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# **THE 5 th INTERNATIONAL AND CALL PAPER**

## **Legal Reconstruction in Indonesia Based on Human Rights**

**Imam As Syafei Building**

**Faculty of Law, Sultan Agung Islamic University**

**Jalan Raya Kaligawe, KM.4 Semarang, Indonesia**

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# The 5<sup>th</sup> PROCEEDING

## *“Legal Reconstruction in Indonesia Based on Human Right”*

**IMAM AS SYAFEI BUILDING**

Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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Reviewer:

Prof. Dr. H. Gunarto, S.H., S.E., Akt., M.Hum

Dr. Hj. Anis Mashdurohatun, S.H., M.Hum

Prof. Henning Glaser

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM

Prof. Shimada Yuzuru

Prof. Associate Dr. Dr. Ahmad Zaharudin Sani

Editor:

Dr. Amin Purnawan., S.H., CN., M.Hum

Dr. Hj. Widayati., S.H., M.H

Dr. Hj. Sri Endah Wahyuningsih, S.H., M.Hum

Dr. H. Ahmad Khisni., S.H., M.H

M. Abdul Hadi., SE

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## PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

## PROCEEDINGS

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# The Legal Politics Of The State Defense Industry In Indonesia

Ade Christian Manapa

Student of Master of Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) email  
[adechristian.manapa@gmail.com](mailto:adechristian.manapa@gmail.com)

## Abstract

*The defense industry should be the concern of all stakeholders. The government, apart from producing regulations and being a supporter or endorser, has a vital contribution to make in the development of the defense industry because of its broad role as a user of defense industrial products. In general, the Defense industry can be defined as a meeting place between producers and consumers of defense products and their supporting industries. The market as a meeting place sometimes requires a chain of connections such as agents, distributors, exporters and importers. Supporting the defense industry, on the one hand, is needed to meet production factors and on the other hand, the defense industry products are needed to support the existence of other industries. Decree of the Minister of Defense Number: KEPI / 1008 / M / V / 2017 concerning the 2018 National Defense Policy as an example of regulations in national defense policy related to the defense industry. As for the principles of national defense development policy and national defense empowerment, it is stated that the development of the defense industry is to build a strong, independent industry.*

*Keywords: Legal Politics, State Defense Industry, Indonesia*

## A. INTRODUCTION

In determining defense policy, particularly those related to efforts to create national security, an in-depth analysis of the ideological, political, economic, social, cultural (ipoleksosbud) orders is required.<sup>1</sup> State Defense is strictly regulated in the 1945 Constitution of the Republic of Indonesia Article 30 paragraph (2), which reads "State defense and security efforts are carried out through the defense and security system of the total people by the Indonesian National Army and the Indonesian National Police, as the main force, and the people as a supporting force. "

Furthermore, as a modern country, Indonesia is one of the countries that has practiced two models of government systems, namely the Parliamentary system and the Presidential system in different periods. During the 1945-1949 period, Indonesia

implemented a parliamentary system of government with three different constitutions, namely the 1945 Constitution (1945-1949), the Constitution of the United Republic of Indonesia (1949-1950), and the Provisional Constitution of the Republic of Indonesia (1950-1959). When returning to the 1945 Constitution, through Presidential Decree July 5, 1959<sup>2</sup> which was established by acclamation on July 22, 1959, Indonesia adopted a presidential system of government. In the Presidential system concept, power<sup>3</sup> and the responsibility of government is in the hands of one person, namely the President as the Chief Executive (chief of executive). Ismail Suny stated that the general powers of the executive come from the Constitution, including military power, namely powers over the army and government.

<sup>1</sup> Denik Iswardani Witarti dan Semmy Tyar Armandha, *Tinjauan Teoritis Konsepsi Pertahanan dan Keamanan di Era Globalisasi Industri Pertahanan*, Jurnal Pertahanan, Vol.5 No.3, Desember 2015, p. 88

<sup>2</sup> Saldi Isra, *Pergeseran Fungsi Legislasi Menguatnya Model Legislasi Parlementer dalam Sistem Presidensial Indonesia*, Jakarta: PT.RajaGrafindo Persada, 2010, p. 2-3

<sup>3</sup> Miriam Budihardjo, *Dasar-dasar ilmu politik*, Jakarta; PT.Gramedia Pustaka Utama, 2008, p. 60



In the national defense policy which refers to the Republic of Indonesia Law Number 3 of 2002 concerning State Defense, as stated in the White Paper of State Defense issued by the Ministry of Defense, awareness of defending the Indonesian citizen is placed in a very strategic position, namely as a foundation / the foundation on the pyramid of national defense resources. Military defense resources are the result of the transformation of the strength of the military defense component which is formed from several national defense forces, including the main component which is strengthened by the Reserve and Support components. The main component is the TNI which is ready to be used to carry out defense tasks.<sup>4</sup>

Law and politics are like two sides of a coin, if they are reversed, they will have the same value even though in different terms between the two sides. Often the law is referred to as a manifestation of public policy which is heavily influenced by political issues. In this chapter, we want to show another side of law, namely law as a political instrument (law as political instrument) or politics (power) as a legal instrument (politics as legal instrument). For this purpose, the focus or focus of the study is on the issue of legal and political relations in all their aspects. Thus, it is hoped that the red thread (linkage point) will clearly illustrate the closeness (cohesiveness) between law and politics.

A substantial part of the politics of law lies in the field of study of statutory techniques. Except for interdisciplinarity in the sense of the approach used, the study of legal politics also requires more or less mastery of fields within the legal system itself. This control mainly concerns the principles contained in each of these areas of law.<sup>5</sup>

The defense industry, especially defense offset, is also a study in the defense

economy. Defense Offset is a reciprocal purchase or investment process that is agreed upon by a manufacturer or supplier of weapons in return for an agreement to purchase military goods and services. The practice of Defense offset in the procurement of defense equipment provides a perspective that the transfer of defense technology supported by the Defense Offset mechanism must be supported by the readiness of human resources, budget, raw materials, and research and development institutions that can facilitate the process of transferring technology so that it can meet the needs of defense equipment.<sup>6</sup>

The defense industry should be the concern of all stakeholders. The government, apart from producing regulations and being a supporter or endorser, has a vital contribution to make in the development of the defense industry because of its broad role as a user of defense industrial products.<sup>7</sup>

## B. PROBLEM FORMULATION

Based on this background, a problem formulation is produced, namely:

- 1) What is the definition of the Defense Industry?
- 2) How is the legal politics of the defense industry in Indonesia?

## C. DISCUSSION

### 1. Defense Industry

In general, the Defense industry can be defined as a meeting place between producers and consumers of defense products and their supporting industries. The market as a meeting place sometimes requires a chain of connections such as agents, distributors, exporters and importers. Supporting the defense industry, on the one hand, is needed

<sup>4</sup> <sup>4</sup> Muhammad Nakir, *Politik Hukum Bela Negara Dalam Perspektif Pertahanan Negara*, Jurnal Hukum, Vol.1 No.2, 2017, p. 37

<sup>5</sup> Satjipto Rahardjo, *Ilmu Hukum*, (Bandung : PT Citra Aditya Bakti, 2012), p. 399.

<sup>6</sup> Muradi, *Dinamika Politik Pertahanan dan Keamanan : Memahami Masalah dan Kebijakan Politik Pertahanan Keamanan Era Reformasi*, (Bandung : Widya Padjadjaran, 2012), p. 115

<sup>7</sup> Silmy Karima, *Membangun Kemandirian Industri Pertahanan Indonesia*, (Jakarta : Kepustakaan Populer Gramedia, 2014), hx

to meet production factors and on the other hand, the defense industry products are needed to support the existence of other industries. In the defense industry, monopoly, oligopoly, and competitive markets are heavily influenced by internal and external factors.<sup>8</sup>

Internal factors:

- 1) Production factors that are closely related to costs are able to produce goods and services on an economical scale, and reduce production costs from other producers, thus behaving as a natural monopoly;
- 2) The assignment factor of other companies or the parent company or the merger with the dominant company in the oligopoly market, causes a producer to control several main production factors;
- 3) The factor of competition with competing companies is through the creation of barriers, among others, in controlling product sales with a very low price reduction, making it difficult to compete.

External factors

- 1) The interest factor controls the production capacity and provides protection or protection, the government in granting monopoly rights to a certain producer to produce public goods;
- 2) The factor of obtaining a patent by a company allows the company to behave in monopoly. In general, a country grants patents protected by law;
- 3) Concession permit factors granted by the government to a company to operate certain services or activities.

The government has an important role in developing the defense industry, because the government is a large buyer or sole buyer of domestically produced defense equipment

(monopsony).<sup>9</sup>The government can use its purchasing power to determine the size, ownership, structure, entry and exit processes, products, prices, efficiency levels, and even the profitability of the national defense industry (both BUMN and BUMS). The government strongly supports the defense industry, among others, by means of special purchases through direct subsidies. The government can also regulate the national defense industry by controlling profits on government contracts (eg preventing excessive gains or losses). In addition, the government is also able to determine prices and benefits from non-competitive contracts, so that it can influence company behavior by favoring non-price competition (research and development), and can control arms exports, for example through licensing.

## **2. The Law Politics of the Defense Industry in Indonesia**

The development of defense industry technology is aimed at building the ability to produce Alpalhankam that meets operational requirements, namely high quality, weather resistance, accuracy, high speed and resistance, difficult to detect and other advantages. The development of the defense industry is a series of activities towards mastery of technology in order to support the realization of a state defense system that is strong, resilient, modern and dynamic. Mastery of defense industrial technology will raise the bargaining position in the mastery of defense technology.

The development of the defense industry is part of the implementation of defense as a whole, and part of overall development. The development of the national defense industry involves users, producers, and the government as regulators which are coordinated and synergized by KKIP. The Ministry of Defense is determined to develop the defense industry in the areas of mobility, combat capacity, carrying capacity,

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<sup>8</sup> Purnomo Yusgiantoro, *Ekonomi Pertahanan : Teori dan Praktik*, (Jakarta : Gramedia Pustaka Utama, 2014), p. 14

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<sup>9</sup> Soebijono, *Wajib Militer*, Jakarta: Djambat, 2000, p. 32.

and provisions. This is stated in the defense industry development policy as a legal basis for the realization of defense independence. This guidance is a step towards developing the strength of weapons that leads to the empowerment of the national defense industry to achieve independence in the procurement of Alutsista. The development of the defense industry cannot be separated from the cooperation scheme. The mutually beneficial cooperation scheme is one of the criteria for the defense industry. The cooperation is aimed at accelerating the improvement of mastery of defense technology and reducing the cost of technology development. This cooperation is carried out between domestic industries or between domestic and foreign industries in the fields of education, training, technology transfer, research and development, engineering, production, marketing and financing.

In this case, the Decree of the Minister of Defense Number: KEPI / 1008 / M / V / 2017 concerning the 2018 National Defense Policy is an example of regulations in national defense policy related to the defense industry. As for the principles of national defense development policy and national defense empowerment, it is stated that:<sup>10</sup>

- 1) Development of the defense industry, to build a strong, independent and competitive industry in order to be able to support the needs of Alpalhan and support components and supporting equipment including repair and maintenance and diversification of the defense industry which is carried out by: encouraging the development of defense industrial structures and cooperation with the external defense industry country; increasing the technological capabilities and capabilities of the defense industry; and integrated development of the defense industry by taking into account technology security through

the K / L program within the scope of the Defense Industry Policy Committee (KKIP);

- 2) Empowerment of the defense industry, in order to develop the national industry into a defense industry aimed at: meeting the needs of Alpalhan, encouraging the production of products for defense and non-defense purposes, cooperation with the foreign defense industry both in production cooperation and development cooperation

The direction of national defense policy related to the defense industry is determined by realizing a strong, independent and competitive defense industry through increasing the role of KKIP in formulating national defense industry policies. The targets of the 2018 national defense policy related to the defense industry include integrating the development of the Defense Industry by taking into account the mastery of science and technology and technology transfer through the cooperation of related Ministries / Agencies within the scope of the Defense Industry Policy Committee (KKIP) to create a strong, independent, defense industry. and competitive; increasing the empowerment of the national supporting industry for the domestic defense industry to produce the main and / or supporting components, the component and / or supporting (supplies) industry, the raw material industry and the maintenance of Alpalhan's Main Weapon System (Alutsista) in order to increase cooperation, research and development of new products that support the national economy. This integration is carried out through efforts to gradually relocate the defense industrial area to the Lampung region which begins with a study and site survey.

#### **D. CONCLUSION**

1. In general, the Defense industry can be defined as a meeting place between producers and consumers of defense products and their supporting industries. The market as a meeting place sometimes

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<sup>10</sup> Endro Tri Susdarwono, *Politik Hukum Ekonomi Pertahanan di Indonesia Tahun 2002-2018:Kajian Industri Pertahanan*, Vol.9 No.1, Mei 2019, p. 12-29

requires a chain of connections such as agents, distributors, exporters and importers. Supporting the defense industry, on the one hand, is needed to meet production factors and on the other hand, the defense industry products are needed to support the existence of other industries. In the defense industry, monopoly, oligopoly, and competitive markets are heavily influenced by internal and external factors;

2. Decree of the Minister of Defense Number: KEPI / 1008 / M / V / 2017 concerning the 2018 National Defense Policy as an example of regulations in national defense policy related to the defense industry. As for the principles of

national defense development policy and national defense empowerment, it is stated that the development of the defense industry, to build a strong, independent and competitive industry in order to be able to support the fulfillment of Alpalhan's needs and support components and supporting equipment including repair and maintenance and verification of the defense industry, and Empowerment of the defense industry, in order to develop the national industry into a defense industry aimed at: meeting the needs of Alpalhan, encouraging the production of products for defense and non-defense purposes.

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