

STATE DEFENSE RIGHTS IN INDONESIA'S CONSTITUTION

Fitra Arsil, Faculty of Law, Universitas Indonesia
Qurrata Ayuni, Faculty of Law, Universitas Indonesia

ABSTRACT

This paper discusses the uniqueness of the Indonesian constitution, which places defense of the state not only as an obligation but also as a right of citizens. This conception raises questions; why is it essential to put the right to state defense in the constitution? This paper finds three things; first, the history of the formation of the Indonesian national army after colonialism became the starting point for ensuring that the militias could join as national affairs. Second, the construction of rights and obligations means that every citizen cannot be discriminated against in the country's development efforts. Third, the state has a constitutional obligation to provide the distribution of rights to citizens to defend the state. Using the historical-juridical-normative method, this paper provides a legal review of the right to defend the state from the point of view of constitutional law in Indonesia.

Keywords: State Defense Rights, Constitutions, Indonesia.

INTRODUCTION

When Indonesia became independent in 1945, very few native Indonesians (locally called; Pribumi) held positions as officers. The Dutch colonial policy was only discriminatory to train native Indonesians to join the Nederlandsch-Indische Leger Koninklijk (KNIL), the Dutch Indies army kingdom. This KNIL army was the forerunner to the birth of the Indonesian National Army (TNI) after Indonesia's independence (Nasution, 1956).

The existence of the KNIL as a trained force was reversed from the freedom fighters that were born from the militias. The freedom fighters who were scattered in various regions in Indonesia were unorganized people's soldiers. The existence of this people's / local army is not considered to have the coordination, technical and tactical capabilities in the institutional structure of a country's army. The institutional aspects of the military then adopted the army that belonged to the ex-Dutch colonialist KNIL.

Initially, the KNIL was not pro-independence. On the other hand, the KNIL was an accomplice to the colonialists in destroying the militia forces demanding independence. The existence of geopolitical changes in World War II and Japan's entry to Indonesia made significant changes in the army structure. The history was why Indonesia's founding fathers specifically placed defending the state as an obligation and as a right. The clause is intended to assure that everyone can join the national army. They expressly take sides in inviting militias to join forces in national defense and eliminate the element of discrimination.

The construction of the rights and obligations to defend the state is clearly stated in the 1945 Constitution. Article 27 paragraph (3) of the 1945 Constitution expressly states, "Every

citizen has the right and obligation to participate in efforts to defend the state." This is then reaffirmed in Article 30 paragraph (1) of the 1945 Constitution, which states, *"Every citizen has the right and obligation to participate in national defense and security efforts."*

Both articles result from the second amendment of the 1945 Constitution, which was implemented in 2000. Originally, Article 27 of the 1945 Constitution contained only two paragraphs, and the third article on the defense of the country was not in the chapter about citizens. In the original version, Article 30, Paragraph (1) read, *"Every citizen shall have the right and shall participate in defense of the state."* The 2000 revision expanded the phrase *"defense of the state"* to *"defense and security of the state."*

The clause to oblige the responsibility of citizens to defend the state is common in world constitutions. However, the existence of a state defense rights clause is an unusual construction. This clause then gave birth to unique consequences for citizens in Indonesia and a constitutional mandate to be carried out by the state.

History of State Defense Rights in Indonesian Constitutions

The provision of state defense as a citizen's right has existed since the first constitution of the Republic of Indonesia, namely, Article 30, Paragraph (1) of the 1945 Constitution, which was inaugurated on August 18, 1945. The provision reads, *"Every citizen shall have the right and obligation to participate in State defense effort."* A similar provision is found in any constitution ever enacted in Indonesia.

The 1950 RIS Constitution of the Republic of the United States of Indonesia from January 31, 1950, to August 15, 1950, contains a state defense rights provision in Article 23, which reads, *"Every citizen has the right to participate sincerely in the defense."* In the 1950 Constitution replacing the RIS Constitution and valid until 1959, such provision is contained in Article 24: *"Every citizen has the right and obligation to participate sincerely in defense of the State."* The guarantee of state defense rights is also contained in the 1945 Constitution of the Republic of Indonesia, which resulted from the amendment of the 1945 Constitution.

The urgency and argumentation of this provision in the constitution can be traced from the formulation in the Indonesian Independence Endeavors Investigation Body (Badan Penyelidik Usaha-Usaha Kemerdekaan; BPUPK), which gave birth to the guarantee of state defense rights for the first time. The inclusion of the provisions regarding state defense rights in the original 1945 Constitution indicates that the nation's founders considered state defense an important right held by every citizen, and they necessarily asserted its guarantee. This is significant, given that not many fundamental rights of citizens were expressly stated in the original 1945 Constitution.

The constitutionalists at that time agreed that fundamental rights (grondrechts) need not be explicitly stated in the constitution, except for a few rights that were considered necessary under the conditions of the time. This view led to the lack of articles on human rights in the original 1945 Constitution. Soepomo, in his speech at BPUPK on July 5, 1945, stated that he agreed with Sukarno's earlier description, stating that basic rights need not be included in the constitution (Kusuma, 2009). However, Soepomo argued that the constitution should include the right to decent work and livelihood for humanity, the right to participate in defense of the state, the right to teach, and the right to convert to a new religion. All of these, according to him, include the basic rights (grondrechts) and deal with specific content that needs to be stated

explicitly. Soepomo argued that at the time, state defense was *"the actual matter, which became the mind and the public discussion"* (Kusuma, 2009).

The reason behind Soepomo's assumption that citizens' right to defend the state was the *"actual question, which becomes the mind and public discussion"* can be traced in the draft of the Indonesian Constitution written by Soepomo, Soebardjo, and Maramis dated April 4, 1942. In the draft, there appears to be a desire from the constituents that the Indonesian people should have the opportunity to work and occupy positions in the armed forces (Kusuma, 2009). Article 16 of a document entitled *"The Beginning Plans of the Indonesian Constitution"* says that *"the people of Indonesia may be equally appointed to civil, military, or other public offices, in accordance with the law or rules."* Article 17 of the draft law mentions more specifically that *"the Indonesian People should be facilitated in working within the Army, Navy and Air Force, according to the rules of the law"* (Kusuma, 2009).

These facts indicate that discussions on the guarantee of opportunity for all Indonesians to have equal opportunities in state defending activities, especially involvement in the armed forces, were quite prominent. There appears to have been a stalled condition of Indonesian people's chances to join military activities. This assumption corresponds to data showing that only a limited number of Indonesians could participate in armed forces activities, especially holding positions in the military service as staff or officers.

During the Dutch colonial period, the Dutch had a policy of using local people in the armed forces of the colonial territory, carried out with the formation of the Koninklijk Nederlands-Indische Leger (KNIL) (Singh, 1996). However, very few Indonesians served in KNIL as officers. According to data provided by Sundhaussen (1986), there were 15 Indonesians in KNIL with the rank of junior lieutenant upwards who were still active in KNIL in 1942, and 13 of them supported the republic. Given the population of Indonesia and the length of Dutch involvement, 15 is a very small number.

The Indonesians who became KNIL officers were the only ones who received staff education or were assigned staff duties. Those who served elsewhere, such as Home Guard Defense Forces (Pasukan Pembela Tanah Air; PETA) officers, did not receive staff education. At the beginning of Indonesian independence, such staff capabilities were particularly needed, especially to build a new army that required military organizing and planning abilities (Sundhaussen, 1986).

The authors of the 1945 Constitution argued that citizens should not face barriers to participating in defense of the state in the period of independence, especially regarding joining the armed forces. According to Suryohadiprojo (1962), the people demanded opportunities to conduct state defending activities, notably the honor of bearing arms. Further, according to Suryohadiprojo, the practice of conscription indicates that the people participate in governing the country, thereby granting citizens the right to state defense and the right to participate in government, which are guaranteed in the constitution.

The concept of giving equal rights to members of all levels of society to participate in the armed forces and to occupy certain positions in military service is typically opposed to the conditions found in absolute monarchic countries, where high-ranking soldiers consist solely of men from the royalty or ruling class. According to Simatupang (1960), in an army of an aristocratic society, generally, the officers or those in essential positions come from the nobility, while common soldiers come from the regular classes.

Application of State Defense Rights in Indonesia

The birth of Indonesia's armed forces is based on the existence of militias before independence. There are many groups of fighters fighting for independence in Indonesia across the country. These troops are known as the People's Warriors, who are forced against invaders with different names in each region. Laskar Rakyat joined the People's Security Agency (Badan Keamanan Rakyat; BKR) with former soldiers of the Home Guard Defense Forces (Pasukan Pembela Tanah Air; PETA), ex-KNIL, and other ex-Japanese troops (Tarling, 2001). BKR is the forerunner of a state defense unit known as the Indonesian National Army (Tentara Nasional Indonesia; TNI).

In 1948, Hatta's cabinet passed the Military Rationalization Act No. 3 of 1948 concerning the Organization of Ministers and the Armed Forces. The law was intended to reduce the number of members in Indonesia's armed forces through the Policy of Reorganization and Rationalization (Re-Ra) (Nasution, 1968). Later, in 1950, the National Reserves Corps (Corps Tjadangan Nasional; CTN) was established under Government Regulation No. 15 of 1950 on the National Demobilization Bureau (Abdullah, 2009).

The state defense rights clauses in the Indonesia Constitution require the state to provide an open opportunity for every citizen to participate in defense activity. Given the magnitude of the effort of many militias in Indonesia to seize independence, these components are seen as a precious asset for the state.

Despite Indonesia's independence, struggles to maintain state sovereignty remained relevant, as many attempts to re-colonize Indonesia. Therefore, in the early days of independence, the militia was still used as a reserve component. Those who were allowed to join CTN included members of the army outside the formation, former members of the armed forces, and people who self-enrolled as soldiers or guerrillas of southern Sulawesi (Gonggong, 1992).

The participation of militant forces of the Indonesian people in independence has repeatedly proven to be a source of strength of the Universal People's Security Defense System, which is a manifestation of Article 30 of the 1945 Constitution. The recognition of the state defense system in Indonesia is known through two components in explaining Basic Provisions on Defense Act, namely, the Components of the People and Components of the Armed Forces.

First, the Components of the People consist of 1) paramilitary troops (kelaskaran), which were then disciplined and developed, i.e., those qualified to be accepted as members of the Indonesian National Army while others were members of the Reserves Front called Barisan Cadangan or Barisan, during the First War of Independence; 2) village guerrilla forces (Pasukan Gerilya Desa/Pager Desa) including Mobilization of Students (Mobilisasi Pelajar/Mobpel) as a form of development from the Reserves Front during the Second War of Independence; 3) The Village Security Organization (Organisasi Keamanan Desa; OKD) and the People's Resistance (Organisasi Perlawanan Rakyat; OPR) as a continuation of Pager Desa, developed during 1958–1960; 4) Civil Defense, Resistance and People's Security, including the Student Regiment (Resimen Mahasiswa/Menwa), as a continuation and perfection of the Village Security Organization/People's Resistance Organization, established in 1961; and 5) Reserve Officers (Perwira Cadangan) established in 1963.

Secondly, the components of the Indonesian National Army, which have evolved throughout history, are composed of 1) The People's Security Service (Badan Keamanan Rakyat) as part of the Family Victim Support Agency of War (Badan Penolong Keluarga Korban

Perang), formed in August 1945, as an embryonic form of the army; 2) The People's Security Army (Tentara Keamanan Rakyat), formed on October 5, 1945, and later renamed the People's Salvation Army (Tentara Keselamatan Rakyat); 3) The Republic of Indonesia Army (Tentara Republik Indonesia), established in January 1946; 4) The Indonesian National Army (Tentara Nasional Indonesia; TNI), who integrated the Armed Forces of the Republic of Indonesia and members of the *kelaskaran* that met the requirement in July 1947.

Furthermore, the components of the State Police of the Republic of Indonesia were developed as follows: 1) originally part of the Ministry of Home Affairs up to July 1, 1946; 2) through Law No. 13 of 1961 designated as Armed Forces after going through a stand-alone bureau form under the prime minister from July 1, 1946, and later the State Police Department in 1953; 3) became parallel and equal-armed forces with the army, navy, and air force beginning in 1964.

More explicitly, the opportunities for citizens to participate in state defense efforts are regulated through the Basic Defense Act. Efforts to defend the country are mentioned as an activity undertaken by every citizen to fulfill rights and obligations in the framework of organizing the defense of state security. Some components that become the application of state defense efforts in the defense system of the people consist of a) Trained People as basic components, b) armed forces and the Indonesian National Army Reserve as the main component, c) Community Protection as a special component, and d) natural resources, artificial resources, and national infrastructure as supporting components.

The Basic Defense Act clearly defines the rights and obligations of state defense that every Indonesian citizen must have. Article 18 of the Basic Defense Act stipulates that state defense efforts shall be conducted through pre-state education in the national education system. It is reiterated that the state's defense education is manifested in the existing Scout movement activities in schools and higher education. Therefore, every citizen of the period was entitled and obliged to join the Scout movement and participate in the disciplinary educational activities (*kewiraan*) at universities.

Besides, every citizen is entitled to join the Compulsory Trained People, the Armed Forces (TNI), the Indonesian National Army Reserve, and the Community Protection. As a right, every citizen could demand that the state provide equal opportunity to join a reserve component or support component of military and non-military forces.

Specific rights and obligations as Trained People are further stipulated in the Trained People Act. This law regulates state defense efforts through the Mandatory Pre-service or *Prabakti* program for citizens to become Trained People. In Article 5, Paragraph (2), the Trained People Act provides requirements for citizens to participate in the Mandatory Pre-service or *Prabakti* program: (1) Citizen, (2) Devoted to God the Almighty; (3) Loyal to Pancasila and the 1945 Constitution; (4) Aged 18 (eighteen) years up to 45 (forty-five) years; (5) Well behaved; (6) Physically and mentally healthy; and (7) Not in a state of loss of the right to participate in defense of the state.

Citizens who are eligible to be charged by Mandatory Pre-service or *Prabakti* can be called in rotation to attend education and training. However, there are exceptions for those who have health problems, are on *hajj*, are in prison, or have other situations. Citizens who are absent during the call to implement Mandatory Pre-service or *Prabakti* shall be sentenced to imprisonment for a maximum period of six months as stipulated in Article 32 of the Trained People Act. After completing the Compulsory Pre-service or *Prabakti* period, citizens are sworn

in as Trained People who are assigned to defend the state in the implementation of state security defense.

The Basic Defense Act was subsequently replaced by Law No. 3 of 2002 on the State Defense Act. In the State Defense Act, the state defense system involves various elements such as main components, reserve components, and supporting components. This contrasts to the Defense Force of State Security components regulated in Law No. 20 of 1982 concerning Basic Provisions for the Defense of the Security of the Republic of Indonesia, which consists of basic components, main components, special components, and supporting components.

The paradigm shift for not using the people as the main component was found after the amendment of the 1945 Constitution. In the post Indonesian reform, the concept of using the people as the main component was no longer used. This is because the existence of the Indonesian national army has been sufficiently established with the needs of national security. Thus, the constitutional construction used in the second amendment to the 1945 Constitution places the national army as the main force in the national defense and security efforts. As for the people, it becomes a supporting component. Article 30 paragraph (2) of the 1945 Constitution states *"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 the supporting force."*

The regulation of the State defense and security system in the constitution is very essential because it involves the existence of the nation and the State facing various possible threats both from outside and from within the country. This arrangement basically concerns the formation of the components of the defense force, which must be owned by the State and its controlling authority. Meanwhile, matters relating to how the components of the defense force are organized, built, armed, trained, and deployed to carry out the tasks assigned by the State can be regulated in organic legislation and government policies.

The regulation of the State defense and security system in the constitution is very essential because it involves the existence of the nation and the State facing various possible threats both from outside and from within the country. This arrangement basically concerns the formation of the components of the defense force which must be owned by the State and its controlling authority. Meanwhile, matters relating to how the components of the defense force are organized, built, armed, trained, and deployed to carry out the tasks assigned by the State can be regulated in organic legislation and government policies.

In 2021, President Joko Widodo has signed Government Regulation (PP) No. 3/2021 concerning Implementation of Law no. 23/2019 concerning Management of National Resources (Pengelolaan Sumber Daya Nasional/PSDN) for National Defense. First, the broad scope of types of threats regulated in the PSDN Act. Article 4 Paragraph (2) states that threats consist of military threats, non-military threats and hybrids. The extent of the threat raises its own problems, in which the Reserve Component that has been prepared and formed by the government can be used to deal with domestic security threats such as pretexts to face the threat of communism, terrorism and domestic conflicts that have the potential to cause horizontal conflict in society. In fact, the formation and use of reserve components should be oriented to support the main component of national defense, namely the TNI, in facing external military threats.

The potential of a country's defense power is not only determined by economic and industrial strength, but also by two other factors, namely the administrative capacity of a

government and the political foundation to build its military power (Knorr, 1970). These factors collectively determine the size of the potential defense force of a country. The political basis here relates to the attitude of the executive leaders of a country, as well as the attitude of the people represented by the legislative bodies towards the development of a military force.

The ability of a nation to develop its defense force or military power when needed, namely in the face of a crisis or war, is a measure of the size of its defense potential. To be able to develop this ready force requires the capability or support of national resources that are ready to be converted into a defense force that is ready to be used as well. Thus the potential for national defense is the same as the available national resources to build a ready military force and its rapid development. When a nation develops its defense power by utilizing relevant national facilities and infrastructure when facing a crisis or war period, it means that this nation has mobilized its potential defense force (Knorr, 1970).

Consequences of State Defense Rights in the Constitution

Kelsen (1945) mentions that in the context of the state, the discussion of rights is usually associated with the law. Rahardjo (2000) argues similarly that the law protects one's interests by allocating power to the individual to act in his or her interests. This allocation of power is measured utilizing its breadth and depth. Rahardjo sees law as a tool used to distinguish what is called right and what is not in the sense of authority. From the first constitution to the present day, Indonesian citizens have secured state rights as their rights in addition to other rights

State defense rights can indeed be classified as institutional rights distinguished from non-institutional rights in Rainbolt's (2006) division. In non-institutional rights, a moral determines its implementation because this right comes from customs or customs prevailing in society.

The state creates institutional rights, and the law appears as a tool for exercising these rights (Rainbolt, 2006). State defense has been established as a right for Indonesian citizens in the constitution, the basic law. So, the state as the holder of power in the state shall act to implement it. Not only as the creator of such rights and in the framework of fulfilling the rights of the citizen but more so in its duty to enforce the law.

The state ensures the fulfillment of these rights because, according to Kelsen (1945), there is no legal right for a person without a legal obligation to others. A person's right obliges the other party to commission or omission an act. This can be referred to as the contents of rights (Rahardjo, 2000).

Enforcement efforts can be made with an effort that can compel the party who is obliged to fulfill them. Kelsen (1945) said that rights allow the law to drive sanctions. In the relationship of rights and obligations in the context of law and sanctions to enforce it, Kelsen says that a right concerns more of the interest or will of the individual concerned, while an obligation is more a fear of sanction or coercion in the mind of the required individual. Thus, the state as an obligated party may be subject to coercion to exercise the rights of citizens. Citizens can use this coercive device by the administrative judiciary and judicial review for constitutional complaints.

The above description at least gives a conclusion to the exercise of state defense in three respects. Firstly, anyone who can be categorized as a citizen according to the 1945 Constitution of the Republic of Indonesia is guaranteed the opportunity to participate in the state's defense. Second, the state is obliged to take measures for the fulfillment of state defense rights for every

citizen. Third, the failure of the state to guarantee these rights to every citizen creates citizens' right to take legal action.

CONCLUSIONS

The entire constitution that has prevailed in Indonesia places state defending activities as an obligation and the constitutional right of every citizen. The founders of the state and authors of the 1945 Constitution agreed not to include basic rights in the constitutional text except for a few exceptions. State defenses included rights that were expressly called guarantees in the constitution. If following this logic, the existence of state defending activities as a right in every constitution in force in Indonesia shows that the constitutions that followed the 1945 Constitution mentioned the state's defense as a permanent right, maintaining its importance in the nation's thoughts and discussions.

The guarantee of the rights and obligations to defend the state in the 1945 Constitution provides guarantees for citizens not to be discriminated against in the involvement of state defense. So that every citizen can join in defense activities in various forms and levels of contribution. The placement of state defense as a right implies that every citizen without exception is entitled to the opportunity to engage in state defense, the state must take action and establish a means for ensuring the fulfillment of state defense rights, and the failure of its fulfillment may entitle citizens to adopt constitutional action to gain it.

REFERENCES

- Abdullah, T. (2009). *Indonesia towards democracy*. Inggris: Institute of Southeast Asian Studies.
- Gonggong, A. (1992). *Abdul Kahar Muzakkar: From patriot to rebel*. Jakarta: Grasindo.
- Kelsen, H. (1945). *General theory of law and state*. New York: Russel & Russel.
- Knorr, K. (1970). *Military power and potential*. Princeton University Press.
- Kusuma, A.B. (2009). *The birth of the 1945 constitution: Loading authentic copies of documents*. Jakarta: Faculty of Law, University of Indonesia.
- Nasution, A.H. (1956). *The Indonesian national army 1*. Indiana University.
- Nasution, A.H. (1968). *Indonesian national army 2*. Djakarta: Seruling Masa.
- Rahardjo, S. (2000). *Legal studies*. Bandung: Citra Aditya Bhakti.
- Rainbolt, G.W. (2006). Rights theory. *Journal Philosophy Compass*, 3(1), 1-8.
- Simatupang, T.B. (1960). *Government-society armed forces*. Jakarta: Indira.
- Singh, B. (1995). *ABRI's dual function: Origins. Actualization and Implications for Stability*.
- Sundhaussen, U. (1988). *Indonesian military politics, 1945-1967: Towards ABRI's dual functions*. LP3ES (Institute for Research, Education and Information, Economics and Social Affairs).
- Suryohadiprojo, S. (1962). *The problem of national defense: An introduction to the science of war*. Jakarta: Time Advisor.
- Tarling, N. (2001). *Southeast Asia a modern history*. Oxford University Press.