



The Application Of Law in The Empowerment of The Defense Area by Using Joint Training Method Between TNI and The Local Government.

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Abstract

In the context of national defense (not attacking another country), the service of human or the people to their country is an obligation (compulsory), not optional, because in the explanation of Article 27 paragraph (3) of the 1945 Constitution: "That every citizen has the right and obliged to participate in national defense efforts". The purpose of this study is to analyze using a juridical approach method with a comprehensive study. The source of data is taken from legislation and empirical juridical research; reviewing based on the needs of National Defense which are carried out jointly between TNI and the Regional Government. The results of this study indicate that by applicable law, the community managed by the Regional Government has the right and is obliged to carry out National Defense with Empowerment of Defense Areas, because a peaceful State is a condition prepared by all Indonesian people. In this case, it can lead a country to become a strong defense country; strong enough to prevent war. The diminishing number, knowledge, and experience of civilian leaders in war or military operations pose the danger of being underestimated. In this regard, it is necessary to remember what Sun Tzu (400 BC) said: "*war is a matter of vital importance to state, the road of survival or run. It's mandatory that it be thoroughly studied*".

Keywords

National Defense, Empowerment of Defense Areas, Local Government, Joint Exercises.

Introduction

For the last decade, security sector issues are not only monopolized by the

state and the military. They have become part of global governance, such as democratization, human rights, the environment, and gender. The power of global civil society also pays attention to the issue of the national defense sector. The widespread attention from external and internal circles encourages the emergence of a new paradigm regarding the national defense sector that places the sector in the broader development area. This paradigm puts forward 2 (two) focuses of attention (Sujito & Eko, 2002): First, the national defense sector must focus more on human security than territorial defense. Second, human security must be achieved with a sustainable human development paradigm to shift the security paradigm that uses weapons and the military.

This paradigm shift implies a shift in the understanding and scope of the military role in the context of democratization. National defense is not a stand-alone field but must be integrated into the development agenda to achieve people welfare. In other words, the security approach must be combined with the prosperity approach. State defense affairs handled with a militaristic or repressive approach through weapons are no longer relevant because it is opposed to people welfare orientation. This paradigm changes also affected the national defense system concept; which initially emphasized efforts to maintain territorial stability to efforts to empower the region. The concept is contained in Law no. 34 of 2004 concerning TNI, which is known as the concept of empowering the defense area (Secretary of State, 2004). However, up to now, the realization of the concept and the empowerment of government, military, and related institutions of defense area remains unclear. These two issues become our 'homework' to discuss and evaluate in developing legal instruments by using the legislation mandate.

Law Number 3 of 2002 concerning National Defense mandates that the essence of national defense is all defense efforts are universal, its implementation is based on the rights and obligations of citizens and belief in their strength. National defense is prepared by considering Indonesia's geographical conditions as an archipelagic country. The definition of national defense is the participation of Indonesian people in defending their country, as well as the utilization of all national resources and the entire territory of the country in the national defense effort (Indonesia, 2002). The essence of empowering the defense area can be explained as follows:

1. Helping the government in early preparation of national potential to become a defense force, covering the defense area and its supporting forces, to carry out military operations for war, which the implementation of it is based on the interests of national defense of the universal defense system,
2. Assisting the government in conducting compulsory basic military training for citizens by statutory regulations, and
3. Assisting the government in empowering the people as a supporting force.

Belief in one's strength is the spirit of relying on one's strength as the basis for national defense. Observing the law's mandate, it is natural for Indonesia, as an archipelagic country, to place human or people's strength as the main potential

in managing the empowerment of defense areas. National defense is based on universality, thus all citizens should actively participate in and are involved in defending the country by the law mandate on national defense. TNI, as the core of national defense, is formed and fostered to become professional through continuous education and training, the training places and military installations covered by the provisions of the law and legislation are badly demanded. Invitation on spatial planning and spatial defense planning; for example how to shape the mindset of concerned people in managing national resources, such as the construction of controlled-access highway that are designed to be functional as well as mobilizing military and civilian forces involved in disaster management and air evacuation in others, and the mindset of human to protect the environment. The potential of rice fields and other plantations as logistics supplies and foods during war or disaster. Embargoes or interruption of logistical support lines and different mindsets among Indonesian people related to the development of the national defense force.

The substances of state defense contained in the 1945 Constitution include the views of the Indonesian people in seeing themselves and their environment, the state's goals, the state defense system, and the involvement of citizens. This reflects the attitude of the Indonesian against all forms of colonialism, which are contrary to the values of humanity, justice, and welfare. Furthermore, the 1945 Constitution stipulates the National Defense System (Sishanneg), which places the people as a vital actor. National defense is carried out with the Universal People's Defense and Security System (Sishankamrata). Then Sishankamrata is translated into Sishanneg that become the universal Sishanneg. State defense is all efforts to defend the sovereignty of the state, the territorial integrity of the Republic of Indonesia, and the safety of the entire nation from threats and disturbances to the integrity of the nation and state. The meaning contained in Sishankamrata: "the people are the main and in the universe", both in spirit and in utilizing all national strength and resources, for the sake of defense in defending the existence of the Unitary Republic of Indonesia. Participation in Sishanneg manifests every citizen's rights and obligations to participate in national defense efforts. The participation of citizens in national defense is a form of honor for citizens to reflect their rights. The participation of citizens in national defense efforts can be directly, namely to become voluntary soldiers of the Indonesian National Armed Forces. However, it can also be indirectly, namely in their respective professions. Who contributes to national defense (including educators) or becomes mandatory soldiers. Defending the state is one of the identities and personalities of the Indonesian who are responsible, aware of their rights and obligations as citizens, and love the homeland so that they can display patriotic attitudes and behavior in the form of defending the country. The patriotic spirit for the nation's sake and the state that appears in the attitudes and behavior of citizens, who are aware of defending the country, is a form of state defense power in Sishanneg.

National defense capabilities must be built, fostered, and prepared from an

early age and implemented in all Indonesian national territories. It is the duty of all Ministries, non-Ministerial Institutions, and local governments, by their respective roles, responsibilities, and functions. The doctrine issued by TNI stipulates that in carrying out the duties of military operations, the forces involved are not only TNI but also non TNI institutions and other components of the nation. Coordination and cooperation among institutions are needed to carry out all the task successfully and adequately. The joint exercises between TNI and local governments needs to be formulated in implementing legal regulations by the state so that defense capabilities and empowerment of defense areas by all national resources and potentials can be measured and standardized from the implementation of the joint exercises.

The history of national defense is an inseparable part of the appreciation and aspirations of the Indonesian nation's struggle to realize the ideals of independence and its national goals as mandated in the Preamble to the 1945 Constitution, namely:

1. Protecting the entire Indonesian nation and the entire nation. Spilled blood of Indonesia,
2. Promoting public welfare,
3. Educating the nation's life, and
4. Participating in implementing world order based on independence, eternal peace and social justice.

State defense is essential to all universal defense efforts. The implementation of it is based on awareness of the rights and obligations of all citizens and belief in their strength to maintain the survival of the nation and the State of Indonesia, which is an independent and sovereign state. Meanwhile, universality implies the involvement of all the people and all national resources, national facilities, infrastructure, and the entire territory of the country as a complete and comprehensive defense unit. A universal defense effort is a model that was developed as the most appropriate choice for Indonesian defense, which is carried out with confidence in one's strength and based on the rights and obligations of citizens in the national defense effort. Even though Indonesia has achieved a relatively high level of progress in the future, this model remains a strategic choice to be developed by placing citizens as subjects of state defense in their respective roles.

The characteristic of universal national defense system is populist, universal, and regional. Populist characteristics mean that the defense orientation is dedicated to and for the people benefit. The universal characteristic implies that all national resources are utilized for defense efforts. Meanwhile, the territorial characteristic implies that the title of defense force is spread throughout the Republic of Indonesia by the geographical conditions as an archipelagic country. Efforts to maintain territorial integrity of a country are closely related to the right to exist of a country (the right of national or State existence) guaranteed in international law. Therefore, the primary right of a state is the integrity of

its personality and entities as a state because the existence of a state is a critical condition of any rights demanded by the State. Then, by the principles of applicable international law, the State also has the right to safeguard and defend its independence, sovereignty, and territorial integrity. Understanding the meaning of the right to the existence of a State, including the right to be able to take actions that are deemed necessary, even actions with any risks, such as repressive measures, if methods through negotiation, legal settlement, or other peaceful means can no longer be successfully carried out. Such action, which is the last resort, may be carried out in the context of the right of a country to self-defense (the right to self-defense) because of threats that could threaten its sovereignty, independence, and territorial integrity. The State has complete sovereignty and jurisdiction over its territory as a unified whole. Thus, the country has exclusive rights to defend its territorial integrity from all threats, both within and outside. Therefore, it is said that what is done by the power of the State or its jurisdiction over its various territories is complete and exclusive. It was said complete because the country can have access to all areas of the country, including all residents in that region, regardless of their nationality. The State's jurisdiction over its exclusive means that no party, including other countries, has the right to impose its jurisdiction over that area. Thus, without prejudice to the principles of applicable international law, the territory of a country cannot be contested (the inviolability of territories) by states). The obligation to respect the territorial integrity of a country has also been included in the Declaration of Principles concerning International Law which the General Assembly approved of the United Nations on October 24, 1970 (General Assembly Declaration on Principles of International Law). Concerning Friendly Relations and Co-operation among States by the Charter of the United Nations). The term "territorial integrity" has also been included as the principle of inviolability of frontiers.

Method Research

This research was conducted using a normative juridical research method based on legislation and empirical juridical research to gain comprehensive result. The study was conducted based on observations of the handling of acts of terrorism in Indonesia involving TNI.

The data obtained was analyzed qualitatively and described using words so that the discussion or presentation is in the form of a systematic and understandable sentence, then a conclusion drawn.

This analysis is used to process data that cannot be measured in the form of legislation, so it requires elaboration through descriptions. The data and information that has been collected will be selected and adjusted with the topic of research discussion. Then this data is processed qualitatively and described in words so that it is a description of the sentence that can be understandable, understandable, and accountable. This qualitative analysis is done by paying attention to data from library materials and data obtained from sources in the field.

There are two approaches used in this legal research, namely (1) statutory approaches to review the laws and regulations relating to central research themes and both problems in this research and (2) normative juridical research to explain the legal principles contained in the provisions of the legislation.

This research was conducted to provide an overview and analyze the juridical and non-juridical impacts of TNI involvement in OMSP tasks and to provide an overview and analysis of efforts to overcome the juridical and non-juridical impacts of TNI involvement in OMSP duties.

Results and Discussion

Theoretical Framework

In conducting research, it is necessary to have a theoretical framework, as Ronny H Soemitro stated that to provide a solid foundation in general, every research must always be accompanied by theoretical thinking. In this study, the Rule of Law and Authority theory are used to analyze the main research problems on the authority of TNI to overcome threats that must be equipped with juridical aspects.

The term rule of law is a direct translation of *Rechtsstaat*. According to Philipus M.Hadjon, the term *Rechtsstaat* became popular in Europe in the 19th century, although the thought about it has been around for a long time. Plato first put forward the ideal of the rule of law, and then this thought was confirmed by Aristotle. The concept of the rule of law in Continental European known as *Rechtsstaat* conception in Anglo Saxon is known as the Rule of Law. Historically, the emergence of constitutional government has always been associated with its managers' limited State and power. Therefore, constitutionalism, an abstraction slightly higher than the *rule of law* or *rechtsstaat*- means the understanding of a limited state where clear laws surround official political power, and its acceptance will turn power into legally determining authority.

TNI involvement or authority, according to KBBI, is the power to make decisions, govern and delegate responsibility to others. According to Miriam Budiardjo, the terms power and authority are often found in the literature on political science, government science, and law. Power is often equated with authority, and power is often used interchangeably with the term authority and vice versa. Even authority is often equated with authority, power usually forms a relationship because "one party rules and the other is being ruled" (the rule and the ruled).

Based on the above understanding, power can be interrelated to the law. The power that is not related to law by Henc van Maarseveen is called "blote mach." In contrast, power related to law by Max Weber is referred to as rational or legal authority, namely authority based on a legal system, and this is understood as a rule that has been established, recognized and obeyed by the community and even strengthened by the State.

Discussion

Restructuring the National Defense System requires a comprehensive understanding of the legal framework and the structural, cultural, and system aspects that serve as the basis for implementation. Restructuring procedures and mechanisms require a deep understanding of the need to differentiate between the responsibilities of policymakers at the political strata and those who apply the system of using force to the operational echelons. With this understanding, the implementation of the National Defense System requires resources that deeply master the problems, so that in the current democratic government system, each implementing element's division of tasks and responsibilities must be able to run well to support the national interest.

Designing Joint Exercises with TNI by Involving Civilian Roles in National Defense

The nature of Military Operations for War (OMP) is an operation carried out in a planned manner with predetermined objectives, targets, time, and logistical support, with the deployment and use of TNI forces assisted by reserve components and supporting components against the military forces of other countries. Who commit aggression against Indonesia, and or in an armed conflict with one or more other countries, which is preceded by a declaration of war and is subject to the International Law of War? Article 16 of TNI's *Buku Petunjuk Induk* (Bujukin) on Military Operations Other Than War (OMSP) states that:

"Combat operations carried out by the TNI in OMSP, both independent and integrated with other institutions, are aimed at overcoming armed violence, including terrorism, communal conflicts, and other armed violence, on the principle of stopping armed violence, in order to avoid greater casualties,...".

The State Policy, as stated in the Law of the Republic of Indonesia Number 3 of 2002 concerning National Defense, stipulates that the implementation of development in the regions must pay attention to the development of defense capabilities. Therefore, long before the area is designated as a war mandala/operations mandala, the autonomous region must develop to benefit the people's welfare (Indonesia, 2007). However, if the region is designated as a war mandala, then the region must be able to support the implementation of OMP and OMSP. In the book on the Doctrine of National Defense, it is stated:

"The preparation of the state's territory as a defense field is a non-military defense function carried out in an integrated, coordinated, and cross-departmental/institutional manner. Its realization is through national spatial planning, including defense areas' spatial planning. The preparation of defense logistics is carried out early and integrated with national development for welfare purposes. The preparation of defense logistics is fundamental in supporting the implementation of war. The preparation of defense logistics is part of the development of non-military defense, which is organized in an integrated,

coordinated, and cross-departmental/institutional manner. Its realization is through strong economic development with fairly high growth as well as a competitive and independent national industry, which in turn will be able to realize the independence of defense facilities and logistics centers spread across each region".

The defense system adopted by Indonesia gives TNI the opportunity to design the implementation of joint exercises that invite the active role of other components of the nation in supporting the system. In the face of enemies both from outside and within the country that threaten part or all of Indonesia's territory, training to increase capabilities and readiness is not only needed by TNI and its elements but also for institutions outside TNI and other components of the nation, because the concept of involving strength in both OMP and OMSP involves other institutions and components of the nation.

The Joint Exercise simulated that enemy forces had controlled part of the territory of the Republic of Indonesia and TNI forces carried out OMP and OMSP. The TNI Commander, with various considerations, submit suggestions to the President as the Supreme Commander of the Armed Forces to designate part of the country's territory as a war zone and an operational mandala, which are part of the autonomous regional government. The war/operational mandala, which has been determined to be a territorial area of the regional government is the task of the autonomous regional government, and the existing resources in the region must be able to meet the needs for the implementation of national defense so that the area is simulated as a War/Operation Mandala in the TNI Joint Exercise must be able to support the implementation of military operations and elements in the region can carry out cooperation with TNI for the successful implementation of tasks.

Joint Exercises TNI - Local Governments Can Be Used to Evaluate Regional Readiness and Capabilities in Supporting National Defense

Joint Exercises, as a method applied by TNI to improve readiness and testing of doctrines, are prepared so that from the implementation of this exercise, an understanding of how military operations are carried out when faced with conditions that are scenarios in the exercise will be obtained. In addition, the implementation of the exercise will also find things related to the implementation of the doctrine so that the results of the evaluation of the exercise can be used to improve the doctrine being tested, or if the doctrine has not been compiled, the implementation of the Joint Exercise can be used as helpful material for the preparation of the doctrine. Article 20 of the Republic of Indonesia Law No. 3 of 2002 concerning National Defense, as follows:
Paragraph (2) stipulates that:

"All national resources in the form of human resources, natural and artificial resources, values, technology, and funds can be utilized to improve the national defense capability, which Government Regulation further regulates.

Paragraph (3):

Development in the regions must pay attention to the development of defense capabilities, as referred to in paragraph (1), which is further regulated by a Government Regulation.

Considering that war is not only the responsibility that involves military forces but also involve the region with all available resources, the implementation of the exercise should also be helpful for the state to evaluate whether regional development has succeeded in building defense capabilities and whether the resources in the region have been successful. Regions have been able to be deployed to support national defense. Therefore, the joint exercise can help evaluating the implementation of the obligations of the autonomous region in terms of regional readiness and capability in supporting national defense, which in this case is simulated in the scenario of the Joint Exercise.

The determination of the mandala of war or the mandala of operations is determined by the President based on the recommendation of the TNI Commander. The TNI's *Buku Petunjuk Induk* (Bujukin TNI) on OMP states:

"..... if enemy aggression can occupy part of Indonesia's territory, it is necessary to prevent it with limited war efforts in certain areas and not widespread. ..." further stated, "If OMP is forced to be carried out in the territorial area of Indonesia, so OMP is carried out outside the settlements of civilians."

It is impossible to control the enemy who commits aggression against Indonesia so that they do not control and occupy residential areas, therefore the implementation of military operations should not be limited to areas outside the settlements. If the operation is forced into a residential area, a way out must be found, how the population in the area of operation does not become victims of war and can be saved. Therefore, regional development must also predict the possibility of danger and threats that may arise, even though in peacetime all development is aimed at the welfare of the people, regional development planning must be able to eliminate vulnerabilities, reduce the risk of possible victims of the people and other related conditions. By saving the people so that evacuation routes are formed with the available infrastructure.

In the OMP's Bujukin, it is stated that the main component is TNI, assisted by reserve components and supporting components, so that in preparing joint training plans, to obtain optimal training realism, the auxiliary component elements should also be included in the planning, so that they can fulfill and "realize" the mandate. The law on the main tasks of TNI, with the understanding that the Joint Exercises, not only train military capabilities and readiness, but also must be able to train how the strength of the community protection component in carrying out its roles, duties and functions in efforts related to civilian tasks, both civil defense as well as Community Protection in preventing the occurrence of civilian casualties during the operation. In addition, local governments can also train their abilities in dealing with "emergency" conditions, ranging from "civil emergencies" to "war emergencies" in accordance with Government Regulation in lieu of Law number 23

of 1959 concerning conditions of danger, how local governments carry out their roles, duties and responsibilities. Its function, in these situations and conditions and how to control the role and involvement of the community (Number, 23 CE). In addition, it can also be useful for the pattern of cooperative relations with the military and through its involvement in the implementation of Joint Exercises, it will find a formula on how to carry out procedures for mobilizing resources in the regions to support the interests of national defense and support military operations.

An emergency situation must be anticipated by the Regional Government, which in its implementation requires the existence of guidelines in order to save the people and the mobilization of national resources in the region, including if it must support the implementation of military operations. In connection with this task, it is necessary to coordinate and cooperate between the TNI and the Regional Government so that the capability of the civilian component can play an active role in efforts to save the people / prevent the people from becoming victims of disasters, by organizing and mobilizing resources in the region so that the following data are obtained:

1. Obtaining an overview of the readiness or unpreparedness of the region in supporting the implementation of operations,
2. Obtaining data on what needs to be developed and built by the regional government and programmed in regional development plans, because various facilities needed for national defense are actually in peacetime. Facilities that are useful for the service and welfare of the people and the state has issued a policy related to this task which is stated in Article 22 of the Republic of Indonesia Law No. 32 of 2004 concerning Regional Government.

Building public awareness in facing military and non-military threats

The State's view of war is expressed in the statement "Indonesia loves peace, but loves Independence more". With this view, war as part of the concept of national defense, for Indonesia is an option if Indonesia's independence is threatened. War determines the establishment or collapse of a country, therefore war should not only be left to the military, but becomes a common interest and business because war is diplomacy in other ways to achieve the country's political goals. War is highly avoided by every country, because war requires large costs that will harm the country's economy and cause misery for the people.

Basically every country faces potential threats both from within and outside the country. In addition to threats, each country also has duties and obligations to achieve development goals, which require cooperation and involvement from all components of the nation. Every individual, organization, and institution, according to their abilities, duties and responsibilities, is a force that must be synergized as a force to prevent and face threats as well as a power to achieve the development goals that have been set. Threats and targets are common problems, not the rights

or obligations of certain individuals, organizations, or institutions and only through the cooperation of all elements can achieve the ideals of the nation. Universal war is a war that applies on all fronts, not always by deploying military force and using violence. To destroy elements of state power through subtle, constitutional means with a coordinated pattern that results in the collapse of the target state slowly but surely, attacking non-physical. Even though the collapse of the state system is not the final target, because with the destruction of the system and the resilience of the state it will make it easier to destroy the target, with a little effort will get victory in a short time and with minimal costs.

With this awareness, it will inspire all elements within the country to always be alert and ready to face threats and strive to increase resilience in all fields which will ultimately increase the country's defense capability. By involving institutions outside TNI's strength in the Joint Exercise, it will get an idea as to whether the obligations of the Regional Government in implementing development have been carried out and the development of defense capabilities can be carried out. Based on the picture obtained during the process and the dynamics of support and cooperation in the Joint Exercise, it can be used as input for further planning so that regional deficiencies in supporting the implementation of military operations can be gradually increased and fulfilled in the future, although development is still directed at improving welfare and services, social services to the people, but in a state of danger capable of supporting the defense of the country. The Joint Exercise is expected to create a bridge of shared vision and mission between civilians and the military in global security needs in the field of national defense, increasing public awareness of the military so that the confrontational nature between military and non-military institutions can be reduced. Continuous Joint Training also supports the ideas and praxis of a clean government (good governance) including the state's obligation to use state or regional revenues for the best interests of citizens in the field of national defense.

Conclusion

Joint training between TNI and the Regional Government is a necessity for TNI to continuously improve the organization's ability to prepare elements of TNI to deal with any possible threats. In addition, the training is also a means of testing the doctrine that has been prepared, to evaluate whether the guidelines for carrying out tasks can be implemented according to the objectives and as material for drafting the doctrine of military-civilian cooperation in carrying out operations as well as in drafting laws and regulations related to national resources. An emergency situation must be anticipated by the Regional Government, which in its implementation requires the existence of guidelines in order to save the people and the mobilization of national resources in the region, including if it must support the implementation of military operations. In connection with this task, a legal umbrella or implementing regulations are needed from Law no. 34 of 2004 to carry out coordination and cooperation between the TNI and the Regional Government

so that the capacity of the civilian component can play an active role in efforts to save the people/prevent people from becoming victims of disasters, by organizing and mobilizing resources in the regions.

Suggestion

State defense is not only the duty of TNI, but also involves all national resources, therefore in planning the next Joint Exercise in addition to training the capabilities and preparedness of TNI, it is recommended:

1. Involving resources nationally in the training area, to assess the success of national development in the region, while at the same time evoking the spirit and awareness of institutions outside TNI that national defense is a joint task of all components of the nation.
2. Designing the legal umbrella or implementing regulations of Law no. 34 of 2004 in the form of Government Regulations or Presidential Regulations concerning Empowering Defense Areas and Supporting Forces early with a universal defense system and Presidential Regulations concerning Assisting Government Duties in the regions, to carry out coordination and cooperation between the TNI and Regional Governments and to design the doctrine of civil-military cooperation as guidelines for the implementation of joint tasks between the TNI and other components of the nation in dealing with all forms of threats that may occur in the future.

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