

**ALMANAC**  
**ON INDONESIAN SECURITY SECTOR**  
**REFORM**  
**2007**

**Editor : Beni Sukadis**



**The Geneva Centre for the  
Democratic Control of Armed Forces**

**ALMANAC**  
**ON INDONESIAN SECURITY SECTOR REFORM**  
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## TABLE OF CONTENTS

### **Foreword**

**Suripto, SH**, Deputy Chairperson, Commission III National Parliament .....

**Dr. Philipp Fluri**, Deputy Director of DCAF.....

### **Introduction**

*Beni Sukadis*.....

### **The Department of Defence of the Republic of Indonesia**

*Kusnanto Anggoro*.....

### **The Indonesian Armed Forces**

*Al Araf*.....

### **The Indonesian Parliament and Security Sector Reform**

*Rico Marbun and Hilman R. Shihab*.....

### **Reform of the Indonesian National Police**

*S. Yunanto*.....

### **Police Mobile Brigade (Brimob)**

*Muradi*.....

### **Special Detachment 88 of the Indonesian National Police**

*Eko Maryadi*.....

### **State Intelligence Agency (BIN)**

*Aleksius Jemadu*.....

### **Strategic Intelligence Agency (BAIS)**

*Rizal Darma Putra*.....

### **Military Business**

*Eric Hendra*.....

### **The Territorial Command and Security Sector Reform**

*Agus Widjojo*.....

**The Role of Civil Society Organisations (CSO) in Security Sector Reform**

*Muvti Makaarim Al Ahlaq* .....

**The Media and Security Sector Reform**

*Ahmad Taufik*.....

**Relations between the Department of Defence (DoD) and TNI Headquarters in the Reform Era**

*Rico Marbun*.....

**Border Management and National Security**

*Anak Agung Banyu Perwita*.....

**Legislative Reform of the Indonesian Security Sector**

*Bhatara Ibnu Reza*.....

**Contributors**.....

**ANNEX**.....

Institution Profile

**Security Sector Reform in Indonesia**  
*An Effort to Guarantee the Security of Citizens*

**Suripto, SH**

Deputy Chairperson, Commission III of the Indonesian Parliament (DPR-RI)

and

Chairperson, Founders Board, Indonesian Institute for Strategic and Defence  
Studies (LESPERSSI)

The reform movement that brought an end to the authoritarian and centralised system of government of the Soeharto regime in 1998 soon rolled out a number of reform agendas in a variety of fields including security sector reform, with the objective of improving the system of government to make it more transparent, accountable, and democratic.

The expected impact of the security sector reform agenda is a heightened level of community wellbeing, accompanied by a guarantee of personal security for each and every citizen.

This being the case, security sector reform should encompass a number of stake holders, not only those directly involved in operational matters with responsibility for defense and security, such as police and military institutions, but also other institutions at the executive level as the parties with authority for planning policy for use of military force, and at the legislative level as a form of democratic civilian control.

In addition, the print and electronic media and non-governmental organisations performing democratic, non-governmental, civilian control functions must also be involved, mindful of the vital roles both played in initiating the course of security sector reform, if it is to remain consistent with the ideal of human security. Then, hopefully all parties associated with the security sector can cooperate synergistically to carry out security sector reform, having learned from historical experience of the security sector in the past, when defence and security actors deviated significantly from their roles. Security sector reform has been underway in Indonesia for over eight years but there are many unresolved problems in military, police and intelligence reform.

There are a number of factors causing security sector reform in Indonesia to remain in need of attention, among them the continuing weakness of legal and institutional frameworks for civilian control of the security sector and the enduring strength of the old paradigm that infects the mindset of actors in the security sector, i.e., the view that still sees security institutions as political actors as was customary under the New Order regime. The old paradigm, cultivated for more than thirty years, has virtually crystallised into a culture that is difficult to change. So, too, close ties between vested business interests and actors in the security sector are impediments, causing security sector reform to progress in fits and starts, making it difficult for institutions responsible for the security sector to behave professionally.

This Indonesian Security Sector Reform Almanac 2007 will discuss a number of issues in security sector reform in Indonesia that currently remain in need of attention. Reform of the institution of the Indonesian Armed Forces (TNI) is not

yet comprehensive, restructuring of military business has not been finalised and reform of the TNI Territorial Command structure remains a topic of heated debate on the performance and professionalism of the TNI.

In its role and responsibility as political representative of the Indonesian community, the Indonesian Parliament (DPR), the institution with legislative and control functions over the defence and security sector, is perceived to move quite sluggishly.

On the other hand the Department of Defence (DoD), the civilian institution with authority and responsibility for determining policy for national defence, has not exerted its supremacy as the institution to which military authorities are subordinate. In that context, relations between DoD and TNI Headquarters are also an integral element that cannot escape discussion in this volume. The structure of the relationship between these two institutions will define the extent to which the ideals of reform of Indonesia's security sector can be realised.

Similarly, issues concerning state intelligence institutions and their reform are also a separate sub-theme of this book. The Indonesian National Police (POLRI), Indonesia's principal domestic security authority, is also discussed from various perspectives, i.e., institutional reform of POLRI, the Mobile Brigade (Brimob) as a form of paramilitary policing, and the Special Anti-Terrorism Detachment 88 (Densus 88).

With the dynamic evolution of problems related to national boundaries and issues of sovereignty, border violations and management of national borders, the need for autonomous border guard troops is seen to be a critical response to this dynamic, rendering this a topic of interest to this discussion. The roles of the media and non-government organisations also influence the discussion in this volume as the fifth pillar of democracy, who act as watch dogs over the success of security sector reform in Indonesia.

In general, this book is divided into two sections: the first section will address the institutional actors in security sector reform in Indonesia, while the second section will address the dynamics of developing issues in security sector reform in Indonesia.

In closing, the Indonesian Institute for Strategic and Defence Studies (LESPERSSI) wishes to convey its deepest gratitude to the Geneva Centre for the Democratic Control of Armed Forces (DCAF), Switzerland, for its support in publishing this volume. In addition, LESPERSI also wishes to convey its deepest gratitude to the contributors of the articles in this 2007 Indonesian Security Sector Reform Almanac for contributing their very constructive ideas for development of security sector reform in Indonesia. LESPERSI hopes that this almanac can provide useful information and that it becomes a record for the community and for parties who are concerned about security sector reform, so that Security Sector Reform in Indonesia is a process that has not come to an end.

Jakarta, July 2007

## **Foreword**

### **Deputy Director DCAF**

This Almanac describes developments in the security sector in Indonesia from the perspective of security sector reform and democratic control of the armed forces. This volume explains the various institutions and community actors involved in security sector issues who evaluate, among other things, the level of effectiveness of parliamentary and civil society oversight of the security sector and explains the programs for oversight and direction.

This book was produced so that the community can understand the present state of the Indonesian security sector, to identify both short- and long-term requirements for security sector reform and to reach a consensus on this reform. Hopefully this Almanac will be updated every two years, to document the progress of reform and the new challenges that will emerge.

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) has used the methodology previously adopted in its work on Turkey. In 2005, DCAF, in cooperation with the Turkish Economic and Social Studies Foundation (TESEV), published an almanac on the Turkish security sector, identifying existing control mechanisms. The Almanac of Security Sector Reform (SSR) in Turkey has become the main focus for discussion in the Turkish community and media in debating security sector policy and practices, as Turkey continues to progress toward entry to the European Union.

From 1998 until the present, debate about the difficulties and obstacles in security sector reform in Indonesia has continued to evolve. Indonesian Human Rights Monitor Indonesian Human Rights Monitor Research and oversight of reform of defence, police and other security sector agencies has been conducted by a variety of civil society organisations, among them the Centre for Strategic and International Studies (CSIS), the Institute for Defence, Security and Peace Studies (IDSPS), the Indonesian Human Rights Monitor (Imparsial), the International NGO Forum on Indonesian Development (INFID), the Commission for Disappearances and Victims of Violence (KontraS), the Indonesian Institute for Strategic and Defence Studies (LESPERSSI), Pacivis, ProPatria, the Human Rights Monitoring Group and the Security Sector Working Group. The presence of some of these organizations amongst the contributors to the articles in this book demonstrates their professional competence, good methodological approach and, of course, the mutual cooperation amongst themselves.

Members of Parliament are the most influential actors in security sector reform, especially those who sit on Commissions I and III, which are very interested in security sector oversight issues. Initially, DCAF's involvement in Indonesia was at the suggestion of Indonesian parliamentarians who attended a regional meeting of the Inter-Parliamentary Union (IPU). Parliamentary oversight of the security sector became an increasingly hot topic for discussion after the publication of the DCAF-IPU Handbook on Parliamentary Oversight of the Security Sector. Publication of that book in the Indonesian language in cooperation with (CSIS) marked the start of long term program cooperation. Discussions with members of Parliament were followed by advice from DCAF member Yusuf Wanandi from CSIS, close cooperation with Rizal Darma Putra

from LESPERSI and former Director of Friedrich-Ebert-Stiftung (FES) Indonesia Hans Esdert, who all assisted in structuring aid and cooperation programs with democratic institutions, civil society organisations and the security sector in Indonesia.

The principal challenges in the Indonesian security sector are very well known. Since 1998, the activities of Polri, TNI and intelligence agencies have been scrutinised to a great extent and, at the same time, various security actors have had the opportunity to study best practice in democratic management of defence at a number of educational institutions, including King's College, Cranfield University, and other institutions. Coinciding with the growth of the Indonesian economy, the challenges to democracy that Indonesia currently faces might be insurmountable even in states with more advanced democracies. These challenges increase the pressure on the security sector to not only be able to safeguard Indonesia's sovereignty, but also to guarantee human security for its people.

Indonesia, like other states, also faces challenges from a domestic terrorist network. This network originated in the 1960s and its organisational and operational capabilities have increased hand in hand with advancements in the fields of politics, economics and technology. A variety of incentives to increase the capacity of the security sector - including the supply of primary weapons systems - were made possible through cooperation and aid from foreign countries. At the same time, the Parliament and civil society organisations have an important role to play in ensuring that appropriate options and best practice are able to be carried out, primarily for the benefit of human security and a democratic system of government. Significant resources will be forthcoming and all Indonesian citizens are responsible for making the decisions.

For the past several years, DCAF has been involved in the discussion of Indonesian security sector reform and hopes to be able to continue to facilitate the reform process by contributing the expertise and best practices of a number of states, regions and cultures. In Indonesia, there is some issues that take priority in security sector reform, namely reform of border management, democratic policing, national security policy, parliamentary oversight of the military budget and jurisdiction of military courts.

In the area of increasing the capacity of parliament and of democratic oversight, DCAF will continue to assist the DPR and the circle of civil society organisations in political-legal procedures, mainly by facilitating the drafting of laws related to security in accordance with international best practice. Parliamentarians can also hold more specific discussions on the issues, in order to be better able to understand oversight of the security sector, legal structures and mechanisms for accountability and transparency, mainly the issue of budget oversight.

In the area of increasing democratic institutions, DCAF can provide comparative data on defense, police and intelligence reform and recommendations for policy and planning. DCAF has extensive experience in cooperating with a variety of security sector actors within various cultures and can facilitate the reform process. Assistance that is relevant and recommendations for policy are situated in the context of human rights and protection of civil rights.

Ultimately, the presence of strong, independent civil society organisations and media are vital if democratic oversight of the armed forces is to be effective. Civil organisations that are well-informed are able to provide independent advice to democratic institutions and the media on security issues. Likewise, independent and professional media can pose questions from the perspective of their relationship to security sector policy and practices. Most of the community's understanding of and involvement in issues of management of the security sector has come about through the hard work of civic organisations and the media.

In the long run, all the priorities in policy and planning must be managed by the Indonesian security actors themselves, with input and support from the Indonesian community. Stakeholders in various sectors of the community, if well-informed, can take charge of many of the security problems at the local, regional and national levels and thus be able to influence and drive forward the process of institutional reform.

One issue that repeatedly comes up in the theory and practice of security sector reform is the problem that every state is unique, the security sector is too vast, the challenges of oversight are quite complex and the practice of lawmaking is difficult for outsiders to understand. However, this is but a misconception and usually benefits those parties who reject security sector reform for the sake of individual interests, because principles, practices and challenges of democracy can be understood and implemented and good principles and practices in democratic oversight of the armed forces can become lessons for a variety of states, political groups and communities. The pressing challenges for democratic oversight and the security sector are how to develop expertise and required capability for administering democratic reform that is sustainable. Human security can be guaranteed in a state if there is genuine participative democracy. Debate on questions of SSR must shift away from mere protest; we must be able to provide good analysis that can become the basis for involvement that is constructive, informative and specific. This Almanac hopefully will drive this process forward.

DCAF hopes to be able to continue its involvement in Indonesia because a number of programs implemented here are among the most successful in Asia. DCAF programs begun in Indonesia since December 2005 have had support from the Foreign Ministry of the Federal Republic of Germany.

Not every planned program will succeed; there needs to be discussion, organisation and active participation of Indonesia experts both in the governmental and non-governmental sectors. Finally, DCAF wishes to express its appreciation for the role played by LESPERSSI and its Executive Director, Rizal Darma Putra, and likewise to Beni Sukadis, Program Coordinator for LESPERSSI, LESPERSSI researcher Aditya Batara, and Rosemerry in the compilation, coordination and publishing of this Almanac. Also, we thank all the associates and colleagues from the various Indonesian civil society organisations whose outstanding performance has contributed to the success of the first edition of this Almanac.

Dr. Philipp Fluri, Deputy Director DCAF,  
Geneva, July 2007

## **Introduction**

### **Almanac on Indonesian Security Sector Reform 2007**

**Beni Sukadis<sup>1</sup>**

#### **Introduction**

Security Sector Reform (SSR) is an important component in the wave of domestic political reform since 1998. SSR is the continuation of the demands of university students and other domestic civil groups who are calling for actors in the security field such as the Indonesian Armed Forces (TNI), Police (Polri) and intelligence to become professional institutions. The essence of security sector reform is structural, legislative and cultural transformation of closed and highly secretive institutions into those that are transparent and accountable.

In reality, security actors, including the TNI, Polri and BIN, are state institutions providing public services in the security field to the general public. On this basis, they in fact have the obligation and responsibility to protect and serve the community without fear or favour. As a public service for providing a sense of security, it is necessary that Security Sector Reform in Indonesia continues to evolve in order to transform institutions into reliable security actors.

In the framework of transformation into accountable and transparent institutions, there are several prerequisites from the aspects of legal and political foundations. During the past eight years there have been many legal products for oversight of the performance of security actors. It can be said that People's Consultative Assembly (MPR) Decree No.VI/2000 on separation of the TNI and Polri and MPR Decree No. VII/2000 on the roles of the TNI and Polri, provide the basic legal foundations upon which these two security actors may act. Although these MPR decrees were not without problems, two years later they spawned legal products in the form of laws, i.e. the Law on the Indonesian Police Force and the Law on State Defence. These two legal foundations reaffirm that the two institutions, i.e. TNI and Polri, have separate authority and tasks.

#### **Transformation**

It must be acknowledged that at present the public still questions how far internal reform has progressed within each of the institutions, both TNI and Polri and intelligence. TNI and Polri can be said to be more advanced in undertaking internal reform, i.e., they have conducted a number of organisational validations and legislative reforms. A concrete example is that the TNI came under a separate law in 2004, although it is still far from the ideal demanded by civil society. At least Law No. 34/2004 on the TNI further reaffirmed that the TNI serves only to defend the State from external threat.

What is interesting about the process of reform in the security field is that these

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<sup>1</sup> Beni Sukadis is Program Coordinator of Indonesian Institute for Strategic and Defence Studies (LESPERSSI), Jakarta.

actors have had to adapt to national, regional and international situations. Initially, it was the domestic situation that provided the main impetus for the necessity for internal reform. It was this deteriorating political and economic situation that led to the fall of the Soeharto regime. Here, institutional change became a necessity due to pressures in the domestic situation that had become a multidimensional crisis.

So, to ascertain the extent of internal reform of the security actors (TNI, Polri and Intelligence) and their relationships with *stakeholders* such as the Department of Defence (DoD), the Parliament, civil society organisations, the media, etc, there is a need to create an Almanac of Security Sector Reform in Indonesia. Internal reform will be very difficult to monitor if security actors are not strongly motivated to play a concerted role in the transparency process, especially with regard to formulation of national security documents and structuring budgets or various other documents.

An important process in SSR is the extent to which security actors feel threatened by both internal and external environments. Perception or assessment of threats strongly influences *force structure*, capability and budgets of each of the actors. Threat assessment will be formulated in order to apportion specific roles and tasks amongst security actors. In addition, comprehensive assessment of the threat will enable the drafting of budget planning and organisation that is performance oriented. This process must, of course, engage oversight actors, both political authorities in the executive and legislature and the civil society organisations (CSO).

This oversight task becomes one of the indicators that security actors have adapted themselves to become accountable and open institutions. One of the challenges faced at present is that legislation to support oversight tasks, especially freedom of information (FOI) legislation, remains incomplete. Given that this legislation is not yet in force, the impediments and challenges for oversight actors lie in how to obtain information and/or data held by security officials.

The need for valid and accurate information is, of course, part of the oversight process. Without accurate information it is rather difficult to carry on democratic oversight of security actors, especially the intelligence actor BIN, an organisation for which there is at present no basis in law.

## **Objectives of the Almanac of Indonesian Security Sector Reform**

To further assure the general public, it must be stressed that the concept of security sector reform requires ongoing effort by *stakeholders* in exercising control over security actors to make them accountable to political and community authority. The essence of SSR is to transform previously closed institutions to become open by engaging community elements in institutional transformation, especially in planning and in the decision making process so that they can act in accordance with constitutional guidelines.

This SSR Almanac is also intended to provide a comprehensive description of a number of issues, policies or practices related to security actors and stakeholders in Indonesia. Some issues or practices involving the TNI are the problem of TNI business that must terminate by 2009 and the issue of the Army's territorial command which tends to overshadow civil government jurisdiction. At the same time, issues involving Polri are institutional reform of Polri itself and of two institutions within Polri, i.e. the Police Mobile Brigade (Brimob) and Special Detachment 88 (Densus 88) which have a role in dealing with terrorism and a variety of domestic communal conflicts. There are two parts to the problem with Intelligence, i.e. the State Intelligence Agency (BIN) and the military intelligence organisation Strategic Intelligence Agency (BAIS), in the context of democratic oversight.

A number of problems that are no less important are included in this 2007 Almanac, i.e., legislative reform and border management in Indonesia. The first two points above are very closely linked to the division of roles and tasks amongst Indonesian security actors. There are two regulations in relation to the security apparatus that were discussed quite intensively during 2006, namely the Draft Law on National Security and the Draft Law on Military Justice. Moreover, border management problems are tightly linked to the vastness of Indonesia's land and sea borders which have not yet been addressed by the security actors, especially the grave weakness in border protection which has allowed these regions to become vulnerable to a variety of border offences (illegal fishing, illegal logging, arms trafficking, etc).

In addition, this 2007 SSR Almanac needs to explain the roles and tasks of a number of government stakeholders, namely the executive, represented by DoD, and the legislative, i.e. the Parliament. The DoD is the political authority most responsible for formulating defence policy (including the Defence White Paper) and other strategic defence documents, whereas the task of Parliament is to conduct oversight of the security actors from the standpoints of both performance and budget. Their roles can be monitored to determine the extent to which they perform these constitutional tasks.

The Almanac then discusses the stakeholders in security sector reform who derive from civil society, i.e. NGOs, academics and the media. These civilian institutions can be said to represent the opinions or the voices of the general public. Their role as pressure groups is extremely significant in the context of security sector reform. During eight years of reform, they have constantly followed developments and issues in security sector reform.

This 2007 Almanac hopefully can illustrate the relationships between political authorities (DoD and Parliament) and security operational authorities (TNI, Polri and BIN), and amongst the security authorities themselves in handling security issues. Relationships among security actors must be coordinated and mutually supportive, to provide synergy in managing security problems. Then, too, relations between security actors and the community – as an interested party - need to be viewed from a broader perspective, i.e., efforts to improve transparency of the security actors.

Written in a descriptive and analytical manner and as objectively as possible, this edition of the 2007 Indonesian SSR Almanac hopefully can also make a contribution to the general public, such as students, university students, entrepreneurs or even housewives and so on, in addition to stakeholders such as NGOs, the media, government officials and members of Parliament. This Almanac was created to illustrate what was accomplished in Security Sector Reform during 2006, the obstacles that still stand in its way, and what must be done to overcome them. This Almanac does not pretend to be able to provide all the answers to critical issues in security sector reform, but possibly can oversee the reform process in a measured and sustainable way.

Security Sector Reform that Indonesia is currently experiencing is a complicated and lengthy process which requires time and patience to see desired results. This process has several important prerequisites, first, a conscious effort or likemindedness amongst *stakeholders* in contemplating the national interest and the national sense of being under threat. Second, a change of *mindset* or paradigm to contemplate the role and task of security actors in accordance with their mandate. Third, a need for a collective understanding that all parties are responsible to maximise their respective roles. Fourth, it is vital that security actors must be subject to and accountable to elected political authority.

It is important that these four prerequisites be continually communicated amongst security actors and stakeholders. As a consequence, the initial ideals of reform, i.e., the desire to bring about a reality in which security actors are accountable and reliable, will not be merely a dream. In summary, participation of a variety of community elements is a necessity if there is to be inclusivity and a shared perception in addressing the various issues and problems in the security sector in the context of democratic oversight.

# The Department of Defence of the Republic of Indonesia: Civil Supremacy without Effective Control

Kusnanto Anggoro<sup>1</sup>

## ***Introduction***

It seems that the eight years since the positions of Defence Minister and Commander of the Indonesian National Military (TNI) were separated (1999) has not been sufficient time to cement civilian control over the military. Legislation to develop the department's systems remain problematic, both because of the shortcomings in development of legislative systems as a whole, as well as inconsistencies between the provisions of the various regulations.<sup>2</sup> Meanwhile, the scope of Department of Defence (DoD) functions has become increasingly broad and is not oriented towards development of military strength, which must be viewed as the instrument for top executors of national defence policy. This section will only address part of the general description, organisational structure, accountability, challenges of internal reform and democratic oversight.<sup>3</sup> Several important questions that need to be answered are, among others, the capability of the DoD as the institution responsible for formulating defence policy, problems encountered by the department and how DoD has played a role in exercising oversight over military institutions. The gap between the capability of the bureaucracy on the one hand and the incompleteness and the vagueness of legislation on the other hand is one of the important factors why the relationship between the Department of Defence and military institutions continues to be marked by features of civil supremacy without controls.

## ***Background of the Institution***

The Department of Defence of the Republic of Indonesia (DoD) was established at independence (1945) and since then has undergone a variety of changes. At the end of the New Order period, the position of Defence Minister was occupied by the TNI Commander; from 1999, the two positions were held by two different persons. Nevertheless, both the Defence Minister and the TNI Commander continued to occupy key positions and were members of cabinet. In fact, to a certain extent the legitimacy of the TNI Commander was stronger because his selection required the consent of the House of Representatives. While important symbolically, having a civilian at the head of the Department of Defence does not automatically bring about civilian control over the military.

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<sup>1</sup> Kusnanto Anggoro is a Senior Researcher at the Centre for Strategic and International Studies (CSIS).

<sup>2</sup> See Kajian Krisis Perundangan di bidang Pertahanan dan Keamanan (Study of the Crisis in Legislation in the field of Defence and Security), *Monograph* No. 7 (Jakarta: The Propatria Institute, 12 September 2006), especially pp. 5-17.

<sup>3</sup> On the concepts of accountability and democratic oversight, this article follows a number of conceptualisations offered by Bovens, Lord and Leigh. See Mark Bovens, "New Forms of Accountability and EU Governance", *Comparative European Politics* (2007) 5, 104-120; Ian Leigh (et al), *The legal norms of the Geneva Center for the Democratic Control of the Armed Forces and Security Sector Reform* (Geneva: DCAF, 2003); and C.. Lord, *A Democratic Audit of the European Union* (Basingstoke: Palgrave/MacMillan, 2004).

The functions of the Department of Defence include formulation and regulation of policy for carrying out the national defence.<sup>4</sup> In accordance with provisions embodied in Section 16 clause 3 of Law No. 3 of 2002 on National Defence, the DoD has several functions, i.e., determining policy on providing for the national defence based on general policy determined by the President; formulating the Defense White Paper and setting policy for bilateral, regional and international cooperation in the defence arena; formulating general policy for use of TNI forces and other defence components; determining policy on budgeting, procurement, recruitment, management of national resources and development of defence technology and industry required by the TNI; cooperating with leaders of other departments and government agencies, and formulating and executing strategic planning for management of national resources in the interests of defence.<sup>5</sup>

These articles do not differentiate between substance and policy instruments for carrying it out. It is the substance of policy that must be formulated clearly, for example, the relationship to management of defence resources, defence posture and strategic planning for use of military forces in deterrent, attack and/or defensive modes in cooperation with other national forces, for example, diplomacy, to achieve national objectives. Conversely, the Defense White Paper, international cooperation, development of national technology and industry and cooperation with leaders of other departments – just a few examples listed in Law No. 3 of 2002 - should not need to be spelled out in detail in the context of the functions of the DoD or the Defence Minister but more as instruments to support defence policy.

The Law on State Defence differentiates between “general defence policy” (purview of the President) and “general policy for providing for defence” and “general policy for use of defence forces” (purview of the Defence Minister). In formulating general policy on national defence, the President can consider advice and recommendations from other agencies external to the Department of Defence, for example, the State Defence Council, the State Defence Institute and the State Stability Council. In other words, the DoD is not the sole institution with a role to play in formulating policy.<sup>6</sup> The term “providing for defence” obviously must be read as the authority to manage defence resources and the term “general policy for use of defence forces” must be read in the context of the department's authoritative right and power over use of military force.

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<sup>4</sup> As we know, Law No. 3 of 2002 regulates the authority of the Defence Minister but does not specify the mission of the DoD. Only where the minister is assumed to have authority over the department (of Defence) and the duties of the minister are themselves detailed by officials in the domain of the DoD, can the tasks and functions of the DoD in the field of national defence be laid out in detail.

<sup>5</sup> See articles 16 and 17 of Law No.3 of 2002 on State Defence.

<sup>6</sup> Despite being mandated in the Law on State Defence (article 15 clause 2), the State Defence Council has not yet been established. The difficulty in accommodating the variety of organisational structures that exist, e.g. the State Stability Council, and the absence of a strategic plan for democratising the process of policy (making) seem to be important factors. In accordance with the Law on State Defence, the State Defence Council is part of the Office of the President. It remains unclear whether a council such as this will serve only to assist presidential decision making, particularly in an atmosphere of crisis, or will be a functional entity complete with a technical bureaucratic structure.

In some European states, the department of defence is first and foremost the department charged with preparations for war (*war department*), and is very clearly involved with defence resources to confront military threats (armed threats) and therefore will employ the military as the primary instrument for executing defence department policy. The key question becomes whether political decisions on use of these forces will rest in the hands of the President, the Parliament or the Minister of Defence. At the very least, based on these details, it is appropriate that the Department of Defence shoulder the functions as the institution responsible for matters of policy on use of military force.

In the Indonesian context, this problem becomes an important question because Law No. 3 of 2002 on National Defence does not specifically link the defence function with military threat, armed threat or certain threats that can only be confronted with military force. Conversely, this Law treats defence as a very broad governmental function. In general, e.g. in article 1 clause 1 of Law No. 3/2002 on National Defence, this function encompasses efforts to preserve state sovereignty and territorial integrity and to guarantee the safety of the entire nation from threats and disruption to the integrity of the nation and state.<sup>7</sup> Article 6 of this same law states that defence is provided through efforts to develop and cultivate the capability of the state and nation to deter and to confront all threats.

In an established democracy, such matters do not unduly give rise to question. So too when the Department of Defence is understood by other *stakeholders* as a *legitimate* agency for formulating defence policy in the broad sense, or at least the *leading sector* for discussion of defence issues. However, in the Indonesian context, especially in relationships between TNI and Polri and a variety of other civilian institutions, the lack of such criteria has a number of consequences. On one hand, there is suspicion amongst certain institutions about restoration of certain functions to the Department of Defence and/or the TNI. The entire discourse on military operations other than war, the role of the TNI in coping with communal conflict and various types of transnational threats reflects these apprehensions.

This confusion renders the Department of Defence itself seemingly incapable of setting appropriate priorities for development of the Indonesian defence forces. Many examples can be cited, beginning with the discussion on *non-military defence* and the "intervention" by the DoD, in discussing matters that rightfully fall outside the defence arena, e.g., civics education, state intelligence and state secrets. Defence against non-military issues/threats, for example, is often deliberated in Defence Department circles and military academies, never reaching any conclusion about whether there will be a military response. In addition, there remains uncertainty whether non-military defence means that diplomacy is the first option or conversely whether to expand the domain of the Department of Defence to include functions not directly related to defence forces.

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<sup>7</sup> See Article 1, clause 1, of Law No. 3 of 2002 on National Defence. It must be noted that the final phrase "to the integrity of the nation and state" is not always restricted just to the safety of the entire nation but also encompasses two other issues in its scope: while not explicitly stated, "military" and "armed threat" are important issues.

As an institution, it seems that the Department of Defence still must wrestle with a variety of paradoxes. On one hand, thinking in Indonesia is representative of New Order conservatism, i.e., that national defence is a comprehensive matter in which multiple dimensions of threats must be taken into consideration. Given this comprehensive and multidimensional mindset, the necessity to situate national defence within a specific context, especially the context of escalating threat, has faded from public consciousness. Sectoral ego, a constant in the context of bureaucratic politics, has as a result become very disturbing. This is especially true where the President does not provide direction on what is meant by "national defence", "national security" and/or internal security. Indonesia does not yet have an official document that outlines general policy on state defence and/or *national security* as exists in several other states and called "National Security Strategy". However, in the recent past the DoD has been headed by a Minister whose background is civilian, i.e., Juwono Sudarsono (1999-2000; 2004 - ...), Muhammad Mahfud (2000-2002), and Matori Abdul Djailil (2002- 2004), the latter two coming from backgrounds in party politics, namely the National Awakening Party. Juwono Sudarsono is on record as an intellectual who took his legitimacy directly from the President but was not associated or affiliated with any particular political party. Those in such positions often become susceptible to political demands of parliament but, conversely, acquire credibility from TNI circles.<sup>8</sup>

### ***Department of Defence Functions, Tasks and Bureaucracy***

The Indonesian Department of Defence is composed of several substructures. The highest echelon (Echelon 1) is composed of 3 categories. *First*, the corporate affairs structure which functions in the areas of coordination, internal control and intra-departmental relationships. Included in this category are the General Secretariat and Inspector General. *Second*, the executive mission echelon, headed by a Director-General, and composed of five functional areas, responsible for defence strategy, defence systems planning, defence potential, defence strength, and defence facilities, respectively. *Third*, the technical mission echelon, responsible for specialist areas such as the Research and Development Board, the Education and Training Board, the Data and Information Centre, the Finance Centre, the Codification Centre and the Centre for Rehabilitation of Disabled Personnel.<sup>9</sup>

As executors of the primary task mission and/or technical mission, organisation at this first echelon has undergone functional differentiation, from routine functions such as administration and secretarial matters to functions directly reflecting their work areas. The Defence Strategy Directorate is composed of the Directorate of Defence Strategic Policy, Directorate of International Cooperation, Directorate of Strategic Environment Analysis and Directorate of Defence Region. The Directorate-General for Defence Potential is composed of

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<sup>8</sup> As we know, the military are particularly anxious about being subordinate to the Department of Defence when the Minister of Defence has a political background, because of their perceptions that this will make (the department) a political tool. While this is extremely naive, such opinions may become one of the considerations when a President appoints a Minister of Defence. Depending on how one views it, this trend may be interpreted either as political accommodation by the President or as a political bargaining position by the TNI.

<sup>9</sup> See Department of Defence Structure, attached.

the Directorates of Civics and National Defence Education, Human Resources Potential, Natural Resources Potential and National Land-use Products and Potential. The Defence Planning Directorate encompasses technical planning in matters of Defence Development Planning, Program and Budget Planning, Budget Implementation Administration and Program Administration.

As is the case in modern bureaucracies, this structure reflects not only functional specialisation but also hierarchical authority. According to theory, this improves the overall performance of the bureaucracy. On the other hand, staying within the context of the modern bureaucracy, such structural differentiation and functional specialisation always requires coordination and harmony amongst the sub-bureaucracy. In practice, such necessities are not easily fulfilled, either on bureaucratic grounds or other grounds, e.g., the military culture and leadership at department level. High operational technical capability plays a key role. The organisational structure of an institution reflects its field of endeavour and to a certain extent its potential to be capable functionally of implementing timely and adequate policy.

Nevertheless, such differentiation and functional specialisation also inhibits the manifestation of issues such as duplication of effort (*overlapping*) within the department. In this context, it is interesting to note the presence of the term "defence region" as part of strategy and "potential natural and technological resources". It is possible to create a simpler structure, e.g., combining the two into "defence potential" would be more beneficial. Another even simpler possibility is separation at the directorate-general level according to mission, for example, strategy, planning and budget. In the majority of cases, the simpler the structure the easier it is to coordinate, which is vital, especially if the Department of Defence lacks professional leadership.<sup>10</sup>

Aside from such structural alternatives, several interesting trends have been noted during the past few years. *First* is the technical bias towards addressing issues connected with system building, often at the expense of urgent policy matters. The Directorate of Defence Potential, for instance, has for a long time drafted policy, including law, to regulate the state defence reserve component, but consistently fails to make clear planning estimates for the primary military force component that needs to be reinforced by the reserve or support component. Another directorate addresses policy in the area of Civics and National Defence Education. Although all of this is necessary from the aspect of systems development, it is perhaps not urgent in the scale of priorities, while other urgent matters are neglected.

Besides these two directorates-general, another directorate that seems to be most controversial is the Directorate-General for Defence Strategy, particularly when preparing policy discussion on "national security" (or state security defence), state intelligence and state secrets. Certainly such discussion is important as part of overall defence system planning. However, the issue gets bogged down in political debate when the scope of the discussion is widened.

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<sup>10</sup> Ron Aminzade, A. Jack Goldstone, and J. Elizabeth Perry, "Leadership Dynamics and Dynamics of Contention"; in Aminzade et al (ed), *Silence and Voice in the Study of Contentious Politics* (Cambridge: Cambridge University Press, 2001): pp. 126-154.

The timing of discussion that is linked to other questions, for instance the Draft Law on Freedom of Information, becomes increasingly complex. Unilateral recognition that the DoD is the leading sector for other agencies for preparing such legislation is not adequate to convince other groups, especially the National Police.

*Second* is the continuing failure to demilitarise the bureaucracy in the Defence Department. During the post-New Order period there have been only a few directors-general whose background was civilian, i.e., Mas Widjaya, who served as Director-General Planning and Budget under the Megawati government and Budi Susilo Supandji, Director-General Defence Potential during the government of Susilo Bambang Yudhoyono. Another position held by a civilian is Head of the Research and Development Agency which has been in civilian hands for the past eight years, i.e., Sofyan Tsauri and Lilik Hendrajaya. This demonstrates the enduring control by the military of the civil bureaucracy.

Certainly it must be acknowledged that bureaucracy is always hierarchical and *division of authority* flows from top to bottom in accordance with the organisation's work procedures. However, the DoD environment is particularly problematic because there continue to be parallel civilian and military bureaucracies. For the most part, officials in this sphere are equivalent to Major General in the military; however, in theory it should not be necessary to have a connection between the sequence of military rank and the civilian bureaucracy. However this context becomes important in connection with Indonesia. The position of Secretary-General of the Department of Defence, for instance, has always been held by an active duty military officer with the rank of Lieutenant General. At the same time, other positions in the top echelon have been held by persons at a level equivalent to Major General (two star).

This implies *tacit control* by TNI Headquarters over the Defence Department bureaucracy. It must be remembered that provisions of article 45 clause 5 of Law No. 34 of 2004 on the TNI give authority to the TNI Commander to conduct "character building" (indoctrination) of Army officers who work outside the TNI domain. Therefore, it's little wonder that, especially when a Minister of Defence does not function well, officials in echelon one do what in bureaucratic theory is known as *ministerial turnover*, namely, they take on political roles when they have only operational technical authority. When the DoD was headed by Matori Abdul Djalil, for instance, it was common for the Director-General for Defence Strategy, at the time Major-General Sudrajat, to act as though he were the *virtual defence minister*. At that time, the Defence Minister was forced to agree to initiatives raised by the Director-General for Defence Potential to support acquisition of patrol boats by several regions, although this was in conflict with legislative provisions requiring procurement of primary weapons systems (*platforms*) to be funded only from the budget of the central government, i.e., the State Budget).

### ***Accountability and Democratic Oversight***

As was stated at the beginning of this article, accountability is really a virtue, requiring conscious effort and a willingness to open oneself to the outside world, whether in government or in the public domain. The literature on accountability differentiates between political accountability, institutional accountability and

public accountability. Another side of accountability (democratic oversight) is more closely related to the system of relationships between the Department of Defence and various other state institutions, for instance, the President, the Parliament, the State Audit Board, the Supreme Court and the Corruption Eradication Commission. It is not difficult to observe that, especially for the three latter agencies, the accountability function is directly related to the financial and judicial domains. At the same time, accountability of the Department of Defence to Parliament is rather difficult to observe from the perspective of accountability, but has more of the characteristics of democratic oversight in a broader sense, starting from the aspect of policy and budget up to and including legislation.

It needs to be stated at the outset that political accountability is quite irrelevant to the discussion. This concept is valid only in the system of relationships between the President and the Defence Minister who, in the presidential system of government, have traditionally held prerogative authority. How the President pursues political accountability becomes a technical question. There is no special mechanism, although it is predictable that the Defence Minister and other members of cabinet may from time to time be requested to assume political and policy responsibilities by the President. On the other hand, the President must support politically the policy adopted by the Defence Minister.

As a department, it follows from its existence within the domain of established policy and its linkage to the public interest that the dimensions of accountability that are most needed are institutional accountability and public accountability. Policy accountability is accountability for implementing the government's defence policy (in this case that of the Department of Defence) with other parties, especially Parliament, the State Audit Board and the Supreme Court. As we know, Parliament has a commission with special responsibility for defence and foreign affairs matters (Commission I). Its relations with the government generally involve discussion of particular types of policy, including procurement, acquisitions and defence planning in general.

Another interesting trend is the increased desire of the Department of Defence to conduct public accountability through use of information technology infrastructure. Since 2005, the Department of Defence has had its own website where the public can access information on activities within the department, from information on routine activities and plans for development of the defence posture to decisions promulgated by the department. Even the 2003 Defence White Paper can be accessed freely by the public through the Department of Defence website.

To a certain extent, this trend demonstrates that public accountability in the Defence Department domain is quite adequate. Only technical constraints prevent the achievement of identical levels of transparency by every sub-element in the organisation. The website of the Director-General for Defence Strategy, for instance, offers opportunities to learn about a variety of fundamental matters (organisational structure, functions and tasks), as well as rather specialised matters such as personnel and budget. On the website of the Directorate-General for Defence Potential, there is a link to the budget but there is as yet no information available to be accessed; likewise the websites of the Directorates-General for Defence Forces and Defence Planning.

Nevertheless it needs to be said that the same trend has occurred not only in the Department of Defence domain but also in other government agencies. Without intending to diminish the importance of such efforts, there is a distinct possibility that this tendency is motivated more by the necessity and desire to use advanced technology than by a conscious effort to make information available to the public or even to use it to gain public support. The Department of Defence has not undertaken to develop what has been done by the Australian Defence Department in its Defence White Paper. In addition, the Department of Defence seems not to make use of available media to engage in two-way communication between the government and the public.

It is somewhat phenomenal that Defence Minister Juwono Sudarsono is the only minister in the cabinet of Susilo Bambang Yudoyono who writes not only in various mass media, but also broadcasts his viewpoints through *blogging*. The virtual space that has been called "integrity in the strict sense" makes possible two way communication between Juwono Sudarsono and the public. It is interesting to note that the public seems quite enthusiastic to follow blogging and provides commentary not only on critical issues directly related to national defence, but also on other questions such as diplomacy and external politics. In the future it is not impossible that defence policy will no longer have the sole purpose of serving the elite and be of interest only to those associated with the *defence community* but also to an increasingly broad public.

Whether in future this broadening of the public arena will of itself strengthen Parliament's bargaining position vis a vis the government and thereby bring about a more effective mechanism of *checks and balances* between government (i.e., DoD) and representatives of the people remains questionable. The Parliament is a political agency and the majority of its members, including members of Commission I, which functions as the government's partner in matters of defence and external politics, do not have adequate technical competence in the field of national security. Therefore, it is little wonder that, especially during the period 1999-2004, members of the Indonesian Parliament often brought up for discussion issues that in reality cannot be considered relevant to issues of defence.<sup>11</sup>

A more serious question is that in the parliamentary domain itself the role of Parliament (*parliamentary oversight*) is defined as a role in matters of legislation, oversight and budget without specifically making the link to the level at which such functions will be conducted, i.e., at the level of decision-making, of policy formulation or of policy implementation. Parliament does not particularly regard its role as being one of control in the scheme of *checks and balances* through use of the budget and legislation as instruments. One of the serious consequences of this confusion is ambiguity over the extent to which parliament may question government policy (i.e., that of the Defence Minister) and how to go about it.

It is not surprising when, as a result, parliamentary debate becomes

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<sup>11</sup> See Kusnanto Anggoro, *Supremacy Sipil, Profesionalisme Tentara, dan Kontrol Parlemen atas Anggaran Militer* (Civil supremacy, Military Professionalism and Parliamentary Control over the Military Budget), *Background Paper*, delivered at the Indonesia Working Group on Security Sector Reform (IWGSSR) Discussion, Propatria-House of Representatives, Hotel Mulia Senayan, Jakarta, 21 April 2003.

counterproductive and often deviates from its true objective. Parliament more often addresses political, rather than substantive, issues. On various occasions, parliament has brought up matters for discussion that are extremely technical, as a consequence giving the impression of *civilian overstretch* into Defence Department and/or Indonesian National Military affairs. The same tendency has been observed in relationships between the Defence Department and/or TNI with various other oversight institutions, especially the State Audit Board. Certainly, this tendency is understandable and does not necessarily indicate a weakness on the part of Parliament or other oversight institutions. Be that as it may, reform of the Department of Defence and the TNI requires political pressure and in that context even substantive distortion can become an instrument to provide the stimulus for the process of reform of defence policy. One of the keys to success of reform is continual effort, applied consistently and persistently.

### ***Internal Reform: Demilitarisation, Reorientation and Capacity Building***

In the previous section, several matters were discussed which are related to how change occurs in the Department of Defence, particularly regarding accountability and oversight of development of the national defence policy function. Previous statements are based on the view that the Department of Defence, as a government department, is required to observe all rules and regulations and to deal appropriately with other departments. A number of important questions generally discussed in the context of democratic oversight of military institutions are not so obvious, for example, issues related to financial and judicial accountability. As we know, these two issues are increasingly becoming problems in civil control over military institutions.

Another problem that is no less important, regarding the Department of Defence as an instrument of civilian control over the military, is how the department has played a specific role in military institutions. As was stated earlier, the Department of Defence plays a central role in a number of matters, especially those related to defence policy and, therefore, can exercise control over military institutions through its policies. There is, in fact, much to take note of, starting with decisions on application of Humanitarian Law (2001) through to the Ministerial Decision on procurement of goods and services in the DoD and TNI (2005). So, too, the willingness of the Defence Minister to transfer to the civil justice system the adjudication of general crimes committed by soldiers (2007).

To a certain extent, these examples portray financial and judicial accountability in the Department of Defence domain. Furthermore, there is no disputing the fact that a number of these policies have been instrumental in placing the TNI under the control of civil authority and politics. However, the question remains whether the Department of Defence can exercise effective control over the TNI or merely have symbolic supremacy while failing to uphold its authority. As a government department, there are still a number of problems remaining.

The *first* problem is the ambiguity in the relationship of the Defence Minister to the TNI Commander. The provisions of Law No. 3 of 2002 simply state that "in defence policy and strategy as well as administrative support, the TNI is under the coordination of the Department of Defence,"<sup>12</sup> without clarity on what is

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<sup>12</sup> Article 4 clause 2, Law No. 34 of 2004.

intended by “under coordination” and how that coordination is to be conducted. Both because TNI Headquarters is not part of the Department of Defence and because both the TNI Commander and the Defence Minister are in the cabinet, the true relationship between the two is not one of subordination-supremacy but rather a relationship of equals. The status of the TNI Commander operationally under the President<sup>13</sup> in reality weakens the role of the Defence Minister to establish policy on “use of force” as intended in Law No. 3 of. 3/2002. It is feared that this relationship breeds a type of dualism regarding who really has full authority to establish national defence policy.

On the surface, the provisions on the role and functions of the Defence Minister as stipulated in Law No. 3 of 2002 indeed demonstrate hierarchical authority and patterns of relationships in determining defence policy, with the Defence Minister being the party holding civil authority and the military being the party which executes policy. The obvious weakness observed in regulations in Law No. 3 of 2002 is the lack of detail on what is intended by some of its terminology, as well as the absence of mechanisms and instruments to articulate what is intended as defence policy and how specific policies, including the Defence White Paper, *the Strategic Defence Review* or various plans for changes to military deployments will be communicated to parliament. More than merely a necessity for Department of Defence control over military institutions (TNI Headquarters), the absence of such mechanisms gives rise to the problem of determining whether the President or the Defence Minister has carried out the provisions embodied in law.

The *second* problem is increasing the capacity of the Department of Defence to play a role as the institution with authority to formulate state defence policy. As was stated in another section of this article, its capacity is in fact still very limited. The process of demilitarising (or civilianising) the ranks of the Department of Defence has only affected the top position, i.e., the Minister and a very small segment of the top echelon. At the lower ranks, DoD is still very dependent on or unable to free itself from TNI Headquarters. The TNI Commander can use article 45 clause 5 of Law No. 34 of 2004 on the TNI to overshadow the authority of the Defence Minister.

For the foreseeable future, such possibilities need not have political implications. However, to accelerate reform in DoD, there is no disputing the need for clear regulations on how the department must be organised, managed and function, and consequently truly be able to reflect the principle of civilian supremacy in operation. For instance, there need to be provisions on which positions in the Department of Defence must be filled by and led by a civilian or may not be filled by active duty Army officers. If not, it is highly likely that the Department of Defence will not be able to free itself from the fetters of *military culture* that render it orthodox. Without such provisions, it is certain that this can cause stagnation in military reform in particular and defence reform in general.

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<sup>13</sup> Article 3, clause 1, Law No. 34 of 2004.

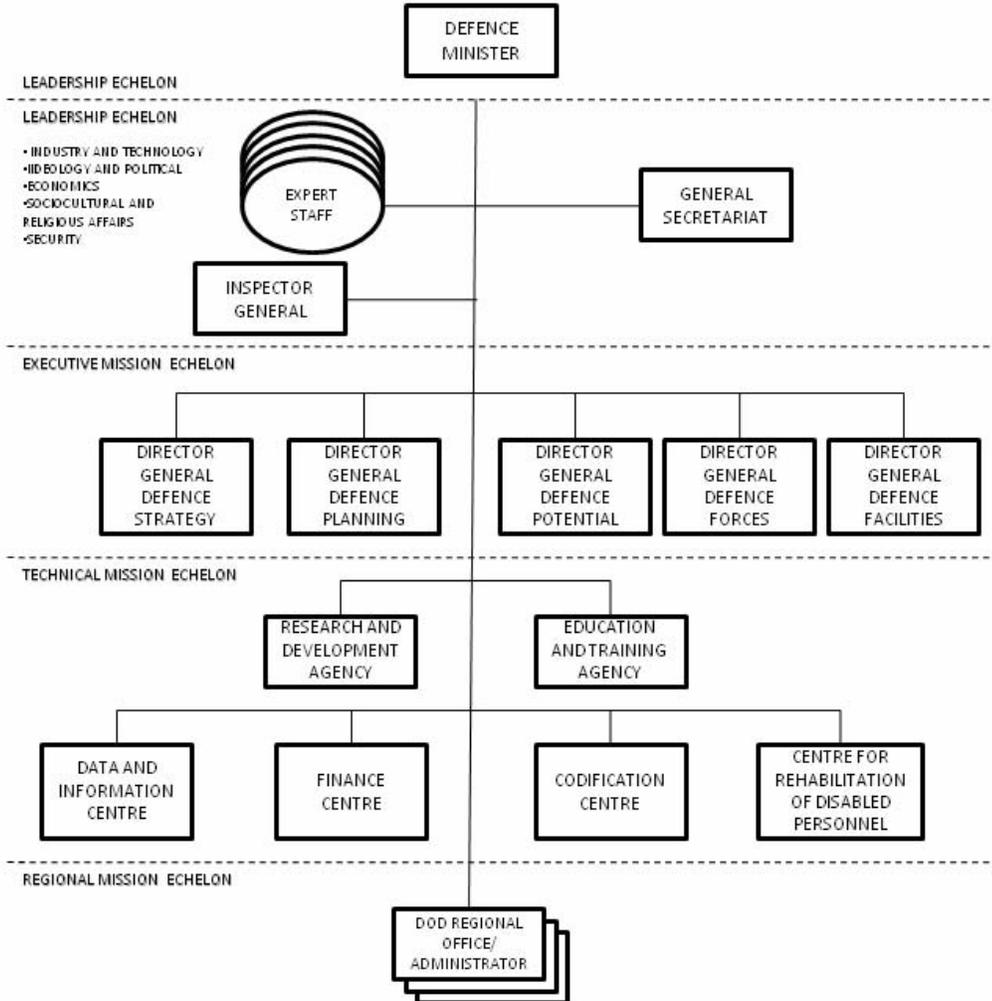
## ***Closing***

Reform taking place in the Department of Defence domain has a dual role to play. On one hand, reform is a prerequisite for national defence policy to meet demands for more extensive public accountability and/or democratic control. On the other hand, reform can also be instrumental in upholding not only civil control over military institutions but also military professionalism. As implied in this article, a number of important milestones have been achieved in reform of the Department of Defence, especially in relation to accountability. However, at the same time, reform must take an increasingly difficult journey in the foreseeable future - partly a consequence of political burnout and partly because of bureaucratic difficulties that must always take into consideration the balance between benefits and the associated costs.

For those involved in efforts to reform defence in particular and the security sector in general, it is not difficult to get the impression that momentum for reform is obviously not as great as it was during the first five years after the fall of the New Order. Regulation at the level of law seems to have reached a saturation point, partly because the majority of the legislative agenda is drafted in the National Legislation Program (*Prolegnas*) drafted by the National Development Planning Agency and then discussed with the Legislative Body in the Parliament. Modernisers in the Defence Department obviously must begin with a variety of internal initiatives, particularly those related to increasing the capacity of the department. Actually most indicators of change over the past eight years involve military depoliticisation, not military professionalism. Possibly, stages of military reform in particular and defence reform generally in Indonesia must go through a stage that is less nuanced politically but more focused on the various operational technical problems.

**ATTACHMENT 1. Defence Department Structure**

**DEPARTMENT OF DEFENCE OF THE REPUBLIC OF INDONESIA  
MINISTERIAL REGULATION (PER/01/M/VIII/2005)**



Source: <http://www.dephan.go.id/modules.php?name=Organisasi>

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# INDONESIAN NATIONAL ARMED FORCES

Al Araf<sup>1</sup>

## ***Introduction***

Discourse and study of military reform often emerges in *post-authoritarian* states. Participation by the military in world politics is the principal factor that gives rise to debate on the importance of bringing about change within the body of the military. Not only in Indonesia but also in other post-authoritarian states, the idea of and pressure to return the military to its original function has become an important theme in state politics in nearly every transitioning state.

Failure and success are two words that characterise military reform in a number of such states. Many factors obstruct and support the path of military reform, from the problem of minimal *political will* of government to technical problems in implementation of the military reform agenda.

It must be acknowledged that pressure to undertake military reform in some states is strongly influenced by dynamic changes in global politics as well as dynamic developments in national politics. Similarly, in Indonesia, the vicissitudes of the path of reform of the TNI have been strongly influenced by the wave of democratisation that has pounded third world states, the torrent of globalisation, international developments on issues of human rights enforcement and the international campaign on the war against terrorism. In the national context, conflicts that occur within the turbulence of power politics strongly influence the dynamics of the path of reform of the TNI. On this point, the political reformation process of 1998 provided the gateway into efforts to reorganise the role and function of the TNI.

In this working paper, the focus of the discussion is an attempt to portray to some degree and to investigate the political dynamics of the journey of reform of the TNI and the results so far achieved. Further, this essay also attempts to analyse and lay down an agenda for reform of the TNI within the framework of security sector reform.

## ***Dynamics of the Path of Reform of the TNI***

Reform of the TNI has been underway for approximately nine years. Opinion differs when evaluating the path of reform of the TNI. Some observers are of the opinion that the TNI has greatly reduced its influence in the political process, has improved its standards of professionalism and respect for human rights and is under *civilian control*. John Bradford has stated that the TNI has now, through commitments made and decisions taken, disengaged from practical politics and

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is focused on its war-making abilities, especially those related to external defence (Bradford 2005: 19).

However, there are others who are of the opinion that reform begun since 1998 is only ceremonial in nature ceremonial and not effective. This is observed from the TNI's disengagement from the world of politics without having sufficient power to secure its main interests. William Liddle has concluded that no fundamental change has occurred since the drumbeat of reform was sounded in 1998.<sup>2</sup>

Regardless of existing opinions, it must be acknowledged that the path of reform of the TNI has, on one hand, produced some positive results, while on the other hand, a number of problem agenda remain. In retrospect, some observers have concluded that the TNI's commitment to carry out reform began after Wiranto promulgated the TNI's New Paradigm. The TNI's New Paradigm encompasses: *First*, changing TNI's stance and methods so as not always needing to be in the forefront; *second*, changing from the concept of occupying to the concept of influencing; *third*, changing methods of influencing from direct to indirect; *fourth*; readiness to conduct *role sharing* (joint decision-making in the case of important national and governmental issues) with other national components (non-military partners).<sup>3</sup> These four new TNI paradigms were then described in fourteen steps for TNI internal reform.

Although it was Wiranto who articulated this New Paradigm, some are of the opinion that this paradigm was actually conceived during the term of President Soeharto. The late Lieutenant General Agus Wirahadikusumah<sup>4</sup> stated that the TNI's New Paradigm was not new. Agus said that what Wiranto proposed was a concept prepared when President Soeharto authorised the creation of limited reform and when reform got underway, this old concept was then taken off the shelf. More detailed examination reveals that this TNI New Paradigm does not evidence any enthusiasm or seriousness on the part of the TNI for extricating itself totally from the world of political life. The New Paradigm is only a political model for the TNI, i.e., where formerly the TNI's political model placed it in the forefront of domination of Indonesian politics<sup>5</sup>, nowadays they are in the background but continue to influence the evolving political dynamic.<sup>6</sup> Further,

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<sup>2</sup> Marcus Mietzner, *The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance*, by the East-West Center Washington, 2006.

<sup>3</sup> Ikrar Nusa Bhakti, *Teori dan Praktek Hubungan Sipil-Militer di Indonesia (Theory and Practice of Civilian-Military Relationships in Indonesia)*, in *Dinamika Reformasi Sektor Keamanan (Dynamics of Security Sector Reform)*, Imparsial, 2005.

<sup>4</sup> Agus Wirahadikusumah was a leading figure considered by some to be a radical and courageous leader in driving forward the path of TNI reform. He held the positions of Commander, Wirabuana Military Area Command and Commander, Army Strategic Command (Kostrad). One of Agus' ideas was the elimination (of) the territorial command structure (see Salim Said, *Legitimizing Military Rule*, p. 181, Sinar Harapan, 2006.)

<sup>5</sup> TNI politics is illustrated by stationing of active duty TNI members in important positions of state (Ministries, Governors, Regents, etc)

<sup>6</sup> The TNI's political influence is evident in the participation of the TNI Commander in cabinet meetings to formulate political policy. In a more extreme case, political influence and political pressure by the TNI was evident in the final days of the fall of the government of Gus Dur, where on 22 July 2001, the Kostrad

Ikrar Nusa Bhakti also concluded that the TNI's New Paradigm was merely cosmetic in nature and lacked substance.

In that context, Anders Uhlin was accurate in his conclusion that the Indonesian military sees its involvement in politics as permanent.<sup>7</sup> Whereas from a cultural perspective, as stated by Ben Anderson, the source of authoritarianism and the overflow of the role of the military into other areas of livelihood is a factor of the cultural image of the military in Indonesia that perpetuates the traditions of the Javanese aristocracy with its Mataram political notions that stress obedience, paternalism and harmony<sup>8</sup>, and these Mataram political notions remain strong within the body of the TNI.

Qualitatively, there have been several achievements in reform of the TNI, as follows:<sup>9</sup>

Year	Government	Achievement	Explanation
1999	Gus Dur	Reorganisation of the Department of Defence and Security to become the Department of Defence	Unfortunately this reorganisation was not followed by reform of the Department of Defence. The second echelon of the Department of Defence continues to be dominated by active duty senior officers. This condition makes it difficult to make the Department of Defence more independent because officers accountable to the Defence Minister are also accountable to the TNI Commander.
1999	Gus Dur	Appointed a civilian as Defence Minister	Formerly the Defence Minister also served concurrently as TNI Commander.
1999	-	Declared neutral in politics and separated from Golkar	Formerly the TNI was affiliated institutionally with Golkar.

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Commander moved tanks towards the Presidential Palace during a call for readiness at the National Monument (Monas). This symbolised the disdain of the military towards Gus Dur. Eight days later, Gus Dur fell and Vice President Megawati assumed the presidency. See Ingo Wandelt, *Security Sector Reform in Indonesia, Military vs Civil Supremacy*, in the volume *Democracy in Indonesia, The Challenge of Consolidation*, (edited by Bob S. Hadiwinata and Christoph Schuck), Nomos, 2007.

<sup>7</sup> Anders Uhlin, *Oposisi Berserak (Opposition in Disorder)*, Jakarta, Mizan, 1998.

<sup>8</sup> Robertus Robert, Four concepts critical to security sector reform, in the book *Dinamika reformasi sektor keamanan (Dynamics of Security Sector Reform)*, Imparsial, Jakarta, 2005.

<sup>9</sup> This table is the result of modification of a table by Marcus Mietzner in the paper *The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance*, by the East-West Center, Washington, 2006.

2000	Gus Dur	TNI and Polri structures separated	- MPR Decree No VII/2000
2000	Gus Dur	Separation of the roles of the TNI and Polri. TNI responsible for defence; Polri responsible for security.	- MPR Decree No VII/2000 - This separation of authority was on the one hand problematic because in reality the TNI, as an instrument of state defence, often also plays a role in the field of security.
2000	Gus Dur	Revocation of the Dwifungsi (Dual Function) doctrine (the doctrine of involvement of the military in socio-political affairs)	-
2000	Gus Dur	Disestablishment of the Coordinating Agency for National Stability (Bakorstanas)	-
2000	Gus Dur	Appointment of a Senior Naval Officer (Admiral Widodo A S) as TNI Commander	Throughout the 32 years of the Soeharto government, the TNI Commander had always been a senior Army officer.
2002	Megawati	Formulation of the Law on State Defence	Despite a number of weaknesses, this Law normatively has provided a starting point for managing the defence sector. This is evident in the requirement for the government to develop general policy on state defence and to establish the State Defence Council; however, neither of these requirements has been met to date. In addition, while this Law was promulgated during Megawati's term in office, debate around it was long discussed during the term of Guss Dur.
2004	Megawati	Formulation of the Law on the TNI	Despite its weaknesses, this Law normatively provided a starting point of efforts to manage TNI more professionally. This is evident in the existence of the requirement that TNI adhere to a system of values of democracy and human rights, the requirement to restructure the

			territorial command, prohibition against political activity, expropriation of TNI businesses etc; however, neither of these requirements has been met to date.
2004	Susilo Bambang Yudhoyono (SBY)	Abolition of the TNI/Polri Faction in Parliament	Although the TNI faction no longer exists under the SBY government, the requirement to abolish it was determined long before SBY took office.
2005	Susilo Bambang Yudhoyono (SBY)	End of Civil Emergency status in Aceh	-

From the table above, we can see that there were numerous radical achievements in reform of the TNI during the term of leadership of Abdurahman Wahid. Therefore, several observers of politics and the military, both domestic and foreign, are not wrong in concluding that Gus Dur was a serious and successful figure in advancing the cause of TNI reform. In his biography of Gus Dur, Greg Barton concluded, albeit prematurely, that President Gus Dur took control over the military and that this was one of his greatest successes (Greg Barton, 2002: 384).<sup>10</sup>

However, Gus Dur's excessive intervention in military autonomy became a justification for the military's resistance to it and perhaps was also one of the causes of his downfall. The appointment of Agus Wirahadikusumah as Commander of Army Strategic Command (Kostrad) without following the TNI's internal procedures was one of the forms of intervention by civilian authorities (Gus Dur) that cut too deeply into the affairs of the TNI. Historically, this perhaps is somewhat reminiscent of Nasution's disobedience to the Soekarno government that also constituted excessive intervention into the military's affairs during that era. Similarly, one of the causes of the coup d'etat against the Thaksin government was its excessive intervention into the Thai military. Thaksin replaced several senior military leaders in their positions in *regional commands* and destroyed their career paths, allowing Thaksin to give orders directly to subordinates and to direct commanders at the regional level, without going through and observing existing chains of command. In that context, the Huntington approach of objective control of the military is relevant and important to consider, in which civilian authority is asked to respect matters of autonomy of the military in managing civil-military relationships.<sup>11</sup>

Aside from these matters, Gus Dur's success in driving forward TNI reform was also strongly influenced by the necessity of his government to construct legitimacy in the eyes of the public that his government was different from

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<sup>10</sup> Ibid p 22.

<sup>11</sup> Samuel P. Huntington, *The Soldier and the State: Theory and Politics in Civil-Military Relations*, Grasindo, 2003.

previous governments.<sup>12</sup> Further, the direction of movement in advancement of TNI reform was also caused by compelling cultural necessities. A wave of democratisation had become a global political trend during the last decade and global economic transactions were relatively free of east-west ideological polarisation. It is essential that this factor be understood because no matter how the dual function of the Indonesian National Armed Forces is interpreted, what is clear is that it operated during and within the context of cold war ideology. Thus, the military vision and mission were also determined by cold war milliteristic doctrine.<sup>13</sup>

In that context, the ebb and flow of the path of TNI reform is to some degree influenced by two political dynamics, i.e., global politics and national politics. Likewise, as occurred during the period of Megawati's leadership, turbulence in national political power in 2001 that culminated in the fall of Gus Dur forced Megawati to compromise on the demands of conservatives within the TNI in matters of TNI reform. It must be noted that Megawati's compromise with the military at that time was brought about because of the coalition and conspiratorial cooperation between the military and various political elites (Megawati and others) in bringing down Gus Dur. Consequently, the aspirations of conservatives with the TNI were accommodated, as evidenced by the formation of Battalion 714 Sintuwu Maroso in Central Sulawesi, imposition of Military Emergency Status in Aceh, formation of Iskandar Muda Military Area Command, Aceh, et cetera. In fact, the agenda to restructure the Territorial Command had previously been mooted by Gus Dur<sup>14</sup> and has become part of the reform agenda.

Further, the Military Emergency policy in Aceh fundamentally contradicted Megawati's commitment at the start of her term of office when she stated that there would be no more bloodshed in Aceh. In fact, what was most serious was the case of human rights violations that occurred on 27 July 1996, important to Megawati herself, in which the victims did not receive justice through the judicial process. During this period, the path of TNI reform became stalled and began to deteriorate.

Nevertheless, at the end of her term in power, the Megawati administration promulgated Law No. 34 of 2004 on the TNI. Aside from normative achievements in TNI reform in the Law on the TNI, promulgation of this law cannot be separated from TNI politics and accommodation by the Megawati administration, because during that period the TNI faction was able to be involved in deliberations over the Law on the TNI and protect its interests.<sup>15</sup>

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<sup>12</sup> See Rocky Gerung, *Tentara, Politik dan Perubahan (The Military, Politics and Change)*, in the volume *Indonesia di Tengah Transisi (Indonesia in the Midst of Transition)*, Propatria, 2000.

<sup>13</sup> Ibid p. 140. Gus Dur's most important indication in reforming the TNI came when he supported debate on the future of territorial command. This system of command, which has the capacity and opportunity to intervene politically, is central to TNI interests. Ibid.

<sup>14</sup> Gus Dur's most important indication in reforming the TNI came when he supported debate on the future of territorial command. This system of command, which has the capacity and opportunity to intervene politically, is central to TNI interests. Ibid.

<sup>15</sup> After the 2004 General Election, the TNI faction was no longer in the Parliament.

Consequently, within a very short time, i.e., approximately fifteen days of debate in Parliament, the Law on the TNI promulgated.<sup>16</sup>

During the SBY government, the path of TNI reform has produced hardly any significant outcomes. This dark omen for TNI reform was predicted by some groups at the outset. His background as a retired military officer and his political support based primarily on the TNI caused the brakes to be applied to the process of TNI reform. Many TNI reform agendas needed to be resolved but were not. Among the agendas that were not pursued are the lack of action on restructuring the territorial command as articulated in article 11 of the Law on the TNI; delays in completion of expropriation of TNI businesses; failure to solve several cases of violation of human rights; reform of military justice in fits and starts, and so on. In other words, during this period, SBY practiced not just the politics of vacillation but, in the context of TNI reform, he also practiced the politics of cowardice.

In the context of global politics, the war on terror has also influenced the ebb and flow of TNI reform during the term of the SBY administration and preceding governments. The war on terror has become a new justification for coercive institutions<sup>17</sup> (including the TNI) to oppose the tide of reform, as illustrated by their desire to maintain the territorial command structure in the interests of fighting terrorism. And because of the requirements and in the interests of the war on terror, the US government finally ended the weapons embargo imposed following human rights violations in East Timor.

In the security arena, a positive achievement of the Susilo Bambang Yudhoyono-Jusuf Kalla administration in state politics was its policy of ending the Military Emergency in Aceh and the restoration of peace in Aceh based on the Helsinki agreement.<sup>18</sup>

In broad terms, debate and achievements in TNI reform during the periods discussed revolved around three fundamental problem issues, i.e., *first*, military politics and military businesses, *second*, structural organisation and *third*, problems of violation of human rights.<sup>19</sup> TNI reform that is underway has not fully engaged with efforts to reform defence management and defence strategy or, in other words, has not yet reached the point of developing a modern

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<sup>16</sup> To further examine the problems associated with promulgation of the Law on the TNI, see Rusdi Marpaung, Al Araf and other in the volume “*Menuju TNI Profesional: dinamika advokasi UU TNI (Towards a Professional Military: dynamics of advocacy for the Law on the TNI)*”, published by Imparsial, Jakarta, 2005.

<sup>17</sup> In the name of the war on terrorism, the State Intelligence Agency (BIN) also requested increased authority from Parliament to arrest perpetrators suspected of committing acts of terror. This was in clear contradiction of the basic function of intelligence and runs anti to the mechanisms of the *criminal justice system*.

<sup>18</sup> However, the achievement of this agreement cannot be separated from events of the tsunami disaster in Aceh resulted in international pressure that forced the SBY-JK government to resolve the Aceh situation by peaceful means and negotiation.

<sup>19</sup> The third issue is also a trend in other transition states, such as in Latin America. (further see Alfred Stephan, *The Military and Democratisation*, Grafiti, 1996).

defence force. In spite of observers who discuss this problem, the matter has not become a central theme in progressing reform of the military and has not become the principal agenda in state politics.

### **Outstanding problems and agendas in TNI reform**

To determine whether TNI reform has been adequate and to analyse outstanding agendas, benchmarks are needed against which to measure the progress of reform. These benchmarks encompass seven principal matters:<sup>20</sup>

1. Systematic arrangement of legislative provisions based on the *rule of law*
2. Development of capability to develop policy and doctrine and to formulate *defence planning*
3. Implementation of policy and legislation
4. Achievement of professionalism of executive actors
5. Capability for and effectiveness of oversight
6. Logical and proportional budget management
7. Resolution of cases of violation of human rights

1. In the context of the system of laws and regulations.

Indonesia still has a number of unresolved problems in its system of laws and regulations on the defence and security sector. There are approximately fifteen draft laws on the defence and security sector and several other political regulations that require revision.

One of the most crucial and urgent bills to be debated is the Draft Law on Amendment of the Law No. 31 of 1997 on Military Justice. The principle that needs to be affirmed in the amendment to the law on military justice is the explicit stipulation that a member of the military is subject to the jurisdiction of the general justice system when s/he commits a general criminal offense. Currently, a member of the military who commits a general criminal offense is adjudicated within the military justice system.

Further, to synchronise the various laws on defence and security and to attempt to restructure management of national security, a Law on National Security is required.

2. In the context of capability for policy development and formulation of *defence planning*.

Presently Indonesia has no general policy on state defence to provide a platform and direction for managing national defence. However, under the Law on Defence, Article 13, clause 2, the President is required to make general policy on

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<sup>20</sup> Ibid.

state defence and the Defence Minister is required to make policy on state defence. The presidency has changed hands twice but not one of the Presidents has made general policy on national defence. The lack of such policy is a problem for Indonesia in structuring an integrated defence sector.

Further, within the framework of developing a state defence force that is planned and effective, the government must conduct, at the outset, a *review* of the existing defence system. This is useful for measuring and evaluating whether existing defence strategy and systems are appropriate in the face of complex and constantly changing threat dynamics and whether defence strategy and forces that are developed accurately reflect the realities of Indonesia's geographic conditions.

On 29 September 2004, the government produced the *Strategic Defence Review (SDR)*; however, the SDR concept was not based on restructuring and evaluating a more modern defence force and strategy and, in fact, the existing SDR actually runs counter to the evolving tide of TNI reform. This is evident from the retention of a land defence orientation and strategy (*land based orientation*) as Indonesia's defence orientation and strategy, even though this is diametrically opposed to Indonesia's geographic conditions as a maritime state and is out of step with modern, developing, defence orientation, doctrine and strategy. Even more serious, the SDR retains the territorial structure as part of the defence structure.<sup>21</sup>

### 3. In the context of implementation of policy and legislation.

Implementation of defence and security policy and legislation in Indonesia continues to be a complex problem. Some of these problems in implementation are as follows:

1. Lack of conclusive action to resolve the expropriation of TNI businesses, as mandated by Article 76 of the Law on the TNI.
2. Failure to complete the restructuring of the territorial command as mandated by Article 11 of the Law on the TNI.
3. Failure to complete amendment of the law on military justice as mandated by MPR Decree Number VII of 2000 and Article 65 of the Law on the TNI.
4. Failure to make general policy on national defence as mandated by the Law on Defence, Article 13 clause 2, et cetera.

### 4. In the context of professionalism of security actors.

Professionalism of security actors is a principal and primary matter in security sector reform. Recognising that achieving this will require considerable time, efforts to train and prepare security actors to become professional must begin immediately.

In their practices, security actors still display a lack of professionalism. For

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<sup>21</sup> Department of Defence, *Strategic Defence Review*, 2004, p. 14.

example, in the TNI context, soldiers who essentially perform a defence function are apparently still involved in practical political activity such as standing as candidates in direct elections of regional heads. However, under Article 39 of the Law on the TNI, TNI members are prohibited from taking part in practical political activity.<sup>22</sup>

In the context of intelligence, especially TNI intelligence (BAIS), intelligence agencies still consider expressions of political freedom, recognised by the constitution, as threats. This is clear from the attitude of BAIS, which has declared Imparsial (Indonesian Human Rights Monitor), KontraS (Commission for "The Disappeared" and Victims of Violence) and Elsham (Institute for Human Rights Study and Advocacy) as part of the threat to the existence of the national ideology, Pancasila.

#### 5. In the context of oversight

Oversight of institutions responsible for execution of security in Indonesia remains weak. In its role as the institution of oversight, Parliament is seemingly incapable of functioning maximally. An example is the lack of oversight and evaluation by Parliament of military operations conducted in Aceh, especially during the Military Emergency. Up until now, the Parliament has never demanded accountability by the government for operations conducted and expenditures incurred during operations.

#### 6. In the context of logical and proportional budget management

Budget management in the defence sector still appears helter-skelter. Budget management is incongruent to the demands of development of defence and security forces. This is one of the consequences of Indonesia's lack of general policy to provide a basis and platform for managing the systems of state defence and security. Consequently, budget management in the defence sector is inefficient and ineffective.

#### 7. In the context of resolution of cases of violation of human rights

There are still many unresolved cases of violation of human rights, such as Trisakti, Semanggi, Aceh, Talangsari and others. Although there is a Human Rights Court with jurisdiction over cases such as East Timor, the court has itself become a tool for acquiring impunity, because not one TNI officer has been sentenced for his role in those events.

### ***Inhibiting Factors***

Briefly, several factors that inhibit the progress of TNI reform are:

1. Weakness of political will on the part of the government to complete security sector reform, i.e., military reform);

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<sup>22</sup> Nevertheless, the Decision of TNI Commander, Chief Air Marshal Djoko Suyanto, that prohibits active duty soldiers from being elected in regional elections at the end of 2006 is a step forward because this decision corrected a previous TNI Commander Decision.

2. Weakness of functions of control and oversight especially that conducted by the Parliament;
3. Many *vested interests* among security actors such as the TNI and Polri who hinder the reform process, as occurred during the foot-dragging over revision of the Law on Military Justice;
4. Reduction in public pressure to complete reform of the TNI, far different from the initial period of reform in 1998-2000;
5. Weakness in the capacity of human resources both in Parliament and government to understand evolving security problems and issues;
6. Absence of a *grand design* to drive forward progress on TNI reform

### **Military reform as an important agenda in Security Sector Reform (SSR)**

Military reform is one element of the concept and agenda of security sector reform. As an field of academic study, the scope of SSR encompasses all organisations that have authority to use or to order the use of force to protect the state and its citizenry as a whole, as well as civilian structures responsible for management and oversight of these security institutions.

Based on the above definition, there is a number of institutions that can be categorised as security sector institutions:<sup>23</sup>

- (1) Military forces over which the Defence Minister has responsibility for control;
- (2) the Strategic Intelligence Agency (BAIS);
- (3) the Police and the Customs and Excises Directorate;
- (4) the justice and legal systems;
- (5) Civilian structures responsible for management and oversight of the above institutions.

Conceptually, SSR is a topic that nowadays has captured significant attention from the development community and has crystallised into a debate which has been taken up unreservedly by central governments as well as many actors at the multilateral and NGO level.<sup>24</sup>

Prof Robin Luckham describes SSR as the quintessential governance issue, both in the sense that there is enormous potential for the misallocation of resources and also because a security sector out of control can have a negative influence

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<sup>23</sup> Rifki Muna, *Military Reform in Indonesia: How Far and How Real* (working paper), Yogyakarta, 2002.

<sup>24</sup> Dr Ann M Fitz-Gerald, *Security Sector: Streamlining National Military Forces to Respond to the Wider Security Needs*, Journal of Security Sector Management, published by Global Facilitation Network for SSR, University of Cranfield, Shrivvenham, UK, volume 1, 2003.

on governance.<sup>25</sup>

Essentially, the primary objective of security sector reform is to establish *good governance* in the security sector as well as to create a secure and orderly environment, thus underpinning the objective of the state to make the community safe and prosperous. Ann M. Fitz-Gerald concludes that SSR is a practice of programmatic modification of institutions and operations covering the national security sector (supported by regional efforts) to establish an environment in which citizens always feel secure and comfortable.<sup>26</sup>

In the context of objectives, Nicole Ball considers that SSR has two primary objectives, i.e., to establish *good governance* in the security sector to strengthen the capability of the state to an economic system and *political governance that* benefits the community overall and establishes a secure and peaceful environment at the international, regional, national and local levels.<sup>27</sup>

In the framework of security sector reform, efforts to realise TNI reform must be situated in a new perspective that is more extensive and comprehensive. So far, the progress of TNI reform remains piecemeal and reactive. As a phase in a continuum, reform must be designed and organised around achievement of objectives; likewise, this is necessary to progress TNI reform. Not only that, TNI reform, in the sense of SSR, also requires judgment and contemplation to choose and determine a scale of priorities for deciding what needs to be given priority in advancing the progress of reform. In that context, development of a *national security framework* is the principal phase and the phase that must be embarked upon immediately by the Indonesian government. On that basis, progress of TNI reform can be more measured and focused.<sup>28</sup>

In the sense of security sector reform, a new approach to progressing TNI reform encompasses:

*First*, TNI reform must be viewed as part of the agenda to realise and complete security sector reform. For this reason, success in the agenda of military reform requires a multidimensional, interdisciplinary and integrated approach. For this, we require a *national security framework*, the starting point from which the TNI reform agenda can be brought to fruition.

*Second*, TNI reform must run parallel to and simultaneous with the process of political reform. Consequently, TNI reform must bring about a system of political life that is democratic at its core. In this, the system of democratic values, i.e., transparency and accountability and human rights, must be

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<sup>25</sup> Ibid, p. 4.

<sup>26</sup> Course materials, *Security Sector Governance*, Ann M. Fitz-Gerald in MSc Program in Defence and Security Management, Bandung Institute of Technology, Bandung, 2007.

<sup>27</sup> Rizal Sukma, *Sektor Keamanan Indonesia: Pengertian, Tujuan dan Agenda*, dalam buku *dinamika reformasi sektor keamanan (Indonesian Security Sector: Understanding, Objectives and Agenda*, in *Dynamics of Security Sector Reform*, Imparsial, p. 19, 2005.

<sup>28</sup> At present, the Indonesian government Indonesia does not have a *National Security Framework*.

incorporated into the system of values throughout the process of change and restructuring of the institution of the TNI.

*Third*, TNI reform is the responsibility of every element of the population, as a matter of *public good*, and consequently the reform process must designate every citizen and element of the population as a political subject with a role to play in making it successful. In that context, exclusivity in progressing TNI reform must be avoided and renewed criticism and self-criticism of the TNI must not be considered as a threat, but rather as a form of active participation by citizens in the effort to realise a professional Indonesian military force.

*Fourth*, the impasse in progress of TNI reform cannot be blamed solely on the TNI. As a democratic state, it is appropriate that responsibility for the stalemate be attributed to political authorities who have been legitimately elected.

*Fifth*, TNI reform must be able to ensure that the TNI is no longer a tool of political power as was the case under the New Order regime, but instead becomes a tool of state defence that is subject to legitimate political authority and provisions of applicable law. Therefore, the TNI should refrain from acting in such a way as to impede the reform process and must obey decisions and the TNI reform agenda which has been planned and produced by political authorities.

*Sixth*, TNI reform is no longer viewed merely as a ban on TNI political and business activities -- this does not mean these problems should be ignored -- but rather it must be viewed as an effort to realise the development of a strong and integrated defence force structure as well as a professional military.

## **Conclusion**

1. The reform process that has been for underway for approximately nine years has produced a number of positive decisions. Nonetheless, the progress of the TNI reform process remains reactive and piecemeal and many problems remain unresolved.
2. The ebb and flow of the progress of TNI reform is strongly influenced by dynamics of global and national politics. On this point, turbulence and change in political dynamics have strongly influenced the progress of TNI reform.
3. Obviously we must recognise that the high point in achievement of TNI reform occurred during the term of Gus Dur. Since then, progress on TNI reform has declined significantly.
4. Debate and achievements in TNI reform during the periods discussed revolved around three fundamental problem issues; i.e. *first*, military politics and military business *second*, structure and *third*, problems of violations of human rights. TNI reform that is underway has not fully engaged with efforts to reform defence management and defence strategy or, in other words, has not yet reached the point of developing a modern

defence force.

5. As part of security sector reform agenda, completing the agenda of TNI reform must be conducted in a more organised and comprehensive manner. In that context, government must produce a grand design for the direction of security sector reform which also spells out the direction of military reform for the future. Failing that, progress on military reform will progress only in a piecemeal, reactive and makeshift way. In that context, Indonesia urgently requires a *national security framework* as its platform for progressing military reform.

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## The Parliament and Security Sector Reform

Rico Marbun MSc and Hilman Rosyad Shihab<sup>1</sup>

### Introduction

The Reform Era, marked by the fall of General Soeharto from the presidency, marks the total change of the variables of Parliament in the dynamics of national politics. During the New Order period we often heard that the Parliament was full of representatives with a '3D' mentality: *Datang* (Come in), *Duduk* (Take your seat), *Duit* (Get rich). For decades the Parliament was manipulated into becoming a chamber for putting a legal stamp of approval on authoritarian products of the ruling regime. However, the reform era became a turning point for significant change.

Nowadays, the Parliament is very dynamic and in fact ignites the political dynamic with nuanced criticism of executive policies of all kinds. One is not wrong in feeling that the Parliament can now claim to hold the balance of power and to be the motor driving *checks and balances* in national politics.

The Parliament's earnestness in carrying out its role is extremely important for the sustainability and success of reform, including security sector reform, which became the 'prima donna' of the transition agenda for democracy in Indonesia. Democratic principles require that security be synonymous with the *public good*. Citizens are its principal consumers and to achieve *consumer satisfaction* there must be standards and principles that must be fulfilled by the security sector. The Parliament is the institution that produces laws to ensure that security institutions in Indonesia work to fulfil *consumer satisfaction*. However, the functions of Parliament are certainly not limited to lawmaking. The 1945 Constitution outlines the three basic functions of the Parliament: monitoring/oversight, budgeting and legislation<sup>2</sup>.

This section will not detail the principles that must be fulfilled by the security institutions. However, it will endeavour to explain in detail the contributions that have been made by the Indonesian Parliament in security sector reform.

The fundamental question that will be answered by this chapter is: to what extent has the role played by the Parliament in security sector reform been effective? To answer that question, this working paper will be divided into several sections. *First*, explanation of the elements of the Parliament that are responsible for the security sector. *Second*, analysis of the role of the Parliament in the restructuring of the three important actors in the Indonesian security sector -- the military (TNI), the national police (POLRI) and the state intelligence agency (BIN) -- since 1998. *Third*, analysis and conclusions.

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<sup>2</sup> See the 1945 Constitution and Amendments, Article 20-A, clause 1.

## **Instruments of the Parliament in the Security Sector**

To carry out its functions effectively, the Indonesian Parliament is divided into several Commissions that deal with specific sectors. There are two special commissions related to the security sector that are directly in contact with each other, namely Commission I and Commission III. Commission I as the dominant commission has frequent direct contact and is responsible for dealing with Defence, Foreign Affairs, the Indonesian Armed Forces (TNI), the National Resilience Council, the State Intelligence Agency (BIN), the State Cryptography Institute, the National Institute of Information and the National Resilience Institute, while Commission III, among other things, deals primarily with the National Police (Polri).

### ***Role of the Parliament in the Security Sector***

Since the fall of Soeharto, Commissions I and II of the DPR have worked actively to make a number of breakthroughs. There are observable signs that the Parliament has made tangible efforts to manage the three security institutions (TNI, Polri and BIN).

#### **I. Role of Parliament in military reform**

Military institutions, in this case the TNI, have indeed become the main focus of security sector reform. For decades, this institution not only enjoyed many privileges, but also in practice transformed itself into the most influential and powerful institution in the history of Indonesia. Its great power, almost without control, has been the cause of the level of *abuse of power* perpetrated by military institutions. During the New Order era, the military had strong *de facto* political influence, could run businesses and were virtually immune from the law. This became the main *concern* of the reform movement. In the post-New Order period, the Parliament has grasped the urgency of aspirations for military reform and has now gradually taken a number of steps to advance the process of reform of the military.

##### **1. Drafted the Law on National Defence and the Law on the TNI**

The Indonesian White Paper states that military reform began with issuance of People's Consultative Assembly (MPR) Decree Number VI on separation of the TNI and POLRI and MPR Decree Number VII of 2000 on the roles of the TNI and POLRI. Taking the MPR Decree as a starting point, the Parliament then drafted two laws, i.e., the Law on State Defence and the Law on the TNI. The Law on State Defence was ratified in 2002 while the Law on the TNI was ratified in 2004.

Provisions of these laws, among other things, regulate separation of the TNI and POLRI; provide the basis for implementation of management of state defence; set out the values, objectives and principles of state defence; articulate the functions and role of the TNI as a defence tool in the state defence system; set out the principles for development of defence; regulate the scope of authority and the relationships between state institutions and

agencies managing the national defence, and regulate the tasks of the TNI.<sup>3</sup>

## **2. Parliamentary advocacy for overhaul of military justice**

Impunity is one of the main issues in military reform. It is indeed the case that military thugs who perpetrate abuses of power often escape the snare of the law. This is possible because even where military officials commit a general criminal offense, under Law No. 31 of 1997 on Military Justice, which is still in force, they not may be brought before a general court. A professor in the Faculty of Sociology and Political Science at the University of Indonesia (FISIP UI) Prof. Dr. Astrid Susanto, for example, has stated that many cases of violation of human rights involving officials are not resolved in a transparent manner. This occurs because the military have learned methods for resolving offenses that differ from civil law enforcement. Sometimes these methods are unsatisfactory. In fact, Hendardi, a human rights activist in the Indonesian Legal Aid and Human Rights Association (PBHI), has stated that Law No. 31 of 1997 actually has the tendency to provide the protection of the law to thugs in the TNI who violate human rights.<sup>4</sup> Herein lies the root of the problem. Military justice is considered often to be unable to provide adequate justice to perpetrators of crimes who are military personnel.

The most recent law on military justice, ratified on 15 October 1997, became Law No. 31 of 1997 on Military Justice, which specifically states that whenever a member of the Armed Forces commits a crime, competency to try the case falls to the military courts.<sup>5</sup>

During the post-New Order period, the Parliament has taken the initiative to abolish this system. On 24 May 2004, the Parliament held a Plenary Session which included on its agenda the transformation of the military justice system.<sup>6</sup> At the meeting, all factions agreed unanimously to employ the right of initiative to amend Law No. 31 of 1997 on Military Justice. The session was chaired by the Deputy Speaker of the MPR, Soetardjo Soerjoguritno. Full of enthusiasm for reform, Rajda Roesli, representing the Reform Faction, for example, stated that the current law on military justice is out of step with the demands of the time. The spokesperson for the National Awakening faction stated that revision of the law on military justice will make all individuals equal in the eyes of the law. And even more importantly, the spokesperson for the Crescent Star Party faction stated that the law must be revised to make military justice more transparent and open.<sup>7</sup>

In the end, the DPR actively pressured the government to submit immediately a draft for amendment of the Law on Military Justice. It is apparent here that

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<sup>3</sup> Rizal Sukma, *Civil Supremacy: Sampai di mana mau kemana?* (Where do we go from here?), *Media Indonesia* 5 October 2005.

<sup>4</sup> Menanti retasnya sebuah impunity (Waiting for impunity to be cut down), *Kompas Cyber Media*, 3 February 2000.

<sup>5</sup> Darwan Prinst, SH, *Peradilan Militer (Military Justice)*, pages 4-6.

<sup>6</sup> *Kompas*, 24 May 2004.

<sup>7</sup> *Kompas*, 25 May 2004, DPR benahi peradilan militer (DPR cleans up military justice).

the government continues to display resistance and phobia. Amendments are proposed for seventy-eight of the law's 335 articles. One of the main issues that the DPR has insisted on is related to the possibility that a member of the military be tried in a general court when s/he has committed a general criminal offense. As a consequence, of course, military personnel who commit general crimes can be arrested by the police, investigated and brought before the bench of a civilian court.

In response to the DPR initiative, President Susilo Bambang Yudhoyono immediately tasked Yusril Ihza Mahendra who was Minister/State Secretary at the time to write a preliminary draft for revision of the Law on Military Justice.<sup>8</sup> However, it seems that discussion of the DPR initiative proposal did not go smoothly. The points under dispute originated from the Parliament's suggestions about the jurisdiction of the Law on Military Justice. A member of the special committee, Nursyahbani Katjasungkana, from the National Awakening Party, said that after only two meetings between the government and the Parliament, the process reached impasse.<sup>9</sup> The government wanted soldiers who commit general criminal offenses to continue to be tried in military court.

Therefore, the government consistently insisted on the retention of mixed civilian/military tribunals, while factions in the Parliament hold the view that a member of the Armed Forces who commits a general criminal offense will be tried in general court and that there is, therefore, no further need for mixed civilian/military tribunals.<sup>10</sup> Nursyahbani also added that this article tends to be anti-reform and conflicts with the spirit of civilian supremacy.

Antipathy towards the Parliament's proposals grew larger day by day and on many occasions led to open debate. Several grounds for rejection surfaced:

*First*, the Department of Defence, for example, rejected general justice for soldiers who are guilty because of the link with to grounds for 'character building' of soldiers. Moreover, DoD explained that if a soldier is tried in public courts, implementation of the verdict would be carried out in general correctional institutions, whereas the objective of sentencing a military convict to an institution of military justice is to educate, while providing tactical and technical military training, integrated with physical and mental character building and combat readiness.<sup>11</sup>

*Secondly*, as an institution, the police are considered to be unprepared to deal with the consequences. One of the consequences of dealing in the general courts with soldiers who have broken the law is that the police will conduct the investigation. This is the main point of contention. The Commander of the Army Military Police Centre, Major General Ruchjan, believes that law enforcement officials, especially those in the Indonesian National Police (Polri), are psychologically unprepared to handle cases involving offences committed

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<sup>8</sup> Kompas Cyber Media, Pemerintah Konsultasikan Draf RUU Peradilan Militer (Government Consults on the Draft Amendment to the Law on Military Justice), 11 November 2004.

<sup>9</sup> Kompas, Pembahasan RUU peradilan Militer mentok (Discussion of Draft Law on Military Justice is all talk), 16 March 2006.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

by members of the Indonesian Armed Forces.<sup>12</sup> Major General Ruchjan is not alone; Defence Minister Juwono Sudarsono opposes it even more vigorously. The Defence Minister is of the view that the unpreparedness of law enforcement officials specifically to deal with the TNI stems from the lack of a code governing the possibility that a public prosecutor brings charges against an active-duty member of the TNI in court and the performance of police officials is less than satisfactory or even given short shrift due to budgetary constraints.<sup>13</sup> To be sure, this view was categorically rejected by the Police and by members of the Parliament.<sup>14</sup>

In response to those objections, the Parliament, through its special committee, straightaway reached the conclusion that the Department of Defence was not taking the matter seriously and tended to postpone again and again discussion of revision of the Law on Military Justice. For that reason, the special committee wrote a letter to President Susilo Bambang Yudhoyono requesting further clarification.<sup>15</sup>

Parliament's pressure finally bore fruit. Although there was no official response by the government, even though some time had passed, the Defence Minister's attitude eventually softened after he consulted with the President. Based on that agreement, the Defence Minister agreed that soldiers could be brought before general justice<sup>16</sup>. In most recent developments, DoD and the Special Committee have mutually agreed to take the Draft Law on Military Justice to the next level, i.e., to the Standing Committee level.<sup>17</sup> As a compromise, implementation of this law will occur over a transition period of two to three years.<sup>18</sup>

### **3. Pressure by Parliament for elimination of TNI Business**

Military business is one of the main forms of deviation from military professionalism that has persisted ever since the founding of the republic. Law No. 34 of 2004 on the TNI provides the foundation for efforts to reform the military by eliminating the business activities that put its professionalism at risk. There are several important articles in the TNI Law:

a. Article 2.d defines a professional army as one that is not engaged in business.

b. Article 39 prohibits soldiers from being involved in business activities

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<sup>12</sup> Kompas Cyber Media, Polisi belum siap tangani kejahatan oleh prajurit TNI (Police unprepared to handle offences by TNI members), 29 March 2006.

<sup>13</sup> Kompas Cyber Media, RUU Peradilan Militer sulit diwujudkan (Draft Law on Military Justice difficult to translate into reality), 23 June 2006.

<sup>14</sup> Kompas Cyber Media, Pemerintah bergeming soal prajurit melanggar pidana (Government indifferent to problem of soldiers who break the law), 1 April 2006.

<sup>15</sup> Kompas Cyber Media. DPR nilai Pemerintah Tak serius (DPR believes that the Government is not serious). 22 September 2006.

<sup>16</sup> Kompas Cyber Media, Pemerintah 'Mengalah'. Prajurit bisa diadili di pengadilan umum. (Government Gives In: Soldiers can be tried in general court.) 29 November 2006.

<sup>17</sup> Kompas Cyber Media, Dephan dan Pansus Sepakat (Defense Minister and Special Committee Agree), 24 January 2007.

<sup>18</sup> Kompas Cyber Media, Militer akan diadili di pengadilan Uumu, ada masa transisi 2-3 tahun (Military to be tried in general court; 2-3 year transition period), 9 February 2007.

c. Article 7b, clause 1, provides that, within 5 years of the enactment of the law, the government must expropriate all of the business activities owned and managed either directly or indirectly by the TNI.

These articles clearly demonstrate the significant role played by Parliament in establishing a basis for elimination of off-budget fund-raising activities by the military. The initial draft of the Law on the TNI drafted by the government (DoD) made absolutely no mention of elimination and expropriation of TNI businesses. The origins of this article are the list of issues of Parliament's Commission I dated 21 August 2004, in which the National Awakening Party, through the proposed article, explicitly stressed the importance of government expropriation of all TNI businesses.<sup>19</sup>

With the enactment of the Law on the TNI and under its provisions, implementation of activities to acquire TNI businesses must be completed by 2009. However, progress from 2004 to 2007 clearly indicates that the process has not run smoothly. The Government, of course, has a target for transfer of businesses owned by the TNI to be completed by December 2008. A National Team for Transformation of TNI Businesses was established for that purpose.<sup>20</sup> However, it is very regrettable that, as of this writing, a presidential decision to provide guidelines for the takeover process has not yet been issued. To that end, the Parliament has repeatedly issued warnings and has openly pressured the government to get more serious in handling the acquisition of TNI businesses. The following are some recommendations issued by Commission I of the DPR:

a. On 8 December 2004, Commission I requested that the Minister of Defence assume control of a number of TNI businesses to implement the newly-promulgated Law 34 of 2004.<sup>21</sup>

b. In a meeting, Commission I requested the Army Chief of Staff specifically to prepare his network to be actively involved in carrying out the provisions of the Law on the TNI on expropriation of TNI businesses.<sup>22</sup>

c. Commission I requested the Defence Minister, Finance Minister and the Minister for State-Owned Enterprises (BUMN), along with the TNI Commander, to expedite rules and regulations for expropriation of TNI businesses and to follow up so that a presidential decision on expropriation of TNI businesses could be published immediately.<sup>23</sup>

d. Commission I insisted that, during the transition period for expropriation of TNI businesses by the government, transfer of any part or all of the assets of

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<sup>19</sup> Jaleswari Pramodhawardani, *Bisnis Serdadu : Ekonomi Bayangan (Military Business: Shadow Economy)*, p. viii, The Indonesian Institute.

<sup>20</sup> *Ibid*, p. i.

<sup>21</sup> Summary Report of Working Meeting of DPR Commission I with the Defence Minister on 8 December 2004.

<sup>22</sup> Summary Report of Working Meeting of DPR Commission I with Army Chief of Staff, 22 March 2005.

<sup>23</sup> Summary Report of Working Meeting of DPR Commission I with TNI Commander, 8 September 2005.

the TNI to other parties not be approved.<sup>24</sup>

e. Parliament repeated its warning to DoD to manage its internal affairs related to management of TNI businesses to prevent waste.<sup>25</sup>

f. The Parliament specifically warned the TNI Commander that contracts or business cooperation between the Navy and Rajawali Nusantara Indonesia and PT KGA in the area of the Pasuruan Combat Training Centre be terminated.<sup>26</sup>

The above measures are indicative of the direct pressure applied by Commission I to ensure the implementation of the provisions of the law on expropriation of TNI businesses. However, it is very regrettable that so far regulations on implementation in the form of a Presidential Decision have not been completed.

#### **4. Advocacy on important issues.**

Other measures taken by the Parliament during the post-New Order period have taken the form of advocacy, monitoring and intensive support of issues and events directly related to the security sector. Among the most recent cases are defence by the Parliament of victims of shooting by Marines who killed four civilians at Alas Tlogo and intensive support for acquisition of VAB armoured vehicles from France to avoid waste of state funds. From the two cases mentioned above, it must be acknowledged that the House of Representatives has indeed performed better than it did during the New Order period. In the case of the Alas Tlogo shootings that occurred a short time ago, the Parliament efficiently dispatched an investigation team to the scene of the incident, summonsed the Navy Chief of Staff and TNI Commander and issued several decisions publicly. In a draft report on the results of the visit to Pasuruan on 31 May 2007, the team produced several decisions.

*First*, the Parliamentary team harshly criticised the barbaric behaviour of marines who had killed four civilians in the incident.

*Second*, the team pressured openly for an open judicial process.

*Third*, the team urged the TNI Commander to reexamine previous statements that claimed that the deaths of the citizens was unintentional, caused by recoil.<sup>27</sup>

Meanwhile, in the case of procurement of VAB armoured vehicles from France to equip peacekeepers departing for Lebanon, pressure applied by the Parliament was able to improve budgetary efficiency. As we know, procurement of the armoured vehicles was done without tender, by placing an order directly government to government. Once the team was established, the Secretary General of DoD, Sjafrie Samsuoddin, unilaterally issued a plan for procurement of 32 armoured vehicles with a unit price of approximately

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<sup>24</sup> Summary Report of Working Meeting of DPR Commission I with Defence Minister, 28 September 2005.

<sup>25</sup> Summary Report of Working Meeting of DPR Commission I with Defence Minister, 28 May 2007.

<sup>26</sup> Summary Report of Working Meeting of DPR Commission I with TNI Commander, 13 June 2007.

<sup>27</sup> Draft Report of the Visit by the Team of DPR Commission I to Pasuruan in connection with the Pasuruan event.

700,000 Euros. Members of Parliament immediately rejected this plan for two reasons: first, the process was required to be conducted through tender and, second, the price set by the Secretary General of DoD was, according to investigations by Parliamentarians, too high. After several working meetings and summonses, some agreements were finally reached. The DPR gave its blessing to the direct procurement of the armoured vehicles without tender; however, the sale price was successfully reduced to approximately 450,000 Euros per unit.<sup>28</sup>

## II. The Role of Parliament in Reform of the Indonesian National Police

During the New Order era, the Police were the fourth armed service after the Army, Navy and Air Force. In practice, the police were under the control of the Commander in Chief of the Armed Forces and were part of the military command. However, People's Consultative Assembly (MPR) Decree No. VI of 2000 determined that Polri must stand on its own, separate from military institutions (TNI). During the New Order period, the police emerged with a very militaristic facade and functioned as a tool for safeguarding the power of the ruling regime. This position was what finally caused Polri to have an image that was so low that it reached its nadir.<sup>29</sup>

### 1. Parliament drafts the Law on Police

Security Sector Reform in Indonesia will never be complete unless Polri is repositioned and reformed. Measures to reform POLRI need to be undertaken not just to rescue the image of the Police that has been smeared because of its militaristic characteristics over decades. Furthermore, policing must be overhauled in such a way that the police distance themselves from the authoritarian regime and position themselves as part of civil society.<sup>30</sup> In addition, the police must be designed to become *civilians in uniform* and act as both the *strong hand and the soft hand of society*.<sup>31</sup>

To achieve that objective, the first step taken by the House of Representatives was to draft a new Law on the Police. In 2002, after a number of lengthy meetings, Law No. 2 of 2002 on the Indonesian National Police was finally enacted. This legislation clarified the role of the police as the party responsible for internal security, while matters of external security (defence) are the burden and responsibility of the TNI. This legislation also confirmed the structural separation of the TNI and POLRI, established the identity of POLRI as a *civilian police force* and placed it directly under the President.<sup>32</sup>

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<sup>28</sup> Kompas, Anggaran Panser jangan Turun Dulu, Kompas 13 September 2006.

<sup>29</sup> See Evaluasi Kolektif Reformasi Sektor Keamanan di Indonesia (Collective Evaluasi of Reform of the Security Sector in Indonesia): TNI dan POLRI, S. Yunanto, The RIDEP Institute, p. 51.

<sup>30</sup> Prof.Dr. Satjipto Rahardjo, SH, Polisi Sipil: Dalam Perubahan Sosial di Indonesia (Civilian Police in Social Change in Indonesia), Kompas Publishing, Jakarta, March 2002, page xviii.

<sup>31</sup> Ibid, p. xix.

<sup>32</sup> S. Yunanto, Evaluasi Kolektif (Collective Evaluation), page 52.

## **2. Parliament provided for sustainability of control and monitoring of various issues concerning POLRI's performance**

However good the laws may be, the spearhead of success relies on implementation in the field. For that, the Parliament, i.e. Commission III, routinely monitors and conducts working meetings on the performance of police officials. One of the important issues that have surfaced is the high level of violence by police officials in the course of their duties. In 2002 alone, the Alliance of Indonesian Journalists recorded Police as being the major perpetrators of violence against journalists.<sup>33</sup> Since being handed internal security affairs, it is apparent that POLRI with its Mobile Brigade is unable to manage situations well in the field.

This was apparent in the level of violence used while dealing with instability in Aceh prior to the signing of the MOU. In fact, one of the cases of violence that elicited a strong reaction from Parliamentarians was the barbaric attack on demonstrators on the campus of the Indonesian Muslim University (UMI), Makassar, in 2004. At the event, police stormed the campus, seriously injuring 65 university students and fatally shooting two other victims. In response to that event, member of Parliament Ibrahim Ambong threatened at a working meeting to cut the budget for weaponry for the police.<sup>34</sup>

### **III. The Role of Parliament in Intelligence Reform**

At present, Indonesia has no law to manage the intelligence community and institutions. Although meetings, monitoring and control between the State Intelligence Agency and the Parliament are routinely conducted, in practice no meaningful breakthrough has been made. The only issue of note is Parliament's rejection of the draft Intelligence Law submitted by the former chief of the State Intelligence Agency (BIN), A.M. Hendropriyono, in 2002. During the same period, terrorist acts were indeed at their peak in Indonesia. A series of terrorist bombings in several locations in Indonesia appear to have given impetus to the intelligence community to request a greater legal role in undertaking counterterrorism activities. However, several articles in the *draft* were considered to be dangerously contrary to human rights principles and susceptible to abuse of power. Among these are :

1. Article 21 states that within the framework of conducting investigations, an officer of State Intelligence has the authority to carry out arrest, detention and interrogation, search, deterrence and preventive measures of all persons suspected of being directly involved in activities that are national threats.<sup>35</sup>

2. Article 26 states that arrest as intended in Section 21a may be for a maximum of 7 times 24 hours.<sup>36</sup>

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<sup>33</sup> Kompas Cyber Media, Polisi tempati urutan teratas pelaku kekerasan terhadap jurnalis (Police occupy highest place as perpetrators of violence against journalists), 30 December 2002.

<sup>34</sup> Pikiran Rakyat, Polri Menuai Kecaman (Polri Attracts Criticism), 4 May 2004.

<sup>35</sup> Draft Bill for a Law on State Intelligence dated 25 January 2002.

<sup>36</sup> Ibid.

3. An insertion into Article 27 clause 1 states that detention within the framework of investigation by intelligence (authorities) as stipulated in Article 21 sub-clause 'a' may be for a maximum of 90 days.<sup>37</sup>

4. An insertion into Article 27 clause 2 states that whenever required for the sake of investigation, detention may be extended for 3 times 90 days.<sup>38</sup>

5. Article 27 clause 3 states that detention shall be conducted at a location determined by the Chief of the State Intelligence Agency (BIN).<sup>39</sup>

6. Article 28 states that during investigation by intelligence personnel, the suspect does not have the right to be accompanied by a legal advisor, does not have the right to remain silent, does not have the right to suspension of detention and does not have the right to be in contact with outside parties.<sup>40</sup>

Particularly with regard to articles granting special authority to intelligence personnel to conduct arrests, this clearly runs counter to applicable legal norms, in which arrest may only be conducted by police officials. In addition, authority was granted to impose extended periods of detention and to deprive suspects of basic rights such as the right to be accompanied by an attorney. New Order practices in which the authorities tended to abuse their power very strongly influenced this draft Bill for a Law on intelligence. Parliament rejected this draft and requested that it be overhauled because, in its existing form, democratic standards were clearly under threat.

### **DPR Role in the Reform Era: Improving but Still Inadequate**

From the explanation above, it is apparent that, compared to the New Order era during which the Parliament was *de facto* a tool to give legitimacy to legislation that perpetuated the authoritarian behaviour of the regime, during the reform era, Parliament has really tried to make positive contributions to security sector reform and in some cases has been quite effective. A number of conclusions can be drawn.

*First*, Parliament has indeed been quite successful in putting regulatory foundations in place, primarily with respect to military and police institutions. This is evidenced by the completion of Law No. 3 of 2002 on State Defence, Law No. 2 of 2002 on the Indonesian National Police and Law No. 34 of 2004 on the Indonesian National Armed Forces (TNI). These laws enable Parliament to act without restraint in its ongoing monitoring of the performance of these security institutions.

*Second*, Parliament's manoeuvres reinforce the perception that at present security sector reform tends to mean military reform. This is apparent from the focus of a series of efforts by the Parliament. It is apparent that issues related to military reform such as the Draft Law on Military Justice, expropriation of TNI business and cases of violation of human rights by military personnel are targets that have been tackled seriously. However,

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

returning to the scope of security sector reform including police and intelligence institutions, it is clear that an evaluation of the contribution of the Parliament is, on the whole, not encouraging. Aside from its rejection of the Draft Law on Intelligence that reeked of abuse of power and its success in formulating the Law on the Police, there is still too much homework to be completed.

For example, cases of police violence committed in the field are evidence that culture change within POLRI is incomplete; resolving this will certainly require more than recommendations and *pressure* in working meetings. In the intelligence field, for example, there has as yet been no outcome of the rejection of the draft Bill for a Law on intelligence.

*Third*, breakthroughs scored by the Parliament are not unopposed. In several cases, such as the rejection of the law on military justice and the proposed intelligence law that reeked of violation of human rights, it is apparent that the level of rejection of the security sector reform agenda remains high. Therefore, Parliament and other elements of civil society need to maintain a consolidated effort to push the reform agenda.

*Fourth*, in security sector reform it is apparent that after nearly 10 years of reform, the fact is that progress in lawmaking has been inadequate. There are still approximately eleven laws related to the security sector that have not yet been enacted. These include the Law on National Security, the Law on State Intelligence, the Law on State Secrets, the Law on Military Justice, the Law on the Military Criminal Code, the Law on the Reserve Component and Defence Support Component, the Law on Mobilisation and Demobilisation, the Law on Conscription, the Law on Defending the State, the Law on Regional Defence Plan, the Law on the State of Emergency and the Law on Technical Assistance of the TNI in the Form of Operations other than War. Parliament's failure to finalise its legislation means that security sector reform remains incomplete. In several areas, for instance, the ambiguity of rules and regulations actually endangers those in the field. For example, after separation of the TNI and POLRI in 2000, there were at least twenty-one incidents of clashes between Polri and TNI personnel in the field that injured dozens of victims, including police, military and civilians.

Given the matters discussed above, the Parliament needs to improve its performance in restructuring Indonesia's security institutions. Security Sector Reform can succeed only if Parliament is capable of providing quality legislation coupled with sustainable and open control. Failing that, there is fear that the process of reform in Indonesia will remain in a never-ending transition phase.

# **Reform of the Indonesian National Police: Just Promises, No Proof**

**S. Yunanto<sup>1</sup>**

## **Introduction**

Reform of the Indonesian National Police, hereinafter referred to as 'Polri', is one of the most important components in reform of the security sector bureaucracy because its reform provides a guarantee of law enforcement, security and order within the community, a function of the Polri institution. In the law enforcement function, Polri is the spearhead, along with others in the judicial bureaucracy, such as the prosecution, the judicial administration, other civil investigating officers, and extra-departmental institutions such as the Corruption Eradication Commission. In the function of shaping security and order within the community, the police are the core component, although they are assisted by the community and other police elements such as Municipal Police Units, Forest Rangers and the Indonesian National Armed Forces (TNI).

So it is not overstating the fact to conclude that one of the parameters for success of reform is reform of the police. One of the most important components in security sector reform is reform of the police, because reform in this sector is very closely intertwined with reform of other sectors.

## **History of Polri**

The Polri bureaucracy has existed since the Dutch colonial period. At that time, the objective of the police bureaucracy was to serve the Dutch colonisers, i.e., to provide protection for persons, property and other assets from the threat of theft and looting by parties wishing to harm the Dutch. Throughout the Dutch occupation, the police bureaucracy was oriented towards protecting the interests of the authorities and indigenous elite. The functions and status of the police bureaucracy during the Japanese occupation were much the same, notwithstanding that the majority of the members of the police force were indigenous residents. The difference was in the use of weapons. During the Dutch occupation, only the Dutch police were permitted to use firearms, while the native police were prohibited from doing so. During the Japanese occupation, native police were officially permitted to use firearms.<sup>2</sup> It is certain that the policy of the Japanese government was in line with the political situation at that time wherein Japan was trying to win the hearts and minds of the natives so that they would defend Japan against the allied armies who were its enemy during World War II. Education and training

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<sup>2</sup> Muhammad Nasir, *Konflik Presiden dan Polri dalam Masa Transisi Demokrasi (Conflict between the President and Polri during the Democratic Transition Period)*, Madani Institute, 2004. pp. 28-30. (This book was taken from a Master's Thesis in Political Science at National University, 2004).

on general theories of policing were seldom given to the native police.

After independence, the Committee for Indonesian Independence (PPKI) integrated the police bureaucracy into the bureaucracy of the Interior Ministry. In line with the political situation at that time, the police were still under the same stresses as the Indonesian population, which was experiencing the struggle for independence. At the end of the Old Order -- to be precise, upon the issuance of Law No 13 of 1961, implemented under Presidential Decree No. 290/1964, 12 November 1964 -- Polri was integrated into the Armed Forces of the Republic of Indonesia (ABRI, now TNI). Polri became the spearhead for safeguarding political stability. This integration has since come to be understood as the cause of the limitations of Polri's functions and tasks. A variety of security matters related to sociopolitical problems were handled more and more by ABRI as the primary security institution. The role and tasks of Polri vis a vis those of ABRI became confused. For example, military policy following riot or insurrection is law enforcement, a task which falls within the domain of the police. Integration of Polri into ABRI also resulted in a very strong military ideology in its education and management systems, centralised organisation and a police community that resembles a military, rather than a police, community.<sup>3</sup>

During the New Order period, the position of Polri remained weak, in fact became weaker, because organisationally it remained under ABRI. Because the budgeting system was unified under ABRI, Polri often lost out to ABRI in procurement of equipment. The ambiguity of Polri's position within ABRI also led Polri to be unprofessional. Polri's attitude and actions during the New Order period were seen to be "military", far from the attitude of police as trainers/guides for community security and order. All provisions of the armed forces also applied to policing, such as education, budget and financial systems and other requirements.<sup>4</sup>

The fall of the New Order regime and the beginning of the Reform Era were vital influences in Police Reform. People's Consultative Assembly (MPR) Decrees No. VI and VII of 2000 separated Polri from the Indonesian Armed Forces (TNI) and put in place functions of Polri independent of the TNI. The organization of the Indonesian National Police (Polri) was henceforth directly under the president. On the functions of the Police, MPR Decrees No. VI and VII of 2000, chapter 2, article 6 explain that:

1. The National Police is a tool of the State that plays a role in nurturing security and community order, upholding the law, and providing shelter and protection to the community.
2. In carrying out its role, Police must have expertise and professional

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<sup>3</sup> Bambang W Umar, *Penafsiran Kembali Simbol-Simbol Polisi (Reinterpretation of Police Insignia)*, *Jurnal Polisi Indonesia (Journal of Indonesian Police)*, No. 4, 2002, pp. 19-20.

<sup>4</sup> Salim Said, *Polisi Republik Indonesia Dalam Pusaran Arus Politik (Indonesian Police in the Vortex of the Political Current)*, *Naskah Dies Natalis ke 54 (54th Anniversary Manuscript)*, PTIK (Police Academy), Jakarta, 17 June 2000.

skills.<sup>5</sup>

Polri is situated directly under the President, so the reform era that is now more than eight years old has become controversial and occasionally becomes heated. From the police perspective, Polri's release from the TNI structure has stimulated Polri's level of independence and autonomy which ensures the creation of professionalism. At the same time, a variety of civil society organisations (CSO), some politicians and, of course, the military observe that this police structure goes too far and is abnormal for any state, because in many states the police structure is located under one department, for instance, the Department of the Interior or the Ministry of Justice. Polri's position directly under the President is disturbing because of its potential to push the police institution into the arena of presidential politicisation.

### **Polri Organisation and Rank Structure.**

Current Polri strength is approximately 250,000 personnel. Observed from the dimension of the ratio to the population, the number of police has not reached the ideal level, which, according to the United Nations, is 1:500. In 2005 the ratio of the number of Polri members to the population was targeted to be 1:675. If the plan for personnel recruitment in 2009 is achieved, the ratio of police to population will be 1:537, which approaches the UN benchmark of 1:500. Polri leaders still consider this shortfall in the ratio of the number of personnel to be one of the reasons for the ineffectiveness of Polri's performance. Nevertheless, this view needs to be tested to determine whether it is indeed correct or whether other factors play a part, for example, professionalism, effectiveness of leadership and low work ethic.

After Polri was separated from the TNI organisational structure, under its organisational structure, Polri became a non-governmental institution directly under the President. With this separation, Polri was expected to become truly autonomous, independent and free of intervention by other institutions, especially political parties. Structuring the Polri organisation must be based on the importance of its tasks and the demands of the community nationwide, must consider regional characteristics, and be organised situationally, yet consistently be guided by the geopolitical concepts of the archipelagic principle, unity and integrity. Personnel appointments in the organisation are differentiated between densely populated regions and regions with sparse populations, and differences in characteristics, geography, customs and traditions, such as communications, mobilisation tools, technology, evidence, et cetera. In addition, structuring of positions in the organisation is not *top heavy*, but rather considers district-level and precinct-level police to be the operational spearheads.<sup>6</sup> This policy is followed by the policy of recruiting in the regions, which stresses local resources, using "a local boy for a local job".

With systems that are integrated, the work pattern of national policing is implemented from the *bottom up*, with broader delegation of authority and

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<sup>5</sup> See MPR Resolution Number VII of 2000 on the role of the TNI and Polri.

<sup>6</sup> Bibit R Rianto, Reformasi Polri, Pemikiran Kearah Kemandirian Polri (Reform of Polri, Pondering the Direction of Polri's Autonomy, Jakarta, pp. 40-41.

responsibility to areas, especially District-level police, as the Primary Operational Unit. Structuring the Polri organisation parallels the structures of regional governments and the criminal justice system. The Polri organization was constructed without an extensive bureaucracy in order to be able to guarantee quick and timely decision making so that the community is conscious of the service Polri provides.<sup>7</sup>

In keeping with the spirit of becoming civilian police after separation of the organisational structure of Polri from the TNI, the terminology of the Polri rank structure has been changed from ranks that previously followed the military organisation to take on names more specific to Polri, as in the following table.

<b>Police - Previously</b>	<b>Police - Currently</b>
<b>Officers</b>	
<b>Senior Officers</b>	
General Police	General Police
Lieutenant General Police	Commissioner General Police
Major General Police	Inspector General Police
Brigadier General Police	Brigadier General Police
<b>Field Grade Officers</b>	
Colonel	Chief Commissioner Police
Lieutenant Colonel	Adjutant Chief Commissioner Police
Major	Commissioner Police
<b>Company-grade Officers</b>	
Captain	Adjutant Commissioner
1st Lieutenant	Inspector 1st Grade
2nd Lieutenant	Inspector 2nd Grade
<b>Noncommissioned Officers</b>	
Warrant Officer 1st Grade	Adjutant Inspector 1st Grade
Warrant Officer 2nd Grade	Adjutant Inspector 2nd Grade

<sup>7</sup> Policy of Chief of Indonesian National Police, 1 July 1999, General (Police) Roesmanhadi, Jakarta, pp. 20-21.

<b>Noncommissioned Officers</b>	
Sergeant Major	Chief Brigadier
Chief Sergeant	Brigadir
1st Sergeant	Brigadier 1st Grade
2nd Sergeant	Brigadir 2nd Grade
<b>Corporal</b>	
Chief Corporal	Adjutant Chief Brigadier
1st Corporal	Adjutant Brigadier 1st Grade
2nd Corporal	Adjutant Brigadier 2nd Grade
Master Private	Chief Patrolman
Private First Class	Patrolman 1st Grade
Private Second Class	Patrolman 2nd Grade

From the names of the ranks used, the desire of the Police to discard the militaristic culture is evident, but on further examination of the changes to the upper ranks, it is apparent that change occurred only at the level of Field Grade Officers and below. At the Senior Officer level, elite police officers still have a strong desire to use insignia and ranks that have military implications, for instance, in the use of the term 'General'.

### **Education System**

While Polri was still part of ABRI (now TNI), the subject matter of education in Polri was 40% military and only 60% policing. As a result of military culture associated with day-to-day behaviour and attitude of Polri personnel that still operated based on the orders of superiors, they always used "*siap perintah*" (awaiting orders) and a variety of other militaristic jargon. The fact is, police must be subject to applicable law (the Code of Criminal Procedure).<sup>8</sup>

After Polri was separated from the TNI, the principal problem in education was how to design an educational curriculum capable of changing this militaristic culture. In an effort to shape a Polri workforce with a professional culture, capable of matching community education levels, the Polri education system was organised based on the national education system, i.e., with development of police science conducted through a police science consortium under the Department of Education and Culture (now Department

<sup>8</sup> Periksa hasil penelitian PTIK, tentang kemandirian Polri pasca mandiri (Examination of results of Police Academy research on Polri autonomy after separation from TNI), PTIK (Police Academy), 1999.

of National Education). A variety of Polri subjects and training Polri were included in the curriculum and every aspect of its education program was oriented towards subject matter closely related to the police profession, including control of human rights problems, democratisation, the environment, capability for interactive dialogue and local capacity and culture. Prior to appointment as Polri employees, applicants are first given the opportunity to serve a *probationary period* in an effort to mold good mental traits in the prospective Polri employees. Those who meet requirements are appointed to become Polri employees, signified by reciting an oath and declaration of acceptance of the Polri code of ethics.

To become a Polri employee, programs are offered through various levels of educational institutions. The first level of education consists of Enlisted School (Seta), NCO School (Seba), Officer Candidate School (Secapa), Officer Education for University Graduates (PDSS) and the Police Academy (Akpól). Levels and kinds of continuing education in Polri, called Formative Education (Diktuk), consist of NCO Candidate School (Seba Reg) and Officer Candidate School/Officer Formation School (Secapa/Setukpa). Other levels and kinds of education are Development Education that consists of Advanced Police Officer School (Selapa), Police Staff College (PTIK), Leadership School (Sespim) and Staff and High-Ranking Administrative Officers School (Sespati). Beyond this education, Polri also has education in science, technology and specialisations such as education centres for Traffic, Criminal Investigation, Intelligence, Police Readiness Unit (Sabhara), Mobile Brigade (Brimob) and Administration.

Levels and types of Polri education are organised to obtain capabilities and expert qualifications through education models at B.A., M.A. and Ph.D. levels and cooperative education both in-country and overseas. Skills qualifications are obtained through education models D1 (one-year diploma programs) for police workers in the field *and* D3 (three-year diploma programs) for first line supervisors, as well as through vocational training. Managerial qualifications are obtained through models of managerial education at middle level and above. The Police Academy and Police Staff College are service academies whose education systems are directed towards filling the needs of the services within the Polri environment. Advanced Police Officer School (Selapa), Leadership School (Sespim) and High-Ranking Administrative Officers School (Sespati) are educational institutions above senior secondary level that are identified as service schools, but they are not tertiary education institutions. These institutes are non-degree educational institutes or what under law are called institutes of professional education. Schools of higher education or universities are institutes of academic education. In the specific case of the Police Academy (Akpól) which is closely linked to the Police Staff College (PTIK), the Department of National Education has established Diponegoro University as its academic adviser. To enter the Police Staff College, university students who have graduated from the Police Academy must have several years practical experience before taking the entry examination for the Police Staff College. For education beyond the Police Staff College, Polri in cooperation with the University of Indonesia runs Masters level (M.A.) courses, known as Police Studies (KIK).

These various types of education hopefully can provide needed

capability to put the Polri organisation into operation. First, professional technical policing capability. Second, managerial capability at basic, middle and higher levels of policing. Third, expertise.

### **Polri Budget and Business**

During the New Order period, the Polri budget was difficult to identify because it was subsumed within the ABRI budget. Since the Reform movement began, the Polri budget has experienced annual increases of between four to ten percent. The table below illustrates the Polri budget for the past four years.

**Table Polri Budget for Period 2004-2007**  
**In millions (000,000,000)**

NO	YEAR	AMOUNT	INCREASE
1	2004	Rp. 10.645	
2	2005	Rp. 11.165	4.89%
3	2006	Rp. 16.778	10.23%
4	2007	Rp. 18.230	8.65%

In addition to the National Budget (APBN), to finance operational requirements Polri regions also receive contributions from Regional Budgets (APBD) and Non-tax State Revenue (*PNBP*) from driver's licence and vehicle registration and vehicle ownership fees and off-budget receipts, usually called Community/Associates Participation (*Parmas/Parman*), and revenue from sources that are legally questionable, often called Participation by the Criminal Sector (*Parmin*). Revenue other than from the National Budget is not in accordance with the Law on State Finance and raises questions of accountability and transparency and is vulnerable to corrupt practices.

According to the Institute for Economic and Social Research (*LPEM*) of the University of Indonesia, although the Polri budget has experienced annual increases, a number of problems remain. *First*, the organization's vision and mission are not reflected in its plans and budget. *Second*, funding is limited by inadequate allocations. *Third*, accountability practices in the finance area are a mockery. Another problem is that implementation of the Polri budget also has no clear foundation in constitutional law because it is different from the defence budget. In Law No. 2 of 2002 on Polri, there is no article that stipulates the source of funding for the police budget. This problem creates opportunities for fund-raising practices that are not accountable and transparent and in fact tend to conflict with the law. Because Polri is an important law enforcement institution, the source of the Polri budget must be

clearly stipulated in the Polri Law.

In future, HQ Polri has committed to change the Polri budget system from one that is program-oriented (*top down*) in which its budget is for the most part determined by the government, into one that is budget-oriented (*bottom up*), i.e., a Polri budget based on the requirements of work in the field. Changing the status of Polri into a civilian institution is currently in the planning and budgeting process referred to in Law No. 17 of 2003 on State Finance and Law No. 1 of 2004 on State Treasury, as well as Law No. 15 of 2004 on Investigation of Management and Responsibility for State Finances.

Amendment of the system of Polri budget authorisation is considered to be an advance within the framework of supporting execution of its tasks. However in reality there are still weaknesses, especially in formulating work unit budgets. This results in fears that funds received by the chief of the work unit -- especially at Metropolitan Region Police (*Polwiltabes*), Regional Police (*Polwil*) and District Police (*Polres*) levels -- will not be distributed maximally to subordinate police units. As a result, the level of welfare for Police personnel in the lower ranks who have day to day responsibility for police operations activities is less likely to be given adequate attention. Conversely, this situation benefits leaders who have control over the budget.

### **Police Business**

Three types of Police businesses, i.e., cooperatives, foundations and personal businesses, are operated by former police and usually have connections with police institutions. These businesses have been operating since the New Order was in power, at the time when Polri was still merged with ABRI. In the Polri domain, these businesses include those aligned with the jurisdictions they control, such as businesses in the field of procurement and administration of drivers' licences, vehicle registration and vehicle ownership documents, vehicle number plates and traffic accident insurance.

Businesses related to procurement and administration of drivers' licences, vehicle registration and vehicle ownership documents, vehicle number plates and traffic accident insurance have operated as a common practice throughout Indonesia through provincial, regional and district police traffic units without competition. Because this line of business was associated with the Polri organisation itself, other businesses were not the main objective.

Within the Polri domain, business has a great influence on the sense of independence of police in the performance of their duties, because police business provides opportunities for collusion, corruption and nepotism (KKN) between police who have authority for law enforcement and legal ways and means and powerful parties who are in litigation. For parties in litigation, the practice of collusion, corruption and nepotism provides opportunities to escape from the court process. In such situations, Police businesses can encourage police to become accessories to crime. Business enterprises in the Polri domain also can influence the behaviour of police who should be oriented towards "prestige", meaning "good reputation", in the performance of their duties but instead redirect their orientation towards the "material", i.e., money, whereby the personal interests of police will prevail. This being the

case, the likely loser is the mission of the institution.

Administration of Polri business differs from administration of military business. At present, the problems connected with military business commands broad attention from civil society organisations (CSO) and the legal framework is clear, although its implementation is still in doubt. There have been much study and research on military business but so far there has been minimal study of Polri business. Even its legal framework remains unclear. The Law on Polri does not give clear direction on Polri business. Polri participation in business will influence its professionalism, independence and principles of justice in providing service. In addition, the absence of a framework for administering Polri business also arouses resentment amongst the military whose participation in business has also been discussed in several studies and laws.

### **Oversight and the National Police Commission (*Kompolnas*)**

One of the most urgent issues to be discussed is the function of oversight. This function become vital because the Polri institution has two main functions, namely, *discretion* and *secrecy*. Discretion simply means authority to interpret a regulatory standard as the basis for taking action in carrying out one's duties, while *secrecy* is police authority to maintain confidentiality. The two functions are like a two-edged sword. In the hands of personnel with high morals, these two functions can be the basis for acting in ways that benefit the community. In the hands of personnel with low morals, these two functions can become opportunities that justify all sorts of violations, especially since the police have a monopoly in law enforcement.

To ensure that these functions can be used in accordance with Polri's basic duties, they must be accompanied by a system of oversight. Internally, implementation of the Polri organisation is supervised by an Inspectorate called the General Supervision Inspectorate (*Irwasum*). The General Supervision Inspectorate (*Irwasum*) is tasked to carry out the functions of: character building, oversight and general investigation of the entire Polri network; carrying out routine oversight activities and investigations both on a programmed and unprogrammed basis of managerial aspects of all Polri units, and compiling reports on the results of investigations, including malfeasance in the implementation of Polri's tasks.<sup>99</sup>

External oversight at the policy and political level is conducted by the President as immediate superior and Commission III of Parliament which has the responsibility for oversight of law enforcement. The system of internal oversight for which *Irwasum* is responsible is of doubtful effectiveness. It is almost impossible to imagine that *Irwasum* personnel who are also members of the police force would prosecute a colleague who is also on the police force. Evidence of such ineffectiveness is the reason that Polri has continued throughout the reform era to have a bad reputation in the eyes of the community. Polri is still considered to be a corrupt institution that violates human rights and displays a militaristic character. Even the President's control is limited to the macro level of policy. The President has no special

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<sup>9</sup> See Decree of the Chief of Police Number Kep/53/X/2002, dated 17 October 2002.

staff tasked with oversight of the police force. Commission III of Parliament is limited to political oversight. Mechanisms of external oversight by Parliament are not routine, e.g., only done in meetings to hear views.

In some states, the oversight function, besides being conducted by internal functions and political oversight, is also conducted by a police commission empowered to conduct interrogation and investigation. In fact, in states such as the Philippines and Sri Lanka, this commission also has authority to arrest police who have offended. In Indonesia, Articles 37 and 38 of Law No 2 of 2002 on the Indonesian National Police also mandate creation of the National Police Institute, called the National Police Commission (*Kompolnas*). But unlike police commissions in other states that have oversight functions, the tasks of the National Police Commission (*Kompolnas*) are very limited and do not include the oversight task. This commission only has the task of assisting the President in determining the policy direction of the National Police and giving advice to the President on appointment and removal of the Chief of Police. In the performance of its duties, the National Police Commission also has very limited authority, namely to collect and analyse data as material for advising the President on developing the police force and providing advice to make Polri professional and independent. In its relations with the community, the National Police Commission receives advice and complaints about the performance of the police.

So, given the legal framework and existing regulations, the National Police Commission is not designed to become a *watchdog* but rather only a consultant and a *think tank*. Given the breadth of Polri's tasks and authority and the oversight structures that exist, it is indeed difficult to conceive of having *checks and balances* on Polri's performance that would guarantee transparency and accountability. Perhaps because of these factors, Polri's performance to date still attracts a fair amount of criticism and dissatisfaction. In fact, during the reform era, the authority of the police has been even more extensive, more autonomous and more independent. In addition, Polri's Budget has tended to increase every year.

### **Outline of Police Reform**

Just as was done by the TNI in conducting internal reform, Polri also formulated a reform concept called "Polri New Paradigm". This paradigm is conceptualised around three aspects of change: structural, instrumental and cultural. Structural and instrumental change is a means to and prerequisite for cultural change. Structural change encompasses change to institutional aspects of policing in the areas of constitutional law, organisation, structure and status. The nucleus of structural change after separation of Polri from the TNI is the implementation of an integrated concept of the national police with a "*bottom up*" approach, with delegation of authority to operational units to provide a mechanism for more timely decision making.

The organisational structure is drawn in the form of a network, rather than a pyramid, with emphasis on cooperation. The Polri organisation is expected to be structurally frugal but functionally rich. Its objective is to accelerate delivery of service to the community. In this spirit, Polri has attempted to forge partnerships with the community through the Community

Policing (*COP*) program that has now been elevated to become the Community Policing (*Polmas*) program. Through the assistance of national and international NGOs, this program has been trialed in a number of regions in Indonesia.

Instrumental change encompasses a philosophy consisting of vision, mission and objectives, doctrine, authority, competence, as well as functional, scientific and technological capability. Polri doctrine is the vision that confirms its trustworthiness and influences the behaviour of its personnel or organisation as a group in carrying out its mission to achieve organisational objectives. Culture change is the objective or outcome of structural and instrumental change. In broad terms, culture change is change to Polri's practices that consist of its ways of viewing the world and ways of thinking, behavior and attitude that reflect its identity as civilian police. Conceptually, civilian police are police who have respect for civil rights and possess civilised or refined characteristics such as manners and gregariousness, who do not display a harsh attitude, who defend the interests of the people and not those of the powerful and are subject to the principles of democracy and *good governance*, such as accountability, transparency and checks and balances. This vision of culture change is diametrically opposed to the attributes of police of old that were militaristic, with a facade of violence, defending the interests of the powerful as if they were secret police, not transparent, not accountable, and corrupt. The impact of the lack of progress to date in this area of culture change is that the police still have a bad image in the eyes of the community and consequently are distrusted.

At the same time, structural and instrumental change is considered to have reinforced Polri's position in Indonesia's system of constitutional law and increasingly this paradigm of building a civilian police force has been given high priority. Culture change is very often said to be still underway in, among other things, revision of the educational curriculum, socialisation of the three duties and four pledges of the police (*Tri Brata* and *Catur Prasetya*) and the professional code of ethics, to realise Polri's identity as protector and servant of the community. Polri's leaders acknowledge that Polri's behaviour still appears arrogant, violent, discriminative, unresponsive and unprofessional. The community, too, does not fully trust Polri, because as an institution Polri is still seen as discriminatory, unprofessional, unresponsive and discourteous in giving service. A member of Commission III of Parliament has pointed out that evidence of the low level of community trust is found in several *ad hoc* teams whose tasks are similar to those of the police, such as the Team for Extermination of Crimes of Corruption (*Timtastipikor*) and the Fact Finding Team (*Tim Pencari Fakta*). These teams have demonstrated that, in the field of investigation, Polri is incapable of solving cases which are in the public eye.

## **Conclusion**

Reform has encouraged change in Polri, especially in symbolic and superficial matters, but has not yet had any substantive impact on culture change in behaviour and attitude. In short, reform of Polri is all promise and no proof. By utilizing a logical framework, structural and instrumental change including annual budget increases will produce culture change.

Over the long term, there needs to be thorough examination of whether the problem of stagnation of change is indeed caused substantively by issues at a more macro level, e.g., at the level of legislation related to crucial aspects such as organisational structure, budget transparency and the framework of oversight and control. If that is indeed the cause, there will, of course, need to be more radical reform of the police that touches on strategic aspects, e.g., amendment of the Law on Polri to correct the problems of organisational structure, framework of oversight, and control and sources of funding, including review of Polri's jurisdiction, which is currently too broad, while oversight and control is weak. But politically this effort is quite exhausting, because of the lack of a common vision amongst the policymakers within the police service.

Practical short terms measures include using the existing legislative framework to motivate Polri's performance through various programs of strengthening, consultation and, of course, oversight so that Polri lift its game in providing protection, shelter and service to the community. These *incremental* efforts can be taken as soon as possible, within the unsatisfactory legal framework. In the short term, political institutions such as the President, Parliament and the community must improve oversight and control of Polri's performance. Ultimately, the community can cooperate with Polri in deterrence and investigation of crimes.

# REFORM OF POLICE MOBILE BRIGADE (BRIMOB): BETWEEN MILITARY TRADITIONS AND THE CULTURE OF CIVILIAN POLICE

Muradi<sup>10</sup>

## ***Introduction***

The underlying problem in the process of institutional transformation of the Indonesian National Police (Polri) from a police force with a militeristic character into a civilian police force is the existence of influential factors that impede the process. Many attribute this to the existence of the Police Mobile Brigade. This elite Polri unit is considered to be the stumbling block in the process of institutional restructuring in Polri, due to its paramilitary nature. In fact, a small segment of the community believes that Brimob should be disbanded in order for the process of transformation to go forward.

Nearly eight years after its separation from its parent organisation, the TNI, Polri still has problems with the structuring of its institutions and with its organisational culture. Institutionally, Brimob has indeed adapted itself to what has become the Polri agenda. However, even Brimob itself feels the process to be too sluggish, and consequently seems unwilling to change. This is the root cause for Brimob remaining the pebble in Polri's shoe.

The process of change, or in Brimob jargon, of adapting to the Polri agenda, increases the psychological burden on the body of Brimob itself because, since its formation, Brimob has focused on the law enforcement specialty of high level security threats, a function that cannot be conducted by ordinary Polri members. Consequently, adoption of its militeristic nature was a conscious effort on its part when integrated formally into the body of Polri. So, when forced to abandon many of the military attributes with which it has been associated since 1946, its response was systematic rejection, because it is a matter of *esprit de corps*.

This essay will address the reform process occurring in the body of Brimob and the responses to it, including existing models of indoctrination and operations and the existing structure. In addition, it will also discuss the process of shifting from traditions that are completely militeristic to those that are a mixture of militeristic and civilian traditions.

## ***Born of Militeristic Traditions***

The Police Mobile Brigade (Brimob), established 14 November 1946, was Polri's response, in cooperation with other national elements, to preserve independence in the face of attempts by the Dutch and their allies to reoccupy Indonesia. This was reflected in efforts of all Brimob and Polri members at

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that time to integrate themselves and work shoulder to shoulder with the people and elements of the TNI to preserve independence, in addition to its role and functions in law enforcement. What is more, Polri participated in every measure and policy of the government related to safeguarding the existence of the nation and state from harassment by foreigners and attempts at rebellion aimed at substituting national ideology and principles with those of others, as took place in the Communist uprising at Madiun in 1948 which was put down by the TNI's Siliwangi Division, the local populace and Polri.

Once freedom had been fully embraced by the people and nation of Indonesia, Brimob did not withdraw from the service of the motherland. A number of rebellions and separatist movements threatened the internal security and existence of the republic. Brimob became the Polri unit in the forefront of quashing these rebellions and separatist movements, alongside the TNI. Under the Old Order, the role and function of Polri was not restricted to only preventive and repressive law enforcement efforts, but also extended into the political arena. In cooperation with the TNI, Polri was involved in operations to exterminate insurgent movements such as the Andi Aziz rebellion, the *PRRI/Permesta* (Revolutionary Government of the Republic of Indonesia/Charter of Universal Struggle) movement, *APRA* (a rebellion led by a former Dutch army officer), *Darul Islam*/Islamic Army of Indonesia and so on.

Returning to its formative days, Brimob was a part of the metamorphosis of paramilitary police established by the Japanese and the Dutch when their respective occupations of Indonesia. In 1912, during the Dutch occupation, an armed police unit was formed, known as *Gewapende Politie*, later replaced by another unit called *Veld Politie*, whose tasks were, among others: to act as a rapid response unit, to maintain order and security in the community, to preserve civilian rule, to prevent the emergence of an atmosphere requiring military assistance and to consolidate conquered territories.<sup>11</sup>

It may be said that *Gewapende Politie* and later *Veld Politie* were effective anti-insurgency units, before the military finally intervened, because these two units were actually moderate forms of non-military armed forces.

Similarly, during occupation, the Japanese were equally quick to respond in April 1944 by forming the paramilitary force known as the *Tokubetsu Keisatsu Tai*, composed of junior police and youths trained as police by the Japanese. The *Tokubetsu Keisatsu Tai* were better trained than the special police formed during the Dutch occupation. Housed in barracks, these Japanese Special Police received education and military training from the Japanese army. *Tokubetsu Keisatsu Tai* were tasked with and had responsibility for community safety and law and order and were used on the battlefield.<sup>12</sup>

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<sup>11</sup> For example, see Wenas, S.Y. 2006. *Korp Brimob Polri dalam Aktualisasi (Polri Brimob Corps in Actualisation)*. Police Staff College Press, p. 3.

<sup>12</sup> Deployment of *Tokubetsu Keisatsu Tai* to the battlefield, with tasks and responsibilities almost identical to those of Brimob at present, was a phase in Brimob's development, from the early days of the nation, in the War for Independence, e.g., the Battle of 10 November 1945, to its current participation in quashing

The *Tokubetsu Keisatsu Tai* were deployed throughout the territories and each *Tokubetsu Keisatsu Tai* unit was under the command of the Regency Police Chief. The number of personnel varied from territory to territory, ranging from 60 to 200, depending on the conditions and situation in the field. Company commanders in the *Tokubetsu Keisatsu Tai* usually held the rank *Itto Keibu* (1st Lieutenant/Inspector 1st Grade). One of the *Tokubetsu Keisatsu Tai* commanders was Inspector Mochamad Jasin, who became the Founder of Brimob under Polri by proclaiming the establishment of Special Police, i.e., special police troops or the Special Police Brigade, which was the forerunner of the Mobile Brigade (Brimob). The multiplicity of names subsequently invited problems because it was commonly felt that these names projected an image of an undeclared competition between the units who bore them. At the initiative of Chief Commissioner Soemarto, Deputy Head of the National Police, the name of the special police was changed to Mobile Brigade (*Mobrig*).

This name change was in line with measures to confirm the existence of the Special Police within the Polri structure., By Order of the Deputy Head of Police No. Pol.: 12/78/91, which ordered Inspector Mochamad Jasin to organise the formation of the Mobile Brigade (*Mobrig*), the Regency Mobile Brigades (*MBK*) were established, with each unit consisting of one company, adopting the *Tokubetsu Keisatsu Tai* structure.

During the Old Order period, *Mobrig* became a special unit within Polri, specialising in high level security and public order disturbances, such as separatist conflict and movements. This encouraged efforts to revamp the organisation. However, this was only temporary, because at the residency level the *MBK* became Mobile Brigade District Battalions (*Rayon Mobrig*), while provincial-level units were reorganised into reserve companies. At the central level, a Mobile Brigade Coordinator and Inspectorate was created, tasked with organising *Mobrig* troops stationed at Purwokerto, whose duty was to assist the Chief of the State Police Service in matters concerning *Mobrig*. At the provincial level, *Mobrig* Coordinators were created, tasked with organising regional *Mobrig* troops stationed in the provinces, and consequently a *Mobrig* company was created in each regency.

From its beginnings as company-level units, *Mobrig's* status increased when, under Department of State Police Decision No. Pol. 13/MB/1959 of 25 April 1959, it was elevated to battalion level, and *Mobrig* regional coordinators became Regional Commanders. At the same time, the Mobile Brigade Coordinator at central level became Mobile Brigade (*Mobrig*) Central Command.

As the 16th anniversary of *Mobrig* approached, the Minister/Chief of National Police issued order Y.M. No. Pol. 23/61 dated 16 August 1961, containing an anniversary decree by which President Soekarno changed the name of *Mobrig* to "*Brimob*". Nevertheless, these name changes did not portend how important *Brimob* would become as an integral part of the units comprising Polri. It is precisely *Brimob's* military character that stands as diametrically opposite the essence of Polri as a civilian security organisation.

Interestingly, this process of change in its formal legal and constitutional status, culminating in the promulgation of the Outline Law on the Police No. 13 of 1961, confirmed Polri's position as a part of ABRI. These changes encouraged internalisation of militaristic values within the body and structure of Polri, even more so since the promulgation of Presidential Decree No. 155 of 1965, issued on 6 July 1965, on equalisation of education at academy level for ABRI and Polri. This was subsequently introduced into the respective academies. This clearly changed Polri's facade from civilian to military, imposing upon it a variety of attributes. The problem that then emerged was that, as a civilian institution, Polri must protect an image of itself as part of civil society in its operations. *Brimob* is no exception.

*Brimob*, since its inception a special Polri paramilitary unit, further confirmed its militaristic nature when Polri was integrated with the TNI into ABRI; in fact, the militaristic nature was not limited to *Brimob* but, on the contrary, became ingrained in the culture of Polri as a whole. In fact, integration into ABRI reinforced the militaristic culture that had become deeply rooted in *Brimob* units. This change strongly influenced Polri's performance, especially that of *Brimob*, in putting its role and functions into operation as an instrument of state security. Hardly any effort was made to advance the democratic process in Polri's commitment to shape 'conducive' internal security.

The pressure to correct *Brimob's* tasks in the fields of high intensity threats to community safety and security and on the battlefield resulted in the issuance of the Decision of the Chief of the Indonesian National Police No. Pol. SK/05/III/1972, dated 2 March 1972 on Refunctionalisation and Reorganisation of the *Brimob* Organisation, which restricted its battlefield and military roles. In addition, the decision placed *Brimob* once again essentially where it had begun, i.e., under the direct command of the Chief of Provincial Police, as it had been when *Brimob* was first organised under the name Regency Mobile Brigades (*MBK*).

Under that decision, *Brimob's* tasks and functions were no longer limited to military combat tasks, but also to function in support of police tactical operations to deal with high levels of criminality. Consequently the form of the organisation was also no longer that of a vertically-oriented corps, but units that had been only independent companies within a battalion became organic to Polri regional commands (*Polda*).

This change in organisational structure lasted only eleven years, because on 14 November 1983, *Brimob's* structure was changed yet again, with the abolition of independent companies and battalions. Under Polri Decision No. Pol. Skep/522/XI/1983, the former battalions and companies were replaced by the formation of *Brimob* units comprised of non-independent companies.

It must be recognised that during the time span from 1972 to 1983, *Brimob* became the 'running dog' of ABRI, organisationally subordinate to Polri. This had a psychological influence on *Brimob* personnel, especially later. This psychological stress sent morale even lower, no better than that of other ABRI personnel. In fact, an anecdote sprung up in the community in which

*Brimob* was said to be "not police, not yet soldiers" because the 'gender' of *Brimob* within Polri was unclear. During this period, militaristic practices had become the daily life of *Brimob*. It was propped up by the inclination of the ruling regime to legitimise it.

It is interesting that in 1996, *Brimob's* status was validated and elevated, when it became a central executive agency under the Chief of Police. As a consequence, the positions of field-grade officer at the Colonel level (Chief Commissioner) become one-star officers (Brigadier General), first held by Brig. Gen. (Pol) Drs. Sutiyono. The improved status also influenced *Brimob's* primary tasks, i.e., develop capability and direct *Brimob* forces for coping with high level threats to community safety and order, particularly mass unrest, organised crime involving firearms or explosives and, in concert with other police operational elements, maintain law and order and community tranquility throughout the territorial jurisdiction of the Republic of Indonesia.<sup>13</sup>

It should be recognised that this process of validation is part of the history of *Brimob's* existence, because recognition that *Brimob* is not just a subsidiary institution but an important part of Polri, and that over a thirty year period, the status of *Brimob* during the New Order has become more a tool of power rather than an instrument of the state. *Brimob* transformed itself into an agent of the powerful, preserving the perpetuation of power of the New Order. Its motto: "Once we step up, we never give up; once we have the objective in sight, we must succeed", clearly projected an image of relentlessness and the ends justifying the means, within the framework of its primary tasks. This motto portrays the perception that *Brimob* is still strongly influenced by militaristic jargon and slogans and consequently is branded as perpetrators of the military culture within Polri. Overall, the behaviour of *Brimob* personnel projects the image of its differences from other Polri units.<sup>14</sup>

As the fall of the New Order approached, *Brimob* also become a target of community criticism because of its violent practices. Efforts to change *Brimob* so that it leans more to the civilian side continue to be pursued through internalisation of civilian policing values into its curriculum and its field operations. However, these efforts have not produced maximal outcomes. Change based on following the tide of reform does not spontaneously change the essence of the *Brimob* paradigm, because the change that has occurred is piecemeal and only pays lipservice. Since the fall of Soeharto, *Brimob* has continued to trumpet itself as paramilitary police with strong militaristic features and character.

### ***Brimob and Democratic Policing***

Significant change in the position and role of Polri, in tandem with the reform era, was marked by the political decision to separate Polri from the TNI institution and chain of command on 1 April 1999 by the issuance of Presidential Instruction No. 2 of 1999. 2 YEAR 1999. To secure broad public

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<sup>13</sup> Wenas. *Op cit.* p. 13.

<sup>14</sup> Different behaviour accepted by *Brimob*, different from that of other units, formed a model and the behaviour adopted by *Brimob* contrasts with that of other units, a contrast that has persisted right up to the present. In reality, this is really what causes the community to fail to see *Brimob* as a civilian police force

support, this decision was enacted in MPR Resolution TAP MPR/VI/2000 on separation of ABRI into TNI and Polri, and TAP MPR/VII/2000 on the roles of both institutions, placing the TNI under the Department of Defence and Polri directly under the President. Follow-up to the issuance of the two MPR resolutions was promulgation of Law No. 2 of 2002 on the Indonesian National Police and Law No. 3 of 2002 on National Defence, which were also related to the role and position of the TNI in providing technical assistance to Polri.<sup>15</sup>

From a broader perspective, the police were still lumped in with the military, and consequently 'civilians' are those who were neither military nor police. Police were still categorised as military because, like the military, they still projected the image of "*having force and power*". To become a civilian police force is to deconstruct the work of the police to become a public authority that distances itself as far as possible from being a force based on power.

Civilian police themselves as a paradigm are also a target of reform. Therefore, implementation of change cannot be biased but must be implemented simultaneously, and consequently will produce synergies which hasten the achievement of the objective, i.e., the realisation of a civilian police force. Several parameters are indicators of a civilian police force, i.e., they are professional, proportional and democratic, have high regard for human rights, transparency, accountability and the supremacy of law, and display a protagonist attitude. Therefore, structural change must be followed by instrumental and cultural change.<sup>16</sup>

Restoring the role and position of Polri as an institution focused on internal security is emphasised in Law No. 2 of 2002, Articles 2, 4 and 5. Article 2 clarifies that the policing function is one of the functions of the national government in matters of maintaining community security and order, law enforcement, protection, shelter and service to the community. Article 4 confirms that Polri's objective is to realise internal security, which includes maintenance of community security and order, law enforcement, providing protection, shelter and service to the community and cultivation of tranquillity in the community, with high regard for human rights). Article 5 reaffirms Polri's role as an instrument of the state, tasked with maintaining community security and order, upholding the law and providing protection, shelter, and service to the community within the framework of maintenance of internal security in a civilian policing culture.

On the basis of the above-mentioned articles, Brimob promulgated its basic duties and functions as follows:

"The primary task of *Brimob Polri* is to manage and employ *Brimob Polri* forces to combat internal security threats of high level intensity, in particular mass unrest, organised crime involving firearms, bombs, chemical, biological and radioactive materials and, in cooperation with

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<sup>15</sup> Because of the perception that Law No. 3 of 2002 was too restrictive and too vague, Law No. 34 of 2004 on the TNI was promulgated.

<sup>16</sup> These indicators of democratic policing are confirmation that Polri, whether they like it or not, must be capable of taking these indicators on board, because becoming a civilian police force means that Polri must obey the civilian authorities and be under community control.

other police operational elements, to maintain community law and order and tranquillity throughout the territorial jurisdiction of the Unitary State of the Republic of Indonesia and such other tasks as shall be assigned to them."

"The function of *Brimob Polri* is as an armed unit of Polri with specific capability for dealing with high level internal security and community safety matters and is supported by personnel who are trained and are under leadership that is solid and well-equipped with modern technology."

"The role of *Brimob Polri* is to perform manoeuvres, either individually or jointly, with mobility, fire power and attack power to contain, overwhelm and arrest perpetrators of offences, along with witnesses and evidence, by means of assisting, augmenting, protecting, strengthening and replacing."

As well, the competencies of *Brimob Polri* are divided into two levels, namely:

1. Strata of competencies:

- a. Strata of *Brimob* Competencies: Basic policing, anti-riot, mobile investigation, bomb disposal, anti-terrorism and search and rescue capabilities;
- b. Strata of Ranger (*Pelopor*) Competencies: Basic *Brimob* competencies plus counter-guerilla/counter-insurgency capabilities;
- c. Strata of Special Response Unit (*Gegana*) Competencies: Ranger (*Pelopor*) competencies plus bomb disposal, intelligence, and chemical, biological and radioactive operations competencies;
- d. Strata of Instructor Competencies: Special Response Unit (*Gegana*) competencies plus teaching and training, research and development.

2. *Brimob Polri* Competencies:

- a. Basic policing competencies;
- b. Riot Control;
- c. Mobile Investigation;
- d. Explosive Ordnance and Bomb Disposal;
- e. Anti-Terrorism;
- f. Search and Rescue.

So it is quite clear that *Brimob* tries to emphasise its identity as an integral part of Polri and as a part of the drive for establishment of *good governance*). Therefore, improving the quality of performance of the police must be a continuous and sustained effort and must be implemented seriously throughout the entire ranks of Polri. The Chief of Police (*Kapolri*), at the

pinnacle of leadership in the Polri organisation, made a breakthrough in response to demands for reform, especially in reform to actualise a civilian police culture, by issuing the Decree of the Chief of Police No. Pol. Skep/1320/VIII/1998, dated 31 August 1998, on the Field Manual for Improving Polri Service in the Reform Era. As a follow-up, *Brimob* responded by issuing *Brimob* Guidelines for Implementation of Operations and Development to build and develop an organisational culture in tune with other units within the Polri domain.

With the issuance of Decree of the Chief of Police No. Pol. Kep 53/X/2002 dated 17 October 2002 on Organisation and Work Procedures of the *Brimob* Corps, the organisational structure of *Brimob* again underwent change, with the position of *Brimob* Corps Commander becoming a two-star billet (Inspector-General) and Inspector-General (Police) Drs. Yusuf Mangga Barani taking up the post. Consequently there were also changes to the organisational structure of *Brimob* in the regions, with abolition of the position of Head of Intelligence Section in *Brimob* units and addition of a Special Response (*Gegana*) subdetachment to each *Brimob* unit, as stipulated in the Decree of the Chief of Police No. Pol. Kep/54/X/2002 on Organisation and Work Procedures of Regional Polri Units. Literally, this change stated implicitly the steps and structure for further integrating *Brimob* with Polri. In fact, this Kapolri Decree No. 54 was preceded by the Decree of the Chief of Police No. Pol. Skep/27/IX/2002 on Reform of *Brimob*, which covers:

a. Structural Aspects

- 1) *Brimob* Polri forces not centralised, but decentralised at the Regional Police (*Polda*) level.
- 2) Organisational structure not required to be the same as that of the military.

b. Instrumental Aspects

- 1) Improvement of computer software in use in *Brimob* directed towards the new Polri paradigm, Polri Law and community demands.
- 2) Continuing research on systems and methods by *Brimob*, to actualise *Brimob* personnel as protectors and servants of the community and professional enforcers of the law.

c. Cultural aspects

- 1) Significant change in the militaristic behaviour of *Brimob* personnel to transform them into civilian police.
- 2) Avoid and eliminate excessive and arrogant esprit de corps in the behaviour of *Brimob* personnel in their daily lives in the community and in the performance of their duties.
- 3) Implement comprehensive and timely programs to promote loyalty of all *Brimob* personnel to the organisation's mission, rather than to individuals or leaders.

However, the fact is that the shift towards a civilian police culture has not progressed very far during the period of reform of Polri. In *Brimob* units,

this change is not yet evident and there is concrete evidence that *Brimob* exhibits more militaristic behaviour than other units. A strategy must be sought to optimise the role and functions of *Brimob* in a civilian police culture, to maintain internal security to meet the community's expectations and to secure its trust. The third aspect confirmed in the above mentioned Decree of the Chief of Police has not yet been fully and effectively implemented. In fact, during the years 1998 to 2005, *Brimob's* performance in regional conflicts in Aceh, Poso, Ambon and Papua set back efforts to manage and reform this special Polri unit.

In Aceh, throughout this period, *Brimob* personnel committed a variety of acts of extortion and violence. From 1998 to 2005, *Brimob* was said to have committed acts of harassment and corruption, from extorting illegal fees at check points and *shadow economic activities* to backing criminal activities such as smuggling and the like.<sup>17</sup>

A more interesting case relates to corrupt practices conducted by *Brimob* Polri in Poso. In a paper "*Keterlibatan Polisi dalam Pemeliharaan Ketidakamanan di Sulawesi Tengah*" ("*Police Involvement in Perpetuating Unrest in Central Sulawesi*"), G. J. Aditjondro states that there were about twelve types of activities in which Polri and *Brimob* personnel conducted illegal business in Poso and its vicinity, i.e., (a) direct extortion by uniformed personnel; (b) protection for covert prostitution; (c) cock fighting; (d) providing security services; (e) hunting and smuggling rare and endangered flora and fauna; (f) trade in forestry products; (g) transportation of goods and passengers in official military vehicles; (h) providing guards or escorts; (i) fees and charges at guard posts; (j) protection of property owned by certain entrepreneurs and former officials; (k) businesses protecting operations of large companies; and (l) illegal sale of firearms and ammunition.

Aside from such misconduct, *Brimob* personnel perpetrated systematic acts of violence upon the Poso community. In fact, in preliminary research conducted by the author in 2005, the community's loathing for the behaviour of *Brimob* personnel was increasing, evidenced when several companies of *Brimob* personnel were involved in a clash when they tried to arrest a terrorist in early.<sup>18</sup>

In spite of the reform process that is underway, *Brimob* quite literally has undertaken no thorough internal reform; instead it has been only superficial and piecemeal. This is apparent, for example, in its structure, which is still mostly, if not completely, a military structure. There is, quite literally, a reluctance on the part of *Brimob* to cast off militaristic attributes and culture that are so deeply entrenched. Nevertheless, there was a prolonged effort to replace the *Brimob* motto, considered very militaristic,

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<sup>17</sup> For further detail, see Abdul Rojak Tanjung, "Kuasa dan Niaga *Brimob* di Masa Darurat: Sebuah Refleksi Keterlibatan *Brimob* di NAD Pada Masa Darurat Militer, Darurat Sipil dan Pasca Bencana" (*Brimob's Power and Commerce during the State of Emergency: Reflections on Involvement of *Brimob* in Aceh under Martial Law, Civil Emergency and Post-Disaster Periods*), Faculty of Sociology and Political Science, University of North Sumatra, unpublished research report.

<sup>18</sup> For further reading, see Yayasan Tanah Merdeka Palu (2006), *Poso: Aparat keamanan dan rasa aman yang hilang* (Poso: Security personnel and lost sense of security), *Seputar Rakyat* No 01, 2006.

from "Once we step up, we never give up; once we have the objective in sight, we must succeed" to "My body and soul for humanity", a motto whose philosophy is more respectful and has a civilian feel.

This state of affairs is important when evaluating security sector reform of, in this case, *Brimob*, which is Polri's weak link in weaving a civilian and professional police culture to achieve internal security; consequently, the importance of accelerating the process of internal reform of *Brimob* must be reemphasised. These measures were taken upon publication of Decree of the Chief of Police No. Pol. Kep/20/IX/2005 dated 7 September 2005 on the Strategic Plan of Indonesian National Police 2005-2009, which emphasised Polri's efforts to improve and reposition *Brimob* as a professional special police unit with high deterrence but whose functions differ from those of the military. To realise this plan, the following are required:

- a. Competence to neutralise the threat of violence against the community;
- b. Reinforcement of *Brimob*'s function to combat separatist insurgency jointly with the TNI;
- c. Adopt a more stringent recruitment and selection process for *Brimob* compared to that applied for regular police;
- d. Provide a probationary period and special training that is civilian in its orientation and totally different from that given to the military.<sup>19</sup>

Despite a variety of policies prepared and supported so that *Brimob* can confirm Polri's position as a civilian police force, the reality in the field is just the opposite. There are seven crucial matters to be considered in evaluating *Brimob*'s place in the reform of the Indonesian National Police, namely:

*First*, although *Brimob* forces are not centralised, their mobilisation and direction still requires command from Polri Headquarters or at least from the *Brimob* Corps Commander. This makes it relatively difficult in the field, where non-organic *Brimob* reserve forces (*Brimob* BKO) tend to be less sensitive to the *chain of command* of the unit to which they are posted than to the chain of command developed within each provincial *Brimob* unit. For example, mobilisation of *Brimob* personnel was difficult for the Chief of Poso District Police, because the chain of command was not in his hands as primary operational commander, but instead in the hands of the company commander or the unit directly.

*Second*, in spite of efforts to strip away the militaristic organisational structure and culture, eight years of reform of Polri have not yet been completely successful. Only the name has been changed, but the chain of command and its attributes are still in use. Consequently, the Police Mobile Brigade remains reluctant to shed its militaristic facade and culture. This is easily seen in the continuing violent approach taken by *Brimob* personnel in the field.

*Third*, despite continual effort to integrate *Brimob* into Polri

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<sup>19</sup> Wenas. *Op. cit.* pp. 22-23.

Headquarters' reform agenda, positive effects are not yet visible. As an illustration, the issuance of the Decree of the *Brimob* Corps Commander No. Pol. Skep/94/X/2005 on Guidelines for Implementation of the Practice of Community Policing for *Brimob* personnel has still not been adopted by *Brimob*. These problems are a function of the nature of *Brimob* itself, which is, by design, brutal.

*Fourth*, improvements to its structure and to its programs of character development remain inadequate. Issuance of Decree of the *Brimob* Corps Commander No. Pol. Skep/115/XI/2006 on Guidelines for Conduct of *Brimob* Operations is also still under discussion and has not yet been put into operation. This is still evident in the capture of fugitive perpetrators of terror in Poso that caused conflict with the community. In fact, the guidelines outline the importance of projecting an image of *Brimob* as a professional civilian institution.

*Fifth*, continuing study of *Brimob's* systems and methods has demonstrated that internal change within *Brimob* has not been effective, because *Brimob* suffers from a paralysing fear of whether to flow with the tide of change to meet community expectations or to continue to protect the traditions built up over more than 60 years.

*Sixth*, the behaviour of *Brimob* personnel in the field still does not project an image of a civilian police force as expected by the community. Its militaristic nature is still evident in the ways it carries out its functions. It continues to take a violent approach to problems in which it becomes involved, such as regional conflicts and mass unrest.

*Seventh*, exclusivity of *Brimob* personnel amongst other Polri units. In law enforcement efforts in regional conflicts and high intensity security threats, there have been major clashes between the community and Polri and *Brimob* personnel, such as occurred during a demonstration over expropriation of land for construction of an airfield in West Nusa Tenggara some time ago.

*Eighth*, efforts to develop the skills and expertise of *Brimob* personnel is still limited to professional expertise, without stressing building interpersonal expertise, one of the prerequisites for civilian police and democratic policing. This expertise, a basic policing skill, declines when integrated into *Brimob* units, replaced by a preventive and repressive approach to law enforcement.

*Ninth*, recruitment of *Brimob* personnel is still based on the old model, i.e., recruitment from the Police Academy (*Akpol*) track, not solely because of interest, but rather on nomination by superiors. In the enlisted track, recruitment is limited to the pool of available personnel. The outcome is random and perpetuates the paramilitary spirit and there is no denying that this is a manifestation of the old model.

Given these nine problems, measures and efforts to emphasise the process of reform of *Brimob* cannot be delayed any longer, because *Brimob* occupies a strategic position in the overall Polri organisation. Sooner or later, *Brimob* will have to either go along with these changes or continue to swim against the current. By going against the current, *Brimob* is digging Polri's grave and, as

Brimob's parent organisation, Polri will continue to be criticised and despised by the community, still unsatisfied with Polri's performance eight years after its separation from the TNI.

Seven items on the reform agenda must be given priority by *Brimob* to complete its internal reform and to actualise *Brimob* as a professional civilian police force, namely:

*First*, conduct the process of recruitment and selection of candidates for *Brimob* in a good and proper manner. There are two selection models that must be rigorously applied; selection via the Police Academy track, and selection of noncommissioned officers and enlisted personnel. At present, company-grade officers are selected through the Police Academy track and upon graduation are assigned to provincial police (*Polda*) units. Then, upon authorisation by the Chief of Provincial Police (*Kapolda*) and his superiors, the junior officer receives vocational training, education and specialised *Brimob* training. It would be better, when considering assigning personnel to *Brimob*, if the decision were based on the outcomes of psychological analysis as well as the candidates' interests, talents and basic capabilities, all of which must be assessed. The noncommissioned officers and enlisted personnel track is appropriate but efforts to integrate *Brimob* with other Polri personnel must continue to be discussed and then implemented.

*Second*, improve *Brimob*'s organisational structure to ensure that it is based on professionalism and the special characteristics of the Corps. Although *Brimob* is directly under Polri, this does not mean that *Brimob* has finalised its internal organisation. *Brimob* is the part of Polri that is in the limelight, because of the paucity of culture change within the Corps. Efforts to overhaul the organisation must also be based on democratic policing criteria.

*Third*, conduct training for *Brimob* personnel in community policing, public relations, negotiation techniques, social communications and social psychology, in addition to other capabilities. These measures will counterbalance the militaristic culture that has become too deeply entrenched. With training in these fields, hopefully a new paradigm of civilian police culture will be created.

*Fourth*, using computer software, conduct effective indoctrination on legislation and decrees in order to bring about a transformation in understanding amongst *Brimob* personnel. This measure could very likely be conducted within existing Polri budget limitations. It is, however, a question of will. If the level of socialisation of laws, regulations and decrees remains low, the situation will only get worse.

*Fifth*, build a civilian police culture. Development of this culture can be accomplished through interaction with other Polri units so that a transfer of understanding and culture takes place. Hopefully this can dissolve the communications impasse between *Brimob* personnel and other units.

*Sixth*, internalise the values of democratic policing, integrating throughout the range of *Brimob* activities the necessity to uphold democratic values, respect for human rights, supremacy of the law, and so on.

*Seventh*, develop a preemptive and preventive approach, rather than a repressive approach, to law enforcement. This needs to be emphasised because, in many cases, *Brimob* has not only used repressive law enforcement but also post-conflict prevention and rehabilitation of a location or territory.

### **Closing**

As explained above, in summary, reform of the Police Mobile Brigade (*Brimob*) remains incapable of supporting the Polri locomotive, because the process of internalisation of civilian police and *democratic policing* is incomplete. This is because *Brimob's* formative process was tied to its original objective, namely to be a paramilitary force with the body of the police, a throwback to the paramilitary police forces during the Japanese and Dutch occupations. This means that a process is required that can position *Brimob* within the civilian police locomotive that is being driven by Polri. This condition is, of course, not beneficial to Polri and *Brimob* as organisations. It need only be emphasised that one of the logical consequences of separation of Polri from the TNI is creation of a new paradigm that is totally different and far from the militaristic nature and culture in Polri, immersing Polri in civilian police culture and *democratic policing*.

Sooner or later, *Brimob* must be able to develop a paradigm of a way of thinking and of operating in the field that reflects the character of *democratic policing* and a civilian police force. Because, if *Brimob* persists in holding onto its old culture and remains reluctant to embrace change, sooner or later *Brimob* will become the nemesis of the community, whose wish it is that Polri and *Brimob* truly reflect the character of civilian police and *democratic policing*, in which the community can have active control. Further, *Brimob* must reflect on demands emanating from the community that it be dissolved as a serious indicator of the need to make real progress on change and adaptation to Polri's reform agenda. Finally, we still desire to have a special unit within Polri of which the community can be proud; one which stands firmly in the corridor of *democratic policing*.

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## SPECIAL DETACHMENT 88 OF THE INDONESIAN NATIONAL POLICE

Eko Maryadi<sup>20</sup>

### *Introduction*

The name 'Special Anti-Terrorism Detachment 88' came to public attention following the arrest of two Jemaah Islamiyah (JI) leaders, Zarkasih and Abu Dujana, in Yogyakarta in June 2007. This was Special Detachment 88's third success story, after major campaigns to arrest members of terrorist groups in Central Java and Poso in March 2007 and the hunt for Doktor Azahari, a Malaysian national, in which the terrorist mastermind was killed in November 2005. Despite its performance, Special Detachment 88 is not immune from criticism and disputation, is envied by other units and is the subject of calls for its dissolution. Can Special Anti-Terrorism Detachment 88 of the Indonesian National Police (*Polri*) survive amidst current efforts at security sector reform?

Chief of Police (*Kapolri*) General Sutanto can relax for the moment. A pretrial lawsuit by the Islamic Defenders Front (*TPM*) against Special Detachment 88, Headquarters Indonesian National Police, was rejected by the panel of judges of South Jakarta District Court. With this decision, the arrest by members of Special Detachment 88 of Abu Dujana in early June 2007 was declared legally valid. *TPM* claimed that Special Detachment 88 members had employed violence and committed human rights violations by shooting Abu Dujana in the foot at the time of his arrest.

The response of the panel of judges was more or less the same as the defence presented by the police, i.e., that there was no choice but to incapacitate the suspect (by shooting him in the foot) because he resisted arrest and there was potential of endangering the safety of the police personnel. By his own admission, Abu Dujana is leader of the military wing of Jemaah Islamiyah (JI), as clever and dangerous as the late Doktor Azahari or Noordin M. Top, who remains at large. Before suing in court, Abu Dujana's wife made a complaint against *Polri* Headquarters to Parliament, to the National Commission on Human Rights of Indonesia and to the National Commission on the Rights of Children on grounds that the shooting of Abu Dujana by members of Special Detachment 88 had been committed in the presence of his children. Public sympathy was focused on Abu Dujana, even to the point that this terrorist suspect was considered to be a "patriot".

Besides being bombarded with lawsuits, Special Detachment 88 is also the subject of frequent criticism and defamation and is even seen by some as the enemy. Abu Dujana for instance, always called the police *Thogut* or the

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Great Satan who must be opposed. Some Islamist activists accused Special Detachment 88 of being a counter-terrorism unit set up by America and western countries. This group demanded that Special Detachment 88 be disbanded because it was considered to cause trouble and to discriminate. They accuse Special Detachment 88 of being controlled by non-Muslim police officers and claim its law enforcement operations tend to be anti-Islam. They even liken Special Detachment 88 to the Communist Party of Indonesia (*PKI*) because of its covert operations. There was a mass demonstration by Muslims against Special Detachment 88 in Solo that ended in the arrest of demonstrators by the Chief of Surakarta Territorial Police and complaints scornful of the police institution.

Aside from lawsuits and defamation, the Special Anti-Terrorism Detachment 88 in *Polri* Headquarters is often envied by other security units. Understandably, Indonesia has a number of anti-terrorism units with command qualifications, trained to combat terrorist acts. To name a few, Detachment *Gultor* of the Army Special Forces Command (*Kopassus*) which was formerly called Group 5 Anti-Terrorism or Detachment 81; Marine Detachment *Jala Mangkara*; Air Force Special Troops Detachment *Bravo*, and Detachment C Regiment IV Police Special Squad (*Gegana, Brimob*). Attaching "Anti-Terrorism" to the name of Special Detachment 88 is problematic in itself, because the official anti-terrorism institutions to date are the State Intelligence Agency (*BIN*), each of the armed services' intelligence units and *Polri's* Strategic Intelligence Agency (*BAIS*).

### ***History of the Formation of Polri Special Detachment 88***

Notwithstanding that it is camouflaged in the discourse *pro* and *con*, *Polri's* Special Anti-Terrorism Detachment 88 was created and clearly exists. At the national level, the *Polri* Anti-Terrorism unit was part of the package of the formation of the Desk for Coordination of Eradication of Terrorism, in accordance with the Decision of the Coordinating Minister for Politics and Security No. Kep-26/Menko/Polkam/11/2002. This Decision of the Coordinating Minister for Politics and Security, a position held at that time by Susilo Bambang Yudhoyono, was set down in response to the Instruction of the President of Republic of Indonesia, Megawati Soekarnoputri, on Crimes of Terrorism, otherwise known as Presidential Instruction (*Inpres*) No. 4 of 2002. This national policy package is summarised in Government Regulation in Lieu of Law (*Perpu*) Number 1 and Government Regulation in Lieu of Law (*Perpu*) Number 2 of 2002 which when ratified became Law No. 15 of 2003 on Anti-Terrorism.

Concurrent with developments at the national level, change occurred in the Indonesian National Police (*Polri*). Further research is needed into the question of precisely when and how an atmosphere coalesced that was conducive to formation of Special Anti-Terrorism Detachment 88. However, the embryo of Special Detachment 88 is known to have emerged when the *Polri* Bomb Task Unit was established to handle the 2002 Bali bombing case, the 2003 Marriott Hotel bombing and the 2004 bombing of the Australian Embassy. Not long after the *Polri* Bomb Task Unit was disbanded, a requirement emerged within *Polri* to reorganise its Directorate VI (Anti-

Terrorism) that was judged to be ineffective. In June 2002, the Head of Polri issued a decision which directed that the name of Directorate VI be changed to *Polri* Special Anti-Terrorism Detachment 88.

### ***Special Detachment 88 Secrecy and Resistance***

As was the case in the formation of special forces within the armed services, secrecy is the hallmark of the Special Anti-Terrorism Detachment 88 in *Polri* Headquarters. How it operates, its operational equipment, recruitment, educational curriculum, form of its taskings, numbers of personnel and cost of operations are extremely difficult for the public to ascertain. The press have been the first to publicise the existence of this elite *Polri* anti-terrorism unit, such as in the 13 November 2003 edition of the Far Eastern Economic Review (FEER), followed by reporting in other national media.

FEER reported that *Polri* had set up a special forces unit named Detachment 88 or Delta 88 with aid from the United States government. The *Polri* special forces had a strength of 400 personnel, trained by the CIA, FBI, and Secret Service as an anti-terrorism unit, with capability to overcome terrorist attacks, bomb threats and hostage situations. Support of the American government, the result of *Polri's* work in solving the Bali bombing and Marriott Hotel bombing cases, encompassed training support, provision of equipment and operational funding. The cost of formation of the Anti-Terrorism Detachment was approximately 150 billion (*rupiah*), including provision of weapons, covert intelligence equipment, and troop transport equipment.<sup>21</sup>

Head of *Polri* at the time, General Police Da'i Bachtiar, refuted the FEER reporting on the establishment of *Polri* special forces. General Da'i acknowledged only that the governments of Indonesia and the United States cooperated in the areas of education and training for members of *Polri*, such as in sending *Polri* officers to America each year to undertake police training. The Head of Public Information (*Kabidpenum*) in *Polri's* Public Relations Division, Senior Commissioner Zainuri Lubis, also denied the FEER report. According to Zainuri, when handling terrorism cases, *Polri* deployed only its own capability and resources.

In time, the denials of the *Polri* leadership were proven false. Special Detachment 88 not only existed and had been formally established, but was able to lift the image of *Polri* in a positive way in its efforts to combat terrorism. However, given the complexities of the problem and the political realities of the time, the denials of *Polri's* leaders about the formation of *Polri's* Special Anti-Terrorism Detachment 88 are understandable.

For example, anti-US sentiment was still quite strong, due to the US policy of embargo of military equipment to Indonesia and its accusations of violation of human rights by the TNI under the New Order government. How was it possible for *Polri*, the sibling of the TNI, to receive US aid, at the same time that this superpower openly "stripped bare" TNI forces through its military

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<sup>21</sup> Far Eastern Economic Review, 23 November 2003 edition.

embargo? Perhaps, *Polri* leaders at that time also took into account the public's resistance to anything that had overtones of "special forces", not to mention the problem of rivalry between the *TNI* and *Polri* over who had more authority to manage internal security and the influence of the existing sociopolitical situation.

### ***Legal Basis for Formation of Special Detachment 88***

Formed in a tumultuous political-legal atmosphere, the idea of Special Detachment 88 was conceived in 2003. It is termed 'tumultuous' because events around the separation of tasks and the respective roles of the *TNI* and *Polri* in the security sector at the beginning of 2000 had complex sociopolitical effects. This had implications for control of the internal security sector, now totally *Polri's* domain, and national security in general, the purview of the *TNI* and the Department of Defence. At *Polri* Headquarters level, Special Anti-Terrorism Detachment 88 was formed by Decree of the Chief of Police, General Police Da'i Bachtiar, Number 30/VI/2003 dated 30 June 2003. The basis for formation of Special Detachment 88 was to combat the escalation of terrorism offences in Indonesia, especially the terror campaign whose modus operandi was bomb explosions.

Previously, offences involving explosives such as bombs, were prosecuted only under Emergency Law Number 12 of 1951 on Firearms and Explosives. Currently this type of offence can be prosecuted under Law Number 15 of 2003 on Terrorism, which replaced the 1963 Anti-Subversion Law (Law No. 11/PNPS/1963) that was repealed. It can thus be said that Special Anti-Terror Detachment 88 is the unit tasked with combating domestic terrorism by *Polri*, as embodied in the Law on Anti-Terrorism.

Formation of Special Detachment 88 at the Regional Police level was first decreed through the Order of the Chief of Metropolitan Greater Jakarta Provincial Police, Inspector-General (Police) Firman Gani, Number 883/VIII/2004 dated 24 August 2004. Special Detachment 88 at the Jakarta Metropolitan Regional Police level initially had seventy-four personnel including officers and NCOs, led by Senior Commissioner Police Tito Karnavian, who received training in several countries.

### ***The Number 88***

Since its inception, there have been questions about the number 88 in the name of *Polri's* Anti-Terrorism Detachment. Cynics claim that the number 88 is an imitation of Delta 88 or the name of the US special police force. In fact, the number 88 of the Special Detachment symbolises a set of handcuffs, a tool for shackling hands, that is identified with the police. The number 88 also represents the number of Australian victims killed in the 2002 Bali bombings and, according to beliefs of some in the community, the number 88 is thought to bring luck or good fortune. This number also carries the meaning of infinity, meaning that the work of Special Anti-Terrorism Detachment 88 is a task that is continuous and never-ending.

### ***Financing and Training***

Special Anti-Terror Detachment 88 troops are initiated and funded by the U.S. government through the Diplomatic Security Service of the U.S. State Department, and trained directly by instructors from the CIA, the FBI, and the Secret Service. The Secret Service instructors are mainly former members of the U.S. special forces. The precise costs of training, provision of weapons, facilities and equipment, operations and logistics, are known only to the leaders of Polri and, of course, the President.

However, it is an open secret that Special Detachment 88 has virtually unlimited resources and equipment and logistics support. The United States, the United Kingdom and Australia are the states that are often called on for technical cooperation, prepared to provide operational assistance whatever the cost. Certainly there is no free lunch; all this cooperation and security assistance has significance for Indonesia. At any rate, all this cooperation is summarised in the grand plan entitled "war against global terrorism " or "war on terrorism" that is led by the United States.

### ***Anti-Terrorism School and Recruitment***

Special Detachment 88 personnel are usually trained at Polri's Criminal Investigation Education Centre (*Pusdik*) in Megamendung, Puncak, West Java and at the National Anti-Terrorism Education Centre at the Police Academy, Semarang, Central Java. At both of these centres, Special Detachment 88 personnel acquire anti-terrorism education with a modern police educational curriculum, complete facilities and instructors from Indonesia and overseas. Sciences and subjects related to terrorism offences are taught here, through both practice and simulation.

Recruitment of Special Detachment 88 personnel is conducted covertly, in accordance with operational requirements, and is known only by Special Detachment heads. However, since the outset, members of Special Detachment 88 have been drawn from the Police Special Squad (*Gegana*) of Brimob, as well as the best officers from the Criminal Investigation and the Intelligence units. In general, members of Polri's Special Detachment 88 come from the Police Academy, Female Constable School, alumni of the Police Staff College, or even civilians who have specific expertise such as information technology and are willing to be trained in the Polri anti-terror curriculum.

As an elite anti-terror unit, Special Detachment 88 will not train a large number of personnel. However, every member of Polri is to have adequate capability and efficiency to be able to work in small units that are trained and have experience in handling terrorism cases.

### ***Weapons and Equipment***

*Polri's* Special Anti-Terrorism Detachment 88 is equipped with a variety of modern weapons and equipment, such as the US-made Colt M4 5.56 mm assault rifle that is newer than the Steyr-AUG, the Armalite AR-10 sniper rifle,

and the Remington 870 shotgun that is light and extremely reliable. Special Anti-Terrorism Detachment 88 also has its own Hercules C-130 aircraft to increase its mobility. All weaponry, equipment, training materials and operations support facilities are probably identical to those of elite anti-terror police (SWAT) units in the United States.

Besides weapons, every member of Special Anti-Terror Detachment 88 is kitted out with personal and team gear. This equipment is needed when they are tasked to conduct investigations of cases of terrorism. For example, personal communications equipment, global positioning systems (GPS), night vision cameras, small bugging and recording devices, GSM call interceptors, portable signal jammers and much more. In addition, *Polri* Headquarters cooperates with all cellular telephone and internet operators to have access to monitor and to obtain cell phone numbers and internet addresses used by terrorists. Bomb disposal units are kitted out with metal and bomb detection equipment, special gloves and masks, anti-land mine flak jackets and footwear and bomb-resistant tactical vehicles.

### ***Work Methods of Special Detachment 88 Personnel***

Those who know most about the way the Special Anti-Terror Detachment 88 works are the leaders and personnel of the Special Detachment itself. In principle, the special Indonesian National Police unit is trained to handle various types of terrorist threats, including terrorist bombings, kidnappings and hostage taking. In executing its tasks, Special Detachment 88 is authorised to spy on, arrest, incapacitate and interrogate suspected terrorists. The special unit has a strength of 400 personnel consisting of criminal investigation experts, intelligence experts, explosives and bomb disposal experts, strike forces and a team of snipers. Some members of Special Anti-Terror Detachment 88 come from *Brimob's Gegana* Special Squad which has qualifications as *Polri* special forces.

Unlike *Polri's* work methods when dealing with general crimes, the methods of Special Detachment 88 are more covert and secret. *Tempo* magazine in its edition 40/XXXIV/28 November-04 December 2005 gave some insight into the work methods of Special Detachment 88 in its Special Report. The author has deliberately quoted this report in its entirety in order not to diminish the meaning and essence of the reporting.

### ***Special Report of Tempo Magazine***

Good but With Criticism,

*by Philipus Parera, Wahyu Muryadi, and Agung Rulianto (Jakarta), Kukuh S. Wibowo (Surabaya).*

Gorries Mere looked pleased when he appeared in the main conference room of Indonesian National Police Headquarters (*Polri* HQ), Jakarta, on Wednesday two weeks ago. This was understandable, because he had just had another star pinned onto his shoulders. Gorries now holds the rank of Inspector-General.

The promotion ceremony was conducted personally by Indonesia's Police Chief, General Sutanto.

Along with Gorries, Surya Dharma Salim Nasution was also promoted. The Head of Directorate I, National Security and Transnational Crime in the Criminal Investigations Division (CID/Bareskrim), HQ Polri, was promoted from Senior Commissioner to Brigadier General.

Actually, given the post he occupies, it was inevitable that Gorries would be promoted. The position of Deputy Head of CID (*Bareskrim*), which he has held since last September, is a two-star general billet, but because the promotion comes only one week after the success of Special Detachment 88 in exposing the hideout of Dr. Azahari in Batu, East Java, people immediately make a connection between the two events. Don't forget, Gorries and Surya Dharma are members of this now famous detachment.

How could it not become famous, with Azahari and Noor Din M. Top the most wanted fugitives in Indonesia. They are both known to be as slippery as greased eels and Special Detachment 88 has successfully arrested one of them. There is public curiosity and some concern to know how this detachment does its work?

A *Tempo* source in HQ Polri has secretly acknowledged that operations of the detachment are actually not different from standard procedures applicable in policing: collect information, conduct surreptitious surveillance, then round up suspects. The difference, he said, is that the Special Detachment is reinforced by unbeatable intelligence and has sophisticated cellular telephone bugging capabilities. And - what is important - they are always cloaked in secrecy.

Despite this secrecy, many interesting stories are circulating within the Special Detachment. For example, while carrying out surreptitious surveillance on Azahari's house, Surya Dharma placed an urgent telephone call to request assistance from a subordinate in Surabaya. When his colleague asked his position, Surya Dharma disclosed that he was in the Central Java-East Java boundary area. "In fact, at the time he has in Batu, he-he..," said the *Tempo* source in Detachment 88.

Secrecy is, of course, an important part of the Special Detachment's code of operations and consequently all plans are known only by the Commander. Subordinates receive instructions only at the last minute. They even have a motto: *Never reveal secrets*. "It's not surprising that they often go off without having a chance to say goodbye to their families," said the *Tempo* source.

The ones who often become "victims" of the implementation of the code of secrecy are the regional Special Detachment 88 teams. This has been experienced by the team posted to the East Java Regional Police. In the assault on Azahari, for example, they were the ones tasked to sterilise the location, but, "In fact, even as the raid was in progress, there were still members who didn't know that it was Azahari that they were surrounding," the *Tempo* source reported. But that is completely understandable because conducting important operations requires secrecy. So far, the results are judged to be satisfactory.

However, not everyone is satisfied. Some criticisms still squeeze in amongst the congratulations. The former Head of the State Intelligence Agency (*BIN*), Hendropriyono, is among the critics, primarily because Azahari could not be captured alive in the raid in Batu.

Hendro is irritated because the Malaysian-born terrorist surely had quite a lot of important information in his head and that would certainly have been very valuable to break open the terrorist network in this country. "For intelligence, the luckiest thing, you know, would have been to take Azahari alive," said Hendro.

Criticism has also come from the military. A former (retired) member of Indonesia's Armed Forces (TNI) says the killing of Azahari was due to the Special Detachment's lack of expertise in conducting assaults. "I don't mean to minimise the success of the police. But, if this had been conducted by professionals, the outcome might have been better," he said.

By "professionals" he meant TNI Detachment 81. That team is, of course, specially trained for conducting assaults. They, for example, can hit a target with precision inside a DC-9 aircraft, blindfolded. "They can even surreptitiously penetrate the ceiling of a house without being detected by the occupants," he said.

It's not surprising that Hendro proposed that in future it would be better if the Special Detachment did not conduct "strikes" on its own. "The brains of intelligence have always been the police, but if you want to conduct an assault, call in the army," he said.

### ***Organisational Structure of Special Detachment 88***

Structurally, Special Anti-Terrorism Detachment 88 at the central level is subordinate to the Criminal Investigation Division (*Bareskrim*) at *Polri* HQ, led by a Detachment Commander at the rank of Brigadier General (Police) and assisted by a Deputy Commander. At the Regional Police (*Polda*) level, Special Detachment 88 is subordinate to the Detective Directorate and led by a commander who is a field grade officer in the Police. Since its establishment, Special Detachment 88 at *Polri* HQ has undergone two changes of command, i.e., Brigadier General (Police) Bekto Suprpto and currently Brigadier General (Police) Surya Dharma Salim Nasution.

In administering its operations, the Commander of Special Detachment 88 has four supporting pillars at the sub-detachment level, i.e., Intelligence sub-detachment, Operations sub-detachment, Investigations sub-detachment, and Support sub-detachment. Under the sub-detachments there are supporting units and personnel who have been educated in anti-terror assistance (ATA) at *Polri* HQ and work in units with specific expertise. For example, the Intelligence sub-detachment has subordinate Detection, Analysis and Counterintelligence units. The Operations sub-detachment has subordinate Negotiations, Reconnaissance, Penetration and Bomb Disposal units. The Investigations sub-detachment has subordinate Crime Scene Investigation, Interrogation and Technical Assistance units. The Support sub-detachment

has subordinate Operations Support and Administrative Support units.

In general, members of the Special Anti-Terrorism Detachment 88 are members of Polri who work under Law No. 2 of 2002 on the Indonesian National Police. Article 13 of the Law the Police states that there are three primary tasks of the police, i.e., maintaining community security and order; enforcing the law; and providing protection, shelter and service to the community. During dangerous threats of terrorism, the major job of the police is to be capable of carrying out their primary tasks with fairness and equal treatment of all strata of the community.

### ***Issues of Terrorism and the Role of the Media***

It is a fact that it is not easy to work alone on issues of terrorism. Besides its ability to transform into a political commodity, the issue of terrorism often ignites ethnic, religious, race and class sentiments capable of exploding into sociopolitical tension, for example the tense relations between *Polri's* Special Detachment 88 with Islamic groups who advocate Wahabism over the violence associated with punitive action by police officials against the terrorist group Jemaah Islamiyah (JI). Unconfirmed reports indicate that, throughout the period 1999-2006, Polri officials arrested hundreds of terrorist suspects, most of whom were followers of Wahabism and possibly shot dead terrorist members of various community and religious groups.

Tensions such as these are difficult to avoid, given that the majority of Indonesians are Muslims. It must be remembered that most Indonesian Muslims are adherents of moderate forms of cultural Islam, not adherents of hard core structural Islam like Wahabists. Therefore, Polri Special Anti-Terrorism Detachment 88 need not hesitate to perform its duty to uphold the law in accordance with existing regulations.

So far, *Polri's* Special Detachment 88 Polri has proven its capability to handle the issue of terrorism in a proportional manner. Furthermore, this special Polri unit has often used the media as its partner, at least in publicising the success of its operations dealing with domestic terrorism. The good reputation of Special Detachment 88 is due in part to the role of the media and this can boost the level of trust in Polri officials in combating terrorist crimes. Revelation of a number of cases of terrorist bombings, arrests and legal processing of perpetrators of terror, not easily achieved, not to mention its hard work and heavy sacrifices. Therefore, cooperation with the media must be maintained.

On the other hand, the media have also strengthened the existence of terrorist groups and spread public fear through reporting of terrorist actions and the violence that they create. The media still give less publicity to activities of moderate groups and seldom report the opinions of the majority of citizens who reject acts of terrorism and violence. Currently, *Polri* has a Most Wanted List. Some of those on the Most Wanted List have been arrested or are serving sentences for their crimes. However, others remain at large and may again perpetrate acts of terror. Therefore, deterrence of terrorist crimes must continue to be improved in accordance with existing law.

### ***Working Within the Corridors of the Law***

To strengthen legal codes, the government and Parliament, in March 2006, ratified two international conventions, i.e., the *International Convention for Suppression of the Financing of Terrorism* (1999) and the *International Convention for the Suppression of Terrorism Bombings* (1997). With the ratification of these conventions, Indonesia hopefully can improve international cooperation in prevention of bombings and the funding of terrorism. As a technical organisation, the Intelligence and Investigations sub-detachments of *Polri's* Special Detachment 88 can perhaps play a more active role in early detection of potential threats.

If all procedures are carried out properly, outcomes of the work of Special Detachment 88 will surely put significant pressure on terrorist crimes. As stated by the Chairman of the Indonesian Parliament, Agung Laksono, in a plenary meeting of the Parliament in May 2006, "The fish was caught without muddying the water", to call attention to the fact that operations against terrorists by *Polri* anti-terror unit 88 must not incite disturbances or offend the populace.

According to social theory, terrorism can be fought through a number of measures, beginning with preparation, deterrence, operations, punishment and education. The role of *Polri* Special Anti-Terrorism Detachment 88 tends more towards the second and third of these functions, i.e., deterrence and operations, whereas the role of punishment is not within the jurisdiction of *Polri* officials but rather with officials of the Prosecution and the Judiciary, and preparation and education about terrorism are in the hands of the community and educational institutions.

### ***A brief look at Brimob's Special Squad (Gegana) and the Polri Bomb Task Unit***

The *Gegana* Special Squad under the Police Mobile Brigade (Corps *Brimob*) is the *Polri* detachment qualified in anti-terror, search and rescue operations and bomb disposal. The name *Gegana Brimob* came to public attention at the time of the flare up of cases of domestic terrorism and bomb threats. These are the troops who arrive to investigate reports of terrorist bombings and explosives at a location. *Brimob* troops are also often tasked to assist organic security elements in the various "hot spots" such as Aceh, Ambon, and Poso to cope with security disturbances and social conflict. It is fair to say that the capability of *Brimob* troops in general is on a par with combat units of the Indonesian Armed Forces (*TNI*).

The problem is, the tasks and role of *Brimob's Gegana* units remain focused on repression, rather than prevention. As a result, *Gegana* Special Squad is judged as not meeting criteria of an anti-terror unit because it serves only as a *striking force*. So, discussion about forming Police Special Detachment 88 with qualifications to combat terror became more pressing.

Prior to establishment of Special Anti-Terrorism Detachment 88, the police had an Anti-Bomb Task Unit within *Polri*. This Anti-Bomb Task Unit, operating directly under the Chief of the Indonesian National Police (Polri), worked night and day to solve the Bali and Marriott Hotel bombing cases, assisted by personnel, funds and equipment of American and Australian police. However, as indicated by its name, the Bomb Task Unit was essentially ad hoc or temporary and accordingly was dissolved once the Bali and Marriott bombing cases had been solved. However, *Gegana* Special Squad remains active at *Brimob* command headquarters and is tasked from time to time as required.

Special Detachment 88 quickly rose to stardom as the new *Polri* special anti-terror unit, due, among other things, to the breadth of its special authority to combat terrorist crimes. Its authority encompasses covert intelligence operations, investigation, striking force operations and law enforcement. As its operations progressed, the roles of other anti-terror security units began to diminish. Especially within a democratic climate in which the roles of the military and intelligence are limited, the existence of Polri's Special Anti-Terrorism Detachment 88 Polri was better received by the public. The success of its operations in hunting down Doktor Azahari and the arrest of Abu Dujana turned Special Anti-Terrorism Detachment 88 into a 'prima donna'. The public is still waiting for other major accomplishments such as the capture of terrorist mastermind Noordin M. Top and the destruction of the domestic terrorist network.

### ***Budget Transparency and Oversight***

Despite all the briefings about *Polri's* Special Anti-Terrorism Detachment 88, what remains unclear is its budget and mechanisms for budget oversight. So far there is no valid data that can be examined about the costs of organising *Polri's* Special Anti-Terrorism Detachment 88 and its operations during the past four years and how it is monitored. How much did it cost for operations to hunt down Azahari and Abu Dujana? What was the cost of arresting those on the Most Wanted List in the Poso attacks? How many operations have there been to capture terrorist suspects in Wonosobo, Yogyakarta, or other areas? All this is aside from questions about the value of Special Detachment 88's equipment, the costs of logistics, accommodation and other operational costs.

So far as is known, budget expenditures of *Polri's* Special Anti-Terrorism Detachment 88 for 2005 were as much as 16 billion (rupiah) whereas the budget for the previous year (2004) was 1.5 billion. An accounting must, of course, be made to the public and to the state of how such a huge jump -- tenfold -- was able to occur over two financial years. Another important matter is clarification of questions over use of aid funds from states such as the U.S. and Australia in connection with the war on terrorism. There are no official figures for the amount of aid given to Special Detachment 88, but almost certainly it would be hundreds of millions of dollars.

Budget transparency is a crucial problem that needs to be openly and honestly addressed. Allegations of bribery and indications of corruption involving high level *Polri* officials demonstrate that closedness and weakness of oversight can

lead to problems within the Special Detachment 88 organisation in particular and the image of the Indonesian Police in general. With integrity and transparency, the good reputation of *Polri's* Special Anti-Terrorism Detachment 88 will be safeguarded.

### ***Recommendations on Special Detachment 88 of the Indonesian National Police***

As a man-made institution, Special Anti-Terrorism Detachment 88 is certain to have weaknesses and possibly faults as well. These include structural weaknesses, technical weaknesses such as problems with coordination or basic weaknesses in human resources.

Structurally, there are still signs that Special Anti-Terrorism Detachment 88 is influenced by methods more appropriate to a *state security* approach rather than to an humanitarian (*human security*) approach). This was evident in the bloody Poso incidents of 22 January 2007, when Special Detachment 88, assisted by Central Sulawesi police, conducted operations against men on the Most Wanted List, resulting in the deaths of fourteen civilians, including three who were ordinary citizens with no connection to the Jihad group, and a police officer, in which more than 20 persons were arrested.<sup>22</sup> While it is possible that suspected terrorists arrested include those on the Most Wanted List, it is also the case that ordinary citizens get caught up in the process. But given the fact that three civilians were among the victims, along with a policeman, these are not law enforcement efforts of which one can be proud. This demonstrates the less-than-optimal capability of the negotiations unit and the weakness of the detection unit of Special Anti-Terrorism Detachment 88 in the conduct of its operations.

Weaknesses in coordination were evident from the contradictory information about the arrest of Abu Dujana and Zarkasih, leaders of the military wing of Jemaah Islamiyah (JI), by members of Special Anti-Terrorism Detachment 88 at the beginning of June 2007. At that time, information about the capture of Abu Dujana was announced by the Australian Foreign Minister Alexander Downer and confirmed by a member of the State Intelligence Agency (*BIN*), but denied by *Polri's* spokesperson. If this was part of a *Polri* Headquarters' strategy to keep information vague and to trick other terrorists into revealing themselves, it may be acceptable. However, if it was actually a problem of communication and a lack of coordination amongst security units, then it is a real shame.

Weaknesses in human resources are the direct result of the basic attitude of members of Special Detachment 88 time when performing their duties. As an elite *Polri* unit, members of Special Detachment 88 must not behave like old-style Malay intelligence personnel, acting like obnoxious cowboys, accustomed to demanding free benefits or services and to flaunting the fact that they are in intelligence or to misuse their positions for personal benefit. Members of Special Detachment 88 must project an attitude and method of operations that

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<sup>22</sup> Page 1, ICG Asia Report NO.127 "Jihadism in Indonesia, Poso on the Edge", 27 January 2007.

is appropriate, law-abiding and professional.

## **Cronology of Formation of the Special Anti-Terrorism Detachment of the Indonesian National Police**

### **2001**

11 September: Twin Towers of New York's World Trade Center destroyed by suicide bombers using aircraft. An estimated 3,000 persons died in the largest non-military attack since World War II on the commercial heart of the superpower, the United States of America.

### **2002**

12 October: Two bombs explode in the Kuta, Bali, tourist district, destroying the Sari Club, Paddy's Club and dozens of other structures in the Kuta-Legian district. A car bomb of horrific strength killed 202 persons, most of them foreign tourists, including eighty-eight Australians and dozens of Indonesians. Three of the bombers were recently arrested and sentenced to death by the Court.

18 October: The Government of Indonesia placed eradication of terrorism on its political policy and national security agenda with the promulgation of Government Regulation in Lieu of Law (*Perpu*) No. 1 of 2002, Government Regulation in Lieu of Law (*Perpu*) No. 2 of 2002 and Presidential Instruction (Inpres) No. 4 of 2002 on Crimes of Terrorism, followed by the Decree of the Coordinating Minister for Politics and Security No. Kep 26/Menko/Polkam/1/1 on Formation of the Desk for Coordination of Eradication of Terrorism. This anti-terror desk works at the national level as an administrative task unit under the President.

### **2003**

5 August: Explosion of car bomb in an attack on the JW Marriott Hotel, part of a U.S.-owned hotel chain, located in the Mega Kuningan district of Jakarta. Thirteen people were killed at the site and dozens of others were injured, while the front of the hotel was destroyed. The Marriott bombing changed the map of security for foreign owned hotels and company offices, where security became tighter and more cumbersome.

18 December: *Polri's* Special Detachment 88 was established and its Indonesian Anti-Terrorism Troops were trained in the Mega Mendung district, Puncak, West Java. The U.S. Government contributed approximately USD 24 million to establish and train these elite police troops.

## **2004**

9 September: A powerful car bomb exploded in the forecourt of the Australian Embassy in Jalan Rasuna Said, Jakarta. At the time, Polri Chief General Police Da'i Bachtiar was making an official statement on the domestic security situation in the Indonesian Parliament building. This bomb blew out the windows of neighbouring buildings and killed ten people, including security guards and pedestrians who were transiting the district. One month later, the Anti-Terrorism Bomb Unit of *Polri* HQ, in cooperation with the Australian Federal Police (AFP), broke open the bombing case and arrested its perpetrators who were sentenced to 10 to 20 years' imprisonment.

## **2005**

1 October: Bomb blast again rocks Bali. Approximately twenty-three people were killed and 102 others wounded in the explosion at Raja's Bar and Restaurant, Kuta Square, in the Kuta Beach area, and at the Nyoman Café and Café Menega in the Jimbaran district. This event, known as Bali Bomb II, severely damaged Bali's tourism industry, which will take a long time to rebuild.

9 November: Detachment 88 of *Polri* HQ staged an assault on the home of fugitive terrorist Doktor Azahari in Batu, Malang, East Jawa, killing Indonesia's and Malaysia's most wanted man. The reputation of Special Detachment 88 skyrocketed, making it the most famous anti-terrorism unit in Asia.

31 December: Bomb explodes in a market in the city of Palu, Central Sulawesi. Eight people were killed and forty-five others wounded. The bombers were presumed to belong to one of the civil groups involved in the Poso conflicts.

## **2006**

29 April 2006: Terrorist mastermind Noordin M. Top escaped from the custody of officials of Special Anti-Terrorism Detachment 88 during a raid on the suspect's rented house in Binangun hamlet, Wonosobo, Central Java. In the shootout, the Special Anti-Terrorism Detachment arrested two people and shot dead two other terrorist suspects.

## **2007**

22 March : Special Detachment 88 rounded up a group of terrorist suspects in Central Java, uncovering a large quantity of explosives in the Sleman district of Yogyakarta. In the onslaught, members of Special Detachment 88 arrested seven persons suspected of owning, storing and assembling explosives, and killed two terrorists. According to information from the *Polri* spokesperson, the cache of explosives found in Central Java was much larger than that used in the Bali and other bombings. At least twenty large bomb assemblies, dozens of detonators, bomb making circuitry, bullets, bomb making chemicals, two M16 weapons and three pistols were seized by the Special Detachment from the suspects.

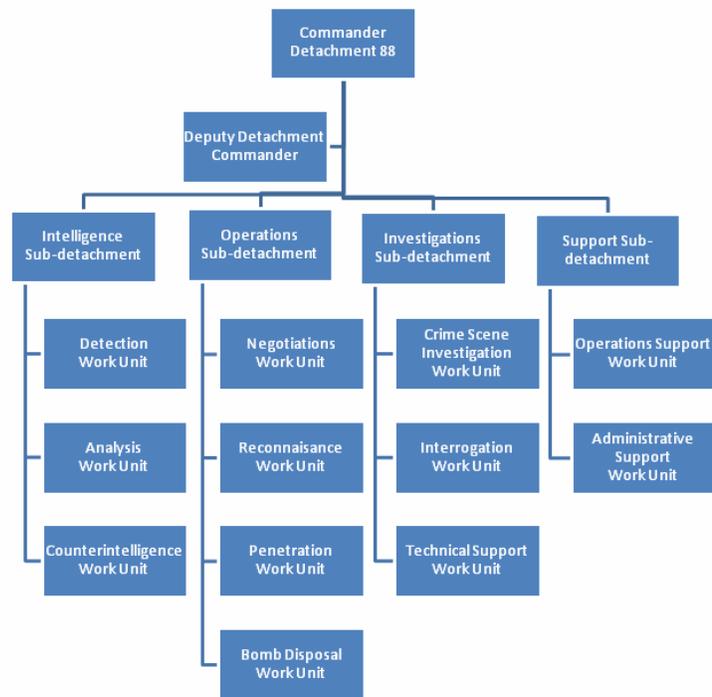
9 June: In the wake of the arrest of the Central Java group, Special Detachment 88 arrested Abu Dujana alias Ainul Bahri, commander of the military wing of Jemaah Islamiyah (JI), and Zarkasih. The arrests of these two leading figures were significant, after tracking down Azahari; however, the major fugitive Noordin M. Top remains at large.

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**Annex 1.**

**Organisational Structure of Anti-Terrorism Detachment 88 of the Indonesian National Police**



## **State Intelligence Agency (BIN)** **Aleksius Jemadu, Ph.D<sup>23</sup>**

### ***Introduction***

Before this article discusses recent developments in intelligence reform, especially that related to role of the State Intelligence Agency (*BIN*), it will first discuss a number of publications that have addressed the same topic to date. Although there have been efforts here and there to analyse developments in reform of Indonesian intelligence services, principally those conducted by NGO groups and universities, publications that address this topic comprehensively are still very limited.

There are some publications that can be considered references for the purpose of ascertaining the extent to which the Indonesian intelligence apparatus has performed to date, but each of them has basic weaknesses. The book authored by Ken Conboy entitled *Intelligence: Inside Indonesia's Intelligence Service*, translated as *Intel: Menguak Tabir Dunia Intelijen Indonesia (Intelligence: Raising the Curtain on the World of Indonesia's Intelligence Services)* analyses developments in Indonesian intelligence services from independence through the period after the fall of Soeharto.<sup>24</sup> Most of this book focuses on the accuracy of records of the historical trail of the Indonesian intelligence world and its performance during each period of government. In addition, interviews conducted by the author on practices of Indonesia's intelligence services and extensive data on a variety of cases obtained from "insiders" are interesting features of this book. But sadly, from a theoretical perspective, this book does not provide clear direction. For instance, the existence of the State Intelligence Agency (*BIN*) after the fall of Soeharto is described in detail but there is no prescriptive description of how intelligence should be conducted in a democratic state.

Another book written by someone with intimate knowledge of the activities of the intelligence services is *Menguak Tabu Intelijen: Teror, Motif dan Rezim (Lifting the Taboo on Intelligence: Terror, Motive and Regime)* written by A.C. Manullang. For the most part, this book is based on the background of its author who served as a director in the State Intelligence Coordinating Agency (*BAKIN*) and the scope of concepts and theory applied in the intelligence services. This book also touches on the perspective of global politics in analysing the role of the intelligence services, especially in the post-New Order era. The weakness of this book concerns its understanding of intelligence only in connection with its technical capabilities and effectiveness in performance. A special chapter addressing the topic of professional intelligence does not outline an important aspect of intelligence within a democratic society, i.e., its oversight, both formally by governmental

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<sup>24</sup> See Ken Conboy. 2007. *Intelligence: Raising the Curtain on the World of Indonesian Intelligence*. Jakarta: Pustaka Primatama.

institutions and informally by the wider community.<sup>25</sup>

There are several books that also help the reader to learn about developments in reform of the Indonesian intelligence services that have been written by NGOs active in the field of human rights and by academics. The pocket book published by *Imparsial* (Indonesian Human Rights Monitor) entitled *Evaluation of the Performance of BIN during the Transition Period* presents an analysis from the perspective of NGOs and human rights advocates that is very critical of and even cynical about Indonesian government performance in handling national security over the past few years.<sup>26</sup> However, the scope of the book is clearly too narrow to evaluate the progress of reform of the Indonesian intelligence services.

The initiative to analyse recent developments in intelligence reform has been taken up by the Working Group on Intelligence Reform in Indonesia under the coordination of the Center for Global Civil Society Studies (*Pacivis*) of the University of Indonesia. Besides producing the Draft Law on State Intelligence as input from *civil society* to government and Parliament, *Pacivis* has also published several books that can serve as references on developments in reform of the Indonesian intelligence services. One of its publications is *Reform of State Intelligence*, written by academics from several Indonesian universities. This book addresses various important aspects of intelligence reform in the context of consolidation of democracy in Indonesia and therefore is more nuanced toward the theoretical/prescriptive rather than discussions of empirical problems which is the obvious challenge to intelligence in Indonesia.<sup>27</sup>

As a government function, intelligence is not absolved from principles of accountability to the populace as holders of sovereignty. However, it cannot be denied that approximately nine years after the fall of the authoritarian regime of President Soeharto in May 1998, reform in the field of intelligence remains an agenda that has not been given priority either by the executive or the legislature. In fact, during this same period the country's security has been continually shaken by a series of terrorist bombings from 2000 to the present. In addition, the spread of conflict throughout a number of regions since the fall of Soeharto demonstrates how weak the intelligence services are in anticipating such incidents. In fact, there are accusations of involvement of security and intelligence elements in provocations to sabotage reform aimed at consolidating democracy.

This article aims to elucidate the historical background of intelligence in Indonesia, especially during the New Order period, and some of the problems bequeathed to the present. After Soeharto fell, intelligence agencies were reorganised to become the State Intelligence Agency (*BIN*), which many have judged to be incapable of preventing the escalation of conflict in various

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<sup>25</sup> See A.C. Manullang. 2001. *Lifting the Taboo on Intelligence: Terror, Motive and Regime*. Jakarta: Panta Rei.

<sup>26</sup> See Imparsial, 2005. *Evaluation of the Performance of BIN during the Transition Period*. Jakarta, Imparsial.

<sup>27</sup> See Andi Widjajanto (ed.). 2005. *Reform of State Intelligence*, Jakarta: Pacivis.

regions since the government of President B.J. Habibie and has failed to prevent the spate of bombings by terrorist groups. This intelligence failure reflects the phobia of post-Soeharto governments about building a security and law enforcement architecture in Indonesia. This article also explains recent developments in reform of the Indonesian intelligence services, both from the government (*BIN*) perspective and that of *civil society* groups, as well as structural impediments to the process.

### ***Organisation of Intelligence in the New Order Period***

Within the framework of writing an almanac on developments in intelligence in Indonesia, the New Order period serves as the departure point because the current image of the intelligence services is strongly influenced by uses of intelligence that conflicted with democracy and human rights throughout the era of leadership of President Soeharto. In addition, much of the institutional legacy and work practices of the period were carried over into the post-Soeharto period, although formally these Indonesian institutions have entered the era of democracy. Organisation of intelligence in the New Order period was not free of the authoritarian and militaristic characteristics of the regime. Consequently, intelligence was synonymous with the military organisation whose primary task was to secure President Soeharto's power and military domination from the centre out to the regions. It is not surprising that the three decades of the Soeharto government were marked by covert intelligence practices including murder of political opponents or detention and forced disappearance of those who opposed the government's power.

Although the State Intelligence Coordinating Agency (*BAKIN*) was the principal intelligence institution during the 1970s, President Soeharto was in the habit of creating other competing institutions in order to strengthen his position while encouraging competition amongst his subordinates who ultimately sought protection or *favour* (blessing) from Soeharto himself. As an illustration, there were three intelligence agencies whose work overlapped and were under the aegis of three different parent institutions. The three institutions were the Assistant for Intelligence to the Minister for Defence and Security who also served as Commander of the Indonesian Armed Forces (*ABRI*); the Head of Intelligence of the Command for the Restoration of Security and Order (*Kopkamtib*), and the State Intelligence Coordinating Agency (*Bakin*).

What is interesting is that one of President Soeharto trusted cronies, i.e., L.B. Moerdani, occupied positions in all three of these agencies whose main objective was to safeguard Soeharto's power. In addition, Moerdani was also entrusted with the leadership of the Strategic Intelligence Centre under the Department of Defense and Security. In these positions, Moerdani had very broad authority during the state of emergency to deploy Army special forces (at that time, *Kopassandha*) and was given special taskings by the President for, among other things, planning and implementation of the invasion of East Timor, procurement of modified combat aircraft from Israel and the mission to rescue the Garuda aircraft hijacked in Thailand.<sup>28</sup>

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<sup>28</sup> See David Jenkins. 1984. *Suharto and His Generals: Indonesian Military Politics 1975 – 1983*. Monograph Series. Cornell Modern Indonesia Project. Southeast Asia Program. Cornell University, Ithaca

Having been judged successful in administering intelligence tasks, Moerdani was promoted to Commander in Chief of the Indonesian Armed Forces (*ABRI*) at the beginning of the 1980s. When he became Commander of the Indonesian Armed Forces, Moerdani undertook to form the Armed Forces Strategic Intelligence Agency (*BAIS*) which has an international network of Defence Attaches stationed in a number of countries. *BAIS* grew rapidly until the early 1990s, when Soeharto began to sideline Moerdani and those close to him. With substantial budget support and a network working both domestically and overseas, *BAIS* became the most prominent intelligence agency, surpassing all others.<sup>29</sup> *BAIS*, which is supposed to handle strategic issues, is actually focused primarily on handling internal security threats and has a long reach into regional areas through the territorial command.<sup>30</sup>

Until the end of the 1980s, Soeharto depended substantially on intelligence agencies and from the early 1990s, as relations with Moerdani grew increasingly distant, Soeharto changed his strategy for securing his power by gaining support outside of *ABRI*, especially among conservative Islamic groups, his main instrument being the Indonesian Association of Muslim Intellectuals (*ICMI*).

The distancing of Moerdani and those close to him from Soeharto's inner circle heralded a new era of consolidation of Soeharto's power which was increasingly sensitive to the growth of the democracy movement in Indonesia. From the early 1990s, Soeharto's main opponents were *civil society* groups that began to challenge his authoritarian and repressive power. Under the new *ABRI* Commander, General Faisal Tanjung, *BAIS* was disbanded and replaced with a new institution called the *ABRI* Intelligence Agency (*BIA*) with personnel hand-picked to put an end to Moerdani's influence in the world of Indonesian intelligence. To lead the National Intelligence Coordination Agency (*Bakin*), Soeharto purposely selected a general who was not too influential and was considered not likely to disobey him, namely, Lieutenant General Moetojib. According to observers of the intelligence services, this also influenced the performance of the agency.<sup>31</sup>

At the same time, Indonesian intelligence began to focus its efforts on monitoring the activities of pro-democracy groups and political activists in *civil society* groups opposed to the Soeharto government. New Order authorities deliberately took advantage of religious issues to weaken and smash the strength of *civil society* until it was incapable of maintaining its opposition to power. It is not surprising that when, from the early 1990s, conflicts around issues of ethnicity, religion, race and class spread to various regions in Indonesia, the government was unable to overcome it.

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New York. pp. 26–28.

<sup>29</sup> See Haryadi Wirawan. 2005. "Evolusi Intelijen Indonesia (Evolution of Indonesia's Intelligence Services)" in Andi Widjajanto (ed.). *op.cit.* p. 41.

<sup>30</sup> See Andi Widjajanto. 2006. (ed.) *Menguak Tabir Intelijen "Hitam" Indonesia (Raising the Curtain on Covert Intelligence in Indonesia)*. Jakarta. Center for Global Civil Society Studies (Pacivis) and Friedrich-Ebert-Stiftung (FES), p. 76.

<sup>31</sup> Ken Conboy. *op.cit.* p. 215.

After the fall of Soeharto, a series of religious conflicts occurred in West Kalimantan, Maluku and Poso (Central Sulawesi). Indonesia's intelligence services, usually quite alert to such conflicts, suddenly could not cope or perhaps were not interested in anticipating communal conflict that undermined the nation from within. Although difficult to prove empirically, there is strong suspicion that authorities of the New Order, within both military and civilian circles, played along with provocation of the various groups in order to regain political and economic influence.

### ***Path to Intelligence along Democratic Lines***

During the term of government of President B.J. Habibie there was no significant change in the world of Indonesian intelligence and the image of a repressive tool of the powerful was consistently associated with the institution. Intelligence services accustomed to serving the needs of the powerful were apparently incapable of anticipating the political unrest and the escalation of conflict in a number of regions. While other institutions began to undertake reform, intelligence institutions were seemingly immune from community demands for government accountability.

Under President Habibie, the National Intelligence Coordination Agency (*Bakin*) was headed by Lieutenant General Z.A. Maulani, who had a background in military philosophy. There is an important written record of political change undertaken by President Habibie. For example, he revoked Law No. 11 of 1963 on Subversion that had commonly been used by the New Order regime to arrest and imprison its political opponents. In addition, the Habibie government also successfully solved the mystery behind the disappearance and kidnappings of democracy activists during the final years of the Soeharto government in which several officers of the Army Special Forces Command (*Kopassus*) who were proven to have been the perpetrators were sentenced to imprisonment. Aside from those significant political changes, the populace remained dissatisfied with the culture of impunity that remained strong, in the absence of any action to reform the intelligence agencies. The agenda to reform state intelligence institutions remains inferior compared to other security policy priorities such as *TNI* reform and resolution of regional conflicts.

As a president whose background was in social organisations, Abdurrahman Wahid (Gus Dur) had a strong desire to reform the security sector in Indonesia, notwithstanding that at the same time he had to overcome challenges, in fact pressure, from *TNI* leaders who were attempting to impede the political reforms for which he was fighting. To lead *Bakin*, Gus Dur promoted Lieutenant General Arie Kumaat to replace Z.A. Maulani. Gus Dur's ability to carry out his plan for fundamental change in the *TNI* organisation was constrained by strong resistance which, in fact, culminated in his fall, through cooperation between nationalist groups in Parliament and the *TNI*, who were not pleased with his interference. At the same time Gus Dur had to cope with the escalation of conflicts in Aceh, Maluku and Poso in which the Indonesian security and intelligence agencies demonstrated their powerlessness to anticipate and overcome communal conflict in which *TNI* and police officials were presumably involved.

During the term of government of President Megawati Soekarnoputri, the National Intelligence Coordination Agency (*Bakin*) was modified to become the State Intelligence Agency (*BIN*), headed by retired Lieutenant General A.M. Hendropriyono, who had a background in military intelligence. As soon as Megawati replaced Gus Dur, the challenge to national security that arose was the issue of the presence of a network of global terrorism in Indonesia. What is more, since 2000 several bombings had been perpetrated by the terrorism network. For these reasons, professional intelligence was needed to cope with increasing threats to national security while taking into consideration the aspirations of the community who demanded that Indonesian intelligence not repeat the mistakes made in the past. But the response provided by President Megawati did not fulfill the genuine demands of the community. The Government was apparently reluctant to undertake comprehensive reform of intelligence institutions because of the political risks she faced. The Megawati government, which was underpinned by conservative military leadership, did not want to undertake a fundamental shakeup of security institutions that were still dominated by military circles. In addition, the government, overwhelmed by other more urgent national agendas such as economic recovery and resolution of conflicts in several regions, did not consider intelligence reform to be a policy priority. A. M. Hendropriyono, as the former Head of the State Intelligence Agency (*BIN*), recognised how much intelligence officials in the field need a clear legal mandate from representatives of the populace so that they have clear guidelines for executing their tasks. But Hendropriyono explains his argument by saying: *But most of all, I wanted an intelligence law in order to enable BIN to detain suspects for limited periods. Such detention would not be for judicial reasons – the police already have that authority – but rather for operational reasons.*<sup>32</sup>

With such a pattern of thought, the Megawati government produced only minimal policy for reform of intelligence in Indonesia. This is apparent from the legal grounds on which the creation of the State Intelligence Agency (*BIN*), which replaced the National Intelligence Coordination Agency (*BAKIN*), was based. The first legal product was Presidential Decision No. 103 of 2001 on Amendments to the Status, Tasks, Authority, Organisational Structure and Work Procedures of Non-Departmental Government Institutions. Further, article 34 of Presidential Decision No. 103 of 2001 stipulates that *BIN* performs governmental tasks in the intelligence field under applicable laws and regulations. To strengthen coordination between the various elements that exist within the intelligence community, the government issued Presidential Instruction No. 5 of 2002, in which *BIN* was assigned the task of integrating, planning and operationalising intelligence tasks in order to achieve national security objectives. In view of the frequency of bombings and escalation of conflict and violence in regional areas during the term of the Megawati government, *civil society* circles questioned *BIN*'s effectiveness in coordinating intelligence.<sup>33</sup>

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<sup>32</sup> Hendropriyono, A. M., "Indonesia badly needs to enact intelligence law", *The Jakarta Post*, October 5, 2005.

<sup>33</sup> See Imparsial. *op. cit.* p. 9.

The weakness of the legal umbrella covering performance of intelligence tasks created opportunities for violations of human rights and civil liberties. Challenges to national security after the events of 11 September 2001 were very complex in nature and consequently required comprehensive legislation to regulate it. In addition to a clear legal mandate for intelligence officials, legal provisions on accountability to the citizenry, as holders of sovereignty, were also required. What applies in Indonesia to date is not *rule of law* but *rule of bureaucratic law* in which domination by the executive is the central feature in dealing with issues of national security including intelligence. This domination by the executive is the principal challenge to reform of the Indonesian intelligence services and, at the same time, political parties and legislators have inadequate knowledge of the function of intelligence in a democratic state. There is an obvious asymmetry in the breadth of knowledge between NGOs active in the struggle for democracy and human rights on the one hand and legislators who have only limited knowledge about intelligence on the other hand. To date, the initiative to encourage public discussion on intelligence reform always comes from *civil society* groups, while the government and representatives of the populace have only reactive attitudes, tending to have conservative attitudes that put more emphasis on the coercive power of the state to cope with threats to national security.

Because Indonesia, although in the midst of increasing acts of violence in a series of bombings, has no specific law on intelligence, the government's methods of dealing with threats to national security are always *ad hoc* and partial in nature. With the campaign of terrorism increasing in various locations in Indonesia, the government responded by reactivating the Regional Intelligence Community Agency (*Kominda*), using Presidential Instruction No. 5 of 2002 as its legal basis.

The objective of *Kominda* was to provide an organisation for regional government coordination in the intelligence field to take necessary action to restore security. This policy was certain to attract strong protest from NGO circles and those fighting for human rights because the government did not give a guarantee that *Kominda* would not be used in the interests of those in power. In addition, because *Kominda's* tasks were not specifically stipulated, this would create opportunities for violation of the human rights and civil liberties of the citizens in the regions.<sup>34</sup>

In 2006 the Interior Department issued Interior Minister Regulation No. 11 of 2006 on Establishment of the Regional Intelligence Community Agency and Interior Minister Regulation No. 12 of 2006 on Community-Based Early Warning Systems in Regional Areas. The appearance of the two ministerial-level regulations demonstrated the Indonesian government's phobia about managing domestic intelligence according to specific principles in order not to turn the citizenry itself into its enemy.<sup>35</sup> Notwithstanding the government's good intentions in making these provisions, every *ad hoc* regulation in the intelligence field has created more problems than protections for citizens, not

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<sup>34</sup> *Ibid.* p. 28–30.

<sup>35</sup> See *Telik Sandi*, fortnightly bulletin published by Simpul Aliansi Nasional untuk Demokratisasi Intelijen (SANDI) (National Alliance for Democratisation of Intelligence), p. 2.

to mention that informal oversight by NGOs of security elements in regional areas is much weaker and not as forceful compared to that in the centre.

In response to increasing demand that the government draft a law on State Intelligence capable of accommodating the interests of both the intelligence apparatus and democracy, on 10 March 2006, this draft was offered to the community and reaction pro and con were solicited from a number of parties. It must be noted that prior to the government offering this draft, the Working Group on Intelligence Reform in Indonesia, coordinated by the Center for Global Civil Society Studies (Pacivis) from University of Indonesia, had much earlier formulated a *civil society* version of a draft Bill for a Law on State Intelligence which was apparently difficult for the government (especially BIN) to accept, because it was considered too heavily weighted in favour of the interests of citizens, while placing strict limitations on the freedom of movement of state officials in the face of the complexities of threats to national security in the 21st century. But as of the writing of this working paper, Parliament has not yet held debate on the government's draft.

As a newly democratic state, it is very difficult for Indonesia to judge the extent to which the Draft Law on State Intelligence has met the standards which apply generally in various other states. Therefore, the only way to evaluate it is to extrapolate from the experiences of other states through publications that have been disseminated to the public. From the aspect of the breadth of its scope, the content of this Draft Law is quite comprehensive, covering a number of important issues concerning the balance between the need for professional intelligence services and for protection of democracy and human rights.

*The Geneva Centre for the Democratic Control of Armed Forces (DCAF)* has published an *occasional paper* entitled *Intelligence Practice and Democratic Oversight – A Practitioner's View* which, among other things, explains the various challenges faced by newly democratic states in the reform of intelligence institutions. In addition, DCAF has provided a practical handbook for newly democratic states containing criteria that must be fulfilled to reform intelligence comprehensively without sacrificing the effectiveness of national security policy.<sup>36</sup> Based on the ideas embodied in the DCAF publication, the author will attempt to comment on several important issues in the Draft Law on State Intelligence proposed by the Indonesian government.

The status and scope of authority granted to the State Intelligence Agency (BIN) features prominently in the Draft Law on State Intelligence submitted by the government. This is understandable because historically there has always been a scramble for influence and control of resources amongst the various intelligence institutions.

The role allocated to *BIN*, outlined in chapter 2, is much greater than that of other members of the intelligence community.<sup>37</sup> In fact, Section 15

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<sup>36</sup> Geneva Centre for the Democratic Control of Armed Forces (DCAF). 2003. "Intelligence Practice and Democratic Oversight – A Practitioner's View", Geneva, July. 59.

<sup>37</sup> The intelligence community as defined in article 7 (1) of the government version of the Draft Law on State Intelligence version government is composed of BIN; the TNI's Armed Forces Strategic Intelligence Agency

stipulates that "*state institutions, government agencies, private institutions, social organisations and all individuals must provide information required by BIN within the framework of conducting intelligence activities*". *BIN's* very broad authority has the potential to create problems or to provide opportunities for misuse of intelligence by those in power if it is not counterbalanced by effective mechanisms for oversight by both formal governmental institutions and the community.

Section 12 proposes that *BIN* be granted special authority to take a person into custody and to detain him/her for up to seven 24-hour days for interrogation. This provision aroused concern amongst civil society groups and human rights activists. In every draft proposed to date by the government, i.e., by *BIN*, this point has consistently been stipulated. This arouses the question, why is the government so insistent on retaining this provision? In general, it can be said that the reason is that the government will in every instance give priority to its responsibilities for national security, but to this can also be added other grounds that are more specific.

*First*, to date, the government, especially its intelligence institutions, has consistently been the target of criticism by the community because of its inability to prevent the terrorist attacks that occurred every year from 2000 to 2005. Rather than take the blame, it looks for a loophole, namely creation of legal legitimacy for arrests and detention by intelligence officials. Possibly, the real problems are the incapacity of the the intelligence services to identify potential threats or the weaknesses in coordination between security elements. These suspicions by civil society groups are well-founded because the existence of authority to arrest does not of itself reduce potential threats to national security, particularly in the absence of improved professionalism and coordination between government officials themselves.

*Second*, the Indonesian government, especially its intelligence agencies, are strongly influenced by the general trend in other states, not only in Southeast Asia, but also in developing democracies, to include this provision of the Law on Intelligence and National Security within the framework of facing the threat of global terrorism. The overlap between intelligence and law enforcement functions has become a trend that threatens the principle of the supremacy of law in democratic states. In such a political setting, it is predictable that a government would "force" its wishes on others, to give intelligence officials authority to make arrests and conduct interrogations.

The question is: what is the strategy of *civil society* groups in the face of this tide of militaristic intelligence? I am of the opinion that it is not sufficient that we find fault with article 12 of this draft law without offering a regulatory alternative to protect democracy and human rights. Based on the principles *minus malum* and *maximum bonum* (seek a formulation with the least negative effects and the most positive effects), there are some who suggest that intelligence officials should perform their tasks in conjunction with other law enforcement officials, for example, police and prosecutors, in

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(BAIS) and other intelligence agencies in the TNI network; Polri's Intelligence Security Agency (Baintelkam); the Intelligence Division of the Attorney-General's Department and intelligence elements of other departments or agencies.

task units established specifically for a particular task. In a Task Unit the intention is that arrest and detention of persons be on the basis of strong preliminary evidence and consistently carried out by police, rather than intelligence, personnel. If procedure is not followed, the aggrieved community member is given the opportunity to bring charges against the police who carried out the arrest or detention. Thus, mechanisms of the democratic state are consistently protected without hampering efforts to deter acts which threaten national security.

With regard to Section 12, a weakness in the Draft Law on State Intelligence that needs to be scrutinised is the lack of specific differentiation between positive and aggressive intelligence and when and how the procedures will be put into effect. Mingling these two different work methods can endanger civil liberties and blur accountability of intelligence agencies to the public. Positive intelligence consists of collection, processing, analysis and presentation of information which is used to strengthen early warning systems and systems for analysis of strategic information to anticipate threats to national security, whereas aggressive intelligence is directed towards confronting foreign elements which threaten national security, by utilising counterintelligence and/or counterespionage methods of operations to reveal similar activities conducted by foreign parties or adversaries.

If these methods are to be directed against the domestic population, there are important prerequisites: *First*, there is strong evidence that there are citizens involved in gathering intelligence in the interests of foreign parties or adversaries. *Second*, the existence of activities that indicate antipathy towards the entire constitutional structure and foundations of constitutional law that is manifested in violent action. *Third*, the existence of efforts to agitate or intimidate to promote or provoke primordial violence. *Fourth*, the existence of use of violent means to force social change in the interest of individuals or groups.

Therefore, aggressive intelligence cannot be conducted randomly or arbitrarily by intelligence officials. So, it must be emphasised that use of work methods of aggressive intelligence may not violate what are known as *non-derogable rights* that consist of the right to life, right to freedom from torture, right to freedom from inhumane treatment and punishment, the right to freedom from enslavement, right to equal treatment as an individual before the law and the right to freedom of thought, conscience and religion.

In newly democratic states like Indonesia, oversight of the performance of political and government institutions is very important because existence of modern political institutions does not yet guarantee the implementation of democracy. Critical study reveals that articles on oversight in this Draft Law are minimal, covering only four percent of the total. Article 43, for example, regulates the formation of a Sub-Commission of Parliament tasked with preventing implementation of special authority by intelligence officials. Oversight can also be conducted through an intelligence budget sourced solely through allocation from the State Budget. Inclusion of this article is a step forward but given how susceptible intelligence institutions are to violation of civil rights, it would not be wrong to imitate systems of layered oversight introduced by the developed nations to their intelligence services.

Therefore, the Draft Law on State Intelligence needs to include more articles to guarantee more comprehensive oversight. Aside from the stipulation that the only source of the budget must be the State Budget, civil society groups demand that details of use of the budget be more transparent, while realising also that revelation of the breakdown of the budget of the State Intelligence Agency (*BIN*) that is too detailed will reduce the effectiveness of the work of the institution. The concerns of civil society are well-founded because over the past few years budget allocation from the State Budget for BIN have been inadequate for confronting the increasingly complex threats to national security.<sup>38</sup> Budget shortfalls are precisely what create opportunities for BIN to seek out off-budget sources of funding that potentially violate the law.

In developing effective mechanisms for oversight of the Indonesian intelligence services, practices already in general use in states that have stable democracies may serve as examples. In countries like England, the United States and Australia, there is intensive oversight of the intelligence community by parliament and *civil society*, especially NGOs active in problems of human rights, and the media, which are always ready to expose deviations from authority granted to the intelligence services. Indonesia, having already developed democratic institutions such as political parties, parliament, independent media and *civil society* that are no longer hampered by government can, as a natural consequence, develop the same mechanisms for oversight.

Indonesia can adopt what in developing democracies is known as the principle of *multilayered oversight*. It is said that intensive oversight of execution of intelligence functions can be accomplished by four interrelated layers of oversight in which external layers overlap internal layers. *First*, every intelligence service has mechanisms for internal oversight by its managers over their subordinates as is usual practice in government bureaucracies. In this layer, superiors must have a guarantee that intelligence officials perform their tasks in accordance with determinations established by the unit head and by the organisation as a whole. In addition, subordinates must report to superiors regularly so that superiors can monitor and evaluate the extent to which tasks have been performed. In the layers which follow, there are layers of oversight by the executive authorities, for example, the President, to receive reports from officers assigned to lead intelligence institutions or, where an intelligence institution is subordinate to a ministry, the relevant Minister oversees the intelligence institution that is under his jurisdiction.

Oversight by the executive authorities is vital to guarantee that intelligence institutions perform in accordance with the priorities established by government policy, commensurate with the national security challenges with which it is confronted. As is usual in democratic states, executive authorities in turn will be overseen by the Parliament (DPR), the representatives of the people, who can demand a guarantee from intelligence

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<sup>38</sup> For example, for financial year 2006 allocation from the State Budget for BIN has been only IDR 958,872,881,808, and for the year 2007, IDR 1,072,616,049,000. Source: Hearing in National Parliament of the Republic of Indonesia with Head of State Intelligence Agency (BIN), 12 March 2007.

institutions and their executives that performance of intelligence functions has been in compliance with applicable law. Parliament can also exercise oversight of intelligence institutions in the execution of special intelligence authority so that provisions that have been set down are not violated and so that there is no conflict with the human rights of citizens. In such cases, Parliament can establish a parliamentary commission specially tasked to oversee the conduct of intelligence and to handle cases of violation of the law by intelligence entities which, on its recommendation, will then be forwarded to the court.

Finally, at the outermost layer, oversight can be carried out by independent agencies who receive grievances or complaints from citizens, and by the entire community, facilitated by *civil society* groups such as NGOs and the media. The right of *civil society* groups to expose abuse of authority by intelligence institutions must be protected under law so that the state cannot arbitrarily violate the civil rights of citizens in the name of national security. This has become even more important because Indonesia has ratified the human rights convention on the civil and political rights of citizens.

### ***Closing***

Obviously Indonesia is currently seeking an appropriate institutional model for organising government functions in the field of intelligence. Past experience has demonstrated how important intelligence reform is for safeguarding national security while protecting democracy and civil liberties from parties who are anti-democracy. Historically Indonesia has no precedent for organising intelligence agencies that bow to the supremacy of the law. Intelligence has always been a tool of the powerful to crush its opponents and, as a result, intelligence has also always been an arena of competition for influence amongst various groups or individuals wishing to seize power through uncivilised methods.

One of the weaknesses of newly democratic states like Indonesia is the ignorance of the public and of members of parliament about the world of intelligence. This ought not be allowed to become justification for the government, i.e., the State Intelligence Agency (*BIN*), to monopolise the discourse on intelligence reform. Precisely because of the community's ignorance, both the government and *civil society* groups need to provide information so that citizens are not mere objects for manipulation of power by the authoritarianism of those in power.

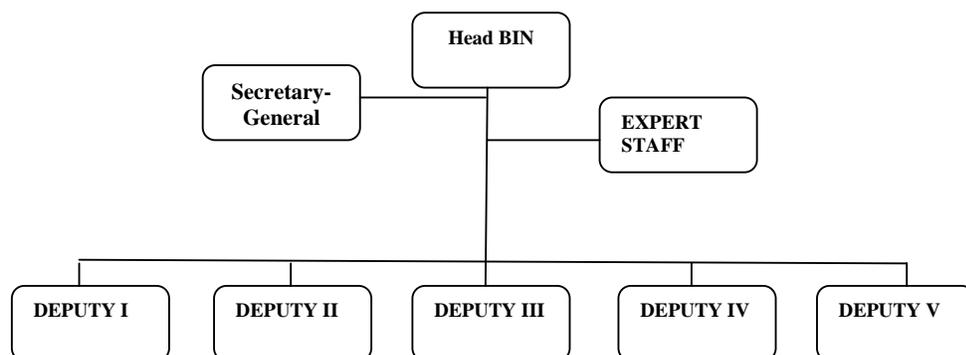
In short, reform of the Indonesian intelligence services is too important to be left up to BIN alone. The people must be included throughout the process of intelligence reform including in implementation of legislation on intelligence in the period that lies ahead. There should be no conflict between the mutual objectives of national security and democracy.

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## Annex 1.

### STRUCTURE OF THE STATE INTELLIGENCE AGENCY (BIN)



Elucidation :

Deputy I deals with foreign and international organisations.

Deputy II deals with domestic politics in the form of data collection and security.

Deputy III handles and produces data gathered by Deputies I, II, and IV and Deputy IV deals with security and counterintelligence.

Deputy V deals with psychological operations and propaganda.

## STRATEGIC INTELLIGENCE AGENCY (BAIS)

Rizal Darmaputra<sup>1</sup>

### ***Background***

At present, the official intelligence service of the Indonesian government, whose tasks cover various sectoral aspects and avenues, and which is accountable directly and hierarchically to the President as *user*, is the State Intelligence Agency (BIN). The existence of BIN as of this writing is not based on law, but rather is still based on the Decision of the President of the Republic of Indonesia (*Keppres*) No. 30 of 2003 on Amendment of Presidential Decision No. 103 of 2001 on the Status, Tasks, Functions, Authority, Organisational Structure and Work Procedures of Non-departmental Government Institutions. Amended several times, under Presidential Decision No. 46 of 2002, the State Intelligence Coordinating Agency became the State Intelligence Agency (BIN).

The primary task and function of BIN is development of national intelligence tasks and it has a role in managing the intelligence community.<sup>2</sup> Consequently, the relationship between BIN and other intelligence institutions is an inter-agency relationship within the intelligence community. This means that there is no command hierarchy between BIN and other intelligence services.

Besides BIN, there are other state agencies that perform intelligence tasks, such as the intelligence units of the Attorney-General, Immigration, Customs and Excise, the Intelligence Security Agency of the National Police (*Baintelkam*) and, of course, the intelligence service that was most prominent during the period of government of former president Soeharto is the military intelligence service, i.e., that of the Indonesian Armed Forces (TNI), known as the Strategic Intelligence Agency (BAIS).

It may be said that of the intelligence institutions mentioned above, hierarchically BIN is the only intelligence service whose direct user is the President. At the same time, military intelligence services like BAIS and the police intelligence service Baintelkam through their respective hierarchies, i.e., through the Head of BAIS and the Head of *Baintelkam*, are accountable to their respective top leaders as users, i.e., the TNI Commander is the direct user of BAIS, whose Head holds the rank of Major General, while *Baintelkam* is led by an Inspector-General (Police), equivalent to the military rank of Major General, whose top level user is the Chief of the Indonesian National Police (*Kapolri*). The leaders of these two institutions, i.e., the TNI Commander and

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<sup>2</sup> Y. Wahyu Saronto, *Intelijen – Teori, Aplikasi, dan Modernisasi (Intelligence - Theory, Application and Modernisation)*, PT Ekalaya Saputra, Jakarta 2004, pp.21-22.

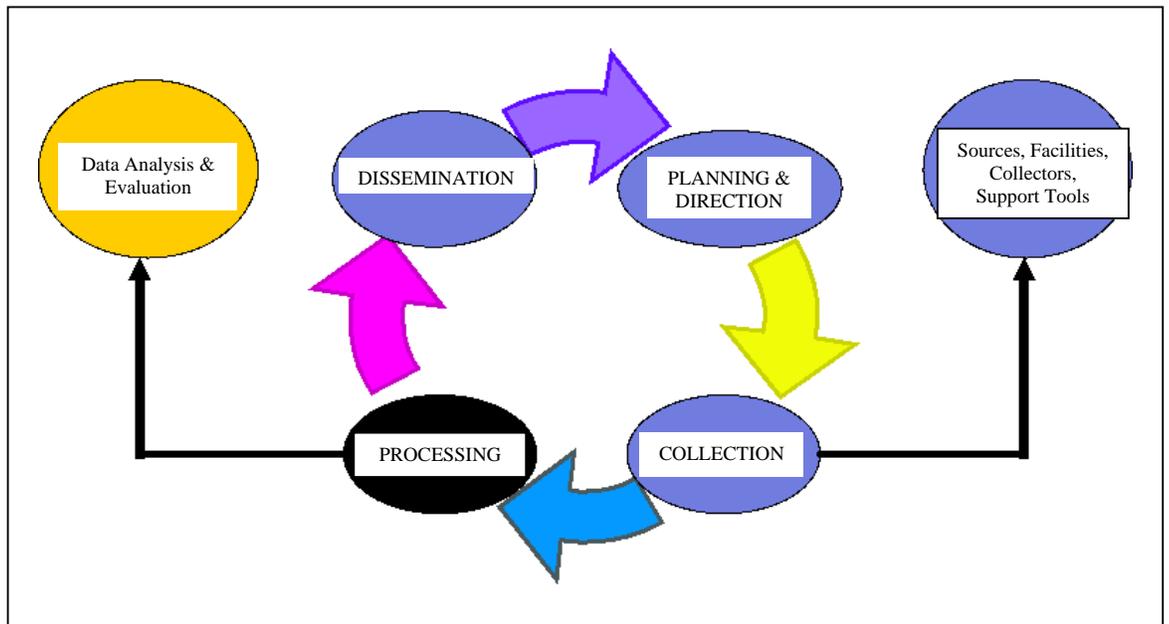
the Chief of Polri provide intelligence reports from their respective institutions to the President.

While BIN is the intelligence service that is accountable directly to the President, it does not have operational authority over the military and police intelligence services which have resources and structural support reaching into the lowest level of the community, i.e., rural areas. In fact, BAIS also has wide-ranging access to resources which can contribute information from overseas, through Defence Attaches and their staff in each Indonesian Embassy. Therefore, it can be said that BAIS is a military intelligence organisation whose scope of operations is quite broad (especially in the domestic sphere), supported by an intelligence structure that has undergone relatively little change, either before or since 'reformasi'.

### ***Issues and Threat Perception***

When the intelligence services undertake to make an "assessment" of the national threat (*threat assessment*), its assessment should be based on a consensus of the political authorities in which political parties in the parliament (through its intelligence commission) have compiled a general description of the issues it categorises as the "national threat". Or the intelligence services should brief parliament on issues categorised as the national threat and parliament can agree to it as a mutual perception of the national threat, and then the intelligence services should formulate a technical framework from the standpoint of operational measures and actions that, in its opinion, can be undertaken. In so doing, policy in intelligence matters will to some degree have a legal and political "umbrella", because the *intelligence cycle*, which usually begins with planning or direction, has acquired its legitimacy from parliament. So, it is expected that once the "threat perception" has been agreed upon by the parliament, the intelligence services can conduct their activities without deviating from the policy line that has been mutually agreed upon. This hopefully can minimise abuses of power such as use of the intelligence services in the political interest of the ruling regime or interests of certain groups, or even exploitation in the interest of foreign governments or intelligence services.

The figure below illustrates the intelligence cycle in general use within intelligence services. In order to minimise abuse of power within the intelligence services, the process of determining the national threat perception through consensus or agreement in parliament begins with the planning or direction stage of the intelligence cycle.



**The Intelligence Cycle**

So long as there is no determination of the national threat perception by parliament and civil political authorities, intelligence services will tend to interpret the criteria for what constitutes the national threat according to the way they themselves perceive it. As is the case with the interpretation by the Strategic Intelligence Agency (BAIS), also a military intelligence agency, that a way to identify internal (domestic) threats still includes spying on critical groups in the community, labeling them, for example, as left-wing radicals, right-wing radicals and other radical groups. Interpreting the threat in such a way is reminiscent of the labels or stigma attached by the intelligence apparatus during the Soeharto regime to muzzle and to legitimise "cracking down on" critical groups that were considered at that time to be opponents of the government. The following is an excerpt from an analysis by the Head of the Strategic Intelligence Agency, Major General TNI Syafnil Armen, at a Department of Defence seminar on 26 August 2006:

"Understanding of and commitment to the ideology of the Pancasila within a segment of the community has begun to be eroded due to the efforts of certain groups who desire to force upon us an ideology other than the Pancasila. This is apparent from the increasing activity of radical groups as the reform era unfolded:

- **Left-wing radical groups.** Today the radical left (Raki) is divided into two politically-oriented groups, i.e., social democratic and communist/marxist groups. The activities they undertake, amongst others, include distortion of facts about communists in Indonesia, organisational reconciliation and consolidation, opinion making in the form of book publishing, production and distribution of films and infiltration of cadres, sympathisers or its supporters into the legislature. This will strengthen the radical left-wing movement. One of their

principal objectives is the repeal of MPR resolution TAP XXV/MPRS/1966 as a precondition to changing the national ideology, the Pancasila, and resurrecting communism in Indonesia.

- **Right-wing radical groups.** Right-wing radicals are active in infiltrating various political organisations in their efforts to impose Islamic sharia law by performing *dakwah* (Islamic proselytism) and *jihad* (holy war). They also conduct demonstrations to gain the sympathy and support of Muslims. Their organisation is closed and is linked to *Jemaah Islamiyah* and the *Negara Islam Berdaulat* (Sovereign Islamic State) organisation. The selection of several leading figures with radical right-wing ties and backgrounds for positions in the executive, legislative, and judiciary is a strategy to influence and put pressure on various future government policies.
- **Other radical groups.** Consist of NGOs and groups who are dissatisfied and disappointed with the government, such as *Imparsial* (Indonesian Human Rights Monitor), *Kontras* (Commission for "The Disappeared" and Victims of Violence), and *Elsham* (Institute for Human Rights Study and Advocacy). They obtain aid from foreign parties and provide active political, financial and advocate support to domestic separatists movements. In addition, they mount disproportionate attacks on every Government policy, bringing up global issues."<sup>3</sup>

The analysis presented by the Head of BAIS is a example of how the domestic environment influences the interpretation of the national threat, by defining members of the community who are critical of the government as a national threat and categorising them as radical groups deemed to put the state ideology, Pancasila, at risk. In fact, in his statement, the Head of BAIS also indicates that there are some members of the legislature, executive, and judiciary who are categorised as radical groups who "attack" the government. Threat perception such as this is a form of threat interpretation characteristic of authoritarian regimes, because they view parties outside of government as potential threats to the government's viability. Consequently, a critical attitude towards the government is interpreted as interference with the administration of government, equivalent to a threat to the sustainability of national security.

This sort of thing still happens because the political authorities in the representative institutions are not involved in determination of the *threat assessment*, and also because there has been no change to the model for operations and scope of intelligence services such as BAIS which should be more focused on military intelligence. It is clear that the use of military intelligence in Indonesia during the Soeharto regime primarily for domestic political operations has continued right up to the present, with the intelligence apparatus continuing to conduct activities to monitor domestic political dynamics and to construe non-combatant groups within the community as threats. This happens because the scope of its tasks and the organisation's structure has hardly changed since the institution was established.

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<sup>3</sup> Head of Armed Forces Strategic Intelligence Agency (BAIS), Major General TNI Syafnil Armen, working paper entitled *Persepsi Ancaman Internal dan Transnasional* (Perceptions of Internal and Transnational Threats) at an Indonesian Department of Defence seminar, 26 August 2006, pp. 14-15.

## **Strategic Intelligence Agency (BAIS)**

While BAIS is not the only intelligence organisation within the TNI, BAIS is the TNI intelligence organisation that is most relied upon, given primary responsibility by TNI HQ for executing intelligence functions. This is not limited to military intelligence activities; the BAIS organisational structure also conducts intelligence activities whose scope includes non-military domestic problems.

### ***Evolution of the Strategic Intelligence Agency (BAIS)***

BAIS stems from the Army Psychology Centre (abbreviated to *PsiAD*) within Army Headquarters, established as a counterbalance to the Central Intelligence Bureau under the leadership of Subandrio, which at that time employed many members of the Communist Party of Indonesia (PKI).

At the beginning of the New Order, the Department of Defense and Security (*Dephankam*) established the Strategic Intelligence Centre (abbreviated to *Pusintelstrat*), to which most members of *PsiAD* were reassigned. The Strategic Intelligence Centre was headed by the Head of G-I/Intelligence of the Ministry of Defence and Security (*Hankam*), Brigadier General L.B. Moerdani, who remained in this position until he became Commander in Chief of the Armed Forces of the Republic of Indonesia (ABRI). During this period, military intelligence had an operational intelligence agency called Command for the Restoration of Security and Order Intelligence Task Unit. It was this agency that, during era of the Operational Command for the Restoration of Security and Order (*Kopkamtib*), played a major role as the Operational Intelligence Unit, given extremely substantial authority.

In 1980, the Strategic Intelligence Centre (*Pusintelstrat*) and the Intelligence Task Unit (*Satgas Intel*) of the Operational Command for the Restoration of Security and Order (*Kopkamtib*) were merged into the Armed Forces Intelligence Agency (abbreviated to BIA). The position of Head of BIA was held by the Commander of ABRI, while BIA's operational activities were led by the Deputy Head. In 1986, in response to challenges, BIA was reorganised into the Armed Forces Strategic Intelligence Agency (BAIS). This transformation had impacts on the restructuring of the organisation which had to cover and analyse all aspects of national strategic defence, security and development.

Even before the restructuring had been implemented, another change took place in which the Armed Forces Strategic Intelligence Agency (BAIS) once again became the Armed Forces Intelligence Agency (BIA), meaning that formally the institution was to conduct only military intelligence operations. The position of Head of BIA was no longer held by the Armed Forces Commander. Then, in 1999, BIA once again became the Armed Forces Strategic Intelligence Agency (BAIS TNI).<sup>4</sup> Throughout the post-Soeharto reform era, and as of this writing, this military intelligence agency has continued to use the name BAIS.

In its organisational structure, the Head of BAIS holds the rank of Major

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<sup>4</sup> [http://id.wikipedia.org/wiki/Badan\\_Intelijen\\_Strategis](http://id.wikipedia.org/wiki/Badan_Intelijen_Strategis)

General while the Deputy Head is a Brigadier General. Under them are seven directorates each headed by a Director, responsible for operations of this military intelligence organisation;

- Directorate A : deals with domestic issues;
- Directorate B : deals with foreign issues;
- Directorate C : deals with defence matters;
- Directorate D : deals with security problems;
- Directorate E : deals with or performs psychological operations;
- Directorate F : performs administrative and financial tasks;
- Directorate G : processes and provides intelligence products to the Head of the Strategic Intelligence Agency (BAIS) and to the Commander of the TNI.<sup>5</sup>

### ***Execution of Tasks in the Field***

In information collection and execution of various intelligence activities, BAIS is said to be effective operationally because, among other things, it is supported by a wide-ranging domestic and overseas BAIS work force which can, for example, obtain information from overseas, usually through its network of defence or military attaches whose postings are based on nomination by BAIS. For its supply of domestic information, besides gathering information through lines of the Territorial Command structure from various Military Area Commands (*Kodam*), BAIS also has an intelligence unit (*Satintel*) working routinely in the various regions categorised as "hotspots", under the command and control of the BAIS organisation". Hierarchically its command control falls within the responsibility of the BAIS organisation. Then, in conducting operations, especially "special" intelligence operations, along with BAIS personnel tasked by BAIS Intelligence Unit Headquarters, field operations are also usually conducted by personnel from Army Special Forces (*Kopassus*) Anti-Terrorism Unit 81 (*Gultor*).

During the period 1995-2001, Detachment 81 was expanded and became Anti-Terrorism Group 5. Then, in 2001, the unit was reorganised and became Anti-Terrorism Unit 81 (*Sat-81 Gultor*). Unit 81 is composed of two battalions: the first battalion is known as Special Action Battalion 811 and the second is Support Battalion 812. Each battalion is composed of two operational detachments.

During engagements, Unit 81 operates in small units, i.e., sections of 10 men or units of 4 to 5 men. Current strength of Unit 81 is estimated to be approximately 800 personnel.<sup>6</sup> BAIS usually uses small sections of 10 men such as this in operations in which the intelligence unit performs routine tasks in regions categorised as "hotspots", such as in Papua.

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<sup>5</sup> Angel Rabasa – John Haseman, *The Military and Democracy in Indonesia – Challenges, Politics, and Power*,

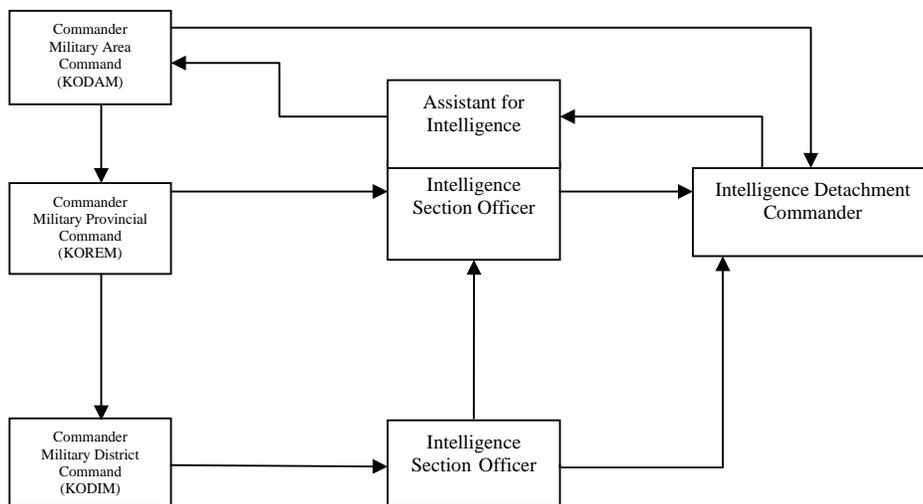
RAND, Santa Monica, 2002, p. 32.

<sup>6</sup> Angkasa Edisi Koleksi, *Indonesia Special Forces*, Jakarta, 2003, pp. 15-16.

## ***BAIS and Military Intelligence Support Elements***

On the other hand, military intelligence is also conducted through the territorial command structure in which each Military Area Command (*Kodam*) has an Intelligence Detachment (*Den Intel*) that performs basic intelligence tasks (investigation, counterintelligence and supportive operations) in each of the areas, for which the respective *Kodam* is responsible. However, intelligence personnel assigned by BAIS to intelligence units in a Military Area Command (*Kodam*) also have access to and cooperate with *Kodam* intelligence elements integrated within the *Den Intel*, where the *Den Intel*, a permanent intelligence unit within the territorial command structure, provides planning or direction for intelligence tasks, and gets feedback through intelligence officers at both the subordinate Military Provincial Commands (*Korem*) and the Military District Commands (*Kodim*) situated hierarchically below the *Korem*. The Intelligence Detachment receives intelligence information from the section officers and forwards or reports it to the Military Area Commander's Assistant for Intelligence.

### **Territorial Command Intelligence System Structure**



Source : Interview with TNI Field Grade Officer

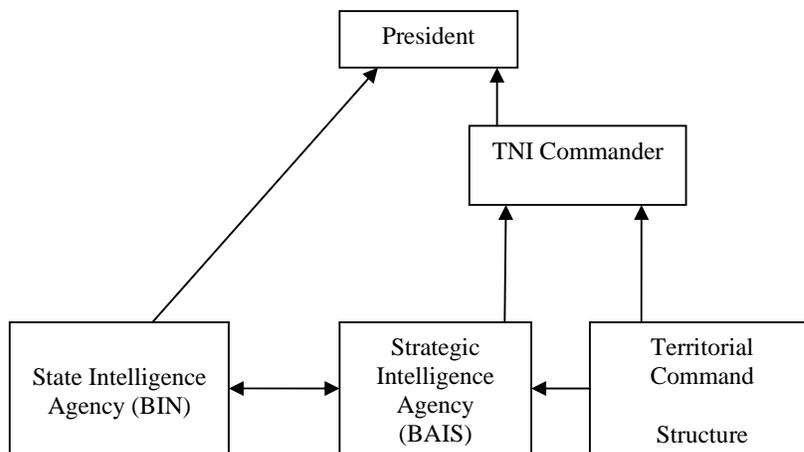
In the hierarchy of the Military Area Command (*Kodam*), the superior officer in intelligence activities is the Military Area Commander, the ultimate "user" in the area under his command. The Military Area Commander forwards information up the hierarchical chain, supplying intelligence data to TNI Headquarters through the Assistant for Intelligence to the TNI Chief of General Staff (Asintel Kasum TNI), who then forwards it to the Armed Forces' primary "user", i.e., the TNI Commander.

So, although the "customer" for the flow of military intelligence is the same, i.e., the TNI Commander, and organisationally there are lines of cooperation in intelligence operations in the field between the officers in charge of

intelligence elements of BAIS and intelligence personnel at the Kodam, TNI Headquarters can be said to operate two different intelligence activity systems in the hierarchy of military intelligence activity, i.e., BAIS and its intelligence apparatus on the one hand and on the other hand the intelligence apparatus organised by the Assistant for Intelligence (*Asintel*) to the TNI Chief of General Staff through the Territorial Command structure. In systems like this, intelligence elements can coordinate with each other to complete and verify intelligence data before the final submission through TNI HQ to the TNI Commander.

This BAIS structure and model for operations can be said to put more emphasis on domestic intelligence, because in addition to deploying intelligence units to various regional 'hotspots', support of territorial intelligence apparatus can also be accessed through its structure that extends from the provincial level into the rural areas through the village *level* non-commissioned officers (*Babinsa*) apparatus. While this structure and model for operations may not be bad, what is most important is how BAIS defines the paradigm of national threat when planning operations and directing its intelligence apparatus which are, after all, military units. Certainly, so long as there is a domestic threat from combatants, BAIS's presence in both domestic and foreign intelligence activities can still be said to relevant.

### Structure of the Indonesian Intelligence Community



Source: Angel Rabasa – Johan Haseman, *The Military and Democracy In Indonesia – Challenges, Politics, and Power*, RAND, Santa Monica, 2002, p. 33.

### Conclusion

Military intelligence in Indonesia, along with the entire range of its activities, is part of the scope of work and activities of the Indonesian National Armed Forces organisation. Consequently, military intelligence is expected to support

the performance of the Indonesian National Armed Forces. In this area, the TNI organisation not only "drives" the Strategic Intelligence Agency (BAIS) as the single military intelligence organisation within the TNI structure performing intelligence work, but also has another mechanism for performing intelligence work, one which relies on the territorial command structure. In fact, special forces like *Kopassus* also have units with combat intelligence capability which frequently assist BAIS in its intelligence tasks. This means that some of the intelligence "apparatus" within the TNI organisation generally operate within the domestic domain. What is not generally known is that the customer of some of the intelligence "apparatus", whether operating through BAIS, the territorial command structure or *Kopassus* personnel from the Covert Warfare (*Sandi Yudha*) Group or Anti-Terrorism Detachment 81 (*Gultor*), is the TNI Commander as the end "user" in the TNI.

In order to address accountability for conduct of military intelligence activities, especially to avoid abuse of authority, a legal umbrella is needed, consisting of intelligence legislation that, among other things, elucidates the scope of military intelligence activities, procedures for internal cooperation between fellow intelligence apparatus in the TNI and with non-TNI intelligence agencies such as BIN, as well as foreign intelligence services. Likewise, the definition of the objectives of military intelligence operations needs to be spelled out clearly, because military intelligence cannot be allowed to overstep its bounds in designating objectives or targets of military intelligence because of issues or parties that are non-military or non-combatant in nature. Consequently, military intelligence will no longer interpret differences of opinion or criticism from civil society as a national threat to which the military intelligence services and the military apparatus associated with it must respond. This means that there must be clear mechanisms and the force of law in the form of legislation. As a result, BAIS, in conducting military intelligence functions, will have legal force, both in the scope of its tasks and in direction and use of military personnel, whether integrated with BAIS or from other military units.

With a legal umbrella and clear regulatory mechanisms such as described above, the expectation is that abuse of authority can be minimised. Thus, democratic control of the intelligence services, both from the legislature and the executive as "users" can hopefully be effective when there are clear legal provisions on the scope of or relations between the intelligence services. Moreover, were BIN to be redesignated as main coordinator of the other intelligence services, including BAIS, hopefully this would facilitate legislative oversight of the various intelligence services, because there would be a coordinator who would be responsible for all national intelligence activities.

## INDONESIAN ARMED FORCES (TNI) BUSINESSES

Eric Hendra<sup>7</sup>

*"The role played by the TNI is different from that of other militaries; there are no other armed forces in advanced countries that we could use for comparison. We have to develop our own doctrine, strategies, tactics and techniques on the basis of our own ideals and experiences."<sup>8</sup>*

### **History and Evolution of TNI Businesses**

The practice of self-funding its budget is a long-standing practice of the Indonesian military, due in part to the history of the establishment of the Indonesian National Armed Forces. The Indonesian National Armed Forces (TNI) is the product of the unification of elements or the combination of modern military units established and trained during the pre-independence period by the Dutch (Royal Netherlands Indies Army/KNIL) and Japan (Defenders of the Homeland/PETA) with indigenous guerrilla forces in regional areas. A direct consequence of this history is that the Indonesian military is founded on the principle of semi-autonomous regional or territorial units, each of which is responsible for its own funding and logistics.<sup>9</sup>

So, it is no longer a secret that the Indonesian military has carried on its economic activities ever since independence; however, in 1957 this function or role was institutionalised with the imposition of the state of emergency (*martial law*). At that time, anti-Dutch demonstrations staged by nationalists over the status of West Papua paved the way for the Indonesian military to exploit the situation and to take control of all Dutch-owned companies.

In fact, the Indonesian military not only took control of these companies but, at the village level, military officers also took control of the milling and procurement of rice at prices they controlled.<sup>10</sup> That same year, Pertamina, the state oil company, was established with military support and expanded rapidly, but not in the same way as when companies that were still under Dutch management were taken over by the military and became virtually sources of self-enrichment.<sup>11</sup> Management of Pertamina was taken over by the military for the first time during the 1960s. Initially, it was Army Chief of Staff General A.H. Nasution who ordered his Deputy II (Operations) Colonel Ibnu Sutowo to take over abandoned oil fields in northern Sumatra which were then

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<sup>8</sup> Bradford, John, *"The Indonesian Military as a Professional Organization: Criteria and Ramifications for Reform," IDSS Working Paper, No. 73, January, 2005.* (Delivered by former President Suharto in 1995). [http://www.ntu.edu.sg/idss/publications/Working\\_papers.html](http://www.ntu.edu.sg/idss/publications/Working_papers.html)

<sup>9</sup> Ishak, Otto Syamsuddin, in Moch. Nurhasim, ed, *Practices of Military Business: Experiences from Indonesia, Burma, Philippines and South Korea*, 2005, pp. 91-93.

<sup>10</sup> See Palmier, Leslie, *The Control of Bureaucratic Corruption: Case Studies in Asia*, 1985, pp. 201-202.

<sup>11</sup> McCulloch, Lesley in Brommelhorster, Jorn, *The Military as an Economic Actor*, 2003, p. 101.

managed with capital from the Japanese business community. This was the start of the Indonesian military's control over almost every important sector of the Indonesian economy.

In the early 1960s, the Indonesian economy experienced what we know as a period of economic rationalisation in which nearly every sector of the government and the military experienced the pressures of tight fiscal policy. A soldier's salary was insufficient to meet even his basic needs. His monthly salary was sufficient only to meet his family's needs for one week.<sup>12</sup> Likewise, military infrastructure was quite dilapidated and standard housing, equipment and uniforms were inadequate. Faced with these conditions, many troop commanders took the initiative to bridge the shortfalls in the budget provided by the central government to meet the actual needs of their personnel.

The military upgraded and expanded through the vehicle of the National Logistics Agency [Bulog], under the leadership of Lieutenant General Ahmad Tirtosudiro, and its operations were funded by credit from the Central Bank of the Republic of Indonesia (Bank Indonesia). Although it failed in its management of Bulog, the TNI again expanded with the creation of PT Berdikari with Suhardiman as President Director at that time. This company acquired two Soekarno-era businesses, PT Karkam and PT Aslam. Via these entities, Suhardiman expanded the private Bank Dharma Ekonomi into a number of provinces and contracted for cooperation with foreign parties to get soft loans to provide capital for the expansion. The bank soon went bankrupt because it was too aggressive in its expansion efforts.

In 1964, nationalisation of foreign corporations was proceeding apace with the expropriation of UK-owned companies and, a year later, US-owned corporations.<sup>13</sup> Once again, it was the military who were assigned the task of controlling these corporations, and so the economic role of the Indonesian military increasingly evolved.

Military leaders in this role tried to conceal discrepancies in budgeting and requisitioning, focusing on two levels. First, they focused on military officers assigned to major or large corporations that had been nationalised, now known as BUMN [State-owned enterprises], ordering them to divert funds directly to military requirements, rather than to state or government revenues as they should have done.

At its peak in 1969, Army Headquarters converted business entities under its control into private companies under the umbrella of PT. Tri Usaha Bhakti (Truba). Its business sector included automobile assembly; factories producing batteries, shoes and clothing; rice milling; Bank Gepabrik; Zamrud Airlines and some projects in Kalimantan and Ambon that were managed as joint ventures with foreign companies. Foundations were set up, such as Yayasan Dharma Putra Kostrad, headed by General Sofyar. In fact, in some regions, Military Area Commands [known by the acronym 'Kodam'] were permitted to set up businesses such as Propelat in Bandung (1970), which was

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<sup>12</sup> Ibid.

<sup>13</sup> Rabasa, Angel, et al, *The Military And Democracy In Indonesia*, 2002, p. 71.

the prime contractor for construction of Pertamina facilities.

The second focus was at the local level where military units began to provide financial support for welfare objectives and operational costs by running local businesses. For example, General Rudini, former Interior Minister during the Soeharto era, who at that time still held the rank of Lieutenant Colonel, was even involved in an informal endeavour, using military facilities, in which he used trucks to transport commercial products, established poultry farms and established a cooperative shop selling eggs and other items at low prices.<sup>14</sup>

They also imposed unofficial taxes at the local level and began to be involved in many other informal commercial activities. From 1957 to 1959, when he was Commander of Diponegoro Military Area Command [Kodam Diponegoro], Soeharto, holding the rank of Colonel at the time, had also built a large and varied network of enterprises, establishing a number of companies with capital from two charitable foundations he had set up, which he claimed were for regional economic development and support for retired military personnel. However, the magnitude of the businesses administered by Soeharto at that time was considered excessive and he was transferred to Army Command and Staff School in Bandung.<sup>15</sup> Business practices such as these created a legacy of a culture of corruption that is very difficult to eradicate.

General A.H. Nasution, Minister of Defence and Security during the 1960s, tried to curb these corrupt practices within the military by heading up the Committee for 'Retooling' State Apparatus [known by the acronym 'Paran'], a new state institution tasked to conduct research into corruption in the military. However, due to opposition from the majority of the other military leaders, President Soekarno, who at the time was involved in a delicate political balancing act with the military, Islam and the communists, was ultimately forced to call a halt to General Nasution's efforts in 1964.

As a compromise, General Nasution proposed the concept of a political role *for the military, known as "jalan tengah" [the 'middle way']*. This concept provided the basis for the military to enter the world of civilian politics and, as compensation, the military agreed to forego its domination of the political and economic sectors. The presence of representatives of the military in governmental and legislative bodies *expanded the military's role into the civilian arena, establishing the basis for the "dual function" [dwifungsi]* concept which prevailed throughout Soeharto's New Order period, through promulgation of MPR [People's Consultative Assembly] Decree No. XXIV/MPRS/1966. However, the creator of the concept of *"the middle way" [jalan tengah]*, which was the basis for the sociopolitical role of the Indonesian military, said later that its application under the Soeharto government was not as originally intended.

So, to summarise, it is an historical fact that the military's role in business and the Indonesian economy far predates its other roles in the social and political arenas during the New Order period (its 'dual function'). Military business in

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<sup>14</sup> Samego, Indria, et al, *Bila Abri Berbisnis [When ABRI Goes into Business]*, Mizan, 1998, p. 52.

<sup>15</sup> Vatikiotis, Michael, *Indonesia Politics under Suharto: Order and Pressure for Change*, 1993, p. 15-16.

Indonesia became entrenched and evolved rapidly during the New Order period, becoming an extensive structure encompassing processing of natural resources, finance, housing, construction and manufacturing.

### ***Perspective on Military Business During the New Order Period***

While the earlier section of this article provided a historical perspective on the background and process of evolution of military business in Indonesia, this section attempts to view military business during the New Order period from another perspective.

With the start of the 1970s, the boom in the world oil price provided the national oil company Pertamina with enormous profits and made Pertamina the greatest contributor to state revenues and expenditures. However Ibnu Soetowo, head of Pertamina at that time, had built a network of private businesses and, according to historical documentation, when the world oil price fell, Pertamina was left with substantial short term foreign debt, worsened by the corruption within this state-owned enterprise [hereinafter abbreviated to 'SOE'].

Pertamina was only one of the many SOEs managed by the military at that time that suffered the same fate, including the State Logistics Agency (BULOG), under the leadership of Ahmad Tirtosudiro at the end of the 1960s, so that ultimately the Soeharto government issued Government Regulation No.6 of 1974, decreeing that the military were prohibited from engaging in business. However, what actually occurred was that, from the early 1970s until the present, military business in Indonesia was given a new foundation and format.

Where previously the military money machine had focused on foreign corporations that had been nationalised and turned into state companies or SOEs, upon issuance of Government Regulation No. 6 of 1974 the format of Indonesian military businesses was transformed, becoming foundations and cooperatives which had a varied and extensive network of enterprises under their control. Although Government Regulation No. 6 of 1974 stipulated that the TNI was prohibited from engaging in business, an exemption was made by the Soeharto government for foundations, on the condition that twenty-five percent (25%) of their profits must go into the TNI coffers.

So, assets of military businesses were converted into assets of foundations. This is revealed in the report of the Army's Yayasan Kartika Eka Paksi (YKEP) foundation, which reported that in 1973 all of the assets of PT Truba (Tri Usaha Bhakti) were converted entirely into assets of YKEP, which had been established by Umar Wirahadikusumah in 1972.<sup>16</sup>

At the same time, business units set up as cooperatives were operated by the Indonesian military along the lines of its territorial structure, i.e., at the central or headquarters level, known as Holding Cooperatives [Induk Koperasi, abbreviated 'Inkop'] and this was applied throughout the force components.

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<sup>16</sup> Report of Kartika Eka Paksi Foundation, 2002, on Restructuring of Kartika Eka Paksi Foundation (YKEP) and its business units, p. 3.

Then, at the regional level, i.e., at the Military Area Command [Kodam] level, they set up Central Cooperatives (Puskop), while at the Military Provincial Command [Korem] level, there were Primary Cooperatives (Primkop). As with the military foundations, the cooperatives also had extremely varied and widespread enterprises.<sup>17</sup>

So, in summary, military businesses in Indonesia during the New Order period used the platform of the existence and influence of the TNI, through the territorial command network from the central level down to the most remote village, to advance its sociopolitical interests. The reality is that the expansion of military business during the New Order period as detailed briefly above can be explained or understood from a cultural perspective<sup>18</sup>.by examining the pattern of relationships maintained by Soeharto with the military, i.e., the construction of patrimonial relationships between Soeharto and the military leaders of the time, which had the hallmarks of being "*personal relationships*" in which the military leaders were in effect Soeharto's subordinates.

Consequently, the rational hierarchical structural model that should be followed by institutions of the state such as the military was in fact not established and so the professionalism and independence of the institution was weakened. Taking this perspective further, *military business practices were tolerated to the extent that the military who were the "subordinates" demonstrated loyalty to "their superiors"*. This model of relationships reflects the model of Javanese authority under the sultans. This concept of relationships also coloured democracy during the Soeharto government, namely "patrimonial democracy".

Military business during the New Order period can also be explained from a structural perspective, meaning that the military was a social class in itself within the structure of the Indonesian community in the post-colonial period.<sup>19</sup>The Dutch, as the colonial power in Indonesia over a long period of time, changed the class system that existed within the community at that time. One class that was wiped out during the colonial period in the archipelago was the bourgeoisie. When Indonesia gained its independence, the military tried to claim a role for itself as a class within the community in the newly-independent state of Indonesia.

The military tried indirectly to create an identity for themselves as a new bourgeoisie; the business activities they conducted can be viewed as a logical consequence of the process of formation of a military in Indonesia which is considered to be formation of a bourgeois class. Their business activities were part of their endeavours to establish hegemony over the state, while simultaneously making their ideological claim. Its zenith was reached during the New Order period, when it supported the political regime in power at that time. This approach became known as 'bureaucratic political practices', in which military leaders head bureaucratic structures and profit from their political and business activities. Such conditions usually occur in states whose

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<sup>17</sup> Ishak, Otto Syamsuddin, in Moch. Nurhasim, ed, *Practices of Military Business: Experiences from Indonesia, Burma, Philippines and South Korea*, 2005, p. 118.

<sup>18</sup> Summarised from discussion of the cultural perspective in Jenkins, David, *Suharto and His Generals: Indonesia Military Politics 1975-1983*, 1987

<sup>19</sup> Further clarification may be seen in *Robinson, Richard, Indonesia: The Rise of Capital*, 1986.

model of authority is military authoritarian as applied during the term of the Soeharto government and his New Order.

### ***Defence Budget Problems***

From the early days of the Indonesian military and up to the present, the proportion of the military budget that can be met by the state is approximately 25-30%, with the 70-75% shortfall assumed to be met through reliance on off-budget sources. This condition has ensured participation by the Indonesian military in business activities, and a consequence of the entrenched nature of this condition is that behaviour of Indonesian military business has been tolerated and not viewed as a role that deviates from the primary reason for having a military in the context of a democratic state.

In fact, Section 25 of Law No. 3 of 2002 on National Defence stipulates explicitly that the sole source of the Defence Budget is the State Budget, and that use and management of national resources, including manufactured, human and natural resources, technology or territory, in improving the national defence capability is done by the government through the Department of Defence.

Herein lies the dilemma: the organisational principle of a centralised national defence system and the principle of democratic control which should be applied by prohibiting *the existence of off-budget sources must co-exist with the reality of shortfalls in the government budget*. The consequence is that the state is unable to fulfill the needs of maintaining national defence. *In practice, there is bias in authorisations for program management and structure in the mechanisms of budgeting between DoD and TNI HQ.*

Defence Budget 2006-07		
Period	2006	2007
Rupiah (trillion)	28.2	32.6

**Fig. 11. Defence Budget 2006-2007. Source: DoD**

The Defence Budget for the year 2006 was second only to that for the education sector, i.e., approximately 23.6 trillion rupiah, plus export credit of 4.5 trillion rupiah, for an overall budget of 28.2 trillion rupiah. According to Defence Minister Juwono Sudarsono, DoD had actually recommended a defence budget of 45 trillion rupiah, whereas the budget approved was only four percent of the total State Budget, less than one percent of Indonesia's gross domestic product (GDP) of 368 billion US dollars, compared to the defence budgets of neighbouring states which generally range from four to six percent of their state budgets and more than three percent of their GDP.

For example, Malaysia had a defence budget of 3.5 billion US dollars with a GDP of 180 billion US dollars, meaning that Malaysia budgeted nearly two

percent of GDP for defence of 25 million residents in a territory less than one-fourth the area of Indonesia. While Singapore, with a land area only 45 kilometers from east to west and 4.2 million residents, budgeted 4.4 billion US dollars for its defence sector, meaning that the size of its allocation from its state budget is 1.5 times larger than Indonesia's defence budget.

Quantitatively, the defence budget allocation during the term of government of Susilo Bambang Yudhoyono (SBY) has indeed been increased quite significantly, compared to previous years, i.e., in 2006, 28.2 trillion rupiah, increasing in 2007 to approximately 32.6 trillion rupiah, as can be seen in Figure 1. However, if the defence budget allocation is compared to the GDP, it is quite obvious that a very dramatic or sharp decline has occurred.

While in 1970 the defence budget was 27 percent of GDP, in 2000 it was only one percent and we know that the defence budget for 2006 was less than one percent of Indonesia's GDP (Figure 2). Of course, economic conditions in Indonesia, still recovering from a major crisis in the latter part of the 1990s, also played a major part in this decline, as well as other sociopolitical situations and conditions.

Defence Budget as a Percentage of GDP 1970-2006									
Period	60s	1988	1989	90s	2000	2001	2002	2003	2004
Percentage	29%	27%	2%	1.8%	1.59%	1%	0.64%	0.76%	1.07%

**Fig. 2 Defence Budget as a Percentage of GDP 1970-2006.**  
**Source : Stockholm International Peace Research Institute (SIPRI) and Department of Defence (DoD)<sup>20</sup>.**

Defence Budget as a Percentage of State Budget 2000-2006						
Period	2000	2001	2002	2003	2004	2006
Percentage	4%	2.66%	3.71%	4.94%	5.72%	4.00%

**Fig. 3 Defence Budget as a Percentage of GDP 2000-2006.**  
**Source: DoD**

As illustrated in Figure 4, the defence budget allocation to support the welfare of TNI personnel for budget year 2007 includes salaries and allowances,

<sup>20</sup> Budget data for 1970, 2000 and 2001, calculated from Widjajanto, Andi, in Moch. Nurhasim, ed, *Practices of Military Business: Experiences from Indonesia, Burma, Philippines and South Korea*, 2005, p. 143. While 1988-89 and the 1990s data were sourced from Stockholm International Peace Research Institute (SIPRI), and budget data for 2007 was sourced from DoD. <http://www.dmcindonesia.web.id/record.php?id=136>.

maintenance and construction of mess halls, official housing and barracks, construction of health care facilities, procurement of medical supplies and equipment, as well as procurement of personal equipment, is 14.6 trillion rupiah, whereas the expenditures budget for procurement is 8 trillion rupiah and the capital expenditures budget is 9.9 trillion rupiah, including 5.7 trillion rupiah non-bank finance and 4.2 trillion rupiah in export credits.

Allocation of Expenditures in the 2007 Defence Budget		
<b>Personnel Expenditures</b>	14.6 trillion rupiah	45%
<b>Expenditures for Goods</b>	8 trillion rupiah	25%
<b>Capital Expenditures</b>	9.9 trillion rupiah	30%

**Fig. 4 Allocation of Expenditures in the 2007 Defence Budget.**  
**Source: DoD**

A policy priority for the conduct of national defence for 2007 was the production of State Defence System [acronym 'Sishaneg'] computer software covering defence strategy, defence doctrine and defence posture, including the 2006 Strategic Defence Review and White Paper.

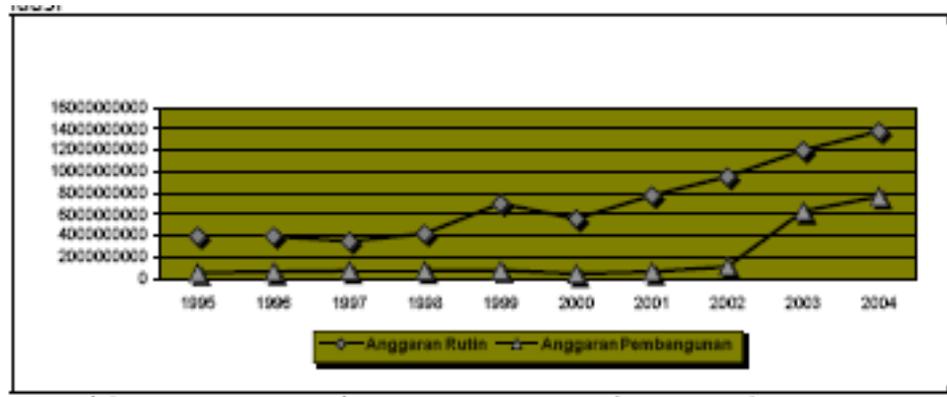
The problem of defence budget allocation in Indonesia is not a simple matter. Besides economic considerations, there are also far more important non-economic considerations. However, how to compile a budget policy to provide for timely priorities and efficient disbursement remains the biggest problem. It is not too difficult to understand the basic problem faced in allocation of the defence budget.

If we refer to systems for establishment and development of a national defence that can be relied upon to respond to conflict and threats with criteria for formation of a professional state military force, the model for allocation of the Indonesian defence budget clearly fails to meet these objectives. The routine expenditures budget, the largest segment of the defence budget in Indonesia, continues to be oriented towards meeting the welfare needs of personnel, rather than towards the development of a professional military.

In Figure 5, it is apparent that from 1995 until the early part of the next decade, the routine budget remained the largest percentage of expenditures in the defence budget, while the budget for maintenance and development remained the smallest portion. However, in 2004 there was an increased percentage of the budget for development, made possible by a decline in inflation and growth in the economy.

It is naïve to assume that expropriation of military business is the alternative

to conceal the state's incapability of meeting its defence budget requirements, because calculations of potential contributions from the institutional military businesses indicate that this would amount to only about one percent of the amount cited in the State Budget. So, transfer of TNI or military business as mandated by the State in Law No. 34 of 2004 must not be viewed as an effort to find an alternative source of funds for Indonesia's defence budget, but rather to return the military to its primary role and to avoid its impacts on the economic and political climate and policy in the broader context.



**Fig.5 Defence Budget Allocation 1995-2004. Source: Stockholm International Peace Research Institute (SIPRI) and DoD.**

Transfer of military business is not a simple problem because of the demands on the budget caused by compensation for winding up military business; if the state lacks this capability, transfer of military business cannot be carried out. Meanwhile, the desire to develop a capable defence force and a professional military must be matched by substantial financial support.

Given that the Indonesian economy has not fully recovered from the crisis, the process of achieving these objectives is far from complete. In the Indonesian context what is needed is a system for ensuring austerity and tightening of budget expenditures allocation and not cutting back the size of the defence budget. Nevertheless, applying the principle of democratic control, budget problems cannot be used as justification for deviation from the role of the Indonesian military through its involvement in business activities.

### ***Brief Typology of Military Businesses***

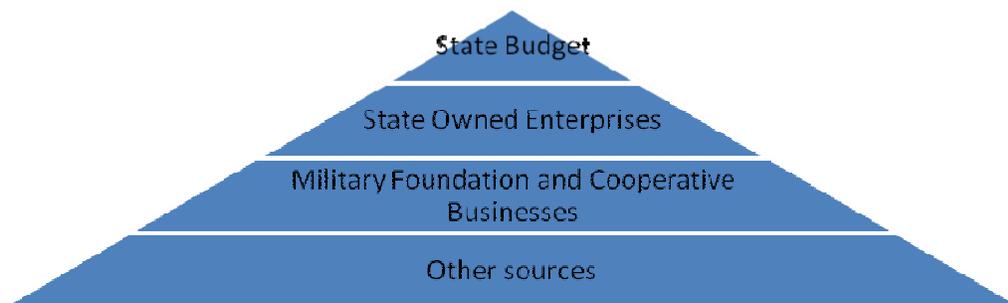
There has been protracted debate in connection with the mandate for transfer of TNI business contained in Law No. 34 of 2004 on the TNI about what is intended by or what the definition is of "TNI business" and the prohibition against involvement in business activities. If we examine section three, article 39, of Law No. 34 of 2004 on the TNI, which addresses obligations and prohibitions, it stipulates that TNI members are prohibited from being *"involved in membership of a political party, active political practice, **business activities**, and selection of candidates for the legislature in a general election and other political positions"*, and the definition of the identity of the TNI as set out in Chapter II, article 2(d), of the same law defines it as a professional military, i.e., *trained, educated, well-equipped, not involved in*

*political activity, not involved in business activities, and whose welfare is guaranteed, that complies with state political policy based on democratic principles, civilian supremacy, human rights, provisions of the law of the land and of international laws that have been ratified."*

The words "not involved in business activities" as embodied within article 2(d) and the words "in business activities" in article 39 have actually generated ambiguities in interpretation. On one hand, the provisions can be interpreted to mean both in activities (the process of operating a business) or ownership (participation through investment or capital in whatever form or percentage). Taken another way, these words can also be interpreted as involvement "only" in the process of business activities, in which case it can be understood as a prohibition only against involvement in the business activities themselves and not participation of capital or investment in business.<sup>21</sup>

Further, it must be assumed that assets of TNI institutional business are by definition assets of the state. So, there can no longer be a notion that the capital or assets owned by a specific military business belong to the military, because military assets must be considered as state assets. In the absence of a government regulation to provide a technical framework for categorising military business in the process of their transfer to the state, the problem will become more uncertain, providing opportunities for parties with vested interests to decide arbitrarily which businesses can be expropriated and which cannot.

Given its level or magnitude, any source of income to finance the Indonesian military can actually be classified as falling within the scope of understanding of military business. Using the pyramid as illustration, the sources from which the military business machine mobilises funds, according to Angel Rabasa, can be summarised as follows: the two greatest producers of funds for the Indonesian military are its foundations and cooperatives as well as other sources, whereas the budget from the central government through the State Budget is always the smallest portion.<sup>22</sup>

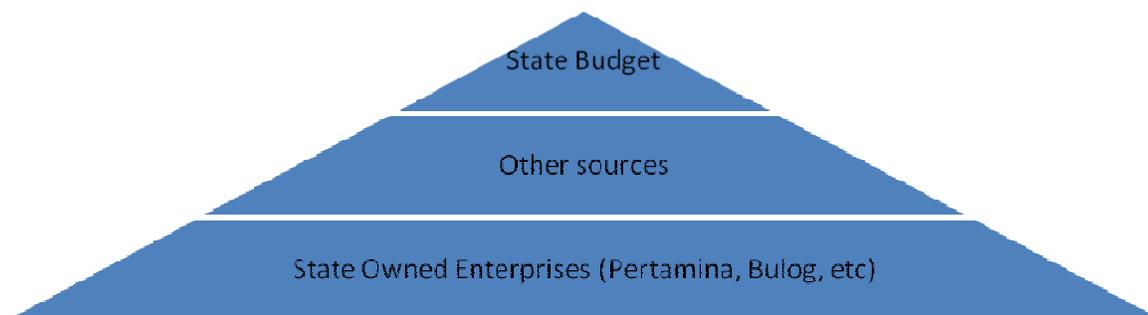


<sup>21</sup> Tuhuleley, E.H., in Beni Sukadis & Eric Hendra, eds, *Toward Professional TNI: TNI Business Restructuring*, 2005, pp. 134-135.

<sup>22</sup> Rabasa, Angel, *Ibid.*, pp. 72-73. The bottom level of the military economic support structure, the largest source of funds for the Indonesian military, includes business activities providing services and contributions to local businessmen. Business activities at this level are not generally known, at least in detail, to the senior military leadership.

***Diagram of Financial/Funding Sources for the Indonesian Military after Government Regulation No. 6 of 1974***

Compared to the diagram of financial or funding sources for the Indonesian military prior to the imposition of Government Regulation No. 6 of 1974 or from the Old Order period until early in the New Order government, the only position on the diagram that has remained the same is that of the State Budget, i.e., the budget allocated by the central government, while the greatest source of funds is now SOE and other sources.



***Diagram of Financial/Funding Sources for the Indonesian Military prior to Government Regulation No. 6 of 1974***

Leaving aside the debate on the definition and legality of which endeavours can be classified as military businesses under Law No. 34 of 2004 on the TNI, we can simply divide the types of business or endeavours run by the military into two general categories, namely institutional and non-institutional. And a third category can be added, i.e., those that are illegal or "shady". However, for purposes of economy, the third category can be generally classified as falling within the non-institutional group.

***Forms of Institutional Business***

Military businesses in this category include foundations in each TNI service component including companies held under a *holding company* or a related project that exists outside of a *holding company*. According to I Gde Artjana, institutional forms of TNI business can be divided into two categories based on the structure and organisation of the institution.<sup>23</sup> However, in general, both foundations and cooperatives are widespread throughout the various units of all three TNI service components and within the Department of Defence, including command or special units, such as the Special Forces Command

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<sup>23</sup> I Gde Artjana in Beni Sukadis, Eric Hendra, eds, *Menuju TNI yang Profesional: Restrukturisasi Bisnis TNI [Towards a Professional TNI: Restructuring Military Business]*, 2005, p. 29.

[Kopassus], etcetera. Because of this, in summary, TNI institutional businesses can be interpreted as those enterprise or business units organised under the umbrella of the TNI institution or the structure of the military organisation, whether in the form of a foundation or a cooperative, as well as their business units.<sup>24</sup>

### ***Forms of Non-Institutional Business***

Although there has been a prohibition since 1974 against involvement of active-duty military in business activities, Government Regulation No. 6 of 1974 did not require them to give up their non-institutional business activities. These types of businesses are administered by TNI officers, both retired military personnel and those on active duty, and by members of their families, who generally have quite high positions in these companies and maintain emotional attachments to the military. Their business network is usually outside the realm of institutional military business. However, the scope of businesses in this category may fall within both formal and informal business sectors. Because involvement is at the level of the individual, this type of business is called non-institutional because it does not involve or exist at the institutional level.

In practice, businesses in the informal sector receive commissions on goods and services provided by business associates, most of whom are generally ethnic Chinese. In addition, there are enterprises which lease military transport such as trucks, aircraft and maritime transport. Other business practices are security service enterprises and other business activities that are frequently illegal; in fact, there are enterprises that can be considered to be in the category of criminal acts.<sup>25</sup>

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<sup>24</sup> Summarised from a number of sources. (*The explanation below is merely an illustration of the breadth of the TNI's business network. \*There have been many changes in the meantime.*)

<sup>25</sup> It is no secret that the Indonesian military (in a non-institutional capacity) also provide security services to individuals or companies. As an example, take the case of PT Freeport which reported to the US Securities Exchange Commission in 2002 that it had paid approximately 50 billion rupiah to the TNI for security services. Likewise, other foreign corporations such as Exxon Mobil Oil. Access [www.jatam.org](http://www.jatam.org) for further information on this topic. There are still many and varied cases of illegal businesses or criminal activities conducted by individuals who are active-duty military, from participation in illegal logging to the murder of the President-Director of PT Asaba which involved members of the Army special forces and members of the Marine Corps Underwater Combat Unit (frogmen). On the matter of violations of human rights, see [http://www.reliefweb.int/library/documents/2006/hrw-idn-2\\_1jun.pdf](http://www.reliefweb.int/library/documents/2006/hrw-idn-2_1jun.pdf). The most recent case is that of the shooting of civilians in Pasuruan, East Java, by Marines acting as security for a private company, which is not a TNI function, but rather a Polri function in which the TNI can get involved only on request by Polri for assistance. Besides that, the disputed land used by the Marines for combat training was actually leased to a private businessman for use as a sugar cane plantation.

## **Foundation**

### **i. Army**

The Army's Yayasan Kartika Eka Paksi (YKEP) foundation owns the holding company PT. Tri Usaha Bhakti. Amongst its many business units are ownership of 44 hectares of land in Jakarta in the area known as "The Golden Triangle", the Artha Graha Bank, Cigna Indonesia Assurance, Danayasa Artatama (the Hotel Borobudur), housing, golf courses, timber and manufacturing. Generally these foundations are the main source of welfare for personnel, especially in procurement of housing. However, this foundation also supports the Army University Ahmad Yani in Bandung, among others.

### **ii. Navy**

The Navy's Yayasan Bhumiymca (Yashbum) foundation owns companies that are quite varied, in the fields of shipping, resorts, oil refineries, property rental, import-export, cocoa plantations, maritime electronics and telecommunications, a taxi company and diving services. In the social and educational sphere, this foundation also sponsors two orphanages, Hang Tuah schools, and so forth. The Marines, although formally under the Navy, also have their own businesses in the housing sector and are in a joint venture which owns Plaza Cilandak.

### **iii. Air Force**

The Air Force foundation Yayasan Adi Upaya (YAU) owns Bank Angkasa, the National Electricity Company (PLN) Pension Fund and has other private investors. It owns golf courses, container services, hotels and logging, aviation and aerial photography enterprises. In the social and educational sphere, this foundation provides scholarships and health care for air force personnel and has built houses of worship on Air Force bases.

### **iv. Department of Defence**

- The foundation Yayasan Panglima Sudirman is active in the education field. Institutions under the auspices of this foundation include UPN Veteran University with campuses in cities on the island of Java, i.e., Jakarta, Yogyakarta and Surabaya. In addition, there is also a General Middle School in Central Java.
- The foundation Yayasan Satya Bhakti Pertiwi is active in business units as a financial source for personnel welfare. Its business units are quite varied.
- PT Yamatran is in transportation.
- PT Mina Jaya operates fisheries.
- PT Undagi Wana Lestari is in forestry.
- PT Yayasan Maju Kerja is in forestry, etc.

### **v. Armed Forces (TNI) Headquarters**

The foundation Yayasan Manunggal ABRI

### **vi. Army Strategic Reserve Command (Kostrad)**

The foundation Yayasan Darma Putra Kostrad, through its holding company PT Darma Kencana Sakti, acquired interests in Mandala Airlines, a chemical storage company partially owned by Mitsubishi, a plastic bag company that was a supplier to Pertamina, a furniture company, an automobile importer and a real estate contractor.

#### **vi. Special Forces Command (Kopassus)**

Kopassus' Red Berets Welfare Foundation [Kobame], in partnership with private entrepreneurs, formed a consortium under the auspices of PT. Kobame Propertindo, which built Graha Cijantung Mall on land owned by the Greater Jakarta Military Area Command (Kodam Jaya). Actually, many businesses owned by this foundation went bankrupt or failed when the economic crisis that befell Indonesia caused them to become insolvent.

#### **Cooperatives**

For the most part, are supported by financial assistance from foundations. Business units are extremely varied, from ownership of petrol stations to leasing of land to businesses. And like foundations, cooperatives also own investments or joint ventures and solely-owned companies in wide-ranging business fields at the Central Cooperative (Puskop) and Holding Cooperative (Inkop) levels.

- Army/Navy/Air Force
- MAIN ARMY COOPERATIVE
- CENTRAL ARMY COOPERATIVE (PUSKOPAD)
- PRIMARY ARMY COOPERATIVE (PRIMKOPAD)
- MAIN NAVY COOPERATIVE (INKOPAL)
- CENTRAL NAVY COOPERATIVE (PUSKOPAL)
- PRIMARY NAVY COOPERATIVE (PRIMKOPAL)
- MAIN AIR FORCE COOPERATIVE (INKOPAU)
- CENTRAL AIR FORCE COOPERATIVE (PUSKOPAU)
- PRIMARY AIR FORCE COOPERATIVE (PRIMKOPAU)
- HQ
- MILITARY AREA COMMAND (KODAM)
- Battalions / Military District Commands (Kodim) / Military Provincial Commands (Korem)  
(*In addition, special forces units also own business units using the cooperative format.*)

#### ***Military Businesses under Law No. 34 of 2004 on the TNI***

The magnitude of the demand within the community that the military in Indonesia be returned to its primary function after the fall of the New Order regime is a matter that can be explained from many perspectives, one of which is the viewpoint of sociology. Viewed from the paradigm of functional relationships in society, each segment of the community, including the military, is considered to have a function, with the understanding that every segment performs its function as a contribution towards the smooth flow of the social system in its efforts to achieve its objectives.

Where one segment of society deviates from its function, there is increased pressure to reintegrate that segment with other related segments. This is necessary to maintain stability within society, both stability based on functional necessity alone and stability based on institutionalised values, such

as democratic values adhered to or being developed in many modern states. In short, it can be said that shared values adhered to by the majority in a society or state are the principal norms for analysis of a social system as an empirical system<sup>26</sup> in which *deviance* causes social conflict.

Therefore, based on the Parsonsian paradigm described above, business activities conducted by the military segment of society are considered to be a dysfunctional deviance which contravenes the shared values of the public or the democratic state now under construction in Indonesia. After a long process, and after repeated postponements, difficulties and revisions, a plenary session of Parliament (DPR) on 30 September 2004 -- despite the lack of a quorum -- ratified the Draft Law on the Indonesian Armed Forces (TNI), enacting it into law.

The Draft Law on the TNI initially contained nine chapters and 67 articles. As enacted, the law has 11 chapters and 77 articles. During its journey towards passage, the Draft Law on the TNI attracted strong reaction from elements of society which rejected the proposed legislation because, in their view, it embodied the old paradigm, for example, on territorial development, the potential for the TNI to be active in departmental and non-departmental roles, and the position of military commanders.

The community was also suspicious of the military's seriousness about restructuring its businesses within the five years between 2004 and 2009. They expected all military business to be wound up and taken over by the government as mandated by the Law on the TNI.

There are at least three articles in Law No. 34 of 2004 on the TNI which govern or address TNI businesses. The first is Article 2 on the identity of the TNI, which sets out the obligations and prohibitions of a professional military, one of which is the prohibition against involvement in business activities by members of the TNI. In its final article, the Law provides a mandate for the government to take over TNI businesses in their entirety, found in Article 76, clauses 1 and 2, on provisions and transfer.

Quoting clause 1 of Article 76, "within a period of five (5) years from enactment of this law, the government must expropriate all business activities owned and managed by TNI either directly or indirectly". Clause 2 states that "rules and further provisions for implementation of clause (1) shall be governed by a decision of the President".

Therefore, the implementation process for expropriation of TNI businesses requires technical analysis and legal certainty in the form of a Presidential Regulation [abbreviated to 'Perpres'], which needs to outline specifically how TNI personnel will be compensated; in addition, the government must give consideration to increasing the budget to provide adequate funding from the State Budget (APBN) for this state security institution. This is necessary to avoid the creation of conditions that are counterproductive for the TNI. Also, the Presidential Regulation (Perpres) needs to make it clear that the government intends to implement the mandate of Law No. 34 of 2004.

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<sup>26</sup> Parsons, T, *Sociological Theory and Modern Society*, 1969, p. 6.

## ***Expropriation of Military Businesses and Presidential Regulation***

Initially there was a fair amount of discussion about who and how and what would be expropriated after promulgation of the mandate for expropriation of TNI businesses in Law No. 34 of 2004 on the TNI. The Defence Minister and the three other concerned ministers cooperated in the formulation of rules for expropriation of military businesses. The three departments involved were the Finance Department, the Ministry of State for SOE, and the Department of Justice and Human Rights. Expropriation of TNI businesses will be based on analysis of five aspects, such as type of enterprise, owned assets, business classification, business interests, and accountability.

To administer TNI businesses as mandated by Law No. 34 of 2004 on the TNI, article 76, the government established an interdepartmental team which included the TNI, called the Team for Supervision and Transformation of TNI Business (TSTB), coordinated jointly by the Ministry of SOE and the Department of Defence. The TSTB TNI was chaired by the Secretary-General of the Ministry of SOE, Said Didu, and his Deputy, Secretary-General of the Department of Defence (DoD) Lieutenant General Sjafrie Sjamsoeddin.

As a result of the decision of the four involved ministers, it was decided that PT Danareksa and its subsidiary PT Bahana would act as independent auditors for verification of enterprises within the TNI domain. Verification and analysis of the business units would be coordinated by the Minister of State for SOE as the focal point and principal authority over the matter. According to the government, the first step to be taken was to choose which TNI business units were using state facilities and which were not. It was determined that only those business units with owned assets of at least 15 to 20 billion rupiah would be transferred. Also, the results of the analysis would determine whether these business units would become limited liability companies (PT), public corporations (Perum) or joint ventures (*holding companies*).

That was the original plan undertaken by the government; however, after the enactment of Law No. 34 of 2004 on the TNI, which gave the government a mandate to carry out the process of expropriation of TNI businesses, the government, through DoD, imposed a deadline of 27 September 2005 for the TNI to inventory military businesses, including those within the domains of TNI Headquarters, the service components, and individual units. After the inventory process is finished, DoD will verify the data that has been provided and then report to President Susilo Bambang Yudhoyono. At least one year will be needed just to conduct the inventory of enterprises within the TNI domain, i.e., only those businesses classified as institutional.

More than two years was needed, after the enactment of the TNI Law in 2004, just to conduct the inventory of military businesses and to verify the data. Consequently, many regarded the government's efforts to be very lax and going nowhere. There was conflicting information on the number of businesses to be expropriated; what began as 219 units became 900 to 1,000 units, and finally 1,520 units.<sup>27</sup> Given the long time just for conducting the

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<sup>27</sup> Republika, "Bisnis TNI Yang Diverifikasi Sudah 1.520 Unit [1,520 TNI Businesses to be Diversified]", 14 March 2006

inventory and verification, plus the government's failure to issue rules for imposing the status quo over all of the TNI's business enterprises, this has attracted attention both among the public circles and in Parliament, who want the government to control and impose the status quo so that assets of enterprises being inventoried and verified are not sold to private parties. However, because the Presidential Regulation required to govern the process has not yet been issued, the Secretary-General of DoD has concluded that the department has authority only to verify the data received from TNI HQ. DoD cannot prevent the sale or transfer of assets or companies while the process is underway.

The TSTB TNI has conducted verification of all of the TNI business activities and has recommended that businesses within the TNI domain be handled by a TNI Business Management Body. All TNI businesses will go through a process of legal clarification. Once the recommendation of the Management Body takes on the form of policy, the government can say that it has met the provisions of article 76 of Law No. 34 of 2004 on the TNI that TNI businesses be placed under government management, i.e., an agency called the TNI Business Management Body. Nonetheless, its management is not corporate in nature.

Regarding the Presidential Regulation, Defence Minister Juwono Sudarsono said it would be issued around October 2005, then it was changed to April 2006, on grounds of waiting for the outcome of review by the Minister of State for SOE. All this time passed with no explanation to the public; then an announcement said that the Presidential Regulation would be promulgated simultaneous with the President's annual address on 16 August 2006. Eventually DoD said that the Presidential Regulation would be issued during the month of March 2007. In fact, as of this writing in mid-2007, the Presidential Regulation has yet to appear.

The continual postponement of the Presidential Regulation (Perpres) to regulate TNI businesses is viewed as a source of the ambiguity of the process, with the emergence of many interpretations about which businesses must be expropriated from the military, because legal certainty must be provided by the Presidential Regulation which has not been issued by the government. In addition, this has also made the public uncertain about whether the government is serious about resolving the problem of resolution of transfer of these military businesses. The Presidential Regulation on TNI businesses is supposed to serve as implementation of and technical guidance for article 76 of Law No. 34 of 2004 on the TNI, which stipulates that the TNI may not engage in business activities. Further, via the Presidential Regulation, there can also be a determination of what a direct or indirect TNI business is and its various derivatives. Article 76 of the Law on the TNI makes it clear that the TNI must get out of business. This means that active duty officers may not be involved in cooperatives and foundations.

So the grounds and conclusions of the TNI are not correct when they state that the process of transferring TNI businesses will continue through 2009 and that these activities are still permissible, because legally the provisions of legislation take effect upon enactment and Article 39 on obligations and prohibitions stipulates the prohibition on involvement in business activities by

TNI personnel. Article 76 which mandates the transfer of TNI businesses must be seen as a five (5) year time limit for transferring existing businesses. Therefore, existing TNI businesses should have been placed in a vacuum upon enactment of the Law on the TNI or at least the *status quo* should be maintained and they should be placed under government supervision until their ultimate expropriation by the government.

On the other hand, there needs to be clarification of the statements of the TNI and the government, i.e. the DoD, that TNI cooperatives will not be transferred or will be permitted to operate on the grounds that they do not use state assets, and that the capital of the cooperatives is the capital of the members of the armed forces. If those managing the cooperatives are active duty military, this violates Law No. 34 of 2004 on prohibition of military involvement in business. Further, if the grounds are that the government is incapable of meeting the welfare needs of military personnel, this also violates Law No. 34 of 2004 which states that the welfare of armed forces personnel is the responsibility of the state.

If the government is indeed incapable of meeting its responsibilities, this does not mean that the government should keep hands off and let the military carry on its enterprises to enrich themselves; rather, the government must take over control as has been suggested, by formation of the agency to manage TNI businesses. The objective of formation of this agency is actually to comply with provisions of article 76 of Law No. 34 on the TNI for expropriation of TNI businesses by the government.

This agency is limited to regulating policy. The problem encountered when handling TNI businesses now is the uncertainty about whether state assets are being used in business activities, when only assets owned by a foundation or cooperative may be used. But due to the prohibition on such activity by Law No. 34 of 2004 on the TNI, something must be done to make a breakthrough to expedite its implementation.

By control and imposition of discipline on TNI-owned cooperatives under government oversight and compliance with regulations for operation of cooperatives in accordance with the law on cooperatives, the government has met its obligations to provide for the welfare of armed forces personnel without violating the Law on the TNI, which obligates the state to take responsibility for the welfare of its armed forces. Now, administration of these cooperatives does not eliminate the possibility that they can be managed by retired TNI military personnel or other civilians and not by active-duty military as at present. Likewise with foundations in the TNI domain.

The government eventually stated its intention to establish the National Team for Transfer of TNI Business (TNPB TNI) immediately after promulgation of the Presidential Regulation, which is supposed to be issued this year (2007). The National Team (Timnas) will have three subsections, i.e. the Team of Directors, consisting of the Defence Minister, the Finance Minister, the Minister of Justice and Human Rights, the Minister of State for State Owned Enterprises (SOE) and the Commander-in-Chief of the TNI. The Supervisory Team consists of the Supervisory Team for the Transformation of TNI Businesses (TSTB), chaired by the Secretary to the Minister of State for SOE and the

Secretary-General of DoD, plus the TNI Chief of General Staff and the Director-General of State Assets. And third is the Management Team which will execute the businesses in the TNI domain, to separate those that will be returned to the TNI and those which will be transferred to the government or become an SOE. The plan is for the Management Team to be chaired by the Deputy for Communications and Stakeholder Relations, Aceh and Nias Rehabilitation and Reconstruction Agency (BRR Aceh), Sudirman Said, and four members who are to be professional and independent. On the deadline for transfer of TNI businesses, a target of two years was decided.<sup>28</sup>

The National Team for Transformation of TNI Businesses will begin its work upon signing of the Presidential Regulation and will be funded from the State Budget. However, preparations for the National Team (Timnas) are underway by agreement of the Team of Directors. The National Team (Timnas) will perform its tasks to study the TNI businesses and will then report its findings to the Team of Directors by December 2008. Meanwhile, an internal Supervisory Committee was established by DoD and the TNI, a transitional committee between the Team for the Supervision and Transformation of TNI Businesses (TSTB TNI) and the National Team for Transformation of TNI Businesses.<sup>29</sup>

In the long run, these matters will be spelled out with legal certainty when promulgated in a Presidential Regulation. Therefore, the immediate issuance of the Presidential Regulation is extremely important, and hopefully this Presidential Regulation, so long delayed, will indeed be published right away, this year (2007), before the attention of the public turns to the festival of democracy, i.e., the 2009 General Election, and the problem of TNI businesses becomes a political commodity. Aside from all that, the technical content of the forthcoming Presidential Regulation will also be a test of the seriousness of the government about implementation of the mandate in Law No. 34 of 2004.

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## THE TERRITORIAL COMMAND AND SECURITY SECTOR REFORM

Agus Widjojo<sup>1</sup>

### *A Brief History*

The history of the creation of the territorial command [abbreviated to Koter] dates from approximately 1948 when the government of the Republic of Indonesia was preparing for the Second War of Independence. We know that conditions at that time were shaped by the outcomes of the Renville Agreement which reduced the territory under the control of the Republic of Indonesia, compared to the 'federal state' controlled by the Dutch. Indonesian Armed Forces troops were required to leave the 'federal state' and remain in the limited area that was under the control of the Republic of Indonesia. These circumstances caused the leaders of the TNI of the time to revise the military strategy for dealing with the Dutch from the strategy of linear defence to a strategy of guerilla war.

This revision was marked by the promulgation of Strategic Order No. 1 by Mobile Battle Forces Headquarters. The most important points in Strategic Order No. 1, which was applied region by region, were, among others: (1) linear defence would no longer be conducted, (2) cantonments would be established in each military subdistrict, with totalitarian guerilla commands called *wehrkreise* centred in a number of mountain complexes, (3) the combat principle would be guerilla war, on the one hand aggressive towards the enemy and on the other hand constructive in upholding the de facto Republic, in both a military and a civilian capacity, to the extent possible within each cell<sup>2</sup>. General TNI AH Nasution, in his book 'The TNI', explained that '*what was needed was a military government that was in touch with the people. The military government was in the hands of territorial Army officers and the civil government was subsumed within it. In so doing, the government was organised so that the de facto control of the Republic of Indonesia over the people would be consistently maintained*'.<sup>3</sup>

In general, the task of the Territorial Command (Koter) is to carry out territorial functions. 'Territorial functions' is interpreted in a very general sense, without detailing the specific functions. From the explanation above, the territorial command, created out of the experience of the war for independence, was originally a military emergency government which came

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<sup>2</sup> General AH Nasution, TNI, Vol. 2, Seruling Masa, Jakarta, 1968, page 187.

<sup>3</sup> Ibid., page 202.

to be called 'Tentara dan Teritorium' [Military Territory], the origin of the Military Area Command [abbreviated as 'Kodam', in English 'MAC']. The organisation of the Military Territory mirrored the functions of defence and management of national resources and appeared during the 1950s. The form of the organisation of the Military Territory derived from the form of the guerilla commands at the time the nation was struggling to obtain and maintain its independence at the end of the 1940s. The guerilla command, as a form of war command, had responsibility for carrying out and controlling military operations (military functions) and carrying out government functions (territorial functions) within their areas, under the supervision of military commanders. The governmental function was actually the function of managing national resources for the support of the defence effort.

Because government took the form of a military emergency government, the administration of the function of managing national resources was carried out by the military, and became known as the territorial function. The function was called the 'territorial function' because it involved management of the resources of a particular territory. It is easy to grasp that this function was not really an organic function of the Indonesian Army, because it was a governmental function. Therefore, during peacetime, i.e., under civilian control, this function, which is a government function, should reasonably be administered functionally by the regional civilian government. This differs from the 'military' function because the 'military' function is actually the defence function, an organic function delegated under the constitution to the TNI. In peacetime, this function takes the form of activities to prepare area TNI units to execute defence tasks in that area when required from time to time.

Understanding of the difference between the two functions is essential so that we can differentiate 'territorial command' from 'territorial function'. 'Territorial function' is TNI jargon for 'government function', which is exercised by the TNI within the structure of a military emergency government. When civilian government is restored, this function is again handled by the regional civilian government. On the other hand, the Territorial Command [Koter] as a deployment of TNI forces is a military command whose role and authority under the constitution is restricted to a specific geographical area (territory) to carry out the defence function. Therefore, the TNI Territorial Command is appropriate to the administration of the function mandated by the constitution, i.e., the defence function. The task of the territorial command is to prepare TNI units and soldiers to execute defence tasks in its area, but it does not have authority to appropriate national resources that are still 'civilian', such as mobilising the civilian population, regulating mass organisations and political parties, dealing with criminality and security, or performing intelligence functions that are not related to defence objectives.

To understand the meaning of the territorial command, it must be seen as a form of the TNI's defence deployment, so understanding the process of formation of the territorial command necessitates understanding the meaning of defence.

Defence is basically operations based on political decisions to preserve the viability of the nation in the face of external military threat. We must have the

capacity to confront such threats, through the procurement of weapons systems, training of TNI units and the size of the TNI force. This capability must be at a level superior to that of the potential enemy and must meet the demands of defence within Indonesia's geostrategic circumstances against external military threats. This capability can be achieved as a result of analysing all potential sources of threat, including the capabilities and intentions of various states in terms of their weapons systems capabilities which present a potential threat to Indonesia's national sovereignty. The requisite defence capability can then be deployed geographically in accordance with the threat analysis.

The territorial command is the form of geographical defence deployment adopted. Formation of the territorial command resulted from the outcomes of analysis of the external defence threat. Formation of the territorial command did not reflect the aspirations of the local people, but rather the administrative boundaries of regional governments. The elucidation to article 11, clause 2, of Law No. 34 of 2004 on the Indonesian National Armed Forces (TNI), states, regarding Defence Posture: 'In executing the management of TNI forces, organisational structures that may provide opportunities for political advantage must be avoided, and its administration need not always mirror the government's administrative structures'. Basically the territorial command can be seen as a division of the geographical territory into sectors with responsibilities for supporting the administration of the defence effort.

### ***Legal Aspects***

To examine the legal aspects of the territorial command we must understand that because the territorial command is a form of deployment within the operational function of the TNI, legal aspects of the existence of the territorial command are closely linked to legal aspects of the existence, role and authority of the TNI. While the current legal and constitutional foundations of the TNI are an outcome of the atmosphere of reform and still require revision and revamping, it can nevertheless be said that the tasks, role and authority of the TNI have been described clearly.

The role, function and tasks of the TNI are stipulated in chapter IV, article 5, of Law No. 34 of 2004 on the Indonesian National Armed Forces. Article 5 stipulates that 'the TNI is an instrument of the State in the field of defence which performs its tasks on the basis of the policy and political decisions of the state'. This means that the TNI has no roles or activities of its own choosing.

The mission of the TNI is stipulated in Article 7, i.e., "*to uphold state sovereignty, maintain the territorial integrity of the Unitary State of the Republic of Indonesia which is based on Pancasila [the Five Principles of the national ideology] and the 1945 Constitution, and to protect the entire nation and entire Indonesian homeland from threat and disturbance to the integrity of the nation and the state*".

From the above we can infer that:

1. Because the constitution delegates the role of national defence to the TNI, a consequence of this provision is that any description of the derivation and

execution of the role of the TNI must be consistent with the constitution, i.e., its role in the national defence. Furthermore, the role and authority of the territorial command as a deployment of defence forces is restricted to that of national defence. What needs to be agreed upon is the meaning of 'defence'.

It must be emphasised that defence is defined as protection of oneself against foreign military threat with the capability to defeat the threatening military forces. While it is true that threats to the nation can arise from anywhere, including from within the state, diverting the TNI from defence against foreign military threats to the arena of internal security is also determined in compliance with constitutional procedures. Diversion of the tasks of the TNI into the arena of internal security can refer to phased transfer of governmental authority from civil government to emergency government which is governed by Law No. 23/Prp/1959 on State of Emergency.

We are also aware of the regulation on Procedures for Military Assistance to Civilian Authorities during peacetime. This regulation governing authority in various levels of state of emergency was also enacted in the context of the birth of the territorial command in the atmosphere of the war for independence. The territorial function of the territorial command is a government function to manage and make efficient use of national resources in support of the defence effort, but because the government of the day was an emergency government waging a guerilla war, the function was performed by the TNI territorial command, despite the fact that the territorial function is not a TNI function but rather a government function. However, because at that time the TNI was identical to the guerilla command, the function was performed by the TNI.

2. Enforcement of state sovereignty and maintenance of the territorial integrity of the Unitary State of the Republic of Indonesia is essentially the defence function of confronting foreign military threats. To confront the foreign military threat, military forces and capability are needed to defeat the military forces of the aggressor. The TNI, as a military institution, has the basic universal mission to be prepared for war. This differs from dealing with domestic threats, because every domestic threat is first and foremost a violation of national law and as such must be dealt with by law enforcement officials. The TNI was never intended to be the principal law enforcement institution. The spectrum of TNI tasks ranging from confronting foreign military threats to supporting law enforcement officials confronting domestic threats is governed by existing law and regulations. These provisions also ensure that the defence role and authority of the territorial command is not abused to overstep its constitutional bounds.

From the explanation above, it can be inferred that the fundamental problem with the territorial command is not whether to disband or to maintain it, but rather to determine what role and authority we grant to on the territorial command, to keep it within the bounds mandated by the constitution. When we assign the defence role and function to the Territorial Command [Koter], it legitimises the Koter as a form of defence deployment during both state of emergency and peacetime. However, its

function in territorial management, in terms of carrying out functions of government, is valid only during a state of military emergency or in wartime, when it becomes the military emergency government or wartime emergency government, respectively.

Within the role and authority of its defence function, the purpose of the territorial command is to prepare TNI personnel and units to carry out defence operations in a specific geographical area. However, it may not perform government functions in the realm of civilian resources. The involvement of the territorial command in the overall defence function is nothing new. We are familiar with the American regional joint commands such as Pacific Command (PACOM), Central Command (CENTCOM), etc., which are territorial defence commands. We are also familiar with Australia's *Northern Territories Command*, a territorial command whose function is limited to defence. The problem with Indonesia's territorial command is a constitutional problem in terms of the role and authority delegated to it by the constitution.

### ***Latest Developments***

Adaptation of the territorial command to the security sector reform agenda and to democratic oversight is inextricably linked to Indonesia's transition to democracy. It is unavoidable that the practices of the past be abandoned, giving way to a new system. We accept the fact that reform of the territorial command is ultimately one of the most difficult agendas of security sector reform to be implemented in the TNI domain. This is because of the central role of 'dwifungsi', i.e., the dual function exercised by the territorial command. The territorial function is a gateway for the TNI to expand its role, due to its resulting direct interaction with the communities under its jurisdiction. The direct interaction made possible by the existence of the territorial management function provides avenues for the TNI to administer the intelligence and community development functions as well as economic and political activities that overstep the constitutionally-mandated boundaries of their role and authority within the defence function.

The ABRI dual function [dwifungsi] doctrine was applied to the TNI originally to give it a role as not only a defence and security force but also as a sociopolitical force. Its role as a defence and security force allowed the TNI to involve itself in internal security affairs, closely related to sociopolitical problems, while its role as a sociopolitical force legitimised the TNI's practical sociopolitical activities. This position was very much in step with the authoritarian political system of the time. This policy was also in line with the national security strategy which was preventive in nature. While there was little likelihood of open military aggression, the authorities considered it most likely that threats to national security would arise domestically. In its dual role under 'dwifungsi', the TNI focused its attention mainly on developments in the domestic arena, and the territorial function provided the platform for the TNI to interact directly with society. The stability that resulted from the dual role of the TNI *provides a standard of comparison with the current situation in the transition* to democracy, with its political dynamics and the relative inability of government to resolve many of the nation's problems, due to the growing strength of civil society and its impact on security stability.

This comparison has made the public ambivalent and has provided opportunities for groups who are reluctant to change, especially those reluctant to reform the role and authority of the territorial command. This reluctance to change the territorial command is intensified because the structure and function of the territorial command is entrenched and is unique to the TNI, a legacy of its history during the war for independence. Transfer of this role to regional government also necessitates that regional government be prepared to take on this function which they are currently not accustomed to performing. Confusion over the role and authority of the territorial command is further exacerbated by the policies of politicians who are looking out for their own interests. On one side are civilian political office holders who have been affected by the changes and who want to cling to the old ways, while on the other side are civilian policy-makers who have little understanding of the problems, and ruling elites whose self-interest demands the continued political support of the TNI.

Change to the territorial command and function, part of the system of government functions overall, is easier understood as a change to a function of the central government that has not been delegated to the regions. In the past, one of the exceptions was the defence security function. Even though the Indonesian National Police (Polri) were separated from the Indonesian Armed Forces (TNI) and the Department of Defence became the functional department, the defence function remained the responsibility of the central government and was not delegated to the regions, whereas security became the responsibility of regional government.

The idea of establishing Defence Department Regional Offices [Kanwil Dephan] was born. This seems inappropriate because defence is an aspect of the TNI's operations to safeguard state sovereignty, while management of national resources (even those required for defence purposes) is clearly the responsibility of regional government. Establishment of Defence Department Regional Offices is merely a permutation of the territorial command from a TNI territorial command to a civilian (DoD) territorial command.

Holistic reform of the TNI, including reform of the territorial function and command, must begin on the basis of political decisions. It is difficult to expect reform of the territorial function and command to be resolved in the absence of understanding and political will on the part of the political stakeholders who have authority to make and execute policy.

### ***Democratic Oversight***

The people's aspirations about the presence and structure of the territorial command actually are not so much concerned with the presence of the territorial command in the regions, but rather the control of the National Parliament over the defence function. The control function is divided into the functions of the Parliament to control government policy on development of the defence force, allocation from the national budget for defence, and the direction and employment of TNI forces. Government policy on development of the defence force must also be set out in the Defence White Paper, which serves as the medium for public accountability and for *confidence building measures* for other states. Therefore, planning and policy for development of

the defence force must fulfill the following requirements: (1) be approved by the National Parliament, (2) be consistent with the State Budget and the contents of the Defence White Paper and (3) revision of initial plans must have the approval of the National Parliament and the Defence White Paper must be amended.

To conform to the evolution of democratic reform at the national level, the TNI has formulated reform objectives which basically involve: (1) renouncing its sociopolitical role, (2) focusing attention on its role in national defence, and (3) positioning itself as part of the overall national system, including no longer acting as the primary institution in internal security and law enforcement, which are functions of the law enforcement apparatus, including the National Police (Polri). Reform of the TNI is essentially affirmation that the role of the TNI is consistent with the 1945 Constitution and standards of democracy. In restructuring the TNI to limit the scope of the territorial command to the defence function alone, the role, numbers and level of the territorial command must be reduced. On the subject of increased numbers of Military Area Commands [Kodam/MAC], the question becomes, where is the demand and what generated the need to increase the number of territorial commands, and what tasks can we expect these territorial commands to fulfill, given the scope of authority granted by the constitution?

Given that the territorial command is a deployment of defence forces that is limited to the defence function, the subordinate level of territorial command capable of carrying out this role is the Military Provincial Command (Korem/MPC) as a strategic subcompartment. As a strategic subcompartment, the MPC is the subordinate level of territorial command with capability to develop, train and control military operations in its geographic area of responsibility. The territorial command at the Military District Command (Kodim/MDC) level and below performs only the territorial management function and has neither the capability nor the authority to control military operations. By allowing the Kodim/MDC and below to carry out the territorial function in peacetime, we only provide openings for the TNI to involve itself in civilian government functions, with the role of the territorial command duplicating the authority of the civilian government.

Is it appropriate that the Kodim/MDC performs the functions that rightfully belong to civilian government officials? Is it appropriate that territorial command officials act as intelligence agents, maintaining close surveillance over the political dynamic within the community? Is it appropriate that the territorial command carries out intelligence functions which treat communism as a latent threat, for example? If so, the the jurisdiction of the territorial command overlaps that of the functional apparatus of civil government, doesn't it? If not, isn't the maintenance of the territorial command at Kodim/MDC level and below during peacetime redundant and a waste of budget funds? Would it not be better if the budget were utilised for programs of more benefit to personnel, to improve the effectiveness of administration of the defence function or to improve personnel welfare?

Differences of opinion occur because we are in a period of transition to democracy. One view holds that we must begin to comply with the system of authority that we want to achieve in the future and with democratic standards.

The other side is of the opinion that the old system has been proven effective in producing sustainable security and stability. According to this point of view, revising the system will produce risks that are disadvantageous to the climate of development of the nation. Our response must be that the nation has already taken the strategic decision to construct national systems that are more democratic and modern. It goes without saying that the systems for control of administration of the state, which is a government function, must be consistent with and organised in accordance with democratic standards, and the defence function is no exception.

Rather than each side blaming the other, we need to view the systems of the past in the context of a political system concentrated in the hands of the President and a political culture that did not provide effective control. That situation failed to meet democratic standards and we are now having to pay the *price*, especially in the form of limitations on citizens' freedom to exercise their political rights. We cannot return to the past, and need always to maintain our orientation to the future. Although ideal conditions for democracy have not yet been achieved, we must have a vision of the direction we want to pursue and the phases to achieve it, aware that the transition phase is only temporary and that we must work hard to get through it. Phased programming is important as an instrument to guide development, recognising the facts of the current conditions and envisioning the final objectives, connected through a phased program. TNI Headquarters has formulated a program for transfer of the territorial management function of the TNI territorial command to regional government in phases over a 15 year period. However, we can no longer defend the existence of the territorial command as necessary because of the 'unpreparedness' of successor institutions or to preserve the uniqueness of the TNI's '*birthright*'.

As the basis for determining what to do about the territorial command and the territorial function, we must ensure that the role, tasks and authority that we assign to the TNI are consistent with democratic standards, on the premise that the 1945 Constitution mandates a political system based on democracy. Diminution of the territorial command is not just a matter of substituting another TNI structure such as a division, because the authority of a territorial command is different to that of a division.<sup>4</sup> Authority over civil resources which is no longer vested in the territorial command cannot be taken over by a division. Therefore, it is not relevant to associate the existence of the territorial command with a division, except for the defence function.

Realignment of the territorial command and territorial function is in the long run designed to protect TNI personnel, so that whatever tasks they carry out, they are acting under authority granted by the constitution. This realignment of the territorial command and territorial function is not change but rather is consistent with the content of the 1945 Constitution, and more precisely termed '*repurification*' of the role of the TNI to conform to the 1945 Constitution. Following this line of thinking, there must be a phased realignment of the territorial command and the territorial function, to restore the defence function, fixing its strength clearly in the interest of defence, through strategic planning to determine a defence posture that is appropriate

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<sup>4</sup> Media Indonesia, 31 March 2005.

for Indonesia.

### ***Conclusion***

From the explanation above on the requirement to realign the structure, role and authority of the territorial command with security sector reform and democratic oversight , we can conclude:

1. The role and function of today's TNI territorial command is the legacy of the structure of the guerilla emergency government during the war for independence in which the TNI had a role in carrying out government functions.
2. The territorial function administered by the TNI territorial command is actually a function of management and utilisation of national resources in regional areas to support the defence effort.
3. The function of management and utilisation of national resources is a government function. The functional executive institution is governmental, and so when the TNI carried out this function, it was because the government was a military emergency government.
4. The territorial command performs the territorial management function when a region is declared to be in a state of military emergency or war emergency and its government takes the form of a military or war emergency government.
5. The problem with reform of the territorial command is not whether to disband or to preserve the territorial command, but rather what role and authority we entrust to it.
6. The territorial command would be legitimate if its role and authority were limited to the national defence function, consistent with the constitutional mandate.
7. The essence of reform of the territorial command is to define its role and authority consistent with the constitutional mandate and to place it under democratic control, mindful that the constitution mandates a democratic political system.
8. When the territorial command does not comply with the provisions of the constitutional mandate, there is duplication of effort by the TNI territorial command and regional government in the function of management of national resources during peacetime.
9. The regional head is solely responsible for management of national resources in a region; therefore, Department of Defence Regional Offices are unnecessary. Establishment of DoD regional offices is just a permutation of the territorial command from a TNI territorial command to a civilian (DoD) territorial command.
10. The only central government function not delegated to the regions is the defence function. Responsibility for the security function in the regions is

vested in the regional governments. The defence function is defined as the operational function of the TNI to maintain national sovereignty in the face of external military threat. The function of management of a region's national resources in peacetime, even those required for defence uses, is the responsibility of the regional government.

**ANNEX.**

**Names of Indonesia's Military Area Commands (MACs)**

<b>Name of Military Area Command (MAC)</b>	<b>Area of Oversight (Province)</b>
Iskandar Muda MAC	Aceh Special Region
I MAC / Bukit Barisan	North Sumatra, West Sumatra, Riau, Riau Islands
II MAC / Sriwijaya	South Sumatra, Jambi, Bengkulu, Lampung, Bangka Belitung
Greater Jakarta MAC	Special Capital District of Jakarta
III MAC / Siliwangi	West Java, Banten
IV MAC / Diponegoro	Central Java, Yogyakarta
V MAC / Brawijaya	East Java
VI MAC / Tanjungpura	East Kalimantan, South Kalimantan, Central Kalimantan, West Kalimantan
VII MAC / Wirabuana	South Sulawesi, West Sulawesi, Central Sulawesi, South East Sulawesi, North Sulawesi
IX MAC / Udayana	Bali, Western Lesser Sundas, Eastern Lesser Sundas
XVI MAC / Pattimura	Maluku, North Maluku
XVII MAC / Trikora	Papua, West Papua

# THE ROLE OF CIVIL SOCIETY ORGANISATIONS (CSO) IN SECURITY SECTOR REFORM

Mufti Makarim Al-Ahlaq<sup>1</sup>

## *Introduction*

The 'Reformasi' [Reform] movement of late 1997 to mid-1998 had three basic demands, namely, the resignation of Soeharto, abolition of the Armed Forces (ABRI) Dual Function and eradication of collusion, corruption and nepotism. These were the major targets for total and fundamental change in all sectors, a reaction to repression by the New Order government. These three fundamental demands evolved into an urgent and far more sectoral agenda. The demand for abolition of ABRI's dual function, for instance, set the scene for the recommendation to abolish all forms of political and economic roles of security actors, i.e., the Indonesian Armed Forces (TNI), the Indonesian National Police (POLRI) and, more recently, the State Intelligence Agency (BIN), as well as accountability for violence, violations of human rights and other lawlessness committed by security actors and the New Order government, together with development of professional security actors responsible to civilian political authority. These urgent agendas were major influences on the discourse on security actors after the fall of Soeharto at the end of May 1998 and became the forerunners of the emergence of the issue of Security Sector Reform (SSR) in Indonesia, particularly strong and dominant throughout the period 1998 to 2000.

This paper will analyse briefly the dynamic of advocacy by Civil Society Organisations (CSO) in SSR agendas, especially throughout 2006, to examine linkages with the 1998 reform agenda and advocacies of the preceding years. The snapshot of activities described in this paper is not intended to evaluate or rank these CSO activities, but rather to illustrate what has taken place in the eight years since 1998.

Another issue to be discussed in this paper is the response and reaction to a number of government policies during the past year, for example, on adjudication of violations of human rights and other law enforcement involving security actors; mechanisms of control by civilian political authorities, especially in the procurement of equipment and weapons for the TNI and for Polri counter-terrorism activities; acquisition of military businesses; review of the role of the Territorial Command; the draft law on national security and the law on intelligence, and criticism and recommendations resulting from evaluation of the escalation of police brutality during the past few years.

This paper will provide flashbacks on the history and mandate for SSR advocacy in CSOs, the dynamic of problems and developments in this series of advocacies, and the effectiveness and outcomes of all of these advocacies.

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## Flashback on SSR Advocacy 1998-2006

Efforts to encourage SSR did not surface suddenly in 1998, but had emerged long before then. What emerged at the beginning of 1998 and culminated in the fall of Soeharto on 21 May 1998 was a cumulative reaction to the abuses by security actors who were very powerful after the events of 1965. As policy makers within the government of the New Order regime, they sanctioned various forms of intimidation, acts of repression, prohibition of freedom to gather, to associate, and to voice opinion, as well as excessive surveillance of the private lives of individuals.

The topics that dominated public debate during this period were the Armed Forces' (ABRI) Dual Function; People's Defence and Security System [known by its acronym 'Sishankamrata']; civilian-military relationships; the role of security actors as 'mediators' in agrarian, labour and political conflicts, and the decadent political and economic behaviour of the New Order regime, the hallmarks of which were increasing violation of both civil and political rights and economic, social and cultural rights during the 1990s. Several notable cases *came to public attention, despite the regime's attempts to cover them up and to distort the facts*, such as the Tanjung Priok and Talangsari cases, the murder of the journalist Udin, the Marsinah and Kedung Ombo cases, the 27 July case, and even serious and large-scale cases such as the brutal massacre and imprisonment of members of the Communist Party of Indonesia and 'separatist groups' in East Timor, Aceh and Papua, reaching a level that aroused public criticism and opposition, albeit limited and dominated by the international community, where information was much more readily available.

Academic discourse on the role of the military and the problems involving security actors also emerged among academics and activists including Mochtar Mas'ood, Yahya Muhaimin, George Aditjondro, Arief Budiman, Ong Hok Ham, Vedi R. Hadiz, Adnan Buyung Nasution, Y.B. Mangunwidjaya, M. Fadjroel Rahman, etc., and even from retired military personnel including Ali Sadikin and A. Hasnan Habib. During those years, an underground student movement emerged, the forerunner of the mass movement of 1997-1998, in concert with a number of academicians and activists in organisations such as the Indonesian Legal Aid Foundation (YLBH), which spread throughout several provinces, organising campaigns and opposition to the tyrannical behaviour of security actors.<sup>2</sup>

Efforts to encourage reform, including SSR, became even stronger during 1997-1998, with the collapse of the regime's ability to maintain its grip on power, assaulted by both the economic crisis and international pressure. International pressure reflected the concerns of international economic regimes such as the IMF, World Bank and foreign investors about 'salvaging' their investments, as well as the deteriorating political situation, and violations of human rights which were very much in the spotlight. The New Order faced not only external pressures due to the economic crisis and violations of human

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<sup>2</sup> A number of young activists in YLBH became involved in the sectoral popular struggle which often came face to face with the authoritarianism of the State and the repression of its security actors, including Abdul Hakim Garuda Nusantara, Todung Mulya Lubis, Nursyahbani Katjasungkana, Hendardi, Mulyana W. Kusuma, Bambang Widjayanto and Munir.

rights, but also internal pressures associated with an 'accumulation' of public rage over the authoritarianism of a regime that was going from bad to worse, the ruthlessness of the security elements and the increasingly blatant bad behaviour of civilian and military bureaucrats.

In response to these sweeping demands, within a five year period a plethora of policies and legislation was promulgated by security institutions, such as the TNI New Paradigm, issued by TNI Headquarters on 5 October 1998; the decrees of the People's Consultative Assembly [abbreviated to TAP MPR] No. VI/MPR/2000 on Separation of the Indonesian Armed Forces (TNI) and the Indonesian National Police (Polri), and TAP MPR No. VII/MPR/2000 on the Roles of the TNI and Polri issued by the People's Consultative Assembly ; Law No. 2 of 2002 on the Indonesian National Police, Law No. 3 of 2002 on State Defence and Law No. 34 of 2004 on the Indonesian National Armed Forces (TNI), issued by the Parliament (DPR), as well as the Defence White Paper, issued by the Department of Defence (DoD) in 2003. However, these responses at the legislative and policy level have not guaranteed the growth and application of SSR to any significant degree, but are still in the initial phase, given the inherent substantive problems and the weakness of oversight and follow up of its implementation. On the other hand, other legislation and policy in the field of intelligence, suggested amendment of some flawed articles and issuance of technical instruments such as Government Regulations and Presidential Decisions have not yet eventuated.

In general, participation by actors in civil society and CSOs during the period 1997-1999 was based on their interest in encouraging a transition to democracy and massive political change. The control of the New Order and the militaristic authority of its security actors caused the emergence of advocacy for SSR among CSOs who put pressure on security institutions through slogans like 'Send the troops back to barracks', 'demilitarisation', or 'the State without the Army', rather than offer technocratic solutions such as modification of the defence posture, strategy and systems or the professionalism of the TNI, Polri and BIN. In some ways, the emergence of this approach was also influenced by a lack of understanding and the 'trauma' of the past caused by the behaviour of security actors, leading some CSOs to tend to avoid 'playing with fire' in partnership with others.<sup>3</sup>

After 1999, three types of SSR advocacy in CSOs came to the forefront, i.e., *think tanks*, *motivator groups* and *pressure groups*.<sup>4</sup> The choice of the type of advocacy was strongly influenced and determined by the *backgrounds* of the actors in the CSOs and the contact model chosen by their constituents and their organisation. The driving force behind the *think tanks* was, for the most part, academics, *policy makers* and retired military who carried on formal activities associated with formulation of legislation and policy, including *lobbying and hearings*, writing academic papers and drafting legislation, while *motivator groups*, generally academics and campus activists, provided the impetus for sustaining discussion of SSR in the public arena, but had no

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<sup>3</sup> Kusnanto Anggoro, Introduction to "Rekam Jejak Proses 'SSR' Indonesia 2000-2005" [Track Record of the Indonesian SSR Process 2000-2005], Jakarta: Propatria Institute, October 2006, p. xvii.

<sup>4</sup> Kusnanto Anggoro and Anak Agung Banyu Perwita (eds.), "Rekam Jejak Proses 'SSR' Indonesia 2000-2005" [Track Record of the Indonesian SSR Process 2000-2005], Jakarta: Propatria Institute, October 2006), pp. 114-115.

direct contact with or influence on SSR legislation and policy. *Pressure groups* consisting of sectors of the community (workers, farmers, fishers and the urban poor), victims of violence at the hands of security actors and organisations active in the field of legal aid pressed for accountability and justice for crimes and violations of human rights committed by security actors, and also conducted oversight of misconduct and foot-dragging by the state in carrying out SSR.<sup>5</sup>

**Table: Types of SSR Advocacy by CSOs**

Category	Think Tank	Motivator	Pressure Groups
General Strategy	Formal approach to security institutions and <i>policy makers</i> in SSR, as well as reinforcement of the consistency between the direction of SSR policy and that of government policy.	Intense public effort to motivate discussion of SSR on a mass scale and to raise awareness of the urgency of SSR in university circles and community groups, especially university students.	Apply pressure for SSR in the context of ensuring accountability and enforcement of the law by security actors and strict supervision of security institutions.
Advocacy Targets/Goals	State (Executive, Legislative and Judicial)	Civil Society (Sectoral communities, University Students and the Public)	State (Executive, Legislative and Judicial)
Outputs	<ul style="list-style-type: none"> <li>• Political commitment and <i>engagement</i> in the legislative and policy making processes</li> <li>• Academic Papers</li> <li>• Draft Legislation</li> <li>• Lobbying Papers</li> </ul>	<ul style="list-style-type: none"> <li>• Discussion of SSR</li> <li>• Studies and Monitoring</li> <li>• Direct and indirect engagement in SSR advocacy</li> </ul>	<ul style="list-style-type: none"> <li>• Oversight</li> <li>• Legal accountability and revision of all undemocratic legislation and policy</li> <li>• Institutional <i>attitude</i> change</li> <li>• Anti-militarism campaigning and deconstruction of the social memory of the culture of violence during the 32 years of the New Order</li> </ul>
Characteristics of Advocacy	Technocratic: strengthen the state and provide impetus for gradual change	Informative: stimulate public criticism, encourage constitutional attitude to security sector	Extra-parliamentary: emphasis on accountability under law, encourage total change

<sup>5</sup> These three categories were not mutually exclusive, because to some degree the CSOs met to *share* ideas and organise strategy. For example, in responding to the Anti-Terrorism Law, the CSOs involved in advocacy for SSR tended to raise the same criticisms and objections, despite their different methods and approaches to advocacy.

Issues	<ul style="list-style-type: none"> <li>• Changing security sector <i>policy</i> by revising legislation and policy</li> <li>• Reformulating perspectives, concepts, values, procedures and oversight of security actors</li> </ul>	Engaging the public actively in formulating security sector policy	<ul style="list-style-type: none"> <li>• Accountability under law for security actors for a broad range of offences (human rights violations, corruption, other crimes)</li> <li>• Strict supervision of the performance of security actors in the field</li> </ul>
Dominant Actors	Academicians, retired security actors, politicians	Academician, pro-democracy activists, Non-Government Organisations (NGOs)	NGOs, primarily those active in the fields of legal aid, human rights and oversight of the state

Throughout 2000-2005, CSOs produced many strategic recommendations on draft legislation, policy formulation and repeal of legislation and policy that conflicts with democracy and values of human rights and *good governance*. This demonstrates the constructive working relationships among CSO actors and the change over time in SSR advocacy. With greater transparency on the part of the state and more freedom of expression, more elegant forms of SSR advocacy emerged, for example, submission of recommendations, production of draft legislation and policy, meeting with Parliament, DoD and both TNI and Polri Headquarters, filing *class action* lawsuits and requests for *judicial review* of security sector policy seen to threaten *human security*, and holding public and open debate on CSO concepts and perceptions about SSR.

Among the outcomes of consolidation of CSOs were important recommendations on actualisation of civilian supremacy, submitted openly to government for the first time. For example, the Forum for Democratic Reform, composed of academics, NGOs, civilian bureaucrats and international experts, made recommendations in 2000 that stressed:

- 1). Repeal of People's Consultative Assembly [MPR] decree No. VII/MPR/2000 which confirmed the existence of the TNI-Polri Faction in the MPR until 2009;
- 2). Repeal of Law No. 80 of 1958 on the National Development Planning Board [Bappenas], which gave the military a role in decision making, and Law No. 20 of 1982, which designated the military as "dynamist and stabiliser, on an equal level with other social authorities (who) perform tasks and guarantee the success of the national struggle to build and improve the standard of living of the people.";
- 3). Abolition of the allocation of military seats in the national and regional parliaments;
- 4). Restoration of citizenship rights of military personnel by granting them the right to vote in general elections;
- 5). Strengthening Parliament's expertise for controlling military and defence affairs to enable it to play the role of both legislator and government overseer;

- 6). Guaranteeing that TNI doctrine confirms the supremacy of civilian authorities and limits the activities of the Indonesian Armed Forces to defence against external threats;
- 7). Repeal of Article 28 (1) of Chapter X (A), Amendment Two, of the 1945 Constitution which prohibits prosecutions under existing legislation;
- 8). Military personnel must be tried in civil court for assault and violation of civil law;
- 9). Strengthen DoD expertise in military affairs;
- 10). Incorporation into law of the prohibition against appointment of active duty military officers to civilian positions in government;
- 11). Stipulate clear legal boundaries between the different intelligence agencies and transfer their activities to the police force once confirmed;
- 12). Nomination of senior officers to be carried out by the executive branch of government in consultation with the national parliament;
- 13). The police force to be placed under the authority of the Interior Department (Depagri) as the department's infrastructure is civilianised;
- 14). The civilian structure which is responsible to government must transfer the management of legal military businesses and at the same time guarantee that the profits remain the property of the TNI, and
- 15). Curtailment of the military Territorial Command must be combined with the granting of the opportunity to participate in international forums to inculcate greater professional norms and increase military salaries.<sup>6</sup>

### ***Dynamics of SSR Advocacy 2006: Between Accommodation, Compromise and State Resistance***

SSR Advocacy conducted by CSOs throughout 2006 is illustrated by some prominent issues and cases as well as significant momentum during the year, as explained below:

#### **1. Draft Law on National Security**

Discussion of the Draft Law on National Security in DoD was polemical, especially between DoD and Polri, whereas the concepts they were debating such as mechanisms for control of security actors by civilian political authority had long been topics of discussion and recommendation among CSOs. The Propatria Institute had set this dynamic in motion by recognising the complexity of the defence problem and the overlapping legislation, policy and roles amongst security actors in this arena. The Propatria Institute initiative effectively bridged the diverse views on national security and allayed the

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<sup>6</sup> Forum for Democratic Reform, "Penilaian Demokratisasi di Indonesia" [Analysis of Democratisation in Indonesia], Jakarta-Stockholm: International IDEA, 2000, pp. 81-101.

suspicions of those who were biased towards enforcement and those who had experienced 'trauma' in the guise of 'security', by accommodating the concept of *human security* as conceived and developed by the United Nations (UN). The problem now seems to focus less on the concept and Draft Law proposed by the CSOs, but more on the politics of the concerns about the Draft Law raised by DoD and views about the 'threat' it poses to Polri's *privilege*. Consequently, for the entire year 2006 the process stagnated within the government.<sup>7</sup>

## 2. Draft Law on Intelligence

Scant attention was being paid to intelligence reform, while a bias towards 'resurrecting' the *extra-ordinary* and *extra-judicial* roles of the State Intelligence Agency was emerging, exploiting the issue of terrorism, as evidenced in the submission of the Draft Law on the State Intelligence Agency and the Draft Law on State Secrets. In early 2005, CSOs, led by the Centre for Global Civil Society Studies (Pacivis), began to raise the issue of reform of state intelligence. Working groups on intelligence reform consisting of academics from universities, *think tanks*, the Indonesian Institute of Sciences (LIPI) and NGOs drafted a far more democratic civil society version of the Draft Law on State Intelligence, taking a human rights perspective and defining the State Intelligence Agency (BIN) as one part of State Intelligence in accordance with its function and tasks. The Draft Law prepared by the working group and distributed to communities in several provinces for comment was also supported by a national coalition called the National Alliance for Democratisation of Intelligence (SANDI), consisting of several CSOs such as the Institute for Human Rights Study and Advocacy (Elsham), the Human Rights Working Group (HRWG), Imparsial (Indonesian Human Rights Monitor), Indonesia Corruption Watch (ICW), the Institute for the Study on Free Flow of Information (ISAI), the Commission for "The Disappeared" and Victims of Violence (KontraS), the Centre for Global Civil Society Studies (Pacivis), Propatria Institute, the Research Institute for Democracy and Peace (RIDEP) and the Indonesian Legal Aid Foundation (YLBHI). Sadly, the "positive" response of the government to this dynamic has not, as at the end of this year, been followed up by its insertion into the National Legislation Program (PROLEGNAS).

## 3. Draft Law on Military Justice

The process of revision of the Law on Military Justice has begun in the National Parliament (DPR). CSOs have protested vehemently against the counterproductive attitude of DoD which has protected the interests of the military rather than hold open and free debate in Parliament. Minister for Defence Juwono Sudarsono has openly expressed his bias towards the conservative attitude of the few military who still wish to have the *privilege* of avoiding *equality before the law* with civilians and who make the argument that the legal system and civilian law authorities are unprepared to adjudicate

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<sup>7</sup> "Supaya TNI dan Polri Lebih Serasi" [Make TNI and Polri More Harmonious], Tempo, 2 November 2006; "RUU Keamanan Nasional Terkendala Posisi Polri" [Polri Position Obstructed by Draft Law on National Security], Republika, 20 November 2006.

cases involving members of the military.<sup>8</sup>The Indonesian Legal Aid Foundation (YLBHI) and the Institute for Human Rights Study and Advocacy (Elsham) stressed that the Indonesian Penal Code (KUHP) and Code of Criminal Procedure (KUHP) are compatible with adjudication of all members of the TNI who commit general crimes; the Supreme Court has also confirmed that the civilian justice system is prepared to try TNI members.<sup>9</sup>

#### 4. Role of the Department of Defence

The strategic role of the DoD as the responsible institution for implementing policy for more comprehensive administration of the national defence -- of which the

TNI is the principal component -- assumes that there exists the capability effectively to control the TNI.<sup>10</sup> From the CSO perspective, the assumption above tended to find its way onto paper. The TNI continued to pursue the opposite course, becoming more dominant in influencing DoD policy on the TNI regarding both *threat assessment*, and development of the defence posture, structure, deployment of forces, equipment and budget. CSOs were critical of the DoD position which reflected ambiguity or reluctance to pursue cases of violations of human rights, corruption, business practices that were criminal in nature and defrauded the state and other abuses of authority by the TNI. Many TNI activities remained beyond DoD control, due to the extreme weakness of the position of the civilian political authorities in DoD and the view within the TNI that DoD was responsible only for financial administration. This condition is even more evident in procurement of weapons, logistics and operational financing, where the TNI freely dealt directly with third parties. When such cases became public knowledge, the DoD usually 'functioned' to cover up the errors, rather than correcting them, issuing statements and taking action to 'salvage' the TNI's image.<sup>11</sup>

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<sup>8</sup> Representing civilian political authority, the Defence Minister should understand that discussion of the Draft Law on Military Justice which clarifies jurisdiction over criminal acts and violations of discipline by the members of the TNI is an logical follow on to MPR Decree No. VII of 2000 on the Roles of the TNI and Polri and Law No. 34 of 2004 on the TNI. See "Penyidik TNI Diminta Tetap Polisi Militer" [TNI Investigators to Remain under Military Police], *Republika*, 8 December 2006; "Peradilan Sipil Diminta Tak Tinggalkan Ciri Militer" [Civilian Courts Called Upon to Not Abandon Military Characteristics], *Tempo*, 8 December 2006; "RUU Peradilan Militer yang Terkatung-katung Menunggu Political Will Pemerintah" [Pending Draft Law on Military Justice Hangs On Political Will of Government], *Indopost*, 14 November 2006; "Juwono Rejects Civilian Trials", *The Jakarta Post*, 30 November 2006.

<sup>9</sup> "KUHP dan KUHP Dinilai Kompatibel" [KUHP and KUHP Judged Compatible], *Kompas*, 1 December 2006; "Pengadilan Militer Siap Adili Anggota TNI" [Military Courts Ready to Try TNI Members], 2 Desember 2006.

<sup>10</sup> Article 16 of Law No. 3 of 2002 on National Defence stipulates that the role of the Defence Minister is as follows: 1). Supports the President in formulating general policy on national defence; 2). Determines policy on the conduct of national defence based on general policy determined by the President; 3). Formulates the Defence White Paper and determines policy for bilateral, regional and international cooperation in the defence arena; 4). Formulates general policy on the use of the Indonesian National Armed Forces and other defence components; 5). Determines policy on budgeting, procurement, recruitment, management of national resources, as well as management of defence technology and industry required by the Indonesian National Armed Forces and other defence force components, and 6). Cooperates with leaders of other departments and government agencies and formulates and executes strategic planning for management of national resources for defence interests.

<sup>11</sup> Kontras-INFID-Imparsial, "Catatan Monitoring Reformasi TNI 1 Tahun Paska Pencabutan Embargo

## 5. Transfer of Military Businesses

CSO advocacy on the issue of transfer of military businesses put the spotlight on the sluggish and long drawn out efforts of the government to expropriate TNI businesses. The process of submitting the draft Presidential Decision on formation of the special team to inventory TNI businesses, formation of a working group, official correspondence of the Defence Minister to the TNI Commander and the chiefs of staff of the service components and verification consumed almost two years after the promulgation of the TNI Law in 2004.

There was conflicting information on the number of businesses to be expropriated; what began as 219 units became 900 to 1,000 units, and finally 1,520 units.<sup>12</sup> Aside from this, the Presidential Decision (Keppres) has not yet eventuated. CSOs also criticised the absence of any serious action on 'shady' or even illegal and/or criminal businesses of security actors, such as money paid to Trikora Military Area Command (XVII MAC) to provide security services for the New Orleans based US mining company Freeport-McMoRan Copper & Gold Inc.; cases of *illegal logging* by senior TNI officers, government officials and law enforcement personnel in Papua between 2002-2004, and the case of the discovery of 185 firearms of various types at the home of the Deputy Assistant for Logistics to the Army Chief of Staff, the late Brigadier General Koesmayadi.<sup>13</sup>

## 6. Violation of Human Rights and Law by the TNI and Polri

CSOs are of the view that security actors, especially the TNI, still use their dominant influence as they did in the past in every legal process involving its personnel. As a result, not even one case involving the TNI has been resolved with a just and accountable outcome, including the East Timor, Tanjung Priok, Abepura and Munir murder cases. CSOs have also criticised the volume of cases of lawlessness and violations of human rights that continue to occur without being processed under law. In this area, the TNI institution perpetuates the practice of *impunity* by retaining personnel who 'violate the law' in strategic positions, on the pretext of TNI autonomy in mechanisms of promotion and reassignment of officers, and using military courts to avoid

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Militer Amerika Serikat" [Record of Monitoring TNI Reform One Year After Repeal of US Military Embargo], October 2006, p. 19.

<sup>12</sup> "900 Unit Bisnis TNI Terpetakan" [900 TNI Business Units Charted], *Republika*, 25 February 2006; "Pemerintah Bentuk Pengelola Bisnis TNI" [Government Establishes Manager for TNI Businesses], *Koran Tempo*, 3 March 2006; "Bisnis TNI Dijadikan 7 Perusahaan" [TNI Businesses Amalgamated into Seven Companies], *Republika*, 8 March 2006; "Bisnis TNI yang Diverifikasi Sudah 1.520 Unit" [Diversified TNI Businesses Number 1,520 Units], *Republika*, 14 March 2006.

<sup>13</sup> "NGOs accuse TNI, officials in biggest timber heist ever", *The Jakarta Post*, 18 February 2005; "Security payment by Freeport triggers U.S govt inquiry", *The Jakarta Post*, 19 January 2006. The Koesmayadi case was detailed in depth in two consecutive editions of *Tempo* magazine, the edition "Warisan Maut General Koes" [Death Bequest of General Koes], *Tempo*, 3-9 July 2006 edition, "Jenderal di Luar Jalur" [General off the Rails], *Tempo*, 10-16 July 2006 edition. On payment by Freeport for security services, see the Global Witness report, "Paying For Protection: The Freeport mine and the Indonesian security forces", July 2005. For the *illegal logging* case involving TNI officers, see the Environmental Investigation Agency/Telapak report, "The Last Frontier: Illegal logging in Papua and China's massive timber theft", London/Jakarta, February 2005.

corrective action through the national legal system, including the Human Rights Court.<sup>14</sup>The TNI has not become an institution governed by the rule of law, continuing to uphold *inequality before the law* between TNI personnel and civilians.<sup>15</sup>

## 7. Repeal of US Military Embargo

The signing of Appropriations Act HR 3067 by the President of the United States of America (US), George W. Bush, on 14 November 2005, heralded the repeal

of the military embargo over Indonesia which had been in effect since the Santa Cruz event in 1992, opening a new phase in mending US-Indonesia military relationships. In reacting to this repeal, CSOs were initially divided, i.e., some groups rejected it, mainly those who were human rights advocates, while some welcomed it, mainly the SSR *think tanks*. However, they were ultimately of one mind and jointly emphasised the need for the cooperation to be conditioned on human rights and reform, which the US government must seriously use as parameters for their annual evaluations.<sup>16</sup>

One year after the lifting of the embargo, CSOs continually requested the US government and the international community to pay serious attention to the process of democratisation, strengthening of control by civilian political authorities over the military and enforcement of human rights in Indonesia. The United States and world community should place more stress on supporting Indonesia to reinvestigate the reform agenda, to evaluate the achievements of eight years of reform, and to compile a *road map* to bring the transition period to an end, with Indonesia having become a concrete and authentic democracy.

A number of remaining problems are worthy of consideration by the US government. Congress and the Senate intend to reexamine military cooperation between the US and Indonesia rather than resume it in full. The

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<sup>14</sup> Some of the 'problem' officers include, among others, Major General Sriyanto Muntrasan who was promoted to Commander, III MAC/Siliwangi (involved in the 1984 Tanjung Priok case); Colonel Chairawan, Commander, 011 MPC/Lilawangsa, Aceh (case of kidnapping and disappearance of pro-democracy activists, 1997-1998); Major General Sjafrie Sjamsoedin, Secretary-General of the Department of Defence (Riots of May 1998) and Major General Adam Damiri who was appointed as Assistant for Operations to the TNI Chief of General Staff (Case of East Timor, 1999), while the Commander of Iskandar Muda MAC, Major General Endang Suwarya, become Deputy Chief of Army Staff (during the Military Emergency and Civil Emergency in Aceh). See "Rights group wary of TNI reshuffle", The Jakarta Post, 5 February 2005; "Promosikan Sriyanto and Chairawan, TNI Diprotes" [Protest against Promotions of Sriyanto and Chairawan], Indopost, 5 February 2005; "TNI Dinilai Belum Hormati Penegakan HAM" [TNI Judged to Have No Respect for Enforcement of Human Rights], Suara Pembaruan, 5 February 2005; "LSM Nilai TNI Tak Peka Soal Endang Suwarya" [NGO Judges TNI not Paying Attention to the Question of Endang Suwarya], Koran Tempo, 2 April 2005, and "Activists criticize latest TNI moves", The Jakarta Post, 2 April 2005.

<sup>15</sup> Mufti Makaarim A, "Potret Reformasi TNI 2006" [Snapshot of TNI Reform 2006], [www.prakarsa-rakyat.org](http://www.prakarsa-rakyat.org)

<sup>16</sup> See joint press statement by the International NGO Forum on Indonesian Development (INFID), Pro Patria, Commission for "The Disappeared" and Victims of Violence (KontraS), Imparsial (Indonesian Human Rights Monitor), The Research Institute for Democracy and Peace (RIDEP) Institute and the Indonesian Legal Aid Foundation, Jakarta, October 2005, in response to the plan to repeal the US military embargo, before the law had been passed by the US government, which only included the briefest mention of SSR and human rights.

US government, including the Congress and Senate, does not respond to lobbying by the Indonesian government, Indonesian military or even civilian groups who desire normalisation of military relations between the US and Indonesia in order to complete SSR, TNI reform and modernisation of Indonesian military weapons, without performing checks on the process of transition to democracy in Indonesia.<sup>17</sup>

## **8. Procurement of Primary Equipment and Weapons Systems (Alutsista)**

In the view of CSOs, procurement of military equipment tends to be *inconsistent* and not targeted towards development of the defence posture. To cope with the US embargo, the government procured weapons produced by European countries, even though the prices were very high or the quality inadequate because it was second-hand. The problem is that nearly all of this procurement utilised export credit facilities allocated annually to DoD and Polri.<sup>18</sup> The Ministry of State for National Planning and Development/National Development Planning Agency (Bappenas) each year allocates USD 500 million for military procurement and financing because there is no other loan scheme from bilateral or multilateral donors which can fund these expenditures. This means that, in addition to the State Budget allocation for defence, the military also has other funding sources which clearly increase the state's debt burden.<sup>19</sup>

## **9. Counter-terrorism**

CSOs focused sharp attention on counter-terrorism operations because of the lack of protection of human rights and safety of civil society. The policy on the war on terrorism, besides its impact on the restrictions on guarantees of individual rights and freedoms, also bestowed *extraordinary* authority on security actors, i.e., the State Intelligence Agency (BIN) and Polri's Special Anti-Terror Detachment 88, to carry out repressive action. CSOs argued against a number of cases of arbitrary arrest and imprisonment, torture and sentencing to capital punishment for crimes of terrorism, as occurred in Central Sulawesi, Central Java, the Yogyakarta Special District and East Java. In the effort to stamp out terrorism, the end has justified the means, including deprivation of rights which may not be reduced or abolished under any circumstances (*non-derogable rights*), inflicting *torture* and legitimising *arrest and arbitrary detention*. Another matter that became a focus of attention was the President's request to involve the TNI in the war on terrorism.<sup>20</sup>

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<sup>17</sup> Kontras-INFID-Imparsial, "Catatan Monitoring Reformasi TNI 1 Tahun Paska Pencabutan Embargo Militer Amerika Serikat" [Record of Monitoring TNI Reform One Year After Repeal of US Military Embargo], October 2006, p. 25.

<sup>18</sup> For deeper analysis, see Andi Widjajanto and Makmur Keliat, "Laporan Penelitian Reformasi Ekonomi Pertahanan di Indonesia" [Survey Report on Economic Reform of Defence in Indonesia], Jakarta: International NGO Forum on Indonesian Development (INFID) and Centre for Global Civil Society Studies (Pacivis), 2006.

<sup>19</sup> "Kredit Ekspor TNI dan Polri Dievaluasi" [TNI and Polri Export Credit Evaluated], Suara Pembaruan, 28 February 2006.

<sup>20</sup> This statement sparked an immediate and strong reaction from various sources. Former President Abdurrahman Wahid stated that resurrecting the active role of the Territorial Command was bad medicine for

## 10. Police Brutality

The phenomenon of escalation in police brutality was a fact to which CSO pointed as evidence that reform of the police was not comprehensive,

often appearing in media reporting.<sup>21</sup> With militaristic characteristics inherited from the military during the New Order period, the police become the new dominant actors in all manner of violence in society, far surpassing the violations by the TNI, including a virtual explosion of involvement by police personnel in illegal businesses and lawlessness. For CSOs, the sustainability of police brutality was strongly influenced by ambiguity in the National Parliament's oversight function and role and the lack of any civilian political authority at Ministerial level with direct authority over the police institution, which was at the time subordinate to the President. On the other hand, there was no legal code governing accountability to the National Parliament. As well, the National Police Commission designed to oversee the conduct of policing had a very weak mandate under Law No. 2 of 2002 on the Indonesian National Police.

### ***The Future of CSO Advocacy in SSR: Dynamics and Challenges to Encourage Democratic Control and Oversight***

The dynamics of SSR in progress is influenced by very specific issues and involve many actors and approaches. These dynamics are influenced by several factors such as:

- 1). The existence of compromise and political accommodation among New Order elites who still control the judicial, legislative and executive responses to the urgent demands of the public, described above;
- 2). The emergence among civilian politicians from old and new parties who are willing to accommodate the agendas of transition to democracy;
- 3). Availability of public access to SSR planning, processes and policy making in Parliament and government, although there is not yet mass involvement in the design process with academics, CSOs, NGOs and other community organisations who focus on SSR; and
- 4). Pressure and support of the international community for the SSR agenda in Indonesia.

Sadly, the SSR dynamic that has been ongoing under several post-Soeharto

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the sickness in our midst and had the potential to revive militarism and encourage authoritarian government, while MPR Chairman, Hidayat Nurwahid, stressed that the role of the military is merely to assist the National Police (Polri) and the State Intelligence Agency (BIN), not to assume their roles. See "Politicians slam plan for TNI", The Jakarta Post, 7 October 2005.

<sup>21</sup> For example, see "Anggota Polisi Tembak Warga Sipil" [Police Shoot Civilians], *Kompas* 29 August 2006; "Polisi Pukul Terdakwa" [Police Beat Defendant], *Media Indonesia* 29 August 2006; "Polisi Tembak Istri yang TNI" [Police Shoot Wife who is a Member of the TNI] *Indopost* 30 August 2006; "Pelecehan Seksual, Langgar Kode Etik Brigjen Edhi Bisa Dipecat" [Brigadier General Edhi may be Sacked over Sexual Harassment and Violation of Code of Ethics], *Media Indonesia* 30 August 2006, and "Illegal Logging, Wakapolres Tabalong Dipecat" [Deputy Chief of Tabalong Police Sacked over Illegal Logging] and "Oknum TNI, Polisi, dan Penjahat Bersekongkol" [TNI, Police and Criminal Conspire], 12 November 2006.

governments has not yet yielded much significant change. The package of changes that were the demands of 1998 have progressed in a direction that is mostly symbolic, rather than substantive. This can be attributed to the fact that some SSR policies were poorly implemented and that oversight of its implementation was not comprehensive.<sup>22</sup> Not to mention other problems that were stumbling blocks, including the complexity of the political attitudes of the state and elites among security actors, accountability for violations and political and economic offences involving security actors, as well as seriousness about developing the posture and culture of professional security actors, subject to civilian political authority and provisions of applicable law.

On the other hand, during the last two governments (Megawati Soekarnoputri and Susilo Bambang Yudhoyono), the CSOs tended to engage in various dynamics and orientations, without consensus or a clear distribution of roles in addressing SSR agendas, as distinct from the two governments which preceded them (B.J. Habibie and Abdurrahman Wahid). This is somewhat understandable, given the close association with macropolitical dynamics, tendencies and interests of the elites, and objectives of consolidation and resistance by the state and security actors. This condition demonstrates and proves that the dynamics of Indonesia's transition to democracy is still at the stage of seeking common meaning, with many compromises between various interests, and very much at the mercy of the tide of dominant political interests, rather than being responsive to questions of substance and principle about consistent and effective change within the body of the state.

In particular, reform of the TNI and Polri that has been instigated by the government touches only on legal aspects of non-enforcement of the law and structural aspects of lack of reorientation of defence and security posture and strategy, while reform of the State Intelligence Agency (BIN) is still far off track, with not even one new law being proposed, let alone enacted. The Draft Law on the State Intelligence Agency proposed by BIN would only provide a legal umbrella for itself, but not regulate its authority and prohibitions or the mechanisms for executive and legislative oversight by the state of the work of the intelligence agency.

Therefore, SSR advocacy by CSOs has not only consistently been met by resistance from security actors, but also has come into conflict with ambiguities in the political attitude of the state and the low level of support by political elites. This has ultimately encouraged a tendency among many SSR advocates in CSOs to propose more realistic agendas and strategies as befits the capacity and objectives of each organisation, for instance, on specific policy and cases rather than consolidate and jointly initiate SSR issues to bring about total change as was the demand in 1997-1998. CSOs, like it or not, have also taken a more realistic attitude towards pressing for change, for example, by using cases and issues as indicators rather than basing their analysis on indicators of planning, implementation and oversight of security sector legislation and policy, which requires greater capacity and strong political support, as well as consolidation and a large, more solid working network.

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<sup>22</sup> "Reformasi TNI Masih Parsial dan Internal" [TNI Reform Still Piecemeal and Internal], 14 November 2006.

In actual fact, SSR advocacy throughout 2006 did not yield very significant or great achievements, but must content itself with small advances that may serve as precedents for stimulating more substantial change.

## The Media and Security Sector Reform

Ahmad Taufik<sup>1</sup>

### *Introduction*

Since independence in 1945, the Indonesian press has experienced many ups and downs, but since 'reformasi' [reform] has been free to present the news. During the more than thirty years of the New Order period, the Indonesian press was increasingly seen as having a development role, publicising the policy of the authoritarian government; consequently the press at that time tended not to criticise but rather to give the stamp of approval to New Order policies.

At that time the government used the press licence to control the press and there was only one journalists' association, i.e., the Indonesian Journalists Association, which also tended to be a mouthpiece for the government. The press licence could be revoked at any time and the revocation of the press licences of *Tempo and Editor* magazines and the tabloid *Detik* in 1994 was quite phenomenal. Despite protests by a number of young journalists from a number of media outlets, the Soeharto government did not budge. *Tempo* resumed publication during the reform era, when Soeharto was forced to step down after a wave of demonstrations by university students who occupied the People's Consultative Assembly (MPR).

Following the collapse of the New Order in 1998, the Indonesian press had the opportunity to become more critical in reporting the news and facts. This occurred in tandem with the process of democratisation, alongside the reform of some security institutions. The press played a part in photographing and observing the extent of optimisation of the tasks of security institutions in a number of domestic troublespots. The Indonesian press played an important role in providing coverage of news about reform of the Indonesian Armed Forces (the TNI) and the Indonesian National Police (Polri) and its dynamics.

The most significant event in the institutional transformation of security actors was the separation of Polri from the TNI in 1999. As well, the press covered the clashes between Polri and TNI personnel taking place in several regions, especially in troublespots such as Maluku, Aceh and Papua. Coverage of the role and interactions of security actors by the media must be viewed in the context of community control of security actors. It can be said that the contributions of the media become important in light of the media's function as providers of information to the public.

Presentation of media reporting of the interactions of security actors needs to be viewed as part of public oversight of security sector reform and consequently professional and impartial media are essential to providing coverage and conveying information openly. This means that freedom of the

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<sup>1</sup> Ahmad Taufik is a journalist, a member of the Alliance of Independent Journalists, currently employed by *Tempo* magazine.

media to provide coverage must be fought for consistently and guided tirelessly by principles of democracy.

### **The Media and Dynamics of Security Actors**

At the outset, there must be a general understanding of the function of the media within the community and especially [its function] vis a vis the security sector. In general, the function of the media, i.e., the press, is threefold, according to Harold Lasswell, namely:

1. Social surveillance;
2. Social correlation, and
3. Socialisation<sup>2</sup>

The social surveillance function of the media is part of dissemination of information within the framework of imposing social control. An example is coverage of cases of human rights violations by security elements which is part of the media's social surveillance function. Social correlation, on the other hand, is the relationship of one group with another or the views of one group versus another. Lastly, socialisation is the transmission of ideas and values from one generation to another. Examples include the way the values of integrity, mutual assistance/cooperation, social justice and unity or even nationalism in society can continually be reported through the media.

In tandem with reform in a wide range of fields, in quantitative terms, the media in Indonesia have evolved quickly. For example, in 2002 there were at least 695 print media, 1,100 electronic media such as radio and ten national privately owned and one government owned (i.e., TVRI) television outlets. Online internet media are also evolving rapidly, such as detik.com, kompas online, tempointeraktif, and so on. The quality of media reporting, on the other hand, remains debatable, with some good and some still searching for a format.

Various categories are present, with print media in the form of newspapers, tabloids and magazines, electronic media in the form of radio and television and online media such as the internet. There is competition amongst the print media and between the print media and electronic and online media. From the perspective of ownership, the media appear to be owned by only a very few people who have the experience and the capital. There are several media groups, as follows: *Kompas-Gramedia* group, *Java Post* group, *Media Indonesia* group, *Tempo* group and some smaller media groups, such as *Republika* and *Pikiran Rakyat*.<sup>3</sup>

Based on data for 2004, it is fair to say that the print media are for the most part controlled by media conglomerates from the *Kompas*, *Java Post* and *Media Indonesia* groups. Kompas group owns 14 newspapers and 32 weeklies; Java Post group owns more, namely 81 newspapers and 23

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<sup>2</sup> P. 14, *Kompetensi Wartawan [Competencies of Journalists]*, Penerbit Dewan Pers, 2005.

<sup>3</sup> *Media Sadar Publik [Media Aware of Public]*, The Institute for Press and Development Studies (LSPP), Jakarta, 2005, p. 52.

weeklies, while Media Indonesia group owns four (4) newspapers and one (1) television outlet. These media groups can be categorised as mainstream media, not alternative media, which present the news from various perspectives and attempt to prevent acts of violence.

Of these media, which ones have consistently pursued a policy that is serious about covering the role of security actors and the dynamics of security reform? What follows has for the most part been drawn from analysis of the national print media which are considered to have consumers in many corners of the nation, have media networks in remote areas, are seen to be able to disseminate information widely and are influential. However, this is not intended to deny the role of regional media or modern and relatively inexpensive media like the internet.

From content analysis of the reporting, a number of issues have been the focus of print media coverage, including voting rights of TNI and Polri members, human rights violations, TNI businesses, procurement of primary weapons systems, the draft laws on military justice and terrorism, and corruption within security elements. The following is some of the print media coverage on security sector reform during the period 2006-2007:

1. The major event that shook public trust in mid-2006 was the discovery of hundreds of weapons and tens of thousands of rounds of ammunition at the home of the Deputy Assistant for Logistics to the Army Chief of Staff (DCSLOG, CoS Army), Brigadier General Koesmayadi (since deceased), in North Jakarta. However, sadly, this event was made public only after the Army Chief of Staff made a statement to the press at Army Headquarters. After that, the media competed with each other to cover the story. Initially, the majority of media, including *Kompas*, *Koran Tempo* (*Tempo newspaper*), *Media Indonesia* and *Tempo* magazine covered the story intensely. While the status of the investigation remains unclear, the Army has announced the names of a number of civilian and military suspects. So, how Brigadier General Koesmayadi came into possession of the weapons and, most importantly, what he intended to do with them, remains unclear. The print media coverage was apparently more concerned with the event, rather than on the process.
2. Procurement of VAB armoured vehicles by DoD in advance of deployment of Indonesian peacekeeping troops to Lebanon at the beginning of October 2006, became a polemic for more than a month in the print media. The controversy began with the placement of an order, without going to tender, directly from the government to France for VAB armoured vehicles which had been reconditioned in 2000, and a subsequent meeting between the government (in this case, DoD) with Commission I of the Parliament, in which Commission I disallowed the direct purchase.<sup>4</sup> Under pressure from the National Parliament, the government ultimately renegotiated with the manufacturer of the armoured vehicles and succeeded in getting a reduction in the price from 700 thousand dollars to approximately 549 thousand dollars for the standard armoured personnel carriers (APC). Money set aside by the government was 287 billion rupiah, but with the

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<sup>4</sup> Kompas, 10 September 2006, Indonesia beli panser senilai Rp 259,2 milyar [Indonesia buys armoured vehicles worth 259.2 billion rupiah].

reduction in price, the total should have been only 205 billion rupiah. But the government spent 287 billion rupiah, on grounds of reconditioning VAB armoured vehicles we owned since 1997. The *mainstream* print media are perceived as having not investigated in depth whether the excess funds were in fact utilised to repair the old APCs. Only one *online* media outlet quoted the critical statement of Commission I member from the Golkar Party Faction, Yuddi Chrisnandi, about the use of these remaining funds.<sup>5</sup>

3. On 30 May 2007, in the village of Alas Tlogo, Lekok Subdistrict, Pasuruan Regency, East Java, four civilians were killed instantly and eight others were wounded; their attackers were Marines, members of the Indonesian Navy. The case of the shooting of farmers in Alas Tlogo shocked the public, given the context of the change of regime. Post-New Order, the military had repeatedly tried to convince the public that it had used its best efforts to change its culture and character from the repressiveness of the past to become a modern military. The military personnel in the field (i.e., the plantation) were the 'hatchet men' of the entrepreneurs. Relatively speaking, this was not much different from the New Order period. Many were pessimistic about how the case of these these shootings would be resolved. One of them was the Chairman of the Judiciary Commission, Busro Muqoddas, who stated to one of the media that the case of the shooting of civilians in Pasuruan, East Java, by military personnel ought to be adjudicated within the general justice system, because if it were to be tried in a military court, the nuances of *esprit de corps* would be very strong and he feared the proceedings would not be transparent. Nearly all the *mainstream* media reported the case; for at least eleven days after the shooting, there were still many national print media who were reporting developing facts, although it was not in the headlines.<sup>6</sup> It is noteworthy, too, that *online* media reported this case quickly and from several points of view, i.e., both commentary and factual.
4. The question of the candidacy for Governor of the Special Capital District of Jakarta, Fauzi Bowo, who shared the ticket with active-duty military Major General TNI Prijanto as candidate for Deputy Governor in the August 2007 gubernatorial elections. Prijanto had been Commander of Military Provincial Command-051/Wijayakarta in the Greater Jakarta Military Area Command from 1999 until 2000. Prior to being designated as Fauzi's partner, Major General Prijanto had served as Assistant for Territorial Affairs (Aster) to the Army Chief of Staff since May 2006. The choice not only offended candidates who were military retirees who had long been involved in political parties and in the public, but also brought dishonour on the ideal held out for the TNI, i.e., a TNI that is not involved in politics. This event was given prominent coverage in the Indonesian media, especially how Major General Prijanto, still holding the position of TNI Assistant for Territorial Affairs, had been nominated by Fauzi Bowo. In some of the media, the general public questioned Prijanto's status as active-duty military when he was nominated, but Prijanto responded to such accusations by claiming that he had already retired from the TNI. This response for public consumption was somewhat difficult to accept because

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<sup>5</sup> Media Indonesia online, 11 October 2006, Dephan dinilai Manipulasi Pembelian panser VAB [DoD Judged to have Manipulated Purchase of VAB armoured vehicles].

<sup>6</sup> See reporting on this case on page 16, Harian Media Indonesia, 9 June 2007.

common sense says that resigning from the TNI or public service could not possibly be processed in a day or two. While his response was rather difficult to accept, no *mainstream* media asked the crucial questions about Prijanto's status as investigative journalism.

5. Military Businesses. Defence Minister Juwono Sudarsono, in a discussion, said that the TNI's involvement in business began in 1952, when the government rationalised the military.<sup>7</sup> According to Juwono, the government was incapable of funding the military. The proceeds of nationalisation of assets of the former colonial power were then handed over to the military to manage. With such a history, we cannot keep looking backward to justify a biased argument, because formally, five years after enactment of the Law on the TNI, all TNI businesses must be handed over to the state. This is the mandate of Article 76 of Law No. 34 of 2004 on the TNI and so, in early 2006, the Supervisory Team for the Transformation of TNI Businesses was established. The team, made up of members from several departments, collected data on all of the TNI assets and businesses. At present, the definitive total of the wealth or assets of the foundations and cooperatives is in the hands of this team and, consequently, the public don't yet know. The problem of expropriation of TNI businesses is closely related to the adoption of a narrow definition of what a TNI business is, a topic of debate among the public. According to DoD, TNI businesses are companies with owned assets of at least 50 thousand US dollars. According to Juwono, possibly only six or seven companies meet this criterion. If so, foundations and cooperatives that have businesses, under this provision, will not be expropriated and will be returned to their units. *Kompas*, *Republika* and *the Jakarta Post* in their coverage of TNI businesses several times questioned how serious the government is about expropriating TNI businesses. A question posed about TNI businesses is whether those companies have been subjected to a thorough investigative audit. If so, who was the independent auditor or was it only a government auditor? The media have never publicised it.
6. Draft Law on National Security. Reporting on the Draft Law on National Security, the draft of which was drawn up by the Department of Defence, primarily centred on the statement by the Defence Minister on the *Tempo Interaktif* website that separation of the TNI and Polri went too far in reform of the TNI during 1998-1999. This distorts TNI reform which allocated security to the police and defence to the TNI. Much of the reporting by the mainstream media focused on the controversy around this Draft Law about the issue of placing Polri under a department, i.e., a political authority, whereas what is actually more significant is the role of the TNI during a state of emergency, especially state of emergency for national security. The question is who can interpret the question of the role of TNI personnel assigned to civilian positions during an emergency caused by disturbances that may threaten national security. So, there must be clear and measured regulation of the tasks of TNI personnel assigned to civilian positions in the context of security problems. The tasks associated with assignment of TNI personnel to civilian positions are beyond the scope

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<sup>7</sup> Kompas , 12 June 2007.

of the TNI's primary tasks.

7. Question of the Role of the National Parliament (DPR). According to Kusnanto Anggoro in the media, the Parliament can play an important role in military reform. "Theoretically, civilian control of the military can be accomplished through various mechanisms," he said. He proposed several procedures, among them *public hearings* and/or *budgetary control*. The Parliament, for example, can approve the size of the defence budget and through that mechanism determine military strength. The Department of Defence compiles the *Defence White Paper* and *Strategic Defence Review* as part of its guidance to the military for developing its operational strength. The Parliament can query defence and security policy made by the President, the Defence Minister or the Chief of Police. "However, the instinct for civilian control of the military is obviously not very strongly enthroned in the various democratic institutions," he said. Coverage with quotes such as this has become characteristic of the mainstream media. This means that the value of its reporting derives from quoting statements of specialists or experts, which can invite polemic in the media.
8. Clashes between TNI and Polri. Reporting on clashes between these two security elements has become a source of *hot news* from a number of national print, electronic and online media outlets. At least six such clashes occurred during 2006, of which the clash in Atambua, West Timor, in 2006 received the greatest media attention.<sup>8</sup>In this clash, one member of the Army's Battalion 744 who was on guard duty on the Indonesia-Timor Leste border was killed and one policeman wounded. However, the media were more inclined to report on the episode from the perspectives of both the victims and the damage done, while the root of the problem was not reported in depth.

### ***TNI's internal reform in the spotlight of the mainstream media***

In the beginning, people assumed that reform of the TNI would succeed in the political domain, i.e., that active-duty military would be eliminated from parliaments and civilian government. Even Indonesian Institute of Sciences (LIPI) researcher Jaleswari Pramodhawardani was fooled and, in his statement at a book discussion in Jakarta, said, "since 1998, there is tension between civilians and the military over two issues: how to extricate the TNI from politics and from business. With the first of these, the process is relatively much easier than the second," said Jaleswari.

At it happened, the candidacy of Prijanto, an active-duty military officer, for the political position of Deputy Governor demonstrates that Jaleswari's thesis was erroneous. Centre for Strategic and International Studies (CSIS) observer J. Kristiadi believes that candidacy of members of the TNI in the election of regional heads (regional elections) can disrupt the process of reform of the military. "Constitutionally, members of the TNI can only elect, not be elected. Even if he wants to nominate for a position, he must retire beforehand," he said.

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<sup>8</sup> Panglima TNI: bentrok TNI-Polri, Masalah Serius [TNI Commander: TNI-Polri clashes a serious problem], Tempo Interactive, 11 December 2006.

Therefore, if the TNI really wants to carry out reform to become an institution that is professional in carrying out its mission to preserve the sovereignty and integrity of the Unitary State of the Republic of Indonesia, its members ought not stand for office in regional elections.

It is interesting to observe how the press often conducts polls to gauge public perceptions of the performance of security elements. One example is the poll conducted by the Kompas daily newspaper on the performance of the TNI as its sixty-first anniversary approached. Results of a poll by *Kompas Daily's Institute of Research and Development*,<sup>9</sup> for instance, revealed that the Indonesian National Armed Forces (TNI) was seen to be at a crossroads between pursuing the reform agenda by upgrading its professionalism and withdrawing from politics or abandoning its barracks to acquire more political freedom for this defence-security institution.

Apparently *Kompas* also discovered in its research, observing the political process post-New Order, that the public was of two minds about the role of the TNI, wavering between supporting and nervousness about use of the TNI's political rights. Actually, the image of the TNI shows a trend towards improvement, traced back to the beginning of 'reformasi' in 1998. According to polling in 2006, no less than 60.6 percent of respondents said that TNI had a good image. However, on the other hand, those who believe the image of the TNI is not good also trended upwards. Where in 2005, as many as 22.2 percent of respondents believed the TNI had a bad image, in 2006 that percentage increased to 35.3 percent of respondents. The increase in the bad image of the TNI cannot be separated from the context of events surrounding this sixty-two year old institution.

Without doubt, this has become a polemic, arousing suspicion that there is a movement that is out of control within the TNI. Nearly half (47.3 percent) of respondents stated that the discovery of the weapons caused their trust in the TNI to decline. Further, the majority (65.2 percent) of respondents were pessimistic about the prospect of the discovery of the weapons cache being scrutinised in accordance with legal procedures and resolved. Aside from that, reform and control of the arms business within the TNI had apparently produced little in the way of a definitive outcome. In fact, on the contrary, quite recently it was revealed that some retired military had been involved in the black market arms trade in the United States of America.

However, the black mark this produced apparently did not destroy the good image that the TNI had begun to create since the reform era. Public awareness of the TNI's role in a number of disasters that struck the country and the energy displayed by the TNI in going to the locations of the disasters, from the eruption of Merapi volcano, the Yogyakarta earthquake, the Pangandaran tsunami to the Sidoarjo mud volcano seem to have successfully resurrected the public's positive attitude towards the TNI. The TNI's social role to support the community through various incidents was praised, with three out of four respondents (75.0 percent) saying they were satisfied with the TNI's performance in supporting the communities in locations that experience natural disasters.

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<sup>9</sup> Kompas, 4 October 2006.

Sadly, despite the positive public response to the TNI's social role, there was less satisfaction with the TNI as professionals. On the subject of restoration of security in troublespots, 46.3 percent said they were satisfied, while the other half (50.7 percent) said they were not. Analysis of other aspects of the TNI's performance such as protecting state sovereignty garnered less enthusiastic responses.

Of the various analyses of the TNI's performance, the ones that indicated a positive response were nearly balanced by those that were negative. In general, the majority of the public polled (57.6 percent) were quite satisfied with the TNI's performance at the time, while there were still 39.7 percent who felt dissatisfied.

Amid the public praise and criticism, the TNI itself was having a verbal tug-of-war over its political role. After dropping off the radar with the collapse of Soeharto's military regime, the political rights of TNI members are again being questioned. The urge to restore the political rights of TNI members is again stirring in the National Parliament among representatives of political parties. Apparently the question of the political role of the TNI in the eyes of the public has reignited phobias, torn between favouring it and at the same time fearing it.

On one hand, there is discussion about restoring the TNI's right to vote in general elections, which means that the TNI will directly or indirectly have a hand in practical politics, although this may be totally different from its political role in earlier days. On the other hand, none other than President Susilo Bambang Yudhoyono himself has used official forums three times to voice his position that the TNI not get involved in political activity.

The public is divided on the exercise of political rights by the TNI. Half (49.2 percent) of the public polled do not object to restoring the voting rights of TNI personnel to those of the 1955 General Election, while the other half (48.8 percent) are opposed. On the other hand, the public's concern is spreading silently. If the TNI is granted the right to vote in general elections, it is feared that the TNI will have difficulty maintaining its neutrality. Not less than 62.1 percent of respondents declared their concerns about that. Even more notably, in the eyes of 65.5 percent, the TNI is still more biased towards the rulers than to the people.

President Yudhoyono's arguments against TNI involvement in political activity are very well-founded. At least, the majority (67.9 percent) of respondents believe the TNI still maintains strong influence over the political affairs of this country. However, with public ambivalence about political participation of the TNI, the community is still nervous about deciding.

In practical politics geared to achieving regional autonomy, for instance, the public tends to prefer civilians over military figures. Not less than 61.7 percent specifically stated that they do not agree with allowing TNI members who have entered politics to contest seats in elections for regional heads, i.e., regional elections. Obviously, the majority of the public have no wish to return to the past when the ranks of regional heads were dominated by the military.

While the public is still uncertain about the role of the TNI in political affairs, it emphatically rejects the notion of TNI involvement in business. Notwithstanding that more than half of the respondents (66.2 percent) considered the welfare of TNI members to still be a concern, the majority (86.2 percent) rejected TNI involvement in business activities and specifically stated that it is the government that must guarantee the living standards of the troops.

The outcomes of these polls increasingly show that there are diverse perceptions of the TNI in this country. In some aspects, its presence is sometimes undesirable, while in others, its reputation as trained guardians of the national defence always attracts attention, and occasionally pride, as expressed by the 63.6 percent of respondents who have relatives or family who are TNI, perhaps illustrating the quite high level of respect for their social class.

### ***Behaviour of the Media in their Coverage***

The VAB armoured vehicles, Koesmayadi and Alas Tlogo cases, as well as the issues of TNI businesses and Deputy Governor Prijanto are failures of reform of the TNI, especially the Army, in the context of civilian supremacy over the military and related to structuring of several draft laws, including those on national security [abbreviated as Kamnas], intelligence, state secrets and the reserve component, because the key element in reform is the availability of a legal basis for a specific and clear *division of labour* amongst security elements.

It is not surprising that the media put the spotlight on the TNI's behaviour. *Kompas* Daily carried many articles about the immature state of reform within the TNI. In its criticisms, *Kompas*, was often off-target, making it difficult for the general public to understand. Serious criticism came only from opinion writers, rather than from *Kompas* journalists themselves.

Tempo magazine was more critical and targeted. For example, for Tempo, the discovery of 103 rifles, forty-two (42) pistols, six (6) grenades and nearly 30 thousand rounds of ammunition at the home of Brigadier General Koesmayadi was a serious matter.

According to TEMPO, armed conflicts like those that occurred in Aceh and Maluku or are still going on in Poso and Papua often raise the unanswered question: where did standard military weapons used by the perpetrators come from? This included, within the same week, the arrest of a man selling Uzi automatic weapons in North Jakarta and the police report of the seizure of the same type of weapon from the Jemaah Islamiyah group. The discovery at the home of Brigadier General Koesmayadi hopefully will be a bright spot in efforts to trace the sources of illicit trade in military weapons that is behind a number of campaigns of violence in the Republic.

*Kompas* is among those who have been industrious in monitoring formal processes such as the submission of the draft law on the TNI, while Tempo Interaktif is more interested in expert statements and activities that make *news*. *Republika* daily seems uninterested in issues of military reform but when there is a specific incident related to Muslims, for example, the

operations to arrest men on the Most Wanted List of terrorists in Tanah Runtuh, Central Sulawesi, by Polri Special Anti-Terror Detachment 88, it was reported in detail by this media outlet which claims to represent Muslims. *Republika* tended to sensationalise its reporting of cases of violation of human rights by Polri in this onslaught.<sup>10</sup>In 2006 *Republika* provided extended coverage of the issue of military reform during the period leading up to the TNI's anniversary.

The *Jakarta Post*, , perhaps because it is an English-language daily, is bolder in its criticism of the TNI. In its *features* , the Jakarta Post often publishes coverage critical of the TNI, including articles on TNI businesses, the Draft Law on National Security, the Territorial Comand, civilian-military relationships and so forth.

### ***Closing***

Of course, there must be checks and balances on the reform process, but there must also be mutual trust and equal opportunity. It also needs time and a conducive environment.

According to military expert Salim Said, one of the challenges of security reform is interesting the military to take up and redefine itself within the 'new religion', i.e. *the religion of democracy which*, in this context, means preventing militarisation of the police and domination of the intelligence agencies by military leaders and discourse. Unless the military are prepared to embrace the new era, it will be difficult to realise a more comprehensive and human-centred concept of security. Salim observed that there are two major constraints. The first is the reluctance of the military to trust civilians and to recognise civilian supremacy. The second is the readiness and willingness within civil society itself. The latest example is the partnership of the candidates for Governor and Deputy Governor of the Jakarta Special Capital Region, Fauzi Bowo and Prijanto. According to Salim Said, views like those of Alfred Stephan, which are still dominant among the Indonesian military, merely put new clothes on third world realities. Such rationales were, of course, designed by the US government to justify military participation in politics, primarily in Latin American regimes it supported.

The media, as one of the pillars of democracy, according to Kurnanto, have their own problems. They all have more or less the same problem, i.e., most journalists are more interested in reporting on "generals' politics" rather than significant defence matters. Such weaknesses must be studied further to determine whether the causes are structural or cultural.

If the problem is cultural, it may be understandable because the process (of change is gradual). However, if the causes are structural, the press will be less inclined to be critical when dealing with sociopolitical problems, much less those related to security reform.

Media coverage of security sector reform is still fixated on reacting to

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<sup>10</sup> *Republika*, 23 January 2007.

events.<sup>11</sup>Media coverage does not present the news comprehensively or reveal the root of the problem. This means that the media must take a more holistic approach to its coverage, including reporting the process leading up to an event. The media must be able to dissect a question and follow up until the point of final resolution. However, sometimes the demands of the media owners has more priority than the mutual interests (of journalists). So, journalists, as the spearheads of the press, must cooperate with other segments of civil society to promote improvement in the performance of security actors.

Apparently, civilian alliances or coalitions needed to carry the military into the democratic order are still not very solid and, therefore, cannot guarantee the continuity of security reform. Change, if ever it occurs, solely relies upon the willingness of the military. In such an environment, the door is always open for exploitation of the political structure as much as possible by certain political powers, including the military. Currently, civil society groups must be bold in making decisions to carve out their respective roles. For the media, this is primarily about being more objective and more candid. Consequently, the control function of the media over security actors can proceed optimally.

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<sup>11</sup> See the examples of some of this sort of coverage in the eight cases/issues mentioned earlier in this article.

# Relations between the Department of Defence and TNI HQ during the Reform Era

Rico Marbun<sup>1</sup>

## *Introduction*

In the context of *defence management reform* in Indonesia after the fall of the New Order regime<sup>2</sup>, three policies have been noteworthy. **First**, in connection with the separation of POLRI from the TNI, based on MPR (People's Consultative Assembly) Decree No. VI of 2000, the Department of Defence and Security (Dephankam) became the Department of Defence. **Second**, the positions of Minister of Defence and Commander of the Indonesian National Armed Forces (TNI) were separated, and **Third**, for the first time in the three decades of the history of New Order Indonesia, Abdurrahman Wahid<sup>3</sup> who is also often called Gus Dur, appointed Dr. Juwono Sudarsono, a civilian, to become Defence Minister.<sup>4</sup>

Separation of the words 'Defence' and 'Security' was intended not just to change the name of the department; it was based on the desire to restore the function of the military to its primary mission, i.e., defence. In accordance with MPR Decree No. VII of 2000, the institution responsible for maintaining domestic security and order is now the Indonesian National Police (POLRI).<sup>5</sup> Steps two and three were aimed more at reinforcing representation by civilian authorities and revitalisation of the principle of subordination of the TNI as an instrument of the State.

Reorganisation of the Department of Defence was an important milestone in *Security Sector Reform*, because the presence of a Department of Defence is theoretically representative of civilian legal authority over the military. And Indonesia is among the *post-authoritarian* states that must reshape the relationships, work patterns and institutions of the Department of Defence and Military Headquarters.

This section in particular will attempt to elucidate the relationships between the Department of Defence and TNI Headquarters during the Reform Era. There are two fundamental questions that will be answered by this section.

First, what kinds of changes to the relationships, functions and position of the Department of Defence and TNI HQ have resulted from reform of the military?

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<sup>2</sup> New Order is the label applied to the governmental regime that replaced the government of President Soekarno. The New Order lasted for 32 years, with General Soeharto as its President and the military as his main supporters.

<sup>3</sup> Abdurrahman Wahid was the fourth President of Indonesia.

<sup>4</sup> Malik Haramain, *Gus Dur Militer dan Politik* [Gus Dur: Military and Politics], Yogyakarta: LKiS, 2004), editor's introduction section.

<sup>5</sup> Leonard C. Sebastian, *Realpolitik Ideology: The Use of Indonesian Military Forces*, Singapore: ISEAS, 2006, p. 331.

Second, do the relationships that have pertained during this Reform Era satisfactorily fulfil the principles of civilian control

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To respond to these two fundamental questions, this paper will cover them in the following manner: *First*, explain in detail the functions and working relationships between the Department of Defence and TNI HQ<sup>6</sup> based on rules that came into effect after 'reformasi'. *Second*, analyze to extent to which these relationships conform to existing values, ideals and regulations. Where deviation is found, the root causes will be sought and analysed. The final section of this chapter will propose some solutions and steps that must be pursued to achieve the ideal position.

### ***New Department of Defence and TNI Headquarters Systems in the Reform Era***

Coupled with the torrent of demands from the Indonesian community after the fall of the New Order to reform the military, two new laws were passed that were associated with structuring the national defence, i.e., Law No. 3 of 2002 on National Defence and Law No. 34 of 2004 on the Indonesian National Armed Forces. Within these two laws, the rules for the work, functions and coordination of the Department of Defence and Headquarters<sup>7</sup>TNI organisations are made explicit. The functions and relationships of each of these institutions as specified in law are described below.

#### **A. Authority of the Department of Defence.**

Article 16 of Law No. 3 of 2002 stipulates that the Department of Defence is obliged to support President in formulating general policy on the national defence and then to incorporate it within policy for administration of defence. As provider of defence policy, the Department of Defence has the authority to plan the development of the defence force and to formulate general policy on use of defence force components. The article also states that the Defence Minister shall cooperate with leaders of other departments and government agencies to formulate and implement strategic planning for management of national resources to be used in defence.<sup>8</sup>

Therefore, under law, the Defence Minister (Menhan) in his capacity as head of the Department of Defence has the following tasks:

1. The Minister supports the President in formulating general policy on national defence;
2. The Minister determines policy on the conduct of national defence based on general policy determined by the President;

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<sup>6</sup> TNI is the Indonesian National Armed Forces, the military institution that was called 'Armed Forces of the Republic of Indonesia' or 'ABRI' during the New Order era.

<sup>7</sup> Headquarters is hereinafter referred to as HQ.

<sup>8</sup> Andi Widjajanto, *Reformasi Sektor Keamanan Indonesia (Security Sector Reform in Indonesia)*, Jakarta: Pro Patria, 2004), p. 55.

3. The Minister formulates the Defence White Paper and determines policy for bilateral, regional and international cooperation in the defence arena, and
4. The Minister formulates general policy on employment of TNI forces.

#### B. Pattern of Relationships and Coordination between the Department of Defence and TNI Headquarters

The two laws (the Law on National Defence and the Law on the TNI) have also stipulated and formulated the structure for relations between the Department of Defence and TNI Headquarters. Article 17, Chapter VI, clause 1 (of the Law on the TNI) stipulates that authority and responsibility for directing TNI forces is vested in the President. It goes on to stipulate that when using TNI forces, total command is in the hands of the Commander, and in matters of use of the forces, is directly responsible to the President.<sup>9</sup>

Further, in defence policy and strategy as well as administrative support, the TNI is under coordination of the Department of Defence.<sup>10</sup> The section on elucidation of this law states that what is meant by *under coordination of DoD* is everything related to strategic planning which includes the aspects of management of the national defense, budgeting policy, recruitment, management of national resources and management of defence industry technology required by the TNI, whereas what is meant by management of TNI forces is related to education, training, force readiness and military doctrine is vested in the TNI Commander with the assistance of the Chiefs of Staff of the service components.<sup>11</sup> In this regard, the TNI organisation is headed by the Commander of the Indonesian National Armed Forces and consists of TNI Headquarters and its subordinate Army Headquarters (HQ TNI-AD), Navy Headquarters (HQ TNI-AL) and Air Force Headquarters (HQ TNI-AU).<sup>12</sup>

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<sup>9</sup> Law No. 34 of 2004, article 19, clauses 1 and 2.

<sup>10</sup> See Law No. 34 of 2004, article 3, clause 2.

<sup>11</sup> See elucidation to Law No. 34 of 2004, article 3, clause 2.

<sup>12</sup> See Law No. 34 of 2004, article 12, clause 1.

C. Flow Chart of Policy for Administration of National Defence

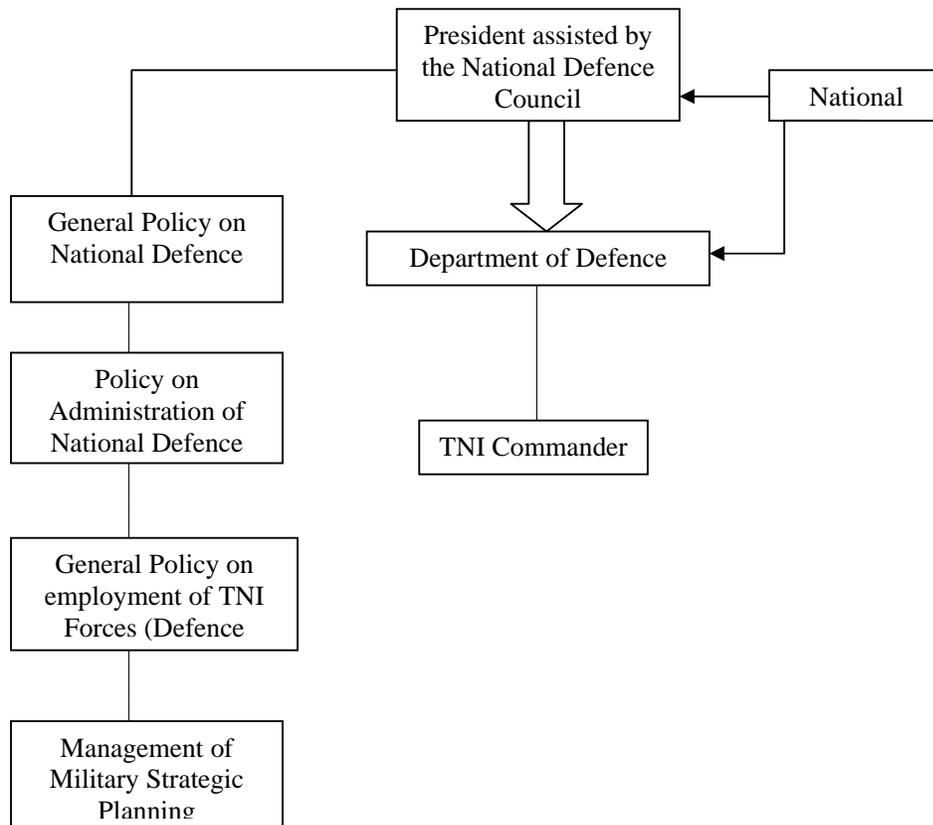


Figure 1<sup>13</sup>

The figure above depicts the channels for policy-making on national defence, not the operational command channels for use of military forces. The chart is summarised from the Law on National Defence on the flow of management of national defence. At the initial stage, the civilian government, i.e., the President and the Department of Defence, formulates general policy on national defence. The General Policy on National Defence is made operational by the Defence Minister by formulating Policy on the Conduct of National Defence and General Policy for employment of TNI Forces.<sup>14</sup> Article 16 of Law No. 3 of 2002 stipulates that the Department of Defence is obliged to support the President in formulating general policy on the national defence and then to incorporate it into policy to provide for defence. As administrator of defence policy, the Department of Defence has the authority to plan the development of the defence force and to formulate general policy on use of defence force components. The TNI Commander is to use this political policy on national defence as guidance for planning the development of military strategy. Formulation and implementation of policy-making on national defence is

<sup>13</sup> Andi Widjajanto, *Reformasi Sektor Keamanan Indonesia (Security Sector Reform in Indonesia)*, Jakarta: Pro Patria, p. 56.

<sup>14</sup> Andi Widjajanto, *Reformasi Sektor Keamanan Indonesia (Security Sector Reform in Indonesia)*, Jakarta: Pro Patria, p. 55.

regularly supervised by the Parliament (DPR).<sup>15</sup>

#### D. Budget Administration

One of the instruments for civilian control of the military is control of the its budget. Under the law, national defence is funded legally from the State Budget<sup>16</sup> (based on the budget request) submitted by the Department of Defence (DoD).<sup>17</sup> To support the production of the DoD budget, the TNI Commander makes a budget submission to the Defence Minister.

The budget process is basically as follows:<sup>18</sup>:

1. Army, Navy and Air Force Headquarters each undertake bottom up review to identify requirements.
2. The outcomes of bottom up review are provided to the Department of Defence for incorporation into general policy on national defence.
3. This policy also includes development plans. Then, it is on the basis of these plans that the Department of Defence specifies the size of the required budget and incorporates that figure into the Defence Budget Plan which is then incorporated into the Draft State Budget as the defence sector segment of the state budget.
4. The budget for the defence sector, once approved by the National Parliament in the State Budget, is then allocated by the Department of Defence.

The regulations introduced by Law No. 3 of 2002 and Law No. 34 of 2004 during the Reform Era is are indeed advances and attempt to fulfill the standards of civilian supremacy that apply generally. As has been illustrated, these regulations are credited with establishing a framework for relations between TNI HQ and DoD. The Department of Defence is now recognised as the civilian administrator of government functions in the defence field. The Law on Defence has also vested in the Department of Defence a greater authority for formulating defence policy and policy on use of the defence force. Even more significant is that it is the Department of Defence which is entitled to make the budget submission to Parliament. Certainly, when formulating the budget, DoD takes recommendations and input from TNI HQ and the three service components (Air Force, Navy and Army).<sup>19</sup>

#### ***Tenuous Control of the Department of Defence***

On the surface, the analysis above shows that there have been advances in the relationships between the Department of Defence and TNI Headquarters. However, at the practical level, some things still stand in the way of healthy

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<sup>15</sup> Ibid, p. 55.

<sup>16</sup> See Law on National Defence, Article 25, clause 1.

<sup>17</sup> Law No. 34 of 2004, article 66, clause 2.

<sup>18</sup> Op cit, *Security Sector Reform*, matter 95.

<sup>19</sup> Rizal Sukma and Edy Prasetyono, *Security Sector Reform in Indonesia: the Military and the Police*, Netherlands Institute of International Relations, Clingendael, February 2003, p. 19.

relationships between the Department of Defence and TNI Headquarters.

*First*, although there are clauses that state that in administrative affairs and defence policy, TNI HQ is under DoD coordination, but there is no clarity about what kind of coordination (is intended). This difficulty is aggravated by the fact that at present TNI HQ is not integrated within, is not under the direct control of, and need not be responsible to the Department of Defence. This is because the TNI Commander has equal status with the Defence Minister; both are members of Cabinet. Consequently, in practice, the TNI Commander is directly responsible to the President, not to the Defence Minister. This reality gives rise to a type of dualism and uncertainty over who actually has full authority to make national defence policy.

The hierarchy of relationships between DoD and TNI is not specifically regulated, because provisions in the law simply state that '*in defence policy and strategy as well as administrative support, the TNI is under coordination of the Department of Defence*' (Article 4, clause 2, Law No 34 of 2004). There is no elucidation of what is meant by 'under coordination' and how this coordination is to be carried out. In other words, the authority of the Defence Minister as the civilian authority remains limited by the status of both the TNI Commander, who is not subordinate to the Minister, and TNI Headquarters, which has not become part of the Department of Defence.<sup>20</sup> An example of the violation of this principle is the reestablishment of Kodam Iskandar Muda (Iskandar Muda Military Area Command (MAC))<sup>21</sup> in Aceh as a result of pressure from TNI HQ. As we know, the MAC in Aceh had been closed during the Habibie government.<sup>22</sup> During the Megawati government<sup>23</sup>, TNI HQ openly declared its intention to reestablish a MAC in Aceh because of the increasing level of attacks by Free Aceh Movement (GAM) separatists. The recommendation announced publicly, while possibly still debatable from the standpoint of effectiveness in the choice of strategies, nonetheless violates both the spirit and the letter of the Law on National Defence. The formation of a MAC is basically a *force deployment*. This recommendation actually fell within the domain of deciding on employment of TNI forces by the State. This means that authority over the recommendation was actually in the hands of civilian authorities who are executors of the defence function.

In short, this recommendation should have been drawn up and proposed by the Defence Minister, not by TNI HQ.<sup>24</sup> This incident can also be interpreted as open *pressure* by TNI HQ to get the reestablishment of a Military Area Command (MAC) in Aceh into the public arena, without having to go through

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<sup>20</sup> Rizal Sukma, *Supremasi Sipil: Sampai Di mana? Mau Ke mana? (Civilian Supremacy: How far has it come? Where is it going?)*, Media Indonesia, 5 October 2005.

<sup>21</sup> The Kodam (MAC) is the territorial command structure at the provincial level. The MAC that was part of the territorial defence posture in Aceh was closed as a result of pressure from the community, because of human rights violations committed by the MAC in Aceh during the New Order period.

<sup>22</sup> Habibie was the third President of Indonesia, who took office upon the fall of President Soeharto. Habibie had previously been Deputy President and automatically replaced Soeharto when Soeharto announced his resignation.

<sup>23</sup> Megawati was the fifth President, succeeding Abdurrahman Wahid when he stepped down.

<sup>24</sup> Eds, M. Riefqi Muna, *Likuidasi Komando Teritorial dan Pertahanan Nasional (Liquidation of the Territorial Command and National Defence)*, Jakarta: The Research Institute for Democracy and Peace (RIDEP), July 2002, p. 36.

the mechanism of discussion with the Department of Defence.

*Second*, although TNI HQ is subordinate to the Department of Defence in administrative support, procurement, budget and defence policy, there are many cases that indicate that the reverse is true. For instance, there have been procurements that the Defence Department knew nothing about and was not involved in. On 23 April 2003, Indonesia entered into an agreement with Russia to purchase two each of the Sukhoi SU-27SK and SU-30MK fighter aircraft, plus two Mi-35P helicopters<sup>25</sup>. What was controversial was that the procurement process violated the Law on National Defence with respect to financing. Violation of the law became increasingly clear when it was revealed that the contract had been signed by someone who did not have authority to do so. The contract for purchase of the Sukhois was signed by the TNI Commander at that time, General Endriartono Sutarto as *user* and Chairman of the State Logistics Agency (Bulog)<sup>26</sup> and Widjanarko as *buyer*.<sup>27</sup> This is done without the knowledge or signature of the Department of Defence; even the Defence Minister at that time, Matori Abdul Djilil, admitted he knew absolutely nothing about the problem of the Sukhoi purchase.<sup>28</sup> The case of this procurement, of course, violated Law No. 3 of 2002, Article 16, clause 6. While this unilateral procurement action which by-passed DoD was in train, preparations were underway to send a team of Air Force and Army technicians (to Russia) without any agreement from DoD.<sup>29</sup>

The second violation of the budgeting process involved a grant by the Riau Regional Government to the Western Fleet. The Riau Regional Government purchased several KAL-35 naval vessels. The Memorandum of Understanding for purchase of the ships was signed by the Western Fleet Commander, Rear Admiral Muslimin Santoso, and Riau Governor Saleh Djasit. This clearly violated Article 25, clause 1, of the Law on National Defence, which stipulates that national defence shall be funded by the State Budget. The case falls into the category of weapons procurement which requires prior submission to DoD.<sup>30</sup>

The examples above are just the tip of the iceberg; such violation occur frequently. They demonstrate that civilian authority over the military, in this case represented by the Defence Department vis a vis TNI Headquarters is still far from ideal. The examples above also indicate that violations stem from ambiguity position together with ambiguities in the status of the Defence Minister and the TNI Commander, culminating in a chaotic working relationship between DoD and TNI HQ. Clearly, because the TNI Commander and TNI HQ are not subordinate to the Defence Minister and the Department of Defence, TNI HQ can act independently and by-pass DoD. This creates

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<sup>25</sup> *Pembelian Sukhoi Melanggar 3 UU (Purchasing Sukhois Violates Three Laws)*, *Pikiran Rakyat*, 11 Juli 2003.

<sup>26</sup> Bulog is the State Logistics Agency, the institution responsible for distribution and stabilising the price of nine (9) basic necessities, such as rice, kerosene and so forth. Bulog is totally unrelated to defence.

<sup>27</sup> *Sukhoi ditentang Mahasiswa Bandung (Bandung Students Protest Over Sukhois)*, *Pikiran Rakyat*, 25 June 2003.

<sup>28</sup> *Departemen Pertahanan Dinilai Tidak Berwibawa (Defence Department Judged Powerless)*, *Kompas*, 21 May 2003.

<sup>29</sup> *Panglima TNI beberkan pembelian Sukhoi (TNI Commander reveals Sukhoi purchase)*, [www.angkasa-online.com](http://www.angkasa-online.com), *Angkasa*, no. 9, June 2003 Year XIII.

<sup>30</sup> *Monograph No. 2, Keamanan Nasional (National Security)*, *Pro Patria*, p. 40.

windows of opportunity for impropriety and for continuing *defacto* emasculation of civilian authority, in this case, DoD.

Of course, in the elucidation to the Law on the TNI, Article 3, clause 2, it says that within the framework of achieving effectiveness and efficiency in management of the national defence in the future, the TNI, including TNI HQ, shall be "within" the Department of Defence. This means that TNI HQ is to be under the control of DoD, with the TNI Commander no longer on an equal level with the Defence Minister. It will be difficult to bring this about for three reasons: *First*, this clause appears only in the elucidation section of the law (and not in the law itself), with the wording '**in the future**'. The words **in the future**, with no clear target and time limit, provide an opportunity to postpone integration of TNI HQ into DoD. *Second*, the government itself has still not set a clear deadline for when it will enforce integration of TNI HQ and DoD, and *Third*, and most important of all, the military, i.e., the TNI Commander and the officers under him have repeatedly rejected the notion of the integration of the TNI into the Department of Defence.

On the subject of making the TNI Commander and HQ subordinate to DoD, Defence Minister Juwono Sudarsono has on many occasions broached the idea that it would be best if TNI HQ were integrated into and subordinated to DoD very soon.<sup>31</sup>, and he is of the view that it will take at least three (3) years to complete the integration and transition processes.<sup>32</sup> However, while the demand and pressure from DoD officials for the TNI to be brought under its control is incessant, the pressure from opponents is no less intense. In fact, the TNI Commander has directly stated his objections to and rejected the notion that he and TNI HQ must be placed under DoD during what he categorises as a period of political transition.<sup>33</sup> His main reason for doing so is that he believes civilians are not mature enough.<sup>34</sup> The TNI Commander fears that if in future the position of Defence Minister is filled by members of a certain political party, the TNI might be employed and used as a tool to support the party's political interests. In conclusion, the TNI still questions whether the Defence Minister is prepared not to use the TNI for *political advantage*, were the TNI to be within DoD.

### ***Dissecting the Roots of Refusal***

Precisely what was it that caused the TNI to refuse to be integrated into DoD?

*First*, in the opinion of the author, the TNI Commander's open and repeated refusals can be understood from the standpoint of history. The view of high-ranking TNI officers that the TNI would tend to be politicised if it were to be under the control of DoD actually stems from historical trauma, traceable to an incident that occurred during the Parliamentary Democracy era.

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<sup>31</sup> *TNI di Bawah Dephan (TNI Under DoD)*, Kompas, 29 October 2004.

<sup>32</sup> *Integrasi TNI-Dephan butuh waktu 3 Tahun (Integration of TNI and DoD to Take 3 Years)*, Kompas, 21 December 2004.

<sup>33</sup> *Panglima TNI berkeberatan TNI diletakkan di bawah Dephan (TNI Commander objects to TNI being placed under DoD)* Kompas, 9 November 2004.

<sup>34</sup> *Penempatan TNI di bawah Dephan jangan Buru buru (Don't Rush into Placing TNI under DoD)*, Tempo Interactive, 8 November 2004.

On 14 November 1945, the presidential system of government was discarded, replaced by a parliamentary system. A Cabinet was formed, headed by a Prime Minister who was controlled by parliamentarians in the Central Indonesian National Committee (KNIP).<sup>35</sup> Sjahrir was then appointed Prime Minister and Amri Sjarifuddin as Defence Minister. As we know, Sutan Sjahrir, the Prime Minister, founded the Socialist Party. Ideologically, the Socialist Party can be categorised as liberal and anti-fascist. For that reason, Sjahrir took the view that the subordination of the military to civilian control was non-negotiable. This was what caused Sjahrir to reject the recommendation of the military, who wanted Sri Sultan Hamengkubuwono [the Sultan of Yogyakarta] to be Defence Minister. Sjahrir instead chose Amir Sjarifuddin, a fellow member of the Socialist Party of Indonesia, to become Defence Minister.<sup>36</sup>

However, it seems Amir Sjarifuddin wanted not only to place the military under the control of the State, but in fact to make the military subordinate to the Socialist Party and its ideology. Amir gave a speech to a military audience in which he said that the military would receive political indoctrination so that they would have a political ideology and political convictions. For that end, he established a body called Military Political Education (Pepolit). Amir, in his capacity as Defence Minister, issued an order appointing his civilian colleagues as political officers within military divisions. Not only that, the civilians that were appointed, such as Soekarno Djojopratiknyo, were even given the military rank of Lieutenant General. Soekarno was made Chief of Staff of Pepolit, while other civilians within the Pepolit structure were given the rank of Major General, the same rank as the commander of a military division. Army Commander-in-Chief Soedirman was vehemently opposed to the creation of the Pepolit [military political education organisation] and assumed that it was a tool for introducing communist ideology into the military.<sup>37</sup>

The policy was seen to be a clear attempt to politicise the military. This policy was also what caused Army Headquarters, at that time located in Yogyakarta, openly to

challenge the order of the Defence Minister in Jakarta.<sup>38</sup> Defence Minister Amir Syarifuddin took this opposition as open insubordination on the part of Army Headquarters in Yogyakarta, and finally decided to establish and arm his own army. He soon recruited revolutionary militias from amongst the many still-active guerillas, given Indonesia's nascent independence, and named his army "Biro Perjuangan" [Bureau of Struggle]. In the beginning, the activities of the Bureau of Struggle were publicised as non-partisan; however, because members of the Socialist Party of Indonesia (PSI) dominated positions in the Ministry of Defence at that time, in the end it was the Socialist Youth of Indonesia (Pemuda Socialis Indonesia/PESINDO) militia, closely allied to the PSI, that was armed and equipped. A number of these struggle militias were

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<sup>35</sup> Legge, J.D., *Soekarno : Biografi Politik (Soekarno: A Political Biography)* (Jakarta: Sinar Harapan, 2001), p. 246.

<sup>36</sup> Dwi Pratomo Yulianto, *Militer dan Kekuasaan: Puncak-Puncak Krisis Hubungan Sipil-Militer di Indonesia [The Military and Power: Crisis Points in Civilian-Military Relations in Indonesia]*, Yogyakarta: Narasi, 2004, p. 86.

<sup>37</sup> Dr. Abdoel Fattah, *Demiliterisasi Tentara: Pasang Surut Politik Militer 1945-2004 [Demilitarisation of the Army: Ebb and Flow of Military Politics, 1945-2004]*, Yogyakarta, LKiS, 2005, pp. 56-57.

<sup>38</sup> *Militer dan Kekuasaan [The Military and Power]*, p. 90.

later organised into brigades and called the People's National Army of Indonesia (TNI Masyarakat). In so doing, the Department of Defence clearly set itself in competition with the TNI.<sup>39</sup>

However, it would be incorrect to put all the blame on these manoeuvres by the Department of Defence during the era of parliamentary democracy. The military's anxiety and antipathy towards civilian policy actually runs deeper, because the military feel they are superior to civilian politicians whom they consider to have failed to protect the State. The TNI's resentment peaked when, during the second stage of military aggression by the Dutch, President Soekarno and other civilian leaders reneged on their pledge to lead the guerilla effort in concert with the military. Sudirman, for example, was extremely frustrated with civilian leaders who allowed themselves to be captured.<sup>40</sup> This sentiment has been passed down to each generation of TNI officers by declaring that it is the TNI that is the 'true guardian of the Republic'.

*Second*, throughout its history, the Department of Defence has remained trapped by two issues that work to its disadvantage. Namely, the Defence Department, unable to measure up to the authority that it has been given, has never been able to control TNI Headquarters and tends to be dominated by the military. The latter is what has led DoD to be nuanced exclusively towards the military.

General Nasution was the first to attempt to strengthen the Department of Defence but, sadly, his efforts were crushed by the manoeuvres of the civilian government itself, in this instance, by Soekarno. In 1961, when Nasution visited Moscow to purchase military equipment, he was also seeking a new concept for reorganising the Indonesian military. Nasution then conceived the idea of integrating all military forces under, and thus strengthening, the Department of Defence. He recommended that the DoD and TNI Headquarters be reorganised and rationalised to mirror Russia's Red Army. Nasution said, "*I intend to appoint the Chiefs of Staff of all of the service components to the Staff of the Deputy Defence Minister where all will be subordinate to the Department of Defence.*" "*In so doing, the four service headquarters will be merged into the Defence Ministry with a joint general staff.*"<sup>41</sup> Although Nasution himself was at that time a military leader, these steps were actually in line with the ideals of civilian control of the military, in which all the services are subordinate to the control of civilian institutions, i.e., the Defence Department. However, most unfortunately, due to Soekarno's competing political interests, the idea ultimately failed. Soekarno, in fact, sidelined Nasution and successfully lobbied three of the services, (the Air Force, the Navy and the Police) to refuse to go along with Nasution's suggestion. Further still, the Chiefs of Staff of each of the services were appointed to positions on a par with ministers. This was Soekarno's trick to prevent the

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<sup>39</sup> *Militer dan Kekuasaan [The Military and Power]*, pp. 94-95.

<sup>40</sup> Salim Said, *Militer Indonesia dan Politik: Dulu, Kini dan Kelak [The Indonesian Military and Politics: Past, Present and Future]*, Jakarta, Pustaka Sinar Harapan, 2006, p. 116.

<sup>41</sup> A.H. Nasution, *Memenuhi Panggilan Tugas [Answering the Call to Duty]*, Jakarta: Haji Mas Agung, 1989, vol. V, pp. 219-220.

military from becoming a solid bloc.<sup>42</sup>

The strength of TNI Headquarters' bargaining position vis a vis that of DoD, sustained even during the reform era, certainly did not come about overnight; the strength of the military's domination over the DoD has been part of the culture since the founding of the Republic. Expect for the period of Parliamentary Democracy, when attempts were made to take total control over the TNI, albeit not successfully, for the most part the Department of Defence has been, conversely, totally dominated by military personnel.

<b>Period</b>	<b>Character of the Department of Defence and TNI</b>	<b>Institutional Leaders</b>	<b>Institutional Functions</b>
1945-1966	Department of Defence established for the first time; not long afterwards, name changed to People's Security Department. Name changed again to Department of Defence and Security.	During Parliamentary Democracy era, several civilians led Ministry of Defence.	Department of Defence or Department of Defence and Security administered State defence function.
1966-1983	Position of Minister, head of Department of Defence and Security, <sup>43</sup> consolidated with that of TNI Commander, leader of the TNI.	During this period, the New Order with General Soeharto as its President, held a grip on power in Indonesia. Until 1973, General Soeharto <sup>44</sup> also served as Commander in Chief of the Armed Forces of the Republic of Indonesia (ABRI) and Minister of Defence and Security. From then on, the ABRI Commander served as Minister of Defence and Security.	Despite integration of the positions of Minister of Defence and Armed Forces Commander, structurally operational command was exercised in the capacity as Armed Forces Commander and military operations were under the control of (ABRI) Headquarters.
1983-1988	Position of Head of Department of Defence and Security separated from Armed Forces (ABRI) Commander.	Armed Forces (ABRI) Commander headed ABRI (meaning that HQ was under the control of the Commander); Department of Defence and Security always headed by Minister with active-duty military background.	Department of Defence usually functioned only to support administrative requirements such as TNI (sic) logistics; operational command over TNI remained under control of Commander, centralised within TNI HQ.

<sup>42</sup> Salim Said, pp. 239-240.

<sup>43</sup> During the New Order period, the Department of Defence was named Department of Defence and Security, the addition of the word 'Security' being due to the inclusion of the National Police (POLRI) in the Armed Forces.

<sup>44</sup> General Soeharto was the second President of the Republic of Indonesia, in power for 32 years.

1998-1999	Positions of Minister of Defence and Security and Armed Forces (ABRI) Commander again consolidated.	This meant that the Armed Forces (ABRI) Commander was automatically Minister of Defence and Security; once again the Department of Defence was under military domination.	The Department retained its minor function of providing logistical and administrative support; TNI HQ played a much more dominant role.
1999-present	Department of Defence and Security modified to become Department of Defence.	TNI headed by TNI Commander, while Department of Defence, for the first time in 32 years of New Order, is headed by a Defence Minister whose background is not military.	Functions and relations of DoD and TNI HQ codified in law (Law on National Defence and Law on the TNI).

Table 1<sup>45</sup>

As demonstrated in the table above, systematic consolidation of military domination and military figures over the Department of Defence began when Soeharto became President in 1968. From then until 1983, the practice of the Commander of the Armed Forces also serving as Minister of Defence and Security meant that it was the military leaders of the Armed Forces who would lead DoD. When Benny Moerdani was promoted to become Commander in 1983, he did not hold the position of Defence Minister, leaving the Defence Minister with only a minor role, with DoD's function usually limited to providing logistics and administrative support to the TNI.

However in 1988, Soeharto once again merged the positions of Minister of Defence and Security and Armed Forces (ABRI) Commander.<sup>46</sup>This continued until 'reformasi' [reform], when Soeharto was toppled. The Department of Defence, seen as the civilian political authority, was separated from TNI HQ, considered to be the executors of defence policy. From the long explanation above, it is clear that it is natural that DoD's desire to take total control over TNI HQ flies in the face of its long history of domination by the military.

### ***Planning Progress***

The chain of events described above demonstrates that during the Reform Era the Department of Defence has been going through a process of transformation towards compliance with democratic principles. In the context of relationships between DoD and TNI HQ, we see that legally DoD has broad authority. Whereas under the New Order, DoD simply functioned to provide administrative and logistics support, it now has a number of new jurisdictions. It is now DoD, with guidance from the President, which sets the direction of defence policy which must be carried out by the TNI through its

<sup>45</sup> Summarised from various sources, primarily the official website of the Department of Defence.

<sup>46</sup> ABRI or Armed Forces of the Republic of Indonesia was the title of the Indonesian military prior to finally being changed to TNI (Indonesian National Armed Forces).

Headquarters. Also, DoD now determines budget allocation for the TNI. However, in reality, these advances have not yet been fully realised. TNI HQ has on several occasions bypassed DoD or *forced its hand*. The Defence Minister is relatively powerless to act, because the TNI Commander also sits in Cabinet and has status equal to that of the Minister.

Of course, although the TNI HQ' refusal to be subordinated to DoD continues to be heard, and its bargaining position vis a vis DoD remains relatively strong, this is no excuse to argue for maintenance of the *status quo* between DoD and TNI HQ. Reform of the relationship between DoD and TNI HQ must immediately get under way. How do we begin?

**First**, the recommendations of DoD officials that the TNI be subordinated to DoD must be implemented immediately by the relevant political authorities. While the intent to subordinate the TNI to DoD as touched on in the Law on the TNI does not explicitly give a time frame, this idea must immediately be progressed and finalised. The latest suggestions from DoD which state that the Heads of the Joint Staff be subordinate to DoD, as was proposed by DoD's defence review team, should be supported.

**Second**, amendment of the Law on National Defence and the Law on the TNI. Revision of this legislation must be undertaken to insert clauses that make it clear that the TNI shall be integrated with DoD, and the TNI Commander shall no longer be directly subordinate to the President.

**Third**, strengthen civilian capacity in defence affairs. Of course, civilians must reflect deeply upon themselves. It must be recognised that as a rule civilians remain quite ignorant about defence matters, which traditionally has been the domain of the military. Improving the quality of civilian resources to merge with DoD is quite urgent, if civilian authorities hope to improve their bargaining power vis a vis the military. The other important problem is the development of political parties. This is important because the fragmentation of civilian political elites is certain to weaken the cohesion and impetus over issues of *security sector reform*.

# Border Management and National Security

Anak Agung Banyu Perwita, Ph.D<sup>1</sup>

*"If boundaries remain uncharted, it is impossible to get government to focus its attentions on communities in border areas. Government tends to restrict the border area issue to just the remote islands, but it is the dry land boundaries that need attention."*<sup>2</sup>

## **Introduction**

The statement above clearly describes the quite complex problem of Indonesia's border regions<sup>3</sup> that are quite complex. Poor management of border regions, economic development, relatively impoverished social conditions of the local communities and poor regional security along national borders are among the hottest and most important issues now facing Indonesia. This internal problem, worsened by claims by neighbouring states over our territorial border regions, have increased pressure on the government to maintain Indonesia's territorial integrity and sovereignty as a nation-state during the present era of globalisation.

The 2003 Defence White Paper of the Republic of Indonesia, for instance, emphatically states that the Republic of Indonesia still has a number of problems over borders with ten neighbouring states. A number of borders remain unresolved, including those with Singapore, Malaysia, Philippines, Australia, Papua New Guinea, Vietnam, India, Thailand, Timor Leste, and the Republic of Palau.<sup>4</sup> Some of the border area problems that remain unresolved will, of course, have negative consequences on several aspects of national security, such as military security, political, economic, social and environmental dimensions.<sup>5</sup>

So, how should we observe and position national borders in the national security agenda and what systematic efforts must we take to improve management of Indonesia's borders? How can border security management be observed from the perspective of security sector reform? This paper will focus the academic discussion on the issue of national borders and the relationship to national security and the process of security sector reform. The discussion

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<sup>2</sup> Statement of General Chairman of National Mandate Party (PAN), Soetrisno Bachir, as quoted in KOMPAS, "Isu Perbatasan Bukan Hanya Pulau Terluar" [Border Issues Not Just Remote Islands], 13 February 2006.

<sup>3</sup> This term is often translated as *frontier*, *boundary* and *border*. According to Duska Knezevic Hocevar, these three terms often have the same meaning, i.e., a boundary line between countries, based on international law. Actually, these three terms have different meanings that encompass not just geographical area but also have symbolic, ethnic and political meaning. See Duska Knezevic Hocevar (2000) *Studying International Borders in Geography and Anthropology: Paradigmatic and Conceptual Relations*. in *Geografski Zbornik*, vol. 30, pp. 85-92.

<sup>4</sup> See Defence White Paper, Republic of Indonesia, Ministry of Defence (2003). *Defending The Country Entering the 21<sup>st</sup> Century*. Jakarta: Ministry of Defence, pp. 24-25.

<sup>5</sup> For further discussion of these five dimensions of security, see Barry Buzan (1998). *Security: A New Framework for Analysis*. Boulder: Lynne Rienner Publisher.

will begin by observing the linkage of the phenomenon of globalisation with the existence of nation-states characterised by management of national borders as the highest symbol of their sovereignty. The discussion also goes on to analyse the issue of national borders as one of Indonesia's important national security and external politics agendas. The final section of this paper shines the spotlight on the importance of development of our defence force in coordination of policy and of state institutions in management of Indonesia's border regions as part of the process of security sector reform.

### ***Globalisation, State Borders and National Security***

*"... borders are like agents of national security and sovereignty, and a physical record of a state's past and present relations with its neighbors...."*<sup>6</sup>

The quote above demonstrates that (state) borders play an important role in establishing a state's sovereignty and national security and occupy an important place in a state's foreign politics as a way to establish constructive systems for interaction between countries within the scope of a geographical area. Contemporary international relations and foreign political agendas will continue to be dominated by the traditional problems of national borders. This is, of course, very closely associated with problems of national security, territorial sovereignty, effectiveness of external politics and even the diplomatic role played by a state.

On the other hand, the phenomenon of globalisation in many ways blurs traditional boundaries and virtually eliminates the physical distance between states. Developments in information technology, communications and weapons have also demonstrated how national borders have become increasingly irrelevant to international relations in the current era of globalisation. Globalisation, according to Anthony Mc Grew, has not only made territoriality in many states increasingly irrelevant, but rather has brought into question the very existence of a nation-state's territorial sovereignty.<sup>7</sup> Ironically, developments occurring in many developing states in this era of globalisation demonstrate conditions that are very diverse.

### ***Identity and Weak/Failed States***

In many cases in many developing states, the problem of national borders that cannot be managed well is one of the indicators that the state is very weak or has failed (*Weak/failed state*).<sup>8</sup> This is, for instance, marked by the state's inability physically to manage its borders. In addition, the absence of administration that is effective in organising its borders is a problem in itself which adds to the complexity of the problems of state borders.

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<sup>6</sup> See Kari Laitinen, 2004, *Reflecting the Security Border in the Post-Cold War Context*, in [http://www.gmu.edu/academic/ijps/vol6\\_2/Laitinen.htm](http://www.gmu.edu/academic/ijps/vol6_2/Laitinen.htm), accessed 25 Jan 2006.

<sup>7</sup> See, for example, Anthony McGrew (2000), *Power Shift: From National Government to Global Governance*, in David Held, Eds., *A Globalising World?: Culture, Economics and Politics*, London: Routledge, pp. 127-168.

<sup>8</sup> See Stewart Patrick (2006). *Weak States and Global Threats: Fact or Fiction*. in *The Washington Quarterly*, Vol.29, No. 2, pp. 27-53.

In the Indonesian context, for example, the phenomenon of creation of new regencies and provinces can also be seen from the emergence of attachment to localities by forming and even demand for formation of new border areas. Consequently, some new regency and/or provincial governments are now trying to fix their respective borders. One illustration of this is the request of the Regional Parliament and government of Banten province to the Regional Parliament and government of the Special Capital District of Jakarta to fix the borders of Kepulauan Seribu [the Thousand Islands].<sup>9</sup> If such problems as these cannot be overcome comprehensively, it is certain to have a bad impact on Indonesia's national integration. The worst consequence of the failure of a state to maintain its border areas and its territorial integrity is that the state will be torn apart by civil war that will lead to fragmentation and disintegration.<sup>10</sup>

Where a state has limited and low capability for managing and controlling all of its air, maritime and land borders and territories, there will also be very profound impacts, both internally and externally. The complexity of these border problems has traditionally been known to foster *internal conflict and/or war* and can even trigger conflict and/or war with neighbouring states, triggered by the principles of territorial integrity and sovereignty which have become the primary and principal concerns of every nation-state. Traditionally, every nation-state is prepared to do whatever is necessary to preserve its sovereignty.<sup>11</sup>

Further, Kari Laitinen has stated that (state) border problems not only encompass the problem of territory alone, but a number of other aspects of livelihood such as resources and local and national pride, which are important factors in a state's external politics.<sup>12</sup> On this point, border problems can become vital components of the national security agenda. Therefore, the systems for managing surveillance of borders will play an important role in the overall national development agenda.

At the same time, in the context of international relations, there are many cases we can cite to illustrate conflicts between states that stemmed from unresolved problems over national borders. In other words, a number of contemporary developments in international relations reflect contradictions in the relationships between actors (both state and non-state). On one hand, the rise of nationalist and/or ethnic sentiment and various forms of other local and national identity ties and the desire to safeguard natural resources have heightened the significance of boundary lines. The emergence of the Ambalat case involving Indonesia and Malaysia is one of the cases we can use to better understand what has been described above.

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<sup>9</sup> See "Banten Minta Batas Wilayah Kepulauan Seribu" [Banten Requests Fixing Borders of the Thousand Islands], KOMPAS, 28 Maret 2006.

<sup>10</sup> See for instance, Julian Saurin (1995), *The End of International Relations? The State and International Theory*, in *The Age of Globalization*, in John MacMillan, Andrew Linklater, *Boundaries In Question: New Directions In International Relations*, London: Pinter Publishers, pp. 244-261.

<sup>11</sup> On the dynamics of the concept of sovereignty, see, for example, Daniel Philpott (2001), *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations*, New Jersey: Princeton University Press, pp. 5- 10.

<sup>12</sup> See Kari Laitinen (2004). *Ibid.*

Traditionally, international relations has focused its attentions on the study of models of external politics in the form of relationships among state actors sharing territorial/regional borders. A state's territory is a determinant of its sovereignty, power and security.<sup>13</sup> Therefore, boundaries and territorial area play a very significant role in determining the existence of a state. The principal purpose of establishing territorial boundaries is to differentiate states physically. In addition, national borders are also tools for controlling the flow of goods, ideas and even ideology.

To control these sorts of things within a geographical area, a state must have military forces that serve to safeguard it from potential threats to its sovereignty posed by external military threat. The concept of *border security* relies on Classical Realism thinking, which stresses *self-help*. In other words, the concept of border security has consequences for *deterrence*, *military forces* and the *security dilemma* in a state's interactions with other state actors.

Classical Realist Hans. J Morgenthau has stated that the fundamental concern of national security is "*to protect (its) physical, political, and cultural identity against encroachments by other nations*".<sup>14</sup> Further, every nation-state must realise its national interest '*defined in terms of*

*power*' to protect its *security* and *survival*. As argued by Realism, national interest has a crucial role to play in which (according to this concept) the security needs of a nation-state actor have close links between state sovereignty and characteristics of the international system, such as anarchy and distribution of power, and the foreign policy and actions of State actors.

However, the problems of state borders and national security will have different manifestations in the majority of developing states. A study conducted by Robert I. Rotberg explicitly indicates that one of the important characteristics of *failed states* is their inability to resolve problems of state borders, which then fosters *intra* and *interstate war* in virtually equal proportions.<sup>15</sup> Better alignment and management of state borders is a principal prerequisite in the effort to establish a *strong state*.<sup>16</sup>

On the other hand, George Sorensen points out that the biggest problem in creating national security and a strong state is that they are commonly hindered by limited capability, if not total incapability, of the state. This is primarily manifested in state agendas that are crowded with all sorts of domestic problems including maintaining the current government regime and

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<sup>13</sup> On this subject, see, for instance, Mike Bowker, Robin Brown (1993). *From Cold War to Collapse: Theory and World Politics In The 1980s*. Cambridge: Cambridge University Press, p. 2.

<sup>14</sup> Quoted in Jutta Welds (1996). Constructing National Interests. In *European Journal of International Relations*. Vol.2. No. 3, pp. 275-318.

<sup>15</sup> Robert I. Rotberg (2004). The Failure and Collapse of Nation-States: Breakdown, Prevention, and Repair. In Robert I. Rotberg ed. *When States Fail: Causes and Consequences*. New Jersey: Princeton University Press, pp. 1-50.

<sup>16</sup> With reference to Sorensen's explanation, manifestations of a strong state are mature institutions and political mechanisms, economies that perform well, effective management of its territory, good governance and a strong national identity. See Georg Sorensen (1996) Individual Security and National Security: The State Remains the Principal Problem. In the journal *Security Dialogue*. Vol. 27 No. 4, pp. 375-390.

limited capacity to manage economic, sociocultural and political conditions as well as national defence (including surveillance of its national borders and territory).<sup>17</sup> Consequently, it is not surprising that we receive information that most smuggling and theft of our natural resources is due to the weakness of surveillance of our land and maritime borders.

### ***Military and Non-Military Security in Border Issues***

For many developing states like Indonesia, the issues of national borders and national security often create a dilemma. Defence refers to capability to overcome various military threats stemming from the international environment but can also be associated with non-military threats. Unlike other developed states, developing states must confront all at the same time a number of economic development, sociocultural and political issues that are both complex and closely associated with internal stability, as well as the capability of national defence to protect it from potential military threats stemming from the external environment.

In many cases in developing states, these economic development, sociocultural and domestic political issues above ultimately impact upon issue of state defence and security. These issues, as well as development of border regions, are among the *domestic vulnerabilities* that often dominate the national security development agenda and are then translated into primary objectives of national defence.

Considered from the standpoint of investigation of the academic literature, a number of the interrelated problems above have been identified as significant non-military issues affecting capability to protect national security.<sup>18</sup> In addition, *failed states* that cannot protect their borders will be confronted by problems resulting from insecurity in the border areas, as non-state actors such as *transnational organized crime*, which involves crimes such as trade in narcotics, trade in humans, smuggling of goods and people, as well as *money laundering*, and terrorist groups who often exploit weakness in border control to plan, prepare for and support its terrorism campaigns.<sup>19</sup>

One of the most recent illustrations of the linkage between transnational crime and terrorist activities which exploit poorly controlled border regions is the use of the border regions between Thailand, Malaysia and Singapore by terrorist groups to plan, prepare for and execute terrorist activities in Indonesia during

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<sup>17</sup> Ibid.

<sup>18</sup> See for instance, Richard Ullman (1983), Redefining Security, in *International Security*. Vol. 8, No. 1; Ole Wæver (1989), *European Security-Problems of Research on Non-Military Aspects*,. Copenhagen Papers No. 1, Copenhagen: University of Copenhagen; Barry Buzan (1991), *People, States and Fear: An Agenda for International Security Studies in the Post Cold War*, Boulder: Lynne Rienner Publishers; Helga Haftendorn (1991), The Security Puzzle: Theory Building and Discipline in International Security, in *International Studies Quarterly*,. Vol. 35, No.1; Muthiah Alagappa (1998), *Asian Security Practice: Material and Ideational Practices*, California: Stanford University Press; Benjamin Miller (2001), The Concept of Security: Should it Be Redefined, in *The Journal of Strategic Studies*, Vol. 24, No. 2, and Sean Kay (2004), Globalization, Power and Security, in *Security Dialogue*, Vol. 35, No.1.

<sup>19</sup> See Elke Krahmman (2005), From State to Non-State Actors: The Emergence of Security Governance, in Elke Krahmman. *New Threats and New Actors in International Security*, New York: Palgrave MacMillan, pp. 3-20.

the past few years.<sup>20</sup>The route from the southern border of Thailand through Satun province to Sumatra (Riau Islands) via Malaysia's territorial waters around Langkawi and Penang is a favourite land and maritime route used to channel funds, weapons and explosives to terrorists planning terrorist activities. Also, the border regions of the southern Philippines from Zamboanga and Davao (Mindanao) to the Sulu Islands and on to Sarawak and Nunukan in Kalimantan, and the Sangihe Talaud Islands in North Sulawesi to Maluku and Central Sulawesi are allegedly also routes for distribution of weapons and humans to wage terrorist activities in eastern Indonesia.<sup>21</sup>Given the examples above, The New York Times was not exaggerating when it wrote that, "*Failed states that cannot provide jobs and food for their people, that have lost chunks of territory to warlords, and that can no longer track or control their borders, send an invitation to terrorists*".<sup>22</sup> In this context, weakness in border control will become a factor that disrupts border diplomacy undertaken by Indonesia with some of its neighbouring states. In other words, this will be the weak point in formulating and implementing Indonesia's external politics.

The experiences of many *weak* or *failed* developing states with the complexities of military and non military actors and issues such as disproportionate levels of development, especially in border regions, *overpopulation*, border violations, environmental degradation and sociocultural problems are sources of state insecurity as well as sources of problems in external politics. Quoting Caroline Thomas,

*"(national) security in the context of the third world does not simply refer to the military dimension, as it is often assumed in the Western discussion of the concept, but to the whole range of dimensions of a state's existence which have been taken care of in the more developed states, especially those in the West".*<sup>23</sup>

A simple illustration can be found in two different reports carried in a national daily. The Kompas edition of 10 March 2006 presented a report entitled "Indonesia's Security is the Main Issue". This report analysed the reluctance of Japanese investors to invest their capital because of the instability of security and social conditions in Indonesia. In another report in the same edition, there was a report entitled "TNI Post in Remote Islands of Papua" which reported the efforts of Trikora Military Area Command (XVII MAC) to construct a military post to protect remote islands from possible claims or military threats from foreign parties. In addition, these border regions are allegedly the main transit routes for smuggling, theft of large quantities of timber (*illegal logging*) and other marine resources (*illegal fishing*).<sup>24</sup>

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<sup>20</sup> "Terorisme: Segitiga Maut Indonesia-Malaysia-Thailand" [Terrorism: The Deadly Triangle Indonesia-Malaysia-Thailand], KOMPAS, 1 April 2006.

<sup>21</sup> Ibid.

<sup>22</sup> As reported in The New York Times, July 2005. Quoted in Stewart Patrick (2006), p. 34. Emphasis in bold type is by the author for the purpose of this paper.

<sup>23</sup> Quoted from Caroline Thomas (1991), *New Directions in Thinking about Security in the Third World*, in Ken Booth, ed., *New Thinking about Strategy and International Security*, London: Harper Collins Academic, p. 269.

<sup>24</sup> See KOMPAS, 10 March 2006, pp. 21 and 25.

Clearly, the meaning of 'security' in the first report is quite different to its meaning in the second report. Whereas the first report is intended to observe the actual condition of our domestic security so that appropriate efforts can be undertaken to encourage foreign investment, requiring a variety of non-military policies including economic, legal and sociocultural, the second report specifically targets the aspect of defence of our territory from the possibility of claims and military threats from our external environment. Therefore, a military response is needed to protect Indonesia's sovereign territory. However, it is also reasonable to acknowledge that a military response alone is not appropriate. There must also be other responses including economic, legal, sociocultural and diplomatic to support efforts to protect our territorial sovereignty.

The level of crisis in many developing states became even more serious when the problems cited above were further complicated by other problems such as limitations on the capacity of financial, human and institutional resources (including their military forces). Therefore, issues of national borders and national security cannot be separated from military and non military threats. Consequently, management and surveillance of the security of the entirety of border areas will encompass a variety of dimensions, among them military, economic, sociocultural, environmental and political.

#### ***Defence Force Development (Indonesian Navy) and Coordination of National Border Security as Part of Security Sector Reform***

In its efforts to protect its national maritime borders, Indonesia requires a naval defence fleet that is effective, large and sophisticated and therefore also insists upon having adequate naval defence facilities. Former Navy Chief of Staff Admiral Bernard K. Sondakh said that Indonesia's existence as a maritime state can only be manifested if Indonesia has a large, strong naval fleet to control and secure its maritime territory.<sup>25</sup>

As embodied in the Navy's doctrine "Eka Sasana Jaya" which states that the greatness of a maritime nation or state is very much determined by its naval forces, both the strength of its mercantile fleet and its armed naval force, i.e., its Navy.<sup>26</sup> Therefore, the presence of the Navy to provide a guarantee of maritime security is a *conditio sine qua non*.<sup>27</sup> In other words, the backbone of national defence is no longer directed towards land forces (*continental oriented*), but instead is focused more on naval forces (*maritime oriented*) and air forces. In other words, the principal orientation of national defence must be on the maritime and air components.

For comparison, the table below illustrates Indonesia's naval strength and that of other states in the Asia Pacific region.

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<sup>25</sup> KOMPAS Interview with Navy Chief of Staff Admiral Bernard K. Sondakh, KOMPAS, 27 June 2004.

<sup>26</sup> See [www.tnial.mil.id/doctrine.php](http://www.tnial.mil.id/doctrine.php), accessed 25 June 2004.

<sup>27</sup> Ibid.

**Table of Naval Forces of States in the Asia Pacific Region**

	Personnel	Submarines	Primary Maritime Fleet	Coastal surveillance
Australia	14,200	4	11	16
India	53,000	16	26	40
Indonesia	45,000	2	17	58
Japan	43,800	16	55	3
North Korea	46,000	26	3	309
South Korea	60,000	19	39	84
Malaysia	12,500	-	4	41
Philippines	20,500	-	1	67
Singapore	9,500	3	-	24
PRC	230,000	71	53	676
Taiwan	68,000	4	37	104
Thailand	73,000	-	15	88
Vietnam	42,000	2	6	40
US Pacific Fleet	132,300	38	58	-
Russia (Pacific Fleet)	31,000	17	10	41

Source: excerpted from **The Military Balance 2003-2004**. London: Oxford University Press.

From the table above, one can get an understanding that Indonesia's naval forces are not very large by comparison, for example, with those of Thailand, although the maritime area that must be protected is far larger. And in comparison with North Korea, South Korea and Taiwan,

Indonesia's naval strength is far inferior. Indonesia's maritime territory is the largest in the Asia Pacific region, while naval forces in the region are heavily dominated by the United States and the People's Republic of China. It is these two states which determine the regional patterns of interaction.

Viewed from the standpoint of the sophistication of the maritime fleet, the

entire maritime fleet of the Republic of Indonesia is old, on average built in the 1960s and reconditioned in the 1980s. Consequently, it is fair to say that the majority of Indonesia's naval platforms (primary equipment and weapons systems) are 'floating scrap metal' and incapable of performing security and maritime defence tasks comprehensively. In total, the Indonesian Navy has 113 vessels of various types<sup>28</sup> with production time span from 1967 to 1990. Vessels in the fleet manufactured in 1967 were reconditioned beginning in 1986 and into the 1990s. To protect national maritime security, Indonesia ideally requires 380 warships.<sup>29</sup> Meanwhile, to control the Straits of Malacca, the Indonesian Navy needs at least 38 patrol boats to be able to protect security in the straits, which are 613 miles long.<sup>30</sup> Of the Indonesian Navy's fleet above, 39 vessels are more than 30 years old, 42 vessels are 21-30 years old, 24 vessels are 11-20 years old, and only 8 vessels are less than 10 years old.<sup>31</sup> During the next five years, the Indonesian Navy plans to augment the fleet by procuring between 2 to 6 submarines of the latest type.<sup>32</sup>

Therefore, expansion and development of Indonesia's naval defence forces, including increases in operational platforms and development of Navy doctrine, can basically be categorised as *the "minimum defense requirement"*<sup>33</sup> which must be done by the Navy in its efforts to protect security and guarantee the maritime defence of Indonesia.

Strength and condition of Indonesian Naval fleet (*navy ships*) are illustrated in the following table:

No	Types	Class	Explanation
1	Submarines (2 units)	U-209 (German built, 1981)	Actual condition 70%; never overhauled during past 20 years.
2	Frigates (6 units)	Van Speijk (Dutch built)	Condition poor, speed only 16 knots, high petrol consumption, weapons harpoon missiles (6 units, of which two (2) have passed their expiry date and the other four (4) expired in 2002 (sic)).
3	Corvettes (4 units)	Built in The Netherlands and Yugoslavia, 1980	Most modern of Navy' fleet; two (2) expired; six (6) Exocet MM-38 missiles have all expired.

<sup>28</sup> The types of vessels owned by the Indonesian Navy are: submarines (2), frigates (6), patrol frigates (6), training frigates (1), light frigates (3), corvettes (16), missile boats (4), minesweepers (9), patrol boats (19), ASW patrol vessels (4), amphibious ships (22), coastal minehunters (2), command ship (1), oilers (2), fleet tugs (2), survey ships (2), research vessels (6), coastal transports (3), tankers (2). Source: Toppan, Andrew, *World Navies Today: Indonesia*, <http://www.hazegray.org>, accessed 14 April 2004\*. (\*Translator note: the web page which is the source of this list was last updated in March 2002)

<sup>29</sup> KOMPAS interview with Navy Chief of Staff Admiral Bernard K. Sondakh, KOMPAS, 27 June 2004.

<sup>30</sup> As stated by Commander of the Indonesian Navy's Western Fleet, Rear Admiral Y. Didik Heru Purnomo, in an interview with the weekly magazine TEMPO, 28 June-4 July 2004 edition.

<sup>31</sup> Written response by Navy Chief of Staff to questions by a member of Commission I of the National Parliament (DPR) of the Republic of Indonesia, 2002.

<sup>32</sup> Tempo magazine, 5 February 2006.

<sup>33</sup> In strategic studies, this concept targets two principal roles, namely: defense planning and defense management. See, for example, Gompert, David C, Olikar, Olga, Timilsina, Anga (2004). *Clean, Lean, and Able: A Strategy for Defence Development*. Santa Monica: Rand Corporation, p. 5.

4	ASW/patrol corvettes (16)	Built in East Germany, 1980s	Propeller systems inoperable in the tropics; spare parts unavailable because the factory in Rostock has been closed.
5	Missile and high-speed boats (4 units)	Built in South Korea, 1979	Primary weapons Exocet MM-38 missiles (all expired), 1 unit unserviceable, 3 units under repair.
6	High-speed torpedo boats (2 units)	Built by PT PAL, Surabaya	Both in good condition and ready for operations.

Source: Speech by Navy Chief of Staff before Commission I of the Parliament (DPR), 2002.

The table above also identifies the external implications of the internal priorities for development of the potential of Indonesia's maritime defences. As we know, there are huge changes taking place internationally in the fields of politics, economics and defence. In the fields of politics and security, for example, the dynamic in the Asia Pacific region have brought to the fore some mechanisms for organising international security which will have significant influence on the framework of Indonesia's external politics and defence policy.

Taking into account a number of positive developments in the structure of regional maritime cooperation, Indonesia needs to give consideration to several national policies. *First*, greater priority must be given to formation of a *credible* maritime defence in the region to ensure maritime security conducive to all concerned states.

Indonesia must develop a strong naval force to deal with the numerous possible military and non-military threats in its territorial waters, including rampant illegal fishing, smuggling of both goods and people and the possibility of military conflict in several *hot spots* in the South China Sea. In other words, development of the Indonesian Navy should be directed towards infrastructure for *defense and security* of national territorial waters rather than towards arming and equipping an *aggressive force*.

Significantly increasing the strength of Indonesia's navy is certain to change Indonesia's strategic position in the region and thus Indonesia will be party to determining the pattern of relationships amongst the states in the Indian Ocean, more so in the Pacific. Over the next five years, the Department of Defence has allocated export credits of USD 1.97 billion to the Navy; however, this is inadequate to meet the Navy's requirements for platforms to maintain national maritime security.<sup>34</sup>

*Second*, problems of coordination between the institutions of the national government that impact upon management of the maritime border areas must also be given more serious attention. To date, there are all the hallmarks of overlapping and patchy coordination between the Navy, Air Force, Police, associated departments (Ministry of Marine Affairs and Fisheries,

<sup>34</sup> See Tempo magazine, 5 February 2006.

Foreign Ministry, Customs and Excise, and Immigration) and the courts in the protection of territorial waters and maritime border areas.

These institutions need to resolve the problems in a regular and coordinated manner. This problem of coordination became increasingly complex when the provinces of Papua, Riau and Bangka Belitung, in the spirit of regional autonomy, planned the procurement of patrol boats to secure their territorial waters from illegal fishing. The issue of this procurement of fast patrol boats generated prolonged controversy between a number of domestic institutions, including the provincial government, the Interior Ministry, the Department of Defence and the Navy. This occurred because of differing interpretations of Law No. 3 of 2002 on National Defence and Law No. 22 of 1999 on Regional Government.<sup>35</sup>

Better coordination and harmonisation amongst the various national institutions (Foreign Ministry, DoD, TNI HQ and several other government institutions) would, of course, gradually improve our capability for surveillance of security of our national and regional waterways, which will, in the long run, make Indonesia a major power in the region. Obviously, in addition to the need for allocation of a large amount of funding and high levels of policy coordination between institutions, it will take a very long time for Indonesia to become 'master' of its national maritime security. Borrowing the words of the Navy Chief of Staff, Admiral Slamet Subiyanto, the effort to manage Indonesia's maritime security in an integrated manner requires that defence strategy be structured according to Indonesia's geographical conditions, with synergies among all of the defence force components and surveillance by a number of security sectors, both military and civilian.<sup>36</sup> Political will of members of Parliament, representing civil society at a very high level, can be a strong influence on improvement of the level of security in our border regions. Parliament can also exercise its *oversight* function, which is, of course, one of the main prerequisites for carrying out security sector reform.

### ***Closing***

From the explanation above, one can draw some understanding that the problem of management of maritime security has multidimensional characteristics. In addition, the sources of maritime threats faced by Indonesia and other littoral states vary in their military and non-military dimensions and stem from both the internal and external environments. The *degree of threats* to maritime security is also very high. Meanwhile, Indonesia's capability for protect its maritime security is still relatively limited. In other words, Indonesia has a *security deficit*<sup>37</sup> in the protection of its maritime security.

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<sup>35</sup> "Kontroversi Pembelian kapal Patroli oleh Pemda: Saat Otonomi Menyentuh Keamanan Laut" [Controversy over Purchase of Patrol Boats by Local Government: When Autonomy Bumps Up Against Maritime Security], KOMPAS, 24 Juni 2004.

<sup>36</sup> See Admiral TNI Slamet Subianto (2005). Gagasan Tentang Strategi Pertahanan Maritim Indonesia (SPMI) Sebagai Strategi Pertahanan Negara Kepulauan [Ideas on Indonesia's Maritime Defence Strategy as the Defence Strategy of an Archipelagic State]. In the journal Satria: Studi Pertahanan [Defence Studies], Vol.1, No. 2, pp. 10-17.

<sup>37</sup> This concept refers to a condition in which the threat is far greater and varied by comparison with the capability to overcome it.

Therefore, Indonesia cannot simply base its maritime security on development of its maritime defences alone, but requires a structure of increasingly comprehensive cooperation with a number of states in the region. In other words, Indonesia needs national, bilateral and multilateral cross-sectoral cooperation and coordination to guarantee its maritime security, including that of its shipping. In addition, mechanisms for (*oversight*) and collection of intelligence data on all of its state borders, organised to provide accountability, under a "*frontier regime*"<sup>38</sup> within the overall framework of security sector reform.

The problems we now face over national borders are marked by varying aspects such as type of threat, attributes of threat, wide dispersion of objects of national security, limitations on resources, varied perceptions of the threat and approaches and policy instruments at our disposal, all of which require that the discussion continue in a more transparent and accountable manner. Hopefully we can have a more comprehensive understanding of the importance of the issues discussed above, and also produce the necessary instruments of systems and policy (including the possibility of creating a new institution directly responsible to the President) capable of accommodating all the needs of the our border areas and national security in a more thorough and integrated manner.

Internally, management and oversight of all of our territory, including our borders, will not only strengthen *nation-state building* but also encourage creation of *regional security building*. This can, for example, be attempted through active cooperation with all neighbouring states who share borders with us. However, before this can be achieved, again, we must be able to harness the capabilities of various sectors, including economic, social, legal and diplomatic in the management of our borders.

Borrowing the words of Rizal Sukma, management of state borders and Indonesia's national security overall must involve four components, integrated within a comprehensive policy structure, i.e., *Development, Democracy, Diplomacy and Defence*.<sup>39</sup> High sectoral egoism, parceling out the management of our borders, territory and national security, will only consign Indonesia to the status of a nation-state stumbling along in response to local, national and global change.

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<sup>38</sup> On this subject, see Otwin Marenin (2006). Democratic Oversight and Border Management: Principles, Complexity and Agency Interests. in Marina Caparini, Otwin Marenin eds. *Borders And Security Governance: Managing Borders in A Globalised World*. Zurich: LIT Verlag, pp. 27-28.

<sup>39</sup> Rizal Sukma (2005), War will never solve our problem, in *The Jakarta Post*, 21 March 2005.

# Legislative Reform of the Indonesian Security Sector

Bhatara Ibnu Reza<sup>1</sup>

## Introduction

The aspirations of reform after the fall of Soeharto were to create *good governance* in every field, including *security sector reform*. The scope of security sector reform is broad and complex, requiring restructuring of the functions, structures and cultures of institutions responsible for security, to bring them into line with the set of values of democracy and human rights.

Between 1998 and 2004, the government changed four times and the successive governments did not really expect to solve the major problems during the transition period. The situation increasingly deteriorated as the political elites in Parliament used transitional issues in their momentary political interests and as tools to bargain with the government, whereas security reform demands an environment that is democratic and respects human rights. This occurred because the strength of domination by the military in the past had made these issues fodder for manipulation. The primary agenda of security reform, undertaken for the first time, was separation of the Indonesian National Armed Forces (TNI) from the Indonesian National Police (Polri) which had long been merged within the Armed Forces of the Republic of Indonesia (ABRI).<sup>2</sup> This was extremely important because, if it failed, the impacts would give rise to the risk of repetition of the human rights violations which had occurred in the past.

Indonesia, still in a period of transition, remains threatened with the possibility of a return to a major role for the military in national politics, albeit in a more refined and legal manner. However, political reform demands that the status of the military be subordinate to civilian supremacy and that it be transformed into a professional defence institution. Not only the military, but also the police and intelligence institutions and all executive institutions in the

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<sup>2</sup> The name Indonesian National Armed Forces (hereafter referred to as 'TNI') was used for the first time on 3 June 1947. On 21 June 1962, the TNI became the Armed Forces of the Republic of Indonesia when Polri was merged with it under Resolution of Temporary Peoples' Consultative Assembly (TAP MPRS) No. II/MPRS/1960 in conjunction with Law No. 13 of 1961 on the Indonesian National Police and then implemented by Presidential Decree (Keppres) No. 290 of 1964. In 1969, Presidential Decision (Keppres) No. 52 of 1969 was published, stipulating that Polri was within the domain and scope of the Department of Defence and Security. TNI Commander General Wiranto reinstated the name 'TNI'. See *Kompas*, "Pangab Usulkan ABRI diubah menjadi TNI" [ABRI Commander recommends ABRI become TNI], 3 April 1999. Meanwhile, upon promulgation on 1 April 1999 of MPR Decree No. VII/MPR/2000 on the Role of the TNI and the Role of Polri, operational management of Polri was transferred from ABRI Headquarters to the Department of Defence and Security. See *Kompas*, "Polisi Resmi Pisah dari ABRI: Stop Gaya Militer" [Police Officially Separated from ABRI: Stop Military Style], 3 April 1999. Separation of the Indonesian National Armed Forces (TNI) and Indonesian National Police (Polri) began with promulgation of Presidential Instruction (Inpres) No. 2 of 1999 on Policy on Separation of Polri from ABRI. For further reading, see Muhammad Fajrul Falaakh, *et al*, *Implikasi Reposisi TNI-Polri di Bidang Hukum [Implications of the Repositioning of TNI and Polri in the Field of Law]*, (Yogyakarta: Faculty of Law, Gadjah Mada University, 2001).

security sector have experienced reform which continues up until the present, i.e., assigning them functions as actors in internal security who hold human rights in high esteem.

Increasing civilian authority requires two approaches, *first*, the military must not be involved in the political arena and *second*, civilian authorities must be involved in military problems as their function in the national defence of the state under civilian oversight and control.<sup>3</sup> Civilian participation in this case is not only represented by political elites but by elements of the citizenry as *concerned* civil society groups with changes in security sector reform carried out with their involvement through restructuring security and defence institutions via political regulation or legislative reform. By revising political regulations, hopefully security actors can become more professional under civilian control.

This has been made possible because of the political transition after the fall of Soeharto, changing the political configuration to become more democratic, creating opportunities for full participation by the people in determining general policies and consequently producing legislation embodying justice and fulfilling the expectations of society.<sup>4</sup>

Success of security sector reform is determined by seven components, as follows:<sup>5</sup>

1. Systematic arrangement of legislative provisions based on the *rule of law*;
2. Building capability for development of policy and formulation of *defense and security planning*;
3. Implementation of policy;
4. Achievement of professionalism of executive actors;
5. Capability for and effectiveness of oversight;
6. Logical and proportional budget management, and
7. Resolution of cases of violation of human rights.

By basing it on these components, the focus of legislative reform can (sic) also be separated from effectiveness, *legal basis* and accountability and consequently the resulting regulations can operate as they should. To realise this, it must be closely linked with development of the politics of law (making) which is related to the substance of the law in Indonesia, now done through the National Legislation Program (Prolegnas).<sup>6</sup> The National Legislation Program (Prolegnas) is a plan listing the laws to be passed during a certain period.<sup>7</sup> The National Legislation Program (Prolegnas) is drafted jointly by the Parliament (DPR) and the Government and is then coordinated by the

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<sup>3</sup> See Terence Lee, "The Nature and Future of Civil-Military Relations in Indonesia", *Asian Survey*, Vol. 40, No. 4 (Jul.-Aug., 2000), pp. 703-704.

<sup>4</sup> Moh. Mahfud M.D., *Politik Hukum di Indonesia [Legal Politics in Indonesia]*, Jakarta: Institute for Economic and Social Research, Education and Information (LP3ES), 2nd edition, 2001, pp. 24-25.

<sup>5</sup> See Nicolle Ball, Tsjearl Bouta and Luc van de Goor, *Enhancing Democratic Governance of the Security Sector, An Institutional Assessment Framework*, Clingendael: The Netherlands Ministry of Foreign Affairs/The Netherlands Institute of International Relations, 2003.

<sup>6</sup> Moh. Mahfud M.D., *Membangun Politik Hukum, Menegakkan Konstitusi [Develop the Politics of Law Making, Uphold the Constitution]*, Jakarta: LP3ES, 2006, p. 33.

<sup>7</sup> *Ibid.* p. 33.

Parliament, a logical consequence of the First Amendment to the 1945 Constitution, which shifted the emphasis for law making from the Government to the National Parliament.<sup>8</sup>

The status of the National Legislation Program is regulated in Law No. 10 of 2004 on Procedures for Making Legislative Regulations which contains not only the substance or plan for making legislative regulations but also functions as an instrument that stipulates mechanisms for planning laws, so they are always consistent with the objectives, guidance and spirit of the law on which it is based.<sup>9</sup>

Security sector reform carried out since 2000 through legislative reform using political decrees by the People's Consultative Assembly (MPR), changes to the 1945 Constitution, and legislative regulations are as follows:

1. Amendment of the 1945 Constitution;
2. People's Consultative Assembly (MPR) Decree No. VI/MPR/2000 on Separation of the Indonesian National Armed Forces (TNI) and the Indonesian National Police (Polri);
3. MPR Decree No. VII/2000 on Separation of the Roles of the Indonesian National Armed Forces (TNI) and the Indonesian National Police (Polri);
4. Law No. 3 of 2002 on National Defence;
5. Law No. 2 of 2002 on the Indonesian National Police;
6. Law No. 15 of 2003 on Decree of Regulations in Lieu of Statute No. 1 of 2002 on Eradication of the Crime of Terrorism Becomes Law, and
7. Law No. 34 of 2004 on the Indonesian National Armed Forces (TNI).

These five regulations are not only landmarks of change to the security sector but altered the landscape of Indonesian constitutional law as well. The constitutional changes can be seen in the interactions between institutions at the level of executive authority such as the President, the Defence Minister, the TNI Commander and the Chief of Indonesian National Police (Kapolri), as well as the interactions between the executive and the legislative branches as lawmakers, as has been described above. What is even more important is that reform of security sector regulations that are codified in the National Legislation Program must also parallel the plans for security sector requirements that have been compiled in the *grand design* of the security sector.

During the period 2004-2009, legislative reform in the security sector was incomplete, leaving a number of legislative regulations yet to be discussed by the government with the Parliament, among them issues of national security, tasks of military seconded to civilian positions (known as 'perbantuan'), conscription, military operations other than war, state intelligence, mobilisation and demobilisation, national defence reserve component, civil defence (known as 'bela negara' and decree of state of emergency).

Leaving aside those issues, the question becomes whether whether regulatory reform of the security sector during the period 2000-2007

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<sup>8</sup> *Ibid.* p. 33.

<sup>9</sup> *Ibid.* p. 33.

measures up to expectations and is operating as planned in the National Legislation Program and the *grand design* for the security sector.

## 1. Legislative Reform of the Security Sector

### a. Amendment of the 1945 Constitution

When Soeharto was in power, there was absolutely no opportunity to revise the 1945 Constitution. This was a consequence of the promulgation of the Presidential Decree of 5 July 1959 by President Soekarno which reimposed the 1945 Constitution in which the armed forces were made the principal actors in Indonesia's national politics through the legislature.<sup>10</sup>

However as has been explained, after the fall of Soeharto, one of the main agendas of political reform has been amendment of the 1945 Constitution which *mutatis mutandis* will change the legislative regulations that derive from it. This is because the 1945 Constitution 1945 is the fundamental and highest law in Indonesia. The Constitution was amended four times by the People's Consultative Assembly (MPR) between 1999 and 2002.

The focus of amendments to the 1945 Constitution in the security sector encompass changes to the office and authority of the President as he Head of State and Parliament, i.e., the People's Representative Council. The President's position as Head of State in relation to the armed forces is stipulated in Article 10 of the 1945 Constitution which states, "The President holds the highest authority over the Army, the Navy and the Air Force". The position of the President is as *Supreme Commander* of the armed forces and as such, the President has total authority over the military.<sup>11</sup> However, in their day-to-day operations, the three services are led by the TNI Commander.<sup>12</sup>

The President also has authority to declare war, as stipulated in Article 11(1) of the Fourth Amendment to the 1945 Constitution, which states, "the President in agreement with Parliament declares war, makes peace and concludes treaties with other states."

The President also has authority to declare a state of emergency or state of emergency as regulated in Article 12 of the 1945 Constitution, "The President declares the state of emergency. The conditions for such a declaration and the measures to deal with the emergency shall be governed by law."

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<sup>10</sup> Ulf Sundhaussen, *The Road to Power: Indonesian Military Politics 1945-1967*, (Oxford University Press, 1982), p. 138.

<sup>11</sup> There is debate amongst observers of security sector reform about the President's position as *Supreme Commander* of the armed forces. According to them, the President's position is as *Commander in Chief of the Armed Forces*. However, in Indonesia, there is a position 'Commander in Chief of the Armed Forces' which is subordinate to the President. The first use of the term *Supreme Commander* was in Law No. 23 of 1959 on State of Emergency. See Prof. Mr. Herman Sihombing, *Hukum Tata Negara Darurat di Indonesia [Emergency Constitutional Law in Indonesia]*, (Jakarta: Djambatan, 1996). The author himself is of the opinion that the position of the TNI Commander as *Commander-in-Chief* must be reexamined or, in other words, effectively must be held by the President as the holder of highest authority over the armed forces.

<sup>12</sup> The relationships between the President and the TNI Commander will be elaborated below in the discussion of Law No. 3 of 2002 on National Defence and Law No. 34 Year 2004 on the TNI.

A quite significant change to Chapter XII of the Second Amendment to the 1945 Constitution on State Defence and Security was codified in Article 30:<sup>13</sup>

1. Every citizen shall have the right and duty to participate in the defence and security of the state.
2. The state's defence and security efforts shall be conducted through a system of total people's defence and security by the Indonesian National Army (TNI) and State Police of the Republic of Indonesia, as the main component, and the people, as the supporting components.
3. The Indonesian National Army (TNI) shall consist of the Army, Navy, and Air Force as the nation's implements in their duty of defending, protecting, and maintaining the integrity and sovereignty of the state.
4. The State Police of the Republic of Indonesia as the national tool preserving security and public order shall have the duty to protect, shelter, and serve the public, and to uphold the law.
5. The structure and position of the Indonesian National Army (TNI), the State Police of the Republic of Indonesia, the relationship in authorities between the Indonesian National Army (TNI) and the State Police of the Republic of Indonesia in conducting their duties, the requirements of the citizen participation in the efforts to defend and provide security for the nation, along with matters related to defense and security, shall be regulated by law.

What is important in this article this is legalisation of the concept of the People's Defence and Security System (known as Sishankamrata) which had not previously been regulated in the Constitution.

Also important in the amendment of the Indonesian constitution was the recognition of human rights which had not previously been regulated in the Constitution.<sup>14</sup> Several important matters regulated in the *International Bill of Human Rights* in the realm of human rights, including the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) had been adopted in the Second Amendment to the 1945 Constitution long before Indonesia ratified the two covenants.<sup>15</sup> The most important matter is the state's guarantee of *non-derogable* rights, i.e., rights which may not be diminished by the state under

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<sup>13</sup> Compared with Chapter XII on National defence, Article 30, of the 1945 Constitution, before the amendment: "(1) Every citizen has the right and duty to participate in the defence of the state; (2) The rules governing defence shall be governed by law." In the Indonesian language, there is a distinction between the word "pembelaan" (Article 30, before amendment of the 1945 Constitution) and with "pertahanan" (Article 30 of the Second Amendment to the 1945 Constitution). The former has active-aggressive connotations, as distinct from the latter. However, in English, both are translated as and mean the same thing, i.e., "defence". See Bhatara Ibnu Reza, *The Indonesian Doctrine of Territorial Warfare: Problems in Civil-Military Relations and Their Implications for Human Rights and Humanitarian Law*, Thesis for Master of Laws in International Human Rights Law, Northwestern University School of Law, Chicago, 2006, pp. 39-40.

<sup>14</sup> Human rights are specifically governed by Chapter XA, Articles 28A to 28J, of the Second Amendment to the 1945 Constitution.

<sup>15</sup> Indonesia ratified the ICESCR with the passage of Law No. 11 of 2005 on Ratification of the International Covenant on Economic, Social and Cultural Rights, and the ICCPR with Law No. 12 of 2005 on Ratification of the International Covenant on Civil and Political Rights.

any circumstances.<sup>16</sup>

The incorporation of human rights into the constitution means that these rights have been recognised as constitutional rights of citizens which must be respected by the government, which includes the security actors.<sup>17</sup>

### **b. People's Consultative Assembly (MPR) Decree of 2000**

Coincident with amending the constitution, the People's Consultative Assembly (MPR) also decided two matters important to security sector reform. In the hierarchy of legislation in Indonesia, decrees of the People's Consultative Assembly (known as TAP MPR or MPR Decrees) are below the constitution.<sup>18</sup> Two MPR decrees ratified during 2000 are the basis for legislative reform of the People's Consultative Assembly (MPR) as well as the basis for subsequent law, including Law No. 2 of 2002 on the Indonesian National Police, Law No. 3 of 2002 on National Defence and Law No. 34 of 2004 on the TNI.

The nucleus of the two MPR decrees of 2000 is separation of the institutions, roles and legal jurisdictions of the TNI and the Police (Polri). Also incorporated within them is the prohibition against involvement by the TNI and Polri in practical politics and holding two positions. In addition, what is most important in the latter decree (TAP MPR No. VII/MPR/2000) is the participation of the legislature, i.e., the National Parliament (DPR), in the processes of selection, appointment and removal of both the TNI Commander and the Chief of Polri within the structure of the 1945 Constitution.<sup>19</sup>

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<sup>16</sup> Recognition of *non-derogable rights* in the constitution is stipulated in Article 28I (1) of the Second Amendment to the 1945 Constitution. Article 28I(1): The right to life, the right to not be tortured, the right to freedom of thought and conscience, religious rights, the right to not be enslaved, the right to be recognized as an individual before the law, and the right to not be prosecuted based on retroactive laws are human rights that may not be diminished under any circumstances whatsoever.

<sup>17</sup> For a comprehensive discussion on human rights and security actors, see Peter Rowe, *The Impact of Human Rights Law on Armed Forces*, (United Kingdom: Cambridge University Press, 2006).

<sup>18</sup> This is based on TAP MPR No. III/MPR/2000 on Legal Sources and Hierarchy of Legislative Acts. However, since the issuance of MPR Decree No. I/MPR/2003 on Review of the Substance and Status of Interim Decrees of the People's Consultative Assembly and Decrees of the People's Consultative Assembly 1960-2002, not all MPR decrees have become legal sources in Indonesia. However, there are some MPR decrees that have the status of source of law and must be complied with in subsequent legislation. For example, MPR Decree TAP MPR No. VI/MPR/2000 on Separation of the Indonesian National Armed Forces (TNI) and Indonesian National Police, as well as TAP MPR No. VII/MPR/2000 on the Roles of the Indonesian National Armed Forces (TNI) and the Indonesian National Police. Sources of law and the hierarchy of legislation now governed by Law No. 10 of 2004 on Procedures for Making Legislative Regulations, Article 7(1), are as follows:

- a. the 1945 Constitution;
- b. Legislative Regulations in Lieu of Statute;
- c. Government Regulations;
- d. Presidential Regulations, and
- e. Regional Regulations

<sup>19</sup> Participation of the parliament in deciding the leadership of the military and police happened previously during the period of Liberal Democracy (1950-1959) under the structure of the 1950 Provisional Constitution and the parliamentary system. Excessive interference by the legislature into the internal affairs of the military and police led to Army officers who should act professionally becoming politically-oriented. See Ulf Sundhussen, *Politik Militer Indonesia 1945 - 1967: Menuju Dwi Fungsi ABRI [Military Politics in Indonesia, 1945-1967: Towards ABRI Dual Function]*, Institute for Economic and Social Research, Education and Information (LP3ES): Jakarta, 1986, pp. 123-128.

Now, these MPR decrees are, *first*, MPR Decree No. VI/MPR/2000 on the separation of the TNI and Polri. This decree confirms the separation of these two institutions. Article 2 of MPR Decree No. VI/MPR/2000 articulates the following:

1. The Indonesian National Armed Forces are the instruments of the state which functions in the defence of the State.
2. The Police of the Republic of Indonesia is the instrument of the state which functions in maintaining the security of the State.
3. In case of overlap between defence and security activities, the Indonesian National Armed Forces and the Police of the Republic of Indonesia must work together and support one another.

The *second* is MPR Decree No. VII/MPR/2000 on the Role of the Indonesian National Armed Forces (TNI) and the Role of the Indonesian National Police. There are several important articles concerning the TNI. *First*, the structure and position of the TNI as promulgated in Article 3 of MPR Decree No. VII/MPR/2000:

1. The Indonesian National Armed Forces (TNI) consist of the Army, the Navy and the Air Force which organisations are structured based on need and are governed by law.
2. The Indonesian National Armed Forces (TNI) are under the President.
3. The Indonesian National Armed Forces (TNI) are led by a Commander who is appointed and dismissed by the President after obtaining agreement of Parliament.
4. a. Members of the Indonesian National Armed Forces are under the jurisdiction of the military courts in case of violation of military law and come under the jurisdiction of the general courts in case of violation of general law.  
b. When the authority of general justice as intended in this article is not applicable, members of the Indonesian National Armed Forces come under the judicial jurisdiction determined by law.

This article indicates that the position of the TNI Commander is under the authority of the President and that there is participation by the National Parliament in the decision to appoint and dismiss the TNI Commander. In this way, for the first time, the MPR determined the position of the TNI Commander in an MPR decree, whereas previously it had been governed by law.<sup>20</sup>

*Second*, TNI assistance to Polri in maintaining security is specified in Article 4(2), "The Indonesian National Armed Forces provide assistance to the Police of the Republic of Indonesia in matters of public security, on request, as determined by law." This article is apparently based on experience when Polri was still part of the armed forces. At that time, problems of maintaining law and order including security were also military tasks.

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<sup>20</sup> Previously, the position of TNI Commander had been regulated neither by MPR decree nor the Constitution.

Article 5 of MPR Decree No. VII/MPR/2000 governs participation by the TNI in the state administration, namely:

1. State political policy is the basis for policy of and execution of tasks by the Indonesian National Armed Forces;
2. The Indonesian National Armed Forces maintain impartiality in political life and refrain from getting involved in practical politics;
3. The Indonesian National Armed Forces uphold democracy and respect the supremacy of law and human rights, and
4. Members of the Indonesian National Armed Forces do not use the right to elect or to be elected. Involvement of the Indonesian National Armed Forces in determining the direction of national policy shall be channeled through the People's Consultative Assembly (MPR) until 2009 at the latest.<sup>21</sup>
5. Members of the Indonesian National Armed Forces are eligible for civilian posts only after resignation or retirement from military service.

This article brought to an end the era of the armed forces' dual function, at the same time ending involvement by the military in the political life of Indonesia and the practice of active-duty military holding two positions, one military and one civilian, at the same time (known as 'kekayaan').<sup>22</sup> Another very important matter was the change in the Presidential Cabinet, requiring that the TNI Commander not serve concurrently as Defence Minister.<sup>23</sup>

The role of the National Police (Polri) is governed by Article 6 of MPR Decree No. VII/MPR/2000, i.e. ,:

1. The Police of the Republic of Indonesia is an instrument of the state whose role is to maintain security and social order, enforce the law and provide protection and service to the community;

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<sup>21</sup> From 1999 to 2004, the TNI-Polri Faction was still part of the MPR and the DPR. As stated in Article 5(4) of MPR Decree No. VII/MPR/2000 on the Role of the TNI and the Role of Polri, the TNI continues to use its right to set the direction of national policy in Parliament until 2009. After the Fourth Amendment to the 1945 Constitution in 2002, which governs membership in the MPR and the DPR, TNI Headquarters and Polri decided to disband and withdraw its faction in the DPR and MPR, where their membership in Parliament was based on appointment and designation by the TNI Commander and the Chief of Polri, rather than by the outcome of election to the legislature in a general election.

<sup>22</sup> The term "an active-duty military officer" must be interpreted to mean that the subject is still a member of the military. However, TNI construes 'not on active duty' to mean an Army officer without *portfolio*, which can be interpreted to mean that a member of the military can still occupy a civilian position when temporarily not on active duty. This occurred in the election of a regional head when an active-duty Army officer was nominated in regional politics. See Aris Santoso, "Pilkada Ujian Lapangan Bagi TNI" [Election for Governor a Field Test for the TNI], *Republika*, 6 May 2005. Application of ABRI's Dual Function was for the first time legalised in MPR Decree No. X/MPR/1998; see Muhammad Fajrul Falaakh, *et al*, *Op .Cit*. p. 41.

<sup>23</sup> Previously, it was customary for the TNI Commander to serve as Defence Minister. This indicated the position of the military as independent and not in civilian control. The last time the latter position was dual-hatted was when General Wiranto was promoted by President Soeharto to Commander of the Armed Forces on 16 February 1998 and a month later was appointed Minister of Defence and Security. After the fall of Soeharto, President Habibie confirmed him in these posts on 22 May 1998. On 4 November 1999, President Abdurrahman Wahid appointed Wiranto to the post of Coordinating Minister for the Political, Social and Security Sectors and appointed Admiral Widodo A.S. as TNI Commander and Prof. Juwono Sudarsono as Defence Minister. See Bhatara Ibnu Reza, *The Indonesian Doctrine of Territorial Warfare: Problems in Civil-Military Relations and Their Implications for Human Rights and Humanitarian Law*, Thesis for Master of Laws in International Human Rights Law, Northwestern University School of Law, Chicago, 2006, p. 44.

2. In the execution of its role, the Police of the Republic of Indonesia are obliged to have professional expertise and skill.

Meanwhile, the structure and position of Polri are also clearly governed by Article 7 of MPR Decree No. VII/MPR/2000:

1. The Police of the Republic of Indonesia are the National Police which organization is hierarchical from the centre to the regions;
2. The Police of the Republic of Indonesia are subordinate to the President;
3. The Police of the Republic of Indonesia is headed by the Chief of Police of the Republic of Indonesia, who is appointed and dismissed by the President with the approval of Parliament, and
4. Members of the Police of the Republic of Indonesia come under the jurisdiction of the Public Courts.

Since the police are subordinate to the President, MPR then needed to add an institution to assist the President in determining the policy direction of Polri. This is governed by Article 8 of MPR Decree No. VII/MPR/2000 on the National Police Institution. Not only that, this institution also functions as advisor to the President in the appointment and dismissal of the Chief of Polri. This institution was established by the President by law.

Polri also has the '*perbantuan*' task, in which personnel are seconded to civilian positions, like the TNI, but there are some special matters specific to policing that the military do not share. This is specified in Article 9 of MPR Decree No. VII/MPR/2000:

1. In a State of Emergency, the Police of the Republic of Indonesia render assistance to the Indonesian National Armed Forces, as governed by law;
2. The Police of the Republic of Indonesia participate actively in international crime prevention tasks as a member of the International Criminal Police Organization - Interpol.
3. The Police of the Republic of Indonesia actively assist in peacekeeping operations under the banner of the United Nations.

Article 10 of MPR Decree No. VII/MPR/2000 (stipulates that) like the TNI, when participating in state administration, members of Polri also must remain impartial and not involve themselves in practical politics. In addition, members of Polri do not have the right to elect and be elected but may be involved in setting the direction of national policy through the MPR until 2009. Other provisions are about the necessity to resign or retire from Polri refuse himself or retire for members of Polri in order to take up a position outside of policing.

### **c. Law No. 2 of 2002 on the Police Force of the Republic of Indonesia**

The passage of Law No. 2 of 2002 on the National Police implemented the mandate of MPR Decree No. VI/MPR/2000 on Separation of the Indonesian National Armed Forces (TNI) and The Indonesian National Police and MPR Decree No. VII/MPR/2000 on the Role of the Indonesian National Armed

Forces (TNI) and the Role of the Police Force of the Republic of Indonesia. This law revoked Law No. 28 of 1997 on the Police Force of the Republic of Indonesia which was valid only for five (5) years, the successor to Law No. 13 of 1961 on the Indonesian National Police, in effect for the 36 previous years.

The publication of this law provided hope of culture change in Polri from its former militaristic culture, to become a civilian police institution like those of democratic countries. The police institution also can hopefully become professional and modern especially in its law enforcement function by respecting democracy and human rights.

Law No. 2 of 2002 on the Police of the Republic of Indonesia substantively positioned the police institution as a strong institution in terms of its function and status within government. This is emphasised in Article 2 of Law No. 2 of 2002, i.e., "the police force function shall be one of the state administration functions in the fields of maintaining security and public order, law enforcement, protection, shelter and service to the community." The position of Polri within the government is under the President as defined in Article 8 of Law No. 2 of 2002.

On deeper examination, there are three important functions associated with Polri's position, i.e., *first*, the government function, *second*, the law enforcement function and *third*, the community security and order function (known as '*kamtibnas*'). From the governmental aspect, Polri has authority to make police force regulations of a general nature within the framework of restoration of order and security, pursuant to legislative regulations.<sup>24</sup>

This provision is rather odd where a police force regulation is binding on the public although the subject matter is covered by legislation. Although police force regulations are issued on the basis of applicable legislation, misconduct or violation of human rights violations can be justified within the framework of restoration of order and security.<sup>25</sup>

The police function in the structure of the criminal justice system is governed by Article 16 of Law No. 2 of 2002. Special police functions as law enforcement officials are governed by Law No. 8 of 1981 on the Code of Criminal Procedure.

The special function and authority of the police in the field of community security and order is governed by Article 14 and Article 15 of Law No. 2 of 2002. In these two articles, there is some overlap between the function and authority of the police in their law enforcement capacity and their authority as

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<sup>24</sup> See Article 1(4) Law No. 2 Year 2002 on the Police Force of the Republic of Indonesia: a Police Force regulations shall be any regulation issued by the Police Force of the Republic of Indonesia in the framework of keeping order and assuring public security pursuant to legislative regulations.

<sup>25</sup> This was apparent when the Chief of Central Sulawesi Provincial Police, Brigadier General Badrohin Haiti, issued an Order to Shoot on Sight in the Poso Regency and city of Palu on 16 January 2007, applicable to anyone owning and keeping firearms and explosives without lawful authority. According to the Head of Public Relations for the Central Sulawesi Regional Police, this measure was adopted to restore security and order. Another case involved stopping attacks by persons on the Most Wanted List (known as 'DPO') in the case of the Poso conflict. See *Republika Online*, "Maklumat Tembak Ditempat berlebihan" [Warning to Shoot on Sight Excessive], 18 Januari 2007, [http://www.republika.co.id/koran\\_detail.asp?id=279333&kat\\_id=59](http://www.republika.co.id/koran_detail.asp?id=279333&kat_id=59), diakses pada 24 April 2007.

trainers/guides in the Public Safety and Order Program (known as *'kamtibnas'*). For example, Article 15(1)(f) where police officials can perform special examinations as part of the police force action in the framework of prevention.<sup>26</sup> The elucidation to Law No. 2 of 2002 does not provide an explanation, but if this action is not explained it will give rise to violation of the right of *habeas corpus* and open the way to practice of torture of suspects.<sup>27</sup> In other words, it is extremely difficult to tell when police are exploiting the law as opposed to upholding it.

The most important matter in this Law is the clarification of the National Police Force Commission which is governed by Chapter VI, Articles 38 to 40 of Law No. 2 of 2002. The institution, as stipulated in Article 38(1), is called the National Police Force Commission (Kopolnas). However, despite the mandate in MPR Decree No. VII/MPR/2000 on the Role of the Indonesian National Armed Forces (TNI) and the Role of the Police Force of the Republic of Indonesia that the institution was expected intended to become the institution overseeing the police, it instead became merely an advisory body to the President.<sup>28</sup>

The final matter governed by Law No. 2 of 2002, Chapter VII, Articles 41 and 42, on Assistance, Relationship and Cooperation, is the issue of requests by Polri for assistance from the TNI for security tasks and during a military emergency and participation in peacekeeping operations under the UN banner, all of which are governed by Article 9 of MPR Decree No. VII/MPR/2000, while cooperative relationships in general are described in terms of development of cooperation between Polri and both domestic and foreign institutions.

#### **d. Law No. 3 of 2002 on National Defence**

Law No. 3 of 2002 on National Defence fundamentally revises the national defence system and civilian-military relationships, albeit to a very limited degree. This law replaced Law No. 20 of 1982 on The Basic Principles of the National Defence and Security of the Republic of Indonesia.<sup>29</sup> Publication of Law No. 3 of 2002 directly restricted the military's political role; this legislation incorporated the principles of democracy, basic human rights, public welfare,

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<sup>26</sup> Article 15(1)(f) of Law No. 2 of 2002 on the Police Force of the Republic of Indonesia: Perform special examinations investigations as part of police force action in the framework of prevention.

<sup>27</sup> Indonesia ratified the UN Convention Against Torture with the promulgation of Law No. 5 of 1998 on Ratification of the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

<sup>28</sup> Members of the National Police Force Commission were appointed effective upon publication of Presidential Decree No. 50 of 2006, 19 May 2006. See *Media Indonesia Online*, "Mabas Polri Terima Daftar Nama Anggota Kopolnas" [Polri HQ Receives List of Names of Members of National Police Commission], 20 Mei 2006, <http://www.media-indonesia.com/berita.asp?id=201314>, accessed 24 April 2007.

<sup>29</sup> Law No. 20 Year 1982 was a form of validation of ABRI's Dual Function which had previously been confirmed in the Resolution of Temporary Peoples' Consultative Assembly (TAP MPRS) No. XXIV/MPRS/1966 concerning New Policy on Defence and Security. Nevertheless, to secure ABRI's role in defence and its role in social and political life, the Soeharto regime needed to reinforce its position under Article 26 of Law No. 20 of 1982, i.e.: the Armed Forces shall have functions as the state security defence force state and as a social force. in Article 28(1) of Law No. 20 of 1982: The Armed Forces as a social force act as a dynamic and stabilising force which, together with other social forces, shoulder the responsibility for securing and ensuring the success of the national struggle to fulfill independence and improve the welfare of all Indonesians.

the environment, provisions of national and international law and custom, as well as the principle of peaceful coexistence.<sup>30</sup>

In Law No. 3 of 2002, there are two important matters of note. *First*, on changes to the national defence system and *second*, on relationships and roles of the President, Defence Minister and TNI Commander in the national defence.

As has been explained above, the position of the People's Defence and Security System (known as '*Sishankamrata*') has been confirmed in the Constitution. However, Law No. 3 of 2002 has a different interpretation about participation of the public or residents who are no longer considered to be the basic component in confronting military threat. Article 7(2) of Law No. 3 of 2002 states, "In facing military threat, the TNI is the main component of the national defence system with support from the reserve and support components."<sup>31</sup> The TNI's role is also limited whenever the state is faced with a non-military threat, in which case other governmental institutions take priority.<sup>32</sup>

The reserve component consists of citizens, natural and manufactured resources, and the national facilities and infrastructure prepared for mobilisation to increase and strengthen the main component,<sup>33</sup> whereas the support component consists of citizens, natural and manufactured resources, and the national facilities and infrastructure that can directly or indirectly increase the strength and capability of the main and reserve components.<sup>34</sup>

With such regulation, the TNI, whether it likes it or not, will become a professional military institution, since they will focus only on the national defence. It is a government task to establish a legislative regulation to govern public participation in defence so that never again can the TNI be directly involved in using members of the public within the framework of national defence.<sup>35</sup> Based on the elucidation to Law No. 3 of 2002, the TNI as the main component and the TNI Reserves as the reserve component are to implement national defence in accordance with the rules of international law, especially the distinction between combatants and non-combatants.<sup>36</sup>

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<sup>30</sup> See Article 3(1) of Law No. 3 of 2002 on National Defence.

<sup>31</sup> Compare with Section 1(5) Law No. 20 Year 1982: The People's Defence and Security System (sometimes called Universal Self-Help System) is the total defence system consisting of the Trained Civilian Militia (known as *Ratih*) as the basic component, the Armed Forces of the Republic of Indonesia as the main component, along with the Reserve Component of the TNI, special Civil Protection component and natural resources, national manufactures and infrastructure support component, as a totality, integrated and directed.

<sup>32</sup> See Article 7(3) of Law No. 3 of 2002 on National Defence.

<sup>33</sup> See Article 8(1) of Law No. 3 of 2002 on National Defence.

<sup>34</sup> See Article 8(2) of Law No. 3 of 2002 on National Defence.

<sup>35</sup> There are some legislative regulations related to mobilisation and demobilisation, Trained Civilian Militia (*Ratih*) and ABRI personnel but since the source of law is the 1945 Constitution which has been amended and Law No. 20 of 1982 has been replaced by Law No. 3 of 2002, those legislative regulations do not have legal force.

<sup>36</sup> See the Elucidation to Law No. 3 of 2002 on National Defence. In relation to implementation of human rights law and humanitarian law in conjunction with announcement of applicability of Law No. 3 of 2002, the Defence Minister issued Ministerial Decision No. Kep/02/M/II/2002 on Application of Humanitarian and Human Rights Law in the Administration of the National Defence.

Law No. 3 of 2002 defines the President as holder of supreme authority over the TNI with authority and responsibility for mobilisation of TNI forces<sup>37</sup> as governed by the 1945 Constitution. However, this may not be used directly by the President without first obtaining the agreement of the Parliament<sup>38</sup> except in a state of emergency.<sup>39</sup> In this event, the President must, within 48 hours, submit the matter to the DPR for its agreement<sup>40</sup> and, in the event that the DPR does not give its assent, the President must terminate the mobilisation of military operations.<sup>41</sup>

Under Law No. 3 of 2002, the Minister of Defence heads the Department of Defence<sup>42</sup> and assists the President in formulating the general policy for national defence.<sup>43</sup> The Defence Minister also determines policy for the conduct of national defence based on the general policy determined by the President.<sup>44</sup> The Defence Minister formulates the general policy for the employment of TNI forces and other defence components.<sup>45</sup>

The Defence Minister also determines the policies for budgeting, procurement, recruiting, management of national resources and development of defence industry and technology required by the TNI and other defence components.<sup>46</sup> Within the framework of international relations, the Defence Minister compiles the Defence White Paper and decides the regional and bilateral cooperation policies within his scope.<sup>47</sup>

Law No. 3 of 2002 states that the Commander heads the TNI<sup>48</sup> and is responsible to President for the use of national defence components and works with the Defence Minister in fulfilling the needs of the TNI.<sup>49</sup> The TNI Commander also conducts strategic and military operations planning, professional and military strength development and maintains operational readiness.<sup>50</sup> Finally, the TNI Commander has the authority to use all national defence components in the conduct of military operations in accordance with the law.<sup>51</sup>

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<sup>37</sup> See Article 14(1) of Law No. 3 of 2002 on National Defence.

<sup>38</sup> See Article 14(2) of Law No. 3 of 2002 on National Defence.

<sup>39</sup> See Article 14(3) of Law No. 3 of 2002 on National Defence.

<sup>40</sup> See Article 14(4) of Law No. 3 of 2002 on National Defence.

<sup>41</sup> See Article 14(5) of Law No. 3 of 2002 on National Defence.

<sup>42</sup> See Article 16(1) of Law No. 3 of 2002 on National Defence.

<sup>43</sup> See Article 16(2) of Law No. 3 of 2002 on National Defence.

<sup>44</sup> See Article 16(3) of Law No. 3 of 2002 on National Defence.

<sup>45</sup> See Article 16(5) of Law No. 3 of 2002 on National Defence.

<sup>46</sup> See Article 16(6) of Law No. 3 of 2002 on National Defence.

<sup>47</sup> See Article 15(3) of Law No. 3 of 2002 on National Defence. On 31 March 2003, the Department of Defence published the Indonesian Defence White Paper. See Department of Defence, *Mempertahankan Tanah Air Memasuki Abad 21 [Defending the Country: Entering the 21st Century]*, (Jakarta: Defence Department, 2003).

<sup>48</sup> See Article 18(1) of Law No. 3 of 2002 on National Defence.

<sup>49</sup> See Article 18(4) of Law No. 3 of 2002 on National Defence.

<sup>50</sup> See Article 18(2) of Law No. 3 of 2002 on National Defence.

<sup>51</sup> See Article 18(3) of Law No. 3 of 2002 on National Defence.

Therefore, it can be said that the positions of the President and the Defence Minister in this law project an image of civilian-military relationships defined by civilian supremacy over the military which heretofore was unknown in Indonesia's system of constitutional law. However, this law does not really put the civilian-military relationships into practice in an integrated manner, due to the fact that the TNI is not under the control of the Department of Defence. Both the Defence Minister and the TNI Commander are on the same level, formally under the control of the President. The President has central command authority for mobilising and employing TNI forces.

#### e. Law No. 15 of 2003 on the Eradication of the Crime of Terrorism

(The full reference is:) Law No. 15 of 2003 on the Stipulation of Interim Law No. 1 of 2002 on Eradication of the Crime of Terrorism as a Statute. Interim Law (full title: Government Regulation in Law of Law, known as 'Perpu') No. 1 of 2002 on Eradication of the Crime of Terrorism. Interim Law No. 1 of 2002 was itself a response to the Bali bombings of 12 October 2002.

Initially, this regulation did not come into being on its own, but rather in conjunction with Interim Law No. 2 of 2002 on Eradication of the Crime of Terrorism upon the Event of the Bomb Explosion in Bali on 12 October 2002 which was then ratified as Law No. 16 of 2003.<sup>52</sup> Factions in the National Parliament (DPR) from the time they were published had differing attitudes, although among them there was some who agreed with the existence of the two interim laws, as a consequence of international political influence, as well as some who were uneasy, and most who wanted an alternative draft.

No	Meeting date	Name of faction	Name of faction member	Faction's Attitude towards Interim Law and Draft Law on Anti-terrorism	Other explanation
1.	12 January 2003	Reform Faction	Patrialis Akbar and Luthfi Ahmad	Interim Law very dangerous for society	Concerned that if the Draft Law does not become law, will be forced to accept Interim Law
2.	16 January 2003	Indonesian Unity and Nationhood (KKI) Faction	Sutradara Gintings and Kapad	Interim Law a reaction to Bali bombing; Draft Law on Anti-terrorism definitely acceptable	Accepted Draft Law on Anti-terrorism on grounds of international political considerations at the time
3.	16 January 2003	Golkar faction	Marzuki Achmad, Datuk Labuan and Daryatmo Mardiyanto	Interim Law does not apply once Draft Law is ratified into Law	Hoped there would be an integrated form of an alternative Draft Law and requested Inventory of Issues (DIM)

<sup>52</sup> Law No. 16 of 2003 on Eradication of the Crime of Terrorism upon the Event of the Bomb Explosion in Bali on 12 October 2002 was then annulled by the Constitutional Court because it conflicted with Article 28(i) of the 1945 Constitution which prohibits retroactivity. See the Decision of Constitutional Court 013/PUU-I/2003 on Application of Masykur alias Abdul Kadir, defendant in the case of the Bali Bombing of 12 October 2002 in the Denpasar District Court. See also *Media Indonesia*, "Yusril: Putusan Mahkamah Konstitusi hanya untuk Bom Bali" [Yusril: Decision of Constitutional Court only for Bali Bombing], 25 Juli 2004. For an in-depth study of the Constitutional Court, see Petra Stockmann, *The New Indonesian Constitutional Court: A Study into Its Beginnings and First Years of Work*, (Jakarta: Hans Seidel Foundation, 2007).

4.	20 January 2003	People's Sovereignty Party (PDU) faction	K.H. Ahmad Satari, Mudahan Hazzie and Amarudin Djajasubinta	Rejected both the Interim Law and the expansion of the State Intelligence Agency (BIN) into the provinces and regions.	Requested an Alternative Draft Law
5.	21 January 2003	Crescent Star Party (PBB) faction	Ahmad Sumargo, M.S. Kaban etc	Nervous about deviations from Interim Law; rejected expansion of State Intelligence Agency (BIN)	Requested an Alternative Draft Law
6.	22 January 2003	National Awakening Party (KB) faction	Chotibul Umam, Manase Mallo, Muhaimin M.T., Ida Fauziah and Susono Yusuf	Nervous about deviations from Interim Law; rejected expansion of State Intelligence Agency (BIN) into regions	Requested an Alternative Draft Law
7.	23 January 2003	Indonesian Democratic Party - Struggle (PDI-P) faction	Nyoman Gunawan, V.B. Da Costa and Dwi Ria Latifa	Had no clear attitude; all depended on instructions from the party	Requested alternative draft but gave no guarantee it would be discussed
8.	-	United Development Party (PPP) faction	-	-	-

**Table 1. Attitudes of Factions in the National Parliament (DPR) on Interim Law and Draft Law on Eradication of the Crime of Terrorism (Source: UU Anti Terorisme: Antara Kebebasan dan Keamanan Rakyat [Anti-Terrorism Law: Between Freedom and Human Security], Imparsial, 2003)**

From its publication in the form of an Interim Law until its enactment, the substance of this law was subjected to much criticism, particularly because of the threat it posed to democracy and human rights.<sup>53</sup> *First*, it changed the face of law enforcement by the introduction of non-judicial intelligence into the domain of the Criminal Justice System (*integrated criminal justice system*). *Second*, change to the law on criminal procedure and *third*, retroactive application to crimes of terrorism.

Along with publication of the Interim Law at that time, President Megawati issued two Presidential Instructions. *First*, Presidential Instruction (Inpres) No. 4 of 2002 in which the Coordinating Minister for the Political, Social and Security Sectors had the authority to formulate policy on terrorism.<sup>54</sup> *Second*, Presidential Instruction (Inpres) No. 5 of 2002 referred to the role of the State

<sup>53</sup> In reaction to the publication of the two interim laws, some NGOs and human rights advocates agreed to form a coalition called the *Coalition for Civil Liberties* as a follow-up to the meetings on 7 and 12 November 2002. At that time, the Coalition agreed to appoint Imparsial, The Indonesian Human Rights Monitor, as coordinator. See Imparsial and the Coalition for Civil Liberties, *UU Anti Terorisme: Antara Kebebasan dan Keamanan Rakyat [Anti Terrorism Law: Between Freedom and Human Security]*, Jakarta, Imparsial, 2003. This book provides a thorough explanation of all the legislative regulations related to eradication of terrorism, including some communiqués from the Coalition.

<sup>54</sup> *Ibid.* p. 9.

Intelligence Agency (BIN) as coordinator of all intelligence activities with several other intelligence agencies made subordinate to it, including the Strategic Intelligence Agency (known as 'BAIS'), Polri, the Attorney General's Office and Judiciary, Immigration, Customs and Excise and so on).<sup>55</sup>

Law No. 15 of 2003 in the field of protection of civil rights in fact threatened freedom of the press and freedom to express opinions.<sup>56</sup> Article 20 of Law No. 15 of 2003 states "...act of "intimidation" of an investigating officer..", without limiting what is meant by "intimidation", allowing this article to be used as grounds for placing restrictions on the media or even those commenting on a legal process over a terrorist crime.<sup>57</sup>

Law No. 15 of 2003 also threatens individual rights through telephone wiretapping, surveillance of bank records and so on, based solely on intelligence reports.<sup>58</sup> This is a new addition to the law on criminal procedure in which intelligence reports are one type of evidence as governed by Law No. 6 of 1981 on the Code of Criminal Procedure (known as 'KUHAP').<sup>59</sup>

Making provisions of the crime of terrorism retroactive conflicts with civil rights. Therefore, this law takes seriously the principle of non-retroactivity which is a cardinal principle in criminal law.<sup>60</sup> In practice, the constitutions of numerous democratic countries disallow the bringing of a matter to court based on retroactivity (*ex-post facto*).

As has been mentioned, Law No. 15 of 2003 threatens the independence of the judicial system with involvement of non-judicial intelligence officials such as the State Intelligence Agency (BIN) and the TNI.<sup>61</sup> Public control over legal institutions can be paralysed by this involvement of non-judicial intelligence agencies in the legal process.<sup>62</sup>

Law No. 15 Year of 2003 also adopted pre-trial mechanisms stemming from the Anglo-Saxon system but did not adopt its judicial system, and in fact can abolish the right to submit an objection (*habeas corpus*).<sup>63</sup> This mechanism

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<sup>55</sup> *Ibid.* p. 9.

<sup>56</sup> See Imparsial Team, "Terorisme dalam Pergulatan Politik Hukum" [Terrorism in the Political Struggle over Law], in Rusdi Marpaung and Al Araf, ed., *Terorisme: Definisi, Aksi dan Regulasi [Terrorism: Definition, Action and Regulation]*, (Jakarta, Imparsial, 2003), p. 52.

<sup>57</sup> *Ibid.* p. 52. Article 20 of Law No. 15 of 2003: Any person who uses violence, the threat of violence or intimidation against a police prosecutor, investigating officer, public prosecutor, legal advisor, and/or judge handling a terrorism case, thereby impeding the judicial process, faces between 3-15 years imprisonment.

<sup>58</sup> *Ibid.* p. 52. Article 26(1) of Law No. 15 Year 2003: to obtain sufficient initial evidence, the investigating officer may use every intelligence report. See also Article 30 of Law No. 15 of 2003.

<sup>59</sup> See Article 184(1) of Law No. 6 of 1981 on the Code of Criminal Procedure (KUHAP): Lawful evidence is:

- a. witness testimony;
- b. expert testimony;
- c. document(s);
- d. circumstantial evidence;
- e. testimony from the accused;

<sup>60</sup> See Decision of Constitutional Court 013/PUU-I/2003.

<sup>61</sup> Rusdi Marpaung and Al Araf, *Op.Cit.* p. 52.

<sup>62</sup> *Ibid.* p. 52.

<sup>63</sup> *Ibid.* p. 52. See Article 26(2) of Law No. 15 of 2003: A determination that sufficient initial evidence as referred to in clause (1) exists or has been obtained must be made (by means of) a process of investigation by a Chairperson or Deputy Chairperson of a District Court.

closes off the possibility of the individual's right to use pretrial procedures as regulated in KUHAP as the only *habeas corpus* mechanism as an instrument of control.<sup>64</sup> Formation of pre-trial mechanisms in the process of admissibility where a single judge decides the legality of initial proof, detention order, search and confiscation, is a means to develop immunity from the law and give impunity to the intelligence apparatus as outlined in Article 26 (2).<sup>65</sup>

Rather than limiting and preventing abuse of power by the state, Law No. 15 of 2003 in fact provides opportunities for abuse of power by the state, especially giving broad opportunities to intelligence agencies, both the State Intelligence Agency (BIN) and the TNI, for purposes other than to prevent or collect information related to terrorism.<sup>66</sup> In addition, Law 15 of 2003 protects perpetrators of abuse of power committed by banks or financial institutions, treating leaking of confidential bank details, embezzlement, corruption and so forth as administrative errors only.<sup>67</sup>

In subsequent developments, the Government was aware of the magnitude of criticism of Law No. 15 of 2003 and accordingly formulated an alternative draft. However, the zeal and intention to take up the amendment only arose when there was a bomb explosion in Indonesia. This can be seen in the drafting of the amendment that was the outcome of working committee meetings during the period 20-28 August 2003 in response to the bombing at the Marriott Hotel on 5 August 2003, while the other draft amendment emerged in September 2004 as a response to the bomb explosion at Kuningan [outside the Australian Embassy] on 8 September 2004.<sup>68</sup> Now the zeal was directed towards strengthening to state and not towards guaranteeing and respecting human rights and democracy.

In the first draft amendment, the government accommodated the demands of non-judicial institutions such as the TNI and BIN to participate in the process of law enforcement.<sup>69</sup> The Department of Justice and Human Rights<sup>70</sup> seemed reactive, focusing on short term concerns, while ignoring the fundamental issue, i.e., the proper roles of the TNI and BIN within the structure of a democratic state.<sup>71</sup>

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<sup>64</sup> Pre-trial hearing is governed by Law No. 8 of 1981 on the Code of Criminal Procedure (KUHAP), Chapter X, Court's Authority to Judge, Part One.

<sup>65</sup> Rusdi Marpaung and Al Araf, *Op.Cit.* p. 52.

<sup>66</sup> *Ibid.* p. 53.

<sup>67</sup> *Ibid.* p. 53. See Article 29(2) of Law No. 15 of 2003: The order of the investigating officer, public prosecutor, or judge as referred to in clause (1) must be made in writing stipulating clearly on:

- a. name and position of investigating officer, public prosecutor, or judge;
- b. identity of everyone reported by the bank and financial services institution to the investigating officer, suspect, or defendant;
- c. grounds for suspension;
- d. criminal act suspected or indicted; and
- e. location of assets.

<sup>68</sup> See Imparsial Team, *Catatan HAM 2004: Keamanan Mengalahkan Kebebasan [Record of Human Rights 2004: Security Subjugates Liberty]*, (Jakarta, Imparsial, 2006), p. 48.

<sup>69</sup> *Ibid.* p. 48.

<sup>70</sup> At the time, the department was called the Department of Justice and Human Rights (different terminology but same meaning).

<sup>71</sup> *Ibid.* p. 48.

However, in the government's draft Second Amendment to Law No. 15 of 2003, submitted through the Department of Justice and Human Rights after the bombing [of the Australian Embassy] at Kuningan, there was no clear definition of 'perpetrator of a terrorist crime'.<sup>72</sup> In Article 13B on terrorist organisations, the government classified persons who wear the clothing and insignia of a terrorist organisation in public, and use funds from a terrorist organisation, as among those who face between three and 15 years imprisonment.<sup>73</sup>

#### **f. Law No. 34 of 2004 on the Indonesian National Armed Forces**

The publication of Law No. 34 of 2004 on the TNI is a further effort within the framework of conducting security sector reform as mandated by MPR Decree VI/MPR/2000 and MPR Decree No. VII/MPR/2000. While this law was still in draft form, the TNI attempted to ensure that it would remain an independent institution, free of civilian controls. In the Draft Law on the TNI of 2003<sup>74</sup>, the TNI was successful in inserting a controversial article dealing with employment of forces. Article 19 of the Draft Law on the TNI of 2003 stipulates:

1. In an urgent situation where state sovereignty, territorial integrity and national safety are under threat, the Commander can employ TNI forces in the first instance to prevent greater damage to the state.
2. Mobilisation of TNI forces as intended in clause (1) must be reported to the President within 24 hours.

This article subsequently became notorious as the "coup d'etat article", considered by the TNI to be necessary in case of emergency.<sup>75</sup> The article then became the target of criticism by political experts, human rights advocates and politicians in the DPR who were involved in drafting the TNI bill. Basically, the article fails to provide explicit criteria on what is meant by an "urgent situation" that constitutes a threat to state sovereignty and territorial integrity, nor does it indicate which actor has the right to interpret these criteria.<sup>76</sup>

The TNI Commander at that time, General Endriartono Sutarto, explained that he was of the opinion that mobilisation of forces must be decided by the President with the agreement of Parliament.<sup>77</sup> However, according to him, in practice the TNI needs a legal umbrella to deter enemy attack as soon as possible in a state of emergency. Taking this into consideration, authority to employ and mobilise forces as intended in Article 19 of the Draft Law on the

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<sup>72</sup> *Ibid.* p. 48.

<sup>73</sup> *Ibid.* p. 48.

<sup>74</sup> The Draft Law on the TNI was the outcome of a DoD meeting on 3 February 2003.

<sup>75</sup> See Imparsial Team, *Menuju TNI Profesional: Tidak Berbisnis dan Tidak Berpolitik* ([Towards a Professional TNI: Out of Business and Out of Politics]), Jakarta: Imparsial, 2005, p. 115. This book provides comprehensive information on the debate on the Draft Law on the TNI in the Parliament (DPR) including analysis and the campaign to reject it.

<sup>76</sup> *Ibid.* p. 116.

<sup>77</sup> See General Endriartono Sutarto, "Soal Pasal Kudeta" (Problem of the Coup d'etat Clause), *Kompas*, 7 April 2003.

TNI could be adequately regulated by a standard operating procedure.<sup>78</sup> In other words, the TNI Commander has absolutely no automatic authority but must be political minded.<sup>79</sup> Given the magnitude of the rejection from numerous segments of the community, this article was finally deleted and did not reappear in the subsequent TNI bill.

On 30 June 2004, in the lead up to the 2004 Presidential elections, President Megawati Soekarnoputri submitted the TNI bill to the Parliament. The Parliament needed 45 days prior to the final session of Parliament to address this Draft Law, which was a very short time, given the lawmaking process in Indonesia.<sup>80</sup> The debate on the TNI bill was the TNI's last opportunity to be involved in setting the direction of national policy through the legislative process before finally losing their seats in Parliament.

There were four important issues in the debate on the TNI bill this time around, i.e., *first*, territorial management as a primary task of the TNI; *second*, the position of TNI HQ under the Department of Defence; *third*, the question of '*kekaryaan*' in the bureaucracy, whereby TNI members can be dual-hatted as both a military officer and a civilian bureaucrat in the civilian domain and *fourth*, military businesses.

No	Political Elite	Attitude	Source
1	Megawati Soekarnoputri (President of the Republic of Indonesia)	Supported Draft Law on the TNI and submitted it to Parliament on 30 June 2004	<i>Kompas</i> , 16 August 2004
2	Amris Fuad Hasan (Deputy Chairperson, Commission I of the Parliament (DPR))	Declared support of debate on TNI bill on the grounds of giving a final opportunity to the TNI-Polri Faction	<i>Media Indonesia Online</i> , 3 August 2004
3	Air Vice Marshal (AVM) Pieter L.D. Wattimena (Director-General Defence Strength, Department of Defence)	Requested that TNI bill be debated by the Parliament now because of the constitutional mandate. Postponement of the debate until after the seating of the new 2004-2008 Parliament was seated was judged inappropriate.	<i>Tempo Interactive Online</i> , 19 July 2004

**Table 2. Initial Attitude of Political Elites on the Draft Law on the TNI (Source: Analysis by Imparsial (Indonesian Human Rights Monitor), 2004).**

<sup>78</sup> Imparsial Team, *Op.Cit.* p. 123.

<sup>79</sup> *Ibid.* p. 123.

<sup>80</sup> Policy Analysis by Imparsial, "Gambaran Reformasi TNI dalam Pengesahan UU TNI" [TNI Reform Illustrated in Ratification of TNI Law], Jakarta: Imparsial, December 2004), p. 1.

This time, the TNI again inserted an article on territorial management as one of the TNI's tasks. Article 8(2) of the Draft Law on the TNI defined the primary tasks of the TNI as:

2. In conducting its mission as intended in clause (1), the TNI conducts:
  - a. military operations for war;
  - b. military operations other than war;
  - c. conducts territorial management in accordance with the role and authority of the TNI:
    1. assists the government in administering management of defence potential within the framework of raising national defence capability;
    2. assists the government in administering military obligations and basic military training for citizens;
    3. realising amalgamation of the TNI with the people, and
    4. other tasks based on legislative regulations.

This article made territorial management a TNI mission and, in so doing, the territorial structure of the TNI was indirectly made permanent, because to date territorial management is one of the tasks associated with the territorial command.<sup>81</sup> The territorial command itself remains the backbone of the Army in applying its Doctrine of Territorial Warfare and is not part of the overall defence system which involves all of the service components.<sup>82</sup>

The TNI Commander, General Endriartono Sutarto, construed the importance of territorial management as both an instrument for getting the people on side and for expanding the TNI's ability to get information.<sup>83</sup> The interpretation of the TNI Commander proves that the TNI wishes to become a political entity, free from control by civilian authorities.

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<sup>81</sup> *Ibid.* p. 4.

<sup>82</sup> See Bhatara Ibnu Reza, *The Indonesian Doctrine of Territorial Warfare: Problems in Civil-Military Relations and Their Implications for Human Rights and Humanitarian Law*, Thesis for Master of Laws in International Human Rights Law, Northwestern University School of Law, Chicago, 2006.

<sup>83</sup> See *Kompas*, "RUU TNI Belum Tentu Bisa Diselesaikan DPR" [Passage of TNI Bill by DPR Uncertain], 29 Juli 2004. See also Bhatara Ibnu Reza, "Mempertimbangkan RUU TNI" [Considering the Draft Law on the TNI], *Suara Pembaruan*, 5 August 2004.

Faction	TNI Territorial Function	TNI subordinate to Defence Minister	Dual-hatting ( <i>Kekaryaan</i> ) in the Bureaucracy
Indonesian Democratic Party - Struggle (PDI-P)	Reject	Agree	Must abstain
Golkar Party	Has not decided	Agree	Must abstain
United Development Party (PPP)	Reject	Agree	Must abstain
The National Awakening Party (PKB)	Reject	Agree	Must abstain
Reform Party	Has not decided	Agree	Reject
TNI-Polri	Agree	Reject	Agree

**Table 3. Attitude of Factions in National Parliament (DPR) on Draft Law on the TNI on 23 August 2004 (Source: Analysis by Imparsial (Indonesian Human Rights Monitor), 2004)<sup>84</sup>**

On 30 September 2004, the TNI bill was ratified and became law without the insertion of territorial development into it. Law No. 34 of 2004 on the TNI in parallel also reinforced several matters governed by Law No. 3 of 2002 on National Defence, such as mobilisation of the TNI by the President with the agreement of Parliament<sup>85</sup>, the authority of the President during a state of emergency<sup>86</sup>, the role of the TNI Commander in the employment of forces<sup>87</sup> and the position of the TNI Commander who is subordinate to the President in the employment of forces.<sup>88</sup> However, the Law failed to stipulate that the TNI is subordinate to the Department of Defence as a form of reflection of civilian supremacy over the military.

Promulgation of Law No. 34 Year 2004 also repealed Law No. 2 of 1988 on Members of the Armed Forces of the Republic of Indonesia. This was because Law No. 34 of 2004 also regulates TNI personnel.

<sup>84</sup> Indonesian Unity and Awakening Faction, People's Sovereignty Faction and Crescent Star Party Faction were not recorded.

<sup>85</sup> See Articles 17(1) and (2) of Law No. 34 of 2004 on the TNI. See also Articles 14(1) and (2) of Law No. 3 of 2002 on National Defence.

<sup>86</sup> See Articles 18 (1), (2) and (3) of Law No. 34 of 2004 on the TNI. See also Articles 14(3), (4) and (5) of Law No. 3 of 2002 on National Defence.

<sup>87</sup> See Article 19(1) of Law No. 34 of 2004 on the TNI.

<sup>88</sup> See Article 19(2) of Law No. 34 of 2004 on the TNI. In the elucidation, the responsibility of the TNI Commander to President is [in relation to] military operations actions. See also Articles 18(3) and (4) of Law No. 3 of 2002 on National Defence.

### 3. Some Planned Security Sector Legislation

Currently some draft legislation is still being debated in Parliament. Now, the process of consideration of this draft legislation is influenced by the political struggles in Parliament and consequently the discussion can take up to a year. The bills now under discussion include the Draft Law on State Secrets, the Draft Law on Freedom to Seek Public Information (KMIP)<sup>89</sup> and the Draft Law on Amendments to Law No. 31 of 1997 on Military Justice. Two bills that have attracted public attention but have not yet been debated by Parliament are the Draft Law on State Intelligence and the Draft Law on National Security.

Discussion of the Draft Law on State Secrets, the Draft Law on Freedom to Seek Public Information and the Draft Law on State Intelligence are not isolated from Indonesia's political situation related to its policy on anti-terrorism after the Bali bombing of 12 October 2002. Consequently, since that time, the government, especially the State Intelligence Agency (BIN), has tried to persuade Parliament, which was at the time in the middle of debate on the Draft Law on Eradication of the Crime of Terrorism, that it needed to give the same weight to the formulation of the Draft Law on Freedom to Seek Public Information, the Draft Law on State Intelligence and the Draft Law on State Secrets.<sup>90</sup>

#### A. Draft Legislation Now Being Debated by the Parliament and Government

##### a. Draft Law on State Secrets

The Draft Law on State Secrets or State Secrets bill became one of the priorities of the National Legislation Program based on DPR Decision No. 01/DPR/III/2004-2005 who will be signed into law during 2007. Currently, the State Secrets bill is a draft submitted by the Department of Defence and originally drafted by the State Cryptography Institute.<sup>91</sup> Discussion of the Draft Law on State Secrets was not unrelated to the creation of the Draft Law on Freedom to Seek Public Information.<sup>92</sup> The DPR Decision to give priority to

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<sup>89</sup> The latest development is that the Special Committee for this Draft Law has changed the name of the bill to 'Draft Law on Disclosure of Public Information' (KIP). See *Kompas*, "RUU KMIP Diubah Jadi KIP: Kata Kebebasan Tidak Ditemukan" [Draft Law on Freedom to Seek Public Information becomes Disclosure of Public Information: Word 'Freedom' Does Not Appear], 28 May 2007.

<sup>90</sup> See Imparsial Lobbying Documents, "UU Anti Teroris: Kembalinya Otoritarianisme" [Anti-Terrorism Law: Return to Authoritarianism], in Imparsial and Coalition for Civil Liberties, *UU Anti Terorisme: Antara Kebebasan dan Keamanan Rakyat [Anti Terrorism Law: Between Freedom and Human Security]*, Jakarta, Imparsial, 2003), p. 13.

<sup>91</sup> See Imparsial Team, *RUU Rahasia Negara: Ancaman Bagi Demokrasi [State Secrets Bill: Threat to Democracy]*, Jakarta, Imparsial, 2006), p. 3. This book covers and analyses in depth the creation of the State Secrets Bill. In this book there is also a critical focus on the Draft Law on State Secrets of January 2006. Previously there was also a Draft Law on State Secrets that was the outcome of the harmonisation meeting on the State Secrets bill at the Department of Justice and Human Rights on 4 May 2005.

<sup>92</sup> Since December 1998, several NGOs have joined a coalition known as Coalition for Freedom to Seek and Obtain Information, which then formulated the coalition's version of the Draft Law on Freedom to Seek Public Information and submitted it to Parliament. See Masyarakat Transparansi Indonesia [The Indonesian Society for Transparency], "Trilogi Kebebasan Memperoleh Informasi: RUU Kebebasan Memperoleh Informasi, RUU Kerahasiaan Negara dan RUU Intelijen Negara" [Trilogy of Freedom of Information: Draft Law on Freedom of Information, Draft Law of State Secrets and Draft Law on State Intelligence],

the State Secrets bill rather than the Draft Law on Freedom to Seek Public Information in the National Legislation Program was a very odd decision from the standpoint of production of legislation, in light of the fact that the Draft Law on Freedom to Seek Public Information had already been debated.<sup>93</sup>

From its inception, this Draft Law supported the concept of *limited access maximum exemption* which means that all information, especially if it originates with the State, is secret.<sup>94</sup> As a consequence, in future this would give rise to a *state police* like that of the East German communist regime.<sup>95</sup> It is essential that this Draft Law also accommodates the principle *maximum disclosure and limited exemption* as one of the main guidelines to limit state secrets.<sup>96</sup>

This Draft Law also conflicts with Article 28J(2) of the 1945 Constitution in its intent to limitation the rights and freedom of every person within the scope of respect for human rights, in this case, the right to obtain information.<sup>97</sup> The Draft Law on State Secrets also does not balance the rights of the community to obtain information with the limitations on State Secrets contained in Article 28F of the 1945 Constitution.<sup>98</sup> This can be seen by the way the Draft Law governs types of state secrets in the form of information, objects and/or activities.<sup>99</sup>

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www.tranparansi.or.id published in March 2006, p. 1. Accessed on 10 May 2007. The Draft Law on Freedom to Seek Public Information will be discussed later.

<sup>93</sup> On 19 February 2003, the new Draft Law on State Secrets was moved by the 20 member Legislative Board of the Parliament (Baleg) while at the same time the Special Committee on the Draft Law on Freedom to Seek Public Information completed work on that document. See Paulus Widiyanto, "Mewaspadaai Legislasi RUU Kerahasiaan Negara: Catatan Singkat Paulus Widiyanto" [Watch out for the Draft Law on State Secrets: Short Paper by Paulus Widiyanto], (no date), para. 3.

<sup>94</sup> See Article 2(1) of the January 2006 draft of the Draft Law on State Secrets: Every person has a duty to protect state secrets. In the elucidation to Article 2(1): This duty shall apply to Indonesian citizens or foreign nationals regardless of where they are domiciled.

<sup>95</sup> The East German Secret Police, better known as Stasi (*Staatssicherheit*) were under the Ministry of National Security (*Ministerium für Staatssicherheit*). Stasi was the main actor in spying on East German citizens, spreading terror and intimidation. In face, the citizens were all spying on each other and the information was then put on file. Today, these files can be seen at Stasi Headquarters in Lichtenberg, which has been turned into a museum. See James A. McAdams, *Judging The Past in Unified Germany*, (Cambridge: Cambridge University Press, 2001).

<sup>96</sup> Tim Imparsial Team, *RUU Rahasia... [Draft Law on State Secrets]*, *Op.Cit.* p. 16.

<sup>97</sup> *Ibid.* p. 8. Article 28J(2) of the Second Amendment to the 1945 Constitution 1945: In carrying out rights and freedoms, every person is required to obey the predetermined limitations regulated by the law for the sole purpose of guaranteeing recognition and respect over the rights and freedoms enjoyed by other people and to fulfill the just demands in accordance with the considerations of morals, security, and public order within a democratic society. This article is often used, especially by supporters of the death penalty (*retentionists*), to limit the right to life, which is a *non-derogable right* under Article 28I (1) of the Second Amendment to the 1945 Constitution. Article 28I(1): The right to life, the right to not be tortured, the right to freedom of thought and conscience, religious rights, the right to not be enslaved, the right to be recognized as an individual before the law, and the right to not be prosecuted based on retroactive laws are human rights that may not be diminished under any circumstances whatsoever.

<sup>98</sup> *Ibid.* p. 8. Article 28F of the 1945 Constitution: Every person shall have the right to communicate and to obtain information to develop themselves as individuals and their social environment, as well as the right to seek, to obtain, to possess, to keep, to process, and to convey information by utilizing all available types of channels.

<sup>99</sup> Article 4, Draft Law on State Secrets.

The types of secrets mentioned in the Draft Law are divided into policy areas and state activities in the fields of:<sup>100</sup>

- a. Defence and national security;
- b. International relations;
- c. Law enforcement process;
- d. National economic stability;
- e. State cryptography systems;
- f. State intelligence systems, and
- g. State vital assets.

Within the field of defence and security, several matters included in the secret classification are: weapons, supply of provisions/equipment, combat equipment and discoveries of research and development.<sup>101</sup> However, transparency regarding weapons is already part of international regulations on weapons transfer issued by multilateral institutions, such as the *Wassenaar Arrangement* in the form of the document *Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies* to which UN member states have also agreed and "*Guidelines for International Arms Transfer*" issued by the Disarmament Commission on 3 May 1996.<sup>102</sup>

The primary obligations under the UN Guidelines governing the basic agreement on weapons transfer are, (1) cooperation to prevent transfer; (2) publishing verifiable certificates of end use and end user; (3) customs and intelligence cooperation to detect illegal trade in weapons; (4) legal cooperation law to develop standard procedures for weapons export and import ; (5) regulation of of agents, brokers and suppliers of weapons; (6) adhering to sanctions and weapons embargoes imposed by the UN Security Council; and (7) reporting weapons transfer transactions.<sup>103</sup>

Reporting on weapons is carried out based on the *UN Register of Conventional Arms and the UN Standardized System of Reporting on Military Expenditures* , both of which govern transparency in matters of national defence related to data on transfer of conventional weapons, which include:<sup>104</sup>

- (1) defence policy of states which transfer weapons;
- (2) primary equipment and weapons systems (platforms) procurement companies, and
- (3) national weapons production.

In the legal field, [the bill] describes a process of examination and investigation by police officials or Civilian Investigating Officers (public servants) which in certain cases<sup>105</sup> raises the distinct possibility of violation of the rights of suspects which are guaranteed in the law on criminal procedure

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<sup>100</sup> Article 5, Draft Law on State Secrets.

<sup>101</sup> Elucidation to Article 5(a), Draft Law on State Secrets.

<sup>102</sup> Imparsial Team, *RUU Rahasia... [Draft Law on State Secrets]*, *Op.Cit.* p. 46.

<sup>103</sup> *Ibid.* p. 46.

<sup>104</sup> *Ibid.* p. 47.

<sup>105</sup> Elucidation to Article 5(c) of Draft Law on State Secrets.

and governed by the Code of Criminal Procedure (KUHP). Other no less important matters are related to cases that attract public attention such as corruption and serious human rights violations.

In addition, matters considered to be state secrets that are required by the police, the prosecution and/or judges in the interest of justice may not be tendered physically.<sup>106</sup> Ambiguity in determining matters "in the interest of justice" will also damage the rights of suspects, defendants and/or persons convicted, especially in the cross examination process in trials. In addition, where the criminal act involves personnel from the agency carrying out the examination and investigation or relates to cases like serious human rights violations and corruption, the physical evidence is vital. Without a doubt, this Draft Law will impede the process of law enforcement. The investigation process in cases of corruption or human rights violations will come to a halt if an important document that can reveal how the criminal act was committed is declared to be a state secret, possibly by the very perpetrator himself, who is still the head of an agency.<sup>107</sup>

## **b. Draft Law on Freedom to Seek Public Information**

As was touched on previously, Parliament intends to ratify the Draft Law on Freedom to Seek Public Information into Law during 2007, based on DPR Decision No. 01/DPR/III/2004-2005. The legal basis of this Draft Law is Article 28F of the Second Amendment to the 1945 Constitution as also governed by Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR) which was ratified by Indonesia and then became Law No. 11 of 2005 on Ratification of the International Covenant on Civil and Political Rights.<sup>108</sup>

In other words, not only had information been among the human rights guaranteed by the international community under the ICCPR, it was also among the constitutional rights of Indonesian citizens.<sup>109</sup> The principle supported in the Draft Law on Freedom to Seek Public Information is *maximum access, limited exemption* which accommodates the rights of citizens to access information, in line with practices and values of good governance regarding provision of public information by the government.

This amendment strengthens and reiterates the same provisions contained in Article 14 of Law No. 39 of 1999.<sup>110</sup>

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<sup>106</sup> Article 27(1) of Draft Law on State Secrets.

<sup>107</sup> Imparsial Team, *RUU Rahasia... [Draft Law on State Secrets]*, *Op.Cit.* p. 42.

<sup>108</sup> See also Article 14 of Law No. 39 of 1999 on Human Rights: 1) Everyone has the right to communicate and obtain information they need to develop themselves as individuals and to develop their social environment; (2) Everyone has the right to seek, obtain, own, store, process, and impart information using all available facilities. Much earlier, during the Soeharto era, there were regulations guaranteeing the rights of citizens to obtain information, such as Law No. 24 of 1992 on Spatial Planning, Law No. 23 of 1997 on Environmental Management and Law No. 36 of 1999 on Telecommunications.

<sup>109</sup> For a comparison of law on freedom of information in a number of states, see Toby Mendel, *Kebebasan Memperoleh Informasi: Sebuah Survei Perbandingan Hukum [Freedom of Information: A Comparative Legal Survey]*, translated by the Kawantama Team, (Jakarta: UNESCO, 2004).

<sup>110</sup> Masyarakat Transparansi Indonesia [The Indonesian Society for Transparency], "Trilogi RUU..." [Trilogy of Draft Laws ...], *Op.Cit.* p. 2.

1. Foster democracy through ensuring public access to information and recorded data and information;
2. Improve public access to data and information;
3. Ensure that institutions adhere to deadlines, and
4. Maximise the use of data and information held by institutions.

In 2007, discussion of the FOI bill by the Parliament entered its seventh year, with the 1999-2004 Parliament having been replaced by that of 2004- 2009. The process was complicated by political struggles and foot dragging between the Parliament and the Government on substantive issues and synchronisation of the FOI bill with the Draft Law on State Secrets. Now in the debate on the bill, the Government was represented by the Department of Communications and Information (*Depkominfo*) which had also produced the government version of the bill, known as the Draft Law on Public Information (RUUIP).<sup>111</sup>.

During the discussions, which took quite a long time, some of the main problems in the bill were:<sup>112</sup>

1. Absence of legal certainty regarding matters that may not be revealed to the public and matters which may not be disclosed on specific grounds;
2. Definitions of many terms required clarification; The FOI bill governed only the right of the public to information but did not govern the duty of government agencies to disclose information;
3. The FOI bill did not stipulate sanctions, and
4. The FOI bill did not stipulate complaint procedures and mechanisms for imposing sanctions for failure to provide information.

One of the important problems with the FOI bill concerned exempt information. Article 15 of the FOI bill articulates matters exempted from agencies' disclosure obligations for reasons such as:

1. Impedes the law enforcement process;
2. Interferes with the interests of protection of intellectual property rights and protection from unfair business competition;
3. Damages defence strategy and national security, and
4. Violates individual confidentiality.

Specifically on information prejudicial to strategy on defence and national security stipulated in detail in Article 15(c):

1. Information on intelligence, tactics, defence strategy and national

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<sup>111</sup> Paulus Widiyanto, *Op. Cit.* , para. 2.

<sup>112</sup> Masyarakat Transparansi Indonesia [The Indonesian Society for Transparency], “Trilogi RUU...” [Trilogy of Draft Laws ...], *Op.Cit.* p. 2.

- security related to both internal and foreign threats;
2. Documents containing war plans and strategy;
  3. Estimates of military capabilities of other states;
  4. Strength and composition of combat units and plans for their development and/or;
  5. State of military combat bases.

It is a fact that some of this information, such as estimates of military capabilities and strength and composition of combat units, is already publicly accessible. For example, estimates of military capabilities of other states can be accessed through White Papers published regularly by defence departments to demonstrate to other states, especially neighbouring states, that their defence posture does not constitute a threat. Consequently, developments of defence capability does not lead to what is termed a security dilemma in which states compete with each other to build up their military capability because they feel threatened by developments in the national defence capability of neighbouring states.

Other important matters previously touched on are weapons transparency, already part of international regulations on weapons transfer, such as the *Wassenaar Arrangement* in the form of the document *Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies* and the "*Guidelines for International Arms Transfer*" issued by the Disarmament Commission on 3 May 1996, to which UN member states have already agreed<sup>113</sup>.

Consequently, it is clear that both the FOI bill and State Secrets bill recognise the existence of limitations on the freedom of citizens to obtain public information. However, it should be emphasised that regulation of secrecy under the State Secrets bill must refer to the provisions of the FOI bill to avoid overlap and different interpretations of the two bills.

### **c. Draft Law on Amendments to Law No. 31 of 1997 on Military Justice<sup>114</sup>**

Discussion of the bill to amend Law No. 31 of 1997 on Military Justice is one of the pieces of draft legislation that have been before the Special Committee of the 2004-2009 Parliament since October 2005. However, long before that, members of the 1999-2004 Parliament demanded that a new law be prepared to provide for trial in civilian court of members of the military who violate general law.<sup>115</sup> In the text of the revision, the most significant change is the abolition of connection. Aside from that, there has been no significant substantive change in the text of the bill on revision of Law No. 31 Year 1997.

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<sup>113</sup> Imparsial Team, *RUU Rahasia... [Draft Law on State Secrets]*, *Op.Cit.*, p. 46.

<sup>114</sup> Author has excerpted from the draft Imparsial Survey of Reform of Military Justice to be published in June 2007.

<sup>115</sup> *Kompas*, "Segera Revisi UU Peradilan Militer" [Immediate Revision of Law on Military Justice], Monday, 13 March 2000, p. 6.

There have been only minor editorial changes, such as changing the term 'ABRI' (Armed Forces of the Republic of Indonesia) to 'TNI' (The Indonesian National Armed Forces and changing "legal adviser" to "lawyer".<sup>116</sup>

However, at the end of the 1999-2004 Parliament there had still been no discussion of the bill to amend Law No. 31 of 1997 on Military Justice. Just six months later, the new Parliament (2004-2009) submitted the bill to be entered into the Table of Priorities of the National Legislation Program (*Prolegnas*) based on DPR Decision No. 01/DPR RI/III/2004-2005. This time, the Parliament's partners in the discussion of the bill were both the Department of Defence and the Department of Justice and Human Rights.

At the beginning of May 2005, in a plenary meeting of the Parliament, all political party factions agreed to use their right of initiative to revise Law No. 31 of 1997 on Military Justice as proposed by the Legislative Board (Baleg) of the DPR<sup>117</sup>, who considered that Law No. 31 of 1997 on Military Justice no longer accorded with the demands of security sector reform, which requires subjugation of the military to the supremacy of the law as well as civilian authorities chosen through the process of democratic general elections.

Two crucial matters caused the process of discussion of the bill to drag on, i.e., *first*, the question of jurisdiction, where under the Draft Law TNI personnel who commit a general criminal offense will be tried in a general court and military crimes will be tried in military courts as mandated by MPR Decree No. VII/MPR/2000 on the Role of the TNI and the Role of Polri and Law No. 34 of 2004 on the TNI. *Second*, the Government's demand that Parliament must first revise legislation governing substantive law such as the Military Criminal Code (KUHPM) rather than debate the institution of military justice. Currently, Military Justice is within the system of judicial authority of the Supreme Court.<sup>118</sup>

Parliament's differences of opinion with the Government, mainly the Department of Defence, continued to drag on and nearly did not coalesce until Parliament's sitting during August 2006. Fearing a *deadlock*, near the end of the previous sitting the Special Committee agreed to *lobby* the Government.<sup>119</sup>

As the matter developed, two issues arose as grounds for rejection by the government of the bill. The *first* was psychological, i.e., serious difficulties with bringing military personnel to trial. This condition was further aggravated by the continued unpreparedness of civilian law enforcement agencies in the

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<sup>116</sup> See Law No. 18 of 2003 on Lawyers.

<sup>117</sup> *Kompas*, "RUU Peradilan Militer Jadi Usul Inisiatif DPR" [Bill on Military Justice Proposed as DPR Initiative], Wednesday 22 June 2005, p. 6.

<sup>118</sup> See Article 24(2) of Third Amendment to the 1945 Constitution: Judicial authority shall be executed by a Supreme Court and judicial bodies underneath it in the form of public courts, religious courts, military tribunals and administrative courts, and by a Constitutional Court. On that basis, on 1 September 2004, the TNI Commander officially transferred the military to the system of judicial authority as mandated by Law No. 4 of 2004 on Judicial Authority and Presidential Decision No. 56 of 2004. See [www.temppointernatif.com](http://www.temppointernatif.com), "Mabes TNI Resmi Alihkan Peradilan Militer ke MA" [TNI HQ Officially Transfer Military Justice to Supreme Court], <http://www.temppointeraktif.com/hg/nasional/2004/09/01/brk,20040901-52,id.html>

<sup>119</sup> The Parliament's lobbying team consisted of ten persons, including four leaders of the Special Committee and representatives of those factions not already represented amongst the leadership. The lobbying was carried on during the May 2006 sitting of Parliament.

field, such as the police, the prosecution and judges, primarily when they had carriage of legal cases involving TNI personnel.<sup>120</sup> The *second* grounds were that the government considered it was absolutely impossible to try TNI personnel in the civilian justice system while the Military Criminal Code, as the substantive legal basis, remained unrevised. Revision of the substantive legal foundation must be completed before revising the Law on Military Justice.

At the end of November 2006, while still in Tokyo, President Susilo Bambang Yudhoyono conveyed through the Minister/State Secretary Yusril Ihza Mahendra and the Minister for Justice and Human Rights Hamid Awaludin that the Government agreed that TNI personnel who commit a general criminal offense be tried in public courts. With that statement, the deadlock between Parliament and the government was broken and there was agreement to continue discussions. At the beginning of 2007, the government and Parliament began to reach accord, in the wake of the previous impasse in the debate on the Military Justice bill. Both sides shared a desire to go to the next step in the process of discussion of the bill by sending it on to the standing committee level. The softening of attitudes of both sides was in evidence when the Parliamentary Special Committee on Military Justice accepted an invitation from the Department of Defence to attend a coordination meeting.<sup>121</sup>

The meeting between the Parliamentary Special Committee on Military Justice and the Department of Defence produced several accords. *First*, DoD accepted the Parliament's recommended formulation of Article 9 of the bill to amend Law No. 31 of 1997 on Military Justice. *Second*, in addition, both sides agreed on a transition period of two to three years to socialise the law to TNI personnel and to bring several related laws into accord, such as the Penal Code, the Code of Criminal Procedure and the Military Criminal Code, before revising the regulations of Military Justice.

## **B. Draft Laws that Have Captured the Attention of the Community but have not yet Entered the Discussion Phase in Parliament**

### **a. Draft Law on State Intelligence**

The Draft Law on State Intelligence captured the public's attention when *Imparsial* [the Indonesian Human Rights Monitor] publically disclosed via the Parliamentary Special Committee on the Draft Law on Eradication of the Crime of Terrorism the potential for human rights violations in the 25 January 2002 version of the bill<sup>122</sup>, to the effect that the bill had been drafted long before the Bali bombing of 25 October 2002. This bill was classified 'SECRET' by the

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<sup>120</sup> *Kompas*, "RUU Peradilan Militer: Pertarungan Merebut 'Pedang Keadilan'" [Military Justice Bill: Struggle over Sword of Justice], Thursday 28 Desember 2006.

<sup>121</sup> See *Kompas*, "Dephan dan Pansus Sepakat; RUU Peradilan Militer ke Panja" [DoD and Special Committee Agree: Military Justice Bill to Working Committee], Wednesday 24 January 2007. See also *Media Indonesia*, "Pembahasan RUU Peradilan Militer Dilanjutkan: Pansus dan Menhan Berdamai" [Discussion on Military Justice Bill Progressing: Special Committee and Defence Minister Declare Truce], 24 January 2007, p. 6, and *Detikcom*, "DPR-Dephan Sepakat Peradilan Umum untuk Prajurit TNI" [Parliament & DoD Agree to Public Trial for TNI Members], 23 January 2007.

<sup>122</sup> *Imparsial dan Koalisi untuk Kebebasan Masyarakat Sipil* [Imparsial and the Coalition for Civil Liberties, *Op.Cit.* hal. 13. At that time, Imparsial Executive Director (the late) Munir for the first time made revelations on the Draft Law on State Intelligence before the Parliamentary Special Committee which directly caused a negative reaction from Parliament and the community

State Intelligence Agency (BIN) because it was not supposed to be made public.<sup>123</sup>

One of the powers of the State Intelligence Agency (BIN) under the Draft Law on State Intelligence was to detain perpetrators for 90 days without access to the rights guaranteed under the Code of Criminal Procedure, which became known as the "Kidnapping Article".<sup>124</sup> The 25 January 2002 version of the Draft Bill for a Law on State Intelligence also grants authority to the Head of BIN to procure and distribute firearms for administration of intelligence.<sup>125</sup> Also, the position of the State Intelligence Agency (BIN) in the governmental structure is under and directly responsible to the President as governed by Article 5(2) of the Draft Bill for a Law on State Intelligence, 25 January 2002 version.

Once the bill became widely known in the community, BIN then prepared draft legislation dated 5 September 2003 and called the Draft Law on Intelligence Principles. Again, this Draft Law was classified secret and several items such as the "Kidnapping Article" were absent.<sup>126</sup> However, BIN was granted authority to hold a suspect for 30 days without explaining his/her rights.<sup>127</sup> Procurement of firearms is also granted in the 5 September 2003 version of the bill; however, this time around it was without authority to distribute weapons as had been written into the previous draft.<sup>128</sup> Article 6(2) of the 5 September 2003 version of the Draft Law on Intelligence Principles confirms

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<sup>123</sup> Every page of the 25 January 2002 version of the Draft Law on State Intelligence was stamped "SECRET".

<sup>124</sup> Article 27(1) of the Draft Law on State Intelligence (25 January 2002 draft): Detention within the framework of intelligence examination as intended in Article 21, sub-clause 'a' shall be valid for a maximum of 90 days. See [www.korantempo.com](http://www.korantempo.com), "BIN Akui 'Pasal Penculikan'" [BIN Acknowledges 'Kidnapping Article'], <http://www.korantempo.com/news/2003/3/7/headline/2.html> (Accessed 18 May 2005). Whereas on denial of the rights of suspects, see Article 28 of the Draft Law on State Intelligence: During investigation by intelligence (authorities) as intended in Article 21 Sub-clause 'a' for suspects:

- a. Inquisitor system applicable;
- b. No right to be accompanied by a lawyer;
- c. No right to remain silent or to not answer the examiner's questions;
- d. No right to suspension of detention upon personal or financial guarantee;
- e. No right to home detention or town detention;
- f. No right to contact with outside parties including one's family.

<sup>125</sup> Article 25 of Draft Law on State Intelligence (25 January 2002 draft): Head of State Intelligence Agency is authorised to:

- a. Procure firearms to be employed directly and/or through agents domiciled within or outside the country;
- b. Control documentation of firearms for administration of intelligence.

<sup>126</sup> The front page of this 5 September 2003 version of the Draft Law on Intelligence Principles was stamped "SECRET".

<sup>127</sup> Article 21 of the Draft Law on Principles of State Intelligence (5 September 2003 draft):

1. Arrest as intended in Article 20 shall be for 30 (thirty) days;
2. When the outcome of examination as intended in Article 20 clause (1) yields strong circumstantial evidence of the occurrence of a threat to the national interest, the subject shall be handed over to the Indonesian National Police for processing in accordance with applicable law.
3. When from outcome of examination as intended Article 20 clause (1) does not yield circumstantial evidence about the occurrence of a threat, the subject must be released.

<sup>128</sup> Article 23 of Draft Law on Intelligence Principles:

1. The Head of the State Intelligence Agency is authorised to procure firearms for official use directly by producers or through agents domiciled in country or overseas.
2. Use of firearms as intended in clause (1) of this article is governed by decision of the Head of the State Intelligence Agency.

that BIN's position is also under and directly responsible to the President.

The government then formulated a Draft Law on State Intelligence, March 2006 version, which still had many faults and weaknesses, i.e., *first*, the existence of controls on intelligence that conflicted with democratic principles and *second*, democratic principles of intelligence were not applicable in the articles of the Draft Law.<sup>129</sup> This was marked by the proposal to give BIN authority to perform activities appropriate to law enforcement agencies such as arrest.<sup>130</sup>

On further investigation, nearly every Draft Law governing intelligence in fact recognises that violations of law and human rights may occur. As has been revealed, BIN agents are not law enforcement officials and giving them that authority runs counter to the criminal justice system. In addition, there are no legal mechanisms for suing BIN when there is misconduct by its agents as governed by the Code of Criminal Procedure via the pretrial mechanism.

## **b. Draft Law on National Security**

The Draft Law on National Security is a bill that attracted considerable public attention in early 2007. In addition to its sudden appearance, this bill was not a priority for discussion under the existing National Legislation Program. Debate within the community that emerged prior to publication of the 18 January 2007 version of the Draft Law on National Security was the outcome of a Department of Defence draft which had from its beginnings been concealed from the public and from security institutions including the Indonesian National Police.<sup>131</sup> The quite unique debate then aroused suspicion, polemic and resistance, primarily from Polri, in relation to its positioning under the Department of the Interior.<sup>132</sup>

However, once the 18 January 2007 version of the Draft Law on National Security was brought out into the open, there were, of course, a number of problems because in spirit it relegated security reform to the domain of unfinished business. This can be seen in the way the Draft Law interprets a state of emergency by reference to Law No. 23 of 1959 on State of Emergency

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<sup>129</sup> Andi Widjajanto, *Ed., Panduan Perancangan Undang-Undang Intelijen Negara [Guidance for Planning a Law on State Intelligence]*, Jakarta: Centre for Global Civil Society Studies (Pacivis), August 2006. This book provides a through picture and critique of the March 2006 version of the Draft Law on State Intelligence.

<sup>130</sup> Article 12 of Draft Law on State Intelligence (March 2006 draft):

1. BIN has special authority to make arrests within the framework of interrogation, to wiretap, to examine bank accounts and to open the mail of every person considered to endanger the safety of citizens;
2. Interrogation for up to 7 x 24 hours;
3. If there is sufficient initial evidence, the suspect is handed over to the authorised [police] investigator if not required to be released.

<sup>131</sup> *Kompas*, "Legislasi: Dephan Perlu Buka Draf RUU Keamanan Nasional" [Legislation: DoD Must Reveal the Draft Law on National Security], 13 January 2007).

<sup>132</sup> *Kompas*, "RUU Kamnas Tidak Akan Dibahas Tahun Ini, Kusnanto Anggoro: Wajar Polri Dibawah Depdagri" [National Security Bill Won't Be Discussed This Year, Kusnanto Anggoro: Face of Polri Under Interior Ministry], 4 January 2007.

which is substantially inappropriate in the context of the these times.<sup>133</sup>

Another problem in the 18 January 2007 version of the Draft Law on National Security was the TNI's obligation to provide assistance to regional governments in the field of governmental tasks as promulgated in Article 61(1). As detailed in Article 61(2), what is intended by governmental tasks is:

1. Assisting to overcome impacts of national strike campaigns;
2. Assisting to overcome impacts if natural or unnatural disasters;
3. Assisting to overcome communal conflict and its impacts, and
4. Assisting to overcome difficulties of people in isolated regions.

Further, Article 62(1) to (3) stipulates that requests for involvement of the TNI for assistance to regional government must be based on a request from the governor in the framework of a *military operation other than war* and mechanisms for such requests shall be governed by Presidential Regulation. This provision in fact creates opportunities for the TNI to use regional budgets in violation of Article 25(1) of Law No. 3 of 2002 on National Defence, which specifically stipulates that national defence is funded from the State Revenue and Expenditure Budget.<sup>134</sup> The impact if this were to occur is that security reform in the realm of civilian oversight of the military budget would go back to square one.

In addition, in the current context, implementation of regional autonomy is very loose and reactive, with no structure for putting limits on local governments. The central government cannot supervise them, although the Interior Ministry and the Association of Regional Governments agreed on implementation of ten principles of *good governance*, i.e., participation, transparency, accountability, responsiveness, equality, law enforcement, oversight, future focus, professionalism, efficiency and effectiveness. At the implementation stage, regional autonomy was not accompanied by sufficient oversight by the central government, which caused some problems which took on national proportions but left room for free interpretation by local governments.<sup>135</sup>

What is needed is for the National Parliament as lawmakers to consider the Draft Law on National Security in light of the complex problems that will arise if it becomes law. The Parliament needs to take ownership of the discussion of this Draft Law by producing its own draft as a form of its use of the legislative right. The interpretation and spirit of the Draft Law on National Security is very far from the spirit of the constitution that postulates a state that protects the nation and the Indonesian homeland, promotes the general welfare,

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<sup>133</sup> Article 9(4) of the Draft Law on National Security (18 January 2007 draft): Determination of national security conditions including state of civil order, civil emergency, military emergency or state of war pursuant to legislative regulations governing states of emergency. The elucidation to Article 9(4) of the 18 January 2007 version of the Draft Law on National Security: What is intended by legislative regulations governing states of emergency is Law Number 23/Prp/1959 on State of Emergency.

<sup>134</sup> Imparsial Team, *Pembiayaan Pertahanan Melalui APBD [Financing Defence Through the State Budget]*, Jakarta: Imparsial, 2007.

<sup>135</sup> Imparsial Team, *Pembiayaan Pertahanan... [Funding Defence ...]*, *Op.Cit.*, p. 20.

develops the nation's potential and participates in establishing world peace.

### ***Conclusion***

The explanation of all of the legislation and draft Legislation governing the security sector during the period 2000-2007 can be summarised as follows: *first*, legislative reform of the security sector is problematic, given that some legislation conflicts with the primary objective of security sector reform, which is to create good governance within the security sector and create a secure and controlled environment, and consequently underpin the objectives of the state to make society safe and prosperous.

*Second*, legislative reform of the security sector has not achieved protection, respect and guarantee of human rights as reconfirmed in the Second Amendment to the 1945 Constitution and democratic values, given the continuing accommodation of matters that threaten human rights, human security *and* implementation of democratic governance.

*Third*, there is still inadequate linking and planning for execution of legislative reform of the security sector. In other words, capability for policy development and defense and security planning embodied in a grand design for the security sector remains undeveloped. This has led legislative reform of the security sector to lack focus and to be out of synch with the National Legislation Program. The existence of draft legislation that has not been discussed or focused on by the parliament is evidence that development of the security sector through legislation is still biased.

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## **ANNEX:**

### **Abbreviations and acronyms used in the Indonesian Security Sector**

ABRI = Armed Forces of the Republic of Indonesia

ALKI = Indonesian Archipelagic Sea Lanes

AD = Army

AL = Navy

AU = Air Force

AMN = National Military Academy

Akabri = Armed Forces Academy AAU = Air Force Academy AAL = Naval Academy  
AKPOL = Police Academy Alutsista = (lit.) Primary Equipment and Weapons Systems;  
(mil.) platforms

Asops = Assistant for Operations Asintel = Assistant for  
Intelligence Asrena = Assistant for Planning and Budgeting Aster =  
Territorial Assistant Aslog = Assistant for Logistics Aspers =  
Assistant for Personnel Armabar = Western Fleet

Armatim = Eastern Fleet

Armed = Field Artillery

Art = Artillery

AT = Anti-Terror

BIN = State Intelligence Agency

BIA = Armed Forces Intelligence Agency

BAIS = Armed Forces Strategic Intelligence Agency

Babinsa = village level Noncommissioned Officer (NCO)

Bareskrim = Criminal Investigations Division

Brimob = Police mobile brigade

Balahanpus = Central Defence Troops

Balahanwil = Field Defence Troops

Bin = Development; guidance; character-building

BS = separate military unit

Datin = data and information

DoD = Department of Defence

DPR RI = National Parliament/House of Representatives of the Republic of Indonesia

Dan = Commander

Danrem = Provincial Military Commander

Dandim = District Military Commander  
Danramil = Subdistrict  
Military Commander  
Darmil = Military Emergency

Dirops = Director of Operations

Dirbin= Director of Development

Densus = Special Anti-Terror Detachment 88 (Police)

Denma = Detachment headquarters

Den 81 = Anti-Terror Detachment 81 (Army)

Denjaka = Detachment Jalamangkara (Navy)

Denbravo = Detachment Bravo (Air Force)

Dirjen = Director-General

Gultor = Anti-Terror

GARSTAP = Permanent Garrison

Han = Defence

Hanneg = National Defence

INF = Infantry

TNI = The Indonesian National Armed Forces

Jakum = General Policy

JCLEC = Jakarta Center for Law Enforcement Cooperation

KSAD = Army Chief of Staff

KSAL = Navy Chief of Staff

KSAU = Air Force Chief of Staff

Kastaf = Chief of Staff

Kasum = Chief of General Staff (TNI)

Kapolsek = Chief of Police Sector (subdistrict)

Kopassus = Special Forces Command

Kostrad = Army Strategic Reserve Command

Kopaskhas = Air Force Special Troops

Kopaska = Naval Underwater Combat Unit (frogmen)

Kodam = Military Area Command (MAC)

Korem = Military Provincial Command (MPC) Kodim = Military District Command (MDC) Koramil = Military Subdistrict Command

Koter = Territorial Command

Kohanudnas = National Air Defence Command

Kormar = Marine Corps

Pangti = Supreme Commander

Pangdam = Military Area Commander

Kapolri = Chief of Indonesian National Police

Koops = Operational Command

Jianstra = Strategic Study

Mabes TNI = TNI HQ = TNI Headquarters

Mabes Polri = Polri HQ = Polri Headquarters

Kuathan = National Security Defence Forces Kamnas = National Security

KMIP = Freedom of Information

Kotama = Primary Command

Komcad = Reserve Component

Kamdagri = Internal Security

Kamtibmas = Community Security and Order

Kominda = Regional Intelligence Community

Kowil = Field Command

Kodahan = Regional Defense Command

Kowilhan = Regional Defence Command / Regional Upper Command

Kum = Law

Kasubdit = Head of Sub-directorate

Komlek = Communications and Electronics

KRI = Republic of Indonesia Warship

Kal = supply of provisions/equipment

Kes = health

Lanud = Air Base

Lanal = Naval Base

Lemdik = Educational Institution

Polda = Regional Police [has jurisdiction over a province and supervises Polres and Polwil]

Polwil = Territorial Police [one level above Polres; one level below Polda]

Polres = District Police [has jurisdiction over a Regency or city; one level above Polsek and one level below Polwil]

Polresta = City Subregional Police

Polsek = Sector Police [has jurisdiction over a subdistrict; one level below Polres]

Pospol = Police Station

Pothan = Defence Potential

Polkam = Security Politics

Propam = Professional and Security Division, Indonesian National Police

PTIK = Police Staff College

Platina = International Anti-terror Training Centre

Pers = Personnel

PM = Military Police

Strahan = Defence strategy

Ranahan = Defence Facilities

Renhan = Defence Planning

Renstra = Strategic Planning RSK = SSR [Security Sector Reform] Sekjen = Secretary-General

NKRI = Unitary State of the Republic of Indonesia

NCB Interpol = National Country Bureau International Police

RUU = Draft Law or Draft Bill for a Law

UU = Law

RN = State Secrets

RI = Republic of Indonesia

Otda = Regional autonomy

OMS = CSO = Civil Society Organisation

Otmil = Military Prosecutor

Opslihkam = Security Restoration Operation

LSM = NGO = Non-government Organisation

SDR = Strategic Defense Review

Linmas = Civil Protection

Lemhannas = National Resilience Institute HAM = Human rights

Bekang = Provisions/equipment and transport

Ops = Operations

Rengar = Planning and Budgeting

Log = Logistics

Kaur = Head of ... Affairs

Kadis = Department Head

Renstra = Strategic Planning

Polri = Police Force of the Republic of Indonesia

Polmas = Community policing

Puspen = Media Centre [TNI]

Permil = Military justice

Pussenif = Infantry Weapons Centre

SOPS = Operations staff

Sintel = Intelligence staff

Spers = Personnel staff

Setum = General Secretariat

SESKO TNI = TNI Staff and Command School

SESKO AD = Army Command and Staff School

SESKO AL = Navy Command and Staff School

SESKO AU = Air Force Command and Staff School

Sespim Polri = Police Leadership School

Sespati = [Police] Senior Officer School

SPN = National Police School

Secapa = [Police] Officer Candidate School

Secaba = Non-commissioned Officer Candidate School

Satker = Work unit

Sus = Special

Tontaipur = Combat and reconnaissance platoon

Vet = veteran

Wanjakti = Council on High Ranks and Positions

YONIF = Infantry Battalion

YONKAV = Cavalry Battalion



**Indonesia Institute for Defense and Strategic Studies (LESPERSI)** was established in 1996 as a discussion forum that analysed several issues at that time, such as horizontal and vertical conflict, democratisation, civil-military relations and other strategic issues at the regional or international level.

For years, LESPERSI has positioned itself as a non-governmental organization (NGO) in Indonesia that focuses on activities regarding the defense, security, and other strategic issues. Activities conducted by LESPERSI include research, training, conference, workshop and also production of publications to support and enhance public accountability, good governance, democratic oversight and democracy.

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The Geneva Centre for the Democratic Control of Armed Forces (DCAF) was established by the Swiss government in October 2000. The Centre's mission is to promote good governance and reform of the security sector in accordance with democratic standards.

The Centre conducts research on good practices, encourages the development of appropriate norms at the national and international levels, makes policy recommendations and provides in-country advice and assistance programmes. DCAF's partners include governments, parliaments, civil society, international organisations and the range of security sector actors such as police, judiciary, intelligence agencies, border security services and the military. The Centre works with governments and civil society to foster and strengthen the democratic and civilian control of security sector organisations.

DCAF is an international foundation with 48 Member States (including the canton of Geneva). Their representatives compose the Foundation Council. The Centre's primary consultative body, the International Advisory Board, is composed of experts from the various fields in which the Centre is active. The staff numbers over 70 employees from more than 30 countries. DCAF's main divisions are Research and Operations which work together to develop and implement DCAF's programmes as follows:

- By conducting research to identify the central challenges in democratic governance of the security sector, and to collect those practices best suited to meet these challenges