

RECONSTRUCTING THE ASSIGNMENT OF INDONESIAN NATIONAL ARMY'S (TNI) DUTY IN COUNTERING TERRORISM

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Abstract

In analyzing legal materials, one of the applied techniques as contained in the research method is reconstructive. Reconstructive analysis technique for legal materials comes from the term reconstruction. The meaning of reconstruction in the context of analysis is in term of the building of the material object under the study according to critical epistemology based on the value to be achieved, so that a new juridical construction is formed. The reconstruction of the meaning of a legal rule is carried out by initially understanding the meaning in a particular regulation or article in a law by being systematically connected based on philosophical and analytical approaches. In reconstructing laws and regulations regarding counter-terrorism, this research refers to several theories, including the rule of law theory, the theory of authority, and the theory of legislation. The content of the laws and regulations that need to be reconstructed is the title of the law that regulates the eradication of terrorism, and regulations related to authority between Indonesian National Police (POLRI) and Indonesian National Army (TNI), as well as the role of National Security Council (DKN) in the ideal laws and regulations, which if referring to the Law Number 5 of 2018, it seems to be played by the National Counterterrorism Agency (BNPT) with all its special limitations related to the eradication of terrorism. With regard to regulatory reconstruction, that the title of the current legislation, namely the Law on the Eradication of Criminal Acts of Terrorism, should be revised to use a broader title, for instance into the Law on the Eradication of Terrorism, by omitting the phrase 'Criminal Acts' due to its use, the term 'Criminal Acts' seems to reflect to be only on the field of Criminal Justice System. Despite of that, the problems regulated in counter-terrorism are broader than that, because they involve TNI in overcoming acts of terrorism as part of TNI's duties from military operations other than war, and are carried out in accordance with the main duties and functions of the TNI. From the epistemological aspect, there are quite fundamental changes related to the assignment of TNI and POLRI in dealing with terrorism. The regulation regarding TNI and POLRI certainly cannot be separated from the discussion on the authority of the two institutions, given the intersection of authorities.

Keywords: *reconstructing, terrorism, criminal justice system, Indonesia.*

JEL Classification: K23, K33

1. Introduction

In analyzing legal materials, one of the applied techniques as contained in the research method is reconstructive. Reconstructive analysis technique for legal materials comes from the term reconstruction. The meaning of reconstruction in the context of analysis is in term of the building of the material object under the study according to critical epistemology based on the value to be achieved, so that a new juridical construction is formed. The reconstruction of the meaning of a legal rule is carried out by initially understanding the meaning in a particular regulation or article in a law by being systematically connected based on philosophical and analytical approaches⁵.

In reinterpreting a concept in the text, it must begin with an understanding of its essence. Understanding through construction is criticized through deconstruction to carry out reconstruction efforts. The term deconstruction is used by Martin Heidegger in reconstructing a phenomenon. The concept of deconstruction was then continued by Jacques Derrida through his post-structural deconstruction based on the structural thinking of Ferdinand de Saussure's language. Jacques Derrida views that deconstruction is carried out in a philosophical text through the identification of

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⁵ Syamsudin, 2015, *Budaya Hukum Hakim Berbasis Hukum Progresif*. Jakarta, Kencana.

the oppositional hierarchy of the text as opposed to introducing new ideas and not through the identification of logical inconsistencies or weaknesses of the argument⁶.

Problems in legal studies according to Bernard Arief Sidharta⁷ are things that refer to a positive legal order to answer questions raised by doubts on the validity of positive law. Positive law deals with authoritative texts that must be understood. Understanding the text also means knowing the meaning of the text through interpretations that can be understood in its entirety based on internal standing points. Therefore, in law studies, knowing is judging. It also assesses the knowledge about the rule of law that formed in and through participation and claims of validity which already loaded with value. The implication is the formation of possible differences of opinion on the meaning of the rule of law. Legal studies development activities are based on juridical arguments in presenting rational criteria for testing activities and development of legal studies.

2. Research method

The research method used in this dissertation is legal research in relation to academic activities. It is referred to as legal research in academic activities because it is intended to differentiate from legal research in relation to practical legal research, as written by Peter Mahmud Marzuki⁸, namely that legal research is a process to find legal rules, legal principles, and legal doctrines in order to answer legal issues at hand. Academic legal research is concerned with making valuable contributions to the development of legal studies through new legal theories, or finding new arguments, or finding new concepts for issues considered to be established in law.

In order to obtain the truth, this study uses a type of normative legal research. Normative legal research is meant to conduct a study on various laws and regulations related to research themes. According to Bernard Arief Sidharta⁹, normative research is a doctrinal method with a prescriptive view to hermeneutically find legal principles that determine what are the juridical obligations and rights of legal subjects in certain social situations based on and within the framework of the prevailing legal order by always referring to positivity, coherence, justice, and human dignity, which in its implementation (can and often should) make use of the methods and products of social sciences research.

In analyzing legal materials, one of the applied techniques as contained in the research method is reconstructive. Reconstructive analysis technique for legal materials comes from the term reconstruction. The meaning of reconstruction in the context of analysis is in term of the building of the material object under the study according to critical epistemology based on the value to be achieved, so that a new juridical construction is formed. The reconstruction of the meaning of a legal rule is carried out by initially understanding the meaning in a particular regulation or article in a law by being systematically connected based on philosophical and analytical approaches.

3. Results and discussion

3.1. State of law principle and legislations in countering terrorism

In reconstructing laws and regulations regarding counterterrorism, this research refers to several theories, including the rule of law theory, the theory of authority, and the theory of legislation. The content of the laws and regulations that need to be reconstructed is the title of the law that regulates the eradication of terrorism, and regulations related to authority between Indonesian National Police (POLRI) and Indonesian National Army (TNI), as well as the role of National Security Council (DKN) in the ideal laws and regulations, which if referring to the Law

⁶ Chaer, 2015, *Filsafat Bahasa*. Jakarta, Rineka Cipta.

⁷ Sidharta, B.A. (2000). *Refleksi tentang Struktur Ilmu Hukum, Sebuah Penelitian tentang Fundasi Kefilsafatan dan Sifat Keilmuan Ilmu Hukum sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia*. Bandung, Mandar Maju.

⁸ Marzuki, P.M. (2005). *Penelitian Hukum*. Jakarta, Prenada Media.

⁹ Sidharta, B.A. (2000), *op. cit.*

Number 5 of 2018, it seems to be played by the National Counterterrorism Agency (BNPT) with all its special limitations related to the eradication of terrorism.

As a rule of law state, Indonesia recognizes two types of law, namely written law and unwritten law. Written legal regulations cover all regulations from the Dutch colonial government to regulations which are products of national law, while the unwritten law is Customary law. National law is still developing in the process of its formation. Although several laws and regulations have been formed, not all of these laws and regulations are in accordance with the ideals of national law, so they need to be studied carefully¹⁰. This statement is a signal that laws and regulations need to be studied from the aspects of the interests of various sciences and also aspects in legislative drafting science. Furthermore, several formulations of articles in the legislation, and even the statutory regulations themselves need to be reconstructed are conveyed.

In relation to the reconstruction of regulations, that the title of statutory regulations, namely the Law on the Eradication of Criminal Acts of Terrorism, should be revised to use a broader title, namely the Law on Counter-Terrorism, and omit the phrase 'Criminal Acts', because the use of the term 'criminal acts' reflects as if it will only contain Criminal Justice System material. Whereas the problem regulated in the effort to fight terrorism is broader than that because it involves the TNI in overcoming acts of terrorism as part of the TNI's duties from military operations other than war, and is carried out in accordance with the main duties and functions of the TNI. From the epistemological aspect, there are quite basic changes related to the assignment of the TNI and POLRI in dealing with terrorism. The regulation regarding the TNI and POLRI certainly cannot be separated from the discussion concerning the authority of the two institutions, given the intersection on authorities between the two institutions.

As well known, that the formulation of Article 30 (5) of the 1945 Constitution of the Republic of Indonesia has explicitly stated that the composition of the Indonesian National Army (TNI) and the Indonesian National Police (POLRI), the relationship of authority between the Indonesian National Army and the Indonesian National Police in carrying out their duties, the conditions for citizen participation in the Republic of Indonesia's national defense and security, as well as other matters related to defense and security, are regulated in law. Thus the arrangement of authorities between TNI and POLRI will be further regulated in statutory regulations, particularly in the form of laws. But in reality, the regulation regarding the relationship of authority between the two institutions is not only regulated by law, but also regulated by regulations in lower level than law, such as in the form of government regulations and presidential regulations. This is not in line with the material formulation of the content of laws and regulations, and the theory of statutory regulations. The reconstruction offered is by changing the formulation of laws and regulations related to defense and security to be consistent with the mandate of the constitution, namely that all regulations related to defense and security must be regulated by law.

The regulation of Article 30 (5) of the 1945 Constitution of the Republic of Indonesia regarding the relationship between TNI and POLRI's authority will be regulated in a "law", with small letters. If a lowercase letters "law" is used, then what is meant is the word law in a general sense, or not defined yet, or not yet related to a specific number and title. Meanwhile, the term "Law" by using a capital letter prefix is understood to mean the name or designation for a law that has been determined (definite), for example with a certain number and name, such as Law Number 34 of 2004 concerning the Indonesian National Army. Thus, "law" is a genus, while "Law" is a term related to certain laws.

Further elaboration of Article 30 of the 1945 Constitution of the Republic of Indonesia regarding the issue of eradicating terrorism is further regulated in Law Number 34 of 2004 concerning the Indonesian National Army and Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Stipulation of Regulations Government In Lieu of Law Number 1 Year 2002 concerning Eradication of Criminal Acts of Terrorism. However, Law

¹⁰ Attamimi, A.H.S. (1989). *Fungsi Ilmu Perundang-undangan dalam pembentukan Hukum Nasional*, paper presented in a scientific forum in the Law Faculty of Universitas Islam Assyafiah, Jakarta 17 March 1989.

Number 34 of 2004 concerning the Indonesian National Army only stipulates that the TNI in carrying out the main tasks of military operations other than war, including in overcoming acts of terrorism, in accordance with Article 7 paragraph (2) letter b) Number 3, means that there is no delegation of authority, except in Article 7 paragraph (2) letter b) Number 10 which further explicitly stated by law, namely provisions on assisting the Indonesian National Police (POLRI) in the context of security and public order duties as regulated in law. So that the phrase 'assisting the State Police of the Republic of Indonesia' is only in the context of the task of security and public order, and does not automatically apply in dealing with terrorism.

For Indonesia, laws and regulations are absolute, because Indonesia adheres to the Continental European legal tradition or often referred to as the civil law legal system. One of the main features of the civil law legal system is the importance of statutory laws or statutory legislations. The position of statutory laws takes precedence over judges' decisions or jurisprudence. This is different from the common law system which prioritizes judge's decision as reference for the settlement of a case. Therefore, the common law system is also called the judiciary law or the case law¹¹.

To regulate the administration of the state by state institutions, limit the power of state administration, and also protect the rights of citizens, in a civil law system like Indonesia, obviously, many laws and regulations are needed. In addition, considering the many problems that currently developing, it is necessary to have regulations that oriented towards certainty, justice and benefits¹², so that future legal products can meet the needs of the community and at the same time carry out more precise state management.

On the other hand, as a legal order, all laws and regulations in force in Indonesia must be interrelated as a system which built comprehensively, consistently and hierarchically based on the 1945 Constitution of the Republic of Indonesia as the basic law and final legitimacy of the validity of statutory regulations and the entire legal order. To build this legal system requires mechanisms and institutions that able to guarantee the realization of this legal system.

Furthermore, Article 7 paragraph (3) of Law 34 of 2004 concerning the Indonesian National Army states that the provisions referred to in paragraph (2) shall be implemented based on state political policies and decisions. The explanation of Article 7 paragraph (3) is only remarked with the information "quite clear". Therefore, to see the formulation of the meaning of the verse, we must look at Article 5 of Law Number 34 of 2004 concerning the TNI which states that the TNI acts as a state instrument in the defense sector which in carrying out its duties must be based on state political policies and decisions. In the elucidation of the article, it is stated that what is meant by state political policies and decisions are joint political policies by the House of Representatives which formulated through a working relationship between the Government and the House of Representatives, such as consultation meetings and work meetings, in accordance with statutory regulations. The formulation of state political policies and decisions in the provisions of the article does not have an explanation and there is also no implementing legislation, so that at the norm level it is unclear and contains a vacuum of law.

From the perspective of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, Article 7 paragraph (3) of Law Number 34 of 2004 concerning the Indonesian National Army, related to provisions based on state political policies and decisions, are not known as legal forms of implementing regulations. This is the obscurity of the article even though the content is very important for the interests or legal basis of the Indonesian National Army to move. To overcome legal ambiguity or vacuum of law in the context of governance, further regulations are needed even though they are not explicitly ordered to be formulated in Article 7 of Law Number 34 of 2004 concerning the Indonesian National Army.

¹¹ Asshiddiqie, J. (2011). *Perihal Undang-Undang*. Jakarta, PT Raja Grafindo Persada.

¹² Fajrul U., A. (2020). *Memahami Teori Tiga Nilai Hukum Gustav Radbruch*. Available at <http://www.pojokwacana.com/memahami-teori-tiga-nilai-hukum-gustav-radbruch/>, consulted on June 1, 2020.

Further regulations related to the task of the TNI in eradicating acts of terrorism are regulated in the form of a Presidential Regulation or Government Regulation. However, in theory, Government Regulation does not allow for such regulation, on the basis that Government Regulation is only possible if it is explicitly mandated by law. Meanwhile, Presidential Regulation is formed to carry out further regulations based on the order of laws or government regulations, which explicitly as well as not explicitly mandates its formulation. Based on the aforementioned considerations, the form of laws and regulations suitable for the implementation of Article 7 paragraph (2) of Law Number 34 of 2004 to be in accordance with Article 5 paragraph (2) of the 1945 Constitution, Article 12 and Article 13 along with the explanation of Law Number 12 of 2011, is in the form of a Presidential Regulation.

Therefore, the concept of reconstruction offered must refer to the current constitution (positive law) so that there is legal certainty, as follows:

a) The title of the law is the Law on Counter-Terrorism, because the content related to the eradication of terrorism is more comprehensive, not only the issue of Criminal Justice System, which is the authority of law enforcement, but includes how to prevent it from being carried out by the TNI, Polri and other Ministries/Institutions, then the action was carried out by POLRI and TNI, then the recovery was carried out by the TNI, POLRI, BNPT and other Ministries/Agencies. From the ontology side, it means that the title has the same content, namely how these laws and regulations handle terrorism appropriately.

b) The content of the law and regulation, namely the Law on Counter-Terrorism, from the epistemological aspect, will describe it more comprehensively, including eradicating terrorism from its prevention/deterrence, and taking action against acts of terrorism, which basically carried out with reference to the principles of rule of law, politics of law which oriented towards the 1945 Constitution of the Republic of Indonesia and Pancasila, so that the division of authority between TNI from the aspect of state defense and POLRI from the aspect of state security, as well as the assignment of authority, can be carried out proportionally, this includes the relationship of authority between TNI, POLRI and other institutions. Furthermore, the regulation must be in accordance with the proper legal system hierarchy, as well as how to apply the Criminal Justice System in these laws and regulations. Meanwhile, the authority of TNI may move up if the escalation is high as determined by the National Security Council (DKN), and if it has not reached high escalation then the authority belong to POLRI.

c) The National Security Council (DKN) is a new institution whose assignment can be regulated in law. In accordance with Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism, the institution authorized to analyze and control crisis and functions as a facility for the President to determine policies and measures for crisis management, including resources in dealing with terrorism, is the National Counter-terrorism Agency (BNPT). It is suggested that the DKN should be given the authority to determine the criteria for high escalation, which is the consideration to deploy TNI, so that the DKN focuses on matters that intersect with national sovereignty, territorial integrity and national safety. In the future, BNPT will only take care of matters related to the Criminal Justice System section.

3.2. Implementation of *Criminal Justice System* towards terrorism

In order to respond to and at the same time anticipate this real threat, the government has enacted laws and regulations, especially in the articles governing the authority of Indonesian National Army (TNI) to combat terrorism. The ontology review shows that the existence of TNI is essentially a state instrument to maintain the existence of the Republic of Indonesia in the defense sector according to the 1945 Constitution. According to the 1945 Constitution, based on Article 7 (2) of Law Number 34 of 2004 concerning TNI, it is stated that TNI has the duty of Military Operations Apart from War (OMSP), which in essence TNI also has duties in the field of state security, including in counter-terrorism, so that TNI has an intersecting task between the duties of

state defense and security. The task orientation essentially focuses on its urgency for national interest.

Meanwhile, from the epistemological aspect, the existence of a more detailed regulatory method is unclear because Article 7 (2) of Law Number 34 of 2004 concerning TNI states that TNI has the task of Military Operations Apart from War (OMSP). Article 7 (2) of Law Number 34 of 2004 concerning TNI states that TNI has the task of Military Operations Apart from War (OMSP). Meanwhile, the Law number 34 of 2004 concerning Indonesian National Army, since its enactment until today (16 years), still has no implementing regulations, either in form of Government Regulations or Presidential Regulations. Subsequently, Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism, in Article 43 letter I (2) states that the measure taken to counter terrorism actions must be in accordance with the main duties and functions of the TNI. The main task of TNI is to uphold the sovereignty of the state, maintain territorial integrity and protect the entire nation. Meanwhile, the TNI's function is to deter, act and recover against military threats and armed threats. Concerning prosecution, it is necessary to have clear arrangements regarding the duties of TNI and POLRI in overcoming acts of terrorism. In addition, the regulation on terrorism which is regulated in the Criminal Act of Terrorism, with the title of a criminal act, but regulates or contains regulatory content regarding TNI's duty, is actually inconsistent because TNI is not part of the Criminal Justice System.

TNI's assignment in dealing with terrorism are not clear, so that from the axiological aspect it hinders the implementation of the state's defense and security functions, and its objectives or benefits are not optimal in accommodating interests in the sense of security for the society, nation and state. Therefore it is necessary to reconstruct laws and regulations on the eradication of criminal acts of terrorism.

Furthermore, it will review the position of the TNI in Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism from the perspective of Criminal Justice System. Related to this problem, it will be seen from 3 (three) aspects, namely the issue relating to Criminal Justice System, the duties and functions of the TNI in regulating the eradication of terrorism, and the principle of *Lex specialis derogat legi generali*.

3.3. The Establishment of National Security Council (DKN)

The potential threat of terrorism action in the current era of globalization will be increasingly complex with targets that offend and even threatened the country's sovereignty, territorial integrity and national safety; hence one government's agency is not enough to handle terrorism. Therefore the scale of the threat of terrorism often requires decisions at the cabinet level. It requires a strategic decision-making structure. One of the strategic decisions is in the determination to high escalation by involving the TNI in overcoming acts of terrorism.

In order to determine an act of terrorism is deemed to have a high escalation, it must endangers the state ideology, state sovereignty, the territorial integrity of Indonesia, and the safety of the entire nation, and the counter measure must be carried out based on the results of the coordination of Indonesian National Police, TNI, and the agencies that carry out affairs in the field of counter-terrorism, namely the National Counterterrorism Agency (BNPT). This clearly threatens the absolute interests, i.e. threatening the sovereignty and safety of the state, thus the TNI must act as the actor or be involved in the prosecution¹³. In Law Number 34 of 2004 concerning Indonesian National Army (TNI), the TNI is not given the authority to determine these conditions. In Law Number 34 of 2004 concerning the Indonesian National Army, it is stated that the TNI in carrying

¹³ Suryokumoro, H. (2006). *Kedudukan dan Fungsi Militer dalam Struktur Ketatanegaraan Sejak Tahun 1945*, Jurnal Konstitusi, 3(2), 173-189.

out its duties is based on state political policies and decisions. This means that TNI plays only as the executor of the decisions made by the state, in this case is the President.

On the other hand, the Draft of Presidential Regulation on the Duties of Indonesian National Armed Forces in Countering Terrorist Actions also emphasizes that the BNPT has the authority to assess or determine the implementation of letter h of this regulation which states "act of terrorism that has high escalation and endanger state ideology, state sovereignty, territorial integrity of Indonesia, and national safety" must be countered jointly by National Police, TNI and other agencies in charge of countering terrorism. In terms of legal politics, the content of the Presidential Regulation does not only carry out the orders of the higher legislations and regulations, namely laws, but also in the context of exercising government authority, so that it is broader in scope. Therefore, the arguments in the context of exercising government's authority, the interpretation gives these 3 (three) institutions the authority to determine the high escalation to acts of terrorism.

The determination of high escalation as the legal basis for TNI to act in countering acts of terrorism, given that the TNI, POLRI and BNPT are inaccurate, it should involve relevant ministries/institutions as in the laws and regulations. In addition, TNI is the implementer of policies, not as policy makers in the defense and security sectors, so it is not in its capacity. Meanwhile, the National Police in the constitutional system focuses more on issues that part of the Criminal Justice System, which do not intersect with the issue of threats to disrupt state sovereignty, territorial integrity and national safety. Meanwhile, BNPT is also a supporting institution for handling terrorism from the aspect of criminal acts and the institution is mostly manned by the members of police institution and led by members of the National Police.

Therefore, the authority given to TNI, POLRI and BNPT should be given to the National Security Council, because the authority related to assessments of threats that endanger the state ideology, state sovereignty, the territorial integrity of Indonesia and the safety of the entire nation, is actually the authority of the DKN institution, whose members consist of related ministries/institutions as stipulated in the laws and regulations, such as the Attorney General's Office, the State Intelligence Agency, the Maritime Security Agency, the National Disaster Management Agency, the National Narcotics Agency, the National Counterterrorism Agency, TNI and POLRI.

The existence of the National Security Council will make the handling of national security problems more integrated, coordinated, controlled, effective and efficient. It includes the decision whether to deploy TNI or not in dealing with a terrorist group or an act of terrorism will be taken by the President through a process of review and consideration of the National Security Council. With the existence of the National Security Council, it is certain that TNI will not unilaterally claim that an act of terrorism has threatened state sovereignty, territorial integrity and national safety and then feel entitled to take action, or vice versa, the Police feel that the act of terrorism is only a pure crimes or criminal act. Thus there will be no subjective overlapping interests from each institution.

4. Conclusion

The juridical implication of regulating the assignment of TNI duties in countering acts of terrorism, from the epistemological aspect, is that the provisions in Law Number 34 of 2004 concerning the TNI, for 16 years (from 2004-2020), do not provide a clear description of how the rules are implemented, resulting in regulations being still in the form of formal laws (*Formeell Gesetz*), not yet transformed out into the form of implementing regulations (*Verordnung*). The problem of incomplete regulation (vacuum of law) has caused the TNI to be uncertain in dealing with acts of terrorism. The birth of Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism, ontologically from its essence, confirms that the TNI is involved in countering acts of terrorism in order to combat acts of terrorism in accordance with the main duties and functions of the TNI, further regulation will be regulated with Presidential Regulation. Regulations regarding the authority to assess when to deploy TNI to be involved in countering acts of terrorism,

with what institutions, as well as to what strategic targets will be regulated in the Presidential Regulation. Epistemologically, regulating the involvement of TNI in countering acts of terrorism is part of the relationship of authority with other institutions (POLRI) which will be regulated in a Presidential Regulation. This is not in line with the formulation of Article 30 of the 1945 Constitution of the Republic of Indonesia. In addition, in regulating the involvement of TNI in countering terrorism acts, but the title of statutory regulation using the phrase of 'criminal acts' in the Law on Eradication of Terrorism, is not in accordance with the content of the laws and regulations, thus the implication is that the Law is not in line with the Criminal Justice System. Meanwhile there is the existence of National Counter-Terrorism Agency (BNPT) in Law Number 5 of 2018, which functions as a facility for the President to determine policies and steps to handle crisis, including mobilizing resources in dealing with terrorism.

The Presidential Regulation that regulates measures to counter acts of terrorism is still in the process of consultation with Indonesian Parliament. This arrangement is not common in the formation of a Presidential Regulation. As guideline for the formulation of a clear regulation for the TNI, TNI Supreme Commander issued a Regulation of TNI Supreme Commander to fill the legal vacuum (vacuum of law) in operations, although this is not yet ideal if it is linked to the statutory system.

Reconstruction of regulations regarding the ideal assignment of TNI's tasks in dealing with acts of terrorism in the future can be done by taking a systemic approach, namely changing the arrangements for eradicating terrorism in a more comprehensive manner. Ontologically, because the regulation of terrorism touches the issues of state sovereignty, territorial integrity and national safety, it is necessary to make changes or reconstruction, including the title of legislation to become the Law on Countering Terrorism, thereby it needs to eliminate the phrase 'Criminal Act'. Epistemologically, related to the regulation in the body, there are 2 (two) institutions that take action, namely the National Police, which takes action against criminal acts of terrorism which are part of the Criminal Justice System, and the TNI, which makes efforts to overcome acts of terrorism with high escalation and aims strategic targets that threats state sovereignty, territorial integrity and national safety. Then the National Security Council institution is the one that determines the decision to deploy the TNI to be involved in countering acts of terrorism, especially acts of terrorism with high escalation, while the role of National Counterterrorism Agency (BNPT) is as the center for crisis analysis and control which is still part of Criminal Justice System.

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