

Legal Policy of National Defense: Developing National Character in Indonesia

Arqam Azikin* Marwati Riza Muhadar Faisal Abdullah
Faculty of Law, Hasanuddin University, South Sulawesi, Indonesia

Abstract

Indonesia is likely to face a complex and dynamic strategic for national development in the future. Despite the country's political reforms, domestic security problems including communal tensions, religious radicalism, and terrorism continue to pose dangers to the wellbeing of the Indonesian people. The research is a normative-legal research using a statute and conceptual approaches. The results show that the understanding of a universal defense system in legal policy in the field of national defense is the implementation of a national defense system that involves all aspects both community and territoriality based on the values of Pancasila and the 1945 Constitution. The integration of the defense component is in order to aligning the vision and mission as part of the implementation of the national defense system development agenda. By this integration it will have a greater impact on efforts to achieve development goals in the field of defense. The involvement of citizen in the implementation of the national defense system must be early exercised. Early involvement means that there is a rational effort undertaken by the State. This tiered model leads to three basic elements of the system i.e nationality insight, national schooling, and State-defense orientation.

Keywords: Character; Defense; Government; Legal Policy; Nationality

DOI: 10.7176/JLPG/97-06

Publication date: May 31st 2020

1. Introduction

The establishments of an independent State have elements that must be fulfilled such as a permanent population, a defined territory,¹ a government to a capacity to enter into relations with other States.² The four elements are closely related and cannot be separated.³ The people are an important component for a country, because the people who first want to establish a State. Politically, the people are all people who reside and live in a country or become residents of a country that is subject to the power of State.

It is undeniable that the threat is a main factor and become a basis in the preparation of the design of the national defense system, both actual and potential. As a strategic analysis and identification of the dynamic characteristic of threats, it is possible to combine various types of threats. Therefore, the current and future threats can be classified into 3 (three) types namely military threats armed and unarmed, non-military and hybrid threats. Sources of threats can come from inside and outside the country, and it is performed by State and non-state actors which are national, regional and international.

Act No. 3 of 2002 concerning National Defense classifies the components of the State defense and security system includes major, reserve and supporting components. In this case, the main component of the State defense and security system is the Indonesian National Army. While, the people as citizens and become part of the reserve component and/or supporting component. The involvement of the people in the defense and security system is an absolute thing to do because in terms of population, Indonesia is the fourth most populous country in the world. The total population of Indonesia is more than 269 million. With a large enough number should be able to support and strengthen the Indonesian National Army as a major component.

The implementation of national defense is aimed at maintaining and protecting the sovereignty, territorial integrity and safety of all nations.⁴ Defense is arranged in a universal defense system, non-aggressive and not-expansive in order to protect national interests. The settlement of issues related to and influencing national defense is performed by promoting diplomacy reinforced by modern military forces.

Responding to every dynamic, Indonesia actively encourages global partnerships, promotes the spirit of togetherness and creates a dynamic balance, which is a condition characterized by the absence of a dominant State power in a territory. This is done on the basis of belief as an opportunity for increased cooperation and partnership in building defense forces for the progress of a country. Indonesia continues to promote free and active politics based on the principle of peace-loving but more love of independence and holds that neighboring countries are friends who have a shared-commitment to maintain security and stability in the territory. Build common perception

¹ Reza, B. I. (2017). The total people's defense and security system: Issues related to state-sponsored militia in Indonesia. *Indonesia Law Rev.*, 7, 155.

² Honna, Jun. (2013). Security challenges and military reform in post-authoritarian Indonesia: the impact of separatism, terrorism, and communal violence. *The Politics of military reform* (pp. 185-199). Springer, Berlin, Heidelberg.

³ Adolf, H. (1996). *Aspek-aspek Negara dalam Hukum Internasional*, PT. Raja Grafindo Persada, Jakarta, p. 2.

⁴ Rabasa, A., & Haseman, J. (2002). *The military and democracy in Indonesia: challenges, politics, and power*. Rand Corporation, p. 31

is needed to minimize problems faced in international relations both bilateral and multilateral. The development of defense forces is not intended as a form of arms race but is an effort to achieve professional standards of the armed forces, based on the vision, mission, nine hopes, and policies of the World Maritime Axis. In this case, the government needs to build maritime defense forces supported by satellite technology and drone systems.

The national interests of a country will be used as a reference in the formulation and determination of a grand strategy or national security strategy. Stable national security is a precondition for the implementation of national development in order to realize national goals. In that framework, national security is a dynamic national interest. National security is influenced by the dynamics of strategic environmental changes and factors from within the country, including economic development, education, social welfare, political dynamics, and interaction between communities.

2. Method of the Research

This study is a normative-legal research by using statute and conceptual approaches.¹ Data were analyzed with descriptive qualitative analysis with content analysis. In this study, the authors used the qualitative research method, which (in general) generates words rather than numbers as data for analysis.² This research focuses on the analysis study of the Indonesian legal policy of national defense.

3. Legal Policy of National Defense: A Reflection on Indonesian Law

Indonesia as a modern country has the direction, goals and ideals in achieving the future. This system can be called constitutionality, where the constitution as a fundamental law in the whole building system. The constitution on the top position in the State system in which all fields of national life rely normatively on the constitution, including in the field of defense and security.

The development of defense and security is aimed at upholding the sovereignty of the country, maintaining the territorial integrity of the Unitary State of the Republic of Indonesia, maintaining the safety of all nations from military and non-military threats, increasing the sense of security and comfort as a guarantee of conducive investment climate, and staying orderly and upholding the law in the community. The condition of Indonesia' vast territory (land and water), the large number of population and the value of national wealth that must be guaranteed its security makes the challenges of the duties and responsibilities in the field of defense and security become very heavy in law enforcement. Law enforcement is the authority of a country that must be created so that the country does not collapse. For this reason, law enforcement is needed that can be accountable to the public, nation and State in order to maintain the security and sovereignty of the State.

Actually, the development of the defense and security have close links in terms of law enforcement as caused by violations of territorial boundaries and law in the jurisdiction of Indonesia; security and safety of shipping at the Indonesian archipelago sea; terrorism;³ an increasing trend of serious crime; drug abuse and distribution; the weak of information security in the country and inadequate early detection.⁴

Development in all fields as exercised by the Indonesian people since the first national leadership President Soekarno, in the old order era up to now in the leadership of Joko Widodo, in the reform era is an effort to implement the mandate of the 1945 Constitution, which from the beginning was held as a basic guide in juridical dimension by the State of the Republic of Indonesia. This means that the development exercised by the government is the implementation of the mandate of the 1945 Constitution, that the development is based on the direction of the norms or rules contained in the constitution of the Republic of Indonesia.⁵

The constitution has provided fundamental direction as basic principles in the effort to manage the field of national defense and security in its context as legal policy. In this case, the legal policy can be understood as the basic direction and objectives as contained normatively in the highest legal constitutional system that provides guidelines for development and management in the field of defense and security. According to Padmo Wahjono,⁶ legal policy is a basic policy that determines the direction, form and content of the law to be established. This definition is still abstract, but practically it can be interpreted as a State policy on what is used as a criterion to set something. In this case the policy can be related to the formation of law, the application of the law and enforcement itself.⁷

Seeing from the understanding of legal policy as mentioned above, it can be described that the basic principles

¹ Marzuki, P.M. (2010). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group., p. 93

² Patton, M.Q., and Cochran, M. (2007). *A Guide to Using Qualitative Research Methodology*, Medecins Sans Frontieres, UK.

³ Puspongoro, A.D. (2003). "Terrorism in Indonesia." *Prehospital and disaster medicine* 18 (2): 100-105.

⁴ Jazuli, A. (2016). Pembangunan Pertahanan Dan Keamanan Demi Penegakan Hukum Di Indonesia: Kewibawaan Suatu Negara, *The Journal of Legal Research DE JURE*, 16 (2): 187 -199

⁵ Muhtamar, S. (2016). *Grand Desain Pembangunan Hukum; Arah Pembangunan Sistem Hukum dalam Sejarah Perencanaan Pembangunan Jangka Panjang Nasional Indonesia*, INTI, Makassar, p.8

⁶ Wahyono, P. (1986). *Indonesia Negara Berdasarkan atas hukum*, Cet. II, Ghalia Indonesia, Jakarta, p. 160.

⁷ Wahyono, P. (1991). *Menyelisik Proses Terbentuknya Perundang-Undangan*, Forum Keadilan, No.29 April 1991, p.65.

in defense and security must refer strongly to the constitution. In the constitution contains fundamental values as norm fundamental and become a basis for other pragmatic-normative values, especially those governing defense and security, the main values are Pancasila. Values that can be used as the direction and basic objectives of the development of national defense and security, mainly related to the three basic values of Pancasila that is democracy, unity, justice. The following will be comprehensively analyzed the values of democracy, unity, justice as a basic principle in national defense and security.

Regulatory policies in the field of defense are directed at acceleration in the process of establishing legislation that is in line with the national legislation program. The establishment of legislation includes all legislation products, both those delegated by law, and those established due to the need for the management of national defense that is adapted to the provisions of national and international law based on democratic principles and human rights, including legislation which is part of an open cumulative list for the ratification of international treaties on defense.

The budget policy of the national defense is directed to meet the needs of the implementation of national defense including: *firstly*, military defense budget support is directed at increasing the budget, to achieve the national defense strategic objectives by guiding the priorities and targets in the field of defense, as well as tasks in accordance with the national defense strategic plan; *Secondly*, the non-military defense budget support is provided by K/L and the Regional Government which is used for development, empowerment and mobilization of the non-military defense force according to the strategic plan of K/L and the Regional Government in line with the interests of national defense; *Thirdly*, the availability of budget at the central and regional levels to meet the needs of handling emergencies in the implementation of national defense.

The function of supervision is exercised through internal and external supervision both in the implementation of military and non-military defenses. It is conducted in accordance with procedures and mechanisms as well as laws and regulations which are directed at supervising the implementation of national defense in order to prevent misuse of the budget, and ensure accountability of budget management.

Regard to the perspective of State security, the Indonesian National Police is an institution that has the authority to organize State security for the life of the nation and State. As in the perspective of the Indonesian National Army' defense in performing the basic principles of defense and security, it has its own policies, so the National Police has a vision and mission in order to realize the defense and security principles relating to maintaining and protecting the integrity and sovereignty of the country. The following is a description of the vision and mission of the National Police.

The National Police of the Republic of Indonesia is a non-departmental institution that has a role in realizing Indonesian domestic security which includes maintaining the security and order of the people, orderly and upholding the law,¹ conducts the protection and service of the community, and maintaining the peace of peoples by upholding human rights. The National Police can be seen both organizationally and personally. The organizational aspect looks at the institutional nature of the National Police itself, while the personal aspect looks at the members of the National Police who exercises the roles, functions, tasks and responsibilities of the organization.

In order to deal with various threats to national defense, a system of management and implementation of national defense is needed that is systematic and performed professionally and proportionally. This was addressed by the main components of national defense through efforts to increase professionalism by not practical-politics and focusing on its main tasks in the form of Military Operations for War (OMP – *Operasi Militer untuk Perang*) and Military Operations Other Than War (OMSP – *Operasi Militer Selain Perang*). The increasing of professionalism is realized through the development of human resources and the development of defense equipment. While, the increasing of professionalism in the reserve and supporting components is done by increasing competence in accordance with their respective professions aimed at the interests of national defense.²

Act No. 34 of 2004 concerning the Indonesian National Army, Article 2 mentions the identity of the Indonesia National Armed as; a) People army, whose members come from Indonesian citizens; b) Patriotism army, who fought to uphold the Unitary State of the Republic of Indonesia and knew no surrender in exercising and completing tasks; c) National army, the Indonesian national army serving in the interests of the country and above regional, ethnic, racial and religious interests; d) Professional army, who are trained, well-educated, well-equipped, not practical-politics, do not business, and guaranteed their welfare as well as following the country' political policies that adhere to the principles of democracy, civil supremacy, human rights, provisions of national and international laws which have been ratified.

As a major component of the national defense, the Indonesia National Army should be built professionally in accordance with the political interests of the country which refers to the values and principles of democratization.

¹ Alamsari, S. Heny., Irwansyah, Muhadar, Heryani, W. (2019). Law Enforcement of Money Laundering: Case Studies on Fighting Narcotic Crime, *Journal of Law, Policy and Globalization*, Vol. 88, 12.

² The Regulation of Defense Ministerial No. 16 of 2012 concerning the Integration Policy of the State Defense Component.

The Indonesia National Army is a major supporting for national defense, because the Indonesia National Army escorts the political interests of the country but is not identical with the political interests of one particular group.

4. Legal Policy Strategies for the Components of National Defense

Article 1 Number (2) of Act No. 3 of 2002 concerning National Defense asserts:

“The defense system is a universal defense system that involves all citizens, territories and other national resources and it is prepared early by the government and exercised in a total, integrated, directed, and continuing manner to uphold State sovereignty, territorial integrity, and safety for all nations from all threats.”

Based on this juridical foundation, then actually the involvement of citizens must be carried out early. Early involvement means that there is a rational effort undertaken by the State in this context the government systemically with regard to the constructional efforts of citizens in stages based on the chronological age of citizens as exercised in a total, integrated and sustainable manner in a tiered model.

In this study, the tiered model leads to 3 (three) basic elements of the system, namely, nationality insight, national schooling and education and training and State-defense orientation (**Figure 1**). The model of the early universal defense system can be described as follows: *the first* is the National Insight. The presence of globalization is marked by the rapid development of technology, information and communication and affects all areas of a country' life i.e ideological, political, economic, socio-cultural and national defense and security, including Indonesia.¹ For the Indonesian nation, the influence of globalization has brought universal values (individualism, hedonism and liberalism) that fade national values (mutual cooperation, tolerance and manners) so that it shifts the mindset and patterns of community action, especially teenagers.²



Figure 1. The strategy of the early universal defense system

The second is the National Schooling. National education must re-enter the national education system in the form of a school curriculum starting from elementary school to universities. This is important to shape and strengthen the national character of Indonesia in the soul of generations so that it can avoid various threats of radicalism and intolerance. National education should not be interrupted and must become a continuous entity.

The importance of national education is something that must be encouraged in order to shape and strengthen the national defense, especially in the aspects of the reserve and supporting components. Through the idea of national education, it can become a way for the implementation of national defense efforts as stipulated in the Defense Law, that national defense is exercised through efforts to build and foster capabilities, the deterrence of the State and nation and overcome any threats. This is organized by the government and prepared early with the national defense system.

Improving the quality of the generation must be a concern for educators and it must start at the family, school and community level. Do not let the attitudes of intolerance have room to develop because ultimately it will encourage radicalism and even terrorism. Therefore, the concept of national education can be realized into 3 (three) segments, namely formal, non-formal and professional groups. The target of the national schooling is the

¹ Gindarsah, I., & Priamarizki, A. (2015). Politics, security and defense in Indonesia: The pursuit of strategic autonomy. In *Indonesia's Ascent* (pp. 130-154). Palgrave Macmillan, London.

² Rahmanto. (2019). *Wawasan Kebangsaan dan Nilai-Nilai Bela Negara*. A Module of Education and Training of State Administration Institution of the Republic of Indonesia; See also: Ilmar, A. (2014). *Hukum Tata Pemerintahan*. Prenadamedia. Jakarta.

embedded understanding of qualified nationality which is exercised early for generations in a directed, integrated and sustainable manner.

The third is Education and State-Defense Orientation. State defense is a concept that is arranged by a set of laws and officials of a country about the patriotism of a person, a group or all components of a country in the interests of maintaining the existence of that country. Every citizen has the same obligation in the State defense. This is a form of love of a citizen of the country that has given life to them. This happens since a person is born, grows up and is in an effort to make a living. Physically, it can be interpreted as a defense effort in facing the physical attacks or aggression from those who threaten the existence of the country, whereas non-physically this concept is interpreted as an effort to play an active role in advancing the nation and State, whether through education, morals, social and improving the welfare of the people who arrange the nation.

In a State defense, a citizen can do it both physically and non-physically. The physical defense includes the struggle to take up arms if there is an attack from a foreign country against national sovereignty. Meanwhile, non-physical defense is defined as all efforts to safeguard the nation and State sovereignty through a process of increasing nationalism. Nationalism is a series of love and awareness in the process of life in the country and nation, as well as efforts to foster a sense of love for the motherland. In addition, the defense can be done by fostering an active role to play an active role in realizing the progress of the nation and State.

The basis of the State defense is the existence of conscription. The subject of this concept is the army or other State defense equipment, either as a chosen occupation or as a result of involuntary design (conscription). Some countries (e.g Israel, Iran and Singapore) impose conscription for eligible citizens (except by dispensation for certain reasons such as physical, mental disorders or religious beliefs). A nation with a fully military volunteer usually does not require the services of conscription unless faced with a recruitment crisis during wartime.

5. Conclusion

The understanding of a universal defense system in legal policy in the field of national defense is the implementation of a national defense system that involves all aspects both community and territoriality based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia. In the implementation of national defense, every citizen has the right and obligation to participate in efforts to defend the country. The integration of the defense component is in order to aligning the vision and mission as part of the implementation of the national defense system development agenda. By this integration it will have a greater impact on efforts to achieve development goals in the field of defense.

The involvement of citizen in the implementation of the national defense system must be early exercised. Early involvement means that there is a rational effort undertaken by the State in this context the government systemically with regard to constitutional efforts to involve citizens in tier based on the chronological age of citizens that performed in a total, integrated and sustainable manner in a tiered model. This tiered model leads to 3 (three) basic elements of the system i.e nationality insight, national schooling and State-defense orientation.

References

- Adolf, H. (1996). *Aspek-aspek Negara dalam Hukum Internasional*, PT. Raja Grafindo Persada, Jakarta.
- Alamsari, S. Heny., Irwansyah, Muhadar, Heryani, W. (2019). Law Enforcement of Money Laundering: Case Studies on Fighting Narcotic Crime, *Journal of Law, Policy and Globalization*, Vol. 88, 12.
- Gindarsah, I., & Priamarizki, A. (2015). Politics, security and defense in Indonesia: The pursuit of strategic autonomy. In *Indonesia's Ascent* (pp. 130-154). Palgrave Macmillan, London.
- Honna, Jun. (2013). Security challenges and military reform in post-authoritarian Indonesia: the impact of separatism, terrorism, and communal violence. *The Politics of military reform* (pp. 185-199). Springer, Berlin, Heidelberg.
- Ilmar, A. (2014). *Hukum Tata Pemerintahan*. Prenadamedia. Jakarta.
- Jazuli, A. (2016). Pembangunan Pertahanan Dan Keamanan Demi Penegakan Hukum Di Indonesia: Kewibawaan Suatu Negara, *The Journal of Legal Research DE JURE*, 16 (2): 187 -199
- Marzuki, P.M. (2010). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- Muhtamar, S. (2016). *Grand Desain Pembangunan Hukum; Arah Pembangunan Sistem Hukum dalam Sejarah Perencanaan Pembangunan Jangka Panjang Nasional Indonesia*, INTI, Makassar.
- Patton, M.Q., and Cochran, M. (2007). *A Guide to Using Qualitative Research Methodology*, Medecins Sans Frontieres, UK.
- Pusponegoro, A.D. (2003). "Terrorism in Indonesia." *Prehospital and disaster medicine* 18 (2): 100-105.
- Rabasa, A., & Haseman, J. (2002). *The military and democracy in Indonesia: challenges, politics, and power*. Rand Corporation.
- Rahmanto. (2019). *Wawasan Kebangsaan dan Nilai-Nilai Bela Negara*. A Module of Education and Training of State Administration Institution of the Republic of Indonesia.
- Reza, B. I. (2017). The total people's defense and security system: Issues related to state-sponsored militia in

- Indonesia. *Indonesia Law Rev.*, 7, 155.
- Wahyono, P. (1986). *Indonesia Negara Berdasarkan atas hukum*, Cet. II, Ghalia Indonesia, Jakarta.
- Wahyono, P. (1991). *Menyelisik Proses Terbentuknya Perundang-Undangan*, Forum Keadilan, No. 29 April 1991.
- The Regulation of Defense Ministerial No. 16 of 2012 concerning the Integration Policy of the State Defense Component.