



RESEARCH ARTICLE

RATIO LEGIS OF THE AUTHORITY ARRANGEMENT IN THE FIELDS OF STATE DEFENSE AND SECURITY IN NATIONAL SECURITY SYSTEM

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ABSTRACT

A change of strategy and security system of a state is a matter that certainly happens. The strategy and security system of a state are not static matters, but they are dynamic with a change of strategy and security system are influenced mostly by the dynamics of strategic environment which keep developing and changing. National security is an element embedded from a purpose of state governance. As the government of state, the government needs an arrangement of national security regarding the authority system of institutions that has a role in the attempt to reach national security. This study is focused to analyze the ratio legis or the aim and purpose of the created authority arrangement in the fields of defense and security of state in National security system based on instrument of laws and regulations regarding defense and security. The approaches used in this study are: historical, conceptual, regulations, comparative and philosophical. This study uses primary legal material and secondary legal material. On the other hand, analysis on the root of problems and the legal materials were conducted in prescriptive analytic, which provides thinking to answer root of problems in the study. The result of this study shows that there is no regulation regarding comprehensive defense and security which regulate national security that is in accordance with national security system as intended in the Preamble of 1945 Constitution of Indonesia. The regulations are still partial and sectorial; it has not been able to give the strong basis; it is not clear and strict in decide the actors in overcoming national security; and even cause obscurity related to the implementation of defense and security.

INTRODUCTION

The Unitary State of the Republic of Indonesia (NKRI) has a national ideal as stipulated in the second paragraph of Preamble to the Constitution of Indonesia Year 1945 (Hamidi & Lutfi, 2010). The Preamble to the Constitution of Indonesia Year 1945 proves that before The United Nation (UN) arranges the concept of security (Grehenson, 2016), the founding fathers had thought the concept of national security. The security concept can be categorized into the reached defense, internal security, public order, and human security. The concept of national security system faces the transformation by the more powerful influence of democratic politics system, globalization and the active actors of non-state security that cause demand of a security concept that widely spread and stronger (Thomas, 1991). According to Muladi (2012), Idealism on national security of Indonesia has been contained in mandate, value and norm of Preamble to the Constitution of Indonesia Year 1945 (beliefs and ideals of nation). It is an ideal legal politics that should be explained in basic legal politics existed in articles of Constitution of Republic of Indonesia Year 1945 and then also explained in the instrumental legal politics in the form of Law.

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The coverage of idea of founding fathers is regarding the security of Indonesia which security is already comprehensive and holistic. Defining national security (Article 1 paragraph 1 and 3 Bill Year 2012) can be done based on two perspectives: first, domain perspective that view the coverage of national security consists of: external defense, internal security, public order and disaster management; second, object perspective that view national security as a matter that covers the welfares of state, society and individual (Hasanuddin, 2013). Based on these perspectives, essentially the national security is a comprehensive security which place security as a multidimensional concept. A change of strategy and system of security of a state is a matter that certainly happens. Strategy and system of security of a state are not static matter, but dynamic with the change of strategy and system of security influenced by the dynamic of strategic environment that keep developing and changing (Araf, *et al.*, 2012). Technical laws and regulations related to the national defense and security after the reform era has also been arranged, but legal instrument cannot solve the legal problem related to the concept and system of national security that is able to protect all nations and State of Republic of Indonesia. The implementation of any laws cannot be categorized as comprehensive legal instruments, but still partial and sectorial. National security system in its implementation is in the

confusion due to vague legal norms. Confusion is increased due to the emergence of People's Consultative Assembly Decree (TAP MPR) Number VII / MPR / 2000 which stated that security was the responsibility of the National Police, while defense was the responsibility of the Indonesian Military. Article 1 of TAP MPR Number VI / MPR / 2000 concerning the Separation of the Indonesian Military (TNI) and National Police states that TNI and National Police are institutionally separated according to their respective roles and functions. In article 3 of the TAP MPR Number VI/MPR/2000, it is stated that TNI is a state instrument that plays a role in national defense while National Police is a state instrument that plays a role in maintaining security. In the term that there is a relation between defense and security activities, the TNI and National Police must cooperate and help each other. However, with the enactment of Law Number 3 of 2002 concerning National Defense and Law Number 34 of 2004 concerning TNI, People's Consultative Assembly Decree (TAP MPR) Number VI / MPR / 2000 and TAP MPR Number VII / MPR / 2000 are no longer meaningful. In order to overcome the problem of the obscurity of the national security concept, previously there were attempts to construct institutions and organizations within the Armed Forces (ABRI). Polri is integrated into ABRI through Presidential Decree No. 290 of 1964 concerning the Position, Duties and Responsibilities of the Police Forces of the Republic of Indonesia as the Armed Forces. However, this has caused a number of problems, namely the National Police is in a weak position because it is subordinated to a military institution that principally has the character and functions that conflict with the police as a civil institution (Siregar, 2015).

In 2000, demands for reform and democratization emerged; there were demands about ABRI's repositioning and restructuring, namely defense/ security policies in the form of a merger of the Army, Navy, Air Force and the separation of the National Police from ABRI. As a result of this separation, there was confusion and overlap between the roles and functions of the TNI and Polri. That was the background of the created TAP MPR which is separated the National Police and the TNI, namely TAP MPR Number VII / MPR / 2000 concerning the Role of the Indonesian National Army and the Role of the Indonesian National Police. The strength of the concept of separate defense and security arrangements, namely Polri which is separated from TNI, is that it is institutionally in accordance with each of its roles and functions. The lack of defense and security arrangements, namely National Police joining the TNI, resulted in the Polri being in a weak position because it became a subordination of military institutions which principally had characteristics and functions that were contrary to the police as civil institution. The merger of the Indonesian National Police and the TNI resulted in confusion and overlap between the roles and functions of the TNI and National Police. Unclear / vague arrangement regarding institutions that have authority in the field of national security caused legal uncertainty and norm conflict. This uncertainty led to a prolonged polemic. Effectiveness and implementation have problems. In the end, the functions and duties of defense and security in the operations cannot accommodate various interests in society. As a result, national security that should create people's welfare as mandated in the Preamble to the 1945 Constitution of the Republic of Indonesia experienced obstacles in its implementation. The authority itself is the power that has the right to demand obedience so it has the right to give orders. However, power must be limited because power

has a tendency to act beyond the applicable law as Sudarsono (2008) argues that abuse of power including authority (*detournement de pouvoir*) and arbitrary acts (*willekeur / abus de pouvoir*) is a symptom that has long existed, as well as reminds us of the importance of control to the authority's use itself. Based on the background of the problem above, the problem studied is to find out the ratio legis in the fields of defense and security in the National Security System to the law on defense and security of state.

MATERIALS AND METHODS

The type of this research is normative legal research. The research approaches used include historical approaches, conceptual approaches, legislative approaches, and comparative approaches (Marzuki, 2010) and philosophical approaches (Fadjar & Achmad, 2012). The type of legal material in this study consists of primary, secondary and tertiary legal materials. Primary sources consist of legislation, minutes or official records of the making of legislation. Secondary sources consist of all legal publications which are not official documents. Legal publications can be legal dictionaries, legal journals, and books related to defense and security. Tertiary legal sources are in the form of legal encyclopedias which are used to understand the definition or understanding of the technical terms used in writing a dissertation. Collection of legal materials is carried out by studying documents or library materials in several libraries such as the Library of Brawijaya University in Malang, the Library of Ministry of Defense of Republic of Indonesia, the Library of Ministry of State Secretary of the Republic of Indonesia, the Library of Constitutional Court of the Republic of Indonesia, and the Library of Universitas Pertahanan. Research is also carried out by collecting articles in magazines or newspapers, collecting articles in scientific journals related to research, official documents issued by the government and internet (Ibrahim, 2006). Analysis of legal materials is done by using analytical prescriptions by prioritizing legal reasoning using legal interpretation (authentic, historical, and teleological).

RESULTS AND DISCUSSION

Ratio Legis of Constitution of Republic of Indonesia Number 2 Year 2002 on National Police of the Republic of Indonesia

Based on the General Explanation of Law Number 2 Year 2002, it can be seen that Law Number 2 Year 2002 was formed with a juridical basis that the legislation which became the basis for the implementation of the duties of the National Police of the Republic of Indonesia before, namely Law Number 28 of 1997 concerning Police Republic of Indonesia. Even though the law contains the main objectives, positions, roles and duties and also development of professionalism of the police, the formulation of the provisions contained in it is still referred to Law Number 20 of 1982 concerning Basic Provisions for the Defense of the State of the Republic of Indonesia. As a result, in Law No. 28 of 1997, the military character is still very dominant. Such characteristics in reality affect the attitudes and behaviors of police officials in carrying out their duties in the field. Therefore, the legislators hoped that Law No. 2 of 2002 could provide confirmation of the character of the National Police as stated in Tri Brata and Catur Prasatya as a value source of ethics code of police

flowing from the Pancasila philosophy. In accordance with the Second Amendment to the 1945 Constitution of the Republic of Indonesia, Republic of Indonesia's MPR Decree No. VI / MPR / 2000 and MPR Decree No. VII / MPR / 2000, domestic security is formulated as the format of the objectives of the National Police and consistently it is stated in the details of the main duties, namely maintaining security and public order, enforcing the law, protecting and serving the community (Praditya, 2016). Law No. 2 of 2002 affirms the Government's awareness to maintain internal security and public order by making a legal umbrella towards the National Police as one of the security actors. Law No. 2 of 2002 affirms that the duties and authorities of the National Police are to foster the community in order to increase participation, have legal awareness, and obey the laws and regulations. Thus, Law No. 2 of 2002 is not very clearly related to national security or national security systems. Law No. 2 of 2002 specifically only regulates and maintains aspects of security and public order, enforces the law, protects and serves the community. It is not clear about the concept of Indonesian national security as the concept of security of the Indonesian which is oriented to national interests.

Law Number 2002 has not provided conceptual and implementative support regarding the national security system that is able to create synergies between the National Police and ministries and institutions related to the national security system. It means that Law Number 2 Year 2002 has not been able to fulfill the concept and system of national security which is multi-faceted as intended by the 1945 Constitution of the Republic of Indonesia. In addition, Law No. 2 of 2002 has not been able to synergistically regulate the institutional relations between the National Police and the TNI as referred to Article 30 paragraph (5) of the 1945 Constitution of the Republic of Indonesia. Article 41 paragraph (2) of Law Number 2 Year 2002 stipulates that in military emergencies and war conditions, the National Police of Republic of Indonesia provides assistance to the Indonesian Armed Forces in accordance with laws and regulations. On the other hand, the implementation of the main duties of TNI as confirmed in Article 7 paragraph (3) jo. paragraph (1) and paragraph (2) of Law No. 34 of 2004 is based on policies and political decisions of state. Here, it seems that the regulation of authority relations between the National Police and the TNI is not synergistic when referring to the hierarchy of legislation that is used as the basis for the implementation of authority and authority relations between the two actors in the country's defense and security. The guaranteed order, the upheld law and the builded public peace in order to create security and community order which become the goal of the National Police is one of the conditions for the implementation of all development efforts towards a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The duties of police such as protect and serve society and the authorities of National Police for example summoning, arresting, detention, examination, searches, and seizure has direct links to applicable human rights, so the members of the Police in carrying out their duties are always obliged to uphold human rights.

Ratio Legis of Law Number 3 Year 2002 on State Defense

Law Number 3 Year 2002 is established with the aim as stated in the General Explanation. In the General Explanation section of the Law it can be seen also the basis or philosophical

foundation of the establishment of Law No. 3 of 2002, namely that in the life of the state, the defense aspect is a very essential factor in ensuring the survival of the country. If it is unable to defend itself against threats from abroad and / or from within the country, a country will not be able to maintain its existence. The Indonesian nation intends to defend, maintain and uphold independence, as well as the sovereignty of the state and nation based on the Pancasila and the 1945 Constitution of the Republic of Indonesia. Law No. 3 of 2002 already contains thoughts on national defense which are essentially all defense efforts are global. The law has categorized national defense as a universal defense so it does not only involve the role of the military, but also civilians. Global defense will directly and indirectly support the national security system. However, Law No. 3 of 2002 has not become a law that govern the national security system as referred.

Table 1. State Defense based on Law Number 3 Year 2002

1.	The Philosophical basis	In the life of the state, aspect of defense is a factor that is essential in guaranteeing life sustainability of the state.
2.	The essence	All efforts of defense which its implementation is based on the awareness of rights and obligations of citizens. A universal state defense that participate to involve in military and civil roles directly and indirectly support national security.
3.	Organizer	State defense is held by the government and prepared early with the defense system of state through the efforts in building and developing the ability and power to defense the state and nation and also cope with every threat. Defense system of state in facing military threat positioning Indonesian Armed Forces as the main component supported by alternative component and supporting component. In facing non-military threat, it places governmental institution beyond the defense field as the main element that is in accordance with the form and the character of threat supported by other supports of nation's strength.
4.	Component	From juridical aspect, the defense system of state involves all components of state defense, which consist of main component, alternative component and supporting component.

Ratio Legis of Law Number 15 Year 2003 on the Establishment of Government Regulation in lieu of Law Number 1 Year 2002 on Eradication of Terrorism Criminal Act being Law as amended with Law Number 5 Year 2018 on Amendment to the Law Number 15 Year 2003 on Eradication of Terrorism Criminal Act

The philosophical basis of Law Number 15 of 2003 is that a series of bombings that took place in the territory of the Republic of Indonesia that have caused widespread fear of the community, resulting in loss of life and loss of property which has had an unfortunate influence on social, economic, political life and also the relationship between Indonesia and the international community. The Indonesian government is in line with the mandate as stipulated in the Preamble of the 1945 Constitution of the Republic of Indonesia, which is obliged to protect its citizens from any threat of crime whether national, transnational or international. The government is also obliged to maintain sovereignty and maintain national unity and integrity from every form of threat, both from outside and inside. For this reason, it is absolutely necessary to enforce law and order consistently and continuously. Law No. 15 of 2003

as a legal instrument for eradicating criminal acts of terrorism, affirms that the series of bombings that took place in the territory of Indonesia had resulted in lives lost of regardless of viewing who the victims are, causing widespread public fear and causing loss of property. Terrorism events also have broad implications for social, economic, political and international relations. The philosophical basis of Law Number 5 Year 2018 concerning Amendment to Law Number 15 of 2003 which can be known from the General section and the General Explanation section is that the criminal acts of terrorism that have occurred in Indonesia are serious crimes that endanger the state's ideology, security, sovereignty, humanitarian values, and various aspects of social, nation and state lives, and are transnational, organized. Furthermore, related to the juridical basis, the enactment of Law Number 5 Year 2018 is to provide a stronger legal basis to guarantee the protection and legal certainty in eradicating criminal acts of terrorism, and to fulfill legal needs and developments in society, it needs amendment to Law Number 15 of 2003 concerning Determination of Government Regulation in lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism becoming Law.

In Law Number 5 Year 2018, namely BNPT (Presidential Regulation No. 46 of 2010) with the existence of BNPT reaffirmed through Article 43 E paragraph (1) is an agency that organizes affairs in the field of counter-terrorism which is under and responsible to the President. BNPT is the center of analysis and crisis control which functions as a facility for the President to establish policies and steps to handle the crisis, including mobilizing resources in handling terrorism. However, Law Number 5 Year 2018 has not been able to reflect the concept of a comprehensive national security system in regulating the authority of actors to counter terrorism because it still makes a problem related to the regulation regarding the implementation of TNI duties in handling the acts of terrorism as part of military operations besides war.

Another problem in Law Number 5 Year 2018 is related to the implementation of TNI duties in the form of operations other than war in the form of securing strategic vital objects. In Explanation of Law Number 5 Year 2018 it is stated that serious crimes committed using violence or threats which are intentional, systematic and planned, which creates an atmosphere of terror or widespread fear with targets, including strategic vital objects, included in terrorism criminal acts. In fact, criminal acts are included in the criminal justice system thus, TNI is not included in this domain. In fact, as stated in Article 7 (2) of Law Number 34 of 2004 concerning TNI, the security of vital strategic objects includes the duties of military operations beside war. In addition, Law Number 5 Year 2018 is not comprehensive enough to provide limits on the duties of the TNI in the context of "overcoming the actions" of terrorism within the framework of "Eradicating the Terrorism Criminal Act."

Ratio Legis of Law Number 34 Year 2004 concerning TNI

To find out the ratio legis of Law No. 34 of 2004 concerning TNI can be seen from the General Explanation section of the Law. The reason or philosophical basis of Law Number 34 of 2004 has been contained in the Preamble of the 1945 Constitution of the Republic of Indonesia, which mandates national aims, namely, to protect the entire nation and all of Indonesian people; and participate in carrying out world order based on freedom, eternal peace and social justice. To achieve

this mandate, a joint effort of all the Indonesian people is needed which is manifested in the roles, functions, and duties of each component of the nation and carried out seriously. Sociologically, national defense is one form of the Indonesian nation's efforts to achieve national aims. The essence of national defense is the participation of each citizen as the realization of his/her rights and obligations in the efforts of national defense.

The rights and obligations of each citizen are regulated in Article 30 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, while paragraph (2) affirms that the national defense effort is carried out through a universal people's defense and security system, namely that the Indonesian National Army is the main force and the people as a supporting force. As stated in the juridical basis of Law Number 3 of 2002, it is stated that as the main force according to Law Number 3 of 2002 concerning National Defense, TNI as the main component in the national defense system is a state tool that has duties of defense, protecting, and maintaining national integrity and sovereignty. In Article 30 paragraph (5) of the 1945 Constitution of the Republic of Indonesia, it is stated that the composition, position, relationship and authority of TNI and National Police in carrying out their duties, including the conditions for the participation of citizens in the efforts of defense and security of the state and matters related to national defense and security, regulated in law. In Article 7 paragraph (2) of Law Number 34 of 2002 it is stated that TNI has a basic duty in conducting military operations other than war (OMSP). OMSP is an operation carried out by TNI which covers overcoming the armed separatist movement, terrorism, securing boundary areas, securing strategic national vital objects, armed rebellion, and assisting the National Police to carry out security duties and public order. However, on the other hand, based on Article 13 of Law Number 2 of 2002, the National Police maintains security and public order. Regarding security based on the law, internal security is a condition that is characterized by the guarantee of public security and order, order and enforced law, and the implementation of protection, and service to the community.

Thus, both TNI and Polri have laws that legitimize their efforts to maintain security. This reality shows the occurrence of gray areas related to national security thus it is prone to overlap in those two institutions. In fact, those two institutions are actually inseparable from one another because of their interrelationship and interdependence. Until now, there is also no law that regulates the relationship and authority of TNI and Polri in carrying out their duties, as mandated in Article 30 (5) of the 1945 Constitution of the Republic of Indonesia. Based on the description of the regulation regarding authority in the field of security owned by TNI and National Police, it can be concluded that, both Law No. 34 of 2004 and Law No. 2 of 2002 cannot be used as references for TNI and Polri regarding roles and functions and structure of security actors, including the arrangement of relations between TNI and Polri. The order to make Law for National Police to help TNI in Article 7 (2) number 10 of Law Number 34 of 2004 cannot be implemented because of the provisions in Article 7 (3) that OMSP duties are carried out through state political policies, not by The Law. The law has not reflected the concept of national defense and security; and cannot be used as a reference to build the capacity of security actors who are able to answer the dynamics of global security.

Ratio Legis of Law of Republic of Indonesia Number 17 Year 2011 on State Intelligence agency

The philosophical basis of Law Number 17 of 2011 is the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia. State intelligence agency vision and mission are a description of the nation's vision and mission. The nation's visions or ideals are as stated in the Preamble of the 1945 Constitution, namely an independent, united, sovereign, just and prosperous Indonesia, as well as a free national life (Academic Script of Bill of the Republic of Indonesia concerning State Intelligence agency). The main guideline used in the process of formulating the interpretation of the vision is the realization of justice for all components of the nation and region. The theme of justice was chosen because based on the analysis of the condition, the weakening of the quality of national integration, it was only caused by factors of injustice still felt by some components of the nation. Sociologically, the efforts to realize the aim of establishing the Indonesian government; enacted sovereignty, national integrity, the integrity of the territory of the Republic of Indonesia, and the creation of dynamic national stability are the main requirements. However, as the time goes by, the process of globalization has resulted in the emergence of new phenomena that can have positive implications for the Indonesian nation, such as democratization, respecting for human rights, demands for supremacy of law, transparency and accountability (Pramodhawardani, 2012). Threats have pluralistic, physical or non-physical, conventional or nonconventional, global or local, immediate or future, potential or actual, military or non-military, direct or indirect, foreign or domestic, and also armed violence or non-weapon violence. Threats to human security include economic, food, health, environmental, personnel, community and political security. Threats to public security and order include general crimes and transnational organized crime. Threats to internal security include separatism, terrorism, espionage, sabotage, political violence, horizontal conflict, information warfare, cyber warfare, and the national economy. Threats to defense include unlimited war, limited war, border conflicts, and regional violations.

Threats to interests and national security are no longer traditional, but are characterized by nontraditional threats. The nature of the threat has undergone a shift in meaning, not only includes internal threats and / or threats from outside that are symmetrical (conventional), but also asymmetrical (nonconventional) that is global in nature and difficult to recognize and categorized as a threat from outside or from within. State intelligence agency as part of the national security system which is the first line is capable of early detection and early warning of various forms and characteristics of threats, both potential and actual. For this reason, intelligence personnel must have professional, objective and neutral attitudes and actions. These attitudes and actions reflect independent and impartial intelligence personnel because all actions are based on facts and are not affected by personal or group interests and are not dependent on other parties, but solely for the interests of the nation and state. Law Number 17 Year 2011 still regulates partially or sectorally regarding state intelligence related to a comprehensive national security system. Law Number 17 Year 2011 stipulates that State Intelligence is an intelligence provider and as an integral part of the national security system, implementing its authority to carry out functions and intelligence activities. Law Number 17

of 2011 overlaps with the authority of other institutions, and can potentially lead to multiple interpretations and does not guarantee legal certainty. This law also has not been able to operationalize the concept of national security as a multidimensional concept that is interrelated, namely the dimensions of human security, security and public order, internal security, and defense. Based on the description of the ratio legis from various laws related to the National Security System, it seems clear that there is no comprehensive and synergic law. The various laws are still partial or sectoral thus they have not been able to meet the national security system as referred to the 1945 Constitution of the Republic of Indonesia. The applied legislation instruments are apparently not sufficient to be able to counter threats to national security whose frequency is increasing. It is unclear and decisive about who becomes security actors in overcoming national security threats. The legal instruments that are now applied to regulate the implementation of defense and security in the life of the nation and state are apparently unable to provide a solid basis to make a comprehensive national security system. Various national security legal instruments have caused confusion or obscurity in carrying out national defense and security.

Ratio Legis of Law Number 7 Year 2012 on Social Conflict Management

Establishment of Law Number 7 of 2012 concerning Social Conflict Management with a ratio legis background that can be elaborated by philosophical arguments, sociological arguments, and juridical arguments. The philosophical argument related to the guarantee of the ideals existence of the establishment of the Republic of Indonesia is to create national unity and integrity, protects the entire Indonesian nation consisting of various ethnic groups, religions and cultures and protects all Indonesian people, including guaranteeing the secure and free from fear feelings in order to realize public welfare as mandated in the 1945 Constitution of the Republic of Indonesia. Furthermore, sociological arguments can be elaborated as follows. First, the Republic of Indonesia with a diversity of ethnic groups, religions, and cultures that are still tinged with development inequality, injustice, and social, economic and political inequalities, it is potential to cause conflicts in the community. Secondly, Indonesia on the one hand is experiencing a democratic and government transition, opening opportunities for the emergence of radicalism movements in the country, and on the other hand living in an open world order with foreign influences which are very vulnerable and potentially causing conflict. Third, the more limited wealth of natural resources and carrying capacity of the environment can lead to conflict.

Fourth, conflict causes loss of feeling secure, the emergence of fear, damage to the environment and social institutions, loss of property, loss of life, psychological trauma (revenge, hatred, antipathy), and widening of the segregation distance between the parties in conflict. Fifth, conflicts management can be carried out comprehensively, integratively, effectively, efficiently, accountably, and transparently and on target through dialogical approaches and peaceful means based on an adequate legal basis. Sixth, in overcoming and handling various conflicts, the Government of Indonesia does not yet have a policy format for handling conflict which is comprehensive, integrative, effective, efficient, accountable and transparent, and on target based on a dialogical approach and peaceful means. In the juridical argument, it can be

explained that the laws and regulations related to handling conflicts are still sectorial and reactive, and are not in accordance with the development of the constitutional system outlined in the Law on Social Conflict Management. The establishment of a Law on Social Conflict Management has been carried out through in-depth and comprehensive research and studies to the formulation of philosophical, sociological and juridical arguments and an overview of the scope and scope of its regulation. Efforts to stop the conflict are carried out if the social conflict referred to this Bill actually occurs, or the preventive measures are not able to reduce the occurrence of social conflict. Termination of violence is a duty and responsibility and carried out under the coordination of the National Police. Emergency relief measures for victims are activities that cannot be separated from the cessation of violence. These activities included rescue, and evaluation of conflict-affected communities. The assistance can also be done such as mobilizing TNI resources. Governors and regents / mayors in a state of conflict can request assistance from the Indonesian National Armed Forces based on proposals from the local police.

Based on the description of the ratio legis above, it can be concluded that the enactment of Law Number 7 of 2012 still needs to be synchronized and harmonized with other laws and regulations to deal with social conflicts within the framework of the national security system. There seems to be obscurity in the epistemology / method of formulating the regulation of the authority to use the power of TNI in the implementation of assistance in handling social conflicts: The status of the conflict is determined if the conflict cannot be controlled by the National Police. Assistance in the use and deployment of TNI forces is coordinated by the National Police, which is regulated in PP, including technical arrangements for operational controls in the field, including in the form of implementation, administration, and logistics, control commands. This has caused insecurity in the field because the use of TNI forces is subject to the laws and regulations and human rights principles, and TNI Commander is responsible to the President. The presence of the Indonesian National Police to operationally coordinate duties of TNI on the realm has the potential not to be conducted considering that the determination of the status of the conflict began when the National Police could not handle the situation on the realm. How it is possible for an institution that has not been able to carry out its duties in the field, then it is still given the authority to control operationally other institutions that are different in character, duties and functions. If it is feared vulnerable to human rights violations, there are provisions that require TNI to submit to the applicable laws and regulations and human rights principles.

Conclusion

The ratio legis of authority regulation in the field of national defense and security related to the national security system that was digged and analyzed from all legal materials analyzed shows that there is no reason for comprehensive and synergic authority arrangements to overcome threats to national security thus the institutionalizing national security system as reflected in the Preamble of the 1945 Constitution of Republic of Indonesia has not been implemented. Therefore, it is expected to immediately form a new Law related to national security. This law should be comprehensive, no longer partial or sectorial thus it can fulfill the national security system as

referred to the 1945 Constitution of the Republic of Indonesia, and the established national security Law should be able to comprehensively accommodate the concept of the national security system and be able to counter national security threats whose frequency is increasing. For this reason, it needs to be clarified and emphasized regarding the authority of the actors involved in national security management.

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