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Legal Implications of the Arrangement of Authority of the Indonesian National Army in Overcoming the Armed Separatist Movement, Armed Insurgency and Terrorism

Tri Ubayanto¹, Sudarsono², Iwan Permadi³, Setyo Widagdo⁴

ABSTRACT

Arrangement the Authority of the Indonesian national army (TNI) in Overcoming the Armed Separatist Movement, Armed Insurgency, and Terrorism Action there are still some problems both physiologically and juridically. The philosophical problem is that the regulation of the TNI's authority gives rise to multiple interpretations and does not create integrated legal handling. Juridical problems, namely Article 7 paragraph (3) uu No. 34 of 2004 are implemented based on state policy and political decisions. This deviates from the provisions of Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The purpose of this study is to find the legal implications of the TNI Authority to overcome armed separatist movements, armed insurgencies, and acts of terrorism. This research is normative legal research using the statutory approach, historical approach, comparative approach, philosophical approach. The analysis technique is done by qualitative juridical analysis. The results of this study found several problems including legal obscurity and conflicting norms because there were postulates that conflicted with the 1945 Constitution of the Republic of Indonesia. So the steps to be taken by the government were to revise Law no. 34 of 2004 based on an assessment of the threat escalation carried out by stakeholders from the civil authorities followed by a political decision-making mechanism to use the TNI's power. The revision of Law number 34 of 2004 concerning the TNI should be a legal umbrella for the use of TNI force and ensure the role and involvement of the TNI in combating armed separatism, armed insurgency, and acts of terrorism.

Keywords: The Indonesian national army (TNI), separatist movements, armed Insurgency, terrorism, legal implications.

JEL classification code: K14, K25, K32, K40.

¹ Student at Faculty of Law, Brawijaya University. Address: Faculty of Law, Brawijaya University, Veteran Street no. 1 Post code: 65125, Malang City, Indonesia. Phone Number +628112014100. email: triubayanto.fhub@gmail.com . (correspondance Author)

² Professor at Faculty of Law, Brawijaya University. Field of study in of Administrative Law. Address: Faculty of Law, Brawijaya University, Veteran Street no. 1 Post code: 65125, Malang City, Indonesia. Email: sudarsono@ub.ac.id (Co-Author)

³ Head of Doctorate at Faculty of Law, Brawijaya University. Field of study in state administrative law and agrarian law. Address: Faculty of Law, Brawijaya University, Veteran Street no. 1 Post code: 65125, Malang City, Indonesia. Email: iwan_permadi@ub.ac.id (Co-Author)

⁴ Head of Doctorate at Faculty of Law, Brawijaya University. Field of study in international law. Address: Faculty of Law, Brawijaya University, Veteran Street no. 1 Post code: 65125, Malang City, Indonesia. Email: widagdo@ub.ac.id (Co-Author)

1. Introduction

The Indonesian National Army (TNI) is a solid organization, because of its capacity the TNI is not infrequently used or misused for certain interests of certain groups. So the main problem for a democratic system is how to maximize the capability of military defense and at the same time minimize the danger of misusing its power. In this context the article governing the role and authority of the TNI is very important and can even be said to be the core of Law No. 34 of 2004 which regulates the TNI because of the regulation of roles and authority will be a reference for the regulation of Functions, Duties and Organizations as well as the arrangements for the Mobilization and Use of Force (Syahnakri, 2009). The regulation of the role and authority of the TNI so that there is no abuse of power is very important because the pattern of armed conflict has now experienced significant changes that have shifted the tendency of contemporary forms of conflict in the world. A crucial issue related to contemporary conflict is an increase in internal conflicts, namely conflicts that can trigger separatist movements due to political and regional interests, including social conflicts that occur in several countries against the background of social dynamics, culture, primordialism, ethnicity, race, and religion. The pattern of *divide et impera* or dividing the components of the nation in the country is an effective way to destroy a country (Ministry of Defense of the Republic of Indonesia, 2015).

Disturbance to the interests of the state must be minimized because security, order and social welfare are absolute requirements for the survival of a country's life. In terms of regulating crimes against state security, the Criminal Code does not conduct "onderscheiding" or separation between internal and external security. Therefore it is interesting to conduct research on the authority of the TNI mandated in article 7 paragraph (2) of Law 34 of 2004 concerning the TNI, which in the perspective of the second book of the Criminal Code on crime in chapter I is mentioned as a criminal offense in the form of a crime against state security (treason). The form of treason in the Criminal Code can be classified in 3 forms namely:

1. Treason on the President (Article 104 of the Indonesian Criminal Code), a. take the life of the President, b. eliminate the independence of the President, c. make the President unable to serve.
2. Treason To Enter Indonesia In Foreign Mastery (Article 106) a. Trying to cause the entire territory of Indonesia or part of it to become a colony of another country b. Trying to cause part of the territory of Indonesia to become a country that is *mardeka* or sovereign regardless of the Unitary Republic of Indonesia (Sianturi, 2016).
3. Treason to Overthrow the Government (Article 107 of the Criminal Code).

As a comparison in the literacy of crime against state security, there is an understanding that is almost the same as treason, that is separatism which, if observed, is also a movement against the government and the state. In military terminology, separatism is mentioned as a political movement to gain sovereignty and separate a region or group of people (Darlis, 2019). While Bambang Cipto (2003) in the Separatist Movement and Its Impact on the Development of Democracy mentioned the separatist movement as a separate movement carried out by a community of a nation. The people involved are called separatists. The objective of secession to become an independent state apart from its parent country in various international legal literatures is in essence only one of the objectives of a Insurgency that occurs in a country (Sefriani, 2003). Although the legislation does not separate between the two features of crime against state security, this issue is discussed in the systematic science of law. The division is *Hochverrat* (crimes against domestic security) and *Landesverrat* (violations of state security outside) (Prakoso, 1986).

From the description above can be explained the problems that exist in this dissertation research, namely philosophical issues, juridical issues, and theoretical issues. Philosophical problems namely Ontology distortion of the nature of separatists, Insurgency, and acts of terrorism, and in Epistemology, methods of regulating separatist authority, Insurgency, and acts of terrorism lead to multiple interpretations and do not create integrated legal handling. Juridical problems, namely Article 7 paragraph (3) uu No. 34 of 2004 are implemented based on state policy and political decisions. This also deviates from the provisions of Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that: The President establishes government regulations to carry out the law

accordingly. Therefore, we can see that conceptually article 7 paragraph (3) contradicts the principle of the law of *lex superior derogate legi inferiori*, if there are two laws governing the same object, the higher law applies while the applicable law lower binding is not binding. Whereas Theoretical Problems include authority theory, unitary state theory, sovereignty theory, hermeneutical theory, defense theory. Based on this background, it is important and interesting to study the Regulation of the Authority of the TNI Overcoming armed separatists, armed rebels and acts of terrorism.

According to the author's knowledge, there are several researchers discussing the authority of the TNI, including research conducted by Bambang Eko Suhariyanto (2018), according to Bambang Eko, the TNI has authority in the field of defense, consequently axiologically, the existence of the actors, especially the TNI and The National Police in the national security system not optimal. For this reason, reconstruction is needed in managing the landscape and interaction of the roles of defense and security actors and other institutions in handling National Security. Anshari (2018) in the journal revealed, the crime against State Security in Indonesia (Normative Juridical Analysis of the Case Study of Sultan Hamid II). The focus of Ansari's research is the crime against state security in Indonesia, then the crime is compared with a case study, the Insurgency against Sultan Hamid II in 1950-1953. The objective of Ansari's research is to find out which elements can be considered as crimes against State Security and how are the differences in the crime of treason with ordinary crime (trial offense). Another similar study was conducted by Jazim Hamidi, Abdurisa Adzan, and Aan Eko Widiarto with a focus on the study of Political Law in the Arrangement of Crimes in Indonesia by looking at several phases that Indonesia has experienced. This research is different from the existing research, which is different in terms of objects or the scope of the study. The focus of this research is on the Regulation of the TNI Authority to Overcome Crimes Against State Security.

2. Research method

This study is a Normative Legal research. Normative research in the form of a study of legal material that will discuss the Arrangement of the Authority of the TNI in Overcoming the Armed Separatist Movement, Armed Insurgency, and Acts of Terrorism in NRI Law No. 34 of 2004 About the TNI. The approaches in this study are: the statutory approach, the conceptual approach or the conceptual approach to the history of the law or historical approach, and the comparative approach (Diantha, 2016). The types of legal materials in this study are primary legal materials and secondary legal materials as well as other legal materials. Primary legal material is a statement that has legal authority determined by a branch of governmental power which includes; laws made by parliament, court rulings, and executive/administrative regulations (Fajar & Ahmad, 2017). Secondary legal materials include a) legal books that contain teachings or doctrines or treatises; b) periodicals in the form of articles about legal reviews; c) narrative about the meaning of terms, concepts, phrases, in the form of legal dictionaries or legal encyclopedias (Sunggono, 2016). Legal materials are collected by library research and internet searching. Legal material analysis techniques are carried out with four types of analysis, namely: description by describing a legal event, comparison by comparing one opinion with another opinion, evaluating legal material using a variety of interpretations and legal constructions, and arguments made to answer problems the study.

3. Results and discussion

3.1 Implications in overcoming the armed separatist Movement

In principle the separatist movement is an internal problem of a country so that the law used is national law. However, according to the Geneva Conventions of 1949 and Additional Protocol II, the principles of humanitarian law must be upheld. This is what needs to be followed in the implementation of operations to overcome separatist movements by implementing and enforcing the two laws. The task of overcoming the armed separatist movement is one of the main tasks of the TNI in the OMSP. In carrying out operations dealing with armed separatist movements the TNI must be guided by the provisions of applicable national and international laws. In Article 7 paragraph (2) one of the main tasks of the TNI is to carry out OMSP, which among others is to overcome the armed separatist movement. Separatist movements are usually in the form of political movements and armed resistance.

The nature of threats from separatist movements according to the national defense white paper states that one form of threat that arises within the country is actions carried out by separatist groups in several regions of the Republic of Indonesia. At present there are two separatist groups who are trying to separate themselves from the Republic of Indonesia, namely the Free Aceh Movement (GAM) and the Free Papua Organization (OPM). Actions developed by separatist groups in the form of acts of crime and violence (destructive) which caused material losses and casualties, also displaced residents, as well as disrupting the functions of government (Facruddin, 2011). In line with the above understanding, the true problem of separatism in Indonesia, such as the Free Papua Organization (OPM) is not just an ordinary armed criminal group. In the OPM there is clearly a separatist element because there is an armed movement against the government which aims to separate from the Republic of Indonesia and this results in threatening the country's sovereignty, territorial integrity and national safety.

The mention of armed criminal groups is a strategic phrase related to the clause of the 1977 Additional Protocol II of the Geneva Convention. Using the mention of the Free Papua Movement (OPM) as a rebel risks the internationalization of attacks by OPM on civilian and military objects, or when the TNI/The National Police conduct law enforcement operations against them. Another risk greater than defining the OPM as a rebel is the emergence of opportunities for them and their elements abroad to refer to the 1977 Additional Protocol II of the Geneva Convention. The convention is an international law regarding the handling of war (*jus in bello*) or also called international humanitarian law. Additional Protocol II addresses non-international armed conflicts or armed conflicts within a country.

Protocol II is the development and completeness of the provisions of article 3 of the 1949 Geneva Conventions, namely in relation to non-international (non-international) armed disputes which take place within the territory of one of the High Contracting Parties. So Protocol II is an international legal provision but regulates armed disputes (Department of Defense Security of the Indonesian Armed Forces Law Development Agency, 1982). When examined, Article 3 of Additional Protocol II prohibits outside intervention, but there is no prohibition on the part of the rebels from raising concerns to the international community if according to them there is a violation of the Geneva Conventions. This is in line with the second book of the Criminal Code on crime in chapter I mentioned as a crime against the security of the State, the scope of duties of the National Police in accordance with Law RI Number 2 of 2002 Article 13.

On the other hand, if the mentioning of separatist groups uses sentence groups/organizations treason/separatist, the handling by the TNI on the grounds of the duties and functions of the TNI is to maintain the national defense in which there is a clause upholding state sovereignty, and article 7 paragraph (2) of the TNI's main tasks in the OMSP In the context of securing, it is also mandated by law as the duty of the TNI. In the four Geneva Conventions of 1949 there are concurrent provisions, viz:

1. Governing the issue of respect for conventions.
2. Which governs the issue of entry into force of the convention. This is regulated in Article 2 of each Convention.
3. Regarding non-international armed disputes (Article 3). What is meant is a civil war, a Insurgency that occurs within the territory of a State party to the convention.

3.2 Implications in overcoming acts of terrorism

Global terrorism is said to have an impact both physically and psychologically, both on the actual targets and on the wider community. The most significant act of terrorism came on September 11, 2001, or what we know as the 9/11 Attack. This event reflects the religious ideology promoted by Al-Qaeda which was also followed by several Asian terrorist groups, such as the Islamic congregation (JI) groups in Indonesia and the Taliban in Afghanistan (Fatlolon, 2016). At present the National Police is at the forefront of combating terrorism through anti-terror detachment 88. There are 3 reasons behind the Detachment 88 AT under the command of the Indonesian National Police and not under the command of the Indonesian National Army. First, giving the main authority to eradicate terrorism is a strategy of the government to be able to participate in the global war against terrorism, one of which is to encourage the strengthening of special and reliable anti-terrorism special units, with the support of sophisticated equipment and quality human resources. When Detachment 88 was formed, the TNI was

still embargoed on military weapons and education by Western countries, especially the United States, so that one of the strategies to establish an anti-terror unit without interrupting the TNI's past was to develop it in the police force. Second, the criminal act of terrorism is a criminal act that is unique, transnational (transnational crime) and involves many factors that develop in society. Related to this, terrorism in the Indonesian context is considered a criminal law domain, because the ideals of separatism as in the context of terrorism were no longer the main priority, but instead promoted acts of terror that disturbed security and order, and threatened the safety of life and society. Third, avoid the attitude of community and international resistance regarding the eradication of terrorism if carried out by the TNI and Intelligence.

Military missions and civilian missions from the TNI have been stated in the TNI Law, Article 7 states there is a concept of OMP and OMSP titles. The OMP is part of the TNI military mission, while the OMSP which is contained in overcoming acts of terrorism is part of the TNI's civic mission. The basic concept for deploying OMSP is National Defense. As a concept and theory of defense, national defense is an element that must be present in every heart of the Indonesian people, so that every citizen has a deterrent ability to terror efforts. This can happen because defending the state has an element of loving the motherland, willing to sacrifice for the nation state, and never give up for the nation. Philosophically, defending the country is the value of nationalism and patriotism that must be embedded in every Indonesian people (Subagyo, 2018). Based on Budi Susilo's explanation of a weak and strong indicator of a nation, and Hastuti's (2015) explanation of hard and soft indicators. So it can be interpreted that a strong nation is a nation whose Defending State is strong, and a weak nation is a nation whose Defending State is weak.

3.3 Level of authority of exertion and use of force of the Indonesian national army in overcoming the armed separatist movement, armed insurgency and terrorism

Indonesian National Army Doctrine Tridarma Ekakarma (Tridek) Regulation of the TNI Commander Number Perpang/45/MI/2010 Dated June 15, 2010. To support the achievement of the main tasks of the TNI, TNI Doctrine is needed as a guideline of the TNI in carrying out its role based on historical experience, intrinsic values of the nation's struggle and with support from theories that are conceptual to those that are operational. As a guideline, TNI Doctrine is needed to underpin the mindset, attitude pattern, and pattern of action in fostering and using the TNI's power to defend the Republic of Indonesia, which is based on the Pancasila and the 1945 Constitution of the Republic of Indonesia from various military and non-military threats to state sovereignty and territorial integrity and national security. . Based on Tridek's doctrine, the forms of threats include military threats, non-military threats and other threats determined by the President of the Republic of Indonesia. In the context of this research, the focus is on non-military threats especially armed separatism, armed insurgency, and acts of terrorism. Whereas the Strategy for Facing Non-Military Threats, in the Tridek doctrine includes:

1. Deterrence Strategy in the form of 1) Strength Development. 2) Capability Development. 3) Strengthening.
2. Enforcement Strategies include 1) Intelligence Operations. 2) Combat Operations. 3) Territorial Operations.
3. Recovery Strategy in the form of 1) Coaching. 2) Reconstruction. 3) Rehabilitation.

The strategy in dealing with nonmilitary threats as mentioned above, is in line with the legal aspects of the military position. The military position in the administration of Sishaneg as regulated by the Act is entrusted to the President, Minister of Defense, and the Commander of the Army, with the following explanation (Syamsul, 2014):

- a. President of RI. Management of the national defense system is the authority and responsibility of the President of the Republic of Indonesia. In managing the national defense system the President establishes the National Defense General Policy (Jakum Haneg) covering efforts to build, maintain, and develop all components of the Haneg in an integrated and directed manner.
- b. Ministry of defence. The Minister of Defense assists the President of the Republic of Indonesia in formulating Jakum Haneg and establishes policies regarding the implementation of national defense based on general policies set by the President of the Republic of Indonesia.
- c. Commander of the TNI. The TNI Commander carries out military strategic planning, military service, fostering professionalism, and military strength as well as maintaining operational

readiness. Based on state political decisions, the TNI Commander is authorized and responsible for the use of all defense components in the implementation of the OMP and OMSP.

Command and control in the organization of OMSPs. 1) Declaration of the state of emergency for part or all of the territory of the Republic of Indonesia is in the hands of the President with the approval of the DPR. 2) The TNI Operational Main Command is with the TNI Commander, in control of the TNI elements involved in the implementation of the OMSP. The TNI Commander is responsible for the operational readiness of all elements of the TNI. 3) The Chief of Staff of the Force monitors continuously and provides the necessary strength support, both for centralized and regional powers. The Chief of Staff is responsible for the operational readiness of all elements in each force. 4) The TNI Operational Command is at the Pangkotamaops/Pangkogas/Pangkoops who are appointed as the operational executors. 5) Operational control of implementing elements/units/commands involved in OMSP is carried out in accordance with the form, type and nature of operations carried out.

TNI Doctrine Tri Dharma Eka Karma Decree of the TNI Commander Number Kep/555/VI/2018. Basically the TNI was formed to carry out state tasks in the defense sector in the face of various threats and disturbances to the integrity of the nation and state. In addition to carrying out these defense duties, the TNI is also prepared to carry out tasks in the framework of supporting national interests in accordance with statutory regulations. This doctrine will describe the experience of the assignment of TNI operations which includes:

a. Military Operations in the State. From the historical experience of the struggle and battles that the TNI went through before and since the proclamation of independence, the TNI has carried out various operations. From the experience of the operation, values and lessons can be explored that are very beneficial for the next generation of the TNI struggle. Here are some of the operations carried out by the TNI in the form of struggles since independence including Defending Independence, Securing National Integrity, and Protecting Nation's Safety.

b. Military Operation in Foreign Countries. TNI assignments carried out since the Garuda I contingent (1957) to Egypt up to the Garuda XXIII contingent (2018) to Lebanon; Operation Woyla (1981) in Don Muang, Thailand and Operation Operation Release of Sinar Sinar MV in Somalia (2011).

In addition to mentioning various experiences of the assignment of the Indonesian National Army, the Tri Dharma Ekakarma doctrine also focuses on threats and disturbances directed at the approach of the TNI's main task, in accordance with Article 7 paragraph (1) of Law Number 34 of 2004. It is stated in the doctrine that, threats and disturbances can be sourced from within and outside the country, both directly and indirectly (proxy war), while the actors can be either state or non-state, and in their development can be done by non-state actors supported by the state. Media used through land, sea, air, space, electronics, and cyber media. The threat of using modern weapons technology in the form of conventional and non-conventional weapons.

The Indonesian National Armed Forces implemented the OMSPs to deal with armed threats, non-military threats, and interference with the following conditions:

1. Deterrence. At this stage a strategy was implemented that used the TNI's power through military activities and operations in the context of counteracting armed threats, non-military threats, and harassment. Activities undertaken include: Military Diplomacy including: joint training, education, military meetings, visits, military cooperation, or military sports; and territorial development and/or Empowerment of Defense Areas in synergy with the National Police, National Counterterrorism Agency (BNPT), National Search and Relief Agency (BNPP), Maritime Security Agency (Bakamla), other related ministries/agencies; and is active in the Regional Leadership Coordination Forum (Forkopimda).

2. Law enforcement. At the enforcement stage a strategy is used to use TNI forces through Military Operations to take action directly against opponents after the policy and political decisions of the country, for example after a statement of civil emergency status or martial law.

3. Recovery. During the recovery phase a strategy was implemented to use TNI forces through Military Operations and recovery activities based on state policy and political decisions. Operations carried out include: Territorial Operations and/or Operation for Empowerment of Defense Areas and their supporting forces to be ready to face the situation.

The Tridek TNI doctrine is binding but not dogmatic which means that this doctrine can be developed in accordance with the development of the strategic environment that occurs. Thus, the

provisions, rules, principles, principles, and other values contained in this doctrine must be continuously developed through research, analysis, and study, as well as evaluation results. In addition it must also pay attention to various factors, both external and internal that directly influence the development of doctrines such as: changing threats, geographical and demographic conditions, science and technology, resources, military strategy and culture, government policies, concepts of experts, the development of strategic concepts, military campaigns or military operations, and the development of universal military doctrines.

The Tridek TNI doctrine must be able to synergize both with the Hanneg Doctrine and with the Dwi Bhakti Eka Dharma Doctrine (other K/L Doctrines) in dealing with non-military threats that can threaten both directly and indirectly to soldiers and TNI institutions. The Tridek TNI Doctrine is a Parent Doctrine for the TNI which is in the strata of military strategy and is derived from or at the level below the basic doctrine, the National Defense Doctrine (Hanneg). The Tridek TNI doctrine becomes a binding guideline for its derivative doctrines including the force doctrine.

Basics of Military Operations Other Than War (OMSP) in the Regulation of the TNI Commander Number Perpang/14/III/2008 Concerning Temporary Text the Guide Book of Military Operations Other Than War. Military Operations Other Than War (OMSP) is actively carried out by the TNI in order to solve various problems faced by the Indonesian people and other tasks in accordance with applicable laws and regulations. In order to realize the similarity of mindset, attitude patterns and action patterns in the implementation of OMSP and in accordance with predetermined rules, it is necessary to issue TNI Commander Regulation Number Perpang/14/III/2008 concerning temporary texts of the manual for Military Operations Other Than War. Which in it is formulated about the main points of the OMSP that include the goals, objectives, principles, organization, shape, nature, methods, involvement and various types of OMSP. In this regulation it is stated, the purpose of the OMSP is to overcome the various problems of the Indonesian people and carry out other tasks in accordance with applicable laws and regulations.

The TNI already has quite complete manuals (operating instructions, field instructions, technical instructions) for all strata. However, after the TNI had a considerable amount of experience in conducting military operations of both dimensions and joints, as well as paying attention to the results of many critical evaluations that were quite sharp on the implementation of these operations, it was necessary to reorient the defense doctrine especially for tactical-operational strata. This is because there is no harmony between the reference books and the reality of factual threats. So a reorientation is needed in order to harmonize between unit capabilities or Ternpur-consisting of Shooting Power and Motion Power that must be built with the reality of potential threats faced, other than as an effort to efficiently and effectively use the defense budget (Syahnakri, 2009).

Related to the use of TNI force in the OMSP, especially in Article 7 paragraph 2 number 10 of the TNI Law with a clause helping the Indonesian National Police in the framework of security and public order must go through the law, the Headquarters of the Indonesian National Army organized a Focus Group Discussion (FGD) TNI's assistance to the National Police from the Human Rights Perspective, took place at the Santika Hotel, TMII on March 14, 2019. The TNI Commander revealed that the task of assisting the TNI with the Police referred to the mandate of Law Number 2 of 2002 concerning the Indonesian National Police and Law Number 34 of 2004 concerning the TNI. "Rule Of Engagement or TNI Involvement Rules, take reference from Law Number 39 of 1999 concerning Human Rights, Criminal Code, Criminal Procedure Code, Permanent Procedures for the Head of the Indonesian National Police regarding Countering Anarchy, Humanitarian Law, UN Protocol VII on Basic Principles on the use of force and firearms by enforcement officials law, and UN Resolution on the Code of Conduct for law enforcement officials (www.indonews.id).

Based on TNI Law No. 34/2004, in the context of OMSP, the TNI can be involved in assistance tasks including handling terrorism, based on state political decisions as a representation of civil authority. However, this regulation has a weakness, namely there is no operational mechanism that regulates the implementation of TNI assistance tasks. This law only mentions what types of assistance can be done by the TNI in the context of OMSPs. The vacuum of the mechanism prompted the formation of an MoU between the TNI Commander and the National Police Chief regarding TNI Assistance to the Police in the Context of Maintaining Community Security and Order. This MoU was formed in 2013, which was renewed in 2018.³⁷ On the other hand, the MoU between the TNI and The

National Police regarding this assistance task has sparked criticism among the public. This MoU is a setback in security sector reform, where the separation of the TNI and The National Police and the division of roles of these two institutions is the mandate of reform as stipulated in the MPR Decree No. VI and VII of 2000. Determination of assistance tasks based on the MoU is also considered to violate the Law, especially article 7 TNI Law No. 34/2004.³⁸ According to the TNI Law, assistance can be carried out on the basis of state political decisions while the MoU is not a state political decision. In addition, the making of this MoU was initiated by the TNI Commander and the National Police Chief (Fitri, 2018).

Cooperation agreement (MoU) regarding TNI Assistance to the Police in the Context of Maintaining Community Security and Order. In the Rule Number B/2/2018 and Kerma Number/2/1/2018 signed by the the National Police Chief, Tito Karnavian and the TNI Commander Hadi Tjahjanto dated January 23, 2018, it was explained that the scope of the cooperation, besides dealing with demonstrations and strikes, also including dealing with riots, handling social conflicts, securing the activities of people and or governments that are potentially vulnerable to chaos, and other situations that require assistance in accordance with existing provisions. In essence, in accordance with Article 7 paragraph (3) of the TNI Law, military operations both in war and other than war must be through state political decisions. The MoU or memorandum of understanding is not a political decision of the state (www.bantuanhukum.or.id).

Regarding the cooperation between the two institutions, especially in the case of assistance to the Police stated in Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia paragraph (1) that in the framework of carrying out security duties, the National Police may request the assistance of the TNI, which is further regulated by Government Regulation (PP). Paragraph (2) states that in a state of military emergency and state of war, the National Police provide assistance to the TNI in accordance with statutory regulations. Although the TNI and The National Police have a vertical relationship in the context of involvement, it is not easy to realize this. The reality shows that requests for The National Police assistance from the TNI unit are very rare, in fact it can be said to be almost non-existent. In handling various cases, there was a tendency for the National Police not to involve the TNI. Even if there is a request for assistance, the National Police are more likely to ask the National Police units in other areas or even from the center. This development is quite ironic, bearing in mind that TNI units in the regional command have a complete and broad organizational structure, supported by adequate human resources and infrastructure in carrying out assistance tasks. Many factors become obstacles or obstacles in implementing the involvement of the TNI in the task of assistance to the Police. One of them is the policy or regulation governing the assistance task until now it does not yet exist, making it difficult to implement it in its work patterns. Even though this policy is very important to know how the mechanism of involvement is carried out, and the extent to which the boundaries of involvement are carried out, as well as in the context of the conditions how the Police must ask for assistance from the TNI. The absence of clear rules, of course, makes the lower-unit unrest, especially those in the regions, especially the regional military command command in implementing the request for assistance. Especially considering the still strong sectoral egos among the relevant agencies, so it is very strong that it seems reluctant to ask for help from other units (Subekti, 2014).

3.4 Sample Handling Practices armed separatists in Indonesia

Aceh's Separatism Movement. The Aceh separatist movement in general was organized under the name of the Free Aceh Movement which was a political and cultural struggle to break away from the Republic of Indonesia which was carried out generation to generation. The Free Aceh Movement (GAM) was declared by Muhammad Hasan Tiro by taking an armed struggle by guerrilla and international diplomacy based in Switzerland. GAM was born as a result of the disappointment of the Acehnese people seeing their rich natural resources, finally only controlled by officials in the central government and a number of industry people who exploited their land, and left them with some air pollution, polluting their rivers. In addition, Aceh's cultural differences that are different from some other regions in Indonesia are not sufficiently respected by the central government.

Defendants of the Aceh Merdeka case were generally convicted by using articles of general criminal acts in the Criminal Code such as murder and Articles in Presidential Decree No. 11 of 1963 concerning Eradication of Subversion Activities. In addition to actions in the form of conviction, it was also carried out with political actions in the enactment of the Military Operations Area. The legal basis

for the enactment of Military Operations Areas in Aceh is Government Regulation Number 6 of 1960 concerning Military Assistance which in Article 9, among others, states that areas where military assistance is carried out are called Military Operations Areas or DOM. According to Djohari, the status of the Military Operational Area from 1989/1990 to August 7, 1998 is different from the Martial Law status where in the Martial Law the Regional leadership will be held by the Commander/Military Commander, while in the DOM the presence of the military is only helpful, then the Regional leader remains held by Governor/Head of local area. Therefore, the status of Aceh in 1989/1990 until 1998 according to Djohari can be called a de facto emergency or de facto emergency (Efendy, 2015).

Based on the desire to create peace in sustainable Aceh, the Government of Indonesia led by Indonesian President Susilo Bambang Yudhoyono issued Presidential Instruction (Ipres) Number 15 of 2005 concerning the Implementation of the Memorandum of Understanding between the Government of Indonesia and GAM, the President further instructed the United Indonesia Cabinet, Attorney General, TNI Commander, National Police Chief, Head of BIN, Head of the National Defense Agency, Head of the Rehabilitation and Reconstruction Agency for the Regions and Life of the People of the Province of NAD and the Islands of North Sumatra Province and the Governor of the Province of NAD for the implementation of the Memorandum of Understanding and preparing the draft Law on the Governing of Aceh (RUUPA), which eventually gave birth to Law Number 11 of 2006 concerning the Government of Aceh (LoGA). Provisions of Law Number 11 Year 2006 concerning the Government of Aceh constitutes a follow up to the provisions of the Helsinki MoU, so that in the Law on the Governing of Aceh several provisions have been accommodated in the memorandum of understanding (MoU Helsinki) (Salpina, 2018).

Papua's Separatism Movement. After the Round Table Conference (KMB), from 1950 to 1962 the Netherlands sought to accelerate development in various fields to prepare Papuans to receive the right to self-determination. In essence, the Dutch are determined to break the Indonesian Government's efforts to integrate Papua into Indonesian territory. Although the social and geographical conditions of Papua are very heterogeneous, and most of the population has not received education, during the decade the Dutch succeeded in changing the perspective of the people of Papua. Dutch Rationale for Papua. As a consequence of the results of the Round Table Conference which took place on 27 December 1949, Papua would be submitted to the Government of Indonesia a year after the conference through negotiations. After the transfer of sovereignty, the Dutch were declared psychologically defeated. This reduced the dignity of the Netherlands as one of the largest ruling countries in the Asian region. To maintain its prestige, the Dutch tried not to lose face by including Papua as part of its territory (Materay, 2012).

Debate that never ended in the diplomatic world, made the Indonesian side take another step through military settlement. President Soekarno on 19 December 1961 in Yogyakarta announced the Trikora (Tri Komando Rakyat) which contained the following orders: 1) Failure to establish a "Papuan Puppet State" Made in the Netherlands, 2) Flap the Purih in West Irian, and 3) Prepare for general mobilization in order maintain the unity of the homeland and the nation. And finally, since May 1, 1963, based on the New York Agreement, the Netherlands agreed that Papua be integrated with Indonesia, the Indonesian Government in full control of Papua.

OPM (Free Papua Organization) was established in 1965, was fragmented in various guerrilla groups and small organizations and did not have a centralized command system and an adequate weapons system. The basis for organizing is still dominantly affiliated or influenced by the ethnic identity of each member and leader. In addition to OPM, there is also the OPM National Liberation Army (TPN-OPM) which was formed when a number of OPM groups formed a military branch based in Papua in the 1960s. OPM military practices can be seen in attacks on TNI posts in Papua during the New Order. According to Bilveer Singh (2008: 144-145), after the fall of the New Order political regime, the struggle of the OPM was to respond to these changes by trying to form a "national coalition" and united fronts. One of them was the formation of the National Liberation Council (NLC), led by Amos Indeyey, Toto, and Rumkoren. This council organizes mass organizations that were established in the 1960s such as the Spirit of the Anti-Republic of Indonesia Papuan Youth Force (SAMPARI), Operation of the Free Papua Organization (OOPM), and the Papua National Movement (GNP). In June 2003, at the initiative of Tom Beanal and John Otto Ondawame, a meeting of West Papuan leaders was held in Nieuwegein, Utrecht, Netherlands to reconcile between Papuan fighters (Nainggolan, 2014). The

meeting was followed up with a meeting in Lae, Papua New Guinea on November 28 - December 1, 2005 which resulted in the establishment of the West Papua National Coalition for Liberation (WPNCL) based in Port Villa, this Council also has a separate military wing from the OPM namely the West Papua National Liberation Armed Forces, chaired by Mathias Wenda (Wdjojo, 2009).

3.5 Sample Handling Practices Armed Insurgency in Indonesia

When in Madiun there was a power struggle carried out by PKI Musso, the government immediately held a Complete Cabinet Session on September 19, 1948, chaired by President Soekarno. The results of the hearing took the following decisions; that the Madiun incident which was driven by the FDR/PKI was a Insurgency against the Government and carried out instructions to the instruments of the State and the Armed Forces to restore the security of the State. Giving full power to General Sudirman to carry out the task of restoring security and order to normal conditions in Madiun and other areas. Then on the evening of September 19, 1948, the President, the Minister of the Interior Dr. Sukiman, Minister Hamengku Buwono IX and Panglima Besar Sudirman, gave speeches to all the people of Indonesia. In the speech, the President said that: In Madiun city on 18 September by and under the leadership of the PKI, the former FDR using unity personnel from one of the brigades in East Java had carried out attacks on State equipment and the illegal replacement of local government with gun violence.

The Military Operations Movement launched by troops obedient to the Indonesian government was short-lived. In 12 days Madiun was regained, he arrived on 30 September 1948 at 16.15. In the evening at 22.00 Military Governor Gatot Subroto ordered the Army to continue to pursue the rebel forces that were lodged in Purwodadi, Pacitan, Ponorogo, the Spokesperson of the Minister of Defense in his announcement saying; that Musso fled to Dungus, south of Madiun. The rebel forces commander sent a letter to Lieutenant Colonel Kretarto to hold negotiations, but the government did not want to enter into relations with the rebels. When TNI troops entered Madiun, Musso Cs was not in Madiun. Before resigning the rebels had destroyed the Telephone Office by using the bomb. By the people the government was then re-established in Madiun. The red and white flag was hoisted again throughout the city (Susatyo, 2008).

3.6 Practical examples of Action Combating terrorism in the military assistant task to the Police

One form of TNI assistance to the Police is the Tinombala operation in Poso with the target of operating 41 DPO terrorist groups Santoso. This operation is in accordance with TNI Commander Regulation number Perpang/71/VIII/2011 dated August 19, 2011 regarding TNI assistance to the Police in the framework of security, security and society.

The start of the operation is as follows:

a. Camar Maleo III.

Held for 30 days from 12 September 2015 to 11 October 2015. The forces involved amounted to 105 perelons.

b. Camar Maleo IV.

Conducted for 90 days starting from October 12, 2015 to January 9, 2016. The forces involved amounted to 281 personnel plus 764 personnel totaling 1045 personnel.

c. Rated Level-1.

Held for 60 days starting from January 10, 2016 to March 9, 2016. The forces involved amounted to 1800 personnel.

d. Rated Level-2.

Held for 60 days starting from March 10, 2016 to May 8, 2016. The forces involved amounted to 1800 personnel.

TNI Commander General TNI Gatot Nurmantyo appreciates the performance of the Tinombala TNI-The National Police joint task force in hunting the Santoso armed terrorist network in Poso, Central Sulawesi. Appreciation and pride are given to the Tinombala Task Force consisting of the Police, the Army, the Navy and the Indonesian Air Force for their performance. The Indonesian Air Force was involved in this operation, by deploying drones who always watched the movement of the Santoso network until the death of Santoso in a shootout between the Tinombala Task Force and five Santoso

group networks in the mountains in Poso, Monday 18 July 2016 evening. The cooperation developed by the TNI-The National Police is a gradual integration of patience with patience. The team that managed to kill Santoso, namely soldiers from the Kostrad Raider Battalion 515 (kompas.com).

4. Conclusion

The intended legal implications are the involvement or connection of several legal aspects due to the regulation of the authority of the Indonesian National Army in overcoming the Armed Separatist Movement, Armed Insurgency, and Terrorism Action. The legal implications of regulating the authority of the Indonesian National Army in overcoming the Armed Separatist Movement, Armed Insurgency based on the results of this study found several problems as follows.

a. Obscurity of law. One thing that raises the problem is in overcoming the Armed Separatist Movement, Armed Insurgency, and Acts of Terrorism from Military Operations Other Than War (OMSP) must be based on policies and political decisions of the country as mentioned in article 7 paragraph (3). The policies and political decisions of the state as ordered in Article 7 paragraph (3) have yet to take shape, meaning that there is still a legal vacuum for the implementation of the OMSP, which must be carried out by the TNI. According to the explanation in Article 5 of Law number 34 of 2004 concerning the TNI, what is meant by state policy and political decisions is the government's political policy together with the House of Representatives, which is formulated through a working relationship mechanism between the government and the House of Representatives, such as consultation meetings and work meetings. in accordance with statutory regulations. Whereas when referring to the Decree of the Commander of the Indonesian Armed Forces Number Kep/555/MI/2018 Regarding the Doctrine of the Indonesian Armed Forces Tri Dharma Eka Karma, The so-called state policies and political decisions are policies and political decisions made by the government together with the House of Representatives of the Republic of Indonesia (DPR RI) and formulated through a mechanism of working relations between the government and the House of Representatives, such as consultation meetings and work meetings in accordance with statutory regulations as the implementation of the tasks of the Indonesian Parliament in the fields of legislation, supervision, and budgeting. The results of consultation meetings and work meetings include agreements or things that need to be followed up by the government so that they do not deviate from what has been set and/or the need for other program activities that have not been determined in the APBN program and budget and so forth..

b. On the other hand, there is a conflict of norms as there are postulates contrary to the 1945 Constitution which clearly state in Article 5 paragraph (2) that the President establishes the Government Regulation (PP) to enact laws. Until the phrase Policy and the country's political decisions are contained in article 7 paragraph (3) of Law. 34 th 2004 is a clause that deviates from the order of Article 5 paragraph (2) of the NRI Constitution of 1945.

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