

# Poor Post-Legislative Scrutiny of Security Sector Reform and Its Impacts on Human Rights and Civil-Military Relations in Indonesia

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## Abstract

As emerging democracy, Indonesia is facing a formidable challenge from its Parliament whose capacity in conducting Post-Legislative Scrutiny is weak; this could prevent the country from fulfilling democratic consolidation. The country's failure in fulfilling its democratic consolidation two decades after Soeharto's resignation can bring it back to the authoritarian era as it has experienced only two years after the first 1955 democratic election until 1998. Applying an empirical research by directly observing PLS in the Indonesian parliament and using a qualitative method of analysis, this essay discussed the causes and repercussions of the parliament's poor capability, which have brought the country into current setback, facing resistances from the old establishment that has made the military unable to continue reform and to change its political culture. Therefore, the Indonesian military still wants to involve in civilian affairs and businesses by making a more flexible interpretation of Military Operations Other Than War, on the one side. While, on the other, TNI's existing culture of violence has led it to many alleged cases of gross human rights violations which could not be prosecuted until recently. In fact, Indonesian Members of Parliament's poor capability and DPR's weak supporting system give more complexity to the country in its struggle and success to be the third biggest democracy in the world.

*Keywords: Post-Legislative Scrutiny, Security Sector Reform, The Indonesian Military, Human Rights, Civil-military Relations, Indonesia.*

## I. INTRODUCTION

In addition to their main function in making laws, Members of Parliament (MPs) play an important role in overseeing consistent implementation of laws after they have been deliberated with the government and further passed in the plenary session.<sup>1</sup> They are expected to have adequate capacity to guarantee the laws immediately can be enacted and moreover consistently implemented. In line with this, in democratic States, Post-Legislative Scrutiny (PLS) should be automatically practiced by their Parliaments within national and lower (provincial) levels.<sup>2</sup> PLS plays a crucial role for MP's and is similarly important in law making, particularly in a transitional democracy such as Indonesia, which has yet to reach consolidation since the reform movement emerged in May 1998.

PLS is not an easy task, although not entirely new as Indonesia adopted a Parliamentary system between 1955-1959, with the existence of various opposition groups, before being replaced by an authoritarian system led by Soekarno and Soeharto respectively.<sup>3</sup> During Soeharto's New Order, PLS has been linked to the implementation of *fungsi legislasi* (law-making function) and *fungsi pengawasan* (oversight function) conducted through a regular law-making process and constant oversight conducted by DPR (*Dewan Perwakilan Rakyat* or The House of Representatives) once laws have been agreed with the government. With such a mechanism of hearing, DPR could gather various aspirations and obtain different inputs from stakeholders over the implementation of the laws by the government and convey criticism. Furthermore, in the post-Soeharto New Order era, there was strong demand from the reform movement to put back PLS on the agenda, whereby Parliament develops capacity to make needed laws and oversee the government's policies and performances in executing the laws.<sup>4</sup>

This is not too different from the practice in other emerging democracies such as Australia; in Indonesia PLS is conducted on a passive model with an informal mechanism due to the absence of systematic and standardized steps as adopted within the British system.<sup>5</sup> In other words, there are no special procedures regulated by a specific law, which is legally binding. In DPR, PLS is administered by Parliament's

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1 David Beetham, *Parliament and Democracy in the Twenty-first Century: A Guide to Good Practice* (Inter-Parliamentary Union, 2006), in 13, 43, 95, 125, 126.

2 See, Franklin De Vrieze, *Post-Legislative Scrutiny: Guide for Parliaments* (London: Westminster Foundation for Democracy, 2017) 11-12,39; *Post-Legislative Scrutiny in the Americas*, Draft publication Prepared for the ParlAmericas-WFD seminar on Post-Legislative Scrutiny, by Westminster Foundation for Democracy, (Ecuador, 2019) 4-6.

3 David Bourchier, "Illiberal Democracy in Indonesia: The Idea of the Family State" in (2015) 218-230.

4 De Vrieze, supra note 2.

5 See, Franklin De Vrieze & Victoria Hasson, *Post Legislative Scrutiny: Comparative Study of Practices of Post-Legislative Scrutiny in Selected Parliaments* (London: Westminster Foundation for Democracy, 2017).

office and supporting system (The Secretariat General), which has not yet been reformed in the post-Soeharto era. An absurdity resulted from contradiction and conflict of interest in Indonesia's PLS activity as the Secretariat General is part of the government, whose staff are civil servants, hence researchers, legal drafters, analysts and other experts can be involved in the decision-making process. Rather than improving DPR performance, the staff's partial position and roles tend to strengthen the government's position in PLS. This means they are more helpful to the government in comparison to the Parliament.

In Indonesia's case, one of the most important Parliamentary roles in today's reform era dealing with PLS is within the security sector which hosts highly complex issues, consisting of military involvement in civilian affairs, businesses, weapon procurements, and arms control, setting the military budget and so forth.<sup>6</sup> This is consistent with reform demands to end Soeharto's authoritarian rule, *Tentara Nasional Indonesia* (The Indonesian Military) or TNI's dominant role in civilian affairs was reduced with the existence of Law No. 34/2004 on The Indonesian Military. Parliament's success in enacting and making laws is dependent on the existence of relevant experts and their capacities. This capacity would enable DPR which can be expected to provide the legal basis for TNI to evolve into a professional military. The TNI itself must be encouraged to return to its barracks, having occupied civilian posts for over three decades.

Meanwhile, the DPR should focus on the main tasks of making laws and conducting PLS. Issues on Security Sector Reform (SSR) will bring in new difficulties as Parliament must have the capability in implementing democratic control over the military. MPs' lack of capacity in performing PLS and the absence of supporting laws provide TNI with more opportunities and accesses to return to the political arena. This situation threatens to reinsert military supremacy in Indonesia, which would endanger civilian careers amidst the country's crisis in finding a solution for the numerous unemployed Generals and Colonels.<sup>7</sup>

The real problem is the MPs' lack adequate knowledge and expertise to address SSR issues in an effective manner. Additionally, they do not have adequate time to finish their tasks since their terms are time-bound, whilst their access to assistances remains limited. Research is necessary to evaluate how PLS of DPR's democratic control over the military on SSR has been conducted since Law No. 34/2004 on the TNI, Law No. 39/1999 on Human Rights and Law No. 26/2000 on Human Rights Tribunal have been passed.

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6 Hans Born, *Parliamentary Oversight of the Security Sector*, Philipp Fluri & Anders B Johnsson, eds. (Geneva: IPU and DCAF, 2003).

7 Maya Ayu Puspitasari, "Penambahan Pos TNI Dapat Merusak Sistem Karier Pegawai Sipil - Nasional - koran.tempo.co", *Koran Tempo* (25 February 2019) 15.

Empirical research and further discussions would provide explanations and recommendations for the Parliament to consistently continue its SSR agenda. These results would serve to remind the DPR on the need to form relevant Commissions or Committees to conduct both ex-ante Regulatory Impact Assessments and ex-PLS on SSR, which cannot be separated from one another. The recommendations would further help DPR to realize the remaining homework which has yet to be completed. The research question that has guided this result is how PLS on the existing laws regarding SSR has been conducted by the Indonesian Parliament since reform began in 1998 until now.

This research itself comprehensively applies an SSR perspective used by international organizations such as United Nations (UN), especially United Nations Development Programme (UNDP) and Organization for Economic Cooperation and Development (OECD). In this context, the role of Parliament is linked to tasks commonly performed by MPs in a number of key functions, namely<sup>8</sup>: (1) establishing the legal basis by which the armed forces, intelligence and security services, border guards and police, operate; (2) scrutinizing defence and national security policies and holding ministers and public officials accountable for how these policies are implemented; (3) exercising control over defence and security budgets and procurement decisions, as well as reviewing how many was spent; (4) investigating allegations of policy failure and abuses by the defence and security sector; (5) and making recommendations.

In addition to the points above, there are also specific tasks regarding the affirmation of a State of Emergency or approval of the decision to commit the military to conflicts or peacekeeping missions, which may require an enhanced majority votes in Parliament.<sup>9</sup> The role of MPs or Parliamentarians in SSR may utilise procedures such as introducing legislation and amending laws, scrutinizing ministers, civil servants and members of military through questions and hearings, receiving expert evidence and gaining access to official documents and information.<sup>10</sup> Therefore, the analysis covers issues pertaining to law enforcement, intelligence practices, relationships with civilian institutions and so forth, which discuss core security actors, oversight bodies, justice and the rule of law. This qualitative research focuses on post-Soeharto's civil-military relations, using references since the 2000s, particularly from the Democratic Control of Armed Forces (DCAF), Friedrich-Ebert-Stiftung (FES), Inter-Parliamentary Union (IPU) and UNDP, in addition to journals and newspapers. Writers and researchers in DPR, more importantly, contributed their observations of Parliamentary sessions discussing SSR issues.

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8 Hans Born, *Security Sector Reform in Challenging Environments*, Albrecht Schnabel, ed. (Zurich: Lit Verlag, 2009) 8-9.

9 *Ibid.*

10 *Ibid.*

The results of this research are presented in six main areas. The first two parts, cover PLS and the alleged cases of gross human rights violations that mainly occurred in the democratic transition period and TNI's continuing culture of violence until recently, which can be linked to the emergence of the cases of human rights violations in some regions, which did not take place far from the military headquarters and Parliamentary building in Jakarta. The following two parts, the discussions will focus on PLS and TNI's new involvement in businesses and its unimproved discipline. Subsequently, this paper discusses Parliament's or DPR's lacking capability on PLS and its relevance with the emergence of TNI's more flexible interpretations on Military Operations Other Than War (MOOTW). The research concludes by offering recommendations on an urgent need for the creation of an SSR Oversight Commission in the Indonesian Parliament to manage SSR.

## II. WHAT PLS MEANS IN INDONESIAN POLITICS AND SSR AGENDA

Since 1955, the first free and fair national elections which produced a liberal democracy in Indonesia, PLS has undertaken the MPs function in implementing both law-making and oversight functions.<sup>11</sup> Needless to say, these two functions have a strong equal position with one another, namely the budget making function (*fungsi anggaran*). From 1955-1959 under the liberal democracy system, before it had been terminated and further replaced by Soekarno with his guided democracy (*Demokrasi Terpimpin*) which brought the country to a new period of authoritarianism, MPs could demonstrate their active role in conducting PLS.<sup>12</sup>

The strong inquiry function of the DPR Commissions during the Natsir administration (1950-1951) and their capability in addressing the question on Papua integration pushed the Prime Minister Natsir to resign. A similar fate was experienced by the Sukiman administration (1951-1952) due to its failure in copying the implementation of the anti-corruption policy which had been strongly demanded by opposition parties in DPR. Meanwhile, Prime Minister Wilopo, who led the administration from 1952-1953, had to resign due to his incapacity in handling military reform aspirations. Not surprisingly, within one to two years, the next four administrations, consecutively under Prime Ministers Ali Sastroamidjoyo (1953-1955), Burhanuddin Harahap (1955-1956), Ali Sastroamidjoyo (1956-1957) and Djuanda (1957-1959) had to resign due to votes of non-confidence in DPR and their own inability in fulfilling the strong demand for military reform pushed by the progressive officers inside TNI.<sup>13</sup>

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11 Bouchier, *supra* note 3, 106-201.

12 *Ibid.*

13 *Ibid.*

Importantly, the fall of Cabinets that occurred during the liberal democracy era created political instability in the country. For this reason, understanding PLS and its links with SSR becomes more relevant. Also, assuring a binding requirement for PLS when a Bill is debated in Parliament is the most effective way to guarantee that PLS will indeed take place.<sup>14</sup> In addition to this, a commitment is required for securing that PLS will be applied in Parliament which has been freely and fairly elected. This situation can explain why under the Old Order era of Soekarno and the New Order era of Soeharto, with the existence of their own authoritarian control, PLS could not be properly implemented, especially the SSR issue since the military (TNI) still controlled the country and held a strong position.

A somewhat different situation emerged during the early years of the post-Soeharto era (1998-2004) as the country began to enter a new period of democratic transition. With new laws on TNI and other related laws, made and agreed by DPR and the government, both parties could show their PLS roles, particularly under President Habibie and President Abdurrahman Wahid.<sup>15</sup> This meant PLS roles performed by MPs could deal with positive as well as negative responses and resistances. Such resistance, in the case of PLS regarding military reform aspirations (or SSR agenda) were not supported by stakeholders inside the government, namely the TNI, which could instigate a power contest between civilian and military. This had the potential to produce sporadic conflicts in Indonesia and contributed to political instability.<sup>16</sup>

Problems for MPs and the Government in conducting PLS on SSR are constrained by the military and TNI stakeholders who fear losing their many privileges as enjoyed under Soeharto's New Order. Simultaneously, MPs' lack of interests on the one hand and their poor knowledge on the other also influence their capability in practicing proper PLS. Additionally, the DPR's weak support system is characterized by the lack of SSR experts coupled with MP's poor performance pertaining to PLS since 2003. It is hoped that this research can help the country to put SSR on the right track and further implement its agenda. The effectiveness of this SSR can contribute to the formation of civilian supremacy that can increase the quality of democracy in Indonesia and reach its next step toward consolidation.

### 1. PLS and Military's Alleged Cases of Gross Human Rights Violations

An important aspiration raised by the reform movement in May 1998 was to bring to Court the alleged perpetrators of past gross human rights violations. To achieve this objective, Law No. 39/1999 on Human Rights and Law No. 26/2000 on Human Rights

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14 De Vrieze, *supra* note 2.

15 Poltak Partogi Nainggolan, *The Indonesian military response to reform in democratic transition: a comparative analysis of three civilian regimes, 1998-2004*, cetakan pertama ed (Jakarta: Azza Grafika, 2012) 58-65, 149-154.

16 *Ibid.*

Tribunal were created to enable the prosecutions of those whom committed human rights violations since the rise of authoritarian power under Soeharto in the mid-1960s. In fact, since the related laws had been widely socialized in early 2000s, it was not easy for both the government and the Parliament to meet Indonesian people's aspirations of conducting open investigations and pushing for prosecutions of the alleged human right violation cases. The problems do not deal with only the complexity of the cases but also the weak capacity and performance of new Parliaments resulted since the post-1999 election.

With its weak knowledge on SSR, new civilian MPs were unaware that appointed MPs from the military who were still in the Parliament until 2004 have been placing obstacles to any attempt to prosecute past accusers of human rights abuses. A closer analysis of Section 2 of Chapter 43 of Law No. 26/2000 on the Human Rights Tribunal illustrates how it becomes difficult for prosecutors to determine whether an alleged case can be followed-up or not. An *Ad-Hoc* Tribunal which will prosecute the alleged cases mentioned in Section 1 requires a deliberation from the DPR plenary session to make a final decision.

With the presence of the remnants of the old regime, any effort to bring the alleged cases to the Human Rights Tribunal have always failed due to the existing requirement of an *Ad Hoc* Tribunal which demands a majority vote from the Parliament. Therefore, the DPR Special Commission (*Panitia Khusus* or *Pansus*) on the prosecutions of the *Trisakti*,<sup>17</sup> the *Semanggi I*<sup>18</sup> and the *Semanggi II*<sup>19</sup> cases relating to extra-judicial killings, rape and crimes against humanity occurred, found no legal basis to continue the investigation of reports from *Komnas HAM* or *Komisi Hak Asasi Nasional* (National Human Rights Commission) who had findings of alleged gross

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17 The Trisakti shootings took place on 12 May 1998, an unidentified squad killed at least 4 students and dozens wounded as they began their long march toward the DPR building to force Soeharto to resign. See, Laporan Hasil Penyelidikan KPP HAM Trisakti, Semanggi I dan II (Reports of Investigations of the Trisakti, Semanggi I and II), "Laporan Hasil Penyelidikan KPP HAM Trisakti Semanggi I dan II", (10 March 2002), online: *Sekitarkita.syaldi.web.id* <<http://sekitarkita.syaldi.web.id/laporan-hasil-penyelidikan-kpp-ham-trisakti-semanggi-i-dan-ii/>>.

18 The Semanggi I Tragedy occurred on the 13th November 1998, erupted after the pro-reform students organized a big rally in front of the DPR building to stop the Special Session of the People's Consultative Assembly (Majelis Permusyawaratan Rakyat --MPR) that failed to add people's aspiration on reform, particularly to bring Soeharto to trial and seize his illegal wealth. The clash between the students against the military and the police caused 14 student and civilian deaths, 195 people were seriously wounded and 239 slightly injured. A different source cited 17 died and over 400 injured, with some found shot dead and others were killed or seriously injured by rubber bullets fired at close range. Nainggolan, *supra* note 15.

19 The Semanggi II Tragedy happened on 24 September 1999 as students, particularly in Atmajaya campus, Semanggi, demonstrated against the enactment of the new Law on State Emergency, that caused at least 11 students' deaths and 217 injuries. See, Sri Lestari, "Kasus penembakan mahasiswa Trisakti, Semanggi I dan II, belum selesai setelah 20 tahun reformasi", *BBC News Indonesia* (12 May 2018), online: <<https://www.bbc.com/indonesia/indonesia-43940189>>.

human rights violations and the involvement of high ranking officials. As a consequence, the DPR plenary session on July 9, 2001 finally decided that the prosecutions of the alleged human rights abuse cases must end, meaning they would only be handled by an ordinary tribunal hereon, which would result in middle and low-ranking Officers being imposed with lighter sentences. Even, with the MPs' lack of information and weak knowledge on SSR, several years later, the alleged perpetrators of the gross human rights violations had been promoted to higher posts and ranks --a historical tragedy for Indonesia which in turn stirred vehement criticism from human rights activists.

The prosecution of the *Trisakti* case can help disclose previous alleged gross human rights violations occurred before Soeharto's resignation and included actions such as kidnapping and forced disappearances of political and student activists during 1996-1998, which became the prologue of the 12-14 May 1998 anti-Chinese riots.<sup>20</sup> Therefore, the *Komnas HAM's* investigation reports have indicated the alleged involvements of high ranking military commanders.<sup>21</sup> Heavy pressure from the TNI/Police faction in DPR, which obtained wide support from Islamist party MPs, pushed the *Pansus* investigating the cases to designate them to ordinary crimes. This reduced their status from gross human rights violations recommended earlier by the *Komnas HAM* into ordinary cases. These cases would not be handled in an *Ad-hoc* Human Rights Tribunal, but rather, a Military Tribunal, who would be free to disregard the results of previous enquiries.<sup>22</sup> Hence, both active and retired TNI Generals could not be prosecuted by the Attorney-General Marzuki Darusman for their accused involvements.<sup>23</sup>

Also, worryingly, rather than being scrutinized for being suspected perpetrators, based on the reports of TGPF or *Tim Gabungan Pencari Fakta* (The Joint-Fact Finding Team) along with other independent enquiry groups, whilst giving testimony before the Special Commission (*Pansus*) of DPR, Lt. Gen. (ret) Prabowo was considered a hero.<sup>24</sup> Worse, with Indonesia's great permissiveness, he was able to run

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20 John McBeth, "Shadow Play", (23 July 1998), online: *Australia Review*.

21 See, for example, Arif Budianto & Eko Budiono, "Eks TNI Masih Berpengaruh", *Seputar Indonesia* (22 March 2008) 3.

22 Harold Crouch, "Establishing Civilian Supremacy in Southeast Asia" in *Democratic transitions in Asia* (Singapore: Select Books, 2001) 182.

23 Marzuki Darusman was interviewed on December 17, 2007, and April 10, 2008 in Jakarta; see again also Nainggolan, *supra* note 15. 199-200

24 The writers attended the hearing and testimony organized by the *Pansus* in DPR building in 2000; "Kopassus Diduga Terlibat Pelanggaran HAM Berat di Aceh - Nasional - koran.tempo.co", *Koran Tempo* (6 September 2018) 30, online: <<https://koran.tempo.co/read/434656/kopassus-diduga-terlibat-pelanggaran-ham-berat-di-aceh>>; Restu Diantina Putri, "Rumoh Geudong dan Setengah Hati Pengusutan Korban Konflik Aceh", (20 August 2018), online: *tirto.id* <<https://tirto.id/rumoh-geudong-dan-setengah-hati-pengusutan-korban-konflik-aceh-cTBw>>; see again also, Nainggolan, *supra* note 15, 217.



for Office in several Presidential Elections (since 2009); all legal obstacles removed.<sup>25</sup> During the recent 2019 Presidential Elections, moreover, he was allegedly planning a coup to overthrow the existing civilian regime of President Joko Widodo. He did so by organizing his supporters and loyalists, particularly former military leaders, to reject election results. This resulted in the orchestration of the 22-23 May 2019 mayhem in Tanah Abang, Slipi and Thamrin areas in Central Jakarta and other vulnerable regions in the country. This sought to repeat the chaos of 1998, that he also allegedly instigated.

Furthermore, in cases of kidnapping and forced disappearances of political and student activists and the *Trisakti* shootings, only middle ranking soldiers were considered responsible. Not surprisingly, their own cases were processed by the Military Tribunal, not an *Ad-hoc* Human Rights Tribunal or Court, as required by Law No. 39/1999 on Human Rights. Thus, the cases were treated as mere disobediences of military discipline and rules, whilst their superiors, the Generals responsible for the violations were left unscathed; they were immune from being summoned by the Parliament, and, moreover, by the Court.<sup>26</sup>

The existence of Law No. 26/2000 on Human Rights Tribunal produced in DPR was responsible for presenting the above impunity and the following stagnant prosecutions of the accused gross human rights violations. In 2005, the Chairperson and several DPR members of the Commission on Law (*Komisi 3*) attempted to review and revoke the *Pansus* decision. Unfortunately, in 2006, the DPR Steering Commission (*Badan Musyawarah* or *Bamus*), a stronger complementary organ performing function of mini plenary session, halted their efforts. In 2008, a year before the Presidential Elections, several MPs from the PDIP faction in the Commission on Military, Defence and Foreign Affairs (*Komisi 1*) raised this case yet again. Their efforts were blocked by MPs especially from the Golkar or *Golongan Karya* party, who were the loyalists of Soeharto's authoritarian regime.

Facing discernible resistance from the majority of their colleagues from other factions; they anticipated their efforts would be unfruitful, hence, the PDIP (*Partai Demokrasi Indonesia Perjuangan* or The Indonesian Democratic Party for Struggle) faction's initiatives came to an end. Although PDIP was the second largest faction in DPR, its MPs could not demonstrate the utmost efforts to fight for human rights. The new initiatives to question and open again an enquiry to the past alleged gross human rights abuses, and also the emergence of new aspirations to make an amendment to the existing Human Rights Tribunal law at that time, were more likely motivated by PDIP Chairperson's (Megawati) pragmatist interest to draw more support for the 2009 presidential election. This became clear, when she was defeated in the election, the

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25 Komnas HAM, "Penantian Panjang Korban Pelanggaran HAM" (2008) VI (Wacana HAM Second Edition), online: <<http://www.konnasham.go.id/portal/files/wacana%20edisi%20JULI%202008.pdf>>.

26 *Ibid.*

PDIP faction in DPR never again raised the past alleged gross human rights abuses, although more than one hundred of her followers perished during the July 27, 1996, tragedy. More importantly, since the DPR showed no further commitment and political will, the presence of Chapter 43 of Law No. 26/2000, which required the creation of an *Ad-hoc* Tribunal or Court by the DPR, has consequently changed the parliamentary role from the defenders of human rights to the protectors of gross human rights violators.

Another counterproductive effort later emerged. In December 2006, human rights activists filed judicial reviews under Chapters 27 and 44 of Law No. 27/2004 on The Commission of Truth and Reconciliation (*Komisi Kebenaran dan Rekonsiliasi* or KKR), regarding amnesty for the violators' and victims' access to justice, to *Mahkamah Konstitusi* (The Constitutional Court). Unexpectedly, the Court decided to revoke the law thereafter. This was yet another setback for the development of Indonesia's law enforcement after Soeharto as an alternative way to fulfil victims' rights for justice had been abolished.

With the DPR's deprived performance in conducting PLS, other gross cases of human rights violations were repeated in the new era of reform. From the westernmost to the easternmost provinces of the country, namely Aceh and Papua, as well as in old and new provinces, like Java and East Timor, new cases continue to emerge. The new DPR members from the 1999 election could not prevent serial cases from occurring both during the preparation and after the referendum on independence in East Timor. They could not respond to KPP HAM's (*Komisi Penyelidikan Pelanggaran* or the Human Rights Commission for Investigation of Violations) independent inquiry reports on systematic killings resulting in crimes against humanity, extrajudicial executions, and arbitrary shootings, particularly violent rapes and mass killings during 1999.<sup>27</sup> Furthermore, the Parliament was not ready to deal with the TNI which was losing many of its vested-interests and was under pressure by separatist movements in the Aceh and Papua province.

The new report from *Komnas HAM* revealed that the TNI's special force units, particularly *Kopassus* (*Komando Pasukan Khusus*), were apparently involved in committing gross human rights violations in Pidie, Aceh Province, during the implementation of *Operasi Jaring Merah I dan II* (the Red Web Operation I and II) during 1989-1998, which caused the death of 35,000 civilians.<sup>28</sup> The so-called incident of *Rumoh Geudong*, whereby special forces units killed dozens of civilians in a large house in a village of Billie Aron in Pidie, was investigated by an *Ad-Hoc* Commission of *Komnas HAM* from 2003-2018 but was not discussed in DPR. This was due to the MPs reluctance to open up another Parliamentary hearing on these new findings of human right violations. Meanwhile, a rare MP from the Aceh province, namely

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27 Kevin O'Rourke, *Reformasi: The Struggle for Power in Post-Soeharto Indonesia* (Allen & Unwin, 2002) 341; See also, Nainggolan, *supra* note 15, 210.

28 note 24, 30; Putri, *supra* note 24; Nainggolan, *supra* note 15, 217.

Tengku Nasruddin Daud who disclosed the violations with passionate accusations ended with his tragic death not soon after. The MP from an Islamist party, namely PPP or *Partai Persatuan Pembangunan* (United Development Party), had robustly demanded the TNI leaders' responsibility that had embarrassed the Generals present during the testimony, which was attended and directly observed by the writers as members of the DPR assistance team.

Amid the DPR's feeble role in conducting PLS, new cases of gross human rights violations took place in hotspots in the Aceh and Papua provinces as the separatist rebels increased their activities to attract international attention, and TNI simultaneously renewed their messages to stop them with maximum backlash. Similar to Chief Commander Gen. Sutarto, Army Chief Gen. Ryucudu could not tolerate any separatist movements in both provinces, therefore he responded with maximum military force. The military's obsession with a culture of violence could not be terminated as the Parliament showed no progress in conducting PLS.

More specifically, MPs from PDIP's faction were unable to make objective decisions as they were unable to criticize their party leader, President Megawati's uncompromising policy in unstable areas. This situation highlights that between May 2003-September 2004,<sup>29</sup> 2,849 rebels had been killed during TNI operations and an additional 662 civilians had died both during the military and civil emergency periods in Aceh<sup>30</sup> Whereas, in Papua, new extra judicial killings and other human rights violations obstructed by TNI soldiers continually occurred since 2002 in Timika, Wamena, Wasior, Biak, and Abepura. For these cases,<sup>31</sup> MPs lacked the willingness to create a Special Committee or a Fact-Finding Team for conducting on the spot investigations in each place and formulate clear reports on what really happened on the ground, as well as to discover the actual number of victims. Thus, there has not been a Parliamentary hearing about these cases held in DPR.

Even, in the most recent case in 2019 that took place in Nduga, Wamena, whereby separatist rebels attacked civilian workers, military and police posts, native Papuans, especially women and children, had to flee their villages and find safe refuge which is extremely difficult to reach due to the region's topographical condition.<sup>32</sup> Newer and smaller cases emerged sporadically in other parts of Papua shortly after. Unfortunately, during a regular working meeting with TNI leaders, from the MPs present in the Commission, only one raised a few questions on the case. Obviously, they have little interest in conducting further investigations via *Tim Pencari Fakta* (A Joint Fact-Finding Team) to discover the truth on the ground, especially since the

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29 Acehkita, "TNI Klaim Telah Tewaskan 2.800 Anggota GAM", (17 September 2004).

30 Acehkita, "Versi TNI: 662 Warga Sipil Tewas Sejak Darurat Militer", (17 September 2004); *Ibid.*

31 See again, Nainggolan, *supra* note 15, for examples, 221-223; 303-309.

32 Stefanus Pramono, "Bara di Nduga" *Majalah Tempo* (1 April 2019) 25, 28-38.

attack was provoked by separatist rebels who had long since been perceived as enemies of the State that threatened national sovereignty or integrity.

In comparison to Aceh, the figures of victims could be less in Papua, however, because of the DPR's substandard function in PLS, the exact number of victims cannot be determined in regard to new and old cases of human rights violations. In December 2006, Law No. 27/2004 on The Commission of Truth and Reconciliation has been annulled by the Constitutional Court, however all alleged cases of human rights violations in the Papua province still could be prosecuted by using Law No. 21/2001 on Special Autonomy of Papua, particularly based on Chapter 45 and 46.<sup>33</sup> Due to MPs' deficient PLS function there is certainly no guarantee that new cases will not recur.

In fact, 15 years were needed to pass until the alleged cases could be opened again, that was until April 2016 when the new civilian government under Joko Widodo formed *Tim Terpadu*, an Integrated Team, comprising of important national figures from various backgrounds. The involvement of former officials of the Soeharto regime, who were allegedly perpetrators, were comprised of members of the aforesaid team. This seemingly virtuous initiative by the government was later rejected by Papuan people on this basis. Therefore, after working for about 6 months, as there were no follow-up and due to the resulting team, the initiative came to an end.<sup>34</sup> Unsurprisingly, separatist movements continued to increase their activity although the central government has granted a special autonomy status for the province and allocated a significant budget since 200.<sup>35</sup>

TNI resistance since 2006 to obey civilian law or KUHP (*Kitab Undang-undang Hukum Pidana*, the criminal code) was further responsible for its soldiers' and officers' persistent involvement in various human rights violations across Indonesia. The MPs' lack of enthusiasm to enact amendments to existing Law No. 31/1997 on Military Tribunal provides a safe haven for the alleged violators to avoid such kind of accusations, prosecutions and sanctions. In other words, the lack of DPR members' motivation to bring soldiers who violated criminal code to civilian Court, the TNI continues to subjectively protect its soldiers from any accusation of violating the KUHP for the sake of maintaining its old motto of *l'esprit de corps*.<sup>36</sup> This, obviously, cannot be justified if Indonesia wishes to uphold the principle of rule of law.

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33 Riris Katharina, *Menakar Capaian Otonomi Khusus Papua* (Yayasan Pustaka Obor Indonesia, 2019) 127.

34 *Ibid.*

35 *Ibid.*

36 Poltak Partogi Nainggolan, "Peran DPR dalam Menjalankan Kontrol Demokratis atas Pembaruan Sektor Keamanan" (2011) 2:1 P3DI (Jurnal Politca Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional) 31.

## 2. PLS and Military's Unchanged Culture of Violence

The Indonesian Parliament's abysmal performance in performing its oversight function over the military in the post-Soeharto era has allowed the TNI behaviour to go unchallenged. MPs' shallow awareness regarding the importance of Parliament to implement PLS demonstrates why TNI soldiers often violate Law No. 34/2004 on TNI. Several cases can be taken and deeply discussed in this paper that resulted in social, economic, political and human costs, as well as negatively impacted governance and security in cities and regions. It has become clear that a return to involving the military with civilian affairs is being demanded by the civilians themselves.

The growing instability in the regions following the devolution of power and the transfer of autonomy from central government has strengthened civilian resolve to bring back the military to join with the head of regions and become elements of *Muspida* or *Musyawah Pimpinan Daerah* (The Joint Regional Leadership) as had been the case during the Soeharto era. In fact, instability has been caused by poor leadership and the incapability of civilian leaders, including the failure of political parties and mass organization leaders in pushing a peaceful and smooth transference of power and initiate the process of regeneration. Many ignored the presence of the *Muspida* in the past which offered opportunities for TNI to become a bumper, particularly for the army who controlled the situation at the lowest level through their territorial commands.

TNI involvement in legal and illegal businesses, especially in racketeering and offering security protection businesses, has not significantly diminished. In many cases, the growing insecurity in the regions and new demands for the enlargement of provinces, municipalities and regencies were orchestrated by the military due to their dissatisfaction with the reform movement or SSR, more specifically. This was also due to police incapacity to conduct their tasks in guaranteeing security in the new era. The MPs' ignorance of their PLS function over TNI behaviors in the post-2004 military reform led to its soldiers' involvement in many cases of new violence against civilian populations.

A tendency for violence organized by TNI soldiers in various regions has been increasing in the last few years. A report by *Kontras* or *Komisi untuk Orang Hilang dan Korban Tindak Kekerasan* (The Commission for Disappeared and Victims of Violence), a pro-human rights Non-Government Organization (NGO) specializing in investigating victims of violence and forced disappearances, revealed during the first quarter of 2013, there were 51 cases of violence involving TNI members, ranging from lowest soldiers to middle ranking officers.<sup>37</sup> The forms of violence were systematic attacks on police and civilian offices, in prisons in Ogan Komering Ulu regency of

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37 Alsadad Rudi, "JK: Kasus Cebongan Dampak Ketidakpercayaan", *Kompas* (29 March 2013) A5, online: <<https://nasional.kompas.com/read/2013/03/29/23165783/jk.kasus.cebongan.dampak.ketidakpercayaan>>.

South Sumatra, Sleman, Yogyakarta and PDIP Headquarters and branches in Jakarta and Semarang, caused civilian deaths. It was widely reported that all cases of violence toward civilians were organized by groups of army. While admitting his soldiers' dreadful behavior and fearing the emergence of similar cases of violence in the future, the new Chief of the Army, Lt. Gen. Moeldoko acknowledged that military education curricula must be immediately reformed to rectify soldiers' unfavorable behavior, which was derived from the old culture of violence and is still basically maintained today.<sup>38</sup>

A clear example of this is the case of a commando raid on Sleman prison, which has demonstrated the involvement of the Indonesian special force (*Kopassus*) units from Group 2 of Surakarta. The local police stated that they might have failed to foresee the recent attack on four inmates at Cebongan Penitentiary in Sleman Yogyakarta. Subsequently, the police have been blamed for ignoring potential clues that an attack was imminent. The weak investigation of this case that should have been conducted by the DPR in line with Parliament's PLS function increased disharmony between the police and the military since the separation of both institutions in 1999.

Growing distrust with the police institution, conflict of interest and the ongoing contestation between the police and the military in controlling illegal business were the reasons behind the Sleman, Yogyakarta, Cebongan prison attack by skilled individuals equipped with weapons, namely those had suspicious connections with the *Kopassus* units. Another analysis revealed the possible re-emergence of military covert operations which often occurred in the past during the early crucial period of power transition from the military to civilian regime leaders.<sup>39</sup> More importantly, the raid has put the troubles of TNI and SSR back on the front seat.

Early investigations organized by the TNI team on military involvement brought about an odd result because it focused only on low ranking soldiers whom the accused of violence or mentioned as the alleged perpetrators of the attack. It avoided investigating their superiors, middle and high-ranking commanders of the Second Group of *Kopassus*, *Korem* (*Komando Resort Militer* --City or Regency Level Military Command), and *Kodam* (*Komando Daerah Militer* --Provincial Level Military Command). In fact, there were numerous differences as to the results of investigations that have been organized by the Indonesian Human Rights Commission (*Komnas HAM*) and the *Kontras*.<sup>40</sup>

TNI leaders stated perpetrators are "*oknum*" --individual actors, whose actions have no relation with the (military) institution where they work, was an indication that until recently TNI was still a sacred State institution, and, furthermore, its soldiers as state apparatus and enjoyed immunity. TNI was unready to take responsibility for their wrongdoings in the pre-reform era. The use of word "*oknum*" (somebody, not accusing

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38 Media Indonesia, "Pendidikan Budaya TNI akan Dibenahi", (24 May 2013) 5.

39 Koran Tempo, "Sejumlah Saksi dan Korban Mengadu ke Komnas HAM", (6 April 2013) 1, A3.

40 See, Rudi, *supra* note 37.

specific person or institution) terminology in Indonesian language was also another attempt to give impunity to TNI when they have been usually found guilty of committing crimes.

Plausible deniability as part of intelligence operations continues to be practiced by the TNI and can be transparently seen. It appears the military is using its traditional supporters, the military backed-youth organizations, such as FKPPI or *Forum Komunikasi Putera-Puteri Purnawirawan ABRI* (The Communication Forum for TNI's Children) to invite new supporters and justify its violent actions to uphold security and public order. Evidence for this can be found in the placing of banners in the name of these militia organizations in public places, which transparently declared their support for TNI, particularly, its special force, the *Kopassus*, to crush the hoodlums or thugs who still secured cafes, bars, night clubs, amusement, entertainment centers and streets in big cities.<sup>41</sup>

Thus, TNI moves to mobilize paramilitary groups, such as FKPPI, and other traditional supporters inside civilian organizations, for example, KNPI or *Komite Nasional Pemuda Indonesia* (The Indonesian National Youth Committee), launched a public campaign conducted by its soldiers in the *Cebongan* prison, and was still a reflection of *l'esprit de corps*, a common decision and action that can be justified. Nonetheless, the TNI leaders' attempt to paint perpetrators as knights who demonstrated their strong loyalty to their institution is rather deceptive! Such an action reveals the culture of violence remains part very much of TNI behavior which has its historical roots in the Javanese culture.

The TNI leadership's approach to address the rising trend of military violence after a decade of reform since 2004 is used as a test to examine whether or not TNI soldiers, have been involved in human rights violations in the past and whether they have respected the process of transitional justice to aid the country in accomplishing democratic consolidation. Unfortunately, TNI soldiers and GAM members allegedly involved in gross human right violations during the 30-year civil war were only arrested recently. It can be predicted what will happen in Aceh if KKR or *Komite Pencari Kebenaran dan Rekonsiliasi* (The Committee on Truth and Reconciliation) wanted to follow up the reports on the alleged abuses, i.e. during military operations from 1989-2004. The formation of KKR itself has been mandated by the Helsinki Peace Treaty and Aceh Administration Law, based on the consideration that those TNI operations claimed the lives of between 10-30,000 local people, majority of whom were civilians.<sup>42</sup> For this reason, citizens demand an open investigation and prosecutions for the past

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41 A big banner could be seen, for instance, in front of The Military Strategic Reserved Command (Kostrad) housing compound in Arteri Pondok Indah Road, Jakarta.

42 See, *Derailed-Transitional Justice in Indonesia Since the Fall of Soeharto*, Executive Summary and Recommendations, by ICTJ & KontraS, Zotero, Executive Summary and Recommendations (2011); Hotli Simanjuntak, "Aceh to set up KKR without national presedence", The Jakarta Post, (18 April 2013) 2.

grave human rights abuses raised in East Nusa Tenggara province in order to address the cases of the 1965 and 2005 incidents which were allegedly organized by the TNI.<sup>43</sup>

Nonetheless, as previously stated, DPR members in Jakarta did not respond to questions during Parliamentary sessions. Apparently, for them, the past cases of gross violations were not only difficult to disclose, but also the final result of the investigations of the Special Committee could not meet the ‘high expectations of justice’ the families of the victims sought. There are unclear prospects and with the unfinished SSR agenda, TNI leaders could still influence MPs in DPR as veto players.

Meanwhile, small cases of disciplinary violations, for instance the Cebongan case, produced no serious resistance or backlash from military institutions and TNI leaders when MPs raised these issues during Parliamentary sessions. They put them on the top of their agenda in order to build public support and political investment they needed for the next legislative election, which demanded no risks in comparison with the past cases of the alleged grave human rights violations. It can be argued, therefore, as long as civil-military relationships endure, the TNI will remain an extraordinary institution in Indonesia. Their soldiers cannot be brought to the public Courts for the crimes they committed instead the Military Courts whilst their Commanders escape severe punishment. PLS should be carried out regularly as part of MPs’ routine or daily tasks.

### 3. PLS and Military’s Irresistible Involvements in Businesses

Slow progress of SSR can be seen in other areas. An example of this is military business, an illegal practice with a long history mostly enjoyed by higher commanders of TNI. Whilst certain large military businesses have been terminated with the enactment of Law No. 34/2004 on TNI or the Indonesian Military. However, TNI soldiers continue to be involved in racketeering operation across many. Such kind of businesses are perceived as protecting palm oil plantations of large businesses from local people. Moreover, NGOs’ report tremendous claims and seizures. The top and middle ranking Officers of regional commands and military headquarters have allegedly become involved in obtaining shares of plantation companies and are poised to take over ownership.<sup>44</sup> In other instances, soldiers often clashed with local people due to land disputes; as in the case of Palembang which involved Yon Paskhas 462, the Air Force’s special troop battalion. The cases transpired due to the TNI’s lack of control of their assets, conflict of interest, lack of discipline and weak law enforcement causing civilians and soldiers to be seriously injured.

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43 Suara Pembaruan, “Korban Pelanggaran HAM Berat di NTT Mulai Buka Suara”, (28 April 2013) 15, online: *BeritaSatu.com* <<https://www.beritasatu.com/nasional/110592-korban-pelanggaran-ham-berat-di-ntt-mulai-buka-suara>>.

44 Report of the Indonesian Peasant Union (*Serikat Petani Indonesia* –SPI), presented in FGD at the Indonesian parliament’s research centre, P3DI, DPR, on 15 April 2013.



TNI involvement in racketeering in Natuna municipality is quite clear, the area is set in the Riau Islands Province, a remote part rich with oil and gas resources. Regional government officials report the three branches of the Indonesian military, and the police, regularly receive until large sums of money to support their daily operations in protecting the region located near the disputed area of the South China Sea. The unfinished amendments of the Law No. 31/1997 on Military Tribunal, regarding procedural aspects of implementing chapters, and the failure of DPR to accomplish its tasks during the 2004-2009 parliamentary period, offer wider opportunities for soldiers to break the law. Both laws above discussed were formulated in accordance with the SSR agenda introduced in early 2000 when reform was initiated for the first time.

Meanwhile, regarding racketeering it has been reported there was an alleged deeper involvement of the police, another important actor of security sector that must be more properly regulated in the country's SSR Agenda. The mass media<sup>45</sup> disclosed a case of human trafficking, involving a police officer collaborating with military personnel, pertaining to a factory in the Banten Province. Both officers provided illegal protection to the factory which has been accused of producing crimes of deprivation of liberty and torturing several workers who ignored the factory Manager's order to work without payment for 2 years. The police and military punished and assaulted workers if they failed to reach the factory's daily production target.<sup>46</sup>

Yet another case, PPATK or *Pusat Pelaporan Analisis dan Transaksi Keuangan* (The Centre for Financial Transaction and Analysis Report) has revealed that a low ranking police officer owned bank accounts with more than Rp. 900 trillion (nearly US\$ 600 billion) allegedly gained from illegal logging and fuel smuggling activities in the West Papua, a new Papua province which is rich in natural resources.<sup>47</sup> The police officer's involvement in businesses such as illegal logging, raised suspicion as to the possible connection of higher ranking police officers, and also military commanders in lucrative businesses.<sup>48</sup> Furthermore, KPK or *Komisi Anti-Korupsi* (The Anti-Corruption Commission) has uncovered corrupt practices related to the regulation of a driving simulation machine at the Police Headquarters involving two-star police officers, who are accused of misusing State funds to the tune of Rp. 100 billion (nearly US\$ 67 million).<sup>49</sup>

Due to DPR's deficient database, in recording various cases above involving soldiers and the police in racketeering practices, MPs were unable to seriously pose questions to further discuss the cases or work toward understanding their causes and solutions, which would have enabled the prevention of future cases. The proposal of

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45 See, Multa Fidrus, "Tangerang 'slave' factory attracts tourist," The Jakarta Post, (8 May 2013) 9.

46 *Ibid.*

47 Suara Pembaruan, *supra* note 43.

48 *Ibid.*

49 Bangkok Post, "Police decline luxury phones, pens," online, <<https://www.bangkokpost.com/world/342463/police-decline-luxury-phones-pens>>.

the Ministry of Defense to submit Bill on Military Service and Auxiliary Reserves could have a better response. Inputs from NGOs and MPs from Commission I during a DPR hearing were successful in demanding the government to withdraw the Bill and presenting an alternative solution to TNI by allocating funds to improve soldiers professionalism and the military's weapons systems.

In an unprecedented move, MPs passionately stated they would struggle to help TNI fulfill its minimum essential forces quota within few years as the military can only receive 1/3 of the budget from its total demand annually. Whilst criticizing TNI leaders, MPs argued that it would be prudent for the government to prioritize and accelerate the improvement of the TNI's defense technology and capacity. Regarding this case, utilizing their PLS function, MPs wanted the government to discard the Bill which would severely implicate the state budget. Interestingly, unlike before, in this rare case, MPs could have rejected the government's initiative Bill which had been prepared as a short-cut solution to strengthen national defense from perceived future from neighboring countries. MPs believed the Bill could be misused by the government for their self-serving interests in the upcoming general elections.

#### 4. Weak PLS and Military's Unimproved Discipline

DPR's success in creating a baseline for military reform cannot, in reality, prevent the military from involvement in criminal cases, such as the one which humiliated TNI and affected the naval force in Semarang, Central Java, causing its naval base commander, Col. Anter Setiabudi, to be arrested by BNN or Badan Narkotika Nasional (The National Narcotics Agency) on drug charges. It is argued these emerging cases concerning military personnel are only the tip of the iceberg. An analyst affirmed if a middle-ranking officer such as the naval commander in Semarang committed crime, the iceberg could be huge. An investigative report disclosed from 2005-2013, there were 205 soldiers at all levels, consuming narcotics and drugs and involved in illegal businesses taking place inside navy units.<sup>50</sup> In 2012, there were at least 3 cases concerning the military and the police, whilst in the first quarter of 2013, 4 similar cases took place relating to TNI soldiers.<sup>51</sup>

TNI has been under the media spotlight for a number of criminal acts, ranging from assault to murder. In Bandung, the Military Court assigned the death penalty to twenty-three year old Second Private Mart Azzanul Ikhwan for the murder of a pregnant woman and her mother in Garut, West Java Province.<sup>52</sup> Deriving lessons from

50 See, Koran Tempo, "Kolonel Nyabu, KSAL Marah Besar", (2 May 2013) A6, online: <<https://nasional.tempo.co/read/477272/kolonel-nyabu-ksal-marah-besar>>.

51 Zaky Al Hamzah, "Kasus Narkoba Tampar TNI", *Republika Online* (1 May 2013), online: <<https://republika.co.id/berita/koran/news-update/13/05/01/mm334d-kasus-narkoba-tampar-tni>>.

52 Ichsan, "Oknum TNI Pembunuh Akhirnya Dihukum Mati - Tribun Jabar", (24 April 2013), online: *JabarTribunnews.com* <<https://jabar.tribunnews.com/2013/04/24/oknum-tni-pembunuh-akhirnya-dihukum-mati>>.

this case, it seems that for individual cases at least the TNI can easily impose grave punishment to soldiers who violate the law. But, in contrast, TNI is consistent in its reluctance to bring soldiers to court and imposing severe punishment on the perpetrators.

In a more recent incident, a group of TNI soldiers attacked the Indonesian Democratic Party for Struggle (PDIP) headquarters in South Jakarta. Senior military leaders such as Gen Endriartono Sutarto defended frequent criminal behavior concerning TNI members arguing it was due to the government's decision to stop the military from conducting business. In an interview with *The Jakarta Post*, the General suggested that TNI soldiers committed violent criminal acts because the current government failed to provide enough incentives for them.<sup>53</sup> This illustrates how military leaders protect their corps and even defend their involvement in legal and illegal businesses. Nevertheless, it is inappropriate for TNI leaders to blindly defend their corps over their links with businesses. Although the leaders argued the TNI was not responsible for the criminal behavior of its soldiers, the alleged cases against the laws cannot be so easily dismissed.

The decision to end the TNI's involvement in legal and illegal business is part of the military reform effort. In accordance with the SSR agenda, it must be underlined that professional soldiers must not do business nor be involved in politics. Additionally, military business affairs serve to profit the Generals and contribute very little toward the welfare of low-ranking officers. The TNI ought to improve its personnel development program and supervision. Punishment and evaluation must be should be considered important factors to improve TNI soldiers' discipline. However, discussions during a hearing in DPR could not immediately put an end to soldiers' disruptive behavior.

Unsurprisingly, the inconsistent PLS performed by MPs has failed to prevent fundamentalists in Indonesia in spreading their influence on TNI and police institutions. This was revealed by Zuhari Misrawi, the Chairman of Moderate Muslim Society, based on his research on the current rising tendency of religious extremism in the country.<sup>54</sup> Weak PLS in this context will aggravate national security as the country is seeing a dramatic increase in intolerant behavior from conservative groups. This will produce further challenges for the national police in their war against terror.

During Soesilo Bambang Yudhoyono's (SBY) era, there was a rumor of an *coup d'état* attempt. This was publicly announced by President SBY. Another possible post-Soeharto *coup* in the democratic transition period, reportedly organized by ex-Generals, has been detected and reported by BIN or *Badan Intelijen Nasional* (The National Intelligence Body).<sup>55</sup> To counter this, in 2014, President SBY was forced to

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<sup>53</sup> See again, Bangkok Post, *supra* note 49.

<sup>54</sup> Suara Pembaruan, *supra* note 43.

<sup>55</sup> Koran Tempo, "Ray Rangkuti: Kudeta Hanya Khayalan SBY", (25 March 2013), online: <<https://nasional.tempo.co/read/469331/ray-rangkuti-kudeta-hanya-khayalan-sby>>.

invite former TNI leaders and several retired army Generals, such as Fachrul Razy, Luhut Binsar Panjaitan and so forth, to his office to obtain information, as well as request support for his remaining presidential term.

Along with counter-intelligence motions performed by the BIN, the pre-emptive efforts of President SBY successfully deterred the *coup* rumor before it had the chance to develop into a serious threat to his presidency. At the time MPs failed to organize a special hearing in the DPR that could have served to support the constitutional ruler, President SBY, from the *coup* threat. In fact, SBY's effort to invite former military leaders to the *Merdeka* State Palace managed the danger before it transformed into an uncontrollable situation.

Several surveys indicated ex-military leaders such as Lt. Gen. (ret) Prabowo and Gen. (ret) Wiranto were the most promising presidential candidates, chosen by the public, leaving behind civilian figures, such as former President Megawati Soekarnoputeri and Vice President Jusuf Kalla, who remained amongst the most popular civilian presidential candidates in 2014. Seemingly, military figures' unpleasant records of the past have been replaced by the Indonesian people's defeat in their battle against forgetting. Milan Kundera confirms this popular statement as to the difficulty of States and nations and their struggle against forgetting during the period of transition.<sup>56</sup>

A more counterproductive situation arose during the course of Indonesia's journey to democratic consolidation. The flourishing development of civil society was threatened by the existence of Bill on Civil Society Organizations or CSOs, which further extended to DPR. The existence of the amending Bill on mass-organization certainly tests the early question as to whether SSR has been accomplished, facilitating the State's transition into a new phase of democratic consolidation.

The rising tendency of anarchy in society recently cannot be justified under SBY to tightly control CSOs' activities including foreign NGOs in the country. MPs, especially from the ruling party, namely, members of the Democrat faction in DPR, who wanted to propose the Bill on CSOs, failed to garner support from other factions. Increasing pressure from the grass-roots level pushed MPs to take their PLS function seriously and examine relevant laws which have granted greater freedom to Indonesian people for gathering and joining associations or organizations.

Strong pressure from civil society organizations that arrived in several waves to visits the DPR and submitted petitions to reject the Bill to the DPR Speaker and Chairperson of Commission 1 resulted in the MPs deciding to stop discussions of the Bill and subsequently dropped it from Parliament's agenda. MPs recognized the rising threat of anarchy resulted from uncontrolled political liberalization during the democratic transition and should be properly handled by the police. The MPs understood that the existence of such a Bill would constraint foreign NGOs to help Indonesia accomplish its SSR agenda at a time when there were rising sentiments of

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56 Milan Kundera, *The Book of Laughter and Forgetting* (HarperCollins, 1999).

nationalism and anti-Western intervention campaigns. The DPR in a preventive move has successfully blocked the SBY's efforts to propose the counter-productive Bill.

A vocal figure amongst the MPs was Yudi Chrisnandi, a young savvy lawmaker from the *Golkar* or *Golongan Karya* faction. After his removal in 2014, following his appointment as the Minister for State Apparatus and Bureaucratic Reform by President Joko Widodo, PLS in the Indonesian Parliament (DPR) continued to weaken. Not many young Parliamentarians wish to be vocal members, raising difficult questions including those related to military indiscipline, to Ministers during hearings and working sessions in DPR.

Veteran MPs wish to play in a safe zone, preferring to be the mouthpiece of the government rather than demonstrating their roles as the representatives of the people. This illustrates as happened in other cases of military indiscipline, MPs do not wish to summon TNI leaders for allowing military compounds to become warehouses for toxic waste, endangering soldiers, their families and local residents.<sup>57</sup> This tragedy transpired as the Commandants of the TNI bases were allegedly misusing their authority by conducting illegal business with middlemen, involving private companies as well as regional government officers.<sup>58</sup>

The DPR received further criticism for its feeble response to the peoples call for investigation into the 2019 post-election mayhem.<sup>59</sup> DPR can organize a hearing with the leaders of TNI and the police to disclose what occurred during security forces clashes with the massive rallies in front of Bappilu or *Badan Pengawas Pemilu* (The National Election Oversight Body) building.<sup>60</sup> Another case of widespread ignorance on part of MPs was the military's involvement in the Citarum's river cleanup whereby the military sought to borrow Rp. 14 billion (US\$ 997,275) from a Foundation, to fund TNI personnels food, allowances and accommodation.<sup>61</sup> This new case will highlight further complexities and problems related to soldiers actions.

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57 See, Majalah Tempo, "*Investigasi - Limbah Berbahaya di Markas Tentara*" (Tempo Publishing, 2020)23, 39-53.

58 Arkhelaus Wisnu, "Markas Tentara Diduga Menyelewengkan Izin", *Koran Tempo* (20 February 2019) 14.

59 The Jakarta Post, "What TNI reform?", (12 June 2019) 4.

60 A mayhem which caused the death of 8 persons, mostly young people, 300 wounded, and 700 arrested, see, for instance, *Koran Republika*, (27 May 2019) 1; Suseno, "Ada Indikasi Pelanggaran HAM dalam Kerusuhan 22-23 Mei", *Koran Tempo* (27 May 2019) 27; "Fungsi Sosial Masih Dapat Kami Jalankan", *Koran Tempo* (22 February 2019) 5.

61 Arya Dipa, "Military borrows money for Citarum River clean-up", *The Jakarta Post* (22 February 2019), online: <<https://www.thejakartapost.com/news/2019/02/21/military-borrows-money-for-citarum-river-clean-up.html>>.

### 5. PLS and Military's More Flexible Interpretations on MOOTW

Parliament's faulty performance in conducting democratic control over the military on SSR has contributed to its inconsistency in coping with issues on MOOTW, shortly after Law No. 34/2004 on the Indonesian Military (TNI) had been passed in 2004. Similarly, the DPR's weak PLS role has encouraged the TNI to send more soldiers to occupy other civilian posts beyond what is permitted by law --a new policy which is undoubtedly illegal. It is true that the military's dual function was terminated in 2004, five years earlier than it the target, culminating in the withdrawal of all of TNI officers from DPR. Conflicting with this is the existence of 150 unemployed Generals and 500 Colonels (2011-2019)<sup>62</sup> this is due to defective recruitment processes, promotion and retirement policies which have resulted in the TNI sending more soldiers to occupy civilian posts.

This inflexibility has led to TNI leaders tolerating their soldiers' return to securing train stations and airports, managing public protests and even work in rice fields helping peasants. The new initiative came to fruition by the creation of a Memorandum of Understanding (MOU) between the TNI and respected parties in State institutions, characterised by a bureaucratic structure. Previously, the TNI's return to civilian jobs was executed by Chief Commander, Air Marshal Hadi Tjahjanto without amendments of Chapter 7 and 47 of the Law No. 34/2004, which permits soldiers to conduct more MOOTW in various State institutions. However, civil society and human rights groups protested causing him to delay his decision until his TNI team concluded their proposals to amend both chapters of the law. Discussions as to the TNI Chief Commander's unlawful decision which could instigate complications has not been scheduled in DPR, despite Air Marshal Hadi Tjahjanto after concluding a TNI leaders meeting at Cilangkap Headquarters, East Jakarta, on January 31, 2019, conveyed his rather surprising statements to mass-media; to send jobless middle ranking Officers and Generals to occupy civilian posts, beyond the 10 State institutions allowed by the Law on Indonesian Military. MPs in Commission 1 and Commission 2 failed to respond to the TNI Chief's decision with any hearing in DPR. They did not summon the TNI Chief before DPR session to discuss this crucial decision. Therefore, they failed to take necessary action to prevent the TNI from further violating the law. This demonstrates Indonesian MPs' imperfect commitment or political will to perform their PLS functions; which are comparatively quite enthusiastically carried out by members of House of Common in UK.

The MPs showed a distinct lack of responsibility to invite the TNI Chief to a Parliamentary hearing to further investigate his decision which would no doubt implicate civilian careers. MPs efforts to convey their criticism to the TNI Chief indirectly through mass-media was not an effective solution as they could not prevent him from taking further steps to realize his decision. On the contrary, MPs should have reprimanded TNI leaders who made an unconstitutional decision and introduced this

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62 Arkhelaus Wisnu, "Pos TNI di Sipil Dibahas", *Koran Tempo* (22 February 2019) 2.

decision publically without prior consultation with the MPs through a hearing mechanism or forum of DPR. The TNI's public statement to occupy civilian jobs seeks to return them to dual function roles. PLS was not conducted, and DPR members will carry the blame for their inconsistency in overseeing the military agenda on SSR.

The MPs role in carrying out PLS is hindered by their deficiency in knowledge of civil-military relations and the SSR agenda. Hence, they are unable to demonstrate a strong opposition to TNI leaders' statements. Furthermore, MPs unclear response to civil society's aspiration for demanding the creation of Law on Rule of Engagement may produce fresh human rights violations in Indonesia.

It seems MPs tolerate the TNI leaderships' attempt to deploy more soldiers in MOOTW. However, TNI return to barracks must be supported by the making of the aforementioned law. The existence of the new law would stop unnecessary TNI's involvement in the so-called 'Military Operations Other than War' and limit further abuses and thwart the leaders justifications in defending the TNI's social function.<sup>63</sup> Additionally, the principle of civilian supremacy can be upheld to assist Indonesia in reaching democratic consolidation.

### III. PLS AND THE ABSENCE OF SSR OVERSIGHT COMMISSIONS

DPR's poor performance in conducting PLS is worsened by the TNI's ongoing management concerns that need more flexible interpretations of the MOOTW, as well as Parliament's insufficient support system. Incomplete SSR has led to the absence of a specific Commission on Military Affairs, a Commission on the National Police and a Commission on Intelligence in DPR, which could play role in overseeing day-to-day military behaviour. Needless to say, there is no special hearing that has been scheduled in Parliament to evaluate TNI's deviant behaviour as reported by civil society and mass-media.

MPs' deficient awareness and motivation to complete the SSR agenda has caused the DPR's weakness in scrutinizing the implementation of relevant laws by the TNI. For over two decades following Soeharto's resignation, the DPR has been unable to provide guarantees that military institutions are upholding the rule of law and the principle of civilian supremacy. Meanwhile, pushing amendments and making new laws on SSR are not lucrative for MPs in this new era of reform which is hindered by practices of corruption, collusion and nepotism. In comparison to other laws, such initiatives offer no financial incentives for MPs, except popularity.

MPs are unaware of the impact of not having established an Oversight Commission in Parliament. At this point, regarding the SSR agenda, the urgent existence of an Oversight Committee on Military Involvement in Combating Terrorism

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63 See, for instance, note 60.

is needed. This deficit is leading to new cases of human rights violations. Meanwhile, Law No. 5/2018 on Combating Terrorism has mandated the Indonesian Parliament to create a Commission within 6 months of the law being passed. This negligence leaves DPR with more homework and difficulties in the near future in order to prevent and to address new violations of SSR laws which deal with security and civil-military relations. TNI soldiers have been at ease for a long-time enjoying privileges and protections sanctioned by existing Military Tribunal law. They will be resistant to attempt to change the status quo.

Problems of defectives database systems, limited capacity of researchers and a weak support system in general, which have yet to be addressed by the Indonesian Parliament, demonstrate why there are no amendments and initiative draft laws proposed by the DPR. MPs, particularly in Commission 1 and Commission 3, remain insensitive on the return of TNI soldiers to civilian posts, return their historical dual function. Comparatively, MPs in the DPR cannot critically respond to this crucial issue as is expected by NGOs and civil society groups. The lack of SSR experts in DPR has degraded the Indonesian Parliament's performance and its oversight function on SSR since political reform begun in 2004 with the making of Law No. 34/2004 on the Indonesian Military. Yet another reason exemplifying the DPR Assistance Team inability to aid MPs in controlling new practices of racketeering conducted by soldiers despite the fact military involvement in businesses has been terminated by law.

#### IV. CONCLUSION AND RECOMMENDATION

Military reform in Indonesia is far from being accomplished, this is in part due to pitiful PLS on relevant laws and the Law 34/2004 on Indonesian Military, which have led to unfinished SSR. There are two key agendas which need to be realized, namely amending the Law on Military Tribunal and the formation of a Law on Rules of Engagement, to regulate TNI deployment, particularly in MOOTW, which suffers from a lack of support from DPR factions.

The government has attempted to reopen cases of human rights violations and initiate the so-called an umbrella law on SSR to replace Law No. 34/2004. They did so by proposing *Rancangan Undang-Undang Keamanan Nasional* (Bill on National Security), which was immediately withdrawn once it attracted strong criticism and pressure from a coalition of civil society and human rights groups.

More specific laws that can tackle issues of military discipline, deployment and involvement in civilian affairs are needed to prevent the TNI from further violations of MOOTW. The lack of political will and commitment to respond to reform demand on the part of MPs make PLS more necessary specially to control the formulation of bylaws or implementing rules of Law No. 34/2004. On the other hand, MPs ignorance can hinder the prospect of Indonesian democracy and the possibility of returning to the past eras of authoritarian regimes. Such willful ignorance will support the TNI to



remain embedded in politics behind the blurred formation of a well-disciplined democratic nation.

The DPR's deficient role on PLS and implementation of Law No. 34/2004 on the Indonesian Military has led to the Indonesian Parliament's inconsistency in adopting a post-2004 SSR agenda. DPR's inability to perform the PLS task has contributed toward the failure of Indonesia in reaching democratic consolidation. Regime transplantation, whereby the remnants of the past authoritarian regime and the old political culture exist, and new oligarchies, political dynasties and patron-client systems arise, coupled with MPs' low commitment and political due to financial interest, have led their reluctance to resume SSR agenda. Furthermore, the inadequate capability of the DPR's support system, especially the lack of experts to deal with the agenda, has served to exacerbate the problem.

Subsequently, Parliamentarians or MPs of this emerging democracy continue to demonstrate their poor performance in conducting democratic control over the military on SSR during 2004-2019. In other words, SSR has been inconsistently implemented and the military does not respect the principle of civilian supremacy. More specifically, DPR was unsuccessful in accomplishing the amendments of the Law on Military Tribunal and in initiating the Law on Rule of Engagement. The Parliament was also unwilling to establish an Oversight Commission on Military Involvement in Combating Terrorism which can play function as a Sub-Commission on Intelligence which has not also been formed. An impaired PLS of the DPR means the TNI will continue to interfere in civilian affairs. Meanwhile, having a Standing Committee of PLS and specifically creating a separate Standing Committees on Military, Police and Intelligence become more important.

Therefore, the SSR agenda must be continued in accordance with the post-1998 reform demands reflected in the Amendments of the 1945 State Constitution and specific Law No. 34/2004 on the Indonesian Military. To this end, MPs must demonstrate a strong commitment to fulfilling people aspirations on post-Soeharto reform. MPs ought to remember the people as their constituents have conveyed their political mandate to their representatives in DPR --a full mandate produced from fair election must be consequently implemented in a system identifying as a democracy. Equally important is political transformation, which can be achieved by political parties aiding the emergence of better MPs and legislative elections in the near future. MPs who fail to perform their constituents mandate should forfeit their roles in the following elections.

Simultaneously, supporting system of the Indonesian Parliament must be strengthened. DPR must have persistent updated information on the military and its institutions as well as their recent policies in recruitment, promotion, tour of duty, operation, and deployment. A database overseen by Parliament must be developed and updated with MPs agenda and rising issues. The capacity of human resources,

especially researchers and legal drafters, who work behind the scenes to support MPs in conducting PLS, must be improved by fostering cooperation and strengthening networks between Parliament, NGOs and wider civil society.

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