Legis ratio of the Indonesian national army's authority arrangements to overcome armed separatism movements, armed insurgency, and the terrorism

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ABSTRACT

The purpose of this study is to find out about the setting of the authority of the Indonesian National Army (TNI) overcoming the armed separatist movement, armed insurgency, and acts of terrorism in Law NRI Number. 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 showed that the legis ratio of regulating the authority of the Indonesian National Army in overcoming armed separatist movements, armed insurgency, and acts of terrorism in RI law number 34 of 2004 concerning the Indonesian National Army was departed from the desire to abandon the dual function model of ABRI, namely as a security and security forces and as a social-political force. As a social and political force, ABRI at that time had a role as a stabilizer, a dynamist, as a pioneer, and as an implementer of Pancasila democracy. With the enactment of RI law number 34 of 2004 concerning the Indonesian National Army, changing the Indonesian National Army as a means of defense of the Unitary State of the Republic of Indonesia, which is tasked with implementing a state defense policy to uphold national sovereignty, maintain territorial integrity, and protect national security, carry out military operations for war and military operations other than war, and actively participate in the task of maintaining regional and international peace.

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Introduction

Problems related to the Arrangement of the Authority of the Indonesian National Army (TNI) overcoming the Armed Separatist Movement, Armed Insurgency, and Acts of Terrorism in the Republic of Indonesia Law Number 34 Year 2004 About the TNI include Philosophical Problems namely ontologically the distortion of separatist nature, insurgency, and acts of terrorism, and in epistemology, the method of regulating separatist authority, insurgency, and acts of terrorism raises multiple interpretations and does not create integrated legal handling.

Juridical problems, namely Article 7 paragraph (3) law No. 34 of 2004 are implemented based on state policy and political decisions. It 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. Theoretical Problems include authority theory, unitary state theory, sovereignty theory, hermeneutical theory, defense theory.

This paper aims to find out about the setting of the authority of the TNI overcoming the armed separatist movement, armed insurgency, and acts of terrorism in Law NRI Number 34 of 2004 concerning the TNI.

A normative legal research using the statutory approach, historical approach, comparative approach, philosophical approach, has been designed in this study. The analysis technique is done by qualitative juridical analysis.

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The reminder of this study is organized as follows. The next section provides a review of extant literature and the background of the study. The third section introduces legis ratio of the Indonesian national army's authority arrangements in overcoming armed separatist movements, armed insurgencies, and acts of terrorism in Military Operations Other Than War (OMSP) in Law Number 34 of 2004. The fourth section evaluates the problems of academic text vacancies in the draft law on the TNI and the legal aspects of the existence of academic text. Finally, conclusions and implications of the study are presented in the final section.

Literature Review

Background of the study

Constitutionally the Indonesian National Army (TNI) does not have the authority to make political decisions. The TNI as a national asset can be mobilized for any task in the interests of the nation, provided that the task is based on political decisions made by the president. Article that regulates 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 regulations on the Mobilization and Use of Force (Syahnarki, 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. This condition was triggered by the development of military technology, the desire to reduce casualties, high social costs and war and the increasingly stringent application of international law and conventions (Ministry of Defense of the Republic of Indonesia, 2015).

The ways to destroy the Indonesian state are no longer only by physical warfare and military power, but also by non-military power, by weakening the country's basic power, political system, economy and socio-cultural system (Wangsajaya, 2016). 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. Disturbance to the interests of the country can be in the form of armed separatism, armed insurgency and acts of terror. Makar to the state, this form of government is a dangerous crime because it threatens the survival of the nation and state. There are three (3) matters concerning state security namely: a) the President, b) territorial and c) form of government. In terms of regulating crimes against state security, our Criminal Code (KUHP) does not conduct "onderscheiding" or separation between internal and external security. Therefore, it is interesting to conduct research on the authority of the TNI in overcoming armed separatism, armed insurgency, and acts of terrorism mandated in article 7 ayat (2) of Law 34 of 2004 concerning the TNI, which in the perspective of the Criminal Code second book on crime in chapter I is mentioned as criminal acts in the form of crimes against State security (makar).

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 an insurgency that occurs in a country. The other aim of the insurgency is to overthrow the legitimate government and replace it with a new government in accordance with the wishes of the rebels, or to join with other countries (integration), or another possibility is to demand greater autonomy (Sefriani, 2003).

In addition to the two TNI task clauses in Military Operations Other Than War (OMSP) namely tackling armed separatist movements, and tackling armed insurgencies, one more clause is dealing with acts of terrorism, currently specifically regulated in the basic considerations of the Republic of Indonesia Act No. 5 of 2018 concerning eradication of acts criminal terrorism. The form of TNI OMSP basically can be in the form of independent or integrated operations with certain institutions or agencies based on the scale of the problem at hand. Three (3) forms of CSOs that are the subject of this research are, tackling armed separatists, tackling armed insurgency, and terrorist acts. The main factors that must be considered in Operations to Tackle Terrorist Actions are the ability and strength of terrorists, Operations based on government political decisions, Operations carried out in an integrated manner, and objective conditions prevailing in the community (TNI Headquarters, 2011).

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 Polri 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 in his 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.

Legis ratio of the Indonesian National Army's authority arrangements in overcoming armed separatist movements, armed insurgencies, and acts of terrorism in military operations other than war (OMSP) in Law Number 34 of 2004

If we will develop a discussion on legis ratios, at least in modern jurisprudence it has been linked to the interpretation of legal texts. Von Savigny said in his famous Modern Roman Legal System that, the process of interpretation to recognize the contents of written law is something that needs to be done by the purpose of the written law itself because every written law is to enter into life, which at first was only possible through an intellectual conception of it. For Savigny, the legis ratio has two temporal dimensions namely: Belonging to the past, as something on which law is based, or belonging to the future, as the expected effect of law (Dybowski, 2018). Meanwhile, according to Adam Dyrda in the real legis ratio and where to find it, the legis ratio argument that is connected from the legis ratio form is not an empty phrase in the sense that there is no conceptual limit regarding the actual content.

If so, that means that the argument forming a legis ratio is only a functional instrument, a rhetorical tool in the practical discourse of law rather than a substantial argument that reveals facts about the law or legislators. Therefore, such consequences are not very important because they depend on a number of normative assumptions regarding the description of the actual use of the term and the connected argument (such a negative description is still a description). What this means is that skeptical conclusions about the general content of the legis ratio argument do not prevent one from asking normative questions about how the term legis ratio (and thus the whole argument) should be used. If there is no substantial preconception of legis ratios in legal discourse, then we can use the legis ratios argument as persuasive arguments that indicate a particular reason (ratios) of law (legis) arbitrarily depending on their interests, that is, with consideration of what reasons, if there is, it is wise for them in certain cases, from the perspective of the client, other parties, abstract legal notions, or anything or anyone. Because almost every fact can be referred to as a "reason" that is roughly understood, the skeptic problem regarding legis ratios is a serious problem (Dyrda, 2018)).

Based on the above considerations, it is very important to know the legis ration of the regulation of TNI's authority in overcoming armed separatist movements, armed insurgency, and acts of terrorism in law number 34 of 2004. From the notes of the Public Hearing Meeting in the DPR related to the discussion of the TNI Bill. then became law number 34 of 2004. It was stated that in the reform era, the term assistance task first appeared in Article 4 of MPR Decree No.VII / 2000 concerning the Role of the Indonesian National Armed Forces and the Police of the Republic of Indonesia. The use of the term Military Operations Other Than War (OMSP) was first mentioned in Article 10 of Law Number 3 of 2002 concerning National Defense mentioned in paragraph (3) letter c. However, the concept of assistance tasks was well known long before that. In the Soekarno era, the regulation regarding assistance tasks during peacetime was regulated in Government Regulation Number 63 of 1954 concerning Requests and Implementation of Military Assistance in lieu of Presidential Decree Number 175 and Number 213 of 1952. While military involvement in emergencies, only appeared in 1959 and regulated in Perpu No. 23 of 1959 concerning Dangerous Conditions as a substitute for Law No.74 of 1957 (State Gazette No.160 of 1957) and Determination of Dangerous Conditions. Adjusting to the Dangerous Legislative Regulation (Perpu), the assistance task regulation (in peacetime) was again refined through Government Regulation Number 16 of 1960. In subsequent developments in the era of President Soeharto, the discourse on the task of assistance became insignificant. This was caused by Soeharto's authoritarian government system and the dual functions of the Armed Forces that legitimized the military to be dominantly involved in the civilian sphere, especially involvement in social and political roles (SSR) began.

Legis ratios can be found using legislative records, in the DPR RI public hearing with experts in the context of discussing the Bill on the TNI starting on August 2, 2004. These materials can be consulted in at least six circumstances: (1) to avoid absurd interpretive results, (2) to correct legislative errors, (3) to understand the meaning of special terms, (4) to find the purpose of certain provisions, (5) to choose among several possible interpretations of the law or (6) to confirm the literal meaning of the law (Krotoszynski, 2018). Values that are ascribed to legislators consist of three criteria: legal values (legal binding), reference values, and universal character values. In the perspective of the legislator's axiological system, the legis ratio can be qualified as a value, and also as a legally binding value (Ma'arif, 2014).

1. Assumptions of the Axiological Rationality of the Legislator

The legislator must become a rational axiologist, not only creating a set of values given but also being able to show the relationship that occurs between them. The main correlation that forms the basis of the legislator's axiological system is preferential relations.

2. Axiological System of Legislators

The axiological system of each legislator consists of three subsystems. First, Law (binding because of law). The first subsystem consists of legally binding values, namely values that become legally binding based on the act of enactment, in analogy with the enactment of legal norms and their validity resulting from it. By obtaining legal legal status, these values constitute certain types of values that differ from moral, customary, religious or other values. Moreover, it is not important whether the legal value given previously is defined as moral or customary values or whether it is made as a whole, both in content and form (within the scope of validity. In the end, what interpreters of legal texts describe is not their own creation but something given. The values encoded in the normative action provisions bind the results of the evaluation process carried out by the legislator themselves and not by translators. The final form they set out in legal terms is an objective character that can be read both intersubjectively and in control, or at least with the assumption of rational arguments for and against certain positions.

On the basis of explicitly formulated principles, the following values can be defined as legally binding (Sinaga, 2018):

1. recognition and protection of each individual's personality in equal measure
2. complete and equal property protection,
3. prohibition of abuse of subjective rights,
4. personal autonomy,
5. protection of confidence.

Second, Reference Values The second subsystem of legislator values consists of values which, although extra-legal, must be applied by the court in accordance with the legislator's orders formulated in the reference provisions. A regulation contains general reference provisions if, on that basis, the court gains competence to be guided by individual evaluations of certain situations (type I general reference provisions) or non-legal principles that are axiologically justified in general values (general type provisions II), such as the principle of social coexistence or the principle of justice. They have no legally binding value character; however, the fact that the court is obliged to implement it makes values inherent in the legal order such as: a) social interests, b) public interests, c) principles of justice, d) requirements in good faith, e) social losses from an action (as a negative value), f) principles of social justice, as well as, g) important reasons, h) justified reasons, i) well-established habits.

Third, Universal Values. The final grade classes that are ascribed to legislators are those values that are defined as fundamental values which are considered as elements of a country's legal culture. Determination of these values as binding comes from an empirical observation that people accept certain values as basic or universal and demand that they be realized.

3. Interpretation of Axiological Law

The rules of axiological interpretation can be formulated as follows:

- a. If the decoded legal norms formulate orders to pursue the specified behavior (or to realize the state of affairs specified) then this behavior (this state) has a positive value character in the axiological system of the legislator.
- b. If the decoded legal norms formulate a prohibition of specified behavior (or the realization of certain circumstances) then this behavior (this condition) has a negative value character
- c. If the text of a normative action contains phrases such as the right to freedom of liberty then the complementary phrases play the function of the names of the legislator's positive values.
- d. Legal norms with the status of legal principles that cannot be questioned in a given system.
- e. Legal norms with the status of program norms (political direction) and displaying in their structure the objectives of state policies determine the fact that the state of affairs included in the objectives becomes a positive value.
- f. If the goals that are defined can be ascribed to norms, institutions, normative actions or the entire legal system (legis ratio, juris ratio), then this goal is characterized by positive values.

4. Legis Ratio as Value

Despite the fact that, as a result of interpretation, certain objectives (legis ratios) will be stated as goals of a single norm or group of norms and regardless of the fact to whom these goals are ascribed to history or the current legislator the circumstances deemed necessary will always obtain status value, and this value will be a legal value (legally binding value) in the strict sense of this phrase.

5. Rasio Sistem Legis

The fact of setting a status value to a legis ratio (valuable object) is not the same as excluding from consideration, at its fundamental reference point, what is the subject of legal protection (thus what must be maintained in the form given) and the definite state that must arise as a consequence of realization of the norm or group of norms given. In both cases, the purpose of the law can be interpreted as the state of the current or potential relationship and is therefore included in the fact order (Kordela, 2018).

The axiology of law (the teaching of values, wardenleer) plays a role in determining the content of values in law such as equality, freedom (). Axiology as a value that applies in every fact of human action. Moral teachings about good and bad make legal axiology full of judgments about something good. Departing from this understanding, the law has a value to be realized in the form of statutory regulations and so forth. In the context of this study, axiology determines the value of regulating the authority of the TNI in overcoming armed separatism, armed insurgency, and acts of terrorism that are to be achieved in a regulation or what values underlie the issuance of a legal provision regarding the TNI's authority.

In law there are values that want to be realized including the value of freedom, the value of justice, the value of benefit, the value of unity, involvement and so forth. Then, there are antinomies or opponents of these values, which of course always stand in line and tug. Like the symbol of the law itself, namely the scales, then humans as the owner and maker of the law must weigh it at the point of balance. The value of unity, for example, underpins the state to allow its people to unite and associate and form associations. Because if it is prohibited it will certainly cause people's resistance which threatens the security of the state which ultimately endangers the unity, after all the desire to gather is one of human rights. But on the other hand this policy is not harmless for the country. Many social associations or organizations demand careful oversight from the government, even if it does not mean that they are restrained. History proves that many associations have triggered insurgencies, or horizontal conflicts between social organizations that often occur today due to differences in ideology.

Here, there appears to be a conflict of values between the value of unity and the value of freedom. For this reason, there is a need for other values that are considered middle ground, for example the value of expediency. What is the benefit if freedom is given but instead contains mudharat that threatens unity. But it is not biased and immediately decides to curb freedom in order to achieve unity, because restraint actually triggers resistance and insurgency which eventually also splits. That is, there is a scale of priorities in the achievement of values in law. The value of justice, for example, does it have priority to be achieved first, or the value of expediency first. But the achievement of both values must come from the values of obedience, obedience and order (Erwin, 2015).

To find out more about the process of interpreting the contents of the written law regarding the regulation of the TNI's authority in the CSOP, namely tackling the armed separatist Movement, overcoming armed insurgency, and overcoming acts of terrorism, the author will first review the authority in the perspective of legislation. The term authority is used in nouns. The term is sometimes interchangeable with the term authority. The term authority or authority is often equated with the term "bevoegdheid" in Dutch legal terms or "authority" in English. Authority in the Black's Law Dictionary is defined as "legal power a right to command or to act the right and power of public officers to require obedience to their orders lafully issued in the scope of their public duties ". If a deeper study is carried out between the terms authority or authority and the term bevoegdheid shows that there are differences. The difference lies in its legal character because the Dutch term for the use of the term bevoegdheid is used both in the concept of public law and in the concept of private law (Fitri, 2018).

Menuut Philipus M. Hadjon in our law, the term authority or authority should always be used in the concept of public law. Because in its implementation, the authority or authority is ultimately always related to actions in public law, as stated by Prajudi Atmosudirjo that in general the authority is the power to carry out public legal actions. With an administrative legal approach, for the basic government to carry out public legal actions is the authority associated with an office (ambt). Position gained authority through three journalists namely:

Attribution, delegation and mandate give birth to authority, (bevoegheid, legal power cornpetenoe). Every power (including state power) must have authority. Authority is the juridical ability of people. Authority based on public law is the juridical ability of the body. To try to understand the concept of authority or authority by using Dutch administrative law literature. In the Dutch administrative law literature the issue of authority has always been an important and initial part of administrative law because the object of administrative law is the authority of government (bestuursbevoegheid).

In the concept of public law, authority is a core concept in state and administrative law. In constitutional law, authority (bevoegdheid) is described as a legal authority (rechtsmacht). So in the concept of public law authority is related to legal power. In the perspective of administrative law, the notion of "authority" (authority, gezag) is formalized power, either to a certain group of people or to a certain field of government that comes from legislative or governmental powers, while the notion of "authority" (competence, bevoegheid) is only regarding a certain part or certain area only, therefore, authority is the ability to carry out a public legal action, or legally the authority is the ability to act given by the applicable law to conduct legal relations.

Robert Bierstedt in *An Analysis of Social Power* said that authority is institutionalized power (institutionalized power). In the same vein said by Harold D. Laswell and Abraham Kaplan, in the book *Power and Society* that authority is formal power. It is assumed that the authority has the right to issue orders and make regulations and has the right to expect compliance with the regulations. Thus the existence of authority is a requirement for taking legal action (Anwary, 2018).

Authority is an understanding derived from the law of government organizations, which can be explained as a whole of rules relating to the acquisition and use of governmental authority by subjects of public law in public law relations. Meanwhile, according to Tonnaer: government authority in this regard is considered as the ability to implement positive law and as such, a legal relationship can be created between the government and citizens. The authority has an important position in the study of constitutional law and administrative law. Once this authority is important, the concept can be said to be the most important thing in state administration law and state administration law. Apart from that, there are rights and obligations that must be exercised in the authority. Meanwhile, according to P Nicolai said: The ability to take certain legal actions (ie actions intended to cause legal consequences, and include the emergence and disappearance of legal consequences). The right contains the freedom to do or not to do certain actions or according to other parties to do certain actions, while the obligation includes the obligation to do or not to do certain actions. According to Bagir Manan, authority in legal language is not the same as power (*macht*). Power only represents the right to take or not do anything. In law, authority also means rights and obligations (*rechten en plichten*) (Ridwan & Sodik, 2019).

Problems of academic text vacancies in the draft law on the TNI and the legal aspects of the existence of academic text

The use of the term Academic Text Regulations by default was popularized in 1994 with the Decree of the Head of the National Legal Development Agency Number G-159.PR.09.10 of 1994 concerning Technical Instructions for Academic Text Preparation of Legislation, stated that the Academic Text of Legislation is a preliminary text containing the regulation of certain fields of legislation which have been reviewed systemically, holistically and futuristically. Before the issuance of the Decree of the Head of the National Legal Development Board, various terms emerged, namely the Draft Law, the Draft Scientific Draft, the Scientific Draft of Legislation, the Academic Draft Draft Law, and the Academic Draft of Drafting the Legislation.

The existence of an Academic Paper is actually a very strategic and urgent matter in the formation of good laws and regulations. This is caused in the development of Indonesian state administration which is in a period of democratic transition legally there are still not many complete legal rules governing everything. Meanwhile, the flow of change desired by the Academic Text, the public spaces are very open and the public is free to issue aspirations and appreciate the substance of the legislation that is regulated. In Presidential Regulation (Perpres) No. 68 of 2005 concerning procedures for preparing the Draft Law, the Draft Government Regulation in Lieu of the Law, the Draft Government Regulation, the Draft Presidential Regulation, in Article 1 number 7 it is stated that: "Academic Texts are texts that can be scientifically justified regarding the conception that contains the background, the purpose of the preparation, the objectives to be realized and the scope, objects, or direction of the draft law."

After the enactment of Law Number 12 of 2011 concerning Formation of Regulations and Regulations, the existence of Academic Texts in the drafting of legislation becomes a necessity for the formation of Laws as stated in Article 43 paragraph (3) that the Draft Law originating from Parliament, President or DPD must be accompanied by Academic Paper. Meanwhile Law Number 34 of 2004 was promulgated in Jakarta on October 16, 2004 with the Republic of Indonesia State Gazette number 127 of 2004, long before the issuance of Law Number 12 of 2011 concerning Formation of Regulations that require academic texts in the formation of the law (Basyir, 2014). However, some parties still criticize the absence of academic texts in the TNI Bill.

Related to the absence of an academic draft of the TNI Bill, Executive Director Propatria T. Hari Prihartono considered that the TNI Bill proposed by the government to the DPR contained substantial weaknesses. From a study of the TNI Bill, Propatria found four substantial weaknesses in the bill. The first weakness, in general, the TNI Bill does not provide a clear picture of the layout of the Act later in the constitutional legal system, nor the institutional layout and authority of the TNI in a democratic civilian government system. All of the above mentioned matters should be contained in the Academic Text which is an inseparable part of the Bill. However, the fact that the Bill on the outcome of the Coordinating Minister of Political and Security meeting on June 10, 2004 was not accompanied by an academic paper. Substantial weakness.

The second weakness, the TNI Bill is considered not to reflect efforts to build TNI professionalism. This can be seen in Article 2 regarding the identity of the TNI which emphasizes on being one with the people, rather than giving a specific description of TNI competence. The third weakness, the TNI Bill has not closed the possibility of the re-emergence of the social and political role of the TNI. Therefore, it is suggested that the TNI's tasks related to territorial development and oneness with the people be completely eliminated. The fourth weakness, the entire article in Chapter V of the TNI Bill should be made separately that can replace Law No.2 of 1998 concerning ABRI Soldiers. Even if the chapter wants to be defended, the formulation of the articles will be refined to better reflect the existence of partiality towards the soldiers. Beyond that, the TNI Bill is quite laden with procedural defects mainly related to the party who submitted the bill. According to Law No. 3 of 2002 concerning National Defense, the authority to submit a TNI Bill is in the Department of Defense cq. Ministry of defence (<https://www.hukumonline.com>).

Related to the absence of academic texts in the TNI Bill, there has been an academic debate among experts because the Academic Text (NA) is an important part of the process of forming legislation. When viewed from the legal aspect, actually the birth of Law No. 34 of 2004 concerning the TNI is not required to be accompanied by an academic text as mandated by law number 12 of 2011. Indeed, not all types of statutory regulations require NA. But NA will be a reference to find out the direction of drafting a statutory regulation. Based on the law Number. 12 of 2011 concerning the Formation of Laws and Regulations, in article 1 number 11 it is mentioned, Academic Text is the text of research or legal study and other research results on a particular problem that can be

scientifically justified regarding the regulation of the problem in a Draft Law, Provincial Regional Regulation Draft, or Regency / City Regional Regulation Draft as a solution to the problems and legal needs of the community.

The academic draft of the bill and the draft local regulation (Ranperda) in practice, are often prepared in drafting the regulation. That is because there is a requirement that a bill originating from the DPR, the President or DPD must be accompanied by an academic text as stipulated in Article 43 which states in paragraph (1) that the Draft Law may originate from the DPR or the President. Paragraph (2) The RUU from the DPR as referred to in paragraph (1) may originate from the DPD. Paragraph (3) Bills originating from the DPR, President or DPD must be accompanied by Academic Text. Furthermore Article 44 paragraph (1) states that, the drafting of an Academic Draft Law shall be carried out in accordance with the technique of drafting an Academic Text (NA). Paragraph (2) Provisions regarding NA preparation techniques as mandated by paragraph (1) are contained in Appendix I which is an inseparable part of this Law.

Although there are no specific obligations for all types of laws and regulations, there are consequences that arise if NA is ignored. This consequence is also alluded to in the Supreme Court's decision No. 49P / HUM / 2017 dated 2 October 2017. The panel of judges who tried case No. 49P / HUM / 2017 believes that academic texts produce a good law. There are two things that support this argument. First, NA contains laws and regulations governing the substance or material to be regulated. Secondly, the academic paper contains the relationship between new legislation and other laws, vertical and horizontal harmonization, the status of existing legislation, so that NA is able to prevent overlapping regulations.

The Supreme Court further considered that in order to realize Indonesia as a state of law, the state was obliged to carry out a planned, integrated and sustainable national legal development in the national legal system that guaranteed the protection of the rights and obligations of all people based on the 1945 Constitution of the Republic of Indonesia. good legislation, then rules are made regarding the formation of legislation which is carried out in a way that is certain, standardized, and standard which binds all institutions authorized to form legislation as stipulated in Law No. 12 of 2011. That based on such thinking, Law No. 12 of 2011 stipulates that every Planning for the drafting of legislation under it (including in this case Ministerial Regulation) must go through an assessment and alignment as outlined in the Academic Text. Academic Texts are texts of research or legal studies and other research results on a particular problem that can be scientifically justified regarding the regulation of the problem in a Draft legislation as a solution to the problems and legal needs of the community. Whereas the consequences if not compiling Academic Text as a reference for the formation of legislation are as follows:

The formulation of the problems of the life of the nation, state and society and ways of coping become inaccurate;

The legal problems faced as a reason for the formation of the draft legal formation as a legal basis for the resolution or solution of problems in the life of the nation, state and society are incomplete;

The formulation of philosophical, sociological, juridical basis is not comprehensive;

The formulation of objectives, scope of regulation, scope, and direction of regulation in the draft regulation are not comprehensive. Whereas thus, it can be understood that with an academic text will produce a good statutory regulation because: (1) it contains existing legal conditions or statutory regulations governing the substance or material to be regulated, (2) the relevance of the laws and regulations new legislation with other legislation, harmonization vertically and horizontally, as well as the status of existing legislation, including legislation that is revoked and declared invalid and legislation that still applies because it does not conflict with the regulations new, so that overlapping settings can be avoided.

To understand more about the academic text of the draft law, it can be seen from the technique of drafting Academic Text in Appendix I of Law number 12 of 2011 concerning Formation of Regulations and Regulations for the Formulation of Academic Draft Laws, the Draft of Provincial Regulations, and District / City Regional Regulation Draft. It is stated that, Academic Text is a research or legal study paper and other research results on a particular problem that can be scientifically justified regarding the regulation of the problem in a Draft Law, Provincial Regional Regulation Draft, Regency / City Regional Draft Regulation, as a solution to the problems and legal needs of the community.

Draft Bill No. 34 of 2004 concerning the TNI and the armed forces arrangement of the authority of the TNI overcoming armed separatist movements, armed insurgencies, and acts of terrorism in military operations other than war (OMSP)

Minutes of the DPR's Commission I public hearing (RDPU), Coordinating Minister for Security Politics, TNI Commander with experts seeking input in the framework of discussing the Draft Law on the TNI on August 2, 2004. The payment of the Indonesian National Armed Forces Bill (TNI) which continues to be Law No. 34 of 2004, there are many discussions on the regulation of TNI's authority in CSOs. In the Elucidation of Article 5 of Law Number 34 Year 2004 concerning the Indonesian National Army, the intended state political decision is the government's political policy together with the House of Representatives (DPR) which was formulated through a working relationship mechanism between the government and the DPR, such as consultation meetings and meetings. work in accordance with statutory regulations. However, until now there has not been a single legal product related to

policies and political decisions of the state that mandate the granting of authority to the TNI to combat armed separatism, overcome armed uprisings, and overcome acts of terrorism.

Law number 34 of 2004 concerning the TNI mandates Article 3. The President can mobilize and use TNI forces, whereas in the case of defense strategies and administrative support, the TNI is under the coordination of the Ministry of Defense. Thus it is clear that the existence of the TNI is under the authority of the President, with the authority to mobilize and use military force for the OMP and OMSP.

In the 2008 Defense White Paper it was also explained that the implementation of the OMSP could only be carried out if the handling by normal means or functional handling was no longer effective or was expected to cause large casualties, severe infrastructure and property damage. But unfortunately in the Reformation era there were no regulations on the task of military assistance within the specific and comprehensive framework of the CSO in Indonesia. In fact, the regulation on the assistance tasks of the TNI within the framework of the OMSP is regulated partially and sectorally in a number of rules as regulated in Law Number 7 of 2012 concerning PKS or Handling of Social Conflicts, Law Number 3 of 2002 concerning Defense, Presidential Instruction on Handling of Domestic Security Disruptions Number 2 Year 2013. In fact, the regulation on the task of military assistance to the government in this case the ministries and other agencies is only set in the form of a memorandum of understanding between the Commander of the TNI with the relevant ministries and agencies (Pratiwi, 2017).

Conclusions

of the Indonesian National Army's Authority Arrangements in overcoming armed separatist movements, armed insurgency, and acts of terrorism in RI law number 34 of 2004 concerning the Indonesian National Army is departing from the desire to abandon ABRI's dual function model, namely as a defense and security force and as a social political force. As a social and political force, ABRI at that time had a role as a stabilizer, a dynamist, as a pioneer and as an implementer of Pancasila democracy. With the enactment of RI law number 34 of 2004 concerning the Indonesian National Army, changing the Indonesian National Army as a means of defense of the Unitary State of the Republic of Indonesia, which is tasked with implementing a state defense policy to uphold national sovereignty, maintain territorial integrity, and protect national security, carry out military operations for war and military operations other than war, and actively participate in the task of maintaining regional and international peace. The Indonesian National Armed Forces are professionally developed and developed in accordance with the country's political interests, referring to democratic values and principles, civil supremacy, human rights, national legal provisions, and ratified international legal provisions, with the support of a transparent and accountable state budget.

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