

# RECONSTRUCTION OF THE AUTHORITY OF THE INDONESIAN NATIONAL ARMY IN CONNECTION WITH THE ACTION OF TERRORISM FROM A STATE DEFENSE PERSPECTIVE

Khairul Anwar Mandailing  
Doctor of Criminal Law, Pasundan University

Jl. Sumatra 41, Kel. Babakan Ciamis Kec. Sumur Bandung, Bandung City, West Java Province  
khoirulanwar8357874@gmail.com

## Abstract

The involvement of the Indonesian Armed Forces in countering terrorism has been debated among the public due to the concern about a shift from a criminal justice model to a war model in Indonesia's counter-terrorism mechanism. However, military involvement is possible through a military operational framework other than war. However, in Indonesia, there is no technical mechanism for this assistance. This is especially crucial in a conflict area such as Papua, which requires the involvement of the Indonesian Armed Forces in its resolution. It is in this regard that this research is conducted. This research examines how the reconstruction of the authority of the Indonesian Armed Forces related to the prosecution of acts of terrorism is seen from the perspective of state defense. The research applied a qualitative approach with an analytical descriptive method. The data were articles on laws and regulations related to countering acts of terrorism, the duties and functions of the Indonesian Armed Forces, and other relevant sources. The data collection instruments used are document analysis and interviews. Data analysis used the qualitative juridical method. This research resulted in several conclusions. First, the implementation of the authority of the Indonesian Armed Forces in countering acts of terrorism is not explicitly stated in the Indonesian Armed Forces. However, the implementation of the roles, functions, and duties of the Indonesian Armed Forces contained in the Indonesian Armed Forces' Law makes the authority of the Indonesian Armed Forces in prosecuting acts of terrorism explicit in the Indonesian Armed Forces Law, namely as part of military operations other than war. Second, the concept of reconstruction of the authority of the Indonesian Armed Forces is carried out by transforming the authority of the Indonesian Armed Forces, which was initially implied in the Indonesian Armed Forces Law, into an explicit one. This reconstruction can be done by revising the Indonesian Armed Forces Law itself or can also be implemented in the implementing regulations of the Indonesian Armed Forces Law in the form of presidential decrees or presidential regulations.

**Keywords:** Authority of the Indonesian Armed Forces, Terrorism, State Defense.

## A. Introduction

The sovereignty of a state concerns the legal control of a territory, so the sovereignty of the state territory becomes an absolute prerequisite for the existence of a state. As explained in the preamble of the 1945 Constitution of the Republic of Indonesia, which states that the Indonesian State protects the entire Indonesian nation and the entire Indonesian blood spill and advances the general welfare, educates the nation's life, and participates in implementing world order<sup>1</sup>. Thus, the strategic importance of the sovereignty of the State of Indonesia is essentially the realization of the implementation of a state

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<sup>1</sup>UUD RI 1945, Alinea 4 Pembukaan UUD NRI 1945.

that can maintain the territorial integrity of the Unitary State of the Republic of Indonesia and the safety of the Indonesian people from threats, interference, obstacles and challenges both from within and from abroad. One of the threats that endangers the sovereignty of the Unitary State of the Republic of Indonesia at this time, if not quickly anticipated in its resolution, is non-state actors such as the Free Papua Organization group movement calling itself the West Papua National Liberation Army.

Papua and West Papua provinces are granted special autonomy within the framework of the Unitary State of the Republic of Indonesia. In these areas, the West Papua National Liberation Army group is an organization that often causes security disturbances. It is a problem that continues to be in the spotlight and public attention nationally and internationally. This condition is also due to the interests of various parties in the Papua region, which has abundant natural resource potential and has not been maximally explored. The problems caused by the West Papua National Liberation Army movement can, at any time, develop into vertical conflicts that can threaten the sovereignty of the Republic of Indonesia. Until now, there have been security disturbances from the West Papua National Liberation Army of Papua, one of the unsolved national problems.

The emergence of the term armed separatist criminal groups, called terrorists since April 29, 2021, will undoubtedly trigger the disintegration of the nation, which disrupts national stability, so countermeasures are needed through "Management of national resources for national defense which aims to transform human resources, natural resources, and artificial resources, as well as national facilities and infrastructure into national defense forces so that they are ready to be used for national defense purposes". Indonesian Armed Forces, as part of national resources, have the main task of upholding the sovereignty of the state, maintaining the territorial integrity of the Unitary Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and protecting the entire nation and the blood of Indonesia from threats and disturbances to the integrity of the nation and state. Indonesian Armed Forces must always be ready to face all threats, especially those that threaten and endanger the sovereignty and territorial integrity of the Unitary Republic of Indonesia. The involvement of the Indonesian Armed Forces in dealing with terrorists as assistance to the Indonesian National Police must be supported by all components of the nation. This is because counterterrorism in Papua has not been successful. After all, until now, the existence and activities of terrorists in Papua still exist. It must even be recognized that terrorists in Papua have the support of the community, security forces, and local government officials. The failure of counterterrorism in Papua is caused by several problems, namely the limited personnel of the Indonesian Armed Forces and the Indonesian Police personnel in the Papua region, the high social inequality in society, weak law enforcement, and the terrorists' demands for independence. These problems require good answers or solutions so that counterterrorism is successful in Papua.

It can be understood that about the handling of terrorist acts, the Indonesian Armed Forces is inappropriately positioned as a subordinate of the Indonesian National Police as referred to by the provisions of Article 41 paragraph (1) of the law on the police, namely, "In order to carry out security tasks, the Indonesian National Police may request the assistance of the Indonesian Armed Forces which is further regulated by Government Regulation." This inappropriate subordination is because the positions of the Indonesian Armed Forces and the Indonesian National Police are equal in terms of handling terrorism activities that pose a threat to state security. What needs to be examined is how the regulatory mechanism so that the Indonesian Armed Forces and the Indonesian National Police can synergize with each other; their duties and authorities do not overlap in handling acts of terrorism, thus ultimately making efforts to overcome the threat of acts of terrorism effective and efficient.

The police function in terms of prosecution against terrorism is a function of the police in terms of law enforcement, especially criminal law, so the police function, in this case, becomes part of the criminal justice system in Indonesia. Meanwhile, countermeasures against acts of terrorism were carried out by the Indonesian Armed Forces in an effort to restore the disturbed state security condition due to security chaos. In this regard, the Indonesian Armed Forces functions as a means of state defense.

Based on the description above, the goal of this research is that the action taken by the Indonesian Armed Forces against acts of terrorism is the implementation of the function of the Indonesian Armed Forces as a means of state defense. In contrast, the fact is that currently, the handling of acts of terrorism is more focused on being carried out by the police about the police function in terms of law enforcement. In a simple sentence, about the handling of terrorism, the law enforcement approach is prioritized over the national defense approach. The main component of law enforcement in Indonesia is the police, while the main component of national defense is the Indonesian Armed Forces.<sup>2</sup>

The motive of terrorism is ideological, political, or security disturbance. This is not in line with the main tasks of the police, which are maintaining security and public order, enforcing the law, and providing protection, protection, and services to the community.<sup>3</sup> The motive for acts of terrorism is more in line with the main tasks of the Indonesian Armed Forces, namely “upholding the sovereignty of the state, defending the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, as well as protecting the entire nation and the entire spilled blood of Indonesia from threats and disturbances to the integrity of the nation and state”.<sup>4</sup> Furthermore, ideological, political, or interference issues directly related to state sovereignty and territorial integrity must be eliminated. This is in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia, especially the fourth paragraph of the preamble, which is to protect the entire nation and the entire homeland of Indonesia.

Faced with the rapid development of national and international terrorism networks and actions that intersect directly with national defense and security, the role of the Indonesian Armed Forces must be increased to be ready to face every development of terrorism threats that constantly threaten the life of the Indonesian state and nation. Based on Law No. 34 of 2004 Article 7, the Indonesian Armed Forces, as a means of national defense, must overcome acts of terrorism in military operations other than war.<sup>5</sup> The involvement of the Indonesian Armed Forces in countering terrorism has been agreed in Law No. 5/2008 on the amendment of Law No. 15/2003 on the Stipulation of Government Regulation instead of Law No. 1/2002 on Eradication of Criminal Acts of Terrorism into Law. Still, the implementation of the involvement of the Indonesian Armed Forces in countering terrorism will only be outlined in a presidential regulation. The participation of the Indonesian Armed Forces in countering terrorism has been debated among the public due to the concern of shifting from a criminal justice model to a war model in counter-terrorism mechanisms in Indonesia. However, military involvement is possible through a military operational framework other than war. However, in

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<sup>2</sup> Undang-Undang Republik Indonesia Nomor 34 Tahun 2004 Tentang Tentara Nasional Indonesia, Pasal 6 ayat (2).

<sup>3</sup> Undang-Undang Republik Indonesia Nomor 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia, Pasal 13.

<sup>4</sup> Undang-Undang Republik Indonesia Nomor 34 Tahun 2004 Tentang Tentara Nasional Indonesia, Pasal 7 ayat (1).

<sup>5</sup> Departemen Pertahanan. *Buku Himpunan Perundang-Undangan Yang Terkait Dengan Penyelenggaraan dan Pengolahan Pertahanan*, Jakarta, 2005, hlm. 74.

Indonesia, there is no technical mechanism regarding the assistance tasks of the Indonesian Armed Forces.

This research is intended to find clear boundaries on countering criminal acts of terrorism that become the duties and functions of the Indonesian Armed Forces through a legal approach to provide a more substantial legal basis to ensure protection and legal certainty for the Indonesian Armed Forces in countering criminal acts of terrorism.

## **B. Free Papua Organization as a Criminal Separatist Organization**

According to the meaning of the word, separatism is the action of a person or group of people with the aim of separating themselves from a certain community or large unit (state) so that the person concerned can stand alone. In this context, standing alone means establishing one's own state. This is because separatism is always related to the existence of a state.<sup>6</sup>

According to the meaning of the word, criminality is "things of a criminal nature; acts that violate criminal law; crimes."<sup>7</sup> Meanwhile, people who commit acts that violate criminal law are called criminals.<sup>8</sup> Criminal is also defined as; "relating to crimes (violations of the law) punishable under criminal law".

The Free Papua Organization is included as a separatist movement because it has fulfilled several indicators, as mentioned by Wayan Partiana, namely separating from the existence of a country and forming a new country. In this context, the Free Papua Organization wants to separate itself from the Unitary State of the Republic of Indonesia and create a Papuan state. This will undoubtedly be very dangerous for the existence of the Unitary State of the Republic of Indonesia, so members of the Free Papua Organization must be fostered to be able to return to being obedient Indonesian citizens.

The Free Papua Organization, referred to as an armed separatist criminal group by the Minister for Political, Legal and Security Affairs, General Wiranto, 2011-2017. The Free Papua Organization emerged to oppose the Republic of Indonesia's control of Irian Jaya (now Papua and West Papua). They claim that Papua is an independent sovereign territory and wants to form an independent state and nation. From the aspect of applicable law in Indonesia, armed separatist criminal groups can already be categorized as banned organizations in Indonesia because they have the ideology to separate themselves from the Unitary State of the Republic of Indonesia.

## **C. Free Papua Organization as a Terrorist Organization**

Terrorism is generally committed by an organized group, which can be an organized transnational crime. The relationship between terrorist perpetrators and transnational crime organizations may be direct or indirect. The relationship is direct if the terrorists have certain political goals and are part of the crime organization's subsystem. The relationship is indirect if the terrorists only sell services for a fee.<sup>9</sup>

The Government Regulation instead of Law of the Republic of Indonesia Number 1 Year 2002 on the Eradication of the Criminal Acts of Terrorism does not explicitly define terrorism. Article 1 point 1 of the regulation formulates the definition of the criminal act of terrorism, which is "any act that fulfills the elements of a criminal offense in accordance with the provisions in the Government Regulation in Lieu

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<sup>6</sup> Sefridni, *Separatisme Dalam Perspektif Hukum Internasional: Studi Kasus Organisasi Papua Merdeka*, Jurnal UNISIA No. 47/XXVI/I/2003, hlm. 41.

<sup>7</sup> KBBI Daring, *Kriminalitas*, <https://kbbi.kemdikbud.go.id/entri/kriminalitas>, diakses tanggal 26 Juni 2024.

<sup>8</sup> KBBI Daring, *Kriminal*, <https://kbbi.kemdikbud.go.id/entri/kriminal>, diakses tanggal 26 Juni 2024.

<sup>9</sup> Muladi, *Kejahatan Transnational Terorganisasikan*, makalah lepas, tanpa tahun, hlm. 2.

of Law.” In this case, terrorism is only defined based on its conformity with the elements of a criminal offense in the legislation. The new formulation of terrorism is contained in Article 1 point 2 of Law of the Republic of Indonesia Number 5 of 2018 on the Amendment to Law Number 15 of 2003 on the Stipulation of Government Regulation instead of Law of the Republic of Indonesia Number 1 of 2002 on the Eradication of the Criminal Acts of Terrorism into Law; “Terrorism is an act that uses violence or threats of violence that creates an atmosphere of terror or fear on a widespread basis, which can cause mass casualties, and/or cause damage or destruction to strategic vital objects, the environment, public facilities, or international facilities with ideological, political, or security disturbance motives.” Some of the implications contained in the definition of terrorism include:

1. Acts that use violence or threat of violence.
2. The act creates an atmosphere of terror or widespread fear.
3. Actions that cause mass casualties.
4. Actions that cause damage or destruction of strategic vital objects, the environment, public facilities, or international facilities.
5. Acts motivated by ideology, politics, or security disturbances.

The characteristics of terrorism according to Umar Senoaji are as follows:<sup>10</sup>

1. Mainly aimed at horrible things, directed at innocent people who are not related to the purpose of the perpetrator of terrorism.
2. Terrorism creates a state of uncertainty, aimed at officials, by placing bombs at their residences on the grounds that the officials occupy certain political positions.

“The government has officially designated the Free Papua Organization as a terrorist organization. The decision refers to Law Number 5 of 2018 on the Eradication of the Crime of Terrorism.” According to the Coordinating Minister for Political, Legal, and Security Affairs on Thursday, 29 April 2021, “This is by the provisions of Law Number 5 of 2018 where what is said to be a terrorist is anyone who threatens, moves, and organizes terrorism”. The main reason for the government to decide on the status of the Free Papua Organization as a terrorist organization, according to the Director of Law Enforcement of the National Counterterrorism Agency, Brigadier General Eddy Hartono is “to narrow the space for movement and funding”. According to Eddy, the government has so far had limitations in combating acts of terror and violence committed by armed criminal groups. With the terrorist label, the government, said Eddy, can block access to funding for a terror group.”

In practice, the Free Papua Organization can be categorized as a terrorist organization because they use violence or threats of violence, create a widespread atmosphere of terror or fear, cause mass casualties, cause damage or destruction of strategic vital objects, the environment, public facilities, or international facilities, and are motivated by ideology, politics, or security disturbances.

#### **D. The Authority of the Indonesian Armed Forces to Take Action against Acts of Terrorism in Indonesia as Part of the Implementation of the State Defense System**

Suppression of acts of terrorism, especially those occurring in the Papua region, is a very complex matter because it involves many components, such as the Indonesian Armed Forces, the Indonesian National Police, and the government. According to the provisions of Article 5, the role of the Indonesian Armed Forces is "as a state instrument in the field of defense which in carrying out its duties is based on state policies and political decisions".

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<sup>10</sup> Umar Senoaji, *Pengertian Terorisme dan Kriterianya*, Seminar di Universitas nasional. Jakarta, 16 Januari 1990.

The Indonesian Armed Forces as a means of national defense has a function as referred to by the provisions of Article 6 paragraph (1) of the Indonesian Armed Forces Act as a countermeasure against every form of military threat and armed threat from outside and within the country against the sovereignty, territorial integrity, and safety of the nation. The duties of the Indonesian Armed Forces, as referred to in Article 7 paragraph (1), are "The main tasks of the Indonesian Armed Forces are to uphold the sovereignty of the state, to maintain the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and to protect the entire nation and the entire homeland of Indonesia from threats and disturbances to the integrity of the nation and state." This article means that what is meant by upholding state sovereignty is maintaining the state's power to carry out self-government free from threats. Meanwhile, what is meant by maintaining territorial integrity is maintaining the unity of the state territory with all its contents, on land, sea, and air, whose boundaries are determined by Law. The concept of protecting the entire nation and spilled blood is to protect every citizen's life, liberty, and property.

Regarding how the main tasks of the Indonesian Armed Forces, as referred to in Article 7 paragraph (1) of the Indonesian Armed Forces Law, are carried out, there are arrangements in Article 7 paragraph (2), namely military operations for war and other than war. Military operations other than war, namely to overcome armed separatist movements, overcome armed rebellion, overcome acts of terrorism, secure border areas, secure strategic national vital objects; carry out world peace duties in accordance with foreign policy; secure the president and vice president and their families; empower the defense area and its supporting forces early in accordance with the universal defense system; assist government duties in the regions; assist the Indonesian National Police in the context of security and public order tasks regulated by Law; help secure state guests at the level of heads of state and representatives of foreign governments who are in Indonesia; help cope with the consequences of natural disasters, refugees, and the provision of humanitarian assistance; search and rescue; assist the government in securing shipping and aviation against piracy, piracy, and smuggling." According to the provisions of Article 10 paragraph (3) of the National Defense Law, "The Indonesian Armed Forces are tasked with implementing national defense policies to defend the country's sovereignty and territorial integrity; protect the honor and safety of the nation; carry out military operations other than war; actively participate in regional and international peacekeeping tasks."

The authority of the Indonesian Armed Forces in taking action against acts of terrorism in Indonesia as part of the implementation of the national defense system is the implementation of the provisions of Article 7 of the Indonesian Armed Forces Law, which is to carry out the main tasks of the Indonesian Armed Forces in the form of military operations other than war, one of which is to overcome acts of terrorism as referred to by Article 1 number 1 of the Law on the Eradication of the Criminal Acts of Terrorism and its amendments. The implementation of the main tasks of the Indonesian Armed Forces in the form of military operations other than war in the form of overcoming acts of terrorism that can occur in the land, sea, and air areas of Indonesian legal jurisdiction.

#### **E. Formulating the Concept of Reconstruction of the Authority of the Indonesian Armed Forces in Relation to the Prosecution of Acts of Terrorism in the Perspective of the Implementation of the State Defense System**

A clear concept and legal flow are needed in formulating the authority of the Indonesian Armed Forces so that its product will be in line with the legal concepts applicable in Indonesia. In addition, the

implementation of its legal products must also be in accordance with the legal conception adopted and in line with the duties and functions of its authority.

In the context of legal products, Article 30 paragraph (3) of the 1945 Constitution states, "The Indonesian Armed Forces consists of the army, navy and air force as state instruments tasked with defending, protecting and maintaining the integrity and sovereignty of the state." Thus, the authority of the Indonesian Armed Forces can be interpreted as the power to carry out its duties. Therefore, the authority of the Indonesian Armed Forces, according to Article 30 paragraph (1) of the 1945 Constitution, is to make various efforts to defend, protect and maintain the integrity and sovereignty of the state.

The Indonesian Armed Forces has the role of carrying out military operations for war and operations other than war; one form of non-war military operation is to overcome acts of terrorism. The elements of the crime of terrorism, as referred to in Article 1 number 1 of the PTPT Law in conjunction with Article 6 to Article 19 of the Terrorist Eradication Law, correspond with the domain of national defense as referred to by the National Defense Law, especially Article 7 and Article 10. The problem of terrorism is part of a national defense problem in which the Indonesian Armed Forces is the primary component/state tool to overcome it, so special military operations are needed to overcome acts of terrorism that pose a threat to national defense.

According to the Indonesian Armed Forces' perception, efforts to deal with criminal acts of terrorism must be more effective and efficient if provisions 1 to 13, which are the essence of the Indonesian Armed Forces' authority, are explicit in the Indonesian Armed Forces Act or its implementing regulations. This can be realized through amendments to the Act, its implementing regulations, or the creation of new regulations.

## **F. Conclusion**

The authority of the Indonesian Armed Forces to take action against acts of terrorism is written in Law No. 34/2004 on the Indonesian Armed Forces as one part of military operations other than war in Article 7 paragraph 2, which is to overcome acts of terrorism. Still, the implementation of the Indonesian Armed Forces' duty to overcome acts of terrorism cannot be implemented directly because it must be further regulated through state political policy. This will result in uncertainty, doubt, and delay in carrying out its primary task of overcoming acts of terrorism. Thus, it can be interpreted that the authority of the Indonesian Armed Forces in dealing with acts of terrorism *das sollen* or explicitly exists, but *das sein* or, in reality, cannot be implemented directly because there must be regulations implementing the law.

The concept of reconstructing the authority of the Indonesian Armed Forces is made by amending the Indonesian Armed Forces Law No. 34 of 2004 directly through changes to the articles in the Indonesian Armed Forces Law or through the issuance of implementing rules of the Indonesian Armed Forces Law No. 34 of 2004 in the form of issuing Government Regulations on the implementation of the Indonesian Armed Forces Law, presidential regulations or presidential decrees so that they become direct implementing rules to deal with emerging acts of terrorism.

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