

Reconstruction of Military Authority in the Humanitarian Crisismanagement on the Perspective of Civil Society

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ABSTRACT: *The complexity of the non-traditional threats that cause humanitarian crises in Indonesia, demands the involvement of the civilian and military sectors. However, there is not a sufficient basis for military authorities to get involved. The previous studies only examined the pattern of civil-military relations without trying to reconstruct the military's authority in a review of legal certainty. This paper outlines the need for reconstruction to provide an applicable solution. This research was conducted by using library research with descriptive analysis method through data collection. In analyzing the reconstruction of the role of the military, this study uses the theory of civil-military relations based on the thoughts of Michael C. Desch and Kelsen's theory of legal certainty in the context of authority. This study finds that the reconstruction of military authority in humanitarian crises can be pursued by several alternatives, such as revising the law on the Indonesian national army, making a new special law, or making derivative regulations that already exist. The author believes that a useful reconstruction in the future is by issuing a new special law, namely the Law on Humanitarian Crisis Management. The formulation of this new law has the opportunity to accommodate new theories, concepts, and paradigms in solving humanitarian crises, particularly in realizing proportional civil-military relations. Based on these results, this study can enrich the treasures of defense studies. However, it needs to be refined with a legal drafting approach so that it can be more applicable.*

KEYWORDS –Civil Society, Humanitarian Crisis, Military Authority, Reconstruction

I. INTRODUCTION

The management of the humanitarian crisis is very dependent on the perception or perspective of the humanitarian crisis itself. This perspective is very influential in decision-making and policymaking. In Indonesia, the management of humanitarian crises relies on a non-military approach with civil institutions at the forefront of its management. These institutions include the Ministry of Social Affairs, the Ministry of Health, the Ministry of Internal Affairs, and the National Disaster Management Agency.

A humanitarian crisis is a tragic condition for a country that can occur at any time due to the dynamics of the strategic environment and the escalation of threats. Crisis management can be handled by a variety of approaches outside of the civilian approach. One of them is the approach to national defense and security. This approach is certainly more dominant in providing opportunities for involvement of military resources than social or civilian approaches.

On the other hand, after the 1998 political reform, Indonesia was very focused on developing the role of civilians in various sectors, including defense and security. Indonesia grew up with a democracy that prioritizes the development of civil society as an implication of the fall of the authoritarian regime (Purba, 2019 [1]). This is reflected in the clear separation of duties and authorities between civilian and military authorities (Sukadis, 2014 [2]).

The complexity of the forms and dynamics of threats that are developing in Indonesia, especially non-traditional threats that cause humanitarian crises such as disasters, terrorism, social conflicts, cannot be handled partially. All defense and security actors are required to be involved. Therefore, it is necessary to have a well-

organized and integrated relationship to become an interoperable system. In this context, civil and military relations will be intertwined. However, Civilians need military and vice versa in certain escalation (Nugroho, et al., 2016 [3])

To fulfill civilian needs in empowering military resources, the Indonesian government and parliament issued Law Number 34 of 2004 concerning the Indonesian National Armed Forces. The law provides a legal basis for the use of military resources for military operations other than war (Hediarto, 2016 [4]). There are 14 task areas in the operation, (1) overcoming armed separatism, (2) dealing with armed rebellion, (3) countering terrorism attacks, (4) securing border areas, (5) securing strategic vital objects, (6) engaging in peacekeeping tasks, (7) securing the President and Vice President and their families, (8) Empowering defense areas according to the universal defense system, (9) assisting regional government duties, (10) assisting the police in the task of security and order, (11) securing state guests and representatives of foreign governments, (12) assisting in dealing with natural disasters, evacuation and providing humanitarian assistance, (13) assisting in search and rescue tasks in accidents, (14) safeguarding against piracy or smugglers.

The law uses the phrase “assist” in some tasks other than war to signify the military as a supporting element. Thus, in these tasks, the civil sector becomes the main actor. However, the main problem regarding the military's authority in dealing with humanitarian crises lies not only in the substance of the law but also in the application of the law. There is a need for clarity on further regulation of the derivative regulations. The authority and role of the Indonesian National Army in military operations other than war need to be reconstructed, especially regarding the humanitarian crisis.

This study aims to reconstruct the authority of the Indonesian National Armed Forces in dealing with humanitarian crises amid the development of civil society. Thus, the authority of the Indonesian National Armed Forces will gain more legal certainty, proportionately, and prioritize humanist and democratic methods in its implementation. The problem discussed in this study is how to reconstruct the military's authority in dealing with humanitarian crises proportionally from the perspective of civil society. This study elaborates on previous research by Fauzi (2014 [5]), Nugroho (2016 [4]), Gindarsah (2020 [6]), Widyaningrum, et al (2020 [7]) and Fitri (2020 [8]), which have explained civil-military relations and their concepts. The research focuses on explaining the use of military resources in military tasks other than war in Indonesia, but no one has yet reconstructed how military authority can be carried out sustainably and legally in humanitarian crises. The benefit of this paper is that it can be a reference for the formation of a balanced policy between civilians and the military in solving humanitarian crises.

II. THE ORETICAL BASIS

2.1 Concept of Humanitarian Crisis

Researchers at the Internews institute, define a humanitarian crisis as a condition of suffering, where people's basic needs are threatened and cover a wide scale (Quintanilla, et al. 2014 [17]). In general, humanitarian crises are caused by natural and man-made factors (Ludfiani, et al., 2017 [9]). Natural factors such as natural disasters and disease outbreaks. As experienced by the community due to the 2004 Aceh Tsunami and the Covid 19 Pandemic around the world. Meanwhile, man-made factors are the cause of humanitarian crises due to social conflicts, genocide, environmental pollution, and economic crises. This crisis was experienced by the community during the Poso conflict, the East Timor conflict, etc.

Crisis cannot be handled with the usual approach. There are fundamental differences in governance during normal and emergency times. In an emergency, coordination mechanisms require speed and certainty. All parties are required to remove sectoral barriers and must focus solely on solving the crisis. Crisis management needs to be encouraged as much as possible. The key element in emergency response is not a clear and efficient chain of orders. Instead, what is needed is a unified command coordination decision-maker to ensure clarity of roles within the same frame (Banks, 2007 [16]). There is no doubt that regional heads are basic players in decision-making on humanitarian crises. But currently, more crisis knowledge is taught and trained to military personnel than civilians. This is why even though the humanitarian crisis is of a civilian dimension, it still requires some military expertise..

2.2 Authority as Applied Theory

Indonesia as a state of the law is affirmed in Article 1 Paragraph 3 of the Fourth Amendment of the 1945 Constitution of the Republic of Indonesia. The consequence of the rule of law is that all state administration must be based on positive law or statutory regulations. Included in this context is the regulation of the authority of state institutions and government agencies. Each authority requires a legal basis to the application level (Purba, 2019 [1]). All this legality is a form of constitutional legitimacy in every act of state institutions.

By definition, authority is the ability to act that is granted and justified by applicable law (Marbun, 1997 [18]). In line with this definition, Prajudi Atmosudirdjo (1981 [19]) argues that authority is formal power. Meanwhile, based on the source, authority is obtained from the division of power by the constitution (attribution) and also from delegation as a delegation or mandate (Hadjon, 1994 [23]).

These thoughts ultimately return to how legal certainty is realized. Legal certainty is the matter of stipulation of law in regulation by the holder of the competent legal authority (*bevoegde reschtsautoriet*). Positive law is a translation of *ius positum*, which means as established law, in other words, it contains an element of certainty. Riduan Syahrani (1999 [20]) explains that legal certainty in the view of legal experts contains two meanings. First, the existence of general rules makes individuals know what actions may or may not be done. Second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules, individuals can know what the state may charge or do to individuals. This thinking accommodates the theory of legal certainty by Kelsen which focuses on normative jurisprudence which is in line with positivism theory (Efendi, 2014 [21]).

2.3 Military Operations Other Than War

Theoretically, non-war operations are the use of military organizations' "idle capacity" in times of non-aggression. The involvement of the military in this non-war operation is in accordance with the demands of civilians who are overwhelmed by the crisis beyond their capacity (Malesic, 2015 [10]). Gindarsah (2020 [6]) divides the character of military operations other than war into three. The first is the service operation (*operasi bhakti*), this operation was carried out in a relatively stable situation as a form of social care by the military such as the provision of medical services and the distribution of health logistics in affected areas. Second, the tasks of military "assistance" are to support or sustain the capacity of civilian institutions in dealing with impacts and anticipating social risks. Military forces have special assets that are needed in a crisis, they also have the capacity to rapidly respond on a larger scale than civilian actors (Jahangiri, 2018 [24]). Third, is the deployment of military forces in the context of restoring domestic security. The character of this operation tends to be placed as a last resort to reduce the worst-case scenario in the form of a political crisis and social turmoil. Nonetheless, Simm (2019 [11]) argues that military assets are often the first to respond to disasters according to the UN's Asia-Pacific Regional Guidelines 2014.

In dealing with humanitarian crises, the military's task rests on two general regulations. The first is Law Number 34 of 2004 concerning the Indonesian National Army and Regulation of the Minister of Defense Number 9 of 2011. Both laws do not specifically explain the phrase humanitarian crisis but refer to the factors causing the crisis such as natural disasters, refugees, and humanitarian assistance. This makes military actors unable to be involved in handling humanitarian crises outside of these factors, such as humanitarian crises due to economic crises, climate crises, hunger, and social conflicts. So the way that can be taken is to impose a condition so that the regulation can be covered.

2.4 Objective Civilian Control

The perspective of civil society in this study is built on the concept of civil control proposed by Samuel P. Huntington. Sukri (2020 [12]) explains Huntington's concept of civilian control in an objective sense that maximizes military professionalism through the division of power between the military and civilians to create a conducive situation for the emergence of professional attitudes and behavior among these actors. In addition,

Huntington also said there is subjective control which is a civilian effort to regulate military policy and make the military closer to the civilian sector.

In line with Huntington's concept of civilian control, Michael C. Desch suggests that the best indicator of civilian conditions is who is more dominant when there are differences in choices or preferences between civilians and the military. If the military is stronger, then there will be a tendency for the situation to be detrimental to civilians. But if civilians are stronger, then the situation tends to be balanced for the military. In determining whether the military plays a role in the political decision-making of the people, it is necessary to identify several issues that are conflicting between civilians and the military and to show who is more powerful or dominant in the relationship.

According to this problem, Desch uses a functional structural approach by using independent variables (threats), which will affect the figure of leaders, military organizations, the state, and society when responding to domestic and international threats. Threat variables can be external (international) or internal (domestic) threats and their intensity varies. These variables will affect the three main actors in domestic threats: the military, the civilian government, and the entire society. As for external threats, it will usually lead to the strengthening of unity within the state and make everyone's attention will be focused on these threats. Internal threats will affect the character of civilian leaders, the nature of military institutions, the integrity of state institutions, methods of civilian control, convergence or divergence of ideas, as well as civil and military culture.

Civilian control over the military also needs to prioritize the principles of collaborative partnership. The management of the relationship between civil-military actors will be perfect if they can collaborate in various conditions. Ansell and Gash (2007 [13]) in their explanation of collaborative governance theory describe a new approach to governance due to public actors' awareness of their respective limitations. This awareness encourages their willingness to establish complementary relationships. This collaborative attitude raises a commitment to achieve a common goal. Although this theory basically explains the involvement of non-state actors, it can also be a framework for a better pattern of civil-military relations.

III. METHODOLOGY

This research was conducted using library research with descriptive analysis methods through data collection, which is described in detail and regularly updated. Data collection techniques through documentation are carried out through reviewing and browsing several books, journals, regulations, proceedings, and other sources of data or information deemed relevant to the research or study (Supriyadi, 2016 [14]).

In analyzing the reconstruction of the role of the military, this study uses the theory of civil-military relations based on the thoughts of Michael C. Desch and Kelsen's theory of legal certainty in granting authority. In Desch's view, civilian control is not only needed to maintain domestic liberties, but civil control also results in better national policies, because civilian leaders are less rigid and have a broader perspective on defense issues. Desch's opinion is reinforced by the view of Stanislav Andreski who concludes that external threats will make the military work (Sukri, 2020 [12]). Meanwhile, Kelsen's legal certainty emphasizes the importance of the normative juridical aspect of authority.

IV. DISCUSSION

The 1945 Constitution of the Republic of Indonesia is a convention of the Indonesian nation which is strictly adhered to by all Indonesian citizens. The 1945 Constitution is the highest law in the regulatory hierarchy in Indonesia. The 1945 Constitution also legitimizes the sovereignty of the Indonesian nation which has binding power and has implications for all sectors of the life of the nation and state. One of the most important parts of the 1945 Constitution is the purpose of the State of Indonesia, one of which is to declare the protection of the entire Indonesian nation. This goal is a form of protection responsibility. Marelda (2011 [15]) asserts that the concept of responsibility is a form of protection of human rights without disturbing a government. Furthermore, the United Nations has also formulated the principles of the responsibility to protect, including the responsibility of each country to protect itself, the principle of stating the commitment of the

international community to crimes against humanity, and the principle of preventing and responding appropriately to crimes against humanity (Ludfiani, 2017 [9]).

The policy of protecting the lives of every Indonesian citizen as one of the security sector issues needs to adapt to the development of the paradigm. In the last decade, security sector issues have become part of global governance issues along with democratization, human rights, and environmental issues. The widespread public attention to security issues has created a new paradigm for the defense and security sector in a wider spectrum of development. First, this paradigm focuses on the defense sector which emphasizes human security more than territorial security. Second, this paradigm is integrated with the interests of sustainable development, so it is no longer a militaristic style (Sudjito & Eko, 2002 [22]). Purba (2019 [1]) also emphasizes the importance of the concept of defense and security which focuses its functions on civilian authorities based on a more humane deployment of military resources. This is once again an implication of Indonesia's reform ideals which position the military in the corridor of the national legal order where strength building, capacity building, and operation implementation are based on the legal umbrella decided by the civilian authorities.

This paradigm shift implies that there is a change in the understanding and scope of the military's role in the context of democratization. National defense is no longer a special field, but must be integrated into the development agenda to achieve people's welfare. In other words, the security approach must be combined with the prosperity approach. State defense affairs which are handled with a militaristic or repressive approach through the use of weapons are no longer relevant because they will contradict the orientation of the people's welfare to be achieved.

Based on the explanation above, the response to humanitarian crises, whatever the causal factors, must prioritize a humanist approach. The humanist approach means that crisis resolution must give the survivors the widest possible freedom to fulfill their needs. This is a form of acknowledgment of the dignity of the survivors as whole human beings. On the other hand, efforts to resolve humanitarian crises need flexibility and transparency of information so that survivors can comfortably make decisions in times of crisis. The humanist approach in humanitarian crises should not be intimidating, coercive, and violent. This concept is also contrary to repressive or militaristic ways that tend to limit freedom and openness. This approach needs to be adopted by military actors when involved in humanitarian missions.

Countermeasures humanitarian crisis in Indonesia is regulated in a separate law. The substance of a humanitarian crisis is described in terms of emergency conditions, crises, or disasters due to certain factors that cause community suffering. Humanitarian crises due to natural disasters, social disasters, and man-made disasters are handled through Law no. 24 of 2007 concerning Disaster Management. Humanitarian crises due to radioactive exposure are regulated by Government Regulation No. 33 of 2007. Humanitarian crises due to social conflicts are regulated in Law No. 7 of 2012 concerning the Settlement of Social Conflicts. The humanitarian crisis due to the food crisis is regulated in Law Number 18 of 2012 concerning Food. Humanitarian crises due to health are regulated in Law Number 6 of 2018 concerning Health Quarantine. Finally, the humanitarian crisis due to the destructive power of water and drought is regulated in Law Number 17 of 2019 concerning Water Resources.

The military's involvement in resolving humanitarian crises is only stated in the Law on the Resolution of Social Conflicts. In the explanation section of the Law, it is underlined that the urgency of the issuance of Law no. 7/2012 has a perspective that avoids militaristic and repressive approaches. Therefore, in its control structure, civilian authorities have a dominant role with the assistance of military authorities. However, under certain conditions the conflict turns into an armed threat, it will automatically use another law that nominates the military as the leader of its sector.

Unfortunately, apart from the Law on Social Conflict Resolution, the involvement of the military is not written explicitly even in the Law on Disaster Management. Some of these laws assign responsibility for crisis control to civil authorities through local governments. Specifically for radioactive risk, the responsibility is handed over to the license holder and in coordination with the Nuclear Energy Supervisory Agency. The author views that there is no explicit role of the military in the law because civilian authorities are assumed to be able to resolve the humanitarian crisis due to these factors.

It should be understood that the role of military operations other than war, especially in humanitarian crises, is an important task as assistance. This assistance task is based on two arguments. First, the national defense cannot be separated from the successful implementation of tasks in other fields. For example, even though natural disaster management is the responsibility of the national government and local governments, deadly mass disasters can pose a threat to the safety of the nation. Second, the military has adequate personnel and equipment resources. Of course, the equipment was not only war equipment, but also transportation equipment, heavy equipment, emergency tents, and logistics supply equipment. These resources can be used in addition to war and are needed to help the community at certain times, such as when facing a disaster. So it is concluded that military involvement, for this reason, is needed in times of crisis.

Reconstruction of military authority in dealing with humanitarian crises can be done through three alternatives. First, through the revision of the substance of the legislation, particularly in Article 7 paragraph 2 letter b number 12 of Law 34/2004 concerning the Indonesian National Army. Second, formulating military authority in implementing derivative regulation or even making a special law. These two alternatives must pay attention to other laws regarding conditions that allow military assistance tasks. Third, issue implementing regulations that are derivatives of existing laws.

Of the three alternatives, the author tends to choose to formulate military authority in humanitarian crises in a special new law. The basic reason for the need for reconstruction in the form of new regulations is that No. bridge can synchronize the Law on the Indonesian National Armed Forces with the law governing emergencies, crises, and disasters. This is because revising several laws at one time will require more time. On the other hand, making a new law that is more specific is seen as having stronger legal legitimacy. To write this paper, reconstruction through the formulation of a new law is expected to achieve legal certainty, performance proportionality, and also a humane approach to crisis management from the perspective of civil society. The making of this new law is at the same time the culmination of previous studies that have focused on the search for civil-military relations.

The legal certainty resulting from the special law on the resolution of humanitarian crises will become the legal umbrella for military involvement in humanitarian operations. This special law is designed to accommodate all the interests of crisis resolution by regulating civil-military relations that are clearer and more proportional. The law for solving humanitarian crises will complement and strengthen existing laws so that the law can be implemented both at the national and regional levels.

The law on resolving humanitarian crises needs to regulate the balance of the roles of the civilian and military in conditions that threaten the survival of people's lives. The authority of each actor is given according to the needs and the scale of the threat that occurs. According to Michael C. Desch's theory of civil-military relations, in conditions of humanitarian crises due to internal factors (domestic conflicts, disasters, and crises of basic needs), the role of civilians becomes more prominent. However, when the humanitarian crisis is influenced by foreign or external threat factors, the military should have a more prominent role, even though it remains in civilian control. The categorization of humanitarian crises and the required actors must be clearly and firmly defined to avoid overlapping powers. On the other hand, the law on the resolution of humanitarian crises is not used to form new agencies, because in this case, civil actors are simply left to the national government or local governments. While military actors are left to the regional military authorities only.

In addition, the civil-military relationship model in this law needs to accommodate the concept of collaborative governance. Partnership opportunities between civilians and the military will only occur if each actor has an equal position. The urgency of this arrangement is solely to provide convenience in giving commands in the field during a crisis. Gaps in terms of rank can be a problem of coordination between parties. Civilian actors who do not have a prominent rank culture need to adapt to military actors who are very accustomed to a hierarchical culture. On the other hand, other concepts that can complement the reconstruction of military authority in this law are forms of collaboration, deployment of military resources, data management, and crisis communication.

This law is not meant to belittle the role of the military, but instead provides legitimacy for military involvement. The role of the military that needs to be stated in this law is the mechanism for mobilizing military

resources in solving humanitarian crises. Meanwhile, the command mechanism and the settlement strategy are mandated to the civil authorities. This law will also emphasize that military operations in situations of humanitarian crises must be in line with the methods of handling civil emergencies, where the civil emergency is a condition of suffering for the people, not because of armed actions. Therefore, the approach emphasized in the body of the law is based on the principles of being independent, impartial, interoperable, neutral, transparent, friendly, and on target.

V. CONCLUSION

Based on the results of the discussion above, the conclusions regarding the reconstruction of military authority in humanitarian crises from the perspective of civil society are as follows:

1. That the reconstruction of military authority in humanitarian crises is needed as an elaboration of the existing civil-military relations study. On the other hand, the reality is that military involvement is only regulated in the Indonesian National Armed Forces Law and the Law on Social Conflict Resolution. Meanwhile, in-laws containing emergency clauses or humanitarian crises, such as the Disaster Management Law, the Food Law, the Radioactive Radiation Protection Act, the Water Resources Law, and the Health Quarantine Law, there is no clause on military involvement at all. This is an obstacle to the legal certainty of military authority in the context of a humanitarian crisis.
2. This reconstruction can be pursued in several alternatives, such as revising the Law on the Indonesian National Army, making a new special law, or making derivative regulations that already exist. The author believes that a useful reconstruction in the future is to issue a new special law, namely the Law on Humanitarian Crisis Management.
3. The formulation of this new law has the opportunity to accommodate new theories, concepts, and paradigms for resolving humanitarian crises, especially in realizing proportional civil-military relations. On the other hand, the Law on Humanitarian Crisis can be a bridge between the Law on the Indonesian National Army and other laws. Furthermore, this law will also give more legitimacy to the military's authority in military operations other than war.

This paper has theoretical implications that enrich the study of the military's role in humanitarian crises from the perspective of civil society. Another implication is that this paper has succeeded in finding an applicable solution in reconstructing the military's authority in humanitarian crises from the perspective of civil society, where the re-construction can be realized in a special Law on Humanitarian Crisis with the principle of civil and military balance. However, this paper still has limitations in terms of analysis of the technical approach to legal drafting because it focuses on substance. Therefore, the authors suggest that further research can provide a study from the perspective of drafting legislation.

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