

The Necessity of the Independent National Security Law for The Republic of Indonesia.

Newman Sango¹, Ichsan Malik², I Gede Sumertha KY³

^{1, 2&3} *Peace and Conflict Resolution, Faculty of National Security, Indonesia Defense University*

ABSTRACT: *The Republic of Indonesia has a mandate like any other sovereignty state to provide national security to its citizens the security includes; the welfare of citizens, security of sovereignty, and the territorial integrity of the country, sustainability of national development to all threats. Currently, the country does not have a National Security Act but it has got a bill that is still to pass through the lawmaking process. The National Security Bill was first drafted in 2007 and has up to now not yet been passed through to be an Act of law. Various reasons for the failure of the Bill to succeed through the stages of law-making are discussed in this paper. The necessity to have the National Security Law in Indonesia is discussed in the house of the assembly and by various researchers, academics, and many others. All the other laws that are being used in place of the National Security Law are not covering all the areas concerning national security, they are concentrating on their sectorial only. In this paper, it is suggested that the Sishankamrata doctrine should not only focus on military threats but to include all non-military threats or multi-dimensional threats. There is a need for National Security Law in order to cover all these multifaceted threats.*

KEYWORDS: *Bill, Indonesia, National security, threat.*

I. INTRODUCTION

The Republic of Indonesia (NKRI) guarantees safety, peace, and the welfare of citizens, societies, and nations, safety of sovereignty and the territorial integrity of the country, as well as the sustainability of national development of all threats. The improvement of the present-day strategic surroundings has created a complexity of threats affecting national protection (Crush, 2015). This requires the nation to have the capacity to deal with these developments and changes well. The authorities as a stakeholder desires for modifications in traditional threats that lead to military threats, then shift to multidimensional threats such as terrorism, radicalism, separatism, armed insurgency, natural disasters, disease outbreaks, theft of natural resources, cyber-attacks, narcotics trafficking, and other threats that can interfere with national interest(Suntana, et al, 2021). Thus, efforts to understand national security can no longer be astand-alone, but national security ought to also be considered quintessential to a number of components of nationwide and nation life, particularly ideology, politics, economy, sociological, culture, defense, and security.

The existence of the National Security Bill is a phase of the politics of regulation in order to create legal and legislative policies which as a complete is an attempt to recognize beliefs and goals national in the framework of national interests. Broadly speaking, the policy in the form of grand design: plan solutions to deal with security hazards which is multidimensional or systematically comprehensive, comprehensive, fast, precise, complete, unified, coordinated, and democratic, and keep away from the effect of being slow, late, fragmentary, sectorial, and lack of coordination(Djuyandi, 2016).

Although, there are numerous laws and guidelines that regulate associated to the implementation of national security such as Law Number 6 of 1946 concerning the State of Danger, which then was repealed by Law Number 74 of 1957. The State of Danger, PP No. 16 of 1960 concerning Requests and the implementation of Military Assistance is also a technical law born Post-Reformation such as Law Number 2 of 2002 regarding the Police, Law Number 3 of 2002 concerning State Defense, Law Number 15 of 2003 concerning Eradication of Acts Criminal Terrorism, Law Number 34 of 2004 regarding the TNI, Law Number 24 of 2007 concerning Disaster Management, Law Number 14 of 2008 concerning Openness Public Information, Law Number 35 of 2009 concerning Narcotics, Law Number 17 of the Year 2011 concerning Intelligence and Law Number 7 of 2012 regarding Conflict Handling Social.

However, the law is nevertheless sectorial, overlapping each other, and running separately from the strong sectorial ego interests. This situation causes the ineffectiveness of dealing with quite a number of issues or the threat of national security remains weak. Thus, in 2011, President of the Republic of Indonesia Susilo Bambang Yudhoyono brought the National Security Bill as the parent of the security administration law of the entire nation. However, in 2012, this National Security Bill got many execs and cons so it was returned back to the government in 2013. Due to the urgency of the national security law that supports protection balance and awaiting threats, this National Security Bill is once more sought to enter on Prolegnas 2016. Even so, there are many issues and public fear chiefly of a repeat of human rights violations which were experienced during the New Order era and other social conflicts, making this National Security Bill fail to enter in Prolegnas 2016 (Jacqueline, et al, 2017).

The dynamics of the development of the strategic environment always have an impact, this is the fundamental reason for countries to review and assess the development of the strategic environment both in the global, regional, and national scope so that countries can formulate the right strategies and policies. Therefore, the National Security Bill (RUU Kamnas) emerged to optimize efforts to counter the growing threats. In addition, the National Security Bill can also provide guarantees for the protection and certainty of the national security of the Indonesian nation. However, there are some people who do not agree with the National Security Bill being passed because it will return Indonesia to the new order era which makes the army very strong (Rifai, 2015).

This is very necessary to eliminate and anticipate threats to the country that may arise mainly by the President as an executive leader. The National security Law is projected to be the grand design of national security that is real in maintaining the sovereignty and integrity of the Republic of Indonesia from all threats, both from domestic as well as threats from abroad. In addition, the National Security Act was proposed for the implementation of institutional functions or defense and security institutions in Indonesia in order to increase its synergy to realize security which is essential in order to support the constitutional system. The National security Act aims to protect the interests of the people and to regulate so as not to overlap with other safety rules and place society as an important subject that plays a role in safeguarding national security (Fealy, 2016).

Behind the pros and cons and debates regarding the formation of the National security Law, basically, the National Security Law is an effort to respond to all kinds of real and projected threats to be faced by the Indonesian nation. The phenomenon of the Covid-19 outbreak has brought great momentum to realize the need for a comprehensive framework to deal with the threats facing this country.

II. DISCUSSION

A. National Security Theory

Security can be described as a condition and function where threats from other parties can be overcome by creating defenses. The ability of a nation to overcome multidimensional threats to the well-being of its people

and its survival as a nation-state wherever granted time, by balancing all the instruments of state policy through government (Paleri, 2008). National security, or countrywide defence, is the protection and defence of a sovereign state, including its citizens, economy, and institutions, which is considered a responsibility of government. Originally conceived as safety in opposition to military attack, national safety is extensively understood to include also non-military dimensions, which include the safety from terrorism, minimization of crime, monetary security, energy security, environmental security, food security, and cyber-security (Trump, 2017).

Bambang Darmono defines National Security as conditions as well as functions. In this case, National Security is projected to be able to create a sense of security in a broad sense. The sense of security is detailed with a sense of peace, comfortable, serene, and orderly. This national security paradigm shift is changing the scope of management of National security which was originally more state-oriented to be people-centered security (Darmono, 2010). The stability of conditions that are not conducive can disrupt the stability of National Security and the controlled state of the country from conflict, and war to the crisis is an ideal situation for the meaning of National Security that should be realized by the synergy of all components of the country. Included are backup components that are ready to support key components in situations of conflict or war.

B. The urgency of the National Security Law

1. Philosophical Reasons

Philosophically, the existence of a state aims to create the welfare of society and the national security of its country. It is these two basic goals that the founders of the nation formulated in the Preamble to the 1945 Constitution as national goals. In this goal, it is emphasized that the state protects the entire nation and all Indonesian bloodshed, promotes the general welfare, educates the life of the nation and all spilled blood of Indonesia, and participates in carrying out world order. Therefore, to realize these national goals, the state has two obligations which are at the same time the reason for the existence of the state in terms of the aspect of the social contract between individuals and society, namely ensuring the security and welfare of the community. Thus, national security is one of the pillars of the existence of the state (Eko, 2015).

In response to various security concepts, contemporary security no longer only views that security is solely to deal with military aggression from outside, but also concerns other dimensions of security more broadly (Hikam, 2018). According to a security expert, Barry Buzan, the security sector is divided into five areas; military, political, environmental, economic, and social. The military approach means only one of them in the national security system. The role of the military focuses on the capabilities of defense agencies, threat assessment, and others. Meanwhile, socio-cultural and religious relations are necessary for understanding the dynamics of threats and the interaction of security factors. In addition, security in the narrow sense is only viewed from the point of view of the State (state security), with the assumption that if the people prosper (a state of the full stomach), security will be created.

Meanwhile, security in a broad sense, by looking at various dynamics of security issues changes the concept of national security from being only state center security to people-centered security. Consequently, security becomes a comprehensive security and security management that requires cooperation between security actors and agencies. In this context, national security is interpreted as a basic need to protect and safeguard the national interests of a nation by using political, military, and economic forces to deal with threats both coming from within and outside the country. This view supports the argument that national security in democracies generally includes State security, public security, and human security (Mukhtar, 2017).

The above idea of philosophical reasons is tried to be answered by the National Security bill by looking at the security aspect from a holistic point of view. Article 5 which contains the scope of National Security includes human security, public security, internal security, and external security (Hikam, 2018).

2. Sociological Reasons

Sociological motives so imperative involving people's accessibility to the national security regulation between them can commence with an attempt to equalize perceptions of the definition of national security and aspects to make it happen. In simple terms, perhaps it can theoretically refer to the etymological means of language or refer to the meaning of security as once tested in a variety of laws and regulations. This thinking can be supplied to human beings through the institutionalization of aspiration networks so that a factor of agreement is determined for views on security and aiding aspects (Leffler, 1992).

This is important to depart from the sociological fact that the Indonesian nation is very plural which is very likely to give birth to different perspectives. The safe conditions for certain cultures and tribes, for example, are not necessarily the same in different cultures and tribes. Also the meaning of threat, orderly, anarchist, sanctions, and a number of other concepts closely related to security. All must be sought for commonality so that the meaning that develops in the cognition of people is the same; at least almost the same; at least it didn't cause a misunderstanding of meaning.

These concepts can be the substantive material of national security legislation while positioning the people, not citizens as subjects. During this time, many laws and regulations, have always put people who deserve to be regulated, people who deserve to be blamed, and people who deserve sanctions. Meanwhile, the Government has always been a source of truth, authorizing blame and imposing sanctions. However, when a country has a pillar of democratic state organizing, the theory of "The Voice of the People's Voice of God" is very likely to be used as a reference rather than the voice of the ruler representing God. Therefore, it is the people who are the source of the "truth"; the people deserve the blame and impose sanctions.

However, no matter how good the concept is, it is like a message that cannot stand alone. Messages depend on a communication model bound in systems theory. The success of messaging is largely determined by other aspects of the communication model. For example, in Aristotle's most classical communication model, the success of messaging is largely determined by the existence of a good communicator and the communicator meets at least three conditions: expertise, trustworthiness, and attractiveness (Wisdom, 2011).

The national security bill drafted in 2012 in article 1 confirms that "National Security is a dynamic condition of the nation and the Unitary State of the Republic of Indonesia that ensures the safety, peace, and welfare of citizens, communities, and nations, the protection of sovereignty and territorial integrity of the state, as well as the sustainability of national development from all threats." From the substance of the Kamnas Bill above, it can be understood that this bill offers a novelty of the point of view of man as the subject of legislation.

3. Juridical reasons

Currently, Indonesia already has many laws governing national security issues. However, from the existing regulations, there is still synchrony of legal norms, which has an impact on the effectiveness of their application. There are at least nine laws that have the potential to be out of sync and even contradict the National Security Bill. Therefore the synchronization of the National Security Bill must at least be done carefully.

Laws related to aspects of national security include Law No. 3 of 2004 concerning the TNI, Law No. 2 of 2002 concerning the National Police, Law No. 3 of 2002 concerning Defense, Law No. 15 of 2003 concerning the Eradication of Terrorism, Law No. 17 of 2011 concerning Intelligence, Law No. 39 of 1999 concerning Human Rights, and Law No. 24 of 2007 concerning Disaster Management. Apart from these laws, currently, the formation of laws related to national security aspects is also being discussed, namely the Cyber Security and Resilience Bill.

The House of Representatives has a mandate given by the people to work fully in order to prosper the Indonesian people. As a representative of the people, the DPR has the authority to assess the urgency of the

National Security Bill. As long as the mission of issuing the law is really to protect the people, and strictly limit the equipment of the state to be juridical controlled, the DPR should not hesitate to issue a national security law.

C. Pros and Cons of the National Security Law

The National security Bill was first submitted in the 2007 Prolegnas by the Ministry of Defence together with the TNI Headquarters to carry out institutional arrangements in the reform of the security sector. The proposal of the National security Bill actually gives an idea that policies related to the defence and security of the existing country are still patchy, not comprehensive, and long-term. This was marked by the refusal of the National Police, institutionally, to be involved in the discussion. The existence of Law No. 3 of 2002 concerning State Defense is considered to no longer be able to overshadow various forms of threats, both from within and outside the country, as well as coordination between TNI-POLRI institutions (Safik, 2021).

The crucial issues of the National security bill which are widely criticized by various parties both from experts, academics, students, research institutions, and NGOs include; first, the scope of national security is very wide. Article 5 of the bill formulates that national security includes: a. human security; b. public safety; c. internal security; and d. external security to the outside. The formulation of this article is a rubber formulation or too broad. This Law can ensnare anyone and any problem in the name of national security. With this rubber formulation, it is feared that the provisions or statements of hatred and hostility that have been declared invalid by the constitutional court may be enforced again. This rubber formulation can also drag and ensnare the press so that it has no independence.

Second, it is related to the nature of the threat. Threats as stated in Article 1 point 2 are any efforts, activities, and/or events, both from within the country and abroad that interfere with and threaten the security of individual citizens, society, the existence of the nation, and state, as well as the sustainability of national development. Criticism of the concept of threat, among others, was put forward by Kusnanto Anggoro, that in the context of national security, the threat must be very limited, it should not be very broad, because it will cause various consequences in its implementation, especially in the context of protecting human rights. The restrictions on threats are related to threats that reek of violence. If there is no violence, then what is meant by threats, if it is normal, it can be answered by normal governance, it is not necessary for the context of legislation (Hidayat, 2017).

The third is about the purpose of organizing national security. The implementation of the national security aims to realize the safe conditions of the nation and the Unitary State of the Republic of Indonesia physically and psychically every individual citizen, society, government, and state, as well as the continuity of national development that is free from all threats (Article 3 of the Bill). The national security bill is aimed at building coordination and synergy of relations between security actors so as not to overlap and to fill the vacuum in overcoming the situation. That is, the national security bill is present as part of completing the vacancy and vacuum in the relationship between the army (TNI) and police (POLRI). That is what is often referred to as the assisting task.

Fourth, the organizers of the national security. The reason why administration of national security is only carried out by intelligence as referred to in Article 22 to Article 23, whose emphasis is to give central authority to intelligence in administering the national security. The placement of national administration only on an intelligence actor is a fundamental mistake, it should be the implementation of national security is the parties associated with the actors of the national security such as the Police, army, and intelligence according to their respective functions. Fifth is the status of the state of national security. Article 10 of this bill provides with regard to the status of the state of national security, that; "the legal status of the prevailing governance includes; a. civil order; b. civil emergencies; c. martial law; and d. war. Critics of this article include the view that the status of this state of affairs is a state when the functions of civil government have been disrupted and are not running normally.

Member of Commission I of the House of Representatives from the Democratic Party faction DR. R. AdjengRatnaSuminar said that the national security bill aims to protect the interests of the people, and does not overlap with other security rules. According to him, there are many positive benefits if the bill is no longer placing the community as an object but as an important subject that plays a role in maintaining security. The bill is projected as the 'grand design' of national security because so far each agency has run independently and the law that was born is also only for the benefit of each of those agencies. According to him, Indonesia needs an integrated law. The regulation also became the umbrella of Law No. 3 of 2002 concerning State Defence, and Law No. 2 of 2002 concerning the National Police. Also, Law No. 34 of 2004 concerning the TNI, and sectorial law concerning State Security. Referring to the Indonesia 1945 Constitution Article 30, AdjengRatna expects the national security bill to regulate coordination between relevant institutions, as well as regulate the participation of citizens in the defence and security process. It is said to be coordinated because its nature and purpose are only to coordinate related agencies without changing the structure, authority, and responsibility of each agency. According to him, Indonesia as a country of law and a large country should have a National Security Law.

Al A'raf of Impartial assessed that the people rejected the National Security Bill because the substance contained in the draft, drafted by the government was considered dangerous. The national security draft bill has the potential to return the atmosphere to Orba's reign when the army had relatively large authority (Arifin, 2012). He considered that the agenda of the Ministry of Defence to socialize the National security bill to the faction in the DPR was an effort to lobby not socialize. Therefore Ministry of Defence (Kemhan) must socialize with the community. The opposing view of the bill also continues on suspicions that behind the submission of the National security bill, there is the ongoing consolidation of various power groups to prepare a path to the authoritarian state system with the junta legalized through the national security law. The suspicion was raised by the Director of Communications of the Institute of Public Policy, AndarNubowo. It goes on to say that the current consolidation of power is carried out by military groups, political groups, and business forces, the purpose of which is to restore the monopoly of power by the state (Nur, 2012).

Until now, the pros and cons of whether or not the National Security Law needs to continue, although more and more people are aware of the need for a more comprehensive national security management system to deal with increasingly complex and complicated threats. The entry of the draft law on national security into the House of Representatives was immediately met with a rain of criticism, especially from non-governmental organizations that are human rights activists. They categorically rejected the national security bill and sought to build public opinion to reject the bill.

However, there are quite a lot of parties who apparently support the passage of the national security bill as an additional legal instrument for the government to maintain Indonesia's security conditions. Even the Chairman of Commission I of the House of Representatives, MahfudzSiddiq, expressed support for the Government's plan to reintroduce the national security bill into the 2015 national legislation program. However, the submission of the national security bill needs to be revised again, especially by including academic studies whose scope is more multidimensional in order to be able to classify the types of threats. In addition, the scope of the national security bill needs to emphasize who will be the leading sector, whether it is the army (TNI) or the National Police so that there is no tangent in the future.

III. CONCLUSION

From the explanation above, the return of the text of the National Security Bill to the government by the DPR can be broadly identified as 2 things. First, there is anxiety (phobia) of overlapping jobs by security agencies, especially the TNI such as the New Order. Second, there is an institutional "defence" and "security" dichotomy. In this case, defence is the responsibility of the TNI and Security is the duty of the National Police.

In a broader context, the failure to pass this bill can be understood as the sectorial ego of the relevant ministries/agencies. In this case, the TNI has been proportionally regulated in Law Number 34 of 2004

concerning the Indonesian National Army and Law No.3/2002 concerning State Defence. Similarly, diplomatic actors have also been regulated in Law No. 39/2008 on the Ministry of State and various other laws and regulations regarding foreign relations. On the other hand, the role of domestic security actors has also been regulated in Article 4 of Law No.2/2002 concerning the National Police of the Republic of Indonesia.

SUGGESTION

The development of traditional security issues that prioritize military strength to contemporary security that requires cross-sectorial synergy should be understood as urgency to realize the purpose of the establishment of the Republic of Indonesia as stated in paragraph IV of the 1945 Constitution. The Sishankamrata doctrine, which has only been developed to deal with military threats, must be manifested into broader aspects of defence and security. Thus the National Security Bill should be institutionalized. If indeed many articles are problematic as described in the previous section, this is the duty of the House to review and refine, not reject.

In addition, the expansion of the security agenda that forms comprehensive security that involves not only the military sector but also the environment, economic, social, and political, has the political reality of the need to integrate various national forces and connect them with each other to create national security. Thus, to pursue comprehensive security, the key lies in cross-cutting management. This understanding leads us to a multi-faceted approach that recognizes the complexity of a security problem or threat and considers every aspect of handling a crisis coherently.

The phenomenon of the Covid-19 outbreak has brought great momentum to prove the need for a comprehensive security framework to deal with these multi-faceted threats. Therefore, the National Security Law is proposed to create synergy in the implementation of institutional functions between ministries and defence and security institutions in order to realize comprehensive security involving cross-sectorial management. The existence of the National Security Law can then legitimize the establishment of a National Security Council consisting of experts from each Ministry and experts outside the government to design a national strategy design in responding to national security threats such as the Covid-19 outbreak.

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