



**Indonesian State Intelligence Optimization Analysis Based on Law No  
17 Year 2011  
Case Study: State Intelligence Agency (BIN)**

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**Abstract**

This study aims to determine the nature of the function of intelligence in a country, the obstacles of the Intelligence Agency in carrying out its role and the ideal concept of the position of the Intelligence Agency in a rule of law. This study uses a normative juridical research method with a conceptual approach. The data were then analyzed analytically descriptively. The results of the study show that the essence of intelligence functions in a democratic country is as an organization, science and activity. There are still obstacles, both juridical and sociological in nature, the State Intelligence Agency in carrying out its role based on Law Number 17 of 2011 including those concerning prosecution, supervision, wiretapping, coordination, tracing the flow of funds, extracting information and cooperation with related parties or institutions that tend to weaken the position of the State Intelligence Agency. State Intelligence Agency as the front line of national defense and security. In the end, this research gave birth to an ideal idea regarding the ideal concept of optimizing the position of BIN in a state of law and democracy in Indonesia.

**Keywords:** Optimization, State Intelligence Agency, State Security

**INTRODUCTION**

State sovereignty is an important thing that needs to be maintained together, especially by the government to guard against attacks from parties who have the aim of destroying the country both from and outside (Anwar, 2016). Threats that have a major impact on state sovereignty or what we call ATHG (Threat of Disturbance Challenges) are things that must be considered jointly by all components of the nation, especially in the field of law. So that there is an urgency for the government as part of the legislature, to make its own regulations regarding issues that will have an impact on a nation (Prayetno, 2015).

The reform order was formed by a regime that demanded changes or a new order/policy, where there was a tendency for everything that smelled of the old order and new order to seem wrong, this had an impact on policies that did not side with the people, causing people's misery, and what is even worse, capable of causing vulnerabilities is the opening of the faucet of democracy (Jati, 2021). With the opening of freedom of expression, public transparency, and changes in the structure and management of government from centralized to decentralized government. Change (reform) is to improve things that are considered not good for the better, but in reality all forms of policies, programs and concepts of development order in the current order (reform) seem to be less organized, especially in the field of intelligence, where these conditions will create vulnerabilities to the integrity of the Unitary State of the Republic of Indonesia (Gaus et al., 2017).

The Unitary State of the Republic of Indonesia has the ideals stated in the Preamble to the 1945 Constitution, namely to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life, and participate in carrying out world

order based on independence, eternal peace, and social justice. Based on the four main objectives, it can be used as a guideline for formulating the functions and tasks of intelligence, both in terms of concepts and practical treasures that can be used by intelligence officers who practice directly (Budi, 2022). In addition to threats that come from within the country, various threats from outside are also a big concern. Not to mention the political conditions at the end of 2015 which also had an impact on the instability of the national situation. Another threat that is no less powerful and growing in the current era of globalization is the hybrid threat (Junaidi & Prakoso, 2021).

Hybrid threats, among others, combine conventional, asymmetric, terrorist and cyber warfare as well as diverse and dynamic threats. In addition, hybrid threats can also be in the form of an integrated attack between the use of chemical, biological, nuclear and explosive weapons (Chemical, Biological, Radiological, Nuclear and Explosive / CBRN-E) and information warfare (Ali et al., 2021). Various problems that are, are still happening and will occur make us aware that there is something that must be addressed in Indonesia's national security system, especially in the field of intelligence. The cases in Aceh Singkil and Tolikara some time ago reflect that Indonesia's national security system has weaknesses, both at the conceptual level in regulations and in the technical implementation of the national security system, including the state intelligence administration system (Syukron, 2017).

By understanding various threats and problems in various aspects of life, the state needs to strengthen its national interests, including by optimizing the strategic functions of related state institutions such as intelligence. Based on this background, this research was conducted to answer the problem of how to optimize the role of state intelligence agencies to maintain state security based on Law No. 17 of 2011. The discussion of this article is related to Law No. 17 of 2011, which is the legal umbrella for the agency. and the duties and functions of intelligence, as well as one of the national security actors in the security system of the Unitary State of the Republic of Indonesia to answer relevant issues and test their validity.

## RESEARCH METHODS

This study uses a normative juridical research method with a conceptual approach. The normative juridical research method is a method that conceptualizes law as norms, rules, principles or dogmas (which should be) (Budiman, 2016). While the conceptual approach is a type of approach in legal research that provides an analytical point of view of problem solving in legal research seen from the aspects of the legal concepts behind it, or even can be seen from the values contained in the norming of a regulation in relation to the concepts used (Anam, 2017). Data is collected by exploring books, journals, laws and other information relevant to the study. The data was then analyzed in an analytical descriptive manner, namely describing and analyzing secondary data in the form of laws and regulations (Yulistyowati et al., 2017).

## DISCUSSION

### 1. The essence of the function of intelligence in a democratic country, especially as a support for policy making

In looking at the function of intelligence in a democratic state district, it is more important to place intelligence proportionally and supported by a truly appropriate and systematically facilitated container so that when carrying out the intelligence function can apply optimally and can support all policies or policies that become the goal of a democratic state (Safa'at, 2011).

#### a. Intelligence as a Science

Intelligence as a science is certainly not biased apart from improving the performance of human resources that must be owned by Indonesian intelligence, especially BIN in this case, for that increasing scientific development must be maximally taking into account the facilities and infrastructure that are in accordance with current conditions. The formation of a forum to improve Indonesian intelligence has now been formed which was initiated by the establishment of the State Intelligence High School (STIN) located in the Bogor area of West Java, but this forum is not enough, it is necessary to add a forum that has an orientation in developing the skills possessed by Indonesians. Indonesian intelligence personnel, this aims to further improve the capabilities of Indonesian intelligence personnel which will later be useful for providing thoughts on the condition of the Indonesian State in taking a strategic policy. The presence of the state intelligence agency as a forum for increasing intelligence capabilities in preparing the quality of

human resources is absolutely their main goal. While STIN is also expected not only to be a single platform to improve the quality of Indonesian intelligence human resources, but there must be a higher level for higher quality human resources who face the development, dynamics of the nation's problems in the future.

### **b. Intelligence as an Activity**

In carrying out an intelligence activity, the most important spirit and must be prioritized is information, obtaining information is a separate necessity for intelligence personnel in the field, in carrying out activities, whether closed or open. History records that the intelligence activities of a group against a country have a large impact and implication on the condition of the country, it may be that the country is in a state of alert or slowly approaching destruction, because the nature of intelligence activities is secret and the goal is focused on the central point of an organization. country/government/group. Against this matter, intelligence activities that are destructive in nature must be immediately addressed by the counterintelligence service of a country, because the counterintelligence service, both at home and abroad, is at the forefront which will have an impact on the condition of a country. Activities as one of the intelligence functions in Indonesia, when referring to juridical provisions, have been regulated in the provisions of Article 6 paragraph (1) of the State Intelligence Law. The activities in question are investigation, security and raising (LIDPAMGAL).

### **c. Intelligence as an Organization**

The fundamental purpose of the State Intelligence Agency based on constitutional system of Republic Indonesia is to explain further specifically about the purpose founding Republic Indonesia, as mandated in the 1945 Constitution (4<sup>th</sup> Amendment), in the security sector. In the fourth amendment of the 1945 Constitution, it is mandated that the administrators of the Indonesian state are obliged to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare and participate in implementing world peace. We know that intelligence agency are closely related to national security. The national security can be interpreted as a dynamic condition, which is related to a sense of security, prosperity that is protected by law and can be felt by every individual and all Indonesian citizens. Through the above conception, intelligence has an important role not only in the security sector as an early warning and early detection, but more on how to provide intelligence support to the holders and managers of this country. So that, later they can carry out according to the mandate of the 1945 Constitution which is used as a guide for state life.

### **d. Intelligence in Indonesian Constitution**

In essence, intelligence is not written in the IV 1945 Constitution of the Republic of Indonesia, because this is related to the nature, characteristics and duties of the intelligence function. Shulsky and Schmith argue that at the operational level, there are four essences of intelligence (i). intelligence is part of the national security system;; (ii). Intelligence is an early warning system;; (iii). Intelligence is an information management system;; (iv). Intelligence is a strategic analysis system, which as a whole has the aim of avoiding strategic surprises and having an impact on the national resilience of a nation and a country which affects the sustainability of a country. From this thought, a fundamental conclusion can be drawn that the essence of intelligence is to protect all the needs and sustainability of the State which refers to the basic principles of a democratic state by establishing an early warning system and a strategic analysis system to prevent a condition or sudden strategic nature in the field of national resilience of a nation (national resilience). One of the main characteristics inherent in intelligence is flexibility which refers to the national geostrategic area of a country.

## **2. BIN's Obstacles In Carrying Out Its Role Based on Law no. 17 of 2011 concerning State Intelligence**

Recently, the existence of the State Intelligence Agency (BIN) has received a lot of attention, especially from several cases that occurred and developed in the country, such as the Tolikara case where a mosque was burned at the same time as a Muslim religious holiday, then successively there were bombs in Sarina. , following the case in Singkil aceh and many records that discredit BIN and state the failure of this Indonesian intelligence agency, because it cannot perform its function as an early warning and early detection of threats that come from both

outside and within the country. This problem becomes more complex when looking at the conditions on the ground, where in several Indonesian intelligence sectors which are incorporated in Intelligence Communications either at the central level (Kominpus) or at the regional level (kominda) where BIN as the main forum in the form of coordination (exchange of information) occurs. disharmony, so that the function of lidpamgal which is part of intelligence activities is not optimal, so that a sudden strategic nature even though in an internal scope cannot be avoided, and here national stability is disrupted, so that many say that intelligence is being compromised. For this reason, as researchers, we will try to briefly review the weaknesses that occur in this intelligence agency (Fallah et al., 2021).

#### **a. BIN's Juridical Constraints as the Front Line for State Intelligence Organizers**

The problem of national security is inseparable from the problem of the intelligence power of a country. From the various problems that occurred, we can draw a common thread that the various problems that occurred were intelligence failures. Weaknesses that have existed so far must of course be looked at comprehensively because the administration of state intelligence is part of the national security system. National intelligence in general is a government institution that is an integral part of SISKAMNAS (National Security System), which has the authority to carry out intelligence activities based on Intelligence Act.

#### **b. Sociological Constraints of BIN as the Front Line of State Intelligence Organizers**

Talking about intelligence certainly cannot be separated from the nature and basic characteristics attached to it, namely clandestine. Regarding the nature of confidentiality, there are two contradictory aspects, namely the positive aspect and the negative aspect. What is meant by positive aspect is that in the context of implementing a national security system (SISKAMNAS), a strong State Intelligence organization is needed where all intelligence operations activities must be confidential so that opposing parties will not know about the defense strategy of a country, including Indonesia. Why is that? Because the implementation of State Intelligence is part of the national security system (SISKAMNAS). Therefore, good intelligence administration will greatly affect the achievement of ideal national security as well. On the other hand, there is a negative aspect which is a sociological aspect, namely the stigma attached to intelligence activities. It is undeniable that the Indonesian state had experienced a regime that made the stigma of intelligence activities a negative stigma where intelligence agencies at that time were abused by the authorities (Sampara et al., 2020).

#### **The Ideal Concept of BIN's Position in a State of Law and Democracy**

The rule of law is a country where the administration of government is based on law. This means that the law is used as the commander in all aspects of life, both in society, nation and state. The law is used as an umbrella for legitimacy for every action taken by the state and its citizens. In the concept of a democratic rule of law, it has the meaning that the breaths of democracy are exhaled in every rule of law. Democracy, which has the meaning of freedom, is not only a democracy that is as free as possible, but there are certain limitations that are justified by law. Indonesia itself is a country with a Pancasila democratic system, where the general meaning of democracy as freedom is of course based on the boundaries determined by the values of Pancasila. In relation to the implementation of state intelligence in a democratic legal state, it is appropriate that the implementation be stated in law where there are provisions of Law Number 17 of 2011 concerning State Intelligence. The law, which is a product in the form of a law, legitimizes every administration in the field of state intelligence, which of course remains oriented to democratic values (Aditia & Salomo, 2022).

Along with the development of globalization and technology, according to the author, there are several things that need to be updated regarding the provisions contained in the State Intelligence Law. The rapid development of globalization and technology requires the state to also carry out reforms in the field of the national security system (SISKAMNAS). Moreover, this is an era of openness where the barriers between one country and another are disappearing and we inevitably have to enter this vortex. These changes and developments in the situation and condition of Indonesia's strategic environment are the basis for the need to optimize the role of intelligence providers, especially BIN.

To reform the administration of state intelligence, of course, it is carried out with reforms in the field of legal regulations. The following is the ideal concept that will be put forward by the author in relation to reforms, especially those in Law Number 17 of 2011 concerning State Intelligence:

**a. BIN is an institution that is authorized to carry out the coordination function of State Intelligence (Article 28 paragraph (2))**

However, there is no takeover function related to the intelligence administration function of other institutions. The supervisory function that can be carried out by BIN needs to be regulated for other intelligence providers (Kuncoro, 2019). Because, it is not impossible that the issues handled by other intelligence agencies, including TNI intelligence, Polri intelligence, RI Attorney General's Intelligence, and intelligence from other ministries/agencies are issues related to state security. So it is very relevant in the context of the national security system (SISKAMNAS) that BIN is given the authority to oversee all forms of state intelligence administration.

**b. Wiretapping**

Wiretapping is basically an action to detect a problem so that prevention can be done against an activity that threatens and endangers national interests (Christianto, 2016). In the State Intelligence Law, it is stipulated that wiretapping is carried out first through the determination of the head of the district court (Article 32 paragraph (3)). This provision contradicts the existence of the wiretapping function itself because basically wiretapping is aimed at prevention, but instead it is hampered. With such provisions, it should be remembered that in the implementation of the intelligence function, there is a principle of confidentiality as contained in Article 2 of the Intelligence Law. It becomes a contradiction when it has the potential to be no longer secret because it has been known by other parties other than the intelligence administering apparatus. According to the researcher, specifically regarding wiretapping should not be preceded by the appointment of the chairman of the district court. To answer the challenge of accountability in a democratic country which of course guarantees the human rights of citizens, internal and external supervision is carried out by the main inspectorate in the environment. bro BIN. Meanwhile, external supervision is carried out directly by the Special Team for Commission I of the DPR RI. The form of internal supervision is aimed at the efficiency and effectiveness of the implementation of wiretapping when wiretapping is carried out. As for accountability (responsibility) can be monitored by the Special Team for Commission I DPR RI periodically after wiretapping.

**c. Checking the flow of funds**

With regard to checking the flow of Bank Indonesia funds, banks, financial service providers, or financial transaction analysis institutions are required to provide information to the State Intelligence Agency (Article 33 paragraph (2)). According to the researcher, it is necessary to review the provisions of the article because there are no provisions relating to what if the financial provider does not want to provide information for reasons of customer confidentiality and so on. It is necessary to regulate the juridical consequences if the financial organizer does not want to submit in relation to the flow of funds indicated as funds related to national security threats and dangers, such as funds for terrorism. The right juridical consequences, for example, are given a warning, as well as other administrative sanctions which are clearly regulated in the State Intelligence Law.

**d. Information mining**

Information mining is an inseparable part of the implementation of State. In Article 34 paragraph (2) of the Law on State Intelligence, relevant law enforcers are obliged to assist the State Intelligence Agency. According to the author, it is necessary to regulate juridical provisions relating to the consequences if the law enforcers do not want to assist BIN in extracting information, for example by reprimands or other administrative sanctions which are clearly regulated in the State Intelligence Law.

**e. Intelligence coordination**

The State Intelligence Administrator as referred to in Article 9 letter b, letter c, letter d, and letter e must coordinate with the State Intelligence Agency. This article actually provides an answer to the sectoral ego of State Intelligence organizers other than BIN where BIN is a place

for direct coordination of other State Intelligence organizers. However, the State Intelligence Law does not regulate the juridical consequences related to the unwillingness of other State Intelligence administrators in coordinating with BIN. According to the author, it is necessary to give juridical consequences for the organizers of the State Intelligence if they do not want to coordinate with BIN, for example by reprimands or administrative sanctions which are clearly regulated in the State Intelligence Law. If you look at Law Number 17 of 2011 concerning State Intelligence, the position of BIN, which incidentally is the front line in the national security system (SISKAMNAS) is actually only as a provider of information regarding threats, obstacles, and disturbances that have the potential to endanger national security.

## CONCLUSION

State sovereignty needs to be jointly safeguarded, especially by the government from attacks that have the aim of destroying the country. Another threat that is no less powerful and growing in the current era of globalization is the hybrid threat. The essence of the function of intelligence in a democratic country is as an organization, knowledge and activity. There are still obstacles, both juridically and sociologically, the State Intelligence Agency in carrying out its role based on Law Number 17 of 2011 including prosecution, supervision, wiretapping, coordination, tracing the flow of funds, extracting information and cooperation with related parties or institutions that tend to weaken the position of the State Intelligence Agency. BIN as the front line of defense and national security. In the end, this research gave birth to an ideal idea regarding the ideal concept of optimizing the position of BIN in a state of law and democracy in Indonesia.

## SUGGESTION

Guided by the research that has been studied by the author, the author wants to provide several recommendations including the following:

1. Encourage lawmakers (DPR and the Government) to understand the potential threats, challenges, obstacles, and obstacles (ATHG) both from within and from outside in accordance with current global developments and based on Indonesia's geographical conditions. This understanding is expected to be the basis and guideline as well as a strong foundation in efforts to optimize the implementation of State Intelligence as part of the national security system (SISKAMNAS), especially in the context of updating juridical rules, namely the renewal of Law Number 17 of 2011 concerning State Intelligence.
2. Providing understanding to all parties as elements of the Unitary State of the Republic of Indonesia (NKRI) regarding the importance of a strong Intelligence function within the framework of the national security system (SISKAMNAS) in order to maintain the unity and integrity of the state. The stigma and traumatic of the past cannot be erased from memory, but the present situation and conditions are much different in the past where the stigma of intelligence in the past was used solely to maintain power for the ruler. Thus, it is expected that all parties will be open-minded to the importance of a strong State Intelligence implementation system in order to maintain and continue to maintain the integrity and sovereignty of the Republic of Indonesia.

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