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THE TOTAL PEOPLE'S DEFENSE AND SECURITY SYSTEM: PROBLEMS OF STATE-SPONSORED MILITIA IN INDONESIA

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Abstract

The establishment of state-sponsored militia has raised concerns of human rights violations in non-international armed conflict in Indonesia. Most of the state-sponsored militia have been formed and tacitly supported by the Indonesian National Defense Forces (Tentara Nasional Indonesia) mostly based on the implementation of a concept called the Total People's Defense and Security System (sistem pertahanan rakyat semesta-sishankamrata). The Total People's Defense and Security System is the grand strategy adopted based on Indonesia's experience during Indonesia's physical revolution or armed struggle for independence (1945-1949) and recognized under the Second Amendment to the 1945 Constitution. This article will elaborate on, first, the constitutional history and ideology of 'total people's defense' which contributes to the political ideology of the military and its relations with the existence of militia groups; and second, the active encouragement of militia abuses by the Indonesian military as part of a campaign to maintain control of regions seeking independence, along with the constraints imposed by the military itself on the manner in which it conducts such campaign.

Keywords: Total People's Defense and Security System, State-sponsored militia, Military, Constitution

Abstrak

Pembentukan milisi yang didukung oleh negara telah meningkatkan perhatian terhadap pelanggaran hak asasi manusia dalam konflik bersenjata noninternasional. Kebanyakan dari milisi tersebut dibentuk dan diukung oleh Tentara Nasional Indonesia secara diam-diam berdasarkan penerapan konsep yang dinamakan sistem pertahanan rakyat semesta – sishankamrata. Sishankamrata adalah strategi besar yang diadopsi berdasarkan pengalaman Indonesia selama masa revolusi fisik atau perjuangan bersenjata untuk kemerdekaan (1945 – 1949) dan diakui dalam amandemen kedua UUD 1945. Tulisan ini akan menjabarkan, pertama, sejarah konstitusional dan ideologi sishankamrata yang berkontribusi terhadap ideologi politik militer dan hubungannya terhadap keberadaan dari kelompok milisi; kedua, dukungan aktif militer terhadap pelanggaran yang dilakukan oleh militer sebagai bagian kampanye untuk memelihara kendali atas daerah yang mencari kemerdekaan, dengan batasan yang ditetapkan oleh militer itu sendiri dalam pelaksanaan kampanye tersebut.

Kata kunci: Sistem Pertahanan dan Keamanan Rakyat Semesta, milisi yang didukung oleh negara, militer, konstitusi

I. INTRODUCTION

Indonesia is one of the newly emerging democratic countries in the world. After Soeharto had stepped down in May 1998, Indonesia entered a critical phase of profound political-legal reform, including in the military. Reform of the security regime was seen as necessary to suit a more democratic and human rights-oriented environment, and the reform of the Indonesian National Defense Forces (*Tentara Nasional Indonesia*, or TNI)¹ and the Indonesian National Police (*Kepolisian Negara Republik Indonesia* or *Polri*)² has been amongst the most contentious issues. In particular, the military seems reluctant to fully embrace the reform movement which would change its relationship with civilian politicians and its role in civil society.

The Indonesian military came to be known as notorious for its human rights violations during the Soeharto era, and such behavior continued during the *'reformasi'* era. It is a far-reaching problem whereby the military had formerly played a dominant role in politics during the authoritarian regime known to have produced extreme human rights abuses, and it has been reluctant ever since to give up such role. It was also among the primary reasons for establishing programs aimed at depoliticizing the military and professionalization of the military.

One of the emerging problems can be demonstrated in the establishment of proxy army from among the ranks of civilians, a state-sponsored militia, commonly used during internal armed conflict which has become the source of many human rights violations and humanitarian problems. As a practical matter, this concept of total warfare provided the foundation for military dominance during the authoritarian period, placing significant influence in the hands of military officers and putting basic civil liberties constantly at risk. This militia is a civilian group recruited, trained and supported by state armed forces for doing 'the dirty work' of the military. The military justified this action based on a concept called the Total People's Defense and Security System (*Sistem Pertahanan dan Keamanan Rakyat Semesta-Sishankamrata*). The said Total People's Defense and Security System has been based on experiences gained from the struggle for independence in 1945-1949 through the strategy of guerilla warfare.³

¹ The name of *Tentara Nasional Indonesia* [hereinafter TNI] was used on June 3, 1947. On June 21, 1962, the name TNI was changed and became *Angkatan Bersenjata Republik Indonesia* (Armed Forces of the Republic of Indonesia-ABRI) with POLRI included as part of the armed forces. Since separation of the National Police (POLRI) on April 1, 1999, the Commander in Chief of the TNI and Minister of Defense, General Wiranto reinstated the name TNI. See *Kompas Daily News*, ABRI Commander in Chief Proposed to Change the name of the ABRI to become the TNI (*Pangab Usulkan ABRI diubah menjadi TNI*), April 3, 1999.

² *Kepolisian Negara Republik Indonesia* [hereinafter POLRI]. As from April 11999 with the Stipulation of the People's Consultative Assembly (*Ketetapan Majelis Permusyawaratan Rakyat*) No. VII/MPR/2000 concerning the Role of the TNI and POLRI, the operational management of the POLRI was handed over from ABRI Headquarters to the Department of Defense and Security (*Departemen Pertahanan dan Keamanan*) and then changed their position to be directly under the President of the Republic following the promulgation of Law No.2/2002 concerning the Republic of Indonesia State Police (*Kepolisian Negara Republik Indonesia*). See *Kompas Daily News*, "Police Officially Separate from the ABRI: Stop Military Style" (Polisi Resmi Pisah dari ABRI: Stop Gaya Militer), April 3, 1999.

³ See A.H. Nasution, *Sekitar Perang Kemerdekaan Indonesia [About Indonesia's Independence War]* (Jakarta: Penerbit Angkasa, 1978). See also Indonesia, *Undang-Undang tentang Ketentuan-ketentuan Pokok Pertahanan Keamanan Negara RI (Basic Law on the State Defense and Security of the Republic of Indonesia)*, UU No. 20 tahun 1982, LN No. 51 Tahun 1982, TLN No. 3234 (Law No. 20 of 1982, SG No. 51 of 1982), hereinafter referred as State Defense and Security Law, Article 1 (5): "The people's defense and security system is the total, integrated and directed structure of State defense and security which is composed of all power components of State defense and security, namely the people trained as the basic component; armed forces and the reserves as the principal component; civil defense as the particular component; and national and artificial resources as well as the national infrastructure as the supporting component." (unofficial translation by author).

Based on such conception, military and civilian elites formed the said paramilitary groups or civilian-armed groups or militias, involving them in their operations. It is said to be the duty of the people as a kind of popular participation in state defense.⁴ Under the Total People's Defense and Security System doctrine it has resulted in territorial command⁵ supporting militias, a strategy that poses grave risks to human rights. The Total People's Defense and Security System doctrine emphasizes the unity of the people and military in combat alert against military threats.⁶

The recent defense policy on State Defense Program (*Program Bela Negara*) is an example of civilian involvement in defense matters. According to the 2015 Defense White Paper –released in June 2016–, the *Bela Negara* (Defending the Country) program will be targeted at 100 million militant cadres across the nation within ten years.⁷ The problem arises when the said program does not make clear as to whether to position the people would be as part of the National Defense Reserve Component or another form of defense component as promulgated in Law No. 3/2002.

This article is an attempt to explain the problem which arises from the implementation of the Total People's Defense and Security System as the national defense strategy which is recognized by the Second Amendment of the 1945 Constitution. Secondly, this article also discusses the problem of civil participation in the area of defense in relation to the existence of State-sponsored militia in Indonesia. Furthermore, it will also explain the ideology behind the Total People's Defense and Security System.

In this article, I use the term state-sponsored militia introduced by Ariel Ahram⁸ but adopting the definition and characteristics of pro-government militia by the Pro-Government Militias Database (PGMD). PGMD studies started at the University of Mannheim and University College London sponsored by the Economic and Social Research Council (ESRC).⁹ This project has identified 332 pro-government militias distributed around the world between 1981 and 2007.¹⁰ It defines pro-government militia as a group that is (1) identified as pro-government or sponsored by the government (national or sub-national); (2) identified as not being part of the regular security forces; (3) is armed and; (4) has some level of organization.¹¹ Its characteristics

⁴ See Article 30(2) of the Second Amendment to the 1945 Constitution in Chapter XII on State Defense and Security, as stated as follows, 'The state's defense and security efforts shall be conducted through a system of total people's defense and security by the Indonesian National Army (TNI) and State Police of the Republic of Indonesia, as the main component, and the people, as the supporting components.'

⁵ Territorial Command (*Komando Teritorial* or Koter) is an abbreviation which stands for the structure of command from the provincial level down to the village level. For instance, this includes the Military Regional Command (*Komando Daerah Militer-Kodam*) at the provincial level down to Non-Commissioned Officer (NCO) Village Builders or *Bintara Pembina Desa*- [hereinafter Babinsa] at the village level.

⁶ See Imparsial "A Portrait of TNI Reform in the Enactment of the TNI Act" (Report on Indonesia Policy Analysis, December 2004), p. 14. The 'unity with the People' (*manunggal dengan rakyat*), 'the people's soldiers' (*tentara rakyat*) and 'the fighting soldier' (*tentara pejuang*) concepts were very much the core identity of the TNI (ABRI at that time) construed from its roles as People's Security Army (*Tentara Keamanan Rakyat*/TKR) during the physical revolution (*revolusi fisik*) against colonialism. Throughout time, these core concepts contributed to an understanding that the Indonesian military was developed 'by the Indonesian people and for the Indonesian people' (*dari dan untuk rakyat*).

⁷ Ministry of Defense of the Republic of Indonesia, *Defense White Paper 2015* (Jakarta: Ministry of Defense, 2015), p. 98.

⁸ See Ariel I Ahram, *Devolution from Above: The Origins and Persistence of State-Sponsored Militias* (PhD Dissertation, Georgetown University, 2008).

⁹ See Pro-Government Militias, "Pro-Government Militias Database (PGMD)," <http://www.sowi.uni-mannheim.de/militias/>, accessed June, 12 2016.

¹⁰ See Sabine C. Carey, Neil J. Mitchell and Will Lowe, "States, the Security, Sector, and the Monopoly of Violence: A New Database on Pro-Government Militias," *Journal of Peace Research* 50, no. 2 (2013), p. 250.

¹¹ *Ibid.*

include the following: it is linked to the government; sources of support for the groups concerned; characteristics of membership; and coded alleged targets such as armed and unarmed political opposition and civilians as well as fighting insurgents, intimidating civilians or gathering intelligence.¹²

Regarding the methodology in this article, I emphasize that this article will not be using only legal methodology but also an inter-disciplinary approach of legal-political and analysis, especially when I discuss the historical background leading to the adoption of the Total People's Defense in the Constitution. By combining legal and political analysis, the paper is aimed at answering the overall problem in understanding the relation between the military and civilian people in the area of defense through the implementation of the Total People's Defense and Security System.

II. THE TOTAL PEOPLE'S DEFENSE AND SECURITY SYSTEM: HISTORICAL BACKGROUND AND CONSTITUTIONAL CONTEXT

As I have mentioned previously, the Total People's Defense and Security System was based on experiences gained from the struggle for independence in 1945-1949 through guerilla warfare strategy.¹³ During the said period, General Abdul Haris Nasution, former Army Chief of Staff and then Chief of the Armed Forces formulated the Total People's War (*Perang Rakyat Semesta-Perata*) or also known as the Total People's Resistance (*Perlawanan Rakyat Semesta*) which was adopted as the basis of national defense.

In his handbook, *Fundamentals of Guerrilla War*¹⁴ where he was involved as a major player in implementing the doctrine as one of the Deputy Commanders of TNI during the guerrilla war, Nasution applies the term 'Total People's War' where according to him, the people were the essential element for the success of guerilla warfare and winning the war against the Dutch, as he declared:

*"It is the people who fight, not just the armies. It is the people who declare war and determine peace and create their armed forces. Military leaders must always remember this: they are like the spear-points of the people and are directed by the people. That is why the army is now an army of the people and no longer a separate entity."*¹⁵

The Total People's War was subsequently implemented in 1946 when the Council of State Defense (*Dewan Pertahanan Negara*) initiated it through Regulation of the Council of State Defense No. 19/1946 on *Lasykar dan Barisan* (Militia and Front).

¹² *Ibid*, p. 252.

¹³ Nasution, *Sekitar Perang Kemerdekaan*, note 3.

¹⁴ A.H Nasution, *Fundamentals of Guerilla Warfare* (Jakarta: Seruling Masa, 1970). This book was written around 1952-1953 when Nasution was dismissed as Army Chief of Staff over his role in October 17, 1952, when dissident army units demonstrated in front of the presidential palace and demanded dissolution of parliament.

¹⁵ *Ibid*, p.13.

Based on the definition of *lasykar*¹⁶ and *barisan*,¹⁷ the purpose was part of the preparation for resistance against Dutch military aggression and the implementation of 'total defense and well regulated' resistance as indicated in the consideration of the said regulation.¹⁸ Furthermore, the Council of State Defense issued another regulation, namely Decision of the Council of State Defense No. 85/1947 on People's Defense which clearly articulates total people's defense (*pertahanan rakyat total*) under the leadership of the Indonesian National Defense Forces with all rights to use any force with either military characteristics or others. According to the elucidation forming part of this decision, total people's defense intends to mean that any citizen including civil servants, either individuals or legal bodies in Indonesia's entire territory must participate in the resistance with all efforts.¹⁹

Based on the said experiences, the Total People's Defense was officially adopted as the Indonesian defense doctrine after promulgation of Law No. 29/1954 on State Defense, Article 4 of the said Law states clearly that, "The State defense of the Republic of Indonesia has the characteristic of people's defense which is provided for and arranged by the Government of the Republic of Indonesia." [Unofficial translation] Also, in the elucidation on the law, besides the armed forces as the primary component of State defense, the law also allows for the implementation of conscript in the military and other components referred to as militia (trained populace) as a reserve component of State defense.²⁰

Under Soeharto's New Order, the position of the Total People's Defense was strengthened during the 2nd Army Seminar at the Staff and Command School conducted in Bandung from August 25-31, 1966 which resulted in the *Tri Ubaya Çakti* Doctrine.²¹ This doctrine contains three basic components, namely the National Land Defense Doctrine (*Doktrin Pertahanan Darat Nasional-Hanratnas*); the Functional Doctrine (*Doktrin Kekaryaan*); Doctrine of Guidance (*Doctrine Pembinaan*); and finally the Doctrine of Total People's War (*Doktrin Perang Rakyat Semesta-Perata*).²²

The subsequent step was the recognition of the Total People's Defense and Security System in the Broad Outlines of State Policy (*Garis-garis Besar Haluan Negara-GBHN*) by virtue of Decision of the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat-MPR*) No. IV/MPR/1973. It clearly states the doctrine's position in Indonesia's defense-security policy:²³

¹⁶ Indonesia, *Peraturan Dewan Pertahanan Negara tentang Syarat-syarat yang diperlukan untuk pembentukan Laskar dan Barisan (Concil of State Defense Regulation on the Requirements for the formation for Lasykar and Barisan)*, Peraturan No. 19 tahun 1946 (Regulation No. 19 of 1946), Article 1; it provides the following definition of *lasykar*: "*Lasykar* in this regulation shall be the people's organization which has military character and which is established outside the regular armed forces and receives endorsement from the Minister of Defense."

¹⁷ *Ibid.*, Art. 6 provides the following definition of *barisan*: "Any citizen, either man or woman, of the age above 16 years and below 50 years can be required to defend the homeland in reserve front (*barisan cadangan*), therefore hereinafter referred to as '*barisan*'"

¹⁸ *Ibid.*, Consideration B as follows: "The purpose is to organize the total and regular defense therefore it is important to establish a regulation on *lasykar* and *barisan*." [Unofficial translation]

¹⁹ Elucidation on the Decision of the Council of State Defense No.85/1947.

²⁰ Indonesia, *Undang-undang tentang Pertahanan Negara Republik Indonesia (Law on the State Defense)*, UU No. 29 tahun 1954 (Law No. 29 of 1954), Chapter VI on the Defense Characteristics in Elucidation.

²¹ See Salim Said, *Legitimizing Military Rule: Indonesian Armed Forces Ideology, 1958 – 2000* (Jakarta: Pustaka Sinar Harapan, 2006), p. 67.

²² *Ibid*

²³ Indonesia, *Ketetapan Majelis Permusyawaratan Rakyat tentang Garis-garis Besar Haluan Negara (Stipulation of the People's Consultative Assembly on the Broad Outlines of the State Policy)*, Ketetapan No. IV/MPR/1973 (Stipulation No. IV/MPR/1973).

“According to the Total People’s Defense and Security System doctrine, the safety of the State and the nation is determined by the people factor; that is, a population which is patriotic, militant, trained and well organized. In the spiritual sense, the quality of the people, its organization, and their skills are determined by the quality of the core of the National Defense and Security strength; that is the Armed Forces of the Republic of Indonesia-ABRI.” [Unofficial translation]

The process of legalization of the doctrine continued in 1982 when the Total People’s Defense and Security System was adopted under the Decree of Minister of Defense/Commander in Chief of the Armed Forces of the Republic of Indonesia (ABRI) No.Skep/820/VII/1982 dated July 21, 1982 and was followed by the promulgation of Law No. 20/1982 on the Main Stipulations of the Republic of Indonesia’s National Defense and Security where the doctrine relies on the involvement of the population in implementing the state defense strategy. As stated in Article 4(1) of Law No. 20/1982:

“The nature of defense and security is the total people’s resistance which is based on awareness of the responsibility of the rights and obligations of citizens and builds on a belief in their strength, confidence in victory and knows no surrender, either personal surrender or submission of territory.” [Unofficial translation.]

According to Article 9(a) of Law No, 20/1982, the embodiment of the total people’s resistance is by ‘psychologically arming individuals with the ideology of Pancasila and physically with the skills to defend the state administered by the Government.’

Promulgation of Law No. 20/1982 was followed by the 1967 *Catur Darma Eka Karma* (CADEK) and was further altered and adjusted by Decision of the Commander in Chief of ABRI No.KEP/04/II/1988. This time, the concept of state defense and security was embodied in the Total People’s Defense and Security System empowering the entire national sources and national infrastructures in an integrated and directed manner.²⁴ Under the primary ABRI doctrine of CADEK, the Total People’s Defense and Security System became one of the operational doctrines.

From 1966 *Tri Ubaya Çakti* up to 1967 and 1988 respectively CADEK and its derivations positioned the people as part of the implementation of the defense doctrine. The following is to illustrate how the concept of the 1967 Total People’s Defense was incorporated into the 1982 Total People’s Defense and Security System. According to Law No. 20/1982, ABRI is the primary component of national defense; however, in practice, during conflict either external let alone internal, people become the major element not only in combat operations but also in intelligence and territorial operations. Needless to say, the Total People’s Defense has thus become a backbone of Indonesia’s national defense strategy.

Finally, after Soeharto stepped down and the *reformasi* era began, the Constitution addresses a vision of the role of the citizen in national defense and security by adopting the Total People’s Defense and Security System. In Chapter XII on State Defense and Security, Article 30(2) of the Second Amendment to the 1945 Constitution provides states as follows:

“The State’s defense and security endeavors shall be implemented through a system

²⁴ Departemen Pertahanan dan Keamanan Republik Indonesia, *Doktrin Perjuangan TNI – ABRI Catur Darma Eka Karma [TNI-ABRI Struggle Doctrine for Catur Darma Eka Karman]* (Jakarta: Dephankam, 1988), p. 48.

of total people's defense and security by the Indonesian National Defense Forces and State Police of the Republic of Indonesia, as the main components, as well as the people, as supporting components."[Unofficial translation]

This article shows how all citizens, whether military or civilians, have the right and responsibility to take part in national defense and security. The Constitution adopts the concept of citizenship as the fundamental legal basis, also as the highest law in the country. Therefore, the Constitution also envisages defense as constitutional right of a citizen. As stated in Article 27(3) of the Second Amendment to the 1945 Constitution, 'Every citizen shall have the right and duty to participate in state defense endeavors.' [Unofficial translation] The article itself was originally Article 30 of the 1945 Constitution prior to amendment.

However, the said article forms part of Chapter X on Citizens and Population whereby the term '*pembelaan*', which in the Indonesian language means 'defense', used in this article has a different meaning and interpretation. The purpose of the said chapter is to provide that citizens are entitled to and are obligated to participate in state defense as a whole, which is not specifically limited to the Indonesian military. Since it is also an obligation, the state can 'enforce' it against the population requiring it to participate in state defense. According to Article 9(2) of Law No. 3/2002 on State Defense, citizens participate in endeavors for State defense through the following four activities:

1. Civic education;
2. Compulsory basic military training;
3. Service as member of the Indonesian National Defense Forces either voluntary or compulsory;
4. Service based on profession.

All of these forms of citizen participation are to be regulated in specific laws. In fact, up to the present time, no laws have been promulgated to accommodate the foregoing activities, with the exception of civic education which is provided for under Law No. 20/2003 concerning National Education System. At the same time, in Chapter XII on State Defense and Security, the relevant article uses the term '*pertahanan*', which in the Indonesian language also means 'defense', while the definition of state defense can also be found in Article 1 Law No. 3/2002 on State Defense stating as follows:

"State defense shall be all endeavors to defend national sovereignty, territorial integrity of the Unitary State of the Republic of Indonesia, and the safety of the entire Indonesian nation against threats and disturbances threatening the integrity of the nation." [Unofficial translation]

Based on the interpretation of this article it can be implied that defense is not only about using and strengthening the force of the state; rather than that, it also includes all efforts considered as acts to defend the sovereignty, territorial integrity of the State. In fact, the State Defense Law changes of the term Total People's Defense and Security System to Total Defense which is stated Article 2 of the Law as follows:

"The essence of state defense includes all endeavors of total defense the implementation of which is based on awareness of the rights and obligations of citizens as well as confidence in their own strength." [Unofficial translation]

The elucidation on Article 2 of the State Defense Law clarifies the meaning of 'total' in total defense describing it as inclusion of all citizens, the use of all national resources, and the entire territory of the country in national defense endeavors. Such new interpretation of Total Defense also reflects the spirit of Indonesia's effort to correct the previous practices of involving the population and their international obligations as party to the 1949 Geneva Convention. It is indicated under the said Law that there is no longer involvement of the people or population in specific armed groups as core component as regulated in Law No. 20/1982 implementing Total People's Defense. In Article 7(2) of Law No. 3/2002 it is stated that "TNI is a main component of the national defense system in facing military threat supported by reserve and supporting components."²⁵ The said article limits the TNI's role in preventing military threat and²⁶, and in the event of any non-military threats government institutions outside the defense sector are to be the main components.

To sum up, the changing of the term Total People's Defense and Security System to the term Total Defense has not altered the essence of Indonesia's national defense. However, such new interpretation of 'defense' has led to fundamental change in the essence and position of the people in State defense which previously caused problems related to Indonesia obligation under International Humanitarian Law. At the same time, the adoption of Law No. 3/2002 explicitly reflects the mandate of the Constitution as the highest law of the land.

III. THE LEGAL BASES OF MILITIA IN INDONESIA

In this part, I elaborate on the relevant legal basis with the aim of identifying the link between the implementation of the Total People's Defense and Security System and the establishment of the militia. I have taken into consideration certain laws to explain how militia groups are recognized under Indonesian law although in some cases there was no official mobilization by the government other than tacit mobilization by the military especially in conflict areas such as East Timor and Aceh. On the other hand, the military have denied their relations with these militia groups including their acts of violence given the fact that these militias in East Timor and Aceh were civilian groups recruited, trained and supported by the state's armed forces.

Law No 20/1982 recognizes four components of Total People's Defense and Security, namely as follows: first, the Basic Component (*komponen dasar*) where the Trained Populace was regulated and had multi-functions consisting of the preservation of public order (*ketertiban umum-tibum*); protection of the people (*perlindungan rakyat-linmas*); ensuring the people's security (*keamanan rakyat-kamra*); and finally, the people's resistance (*perlawanan rakyat-wanra*). Secondly, the primary component (*komponen utama*) was the Armed Forces of the Republic of Indonesia (ABRI); thirdly, Community Protection (*perlindungan masyarakat - Linmas*) was provided with the function of assisting people in situations of disaster including war, rebellion, natural disaster, and the like; and finally, natural resources, man-made resources and national infrastructures as the 'supporting component' (*komponen pendukung*). Law No 20/1982 also served as an umbrella law for several ensuing regulations on security and defense at the time.

²⁵ Compare with Article 1 of the State Defense and Security Law (Law No. 20/1982), which in its complete form reads as follows: The total people's defense and security is an order of the components of defense and security forces, consisting of the basic component of Trained People (*rakyat terlatih or ratih*); the main component of the ABRI and TNI reserves; the special component of Community Protection (*perlindungan masyarakat or linmas*) and supporting components which are natural resources; artificial resources and national infrastructure, as comprehensively, integrated and directed.

²⁶ Indonesia, *Undang-undang tentang Pertahanan Negara (Law on the State Defense)*, UU No. 3 tahun 2002, LN No. 3 tahun 2002, TLN No. 4169 (Law No. 3 of 2002, SG No. 3 of 2002), Art. 7 (3); hereinafter referred as "State Defense Law"

However, in the case of East Timor when western press media described the *Pamswakarsa* as 'militia,' from the Indonesian military's perspective it was not an appropriate term as they had emerged long before the announcement of the second option for East Timor.²⁷ It was argued that the establishment of *Pamswakarsa* was self-initiated by society which subsequently came under the government's management and had legal status according to the 1949 Geneva Convention, which specifically sets out Civil Organization Defense [*sic*].²⁸ In fact, there was no legal ground for the existence of *Pamswakarsa* under Indonesian law, including Law No.20/1982 Concerning the Main Stipulations of the Republic of Indonesia's National Defense and Security and Law No.56/ 1999 on Trained Populace. Eventually, the military recognized the existence of *Pamswakarsa*, which was later united under the Force of Integration Fighters (*Pasukan Pejuang Integrasi -PPI*).²⁹

On the other hand, Law No.3/2002 on State Defense based on the Total Defense System recognizes the following three components of state defense: first, the Indonesian National Defense Forces (*Tentara Nasional Indonesia -TNI*) as the primary component (*komponen utama*);³⁰ secondly, the reserve components consisting of citizens, natural resources, man-made resources and national means and infrastructures which are ready to mobilize and to enlarge and strengthen the primary component;³¹ and finally, the supported component consisting of citizens, natural resources, man-made resources as well as national means and infrastructures which directly and indirectly enhance the force and the capability of the primary and reserve components.³²

Moreover, in the Elucidation on Law No.3/2002 there is a substantial change whereby the law draws a clear distinction between the status of the Indonesian National Defense Forces (*Tentara Nasional Indonesia -TNI*) as the primary component (*komponen utama*) and the TNI reserves. Again, according to the Elucidation, the purpose of such distinction is consistent with international humanitarian law, particularly the distinction principle.³³ It is an indication of the lawmakers' realization that they needed to adopt a special law in order for civilian citizens to be involved in State defense. They realized that the implementation of the previous law had raised problems specifically under international humanitarian law and in the area of human rights in general. Therefore, the law had to regulate the eradication of Trained Populace and the functions thereof.

At the same time, in the case of Aceh, there is a difference in view of the time frame from the first generation of militias during the DOM era up to the promulgation of Law No.3/2002 on State Defense. The said law replaced Law No.20/1982 on the Main Stipulations of the Republic of Indonesia's National Defense and Security, under which *Wanra* was fulfilled as one of the functions of Trained Populace (*Rakyat*

²⁷ Zacky Makarim, et. al. *Hari-hari Terakhir Timor Timur: Sebuah Kesaksian [The Last Days of East Timor: A Testimonial]* (Jakarta: Enka Parahyangan, 2003), p. 157.

²⁸ *Ibid.*

²⁹ Commission of Inquiry into Human Rights Violations in East Timor (*Komisi Penyelidik Pelanggaran HAM Timor Timur - KPP HAM TIMTIM*), Full Report of the Inquiry Commission into Human Rights Violations in East Timor (*Komisi Penyelidik Pelanggaran HAM*), January 31, 2000, p.30. The Commander in Chief of the TNI/Minister of Defense, General Wiranto recognized the existence of militia groups and reflected such recognition in his Contingency Plan: "The armed force is about 1,100 people with 546 weapons of various kinds, including homemade weapons; they are joined pro-integration organizations. The mass of militant supporters is 11,950 people joined in resistance organizations like Besi merah Putih, Aitarak, Mahidi, Laksaur Merah Putih, Sakunar, AHL, Jati Merah Putih, Darah Integrasi, Dadurus Merah Putih, Guntur Kailak, Halilantar Junior, Pancasila Team, ABLAI and Naga Merah."

³⁰ State Defense Law, Article 7(2)

³¹ *Ibid.*, Article 8(1)

³² *Ibid.*, Article 8(2)

³³ *Ibid.*, General Elucidation.

Terlatih – Ratih). Law No.3/2002 on State Defense significantly altered the spirit and implementation of the Total People's Defense and Security System into the Total Defense System (*Sistem Pertahanan Semesta*) with due respect for civil-military relations and the supervision of military under the ministry of defense.

In the above case, the existence of *Wanra* in Aceh during the DOM as well as prior to the military emergency in 2003, particularly during the CoHA, was under the implementation of Law No.20/1982. However, *Wanra* which was established during the military emergency was never regulated under a new law except for military uses under Law No.56/1999 concerning Trained Populace. Indeed, Article 26 of Law No.3/2002 on transitional provisions states that the previously existing regulations remain valid until replaced under the new Law on State Defense. It may be concluded that the existence of *Wanra* during martial law was considered to be legal.

As mentioned above, the 2002 State Defense Law has simplified the defense components. Since the promulgation of the said law, the government through the Department of Defense (currently Ministry of Defense) was trying to use the National Defense Reserve Component as another conscript program which was being planned since 2003, but the law was only introduced in 2006. The problem of national defense reserve component failed to answer the very basic question concerning the *la raison d'être* of Indonesia's need to have a program based on threat assessment. The ministry failed to answer the question as to what kind of threat would be faced by Indonesia, since the 2003 Defense White Paper only mentioned terrorism, ethnic conflict, piracy and hijacking, smuggling, narcotics, illegal immigrants and transnational crimes.³⁴ Moreover, the 2003 Defense White Paper underlines that there is a small possibility that Indonesia would face invasion or military aggression by another country.³⁵

Similar types of threats also appeared in the 2008 Defense White Paper although it was now specifically stated that the National Defense Reserve Component was a primary program of the Department of Defense. Moreover, it outlined the plan to form a battalion reserve component in each regency/city up to the year 2029 in three stages.³⁶ The first stage involves building a reserve component company in each District Military Command (*Kodim*), then two companies in the second stage. Finally, a reserve battalion would be held by territorial command.³⁷ In addition, the paper never defined the exact purpose to form the reserve component while Indonesia was said to be facing similar threats as those described in the previous defense white paper.

The civil society led a campaign objecting to the substance of the Law, particularly on the issue of conscript and criminalizing people who refused to become member of the reserve component. This was despite the fact that the ministry had repeatedly denied that the Law would impose the conscript program on the people, as Article 42(1) of the Law (October 9, 2006 version) clearly states as follows:

"The punishment of imprisonment for 1 (one) year shall be imposed on: a. any person who, without a valid reason and deliberately, does not fulfill the obligation to become member of the Reserve Component; or b. any person who intentionally fabricates excuses, or constructs a series of lies that cause him/her to be suspended or ineligible to become Reserve Component member." [Unofficial translation]

³⁴ Department of Defense of the Republic of Indonesia (*Departemen Pertahanan Republik Indonesia*), *Mempertahankan Tanah Air Memasuki Abad 21 [Defending The Motherland Upon Entering the 21st Century]* (Departemen Pertahanan RI, 2003), p.7.

³⁵ *Ibid.*, p.45.

³⁶ Department of Defense of the Republic of Indonesia (*Departemen Pertahanan Republik Indonesia*), *Buku Putih Pertahanan 2008 [The 2008 Defense White Paper]* (Jakarta: Departemen Pertahanan RI, 2008), p.136.

³⁷ *Ibid.*, p.136.

This article violated certain rights, some of them being categorized as non-derogable rights such as freedom of thought, conscience and religion as well as the right to be treated equally before the law. Moreover, the UN High Commission on Human Rights passed a resolution regarding Conscientious Objection (CO) by an individual through Resolution 1998/77. By definition, CO is a refusal by a person to be conscripted due to his/her belief.

The 2015 Defense White Paper is straightforward in stating that the National Defense Reserve Component would be arranged from mobilization to face military threat and moreover it is to be organized by paying due attention to balancing between the civil rights and obligations of citizens in state defense endeavors formulated based on planning, in a gradual and proportional manner appropriate to each branch's needs. Also, the program is to be continued pending the adoption of a specific law on the National Defense Reserve Component.³⁸ In other words, the said program would be established in the future.

However, the current failure of the National Defense Reserve Component started out with the *Bela Negara* program. Prior to its establishment, President Susilo Bambang Yudhoyono issued Presidential Decree No.28/2006 on State Defense Day (*Hari Bela Negara*) to commemorate the spirit of resistance against the Second Dutch aggression on December 19, 1946. Subsequently, in the new administration under President Joko 'Jokowi' Widodo, he issued Presidential Regulation No.97/2014 on General Policy of National Defense 2014-2019 determining *Bela Negara* as a national defense program. The said presidential regulation adopts Article 27(3), 30(1) and (2) providing that the *Bela Negara* program is the implementation of the Total People's Defense and Security System. As I mentioned above, the 2015 Defense White Paper states that it would target 100 million militant cadres across the nation within a period of ten years. At the same time, the term 'militant' is not recognized in Law No.3/2000 on State Defense and there is also unclear legal position as to whether a person is recognized as combatant or civilian during international armed conflict.

Another problem which emerged after implementation of the *Bela Negara* program had started in the shade of violence against human rights during the training and also appeared in the selection process of cadres. For example, the involvement of *Bela Negara* members and Islamic groups became evident as they marched to the Presidential Palace condemning the resurgence of communism in recent situations after the national symposium as part of the reconciliation stage related to the 1965 tragedy in the context of the government's program to uphold human rights under President Jokowi's administration.³⁹ Another example of problematic cadre recruitment occurred in Bali where Kodam IX/Udayana was going to provide *Bela Negara* training to members of thug mass organization.⁴⁰ According to Kodam's Spokesperson, Lt.Col. J. Hotman Hutahaean, training materials would include introduction to weaponry, marching, and other physical training and would prepare them to become good citizens.⁴¹ However, according to Coordinating Minister for Political and Security Affairs, Luhut Panjaitan, such step is an excessive one.⁴²

³⁸ Ministry of Defense, above n 7, p.112.

³⁹ See Kompas, "Massa Pendukung Rizieq berencana Demo Istana, kendaraan antihuru-hara diturunkan [Rizieq Supporter plans demonstration in Palace, Anti-riot vehicle deployed]" <http://megapolitan.kompas.com/read/2016/06/03/10482911/massa.pendukung.rizieq.berencana.demo.istana.kendaraan.antihuru-hara.diturunkan>, accessed June 3, 2016.

⁴⁰ See Deutsche Welle, "Bela Negara: Militer akan latih preman di Bali [Bela Negara: Military will train thugs in Bali]," <http://www.dw.com/id/bela-negara-militer-akan-latih-preman-di-bali-sebagai-kader/a-19321338>, accessed June 7, 2016.

⁴¹ *Ibid.*

⁴² See Tempo, "Preman Bali dilatih Semi Militer itu Berlebihan [Bali thugs trained semi-military is too much," <https://nasional.tempo.co/read/news/2016/06/13/078779382/preman-bali-dilatih-semi-militer-luhut-itu-berlebihan>, accessed June 13, 2016.

It would appear that the *Bela Negara* program has been created based on the flawed foundation to strengthen Indonesia's national defense. In fact, the said program is militarization of the civilian population which opens up the possibility for other human rights violations by triggering horizontal conflict.⁴³ People are educated to accept militarism and blindly obey in following the order of a military superior.⁴⁴ Such unquestioning discipline had been coincidentally embedded in the civilian population; hence, the military has created its proxy army as they supported it during Indonesia's occupation of East Timor and the martial law in Aceh.

In relation to the definition of State-sponsored militia, it is (1) identified as pro-government or sponsored by the government (national or sub-national); (2) identified as not being part of the regular security forces; (3) is armed and; (4) has some level of organization. Based on the above explanation, in Indonesia's case, the previous Law No. 20/1982 recognized the militia in the framework of *Wanra* whereby they were part of the armed forces, however in practice some of these groups, namely the so-called *Pamswakarsa* and *Wanra*, were not recognized by law or even legally mobilized. In fact, some of the groups were established and created by the local elites.⁴⁵

Albeit, the East Timor's *pamswakarsa*, and Acehese militias were examples where the military claimed their existence but denied their links with the groups as part of their forces. I describe such situation as 'Establish, Support, Deny,' given the fact that the military were the primary actors in establishing, supporting but at the same time denying the militias. Moreover, it is proof that militia groups in Indonesia were established illegally since there was no official declaration to mobilize people in the conflict areas concerned.

IV. STATE-SPONSORED MILITIA AS SURROGATE MILITARY CAMPAIGNS AGAINST SEPARATISM: FOR THE SAKE OF SOVEREIGNTY AND TERRITORIAL INTEGRITY

Why does Indonesia still require citizen or civilian participation in the defense area especially in armed conflict or even in low-intensity conflict? In other words, why does Indonesia need militia during armed conflict? Robert Cribb highlights the phenomenon of militia in Indonesia's armed struggle for independence.⁴⁶ Cribb recounts that during the revolution, the *lasykars* or militias in Jakarta where the first groups to raise armed resistance were pre-war Dutch high-ranking officers who had been released after the Japanese surrender, including Dutch collaborators who wanted to restore law and order. According to Cribb, the leaders of these militia groups were gangsters in Jakarta's underworld.⁴⁷

After gaining independence, only on two occasions had Indonesia decided to mobilize the people along with the military operations to fight external threats, namely the liberation of West Irian and the Confrontation with Malaysia. It means that almost all other military operations were conducted in facing internal armed threats. It occurred when Indonesia faced the *Darul Islam* forces in West Java, when

⁴³ Bhatara Ibnu Reza, "Bela Negara: Thinly Veiled Militarization of the Civilian Population", <http://indonesiaatmelbourne.unimelb.edu.au/bela-negara-thinly-veiled-militarisation-of-the-civilian-population/>, accessed July 12, 2016.

⁴⁴ Deutsche Welle, "Bela Negara," note 40.

⁴⁵ See Damien Kingsbury, *Power, Politics and the Indonesian Military* (New York: Routledge, 2003), p. 117; Matthew N. Davies, *Indonesia's War over Aceh: Last Stand on Mecca's Porch* (New York: Routledge, 2006).

⁴⁶ See Robert Cribb, *Gangsters and Revolutionaries: The Jakarta People's Militia and the Indonesian Revolution 1945-1949* (Honolulu: University of Hawaii Press, 1991). See also Robert Cribb, "Military Strategy in the Indonesian Revolution: Nasution's Concept of 'Total People's War' in Theory and Practice," *War and Strategy* 19 (2001).

⁴⁷ *Ibid.*

the military applied the 'fence of legs' (*pagar betis*) tactic involving the police, civil defense (*pertahanan sipil*), as well as members of the Village Security Organization (*Organisasi Keamanan Desa-OKD*).⁴⁸

It is compatible with the above description of the existence of the Total People's Defense and Security System and the continued development of the same after Indonesia's independence. Due to such continuity, militia groups reappeared when Indonesia invaded East Timor in 1975. Then, right after the occupation, Indonesia established militia groups which were recruited, trained and supported by the state armed forces against separatist elements led by *the Frentes Revolutionaria de Timor-Leste Independente* (Revolutionary Front for Independent East Timor-Fretilin).

Poltak Nainggolan argues that the establishment of state-sponsored militia in East Timor was a form of military response and expression of secessionist movement which similarly occurred in Aceh and Papua. The Indonesian military is firmly committed to the principle of national unity and considers it necessary to use repressive measures by aggressive approach to maintaining loyalty.⁴⁹ Moreover, Damien Kingsbury⁵⁰ and Mietzner⁵¹ both consider militia in East Timor as a culture of violence practiced by TNI. Subsequently, Mietzner shows further that the state-sponsored militia in East Timor used the method of terror as the strategy to win the referendum.⁵² However, due to certain acts such as terror, intimidation, and other human rights violations during Indonesia's occupation the majority of East Timorese decided to cast their votes in the 1999 Popular Consultation to separate from Indonesia and to restore their independence they had achieved in 1975.

For the Indonesian military in particular, the loss of East Timor was a complete betrayal of their value and virtue as the guardian of sovereignty by the decision of President Habibie. For years, the Indonesian military had maintained East Timor as military zone and a place for improvement of their military career. Soeharto's policy towards East Timor was that the armed forces were on the mission of saving the people of East Timor from the threat of communism and Indonesia's territory from communist infiltration from East Timor.⁵³ Furthermore, the Indonesian military invasion in 1975 was believed to be a form to save the people of East Timor from civil war and they were convinced the war would start again if they withdrew from the territory.⁵⁴

Habibie's proposal for the second option by giving East Timorese an opportunity to consider their fate, either integrate with Indonesia or refuse and opt for independence, was a hard blow to the military. On the other hand, their staunch supporters - the integrationists - mostly the elite class and local leaders in East Timor demanded the military not to abandon them. For this purpose, tacit military support was provided to integrationists in the form of weapons, training, and mobilization for a full-scale fight against the pro-independence movement. Nainggolan also argues that the triggering of such military approach was due to President Habibie's proposal for a referendum in

⁴⁸ David J Kilcullen, "The Political Consequences of Military Operations in Indonesia 1945-1999" (PhD Thesis, the University of New South Wales, Sydney, 2000), p.65.

⁴⁹ See Poltak Partogi Nainggolan, "The Indonesian Military Response to Reform in Democratic Transition: A Comparative Analysis of Three Civilian Regimes 1998-2004" (PhD Dissertation, Albert-Ludwig Universität, Freiburg, 2011), p.112.

⁵⁰ Kingsbury, *Power, Politics*, pp.111-128.

⁵¹ See Marcus Mietzner, *Military Politics, Islam and the State in Indonesia* (Singapore: ISEAS, 2009), pp.208-209.

⁵² *Ibid.*

⁵³ See Harold Crouch, "The TNI and East Timor Policy," in *Out of Ashes: Destruction and Reconstruction of East Timor*, eds. James J Fox and Dionisio Babo Soares (Goolwa: Crawford House Publishing: 2000), p.151.

⁵⁴ *Ibid.*, p.152.

East Timor, which the military saw as endangering the nation-state's integrity.⁵⁵ Since then, TNI felt East Timor was their nightmare, especially when several of their high-ranking, mid- and low-ranking officers were brought to trial at the *Ad Hoc* Human Rights Tribunal for Cases of the Gross Violations of Human Rights in East Timor.

However, again, the aggressive attitude and view did not change when Indonesia faced a similar situation in Aceh. Although Aceh has a different background from East Timor, due to the existence of the Free Aceh Movement (*Gerakan Aceh Merdeka*-GAM) the military treated this province similarly to East Timor. Aceh presented an opportunity for military career advancement through tacit military operations from 1989 until 1998 or also known as the Military Operation Zone (*Daerah Operasi Militer* – DOM). During this time, the military also created militia groups as part of their combat force as well as support operational forces. During the martial law in 2003-2004, the existence of state-sponsored militia in Aceh was also backed by the military and elite groups in Aceh mostly consisting of entrepreneurs and local politicians. These groups also used terror and intimidation as their method and moreover, in some districts, they also used sectarian issues to stigmatize Acehnese as GAM supporters and sympathizers.

Safeguarding the State's sovereignty and territorial integrity has been one of the policies of the State since Indonesia's independence. The trauma of separatist movements and regional insurgencies in some parts of the country have frequently left Indonesia vulnerable to the threat of disintegration. Moreover, after losing East Timor, the said policy became a kind of sacred mantra and has been used effectively by the military. It has become a very well-known phrase that 'Indonesia's unity is *harga mati*' (non-negotiable).⁵⁶ This phrase has been constantly employed by the military on numerous occasions, particularly in the face of issues of separatism, to generate public support.

During Soeharto's New Order regime, the military always claimed themselves as the unity of the nation and the primary actor during the national revolution struggling for independence. Therefore, they should be heard and involved in every state decision-making process. In fact, the position of the military was not only that of guardian of the state, but also interpreted Soeharto being at the level of the state and considered that any acts of opposition whatsoever would have to be crushed severely. As a result, the Armed Forces of the Republic of Indonesia (ABRI) became an actor of human rights violations in Indonesia at the time.

Even during the *reformasi* era, there was no fundamental transformation of the military perspective using the security approach other than respecting human rights as part of the constitutional rights of citizens. In fact, the military has used the approach of creating and supporting militia groups for the sake of the State's sovereignty and territorial integrity to breach human rights. As a result, human rights violations occurred in the State to their security apparatus – police and military-crushed any acts of separatism even though they were conducted in the form of non-armed activity such as peaceful demonstrations. Furthermore, in conflict areas such as East Timor and Aceh, the military utilized their proxy groups to provide political support to legitimize military presence or acts of violence against separatist groups and their sympathizers. After all, militia groups were able to act more excessively than government security apparatus. Therefore, mostly the military but also the police turned a blind eye and tacitly encouraged it.

There is a similarity between East Timor and Aceh militia groups in their activity to

⁵⁵ Nainggolan, "The Indonesian Military Response," p.112.

⁵⁶ Detik, "Jenderal Gatot: Saya tak kenal kompromi, NKRI Harga Mati [General Gatot: I Never Compromised, the Indonesia Unity is Non-negotiable]," <http://news.detik.com/berita/2957736/jenderal-gatot-saya-tak-kenal-kompromi-nkri-harga-mati>, accessed June 1, 2015.

demonstrate their willingness to defend territorial integrity by holding rallies, giving pledges of loyalty (*janji ikrar setia*) to the State and attending ceremonies held by high ranking local commanders and local government elites. After such ceremonies and upon hearing provoking statements by the military and militia leaders, members of militia groups held a parade around the city by intimidating, terrorizing or even attacking people who were considered to be their enemies.

For example, a rally in Dili organized by militia groups in East Timor where they heard the speeches of their leaders regarding their combat readiness against anti-integration groups and willingness to sacrifice their life for the sake of integration with Indonesia.⁵⁷ Right after the rally, they attacked the newspaper office and the house of a prominent pro-independence figure.⁵⁸ Another example occurred in Aceh during martial law where the local government decided to make the rallies compulsory and was participated in by all elements such as civil servants, students, and mass organizations.⁵⁹ Anybody who did not take part in the rallies was consequently considered to be GAM supporter.⁶⁰ As the next step, the military used the rallies to mobilize the youth to fight against GAM, and this was the phase in which militia groups were dramatically formed in all districts in Aceh.⁶¹

Besides rallies, another method used by the military and the militia has been recruiting people by force. In East Timor, right after Indonesian occupation, people were compelled to join combat support operations units.⁶² Similar practices has also occurred prior to the referendum in 1999 when the military had targeted to recruit ten people from each village and as incentive they were given Rp200,000 (the equivalent of USD 26.66 at the time)⁶³ allocated from the local budget and the social safety net fund.⁶⁴ Meanwhile in Aceh, recruitment was also conducted by the military during DOM⁶⁵ and repeatedly during the martial law when the military sent people who were mostly GAM sympathizers to re-education camps. For periods of three to six months, they aimed to persuade these people to support the Republic as the only guarantee for their personal security.⁶⁶

Based on the foregoing, there is a link between the relation of the State's policies in safeguarding its sovereignty and territorial integrity on the one hand, and the manner in which the military interprets it by implementing the Total People's Defense and Security System on the other hand. By implementing such policies, the military sees an opportunity to influence and force people to take the sides and even further, to recruit them as their proxy through militia groups. By applying methods such as terror, intimidation, and stigmatization against the people, the military is being successful in dividing the population into such conflict areas.

On the other hand, the safety of the population is vulnerable and is becoming a potential target of organized armed groups who fight against government forces.

⁵⁷ Commission of Inquiry into Human Rights Violations in East Timor, para 109.

⁵⁸ *Ibid.* para 110-112

⁵⁹ KontraS, *Aceh, Damai dengan Keadilan: Mengungkap Kekerasan Masa Lalu [Aceh, Peace with Justice: Revealing the Past Atrocities]* (Jakarta: KontraS, 2006), p. 127.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² The Commission of Reception, Truth and Reconciliation (CAVR) of Timor Leste, "Part 4: Regime of Occupation", *Chega! The Report Commission of Reception, Truth and Reconciliation I Timor Leste* (Secretary of CAVR, 2006), para 103

⁶³ *Ibid.*, para 126.

⁶⁴ Commission of Inquiry into Human Rights Violations in East Timor Above, para 41.

⁶⁵ KontraS, *Aceh, Damai dengan Keadilan*, p. 40.

⁶⁶ Eye on Aceh Report, *Ketakutan dalam Bayangan: Milisi di Aceh [The Fear in the Shadow: Militias in Aceh]* (Aceh: Eye on Aceh, 2004), p.12.

It may be concluded that there are militia groups which are proxy groups and an extension of the arms of the military, as the military's hands are tied by law. However, militia groups might be considered as a scapegoat and can be disbanded by the same laws at any time. In reality, however, members who committed crimes might escape prosecution through a process which was since the beginning intended to fail to bring justice⁶⁷ or for the sake of peace.⁶⁸

V. THE IDEOLOGY OF THE TOTAL PEOPLE'S DEFENSE AND SECURITY SYSTEM

Ideology comes from ideas and principles on how the society lives and works, and it also becomes an order in social life. Based on the above description of the historical background and political-cultural aspects, it is evident that the Total People's Defense has become part of Indonesia's social life order. Up to the present time, the people's resistance against the Dutch has been glorified as well as the fact that unlike some other nations, Indonesia gained its national independence through armed struggle rather than negotiation. Moreover, it would appear that the said ideology has been the legacy of the guerilla warfare giving too much weight to the Army's role rather than the two other branches –the Navy and the Air Force- which have bases at locations that are remote from the population.

During Soeharto's administration, militarism shaped society by showing that becoming a member of the armed forces was *crème de la crème* of Indonesia's society. Active Military officers held key positions in the government ranging from ministers to heads of local governments. In short, the military played an important role for a long period of time in Indonesian politics and was considered one of the three pillars (*Golkar*, Bureaucracy, and the Armed Forces)⁶⁹ of the Soeharto dictatorship.⁷⁰ It demonstrated a Praetorian character by claiming its role as the vanguard of the nation and its dual functions role in the area of politics and security.⁷¹ Previously, the dual functions of the military were legitimized in TAP MPRS No. XXIV/MPRS/1966 on the New Policy on Defense and Security.

However, in order to secure ABRI's role in security and defense forces along with their function in social and political matters, the regime needed another legal instrument explicitly regulating it such as Law No.20/1982 providing for ABRI's duties as the state's defense and security forces and social function forces. In Article 28(1) of Law No. 20/1982, the social-political functions means that the military acts as a *dinamisator* and *stabilisator* and along with other social forces assumes the duty and responsibility of securing and bringing to fruition the struggle of the nation based on freedom and raising the welfare of the entire Indonesian population. Ian MacFarling explains that the words *dinamisator* and *stabilisator* are Indonesianized English. The *dinamisator* can be translated as 'dynamic driving force' behind Indonesian society,

⁶⁷ See David Cohen, *Intended to Fail: The Trials before the Ad-Hoc Human Rights Tribunal in Jakarta* (New York: ICTJ, 2003).

⁶⁸ Bhatara Ibnu Reza, "Don't Force Aceh Victims Shake Hands with the Devil", <http://www.thejakarta-post.com/news/2015/08/21/don-t-force-aceh-victims-shake-hands-with-devil.html>, accessed August 21, 2015.

⁶⁹ In Indonesian language these three pillars of relations are abbreviated as ABG (ABRI, Birokrasi, Golkar). It intends to mean that ABRI and bureaucracy were part of the functionalism group (Golongan Karya).

⁷⁰ Leo Suryadinata, *Military ascendancy and political culture: a study of Indonesia's Golkar* (Athens, OH: Ohio University, Center for International Studies, 1989).

⁷¹ Praetorianism in Weberian theories is defined as domination by *honoratiores* meaning honorable person or noble-person and in the Indonesian military recognized themselves as the knight or *ksatria* which is adopted from Javanese culture. See Amos Perlmutter, *The Military and Politics in Modern Times: On Professionals, Praetorians, and Revolutionary Soldiers* (New Haven: Yale University press, 1977), p.90. See also Peter Britton, "Military Professionalism in Indonesia: Javanese and Western Military Tradition in Army Ideology to the 1970s" (MA Thesis, Monash University, 1983).

and the *stabilisator* can be interpreted as 'the stabilizing force' that tries to control any tension that may be present in the population by Law No. 20/1982.⁷²

Drawing inspiration from the guerilla warfare experience against the Dutch, the military has always claimed themselves as the people's army and such claim is crystallized in TNI soldiers' *Sapta Marga* (seven-fold path) oath⁷³ which bestows the military the guardianship of the State.⁷⁴ According to RJ Vatikiotis, by claiming to be the people's army, the military are using a strategy of close cooperation with the people and further by using the Total People's Defense and Security System based on *Sapta Marga* which theoretically positions the military with the people and above the state.⁷⁵

According to Andi Widjanto, the problem arises when the military using the Total People's Defense and Security System is based on the thinking that TNI is originally from the people. Thus, the military is identifying their interest with the people's interest, hence it can act independently beyond the government's oversight.⁷⁶ Furthermore, Widjanto goes even further to show that the military uses such expression to undermine civilian government such as 'TNI never recognizes civilian supremacy, but it recognizes the people's supremacy.'⁷⁷ Therefore, according to Geoffrey Robinson, the Total People's Defense and Security System does not only obscure the distinction between legitimate defense against external and internal threats, it also creates an ever-deepening encroachment of military authorities into political, social, and economic affairs.⁷⁸

There was an attempt to promote such stance further at the time Law No. 34/2004 on TNI was adopted. However, such attempt failed since as it faced profound criticism from experts and the civil society. One of the criticisms was that the relationship between the military and the people is not that of a unified entity because such relationship is limited with the existence of political parties.⁷⁹ Thus, TNI cannot be considered as political authority and neither can it act like a political party where they

⁷² See Ian MacFarling, *The Dual Function of the Indonesian Armed Forces: Military Politics in Indonesia* (Canberra: Australian Defence Studies Center, 1996), p.143.

⁷³ See Army Headquarter-Staff Personnel (*Markas Besar TNI-AD-Staf Personil*), *The Military English Handbook* (Jakarta: Staf Personil TNI-AD, 2012). *Sapta Marga* in its complete form reads as follows:

1. We, citizens of the Unitary State of the Republic of Indonesian based on Pancasila.
2. We, Indonesian patriots, bearers and defenders of the state ideology, who are responsible and never surrender.
3. We, Indonesian knights, who are devoted to God and who defend honesty, truth and justice.
4. We, soldiers of the Indonesian National Defense Forces, are guardians of the Indonesian state and nation.
5. We, soldiers of the Indonesian National Defense Forces, uphold discipline, are obedient and observant to our leadership and uphold the soldier's attitude and honor.
6. We, soldiers of the Indonesian National Defense Forces, give our priority to set ourselves to perform our task will courage and are always ready to devote ourselves to state and nation.
7. We, soldiers of the Indonesian National Defense Forces, are loyal and persistent and committed to the soldier's oath.

⁷⁴ See Michael R. J. Vatikiotis, "The Military and Democracy in Indonesia," in *The Military and Democracy in Asia and the Pacific*, eds. R. J. May and Viberto Selochan (Goolwa: Crawford House Publishing, 1998), p. 31.

⁷⁵ *Ibid.*

⁷⁶ Andi Widjanto, "Kekerasan Militer di Indonesia [Military Violence in Indonesia]," *Antropologi Indonesia* 64 (2001), pp. 10-5.

⁷⁷ *Ibid.*

⁷⁸ Geoffrey Robinson, "Indonesia: On a New Course?," in *Coercion and Governance: the Declining Political Role of the Military in Asia*, eds. Muthiah Alagappa (Stanford: Stanford University Press, 2011), p. 233.

⁷⁹ Rusdi Marpaung, et. al. *Menuju TNI Profesional: Tidak Berbisnis dan Tidak Berpolitik [Towards the Professional TNI: Not Involved in Business and Politics]* (Jakarta: Imparsial, 2004), p. 19.

can have direct relations with the people.⁸⁰ As a tool of State defense, the relationship between TNI and the people in defending the State should be determined based merely on political decision by a civilian political authority.⁸¹ Moreover, it would put the people in a subordinate position as they are sharing the same struggle with TNI while it is impossible for the people to adjust their spiritual and struggle with the military.⁸² Although Law No.3/2002 on State Defense and Law No.34/2004 on TNI do not mention or even omit the jargonish expression on *manunggal*, the Army is still practicing it as one of the three subjects of territorial management.⁸³

Based on the above explanation, the recent challenge for the security sector reform in Indonesia regarding this issue is leaving behind the old perspective and identifying a new strict interpretation of the Total People's Defense and Security System. Although the law related to national defense already incorporates the spirit to respect human rights and humanitarian law, it must be admitted that civilian lawmakers in parliament have failed to uphold their interpretation against the old interpretation as the only game in town.

The only reason why Law No.3/2002 positions the TNI as the main component is that the TNI is guided to become a professional military since they are only focusing on state defense and not on political matters. It is the government's duty to regulate in the law the people's participation in the defense sector. The TNI can no longer use the people directly as an army or militia to defend the country. Moreover, Law No.3/2002 on State Defense has brought fundamental change in the meaning of total people's defense, which had been adopted from the people's war method and has had an effect on the implementation of the related Territorial Warfare doctrine. In theory, the people became the last resort, and the system has become a system of total defense.⁸⁴

The fact is that the total defense system still needs people as a supporting component against enemies on Indonesian land territory. However, the involvement of individuals or civilian population cannot naturally fall under the provision of the right and duty to defend the country against the enemy as stated by the Constitution. The right articulated in Article 30(1) of the Second Amendment to the 1945 Constitution should be clarified under the human right interpretation; in this case, the right set out in that section should not be treated as a negative right in the context of civil and political rights. In other words, the position of the State should not interfere with individual rights, hence such right can be fulfilled. The right should be clearly set out under law including limited conditions of citizens' involvement in fulfilling their right to defend the country. Such provisions on limited conditions should adopt the principle of non-discrimination based on either gender or ethnicity.

In other words, the right to defend the State should be treated as a positive right in the context of civil and political rights where the presence of the State is the primary condition for fulfilling such rights. The said right is parallel to other negative civil and

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² People's Representative Assembly, Minutes on Public Hearing Meeting on Bill of TNI, August 2, 2004, p.19.

⁸³ The third of subject of territorial management, reads in full: Each soldier, as individuals can and should organize territorial management in its simplest form is the behavior as outlined in the Mandatory Eight TNI. Through this behavior expected realization of the unity between TNI – People. *See* Markas Besar TNI Angkatan Darat Staf Umum Teritorial (Army's Headquarter-Territorial General Staff), *Buku Pintar Babinsa [Smart Book for the Non-Commissioned Village Builder]* (Jakarta: Mabesad Staf Umum Teritorial, 2007), pp.16-7.

⁸⁴ *See* Kusnanto Anggoro, "Organisasi dan Postur Pertahanan Indonesia Masa Depan [The Organization and the Posture of Indonesian Defense Future's]," in *Likuidasi Komando Teritorial dan Pertahanan Nasional [Liquidation of the Territorial Command and National Defense]*, eds. M. Riefqi Muna (Jakarta: The Ridep Institute, 2002), p. 72.

political rights such as police protection for individuals and property, and the right to counsel; including economic, social and cultural rights such as right to food, housing, education, employment, public housing, social security, and the like.

Meanwhile, the duty to defend the country should not be interpreted as a blank check for the State to breach citizens' civil rights. Such duty should not derogate civil rights such as freedom of thought, conscience, and religion which are guaranteed by the Constitution and international law. Accordingly, the State should consider refraining from any acts to punish or to prosecute people who object to performing military service especially under the conscript program or another similar program. It is also in line with Resolution 1998/77 of the UN High Commission on Human Rights on Conscientious Objection to Military Service.⁸⁵

Based on such interpretations, the position of the people has to change the ideology of the Total People's Defense and Security System. The word 'people' has a limited interpretation which does not include the 'entire population' or the 'entire people' but only citizens who fulfill conditions regulated by laws. The law related to defense also embraces the right of citizens recognized under the Constitution and international law. In fact, it does not breach the principle of distinction under humanitarian law including its customary applications. Therefore, the deployment of the people should be used as the last option during external and internal conflict in the framework of Indonesia's national defense strategy.

In summary, the recent ideology of Total People's Defense and Security System is still using an old perspective which is based on the unity between the military and the people or the population in facing a threat from the enemy, either external or internal, of the State. The roots of such ideology are derived from the experience of Indonesia's armed struggle for independence. As a result, the military identify themselves as the people thus their position is independent and above the State. Moreover, as a national defense strategy, the distinction principle is breached since the line between the military and civilian population happens to be vague in fighting against the enemy either outside or inside the State.

VI. CONCLUSION

It may be concluded that there is a clear connection between the Total People's Defense and Security System on the one hand and the existence of State-sponsored militia on the other. In other words, Indonesia's law recognizes such form of militia groups although there has been political resistance against using the term to describe such groups. In contrast, the establishment of defense components according to the law has indeed been conducted through the creation of State-sponsored militia. Moreover, the way of establishing the groups was not in the framework of the law.

Law No.20/1982 categorized four components of the Total People's Defense and Security, with three of them involving civilians. Each of these three elements had functions both as military and civilian roles, given the fact that some of the duties gave them the role as combatants. Nevertheless, in practice, the process of recruiting, training and arming was hardly ever based on military interest; rather, it has been based on the legal framework. Besides, while the law affirmed that the component such as *Wanra* was part of the armed forces, the military was trying to avoid and deny that the groups supported by them acted brutally. In fact, in the case of East Timor the military and militia groups used the term *pamswakarsa* which was not even recognized in the law as one of the defense components.

⁸⁵ UN Commission on Human Rights, *Conscientious Objection to Military Service*, April 22, 1998, E/CN.4/RES/1998/77.

Although, unlike the previous law, the recent defense law does not strictly acknowledge the existence of militia, the unclear definition regarding the participation of civilians or population in the area of defense continues to raise the issue as to how to recruit, train and arm the population legally and, more importantly, without depriving citizens of their human rights. The first attempt was made when the Ministry of Defense controversially interpreted and planned to form the National Defense Reserve Component resembling the conscript program. It failed due to public rejection as a result of extensive civil society campaign against the program. The second attempt was the recent *Bela Negara* program expressly using three articles in the Second Amendment to the 1945 Constitution, without referring to articles of Law No.3/2002 on State Defense. However, the legal status of members of *Bela Negara* is not clearly defined, namely whether or not they have the legal status of combatants, since they are being recruited, trained and in specific situations they are also to be armed.

It is true that the Second Amendment to the 1945 Constitution is granting citizens the constitutional right and also duty to defend the state, which is easily interpreted by the military for militarizing the population by establishing militias in conflict areas. As described above, in conflict zones such as East Timor and Aceh the military utilized their proxy groups to provide political support to legitimize the military's presence or acts of violence against separatist groups as well as their sympathizers. By creating such groups, the military believe that they can also minimize or even remove the elements of separatist groups within the community. On the other hand, they do not consider that the people may become a potential target for armed separatist groups and that both –military and separatist groups- potentially create human rights violations.

Although the right and duty provided for in Article 30 (1) of the Second Amendment to the 1945 Constitution should be interpreted in the human rights area, it would seem that the State applies a single interpretation and use of the term 'right and duty to defend the State' without any clear explanation regarding which right and duty are referred to in terms of Constitution or human rights law regimes. Therefore, the State may benefit by using such term at any given time to gain political support especially during armed conflict such as those that had occurred in East Timor and Aceh.

Finally, the historical background of the Total People's Defense and Security System contributes to the political ideology of the military and its relation with the existence of militia groups. The ideology which embraces State sovereignty and territorial integrity itself contains elements of a culture of violence since the glorification of armed struggle has become a center of Indonesian nationalism. Subsequently, such ideology has transformed into military politics in viewing that there is a unity between the military and civilians in facing threats from the enemy. However, this kind of practice is blurring the distinction between the combatant and civilian which is such a cardinal principle in International Humanitarian Law. Thus, as I mention above, Indonesia should consider re-interpretation by using the human rights approach to implementation based on a clear and precise definition the Total People's Defense and Security System. Moreover, it needs to be regulated in a legal framework in order to ensure that there are no further violations of laws. Law No.3/2002 has already set out the boundaries and has introduced the spirit to respect human rights and humanitarian law including customary laws thereof.

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