

## THE ROLE OF TNI (INDONESIAN NATIONAL ARMY) IN COUNTERING TRANS-NATIONAL CRIMES

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### ABSTRACT

*The involvement of the Indonesian Army in law enforcement is often a problematic issue in the context of countries that implement a democratic system. It is considered that the army does not have to be involved in matters of internal security but rather must focus on external threats, however, in the context of a democratic country, the real problem indeed does not lie with civilians or military, but rather with the accountability mechanism. History has proven that authoritarianism is not only the domination of the military, but also the domination of every government regime including civilians that do not implement checks and balances system in the execution of the government. This is what should be the focus of the problem. Apart from that, law enforcement authority actually is not only limited to the area of civil authority which is only given to the police as a representation of state authority which obtains authority from law, but rather to the police functions in general which can also be given to the military which functions as law enforcement officers (law enforcement officials) as explained in the UN Code of Conduct for Law Enforcement as follows; "(a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. (b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services." In the explanation of Article 1 of the Code of Conduct for Law Enforcement, it is clear that what is meant by "law enforcement officials" includes elected or appointed law enforcement officers who are given the authority to carry out arrests and detention. Furthermore, it is also possible if the law enforcement officer is assigned to a military force that is given police authority as long as that force is subject to and complies with the provisions of the Code of Conduct. So the keyword lies in obligations and responsibilities, and not in civil or military restrictions.*

### KEYWORDS

Strategic Role, Indonesian National Army, Transnational Crime



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## INTRODUCTION

Transnational crimes are a real threat to the establishment of state sovereignty. Recognizing the inherent uniqueness of this organized crime, the handling of such crimes also requires a unique approach and should not be hampered by rigid ego-sectoral barriers due to different legal and regulatory provisions that can hamper the effectiveness of law enforcement itself. Laws and regulations must be implemented in accordance with state political policies in the spirit of progressive law enforcement.

In the concept of progressive law enforcement, the essence is more important than the formality of a law or regulation. Laws or regulations should not only be understood as what is written but must be understood as the deepest meaning of the purpose of the law or regulation. In the context of tackling transnational crime, laws or regulations must be understood in line with national politics and interests.

It is necessary to understand and realize that the obstacles surrounding a country's regulations and legal system are loopholes that will be exploited by organized crime to achieve its goals. The inherent peculiarity of transnational organized crime is that it "knows neither territory nor authority boundaries", it moves asymmetrically by ignoring all physical and virtual boundaries.

When transnational organized crime ignores all conventional boundaries, law enforcers are still struggling with who has the authority, and who should do what, and whether a crime is within the boundaries of the authority of a civilian or military agency. If so, it is natural that various obstacles arise that even obscure the objectives of law enforcement and law enforcement efforts become unproductive in tackling transnational crime. Conventional approaches are often shackled by positivistic legal rules that only emphasize what is written and explicitly regulated by a particular law or regulation. Thus, what happens is a struggle for authority under the pretext of the mandate given by the law.

Laws are inanimate objects. The spirit that makes a law or regulation alive is the human being who carries out the law or regulation. In the context of progressive law, as championed by the father of Indonesian progressive law Satjipto Raharjo, the law is only a tool for human welfare. It is humans who determine the "life" of the dead law. When the law is formed, various elements of interest compete to enter or dominate. When the law is formed, the process of legal formation stops in the sense of substance (legal substance) because it has entered the legal structure as explained by Friedman in his theory of the legal system. In this position, the color of the law will depend on the color of the law enforcer or legal culture (legal culture) which is dynamic and constantly changing and directed in line with the behavior or culture of the officer (law enforcer).

The involvement of soldiers in law enforcement is often an issue in the context of democratic countries. Soldiers are considered not to be involved in domestic security matters but should focus on external threats, whereas in the context of a democracy, the problem does not lie with civilians or soldiers, but with accountability mechanisms. History has proven that authoritarianism is not only the dominance of the army, but the dominance of any government regime that does not implement checks and balances, whether civilian or military. This should be the focus of the problem. In addition, law enforcement authority is also not limited to the area of civilian authority which is only given to the police as a representation of state authority that gets authority from the law, but the police function in general can be given to the military which functions as law enforcement officials as described in the UN Code of Conduct for Law Enforcement as follows;

"(a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services."

In the explanation of Article 1 of the Code of Conduct for Law Enforcement, it is clear that what is meant by "law Enforcement Officials" includes elected or appointed law enforcement officers who are authorized to make arrests and detentions. Furthermore, it is also possible for such law enforcement officials to be assigned to military forces authorized to police as long as such forces are subject to and comply with the provisions of the Code of Conduct. So the key word lies in obligations and responsibilities, and not on the boundaries of civilian or military. The police in the context of the UN code of conduct is emphasized on anyone, whether uniformed or not, as long as he is given the authority by law to enforce the law, especially in which there is inherent authority to make arrests and detention or various other efforts against the will of people suspected of violating the law, then he is a police officer, or has the authority to carry out policing duties. This is the indicator, so it is not because of the uniform or the label attached to it that can be measured from how the accountability process is in the context of legality, necessity and proportionality.

## **RESEARCH METHOD**

This brief study is limited to the possibility of involving the Indonesia National Army (TNI) as a defense force that has the potential and relevance of tasks to participate in tackling transnational crime. This study will employ a qualitative research design, focusing on a case study approach. The case study will allow an in-depth exploration of the TNI's role in countering transnational crimes within the context of Indonesian law and national security. This approach will help understand the complex interaction between military operations, law enforcement activities, and legal frameworks in tackling transnational crime. A purposive sampling method will be employed to select interview participants. Key individuals with experience and expertise in military operations, law enforcement, and transnational crime will be targeted. Cases for observational data will also be chosen based on relevance to the research objectives.

## **RESULT AND DISCUSSION**

### **ABRI, the New Order and the Discourse on Military Involvement**

Since the end of the New Order, which began with the famous 1998 riots, the role of the TNI has become a very interesting issue because the TNI, which at that time was still referred to by the abbreviation ABRI (Armed Forces of the Republic of Indonesia), was considered to have a role in supporting the government and at the same time being the main tool in sustaining the New Order. Since then there have been various urgent efforts to separate ABRI from practical political activities and various civil society activities. The military was asked to return to the Barracks, and the result was the separation of Polri from ABRI, and ABRI changed its designation to TNI. In addition, the program that during the New Order was so vigorous in succeeding government programs, namely the Dual Function of ABRI, was abolished and there was practically a significant separation between the National Police which handled domestic security issues and the TNI which was

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responsible for blocking threats from outside, namely being responsible for the defense sector. There is a kind of barrier of responsibility that looks so real and firm. Efforts from civil society in order to encourage the military to return to the barracks continue to strengthen so that military involvement in civilian issues or other non-military issues is always suspected and almost considered taboo and considered an effort to "military come back." One clear example of the fear of the return of the military regime is the presidential regulation on the role of the TNI in eradicating terrorism, which has not yet been ratified. The draft Perpres has been approved and signed by the TNI Commander and the National Police Chief, but until now it has not been ratified and promulgated, even though the Perpres is a mandate from Law No. 5 of 2018 concerning the eradication of criminal acts of terrorism which has been passed and promulgated since 2018, 6 years ago.

The election of Parbowo Subianto, who is part of the New Order regime, is a reflection that despite various allegations of fraud from other contestants participating in the election, it could be a reflection of the will of the majority of the Indonesian people who want the former Kopassus Danjen to lead Indonesia. Especially in the midst of an increasingly uncertain global situation characterized by the failure of International Law to prevent arbitrariness from one country to another, a strong leader with a military background is expected to be able to place Indonesia's position at a respected level in the eyes of the international community. In the midst of this uncertain global situation, military power with its various resources and capacities can be used for any purpose as long as it is within the corridor of accountability based on legality, necessity and proportionality for the benefit of state resilience from possible threats that come both from outside and from within the country including the possibility if cross-country crimes are used as a proxy by other countries to disrupt the stability of security and resilience of the Republic of Indonesia.

Transnational crimes can be committed by a structured organization with strong funding that allows transnational crimes to be used to carry out structured attacks by utilizing existing resources. In addition, it is possible that transnational crimes are designed in such a way or engineered to become large and defeat the strength of state management institutions, for example by involving state authorities through corrupt practices that make these management institutions unaware that they have carried out activities or practices that endanger the state, by accepting bribes or a number of certain privileges so that they either directly or indirectly back up illegal activities such as narcotics smuggling in very large quantities, for example. This is clearly very dangerous, because narcotics, especially with very large quantities, must have a very significant impact on the mindset of the people who consume them. Not to mention the competition between crime groups that can disrupt public security and the loss of public trust in the security forces, which then leads to distrust of the state. An unstable society with low trust in the state will easily accept provocations from any party that wants the collapse of the state system.

The large amount of narcotics circulating in the community will have an impact on the use and abuse among the community, especially young people who are looking for their identity. Young people as the next generation of this nation will lose their direction and focus on the future because their mind system has been "poisoned" with dangerous chemicals that attack the brain's nervous system and affect their thoughts and behavior. They will be distracted from their responsibility that they are the generation that will continue development in order to keep this nation and country existing and developing into a developed country that succeeds in improving the welfare of its citizens. A large population with a qualified young

generation will enable the achievement of a demographic bonus, but a large population with a young generation damaged by drugs is a demographic disaster.

Transnational crime most likely involves a strong organization with a very strong budget or financial system, so the potential damage or loss caused by transnational crime groups in a country will be very serious. What's more, if it is possible that transnational crime is used by other countries as a proxy, for or with a specific intention of attacking or weakening the country, then the impact will be very fatal because the country being attacked or targeted is not aware of the attack from another country. Transnational crime used as a proxy can cause the collapse of a country as happened in Latin American countries and eastern European countries where state organs are almost dysfunctional when facing criminal organizations such as cartels or mafia. Making a state subject or colonized in a non-physical way by utilizing vulnerabilities or utilizing elements that can be created or already exist from the beginning (in place), will reduce the risk of loss or the risk of mobilizing large resources compared to using conventional attacks as practiced by Russia against Ukraine and Israel against HAMAS (Palestine), we can see that the conflicts that are still ongoing today must be very costly, in addition to having to sacrifice the lives of their respective citizens who are forced to serve their country in order to show loyalty to the state (government / regime). Whereas it is possible for Russian citizens and Ukrainian citizens to have personal friendship or fraternal relations either by blood or marriage. Likewise between Israeli citizens and Palestinian Arabs may individually and personally have a good relationship, but for the sake of the country they must face each other and even kill each other.

The risk of using large resources may still be taken by Russia and Israel, especially if they get support from their allies either in the form of weapons or aid and training funds. However, other risks such as being condemned within their own country by anti-war citizens as well as condemnation from the international community are risks that not all countries dare to take. In addition, it is possible that the leader of a country or state apparatus that carries out a physical attack against another country (aggression) may receive the consequences of being designated as a criminal of humanity or other crimes according to international law.

#### **Role of TNI in Law No. 34 Year 2004**

Law No. 34 of 2004 concerning the Indonesian National Army (TNI), clearly regulates the possibility of TNI involvement in tackling Transnational Crimes. The law clearly states that the Indonesian National Army is a means of defense of the Unitary State of the Republic of Indonesia, which is in charge:

1. implement national defense policies to uphold state sovereignty,
2. maintain territorial integrity, and protect the safety of the nation,
3. conducting military operations for war and military operations other than war, and
4. actively participate in regional and international peacekeeping duties.

For this reason, the TNI is built and developed professionally in accordance with the political interests of the state, with reference to the values and principles of democracy, civilian supremacy, human rights, national legal provisions, and ratified international legal provisions, with the support of a state budget that is managed in a transparent and accountable manner. So the possibility of military involvement in this case the TNI is very possible as long as it refers to the predetermined requirements, namely in accordance with the principles of law both national and international law. And an important point that must be noted is the use of the budget that must be managed transparently and accountably, so that the use of the budget also fulfills the requirements of checks and balances as a consequence of a demo-

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cratic country. Regarding military operations other than war, TNI duties include:

- a) addressing armed separatism;
- b) tackling armed insurgency;
- c) addressing acts of terrorism;
- d) securing the border region;
- e) securing strategic national vital objects;
- f) carry out the task of world peace in accordance with foreign policy;
- g) securing the President and Vice President and their families;
- h) h) early empowerment of defense areas and supporting forces in accordance with the universal defense system;
- i) assisting government duties in the region;
- j) assisting the Indonesian National Police in the context of security and public order tasks regulated by law.
- k) help secure head-level state guests and foreign government representatives who are in Indonesia;
- l) helping to mitigate the effects of natural disasters, refugees, and the provision of humanitarian assistance;
- m) assisting search and rescue in accidents; and
- n) assisting the government in securing shipping and aviation against piracy, piracy and smuggling.

Related to this, in the mission of the National Medium-Term Development Plan (RPJMN) in the defense sector, there is a government program to:

- a) Build TNI strength to exceed the minimum essential strength and be respected in the region and internationally;
- b) Strengthen the ability and improve the professionalism of the National Police to protect and nurture the community; prevent crime, and resolve criminal acts;
- c) Building the capabilities of state intelligence and counter-intelligence agencies in the creation of national security; and
- d) Improve the readiness of reserve components, defense support components and the contribution of the national defense industry in the universal defense system.

#### **Operationalization of TNI's Role**

At the operational level, the mission has been translated into the 2015 Sapta Cita Principles of TNI leadership policies, which include:

- a) First, strengthening the capacity and capability of TNI intelligence.
- b) Second, optimizing TNI operations management and interoperability.
- c) TNI operations unit.
- d) Third, improving the competence and welfare of soldiers
- e) TNI.
- f) Fourth, build TNI logistics interoperability.
- g) Fifth, improve the role and territorial duties of the TNI.
- h) Sixth, optimization of TNI's assistance tasks and
- i) Seventh, building institutional synergy between TNI and
- j) government and non-government institutions.

With the doctrine of universal defense, TNI needs to develop a broad defense perspective, to take part in tackling threats to national defense in all forms, lines and levels, by working synergistically with other forces including the National Police in accordance with existing mechanisms.

The involvement of the TNI in tackling transnational crimes must be interpreted as an effort of all rights defense in the context of law enforcement that is sinergy to ensure the realization of democracy, civil supremacy, human rights, national law conditions, and ratified international law conditions as stated in the

Law of the Republic of Indonesia No. 34 of 2004 concerning the Indonesian National Army (TNI). More important than all of that, and should be a reflection of all of us is "when crime organizes itself without regard to territorial or legal boundaries, why should the involvement of the TNI in tackling transnational crimes that threaten the existence of state sovereignty be questioned? If the criminals used any resources they have why should the involvement of the military in combating transnational crimes be questioned?".

### **Discourse on TNI's role in handling terrorism**

The discourse on the involvement of the TNI in handling terrorism has been made possible by Law Number 5/2018 on the Amendment to Law Number 15/2003 on the Stipulation of Government Regulation in Lieu of Law (Perpu) Number 1/2002 on the Eradication of the Criminal Acts of Terrorism into Law.

Article 43 I of Law No. 5 of 2018 explains as follows: (1) The task of the Indonesian National Army in overcoming acts of Terrorism is part of military operations other than war. (2) In overcoming acts of Terrorism as referred to in paragraph (1) shall be carried out in accordance with the main tasks and functions of the Indonesian National Army. (3) Further provisions regarding the implementation of overcoming acts of Terrorism as referred to in paragraph (1) shall be regulated by Presidential Regulation.

The law on the eradication of criminal acts of terrorism allows full involvement of the TNI, because handling terrorism is the main task of the TNI, which is included in the tasks of military operations other than war. In the draft in which the author was involved in the formulation and discussion, it has been clearly explained what terrorism is the main task of the TNI and what terrorism is the main task of the Police. Terrorism that is the main task of the TNI is a criminal act of terrorism that has changed its nature and escalation character. Namely based on escalation so that it is beyond the ability of the police to handle it (beyond police capacity), and because of its type or nature as stipulated in Law No. 34 of 2004, it becomes the main task of the TNI in the framework of military operations other than war. Indeed, the discussion process was very tough and took quite a long time. However, finally there has been an agreement between the government and the DPR, so that the draft has been signed by all stake holders involved in the formulation and discussion. But unfortunately, until now the draft Perpres on the Role of the TNI in dealing with Acts of Terrorism has not been ratified by the government. Hopefully, with the new government resulting from the 2024 elections that have produced a new government under President Prabowo Subianto with a military background, the Perpres will soon be ratified, given the increasingly uncertain global political situation lately, where the possibility of terrorism escalating into acts of terrorism can occur at any time.

### **CONCLUSION**

Trans-national crimes with the possibility of being organized and structured, equipped with large capital and resources, can have fatal consequences and threaten the security and stability of the state. Moreover, if there are other countries that use it or deliberately make it a proxy to attack other countries, then it is possible that the impact is the paralysis of a country. Therefore, the discourse of TNI involvement in handling it is a necessity both in the form of synergy and in the context of independent operations according to the type of crime and the nature of its escalation.

7213 The issue of TNI involvement has been regulated by various instruments of

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national legislation both through the Law on TNI, namely Law No. 34 of 2024 concerning TNI and Law No. 5 of 2018 concerning Eradication of Criminal Acts of Terrorism. Even international instruments do not prohibit the involvement of the TNI in the context of law enforcement because what is meant as law enforcement officials according to the UN code of ethics is (a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. (b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services. (a) "Law enforcement officials" shall include all law enforcement officers, whether appointed or elected, who exercise police powers, particularly powers of arrest or detention. (b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by state security forces, the notion of law enforcement officials shall be regarded as including officers of such services.

The possibility of transnational crime escalating so that it requires handling involving the TNI cannot be denied, this can be seen from the increasingly uncertain global political situation. Especially if the transnational crime is used as a proxy by other countries. Therefore, it is necessary to establish an "Integrated Internal Security National Counsel" function, namely an integrated internal security function by activating existing state institutions or institutions under the auspices and controlled by the Menkopolhukam whose members consist of the TNI, Polri and related ministries whose function is to provide an assessment in what situations the handling of security, especially transnational crimes including the fields of Narcotics and Terrorism, can involve the military in full, while still considering the principles of legality, necessity, and proportionality in a measured and accountable manner. This body is not only administrative and consultative as it has been, but must be given the authority to execute the policies that have been taken with a clear lawsuit mechanism.

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