd, legal officials must be aware and understand that the authority of the law increases if the action is orderly according to its authority and if it respects and protects the bonds (*verbandorde*).<sup>28</sup>

Meanwhile, according to Mochtar Kusumaatmadja<sup>29</sup> relates to a legal certainty, namely:

“To achieve order in society, the effort is made to ensure certainty in the relationship between humans in regular society, but it is an absolute requirement for a living organization that

transcends current boundaries. That's why there are legal institutions, such as marriage, property, and contracts. Without the certainty of law and public order manifested by him, a human cannot develop the talent and abilities that God has given him optimally in the society in which he lives."

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The legal certainty requires the creation of a general rule that is generally applicable and results in a general legal duty to achieve legal certainty (for the sake of order and justice for all Indonesians). This is done so that the creation of a safe and peaceful atmosphere in the wider community and enforced and implemented firmly<sup>30</sup>. In addition, the theory of justice is used to solve the problem, namely finding basic reason for justifying the reason for remission provision tightening for drug inmates. Justice is one of the objectives of the law as well as legal certainty and benefit.

Thus the reason for tightening remission for prisoners who are obliged to cooperate with law enforcement officials to uncover cases of crimes committed is a form of drug abuse control. In general, drug abuse prevention is divided into three instruments:

1. Supply reduction: namely narrowing the space for drugs production and circulation. The obstacle faced today is collusion between the city and the authorities. In addition, the kitchen lab phenomenon emerged a cottage industry that was managed in the garment industry, which resulted in more difficult controls.
2. Demand reduction: reducing drug (user) market, which is taken through the rehabilitation program of users. The point refers to market law: if there is less demand, it will ultimately reduce supply. The government and several private institutions (NGOs) have conducted advocacy and assistance to maximize drug user rehabilitation centers. The head of BNN said the rehabilitation center construction will be carried out simultaneously in Eastern, Central, and Western Indonesia. The government has also formed a Drug Addiction Hospital (RSKO) in Cibubur, Jakarta. Some Islamic boarding schools also have special programs to rehabilitate drug addicts such as the Suryalaya Islamic Boarding School in Tasikmalaya, West Java.
3. Harm reduction: reducing the adverse effects of drug abuse, which is specifically focused on addict users. Usually, the therapy taken is methadone therapy, a type of drug with a low addiction level (24-hour interval), compared with methamphetamine ad-

diction level (every 7 hours). The assumption is that with Methadone Therapy, users can be more productive because intoxicated intervals (pain due to addiction) become longer.”

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*4/2018* In its development, Indonesia also has several official institutions that deal directly with drug cases including BNN (National Narcotics Agency); Narcotics Division of the National Police Criminal Investigation Agency; NAFZA (Narcotics, Psychotropic, and Addictive Substances) managed by the Drug and Food Management Agency (BPOM). There is also a GRANAT social organization (National Anti Narcotics Movement) which later became the Struggle Organization to combat illicit trafficking and drug abuse. GRANAT was established on October 28, 1999, alone or with other groups or Government agencies, conducting counseling about the dangers of illicit trafficking and drug abuse, as well as campaigning on ways to counter illicit trafficking and overcome various dangers of drug abuse.

In the “Indonesian Defense White Paper” in 2008. There are two categories:

1. The traditional security threat in the form of invasion or military aggression from other countries against Indonesia is estimated to be less likely. The role of the United Nations and the international reaction are believed to be able to prevent, or at least limit the use of, armed forces by a country to impose its will on other countries.
2. Non-traditional threats, namely external threats are more likely to originate from a transnational organized crime committed by non-state actors, by utilizing domestic conditions that are not conducive. Estimates of threats and disturbances faced by Indonesia in the future, including terrorism, separatism, transnational crime (smuggling, illegal fishing), pollution and destruction of ecosystems, illegal immigration, piracy/robbery, acts of radicalism, communal conflict and the impact of natural disasters.

The direct link between drugs and national security is the case of large-scale smuggling, with armed personnel. Armed smuggling indicates an increase in smuggling quality. Drugs are one of the crime triggers, which in the United States Secretary of State Hillary Clinton called the drug violence. This happens because the drug business plays a large amount of money, so competition between groups often occurs in fighting over the market or securing the channels of trafficking and smuggling.

## Conclusion and Suggestion

### Conclusion

1. Remission is the right of convicts / criminal children who cannot be separated from obligations. Therefore rights and obligations must be fulfilled, and mutually balanced. In the case of convicts / criminal children having the right to remission, if the convict / criminal child has carried out the obligation to carry out coaching with good behavior.
2. Requirements for Remission for Narcotics Prisoners is a tightening which has special requirements for drug inmates, inmates who are jailed for at least five years, for committing criminal acts of narcotics and narcotics and psychotropic precursors and are willing to cooperate with law enforcement agencies to help dismantle criminal cases do it.
3. The reason for tightening remission for drug inmates is in the context of carrying out the objectives of criminal prosecution, the influence of drugs has damaged the young generation, the nation, and the state, as well as the security threats handling from the dangers of the drug.

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### Suggestion

1. The rights and obligations inherent in remission are required to contain a value of certainty, fairness, balance, benefit for prisoners, families, communities, nations and the state in order to carry out criminal purposes.
2. Requirements for giving remission to convicts / criminal children of drugs Impressed as a remission tightening need to be reviewed by paying attention to, and reflecting the principles / correctional system as outlined in the Penal Code.
3. The reason for tightening remission is expected to be implemented by law enforcement officials to reduce the frequency of drug crimes, and avoid security threats from the dangers of drugs.

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Sujasmin

# The Importance of Police Neutrality in Creating Democratic Election

*Ratnia Solihah, Siti Witianti, Mustabsyirotul Ummah*

## **Abstract**

Indonesian National Police's (Polri) professionalism regarding elections is identified by the public with the neutrality of the police in realizing democratic elections. Polri's professionalism in the political year ahead of the simultaneous elections in 2019 is still considered not optimal by some circles, when viewed from the institution's neutrality attitude and behavior in dealing with several issues in relation to political contestation in the political years, especially before the simultaneous elections in 2019 or in some time in the socio-political life of the community. These issues involve the context of the election which involves the existence of different groups of support and can cause ongoing conflict if not handled properly, fairly and impartially by the police. By using a qualitative approach through literature studies, this paper identifies problems that arise in the context of national neutrality in relation to elections, explains the neutrality arguments of the police in elections, and analyzes the importance of national neutrality in realizing democratic elections in accordance with the prevailing laws and regulations. The results of the study show the importance of the neutrality of the National Police in realizing democratic simultaneous elections, by carrying out the 13 attitudes of national neutrality in the elections, which serve as guidelines for the police as an institution and the police (its members) in contributing to the successful, direct, free, secretive and honest and fair administration of elections.

*Keywords: neutrality, police, elections*



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## Introduction

The year of 2019 in Indonesia will be preoccupied with big political agenda of the general elections, namely the legislative general election and the presidential-vice presidential election held simultaneously. Even before that too, regional elections were held simultaneously which also absorbed public energy, including the police. In each of these elections, demands for maximization of police performance increased. Especially in maintaining public security from the escalation of elite political tension that often spreads to the grassroots. It has become very common in every electoral process, both national elections and local elections are always colored by small and large explosions that accompany elite competition in power struggles. Even not infrequently also leads to the emergence of material and soul victims.

Polri's performance during the election is identified by the public with the neutrality of the police in realizing democratic elections<sup>1,2,3</sup>. Neutrality is seen as an attitude and behavior of the impartiality of the police towards one or several political institutions and political forces that follow political contestation in the election. In plain view, the public views the neutrality of the police in the elections, among others by assessing the attitudes and behavior of the police in dealing with conflicts that occur between supporters of the candidates/election participants and in providing a sense of security for various parties (the elites and the mass) related with the political contestation. Handling conflicts and providing security for everyone is not only a task and a burden on the police, because civil rights in their essential politics are peaceful and are entirely ethical choices from the elite and the masses.

By using Jurgen Habermas's thinking <sup>4</sup>, politics should be fair competition in the public sphere, with freedom of expression, but ethically, not imposing will, especially violence. Elite awareness and mass are therefore the keys to a healthy democracy, besides being supported by clear and fair rules of the game. The National Police, therefore, should become the agent outside the arena, who only act in security, guarding the administrative mechanism of the election itself.

However, Indonesia has not fully demonstrated the maturity of democracy. The thing that makes the police is not only preoccupied with the mobilization of forces to control the masses or detect potential security disturbances, but it also has the potential to be dragged into the political vortex itself. Walker and Waterman<sup>5</sup> explained, the political situation, especially elections, might influence public attitudes towards

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*Siti Witianti*

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the police, as well as influence the behavior of the police themselves. The phenomenon of the withdrawal of the police in a political vortex, among others, can be seen from several horizontal conflicts before the election such as conflicts between supporters of the masses in declarations of support for different candidates whose handling is considered insufficient and not even neutral by certain circles, as well as some issues of internal police inequality deal with parties who persecute the community or those who criticize or oppose the government.

The neutrality of the National Police in elections is very important because it is one of the keys to the success of democratic elections. This was stated by TNI Commander Marshal Hadi Tjahjanto at the TNI Command Staff School in Bandung.<sup>6</sup>

However, in realizing the neutrality of the National Police in simultaneous elections, one of which was conducted in the lead up to the simultaneous elections in 2019, is still in question as well as a matter of concern to various circles, particularly the national neutrality in handling conflicts between supporters of the masses in recent times. The importance of police neutrality to realize simultaneous democratic elections is one of the interesting things to study in this paper, which is not only seen as a form of police professionalism as stated in the National Police Neutrality Guidelines but also as a form of law enforcement institution ethics in carrying out good democratic principles.

### **Research methods**

Study on the importance of police neutrality in creating democratic elections requires an in-depth identification and understanding to see the political context surrounding the problems of study and the processes that occur in the neutrality of the police. Therefore, the research approach used is qualitative research by using literature studies. As stated by Maxwell<sup>7</sup>, qualitative research is aimed at understanding meanings, understanding particular contexts, anticipating phenomena and influences that are not anticipated, and understanding the process. This study aims to identify the problems that arise in the context of national neutrality in relation to elections, explain the neutrality arguments of the police in elections, and analyze the importance of national neutrality in realizing democratic elections in accordance with the prevailing laws and regulations<sup>8,9,10</sup>.

## Results and Discussion

### *Police and Elections*

The word “Polri” according to the provisions of Article 20 Paragraph (1) of Law Number 2 of 2002 concerning the Indonesian National Police is stated that the State Police of the Republic of Indonesia consists of “Polri Members” and “Civil Servants”. Legally, both members of the National Police and Civil Servants are citizens who have equal status before the law, so that all citizens have the same rights in the political context. Second, the meaning of “Election” is a form of party and the application of the principle of democracy in people’s lives in the continuity of the structure of national and state organizations in order to elect representatives in the legislative body and the president/vice presidential pair. This right lasts for the next five years and is carried out through an honest, fair, direct, public, free and confidential mechanism. This as stipulated in Law No. 10 of 2008 concerning General Elections of members of the DPR, DPD, and DPRD.

For the above purposes, the National Police are given roles, duties, and obligations as members of the Election Supervisor, Safeguard and Election implementer. To fulfill these work demands, interests, and abilities, the National Police must be able to act, desire, and work well and neutral in their existence, role and duties. In the form of appearance, the National Police are also required to be able to play an independent, proportional and professional role.

According to Rahardjo<sup>11</sup>, At the very least, Polri in law enforcement and neutrality in elections must consider several interrelated matters. First, the concept of law enforcement is the total (total enforcement concept). This demands that everything be worth considering without exception. Second, law enforcement is full (full enforcement concept). It must be realized that the total concept needs to be limited by the procedural law. Third, the concept of actual law enforcement that arises after discretion in law enforcement.

In addition, the National Police as one of the pillars in the life of democracy cannot avoid the problems of the state and citizenship. This is very important because the National Police, who are demanded to be neutral and work professionally, are also required to understand the aspects of the constitutionality of the state, state institutions, functions of government, goals of the state and society as citizens. Thus, the position as a citizen and also as a law enforcement apparatus becomes very strict, regarding their rights, obligations, and responsibilities<sup>12</sup>.

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Regarding the role of the neutrality of the National Police in the General Election, the problem arises. First, how is the neutrality of the National Police in theory and practice? Second, the prospect of the National Police's prospective neutrality in the future is related to the neutrality of the National Police as a law enforcement institution as well as its members as citizens. The important argument put forward is the neutrality of the National Police in general elections is important and necessary, without having to eliminate political rights, especially the right to be elected and to participate in government and the state.

### *The Neutrality Argument of the National Police in the Election*

Neutrality can be interpreted as an attitude of not actively and passively giving support to political groups/parties that have an interest in winning elections. In the history of the Indonesian state administration, this attitude is referred to as the independence of the National Police as an element in law enforcement.

According to Falaakh<sup>3</sup>, the independence or independence of the National Police is interpreted as independent operational and coaching. In addition to that, it is also independent in the sense of a sufficient number of personnel, quality of professionalism, and also obtaining welfare.

On the basis of this view, it becomes relevant to link neutrality with the institutional independence of the police. There are several reasons or arguments for why the National Police need to have a neutral attitude towards the Election. On one hand, the reflection of the neutrality of the National Police in the General Election must be realized in the independence, proportionality, and professionalism of the existence and implementation of the National Police's work. This is because the role of the National Police is "guarding, protecting, and serving the public, law enforcement and maintaining public security and order".

On the other hand, the National Police are required to be able to mobilize freely and to be able to be in the midst of people's lives. Thus, in the appearance of attitudes that are not in favor of the interests of groups or affiliates in practical political activities certain political parties are very decisive. Considering the demands of the tasks and obligations of the National Police, it is necessary to note whether there is a nature of neutrality. This attitude of neutrality is a demand and reflection of the National Police institution as well as being a model of education for other citizens.

The importance of the attitude of neutrality of the National Police in the Election was stated by Teguh Soedarsono<sup>44</sup> as follows: first, to maintain and realize the professionalism and proportionality in the work of the National Police both individually and institutionally, wisdom and haste from various parties within the National Police to delay and/or not use their political rights (the right to vote) without losing their human rights as members of the community, nationals, as well as Indonesian citizens to get “elected rights.” With the right to vote and be elected, it means that citizens take part in determining the policy of the Government.

Second, to realize the role and duties of the National Police in providing protection, protection and service to the community, as well as in the task of law enforcement as well as fostering conditions of security and public order, especially in realizing the vision, mission and strategies of community policing or “community politics” status is required and Polri’s work behavior is independent, solid, and close to the community. But with that identity, he should still have the opportunity to determine the future of the community, nation, and his country.

Third, the National Police can participate in realizing national goals and interests expressed in national development and the implementation of the General Election for the continuity and sustainability of life in the community, nation, and state. Therefore, it is necessary to have a task force and work capability function unit within the Polri organization that must be formed in a planned, structured and systematic manner. Thus, the right of obligation and authority and responsibility for the interests of the nation and state can be achieved gradually, in accordance with the organizational line.

Fourth, to carry out the role and duties of the National Police as the element of security, guards, and election supervisors, the appearance and attitude of the National Police are firm, neutral and authoritative. Therefore, the existence and work attitude of the National Police must always be unbound and not influenced by the various interests of the groups who are contestants of the Election. This demand is very logical because the National Police as a protector also acts as a law enforcer who is always demanded to be fair in carrying out their duties.

Fifth, to avoid the depletion of the sense of loyalty, dedication and performance of the Indonesian National Police in carrying out the duties of the National Police, as well as to maintain the degraded condition of the discipline and compliance of the National Police

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unit in carrying out their work roles and responsibilities. With the various practical political interests and interests of political parties as experienced by the past, every police officer is required to be neutral.

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Sixth, to fulfill, maintain, and realize the hopes of the people so that the National Police can become a stronghold of the state, guide the community, referee the purity of democracy in the General Election, as well as the agent of change in national reform, the National Police needs commitment, consistency and honesty in acting freely and behaving in a neutral manner every stage of the Election process. This is in line with the attitude of law enforcement that must uphold ethics and morals. Because, in the current development, legal reforms should also reform law enforcement institutions. Consequently, the National Police as a law enforcement institution that plays the role of change should be demanded not only to think of formal legal or juridical approaches, but also to increase efforts to understand the rule of ethics or the code of ethics.

The argument put forward refers to the 1948 UN Universal Declaration of Human Rights that what is formally proclaimed at the level of rights through a fully ethical perspective on the intrinsic dignity of the human person, the freedom that must not be removed and the fundamental alignment of all people and the solidarity and independence of all human beings<sup>11</sup>.

The neutrality demands of the National Police are formally legal, or the normative legal framework seems to be argued not only to prevent inequality in law enforcement but also to reject the emergence of conflicts of interest that can harm the community and also the National Police as citizens.

### *The Importance of Polri Neutrality in Realizing Democratic Elections*

An election is a democratic process that is full of political content, competing for influence to achieve a position, position, and power. That is why the presence of a democratic, open, honest and fair election that is carried out in a Free and Confidential Direct Public manner becomes a demand for the success of the Election, which can give birth to the people's trust. The success and realization of democratic elections require the support of various parties involved by carrying out their respective roles and duties, both election organizers, election

participants (candidates), successful teams, supporters, independent supervisors and security, and law enforcement.

In this study, the author focuses his study on the role and tasks of the National Police as one of the security and law enforcement institutions in the implementation of elections, especially those related to the neutrality of the National Police in elections which are still highlighted by various parties. The condition of the National Police in relation to politics or elections is not only a problem that occurs in Indonesia but also occurs in several other countries.

Based on research conducted by Walker and Waterman<sup>5</sup> in Costa Rica, Mexico, and the United States, it is known that policing can become a political agenda (politicized) because of the issue of law enforcement in the party campaign. At this point, a demand arises for the neutrality and professionalism of the police in the electoral political process. Walker and Waterman<sup>5</sup> also gave an analysis that, the development of democracy in a country also affects the performance of the police, which can then have implications for the attitude of the police themselves in politics. Polri's performance in a new democratic country is often a reflection of the overall unconsolidation of state management.<sup>15</sup>

The maximum principles of democracy and good governance in a country are not yet very susceptible to bring the national police institution which should be impartial into political currents and take sides. Situations that should not occur to create a safe society and protect the interests of many parties. The alignment of state institutions such as the National Police will certainly distance the reality of democratic dreams.

Regarding the issue of national neutrality in the context of Indonesia's elections, among others, can be seen from various events in the political year ahead of simultaneous elections for presidential and legislative elections, namely:

- a. President Joko Widodo's request to members of the TNI and Polri to explain the achievements of the government's performance to the community. According to Gerindra politicians, Jokowi's request has the potential to pull back the two institutions into practical politics. The president's attitude is bad for democracy and harms TNI-Polri. President Joko Widodo's request in front of TNI-Polri members to socialize the performance of the government was considered by various groups to be highly politi-

cal, disproportionate, which would not only injure the electoral process but could break down democracy. There are two fundamental reasons underlined by Gerindra Politicians regarding the issue. First, the president's request contradicts the TNI-Polri Law. In Article 39 Paragraph 2 of Law Number 34 of 2004 Tentang TNI, soldiers are prohibited from engaging in practical political activities. While Article 28 Paragraph 1 of Law Number 2 of 2002 concerning Polri states that the National Police are neutral in political life and do not involve themselves in practical political activities. This prohibition was also reaffirmed in Article 67 of the General Election Commission Regulation (PKPU) Number 23 of 2018 concerning the General Election Campaign. The TNI and Polri are prohibited from taking actions that benefit or harm one of the election participants. So, regulations that maintain the neutrality of the TNI-Police are very strong. In addition to being banned from the law, socializing the performance of the government, not part of the TNI-Polri's duties, because members of the TNI-Polri were not specifically prepared to carry out these tasks. According to the law, there are three main tasks of the TNI, namely to uphold the sovereignty of the state, maintain territorial integrity and protect all nations and all of Indonesia's bloodshed from threats and interference. In its implementation, it was possible for the TNI to carry out Military Operations Other Than War (OMSP).<sup>16</sup>

- b. The lack of security of certain parties who make a declaration of support for one of the presidential-vice presidential candidates who will participate in the 2019 presidential election. In this case, the professionalism and neutrality of the police are in the public spotlight, because the issue of providing security for all people is considered to reflect the policing bias on one particular party.<sup>17</sup>
- c. The handling of the law of the police against those who commit hate speech, hoaxes, black campaigns and defamation that are considered by certain circles is still selective or discriminatory.<sup>18</sup>
- d. The handling of police law which is valued by some people is still discriminatory or still reflects the impartiality or injustice of the police in treating parties/groups of people who carry out persecution and other parties/groups of people who are persecuted.<sup>19</sup>

Some of the issues above which deal with the police are considered as problems of neutrality or professionalism of the police in relation to

political contestation in the political years, especially in the lead up to the 2019 elections or in some time in the socio-political life of the people<sup>20</sup>. These issues involve the context of the election which involves the existence of different groups of support and can cause ongoing conflict if not handled properly, fairly and impartially by the police.

The existence of various problems related to the neutrality of the National Police in the elections led to the birth of the guidelines of the attitude of national neutrality in the 2019 elections. Overall there are 13 attitudes of national neutrality in the election, as stated by National Police Chief Tito Karnavian, that all members of the National Police are obliged to guide 13 attitudes of neutrality, including:

1. Members of the National Police are prohibited from declaring themselves as potential candidates for Tito to say everything. Members of the National Police are prohibited from declaring themselves as potential candidates for the head or deputy regional head or legislative candidates during the election or election.
2. It is forbidden to accept or request gifts.  
Polri members are prohibited from accepting or requesting or distributing promises, gifts, donations or assistance in any form from the political parties, candidate pairs, and successful teams in the election or post-conflict local election activities.
3. It is prohibited to use to order others to place party or candidate attributes.  
Members of the National Police are prohibited from using, installing, ordering others to install attributes that read or display political parties, candidates, and candidate pairs.
4. It is forbidden to attend or be a speaker, and a speaker of political activities.  
Members of the National Police are prohibited from attending, being speakers, speakers at declaration activities, meetings, campaigns, meetings of political parties except in carrying out safeguards based on a duty order.
5. It is prohibited to promote and disseminate the attributes of parties or candidates.  
Members of the National Police are prohibited from promoting, responding to and disseminating images or photos of would-be candidates for the head or deputy regional head, either through the mass media, online media, and social media.
6. Doing photos together.

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- Members of the National Police are prohibited from taking photos together with prospective candidates or deputy regional heads or legislative candidates.
7. It is forbidden to provide political support in any form.  
Polri members are prohibited from providing political support and impartiality in any form to prospective heads, deputy regional heads, legislative candidates, successful teams.  
What must be done is to provide security in a series of election or post-conflict local election activities?
  8. It is forbidden to be a board or member of the candidate pair's success team.  
National Police Member IDs are prohibited from being administrators or members of successful candidate teams for candidates or candidates in the General Election Election.
  9. It is prohibited to use authority or make political decisions .mes / Sukma Shakti  
Members of the National Police are prohibited from using authority or making decisions and actions that can benefit, or harm the political interests of political parties and candidate pairs and candidates in the General Election Election activities.
  10. It is prohibited to provide official or personal facilities. Times / Sukma Shakti  
Members of the National Police are prohibited from providing official or personal facilities for the benefit of political parties, candidates, election candidates, successful teams and candidate pairs during the campaign period.
  11. Doing black campaigns is prohibited.  
Members of the National Police are prohibited from carrying out black campaigns (black campaign) against candidate pairs and are prohibited from advocating abstentions.
  12. It is prohibited to provide information to anyone.  
Members of the National Police are prohibited from providing information to anyone related to the results of vote counting, in the election or Pemilukada voting activities.
  13. It is prohibited to be a general election committee.  
Polri members are also prohibited from being the General Election Committee, members of the General Election Commission (KPU) and the Election Oversight Committee (Panwaslu), as well as intervening in determining and determining the Election participants.

In relation to the still lack of neutrality of the National Police in the election, it can be seen through the Walker and Waterman Analysis <sup>21</sup>, which provides a wider space for analysis than just how the police play a role in safeguarding general elections. As explained earlier, the discussion about police and elections has a plural meaning. Even if reduced to two major issues, namely professionalism and neutrality. Professionalism is certainly related to the function of policing in elections, while neutrality is related to the political distance of the police institution with political actors fighting in the general election, including the distance of the police themselves and the political process.

Free, honest and fair elections are an indicator of an adult democratic state. Therefore, to ensure freedom, honesty, and justice, administrative and legal instruments are needed that can guarantee the security of each stage of the electoral process. One of them is the role of the police in ensuring security and cracking down on criminal offenses according to the law. Even in advanced democratic countries, elections are not a process that can be 100% free from problems, irregularities, and criminal elements.

Research Topo Santoso et al. <sup>22</sup> recorded a number of criminal acts that occurred in the 2004 general elections, including: intentionally causing others to lose their right to vote, falsifying prospective diplomas, insulting other candidates, money politics, incitement and sheep fighting, abuse voter card, to change the results of the recapitulation of the votes. In its analysis, violations such as this still occur in 2009 and also have the potential to occur in 2014. In the experience of regional head elections which are conducted almost every year in Indonesia, these types of violations often occur and become factors that can increase the escalation of conflicts between elites spread to the masses. The experience of elections in Indonesia since 1999, including regional elections, is enough to set a precedent that spreads from one time and place to another. Here, the role of the police is very important and central.

Election administration and supervision conducted by the General Election Commission (KPU) and the General Election Supervisory Body (Bawaslu) will not be able to work optimally without the role of the police in preventing and carrying out repression against election crimes. The Memorandum of Understanding between the Indonesian National Police and the KPU for safeguarding the implementation of the elections in the 2013 Jaruani was proof of the importance of the

collaboration. KPU and POLRI realize that every election detainee always has the potential for security disturbances. Police professionalism, through the role of community guidance and intelligence, is needed to prepare anticipatory steps and early detection.

However, professionalism requires neutrality. Walker and Waterman<sup>5</sup> have provided an analysis of how vulnerable the police institution is in the moment of elections to enter the political stream itself<sup>23</sup>. As a law enforcement institution, police professionalism is required to ensure free, honest, fair. In addition to having the legal authority to take actions, the ability of police personnel to early detection and awareness of the public so that conformists to the law are the capital that determines the success of a democratic party to produce new legislators and leaders. However, professionalism will not be contributive if it is not accompanied by neutrality.

Neutrality, in this case, is interpreted as a firm distance from the National Police with actors fighting in elections and of course the distance to the political process itself. This neutrality is characterized by not acting discriminatively and carrying out duties proportionally. Such as continuing the examination of alleged violations that have been identified previously by the Election Supervisory Body. On the anniversary of the 67<sup>th</sup> Police, July 1, 2013, the president reiterated that the National Police uphold the code of ethics in the task and provide more responsive and professional public services. This instruction is certainly not without reason because there are still many cases of violations of ethics of police members who are invisible to the public. Things that are certainly worrying can affect the professionalism and neutrality of the police in the big moments of the general election. In Evans's framework, et al<sup>24</sup>, the professionalism, and neutrality of the police can be characterized by a responsive, non-passive attitude. Not only in action that does not distinguish case by case or group per group, but also in anticipation of potential security disturbances.

Using the framework of Evans et al.<sup>24</sup>, it can be interpreted that the responsive attitude of the police can be done by optimizing the guidance and counseling functions that provide a wider space for interaction for the police to not only appeal but dialogue about a number of issues that can be anticipated together with the community. It is like inviting elites to be wiser in competing so that it does not become a trigger for unnecessary clashes at the grassroots level, as is often shown by-elections to regions in Indonesia every year. The role

of political parties and elites is crucial in the patron-client political tradition in Indonesia so that the responsiveness of the police can begin long before the election moment takes place by inviting elites to compete ethically.

The period until April 2019 will be a crucial time for the National Police to begin drafting or revising strategic steps to secure this political year. In addition to increasing professionalism, the police need to carry out strategies that are not only general and normative but also optimize the reliable roles of members at the local level. The National Police are local, non-partisan institutions that only carry out the functions of serving and protecting. In this framework, the police will be an institution that is more responsive and not carried away by political currents. In other words, the neutrality of Polri in politics, especially in elections, is very important to contribute to democratic elections.

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## **Conclusion**

Based on the discussion above, it can be concluded that the importance of the police is neutral in general politics and particular elections. Reflection on the neutrality of the National Police in the Election must be realized in the independence, proportionality, and professionalism of the existence and implementation of the National Police's work. This is related to the role of the National Police as a protector, protector, and servant of the community, law enforcers and maintainers of public security and order.

Some issues of police neutrality that still surface and become the spotlight of several circles related to politics ahead of the simultaneous elections in 2019, can be used as an evaluation and input for the police to act professionally by showing neutral attitudes and behaviors as institutions that protect the entire community, without distinguishing distinguish between groups and community groups. Polri is like a referee who must be in a position in the middle of the party that is contesting, and carries out his role well so that the contestation goes well and is sportive (fair play). The National Police is also one of the law enforcement and security institutions that play an important role in contributing to the successful implementation of simultaneous democratic elections in 2019.

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*The Importance  
of Police  
Neutrality  
in Creating  
Democratic  
Election*

# The Implication of Mohammed Arkoun's Political Ethics in the Practical Politics

*Muhammad Azhar*

## **Abstract**

The writing of this article was at least motivated by several reasons: *first*, Mohammed Arkoun is one of the postmodern/contemporary Moslem scholars (21<sup>st</sup> century) –after the era of Modernist Moslems such as Abduh and Ridha—who owns authority to re-establish the ‘submerged iceberg’ of the rich potential of Islamic thought. *Second*, in comparison with other scholars, Arkoun is a Moslem philosopher with the ability to combine “Islamic authenticity” and the broad knowledge of contemporary social sciences. From within his academic visions, he gave birth to the Applied Islamology. *Third*, Arkoun is a Moslem scholar who experienced a life among two traditions—since his childhood—Islam (Aljazair) and France (western) that definitely had great influence on his attempt at creating future Islamic study which aims to link many facets of both aforementioned civilizations, whereas at the same time many other Moslem philosophers—with few exceptions—would rather conflict the two instead.

Several methodologies presented here include descriptive, historical, comparative and synthetical analysis methodologies. Meanwhile, data gathering is based on *library research*, covering both the writings of Mohammed Arkoun himself and other writings by different people relevant to this study. Data gathering technique relies on documentation of Arkoun's works either primary or secondary that contains relevance. All of the resources received thorough review accompanied with data selection. The description process culminates in this written textual



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narration, in accord with data analysis and with its following theories. Based on a philosophical-critical research over all available data, a verifiable conclusion is drawn. In all, the entire processes were conducted in systematic orders, continuous and in certain circumstances, several none-Arkounian views are presented as a point of comparison.

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*Keywords: philosophical approach, siyāsah Islam, theo-humanistic ethics, postmodern islamic study methodology, ushūl as-siyāsah al-mu‘āshirah*

## Introduction

Already many articles on *siyāsah Islam* are written by other researchers.<sup>1</sup> Nevertheless, generally, they don't focus on the intellectual reflection over political ethics as Arkoun has proposed. If other *siyāsah Islamic studies* tend to be only analytic-descriptive-historic, Arkoun's analysis gets down to the core of ethical-political reasoning that has deconstructive-epistemological nature within the scope of such *siyāsah Islamic studies*. Based on this research, therefore, a philosophical criticism toward Islamic-political thought commonly fall under the hegemony of Political-Islamic discourse (*Daulat ilāhiyyah*) with idealistic-fundamentalist-theocratic pattern can be proposed.<sup>2,3,4</sup>

The birth of religious oligarchy or tyranny that seek to secure theocratic authority, are due to the lack of mastering of contextual-integrative methodologies in the Islamic field of study and their respective instruments, as well as knowledge of Theo-humanistic ethics.

And since there is an absence of any concrete, contextual formulation, a distinct separation between responsibilities within the religious field and responsibilities within political field, conflicts have arisen between scholars who believe in critical freedom and the power that be who often suppresses. Turkey's secularism experience in the past can serve as a constructive lesson for other Moslem countries. Likewise the negative outcomes of marginalizing politics toward religious values in the west, like what happened in France, and in Indonesia during the New Order era.<sup>3</sup>

The richness of classical Islamic-ethical thought needs critical review, as well as contextualization with the present situation. Political-ethical thought model like what Ibnu Khaldun, Fazlur Rahman,<sup>4</sup> M. Sa'id al-'Asymawy,<sup>5</sup> and Mohammad Arkoun<sup>6</sup> have proposed still seem relevant to receive furtherance and development, especially for the progress of political-ethical thought in Indonesia, which is plural-

istic. Pancasila as an ideology has humanistic qualities, within its principles rest religious values, universality and eternity of humanity, and serve as a symbol of the relevance and significance of the development of *Theo-humanistic*, political-ethical ideas, through the advancement of the religious democratic system. For this, Pancasila ideology must always be maintained as an inclusive ideology, not as an exclusive ideology instead. The same goes for apologetic political studies that seen in various Sunni and Shia literature, along with the use of positivistic reasoning of some of the orientalist philosophers, which are due for critical re-evaluation. Various methodologies under the scope of *Islamic Studies* and study of politics should remain open for critical and academic assessment throughout the history.

From the above focus of research, the author felt the deep urgency for an attempt of reconstructing Islamic understanding through the use of academic reasoning instead of ideological-political-theocratic reasoning. From here a new political-ethical thought can be brought to existence. New Islamic-political ethics cannot be developed on the base of old Islamic Studies' methodologies but should arise from the foundation of a new scientific-Islamic methodology called *Postmodern Islamic Study Methodology*. Based on such methodology establishment of a Theo-humanistic political ethics can receives differentiation from the theocratic-political ethics and the humanistic *a sich*. From a practical political point of view, this paper will reveal that the broad knowledge of Arkoun's political ethics is generally still within the discursive border, not yet be aiming at the field of practical politics. In other words, researchers on Arkoun's political ethics are limited to individual ethics, instead of covering social, procedural and institutional political ethics already.

In this research paper, the author too would like to propose an urgent appeal to formulate *ushūl as-siyāsah al-mu'āshirah*, with a touch of Theo-humanistic color through a concept of religious democracy, as a scientific contribution to the contemporary political study in Islamic world.

Generally speaking, the writing of this article will surely have some implications, both philosophically, theoretically and in praxis. In accordance with the formulation of the problem, the research is more concentrated on the field of ethics (read: thought) of Islamic politics, with the focus of study revolves around the vision of Mohammed Arkoun on political ethics, viewed through philosophical and historical approach.

## Applied Islamology as the Foundation of Political Ethics

Philosophically, Arkoun's political ethics and reasoning lie on the foundation of his own Applied Islamology theory, which in principle aims no to negate differing methods of many Islamic studies, but rather tries to be comparative in nature, while maintaining scientific cooperation with multidisciplinary Islamic study model. Applied Islamology also does not assume itself as the only correct methodology and remains open towards scientific critique. To Arkoun, Islam is not a lifeless matter or abstract ideas but is widely influenced by historical, sociological contexts and as such. Therefore, every intellectual product of Islamic thought – including any of its derivation in political field – is very limited to a certain epistemological frame. To Arkoun, Islamic study for the next era should employ contemporary *episteme* in place of Middle Ages episteme. In other words, Arkoun tries to emphasize that Islamic study is supposed to not only centered on substance or material texts (*content analysis*) but is also capable of perceiving both the contexts and historical reality as well as a mental limitation (*logocentrism*) prevalent during the Middle Ages.<sup>7</sup>

Future Islamic studies – including sub-Islamic political studies – should not revolve around the formative era of Islam (*early Islamic period*) or reforming *Salafiah* era only, but should also elaborate on the later phenomena of reformative ideas. In Arkoun's perspective in his *Applied Islamology*, there is a conviction that every intellectual tradition must be accompanied by two things: the *unthought-of* and the *unthinkable*. Meaning, the study of Islamic politics can always be renewed or revised, according to the developing socio-historic context.

Islamic thought must be liberated from old taboos, mythology, and ideologies born later. In reality, Islamic thought is often convoluted with various stumbling blocks, especially when integrating the “originality” in Islam and principle of modern open-mindedness supported by the change in material-industrial aspects.

As regards the relation between Islam and western civilization, one must be able to see that two civilization interacting with each other (Greek, Byzantium, and Arab), does not necessarily mean two opposing fractions per Samuel P. Huntington's explanation. For this, a comprehensive re-evaluation on the relationship between Islamic and modern western history particularly around 12<sup>th</sup>-19<sup>th</sup> centuries is necessary. Moslem Islamologists need to be aware that the West itself today is undergoing self-criticism progress concerning their own intellectual

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ideas. And Islamic thought, on the other hand, needs not be limited to western modern logic only (pre critique era).

From many above explanations on Arkoun ideas, it is evident that Mohammed Arkoun' originality lies in his research model that employs methodologies and theories of social science *post-positivism* era. Besides, Arkoun also longs for the return of *Islamic humanism (Theo-Humanistic)* which is innovative and creative as what happened during 2<sup>nd</sup> and 3<sup>rd</sup> *Hijriyah* era that can serve as an ideal, after a long period of decline since the 11<sup>th</sup> century.

For Arkounian thinking model to become real, there are –at least – two challenges to tackle: *first*, the focus of the study in researching the crux of the Koran and Hadith. *Second*, the presence of separating layers of Islamic thought or historic sedimentation among the Moslems (holy mission of the Prophet has turned into various remnants of *aqidah, fiqh, tarekat*, and so on). In turn, Islam has become more partial and is teeming with political interests, causing the rise of *ideologization* and *mythologization* over Islamic teaching. Virtues of prophetic morality erode, and the history of Islam undergoes value distortion (particularinterest against universal values). Here there is a definitive problem where religion needs to be particularized before it is ready to delight. But careless particularizing can ultimately reduce the universal message of prophecy. Moving on, on the foundation of Arkoun's methodology of Islamic study which is integral, an Islamic political ethics and reasoning can be brought to existence along with some Theo-Humanistic color, differing itself from both theocratic political ethics and reasoning as well as the Humanistic *a sich*.

### **Academic Discourse on Religious Politics**

Based on many previous explanations above, in this sub chapter, the author would like to elaborate further on several basic differences between discursive patterns or reasoning which is ideological-theological-political and reasoning which is ethical-academic. Several important points regarding the difference of the two are as follows:

#### *From textual to contextual reasoning*

Studies of Islamic thought in the future can no longer be appropriately done using textual patterns by ignoring context, and even more than this it is very urgent now to examine the relation between text and context, text and historical reality, the background of the text or *aes-*

*thetic reception* (the psychological, cultural and intellectual context of the situation). Borrowing Al-Jabiri's theory, moving from *bayāni* (philosophical), and move to *burhāni* (rational-empirical), from the "curtain" of a closed corpus (*mushaf*) to the "screen" of an open corpus (*kalam*).

Interrelationship model with classical texts considered final and ready to use is due for retirement. Researches on Islamic politics must always question the accuracy aspect and validity or relevance of the understanding of classical Islamic-political texts to today's generation while reassessing the background and historicity of the rise of such idea (*ratio legis*). Reading Islamic political texts with *reproduction of meaning* (*qirā'ah mutakarrirah*) approach must be replaced with *production of meaning* (*qirā'ah muntijah*). For instance, the reading model of Anwar Jundi, al-Maududi,<sup>8</sup> and generally politics scholars of Ikhwanul Muslimin.

In the reality of Islamic thought, many Moslems scholars were trapped into at least two matters (*mythologization* and *ideologization*). As the results, most works of Moslems become static and fragmentary. There is a need for construction projects around historical criticism and epistemology (principles, definitions, comprehensions, conceptual means, and discursive and logical reasons in the study of Islamic politics). In other words, there is a need for a *rethinking of Islamic politics*.

The rises of various political conflicts are caused by static religious understanding. A new interpretation of religious understanding to reduce the tension of the existing conflict is needed. It must be separated between normative teaching and dimensions of history, politics, and economy. Many existing textual holy verses (*ta'wīl-tafsīr*) are under the hegemony of classical theologians and Moslems scholars. Words of God during the era of the Prophet existed as *kalām/bil lafz*, instead of as a writing which retained *positivism* since the 19<sup>th</sup>-century era, the closed corpus era, immanent, written text (written words became tools of legitimation since *Umayyah* regime). "Islam" (capital I) is closer to the model of Islam in the era of "Medina experience" or open corpus era (*lafadz*).

### *From Ideological-Theocentric Reasoning to Philosophical-Anthropocentric-Academic Reasoning*

Model of understanding Islamic politics which is narrow, frightening and under a *siege mentality*, needs some transformation to reach a more spacious, inspiring, intriguing and leading Islamic understanding. In

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other words, *authoritarian* Islamic politics should be turned into *authoritative* Islamic politics. Talking about religion and politics essentially is not speaking on behalf of God, but on what God actually wants. Not a monopoly, but a free market approach in the world of idea.

Study model of Islamic politics focusing solely on comprehension of *ahl al-kitāb* that seems like coming from the Middle Ages, sacred and normative can be transformed into a new form such as 'holy book society'. For this to happen, a fundamental appraisal *das sein* over the Prophet and the historical aspect and review on the words of God as *das sollen* or normative is also vital. In other words, leaving behind the model of study based on one religion (*ahl al-kitāb*)<sup>9</sup> and move to the territory of all-religion learning model – this might include pagan faith as well – by implementing the holy book society approach. In essence, the truth of any idea needs to be persuasively communicated to the public. It can be said that within the field of Islamic politics, faith approach, *believer*, *fideistic-subjectivism*, *truth claim*, exclusive-a priori attitude are due for replacement with a new historic-scientific, a posteriori, *open-ended*, dialogic, and tolerant model, as to allow it to respond globalization accordingly.

#### *From political reasoning to reasonable politics*

Political thinking patterns related to the implementation of *formalistic* sharia, as expressed by radical-fundamentalist group needs the transformation to reach a *substantive-accommodative* and *applicative* shape. The textual model form of this Islamic political reasoning should be altered into another model namely reasonable politics which involves rationalization process over sharia.

What becomes Arkoun's main concern in the future development of Islamic civilization is the serious focus on the *effort to reconstruct Islamic understanding through the use of academic reasoning in place of ideological-political-theocratic reasoning*. Moslems generally speaking, in Arkoun's perspective, have the liking for an ideological-political-theocratic reasoning especially when dealing with modern life phenomena. The use of such ideological-political-theocratic approach often reduces rational parts of Islamic thought related to political discourse. Jargons of ideological Islam by fundamentalist people were meant to serve their temporary political interest, and tend to ignore the richness of humanity, Islamic wisdom, and spirituality on the whole.

## Arkoun's Political Ideas

More specifically, in author's own opinion, Arkoun's political ethics can be laid out in six main different subthemes as seen in the several principles as follows: *first*, dimensions of authority and power in Prophet Mohammad reflects correlation between the field of *authority* (Mecca Era) which happens to be *transcendental-prophetic* and field of *power* (Medina Era) with its *historical-empiricism* color.<sup>10</sup>

*Second*, as concerns the idea of social development and change, the stress is on the importance of religious, political-moral principles which is *liberatory-transformative*, not limited to the narrative-interpretative. Various liberalizations upon religious-political thought should end in a definitive social transformation purpose. Besides, every plan of social development must be based on juridical-constitutional legitimation. In the context of state bureaucracy, humanity principles cannot be put aside during the provision of social service. And as the consequence of these principles, state bureaucracy, as well as the society, should be kept within the safe distance from administrative and managerial practice that is merely technical and positivistic, which in turn will alienate the rich potential of *local wisdom* and *local knowledge*, as well as marginalize social participation. The similar approach will work for the industrial development system. Case in point, building factories in Indonesia will have to assess the possibility for ecological safety and poisoning and comfort for civil area.

*Third*, the concern for state-religion relation. Several religious-political thinking patterns that merely contain ideological-political color should be put to end. Relational pattern between religion and state cannot deny plurality principle of religious understanding among the Moslems. Much discourse on political and religious issues like *khilā-fah*, implementation of sharia and so on, is to be understood under the framework of pluralistic-religious politics, instead of the monolithic one. In addition, *religious-political independence* is to be kept alive, nourished and continuously under guard from possible state intervention (*etatism*). Not least since the relation of religion and state are very prone to three things such: religious politicization, homogenization of religious understanding and political collusion between *ulama* and *umara*.<sup>11</sup>

*Fourth*, on the concept of holy book society and pluralism. Philosophically and empirically, plurality principles of understanding as well as the religious existence both of the internal and external sides are supposed

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to follow universal humanism principle. Such principle can avoid unnecessary sectarianism and *parochialism* from happening in religions and politics. Thus, elements of *criticism* and *ijtihad* sustainably practiced are vital here for a system of social justice, open and democratic.

*Fifth*, democracy and modernity. For a democratic and modern social system to keep afloat, confession of equality principle and similarity in experience among Islamic and western civilization alike is unavoidable. The presence of tension between Islam and the West for so long was triggered by many conflicts including economy, military and political hegemony of prominent states over the weak ones. Besides, similar problem rose from the field of political and religious literature written in polemic-apologetic tone. Principle of *intercommunication* (Habermas model)<sup>12</sup> or *munāzharah* – not *mujādalah* or *mukābarah* - in Islamic tradition, with equality principle, will gradually eliminate dominating tendency and one-sided hegemony. Many political-religious literatures that sound polemic-apologetic should be critically reexamined with *production of meaning* approach, and not *reproduction of meaning* instead.

In addition, acceptance to globalization as one effect of modernity does not necessarily imply a neglect of *locality*, especially in Moslem countries. The rational, positivistic, hedonistic, consumerist-capitalistic Western Modernity needs a corrective attitude. The Similar thing already takes place in the western world, particularly with the rise of postmodernism discourse.

*Sixth*, as concerns secular, secularization and secularism. It is requisite here to underline the difference between westernization and modernization. Modernization could appropriately mean an effort of *rationalization over Islamic teaching* as both Thaha Husein and Mohammed Arkoun have argued for. The same goes for the term secularization which requires particular understanding under either theological or political umbrella (relation of Islam and state). Secularization is not an attempt to deny religious spirituality concept, as to let meaninglessness takes place in our social life like what currently happens in the West, but it's more like trying to let go some of the out of date patterns of religious understanding in today's contemporary setting. In this case *secularization* can walk hand in hand with *contextualization* of Islamic virtues.

A nation aspiring of moving forward and becoming modern needs to brace itself with strong traditional root, cultural, Islamic, rational,

egalitarian and democratic. Its economic system favors even distribution principle and not mere growth. The advancement of Islam in the future does not solely rely on the truth of its teaching, but on how strong its believers (especially from among the *ulama* and Moslem philosophers) manage to afford a bridge between Islamic textualism and modern contextualization, as not to allow *value vacuum* among its modern society. Therefore, the effort to establish Islamic values becomes the responsibility of modern Moslems. To accomplish this, the universality aspect of Islam should be promoted above the parochial, sectarian and primordial.

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### **The Relevance of Arkoun's Thought to The Islamic World**

According to Mohammed Arkoun's visionary perspective, untrodden field (*unthought-of*) in the realm of *Islamic studies* should receive continuous attention. The critical appraisal can be done by leaving behind classical Islamic epistemology and moving forward to contemporary Islamic epistemology. As the consequence, there is a need for academic reassessment of Islamic history.<sup>13</sup> The next era of Islamic study, therefore, must be able to accommodate contemporary *social and cultural studies*.

Arkoun also expresses the need for new understanding of secularization. Secularization that does not mean a separation between state authority and religion (political connotation), but more like a materialization effort of Islamic virtues across space and time, as well as the need for accommodating society's demands that differ from time to time according to the context (*episteme*) of their era. Hence the traditional return to religion is not an alternative for the future.

Islamic politics per Prophet's practice (spiritual authority model *Makkiyyah* and political authority model *Madaniyyah*), is the middle-of-the-road alternative that Arkoun offers as a counter measure against secularist Moslems' thinking /*Makkiyyah a sich* (humanistic reasoning) as well as Islam of the political-fundamentalist/*Madaniyyah* (theocratic reasoning).

Arkoun also argues for the necessity of establishing religious tolerance, this must be started by replacing the old *ahl al-kitāb* understanding and moved on with the new *Masyarakat Kitab*. Arkoun still believes in the existence of Meta text (with emphasis on *mistic-majāzi* (*mythical discourse*) of the Koran) or like field of *kauniyyah*, but unlike Derrida who solely believes in historical text. If Arkoun already enters

postmodernism realm, Derrida is still trapped around modernist-understanding model within textual study/philology.

Besides, Arkoun states that Islamic theology which has undergone metamorphosis at any rate still requires the critical appraisal by Moslem philosophers. The religious and political interpretation which is monolithic/*truth claim* needs also some diversifications (the one who errs can be a follower of the uncritical mass, or possibly of the *truth claim*). The example of Syafii's criticism toward his teacher Imam Maliki can be taken as an example. *Rahbaniyyah* or *cultism* tendency in the Moslems' world should also receive extra attention and be avoided.

The implication of Arkoun's vision is the rise of multiple interpretations of religious text and the more visible 'ideological mask' among religious communities, either internal or external. In the long term, this should have the positive impact on the communal ego of the Moslems, that they could be more critical, rational, and democratic and nourish respectful attitude toward each other.

### **The Ideal Relation between Religion and The Future State**

As a *contribution to knowledge* in the writing of this article, some consideration can be given to these following propositions: *first*, Moslems need to continuously commit themselves to political and cultural transformation, from system of political ethics with *traditional-subjective-symbolic-doctrinal* patterns to *progressive-objective-substantive-rational* political ethics.<sup>14</sup>

*Second*, the use of religious symbols in political field should be eradicated for the sake of political dialectics that is more objective-rational, progressive and fair. The use of religious symbols will only serve to enlarge the chance for further manipulation of said religious symbols for temporary political benefits, in short term. Regarding the fact that traditional religious symbols are also often exploited for sheer politic mobilizations, this at the same time could minimize the chance for enlightening political participation.

*Third*, Moslem (not Islam) countries which are multicultural – like Indonesia—should free itself from religious and political symbols that sound theocratic – like *khilāfah*, *syariah Islam* or *Negara Islam*, and so on. Everybody, every citizen, and religious followers should be motivated to struggle in sportive and elegant terms, using the *fastabiq al-khairāt* principle in the articulation of their religious values through political approach and in *progressive, ethical, academic*,

*objective, substantive-rational* ways along with a strong emphasis on *participation*; instead the otherwise – that is due to symbolic influence of religious fanaticism – in various patterns tending to be *speculative-repressive, ideological-political, subjective, formalistic*, and full of *mobilization*.

*Fourth*, for Indonesia case, the relevant political vision (read: ethics) is in the Theo-Humanistic state, in the sense that the development of state-politic discourse through the manifestation of spiritual values and democracy as the rational and evolutionary medium. Various efforts driving toward religious etatism—on symbolic and formal level—should be avoided, while substantially accommodate elements of religious virtues. This way in the future day's issues like "Islamization" or "Christianization"<sup>15</sup> would no longer be relevant to carry on or to discuss. Political articulation and participation in rational manners through democracy as the medium – definitely its system and regulation need further development– could be the melting pot of various states' components, especially the religious communities.

*Fifth*, considering Indonesia has tribal, religious and communal pluralities, the very idea of establishing Islamic Sharia should be inclusive, not exclusive. Among the Moslems, thought on Islamic sharia already gave birth to plural *fiqh* understanding. Thus *fiqh* which is more rational and substantial will be more prospective to be implemented in Indonesia, since this is conducive to the conflux of many ideas, both among the Moslems themselves and other religious communities. The effort to implement sharia in a substantive manner like this should be openly and sincerely made public, and with democratic approach – like the bill of anti porn case, permission to build the house of worship, and so on – and without any secret political agenda hidden from the eyes of all religious and other communities.

*Sixth*, the Pancasila ideology<sup>16</sup> and Constitution of 1945 should receive unanimous agreement from the public as the last and final effort of our founding fathers to unite all state's components regardless their faith and tribes. Yet fresh effort at reinterpretation – something like amendment – devoted to the two above national binders should always be nourished in the most open and democratic manner. The basic problem of state foundation is, therefore, can be said to be almost completely done, while the follow up to both above national binders such what their formal-juridical fundament should still require some finishing touch to reach fixed form.

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*Seventh*, an important political discourse regarding *fit and proper test* system. The time has come for it to be implemented not only to test executive and judicial candidates but also and more importantly to test parliamentary members (*ahl hall wa al-'aqd*).

*Eight*, state authority of Moslem Countries – including the Republic of Indonesia—should be able to end or at least eliminate foreign political hegemony in their country, so as the community of the radical-fundamentalist cannot attain further legitimation for their scriptural political articulation.

*Ninth*, political regulatory system should be evaluated critically and receive enhancement as to anticipate the rise of religious jargons in the field of practical politics in the future

*Tenth*, administrative and bureaucratic system of political parties which are more objective, rational, accountable and transparent should be developed continuously.

*Eleventh*, for the materialization of many above points, it is urgent for all political and religious philosophers to sit together and reformulate ideal epistemology and methodology concerning the relationship between religion and politics (*al-uṣūl al-siyāsah al-mu'āshirah*) in the future. This recommendation is also an effort to reach that point. For the Moslems of Indonesia context, the researcher here would like to re-emphasise the need for implementing objective-rational-transformational political reasoning<sup>7</sup>—instead of political subjective-doctrinal reasoning—in understanding the Islamic political thought for the next era.

**DR. MUHAMMAD AZHAR, MA.:** Lecturer at Doctoral Program, Post-graduate of **Universitas Muhammadiyah Yogyakarta**, Indonesia. His works were presented in Turkey, South Korea, Japan, China, Dubai, Hongkong, Taiwan. He also get comparative study in Australia, Thailand, Malaysia, Brunei, Singapura, Macao and Saudi Arabia.

## Notes

- 1 See in *Jurnal Ilmu Politik*, ALPI-LIPI and Gramedia (Jakarta: No.7/1990), p. 11; Franz Magnis-Suseno, *Etika Politik, Prinsip-prinsip Moral Dasar Kenegaraan Modern* (Jakarta: Gramedia, 1994), p. x.
- 2 Muhammad Azhar, "Dialektika Din-Daulah-Dunya dalam Politik Islam", *jurnal Perspektif*, Vol. 3, No.1, Oktober 2007.
- 3 Bernard Lewis, *The Political Language of Islam* (Chicago & London: Chicago University Press, 1988), p. 3. About "seculariazation", see: Robert N. Bellah, *Beyond Belief* (New York: Harper & Row, paperback edition, 1976), p. 150-151. In other concept, well know with "the desacralitation" which is announce

- by Harvey Cox, *The Secular City*, p. 139, 141. Also, Ali Abd. Ar-Raziq, *al-Islam wa Ushul al-Hukm* (Egypt: Mathba'ah Mishr Syirkah Mushamah Mishriyyah, 1925), p. 64-80.
- 4 Fazlur Rahman *Islam & Modernity, Transformation of an Intellectual Tradition* (Chicago & London: The University of Chicago Press, 1982).
  - 5 Carolyn Fluehr-Lobban (ed.), *Against Islamic Extremism* (USA: University Press of Florida, 1998), p. 7.
  - 6 Mohammed Arkoun, *al-Islām, al-Akhlāq wa al-Siyāsah*, terj. Hasyim Shalih (Beirut: Markaz al-Inma' al-Qaumi, 1990), p. 45.
  - 7 Mohammed Arkoun, *The Unthought in Contemporary Islamic Thought*, New York: The Institute of Ismaili Studies 2002, p. 179-203.
  - 8 Abu al-'Ala al-Maududi, *The Islamic Law and Constitutions*, translated and edited by Khursid Ahmad (Lahore: Islamic Publications Ltd., 1975), hlm. 157.
  - 9 Mohammed Arkoun, "Pemikiran tentang Wahyu: Dari *Ahl al-Kitāb* sampai Masyarakat Kitab", dalam *Ulumul Qur'an* no.2, vol. IV, 1993, p.46.
  - 10 Mohammed Arkoun, *Nalar Islami dan Nalar Modern: Berbagai Tantangan dan Jalan Baru*, terj. Rahayu S. Hidayat (Jakarta: INIS, 1994), hlm. 210-211, dalam subjudul "Wewenang dan Kekuasaan dalam Islam".
  - 11 About the phenomenon of the tension between religion and state in classical Islamic history, see Mahmoud M. Ayoub, *The Crisis of Muslim History: Religion and Politics in Early Islam* (Oxford, England: Oneworld Publications, 2003); dan Karen Armstrong, *Islam A Short History* (London: Phoenix Press, 2000).
  - 12 See, Jurgen Habermas, *The Theory of Communicative Action*, Vol. 1, *Reason and the Rationalization of Society*, Boston: Beacon Press (1984).
  - 13 Compare with Mahmoud M. Ayoub, (2003). *The Crisis of Muslim History: Religion and Politics in Early Islam*. Oxford, England: Oneworld Publications.
  - 14 Compare with Kuntowijoyo's thought on *Obyektivikasi Islam* which needs translation into contemporary Islamic discourse. See Kuntowijoyo, (2004). *Islam sebagai Ilmu*. Bandung: Teraju-Mizan.
  - 15 Anthony Reid, "Islamization and Christianization in Southeast Asia: the Critical Phase, 1550-1650". IN *Southeast Asia in the Early Modern Era: Trade, Power, and Belief*, ed. Anthony Reid. Ithaca, NY: Cornell University Press, pp.151-79.
  - 16 Pancasila is five principles which complete each other, fill each other, toward the realization within Indonesian sphere all which are true, just, good, happiness and prosperity, under the warmth of brotherhood. See, Mohammad Hatta, "Tanggungjawab Moral Kaum Inteligensia", in Aswab Mahasin and Ismet Natsir. (1984). *Cendekiawan dan Politik*. Jakarta: LP3ES, p. 9.
  - 17 Compare with Francis Fukuyama, (2000). *The Great Disruption, Human Nature and the Reconstitution of Social Order*. New York: Touchstone Rockefeller Center 1230 Avenue of the American, p. 188-189.

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  - a Hatta, Mohammad, "Tanggungjawab Moral Kaum Inteligensia", in Aswab Mahasin and Ismet Natsir. (1984). *Cendekiawan dan Politik*. Jakarta: LP3ES
- 11 Kuntowijoyo, (2004). *Islam sebagai Ilmu*. Bandung: Teraju-Mizan.
- 12 *Journal Ilmu Politik*, API-LIPI and Gramedia (Jakarta: No.7/1990), p. 11.
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# Natural Gas Allocation in Indonesia

## Administrative Law Perspective

*Zainal Muttaqin, Adrian E. Rompis, Amelia Cahyadini, Rafika Fajriati Nastiti<sup>1</sup>*

Indonesia's natural resources have its own interest in the international community, specifically oil and natural gas. The conduct of nation and state activities and actualization of the prosperity of the people must be landed by a governing law, including the management of oil and natural gas. Oil and natural gas as one of the contributors to the Indonesian Budget (APBN). With open market projects, privatisation, and energy consumption intervention, in this context the state's mega project is no longer development law politics but natural resource economy occupation, vital economic assets and the control of local markets by foreign companies, therefore globalization poses as a challenge for the government on its authority to manage natural resources, especially non-renewable resources. Natural gas is one of the non-renewable natural resources that controlled by the state. The importance of the use of natural gas, good for development in Indonesia and export needs, also the limited means natural gas itself, so the use of natural gas become important to the government attention. The concept of state sovereignty over the management of oil and natural gas has been raised as a research topic by law graduates because there are still many issues with oil and natural gas management, especially in the field of administration. This paper is about a regulation concerning the implementation of exploration and exploitation of natural gas which has the effect to both parties that involved in the process of the utilization of natural gas in several other businesses upstream. Firstly, the problem needs to review is, how is the authority of Minister of Energy and Min-

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eral Resources in terms of re-allocation gas based on sovereignty country as stated in the Article 33 paragraph (3) of The 1945 Constitution of the Republic of Indonesia? Secondly, how the regulations of natural gas reallocation in Indonesia associated with the legal certainty?

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*Keywords: sovereignty of the Republic of Indonesia, natural resources, natural gas allocation, natural gas price settlement, Article 33 of the 1945 Constitution*

Natural gas in Indonesia has an important role in the export sector. Indonesia has export approximately 26,229.9 tons throughout 2008 to 2015 with FOB value approximately 15,601 million US Dollars per year to several countries such as Japan, China, South Korea, Australia, Singapore, Hongkong and many more.<sup>1,2</sup> Furthermore, natural gas has an important meaning in contributing to the country income although most of the country income since the tax reform in 1983 is coming from the taxation sector.

Natural gas is one of the non-renewable natural resources which is important for foreign exchange producer in the export sector and country income, also play an important role in human activities that is its very useful in various sectors, such as a source of energy and raw materials industries, are used for refinery industry, fertilizer, petrochemical, and other.<sup>2,4,5,6</sup>

Non-renewable natural resources strategic contained in Indonesia national wealth is controlled by the state, that the wealth of nation used for prosperity all the people of Indonesia.<sup>7</sup> This is in line with the policy of national economic system of Republic Indonesia was set out in article 33 of The 1945 Constitution of the Republic of Indonesia in essence that economy developed as mutual effort based on the principle of family; the branches of the production of what is important for the state and who gained control of the life of the people are controlled by the states; the earth and water and the natural resources contained in it are controlled by the states and used for prosperity all the people of Indonesia; national economy is implemented based on economic democracy with the principles of community, efficiency system, sustainable, environmentally sound, independence, and by keeping the balance progress and national economic unity.

Based on that, the authority determines the allocation and utilization of natural gas in Indonesia is on the government, in this case,

Minister of Energy and Mineral Resources of the Republic of Indonesia as the proxy of mining.<sup>8,9</sup> Allocation gas is taken to ensure the number of the given volume of natural gas to meet the needs of domestic and export in a certain period of time.<sup>10</sup> The allocation of natural gas is a problem that not only relating to the control of a country against non-renewable natural resources in Indonesia, it is also concerned with the economic aspect, in this case, is an attraction for investor to cultivate natural gas in Indonesia since the country and State-owned Enterprise of Indonesia has limited in terms of funds and technology.

The importance of the use of natural gas, good for development in Indonesia and export needs, also the limited means natural gas itself, so the use of natural gas become important to the government attention. Until now the country still faces the available capital, the quality of human resources, and technology to manage the natural gas. This makes Indonesia needs foreign capital partnership participation in the utilization of natural resources. Hence, the Indonesian government should able to provide a legal instrument in order to protect the interest of the state and the people, also able to guarantee any legal certainty, so that it can be attracted the interest of the company foreign capital to established a partnership. Laws and regulations supporting business insurance is one factor that would influence foreign capital investment.

In practice, natural gas resource utilization in the field of business upstream still faced several problems in regard to the number of requests and need unusually high proportional to the number of gas production, infrastructure, and the costs production with paying ability, until problems on allocation natural gas.<sup>11</sup> In this paper, writers will discuss the problems of natural gas allocation in several other businesses upstream, particularly in term of the natural gas reallocation from the perspective of a law the administrations of Indonesia.

Legal perspective of state administrative been a set of regulations as the basics act or what the government to provide opportunities for the company either foreign capital investment and investment of home affair to conduct exploration and exploitation of Indonesian natural resources. As mentioned above regulations changed had influenced by the authorization or power transition from the government itself. The regulations changes that are also by understanding based the interest of the situation and the interest of country with elaboration on the base in the country.

*Zainal Muttaqin*  
*Adrian E. Rompis*  
*Amelia Cahyadini*  
*Rafika Fajriati*  
*Nastiti*

A case that will be discussed in this writing is as an object research that is one case related re-allocation of natural gas on local business activities upstream was the case between PT. Parna against Minister of Energy and Natural Resources of Indonesia, PT. Perusahaan Gas Negara and Husky-CNOOC Madura limited (HCML). The case up till now is still processed in Judicial State Administrative Jakarta Indonesia and International Chamber of Commerce in Singapore.<sup>12</sup> PT. Parna is a natural gas buyer and HCML as the natural gas seller have both agreed to trade natural gas on Gas Sales Agreement (GSA) 1 October 2007.

Based on GSA, PT Parna Raya receives the allocation and utilization of the natural gas field of BD WK Madura Strait.<sup>13</sup> Then on 16 September 2011, GSA experienced amendments and has been agreed by PT. Parna Raya with HCML because there was an increase in the price of natural gas from USD 4,2/MMBTU to USD 5,2/MMBTU. Then on 26 February 2014, HCML sent a letter regarding the adjustment prices and explanation for adjustment gas prices produced from the field of BD WK Madura Strait containing about adjustment gas prices produced from USD 5,2/MMBTU to USD 7,2/MMBTU, who do not have been approved by PT. Parna Raya.

Satuan Kerja Khusus Migas(SKK Migas) has made efforts to reach an agreement between HCML with PT. Parna Raya, but has not yet reached an agreement. HCML submit a request to The Ministry of Energy and Mineral Resources of the Republic of Indonesia to determine re-allocation natural gas field. On the request of Minister of Energy and Mineral Resources of the Republic of Indonesia issues a MEM.M on 2 June, 2017 number 4465/13/MEM.M/2017 about re-allocation gas contains agreed to changes natural allocation which was originally for PT. Parna Raya as much as 40 (forty) MMSCFD becoming to PT. PGN (Persero) Tbk early 20 (twenty) MMSCFD to 60 (sixty) MMSCFD. The letter has created problems for PT. Parna Raya.

Based on the above, the direction of this writing is about a regulation concerning the implementation of exploration and exploitation of natural gas which has the effect to both parties that involved in the process of the utilization of natural gas in several other businesses upstream. Firstly, the problem needs to review is, how is the authority of Minister of Energy and Mineral Resources in terms of re-allocation gas based on sovereignty country as stated in the Article 33 paragraph (3) of The 1945 Constitution of the Republic of Indonesia? Secondly, how

the regulations of natural gas reallocation in Indonesia associated with the legal certainty?

### **Research Methods**

Research Specification that is used is descriptive analytical, research by doing check to the fact that in terms of the management of non-renewable natural resources, especially natural gas there are still several problems one of them is problems on legal certainty allocations and re-allocations of natural gas. It is important to examined considering make a difference is interest foreign investor to cultivate natural gas considering there are still the limited time and technology in the country. In this research, the writer uses the method of juridical normative, which is a research emphasis on theory and the results of the study literature.

The research was done by the writer covering research literature, namely law research done by the study of literature or secondary data. Data collection technique which used in this research is a study of literature, namely research of secondary data that deals with the authority the government of Indonesia to the management of natural gas and regulations on the allocation and re-allocation of natural gas in Indonesia.

### **Results And Discussion**

#### *Legislation that provides the authority of the government*

The Constitution of The Republic of Indonesia asserted that Indonesia is a law state.<sup>14</sup> As a law state, Indonesia has the characteristics of independent reflected in the application of law through the concept or a pattern, that has been adjusted on Pancasila, either as a basis of the state or as a source of all sources of law. Law for some scholar and jurist often placed as a security for order in society,<sup>15</sup> either on daily interaction and their activity as a citizen in conjunction with state or government legitimate. In addition to order, law also placed as surety for the law subject certainty in the form of norms or rules who brought up or giving guidance to them in doing intercommunication also becoming a guidance to lead them in putting their rights and duties as a citizen, so that in the end is a security for being justice in size has been the norm and or violation of rules mentioned above.<sup>16</sup>

The policy of national economic system of Republic Indonesia was set out in article 33 of The 1945 Constitution of the Republic

of Indonesia in essence that economy developed as mutual effort based on the principle of family; the branches of the production of what is important for the state and who gained control of the life of the people are controlled by the states; the earth and water and the natural resources contained in it are controlled by the states and used for prosperity all the people of Indonesia; national economy is implemented based on economic democracy with the principles of community, efficiency system, sustainable, environmentally sound, independence, and by keeping the balance progress and national economic unity.

Meaning contained in Article 33 paragraph 3 of The 1945 Constitution of the Republic of Indonesia is realised through consideration of decisions the Constitutional Court number 001-021-022/PUU-I/2003 about testing Law number 20 years 2002 about electricity, who in consideration of law, the Constitutional Court gave the discussion regarding the position of the state sovereignty to the source of the wealth of the country.<sup>17</sup>

In consideration of the Constitutional Court, the meaning is controlled by the state was the people collectively that construed by The 1945 Constitution of the Republic of Indonesia gives a mandate to government to run and make function of policy determination (*belied*) and function in the management (*bestuursdaad*), regulatory function (*regelendaad*), management function (*beheersdaad*), and supervisory function (*toezichthoudensdaad*) which is aimed with intent for prosperity all the people of Indonesia.<sup>18</sup> The most of important things that must be considered in terms of the primary function of the arrangement by the state (*regelendaad*) affirmed in the consideration of the Constitutional Court be through the use of under the authority of the legislation by both parliament with governments, and regulation determination by the government (executive), so that clear the relationship between house of representative with the government, is to run legislation function namely, together to determine the law.<sup>19</sup> While the primary function pertaining to mastery to the wealth of the country as intended in Article 33 paragraph (3) The 1945 Constitution of the Republic of Indonesia, as the determination of policy (*beleid*) and the action of the management (*bestuursdaad*) and the act of management (*beheersdaad*) and implement action in order supervision (*toezichthoudensdaad*) over-all it is the job of the government.<sup>20</sup>

*Implementation of the constitutional court on act number 22 the year 2001 about oil and natural gas*

The presidential decree in 1959 restore The 1945 Constitution of the Republic of Indonesia, put article 33 as a philosophy of the formation law related to the earth, water and natural resources in it as being controlled by the state. Pertaining to a philosophy of article 33 of The 1945 Constitution of the Republic of Indonesia, and the is meaning of mastery of the country upon “earth, water, and natural resources in it...”. The right to control giving authority to the state to regulate the allocation, the use of, supply and maintenance of; set and determine legal relation between peoples with the “earth, water, and natural resources....etc”; set and determine the regulation between peoples and the “earth, water, and natural resources....etc.” The right of control set functions the state to withdraw the natural resources in it.

Oil and natural gas are a Non-renewable natural resources strategic are in the control of the country as well as are most the vital control life of the many and have an important role in the national economy so that must be able to be maximally efficiency confer prosperity and social wealth. Oil and natural gas business activities have an important role in providing added value in a tangible manner to the national economic growth that rises and sustainable. The implementation of activities of oil and natural gas business as regulated in the Law of Oil and Natural Gas evenly economic society-based, integration, benefits, justice, a balance, even distribution, prosperity together, security, safety, and legal certainty and environmentally sound.

Business activities upstream oil and natural gas include exploration and exploitation. <sup>21</sup> Business activities upstream until now implemented through the contract, as in accordance with the terms on the Law of Oil and Natural Gas. The corporation contract which existing in Law of Oil and Natural Gas load that the ownership of natural resources in the government to the submission and control operations management is at the executive body, in this matter is SKK Migas. Meanwhile, capital and risks entirely are borne by business entities who perform the contract with the government. <sup>22</sup>

In terms of the management of natural resources oil and the earth that is within the territory of Indonesia is in their mastery of the state and is organized by the government to make the country the company exploration activities and exploitation or as holders of mining. Based on it is known that he said the government had legitimacy to exercise

*Zainal Muttaqin*  
*Adrian E. Rompis*  
*Amelia Cahyadini*  
*Rafika Fajriati*  
*Nastiti*

Function of policy determination (*belied*) and function in the management (*bestuursdaad*), regulatory function (*regelendaad*), management function (*beheersdaad*), and supervisory function (*toezichthoudensdaad*) in the event that the management of Non-renewable natural resources strategic, in writing this is especially natural gas, who is aimed addressed with a view for the prosperity all of the people. The Legitimacy is authority given by The 1945 Constitution of the Republic of Indonesia.

The authority of the government is considered as a skill for carrying out the laws positive so that it can be created the legal relationship between the government and its citizens.<sup>23</sup> The authority is defined as power agencies and/or official government or the other countries to act in the law public.<sup>24</sup> Theoretically, ways to earn authority can be distinguished to the attribution, delegates, and a mandate. Providing authority to agencies and/or official government by The 1945 Constitution of the Republic of Indonesia or law called the attribution.<sup>25</sup> To the agency and/or officials governance which had been received the authority of through the attribution, the responsibility of the authority on agency and/or officials governance concerned. The authority of the attribution cannot be delegated, except set in The 1945 Constitution of the Republic of Indonesia and/or Law. This is reflected in regulation that regulations regarding the authority of Minister Energy and Mineral Resources in exploration and exploitation.

Based on the authority, the government (President and Minister of Energy and Mineral Resources) as the holder of the authority of mines forming the executive body, who has the tasks of controlling of business activities upstream of in the field of oil and natural gas.<sup>26</sup> The executive body that is referred to is a unit special working the executor of the upstream oil and natural gas business.

### *The regulation of natural gas allocation for legal certainty*

The allocation of natural gas regulated in the Minister of Energy and Mineral Resources Regulation as mandated by Law of Oil and Natural Gas.<sup>27</sup> As a management function (*beheersdaad*) should be conducted as an instrument institutional, namely the government use the capability over natural resources for optimal public welfare, can be seen that Minister of Energy and Mineral Resources has an obligation to provide guidance to the activities of upstream, which includes the government business in the field of business activities upstream and of policy deter-

mination the activities upstream business.<sup>28</sup> Of policy determination done should be based on reserve and potential resources oil and natural gas owned, production capacity, fuel requirements oil and natural gas domestic, technology mastery, the aspect of environmental and the environmental conservation, the national, and development policy.<sup>29</sup>

The function of the management (bestuurdaad) own is embodied in the implementation of administrative matters in the field of business activity providing an upstream involving planning, in regards to licensing, the basis of an agreement, and recommendations. In addition, supervision function (toezichthoudensdaad) be in the form of the supervision activity that done Minister of Energy and Mineral Resources for the work and implementation of business activities upstream to devoutly the provisions of and regulations.<sup>30</sup> Implementation and control business activity upstream done through the contract between a company or form the permanent business, in this case, HCML with executive body, which in this case is SKK Migas.<sup>31</sup> Authorities to supervise and control over contracts is SKK Migas, through the control the management and implementation of the cooperation contract.<sup>32</sup>

About the allocation policies for natural gas, it is of authority from Minister Energy and Mineral Resources, aimed at to ensure efficiency and effectiveness the availability of natural gas as fuel, raw materials, or other purposes to meet the needs of within the state-oriented to benefit natural gas.<sup>33</sup> The allocation policies were based on energy policy national and through taking into account the public interest; interests of a country; the balance sheets natural gas Indonesia; reserve and opportunities gas market the earth; infrastructure available and who in planning according to a plan parent tissue transmission and distribution national natural gas; and/or economies of the field from oil and natural gas reserves to be allocated.<sup>34</sup>

In the case of above, HCML as a seller of natural gas has done termination trading contracts gas between HCML with PT Parna Raya on April 10, 2017, and applying to change the field gas BD Madura to Minister of Energy and Mineral Resources.<sup>35</sup> A request for the allocation of natural gas can be requested both by a contractor and by a potential buyer natural gas to The Minister of Energy and Mineral Resources through the Director-General and the Director-General would ask for consideration from SKK Migas at the request a potential buyer natural gas.<sup>36</sup>

A request for the allocation of natural gas both submitted by contractors and buyers assessed by the Director-General set by coordinate with other relevant agencies, one of them is SKK Migas.<sup>37</sup> Minister of Energy and Mineral Resources also received petition letter to re-allocation from HCML and recommendations from BPMIGAS (currently SKK Migas) about the proposal re-allocation to natural gas in the field BD KKKS HCML.<sup>38</sup> The head of SKK Migas provides consideration seen a reasonable principle of business which it is perfect, openness, justice, and accountability.<sup>39</sup> The Director-General would consider based on the balance natural gas Indonesia; provisions allocation determination natural gas to the needs of domestic; status and the ability of natural gas buyers; type and capacity facilities the distribution and/or natural gas use will, and, and was attached or established.<sup>40</sup>

Next, The Minister of Energy and Mineral Resources will set out or may reject the application for the determination of allocations natural gas.<sup>41</sup> In this case, after obtaining the consideration as in accordance with the Minister of Energy and Mineral Resources Regulation number 16 year 2016 then Minister of Energy and Mineral Resources issued a letter of Minister of Energy and Mineral Resources dated 2 June 2017 number 4465/13/MEM.M/2017 about re-allocation gas contains agreed to changes natural allocation which was originally for PT. Parna Raya as much as 40 (forty) MMSCFD becoming to PT. PGN (Persero) Tbk early 20 (twenty) MMSCFD to 60 (sixty) MMSCFD. If PT. Parna Raya committed to absorbing the gas from WK Madura Strait, SKK Migas can supply other sources of gas. SKK Migas and HCML, SKK Migas and HCML, adapt over the gas had been granted before, and then SKK Migas asked to pass on the report on the implementation of the agreement letters re-allocation of gas to the Minister of Energy and Mineral Resources c.q. The Director-General of Oil and Natural Gas, Minister of Energy and Mineral Resources has issued a letter is because there is the allocation of natural gas from contractors in this matter is HCML.

Minister of Energy and Mineral Resources issuing of the letter implement guidance covering of policy determination on the oil and natural gas business based on its reserve and the potential of oil resources and natural gas owned, production capacity, fuel requirements oil and natural gas inland, command of new technology, the aspect of environmental and the preservation of the environment, the ability national, and development policy, as stated in article 39 the Act of Oil and

Natural Gas. Minister of Energy and Mineral Resources set a policy of the utilization of natural gas from the reserve natural gas with make an effort for domestic demand were met optimally by considering the interests of the public, interests of a country, and a national energy policy of as well as the technical aspects of which includes its reserve and natural gas market opportunities.<sup>42</sup>

In its consideration, Minister of Energy and Mineral Resources agreed with the re-allocation of gas after taking into account the situation that hcml is under final preparation commissioning and the testing upstream facility where is no longer process can delay startup upstream facilities.<sup>43</sup> Authorities have given the opportunity to PT. Parna Raya to immediately confirm the gas field, but there is unpreparedness from Raya to receive gas, can be seen from the request from PT. Parna Raya to HCML to permit the and the use of a right of gas pipeline channelling way. Meanwhile, the results of progress project upstream HCML has reached 100 % in April 2017 and on the other hand, PGN is ready to absorb gas marked by the exercise of commissioning since may 2017 and agreed to receive gas field bd of 60 MMSCFD.

If the government does not agree with proposals did re-allocation so was predicted to create the problems and potential harm the state, including gas supply for industrial gas users in the East Java is cannot be met and will affect mapping demand and the fulfilment of gas supply in the East Java that had been developed the government so that can affect national energy security.<sup>44</sup> If not done the re-allocations gas which was formerly supposed to can be commercialized to produce income for the state of being have to be in a flaring (burned gases) which also to get to the environmental damage. Infrastructure in upstream and downstream cannot be used optimally when not done the re-allocation. In addition, if not done a re-allocation, there is a potential loss of income can be frankly bad for the country per day as much as USD\$ 13,140 along with total loss as much as USD\$ 617,512,000.

The readiness of the parties, in terms of either to capital, infrastructure humans resources and so on, in the utilization of Non-renewable natural resources strategic become a very important thing to continue to do the exploration and the exploitation. For reasons mentioned above, The Minister of Energy and Mineral Resources agree to natural gas re-allocation so that a project to develop the field of BD will be immediately so that project among the various relevant parties kind of economy of the field of BD can be defended. A letter from The Minis-

*Zainal Muttaqin*

*Adrian E. Rompis*

*Amelia Cahyadini*

*Rafika Fajriati*

*Nastiti*

ter of Energy of Mineral Resources number 4465 will be expected to be the solution to problems arising.

Legal certainty is one element that should appear for the sake of the law. Certainty in the law intended that every a norm law must be able to be formulated by the words of in it not containing and therefore caused diverse interpretations.<sup>45</sup> Legal certainty could also mean it can be determined by law in concrete things.<sup>46</sup> Law had the task of creating certainty a law because aims to establish the order in the community. Law without value certainty will lose significance because they were can be used as guidelines behaviour for everyone.<sup>47</sup>

A letter from The Minister of Energy and Mineral Resources number 4465 is the perfect solution for the matter will rise to and it is not revoked or remove allocation gas PT. Parna Raya for in terms of pt parna raya remains committed to absorbing allocation gas, they will be sent the opportunity to get allocations from other sources.

Approval re-allocation of natural gas to be distinguished with the cancellation of the determination of the allocations natural gas as a form of administration sanction contained in the minister energy and mineral resources number 6 the year 2016. Minister of Energy and Mineral Resources can provide administration sanction to contractor or buyer of natural gas who did not follow the rule in the manner determined in the approval of the biggest allocated and the utilization of natural gas. The cancellation can be given after the twice reprimand written.<sup>48</sup> After the reprimanded written, but the contractor or the buyer of natural gas still not fix or meet the stipulated terms, the Director-General can propose to Minister of Energy and Mineral Sources to repeal allocation and utilization of natural gas.<sup>49</sup> In terms of the Director-General proposed to Minister of Energy and Mineral Resources to repeal the allocation of natural gas, the Director-General warned SKK Migas to find for a potential natural gas buyer.<sup>50</sup> Next, Minister of Energy and Mineral Resources published the determination of the repeal of the allocation of natural gas and at the same time decide on the allocation of natural gas to the new natural gas buyer, and then followed up by SKK Migas to redistribute distribution and/or delivery of natural gas.<sup>51</sup>

Meanwhile, provisions on allocations and re-allocation of natural gas were on equal terms. Need to be the attention is that the allocation of natural gas is an agreement which had been included in an agreement between contractor for buyers of natural gas which a thing is the domain of a private law. Minister of Energy and Mineral Resources

has the authority to approve the allocation and give the allocation of natural gas previously filed by contracting or buyers of natural gas who are considered and recommendations from the Director-general and SKK Migas. So, for the regulation of natural gas allocation in Minister of Energy and Mineral Resources regulations number 6 the year 2016 has quite definitely set and provide legal certainty for the venture or permanent business form.

## Conclusion

From the above, so it can be concluded that The Minister of Energy and Mineral Resources in terms of re-allocation of gas based on sovereignty as stipulated in Article 33 paragraph (3) of The 1945 Constitution of the Republic of Indonesia is the authority the attribution, namely implement of function of policy determination (belied), function in the management (bestuursdaad), regulatory function (regelendaad), management function (beheersdaad), and supervisory function (toezichthoudensdaad) in terms of management the natural gas resources. The regulation of re-allocation of natural gas accordance with the Minister of Energy and Mineral Resources Regulation number 6 the year 2016 has upheld the principle of legal certainty.

## Notes

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*Zainal Muttaqin*

*Adrian E. Rompis*

*Amelia Cahyadi*

*Rafika Fajriati*

*Nastiti*

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- 50 Minister of Energy and Mineral Resources Regulation Number 6 Year Tahun 2016 about The rules and procedures of determining the allocation and the utilization of natural gas and prices, art 31 para (5)
- 51 Minister of Energy and Mineral Resources Regulation Number 6 Year 2016 about The rules and procedures of determining the allocation and the utilization of natural gas and prices, art 31 para (6)

# Synergy of National Leadership to Strengthen State Diversity and Integrity of the Republic of Indonesia

*Sugianto*

## **Abstract**

Indonesia is a unitary country with a diverse population. In this country, there are various ethnic groups, religions, and races that live side by side. But in the midst of a pluralistic society, there are problems that threaten diversity. The social conflict that occurred in the community, whether it was racially, ethnically or religiously, then occurred in several regions in Indonesia. In an effort to strengthen the unity of the nation, ultimately the role of leaders is needed to be able to unite the people who were fragmented due to the conflict. This study uses qualitative methods, where research data are obtained from primary data which are the result of observation and secondary data which is a search of documents and literature studies.

*Keywords: synergy, national leadership, strengthen, diversity, and integrity*

## **Introduction**

The synergy of national leadership is now clearly seen so low; this can be known from the development process which is self-directed and not coordinated as an integrated system. The low level of synergy between national leaders is of public concern because it can hinder the national development acceleration and weaken the unity and entity sense in this pluralistic country. The main problem faced by this nation is the difficulty in carrying out communication

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and coordination among National leaders. This problem has implications for all lines of the nation and state life, where the national leadership holds the main government control in carrying out national development policies aimed at realizing the national ideals as stated in the opening of the 1945 Constitution<sup>1</sup>.

The difficulty for national leaders to work together and carry out communication and coordination can be seen from the selfish, group and party attitudes. On the other hand, it encourages leaders to be primordial and corrupt so that when their accountability is measured, and their moral values, integrity, and capabilities are seen, it will be very difficult to emulate. On the basis of this problem then the thought arises to issue a regulation regarding the recruitment system of national leadership, it is necessary to have value standardization to measure national leadership accountability<sup>2</sup>.

Indonesian pluralism is very clear because it consists of many ethnicities and ethnic groups that inhabit all corners of the country. This diversity enriches the treasures of the nation's culture as a unified whole. On the other hand, this diversity also contains potential differences that can ignite conflict if it is not addressed wisely. In the phrase "Unity in Diversity" there is meaning "even though it is different but still one", which means that a lot of diversity makes the Indonesian nation still one nation. Thus, this diversity can be strengthened by national leaders intention to have a strong synergy that can strengthen diversity<sup>3</sup>.

The decline in individual morality, accountability, social, institutional and global national leaders makes it difficult to find national leaders who are able to work together, uphold the values, principles, and truths they believe. Leaders who are able to exemplify others to make changes related to the thinking process. A person who has the national leadership nature must be able to have high integrity and demonstrate a strong attitude towards determination in acting in accordance with the true principles and not be afraid of shocks that will undermine its leadership qualities. Integrity morals are a measure of national leaders to be able to work together.

Based on the above matters, the article title raised is the national leadership synergy to strengthen the diversity and integrity of the Republic of Indonesia.

## Theoretical Review

### *Leadership*

National leadership is currently facing enormous challenges and heavy. The problem complexity in the midst of a pluralistic society makes these challenge must be addressed appropriately and wisely. Not to mention the rapid changes flow at this time due to globalization impact. National leaders in the reform era are still far from people's expectations. The various problems of national leadership ultimately have an impact on all dimensions of life in the community, nation, and state up to national stability and the integrity of the Republic Indonesia Unitary.

*Sugianto*

Based on these matters, national leaders are required to be a figure that can be a source of inspiration for the community, a place where the community aspirations have a place to be heard and acted upon and at the same time become an example for the people they lead and represent the country in protecting society. The national leader is also not a person who is only capable of building himself into a great individual individually, but absolutely building cooperation to synergize between national leaders to make Indonesia a great country within the framework of the Unitary Republic of Indonesia (NKRI).

Leadership ethics according to Terry<sup>45</sup> for National Leaders include: organizational ethics, institutional ethics, power ethics, and wisdom ethics.

Whereas the need for national leaders to be able to build communication in order to create synergy among them is to maintain national unity or national integrity. Prerequisites for the national integration realization according to Zuhdi<sup>6</sup> include:

1. The existence of understanding and awareness and determination to unite as the Indonesian nation in the NKRI container from Sabang to Merauke based on Pancasila.
2. The existence of understanding, awareness, and agreement on national goals and objectives listed in the Preamble of the 1945 Constitution.
3. Realization of welfare and security that is fair throughout Indonesian territory. Without equitable welfare, it is difficult to create security conditions, on the contrary without security conditions conducive to development to realize prosperity, it is difficult to implement.

Therefore, national integration demands equal rights treatments for all and every citizen. This means that national integration will only be

carried out well as long as there is a guarantee that citizens' basic rights and dignity are respected and not denied being raped or harassed. This means that without guarantee, integration becomes weak.

*CEJISS Synergy*

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A synergy is a form of Win-win solution that is produced through the collaboration of each party without the feeling of losing. According to Covey<sup>7</sup> if  $1 + 1 = 3$ , that's what is called "Synergy". Synergy is to complement each other and complete differences to achieve results greater than the number of parts per section. Further according to Hampden - Turner<sup>8</sup> states that synergy activity is a process that involves various activities, which go together so as to create something new. Synergy is the result of a dialogic relationship between different sources of knowledge and is a process that accumulates various kinds of knowledge. Then Hartanto<sup>9</sup> states that synergy is a new idea, which is formed from various kinds of ideas put forward by many parties to produce a new idea, which is based on a new mindset or concept. In each working group in the organization, the synergy quality which is an effective synergy is essentially the result of combining process in which to overcome problems and the integration of ideas carried out by parties who trust and support each other to produce a new and correct idea gives intrinsic satisfaction to all parties. The emergence of new ideas and the satisfaction that follows will not be obtained without all parties effective collaboration.

Understanding the synergy quality as quality of critical collaboration results is in line with collaboration quality in collaborative processes as expressed by Gray<sup>10</sup>, and as expressed by Bennis & Biederman<sup>11</sup> as creative collaboration, which describes collaboration that can produce more than what is estimated by anyone. Indeed, the theory of synergy (synergy) refers to a synergic management style in an organization that is always creating harmony<sup>12,13</sup>.

### **Research Method**

This research does not want to test something on other matters but intends to look more deeply at the national leadership synergy in order to strengthen the diversity and integrity of the Republic of Indonesia. Therefore this study uses qualitative methods, where research data is obtained from primary data which is the result of observation and secondary data which is a search of documents and literature studies

results related to the national leadership synergy in strengthening the diversity and unity of the state. The data obtained is then validated using data triangulation techniques, this is done so that the data used can help the analysis process objectively.

## **Discussion**

### *Current conditions of national leaders synergy*

The role and existence of national leaders in realizing constructive change are needed. However, the optimization of the national leader's role is not enough, because it requires synergistic aspects with all other national leaders elements to solve various national problems. National leaders are not only represented by the President only but also spread throughout Indonesia. The national leader's synergy is important because national leaders from the center to regions are role models for the people (National Resilience Institute, 2016). Various problems that still spread in various regions in Indonesia demanded national leaders to work together. The lack of national leaders synergy is caused by sectoral ego, the regional autonomy impact, as well as multi-ethnic, ethnic, racial and cultural conditions (National Resilience Institute, 2016). This has caused the national leader's performance to be far from expectations because national acceleration is difficult to achieve. When national leaders lack synergy, the state presence will be questioned by the public because public services are not optimal due to the lack of synergy between national leaders.

As a diverse country in terms of ethnicity, culture, and religion, diversity, on one hand, is a national development reinforcement, but on the other hand, it can be a potential that can be utilized to break the defense of unity and entity. The occurrence of vertical and horizontal conflicts with a violence dimension is fragility evidence of unity and entity. The uniformity politics has eroded Indonesia's character as a warrior nation, waning solidarity and cooperation, and marginalizing local culture. The national identity is torn apart by widespread sectarian conflict and various forms of intolerance. The attitude of not being willing to live together in a diverse community has given rise to intolerance expressions in the form of hatred, hostility, discrimination, and acts of violence against "different" as an illustration of primordialism and ethnocentrism birth in the midst of diversity. At the same time, the rapid advancement of information technology and transportation have produced "borderless-state" which in turn has a negative

impact in a culture shock form and global identity unity among Indonesia's young generation.

Since Indonesia's independence, August 17, 1945, to date, the state government regime has changed several times, which can be grouped into three phases or order. Each ruler with their respective episodes has unique and different characteristics and governance styles. Old Order which was commanded by the first Indonesian President, Ir. Soekarno, with a nationalistic-universal pattern of government based on the inner atmosphere of imperialism-colonialism rejection (old style and new style, neocolonialism). The Old Order passed, replaced by the New Order which was driven by General Soeharto, who later became the second President of the Republic Indonesia, emerged with his new slogan: "determined to implement the Pancasila and the 1945 Constitution purely and consistently". The New Order had to end, was replaced by the Reform Order since 1998 and is still running today.

During the 13-year Reformation period, five presidential successors have emerged, namely Baharuddin Jusuf Habibibi, Abdul Rahman Wahid, Megawati Soekarnoputri, Susilo Bambang Yudhoyono and currently president Joko Widodo. The problem is that in every change of national leader from time to time does not reflect the regeneration existence from the previous leader but more because of the security and political situation which requires the implementation of a presidential change. President Sukarno went to President Suharto because of the G 30 S / PKI. President Soeharto to Baharudin Yusuf Habibie because of society various elements demands which were members of the reform movement. Thus, it came to President Joko Widodo, none of which described the regeneration existence process either by the previous President or by political parties carrying presidential candidates. Dynastic political behavior still colored national political life both at central and regional levels.

The government system dynamics is a system that always develops at any time along with the complexity of the problems faced. The face of bureaucracy implementation will be reflected in the products results in a standards form of service to the public or society. In order to rationalize the bureaucracy, there will be clear boundaries and relationships regarding the rights, responsibilities, obligations, and authority of all parties related to public administration. The proper system of public service delivery and in accordance with the general principles of good governance and corporation. Where public service must be in

accordance with the regulation and protection and legal certainty for the community. Professionalism, participation, equality of treatment/non-discrimination, openness, accountability, a provider of facilities, and special treatment for groups that have limitations, timeliness, speed, ease, and affordability, can only be realized when awareness of a public official's responsibilities as public servants have been embedded in every official.

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*Implications for optimizing the national leader's synergy against diversity and diversity towards the integrity of the unitary state of the Republic of Indonesia*

The various problems that occur in the current national leadership will have direct implications for efforts to build synergy among leaders. The regeneration process of leaders who do not go well cannot build attachments to the atmosphere of mysticism between leaders so that the idea of building synergy is only seen for the sake of the president just to preserve his power. The thing that will happen is resistance from non-party leaders, who are already well-established with current conditions, anti-change leaders and also less intelligent leaders. Thus synergy will only occur in leaders who are a party or in a coalition if it benefits the group or region and can perpetuate its power, the national leadership does not play an effective role as a reinforcement of diversity.

The threat to disintegration is a real implication of leadership current state. Sectoral, primordial ways of thinking and concerned about diversity are split symptoms. The regional autonomy existence that is misused, the development of religious fanaticism, ethnicity and class and the occurrence of vertical and horizontal conflicts in the life of our nation is an implication of current national leaders influence who have not been able to make the country as a final mouth and leadership goal itself, with national leadership not synergizing will have an impact on the country presence so that it implies the unity of the Republic of Indonesia.

*Strategic environmental development*

The National Leadership low integrity cannot be separated from the influence of the strategic environment development at global, regional and national levels. The strategic environment is defined as a complex, multidimensional condition, condition or movement that dynamically

moves forward affecting various aspects of people's lives, nation, and state.

The view of life and the National Leaders lifestyle is strongly influenced by lifestyle or International cultural development (global) that is very "hedonism" and "consumerism". The main contribution is information technology advancement that can be directly accessed by individuals, who present a luxurious lifestyle, far from simplicity. This condition greatly influences the leader's mindset in actualizing themselves and the institutions they lead in the country. Now we are in a situation where each individual can relate to each other indefinitely, even though before they did not know each other. In other words, the development of this strategic environment has brought us to a borderless condition or situation, it seems to be narrower, changes are very fast, unpredictable and uncertain.

Democracy and human values are a strategic issue in developing countries. Democracy issues are spread by Western countries, which are the dominant actors in global politics, especially Western countries which are directed by the United States. But the countries that are dominant actors apply double standard politics. Democracy is used as a political instrument in achieving the State's interests goals. Although democracy is more closely related to political terms, it is precisely the Western countries motives in democracy transnationalism that are economic and cultural importance. It is clear that the core idea of liberalism initially was economic and cultural capitalism, namely how to open the broadest free market opportunities in developing countries. So that in the name of democracy and human rights, a value-free western culture easily enters developing countries (both in ideas and physically form).

The ASEAN region which has the same family, namely Melanesia between ethnic groups in Papua and the Papua New Guinea (PNG) population and other ASEAN countries, is both an opportunity and a challenge (vulnerability). Opportunities for various kinds of emotional approaches in a socio-political, economic, cultural and security fields. In addition, the Melanesian Brotherhood Solidarity and Melanesian Spearhead Group organizations are forums that can be used as political means. However, it can also be used by certain parties to attract eastern Indonesian, such as Maluku and Papua who happen to be less touched by national development for purposes that are detrimental to national interests<sup>14</sup>. Especially to deal with security in Papua and Papua New Guinea (PNG).

The ASEAN regional region in the prospect of economic development and progress in ASEAN countries, including Indonesia occupies a strategic position. Therefore, on a common vision basis in building the nation, several countries in the region agreed to establish cooperation in various fields. This collaboration is realized in forums such as BIMP - EAGA (Brunei Darussalam, Indonesia, Malaysia, the Philippines - East Asian Growth Area); SIJORI (Singapore, Johor-Malaysia, Indonesia); AIDA (Australian, Indonesia Development Area) that can influence the national leader's synergy.

*Synergy of  
National  
Leadership*

### *National environmental development*

#### Aspect of ideology

Ideology is a value system which is unanimous teaching that provides motivation. In ideology also contained a basic concept of life that was aspired by a nation. The ideology efficacy depends on the set of values it contains which can fulfill and guarantee all aspirations of life and human life both as individuals and as national leaders. In theory, an ideology comes from a school of thought/philosophy and is the philosophy system implementation itself so that in order to optimize the national leadership synergy it is necessary to understand this national ideology.

#### Political aspect

The dynamics of local and national political developments are very conducive, which implies that the public awareness level of political rights tends to increase. However, in other developments, demands for regional expansion, the conflict between groups in the elections, inter-regional conflicts in fighting over territories, which often lead to violent actions still have local political dynamics that will affect the national leader's synergy.

The current political trend is a survey institutions emergence that conducts various kinds of survey activities on National leadership and about the actual nationality development. The of people awareness participating in the process of building a public opinion about the nationality development, especially the National Leadership, has become a positive development. Because public can directly monitor and policies laid down and carried out by the government through mass media coverage. The community is able to suppress and/or influence the government and state institutions in carrying out its mandate.

### Economics aspect

The economy is one aspect of national life that is related to meeting the needs of the community, including production, distribution, and consumption of goods and services. Efforts to improve the standard of living of individuals both individually and in groups as well as the ways that are carried out in community life to meet needs.

The economic system adopted by a country will give pattern and color to the country economic life. A liberal economic system with a pure market orientation will be very sensitive to influences coming from outside. On the other hand, the socialist economic system with the nature of planning and full control by the government is less sensitive to outside influences.

Now there is no longer a pure liberal economic system or a pure socialist economic system because both of them have complemented each other with some modifications in it. The economic system adopted by the Indonesian people refers to Article 33 of the 1945 Constitution. In it, it explains that the economic system is a joint effort of every citizen who has the same rights and opportunities in running the economy with the aim to prosper the nation.

Thus, the economy is not only run by the government which is realized in the activities form of state enterprises, but the public can participate in economic activities in a very wide-ranging private businesses form. Cooperatives are a form of business that may be developed, namely a business form carried out on a family basis. In the Indonesian economy, there is no monopoly and monopsonies recognition, both by the government and the private sector.

At the macro level, the Indonesian economic system using national terminology can be called a populist poverty system. In the economy implementation, it is strongly influenced by the national leader's synergy with diversity.

### Socio-cultural

The socio-cultural aspect includes two main aspects of human life, namely the social aspect in which humans must survive in cooperation with other human beings. Meanwhile, the aspect of culture is the whole value system and way of life whose manifestations appear in behavior and the institutionalized behavior results.

Social understanding is essentially the human life association in a society that contains the values of togetherness, common sense, in-

surance and solidarity which are unifying elements. As for the culture, nature is a value system that is the result of human relations with creativity, taste, and initiative that fosters the main ideas and is a supporting force of life. Thus, culture is the whole way of social life whose manifestations are in behavior and behavior results learned from various sources. Culture is created by human organobiological factors, natural environment, psychological and historical environment.

The Indonesian culture (national culture) is the interaction results of regional culture which is then accepted as a shared value of all nations. National culture can also be an interaction between existing cultures and foreign cultures that are shared with all nations. The important thing of the interaction is the national leadership role that synergizes so that cultural interaction runs proper and naturally without coercion and cultural domination of one region against other cultures.

National culture is the identity and pride of Indonesia. Pancasila is the Indonesian nation philosophy; the values contained therein become basic guidance of all attitudes, behavior, and lifestyle of the Indonesian people.

### Defense and security aspects

Indonesia's defense and security is the universality of the efforts of all Indonesian people as a defense and security system in maintaining and securing the country for the survival and life of the nation and the Unitary State of the Republic Indonesia. Defense and security are carried out by compiling, assemble and mobilizing all national potentials including integrated and coordinated community forces in all fields of national life, held by Government and the State with TNI and Polri as the core executors.

Defense and security resilience is defined as the defense and security dynamic condition of Indonesian nation which contains tenacity and resilience that contains ability to develop national power in a face of threats, disturbances, obstacles and challenges that come from outside and inside, directly or indirectly which endanger identity, integrity and survival of the nation and the Unitary State of the Republic Indonesia based on Pancasila and the 1945 Constitution with its Diversity.

### Opportunities and constraints

- a. Opportunity
  1. The strategic environment tendency can be used to increase the National Leaders synergy to accelerate national development in the resilience context.

2. The existence of a free world without administrative boundaries, National Leaders, can learn from leaders of global and regional environmental levels.
  3. Integrity and credibility of leaders at the global and regional strategic environment level can be an inspiration and motivation in improving their original quality and leadership.
- b. Constraints
1. Liberal and value-free lifestyles and lifestyles become obstacles in improving the quality of integrity and National Leaders Synergy.
  2. The life pattern that consumerism and hedonism can destabilize the National Leaders integrity in carrying out leadership, so tempted to abuse authority or power that is in his hands.
  3. The grandeur of worldly life which is displayed at international and regional mass media and international lobbies is also a factor in increasing the National Leaders synergy.

### *Expected Sinergy Conditions of National Leaders*

National leaders who are expected to realize the integrity of the Republic Indonesia in the present and the future that are needed are leaders who have added value to accommodate change and have the ability to manage changes in times and environment. The context of the National Leader in question certainly does not only touch the Head of State level, Deputy Head of State, Minister, DPR member or Regional Head only, but all national components that have the authority to take policies that can affect the nation's improvement or vice versa. Obviously, this nation does not need a leader who has power or creates power, but what is needed is a leader who is able to create a system, a national leader who knows his role in creating a solutive system for national improvement.

In order to maintain harmony in diversity, a leader is expected to understand precisely the pluralism essence. As an ultra plural nation with the posture of an archipelago, it is the duty of the leader to lead the same treatment. There is no majority domination against minorities and also does not recognize the existence of minority tyranny. Pluralism is an attitude of openness as an interaction framework where each group displays respect and tolerance for one another, interacts without conflict.

By understanding the importance of national leaders role in resolving various problems in the life of the nation and state, the national

leader is an Indonesian-minded leader. Leaders who have good integrity and personality, are blameless, honest and respected by others. National leaders in the future need people who have high integrity, meaning that the level of their relationship with those who are led is based on “rational transformative” considerations rather than “emotional transactional”. This situation will give birth to a leader who has the character of a manager, leader and statesman character combination (Manager, Leader, Statesman). Leaders who are prepared early so that they understand the nation’s problems and how to solve them. He is a problem solver.

### *Dynasty political behavior*

To build nationalism, a leader must prioritize national interests rather than the interests of the party or class. The leader should also prioritize the interests of the people’s aspirations.

The leaders who are expected to have intellectual qualities are supported by complete social, economic and political conditions. Important factors that must emerge leaders who take the initiative to be the drivers of change. Leaders of people who are brave, honest with the struggle ideals, have a commitment and determination to the struggle ideology and ideals, as well as patience in struggling. Leaders like this are needed as national leaders now and in the future. Thus national leaders who have synergistic criteria between, intellectual intelligence (Intellectual Quotient), emotional intelligence (Emotional Quotient), and spiritual intelligence (Spiritual Quotient) are harmonious, consistent and balanced, with a hope that he as a national leader can think dynamically and integrative in mindset, attitude patterns and action patterns, thus creating a strong leadership with the understanding that strong leaders are not authoritarian and narrow-minded, but must also have a high spirit of nationalism and patriotism to build a nation that better and able to bring the nation out of crisis which is prolonged towards strong unity and entity and the unity maintenance of the Republic Indonesia in order to achieve the nation ideals.

### *The contribution of optimizing the national leader’s synergy against diversity and diversity’s contribution to the unitary republic Indonesia integrity*

In relation to the national leader’s synergy, in various aspects of life must be a national leadership integral part, namely leadership oriented

to a harmonious interactions creation by the community with leadership traits that are based on the National Paradigm and have the ability to respond to changing times. Thus national leaders who have synergistic criteria between, intellectual intelligence (Intellectual Quotient), emotional intelligence (Emotional Quotient), and spiritual intelligence (Spiritual Quotient) are harmonious, consistent and balanced, with hope that he as a national leader can think dynamically and integrative in mindset, attitude patterns and action patterns, thus creating a strong leadership with the understanding that strong leaders are not authoritarian and narrow-minded, but must also have a high spirit of nationalism and patriotism to build a nation that better and able to bring the nation out of crisis which is prolonged towards strong unity and entity and strengthen diversity.

To realize the leader in his position as a “State Symbol” that can represent the presence of the state in society, the national leader condition is expected, has a nationalism high spirit, with a reliable spirit of patriotism so that he can be trusted and accepted by the community (social trust). Because the leader must be able to think based on a national paradigm that is ethically ethical in accordance with national cultural values that are capable of carrying out the community aspirations by thinking holistically and integrally. This criterion is also based on the Pancasila values as a philosophy and ideology as well as the state basis, and the 1945 Constitution of the Republic Indonesia as the state constitution foundation and always think with the national basis insight by prioritizing national interests. Likewise must be able to pay attention to which is preferred, so that he must be able, to be honest, neutral and behave fairly to make a decision that can benefit people’s interest, also love people who eventually will be loved by the people, then he will be trusted and will can also be accepted by the community they lead (social trust). Therefore, ideally, national leadership must be organized in a national leadership system that is nationalistic in mind, so as to produce a synergistic effect on reliable national leadership, which ultimately can also produce leadership that has strong national insight, so as to strengthen diversity and ensure territorial integrity. NKRI and then expected to be able to be used as a benchmark from a qualified national leader to build a better nation.

#### *Indication of success*

- a. Loss of Primordialism and Ethnocentric Behavior. This is shown from an increasing national character that is consistent, assertive

- and not ambivalent. From these leadership traits the attitude of national leadership always thinks, behaves and acts not trapped in power boxes that have the ability to communicate better with the community and be consistent to build achievement inspire the spirit of the nation's ideals, being established and not artificial and able to decide on decisions in accordance with national policies. Therefore, such leaders must always think, act in accordance with a national security and nationalism concept that can be relied upon and understand, appreciate and implement national management systems in the state decision-making process. With the primordial and ethnocentric loss, the national leader's synergy will be able to carry out their duties and functions proportionally in the corridor of prevailing laws and regulations. In addition, it will be able to solve the problem by prioritizing deliberation approach to consensus, mutual understanding, and respect for differences that are a force to build the nation.
- b. The realization of the National Leader Recruitment System based on the standard parameters in IKNI form. As a democratic country, a leader emergence is generally determined by the party that carries it. For this reason, political parties have had good formal leadership recruits. For this reason, political parties have had good formal leadership recruits. The democracy principle in our constitution is how political parties produce quality leadership because democracy will be quality if it is led by quality leadership. This is a very important political party role. The democracy future in the country is largely determined by democracy ability as an incubator to create national leaders. Similarly, political parties have been able to create a more optimal cadre so that future leaders will be better.
  - c. Increased Human Resources (HR) National Leaders who have individual, social, institutional and global morality and accountability. This is reflected in leaders quality who have been able to face the globalization challenges and have ability and superiority that is equipped with morals and ethics, work ethic, morality, responsibility, and integrity. Quality leaders are every organization hope, not only physical or intellectual qualities but also spiritual qualities because the accumulation of three aspects that include physical, intellectual and spiritual will have a very strong influence on leadership quality. So it can be said that competence

is a statement of what someone must do at work to show their knowledge, skills, and attitudes in accordance with required standards.

*CEJISS 4/2018 Optimization of the national leader's synergy to strengthen diversity in the framework of the unitary state integrity of the Republic of Indonesia*

At the moment there are a lot of corruption acts carried out by the National Leaders both at the center and regional level, this is because the leader does not have good integrity. Leaders if given to people who rely solely on intellectual intelligence without having integrity, certainly tend not to be useful for organizations and society, because leaders like this only think how to satisfy their unlimited needs, how to make a project or activity that can increase their gold purse, how can the position and seat be safe and his career continues to shine, in short this type of leader only thinks about the interests of himself, his cronies and group or class. Therefore, optimizing the national leader's synergy to strengthen diversity in the unity of the Unitary Republic of Indonesia.

The concept determination of optimizing national leaders synergy to strengthen diversity in the unity context of the Republic of Indonesia is "National Leadership Synergy".

Based on the policy formulation, the following strategies are formulated as follows:

- a. Strategy 1. Increase national / nationalism commitment of national leaders.
- b. Strategy 2. Optimize the recruitment system for national leaders.
- c. Strategy 3. Build individual, social, institutional and global morality and accountability.

To achieve desired goals and objectives, the efforts that can be done are as follows:

- a. Strategy 1. Increasing national / nationalism commitment of national leaders with efforts:
  1. National and local governments carry out national leadership socialization values based on Pancasila and National Insight on all government officials, cadres of political organization leaders and community organizations as well as community leaders, religious leaders, and traditional leaders.

2. National leaders at each level strive to improve understanding and commitment to national insights which are derived from the four basic consensuses of the country.
  3. Increasing exemplary national leaders in responsible for implementation of their duties and functions as well as the nation and state life behavior, which can be used as an example/role model for his subordinates in overcoming the rampant practice of corruption, collusion, and nepotism (KKN), illegal activities that violate the law. The leaders in each level strive to improve discipline, work order, and accountability of duties and functions of each government apparatus in complying with regulations.
  4. National leaders at each level strive to improve integrity and professionalism with nationalism spirit through increased willingness and ability according to the science and technology development and excellent service to the community.
  5. National leaders in each level strive to carry out education and skills training in government apparatus in accordance with the duties and functions under their responsibility.
  6. National leaders motivate their members to improve communication and coordination between work units, both vertically and horizontally as the development of cooperation and work dynamics in achieving organizational goals.
  7. Government (Ministry of Home Affairs, Ministry of PAN and RB, Bappenas, BKN) and local government, prepares every government apparatus to have nationalism and national insight so that they are more proactive and adaptive (able to adapt) to strategic environmental changes and carry out good tasks.
- b. Strategy 2. Optimize the recruitment system for national leaders with the following efforts:
1. The government through relevant Ministries and state institutions carry out coordination and communication with all national leadership levels and existing agencies ranks in carrying out a credible and acceptability national candidate recruitment system at central and regional levels and at the same time will determine public trust level.
  2. The government, through the Ministry of State Secretary, designs information and communication systems that can

- be applied in the ranks of national leadership to facilitate the recruitment of candidates for National leaders in an open and transparent manner so as to obtain leaders who meet the competency standards required by the Nation and State.
3. The Government and Regional Government along with their apparatuses apply the Indonesian National Leadership Index (IKNI) issued by Lemhannas so that a benchmark picture of hopes for public trust can lead Indonesian people to a better national life gate and create a synergy, professional system and mechanism of performance for national leadership and proportional to build good governance through accelerating bureaucratic reform, where there will be some changes in the national leadership structural composition in order to increase ethos and work discipline.
  4. The government and regional governments make structural changes to each agency that is considered to be less than optimal in carrying out the candidate's recruitment for national leaders. This change is one of the requirements needed to build good governance.
  5. The Government and regional governments through existing state supervisory bodies/institutions carry out programs/activities of supervision and inspection of each recruitment candidates for national leaders. These efforts are controlled mechanism part for reconciliation implementation which ensures that the recruitment implementation can run smoothly, effectively and efficiently. The supervisory function is one of the important functions included in one part of organizational management namely planning, organizing, actuating (implementing), and controlling.
- c. Strategy 3. Build individual, social, institutional and global morality and accountability with the following efforts:
1. The Ministry of Home Affairs cooperates with the Ministry of Law and Human Rights to formulate the strengthening and development of recruitment standards and parameters related to checks and balances between state administering institutions.
  2. Ministry of Home Affairs, Ministry of Defense together with the House of Representatives carry out debriefing nationalism to the political elite and political party administrators/members at central and regional levels. The aim is so

that political parties' elites and administrators understand national paradigm and able to behave, think and act in accordance with the paradigm. This national insight should be owned and carried out by all political elite/leaders elements so that they have a strong and sustainable commitment to the nation and state.

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3. Law enforcement agencies (Polri, Attorney General's Office, Court, and KPK) increase law enforcement efforts especially against Political elites and state administrators who violate the law, by giving strict sanctions without any difference from other citizens.
4. The government and the government apparatus in carrying out their duties and functions must have global insight so that in determining policies influenced by factors that are influenced by strategic environment so that decisions can be implemented properly and produce optimal performance.
5. Increasing the national leaders and government officials knowledge and ability in carrying out inherent supervision, internal and external supervision intensively on programs implementation that has been established, so as to increase productivity, efficiency, effectiveness, professional, clean and authoritative of every government apparatus.
6. Develop a government apparatus performance appraisal system that can be monitored and evaluated by all levels of society in an open, transparent and accountable manner that is expected to be able to find an early occurrence of irregularities or fraud towards KKN actions, which is then followed by efforts to control and improve organizations and apparatus performance.
7. Leaders to improve the environmental quality and professionalism and social spirit in which the leader is located. So that a leader presence is very beneficial for the environment.
8. Increase socialization and education about legal awareness for government officials and community to prevent abuse of law authority and violation.
9. The government as an executive body together with Legislative Body fosters national leaders to have good individual, social, institutional and global morality and accountability required by the nation and state.

10. The Government seeks to increase public participation in realizing legal order through intensive and continuous legal socialization and to foster public trust in government officials performance, especially law enforcement officers.
11. The government, through its various institutions at the central and regional levels, provides adequate work facilities, a conducive and comfortable work atmosphere so that every government apparatus can work calmly, sincerely, and sincerely without fear and pressure.
12. The government, through its various institutions at the central and regional levels, implements a system of acknowledgment and appreciation for government officials who excel, which leads to inner prosperity so that it will provide motivation for every government apparatus for high performance.
13. The Government determines the national leadership communication and coordination standards in order to build a more effective and open communication pattern so that each national leadership can carry out their duties properly and maintain synergy between agencies or institutions for implementation effectiveness of tasks and responsibilities based on their respective fields.

The Central Government, in this case, the Ministry of Information and Communication in collaboration with the Broadcasting Commission, Press Council, and National Mass Media (both print and electronic media) conducts transparency in Government programs implementation through mass media that can be easily witnessed by all Indonesian people. These efforts will help communication and coordination between the national leadership and bureaucracy ranks in carrying out their duties and obligations because they will be witnessed directly by the wider community. So that the community can directly monitor the government running which will further encourage national leadership and bureaucracy to work optimally.

### **Conclusion**

From all discussions Increasing the national leader's synergy to strengthen diversity in order to maintain the integrity of the Republic of Indonesia can be concluded as follows:

- a. The low national commitment of national leaders, this can be seen from moral values, integrity, and capabilities that can hinder the ability to synergize national leaders so that the socialization of National Leadership values and integrity improvement are needed.
- b. The absence of regulations regarding national leadership recruitment system causes the recruitment quality is low so that a standardized value is needed to measure the national leadership accountability using IKNI's assessment standards.
- c. The decline in individual, social, institutional and global morality led to the prominence of the interests of individuals, groups, and primordialism that encouraged corruption, collusion and nepotism, so that debriefing, socialization of national insight, regulation and law enforcement were needed.

### **Suggestion**

- a. It is necessary to foster and improve integrity through education that has the same standardization as Lemhannas, planned, systematic for all stakeholders to integrate exemplary ideals like prospective leaders at all levels so that there will be no crisis of example and leadership.
- b. Equivalent standard regulation is needed in carrying out sustainable national leadership regeneration as government, political parties, and community organizations.

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# Foreign Policies

# Model of Pro-People Foreign Policy as Indonesia's Response Toward Better Citizen Protection

*Asep Setiawan, Endang Sulastri, Sumarno*

## **Abstract**

Indonesian administration under Joko Widodo introduces the pro-people foreign policy as a response to protect the migrant workers overseas. This study examines the concept of pro-people foreign policy orientation and how it is implemented. Taking the case of economic migrants in Malaysia, the study uses the qualitative method. The study shows that the current government applies principles of state existence to deal with the citizens overseas. Certain facilities for protection of migrant workers are set up, including digital platform and shelters. However, with a broad scale of problems, it is not easy for the government of Indonesia to address the issues of economic migrants overseas comprehensively. Based on the study, a preliminary model of foreign policy decision-making process is constructed in the formulation and implementation of pro-people foreign policy.

*Keywords: foreign policy, Indonesia, Joko Widodo, pro-people, diplomacy, Malaysia*

## **Introduction**

Indonesia's administration under President Joko Widodo is committed to implement the principle of Trisakti (three principles). These principles are based on three pillars, namely Indonesia sovereign in its politics, independent in its economy, and distinct in its cultural character. These principles guide the overall policy government, including in for-



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eign policy. Head of Agency for Policy Research and Development, Darmansjah Djumala<sup>1</sup>, explained that the pillar of political sovereignty is related to the independence from foreign intervention in formulating and implementing policies. Meanwhile, the pillar of economic self-reliance is the foundation for Jokowi's foreign policy that is oriented to the interests of people. In the field of culture, Jokowi prioritizes strategic cultural interests, namely the promotion of cultural values and the unity of the Unitary State of the Republic of Indonesia.

*Asep Setiawan  
Endang Sulastri  
Sumarno*

As explained by Djumala<sup>1</sup>, Jokowi's foreign policy to some extent is different, compared to President Susilo Bambang Yudhoyono's<sup>2</sup>. His comparisons are based on four indicators: operational, orientation, approach, and priority issues. In terms of orientation, Djumala<sup>1</sup> described that SBY prioritized internationalism. In addition, foreign policy of President Yudhoyono was moderate and more focused on addressing political and democratic issues.

In contrast, Jokowi put people interest as the main orientation. Djumala<sup>1</sup> further explained that Jokowi's policy prioritizes more on the issue of pro-people economy rather than political issues. Pro-people foreign policy is described by Foreign Minister Retno Marsudi during her speech in 2015. Retno described that Indonesia's foreign policy must be down-to-earth and must not keep distance from the people's interests. Therefore, the foreign ministry will implement pro-people diplomacy.

Indonesia's Foreign Minister Retno Marsudi (2014) and Hor<sup>3</sup> stated that "in implementing our foreign policy, we will adopt firm and dignified diplomacy. Diplomacy must be able to solve differences and create opportunities to serve the interests of the Indonesian state and people." According to Retno for the period of government 2014-2019, Indonesia's diplomacy abroad conducted by the diplomats of the Ministry of Foreign Affairs will relate to the interests of the people.

In other words, Joko Widodo wants his government's foreign policy to benefit the people and put forward in the field of diplomacy by paying attention to the needs of the people overseas. Minister of Foreign Affairs, Retno, stated that the implementation of Indonesian foreign policy should not be distant with the interests of the people. This is in accordance with the vision and mission that have been submitted by President Joko Widodo during political campaign.

A number of studies have been conducted to evaluate what Jokowi did in his foreign policy at least within the first year of his post. Aaron

L. Connelly<sup>4</sup> and Mizirak and Altintaş<sup>5</sup>, for instance, mentioned that Indonesia's foreign policy under Jokowi will focus on domestic issues. Foreign affairs will be delegated to the ministry for which it is assigned. The reason for this view is that Jokowi has no experiences in dealing with international affairs. Connelly's<sup>4</sup> review in October 2014 did not show the people's policy of Jokowi's government in foreign affairs. But he gave the impression that his focus on domestic reform and the absence of overseas experience suggests that the president will lead in a less obvious position on a number of foreign issues, less leadership in foreign affairs, and perhaps a more nationalist reaction on international issues.

In another analysis, Sophie Qin<sup>6</sup> explained that Jokowi's foreign policy will continue to lead to the preservation of Indonesian sovereignty and to intensify economic diplomacy. Qin<sup>6</sup> said that the attitude into Jokowi is different from the attitude of the government of Susilo Bambang Yudhoyono<sup>2</sup> who is active in international forum. However, Qin<sup>6</sup> noted that Jokowi does prioritize on people orientation policies in his government. He did not mention about pro-people diplomacy run by Jokowi's government.

Other article, which directs touching study on pro-people diplomacy, was discussed by Muhammad Tri Andika<sup>7</sup> and Ahmad and Mazlan<sup>8</sup>. His study concluded that pro-people diplomacy still provides an active space for International Indonesia's presence in Asia Africa's strategic partnership, Asia-Pacific cooperation, and the Organization for Islamic Cooperation. Indonesia's involvement demonstrates a commitment to addressing regional and global issues that, at the same time, focus on pro-people diplomacy and can improve domestic benefits. According to Andika<sup>7</sup>, this pro-people diplomacy includes protecting Indonesian citizens abroad. But in his article, there is no explanation on how led pro-people diplomacy be implemented.

A comprehensive study a year and a half Jokowi's government is put forward by Donald E. Weatherbee<sup>9</sup> in his article: *Understanding Jokowi's Foreign Policy*. Weatherbee's<sup>9</sup> study did not mention clearly on pro-people diplomacy concept and practices. His work emphasizes more on foreign policy aspects, such as global maritime axis, economic diplomacy, Indonesia's and ASEAN role under Jokowi, and how Indonesia faces South China Sea problem.

The puzzle of this study is the meaning of pro-people foreign policy in case of protecting the migrant workers in Malaysia. Based on that

study, a model is constructed in formulation and implementation of pro-people foreign policy.

### Literature Review

To understand what foreign policy is in the context of pro-people foreign policy, it is important to know that foreign policy is called a continuation of domestic politics. If domestic politics is an action to realize the national interest of a country, then foreign policy is an effort to realize the national interest with different arena that is in foreign countries. To realize the welfare of the people, for example, not only done in the country but also obtained from the relationship with other nations. And those who work abroad, particularly migrant workers, should also expect protection from the government.

Thus, the focus of national interest is to realize the welfare of the people not only achieved by spurring development in the country but also by opening opportunities in the international world. Yani<sup>10</sup> mentions that the implementation of foreign policy is strongly influenced by the national interest which became the priority of a government. Foreign policy then becomes a response and stimulus that links domestic interests with opportunities abroad. In the study of foreign policy, a number of experts focus on how the country responds to international developments as a continuation of changes in the country.

According to a model developed by Rosenau<sup>11</sup> and Lynn<sup>12</sup>, foreign policy is the result of changes domestically (structural change) and changes of environment (external change). These two variables determine how foreign policy is implemented. Other variable that influences the style of foreign policy of a government is leadership. Rosenau<sup>11</sup> stated that there are four possibilities raised from adaptive model. Four patterns of adaptive foreign policy are preservative adaptation (responsive to both external and internal demands and changes), acquiescent adaptation (responsive to external demands and changes), intransigent adaptation (responsive to internal demands and changes), and promotive adaptation (unresponsive to both external and internal demands and changes).

Based on four possibilities of adaptive model is response toward demand and changes in domestic politics. A government makes changes in domestic politics because of election or changes in government due to reformation movement and domestic changes. Governments that make changes in the country because of elections or changes of

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government caused by reform or revolution or the subsequent change of government will emerge new demands. Foreign policy is also a set of guidelines for selecting actions directed outside the territory of a country.

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Holsti<sup>13</sup> and Phyoe<sup>14</sup> provide three criteria in classifying the objectives of a country's foreign policy: a. The values (values) that are the goals of the decision-makers. b. Duration required for achieving a pre-determined goal. In other words, there are short-term, medium-term, and long-term goals. c. The type of claim that a country submits to another country. Nevertheless, the objective of foreign policy remains the same with the domestic policy of national interest which is defined as an abstract concept which covers various categories from a sovereign state. This national interest is translated into a number of areas, such as politics, economics, security, and socio-cultural area.

Mangadar Situmorang<sup>15</sup> considers that Jokowi's foreign policy will emphasize national interest in the country. According to him, Jokowi's policies are: a. Promoting national identity as an archipelagic country in the implementation of diplomacy and building international cooperation; b. Enhancing the global role through middle-power diplomacy that places Indonesia as a regional power and global power selectively by giving priority to issues directly related to the interests of the Indonesian nation and state; expanded Indonesia involvement in Asia Pacific region, and c. Formulating and implementing foreign policy involving the role, aspirations, and community involvement.

With the commitment to protect all citizens and maintain national security, it is also called the pro-people diplomacy. This means that there is a clear vision that the element of national interest in foreign policy will be based on the interest of the people, whether in the economic, political or security fields. It appears that the Foreign Ministry emphasized the interests of the people in the implementation of their foreign policy. Even then, the Ministry of Foreign Affairs proclaimed a pro-people diplomacy.

This study uses a qualitative approach because the implementation of foreign policy requires an in-depth study. According to John W. Creswell<sup>16</sup>, this approach is intended to explore and understand the meaning of individuals or groups as a social or human problem. In this approach, the research process involves the formulation of problems and procedures. Lexy J. Moleong<sup>17</sup> mentions qualitative research as research that intends to understand the phenomenon of what is experi-

enced by research subjects, such as behaviour, perception, motivation, action, etc. This research uses descriptive research method which is described as a depiction of the nature of a situation while running at the time of research conducted and check the causes of certain symptoms.

Data collection is conducted in several ways according to qualitative data collection techniques, such as in-depth interviews, documentation studies, and focus group discussion. The research was conducted mainly in the Ministry of Foreign Affairs because it was directly related to the implementation of foreign policy. Interviews were also conducted with numbers of Indonesian workers, academicians, and officials in Malaysia.

*Asep Setiawan*

*Endang Sulastri*

*Sumarno*

### **Discussion and Findings**

Discussion on the model of pro-people foreign policy consists of three parts. Firstly, the concept of Indonesian foreign policy. Secondly, it will discuss about structural and organizational elements in the implementation of pro-people foreign policy. The third is implementation of pro-people diplomacy which is the embodiment of a people orientation of foreign policy.

Indonesia's foreign policy since its independence in 1945 based itself on the mandate in the Preamble to the 1945 Constitution. That mandate is part of the state's obligation to be implemented with its working apparatus, ministers, and ministries. The mandate reads "... protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice ...".

In the era of President Soekarno, foreign policy focused more on maintaining independence while during President Soeharto's era, it focused on economic development by seeking partners abroad. Followed by the era of reformation where the system is more democratic, diplomacy is also widespread because of the demands from the people.

Pro-people diplomacy became part of the five-year programs of the Indonesian government in the era of President Joko Widodo which is a manifestation of the national interest's priority. The national interest prioritized by the central government affirms that the state is present in the midst of the people everywhere. It is this country's presence that makes foreign policy focus on the interests of the people to be the

main focus, not only in bilateral and multilateral diplomacy between countries. Typically, foreign policy is focused on government to government's meetings in diplomatic activities in the form of bilateral and multilateral conferences or negotiations.

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People, in these case citizens who are abroad, are not a priority in the negotiations because it concerns the interests of government directly, for example in the state border or business contract. Indonesia's Foreign Policy currently refers to the third National Middle-Term Development Plan 2015-2019 based on the Vision and Mission Program of President Jokowi and Vice President Jusuf Kalla. Vision Mission Development in 2015-2019 is the realization of Indonesia sovereign in its politics, independent in its economy, and distinct in its cultural character. Among the seven development missions is the realization of an active free foreign policy and strengthening of identity as a maritime country.

This is where the Ministry of Foreign Affairs (2015) specifically plays a role in realizing the mission of development: a. Realizing national security capable of maintaining regional sovereignty, sustaining economic independence by securing maritime resources, and reflecting the personality of Indonesia as an archipelagic country. b. Creating an advanced, balanced, and democratic society based on the rule of law. c. Realizing free-active foreign policy and strengthening identity as a maritime country. d. Realizing the quality of human life of Indonesia is high, advanced, and prosperous. e. Realizing a competitive nation. f. Making Indonesia an independent, advanced, strong, and nation-based maritime state. g. Realizing a society of personality in culture.

The foreign policy also emphasizes the priority of what is mentioned in the first point: to bring the state back to protect the entire nation and to provide a sense of security to all citizens. In this context, the Foreign Ministry refers to the so-called state presenting in foreign policy. Among the priorities that Indonesian citizens can really feel are the government's involvements when the citizens are abroad or working overseas. A Focus Group Discussion explained the relationship between the ideal concepts based on the 1945 Constitution with the policy at the operational level.

According to the Ministry of Foreign Affairs (2015), Indonesian citizens abroad monitored are estimated at 2,862,495. Indonesian Citizens overseas work from housemaid, students to other professional fields. Nearly three million figures are referred to as official data. According to

unofficial data, the number of Indonesian citizens abroad could reach three times that which means nearly nine million people. To realize the pro-people diplomacy, the Ministry of Foreign Affairs lays out the other points of “service and protection of Indonesian Citizens and Badan Hukum Indonesia (Legal Indonesian Entities) and diasporas”. This element is one of eight strategic objectives set by the Ministry of Foreign Affairs. Here it appears that the policy has emerged so-called service for Indonesian citizens abroad.

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Learning from the handling of previous cases, as described in the Focus Group Discussion, Ministry of Foreign Affairs also set the paradigm in the arrangement of Indonesian citizen problems. New paradigm explains about the original reactive and responsive to the proactive. Based on the new paradigm, addressing the cases are not only to how big the case is handled but also the arrangement of supporting instrument from upstream. This means that when handling the case, the Foreign Affairs Ministry also contributes to the settlement of cases of sending Indonesian citizens abroad from within the country.

To achieve this policy, the foreign ministry sets organizational arrangements whereby the Indonesian Citizens Protection Agency and Indonesian Legal Entities are expanded and their budgets are enlarged. The Protection Agency which deals with Indonesian citizens and Indonesian Legal Entities is under the Directorate General of Protocol and Consular Affairs. To support this people-oriented foreign policy, Foreign Minister Retno Marsudi emphasized the need for a state presence in the midst of its people. Foreign Minister Retno (2016) outlined 5 (five) major issues that must be considered by all elements in the Ministry of Foreign Affairs namely: a. Protection and Services with the obligation to provide protection to all citizens and Indonesian legal entities abroad that is fast, responsive, and prioritizes the quality of service to the public; b. Rapid and real-time response to world dynamics, alert, monitor conditions that may affect and convey appropriate policy recommendations; c. Intensify communication to the public and develop networking; d. Efficiency, use the budget wisely and focus on priority program implementation; and e. Increase merit system.

To support pro-people diplomacy, the structure is also strengthened as seen in the structure in the foreign ministry. In the ministry structure, issues related to the protection of people abroad are given a place under the Director General of Protocol and Consular Affairs. The people-oriented foreign policy emerges from the priorities of the

national interest proclaimed by the Jokowi administration. From the national interest expressed in the government program is then realized by the Ministry of Foreign Affairs of the Republic of Indonesia in the form of organizational arrangements to accommodate the national priorities of government. Institutional arrangement is then followed by a budget that also accommodates the shift of interest from just a diplomacy that is elitist with attention to Indonesian citizens abroad, especially those who have problems.

Regarding the amount of budget indicating that the people-orientation in foreign policy in order to protect citizen overseas is evident from the example in budget 2017 around Rp 125 billion of budget of Directorate General of Protocol and Consular 2017 that almost half the budget of Rp 60 billion is for the protection and service of Indonesian Citizens and Indonesian Legal Entities abroad. The increased amount of this budget can be interpreted as a priority of the government to provide better protection of Indonesian citizens and Indonesian Legal Entity abroad as well as accountability of the people's diplomatic policy. The amount of this budget gives more meaning to the protection of Indonesian citizens' abroad relative accommodated to nearly three million citizens with most of their profession as workers. Not only the structure and budget, the program for the protection of Indonesian Citizens is also extended by introducing applications, monitoring sites, and even short messages (SMS) publications to introduce the location of Indonesian diplomatic representatives when members of any community, whether tourists or workers abroad, upon arrival in the destination country.

SMS messages from numbers belonging to members of the community who still use the Indonesian provider automatically turn on messages whose contents are regarding the location and address of the Indonesian representative office. Such a method is mentioned as a new step to provide information transparently to the public about the presence of the country in the destination location. Observation of this SMS functionality as shown in Singapore and Malaysia, newly arrived Indonesian citizen gets special message from Indonesian provider.

This SMS message is part of the Indonesian government's policy in providing information to Indonesian citizens abroad to record the address as a precaution if necessary. This preliminary information is expected by the government to provide awareness of the presence of

officials when required in emergency action. The information contained in this short message clearly explains the complete address of the nearest representative office where the residents are located.

The government's appearance digitally is represented from the internet sites and the information in it in a large number of representative offices ranging from Africa, Europe to America and Australia. With internet access that has been provided worldwide, the citizens who have been living abroad or newly arrived workers can take advantage of the site with a variety of information in it. In addition to this popular protection policy, the Ministry of Foreign Affairs makes centralized information related to issues and issues of overseas employment. The address of the site can be accessed at <http://perlindungan.kemlu.go.id/portal/home>.

In an interview with officials at the Directorate of Protection of Indonesian Citizens and Indonesian Legal Entities, it was revealed that the site was not only to inform the latest developments on a number of problems of Indonesian citizens abroad. Within this site, foreign citizens may also seek information related to Guidelines for Registration, Guidelines for Reporting, Guidelines for Conducting Case Complaints, Guidelines for Conducting Public Service Submissions, and Guidelines for Conducting Public Service Complaints. This kind of information is referred to as a pro-active action by the government to protect Indonesian citizens abroad.

However, not all citizens are able to utilize the site because of the ability of different individuals and the situation of working citizens. With the method of registering through the site for families and relatives who are troubled, communication can take place almost without pause. Those who live in Indonesia can monitor with the identity that has been sent as well as those who have problems can also find out the progress of the officers who helped. This registration system is one tool to take advantage of technological progress in the implementation of people's diplomacy, protecting citizens and Indonesian Legal Entity abroad.

According to Bunyan<sup>18</sup>, the implementation of pro-people diplomacy actually refers to the diplomatic function of representing (representing) protecting, negotiating, promoting, and reporting. Of these five functions closely related to the people is a function of protecting for citizens who are abroad or who will go abroad. The government currently places three priorities in its foreign policy of protecting Indonesian citizens, economic diplomacy, and diplomacy to defend Indonesian territory.

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Economic diplomacy is closely related to the promotion function of diplomacy while maintaining the territory closely related to the diplomacy of protecting also. Pro-people diplomacy, which is a manifestation of the implementation of people-oriented foreign policy, is done by the government with various programs.

Of these programs, the implementation that has been and is being carried out concerns several segments ranging from cases of Indonesian Migrant Workers (TKI) in trouble to the repatriation of troubled Indonesian citizens abroad. This study identifies a number of cases that make the problems abroad a focus.

From the latest data released by the Ministry of Foreign Affairs (2016), within a period of one year 2015- 2016 which is the second year of Jokowi, government recorded 15,756 cases of Indonesian citizens abroad. About 86 percent of that number is related to the problem of Indonesian Migrant Workers overseas. The Ministry of Foreign Affairs stated that 55 percent of migrant workers' cases are related to domestic workers, such as domestic servant profession, driver, and gardener. From this case, it appears that what is handled by the Ministry of Foreign Affairs concerns the profession that is classified as a blue collar or technical workers. This composition can explain some things about this Indonesian migrant case.

First, the case of Indonesian worker handled by the government at least within the period of one year 2015-2016 piles into professions that are categorized into non-skilled labour. Their position is usually vulnerable in the country where they work. In addition, the income is also not too large in the country but they have to work hard physically. Secondly, the high number of migrant workers shows their vulnerability in the middle of other professions protected by local law. Because of its vulnerable position, it will open up the possibility of violation of law from users of their expertise.

Thirdly, the problem of illegal migrant workers will also be high because access to entry into professions, such as domestic helpers or drivers, does not require a certificate of higher education. As a result, many illegal labour migrants are looking for luck and also encounter many problems. From a number of interviews on the problems of Indonesian labour migrants in Kuala Lumpur and Johor, Malaysia, it appears that there are issues of absence of a favourable position for migrant workers there. Some workers have not paid their salaries for years on the grounds that their employers say that these workers are not able to manage finances.

Sofia<sup>19</sup>, one of the Indonesian migrant workers in Malaysia who was interviewed, said she had worked for three years and lived in Johor shelter for 6.5 months. The reason for living in the Consul General of the Republic of Indonesia in Johor is the issue of unpaid salaries for three years. Consulates had tried and get 8000 ringgits but still there are remaining which has not paid with amount of 17.000 ringgit. Similar is the case of Sriyani<sup>20</sup> who claimed to have 10 years working but living in the shelter Consulate General of Johor for 6.5 months. The same case concerns unpaid salaries and violence when working.

In realizing the protection of Indonesian Citizens abroad, the Ministry of Foreign Affairs has also conducted a repatriation program for residents whose residency permits are exhausted. The Foreign Ministry's note in 2016 states that the repatriation of Indonesian citizens who are out of visa and who have no documentation has been declared since December 17, 2014 by President Joko Widodo. This program is quite large because it will gradually repatriate about 1.8 million Indonesians who have permission to stay or do not have documents.

Every year, 50,000 people are deported mainly from Malaysia, Saudi Arabia, and the Middle East. The repatriation of nearly two million troubled Indonesian citizens has prompted the Foreign Ministry to establish what has been called the Task Force for the Acceleration of the Return of Indonesian Citizens in trouble since April 2016. This task force focuses on the repatriation of troubled Indonesian citizens from various locations called the Ministry of Foreign Affairs as Citizen Service. The presence of the state in the problem of Indonesian Citizens abroad is implemented in the form of handling related to Indonesian citizens who become victims of trafficking in persons or trafficking in person. In 2016, the Ministry of Foreign Affairs noted there were 208 cases that could be handled. However, as many as 66 other cases are still in the process of handling.

In handling the victims of human trafficking, Ministry of Foreign Affairs (2016) noted that there are three modes of dispatch of Indonesian Citizens indicated by a criminal case. First, the citizen as a formal worker of a particular company but eventually became a housemaid. These workers are promised positions as cleaning service officers, sick nurses or baby sitters. But then they are treated as housemaids. The second model, sending Indonesian citizens to the destination country by the mechanism of what is called a visa calling to the destination country or umrah's visa and then at the end, they become maids. This

method is done in the Middle East region, especially Saudi Arabia. The third model is sending of Indonesian citizens between countries due to the termination on the sending of migrant workers especially to the Middle East.

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A moratorium on the sending of migrant workers has been applied but in the Middle East, there is a high demand for migrant workers. Then some Indonesians spend huge funds to go to the Middle East. They come to Saudi Arabia not directly but to Bahrain, Kuwait, United Arab Emirates, and Qatar first. This arises because the moratorium on labour migrants to the Middle East region is different. Indonesia imposed a moratorium on Kuwait in 2009, to Saudi Arabia in 2011, against the United Arab Emirates in 2013 while to Oman and Bahrain in 2015.

The problem of Indonesian citizens abroad is not only related to work but also faced with a dangerous position, such as hostage taking. Throughout the year 2016, there have been five incidents of hostage taking involving 25 people who work as ship crew in the Southern Philippines. Until October 2016, the Indonesian government has released 23 of the 25 hostages safely.

In addition to hostage-taking in the Philippines, the Indonesian government also freed the hostage crew aboard *Naham 3* by pirates in Somalia that took place since 2012. Three people were released on October 24, 2016. Hostage becomes a new challenge in the protection of the Indonesian government. The hostage case also shows the increasing complexity of citizen protection because of the various professions they live like crew members. The Foreign Ministry handles this case not alone because it also involves other ministries and also the police.

Hajj and Umrah visitors also become problems. In August 2016 there were arrests and bans of hundreds of Indonesians in the Philippines. A total of 177 Indonesian pilgrims were banned because they were found using a Filipino fake passport. They would depart from Ninoy Aquino International Airport to Madinah, Saudi Arabia. Indonesia contacted Philippine's government asking to release them. Returning citizens abroad made the Indonesian government alert despite the mistakes made by some people so that 177 people had Filipino posts when they were Indonesian citizens.

This problem is not completed because it turns out 106 of them who use a Philippine passport has escaped to Saudi Arabia to perform the pilgrimage. Again, the Indonesian government helps them

to be repatriated gradually which is part of the protection program. In another case also in Saudi Arabia, the Indonesian government faced the problem of the Crane accident at the Grand Mosque of Mecca on September 11, 2015. A total of 12 people died and 49 were wounded. The foreign ministry also then tried to accompany the victim of the accident. Saudi Arabia pledges individual compensation for the death toll of one million riyals and 500,000 riyal injuries.

The Ministry of Foreign Affairs also handles other victims, which are the result of Mina Tragedy in October 2016 where members of Jemaah Haji Indonesia meningeal were as many as 120 people. They are the victims of 2,431 who died from jostling in Mina. Attention to the victim, especially in the identification of the victim and the return of the corpse, is seen. The attention of the Indonesian government to victims of acts of terrorism as well as those allegedly involved has not receded in recent years. Protection is committed against victims of terrorism and their families as well as how to deal with those involved in acts of terrorism, e.g. joining the Islamic State of Iraq Syria also called ISIS. Until September 2016 recorded at least 2012 citizens who were arrested by the Turkish government because of allegedly going across to Syria to join ISIS. The Indonesian government estimates that 483 Indonesians join ISIS.

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*Endang Sulastri*  
*Sumarno*

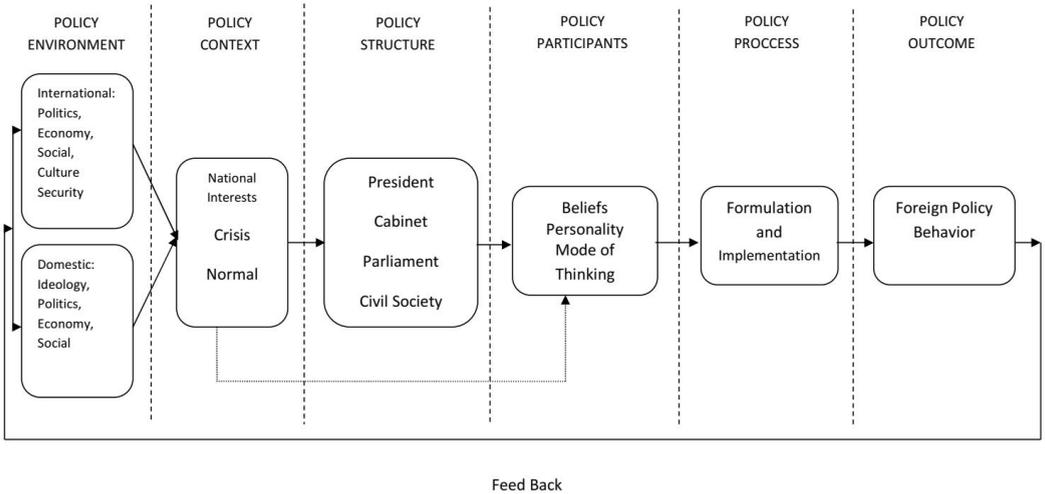
### **Exploring a model foreign policy**

The model constructed for pro-people foreign policy is based on a conceptual framework by linking it through foreign policy in protecting Indonesian citizens in Malaysia. However, as explained later, this model also has an opportunity as a model in reviewing Indonesia's foreign policy in general. This model is based on concepts, such as the policy environment, policy context, policy structure, participant poly, policy process, and policy outcomes. Conceptual source of this modeling is from Jerel A. Rosati<sup>21</sup> about the model of the relationship between decision-making elements in each stage. In addition, foreign policy sources were taken from the conceptual perspective by James N. Rosenau<sup>11</sup> and a model that mentions international and domestic factors are from Gustavsson (1999)<sup>22</sup>.

All of these concepts have their own processes which will be explained one by one by taking protection cases for migrant workers in Malaysia. The model below is a translation of pro-people foreign policy becomes a priority. There are two environmental factors that influence in policy to protect citizen overseas. International factors that influ-

ence the policy of protecting migrant workers in Malaysia are the existence of employment opportunities, especially for domestic workers or more popularly referred to as domestic workers or domestic helpers. This can be called an economic factor in which Indonesian citizens have the opportunity to work in Malaysia especially as domestic workers or workers in farms. With Malaysia's population of around 27 million, the need for workers with low labor skills is quite high.

FIGURE 1 MODEL PRO-PEOPLE FOREIGN POLICY



Source: Rosenau (1976), Rosati (1981), Gustavsson (1999), Researchers

The head of political affairs at the Indonesian Embassy in Kuala Lumpur, Agung Sumirat (2018) said that Indonesia provides opportunities for the citizens as well as protection by providing various facilities that support their work both as domestic servants, factory workers, and workers in the farms. Included in this facility is how overseas employment opportunities are arranged in such a way as regulation since departure. In the concept created by the Indonesian Ministry of Foreign Affairs in collaboration with the Indonesian Manpower Agency, the domestic process is the basis for the availability of jobs in Malaysia.

These economic factors overseas provide the possibility for Indonesian workers to take up employment, especially as domestic helpers. The high demand of household in Malaysia towards low labor skills has led the high demand of Indonesian citizens to work there. Millions

of Indonesians in Malaysia work but as foreigners have various provisions that cannot be violated.

Political factors in the international environment are the good relations between Indonesia and Malaysia which provide opportunities for workers to enter the work area in various regions in Malaysia from villages to cities. The existence of a political system in Malaysia that is democratic and open lead to the opportunity to be openness. Good relations between the two countries as fellow members of ASEAN also provide an atmosphere for the convenience of Indonesian citizens in working there.

Social factors in the international environment also exist in Malaysia because that country is culturally allied with Indonesia. There are similarities in language, basic food and also social and religion. The language of instruction for workers has no difficulty because of the same Malay language roots. Malaysians have no difficulty communicating with Indonesian citizens. Besides language similarity, there are social, cultural, and religious similarities that provide benefits for both parties.

Security and defense factors also arise because in Malaysia there is no threat of security to Indonesian workers. In general, Malaysian employers behave well despite a number of cases where there are incidents of torture but are generally friendly and friendly to Indonesian workers. In addition there is no threat of violence such as conflict, war and acts of terrorism that can threaten Indonesian workers.

Domestic factors that become an environment for foreign policymakers are political, economic, socio-cultural and media aspects. What is included in the environment from the aspect of domestic politics is a foreign policy that refers to government programs that have been the priority of President Joko Widodo's government since 2014. Political factors that emerged from this presidential election provide uniqueness and translation of constitutional messages to become external policy a country under the control of the president and his government.

The economic factor underlying of the pro-people policy is the policy to open up opportunities to work abroad because of the encouragement in terms of economic needs and economic opportunities from an open country such as Indonesia. There is no prohibition on the departure of migrant workers as long as they are in accordance with the applicable regulations.

In addition to political and economic factors, there are also socio-cultural factors in which Indonesian people have the ability to socially access employment abroad. In Indonesia, there are pockets of labor-sending areas to Malaysia as well as other countries, such as Hong Kong and Saudi Arabia.

The mass media factor is also one that influences the government's decision because it provides an overview of employment opportunities abroad. But the mass media also provides reports on how the protection of overseas workers is carried out by the government. The media also helps to report cases of violence that befell these workers while at the same time reporting on employers who they consider guilty. This openness of government policy provides confidence in working abroad.

In this pro-people foreign policy modeling, there are two background contexts, namely the crisis and the normal situation. The so-called routine situation is a policy that is prepared based on a plan that has been studied previously. Whereas the crisis is a foreign policy which is a response to the situation in the international and domestic sectors.

In populist-based foreign policy which is then translated into pro-people diplomacy, it can be said that the right context in this policy is routine, not a crisis. There is no reason to refer to the crisis in the handling of Indonesian migrant workers and Indonesian Legal Entities abroad, especially in Malaysia.

It is routine here because if referring to a foreign policy issued by the Ministry of Foreign Affairs since 2014 there are a number of reasons for placing foreign policy priorities. As in the reference made by the Ministry of Foreign Affairs policy in 2014, it appears that the formulation of the policy is rational and based on foreign policy proposed by the president.

What is meant by the policy structure is the political structure of the infrastructure and superstructure. What is meant by infrastructure is government institutions led by the president. Whereas the infrastructure includes the DPR and civil society, including mass media and community organizations.

This populist-based foreign policy model is based on policy-making institutions namely the presidential institution, government cabinet, DPR (parliament) and Civil Society wherein there are mass organizations, public figures and intellectuals, and the mass media.

In this model, the president, including the presidential institution, is the dominant institution in the making of foreign policy, especially related to the pro-people character. This is a promise from the president and vice president as conveyed in the vision and mission while campaigning. Therefore, the president as an executive leader has policies that are directed directly in accordance with his promises.

*Asep Setiawan*

*Endang Sulastr*

*Sumarno*

The cabinet in the government also has an important role in translating what is called pro-people foreign policy. The Ministry of Foreign Affairs, as previously stated, clearly states that the protection of Indonesian citizens and legal entities abroad is a priority in foreign policy.

The House of Representatives as a legislative body that oversees government policies is also not independent in guarding Indonesia's foreign policy. Foreign Minister Retno Marsudi became a partner of the House of Representatives Commission I in explaining foreign policy taken by the government. In addition to overseeing government policies in the foreign sector, the DPR also has the duty to provide input to the ambassadors who will be assigned abroad.

Civil Society in the Indonesian era after 1998 political reform has become a decisive factor in Indonesia's domestic and foreign policy. One of the important elements of this Civil Society is the development of social institutions that pay attention to government policies including foreign policy. These social institutions criticize and provide input to government foreign policy through mass media or other media. Therefore, the mass media which is an element in Indonesian civil society also has a big role to play as a public mouthpiece while providing analysis and opinions related to foreign policy including the protection of Indonesian workers in Malaysia.

Policymakers both institutionally and personally have their own styles and beliefs. Likewise, in this context, residents, ministers, leaders, and members of the parliament, community leaders, NGOs, and even the media play a role in influencing the formulation and even implementation of pro-people foreign policy.

This aspect of belief is related to the confidence of policymakers at the structural level towards programs that are prioritized based on Indonesia's national interests, in this case, the protection of Indonesian citizens and legal entities and the diaspora. The government also stated that prioritizing the presence of the state in handling the problems of people at home and abroad. Belief is also influenced by the ideology of the nation, in this case, Pancasila. Belief in the protection of people

abroad including legal institutions arises from the belief that the state presents itself in dealing with its citizens. Included in this cluster is how is the belief that the Indonesian nation is able to take advantage of opportunities abroad even though in the present stage only sending low-skill workers.

Personality aspects of policymakers, especially in this case the president and the foreign minister also have an influence on how normal and crisis situations are interpreted. In the context of pro-people policies, it is reflected in the personality of President Jokowi who displays the popular side. Participants in the formation of this pro-people foreign policy model are also influenced by the mode of thinking. This aspect is related to ways of thinking in looking at issues that can be analytical, ideological or committed. Joko Widodo government is not only ideological in thinking but also in terms of pragmatism and analytics.

The process of foreign policymakers can be divided into two stages, namely formulation and implementation. In the formulation stage, the Ministry of Foreign Affairs translated what became the vision of Joko Widodo's government, including the protection of Indonesian citizens abroad which was later translated as people's diplomacy. The formulation model which then implements implementation starts from Indonesia's national interests translated by the Joko Widodo government. Then it is still in policy formulation, translated by the Ministry of Foreign Affairs in detail. This formulation is known as Pro-People's Diplomacy which shows that the Joko Widodo era government put pressure on the focus of the people's interests in their policies at home and abroad.

In the implementation phase, especially the foreign ministry with diplomats stationed in Malaysia including in Kuala Lumpur and Johor. From monitoring in the field it appears that when the foreign policy formulation has been determined as pro-people, the implementation includes the service and protection of Indonesian citizens and Indonesian Legal Entity and diaspora. Some policies in the protection of Indonesian labor migrants have been carried out as in the previous chapter, ranging from the paradigm of delivery to implementation in the field, both digital and representative placements such as in Johor and Kuala Lumpur.

Pro-people foreign policy model also records foreign policy periodically so that it is a behavior of Indonesia abroad and Malaysia in particular. Indonesia's foreign behavior is a series of daily, weekly and

monthly policy implementation into a pattern. The behavior that arises from the Indonesian government in protecting Indonesian citizens in Malaysia can be seen from the representative office that reflects the service to millions of Indonesian citizens, especially those working in Malaysia. During the visit to the field, it was apparent that Indonesia provided space for Indonesian citizens to obtain the necessary document and immigration services as well as the law.

Indonesia also maintains an umbrella diplomatic agreement with Malaysia to always provide protection to citizens who work in this neighboring country. With this agreement from Indonesia and Malaysia, Indonesia's behavior at the government level to Malaysia also pays attention to the interests of the destination country.

A foreign policy based on this model then becomes feedback for the domestic and international environment. In various cases of protection of Indonesian citizens in Malaysia, this became input for the policy of sending workers at the domestic level. At the domestic level, this is not only the domain of the Ministry of Foreign Affairs but also other institutions, such as the Ministry of Manpower and BNP2TKI. The pro-people foreign policy then after being implemented and monitored, feedback will emerge as an evaluation so that it becomes input for the environment at home and abroad. This environment then gives input to the policy context which will then be implemented by the policy-making structure. This feedback function will continue as long as the policy is implemented for changes or improvements. This feedback function can be used in a broader policy framework than pro-people foreign policy.

## **Conclusion**

Based on field data findings both from interviewing informants in Indonesia such as Ministry of Foreign Affairs officials and interviews with Indonesian workers in Malaysia and study of documentation, the conclusions formulated as follows:

National interests in which the government takes the position of the state present in the midst of the people have encouraged the formulation and implementation of pro-people foreign policy. The concept of presenting the state in the protection of the people is manifested in the program at Foreign Ministry. The purpose of people's protection is in accordance with national ideals in maintaining the welfare of the people at home and abroad.

From the national priority, Ministry of Foreign Affairs compiled the program to become a strategic target, namely protecting Indonesian citizens and Indonesian Legal Entities. This strategic target is one of the goals of concern to the current Indonesian government. The placement of protection for Indonesian citizens as a strategic target makes direct attention from the Minister of Foreign Affairs Retno Marsudi. In various statements regarding foreign policy, it was stated many times that pro-people diplomacy is a manifestation of the state's presence in the protection of citizens. The policy is then supported by an adequate structure under the Directorate General of Protection and Consular. In this directorate, what came to be called the Director of Protection, which later in the organizational structure received great attention with the mobilization of greater human resources. The high attention of the Indonesian government to the policy lead to higher allocated of the budget.

The benefits felt by this pro-people policy are evident from several notes and reports regarding the government's involvement in protecting Indonesian citizens in various regions including in Malaysia, with more than two million Indonesians working there. However, assistance to Indonesian citizens as a manifestation of the protection of Indonesian citizens abroad also needs to be increased because of more problems than the availability of services from the representative office. One of the proofs is the presence of safe houses or shelters in representative offices that solve the problems faced by Indonesian citizens.

A Model of Pro-People Foreign Policy is constructed based on the case study of protection of migrant worker in Malaysia. This model is based on the concepts, such as the policy environment, policy context, policy structure, participant poly, policy process, and policy outcomes. The model could be applied for general foreign policy because the factors might be similar. In addition to this model, there is an opportunity to develop new model both in its details and in the process. For example, how is foreign policy decision-making in dealing with a crisis. How structures and participants also act when normal and crisis. The existing modeling base can be a basis for studying Indonesian foreign policy in various condition

The model pro-people foreign policy is in the early stages of development, so it is likely to become a model for other analyses or to be improved in handling other cases, such as economic diplomacy or cultural diplomacy. This model provides a basic basis that can be used as a reference in the development of Indonesia's foreign policy model.

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# Reconciling Refugee Protection and Sovereignty in ASEAN Member States

## Law and Policy Related to Refugee in Indonesia, Malaysia and Thailand

*Bilal Dewansyah, Irawati Handayani*

### **Abstract**

Most of Association of Southeast Asian Nations (ASEAN) member countries perceive themselves as non-immigrant nations. It means that most ASEAN countries are not the destination for immigrants to settle. This approach also appears when they responded to the massive influx of the refugee in the south-east Asian region. In absence of ASEAN regional mechanism on refugee protection (which means covered all stage of treatment for refugee), a few ASEAN member countries - Indonesia, Thailand and Malaysia -, have the valuable efforts and experiences in term of refugee handling and reception, based on their domestic law and national policy, for instance in Indo-Chinese refugees' crisis in late 1980s until 1990s, and also Rohingya "boat people" crisis in 2015. This article discusses the legal efforts undertaken by the three ASEAN countries to reconcile their sovereignty in protecting refugees who enter their territories through law and policy. In addition, this article also elaborates on the extent to which laws and policies contribute to refugee protection in Southeast Asia.

*Keywords: refugee protection, sovereignty, Indonesia, Malaysia, Thailand, ASEAN*

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## Introduction

The issue of refugee has a close connection with regional cooperation. To some extent, the regional cooperation is seen as one of the answers for the refugee movement around the world. Most likely the cooperation is initiated by the regional organization as it formed a consensus between states in a certain region to respond to any issues that emerged and effects the region. There is a tendency that in several regions, the establishment of the regional organization has reduced their national sovereignty or in other word,s, there is an organization above nation-state that has “supra” authority.

While the majority of existing regional organizations to some extent loosen the sovereignty of its member states, the Association of Southeast Asian Nations (ASEAN) regionalism model precisely promotes sovereignty to build regional cooperation or in Ginsburg’s words called “sovereignty - reinforcing regionalism”<sup>1,2,3</sup>. This approach is strongly

reflected in the wave of refugees and asylum seekers which struck Southeast Asia, the region that became the territory of ASEAN member countries. Refugees or forced migration issues in general never considered as an official agenda of ASEAN, unless it has been considered as a crisis by ASEAN member countries, such as the Indo-Chinese crisis or within the framework of regional security issues related to transnational organized crimes issues, such as trade people or people smuggling, but not particularly on refugee protection. <sup>5</sup> in fact, the wave of refugees that swept the Southeast Asian region, tends to be an individual issue of each ASEAN member countries.

In the absence of ASEAN regional mechanisms on refugee protection, a few ASEAN member countries, namely Indonesia, Thailand, and Malaysia, have taken valuable initiatives and efforts to respond refugee issues, based on their national law and national policy, as seen in Rohingya “boat people” crisis in 2015. These three countries agreed to one-year temporary protection for Rohingya refugees whose stranded in their territory.

However, most of ASEAN member countries, including Indonesia, Malaysia, and Thailand, perceive themselves as non-immigrant nations. <sup>5</sup> It means that most of ASEAN countries – in their perspective - are not the destination for immigrants to settle permanently. These countries also not the parties of 1951 Refugee Convention and/or the 1967 Protocol (Refugee Convention and/or its Protocol). The clear implication is that actually there are no legally binding obligations for

them to set-up a durable solution for refugees. In other words, refugee reception is more likely considered as state discretion based on immigration laws and policies that show state sovereignty in security issues, rather than human rights-based approaches<sup>6</sup>. In addition, many criticisms addressed to “ad hoc-ism” approach that they have been applied, so that it is important to discuss how the three countries struggle to carry out their solely national law perspective in terms of refugee handling and to what extent the effort brought adequate protection to refugee rights in the Southeast Asian region.

*Bilal Dewansyah*

*Irawati*

*Handayani*

### **Refugee and sovereignty: Two points to reconcile**

In this article, the term “refugee” is not limited to people who have been in refugee status because they meet refugee criteria under Refugee Convention and/or its Protocol, or according to national laws of countries that have national refugee legislation. Based on the generic meaning, refugee in this article also refer to asylum seeker as person who seeking protection to other country because of the threat of persecution for humanitarian and political reasons, but the status has not been determined yet as refugee.<sup>4</sup> Both refugees and asylum seekers, refer to the same subject but has a difference in term of stage of status, where refugees refer to the recognition of status for protection, while asylum seekers have not been determined the status as refugee or in other words: “refugee in waiting.”

However, asylum and refugee status actually come from different concepts. Asylum is a derivative concept or expression of state sovereignty or prerogative, while refugee status was developed to resolve the refugee problem caused by the war in the twentieth century.<sup>7,8,9,10,11</sup> As part of sovereignty, asylum is the state’s right to provide even for permanent protection to a foreigner whom it wishes, for various reasons, including the most excuses of escaping criminal punishment, so that issues of political differences threaten personal safety.<sup>12,13</sup> Such a character of asylum indeed is actually firmly rooted in the power of the state in the field of immigration as a form of sovereignty to organize people into and out of its territory, including permitting foreigners to live in its territory.

The only mechanism of reconciliation between refugees protection and sovereignty in the context of the right to asylum is the principle of *non-refoulement*. This principle is the limit for the destination country not to return refugees to the country of origin.<sup>14</sup> Although this princi-

ple was first confirmed in the 1933 Convention relating to the Status of Refugee, and reaffirmed in the 1951 Refugee Convention and other documents of international law, it was recognized in its development as an international customary law.<sup>15</sup> That is to say, this principle not only binds to the states party of Refugee Convention and/ or its Protocol but also a third country which is not a party. However, for countries that guarantee the right to asylum in national law as well as the Refugee Convention and/ or its Protocol, normatively the entry of asylum seekers should be followed up with a Refugee Determination Status (RSD), depending on the laws of the country concerned. Whereas for a country which guarantees the right to asylum or is bound by legal obligations of 1951 Refugee Convention and/ or its protocol, there is generally no national institution for that purpose. RSD process is allowed for United Nation High Commissioner for Refugees (UNHCR), assisted by international organizations such as International Organization of Migration (IOM) primarily to provide technical and financial assistance to asylum seekers and refugees.

However, the presence of asylum seekers in the destination country has socio-economic impacts on the fulfillment of asylum seekers' rights, and the country's primary responsibility to its citizens, such as access to jobs, housing or educational facilities. Theoretically, immigration law is not only concerned with the selection of foreigners to enter the territory of a country but the arrangement to the migrants when they are in the host country. Therefore, the protection of the country against refugees should only be interpreted as temporary protection, as long as the threat of persecution in the country of origin still occurs. With the second reconciliation between refugee and state sovereignty in the form of a policy of temporary stay as long as the threat of persecution in the origin country still exist, and allow them to exercise their basic rights.

## **Law and policies related to a refugee in Indonesia, Malaysia, and Thailand**

### *Indonesia*

Although Indonesia is not a party to the 1951 Refugee Convention and its Protocol, the term "granting asylum for foreigners" and "refugees from abroad" is enumerated in Law no. 37 of 2009 on Foreign Relations. In addition, Article 28G Paragraph (2) The Second Amendment

of the 1945 Constitution also guarantees “the right of everyone to asylum from other countries.” However, the law used in the practice of handling asylum seekers and refugees is the Immigration Act (UU No. 9 the Year 1992 which was replaced with No. 6 the Year 2011 on Immigration). Since the law does not allocate asylum seekers or refugees in a special status, they are often categorized as illegal immigrants if they enter Indonesia without a valid immigration document.

The latest development of Indonesia stipulates Presidential Regulation No. 125 of 2016 on Refugee as the implementing regulations of the Law on Foreign Relations. In certain respects, this Presidential Regulation provides positive direction, for example in relation to the definition of “refugees from abroad” which refers to the refugees’ definition of the 1951 Refugee Convention and its Protocol. However, the Presidential Regulation does not regulate the granting of asylum by the Government of Indonesia, but only regulates the mechanisms for handling asylum seekers and refugees entering Indonesia, particularly in emergencies situations. However, the issue of determining the status of refugees, including long-term solutions for refugees remains determined by UNHCR.

### *Malaysia*

Similar to Indonesia, there is no specific Malaysian legislation that provides protection or procedures for treating asylum seekers and refugees. In general, Malaysian law only distinguishes two main categories of migrants, namely ‘documented’ or ‘legal’ migrants and undocumented or ‘illegal’ migrants. It is governed by three major legal instruments:

1. The Immigration Act 1959/1963;
2. The Employment Act 1955/1998 and
3. The Penal Code.

In the Malaysian Immigration Act, there are two special articles namely Articles 6 and 51 which are used to hold and burden illegal immigrants. In amendments to the Immigration Law of 1997 and 2002 immigration violations were given heavier penalties. Thus undocumented Malaysians, regardless of whether they are perceived as illegal migrant workers or asylum seekers, five-year jail sentence, a MYR10,000 (US\$2,600) fine and six strokes of the cane under the Immigration Act.<sup>16</sup> On the other hand, there is omission for asylum seekers and Rohingya refugees from Myanmar and migrants in Sabah

who have a long history of migrating several tribes on the island of Borneo and beyond.<sup>17</sup> Apart from the work of international organizations such as UNHCR and non-governmental organizations (NGOs), Malaysian refugee policy development takes place outside the framework of human rights.

### *Thailand*

As Thailand is not a party of the 1951 Refugee Convention and its protocol, the main legal framework used in the context of refugee treatment in Thailand is the Immigration Act of 1979.<sup>18</sup> Under the law, similar with Malaysia and Indonesia, asylum seekers or refugees who enter are subject to arrest, detention or deportation. However, under this law, the Minister of Home Affairs with the approval of a cabinet may allow foreigners for a temporary stay in Thailand.<sup>18</sup> On that basis, asylum seekers and refugees may reside in Thailand but on the basis of government discretion.

Another national law relating to asylum seekers in Thailand is the 2007 Royal Thai Constitution which in Chapter 1 Section 4 provides for the duty of respecting human dignity, human rights, liberty and equal standing in law, but limited only to Thai citizens.<sup>19</sup> Therefore, this provision is also considered to be the barrier in terms of applies it to asylum seekers. Several provisions also relate to non-judicial refugees and in the context of obtaining employment in Thailand, the Thai Nationality Act and the Alien Work Permit Act of 1978.

Since the handling of Indo-Chinese refugees in the 1970s and 1980s (before the 1989 Comprehensive Plan of Action for Indo-Chinese Refugees (CPA)), Thailand has a policy of accepting refugees on a case-by-case basis on the basis of exceptions to the above Immigration Law. However, the Thai Government avoided the use of the term “refugee” and “refugee camp”, calling it the “displaced persons” and “temporary shelters”, according to Morreti, to avoid the impression that Thailand recognizes obligations under the law.<sup>20</sup> On the basis of this ad-hoc policy, the Government of Thailand in particular receives certain state asylum seekers, but at another times rejects them. Even the Thai UNHCR has been banned from doing refugee status determination, for asylum seekers from Myanmar at the time of Prime Minister Thaksin Shinawatra.<sup>20</sup> However, Thailand has shown a very positive development especially since early 2017 when the Thai Government issued Cabinet Resolution 10/01, B.E. 2560 on 10 January to establish “Committee for

the Management of Undocumented Migrants and Refugees”, as well as a national screening mechanism<sup>21</sup> for the determination of refugee status.<sup>22</sup>

## **To what extent the law and policies protect refugee rights**

*Bilal Dewansyah*

### *The problem of legal basis and policies*

*Irawati*

*Handayani*

From the three countries that compared in this article, the main similarity of these countries is the use of immigration law to deal with refugee flow. However, there are several differences between these countries. Indonesia, Malaysia, and Thailand use their immigration laws, without providing strict rules on asylum seekers and refugees. Even the immigration laws of the countries are not familiar with the term “refugee” or “asylum seeker”, they are only regulating foreigners in general as previously stated. As noted in the previous section, asylum seekers or refugees who entered the country illegally are considered as illegal immigrants and might be the subject of sanctions or immigration measures. The acceptance of asylum seekers and refugees into the territories of the countries is based more on individual countries’ immigration laws or other laws. The Immigration Law of Indonesia, Malaysia, and Thailand govern the acceptance of asylum seekers and refugees as a form of exclusion against certain foreigners. The Indonesian Immigration Act provides for the exclusion of alien entry in an emergency under Article 11 as follows:

Paragraph (1): “In an emergency, the Immigration Officer may issue an Emergency Entry to a Foreigner.”

Paragraph (2): “The Entry as referred to in paragraph (1) shall be valid for a stay within a certain period of time.”

The term “Emergency” in the above provisions, in the explanation of that article, is defined as follows:

“The presence of a conveyance landing in the Territory of Indonesia in the framework of humanitarian assistance in the natural disaster area of the Territory of Indonesia (national disaster) or in the case of any means of conveyance carrying a Foreigner anchored or landed somewhere in Indonesia due to engine failure or bad weather, while the conveyance does not intend to dock or land in the Territory of Indonesia. “

Such provisions may be regarded as the legal basis for the acceptance of asylum seekers and refugees, although limited to asylum-seekers en-

tering in groups, such as “boat people” on the basis of humanitarian considerations, not due to human rights considerations.<sup>4</sup>

The provision of exemption in Malaysia is not only related to immigration laws, but also other laws, namely the Passport Act 1966, but specifically to be applied in Sabah and Sarawak. Under the Passport Act (Article 4), the Minister of Home Affairs may exclude certain persons or groups of persons for a permanent or limited stay, including in Sabah without a passport. In the Malaysian Immigration Act, similar provisions are similar but more general. The Malaysian Immigration Act grants power of the State Government to direct the Immigration Director of the State Governments of each state (Sabah and Sarawak) not to publish, restrict or revoke the license, pass or certificate, and authorize the state government section to allow everyone to enter eastern Malaysia (Sabah and Sarawak) as stated in Article 65 (1) and Article 69 (1). Meanwhile, the Immigration Law of Thailand regulates the exemption in Section 17, as follows:

“In certain special cases, the Minister, by the Cabinet approval, may permit any alien or any group of aliens to stay in the Kingdom under certain conditions or may consider an exemption from being conformity with this Act.

Although the three countries put refugees as subjects that can be excluded from the general rules of immigration law, the exceptional forms are not exactly the same. Indonesia and Thailand have ruled that the exceptions apply to national territory, while Malaysia only grants exceptions for two eastern states of Sabah and Sarawak. Thus, it reflects the difference between Indonesia and Thailand as unitary states in the one hand and Malaysia on the other hand as a federation.

In terms of substance, compared to Thailand, the exceptions set forth in the Indonesian Immigration Law are more limited, especially in the event of an emergency for asylum seekers and refugees arriving at the same time, as in the case of boat man. However, in addition to the Immigration Act, Indonesia also has Law No. 37 of 1999 on Foreign Relations which expressly refers to “refugees” and “political asylum”, although as a form of humanitarian assistance. This provision is also reinforced by the imposition of the right to asylum in the Second Amendment to the 1945 Constitution (2000) in the Human Rights Chapter and the issuance of Presidential Regulation No.125 of 2016 which has also used the term refugees adopted from the 1951 Refugee Convention and its Protocol. Of these three countries, Malaysia is

a country that does not provide legal exceptions to refugees except in Sabah and Sarawak, and therefore has no legal basis for receiving refugees outside eastern Malaysia, except on a discretionary policy basis. Meanwhile, as a policy, the acceptance of asylum seekers and refugees relies heavily on the shortcomings of the governments of those countries, rather than as permanent legal policy, so there is a guarantee for asylum seekers and refugees to at least not be returned to the country of origin where the threat of persecution takes place and treated humanely.

Meanwhile, from the policy optic, Thailand decision to develop a national screening mechanism for asylum seekers as stated earlier shows an intense state involvement in refugee issues compare with the others countries (Malaysia and Indonesia). Nevertheless, the initial draft of the national mechanisms that have been drafted is indeed only regulating the mechanism of determining the status of refugees, not further regulating what protection is given after they achieve refugee status.

Recently, the Government of Thailand has approved the establishment of a special regulation on this subject under the Immigration Act of Thailand and plans to amend the Immigration Act. Although it is not yet clear how to form a national mechanism for refugees in Thailand, if the mechanism is well developed, Thailand will be the only ASEAN country that has the mechanism without ratifying the Refugee Convention or its Protocol. However, in certain respects, Thai Government policy is inconsistent, for example still conducting and continuing the practice of detention in immigration detention centers, even though they are refugees, as well as children refugee.<sup>23</sup>

Meanwhile, the Indonesian Government's policy on refugees after Presidential Regulation No. 125 of 2016 published generally leads to the strict application of the principle of *non-refoulement* when immigrants declare themselves as asylum seekers or refugees although the placement of asylum seekers and refugees at the Immigration Detention Center is a critical note because it is perceived as a form of deprivation of liberty. In addition, the Government seems to focus on the handling of refugees in emergencies as a form of humanitarian assistance temporarily, while the determination of refugee status is still being undertaken by UNHCR, unlike Thailand which will soon move to the Government after Thailand has its own national mechanism. Compared to Indonesia and Thailand, the policy of the Malaysian Government

is considered biased because on the one hand, it allows Muslim refugees, especially Rohingya, to enter Malaysia, but not for non-Muslim refugees.<sup>24</sup>

CEJISS *The implementation of non-refoulement principle*

4/2018 The principle of *non-refoulement* is a key principle in international refugee law. This principle precludes states from returning a person to a place that he or she might be tortured or face persecution. Although this principle was first confirmed in the 1933 Convention relating to the Status of Refugee and reaffirmed in the 1951 Refugee Convention and other documents of international law, it was recognized in its development as an international customary law<sup>15</sup>. That is to say, this principle not only binds to the parties of the 1951 Refugee Convention and/or its protocol (1967) but also a third country which is not a party to the Convention. In addition, the principle of *non-refoulement* has attained the status of *jus cogens* norm, which refers to a peremptory norm of international law which no derogation is permitted.<sup>25</sup>

The three ASEAN member countries that studied in this article also subject to this principle as both customary international law and as a legal obligation born as a consequence of ratifying the 1951 Refugee Convention or its protocol, such as for the Philippines, and Cambodia, or from other international conventions, such as Indonesia and Thailand, the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984 countries which also regulate *non-refoulement* principle. However, only the Philippines consistently apply this principle. Other ASEAN countries that are the object of this study, such as Malaysia, have also been considered to violate this principle, as in the case of deportation of three Sri Lankan Tamil ethnic groups in 2015 facing the threat of persecution to torture.<sup>22</sup>

Even in Thailand, a country that consistently changes its refugee policy also violates its obligations on the principle of *non-refoulement*. Amnesty International, noted several incidents of forced repatriation by Thai authorities, such as the repatriation of Bahraini activist Ali Ahmed Ibrahim Haroon in 2014, a minority of Uighurs from China in 2015, two Chinese political activities, Jiang Yefei and Dong Guangping in November 2015, Turkish activist Mohammed Furkan Sökmen from the Fethullah Gülen group in May 2017, to a push-back policy toward asylum seekers and Rohingya refugees in 2008, between 2011 to 2013 and 2015.<sup>23</sup> Indonesia has also initiated a “push-back” policy

when Rohingya's "boat people" crisis occurred until 2015, but the policy changed, along with Thai and Malaysian attitudes that ultimately decided to provide temporary protection for 1 year.<sup>24</sup>

### *Protection of refugee rights*

Related to the protection of refugee rights, almost the same as the application of the principle of *non-refoulement*, three countries have issues in respecting and fulfilling the rights of refugees. As noted earlier, Indonesia, Malaysia, and Thailand have similarities that generally do not recognize the right to work of asylum seekers and refugees. However, in practice, asylum seekers and urban refugees in Thailand do informal jobs, as well as in Malaysia.

In Indonesia there are also a number of facts in some places asylum seeker community and refugees like in Bogor, West Java, they open a business, like a barber shop or even become a motorcycle taxi driver. To date, only Malaysia that has a policy to grant the right to work to refugees, but only to Rohingya refugees, through a pilot project of work on the plantation and manufacturing industries for 300 Rohingya.<sup>26</sup> However, there is no certainty whether refugees from other groups in Malaysia will be able to be included in the program on the basis of the principle of non-discrimination. Thus, since in general the work of the refugees is in the informal or even illegally normative sectors, the main issue is the lack of legal protection of rights at work.

However, in relation to other rights, the experiences of the three countries implied that there are no significant issues on freedom of religion. Furthermore, in term of the right to education for refugee children, Indonesia and Thailand have allowed refugee children to attend a formal school. In Thailand, they are allowed to access formal education after they receive a Thai language course facilitated by UNHCR and various NGOs in Thailand. Meanwhile, refugee children in Indonesia can only public school after they pay some amount of fees. Among these countries, only Malaysia has a policy that prohibits refugee children to access formal education, so they obtain education through informal channel in 128 community based learning supported by UNHCR.<sup>27</sup>

### **Conclusion**

This article has shown that the law and policy of three ASEAN member countries generally place acceptance of asylum seekers and refu-

Bilal Dewansyah

Irawati

Handayani

gees as an exception of immigration laws of each country. This reflects how the sovereignty of the state, especially in the immigration powers, reconciles the influx of refugees as a forced migration phenomenon. However, as a form of exception, the substance of refugee policies in each country varies widely, but it is generally ad-hoc and for some countries may be called inconsistent or biased as in Thailand or Malaysia. Despite the development of laws and policies in some ASEAN countries, such as the issuing of Presidential Regulation on Refugee in Indonesia, decision to develop a refugee - screening mechanism in Thailand, the enrollment of refugee children in public schools and temporary work schemes for Rohingya refugees in Malaysia, in general, at the practical level shows the lack of legal certainty for the protection of asylum seekers and refugees, such as violations of the principle of *non-refoulement* or the detention of asylum seekers and refugees at the Immigration Detention Center.

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# International Cooperation to Surpress Transboundary Corruption in Indonesia

*Nella Sumika Putri*

Indonesia already made some agreements with other countries to cooperate combating corruption, but the process of cooperation to eradicate corruption has not always been smooth. Even though Indonesia has co-operated with other countries in form of legal policy and law enforcement, the formal process takes a long time and high fees. Dual criminality, different legal system and good willingness are some factors that inhibiting law enforcement process. Hence, besides the formal way, good willingness and reciprocal principle, the requesting of extraditing the fugitive to Indonesia can be done by diplomatic channel without formal request.

*Keywords: International Cooperation, Corruption, Indonesia*

## **Introduction**

In 2016, the Indonesia Corruption Perception Index was at 37 out of 100 as shown by the annual survey released by the Berlin-based Transparency International.<sup>1,2,3</sup> Indonesia has made some improvement in its bureaucracy and thus the score is slightly improved by one point compared to the score in 2015. But Indonesia performance is still 6 points below the global average score. Corruption in Indonesia mainly happens due to the lack of law enforcement in both the public and private sectors.

Corruption is not an only a domestic issue, but also a transnational issue<sup>4,5</sup>. Some cases may involve suspect from other country or evidence and asset which is located outside the country. This situation creates more hindrance, in suppressing corruption. Related to trans-



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boundary corruption, until 2016, after successfully arresting three fugitives extradited from overseas<sup>6,7,8</sup>, there were 33 fugitives of corruption fled from Indonesia to another country. Tracing, finding, and/or extraditing the suspect become more difficult. Recovering assets located in other country is almost impossible.

*Nella Sumika  
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To prevent and to suppress transnational corruption, Indonesia ratified United Nation Convention Against Transnational Organized Crimes (UNTOC), United Nation Convention Against Corruption (UNCAC) and some bilateral and multilateral agreements about extradition and mutual legal assistance in criminal matters, those are an example of the attempt to promote international cooperation.

Lack of law enforcement is one factor which allowed the suspects escaped to overseas. To deal with the problem, Indonesian Government law enforcement must have cooperation with other countries in form of legal policy and law enforcement.

Indonesia already made some agreements with other countries to cooperate combating corruption, but the process of cooperation to eradicate corruption has not always been smooth. For example, the suspect of Bank Indonesia Liquidity Assistance (BLBI) corruption case, Adrian Kiki Ariawan, escaped to Australia in 2002 and became Australian Citizen by changing his name to Adrian Adamas. Indonesia and Australia have an agreement of Extradition since 1994, but to return Adrian Kiki to Indonesia needs process more than 5 years since 2008. He finally returned to Indonesia in early 2014. The difference of legal system between Indonesia and the Australian is one factor that makes this case needs a long process, such as the procedure for a request for extradition. Therefore, this paper tries to analyze to what extent the international cooperation could give a contribution and support Indonesia Government to prevent and combat transboundary corruption.

### **The contribution of international cooperation to prevent and combat transboundary corruption**

In recent year, corruption becomes transnational, some perpetrators escaped to abroad including their stolen assets. Transboundary cooperation among States, and between States and international institutions, must be strengthened to prevent and combat transboundary corruption.

The United Nation Convention Against Corruption (UNCAC) and The United Nation Convention Against Transnational Organized

Crimes (UNTOC), are landmark instrument which offers a new framework for effective action and international cooperation among States to prevent and detect corruption and to return the proceeds.<sup>9</sup> The provision about corruption in UNTOC can be found in article 8 and 9. Those articles stated that the State Party should criminalize corruption through their legislation or other measures. Even though UNTOC already regulated corruption, but UNCAC is the first global legally binding instrument in the fight against corruption.

The purposes of UNCAC are to promote and strengthen measures to prevent and combat corruption through international cooperation and technical assistance in the prevention of and fight against corruption, including asset recovery.<sup>10</sup> Extradition, mutual legal assistance, transfer of criminal proceeding, transfer of sentences, joint criminal investigation and asset recovery are form of international cooperation to assist each other in investigating and proceeding in criminal, civil and administrative matters relating to corruption.<sup>11</sup> The paragraph 1, Article 43 UNCAC not only regulated cooperation in criminal matters but also broadening the type of cooperation in civil and administrative matters, such as, compensation for harm caused by criminal conduct.<sup>12</sup>

To promote and strengthen cooperation among states, UNTOC and UNCAC, provides that convention can be a legal basis for States Parties which not have an extradition treaty between them.<sup>13</sup> Article 16, paragraph 4 of UNTOC provides that, in the absence of a treaty and if a State normally insists on a treaty for extradition, it “may consider (UNTOC) the legal basis for extradition in respect of any offence to which this article applies. The use of UNTOC, as a legal basis for extradition, applies to State party which do not require a treaty for extradition.”<sup>14</sup>

Not all countries have agreed to make UNTOC and UNCAC as the legal basis for extradition, some countries declared that UNTOC and UNCAC would not be the basis for extradition treaties.<sup>15</sup> To make cooperation among State’s, bilateral agreement is an option, international cooperation still can going. The reciprocity principle is a tool can use in a situation in which there is no treaty. The reciprocity principle is a promise that the requesting State will provide the requested State with the same type of assistance in the future.<sup>16</sup> This principle is usually incorporated into treaties, memorandum of understanding and domestic law. some countries use their domestic legislation as a basis for extradition and apply the principle of reciprocity as a precondition to considering extradition to another state.<sup>17</sup>

That convention also mandate the establishment of Central Authority. The benefit of central authority is that a State has more control over the request of international cooperation.<sup>18</sup>

### **Indonesia regulations about corruption and international cooperation against corruption**

*International  
Cooperation to  
Surpress  
Corruption*

Preventing and combating corruption is the main priority of Government of Indonesia at global levels and national. In the global level, Indonesia is a signatory to the United Nations Convention Against Corruption 2003 (UNCAC). The convention was signed on 31 October 2003 and ratified by the Indonesian parliament, in Law No. 7 of 2006 regarding Ratification of UNCAC on 18 April 2006. Indonesia is also a signatory to the United Nations Convention against Transnational Organized Crime, 2000 (UNTOC). This convention was ratified by the Indonesian parliament in 2009 in Law No. 5 of 2009.

In the national level, there is some regulation relating to prevent and combat corruption. There are:

- a. Law No. 11 of 1980 on Bribery (Anti-Bribery Law);
- b. Law No. 28 of 1999 on State Management that is Clean and Free from Corruption, Collusion and Nepotism (Good Governance Law);
- c. Law No. 31 of 1999 on Corruption Eradication (last amended by Law No. 20 of 2001) (Anti-Corruption Law);
- d. Law No. 30 of 2002 on the Corruption Eradication Commission (the KPK);
- e. Law No. 46 of 2009 on the Corruption Court;
- f. Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering

Individual and corporate can be prosecuted for corruption offence. The sanction for corruption under Anti-Corruption Law are imprisonment, fines, and in some special circumstances, the perpetrator the court may order life imprisonment or the death penalty. Besides, primary sanction, there are also additional penalties as set out under the Anti-Corruption Law, namely:

- a. confiscation of tangible or intangible moveable goods or immoveable goods that are used for or obtained from corruption, including a company owned by the defendant in which the corruption is committed, and also goods that replace the relevant goods as mentioned above;

- b. payment of compensation, the maximum amount of which is the same as for any property gained from corruption;
- c. permanent or temporary closure of the company for a maximum period of one year; and
- d. revocation of all or part of certain rights or nullification of all or part of any benefit that has been or may be given by the government to the defendant.

Indonesia is a party state of UNTOC and UNCAC, with the ratification of those conventions Indonesia agree to cooperate with another in every aspect of the fight against corruption. Chapter IV of UNCAC focus on state cooperation and emphasis on mutual legal assistance and extradition. Countries should enter into bilateral agreements or be able to refer directly to UNCAC in making a request for legal assistance or extradition.<sup>19</sup> The state party also required to undertake measures to support the tracing, freezing, seizure, and confiscation of an asset from the corruption through joint investigation, transfer of criminal proceeding and/or transfer of sentenced person<sup>20</sup>

To promote cooperation among countries Indonesia already has national regulation about extradition and mutual legal assistance in criminal matters. There are Law No 1/1979 on Extradition<sup>21</sup> and Law No 1/2006 on MLA<sup>22</sup> on Criminal Matters. Besides that, Indonesia has some regional and bilateral agreement related to extradition and MLA.

There are:

Bilateral extradition agreements:

1. Malaysia
2. Philippines
3. Thailand
4. Australia
5. Hong Kong
6. Republic of Korea
7. Singapore<sup>23</sup>

Regional & Bilateral MLA agreements:

1. ASEAN Treaty on MLA in Criminal Matters
2. Australia
3. Hong Kong
4. India
5. South Korea
6. People's Republic of China

7. UAE
8. Vietnam

### **The barrier of international cooperation against corruption in Indonesia perspective**

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Indonesia, since 19 September 2006 has been ratified UNCAC in Law No. 7 the Year 2006 concerning the Legalization of UNCAC 2003. Despite still have some reservation over article 66 paragraph 2, the signing and the ratification clearly prove Indonesia as a part of international cooperation against corruption.

International cooperation to suppress corruption is not easy, many factors can cause barriers. The barriers are:

1. Dual criminality. The main principle of extradition and MLA is dual criminality, which means the alleged crime can be extradited if it is punishable in both the requested and requesting state.<sup>24</sup>Dual criminality is a primary requirement for an extradition and MLA. Corruption has a broader meaning, UNCAC put a lot of categorization of crimes which can put in term of corruption. There are bribery of national or foreign public officials,<sup>25</sup> embezzlement/misappropriation of property by a public official,<sup>26</sup> trading in influence,<sup>27</sup> abuse of function,<sup>28</sup> illicit enrichment,<sup>29</sup> private sector bribery,<sup>30</sup> and private sector embezzlement.<sup>31</sup> Even though, Indonesia is a party of UNCAC, the ratification does not automatically criminalize the crime listed on the UNCAC, to enforce those crime, Indonesia regulation need implementing legislation through criminalization with domestic law. The crimes such as trading in influence and private sector bribery are not yet criminalized by domestic law and it can influence the treaty's force of law in practice especially extradition and MLA. Another case are ECW Neloe. Neloe is former president director of Bank Mandiri. He has USD \$ 5.2 million and still blocked by the Swiss Government. However, the request of MLA by Indonesia government can not be executed, because the action that Neloe did in Indonesia which categorize as corruption only recognized as administrative infringements in Switzerland.
2. Different legal system and legal tradition related to different procedures. If the requested state does not aware and clear about the procedure in requesting state, can cause the requesting of extradition or MLA rejected.<sup>32</sup>There are three major legal traditions in

the world, civil law tradition, common law tradition and Islamic legal tradition.

Based on legal tradition, Indonesia legal tradition is civil law rather than common law, which is derived from French and German models. Indonesia used codification of laws and legislation as the primary source of law rather than common law where the law developed through precedent or law made by the judge.

Eq:

- ◇ Djoko Tjandra was convicted of misusing Bank Indonesia Liquidity Support (BLBI) funds in Bank Bali Case in 1999. He flew off to Papua New Guinea on June 10, 2009, just one day before the Supreme Court issued a verdict against him. The Supreme Court found Joko guilty and sentenced him to two years in prison and fined Rp 15 million (around US\$1,500). In Papua New Guinea, Joko has been found to own a property business. Djoko Tjandra has double citizenship Indonesia and Papua New Guinea. Indonesia Government requesting Papua New Guinea Government to extradite Djoko Tjandra, however, The Papua New Guinea government still has not revoked Joko's citizenship status and there will be a trial for the citizenship case in Papua New Guinea.<sup>33</sup>
  - ◇ Adrian Kiki Ariawan was extradited to Indonesia after the Australian High Court approved the Indonesian government application for his extradition on December 18, 2013. Adrian Kiki Ariawan, was President Director of PT Bank Surya, in the trial in-absentia has been sentenced to life imprisonment by the Central Jakarta District Court on November 13, 2002. He has been found guilty of corruption (misappropriation of funds BLBI) and defrauding the state of Rp 1,5 trillion. Adrian Kiki escaped to Australia since 2002 and has been an Austrian citizen with changing his name to Adrian Adamas.<sup>34</sup> The extradition process took more than 5 years. Adrian had submitted an application to Australia not to be extradited to Indonesia.
3. Good willingness. As mention above, UNTOC and UNCAC provide those conventions can be a legal basis for international cooperation to suppress corruption<sup>35</sup>, but some countries, particularly in ASEAN such as Singapore, Malaysia, Myanmar and Laos, made a declaration for that clause.<sup>36</sup>The declaration for that clause can

make the process to extradite or MLA will be a delay, except the requested state does not require treaty for extradition or MLA process.

4. Central Authority. Central authority is an important body to make simple international cooperation. Article 18, paragraph 13, specifically references the creation of the central authority. The functions of central authority are to ensure the speedy and proper execution or transmission of request received. The benefit of having a central authority is that a State has more control over incoming and outgoing requests and begins to create a centre of expertise with respect to international cooperation.<sup>37</sup>

To handling cooperation on extradition and mutual legal assistance, Indonesia has established the central authority unit under the Ministry of Law and Human Rights, at the Directorate of International Law and Central Authority. For corruption, besides the Ministry of Law and Human Rights, Indonesia has special agents which have authority there are Attorney's General and Corruption Eradication Commission (KPK). But in other countries, such as Malaysia and Australia, the central authority is the Attorney's General. The difference institution of central authority can cause delay and miss communication among State or even among law enforcement itself when they have issues about extradition and MLA.

5. *In absentia*. In absentia, is one of reason to reject extradition and MLA process. In some case, the fugitive used in absentia clause as part of the argument to refuse extradition from another country. Indonesia at present well recognize and apply in absentia in the case of corruption.<sup>38</sup> *In absentia trial* is a trial where the defendants have been summoned legally but they can't attend the trial without a legitimate reason, so the court tried them without their existence. Article 196 and Article 214 Criminal Law Procedures Code (KUHAP) regulates in absentia trial for faster investigation.

Eq: Hendra Rahardja and Adrian Kiki are some fugitives whose sentenced with in absentia trial after they had fled. Hendra, the former owner of now-defunct Bank Harapan Sentosa, and his son, Eko Edy Putranto, were convicted of embezzlement in absentia in 2002. Adrian, the former director of Bank Surya, was convicted in absentia in 2002 of embezzlement and sentenced to

life in jail. A lawyer of Adrian, questioning whether prosecutors had taken proper steps to summon the former bank director to Indonesia for the trial connected with the legality of the in absentia trial that resulted in Adrian's conviction.

*CEJISS* Besides extradition and mutual legal assistance, the international  
*4/2018* cooperation done by Indonesia to catch is through joint investigation.

◇ Nunun Nurbaeti, a wife of the former deputy chief of the National Police and now legislator Adang Daradjatun, is alleged to have distributed the bribes to the politicians, who were serving on the parliamentary financial commission that selects senior central bank officials, allegedly received travellers' cheques worth between 150 million rupiah (\$16,610) and 1.45 billion rupiah (\$160,600) in exchange for nominating Miranda Goeltom as the Bank Indonesia senior deputy governor in 2004. Corruption Eradication Commission (KPK), asked the National Police to forward the request for arrest, known as a red notice, to the Interpol. Nunun fled to some countries, such as Singapore and Cambodia, Nunun finally arrested in Bangkok, Thailand with the assistance of NCB Interpol.

◇ Nazaruddin was implicated in 31 graft cases in various ministries. Nazaruddin was charged with accepting a Rp 23 billion bribe from construction firm PT Duta Graha Indah and Rp 17 billion from PT Nindya Karya for several projects for the education and health ministries during his time as party treasurer and legislator. In April 2012, Nazaruddin was sentenced to four years and 10 months in prison for accepting Rp 4.6 billion linked to the construction of the SEA Games athletes' village in South Sumatra.<sup>1</sup> To return Nazaruddin back to Indonesia was a complex operation. The National Police cannot make an arrest in a foreign country, neither can other [Indonesian] agencies. So the Indonesia Government asked help from Interpol. Nazaruddin was arrested by Interpol in Cartagena, Colombia. From passport M. Syafruddin or Nazaruddin saw before landing in Colombia, has been landed in Malaysia, Singapore, Vietnam, Cambodia, Germany, Caribbean, and Colombia. The local police arrested Nazaruddin after seeing a red notice issued by Corruption Eradication Commission (KPK). After assuring that the new Nazaruddin carried out arrests, the local police then report to the government of Indonesia.

## International Asset Recovery

The legal actions for pursuing asset recovery are various. They include the following mechanism:<sup>39</sup>

- domestic criminal prosecution and confiscation, followed by an MLA request to enforce orders in foreign jurisdictions;
- NCB (non-conviction-based) confiscation, followed by an MLA request or other forms of international cooperation to enforce orders in foreign jurisdictions;
- private civil actions, including a formal insolvency process;
- criminal prosecution and confiscation or NCB confiscation initiated by a foreign jurisdiction (requires jurisdiction over an offence and cooperation from the jurisdiction harmed by the corruption offences); and
- administrative confiscation.

*Nella Sumika  
Putri*

Indonesia should avoid problems of investigating cross-border corruption by dedicating the necessary resources to pursue the stolen assets abroad. It should be a special agency or unit dealing with the investigation, and asset recovery consists of financial investigators, prosecutors, state attorneys, auditors, forensic accountants and other competent authorities involved in asset recovery issues. Specialized agencies or units within existing agencies should be given the resources to satisfy their mandate to facilitate asset recovery, bearing in mind that the central authority does not become involved in financial investigations or in criminal proceedings but is mainly an administrative authority.<sup>40</sup>

Assets of Garnet Investments Limited, of which Mr Suharto was identified as the beneficial owner, remain restrained in Guernsey. In 2002, the BNP Paribas (Suisse) Bank - Guernsey branch disclosed to the Guernsey financial intelligence unit that Tommy Suharto was the beneficial owner of the Garnet Investments Limited account and sought the FIS's consent to transfer the funds, as requested by Garnet Investments. The FIU denied consent and the Government of Indonesia was informed and given the opportunity to join the proceedings between the Bank and Garnet Investments. The Guernsey court cited the lack of progress by Indonesia to institute proceedings against Suharto in Indonesia as justification for not extending the freeze of the funds but the FIU continued to deny consent to transfer the funds.

According to the March 1, 2005 Judgment by Australia's New South Wales Supreme Court, "It was contended that the crimes of the de-

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ceased Rahardja produced a total loss to the Central Bank of Indonesia of A\$390 million of which some A\$38.5 million came to Australia.” According to a January 23, 2008, Jakarta Post article posted on the website of the Indonesian Embassy in Ottawa and citing an official of the Indonesian Justice and Human Rights Ministry, \$3 million was returned from Australia. Australia was said to also be helping repatriate another \$3 million from Hong Kong. Hendra Rahardja had fled to Australia and was convicted in absentia in 2002 by Indonesia for misuse of Bank of Indonesia liquidity support funds. Indonesia had ordered him to pay \$280 million in indemnities. An Australian court decision in 2008 cited a 2003 affidavit by the Australian Federal Police investigator, who contended that some \$26 million in Hendra Rahardja’s criminal proceeds were found to have come to Australia. The website of the Attorney General of Australia noted that as part of Australia’s Equitable Sharing Program established under United Nations Convention Against Corruption (UNCAC) provisions as well as Australia’s Proceeds of Crime Act, \$493,647.07 was provided to the Indonesian Government for assistance in the Hendra Rahardja matter. Besides the \$3 million that has been returned, the ministry said that, based on Indonesia’s request, Australia was helping the country to return another \$3 million worth of Hendra’s assets from Hong Kong.

Beside Hendra Rahardja case, Indonesia is also asking the Swiss government to freeze a total of \$14.9 million worth of assets belonging to former Mandiri Bank president director ECW Neloe, currently in a Swiss bank account. Indonesia Government has requested that the Swiss government freeze an account containing \$9.9 million deposited by Irwan Salim, who fled justice in late 2004 after being implicated in a fraudulent mutual fund business while he served as director of Bank Global, according to documents released by the AGO and obtained by the Jakarta Globe. However, there is a major stumbling block, Irwan has not been convicted of any crimes in Indonesian courts.

### **Solutions**

The formal agreement needs more time and complex bureaucracy, sometimes involved political issues. Transboundary corruption needs an efficient and effective process of return fugitives and assets. Direct cooperation among law enforcement agencies can simplify the process of formal cooperation, such as to obtain information or intelligence in

a corruption case. Indonesia's anti-corruption commission (KPK) has directly coordinated with a number of counterpart agencies abroad without the involvement of Indonesia's central authority <sup>41</sup>

In some cases, with good willingness and reciprocal principle, the requesting of extraditing the fugitive to Indonesia can be done by diplomatic channel without formal request.

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# Law and Economics

# Legal Higher Education in Indonesia in Facing ASEAN Economic Community

*Pan Lindawaty Suherman Sewu*

## **Background of the Study**

The society's need for law in the modern era is increasing; therefore, the need for Law graduates is increasing as well. Professions in the field of law are professions that appeal to many people in Indonesia. One of the reasons is because this profession is considered a profession with an income that belongs to the highest five income in Indonesia.

One of the important aspects of realizing ASEAN Economic Community is the law aspect. Legal higher education becomes an essential supporting element in producing law experts.

Legal higher education in Indonesia as well as in other ASEAN countries must prepare themselves in the era of ASEAN Economic Community. This must be done because the law systems which are applied in the ASEAN countries are different from one another<sup>1,2</sup>. The law applied in one country is definitely different from that in another country. This will cause a particular problem in the era of the ASEAN Economic Community.

## **Problems**

Various life aspects, such as sciences, politics, law, economics, socio-culture should be carefully observed in the application of the ASEAN Economic Community. The law aspect is one essential element in making a strong country<sup>3</sup>. It is time that law problems should be given a serious attention from each ASEAN country. How do we solve the different law systems in the ASEAN countries? This ought to be seriously taken into account by legal higher education in preparing the graduates to be able to give their contribution to the community. The



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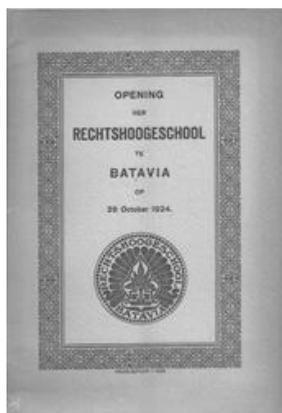
legal higher education always contributes to the existence of a peaceful and prosperous ASEAN community<sup>4</sup>. Hence, it should be considered what kind of legal higher education which can make universities produce graduates that are ready for the ASEAN Economic Community.

Pan Lindawaty  
Suherman Sewu

## Discussion

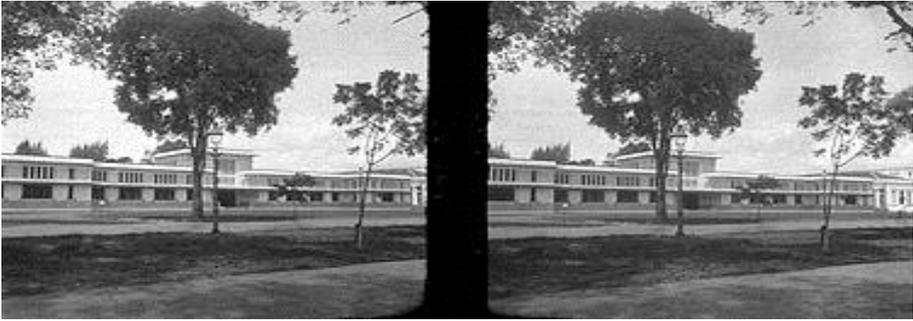
At the beginning the legal education in Indonesia was known in 1909, marked by the establishment of *Rechtsschool* (Law School) by the general governor J. B. van Heutsz and it was operated based on such law as *Reglement voor de Opleiding voor Inlandsche Rechtskundigen* (Regulatory for the School of the Local Law Experts), issued in Stb. No. 93/1909.

*Rechtsschool* is not a university, but of the same level as a vocational high school, or to be more precise, it is the merging of 3 years of junior high school and 3 more years of vocational high school. Based on *Ethische Politiek* and Dutch economic development, which forced the Dutch government to open its colonies for private investment, the establishment of *Rechtsschool* was intended to educate Indonesian people to become *Landraad* judges that were in the daily trials (first level) for the local people and those who were equal. Therefore, the purpose of education was to produce technicians or experts in law (educated)<sup>5,6</sup>. Yet, the meaning and political purpose of the establishment of *Rechtsschool* basically is for the sake of the Netherlands in keeping peace and order (*rust en orde*) in its colony so that it was good for investment and industry development.<sup>7</sup>



Booklet of the establishment of *RH te Batavia*<sup>8</sup>

The Law School in Jakarta (*Rechtshoogeschool te Batavia*) was founded on 28 October 1924 the Dutch East Indies. The Constitution of Education/Higher Education in the Dutch East Indies is called *Hooger Onderwijs Wet 1924 Ordonnantie* 9 October 1924 No. 1 (Stb. No. 457/1924), which becomes the first base of the arrangement of the legal higher education in Indonesia.



Law School in Jakarta<sup>9</sup>

In brief, the constitution sets the materials given in the education of bachelors of law in RHS Batavia, which are:

1. *Inleiding tot de rechtswetenschap* (Introduction to Law Science);
2. *Staatsrecht van Ned.-Indie in Verband met at van Nederland* (State Administration Law in the Dutch East Indies);
3. *Ned. -Indisch Burgerlijk Recht en Burgerlijk Procesrecht* (Civil Law and Civil Procedure Law in the Dutch East Indies);
4. *Ned-Indisch strafrecht en strafprocesrecht* (Criminal Law and Criminal Procedure Law in the Dutch East Indies);
5. *Adatrecht* (Adat Law);
6. *Mohammedans Recht en instellingen van den Islam* (Islamic Law and its institutions);
7. *Ned.-Indisch handelsrecht* (Trade Law **Error! Not a valid link.**);
8. *Sociologie* (Sociology);
9. *Staatshuishoudkunde* (Economic Development Studies);
10. *Volkunde van Ned-Indie* (Ethnology in the Dutch East Indies);
11. *Melech* (Malay Language);
12. *Javaansch* (Javanese Language);
13. *Latijn* (Latin Language);
14. *Wijsbegeerte van het Recht* (Law Philosophy);
15. *Beginselen van het romeinsch privaatrecht* (Roman Civil Law Principles);
16. *International privaatrecht* (International Civil Law);
17. *Intergentiel recht* (Intergroup Law);
18. *Criminologie* (Criminology);
19. *Psychologie* (Psychology);
20. *Gerechtelijke feneeskunde* (Forensic Medicine);

21. *Volkenrecht* (International Law);
22. *Buitenlansch colonial Recht* (Colonial Law of Other Countries);
23. *Geschiedenis van Ned.-Indie* (History of the Dutch East Indies);
24. *Statistiek* (Statistics).<sup>10</sup>

Up to now the curriculum of legal higher education has undergone a number of system changes since RHS Batavia was founded. Indonesian higher education had a new system in about 1982 when the credit system was first applied. Before this, what was applied is that the whole year of learning with all the subjects in that level have to be retaken even when only one subject fails. This is different from the semester credit system; for example, if one subject with 3 credits gets an E, the student has to retake that particular subject only. He or she does not need to retake all the subjects in that semester. This, of course, causes a positive impact because students will only need to retake one subject and not all the subjects.

At the moment the system of legal higher education encourages the active participation from students. Students become the centre of the teaching and learning activities, while teacher only serves as facilitators and tutors. At present the curriculum that is being applied in Indonesia is the Indonesian National Qualification Framework (INQF).

In 2012 with the Presidential Decree Number 8 of 2012 About Indonesian National Qualification Framework which is further elaborated in the Ministerial Regulation of the Minister of Education and Culture Number 73 of 2013 About The Application of the Indonesian National Qualification Framework of Higher Education, a teaching system of the Indonesian National Qualification Framework is set. Article 1 number 1 of the Presidential Decree Number 8 of 2012 gives the definition of INQF as a framework of the levels of competence qualification which can pair, equalize, and integrate the education and work training and work experience in giving the recognition of work competence which is in line with the work structure in various sectors.

INQF consists of 9 (Nine) levels of qualification; levels of qualifications are levels of learning targets nationally agreed upon, which are arranged based on the measurement of education results and/or training gained through formal and informal education, or work experience.

Bachelor level is expected to be equal to level 6, in which the graduates must:

- a. Be able to apply their areas of expertise and make use of Science, Technology and Arts (STA) in their fields in problem-solving as well as adapt themselves at any situation faced;
- b. Master the theoretical concept in a particular science in general and the specific theoretical concept in that science in an elaborate way, and able to formulate the procedural problem solving;
- c. Be able to make the right decision based on information and data analysis, and able to give directions in selecting various alternative solution independently and in groups;
- d. Be responsible for their work and able to be in charge of the organizational work target fulfilment.<sup>11</sup>

University graduates who have the past learning recognition (PLR) are equalized to the profession or equal to level 7. Universities can become the PLR organizers as long as they meet the regulations and criteria for that based on the regulations of Ministerial Regulation of Education and Culture About INQF of Higher Education.

In order that higher education, especially legal higher education, can organize a legal higher education, there are several aspects to pay attention to, namely: academic aspect, aspects of terms and criteria arranged in various regulations, soft skill aspect. If all the aspects are seriously paid attention to by the higher education of law organizers, the graduates of law are expected to have good academic qualifications, be accepted by the market because of good work skills, and have good character. In the end, it is expected that graduates with that kind of profile can compete in the local, national, regional, and even international markets.

Legal higher education in Indonesia must seriously attend to this because since early 2015 the ASEAN Economic Community has been implemented in ASEAN countries.

The establishment of ASEAN Economic Community was done by country leaders of ASEAN<sup>12</sup> as mentioned in the Declaration of ASEAN Concord II in Bali, Indonesia, on 7 October 2003. As the follow up of the declaration in Bali, the blueprint of ASEAN Economic Community was made in Singapore on 20 November 2007. The content of the blue print declaration of the ASEAN country leaders is quoted below:

“We, the Heads of State/Government of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Union of Myan-

mar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member Countries of ASEAN.

Recalling our earlier decision to establish by 2020 the ASEAN Community, including the ASEAN Economic Community (AEC), made in the Declaration of ASEAN Concord II in Bali, Indonesia, on 7 October 2003;

Determined to achieve higher levels of economic dynamism, sustained prosperity, inclusive growth and integrated development of ASEAN;

Conscious of the increasing interdependence of the ASEAN economies within the region as well as with the rest of the world and stressing the importance of narrowing the development gap for accelerating the ASEAN Economic Community by 2015;

Recognising that different levels of development within ASEAN require some flexibility as ASEAN moves towards a more integrated and interdependent future;

Reaffirming our collective commitment, made at the 12<sup>th</sup> ASEAN Summit in Cebu, the Philippines, on 13 January 2007, to accelerate the establishment of the ASEAN Community, including its AEC pillar, to 2015;

Cognisant of the need to have a strengthened institutional framework and a unified legal identity as set forth in the ASEAN Charter by putting in place rule-based systems to realize the establishment of the AEC by 2015;

Expressing satisfaction at the overall progress made and commitment shown by ASEAN in developing the AEC Blueprint and to ensure its timely implementation;

Reaffirming the ASEAN Economic Ministers (AEM) as the coordinator of all ASEAN economic integration and cooperation issues.

DO HEREBY:

1. ADOPT the AEC Blueprint which each ASEAN Member Country shall abide by and implement the AEC by 2015. The AEC Blueprint will transform ASEAN into a single market and production base, a highly competitive economic region, a region of equitable economic development, and a region fully integrated into the global economy. The AEC

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Suherman Sewu*

- Blueprint including its strategic schedule is annexed to this Declaration.
2. TASK concerned Ministers, assisted by the ASEAN Secretariat, to implement the AEC Blueprint and to report to us regularly, through the Council of the ASEAN Economic Community, on the progress of its implementation.
- DONE in Singapore on 20 November 2007, in a single copy, in the English language.”<sup>13</sup>

The declaration of ASEAN country leaders in 2007 is the task of all ASEAN member countries in order to implement the ASEAN Economic Community by 2015. Half a year before 2015 the homework of the leaders of the ASEAN countries also becomes the homework of Indonesia as a member country of ASEAN. Furthermore, the homework of Indonesia becomes the homework of all Indonesian people. The community of the higher education of law in Indonesia cannot ignore the implementation of the ASEAN Economic Community in 2015.

The implementation of the ASEAN Economic Community in various areas of life will begin; the law becomes the pillar which will arrange how the implementation of the ASEAN Economic Community will run smoothly and orderly. The law holds a very important role; the law becomes the means to be able to implement well the ASEAN Economic Community. Harmonization of law in the ASEAN countries must be done.

Harmonization of law done in the ASEAN countries at least leads to a question: how does legal higher education respond to this? The good law must also be supported by good legal higher education. How is the readiness of the legal higher education in Indonesia in facing the ASEAN Economic Community? What should be done by the legal higher education in Indonesia?

## **Conclusion**

The ASEAN Economic Community in 2015 definitely will give a significant impact in various life aspects for ASEAN member countries; an impact that will significantly be felt is in the law aspect. ASEAN member countries have varieties in the development level of economic, political, social, and law system aspects. This fact will cause particular problems in the effort of harmonizing the law of the member countries of ASEAN.

This also roots in the varieties of legal higher education in the ASEAN member countries, both in the law system and the curriculum.

The following description gives a picture of the number of legal higher education in some ASEAN countries, namely Indonesia, Singapore, and Malaysia. There are more than 200 (two hundred) faculties of law in Indonesia, consisting of 27 state universities<sup>14</sup>; the data does not cover the number of legal higher education organized by private universities.

Up to July 2016, Singapore has 1 (one) legal higher education, which is in *National University of Singapore*. In August 2006, Singapore Management University has the legal permission from the Singapore government to organize the legal higher education.<sup>15</sup>

In Malaysia there are 6 (six) state institutions of legal higher education, namely Malaya University, National University of Malaysia, International Islamic University of Malaysia, MARA Technology University, Malaysian Northern University, University of Sultan Zainal Abidin, Malaysia Science and Islamic University; besides Malaysia also has legal higher education organized by private universities collaborated with legal higher education of both the United Kingdom and Australia.<sup>16</sup>

The various organizers of legal higher education and the law systems in ASEAN countries will surely produce the varieties of the curriculum structures and the varieties of the arrangement of the law practices in each country.

Based on the fact about the varieties of the ASEAN countries, there are some ideas proposed by some law experts in several ASEAN countries that may be able to be done in responding to the 2015 ASEAN Economic Community.

Tan Cheng Han, a professor and the dean of the *Faculty of Law, National University of Singapore*, in his paper entitled *Legal Education in ASEAN* states that law comparison should be taught in the legal higher education. The teaching of law comparison should increase the collaboration between the existing legal higher education and it should increase the collaboration among lecturers in many countries. Moreover, Tan Cheng Han conveys his ideas of the enrichment of the teaching methods and students' evaluation. The teaching of law is not delivered in the traditional one-way method, but it can also be delivered with the discussion method in groups, seminar, and assignment. The evaluation is based on tests, group work, active partic-

ipation, class presentation, and a take-home examination. This is so in order that the teachers in the legal higher education can keep on learning, improve their teaching techniques, and make the teaching focus into how students can learn well, participate actively, understand the teaching essence better.

Zuhairah Ariff Abd. Ghadas<sup>17</sup> proposes that in order to harmonize the legal higher education in ASEAN, there are some things that can be done:

1. Increasing the knowledge of the law systems in ASEAN countries. The material must be given to law students in higher education when they study the international law material.
2. Having some training of the comparison of law in ASEAN countries.
3. Organizing annual meetings for the deans of the faculties of law in ASEAN countries.
4. Having collaboration in researches in analyzing the law issues in the perspective of ASEAN countries, through professor and student exchange programs.
5. Actively doing collaborations with various institutions.
6. Initiating a consortium of ASEAN legal higher education.
7. Through technology doing some collaboration of teaching programs.
8. Eliminating the language barrier as the primary language used for communication among lawyers in ASEAN is the English language.

Furthermore, Sanjeevi Shanthakumar<sup>18</sup> contributes his ideas about the things that should be done by ASEAN countries in responding to the ASEAN Economic Community. There are some things conveyed, namely: *Creation of an ASEAN Institute for Harmonization of Laws, Networking of Law Schools, Identifying Communalities, Preparing and Publishing Restatements, Conducting Stakeholder Consultations, Conduct a 360<sup>14</sup>, Preparation of model laws.*

Hikmahanto Juwana, a professor of the Indonesian law, conveys his idea that reflecting and learning from the European Economic Community, which has done the law harmonization, it seems difficult to be applied due to the varieties in many aspects possessed by ASEAN member countries. What appears to be able to be harmonized in the law area is the business and economic law, such as tax law, banking law, investment law, bankruptcy law, and insurance law.

The writer is of the opinion that the ideas that have been mentioned above are good and become the basic contemplation of the community of higher education in ASEAN countries. There are several things that should be done immediately, for instance: institutionally making the issue of the ASEAN Economic Community as one thing responded to with an improvement, the law lecturers' improvement of teaching methods, having the curriculum evaluation, doing collaboration with other institutions of higher education of law both in Indonesia and the other ASEAN member countries, improving the foreign language competence of the faculty staff as well as the students, and accommodating the subject of Law Comparison in ASEAN Countries. Hence, law harmonization in ASEAN through higher education of law becomes one of the ways to support and strengthen the ASEAN Economic Community.

Pan Lindawaty  
Suherman Sewu

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# Horizontal Consistency of the Settings of the Exception in Carrying Out a Notary's Official Pledge

*Agus Setiawan*

Article 17 Law no. 8 of 2010 on Prevention and Eradication of Money Laundering Criminal Act (“LPEMLCA”) in conjunction with article 3 letter b. Government Regulations No. 43 of 2015 on Complainant in the Prevention and Eradication of Money Laundering Criminal Act (‘GR No. 43/2015’); it is obligatory for a notary to give reports. Article 4 paragraph (2) Law no. 30 of 2004 on Position of Notary (“LPN”) in conjunction with article 16 paragraph (1) letter f Law No. 2 of 2014 on Changes to the Law of 2004 on Position of Notary (‘L No. 2/2014’), it is stated that a notary must keep everything about a deed. The research uses the normative law research method based on the principle of *lex specialis derogat legi generali*; Article 17 LPEMLCA in conjunction with article 3 letter b. GR No. 43/2015 as the specific law disregards article 4 paragraph (2) in the third paragraph of LPN in conjunction with article 16 paragraph (1) letter f Law No. 2/2014 as the general law. Legal protection for a notary can be found in article 28 in conjunction with article 29 Law PEMLCA.

*Keywords: Money Laundering Criminal Act, official pledge, specific and general law*

## Introduction

On October 22, 2010, Law no. 8 of 2010 on Prevention and Eradication of Money Laundering Criminal Act [“L PEMLCA”] was enacted. The money laundering criminal act is a criminal act done by the doer by

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trying to hide or disguise the origin of the wealth which is the result of criminal acts in such various ways that it is difficult for law enforcers to trace it.

In its development, the money laundering criminal act is becoming very complex, crossing the jurisdictional boundaries, and using more various modes, taking advantages of institutions outside the financial system, which has even penetrated various sectors. In order to anticipate this, the Financial Action Task Force (FATF) on Money Laundering has issued an international standard to become the measurement for each country in preventing it.

Based on Article 2 Law no. 8 of 2010 on Prevention and Eradication of Money Laundering Criminal Act ("L PEMPLCA"); basically determines that results of criminal acts are wealth acquired from: corruption, bribing, narcotics, psychotropic, human resource smuggling, migrant smuggling, at banking, capital market, insurance, customs, tax, human trafficking, arms black trade, terrorism, kidnapping, theft, embezzlement, fraud, counterfeiting money, gambling, prostitution, at taxation field, forestry, living environment, marine and fisheries, or other criminal acts threatened to get imprisonment of 4 (four) years or more, done in the territory of The Unitary State of the Republic of Indonesia or outside the territory of The Unitary State of the Republic of Indonesia and that criminal act is a criminal act according to the Indonesian law. The wealth known or suspected to be used and/or to be used directly or indirectly for terrorism activities, terrorists' organizations, or individual terrorists are considered equal to criminal terrorism acts.

One of the aspects to make the efforts of preventing and eradicating the money laundering criminal act effective is the person who has an obligation to report suspicious financial transactions. The complainant meant in Article 1 number 11 L PEMPLCA is every person who according to L PEMPLCA is required to report to the Center for Financial Transaction Reporting and Analysis ('CFTRA'<sup>9,10,11,12</sup>). One of the persons who have the obligation to report to CFTRA according to Article 17 L PEMPLCA in conjunction with Article 3 Government Regulations No. 43 of 2015 on Complainant in the Prevention and Eradication of Money Laundering Criminal Act ('GR No. 43/2015') is a notary.

A notary is a public official who is authorized to do an authentic deed and has other authorizations as stated in this law or other laws.<sup>13,14</sup> As

long as a person has the status of being a notary and is still tied to the oath of office and the law and regulations about the notary profession, he or she will be required to keep the deed contents and any information obtained in carrying out the job. This is often mentioned as a notary's official pledge.

Concerning the official pledge, Article 4 paragraph (2) in the third paragraph of Law No. 30 of 2004 on Position of Notary ('L PN) mentions:

"I swear/promise:

that I will keep everything on the deed contents and the information obtained in carrying out my profession".

This official pledge requires a notary to keep the contents of the deed. Besides, in article 16 paragraph (1) letter f Law No. 2 of 2014 on Changes to the Law of 2004 on Position of Notary ('L No. 2/2014') a similar obligation is also mentioned, which states that:

"In carrying out his job, a notary must: keep everything on the deed he made and all the information obtained to manufacture in accordance with the deed of oath/pledge of office, unless the statute otherwise provides."

This article also requires a notary to keep everything related to the deed he made, including all the information which was obtained in relation to the making of the deed. The purpose is none other than to protect all the people connected with the deed.

A notary who does not do the job in accordance with article 4 paragraph (2) in the third paragraph of LPN in conjunction with article 16 paragraph (1) letter f Law No. 2/2014, based on article 85 LPN, can get such sanctions as oral warning, written warning, layoffs, honorable discharge, or dishonorable discharge. Besides the sanctions in the LPN, article 322 paragraph (1) Criminal Code also arranges, in general, the pledge that must be kept because of the profession. Article 322 paragraph (1) Criminal Code says:

"Any person who with deliberate intent reveals a secret that by any reason of either his present or earlier office or profession is obliged to keep secret shall be punished with a maximum imprisonment of nine months or a maximum fine of nine thousand rupiahs."

The sanction is given definitely to make the obligations to keep the deed information, and the official pledge stated by a notary obeyed as well as possible.

When analyzing further the regulations about the revelation of a secret, it is seen that there is opposition or inconsistency of the official pledge, particularly for notaries. On the one hand, based on article 4 paragraph (2) third paragraph of LPN in conjunction with article 16 paragraph (1) letter f L No. 2/2014, a notary must keep everything about the deed that he made and all the information obtained to make a deed in accordance with the official pledge/oath. On the other hand, based on Article 17 LPEML in conjunction with article 3 Government Regulations No. 43 of 2015 on Complainant in the Prevention and Eradication of Money Laundering Criminal Act ('GR No. 43/2015'); a notary is one of the complainants who must give reports to CFTRA. Thus, it means that a notary is given the obligation by the law to open and give information obtained in doing a deed.

In order to give legal certainty of the inconsistency, it is necessary to analyze which regulation should be applied for the enactment or non-enactment of the official pledge. Besides, what is also necessary is the legal protection given to a notary when he gives a report.

### Literature Review

In this part there will be some elaboration on the theories functioning as the "analysis knives" which are intended to "dissect" the problems, especially those related to the horizontal inconsistency among regulations. In connection with this, the theories that will serve as "analysis knives" are the theory about legislation and the theory of legal protection.

**First**, the theory of legislation. Legislation theory, in particular, is a theory that talks about the process of arranging the regulations. In legislation theory, there are some foundations or principles of the legislation of the regulations that if 1 (one) legislation is in conflict with other legislation. The relationship between principles, norms, and regulations can also be seen that if there is a conflict of the regulations, this will be overcome by applying the principle as meta-rules.

Samuel Meira Brasil Jr. states that in law argumentation theory, there is a difference between rule and principle.<sup>2</sup> Conflict of rules is overcome by the principle as meta-rules such as *lex superior* (based on the general hierarchy of law system structure), *lex posterior* (based on the priority of the rule that is applied later), *lex specialis* (berdasarkan spesifikasi aturan), and exceptions. Because a principle is metanorm/rule, then a norm/rule cannot oppose a principle, and if this happens,

a norm or a rule or an agreement that has been made (a contract) will be repealed.<sup>3</sup> B. S. K. Bhandary, K. P. Sharmila, N. S. Kumari, V. S. Bhat, and G. Sanjeev<sup>5</sup>, The principles of legislation cover:

1. *Lex specialis derogat legi generali.* *Lex specialis* originating from Latin words, meaning law governing a specific subject matter. *Lex specialis derogat legi generali* means special rules derogate from general ones or special law repeals general law.
2. *Lex posterior derogat legi priori.* The principle of *Lex posterior derogat legi priori* means that a later law repeals an earlier law.
3. *Lex posterior generalis non-derogat priori specialis* means a later, general law does not repeal an earlier, specialized law.
4. *Lex superior derogat legi inferiori* means a law higher in the hierarchy repeals the lower one.<sup>4</sup>
5. Non-retroactive. The non-retroactive principle means that legislation is not retroactive.

**Second**, the theory of legal protection. Maria Theresia Geme understands legal protection as follows:

“In relation to the country’s action to do something (enacting the country’s law exclusively) with the intention of giving assurance of a person’s or a group of people’s rights.”<sup>5</sup>

## Methodology

The method used in this research is normative juridical, a study that deduction initiates an analysis of the clauses in the legislation governing the above problems. Juridical legal research means that the research refers to the study of existing literature or of secondary data used, while normative research means the legal research aims to gain knowledge about the relationship between the normative regulations with other regulations and application in practice. In normative legal research at first, the secondary data are examined and then it will proceed to Cosmos primary data in the field or on the practice.<sup>6</sup>

## Results and Discussion

Article 17 LPEML in conjunction with article 3 letter b. GR No. 43/2015 states that one of the professions determined to be a complainant and decided to have an obligation to give reports to CFTRA if there are suspicious financial transactions is a notary. On the other side, based on article 4 paragraph (2) in the third paragraph of LPN in conjunction with article 16 paragraph (1) letter f L No. 2/2014 it has also been de-

terminated that basically notaries are obliged to keep everything on the deed he made and all the information obtained to manufacture in accordance with the deed of oath/pledge of office. In this condition, the inconsistency is obvious, which does not give any legal certainty, let alone assurance for notaries in carrying out their duty that what they are doing is lawfully right.

Seeing this condition, in order that legal certainty is fulfilled, which later will give assurance and legal protection to the bearers of the profession who are bound to the official pledge but obliged to do reporting; it is necessary to determine what action should be taken by the profession bearers: reporting a suspicious financial transaction for the reason of subjecting to and obeying the legislation or not reporting because of keeping the official pledge. In order to decide this, it is necessary to do a juridical analysis of the condition which is fit to be suspected that there is a suspicious financial transaction, which legislation to be 'won' and which legislation to be disregarded. The juridical analysis to determine this will be done by looking at the purpose or reason for the articles to be determined in a law, particularly those which set the official pledge, protected interests, understanding the general and specific condition in a financial transaction, and later the principle will be used if there is a horizontal conflict related to the legislation.

The legislation is certainly made and determined with one particular purpose which is connected with the protection of a certain interest. LPN in conjunction with Law Number 2/2014 which arranges a notary's position in which there are specific articles arranging an official pledge is made and determined for the purpose of protecting every side's interests connected with the deed and not protecting public and society's interests.

On the other hand, the purpose of making and determining LPEML in conjunction with GR No. 43/2015 is not only for the parties involved in a financial transaction contained in a deed, but also for the wider-scoped purpose, namely for the sake of the society, nation, and country. In short, 'public interest' is defined as: the importance of the nation, country, and society which the government must realize and use maximally for the people's welfare.

In the global scope, the money laundering criminal act is considered more and more complex, crossing the juridical boundaries with more various modes; and regional and international cooperation is even required in handling this through bilateral or multilateral forums. This

is seen in the fifth paragraph of the general explanation of L PEML which says:

“...To anticipate this, Financial Action Task Force (FATF) on Money Laundering has issued an international standard which becomes the measurement for every country in preventing and eradicating money laundering criminal act and terrorism criminal act, which is known as Revised 40 Recommendations and 9 Special Recommendations (Revised 40 +9) FATF, which is on widening the reporting parties that cover jewel and jewelry/gold and motor vehicles. In preventing and eradicating money laundering criminal act, it is necessary to have regional and international cooperation through bilateral or multilateral forums so that the intensity of criminal acts resulting in or involving wealth in a great amount can be minimized.”

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Based on the fifth paragraph of the general explanation of L PEML, it is more clearly seen that the public interests meant is not only on the jurisdiction of a country but even wider across the country's jurisdiction.

In the condition where it is suspected that a suspicious financial transaction, the condition is no longer a general condition, but a specific one. What is meant by the specific condition is the condition where there is a suspicious financial transaction, in which the wealth used is suspected to come from crime. In this specific condition, a notary, based on Article 17 L PEML in conjunction with Article 3 letter b. GR No. 43/2015 is obliged to give reports to CFTRA. In other words, the suspicion of a financial transaction in which the wealth used is suspected to be the result of a criminal act is a specific condition.

In the analysis related to the general law (*legi generali*) and the specific law (*lex specialis*), it is found out that article 4 paragraph (2) in the third paragraph of L PN in conjunction with article 16 paragraph (1) letter f UU No. 2/2014 is a general law (*legi generali*). The reason is that in principle in a normal condition or general condition, the profession bearers who are bound to the official pledge must do the obligation. In the specific condition in relation to the suspicious financial transaction as the wealth used in the transaction comes from a criminal act, has been arranged in Article 17 L PEML in conjunction with article 3 letter b. GR No. 43/2015 as a specific law (*lex specialis*).

Samuel Meira Brasil<sup>3</sup> Jr. as elaborated in Literature Review basically states that (Conflict of rules) is overcome by a principle of me-

ta-rules, such as by the principle as meta-rules such as *lex superior* (based on the general hierarchy of law system structure), *lex posterior* (based on the priority of the rule that is applied later), *lex specialis* (berdasarkan spesifikasi aturan), and exceptions. Because a principle is metanorm/rule, then a norm/rule cannot oppose a principle, and if this happens, a norm or a rule or an agreement that has been made (a contract) will be repealed.<sup>7</sup>

Consequently, in regard to the inconsistency of the arrangement of the official pledge as elaborated above can be overcome by the principle of *lex specialis derogat legi generali*, which means special rules derogate from general ones or special law repeals the general law, meaning that the specific law is applicable despite its opposition with the general law. The priority given in specific law can be considered right considering that the specific legislation is applied in certain conditions which may not exist if based on the general condition

Based on the legislation, in the perspective of the prevention and eradication of money laundering, LPEML has given legally to the parties that are obliged to give reports but are bound to the regulation concerning the official pledge. Article 29 LPEML states that:

“Unless there is an abuse of authority, a complainant, official and staff cannot be sued, both in a civil and criminal way, for the obligation of giving reports according to the law.”

This article gives a guarantee that if there is a complainant, official, and employee who give reports, they cannot be sued, in a civil or criminal way. Therefore, it can be comprehensible that the sanction which threatens a person who does the obligation of giving reports cannot be applied to him.

As a result, it can be certain that Article 322 paragraph (1) Criminal Code including the sanction which states:

“Any person who with deliberate intent reveals a secret that by any reason of either his present or earlier office or profession is obliged to keep secret shall be punished with a maximum imprisonment of nine months or a maximum fine of nine thousand rupiahs.”

is not applicable for profession bearers who do the obligation of giving reports and in a certain condition deliberately reveals a secret which they must keep because of the position.

In regard to the profession bearers that are given the obligation to give reports, in the perspective of a notary's position as one of the com-

plainants who are also obliged to report, they get legal protection as stated in Article 16 paragraph (1) letter f L No. 2/2014:

“In carrying out his job, a notary must: keep everything on the deed he made and all the information obtained to manufacture in accordance with the deed of oath/pledge of office, unless the statute otherwise provides.”

*Carrying Out  
a Notary’s  
Official Pledge*

This article does oblige a notary to keep everything related to the deed he made, including all the information obtained in connection with the making of the deed. The purpose is none other than protecting all parties’ interests which are related to the deed. However, at the end of the sentence, there is the clause “unless the statute otherwise provides”. Based on the clause “unless the statute otherwise provides”, it can be understood that if there is another law arranging the official pledge, but different from the material stated in article 16 paragraph (1) letter f Law No. 2/2014, which gives an obligation to carry out an official pledge, then the obligation to carry out the official pledge in the condition determined in the other law is not applicable. Moreover, what is meant by the sentence ‘unless the statute otherwise provides’ is the obligation to give reports that go is determined by Article 17 L PEML in conjunction with article 3 Government Regulation Number 43 of 2015 on the Complainant of the Prevention and Eradication of Money Laundering Criminal Act (‘GR No. 43/2015’).

Furthermore, article 28 L PEML states that the obligation of giving reports by the complainant is excluded from the regulation of keeping the official pledge that should be kept by the complainant. This article also gives legal protection to profession bearers who are obliged to give reports but also bound to their official pledge.

## **Conclusion**

1. In the condition where there is a suspicious financial transaction, based on the principle of *lex specialis derogat legi generali*, Article 17 LPEML in conjunction with article 3 letter, GR No. 43/2015 as specific disregarding article 4 paragraph (2) the third paragraph of LPN in conjunction with article 16 paragraph (1) letter f Law No. 2/2014 general law.
2. Article 29 LPEML has given legal protection to complainants who report a suspicious financial transaction to CFTRA. In addition, based on the sentence “unless the statute otherwise provides”, it can be understood that if there is another regulation which ar-

ranges an official pledge, but different from the material in article 16 paragraph (1) letter f Law No. 2/2014 which gives the obligation to do an official pledge, the obligation to keep a secret in the conditions determined in another law is repealed. Article 28 LPEML also firmly gives legal protection to the profession bearers who are bound to their official pledge but obliged to give reports.

## Notes

- 1 Based on Article 1 number 2 Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering Criminal Act, it is said that Center for Financial Transaction Reporting and Analysis which is later referred to as CFTRA is an independent institution formed to prevent and eradicate money laundering criminal act.
- 2 The definition of 'Notary' is contained in article 1 number 1 L PS No. 2/2014.
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- 4 A'an Efendi, Freddy Poernomo, IG. NG Indra S. Ranuh, *Teori Hukum*, Jakarta: Sinar Grafika, 2016, pp. 167-168.
- 5 *Ibid.*, pp. 168.
- 6 Maria Theresia Geme, *Perlindungan Hukum terhadap Masyarakat Hukum Adat dalam Pengelolaan Cagar Alam Watu Ata Kabupaten Ngada, Provinsi Nusa Tenggara Timur*, a dissertation Doctoral Program Science Law Faculty of Law Brawijaya University Malang, 2012, p. 99.
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# Religious-Cosmic Based Philosophical Foundation of Environmental Development Law in Sundanese Local Wisdom

*Mella Ismelina Farmas Rahayu, Anthon F. Susanto, Liya Sukma Muliya*

## **Abstract**

The philosophical foundation of environmental development law in Indonesian society currently is still dominated by western philosophers who are capitalistic, liberalist and individual, who emphasize on human aspect as creatures who are free to exploit their living environment, so that it tends to be anti-ecological. Copious approach on scientific method and rational analytical thinking has emerged anti-ecological attitude. Economic development (consumptive) and infinite growth of technology cause the disruption of the balance of nature, and and it will slowly cause huge damage. That philosophical foundation has dragged human to a cliff and a lowest point of the development of law that merely puts forward regulation aspects and state policy (centralized), through a management model that has the quality of command and control, the policy of environmental development has not seen a chance in local wisdom/culture values, that is religious-cosmic culture in Sundanese community environment.

The philosophical foundation of environmental law which puts forward the local wisdom can be established if there is empowerment movement, massive concern in order to encourage the creation of the concept of equality relation between human and universe, formal aspect of material and substantial aspect in the development of environmental law. It forms the awareness of interdependence on all life



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forms. The philosophical foundation of environmental development law in Indonesia must give back the opportunity for the establishment of the various relations as the form of creation of the better ecological life, that is the relationship between God, Human, and Environmental life. To develop a philosophical foundation of environmental development law which based on local wisdom/culture religious, social and empowerment movement are absolute things.

*Keywords: local wisdom, development of environmental law, religious-cosmic*

*Mella Ismelina  
Farmas Rahayu*

*Anthon F.  
Susanto*

*Liya Sukma  
Muliya*

## **Introduction**

Indonesian environmental development law is still strongly dominated by western mindset/paradigm, under the shade of positivism. The paradigm of environmental development law is still oriented to the formalistic and centralistic effort, with the support of scientific method as well as modern technology, which in the end it directs at capitalism, liberalism, industrialism, and consumerism (*developmentalist*) Fritjof Capra<sup>1</sup>, and it tends to be anti-ecological as it is explained by Fritjof Capra<sup>1</sup> copious approach on scientific method and rational analytical thinking emerge anti-ecological attitude"... "Economic growth (consumptive) and infinite growth of technology can disrupt the balance of nature, and it will slowly cause massive damage" or as it is stated by Gunnar Myrdal, that if "western development theories and concepts are applied it will cause serious consequences<sup>2,3,4</sup>.

The consequences are marked by the number of pollutions and environmental damages in various aspects of life, albeit it is related to meet the life need and human's life. Through the anthropocentric paradigm, hence egoism and centralism are built, that human is everything and all the development activities are intended for human benefits by neglecting the interest of preserving the functions of the environment. In other words, the exploitation and management of the environment that is carried out by humans and merely for their benefits has caused *unsustainability* of environmental functions. It happens because there is a tendency that drains natural resources, and is not accompanied by a culture to protect and utilize, hence the excessive exploitation occurred that lead to the extinction<sup>5,6,7</sup>.

Nowadays, environmental damage is not only occurred locally, regionally, and nationally but it also occurs globally. Global warming, depletion of the ozone layer and acid rain are some of the indications that the function of the environment has been degraded because of the use of fossil fuel that is not environmentally friendly. Environmental damage certainly causes losses to human life and welfare. In addition, it causes a decrease in environmental capacity for the life of human and other creatures. Environmental development becomes unsafe and endangers human's life, due to the broad and permanent impact of excessive and continuous exploitation<sup>8</sup>.

The orientation of environmental development law is eventually degraded on the lowest point in the legal development which merely puts forward the regulation aspects and state policy (centralized) through the management model that has the quality of command and control. Environmental development law becomes oppressive for the people, especially rural or local people because it is impartial and built on the concepts that do not suit their interest. In the end, such development has marginalized and even infringed human rights, and resulted in bad lives of indigenous people and community<sup>9</sup>.

Given the rapid environmental damage rate, its broad impact and effects has caused harm to the public, hence it needs foundational effort to review philosophical conceptions which are paradigmatically able to encourage to improve people awareness and concern within the environmental development law by trying to look at new alternative and promising opportunity, that is balanced alignment for human and environment as well as belief in spiritual values.

In this decade, it began to emerge an idea to return to full ecological awareness which is based on magic and religious values. At this point, religious spiritual aspects hold an important role. For the past thirty years, environmental crisis has been encouraging the process of reforesting religious thought, when the religious thinkers start to respond more focused and increase their concern on fragile, vulnerable and interdependent human life.

This religious perspective coins religious movements and thinking. The theologians and ethicists, as well as philosophers, have moved to review old cultural heritages and reconstruct their holy books and also their old dominant theories, especially to clarify human's responsibility in order to keep the earth and fight for ecological justice. This thinking attempts to put the philosophical foundation which motivates many

scientists, secular environmental thinkers, and environmental activists to look back to the religious values which have mutual purpose and commitment for the betterment of all aspects<sup>10,11</sup>

**A. Problem encountered**

The problem to evolve the more religious concepts of development law and based on local wisdom value is not an easy matter, to change the paradigm that has lived long and dominate the paradigm (State), however, this endeavor continues and must be done continuously, and thoroughly. It is necessary to modify and adapt and reinterpret the development concepts that currently are based on positivism paradigm, as a back-bone of western science development. Environmental development policy must begin to see another alternative outside the domination of western concepts. Therefore, the effort to find a more fundamental principle and philosophical formulation concept can contribute the best solution as an effort and option to get back on the religious life and local people despite it does have to dismiss global aspect. Regulations that rule environmental development law must be reevaluated and the renewal must be the main thing in order to create a better future. People’s understanding becomes an important part that cannot be apart, all of them have to be one unified whole.

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**B. The Virtue/Urgency of the problem**

The urgency or the virtue of this study is linked to the need for establishing philosophical foundation regarding religious-cosmic local wisdom based environmental law. Since it can drive people awareness about the real meaning or environmental development as well as give a better option for environmental development which has been suffering great damage. Human activities, information on technology accelerations and massif production, as well as eroding life ethical values, have threatened human and other creatures’ lives. Besides, the religious concepts which develop in indigenous/ local people become foundational of a more original development that represents “*Indonesians*” and it is expected to change the mindset that has believed in western concepts.

**C. Method and Approach used**

This study applies multi-methods, those are:

1. Philosophical approach: The philosophical approach is used to discover a new way or new problem-solving. Through this philosophical study, it is expected that the issue is studied holistically. Likewise, it is also expected to develop new creativity, especially on the issue at hand. **Philosophical study method** consists of interpretation, induction and deduction, internal coherence, holistic, historical continuity, idealization, comparison, heuristic, inclusive and analogical, and descriptive language.
2. The study also applies a concept approach that is an approach that is carried on as a supportive philosophical approach. The concept is abstract constituents that represent phenomena classes in one field that occasionally refers to universal entities that are abstracted from particular things. The function of the concept is to bring out the objects that attract attention from a practical perspective and knowledge perspective in mind and particular attributes. The steps of concept approach consist of the abstraction process, means selective mental process which dismisses or separates a particular reality aspect from the others; and integrated process, means the combination of units into single thing, new mental entity which is used as a single thought unit (however, it can be broken into components if it is necessary)

## **D. Local Wisdom and Religious conception concerning Environment**

### *1. Local Wisdom Concept*

The term local wisdom is usually/ frequently called indigenous wisdom, traditional wisdom and indigenous inventions<sup>12</sup> indigenous knowledge<sup>13</sup>, *local genius*<sup>14,15</sup>, Eric Hobsbawm and Terence Ranger<sup>16</sup> use the term “invented tradition”. All those terms do not indicate the distinction of meaning, even they are mutually reinforcing. The word indigenous (*indu* and *gignere*) indicate a birth, developing or be naturally generated and genuine (naturally and native) in a territory or area. Uichol Kim and his team<sup>17</sup>, has developed a broader concept regarding the indigenous term, which relates the cultural psychology aspect by trying to understand others within their context even they develop the Cross indigenous concept.

The birth and developing of an idea is an individual creation and invention in society as a response to the needs and interpretation of

internal or external environmental events or phenomena. The fruits of its creation have been tested for its usefulness, socialized and internalized, inherited (institutionalization) to be a habituation or tradition that are lived and believed to be true, so they become steady.

Maryani<sup>18</sup> stated that local wisdom is the peak of cultural excellence which becomes the main identity of the nation. Local wisdom which becomes cultural character has several advantages, those are (1) be able to survive from outside influences, (2) it has an ability to accommodate outside culture elements, (3) it has an ability to integrate outside culture elements into the genuine culture, (4) it has an ability to control, (5) be able to give direction to the cultural development<sup>14</sup>.

Furthermore, Keraf<sup>19</sup> also proposed the meaning of local wisdom as all beliefs, understanding, or knowledge as well as customs or ethics which guide human behavior within their life in the ecological community. Indigenous knowledge encompasses customs, knowledge, perception, norm, a culture that has been mutually obeyed by the society (local) and hereditary live Keraf<sup>19</sup>. The manifestation of local wisdom can take the form of the knowledge system, social system, and culture system as reflected from environment management, a custom that rules a social relationship, and the result of a cultural artifacts such as land use, materials and residential architecture, clothing style, furniture, and ceremonies to take a cycle of life.

To preserve local wisdom, it is frequently familiarized by the term taboo or prohibition; it is something that cannot be done either by the member of a society or outsiders who visits their territory. For instance, the visitors of the Baduy Culture area are not allowed to take anything from the forbidden forest. This taboo works on Baduy people as well as outsiders. The taboo on indigenous people is an effective institution as a social control from various irregularities either internal or external influences. If there is a member of the community who deflects or violates the taboo, the member usually is imposed sanctions, either directly or indirectly.

## *2. Religiosity of Environmental Development*

As briefly stated at the beginning, that the development and the emergence of marches or groups who view and treat this universe as a whole and not partial have been continuing to grow and expand. Even though there are many religious traditions which have many sources, but there are fewer who fully develop systematically envi-

*Mella Ismelina  
Farmas Rahayu*

*Anthon F.  
Susanto*

*Liya Sukma  
Muliya*

ronmental ethics which are relevant to contemporary issues. Lynn white<sup>20</sup>, a historian who was specializing in medieval time, stated that modern science and technology are mutually interconnected contemporary environmental issues.

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There are many things and massive crisis emerge from the issues as mention previously, hence by 1970 an eco-justice movement tried to integrate ecology, justice (society) and religious things express their thought within theological studies, ethics, history, biblical and a general policy that took place in Amerika<sup>21</sup>.

Currently, there are many religious scientific works with an environmental theme. Theologians and ethics experts who have Islamic, Christian, Jewish backgrounds attempt to answer the ongoing crisis. Even, in some cases, they orient to and reformulate the tradition in order to be more consistent with ecological thinking. There are many consensus regarding the importance of religious aspect to deal with environmental problems and it is clearly visible that the struggle to integrate the ecology, justice (society) and faith become a permanent thinking in the future.

A lot of important writings and articles have been developing and reflecting a high commitment from many religious communities who believe in a brighter and sustainable future. Sustainable is a term that evolves either in religious communities or academic scientific communities. In the meaning of religious communities, it frequently reflects theological aspects, as well as the aims and the agenda of the communities. Some thinkers in the field exercise the mandate of environmental development to contemporary sustainable issues.

One of the relevant concepts to this study is “*eco-literacy*”, it is the combination of “ecological” and “literacy. Ecological is defined as “ecological principles-related” whilst “literacy” means “literate” or “a condition that someone understands or comprehend the matter. Therefore, “*eco-literacy*” can be defined as a literate condition, comprehend or understand the way ecological principles work in collective life in the planet earth.

“*Ecoliteracy*” is a fundamental or the first step to developing sustainable communities. Then, the second step “*ecodesign*” (ecology designing pattern) and the third or the last step is the formation of sustainable communities. The concept of “*ecoliteracy*” can be defined as a strategy to drive people in order to embrace new perspective over the reality of their collective life in the earth planet and to have necessary updates.

It is based on the understanding that collective life in the planet earth must be viewed not as mechanistically but ecologically and systematically. Hence, the things that must be understood from “*eco-literacy*” is the wisdom of nature which is depicted by Fritjof Capra<sup>1</sup> as the ability of planet earth’s ecologic systems to organize itself through smooth and complex ways. The ways of these ecologic systems to organize itself has been reliable to prevent the life in the planet earth<sup>22</sup>.

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## **A. The Cosmic Religious Sundanese Local Wisdom as the Concept of Environmental Law Development**

### *I. Sundanese Culture Wisdom*

Sundanese Culture Wisdom is a local cultural wisdom which can simply be interpreted as local genius, indigenous knowledge, a specific community or local community (local, regional, wewengkon), such as the indigenous knowledge of people living in Ujung Berung, Cililin, Pemengpeuk, Ciomas, Kampung Kuta, Kampung Naga, Baduy, Bali, Asmat, Indian Amazon, Aboriginal, and so on.

Sundanese Culture Wisdom is the indigenous knowledge in the effort of restoration and preservation of both natural and artificial life resources; and the environment, the place for living. In West Java, the knowledge in concern is the indigenous knowledge of the Sundanese community as the majority population of West Java.

Local wisdom is a form of environmental wisdom that exists in social life in a place or region. It refers to specific locality and community. According to Keraf<sup>9</sup>, local wisdom is the values or behavior of local people living in interacting with the environment where he lives wisely. Therefore, local wisdom is not similar at different places, times and ethnic tribes. This difference is triggered by challenges of nature and different necessities of life, thus, one’s experience in meeting the needs of one’s life leads to various systems of knowledge related to both environment and social condition. As one form of human behaviors, local wisdom is not a static entity rather dynamic over time, depending on the orders and socio-cultural ties exist in a society.

Meanwhile, Keraf<sup>9</sup> asserts that local wisdom is all forms of knowledge, belief, understanding or insight and customs or ethics that guide human behavior in life in the ecological community. All forms of local wisdom are lived, practiced, taught and passed down from generation to generation as well as shaping human behavior patterns towards

their fellows, either natural or occult issues. Furthermore, Francis Wahono<sup>23</sup> explained that local wisdom is the intelligence and management strategies of the universe in maintaining the ecological balance that has been tested for centuries by various disasters and obstacles, also negligence of humans. It does not only concern on ethics, but also norms, actions and behaviors, so that it may become a religion that both guides people in attitudes, actions in their everyday life and determines the further human civilization.

As understood, in adapting to the environment, the community acquires and develops a wisdom in form of knowledge or ideas, customary norms, cultural values, activities, and equipment as a result of abstraction in managing the environment. Often their knowledge of the local environment embodies as an accurate guide in developing life in their neighborhoods. The diversity of adaptation patterns to the environment that exist in Indonesian society has passed down from generation to generation, become the guidance in utilizing natural resources. Public awareness to preserve the environment can be effectively grown through cultural approaches. If the awareness can be improved, then it will be indeed a big force in environmental management. In this cultural approach, strengthening of the social capital, such as socio-cultural institutions, local wisdom, and norms related to the preservation of the environment is crucial to be the main base.

Relevant and Underlying Views on the understanding of the environment in Sundanese custom are below:

- a. **UNDERSTANDING OF NATURE.** Sundanese society has a philosophy, that man and nature is a unified entity. Man is a part of the sub-system of nature “*seke seker*” to have a very strong sense and inner as well as physical bond.
- b. **UNDERSTANDING OF MOUNTAIN.** Besides viewed as the main life, resources, the mount is also believed to be one of the places that give the element of the human body system in the form of “essence” transformed through “water”. Therefore, naming the mountains is the same as naming parts of the human body.

The above views are in accordance with the concept of ecology in which the reciprocal relationship between humans and the environment is closely related to the pattern of development of a region where everything is done to the environment will affect back to the surrounding ecology, that can be positive and negative depends on how

management is applied to maintain ecological balance. Human beings have a great responsibility and influence on surrounding environmental changes. Technological developments and improvements over time are able to make changes in land use patterns, community growth, urbanization, agriculture, economy, and socio-cultural conditions.

Indigenous people's wisdom against nature can still be discovered among Kasepuhan or Baduy people in Mount Halimun ecosystem. Amidst the threat of environmental destruction by irresponsible parties, Baduy people are well known for maintaining traditional wisdom and proven to be able to save the natural surroundings. Baduy people have an understanding that the forest as a protected area is a life, and classified into 3 classes, namely *leuweung titipan*, *leuweung tutupan*, and *leuweung garapan*. Keraf<sup>9</sup> continued, customary law or local wisdom has advantages compared with the recent ability possessed. Nature is like a human formed from the system. In local wisdom, water becomes the center of life (*sanghyang udel*) like a body-centered on the stomach in the middle. Also, springs are called as the *sanghyang pertiwi* because it comes from the bottom of the earth.

Mella Ismelina  
Farmas Rahayu

Anthon F.  
Susanto

Liya Sukma  
Muliya

## 2. Patanjala Method/Concept and Watershed

Wisdom of Sundanese Culture (KBS) and Patanjala method are the activity base from up to downstream in West Java. KBS seems to be one of the approaches in preserving environmental function as it adjusts Indonesian characteristics and the Patanjala method is applied because this method refers to the concept of the universe (religious cosmic) so that the activities conducted are suitable with the law of nature.

Based on KBS, the development efforts of environmental law is supposed to rely on Watershed (DAS) concept or Patanjala. Patanjala is derived from 'Pata' means water and 'Jala' means river/region. It teaches about the region (awareness of space) as a strategic foothold in determining the policy (regulations). The concept of river taught in patanjala concerns on regional management as a whole, integrated between up, middle and downstream (land and sea).

Patanjala teaches institutional patterns based on the division of roles or tasks rather than power, namely Rama, Resi and Prabu (Queen). The philosophy of patanjala lectures that managing environment or region should build upon the logic of water (river) in which already contained values of knowledge that have been stored thousand, even

million years ago and is not limited to understanding of managing in a narrow sense (waste, garbage, borders, slum houses around the river), but more widespread is managing the governance of the region, from the society, the state to the world order.

Terminologically, Patanjala means river (found in an ancient manuscript of Galunggung). In Sundanese cosmology (*Baduy Society*), called Mount Pangauban. Mount as a communal entity (*kanagaraan-kabala-araan-togetherness*), and pangauban is the territorial or river boundary by river or water. In the *Patanjala* method, the river is believed to be a system or pattern of environmental management that represents the regular pattern of space, time and activity within. The space, time and activity in patanjala term (Sundanese) are called Regional Governance, *Tata Wayah and Tata Lampah*.

In general, the Patanjala formulation including *KABATARAAN*, *KADEWAAN* and *KARATUAN*. *Kabataraan* is the stage of the introduction of society to the origin (Sundanese: *wiwitan*) of their territory which indeed their history. The origin of this region is related to the initial law called *tangtu* (certainty). *Tangtu* is believed to be the natural law which represents the divine law, thus, it is considered a certainty. The law of origin covers territory (Sundanese: *leuweung*), *titipan* (prohibitions), *tutupan* areas (protector or buffer) and *baladahan/bukaan* (utilization or cultivation). Based on the condition of the region, the community understands what really has to do with the environment. *Kadewaan* is the stage of how society digs and re-establishes its knowledge system in environmental management. This stage guides people to rediscover their knowledge system in responding to the demands of the environment. This stage includes *Tapa Di Mandala Salira*, the strengthening of individual knowledge, *Tapa di Mandala Balarea/Nagara*, strengthening of communal knowledge (among individuals) and *Tapa di Mandala Buana*, communal strengthening in managing wider environment (between countries/ universe). Finally, *karatuan*, the stage when the society performs everything in accordance with the mandate (study) of *kabataraan* refers to the discovered system of knowledge (*kadewaan*).

A sample, in brief, is in Ciomas area and under the authority of the elders, Siti Maryam (Mak Iyam), Ciomas residents currently make efforts to preserve their customs that are basically the local wisdom they have. They designate *Leuweung ban* (forbidden forest) in Sawal mount as a place that must be properly guarded and its manners to adhere as part

of the system. This mount is the water spring of Cidarma watershed that fulfills the needs of the community, including Ciomas village community.

In addition, water becomes an everlasting source for the needs of human life. While, land is the material aspect of the living things, the example of 'homeland' (tanah air) concept, Water is the inner aspect while the soil is the material aspect so that they are interrelated one another to form the natural system. Similarly, the country (negara) concept which associates 'Naga' (dragon) as a winding river and 'ra' as light. It is the standard learned by humans as part of the Environment.

*Religious-Cosmic  
Philosophical  
Foundation of  
Environmental  
Development  
Law*

## Conclusions

The philosophical concept of the local wisdom of Sundanese is unique, yet it reflects the holistic relationship between God, mankind and his environment. The developed concept can provide a new vision of an effort to develop a more religious environmental law, also promising life and togetherness. We, however, should slowly begin to break away from the paradigm of positivism (Western-centric) and need to develop a more adaptive model for Indonesian context. Environmental law development needs a religious concept that awakens us all, that the development takes hard and smart work by developing environmental sensitivity based on morality for the future of environmental law development in the Indonesian context.

Development of environmental law based on local concepts and religious values must be massively and systematically driven to address the more concrete legal development areas. First, the general policy aspect concerning changes in various products of legislation in Indonesia. Second, the development of facilities that are more human and eco-friendly facilities and infrastructures. Third, the morality development of law enforcers based on spiritual values and local life aspects, and finally the legal culture of the society that must be able to maintain the continuity of the relationship between the life of the God, man and his environment.

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Mella Ismelina  
Farmas Rahayu

Anthon F.  
Susanto

Liya Sukma  
Muliya

# Use of Non-Disclosure Agreement as Legal Protection in Trade Secrets to Investment Security

*Ranti Fauza Mayana Tanwir, Daniel Hendrawan*

The world of investment and business is growing very rapidly. These developments occur both in Indonesia and internationally. Many investment actors want to keep the secrecy of the products or services they trade. Most of the things that these investors have are a novelty, but there are also not necessarily new things but not many people who understand and understand how to get the results obtained. For that reason, things like this need to be protected so that the creators of those things remain protected. To develop this secret business needs to be protected without being registered, in Indonesia, it is known as a trade secret. In practice, however, sometimes the secret trade-trafficker must share this secret with others in order for the undertaken business to flourish. The protection of this secret shall be made by making a nondisclosure agreement in which this Agreement is required not to notify anything contained in the business of either the business or the investment and the contents of the agreement to the other party.

*Keywords: trade secrets, non-disclosure agreement, investment*

## **Introduction**

Indonesia has a significant economic improvement. This economic improvement is driven by many factors. One of the major economic improvements is a large number of investments in Indonesia. Capital investment is a very large amount due to the flow of globalization.



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In the implementation of the human economy are interconnected with each other. This is because humans are social beings. Humans are social beings so that humans cannot live without others and also make these humans interconnected with each other. Relationships that arise and are created between people can occur with various forms. The relationship is made from family, relationships between neighbours, friendships, to business relationships that can be mutually beneficial to each human being both spiritually and physically. This relationship will gradually cause problems because of frequent dissent. In the case of any disagreements in any activity, this matter must be resolved immediately. Solving this problem is done with the making of regulations so that can be completed properly.

Ranti Fauza  
Mayana Tanwir  
Daniel  
Hendrawan

In carrying out the investment required a rule to ensure the legal certainty of the parties so that the parties do not do things that could harm the other party. In addition to the arrangements issued by the competent government, as well as the parties involved in the matter of such investments may create their own rules of action among the parties by making agreements. The covenant is defined as the rules of the game that are made private among themselves.

In the Civil Code of the Republic of Indonesia article 1338, it is stated that All agreements made legally in accordance with the law shall apply as a law to those who make it. In article 1338 it is stated that it becomes law so as to be a *lex specialist* in the inner arrangement to keep individuals or parties involved in arrangements or agreements made in the agreement so that the parties do not disagree or disagree in interpreting something. Agreements can also resolve disputes that occur to make business or investment work well.

Agreements are formed of various types. There are several agreements that already exist in the Indonesian Civil Code, the law in Indonesia refers to the agreement as a named agreement because it is regulated in the Indonesian Civil Code. In addition to the named agreement, there is also an unnamed agreement. An unnamed agreement is where this agreement is not mentioned in the Indonesian Civil Code.

One of the things that are agreed upon in the cooperation agreement is on the issue of intellectual property. Intellectual property is something very valuable. Increasingly, intellectual property is increasingly valuable. Where the value of this intellectual property can increase the value of one's company. Many of these types of intellectual property are an added value to a business.

One of intellectual property is trade secrets. Trade secrets are the most unique intellectual property of all kinds of intellectual property. The owner of this trade secret never registered his trade secrets. The law also does not regulate the registration of trade secrets. This is done because all trade secrets are confidential. It is the nature of this secret that is protected by the owner of a trade secret so that no other party knows it.

In the business process, trade secrets are not always kept confidential. This is done because, in its implementation, the owner of the trade secret must share this trade secret with his business partner. Whether it's opening a new branch or opening a franchise unit. This whole can pose legal problems. The legal problem that arises is about the legal protection of these trade secrets. Legal protection from trade secrets is to guarantee the continuity of investment in business because the owner of this trade secret has given all business both capital and mind to create this trade secret.

### **Method**

In this study using normative juridical research method in which this research uses the legislative rules as the main ingredients analyzed with various literature as support to examine the legal protection in using trade secrets in investment to protect business actors so that the data continue to develop his business.

### **Trade secrets in Indonesian legal arrangements**

Trade secrets were not new to the business world, before the nineteenth century, the issue of secrecy, especially with regard to company secrets, had received not less significant attention by the courts, but this had not been specifically regulated. Where the arrangement is generally regulated in the law of confidential. The law of secrecy relates to the protection of the secrets of the secrets of the trade, private secrets or of the state government.

The basic reasons for the establishment of this law of confidentiality may prevent a person from leaking information provided to him in confidence, with a firm or covert understanding that the information should not be leaked to other parties or misused by the recipient of the information. It is also the basis for the need to protect the Trade Secret itself. Modern secrecy laws began to develop in the early nineteenth century, in which they have been able to produce special

rules about secrets or information about trade and the interests of the State.<sup>1,2,3,4</sup>

Consideration of the formation of Law of the Republic of Indonesia No. 30 of 2000 on Trade Secrets are:

- a. that in order to promote an industry that is able to compete in the scope of national and international trade it is necessary to create a climate that encourages the creation and innovation of society by providing legal protection to the Trade Secret as part of the Intellectual Property Rights system;
- b. that Indonesia has ratified the Agreement Establishing the World Trade Organization which includes Agreements and Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) with Act Number 7 of 1994 so that it is necessary to stipulate provisions concerning Trade Secrets;

*Use of  
Non-Disclosure  
Agreement as  
Legal Protection*

At the cassation examination, in the case of Lindenbaum vs. Cohen, Lindenbaum was won. Where Hoge Raad declares that the act of Cohen can be included as an unlawful act in accordance with Article 1365 of the Indonesian Civil Code, for having raped a legal right of another person in contradiction with propriety or morality or with propriety in society with no regard for the interests of others.

The verdict of Hoge Raad The Netherlands dated January 31, 1919, has provided a broad understanding of the unlawful act, namely that the disclosure of the information turned out to be a disclosure that could cause a loss (commercially) against the owner of the information.<sup>5,6,7,8</sup>

The Big Indonesian Dictionary explains what is meant by trade secrets, i.e., the secret is something that is deliberately hidden so that no one else knows, whereas trade means work related to selling and buying goods for profit. Trade secrets are information that is unknown to the public in the field of technology and or business, has economic value because it is useful in business activities, and kept confidential by the owner of trade secrets.<sup>9</sup>

Trade secrets in foreign terminology are referred to by various terms, including trade secret, know-how, or undisclosed information. The amount of mention of the term trade secret because there is no single unity in defining trade secrets.<sup>10</sup>

The Government of Indonesia shall make arrangements concerning its trade secrets which are regulated separately; the arrangements can be found in the Law of the Republic of Indonesia Number 30 the Year

2000 on Trade Secrets. The definition of trade secret is stipulated in Article 1 Sub-Article 1 of Law Number 30 the Year 2000 which states that “trade secrets are information that is not publicly known in the field of theology and/or business, has economic value because it is useful in business activities, and is kept confidential by the owner of trade secrets

A trade secret shall be protected if such information is:<sup>11</sup>

- a. Confidential, meaning that the information is only known by certain parties or not publicly known by the public. Based on this, the owner of a trade secret must be able to prove that the information is only known by the company and not information that is of a general nature.
- b. Having economic value means that the nature of confidentiality of information can be used to run business activities that are commercial or can increase economic benefits.
- c. Information is deemed to be kept confidential, the owner of a trade secret must maintain confidential information from other parties that can harm his interests. The trade secret law provides an explanation of the owner of a trade secret who has maintained his trade secrets if he has taken appropriate and appropriate steps. But the law does not elaborate on that.

The most important thing of the case is that the court declares that action is deemed to have violated the Trade Secret if it meets the following elements:<sup>12</sup>

1. That information has a confidentiality value.
2. The parties have an obligation to keep the information confidential.
3. The existence of an element of action in the form of the act of using the information against the law that is detrimental to the owner of the information. The Defendant, in this case, was declared to have violated the Trade Secret for violating his obligation to maintain the confidentiality

Trade secrets cover several things, namely: confidential data, information, or compilation of information used in research, business, trade or industry. This information can be in the form of confidential technical and scientific data, as well as business, commercial or financial information that is not known to the general public and is useful for a company and provides a competitive advantage for someone who has the right to use it. The following scope in trade secrets:<sup>13</sup>

- a. The subject of trade secrets is the owner of trade secrets. The owner of a trade secret has the right to:
  1. Using his own trade secrets.
  2. Licenses to other parties or prohibits other parties from using trade secrets or disclosing trade secrets to third parties for commercial purposes
- b. The object of the scope of trade secrets. According to the Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secrets Article 2, the object of the scope of trade secrets includes production methods, processing methods, sales methods or other information in the field of technology and / or businesses that have economic value and are not known by the general public.
- c. Length of protection, protection of trade secrets does not have a protection limit. In Article 4 of the Law of the Republic of Indonesia, Number 30 of 2000 Concerning Trade Secret The Trade Secret Owner has the right to:
  1. using his own Trade Secret;
  2. grant a License to or prohibit other parties from using the Trade Secret or otherwise disclosing the Trade Secret to a third party for commercial purposes.

Ranti Fauza  
Mayana Tanwir

Daniel  
Hendrawan

Article 5 of the Law of the Republic of Indonesia Number 30 the Year 2000 Concerning Trade Secrets is stipulated in several ways in which the right of trade secrets in which its redemption shall be accompanied<sup>14</sup> by documents of transfer of rights<sup>15</sup>. Ways to be able to switch trade secret rights are by:

- a. inheritance is the *Nomina* (noun) process, manner, the act of inheritance or inheritance<sup>16</sup>
- b. grant;  
Etymologically the word grant is the *masdar* form of the word *wahaba*, which means gift.<sup>17</sup> While the grant by the term is the principal contract of the matter, the giving of another's possessions while he is still alive without reward.<sup>18</sup>
- c. will;  
The definition of a will can be known from Article 875 BW, which states that "a will is a statement that contains a statement about what he wants or happens after he dies and can be revoked by him."<sup>19</sup>
- d. written agreement;

The term agreement is often referred to as the consent, which comes from the Dutch language *overeenkomst*. According to Article 1313 of the Civil Code (Civil Code), the meaning of the agreement is: “An act by which one or more persons commit themselves to one or more persons.”

- e. other causes justified by legislation such as court decisions pertaining to bankruptcy

### **Non-disclosure agreements as protection of trade secrets**

R. Subekti<sup>19,20</sup> explained that the agreement is an event where a person promises to one person or where two people promise to do something.<sup>21</sup> According to M. Yahya Harahap, the agreement means legal relations concerning the law of wealth between 2 (two) or more people, which gives rights to one party and obligations to another about an achievement.<sup>22</sup>

In detail, the agreement contains the following elements:<sup>23</sup>

- a. *Essentialia* is an element that must absolutely exist for an agreement to occur. This element must absolutely exist so that the agreement is valid, is a legal requirement for the agreement. The *essentialia* element in the treaty represents the provisions of achievements that must be performed by one or more parties, reflecting the nature of the agreement, which distinguishes them principally from other types of agreements. This *essentialia* element is generally used in providing formulation, definition, or understanding of an agreement.
- b. *Naturalia*, the element typically attached to the covenant, is an element which is not specifically agreed upon in the covenant by itself is considered to be in the covenant because it is inherent or inherent in the covenant. The *naturalia* element must be in a certain agreement after the *essentialia* element is known for certain. For example, in the agreement that contains the element of buying and selling *essentialia*, there will be *naturalia* element of the obligation of the seller to bear the material sold from hidden defects. In connection therewith, the provisions of Article 1339 of the Civil Code shall apply: The treaties shall not be binding only for things expressly stipulated therein, but also to all things which by nature of the treaty are required by decency, custom, or law invite.<sup>24</sup>
- c. *Accidentalialia*, which is a complementary element in a treaty, which are provisions which can be regulated in a distorted man-

ner by the parties in accordance with the will of the parties, is a special requirement specified jointly by the parties. Thus, this element is essentially not a form of achievement that must be carried out or fulfilled by the parties.

The legal terms of the agreement can be found in the provisions of Article 1320 of the Civil Code which states that: For the legal requirements of the agreement, four (4) conditions are required:

- a. Agree to those who commit themselves
- b. The agreement means the conformity of the statement of intention between one person or more with the other party that entered into an agreement. According to Subekti<sup>19</sup>, what is meant by agreeing is that the two subjects who entered into the agreement must agree, agree or agree on the main matters of the agreement.<sup>20</sup>
- c. Skills in which the person is required to be authorized, adult and not under control
- d. A certain thing is there is a thing that is agreed
- e. Causa is halal wherein the causa does not violate the law, public order, and decency

As for more specific trade secrets, trade secret protection in cooperation agreements for investment can be done by entering a clause of the confidentiality agreement or non-disclosure agreement in the Cooperation Agreement as legal protection for trade secrets.

Protection of confidential information provided and what is obtained must also be protected by confidentiality. Secret information is information that is not open to the public, in the sense of an outsider and is not secret to those who are directly involved with the existence and use of the information itself, which in many terms is categorized as an insider. The nature of the confidentiality contained in such information is entirely subject to the agreement of the parties based on the negotiations made, as well as on the object or subject matter to be arranged by both parties.<sup>25</sup>

Non Disclosure Agreement is a black-and-white cooperation agreement containing a statement that it is not allowed to cite or notify the contents of a job to an unrelated party to the agreement. So, if we accept a job that includes NDA, we are strictly forbidden not to share stories about the work with others.<sup>26</sup>

To find out whether information is a confidential information, the information can be tested through the following measures:<sup>27</sup>

- a. Level of Confidentiality  
First of all the information must be measured to what extent the information is known by the outside. Here, the owner of the confidential information must be able to prove that the information is only known by him and not general information and to what extent and how the information is known to others related to his or her business activities.
- b. Engagement with Employees  
To what extent the information is known by employees within the company and how it affects the company's business and to what extent this information will benefit the other party if it is leaked to a third party. The size of a third party is possible to make a profit if the secret falls into his hands is a condition that the information can be qualified as confidential information.
- c. Actions to Maintain Confidentiality  
The extent to which the information owner seeks to maintain the confidentiality of the information. Efforts to maintain this confidentiality are mandatory because acts that are negligent can cause the secret owner to lose his rights.
- d. Value Information For Competitors  
The extent to which the information affects competitors if leaked, whether the information will provide the possibility of competitors to gain more profits or may cause the owner will lose the proper profits.
- e. Level of Protection and Commercial Value of Information  
The extent to which efforts or funds are spent to develop and maintain that information. A person who claims to be the owner of a trade secret must also be able to prove that the information is the result of his or her thinking and indicate an attempt to keep his secrecy.
- f. Difficulty in obtaining information  
To what extent is the difficulty of obtaining and possessing that information and to what extent is the difficulty if based on that information others are doubling the outcome of the information. Should be, the information is very difficult to be tapped or duplicated because of the sincerity of the owner to keep the information confidential.

## Conclusion

Implementation of the cooperation agreement is very important in investment. Within investment, there are many things that must be regulated to protect both parties. This protection is intended for the parties in the cooperation agreement to obtain profit and comfort in conducting investment. One that needs to be protected is about trade secrets. There are so many things that include trade secrets in a business deal. Protection in an agreement for this trade secret is to create a non-disclosure agreement. In this non-disclosure agreement, parties can ensure good security upon termination until the agreement is finalized that the parties to which the treaty agrees shall not be informed of this matter.

Ranti Fauza  
Mayana Tanwir  
Daniel  
Hendrawan

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# The Force of Strategic Infrastructures

## The Role of Public-Private-Partnership to Strengthen Sustainable Developments in Indonesia

*Prita Amalia, Danrivanto Budhijanto*

### **Abstract**

The Republic of Indonesia as greatest archipelago state in the world with over 260 million people, facing various of challenge in the infrastructure sector. Nowadays, the growth of infrastructures has been the focus of the Indonesian government. Infrastructure means not only for transporting people, but also goods and services including information. Indonesian government scheme to build huge numbers of infrastructures such as road, highway road, bridge, and airport also broadband networks. President Joko Widodo as Indonesia President, in every presidential speech always mentioned and invited numbers of investor from other countries to invest in Indonesia to support Indonesia Infrastructure. To build numbers of infrastructure, Indonesia could not only rely on financial comes from the tax income or fiscal. It also could be realized by the cooperation between public and private entities, namely Public Private Partnership (PPP). A strategic PPP approach can potentially mitigate the overruns and schedule delays that plague traditional infrastructure project delivery by clearly delineating governance, allocating shared risk, integrating resources, applying best practices, and establishing a lifecycle– the long perspective of costs and accountability. Various infrastructure projects in Indonesia based on the PPP

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Framework. Indonesia Government has numbers of policy to support this framework such as Presidential Regulation No 38/ 2015 about the Public-Private Partnership for Infrastructure Project and President regulation No 58/ 2017 about The Accelerations National Strategic Project. The purpose of this research is to have legislation and regulation framework as a platform the Public-Private Partnership in Indonesia, and identified the potential issues with mitigation action for Indonesia as developing countries in implementation PPP for an infrastructure project to triumph sustainable developments in Indonesia.

*Keywords: infrastructure, public-private partnership*

## **Introduction**

Indonesia is a big country with a high economic growth target in order to face global competitiveness. However, Indonesia has not achieved the ideal economic growth target in order to achieve the classification as a developed country in 2025. One of the barriers that Indonesia's government is currently working on is infrastructure development because infrastructure growth gives impetus to the economic growth of a country, This is a reason the government under President Joko Widodo has started to accelerate infrastructure development<sup>1</sup> focusing on investment and regulation.

The Government set targets to build approximately 788 km of the road by the end of 2017, since the 2015-2016 completion that built 1845 km of road. In 2019, Bridge development will be 29,8 km, from 2016 completion of 14 km in the housing sector. The government will develop high rise housing, private and housing for low-income community<sup>2,3</sup>. Not only infrastructure development such as road but also telecommunication in a remote area. In 2017, President Joko Widodo and Vice President Jusuf Kalla initiated the "Expressway of Information" in accordance with their governance mission to focus on infrastructure development in telecommunications and to ensure the even spread of telecommunication services. Under the "Expressway of Information", the government expected to make the whole of Indonesia much more closely linked. The Palapa Ring<sup>4</sup> Project is one example of infrastructure development projects initiated by the government in the telecommunications sector.

Telecommunications infrastructure development gives positive impetus to the distribution of information and communication all over Indonesia. The massive investment made by the government to build

the Palapa Ring is one of the efforts to ensure the best high-speed internet connection all over the country. The Palapa Ring Project will establish broadband in 57 districts and cities<sup>5,6</sup>.



Figure 1. Palapa Ring Project is an infrastructure development project to establish national fiber-optic network backbone that is projected to enhance the spread of broadband access, additionally to strengthen 4G network which also one of the main concern of government in infrastructure development in the telecommunication sector. Currently, 58 districts or cities in Indonesia already receive sufficient telecommunication services. Source: Kominfo <sup>5</sup>

One of the obstacles to Indonesia’s infrastructure development is the shortage of funding for the project, as part of the preparation process. The infrastructure development project needs a relatively high level of funding and needs to be sustainable. Meanwhile, there is also competition among countries in order to obtain right amount of international investment for the infrastructure project that relatively expensive. In the 2017 state budget, the amount of funds that were allocated to infrastructure development is Rp.194,3 trillion and government only provided 17,6% of funding<sup>7,8,9</sup>. It clearly shows the urgency of sufficient funding in order to advance infrastructure development. This issue has to be resolved with an increasing amount of funding from a deficit budget and other source of funding such as cooperation with national and international private sector. Since the state allocation budget is far from the expectation, the only feasible option

is, therefore, to intensify cooperation with the private sector through Public Private Partnership (PPP). Nowadays, most of the infrastructure development projects in Indonesia are conducted and offered under Public Private Partnership.

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Following with this condition, private enterprises in Indonesia have an important role as well as a huge responsibility in infrastructure development. The Rp. 1.974 trillion from the infrastructure budget Rp. 4.700 trillion in the 2015-2016 period, shows the relatively high portion of private entities<sup>10</sup>. It means cooperation with private enterprises is needed to fill the deviation in the infrastructure budget, and this could be solved with public-private partnership.

The government of Indonesia provides any facility to make public-private partnership work effectively in Indonesia and also important for Indonesia. In 2017, the Ministry of National Development Planning/National Development Planning Agency released the Public-Private Partnership (PPP) Book 2017<sup>11</sup> that contains a list of infrastructure development projects that will be conducted under the PPP scheme. The Ministry invites international investors to participate and ensures all investors that all government projects under the PPP book 2017<sup>11</sup> will be conducted in cooperation with private enterprises. Another government office concerned with PPP is Indonesia's government formed PPP Office Government of Indonesia coordinating with National Development Planning Agency Ministry for Economic Affairs, Ministry of Finance, The Investment Coordinating Board of the Republic of Indonesia, National Public Procurement Agency, and Indonesia Infrastructure Guarantee Fund.

With regard to the infrastructure development in Indonesia, and also follow with the development of the PPP framework, the study related PPP as a problem solving for infrastructure funding become very important. Lawyers nowadays should be familiar with this scheme and also understand the regulations on PPP for infrastructure development. This article will try to elucidate the extent to which Indonesia regulates the PPP framework, and has the necessary legislation in place. It also identifies the potential challenges for Indonesia as a developing country in the implementation of PPP for infrastructure projects designed to strengthen sustainable development in Indonesia.

### **The definition of public-private partnership**

Public-Private Partnership is one of the alternative infrastructure funding that currently happening widely in Indonesia. In infrastruc-

ture funding, PPP provides four funding option based on the source of the fund. Those four infrastructure funding comprise of central government funding through national budget, local government funding through local budget, state-owned enterprises fund, and lastly Public Private Partnership fund with central government and state-owned enterprises fund private-owned enterprises.

Although Public Private Partnership is known since 2005, 10 years later Indonesian government finally use alternative infrastructure funding in 2015. Through government regulation number 38 the year 2015 about Public Private Partnership. PPP defined as cooperation between public and private in the process of infrastructure development for the public purposes, based on the specifications made by the Minister/ Head of Agency/ Head of Local Government/ State Enterprises/ Local Government Enterprises, with the whole or partly use the sources from the private entities and consider the risk between the parties.

Cooperation between private and public sector vitrually have been known and applied for a fairly long time ago in terms of infrastructure development. History shows that infrastructure development will also increase economic development, one of the examples show that in the 1800s in the industrial revolution era. Transcontinental Railway in the United States, the British and Japanese Railway system project indicate that project mentioned above had become the backbone of economic activity continuance in that era. Additionally, Third railway development involving numbers of the party that indicate similar trend<sup>12</sup>. PPP framework considered as one of the method to decrease the investment gap in infrastructure development in various countries. PPP framework has to be supported with adequate law system from procurement to the dispute settlement mechanism.

The Indonesia Government has been promoting the exercise of Public-Private Partnership (PPP) the past few years. Throughout history, governments have used such a mix of public and private cooperation to further develop their country Dorthea Greiling and Arie Halachmi<sup>13</sup>. PPP comes up to the surface when people start to realize that a country has a limited source to build infrastructures and social services while the demand of its presence is very high. The development of countries infrastructure cannot keep up with its people's demand if they depend solely on countries fund. It needs an external source of fund to accelerate the development of infrastructure and social services. PPP phenomenon has been with us for a long time. The origin of PPP can be trace back until the early 1990s. The first phrase became used by a spe-

cialist audience in the 1970s, and books were being written about such partnerships even in the 1980s, although it was the 1990s before it was widely recognized, when the Private Finance Initiative was launched by the John Major administration in the UK, and the acronym 'PPP' became common currency<sup>13</sup>.

There is no consensus of how to define PPP<sup>14</sup>. However, PPP can be defined as a cooperative arrangement between two or more public and private sectors typically of a long-term nature which covers, but not limited to risk allocation, funding, arrangements, and transparency requirements<sup>15</sup>. PPPs often formed in a contract between a public sector **authority and** private entities, in which the private entities provide a public service or project and assumes substantial financial, technical and operational risk in the project. According to the World Bank PPP<sup>16</sup> refers to arrangements, typically medium to long-term, between the public and private sectors whereby some of the services that fall under the responsibilities of the public sector are provided by the private sector, with clear agreement on shared objectives for delivery of public infrastructure and/ or public services. In another definition, the World Bank and other Institutions adopt a broader view to defining PPP as a long-term contract between private entities and a government entity, for providing a public asset or service, in which the private entities bear significant risk and management responsibility, and remuneration is linked to performance<sup>16</sup>.

There are two types of how PPP stream revenue can benefit the private sector. In some types of PPP, the cost of using the service is borne exclusively by the users of the service and not by the taxpayer<sup>17</sup>. **In other types, capital investment is made by the private sector on the basis of a contract with** the government to provide agreed services and the cost of providing the service is borne wholly or in part by the government. According to Weimer and Vining<sup>18</sup>, "A PPP typically involves a private entity financing, constructing, or managing a public service or project in return for a promised stream of payments directly from the government or indirectly from users over the projected life of the project or some other specified period of time"<sup>18</sup>. When John Major launched the PFI in 1992, it proved to be controversial. Been attacked by the opposition party saying "apparent savings now could be countered by the formidable commitment to revenue expenditure in years to come"<sup>13</sup>.

Nowadays, the PPP framework is become more popular for the infrastructure project, since this framework can give the benefit not only

for the private sector but also for the public sector. PPP seems will replace the traditional method for the contracting for public services, which is usually conducted through competitive tendering<sup>5</sup>. Another definition is stated by Weimer and Vining<sup>18</sup>; “ a PPP Project generally involves the design, construction, financing, and maintenance (an in some cases operation) of public infrastructure or a public facility by the private sector under a long terms contract”<sup>18</sup>. In another way because sometime this collaboration will establish a new organization, so the PPP some time would be like some new institution or organization, consist of public and private sector<sup>5</sup>.

Dutch Public Management Scholars, Weimer and Vining<sup>18</sup>. They defined PPP through an institutional lens, cooperation of some sort of durability between public and private in which they jointly develop products and services and share risks, costs, and resources which are connected with these products. From this definition, we learned PPP is cooperation with the durability, there is a risk sharing, and they jointly to produce something and also gain some mutual benefit<sup>5</sup>. For the infrastructure project, both parties will joint to produce the infrastructure. Another issue about the PPP, follow the characteristic of PPP as institutional, is how the public and private entities engaged in financial arrangements and also how they could organize both the public and private sectors.

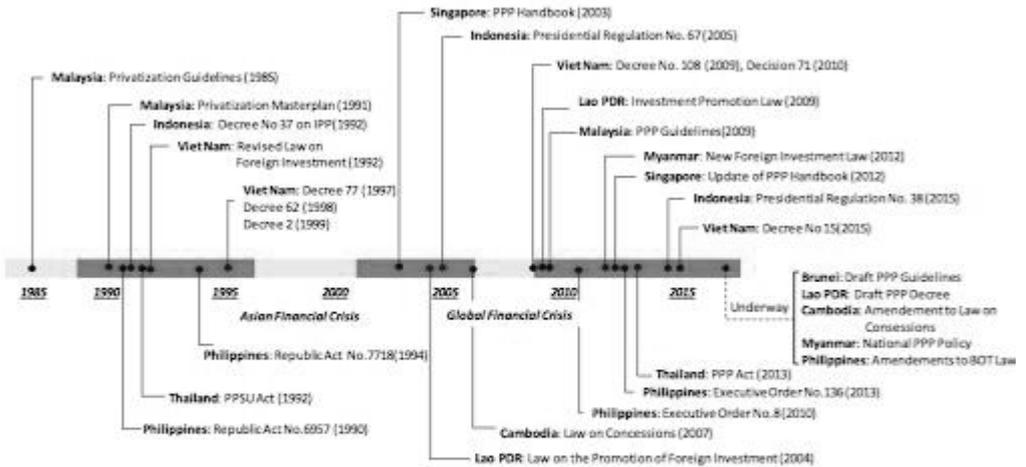
The ASEAN PPP guidelines<sup>19</sup> defined PPP as a specialized procurement method employed by the government for the delivery of public goods and infrastructures services. These guidelines also emphasized the difference between PPP contract and conventional procurement. PPP contracts are long-term arrangements featuring private capital at risk and the allocation of transactional risk to a private party, including the responsibility for lifecycle costs<sup>19</sup>. The ASEAN PPP guidelines<sup>19</sup> also mention about the primary objectives of PPP policy is for speedy implementation of strategic infrastructure plans and growth in the flow of foreign direct investment (FDI). The definition of a PPP contract will include the following contract forms over the policy development period:

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	Early Stage or Initial PPP Policy	Intermediate Stage PPP Policy	Mature PPP Policy
Privatisation of State Businesses Enterprises	X		
Privatisation of State Assets	X		
Privatisation with Residual Interest	X		
Private Finance Initiative (PFI)	X	X	X
BOT, BOO and BOOT Contracts	X	X	X
Design, Renovate, Build, Operate Contracts	X	X	X
Operations and Maintenance Contracts	X	X	X
Design, Build, Finance, Operate (DBFO) Contracts	X	X	X
Renovate, Build and Operate Contracts	X	X	X
Concessions	X	X	X
Management and Service Contracts	X	X	
Traditional Construction Contract			

Source: ASEAN PPP Guidelines<sup>19</sup>

In general, all members ASEAN have started to adopt the PPP framework in their national infrastructure development. The national regulatory in each member states of ASEAN for the PPP framework is still at a transitional stage. For the national regulatory, Philippines more developed than Indonesia, Thailand, and Vietnam<sup>20</sup>.



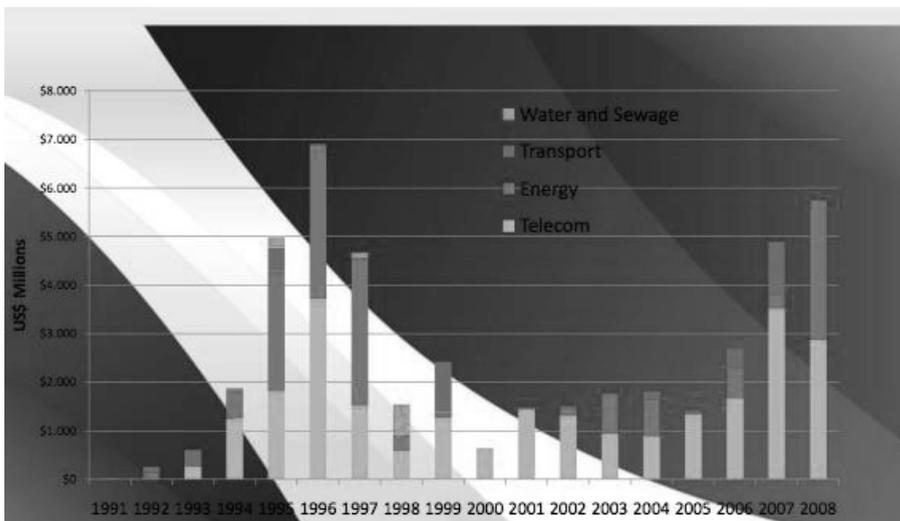
BOT = build–operate–transfer, IPP = independent power producer, Lao PDR = Lao People’s Democratic Republic, PPP = public-private partnership, PPSU = Private Participation in State Undertakings.

Source: Compiled by authors.

Source: ERIA summary on PPP 2015<sup>20</sup>

### The Regulation of Public-Private Partnership in Indonesia

In Indonesia, the private participation for infrastructure development is increasing. The private participation spread average in every sector infrastructure development. The statistic shows the private participation increase from the early 1990s until now. The National Development Planning Agency released the data statistic on 2010, in regard to the private participation in infrastructure development.



Source: World Bank Jakarta, 2010<sup>16</sup>

The Indonesia Government has highlighted the 60% of total infrastructure funding is required to fill the gap the total infrastructure funding needs. It is really important to improve private participation in infrastructure development. The contribution of private entity expected not only for the funding but also contribute in sharing knowledge and experience in the development, operation, and management.

The Indonesia Government committed to improving private participation by increasing investment attractiveness. To support the program government amendment and revoked the previous regulation Presidential Regulation 67/2005 with the Presidential Regulation 38/2015 on Cooperation between Government and Business entity in Infrastructure Provision. Another regulation to strengthen is Ministry of National Development Planning No 4/2015 regarding operational guideline for the PPP in infrastructure provision, head of national procurement agency (LKPP) Regulation No 19/2015 regarding guideline for procurement of Business entity on PPP infrastructure provision and ministry of home affair regulation Number 96 year 2016 regarding availability payment on regional PPP in infrastructure provision.

BAPPENAS as National Development Planning Agency is responsible for the PPP planning and implementation in Indonesia. The responsibility is also to increase the attractiveness of investment to funding project in Indonesia. To provide information for the private entities BAPPENAS issues a PPP Book 2017. These books provide information on available infrastructure investment in Indonesia to potential investors. There is number listed in PPP Book 2017 which divide into the offer projects and under preparation projects, and also project that has already moved to the tender process. In the PPP Books 2017 provide 22 projects with 21 under preparation projects and 1 ready to offer projects, with 17 already tendered project.

The infrastructure development in Indonesia is important to support national development to increase national economic, and community welfare. To improve the infrastructure development, Indonesia Government realized to support the investment and the participation of private entities in infrastructure development. With this concern, the government prepared the regulation for the mutual benefit for all parties, government, and private entities. The presidential regulation is one of the government regulations to provide cooperation between public and private entities in Infrastructure development.

The purpose of the cooperation of public and private entities, is to solve the problem in regard to the infrastructure funding by the funding from the private entities. The infrastructure, which will be provided for the scheme is the economic infrastructure and social infrastructure. These two kinds of infrastructure include the transportation, road, water and irrigation, drinking water, the management of waste, the telecommunication and informatics infrastructure, energy, oil and gas and renewal energy, conservation energy, the city facility of infrastructure, the education of infrastructure, the infrastructure for sport and art, tourism infrastructure, health infrastructure. The cooperation should conduct on the basis for the public interest.

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For every infrastructure project with the PPP framework, the presidential regulation regulates about the head of the cooperation project. The head of the cooperation project will be the Minister/ Head of agency/ Head of local government with considering the specific law. For this responsibility, the Minister/Head of agency/ Head of local government should sign the memorandum of understanding as head of the cooperation project. This is also applied to the state-owned enterprises. The cooperation will conduct with the basis of a memorandum of agreement between the executor entities.

This regulation also regulates about the land, as one of the important things in the PPP project which all the land should conduct under the law for the public interest. The regulation also stated about the support and guarantee from the government for the PPP framework. The infrastructure project with the PPP Framework should have the feasibility study. These studies include the plan of the PPP framework, the plan of infrastructure funding and also the source, the plan of cooperation planning include the schedule, process, and assessment. In the implementation of the PPP project, the head of the cooperation project could conduct the public consultation. In this regulation also regulate the participation of national public procurement agency in Indonesia when the implementation PPP, there is more than one private entity.

The presidential regulation 38/ 2015 is a comprehensive regulation about the PPP framework in Indonesia. Its regulate from the preparation step until the implementation of the project. The PPP framework needs the legal instrument for implementation. All the rights and obligation, which will be the rules of the project regulate on the contract between the parties. The formation of the contract should regulate about the scope of the project, duration of the project, the guarantee,

fee, standardization, transfer of shares, breach of contract condition, termination, and the asset management and dispute settlement.

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In 2017, Indonesia government release Presidential regulation No 58/2017 in regard with Acceleration of Implementation National Strategic Project. Indonesia government has a list of the national strategic project which before regulated by the presidential regulation No 3/ 2016. The existing regulation tries to revise the list of national strategic project and also regulate about the project funding by the non-government budget. These regulations also emphasized the needs of cooperation between the public and private entities in the infrastructure development.

Another regulation provides for the PPP framework to support the acceleration of infrastructure development, such as as:

- Presidential Regulation Number 78 the year 2010 regarding government guarantee on PPP infrastructure project;
- Presidential Regulation Number 75 the year 2015 regarding Acceleration of Priority Infrastructure Procurement;
- Ministerial Regulation of Finance Number 260 the Year 2010 as amended by Ministerial Regulation of Finance Number 8 the year 2016 regarding guideline on a government guarantee. The Government guarantee has been applied on Palapa Ring Project, Umbulan Water Supply Project, Central Java Power Plan Project, and Toll Road Projects;
- Ministerial Regulation of National Development Planning/had of National Development Planning Agency Number 4 the Year 2015 regarding operational guideline for the PPP in Infrastructure Provision;
- Head of National Procurement Agency (LKPP) Regulation Number 19 the Year 2015 Regarding Guideline for Procurement of Business Entity on PPP in infrastructure provision;
- Ministerial Regulation of Finance Number 129 the year 2016, issued as replacement of Ministerial Regulation of Finance Number 265 the year 2015 regarding Preparation and Execution of Transaction of PPP in Infrastructure Provision;
- Ministerial Regulation of Finance Number 190 the year 2015 Regarding Availability Payment on PPP in infrastructure Provision;
- Ministerial Regulation of Home Affair Number 96 the Year 2016 Regarding Availability Payment on Regional PPP in infrastructure Provision;
- Ministerial Regulation of Finance Number 223 the year 2012 Regarding Viability Gap Funding.

## **The implementation of PPP in Indonesia to strengthen the sustainable developments in Indonesia**

PPP will be the most popular framework for infrastructure development. Indonesia government has committed to increasing the PPP framework to support infrastructure development, as one of the strategic development. Besides the regulation about the PPP framework by the presidential regulation 38/ 2015, the government should build another environment for the PPP framework. It should build the synergy between all the parties in terms of promoting infrastructure development growth.

The benefit of PPP framework for the infrastructure development is the efficiency and optimizing the local government budget, risk sharing between the public and private to increase the attractiveness project, transfer of knowledge and also technology to local government, and investment potential.

In the implementation of the PPP framework in Indonesia, there are numbers of barriers to the implementation. One of the issues is coordination issue between numbers of agency in government and also on the step of legislation. Another issue in the implementation is a land acquisition for the PPP project, which is need policy and also legal reform for the land issue. Sometimes the PPP project less feasible, and need government policy to make it more feasible in terms of law and regulation<sup>3</sup>.

The key success for PPP framework is the same interest and the same purposes between the public and private entities. The different point of view will be potential for the new problem. For example, PPP project for the government expected work to minimize the financial for the infrastructure development, since the main problem for the government is a limited budget for the infrastructure development and also to provide high-quality services. It would be different from the private entities view, they do the project on the basis for the profit and business. It seems that every detail on the PPP framework should be clear and regulate on the contract between the parties. Another challenge is the government paradigm about the cooperation with private entities, the whole part of government should be realized to keep the PPP framework as an alternative which should be improved, distribute and promote to the investor. In general, the PPP framework should conduct to build, to control, and to operate the infrastructure project under the government control and government regulation.

To support the PPP framework the Indonesia government established numbers of state-owned enterprises and also commission to

support the infrastructure development. The Indonesia Infrastructure Guarantee Fund (IIGF) is one of the state owned enterprises to provide government guarantees for infrastructure projects developed under the PPP framework. The IIGF established on December 30, 2009, under the ministry of finance. The IIGF purpose is to provide the better framework in attracting private investment and participation. IIGF also works with international and multilateral institutions in increasing its capacity to guarantee large-scale infrastructure projects. IIGF was established as part of the government to speed up the infrastructure development by providing guarantees through accountable, transparent and credible process<sup>21</sup>. IIGF also provides the benefit for the private sector mitigation risks in the implementation of infrastructure projects. Another function of IIGF is also to be the PPP office for the Government of Indonesia and will be work together between National Development Planning Agency, Coordinating Minister for Economic Affairs, Ministry of Finance, The Investment Coordinating Board of the Republic of Indonesia, National Public Procurement Agency and IIGF.

Another government effort to support the infrastructure development is the establishment of the Committee for Acceleration of Priority Infrastructure Delivery. As mentioned before, one of the obstacles of the infrastructure development in Indonesia is lack of coordination between various stakeholders involved. The committee was established with the main objective of becoming a coordinating unit in decision-making processes to encourage settlement of issues arising from the lack of effective coordination between the various stakeholders. The purpose of this committee is to regulate under the presidential regulation 75/ 2014<sup>22</sup>. The KPPIP works under the coordination of Coordination Ministry for Economic Affairs.

The Sarana Multi Infrastruktur Indonesia also another state-owned enterprises to improve the infrastructure development in Indonesia. As infrastructure financing company which was established in 2009, and 100 % shares owned by the Government of Indonesia through Minister of Finance. SMI has a function in facilitating infrastructure financing and also preparing the project and has an advisory function for an infrastructure project in Indonesia. SMI also has a function to support the government in PPP Projects<sup>23</sup>.

Another key of success in the PPP Projects, follow the government support is the system of the dispute settlement between the parties

in the PPP project. In general, there are so many recommendations for the infrastructure project arbitration is the best method dispute settlement between the parties. Arbitration regulates under Indonesia Law No 30/ 1999 regarding arbitration and alternative dispute resolution. As defined by the law, arbitration is an alternative method out of court for the private dispute based on the writing contract between the parties. Arbitration should be known as a system in the infrastructure project to provide the law as mitigation action of the potential dispute between the parties in the PPP projects.

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Nowadays, the existence of arbitration as a method dispute settlement in the infrastructure projects has been proved. It is also emphasized in the new law of construction services law no 2/ 2017, which replace the previous law 18/1999. Before, there are numbers of methods which could be chosen by the parties such as negotiation, conciliation, mediation, arbitration and also court. The parties mostly choose court as their method of dispute settlement. The dispute settlement in Law 2/ 2017 regulates in article 88. The parties should choose and regulate the dispute settlement between the parties on the contract and will give the jurisdiction to the arbitration tribunal, and as resources for the tribunal to conduct the arbitration proceeding. With the advantage of arbitration, the parties expected the dispute far from the public concern. The dispute in the business is related to the reputation.

Regarding the PPP framework, which required the memorandum of agreement between the public and private sector, dispute settlement also one of the clauses in their agreement. The parties could choose arbitration as their dispute settlement and also by mentioned the institutional arbitration and the rules, makes their agreement operative. BANI arbitration center is one of the institutional arbitration in Indonesia, which provides the services in relation to arbitration, mediation, binding opinion and another form of dispute resolutions, include the infrastructure or construction disputes<sup>24</sup>.

## **Conclusion**

Nowadays, infrastructure development is the focus of Indonesia Government. With the infrastructure development, it is believed to improve the economic growth of the country. The infrastructure development in Indonesia, include the build of the road, improve the transportation, and also the development of information and communication infrastructure, which expected to connect all the Indonesia area. The

Government realized the financial based on the national budget is limited, and could not support the acceleration of national strategic project in particular for infrastructure development. There are numbers of an alternative to finance infrastructure development. One of them is Public Private Partnership framework. The cooperation between the public and private entity or the business entity. The PPP is regulated by the presidential regulation 38/ 2015<sup>21</sup> to support the acceleration of national strategic project based on the presidential regulation 58/2017. To support the PPP framework Indonesia government issued the PPP Book 2017, which provide the information of PPP Project. This book provides to give and attract the investor to invest in the infrastructure project in Indonesia. The government also support with establishing numbers of the institution to give the facility and guarantee for the private in doing business in Indonesia. Dispute settlement institution is also another system of law provides in Indonesia. Arbitration recognized under the Indonesia Law to settle the future dispute between the parties on the basis of the arbitration agreement between the parties regulates in the memorandum of agreement of the PPP projects.

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# Legal Certainty in the Use of Certification of Trustworthiness by Indonesian E-Commerce Business

*Muhamad Amirulloh, Vidya Noor Rachmadini*

## **Abstract**

The development of information and communication technology has changed various patterns of human life, one of which is electronic commerce (e-commerce) which has many advantages but is also quite vulnerable to the problems and losses it causes. One of the problems that often occurs in Indonesia is the fraud of electronic transactions by businesses electronically in Indonesia. Responding to this, the use of a Certificate of Trustworthiness on the sites of business people can be carried out electronically in Indonesia. The nature of the use of Certificate of Trustworthiness that only “regulates” as contained in Article 10 of the ITE Law is a separate issue regarding the implementation of the principle of legal certainty and the achievement of the objectives of the ITE Law. The approach method used is normative juridical, with the specifications of analytical descriptive research. Data are analyzed qualitatively juridical in order to obtain conclusions on the problems being studied.

The results of the study show that the principle of legal certainty has not been applied properly in Article 10 of the ITE Law related to the obligation to use Certificate of Trustworthiness by Indonesian e-commerce business. Efforts to achieve the objectives of the establishment of the ITE Law in Article 4 are hampered and may not even be achieved.



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*Keywords: certificate of trustworthiness, e-commerce, precautionary principle, ITE law*

## **Introduction**

The rapid development of information and communication technology has influenced and changed various patterns of human life, one of which is by forming an information society through the internet.<sup>1,2,3,4</sup>

Electronic trading (electronic commerce) transforms conventional economic transactions that must be face to face and use money as payment, into transactions that do not need face to face with non-cash payment facilities. Viewed in terms of efficiency and effectiveness of space and time, e-commerce is very helpful in trade and business activities between countries, but when viewed from another side e-commerce is quite vulnerable to problems and losses that will then arise.

One form of legal protection in e-commerce in the provisions of the ITE Law is to regulate the use of Certificate of Trustworthiness that guarantees legal protection for data privacy and information system security and electronic transactions. Certificate of Trustworthiness is a document stating that a business actor who conducts an electronic transaction has passed an audit or conformity test from a certificate of reliability. Business actors can obtain a Certificate of Trustworthiness by passing the assessment and audit stage from the authorized body to issue a Certificate of Trustworthiness.<sup>5,6,7</sup>

Certificate of Trustworthiness includes examining complete and correct information from business actors to obtain a Certificate of Trustworthiness. Certificate of Trustworthiness in electronic transactions is needed by business actors to protect consumers in electronic transactions and ensure that business actors meet the criteria determined by the Certificate of Trustworthiness Institution. In connection with this, Article 10 paragraph (1) of the ITE Law states that "Every business actor those organizing Electronic Transactions can be certified by a Certificate of Trustworthiness Institution." These provisions also encourage the birth of an understanding of the security and reliability of business actors in e-commerce through the use of a Certificate of Trustworthiness. Likewise in Article 42 paragraph (1) of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions stating that "Implementation of Electronic Transactions in the private sphere can use a Certificate of Trustworthiness and/or Electronic Certificate". It is unfortunate that the nature of

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Amirulloh  
Vidya Noor  
Rachmadin*

norms in these two provisions is only regulating, not compelling. This is what makes the factor of legal certainty itself questionable. Whereas consumer rights to comfort, security and safety in consuming goods and/or services are guaranteed in Article 4 letter of Law No. 8 of 1999 concerning Consumer Protection.

Some cases of crimes that occur in internet transactions, namely fraud through the guise of selling goods. This case befell Chumpon Corps Phaibun, a Thai citizen. Chumpon was deceived by an Indonesian site, namely [www.henbing.com](http://www.henbing.com) managed by Ronal Lubis and Bayu. Through that site, Chumpon transacted buying a jet ski for 19,520 US dollars. However, after sending money to two accounts at Bank Mandiri, the jetski orders did not come.<sup>8</sup> Another case happened to a comedian named Arafah Rianti who was tricked into buying a used car offered through an online trading site.<sup>9</sup> These cases can occur, among others, due to the absence of site security standards that are met because there is no use of the Certificate of Trustworthiness. Based on the background of the problems to be studied, namely:

1. How is the implementation of the principle of legal certainty in the use of Certificate of Trustworthiness by Indonesian e-commerce business based on the ITE Law in the context of consumer protection?
2. How can the nature of the norms regarding the use of Certificate of Trustworthiness by Indonesian e-commerce business affect the achievement of the objectives of establishing an Information and Electronic Transaction Law?

### **Research Methods**

This study uses a normative juridical approach by reviewing the provisions of the ITE Law regarding the Certificate of Trustworthiness. The research specifications used are descriptive analytical, by describing the reliability certificate settings that will be analyzed with the principle of legal certainty. The aim is to obtain a comprehensive and systematic description of the application of the principle of legal certainty and the achievement of the objectives of the establishment of the ITE Law related to the norms of regulation of Certificate of Trustworthiness based on the ITE Law.

Stages of research by examining library materials or secondary data which include primary, secondary and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indo-

nesia, Law Number 11 of 2008 concerning Information and Electronic Transactions juncto Act Number 19 of 2016, Law Number 8 of 1999 concerning Consumer Protection, and Government Regulation Number 82 of 2012 concerning Electronic Transactions. Secondary legal materials include various literature/books related to research material, various results of seminars, workshops, symposiums and research, journals, articles relating to research problems, and interviews. Tertiary law materials, such as the Legal Dictionary, Large Dictionary Indonesian, English-Indonesian dictionary, encyclopedias, and print and electronic media

Data collection techniques conducted by the author in writing this thesis through document study/literature study on secondary data and interviews. Data analysis methods used in writing this thesis are qualitative juridical methods, namely by inventorying, compiling systematically, relating each other with the problems examined by the provisions of the legislation that does not conflict with other laws and regulations, pay attention to the hierarchy of legislation and guarantee legal certainty, meaning that the legislation under study is whether the legislation in force is implemented by the enforcers law.

## **Discussion**

### *Implementation of the principle of legal certainty in the use of Certificate of Trustworthiness by Indonesian e-commerce Business based on the Information and Electronic Transaction Act in the framework of consumer protection*

Technological advances cannot limit human movement to not do most of their activities electronically. The rapid development of information technology has given birth to new forms of transactions between consumers and business people which is often called e-commerce. E-commerce is a dynamic set of technologies, applications and business processes that connect companies, consumers and communities through electronic transactions and trade in goods, services, and information held electronically.<sup>10</sup>

One of the efforts of the provisions of preventive and institutional to deal with the problem of rampant fake sites that deceive and / or mislead consumers can also be seen from the provisions of Article 10 paragraph (1) of the ITE Law which states that: "Every business actor that carries out transactions electronics can be certified by a certificate of reliability." This institution will issue a Certificate of Trustworthi-

ness to business actors as proof that those who trade electronically are indeed the existence, have a safe and reliable electronic system, and are worthy of business.

In order to obtain a Certificate of Trustworthiness, the user must pass the assessment and audit stage of the authority authorized to issue a Certificate of Trustworthiness. Evidence has been made the Certificate of Trustworthiness is indicated by the existence of a certification logo in the form of "Trustmark" on the businessman's homepage. Institutions that issue Certificate of Trustworthiness are often also called Certification Authority (CA) or Trusted Third Party (TTP). This institution is a legal entity that will later function as a trusted third party that issues Digital Certification.

The presence of this institution is very necessary because it can make the electronic transaction climate relatively more secure and trusted by internet users in carrying out electronic information exchange. CA institutions have effective suggestions to meet the four security aspects of electronic transactions, among others: authenticity, integrity, indisputable, and privacy or confidentiality (information exchanged can only be read by those who have the right)

Certificate of Trustworthiness is a document stating that a business actor who conducts an electronic transaction has passed an audit or conformity test from a Certificate of Trustworthiness Institution. The purpose of using the Certificate of Trustworthiness is to protect consumers in electronic transactions. Guarantee that business actors have met the criteria determined by the Certificate of Trustworthiness Institution (LSK). Certificate of Trustworthiness is used on websites and/or other electronic systems. With the certificate of reliability, it will make consumers feel safer to conduct transactions with the business actor, consumers can also know that the business actor has provided complete and correct information about everything related to important business data.

It is mandatory that the use of Certificate of Trustworthiness by business actors electronically will also trigger the industry of the Certificate of Trustworthiness Institution (LSK) in Indonesia. Organizers of electronic systems and transactions are expected to be able to switch to using local LSK because they have more value compared to foreign LSK, one of which is operating domestically. Local LSKs are able to check locations up to the business fields of electronic system

and transaction providers. In addition, the regulation can later encourage foreign LSK to open companies in Indonesia to improve services to consumers.

Article 10 paragraph (1) of the ITE Law and Article 42 paragraph (1) PP PSTE mentioned above actually also encourages the security and reliability of business actors in e-commerce through a Certificate of Trustworthiness. However, unfortunately, the norms in these two provisions are only regulating rather than coercive so that they do not guarantee legal certainty. According to Kelsen, the law is a norm system. Norms are statements that emphasize “should” or “das sollen” aspects, by including some rules about what to do. These rules become a limitation for the community to burden or take action against individuals. The existence of these rules and the implementation of these rules create legal certainty.<sup>11</sup>

Normative legal certainty is when a regulation is made prominently because it regulates clearly and logically. Obviously in terms of **not causing doubt (multi-interpretation)** and **logical**. Obviously in terms of it being a norm system with other norms so that it does not conflict or cause a conflict of norms. Legal certainty refers to the application of clear, permanent, consistent and consequent laws whose implementation cannot be influenced by subjective circumstances. Certainty and justice are not just moral demands but factually characterize law. A law that is uncertain and non-fair is not just a bad law.<sup>1 12</sup>

Based on this, the provisions concerning Certificate of Trustworthiness and Certificate of Trustworthiness Institutions as contained in Article 10 paragraph (1) of the ITE Law and Article 42 paragraph (1) PP PSTE clearly have caused doubts or multiple interpretations of the obligation to use Certificate of Trustworthiness by business actors electronically in Indonesia. In other words, business people electronically in Indonesia are unclear and it is uncertain whether they have an obligation to use a Certificate of Trustworthiness or not. It is possible that the business actor does not use a Certificate of Trustworthiness considering that it is not required and there is no legal sanction. The element of clarity to avoid mistakes in the meaning is also stated by Gustav Radbruch as one of the conditions or meaning of a legal certainty.<sup>13</sup>

The provisions of Article 10 paragraph (1) of the ITE Law and Article 42 paragraph (1) PP PSTE also become illogical because something reg-

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Amirulloh*

*Vidya Noor  
Rachmadin*

ulated is essentially not an option, even it is a necessity to build a safe and reliable electronic system as stipulated in Article 15 and Article 16 of the ITE Law itself. Thus, the provisions of Article 10 paragraph (1) of the ITE Law and Article 42 paragraph (1) PP PSTE become illogical even contrary to Article 15 and Article 16 of the ITE Law. Article 15 paragraph (1) of the ITE Law provides that, "Every Electronic System Operator must operate an Electronic System reliably and safely and be responsible for the proper operation of the Electronic System".

In Article 3 of the ITE Law it is stated that "The use of Information Technology and Electronic Transactions is carried out **based on the principle of legal certainty**, benefits, prudence, good faith, and freedom to choose technology or technology neutral". The explanation of this article states that "the principle of legal certainty" means the legal basis for the use of Information Technology and Electronic Transactions as well as everything that supports its implementation that obtains legal recognition inside and outside the court. In relation to the obligation to use Certificate of Trustworthiness by business actors electronically in Indonesia, the provisions of Article 10 paragraph (1) of the ITE Law and Article 42 paragraph (1) PP PSTE clearly do not support the use of Information Technology and Electronic Transaction because they do not require and encourage the use of Certificate of Trustworthiness as well as the existence of an Institution for the Certificate of Trustworthiness of domestic products by the nation's children.

Based on these matters, the provisions of Article 10 paragraph (1) of the ITE Law and Article 42 paragraph (1) PP PSTE clearly do not implement the principle of legal certainty regarding the use of Certificate of Trustworthiness and the existence of a Certificate of Trustworthiness institution as an electronic transaction security sub-system. Furthermore, it can even be said that Article 10 paragraph (1) of the ITE Law and Article 42 paragraph (1) PP PSTE is contrary to the principle of legal certainty as stipulated in Article 3 of the ITE Law. Seeing the importance of using the Certificate of Trustworthiness and the existence and role of the institution of the Certificate of Trustworthiness in establishing a safe and reliable electronic system for the development and growth of electronic transactions, it would be nice if all businesses in e-commerce are required to carry out Certificate of Trustworthiness so that consumers and business actors have legal certainty in transacting in cyberspace.

The number of criminal crimes in the cyber world or commonly called cybercrime, the precautionary principle is very important to be considered and implemented by the community in conducting daily electronic transactions. The precautionary principle in an electronic transaction (e-commerce) is a principle that requires parties to promise to always be careful in all actions taken later so as not to cause harm to other parties. In conducting e-commerce transactions, consumers must be careful because they include personal data such as identity numbers, debit/credit accounts, and their PIN, etc. In addition to consumers, business actors must also be careful in maintaining the confidentiality of their consumer data so that they are not accused of misusing customer data if data intercepts occur by irresponsible persons. These things have been fulfilled by the use of a Certificate of Trustworthiness system. The use of the reliability certificate system reaffirms the importance of the role of technology to regulate human life in society and enforce the law itself. This is in line with what Lawrence Lessig stated that, "Four different regulatory modalities interact with one another, both in order to support or weaken the rights or regulations of the four modalities (laws, social norms, markets, and architecture / software) themselves alone, but the law has a special role in influencing all three.

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Certification of  
Trustworthiness*

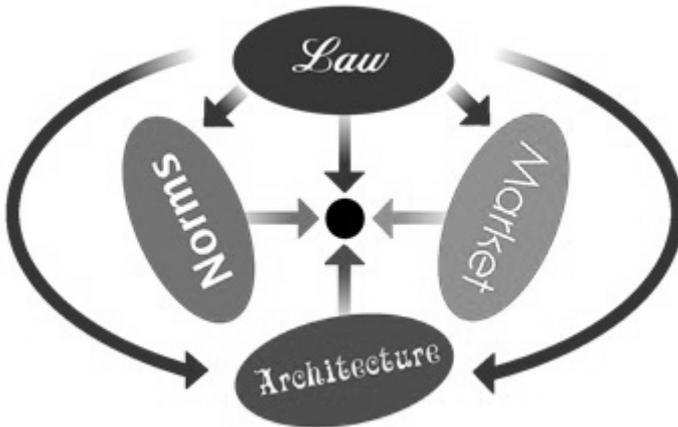


Figure 1 – Source: <https://goo.gl/images/dc7wTz> accessed on June 5, 2018

*Achievement of the Objectives of the Establishment of the ITE Law Regarding the Nature of Norms About the Use of Certificate of Trustworthiness by Indonesian e-commerce Business*

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The rapid development of information technology is driving increased mobility of information dissemination throughout the world. Growth and dissemination of information can be facilitated by internet digital communication technology. The rapid communication and information dissemination method developed a digital information network whose capacity continued to increase so that the internet also gave birth to a new era known as the era of the information economy and information society.

An e-commerce business or online business is a trust-based business of one party against another. A company that sells products that go online must be clearly identified so that consumers are not fooled by the products produced. When consumer experiences confusion over a product purchased online, he must know how to complain, how to redeem the product purchased and ask for the money sent back to the businessman if he decides not to buy the product he wants. Therefore trust in online business becomes the main factor of buyers to choose or take a product that they want.

A trust is very important in online transactions because new customers will buy if they already believe in a product that goes online and who the company is behind. Not a few consumers who have been disappointed in purchasing products through fake websites or online companies that are not responsible. As a result, when consumers will claim the purchase of a product it is not known how and what efforts can be made to these companies. This situation can reduce consumers' intention to shop on the internet; one of the solutions proposed by experts is to impose accreditation institutions that specifically certify companies that intend to open businesses through the internet so that consumers can trust these companies.

The more consumers are harmed by business actors; the function of the accreditation scheme needs to be observed because it will help form a symmetrical relationship between consumers and business actors. Business actors who have been certified will gain higher trust from consumers.

The purpose of the ITE Law is regulated in Article 4, which states as follows:

“The use of Information Technology and Electronic Transactions is carried out with the aim to:

- a. educate the life of the nation as part of the world information society;
- b. develop trade and national economy in order to improve community welfare;
- c. improve the effectiveness and efficiency of public services;
- d. open the widest possible opportunity for everyone to advance their thinking and ability in the field of use and utilization of Information Technology as optimally and responsibly as possible; and
- e. providing a sense of security, justice and legal certainty for users and providers of Information Technology. “

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Amirulloh  
Vidya Noor  
Rachmadin*

The ITE Law is a reference for people to transact electronically both businesses and consumers. One of the objectives of the establishment of the ITE Law mentioned in Article 4 letter e is, “to provide a sense of security, justice and legal certainty for users and providers of Information Technology”. This goal is indispensable given that in the global network there are very many efforts by certain parties who try to obtain electronic information and/or electronic documents belonging to other parties, whether by breaking into a security system or not. This behavior is based on the idea that electronic information and/or electronic documents are very valuable in the information age, which controls the information, and then he will get better benefits.

With the formulation and nature of the norms that only regulate as contained in Article 10 of the ITE Law, it will not be able to provide a strong impetus or influence for business people electronically in Indonesia to use Certificate of Trustworthiness, so that it will be difficult to create a good and developing Certificate of Trustworthiness system in Indonesia. With the development of the Certificate of Trustworthiness system, the purpose of establishing the ITE Law as contained in Article 4 letter e will experience obstacles and be difficult to achieve. In the end, cyber legal culture to implement Certificate of Trustworthiness in Indonesia also did not grow and develop.

This is clearly contrary to what Lawrence Lessig<sup>14</sup> put forward, where the law, in this case, the ITE Law, has a strong influence on the “architecture” in this case the Certificate of Trustworthiness system to achieve the objectives of the ITE Law itself, through the formulation of norms on Certificate of Trustworthiness right. The aim of educating the life of the nation as part of the world information community, as stated in Article 4 letter a of the ITE Law will also be difficult to

achieve, because with the formulation of “norms regulating” in Article 10 precisely the citizens and businesses of Indonesian citizens will have difficulty obtaining access to a Certificate of Trustworthiness system very rare because it is not required. The community and business people of the Indonesian Citizens will be fooled by conditions as if there is no need for a Certificate of Trustworthiness system in electronic transactions. Indonesian people will be blinded from the world of electronic certification systems, allowing even the opportunity to become and develop a Certificate of Trustworthiness Institute.

The nature of the norms that “regulate” in Article 10 of the ITE Law which seems to negate the existence and role of Indonesia’s Certificate of Trustworthiness Institutions, also hampers the purpose of the ITE Article 4 letter d, namely “Opening the widest possible opportunity for everyone to advance thinking and ability in the field of use and the use of Information Technology is as optimal and responsible as possible.” Creativity and creation of Indonesian people will be hampered by using electronic certificates and forming or establishing an Indonesian Certificate of Trustworthiness Institution, when in fact the Indonesian people are able to do that.

This can be input and suggestions for further improvement of the ITE Law while looking at the condition of the economic development of the Indonesian people. If at any time the use of Certificate of Trustworthiness by business actors electronically is compulsory, it will trigger the industry of Certificate of Trustworthiness Institutions (LSK) in Indonesia. Organizers of electronic systems and transactions are expected to be able to switch to using local LSK because they have more value compared to foreign LSK, one of which is operating domestically. Local LSKs are able to check locations up to the business fields of electronic system and transaction providers. In addition, the regulation can later encourage foreign LSK to open companies in Indonesia to improve services to consumers.

## **Conclusion**

1. The principle of legal certainty is not implemented properly with the formulation of the nature of norms that “regulate” and do not “force” in Article 10 of the ITE Law related to the existence and role of Certificate of Trustworthiness and Certificate of Trustworthiness Institutions in Indonesia. Legal certainty in the obligation to use certificates of trust and establishment of institutions of Certificate of Trustworthiness is still not fulfilled.

2. The achievement of the objectives of the establishment of the ITE Law as stipulated in Article 4 of the ITE Law is constrained and even difficult to achieve with the formulation of norms that only “regulate” and do not “force” related to the existence and role of Certificate of Trustworthiness and Certificate of Trustworthiness Institutions in Indonesia as stated in Article 10 ITE Law.

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# The Corruption Court in Indonesia

## History and Development

*Elis Rusmiati, Nella Sumika Putri, Ijud Tajudin*

### Abstract

The corruption eradication in Indonesia currently requires a faster, more assertive, and more significant effort of settlement. One of the reformation efforts is made by the government through the establishment of corruption court. Since 2009, the corruption court has been existing as a special judicative entity that handles corruption cases. However, there are many obstacles found during the dispute settlement of corruption, especially in the process of implementation that is often not in accordance with the applicable provisions. Based on this research, the Corruption Court has not performed optimally yet, because of several factors, namely: a large number of cases, the limited facilities and infrastructures, and also the lack of quantity and quality of human resources.

*Keywords: corruption, Corruption Court, history, development*

### Introduction

The existence of Corruption Court is established through Law number 46 the year 2009 (Corruption Court Law). The Corruption Court Law is the source of law on establishing the Corruption Court entity in Provincial level which domiciles in the Provincial Capital. The establishment of Corruption Court Law itself is based on Constitutional Court decision dated 19<sup>th</sup> December 2006<sup>1,2,3,4,5,6</sup> where Article 53 of Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* “*KPK*”) Law that establishes Special Corruption Court is considered as



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contradictive to Article 24A paragraph (5) of 1945 Constitution. The aforementioned article stated that an establishment of a court must be regulated by a special law and must not be regulated together with laws that regulate other matters.that. Meanwhile, the Corruption Court is established together with KPK and KPK Law. The presence of Jakarta Corruption Court is considered as unconstitutional because it is only established based on Article 53.

A large number of corruption cases per year definitely needs a quick settlement to prevent the cases pile up. The existence of Corruption Court on the other side is a solution to accelerate settlement of dispute compared to being centralized in only one court. Until now, the number of Corruption Courts in the regional area consists of 33 Corruption Courts in the District Court and the court on the appeal level in 30 High Courts in Indonesia. If we take a look at the data collected within 5 years (2010-2015), based on the Indonesia Corruption Watch (ICW) observation, there are 183 District Heads has become a suspect in corruption cases.<sup>7</sup> Based on the regional basis, 3 regions with the highest corruption level in Indonesia or according to KPK are categorized as “corruption emergency” are North Sumatera, Riau, and Banten. In those provinces, the corruption actors are not only from the executive or legislative officer background but also from law enforcement officer. However, on the other side, the existence of Corruption Court also causes various problems inter alia regarding the Corruption Court entity itself in the criminal court system, including the problems with coordination, resources, facilities & infrastructure, financing and level of success I the dispute settlement itself.

The main purpose of establishing Corruption Court in the regional area is to optimize the effort in eradicating corruption, hence it may be effectively and efficiently performed. The Corruption Court is existed as a part of law enforcement mechanism, especially on the eradication of corruption. This article will discuss the history and development of corruption court corruption in Indonesia.

## **Research Methods**

This research will use juridical normative approach, that is conducted through analyzing library materials as a secondary data.<sup>8</sup> The author will conduct assessment and examination toward the legal principles, legislation rules, and legal norm related to the legal enforcement theory and principle in the court session which are simple, fast, and low

*Elis Rusmiati*

*Nella Sumika*

*Putri*

*Ijud Tajudin*

cost connected with the object of this research, which is about the Corruption Court in a regional area.

This research will not take every sample from Capital Province that has Corruption Court. The sample is selected based on the Corruption Court that has plenty amount of cases but has an inadequate amount of judge, facilities, and infrastructures. The sampling process is conducted through interview method and questionnaire toward the related parties such as Judges, Prosecutors, Clerks, and Chief of the District Court where the Corruption Court is domiciled.

## **Result And Discussion**

Currently, corruption is still considered a severe problem faced by Indonesia. This condition can be seen from various regulation and policies made by the government as an attempt to eradicate corruption. On the regulation scope, the attempt to eradicate corruption may be found in several regulations, namely: Law No. 8 year 1981 Criminal Procedural Law; Law No. 28 year 1999 regarding State Administrators Clean And Free of Corruption, Collusion and Nepotism; Law No. 31 year 1999 regarding Eradication of Corruption; Law No. 20 year 2001 regarding Amendment of Law No. 31 year 1999 regarding Eradication of Corruption; Law No. 30 year 2002 regarding the Commision of Corruption Eradication; Law No. 46 year 2009 on Corruption Court; Law No. 8 year 2010 regarding Money Laundry; Law No. 6 year 2011 regarding Immigration; Govt. Regulation No. 71 the year 2000 on Procedures for Implementation Of Public Participation in Prevention and Eradication of Corruption; Government Regulation No. 103 the year 2012 regarding amendment of Govt. Regulation No. 63 the year 2005 regarding System Management for Human Resource of KPK. Moreover, in the context of international cooperation, Indonesia has already ratified the United Nations Convention Against Corruption (UNCAC) through Law No. 7 the year 2006.

The definition of corruption based on Corruption Law composed of 30 forms/types of criminal conduct which are elaborated in 13 articles. To increase the effectiveness of corruption eradication, the government has finally established the Commision of Corruption Eradication (KPK) which owns various authorities ranging from the investigation to the prosecution process. The corruption court itself was initially regulated within KPK Law, where the provisions related to corruption court is stipulated in Article 3 of KPK Law. Considering that the

corruption case might be prosecuted by 2 (two) entities which are the Public Prosecution and KPK. The existence of Article 53 of KPK Law may result in legal consequences toward the trial process of corruption cases. The corruption cases which is being prosecuted by the Public Prosecution will be submitted to and processed in the District Court, while in the case of corruption that is being prosecuted by and submitted to KPK is processed in Corruption Court which is based on KPK Law is located in Central Jakarta District Court.<sup>9</sup>

After Article 53 of KPK Law has been announced by the Constitutional Court Decision No. 12-16-19/PUU-IV/2006 which concluded on 19<sup>th</sup> December 2006, the Government was given 3 years to establish a new independent regulation that regulates about the Corruption Court. Finally, in 2009 the government legalized the establishment of Corruption Court based on Law No. 46 the year 2009 on Corruption Court.

Law no. 46 the year 2009 regarding Corruption Court which is enacted on 29<sup>th</sup> October 2009 consists of 40 articles. The matters regulated in the Law no. 6 the year 2009 on Corruption Court are regarding the domicile and authority of Corruption Court. Furthermore, the provisions on the location of the establishment which is based on the mandate of Law No. 46 the year 2009 on Corruption Court will be enacted in every Regency/Municipality will be periodically conducted related with the facilities and infrastructures.

The existence of Corruption Court in Indonesia is established through Law No. 46 the year 2009 on Corruption Court. The background of Corruption Court establishment was based on the revocation of Article 53 of Law No. 30 the year 2002 on Commission of Corruption Eradication (KPK) by Constitutional Court through Decision No. 12-16-19/PUU-IV/2006 which concluded on 19<sup>th</sup> December 2006. Based on Article 54 KPK Law, initially, Corruption Court located in District Court of Central Jakarta which has jurisdiction in every area of across the Republic of Indonesia.

The reasoning behind the revocation of Article 53 of Law No. 30 the year 2002 regarding KPK by the Constitutional Court is because the article is considered as contradictive to the Constitution. The reasons of the Constitutional Court are:

- a. There is a dualism in handling corruption case.

For the case which is being prosecuted by KPK Prosecutor will be handled by the Corruption Court, while corruption case where

the prosecution process is conducted by the Prosecutor will handle in general court.

b. Regulating Corruption Court.

The Corruption Court shall not have been regulated in the KPK Law but instead must be regulated by independent Law. This is stipulated in Article 2A Paragraph (5) 1945 Constitution which stated that the structure, domicile, and the procedural law of Supreme Court along with lower judicative body are regulated by the laws.

Based on Law No. 46 the year 2009 on Corruption Court, *The Corruption Court is the sole Court that has authority to investigate, prosecute, and decide in a corruption case.*<sup>10</sup> *The consequence of such provision is the absence of dualism in handling corruption case. The corruption case which is handled either by KPK or by the Prosecutor, both will be handled in the Corruption Court.*

Law No. 46 the year 2009 also extends the competence of Corruption Court also related to the case that may be handled. Based on article 6 of the aforementioned law, the Corruption Court also may handle money laundering case, as long as the *predicate crime* (the initial crime conduct) falls within the category of corruption conduct,<sup>11</sup> and also with any other crime that has been assertively declared as corruption conduct by other regulations.

For several reasons, the procedural process which is regulated within Law No. 46 the year 2009 on Corruption Court has several differences compared to the regulation in Law No. 8 the year 1981 on Criminal Procedural Court, while for matters which is not regulated independently, still use the applicable procedural law.

The speciality of procedural law in Law No. 46 the year 2009 on Corruption Court are including;<sup>12</sup>

1. Asserting the separation of job desk and authority between the Head and the Deputy Head of Corruption Court.
2. The composition of Judges Panel during an examination in the court of first, appeal, and cassation level;
3. Settlement period of the corruption case dispute examination in every stage of examination;
4. Evidence which submitted during the trial, including evidence that is taken by wiretapping must be legally obtained based on the provisions in the regulations;
5. Special Clerk for Corruption Court.

The existence of Corruption Court intended to increase the attempt of corruption eradication through increasing human resource, including institutional and developing awareness of manner and conduct of anti-corruption society. If we take a look from the purpose of Corruption Court enactment, the corruption court is formed exclusively to handle corruption case,<sup>13</sup> hence the court would be more focused and the settlement process will become faster.

*Elis Rusmiati*

*Nella Sumika*

*Putri*

*Ijud Tajudin*

The background of the corruption court establishment is considered necessary is based on the analysis that in one side corruption deemed as an extraordinary crime that needs an extraordinary settlement. Furthermore on the other side, the lack of public trust toward judication system,<sup>14</sup> is because several identifiable shortcomings such as the judicial corruption which rampantly exists, lack of integrity and limitation of judge capacity, besides there is also lack of case transparency factor, existence of unusual and controversial decision which is contradictive toward the sense of justice. Such factors have become the background of the lack of public trust towards the general judicial institution hence it needs a special court with ad hoc judge.<sup>15</sup>

According to Corruption Court Law, the court is expected to be domiciled in every regency/municipality and for the special region such as capital city Jakarta, it is also expected to be included in every town. The intention and purpose of the distribution of Corruption Court in every province and district are to ensure that the society to have better access to the court which also enhance the processing system itself compared to the centralized system in the capital city. The distribution of Corruption Court in every capital province has proven to be more effective in terms of corruption dispute settlement, comparing to the centralized system with the general court or back when it was still located in the capital city only. The distribution of Corruption Court also helps the society that seeks justices in accessing the court institution. If the Corruption Court is only located in Central Jakarta District Court, the people who live outside the region of Jakarta including people that reside outside java island will experience difficulties in accessing the corruption case due to distance, time, including the huge amount of cost.

During the initial period of its establishment, the corruption court is established outside DKI Jakarta, namely in Bandung, Semarang, and Surabaya. The legal basis for its establishment was based on the Decision Letter of Chief of Supreme Court Number 191/KMA/SK/XII/2010

the Year 2010 which becomes the ground for the creation of Corruption Court in Bandung District Court, Semarang District Court, and Surabaya District Court. Afterwards according to the Decision Letter of Chief of Supreme Court Number 22/KMA/SK/II/2011 is the legal basis of the establishment of Corruption Court on Medan District Court, Padang District Court, Pekanbaru District Court, Palembang District Court, Tanjung Karang District Court, Serang District Court, Jogjakarta District Court, Samarinda District Court, Banjarmasin District Court, Pontianak District Court, Makassar District Court, Mataram District Court, Kupang District Court, and Jayapura District Court. Furthermore, the Decision Letter of Chief of Supreme Court Number 153/KMA/SK/X/2011 served as the legal basis for the establishment of the Corruption Court on the District Court of: Banda Aceh, Tanjung Pinang, Jambi, Pangkal Pinang, Bengkulu, Palangkaraya, Mamuju, Palu, Kendari, Manado, Gorontalo, Denpasar, Ambon, Ternate, and Manokwari. The establishment of the Corruption Court in each region of District Court, as well as operating the Court at the Appeal level in that region. Therefore, until now after approximately 8 years, the Government has succeeded in establishing 33 Corruption Courts in every Central Province in Indonesia but still has not yet fulfilled the mandate that has been given by the Corruption Court's regulation.

The difficulties in fulfilling the mandate that has been given by the Regulation in establishing the Corruption Court in the region was hindered by the problems on the budget and human resources. As a result of this problem, it can be seen that even though the main purpose of the corruption court establishment was to accelerate and simplify the judiciary process of the corruption court, under the governmental perspective the creation of the corruption court itself requires it still needs a substantial amount of budget.

Corruption Court, in every region, has its own building, such as Corruption Court of the Bandung District Court, Semarang District Court, and Surabaya District Court, but most of them still located inside local District Court's building. The establishment of the new building also faces obstacles in relation to the construction site, which has become harder to be acquired. Other obstacles that occur during its establishment are in regards to the human resources that can be placed to fill the position. Until now, the government still has a difficulty in finding judges especially *ad hoc* judge, which requires a set of quality in order to become the Corruption Court judge. Considering

the existence of the ad hoc judge is urgently needed to strengthen the role and function of the judicial power in enforcing the law and justice.

The increase in the amount of human resource is also inseparable from the increase in the operational cost, such as the cost of recruiting judges and the court's operational cost. Besides that, the problem of facilities and infrastructure becoming the most prominent problem in the implementation of Corruption Court in the region. Especially the ad hoc judge has not received any facilities as stipulated on the Presidential Regulation Number 5 the Year 2013 regarding The Distribution of the Financial Rights and Facilities for ad hoc judge, especially on financing the house allowance's facilities, health support, it is all depending on the ability of state budget through the budget in Supreme Court, causing in certain region there has been an ad hoc judge which has to share the housing facilities with other judges due to the limited budget. This also includes the health allowance issues. This also includes the issues of equality in receiving the incentive (*tunjangan kemahalan*) even though the related judges placed in the same region with carrier judge, the ad hoc judge doesn't get the incentive, even though it has been strictly regulated by the Law that an ad hoc judge is also under the Supreme Court.

Although on the other side the existence of Corruption Law is intended to simplify the judicial process causing it to be more focused and provide the society with easier access to justice, however, in regards to its implementation, especially in the establishment of Corruption Court in the region requires a huge amount of money in the government perspective. The process of settling cases effectively in regards to the corruption case can be seen from the numerous provisions that are contained in the regulation. Article 25 Law Number 20 the Year 2001 regarding Corruption Eradication has stated that the procedural process of the Corruption cases shall be prioritized over the other cases to be settled immediately. However, the process in settling a case in the Corruption Court based on the Law of the Corruption Court has been determined and limited by the provision in which The maximum time for the corruption court to examine the case is 120 days.

The existence of Law Number 46 the Year 2009 regarding the Corruption Court, has caused significant changes especially for those who have the task of implementing the law. The existence of Law Number 46 the Year 2009 regarding the Corruption Court regulates that the qualification for the judge who could handle the corruption cases.

The Judge who could handle the corruption cases on the Corruption Court consisted of Carrier Judge and Ad hoc Judge. Carrier Judge who could handle the corruption cases shall have special requirement both in terms of experience as well as qualification, such as having a special certificate as a corruption judge. For the Ad hoc Judge, the qualification itself is, having a minimum experience in the legal field between 15 up to 20 years. The existence of an ad hoc judge which have a varied background such as taxation, capital market, finance, banking, and etc., definitely helpful in assisting the court performance in solving complex cases

According to the author, until now the Corruption Court has not worked effectively yet. The obstacles to implementing Corruption regulation are related to the mandate to establish a Corruption Court in every capital of Regency/Municipality. These days even after the enactment of the Law No. 6 the year 2009 on Corruption Court, the corruption court has only been established in every Province Capital, which amounted to 33 Corruption Court, hence the targets of the laws itself has not been fulfilled yet. The obstacles to fulfilling the provisions in the Corruption Law also caused by facilities and infrastructure, and human resources, which includes the quality and quantity of judges as the law enforcer are difficult to obtain.

### **Conclusion**

The existence of Law No. 46 the year 2009 on Corruption Court has caused a significant change, especially towards the parties who implement the law. The facilities and infrastructures issues, especially the budget availability is the factor for the corruption court to have not yet performed in accordance with the trial principle, which is fast and low cost. The limitation of the budget has caused a lack of facilities and infrastructures, including in the recruitment process of qualified *ad hoc* corruption court judges. The budget limitation also makes the trial schedule exceeds working hours, because of the inadequate trial room and the number of corruption judges that may be placed in each of the corruption courts are not enough.

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## Notes

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- 8 Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, 1990, Pg. 9
- 9 Article 5 of KPK Law
- 10 See Article 5 of Law No. 6 year 2009 regarding Corruption Court
- 11 See Article 6 Law No. 46 year 2009 on Corruption Court
- 12 See Elaboration of Law No. 46 year 2009 on Corruption Court
- 13 With the addition on money laundry crime as long as the *predicate crime* (the initial crime conduct) are included in corruption conduct, *idem*.
- 14 Departemen Hukum dan Ham, Naskah Akademik, Rancangan Undang-Undang tentang Tindak Pidana Korupsi, p. 6
- 15 *Ibid*, p. 8-9

Elis Rusmiati

Nella Sumika

Putri

Ijud Tajudin

# Privacy: An Overview of Indonesia Statutes Governing Lawful Interception

*Sinta Dewi*

## **Abstract**

The right to privacy is an issue that draws a lot of public attention, especially when associated with the frequent interceptions made by the state upon state citizen private communications in the course of legal enforcement. Yet, those state practices in the form of surveillance and interception of communications have disrupted citizen's privacy right indeed. In Indonesia, in the post-Constitutional Amendment, the right to privacy is recognized as one of the fundamental rights of citizens that must be protected. This protection is asserted in paragraph G of Article 28 (1) of the 1945 Constitution, states that every person has the right of self-protection (privacy), family, honour, dignity, and property (including personal data). The statement also affirmed in Article 32 of Law No. 39 the Year 1999 on Human Rights, which among other things stated that the independence and confidential communications by electronic means should not be disturbed except by order of a judge or other authority duly authorized by law.

Notwithstanding, the current situation in Indonesia shows that there is no single rule on procedures for an interception. Thus has created vulnerability towards interception of citizens' private communications, including in the use of internet communication, such as electronic mail and various social media tools. To date, Indonesia has at least twelve legislations regulating interceptions in different ways. Those confusing and overlapping regulations have threatened human rights, especially privacy rights. In Indonesia, the war against corruption and terrorism has somehow affected the practices of wiretapping and reduced the protection of privacy rights.



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## **Introduction**

The major issue in information privacy law is a tension between privacy and security. In order to investigate the crime, the law enforcement must gather information by monitoring suspected individuals that have to pose substantial threats to privacy<sup>1,2,3,4</sup>. This situation is exacerbated by the advancement of new technologies and the internet that have provided new challenges to long-standing human rights norms. By facilitating increased State surveillance and intervention into individuals' private lives, the spread of digital technologies has created a serious need for States to update their understandings and regulations of surveillance and modify their practices to ensure that individuals' human rights are respected and protected.<sup>5,6,7,8</sup>

Privacy has been embraced in the Asian Region. There are two major factors that influenced the privacy protection development in Asia, specifically in Indonesia. Firstly, the influences of international law such as the *Universal Declaration of Human Rights* and Indonesia as a signatory to several international human rights convention. Privacy in Indonesia is considered as a part of fundamental human rights. Indonesia as a signatory to international instruments, such as the *Universal Declaration of Human Rights* and *International Covenant of Civil and Political Rights* 1966 and ratified with Law Number 12, 2005. Secondly, privacy awareness in Indonesia has increased due to the development of information technology with its capabilities to collect, analyze and disseminate information. This new development worldwide became an enabling factor in other sector industries, such as telecommunication, media, financial and has increased the level of information generated to individual<sup>9,10,11,12</sup>. Therefore privacy also stated in Electronic Information Technology Law, 2008. Privacy issues also raise in Indonesia relating to the growing concern of protection personal data in e-identity program, because the local government collecting personal data including biometrics data and also relating to the government legal enforcement power on wiretapping.

However, intervention practices on privacy, in the form of surveillance, communications interception and disruption of personal data is one of the major problems that arise in the utilization of information technology and communications, especially the internet. The UN special

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rapporteur for freedom of opinion and expression, Daniel <sup>1</sup>, has given particular attention to this matter, given the high practice of observation (surveillance), the interception of private communications of citizens, as well as the alienation of personal data arbitrarily. In his report, La Rue affirms the need for countries to have laws that clearly describe the conditions that the right to privacy of the individual can be limited under certain conditions, and actions to touch this right should be taken on the basis of a special decision. This decision was taken by state authorities clearly guaranteed by law to perform the act.<sup>13</sup>

The origins of wiretapping occur in two quite different practices: eavesdropping and letter opening. “Eavesdropping,” restricted in meaning, has come to describe any attempt to overhear conversations without the knowledge of the participants. “Letter opening” takes in all acquisition, opening, reading, and copying of written messages, also without the knowledge of the sending and receiving parties. Telecommunication has unified and systematized these practices. Before the electronic era, a conversation could only be carried on by people located within earshot of each other, typically a few feet apart. Neither advanced planning nor great effort on the part of the participants was required to ensure a high degree of security.

Written communications were more vulnerable, but intercepting one was still a hit-or-miss affair. Messages travelled by a variety of postal services, couriers, travellers, and merchants. Politically sensitive messages, in particular, could not be counted on to go by predictable channels, so special couriers were sometimes employed. And written messages enjoyed another sort of protection. Regardless of a spy’s skill with flaps and seals, there was no guarantee that, if a letter was intercepted, opened, and read, the victim would not notice the intrusion. Since spying typically has to be done covertly in order to succeed, the chance of detection is a substantial deterrent.

Electronic communication has changed all of this in three fundamental ways: it has made telecommunication too convenient to avoid; it has, despite appearances, reduced the diversity of channels by which written messages once travelled; and it has made the act of interception invisible to the target.

Conversation by telephone has achieved an almost equal footing with face-to-face conversation. It is impossible today to run a successful business without the telephone, and eccentric even to attempt to do without the telephone in private life. The telephone provides a means

of communication so effective and convenient that even people who are aware of the danger of being overheard routinely put aside their caution and use it to convey sensitive information.

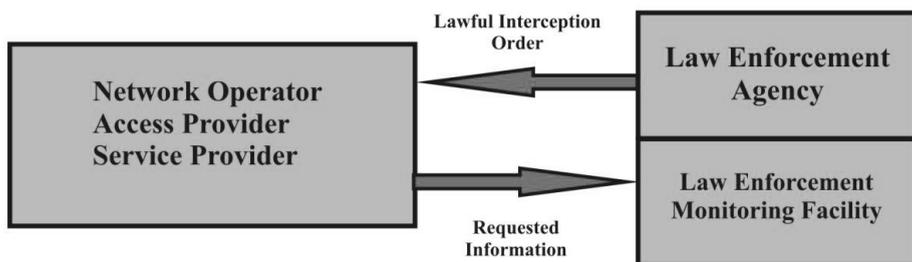
As the number of channels of communication has increased (there are now hundreds of communication companies, with myriad fibres, satellites, and microwave links), the diversity of communication paths has diminished. Today, telecommunications carriers must be registered with national and local regulatory bodies and are well known to trade associations and industry watch groups. Thus, interception has become more systematic. Spies, no longer faced with a patchwork of ad hoc couriers, know better where to look for what they seek.<sup>14</sup>

Interception of a communication in the course of its transmission involves the modification, interference or the monitoring of the system while the communication is actually being transmitted. Lawful interception is the terminology used to describe the means by which law enforcement agencies are authorised to intercept telecommunication sessions as prescribed by law. The advancement of technology has led to the need for law enforcement agencies to curb criminal and terrorist activities.

For interception to be lawful, it must be conducted in accordance with national law, following due process after receiving proper authorization from competent authorities. Typically, a national law enforcement agency issues an order for intercepts to a specific network operator, access provider, or network service provider, which is obliged by law to deliver the requested information to a law enforcement monitoring facility.

In order to prevent investigations from being compromised, the national law usually requires that lawful interception systems hide the interception data or content from operators and providers concerned. Whilst the detailed requirements for lawful interception differ from one jurisdiction to another, the general requirements are similar. The lawful interception system must provide transparent interception of specified traffic only, and the intercept subject must not be aware of the interception. Additionally, the service provided to other uninvolved users must not be affected during the interception. The term target, as used here, can refer to one person, a group of persons, or equipment acting on behalf of persons, whose telecommunications are to be intercepted. Lawful interception also implies that the target benefits from domestic legal protection. However, protections are complicated by cross-border interception.

## Organizational flow chart for Lawful Interception



Source: Adapted from ETSI TS 101 331, Definition of interception.  
See [www.pda.etsi.org/pda](http://www.pda.etsi.org/pda).

Interception of communications can take place in a number of ways: Wire Tap: this involves the installation of a transmitting device on a telephone line for the purpose of intercepting and usually recording telephone conversation and telephonic communications.

Location Tracker: This involves using devices to identify through the telecommunication system the location of an individual.

Pen registers and trap and trace devices: A pen register records only the numbers of outgoing telephone calls. While a trap and trace device is used to capture the numbers of incoming telephone calls.

The intentional interception of communications on public and private telecommunication systems without lawful authority is an offence. Lawful interception plays a crucial role in helping law enforcement agencies to combat criminal activity. Lawful interception involves the collaboration between law enforcement agencies and communication service providers. As such while there are laws dealing with the procedural and authorisation activities required for law enforcement agencies, likewise there are laws relating to the obligations of telecommunications operators and service providers. On the practical level, interception is very vulnerable to violation of privacy rights. It is recommended that government in any state should regulate interception through the act of legislation. Several countries including developed countries such as US, UK, and other European countries also

govern interception in a specific legislations that guarantee a balance protection of the rights of user, providers and public interest.

### **International Law Perspectives**

The Role of international law to protect privacy against surveillance and interception have contributed significantly through international society consists of states, Civil Society Organizations, International Organization on Human Rights and business people is since the interception practices have violated the privacy rights of the public. So, they express their opinions in international forums organized either by Civil Society such as Privacy International, Electronic Frontier Foundation and other organizations. As in June 2013, they issue *International Principles on the Applications of Human Rights to Communications Surveillance*, which must be taken into account by all countries as it is based upon basic principles of the protection of human rights set out in international human rights law.

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This instrument attempts to clarify how international human rights law applies in the current digital environment, particularly in light of the increase in and changes to Communications Surveillance technologies and techniques. These principles can provide civil society groups, industry, States, and others with a framework to evaluate whether current or proposed surveillance laws and practices are consistent with human rights<sup>2</sup>.

Another important role also is done by the United Nations (UN) through its Special Rapporteur on Human Rights in December 2013, when the UN General Assembly issued Resolution Number 68/167 on *The Right to Privacy in the Digital Age, which among others include*<sup>3</sup>:

1. To respect and protect the right to privacy, including in the context of digital communication;
2. To take measures to put an end to violations of those rights and to create the conditions to prevent such violations, including by ensuring that relevant national legislation complies with their obligations under international human rights law;
3. To review their procedures, practices and legislation regarding the surveillance of communications, their interception and the collection of personal data, including mass surveillance, interception and collection, with a view to upholding the right to privacy by ensuring the full and effective implementation of all their obligations under international human rights law;

4. To maintain existing independent, effective domestic oversight mechanisms capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications, their interception and the collection of personal data.

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### **Interception and Privacy in Indonesia**

The debates regarding the interception of a communication in Indonesia are getting more intensified lately, this because the interception of communication today is usually used by law enforcement agencies as to expose the crimes, particularly organized and transnational crimes. This is even getting more intensified after the enactment of Act Number 17 the Year 2011 on State Intelligence and Act Number 18 the Year 2011 on Amendment to Act Number 18 the Year 2004 on Judicial Commission. The discourse to make new regulation regarding the interception of communication increasingly stronger, particularly after the Constitutional Court gave the verdict on the case of Article 31 paragraph (4) Act No. 11 the Year 2008 on Information and Electronic Transactions.

An interception by law enforcement agencies or official institutions remains controversial because it can consider as an invasion of the privacy rights of the citizens, which includes the privacy of private life, family life and correspondence. On the other hand, the interception is also effective as a method of investigation in the disclosure of criminal cases. Interception is a useful alternative to develop the method of prevention, detection and investigation of crimes.

Briefly, quite a lot of perpetrators on the serious crimes can be brought to justice because of the interception. As an example, without an interception, Corruption Eradication Commission of the Republic of Indonesia may not be able to detect the perpetrators of corruption and also against him in court. Without interception. It would be difficult for the Densus 88<sup>4</sup> to reveal numerous cases of terrorism, as well as for the National Narcotics Board in the case of psychotropic drugs abuse.

However, an interception as a method to deterrence and detection of crimes also tend to violate human rights, especially when this activity must deal with lack of regulation and lack of control from the government. Interception tends to be abused, particularly when the national legislation incompatible with human rights. Moreover, there is a tendency from the law enforcement officers, to make interception

transcription as a primary evidence in combating crime without trying to use another instrument as evidence in criminal matters.

The obscurity condition regarding the interception regulation in Indonesia appears from the number of statutory regulations. The regulations provide authorization to the government institutions to commit an interception, while the restrictions between one provision with other provisions are often different. The regulations regarding the interception activity can be found in a number of statutory provisions as follows:

1. Chapter XXVII Indonesia Criminal Law Code on the Malfeasance, article 430 up to article 434;<sup>6</sup>
2. Act Number 5 the Year 1997 on Psychotropic;<sup>7</sup>
3. Act Number 31 the Year 1999 on Corruption Eradication;<sup>8</sup>
4. Act Number 36 the Year 1999 on Telecommunication;
5. Act Number 30 the Year 2002 on Corruption Eradication Commission;
6. Government Regulation Number 1 the Year 2002 on Terrorism Eradication
7. Act Number 18 the Year 2003 on Advocate;<sup>10</sup>
8. Act Number 21 the Year 2007 on Combating Trafficking Persons;<sup>11</sup>
9. Act Number 11 the Year 2008 on Information and Electronic Transaction;
10. Act Number 35 the Year 2009 on Narcotics;<sup>12</sup>
11. Act Number 18 the Year 2011 on Amendment to Act Number 22 the Year 2004 on Judicial Commission;
12. Government Regulation Number 19 the Year 2000 on Corruption Eradication Joint Team;
13. Government Regulation Number 52 the Year 2000 on Operation of Telecommunications Service;
14. Ministry Information and Communication Regulation Number 11 the Year 2006 on Technical Interception of Communication; and
15. Ministry Information and Communication Regulation Number 1 the Year 2008 on Information Recording for Security and Defence.

As mentioned earlier, unfortunately, the variety of acts and regulations governing the interception contain fundamental weaknesses, as one regulation is very often found contradictory or inconsistent with

another. The procedure to get an authorization for communication interception in one Act is different from another Act. The absence of a single regulation regarding the interception procedural in Indonesia has made the rights to privacy of Indonesian citizens are threatened. This situation appears because state officials can easily use various methods to intervene against the privacy rights of its citizen's Another constraint related to the interception of a communication in Indonesia is due to the fact that there is no single authority to provide the authorization or permission for intercepts. To get the authorization, regulations regarding the interception as mentioned above designate different institutions. For example, Act on Psychotropic allows phone tapping and recording with the permission from the Chief of the Indonesian National Police. The act of Narcotics allows the National Narcotics Agency to intercept the communication based on the permit of the Head of Municipal Court. However, under urgent circumstances, the intercepts can also be done without authorization. Act on Terrorism Eradication also allows investigators to intercept phone communications and make recording only with the permission from the Head of Municipal Court. The Corruption Eradication Commission is allowed to intercept phones communications and make a recording in order to reveal allegations of corruptions based upon their own decision. Act on Information and Electronic Transactions allow a request for interception from any investigation institution established under regulation, similarly with the Telecommunications Act. Act on State Intelligence allows the interception based on the command of the Chief of the State Intelligence Agency, as well as through the establishment decision of the Head of Municipal Court.

The above condition shows that the institutions providing authorization for communication interception in Indonesia are varied and depending on the intercept target. Generally, in other countries, permit for intercept solely owned by one institution. Some countries use the model where the permit granted by the government (executive authorization), while some others use the model to obtain the permission from the court (judicial authorization), and the other model is that the intercept is allowed by the judge commissioner (investigating magistrate).

Indonesia embraced all models, and as the consequence, there is no monitoring mechanism nor a uniform control to the institutions that conduct intercepts. This condition will also raise the opportunities for

claims based on the interests of each institution, and as the result, human rights to the privacy which includes privacy of private life, family life and correspondence become vulnerable violated.

Moreover, an obstacle in regulating interception is due to the differences in the length of interception period or duration. Act on Psychotropic allows the interception communication conducted during 30 days. Act on Narcotics allows the communication interception within a period of 3 months and can be extended by another 3 months. Act on State Intelligence allows state intelligence officers to conduct interception for a period of 6 months and can be extended as needed. This means that there is no definite time limit for the state intelligence officers to intercept the target. Act on State Intelligence would potentially violate the rights of privacy protection of the citizens, as it allows state intelligence officers to take interception in long duration. Furthermore, the Act on Terrorism Eradication allows the communication interception within one year and Act on Corruption Eradication allows the communication interception conducted without any specific time limit. These differences in interceptions durations certainly susceptible towards violation of the rights of citizens, particularly if there is no monitoring and control on to the institutions.

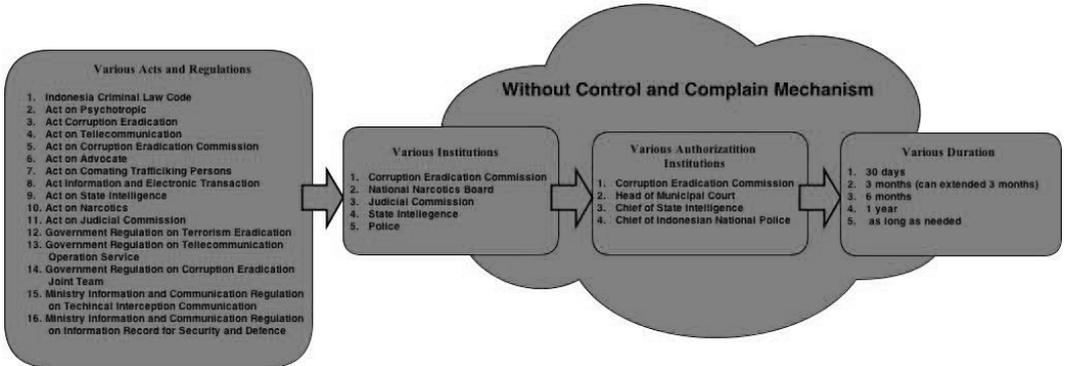
*Sinta Dewi*

The absence of rules regarding the use of the material results will also lead to the abuse of interception. The regulation setting related to the using of the interception results usually consists of :

1. restrictions on who can access the wiretapping and interception results;
2. interception procedures;
3. regulation on the relevant material of the interception;
4. procedures to bring the intercepts results as evidence to the court; and

The lack of rules regarding the use of the materials resulted from interception makes the resulting material can be accessed by any person. Furthermore, the interception's material results can also be heard or quoted in the media without prior selection. Certainly, this condition will also vulnerable to abusing the interception material.

The most important thing related to the interception of a communication in Indonesia is there is no specific complaints mechanism from citizens, particularly if the interception conducted with arbitrarily. The absence of this mechanism will make interception practices will potentially violate human rights.



## Indonesian Obstacles Related to the Interception Regulation

### Conclusion

Privacy is a fundamental human right and is central to the maintenance of democratic societies. It is essential to human dignity and it reinforces other rights and is both recognised under national and international human rights law. Communications Surveillance interferes with the right to privacy among a number of other human rights. As a result, it may only be justified when it is prescribed by law, necessary to achieve a legitimate aim, and proportionate to the aim pursued. In recent decades, due to the advancement of information technology that facilitates State surveillance of communications, States are failing to ensure that laws, regulations, activities, powers, and authorities related to Communications Surveillance adhere to international human rights law and standards. and have decreased to apply legal principles in new technological contexts that have become unclear.

Until today, the regulations related to the interception in Indonesia randomly develop based upon sectoral interests. This condition leads to some problems *inter alia* overlapping regulations, overlapping institutions and causing legal uncertainty to the citizens. The condition also potentially contains human rights abuse, particularly the right of privacy. Therefore, Indonesia must harmonize all regulations related to the interception activity, otherwise, the main objective of the interception as to enforce the law, conversely become unlawful and resulting in the abuse of power committed by the government institution.

The needs of each country to have its own laws which should clearly describe the conditions that the rights for individual privacy may be

limited under certain terms, and measurements on this rights should be taken based on a special decision. This decision should be taken by the state authorities guaranteed by law as to perform the act.

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*An Overview of  
Indonesia Statutes  
Governing Lawful  
Interception*

# Legal Aspects of Asset Valuation on Copyright as Part of Boedel (Countable-List) in the Process of Bankruptcy in Indonesia Following the Latest Copyright Law Act No. 28/2014

*Christian Andersen*

In Indonesia, recording activities of bankruptcy's countable list by a curator are very limited when the conduct of legal proceedings pertaining to some intangible assets especially when we talk about Intellectual Property Right (IPR) from the submitted party of bankruptcy. Even though IPR is an asset the most potential while running business activities. Among the IPR another regime, copyright considered the most striking in assigning its economic value. The monetization of IPR especially copyright may be done by means of economic reckon rights of objects in the number of his rewards or royalty received by copyright holders. The monetization of IPR especially copyright may be done by means of economic reckon rights of objects in the number of his rewards or royalty received by copyright holders.

In various advanced countries in the use of his intellectual property, many businesses made IPR as assets major in their company, for example, Indonesian neighbour countries such as Singapore and Malaysia. Before 2014, Indonesian Copyright Regulation never regulates



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concerning copyrights as a collateral. Indonesia with the latest Act Number 28 the Year 2014 on copyright, specifically in article 16 paragraph 3 expressed with firmly that objects copyright can be used as an object fiduciary security. Where in the law on copyright is mentioned also that in its implementation copyright can be used as fiduciary an object by following the procedures for that has been set up by the laws of fiduciary security?

*Christian  
Andersen*

Basically copyright equal to other IPR, is an asset that did not have a physical (a tangible asset), businesses have been using the license agreement of copyright as an object considered a claim or invoice that give royalty which for the license and this that can be an asset bankruptcy. Although there have been regulation governing copyrights as a collateral, there are still some problem with copyright license holder from Indonesia, first, it has been very difficult to determine the value of its economic value in addition to the intangible characteristic, second, copyright are also difficult to determined its economic value due to lack of implementation regulations such as the credit with IPR as collateral on Banking Law in Indonesia, the third, until now Indonesian Government have not yet been made institutions specifically to estimate the established in economic value of copyright itself as an assessment objective which can be used as a criterion in judgment that IPR as assets moreover in bankruptcy .

*Keywords: bankruptcy, boedel, copyright, and intellectual property rights (IPR)*

## **Introduction**

In modern time like this, many businesses in developing countries such as Indonesia are using intellectual property rights (abbreviated as IPR) as the main activity of business, the parties involved even usually involves many as vendor, producers, and agency that are multiparty, even there is also multinational is that indirectly beneficial important to socio-economic development between countries. Intellectual property, or "IP," plays a major role in Indonesian creative industry that makes intellectual property licenses and especially significant type of executory contract. Whether you are a licensor or licensee, it's important to know what can happen to IP licenses when a bankruptcy is filed.

The development and industrialization of Indonesia to be an advanced country can only be embodied by improvement of the inde-

pendent industry, healthy, and powerless competitiveness, grateful resources optimally and efficient, and encourage industrial development throughout of Indonesia and its support progress and national economic unity based on society, justice, and values that sublime into the culture of the nation with the utmost national interests. Lifting economic and creative industry to the foreign national is one important thing we need to support, this was said by a presidential candidate named Jokowi as part of the notion of mental revolution in the campaign before elected as current President<sup>1</sup>.

The creative industry is an industry that ended up at intellectuality, an idea, and the ideas that original and realized based on thought and action to create real job opportunities in order to promote the economic growth in this country. Through creative industry trading and transactions, we can exchange many aspects like technology, entrepreneurship, creativity, and traditional knowledge. Nonetheless, even the most creative business that is legally protected sometimes facing possible dispute in such claims IPR. All the businesses based IP always trying to find many ways<sup>2</sup> to reduces dispute risk with a tight manner in the management of rights and obligations between superiors with a subordinate and other businesses that operate in the same field. But that sometimes dispute business keep showing up, settled through trial not always arrive on the target with relatively a longtime process until the result although there was already commercial court, the dispute resolution alternative and a resolution dispute-prevention and strategies represent a good solution to both sides and of course affecting their business profit.

The creative industries are expected to more capable of surviving when it comes to the economic crisis because based on ideas and creativity is the man who indefinitely. In relation to this and the protection of the law relating to the intellectual rights, the problem of the contract both national and international must always be improved so that players were traded can mutually benefit being balanced so as to create the dictates of the healthy market. The creative industry is an industry that derived from the use of creativity, skills and talent individual to create welfare and job opportunities by producing and exploit power creation and the copyright the industry. As for that belongs to a group creative industry is advertising, fashion design, the craft, design, interactive game (games), music, video-film and photography, computer services and software, architecture, music, the art of

performing, television and radio, publishing and printing as well as research and development. In the process of business development, both the government and the investor community requires big fund. On the creative industry, many do not have enough capital, to meet the needs of capital can be obtained by the loans.

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Part of Boedel*

In the world of bankruptcy, traditional rules of contract interpretation and the intentions of one or both of the contracting parties are sometimes ignored and often displaced. One area of bankruptcy in which this phenomenon occurs frequently involves the assumption and assignment of executory contracts.<sup>3</sup>

Business financing cannot be separated from the term about guarantee, and when getting a loan for business over this object small business insurance usually using fiduciary, basically regulatory aspect there has been the Law Number 42 Years 1999 about fiduciary security. On the other hands, the regulation in the field of intellectual property rights has also quite many, the latest Act Number 28 the Year 2014 on copyright, specifically in article 16 paragraph 3 expressed with firmly that objects copyright can be used as an object fiduciary security. Where in the law on copyright is mentioned also that in its implementation copyright can be used as fiduciary an object by following the procedures for that has been set up by the laws of fiduciary security<sup>4</sup>, however in practice, the regulation especially about IPR valuation as asset have not been able to fully to support creative industry development in Indonesia, and IP issues may arise when a party to litigation or a party to a license files for bankruptcy, a complication can arise with respect to litigation in the shadow of bankruptcy if the bankruptcy plan disaggregates certain IP rights in Indonesia especially copyright and patent in such a way that constitutional standing to sue is lost<sup>5</sup>. This paper will focus primarily on the latest Copyright Law in Indonesia that affect the reorganization of the debtor.

### **Literature Review**

In general, the intellectual property consists of those intangible assets that are the creation of the mind. Businesses usually consider inventions, expressions, confidential plans, and branding identifiers as IP.

In Indonesia, the limited company assets can be objects that have a physical (a tangible asset) as though, land, vehicles, and can be objects that do not have a physical (intangible asset) as distributor networks, advertising programs, training materials, parts annuities, customer re-

relationships, and intellectual property rights.<sup>6</sup> We can use Copyright in companies that do not have a tangible asset because with the latest Copyright Law article 16 we also know IP also can categorize as a security for liability of a company<sup>7</sup>.

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When a company enters bankruptcy, one of the key decisions it will face is whether to assume, reject, or assume and assign to a third party its executory contracts. For a debtor that is an IP owner-licensor, such “executory contracts” generally include any IP licenses to which it is a party. A debtor-licensor may also choose to sell its IP to a third party, and under certain circumstances, this sale may extinguish any third-party interests in the IP including existing licenses. Although these debtor’s rights do advance the Bankruptcy law in Indonesia primary goal are rehabilitating the debtor and protecting the creditor body, they can work a significant hardship on the debtor’s pre-petition licensees. It also has frequently been noted that the judicial system in Indonesia has not functioned well in dealing with bankruptcy cases<sup>8</sup>.

Unfortunately, the Bankruptcy Law Number 37/ 2004 in Indonesia never states that “intellectual property” includes trade secrets, patents or patent applications, and copyright works, as countable list of bankruptcy (boedel), that address Indonesia Bankruptcy Law doesn’t regulate or allows licensees to elect to retain the right to use certain kinds of copyright or any licensed IP particularly when the licensor rejects the underlying license<sup>9</sup>. Moreover, in certain circumstances, a licensee can retain substantial rights in IP that is sold by the debtor-licensor. The licensing parties’ respective rights will vary greatly depending on the kind of IP involved, the terms of the license, and the action or inaction of the licensee. But we can find some regulation from “Kitab Undang-Undang Hukum Perdata” (Indonesia’s Civil Code) which are article 1233 stated that is in principle indicating that engagement born from a contract has the same power binding as the laws, the regulation is often the reference in clarifying debt sense that a debt is a responsibility of who is born of an agreement. The other articles are 1131 and article 1132 Civil Code, they indicated that objects belonging to debtor including intangible and those who are regulated by law as collateral can be used as part of the countable list as collateral for any debt from the debtor.<sup>10</sup>

IP as assets that have a role in most dominant when companies to normal, would have inferior value when liquidation. Assets that have a role in most dominant of course are assets that have a special pur-

pose as a copyright, patent, the right brand, the right of trade secret, the right of industrial design, a network of the distributor, consumer tissue, advertising system, etc.

IP assets with the usefulness special are generally not assets for trading, so it is hard to give market value, Indonesian Bankruptcy Law are used to the assets that had value in business entities place assets are located. Liquidation assets in Bankruptcy process mean it can be cashed in assets or liquefying assets, namely distribute the right belonging to assets in urgent situations and in fast time which is based on the will buyers in the various forms of the transfer of rights the property of being you could do with assets.<sup>11</sup> We need to really address whether an exclusive copyright license is freely assignable even when the license expressly prohibits assignment.<sup>12</sup>

*Christian  
Andersen*

### **The Methodology and Model**

The methodology that used in this research is descriptive analytical, that trying to give a picture of the actual problems based on the facts that appear. Furthermore, the research methods used in accordance with the formulation of the problem which is the focus of about legal aspects valuation on copyright in Indonesia.

The approach used in this study is a juridical normative law about Intellectual Property Rights, focusing on Copyright Law. The research that takes literature data supported by the data fields. Normative research is the main research in this study, including legal research library materials. In this study is basic data research classified as secondary data.

Normative juridical research using secondary data. In the legal research, secondary data includes primary legal materials, secondary law, and tertiary legal materials.

The analysis technique used with a qualitative approach. In this qualitative approach is not used statistical parameters. Deductive method is used for the data obtained from the literature search, whereas the inductive method is used for the data obtained from the field and complementary in this study.<sup>13</sup>

### **The Findings**

The major role of intellectual property, or “IP,” plays in our economy makes intellectual property licenses an especially significant type of executory contract. Whether you are a licensor or licensee, it’s import-

ant to know what can happen to IP licenses when a bankruptcy is filed. The restructuring of the company in bankruptcy would be crucially effective if be done with considerations including company assets that have dedicated to the certain economic activity, the assets such as Copyright and IP, in general, must stay with the company, and lack of the assets very significant impact on assets company. The article 16 paragraph (3) (copyright law) that saying, “copyright can be used as an object fiduciary security “, the presence of article this does not necessarily make the bank or other finance companies in Indonesia easily give loans. And let us not forget that intellectual property rights can only be considered as collateral if the IP itself were already registered and still has when the value of bankruptcy, with the manner of proceeding the license agreement intellectual property rights who formerly was and liquidates assets intellectual property rights.

A debtor-licensor’s ability to reject licenses creates a tremendous danger that licensees may have their licenses rejected in bankruptcy, a disastrous outcome for licensees in many cases. Timing is critical to whether a licensee may retain rights pursuant because that section applies only to rights existing at the time the bankruptcy commences.

When a bankruptcy comes, that debtor is an IP licensee, assumption or assignment of that license can provide relief to that debtor. Generally, a debtor can assume a license if he cures any defaults and gives adequate assurance of future performance of the license.

However, the bankruptcy law in Indonesia may limit the debtor licensee’s ability to act through which debtor licensee may not assign a license to another third party if the applicable law, such as IP related laws, indicates that the other contracting party does not have to allow the assumption or assignment and does not consent to the assumption or assignment. Here, a licensor could prevent the debtor licensee from selling the license to another party and receiving any resulting proceeds into the bankruptcy estate. This would presumably protect the licensor from performing the contract with an unintended party.

A debtor licensor may prefer to reject an IP license in order to limit his future responsibilities or costly contractual obligations to the licensee. The Code removes this debtor’s freedom to completely reject a license. As licensees may have become overly dependent upon the IP assets bargained for in the license, the Code provides the non-debtor licensee with options when the debtor rejects an IP license. The licensee first has the option to simply allow the rejection and treat the license

as terminated, thus allowing the licensee to sue for breach under non-bankruptcy law. Alternatively, Indonesia Copyright Law allows the non-debtor licensee to elect to continue to use the licensed IP. If the non-debtor selects this option, the licensee retains his rights that existed at the time of the debtor's bankruptcy case commencement but must continue to pay license royalties to the debtor. Additionally, the licensee waives any right to set-off, or the right to deduct the value of services or money owed to it from its future payments to the licensor. In this situation, the debtor-licensor would not likely provide any new services, such as software updates, but would be obligated to maintain the license under its initial contractual terms. protects the licensee, allowing him to continue his use of the IP regardless of the licensor's bankruptcy.

A licensee in bankruptcy, like a licensor, may choose to assume, reject, or assume and assign its executory contracts, including IP licenses. A debtor-licensee will, however, have a somewhat different set of related considerations in bankruptcy than will a typical debtor-licensor. For example, article 16f from copyright's law in Indonesia is inapplicable when a debtor-licensee rejects a license—the licensor owns the underlying IP so there are no “use” rights that the licensor might need to retain—leaving fewer restrictions on the debtor-licensee in this regard. On the other hand, a licensee's ability to assume and assign a license will vary greatly depending on the kind of IP that is at issue and the exclusivity of the rights conferred. Perhaps the most complex issue facing a licensee is whether it can assume a license outright—in some circuits, the assumption is only possible if a hypothetical assignment would also be permissible. After analyzing the assignability of an intellectual property license under such rules, three things must be considered carefully: The type of intellectual property is the subject of the license (e.g., patent, copyright, trademark, software, knowhow), The license exclusive or nonexclusive; and what the license says about the licensee's ability to assign the agreement, written or expressed on restrict assignment, it expressly permit it, unwritten.

### **Summary and Conclusions**

Whether an economic right from copyright as IP license can be assigned or not will depend on the type of license at issue. Licenses may be treated differently (assignable or nonassignable) based on the kind

of IP that is at issue—for example, patent, copyright, or trademark rights—and may also be treated differently depending on whether the license is exclusive or nonexclusive.

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Moreover, even though exclusive licenses confer a broader ability on the licensee to sue for patent infringement, most courts hold that exclusive patent licenses are also generally nonassignable absent consent. A party's ability to enforce its patent rights in litigation may be significantly affected by an adverse party's decision to file for bankruptcy. The automatic stay adds additional complexity to litigation proceedings, potentially creating asymmetrical scenarios where one party can proceed but the other stays, and the need for judicial approval of settlements creates an additional layer of uncertainty for all parties concerned. Similarly, a licensing party's bankruptcy may profoundly affect the rights of other parties. A debtor's ability to reject, assume, or assume and assign an IP license will vary greatly depending on the kind of IP at issue, whether or not the license is exclusive, and whether the debtor is the licensor or the licensee. In some contexts, the debtor has the extraordinary latitude to decide among all options, while in other contexts, certain options are available only subject to the counterparty's rights or consent, or are prohibited altogether. A circuit split on the critical issue of the actual test versus the hypothetical test adds another source of variance with respect to the treatment of the parties to an IP license. Consideration of these issues as early as possible—ideally at the time that a license is drafted, and preferably pre-petition and vigilance in monitoring the bankruptcies of licensing counterparties may mean the difference between retaining one's rights and having those rights extinguished.

Bankruptcy cases can dramatically alter a debtor's assets and contractual obligations. The debtor might have to surrender property, money, and other holdings to creditors. The bankruptcy court might also remove or discharge a debtor's contractual responsibilities, allowing him to breach otherwise valid agreements. These changes work to possibly give the debtor a fresh start in the face of unmanageable debt as well as help creditors minimize their losses. However, third parties might be unduly injured by the bankruptcy case of a debtor with whom they had entered into an agreement. In the case of intellectual property ("IP") licenses, non-debtor licensors may have only intended to provide licenses to the debtor. If that debtor licensee assigns the license to a third party, the licensor could be obliged to maintain an unwant-

ed license. Also, non-debtor licensees contracting to use a debtor's IP might base their entire business around the use of a debtor's property, such as a software product.

As in many areas of law in Indonesia, the rules concerning assignability of intellectual property licenses in bankruptcy law are often less than clear and constantly evolving. Nevertheless, this article has attempted to distil and present those rules in a manner that is helpful to the intellectual property and bankruptcy practitioner attempting to reach a satisfactory resolution of these challenging issues.

Christian  
Andersen

## Notes

- 1 Can be read on the news [kompas.com](http://nasional.kompas.com/read/2014/06/06/1718353/Industri.Kreatif.di.Mata.Jokowi), (2014), '*Creative industry in the sight of Jokowi*,' <<http://nasional.kompas.com/read/2014/06/06/1718353/Industri.Kreatif.di.Mata.Jokowi>> accessed on 6 June 2014
- 2 Treatment of executory contracts in bankruptcy is governed by 11 U.S.C. § 365 of the United States Bankruptcy Code. Although Section 365 does not define the term "executory contract," courts define such a contract as one under which performance is due to some extent on both sides and in which the obligations of both parties are so far unperformed that the failure of either party to complete performance would constitute a material breach and thus excuse the performance of the other. See, e.g., *Everex Sys., Inc. v. Cadtrak Corp.*, 89 F.3d 673, 677 (9<sup>th</sup> Cir. 1996).
- 3 Sundar CS and Al Harthi FNS (2015), 'Impact of capital structure on firm's profitability with reference to companies listed on MSM (Muscat Securities Market),' *International Journal of Business and Administrative Studies* 1(1), p. 23- 28
- 4 Ambikai and Ishan Z (2016), 'Comparative analysis of law on tort of deviant behaviors in Malaysia and India,' *Journal of Advances in Humanities and Social Sciences* 2(4), p. 243-249.
- 5 Gordon V Smith and Russel L Parr (1994), *Valuation of Intellectual Property and Intangible Assets*, (New York: The United States of America), p 34.
- 6 Kaothan O (2018), 'Organizational attractiveness and person job fit as the predictors of intention to stay of employees commercial bank,' *Journal of Administrative and Business Studies* 4(3), p. 156-164
- 7 It has been noted by David Linnan that in the five year prior to the bankruptcy law amendments of 1998 (Perpu No 1 of 1998), there were only 120 bankruptcy cases in a country of over 200 million: in Linnan, 2000 at p 95.
- 8 Djilali B, Sarra, B and Abdesselem B (2016), 'Proposal of a new model for the Algerian companies to measure the effect of intellectual capital on organizational performance,' *International Journal of Business and Administrative Studies* 2(5), p. 129-142.
- 9 Sri Soedewi Masjchoen Sofwan, *Hukum Perutangan*, (Yogyakarta: Civil Law Section FH UGM, 1980), p 8
- 10 Gordon V. Smith, Russel L. Parr, *Valuation of Intellectual Property and Intangible Assets*, (New York : The United States of America, 1994), p 413.

- 11 See *Gardner v. Nike, Inc.*, 110 F.Supp.2d 1282 (C.D. Cal. 2000), *aff'd*, 279 F.3d 774 (9<sup>th</sup> Cir. 2002); *Morris v. Business Concepts, Inc.* 259 F.3d 65 (2d Cir. 2001).
- 12 Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, (Jakarta: Ghalia Indonesia, 1988), p 35

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# Juridical Review of Mastering and Utilization of Land Rights Based on Land Letters (Skt) Connected with Mining Business Licenses (Iup) Based on Law of Number 4 the Year 2009 Regarding Mineral and Coal Mining

*Daniel Hendrawan, S.H., M.Hum, Yelma Nomida Alvisalia, S.H.*

## **Abstract**

Minerals and coal as one of Indonesia's natural resources are used for the greatest prosperity of the people so that the state controls it. Based on Law No. 4 of 2009 on Mineral and Coal Mining, state control within the scope of business can be delegated to other parties within the Indonesian mining legal territory, one of them is the existence of an IUP. IUP serves to carry out mining business activities. IUP holders are not holders of land rights, and holders of land rights do not automatically become holders of IUP. Land held by IUP holders can not be directly utilized. Mining business activities carried out gradually and timed long enough. As a result, an impression of neglect of the land and invite other parties to make land grabs. One of them uses Land Certificate. The purpose of this first study is to know the legal power of Land Certificate in terms of control of land rights. Second, to know the legal protection for IUP holders due to the issuance of Land Certificate. Thirdly, to know the legal certainty of ownership of mineral

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and coal resources in Mining Permit Areas (WIUP) due to issued Land Certificate. The results showed that the Land Certificate is just a certificate of physical control over land, especially in WIUP, so it has a weak legal force as proof of control over land rights. Unlike the case when land ownership using certificates. IUP granted by the government to mining entrepreneurs is a form of legal protection in the implementation of mineral and coal mining business activities. The issuance of Land Certificate for land tenure in WIUP cannot distort the existing IUP first. Land certificates are indeed possible to control the land surface, but not to control the mineral resources and coal in the bowels of the earth.

*Keywords: Land Certificate, Land Rights Control, Mining Business License*

### **Introduction**

Indonesia is a country endowed with abundant natural resources as national wealth. The regulation on natural resources is regulated in the 1945 Constitution in Article 33 paragraph (3) stating that:

“The earth and the water and the natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people.”

One of Indonesia’s natural resources is mineral and coal. Minerals and coal as natural resources, controlled by the state and controlled by the government. State control contains the authority to regulate, manage (control) and supervise the management or exploitation of minerals and coal, and contains an obligation to use as much as possible for the welfare and interests of the people.

The control of the state within the scope of business (concession rights) within the legal territory of mineral and coal mining is regulated in Law No. 4 of 2009 on Mineral and Coal Mining. The concession rights may be delegated to business entities, cooperatives or individuals within the territory of Indonesian mining law in the presence of licenses. One of the permits to be discussed is the Mining Business License to be hereinafter abbreviated as IUP. IUP is divided into 2 (two) namely Exploration IUP and Production Operation IUP. IUP in addition to functioning for permission to carry out mining business, IUP has issued aims for the first step can be done mining construction.

When mining construction phase is done, of course, have to get certainty about the right of land. Because mining business activities

are mineral and coal management activities contained in the soil. The right to land is required for the interest of mining business activities. Then related to the utilization of land rights in which contained minerals or minerals, can cause problems because the holder of IUP is not the holder of land rights. Similarly, holders of land rights do not automatically become holders of IUP for minerals and coal contained therein. The result is that the land controlled by the IUP holders cannot be directly utilized.<sup>1</sup> This is because mining business activities are done in stages starting from the exploration stage to production operation stage. In addition to gradual, mining business activities also require a long period.

The period for each Exploration IUP and Production Operation IUP has a long-term of validity. The problem is the validity period of IUP starting from IUP Exploration, and Production Operation IUP and extension can be up to 60 (sixty) years. Therefore, the control of land rights by IUP holders is possible up to 40 (forty) years, unless the IUP holder gradually also returns to the state after the mining materials are extracted/processed.<sup>3,4,5,6</sup> Due to a long tenure in the absence of mining activities, the impression of neglecting the land and inviting other parties to conduct land grabs within the Mining Permit Territory (WIUP).

There is a problem of land grabbing conducted on the basis of Land Certificate, hereinafter referred to as SKT issued by the village head (*kelurahan*). This SKT confirms the history of the land. The purpose of the issuance of SKT is to facilitate the control of land rights. Based on this SKT will be used for registration of land rights to the National Land Agency (BPN) or the District Land Agency. The village head as part of the government apparatus at the lowest level has the authority to make a letter affirming or strengthening a person's physical control over a plot of land in his territory.<sup>7,8,9,10</sup>

Through this case, there is uncertainty about legal certainty and protection of IUP holders. The impact is on the side of society demanding compensation because they base their ownership of land rights with SKT. In the side of IUP holders, they are forced to pay compensation for the demands of the local community.

### **Licensing of coal mining business in Indonesia**

SKT (Land Information Letter) is a written evidence under the hand that the evidentiary power is not as strong as the authentic deed, but

*Daniel  
Hendrawan S.H.,  
M.Hum  
Yelma Nomida  
Alvisalia, S.H.*

because the SKT is the letters categorized as the basis of the right or juridical data on the land as a condition of the completeness of the requirements of the land rights application as stipulated in the provisions of the land legislation, then the SKT is a very important document in the process of issuing a certificate of land rights.

Based on the interview result of the writer with Mrs. Tini Sumartini and Mr. Iwan Y. Adyaksa as the Analyst and Staff of Land Rights Application and Land Registration in the National Land Agency of West Java Regional Office he mentioned that SKT is one of the supporting data in the implementation of land titling certification so that SKT must be completed as a condition of land registration especially for first land registration. Furthermore, he mentioned to issue SKT, Village Head / Village Head who wants to issue SKT hence there are conditions such as follows: <sup>11</sup>

- a. The subject of SKT physically controls the land, the land tenure is done with a minimum period of 20 (twenty) years and knows about the land boundary mark
- b. The land is cultivated by the subject of SKT, for example, farming and others;
- c. Routine pay taxes or village fees on the land;
- d. Residents around the land area know that the subject of the SKT is really working on the land concerned (minimum 2 (two) people).

In Law No. 4 of 2009 on Mining of Minerals and Coal is determined the types of the mining business. From this understanding it can be concluded that the mining business of excavation materials are divided into 8 (eight) kinds:

- a. A general inquiry is a stage of mining activity to determine regional geological conditions and indications of mineralization.
- b. Exploration is the stage of mining business activities to obtain detailed and thorough information about the location, shape, dimensions, distribution, quality, and measurable resources of minerals, as well as information on the social and environmental environment.
- c. Production operations shall be the stages of mining business activities which include construction, mining, processing, refining, including transportation and sales, as well as environmental impact control facilities in accordance with the results of the feasibility study.

- d. Construction is a mining business activity to undertake the construction of all production operation facilities, including the control of environmental impacts.
- e. Mining is part of mining business activities to produce minerals and/or coal and associated minerals.
- f. Processing and refining is a mining business activity to improve the quality of minerals and/or coal and to utilize and obtain minerals.
- g. Transportation is a mining business activity to remove minerals and/or coal from mining and/or processing and refining areas until the delivery site.
- h. Sales is a mining business activity to sell the proceeds of mineral or coal mining.

IUP according to Article 1 number 7 of Law Number 4 the Year 2009 is a license to carry out mining business. IUP is divided into 2 (two) namely Exploration IUP and Production Operation IUP:

- a. Exploration IUP is a permit granted for general investigation activities, exploration, and feasibility studies within the framework of mining.<sup>12</sup> Exploration IUP is provided on request from business entities, cooperatives, and individuals who have obtained Mining Permit Areas (WIUP). In the case of exploration activities and feasibility study activities, holders of exploration IUPs obtaining mined or uncultivated coal shall report to the IUP. Article 42 of Law No. 4 of 2009 concerning Mineral and Coal Mining regulates the period of Exploration IUP, on average when the total length of the Exploration IUP can reach 20 years along with its extension.
- b. Production Operation IUP is a permit granted for construction, mining, processing, and purification activities, as well as transportation and sale in the framework of mining.<sup>13</sup> This type of IUP is provided to enterprises, cooperatives or individuals as an increase from exploration activities. Article 47 of Law Number 4 the Year 2009 regarding Mineral and Coal Mining regulates the period of IUP Exploration which if accumulated reaches 60 years along with its extension.

### **Land Tenure Analysis Based on SKT Connected to Mining Business License (IUP) Based on Law Number 4 the Year 2009 on Mineral and Coal Mining**

Based on its position the land is divided into 2 (two), namely land that has been certified and land that has not certified. The certified land is

land that has rights and has been registered in the land office. Land that is not certified is the reverse of land certified; this land has not been registered to the land office so that this land has not owned the right to land which is indicated by a certificate of land rights and the status of the land is still state land or customary land. Usually, the state land that has been carried out by the local community has proof of rights right in the form of SKT.

SKT is a certificate indicating the control of a person or a party to the plot of the land concerned. SKT is written evidence made under the hands of a party performed before and published by the Village Head. SKT is based on official reports of land inspection and public figures' statements, then reinforced by the *Camat* containing information on the verification of indigenous land rights that have not been registered, in respect of which the land will be transferred or will be appealed for their rights. Thus, this SKT is used for land that has not been registered as information that someone controls the land physically.

As regulated in Article 39 paragraph (1) letter b of Government Regulation Number 24 of 1997 concerning Land Registry which reads PPAT refuses to issue a deed if the land has not been registered yet, it is not submitted:

1. a certificate of right or certificate of Village Head that states that the person controls the plot; and
2. a certificate stating that the parcel of land concerned has not been certified from the Land Office, or for land located in a region far from the Land Office office, from the right holder concerned with being upheld by the village chief;

Through the explanation of Article 39 paragraph (1) point b, it can be seen that the Land Deed Officer (PPAT) will refuse to make the deed of land which has not been registered if it is not submitted by SKT made by the village head. From here it can be said that in addition as evidence for the registration of land for the first time, SKT was used as one of the evidence of land tenure to later made the PPAT deed.

In mining business activities, it is known as Mining Business License (IUP), Special Mining Business License (IUPK) and Mining Business License (IUPR). All such licenses constitute a form of protection and provision of legal certainty for the holder of each permit based on its mining sector. Permits are required for parties to conduct mining operations to clarify ownership or land management rights. As holders of IUPs for both exploration and production operations, under this

IUP they have rights and obligations. Here the author will discuss the rights of holders of IUP because of its relationship with the protection of the law.

The rights of IUP holders are listed consecutively in Articles 90, 91 and 92 of Law No. 4 of 2009 on Mineral and Coal Mining. In addition to the article above, pursuant to Article 94 of Law No. 4 of 2009 concerning Mineral and Coal Mining states that IUP and IUPK holders are guaranteed their right to conduct mining business in accordance with the provisions of the legislation. However, in practice, in the minerals and coal mining business sector there are still many problems that accompany one of them concerning the utilization of land for mineral and coal mining business activities.

Utilization of land for mining business activities is described clearly in Chapter XVIII starting from Article 134 to Article 138 of Law Number 4 the Year 2009 regarding Mineral and Coal Mining. It should be remembered that the IUP is not proof of control over land rights for the interests of mineral and coal mining business activities. One of the problems of land use is the issue of land rights acquisition carried out by the community around WIUP based on SKT issued by the Village Head.

Tenure of land rights with SKT here which is based on bad faith with other words occupies a plot of land without a legal title (*legal rechts titel*).<sup>14</sup> The right of title herein is contained in Article 16 of Law Number 5 of 1960 on Basic Agrarian Basic Regulations, or land rights regulated by customary law such as a land lien, passenger rights, profit sharing rights, and other rights of a temporary nature because these rights will be regulated by law. According to the opinion of the author, excluding the rights to the land stated in Law Number 5 of 1960 on the Basic Regulation of Agrarian Principles, the control or ownership of the land with other rights base is inconsistent and unlawful of its legal force. Anticipation step is through land acquisition to obtain the right to land in accordance with the law.

Tenure of land rights by a party in the WIUP with the use of the right of HCS shall have no legal effect whatsoever. Therefore, IUP which has been owned by mining and coal mining entrepreneurs as a permit to conduct mining business activities, cannot be distorted by its legal force to exercise physical control over a plot of land, especially in WIUP. This is because the IUP is a permit which clarifies the ownership and rights of land management within the Indonesian mining area.

Daniel  
Hendrawan S.H.,  
M.Hum  
Yelma Nomida  
Alvisalia, S.H.

Referring to Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia juncto Article 4 of Law No. 4 of 2009 concerning Mineral and Coal Mining that in this case mineral resources and coal as one of Indonesia's national assets are controlled by the state for the welfare of the people. However, if a party has obtained IUP from the government to conduct mineral and coal mining business activities under Article 92 of Law No. 4 of 2009 on Mineral and Coal Mining that the IUP holder is entitled to have minerals, including their associated minerals, or coal has been produced if it has fulfilled the exploration or production contribution dues, except for radioactive follow-up minerals.

The ownership of mineral and coal resources by IUP holders is not without limits, the power and sovereignty of the state remain a major right in the ownership of mineral and coal resources. Holders of IUP or mineral and coal mining entrepreneurs after the expiration of the IUP shall return the land and the excavated material contained therein to the state gradually. A SKT issued by the Village Head is indeed possible to be used as the basis for the right to control the land physically. If the IUP is to conduct mining business activities, the IUP holders have legal grounds for ownership of mineral and coal resources processing proceeds. Another case with the holder of SKT, this certificate can be used as the basis of the right of control over a plot of land, but SKT in any legislation cannot be used as evidence to obtain the right to have natural resources both on the surface and in the bowels of the earth.

Even for someone who pocketed the right to the strongest land that property can not necessarily have the mineral resources and coal that is in the bowels of the earth, especially for someone who only has a basic tenure of land with SKT. Referring to the exposure of the above authors, if a party has legally pocketed an IUP in a mining business activity, then at least it has legal grounds for ownership of mineral and coal processing proceeds as set forth in Law No. 4 of 2009 on Mineral and Coal Mining. Although it is not absolute ownership and merely ownership with the right to produce and sell mineral and coal processed products, it must remain oriented to the principle of benefit and principle of partisanship to the state interests referred to in Article 2 of Law Number 4 the Year 2009 concerning Mining of Minerals and Coal. The control of land rights with the issuance of Land Certificate by the Village Head / Head of the Village should not result in legal certainty regarding the ownership of mineral and coal resources.

## Conclusion

SKT is a certificate confirming the mastery and history of a plot of land. SKT is not the right to show ownership of a plot of land. Law No. 5 of 1960 on the Basic Regulations on Agrarian Principles has explicitly stated that the ownership of land rights can only be proven by the certificate of land right from the local land office.

IUP is one form of protection provided by the government to mineral and coal mining entrepreneurs. Article 94 of Law Number 4 the Year 2009 regarding Mineral and Coal Mining states that IUP and IUPK holders are guaranteed their right to conduct mining business in accordance with the provisions of laws and regulations. The issuance of SKT by the Village Head / Village Head for the control and utilization of land can not deviate from IUP.

Mineral and coal resources shall be national assets so that they are controlled by the state for the welfare of the people based on Article 33 Paragraph (3) of the 1945 Constitution of the State of the Republic of Indonesia. However, the rights of its exploitation can be transferred through a license, one of which is IUP, ownership of production can be transferred to IUP holders pursuant to Article 92 of Law Number 4 the Year 2009 regarding Mineral and Coal Mining. The ownership of this production until the term of the IUP expires, then returns to the state. SKT is not a proof of ownership of mineral and coal resources. This is because the SKT is only possible to master the plot of land does not include the resources that exist in the bowels of the earth. Therefore, the issuance of SKT in this WIUP does not affect the ownership of mineral and coal resources.

## Notes

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