

Reciprocal Policy Reformulation of Placement of Indonesian National Army and Police in Certain Civilian Positions

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Abstract : *The State Civil Apparatus (ASN) Law, which was just passed in parliament on October 3, has sparked polemics. This regulation allows the TNI and Polri to fill ASN positions within civil institutions, as outlined in Article 19. ASN positions consist of managerial positions and non-managerial positions. The explanation of the article states that the filling of TNI and Polri positions by ASN and vice versa aims to ensure that ASN, TNI and Polri soldiers have balance and equality in their career development based on the Merit System. This provision in principle contradicts the restriction efforts that have been regulated in the Polri Law and TNI Law. Article 28 Paragraph (3) of the Polri Law explicitly states that Polri members can hold positions outside the police after resigning or retiring from the police service. Article 47 Paragraph (1) of the TNI Law also regulates that soldiers can only hold civilian positions after resigning or retiring from active military service. Thus, the government should reassess and reformulate articles that are counterproductive. In the research conducted by the current author, normative research or doctrinal research and empirical juridical research are used. The main types of data in this research are primary data and secondary data. Data analysis is carried out qualitatively, namely the process of organizing and sorting data into patterns, categories, and one basic description, so that it can be formulated in accordance with the research objectives (substantive theory). This research also conducts comparative theory with other countries' concepts in limiting civilian positions for the TNI and Polri. The urgency of this research is to critically examine the reciprocal policy for the placement of certain civilian positions between TNI soldiers and Polri members with State Civil Apparatus (ASN) employees, which is interpreted as an accelerated expansion of job opportunities, but has implications for the staffing system and civilian militarization in Indonesia in projection.*

Keywords : *ASN, Civil Service, Reciprocal*

Abstract : Undang-Undang Aparatur Sipil Negara (ASN) yang baru saja disahkan di parlemen pada 3 Oktober lalu menuai kontroversi. Regulasi ini memungkinkan TNI dan Polri untuk mengisi jabatan ASN di lembaga sipil, seperti yang tertera pada Pasal 19. Jabatan ASN terdiri dari jabatan manajerial dan non-manajerial. Penjelasan pasal tersebut menyatakan bahwa pengisian jabatan TNI dan Polri oleh ASN dan sebaliknya bertujuan agar ASN, prajurit TNI, dan Polri memiliki keseimbangan dan



kesetaraan dalam pembinaan karier berdasarkan Sistem Merit. Ketentuan ini pada prinsipnya bertentangan dengan upaya pembatasan yang telah diatur dalam UU Polri dan UU TNI. Pasal 28 Ayat (3) UU Polri secara tegas menyatakan bahwa anggota Polri dapat menduduki jabatan di luar kepolisian setelah mengundurkan diri atau pensiun dari dinas kepolisian. Pasal 47 Ayat (1) UU TNI juga mengatur bahwa prajurit hanya dapat menduduki jabatan sipil setelah mengundurkan diri atau pensiun dari dinas aktif keprajuritan. Oleh karena itu, pemerintah harus benar-benar mengkaji dan merumuskan kembali pasal-pasal yang kontraproduktif. Dalam penelitian yang dilakukan oleh penulis, digunakan jenis penelitian normatif atau penelitian doktrinal. Jenis data utama dalam penelitian ini adalah data primer dan data sekunder. Analisis data dilakukan secara kualitatif, yaitu proses mengorganisasikan dan mengurutkan data ke dalam pola, kategori, dan satu uraian dasar, sehingga dapat dirumuskan sesuai dengan tujuan penelitian (teori substantif). Penelitian ini juga melakukan komparasi teori dengan konsep negara lain dalam membatasi jabatan sipil bagi TNI dan Polri. Urgensi dari penelitian ini adalah untuk mengkaji secara kritis Kebijakan Resiprokal penempatan jabatan sipil tertentu antara prajurit TNI dan anggota Polri dengan Pegawai Aparatur Sipil Negara (ASN) yang dimaknai sebagai percepatan perluasan kesempatan kerja, namun berimplikasi pada sistem kepegawaian dan militerisasi di Indonesia secara proyeksi.

Keywords : ASN, Pegawai Negeri Sipil, Resiprokal;

I. INTRODUCTION

State Civil Apparatus as state servants and public servants play an important role in national development as the driving force of government which is burdened with main tasks and functions. The more dynamic the main tasks and functions as State Civil Apparatus, the greater the possibility of ASN facing legal problems. In Law Number 20 of 2023 (hereinafter referred to as the ASN Law), State Civil Apparatus, hereinafter abbreviated as ASN, is a profession for civil servants and government employees with work agreements who work in government agencies.¹ State Civil Apparatus Employees (or abbreviated as ASN Employees) are Civil Servants and Government Employees with Work Agreements who are appointed by Government Officials or assigned other State duties and are paid based on laws and regulations. Meanwhile, according to the ASN Law, civil servants are Indonesian citizens who meet certain requirements, appointed as permanent ASN employees by personnel development officials to occupy government positions.²

In today's reality, the ratification of Law Number 20 of 2023 which replaces Law Number 5 of 2014 concerning ASN is a historic step that provides a strong legal basis for this transformation. The House of Representatives (DPR) of the Republic of Indonesia has ratified the Law on State Civil Apparatus (ASN) which presents significant developments in filling positions within the TNI (Indonesian National Army) and Polri (Indonesian National Police). According to the Minister of Empowerment of State Apparatus and Bureaucratic Reform (Menpan-RB) Abdullah Azwar Anas, the ASN Law enforces the principle of reciprocity between ASN and the two institutions.³

Thus, ASN employees now have the opportunity to fill positions in both institutions. Previously, TNI members had access to occupy positions in ASN, while ASN

¹ Sri Hartini, *Civil Service Law in Indonesia* (Jakarta: Sinar Grafika, 2008), p. 50.

² Adella Anggia Pramesti, "Pengangkatan Penjabat Kepala Daerah Dari Anggota TNI Aktif Ditinjau Dari Segi Hukum," *Court Review: Jurnal Penelitian Hukum* (e-ISSN: 2776-1916) 4, no. 05 (2024): 22–37.

³ Rahmat Saputra, "Rekonstruksi Politik Hukum Undang-Undang Aparatur Sipil Negara Berbasis Nilai Keadilan," *Krtha Bhayangkara* 15, no. 2 (2021): 385–408.

employees did not have similar opportunities to fill positions in TNI and Polri. ⁴This imbalance has long been a concern, and the new ASN Law responds to it by providing broader opportunities for ASN employees. The ASN Law regulates the provisions for filling ASN positions in TNI and Polri, the ASN Law regulates the provisions for filling ASN positions in TNI and Polri, and the following are some important points contained in the law, namely in Article 19 and Article 20, including the following:

1. ASN positions are filled by ASN employees.
2. Certain ASN positions may be filled by Indonesian National Army Soldiers; and Members of the Indonesian National Police.
3. The filling of certain ASN positions originating from TNI soldiers and Polri members as referred to in paragraph (2) is carried out at Central Agencies as regulated in the Law on the TNI and the Law on the Polri.
4. Further provisions regarding certain ASN positions originating from TNI soldiers and Polri members, as well as procedures for filling certain ASN positions as referred to in paragraph (3) are regulated in Government Regulations.

Then Article 20 states that

1. ASN employees can occupy positions within the TNI and Polri according to the required competencies.
2. Further provisions regarding filling positions within the TNI and Polri as referred to in paragraph (1) are regulated in Government Regulations.

Regarding this opportunity, the ASN Law provides a solid legal basis. ASN employees who have the competencies according to the needs of the TNI or Polri will be able to undergo the process of filling positions in these institutions. The process of filling positions and further details will be regulated through Government Regulations. In addition, the implications of these provisions not only open up opportunities for placing TNI in civilian positions outside the provisions of Article 47 Paragraph (2) of the TNI Law on the basis of expertise and skills, but also the increasingly massive migration of TNI to civilian positions. This will cause many TNI soldiers to deal with administrative and functional matters in civilian positions which result in being far from issues related to national defense.

The contents of the ratification accelerate the expansion of military positions in civilian positions, especially certain ASN positions. Likewise, the National Police also get room for acceleration of the placement of its members in civilian positions. In the provisions of the ASN Law, it is explained that positions that can be filled by TNI and Polri soldiers in non-managerial positions consist of functional positions and executive positions. ⁵The provisions of functional positions require certain expertise and skills as considerations for filling them. Meanwhile, executive positions related to public services and government administration and development also have the potential to distance TNI members from issues related to national defense. ⁶

This condition is counterproductive to efforts to build a professional military force that focuses on national defense considering the increasingly dynamic development of

⁴ Novi Savarianti Fahrani, "Analysis of Criteria and Requirements for Certain ASN Positions That Can Be Filled by Polri Members and TNI Soldiers," *Civil Service Journal* 12, no. 2 (2018).

⁵ Halim, *Merit System in the Comparative Perspective of State Civil Service Law* (Deepublish, 2020).

⁶ Eki Furqon, "The Position of the State Civil Service Commission in Maintaining the Neutrality of the State Civil Service in the 2019 General Election Reviewed from Law Number 7 of 2017 Concerning General Elections (Case Study of the 2019 Election in Banten Province)," *Adjudication: Journal of Legal Studies* 4, no. 1 (2020): 15–28.

threats and strategic environments. The military should strengthen defense through modern means, not conventional means. The placement of TNI in civilian positions should adjust its relevance to positions that have tasks related to aspects of national defense. The ability and competence of TNI soldiers as the basis for placing soldiers in civilian positions is a reflection of the TNI's dual-function perspective that has not changed. This is because the ability and competence of TNI soldiers should be maximized for their main duties in the field of defense. Thus, the government must actually review and reformulate counterproductive articles.

Specifically according to the type, nature and purpose of a legal research is divided into two normative legal research and empirical legal research. In the research conducted by the author at this time, normative research or doctrinal research and empirical legal research were used. The research method used by the author in this writing is normative legal research, namely doctrinal legal research, also known as library research or document study.⁷ It is called doctrinal legal research, because this research is conducted or aimed only at written regulations or other legal materials, as library research or document study because this research is mostly conducted on secondary data in the library. In connection with the type of normative legal research, the approach used is the legal approach applicable in Indonesia (positive law). An analysis essentially emphasizes the deductive method as the main reference, and the inductive method as a supporting work procedure. Normative analysis uses library materials as a source of research data.⁸

II. DISCUSSION

1. Construction of Reciprocal Policy as a Management Concept Between TNI and ASN in Indonesia

The principle of reciprocity itself is actually commonly known as the principle of international criminal law which is very important in cooperation relations between countries which originate from the general principle of international law, namely the principle of reciprocity. This principle is also known as the principle of reciprocity. Basically, this principle of reciprocity contains the meaning that if a country wants good treatment from another country, then the country concerned must also provide good treatment to that country. In the implementation of this principle, UNCAC does emphasize international cooperation and so that the State party has international cooperation in eradicating corruption.⁹

The reciprocal concept of filling state apparatus positions emerged after the ASN Law Article 19 paragraph 2 stated that certain ASN positions can be filled by TNI soldiers and Polri members. Furthermore, in paragraphs 3 and 4, it was concluded that filling certain ASN positions is only for central agencies (ministries and non-ministerial government institutions) as regulated in the TNI Law, Polri Law and the procedures for filling them are regulated in Government Regulations.

The plan to place military officials in civilian positions has sparked much comment from the public and public policy observers. The filling of ASN positions by TNI soldiers and Polri members is actually not a new matter. Law Number 2 of 2002 concerning the

⁷ Fauzi Rachman, *Qualitative Research Methods* (Bandung: Lakeisha Publisher, 2022), p. 20.

⁸ Zainuddin Ali, *Legal Research Methods*, ed. Leni Wulandari (Jakarta: Sinar Grafika, 2021), p. 9.

⁹ Muhammad Adlan Kamil, "Legality of Active TNI Members Holding Concurrent Civilian Positions (Study of Law Number 34 of 2004 Concerning the Indonesian National Army)" (Faculty of Sharia and Law, UIN Syarif Hidayatullah Jakarta, 2022).

Indonesian Police and Law Number 34 of 2004 concerning the TNI have also long allowed the filling of positions by civil servants.¹⁰

The discussion that needs to be studied is when the actions of the TNI, which is essentially military, intersect with the civil sphere. Polemics like this have actually been going on for a long time. The explanation of the factors that influence military involvement in the civil sphere itself has been explained in previous chapters. The involvement of the TNI in civil positions did not actually disappear after the issuance of Law Number 34 of 2004 concerning the TNI. The elimination of the dual function of the ABRI and the reduction and withdrawal of the ABRI faction in Parliament until 2004 became one of the progress in implementing the reform mandate so that the TNI no longer held civil positions. This discussion strengthened and was deemed appropriate to be raised again after the previous TNI leadership meeting in 2019 attended by President Joko Widodo, TNI General Marshal Hadi Tjahjanto conveyed a discourse on the need to add new positions internally and in ministries for high-ranking TNI officers. This opinion is based on the need to accommodate around 150 high-ranking officers and 500 middle-ranking TNI officers who are in positions without positions or hold positions that do not correspond to their rank.¹¹

Regarding the involvement of the TNI in civil positions, it has actually been clearly regulated in Article 47 paragraph (1) of Law Number 34 of 2004 concerning the Indonesian National Army, which states that soldiers can only occupy civil positions after resigning or retiring from active military service. Article 47 paragraph (1) of Law Number 34 of 2004 concerning the TNI states that the main requirement for TNI members/soldiers to occupy positions in institutions or ministries that are oriented towards civil society is that they have retired or resigned and relinquished their status as TNI soldiers. This effort is intended so that no TNI members reciprocate or reposition themselves in civil positions during their service so that they focus on being a tool of national defense.

The law does flexibly provide opportunities for active TNI soldiers to occupy positions other than in internal TNI institutions. However, in general, there are limitations to the fields that can be occupied by active TNI members, namely only fields related to national security and defense. This is a separate reason for the TNI to propose a revision to Law Number 34 of 2004 concerning the TNI. TNI Inspector General Lieutenant M. Herindra is of the opinion that the TNI Law must be revised by considering the existence of new ministries and institutions that were formed after the law was formed. This is important to do so that the placement of the TNI in ministries and non-military institutions can be done professionally and legally.

This statement itself seems to signal that in the phase of changing political atmosphere, the military has involvement in entrusting positions in government so that there is an effort from the military to participate in carrying out civil work. The problem is considered to be re-triggering the ABRI dual function doctrine that has long been abandoned by the Indonesian nation. The government's claim is that this is purely based on the request of ministries or institutions that require TNI personnel, and is not an effort to revive the ABRI dual function, but is included as part of the democratization process.¹²

Synchronization occurs in the implementation of Law Number 34 of 2004 concerning the TNI, with the reality on the ground. For example, during President

¹⁰ Muhammad Hendrik Novavah, "Analysis of Law No. 34 of 2004 Concerning the Position and Role of the TNI in State Government Institutions," *Rechtenstudent* 1, no. 1 (2020): 1–7.

¹¹ Ni'matul Huda, "Political Rights of the Indonesian National Army and the Republic of Indonesia National Police Post-Reformation," *Ius Quia Iustum Law Journal* 21, no. 2 (2014): 203–26.

¹² Fajrian Noor Anugrah, "The Relevance of Appointing TNI/POLRI Members as Acting (PJ) Regional Heads," *Journal of Development Policy* 18, no. 1 (2023): 121–34.

Jokowi's leadership period 2014-2019, Lieutenant General TNI Doni Monardo was inaugurated as Head of the National Disaster Management Agency (BNPB). Referring to Article 4 of Presidential Regulation Number 8 of 2008 concerning the National Disaster Management Agency, BNPB as an institution carries out its functions and is under the Coordination of the Coordinating Minister for People's Welfare (currently PMK). The latest is the appointment of Brigadier General Ario Prawiseso from the Head of the Logistics Bureau at the BIN Main Secretariat to become the Minister's Special Staff for Tourism Destination Security and Strategic Issues of the Ministry of Tourism and Creative Economy through the Decree of the TNI Commander Number Kep/435/V/2021 dated May 25, 2021 concerning Dismissal from and Appointment to Positions within the Indonesian National Armed Forces.¹³

Even if in this case it is done on the grounds of assistance or the need for competent personnel with special skills, it cannot be used as justification. In the provisions of Article 7 paragraph (2) letter (b) of Law Number 34 of 2004 concerning the TNI which contains Military Operations Other Than War (OMSP) also does not mention that assistance of military members whose service status is still active as special staff of the ministry, which is also not included in the part of the ministry or institution regulated by Article 47 paragraph (2) of Law Number 34 of 2004 concerning the TNI. So Brigadier General Ario Prawiseso should have first resigned from active military service before carrying out new duties as Special Staff of the Minister of Tourism and Creative Economy, in accordance with the mandate of Article 47 paragraph (1) of Law Number 34 of 2004 concerning the TNI. Another thing that needs to be highlighted is the potential for dual positions carried out by Brigadier General Ario Prawiseso.

The determination was based on promotions and promotions, and it was not clearly stated what the status of Brigadier General Ario Prawiseso is in the TNI internal institution to date. Previously, there were also several examples of cases involving dual positions carried out by active TNI soldiers. In 2020, Erick Thohir, who served as Minister of SOEs, made a number of changes to the Board of Directors and Commissioners of a number of SOE companies.

The process of replacing a number of state-owned company positions not only involves professionals to join, but also places a number of active TNI officers. It is noted that there are several names of TNI officers who have Reciprocal positions as Civil Officials and BUMN Commissioners, such as Colonel (Pas) Roy Rassy Fay M. Sait who serves as Head of the General and Legal Section of the Human Resources Development Agency (PSDM) at the Ministry of Energy and Mineral Resources (ESDM), Air Marshal Andy Pahril Pawi who serves as Commissioner of PT. Bukit Asam (Persero) Tbk, Vice Admiral TNI Achmad Djamaluddin who serves as President Commissioner of PT. Pelindo I and Reciprocal position as Secretary General of the National Resilience Council, and many other names who have Reciprocal civil positions outside of their active service as TNI members.

According to Erick Thohir, his decision to appoint a number of active TNI officers as high-ranking officials in state-owned companies was based on the need for BUMN to resolve conflicts related to land, security, licensing, and other social issues in society. The reason actually shows a regression in TNI reform, the entry of active TNI officers as TNI commissioners is considered to cause new problems in the form of violence and criminalization due to the security approach taken. Observers have tried to explain the reasons why this could happen. Regarding the TNI, Evan A. Laksmana argued that there was a bottleneck in officer promotions because there were too few positions available to

¹³ Agus Subagyo and S IP, "Realizing the Professionalism of the Indonesian Army in the Era of Reform," *Journal of the Indonesian Army Staff and Command School* 2 (2017).

accommodate the number of existing officers. This caused the TNI's regressive behavior in the form of intrusion into civilian positions.¹⁴

The dual position of active TNI in civilian positions also conflicts with other laws. One that is synchronized with the laws and regulations is between the dual position of active TNI members as BUMN Commissioners. Article 33 of Law Number 19 of 2003 concerning State-Owned Enterprises states the prohibition for BUMN commissioners to have dual positions as:

1. Members of the board of directors of BUMN, BUMD, Private Enterprises, and other positions that may give rise to a conflict of interest; and/or,
2. Other positions in accordance with the provisions of laws and regulations

The legal consequences of this violation of the Law have actually been regulated through Article 55 paragraph (1) letter (g) of Law Number 34 of 2004 concerning the Indonesian National Army which contains the reasons for honorable dismissal of the TNI from military service is due to occupying a position which according to the laws and regulations cannot be occupied by an active soldier. The implementation of this law and regulation has not been properly implemented by the Government or the TNI. This seems to indicate an unwillingness to enforce reform of the TNI and civil bureaucracy.

Neglect also occurs because there has not been a single lawsuit regarding the lawsuit for dual civil positions carried out by active TNI members. The Ombudsman Institution only responded to demands and protests from various groups regarding the problems of active TNI members who hold reciprocal civil positions by stating that they would follow up if there were indications of violations of laws and regulations, even a request for Judicial Review of Law Number 34 of 2004 on the Indonesian National Army as far as researchers have found has never been submitted to the Constitutional Court. This is certainly a problem for the implementation of law in Indonesia when government policies that clearly conflict with laws and regulations and have their own sanctions are not implemented properly.¹⁵

The legality of civil positions by active TNI members can only be carried out by TNI who have resigned or are no longer active soldiers, except in the fields of State Political and Security Coordinator, State Defense, Presidential Military Secretary, State Intelligence, State Code, National Resilience Institute, National Defense Council, National Search and Rescue (SAR), National Narcotics, and the Supreme Court as stipulated in Law Number 34 of 2004 concerning the TNI. So the presence of a reciprocal policy will certainly create disharmony between the TNI Law and the ASN Law

This is stated in the TNI Law Article 46 paragraph 1, "Certain positions in the TNI structure can be occupied by civil servants". However, in the TNI Law Article 47 paragraph 1 it states that TNI soldiers can only occupy civilian positions if they have resigned or retired early from active military service. Furthermore, in paragraph 2 of the same article, it is stated that active TNI soldiers can occupy civilian positions in 10 fields, namely:

1. The coordinator for the field of State Politics and Security (Kemenpolhukam),
2. National Defense (Ministry of Defense),
3. Presidential Military Secretary (Sesmil),

¹⁴ AAZH Ardi, Timbul Siahaan, and IB Putra Jandhana, "Indonesian National Defense Public Policy," *CITIZEN: Indonesian Multidisciplinary Scientific Journal* 2, no. 1 (2022): 81–87.

¹⁵ Adella Anggia Pramesti, "Appointment of Acting Regional Heads from Active TNI Members Reviewed from a Legal Perspective," *COURT REVIEW: Journal of Legal Research (e-ISSN: 2776-1916)* 4, no. 05 (2024): 22–37.

4. State Intelligence (BIN),
5. National Code (BSSN),
6. National Resilience Institute (Lemhannas),
7. National Defense Council (Wantannas),
8. National Search and Rescue (SAR) (Basarnas),
9. National Narcotics Agency (BNN), and
10. Supreme Court.

Not only that, referring to the Minister of Defense Regulation 38 of 2016 concerning the Procedures and Requirements for TNI Soldiers to Occupy ASN Positions, it is stated that there are three bodies that are excluded from being filled by TNI soldiers, namely:

1. National Counterterrorism Agency (BNPT),
2. National Disaster Management Agency (BNPB), and
3. Maritime Security Agency (Bakamla).

In the proposed revision of the TNI Law which is currently being drafted, there are proposals for five additional ministries and institutions whose positions can be filled by TNI soldiers, namely:

1. Coordinating Ministry for Maritime Affairs and Investment (Kemenko Marves),
2. Ministry of Maritime Affairs and Fisheries (KKP),
3. Attorney General's Office (AGO),
4. Presidential Staff Office (KSP), and
5. National Border Management Agency (BNPP).

Although not yet final, the addition of K/L in the revised draft indicates that there is an effort to place more TNI soldiers in civilian government agencies. It is no wonder that several observers have said that this PP on ASN Management will be the "entry point" for the Revision of the TNI Law which is currently still in process. The Law on the Police itself states that civil servants in the Police consist of members of the Police and PNS. This is stated in Article 20 paragraph 1, so implicitly, civilian positions have indeed been accommodated in the Police. At least there are Investigators from among PNS who are involved in the duties and functions of the Police. On the other hand, in Perkap Number 4 of 2017 concerning the Assignment of Police Members Outside the Police Organizational Structure, it is stated in Articles 4 and 5 that Polri members can be assigned domestically, including various institutions such as:

1. MPR/DPR/DPD,
2. Ministry,
3. Non-ministerial government institutions,
4. International organizations/representative offices of foreign countries in Indonesia,
5. BUMN/BUMD, and
6. Other specific agencies with the approval of the Chief of Police.

Thus, it can be concluded that the Indonesian National Police has very broad access in placing its members in various institutions. The concern about the entry of military elements deep into central civil institutions is quite reasonable. One of the most widely discussed is of course the concern about the return of the ABRI dual function concept, which brought concerns to civil society during the New Order. The concept, which was initially initiated by General AH Nasution in the era of President Sukarno and legalized during the era of President Soeharto, made ABRI (now TNI and Polri) the country's military force as well as the regulator of the country's government.¹⁶

This has implications for the existence of ABRI members through the ABRI Faction and getting seats in the MPR and DPR without having to participate in the election. Not only that, this hegemony makes it easy for us to find ABRI members who occupy strategic positions in government, such as vice president, ministers, and regents.

This certainly has implications for the increasingly shrinking role of civilians in government. The large influence of the military in politics and government is also feared to erode democratic practices that could lead to human rights violations in this country. The Head of BP Centra Initiative, Al Arof, also said that if this practice is allowed to continue, it will have a negative impact on democracy in this country. He firmly rejected the practice of military monopoly over existing authority institutions.

On the other hand, in filling ASN positions, ideally it is filled through a talent management system. This is as regulated in PermenPANRB Number 3 of 2020 concerning ASN Talent Management, that the process of acquisition, development, retention, to placement of talent in ASN positions is carried out with a merit/meritocracy system that originates from the talents possessed. This practice is also being attempted to be carried out in all agencies in ministries, non-ministerial state institutions, and regional governments. If the practice of filling positions in ministries, institutions, and regional agencies becomes increasingly permissive, it will certainly hinder the mainstreaming of talent management practices and even cause demotivation for talents among ASN themselves.¹⁷

The concept of reciprocity in filling military positions by ASN itself is considered to be far from the mark. In other words, in terms of quantity it will be difficult to find a balance point between filling state apparatus positions from military to civilian and vice versa. In terms of quality, there is currently no reciprocity in equal positions between civil servants and military apparatus. For example, currently there are quite a lot of ASN Kemenhan at the TNI AD Headquarters who serve as staff/executors in the fields of finance, human resources, and public relations. Meanwhile, for managerial positions, the author has not found any ASN occupying managerial positions in the military. This is in contrast to the many officials from the military who carry out duties in managerial positions in ASN.

Although on one occasion, the Minister of PANRB, Abdullah Azwar Anas, has said that later it is possible to have a Digital Director at the National Police Headquarters and a Deputy Chief of Police (from among ASN) who is in charge of public services. One of the causes of this phenomenon is suspected to be because there are a number of officers who have not received their positions.

In the impartial realm, the institution that focuses on researching the actions of the military in Indonesia reminds us that if the problem of the accumulation of non-job

¹⁶ Ahmad Wahyudi and Andi Safriani, "Problems of Dual Positions of ASN, TNI, and Polri as Commissioners in State-Owned Enterprises," *Alauddin Law Development Journal* 5, no. 3 (2023): 455–68.

¹⁷ Raihan Ardiansyah, Waluyo Waluyo, and Rosita Candrakirana, "Discretion in Appointing Acting Regional Heads from the TNI/Polri Elements," *Execution: Journal of Law and State Administration* 1, no. 3 (2023): 37–47.

officers is resolved by improving the recruitment process, education, career advancement and rank, not by placing them in civilian positions.

In addition to quantity and quality, the aspect of equality in reciprocal filling of positions is also predicted to be difficult to realize. This can be seen from the comparison of the rank structure between civil and non-civil apparatus which have quite significant differences. Policy makers also need to pay attention to the requirements for the apparatus to be assigned, including competence, equality, retirement age limit, term of office, and so on. However, the Vice President of the Republic of Indonesia, KH. Maruf Amin stated that there is no need to worry about the dual function of ABRI, because the positions needed are still given various limitations. The dual role of military officials in civilian positions must indeed be eliminated while only making the legal formal ASN/civilian as the basis.¹⁸

In line with the Vice President, Acting Deputy for Human Resources of the State Apparatus of the Ministry of PANRB, Aba Subagja also said that military officials in civilian positions will not have dual positions, aka only recognized as civilian officials. Stakeholders, in this case BKN or the Ministry of PANRB, are expected to have special records related to the placement of TNI soldiers and Polri members who occupy civilian positions, and vice versa for ASN who occupy positions in the TNI and Polri.

Of course, there are several positions in the civilian sector that are typical of military nuances such as the field of enforcement at the BNN, even in the military sector there are positions with civilian nuances such as health, finance, and so on. The synergy between the two certainly deserves special attention. Strict supervision of this practice must also be carried out by government institutions that are currently under the auspices of KASN. This is important to conduct periodic evaluations of the running of government agencies. However, ironically, KASN, which is considered independent in overseeing the role of ASN, is facing the reality that it will soon be disbanded.¹⁹

The dichotomy between civilian and military with its various characteristics is a necessity. The synergy between the two is expected to accelerate agencies in achieving their goals. Even so, the entry of TNI soldiers and Polri members into civil government agencies needs to receive joint attention from stakeholders. The nuances that are built in both civil and military institutions have the potential to change along with the difference in paradigm between the military which is thick with command nuances compared to bureaucracy/non-military which tends to be participatory. The psychological impacts caused to civil servants (and the military) can be used as an initial consideration before the practice is commonly carried out. The division of roles between the TNI, Polri, and ASN is actually clear.

1. The TNI is essentially prepared to go to war/defend the country's sovereignty;
2. Police for law enforcement and order for the community;
3. Meanwhile, ASN serves the interests of the community.

Therefore, the fairness of the placement of military officials in ASN positions must be re-examined. If there is no urgency, it is appropriate for the apparatus to have a career in its own realm without any intervention.

1. The preparation of the RPP ASN should strengthen the commitment to TNI/Polri Reform. So that it continues to place these two state apparatuses as

¹⁸ Azhira Dwi Oktavianis, "The Influence of Leadership Style, Work Discipline, and Work Compensation on the Performance of Civil Servants of the Indonesian National Army Provision Agency: A Case Study of Civil Servants of the TNI Babek," *OPTIMAL Journal of Economics and Management* 4, no. 3 (2024): 200–223.

¹⁹ Moh Bagus et al., "The Phenomenon of Filling Civil Servant Positions by the TNI/POLRI," *Sosio Yustisia: Journal of Law and Social Change* 1, no. 1 (2021): 108–25.

strong and professional state instruments in the fields of defense and state security, and is not encouraged to occupy government positions that are substantively and have so far been the duties and functions of ASN.

2. This regulation can actually strengthen the restrictions on civil positions for the TNI/Polri in accordance with the TNI Law and the Polri Law. Various ASN positions that can be occupied by TNI soldiers in the ASN PP should still refer to the provisions of Article 47 paragraph (2) of the TNI Law which has detailed the civil positions that can be occupied by TNI soldiers without going through the early retirement mechanism, as also stated in Article 19 paragraph (3) of Law No. 20 of 2023 concerning ASN. Likewise, referring to Law No. 2 of 2002 concerning the Police, Article 28 paragraph (3), as explained, these positions need to be ensured to have a connection with the police and there is an official assignment from the Chief of Police.
3. Meanwhile, regarding ASN positions outside the provisions of the TNI Law and the Polri Law, this ASN PP needs to emphasize that TNI soldiers can only occupy civilian positions after resigning or retiring from active military service. This is as stated in Article 47 paragraph (1) of the TNI Law, and refers to Article 28 paragraph (3) of the Polri Law which emphasizes that Polri members can occupy positions outside the police after resigning or retiring from police service.
4. The ASN Law stipulates that ASN positions consist of Managerial and Non-Managerial Positions. The regulation of this PP should provide a clear picture of the criteria and/or positions that TNI/Polri soldiers can occupy for ASN positions. Strict criteria and requirements need to be implemented so that this RPP does not become the widest possible entry point for the placement of TNI/Polri in civilian positions which could trigger a massive return to the practice of ABRI's Dual Function and damage the democratic order of this country.
5. Considering that the ASN Law has a reciprocal concept, where ASN can also fill certain positions within the TNI/Polri environment, it is necessary to ensure that the regulations in this PP draft do not add to the problems regarding the careers of ASN and TNI/Polri soldiers in the future. Placement according to the needs of the Ministry/Institution must be the main principle, so that placement can be right on target. The ASN Management RPP must be ensured to be an instrument to realize an impactful bureaucracy, such as the Kemenpan/RB jargon, not to be a means of expanding the placement of TNI/Polri in ASN positions.

Referring to the law, be it the law on the TNI, Polri, ASN or even the Constitutional Court decision Number 15 of 2022, indirectly the existing laws and regulations in Indonesia do allow the TNI/Polri to occupy positions in government. However, the positions in question only cover certain positions, as stated in the TNI Law Article 47 paragraph (2) of Law Number 34 of 2004. Active soldiers can occupy positions in offices that oversee the coordination of the fields of Politics and State Security, State Defense, Presidential Military Secretary, State Intelligence, State Code, National Resilience Institute, National Defense Council, National *Search and Rescue* (SAR), National Narcotics, and the Supreme Court.

The researcher recommends that the government and leaders and all members of the TNI must first understand the position, role and main function of the TNI as a state institution regulated in the applicable laws and regulations. So that every policy and action continues to follow the hierarchy of the TNI's position, understands the role of the TNI, and does not violate the duties and functions of the TNI as a national defense tool. The

author also suggests that the government not tempt Active TNI with civilian positions such as in ministries, institutions, BUMN, BUMD and others, but the government and TNI leaders should work together to fix the problem of structure and filling positions within the TNI institution. Active TNI members who have Reciprocal or hold civilian positions must also be willing to choose to resign from the civilian positions they hold or resign as active soldiers. Finally, the government must clearly determine the positions in institutions or ministries that can be occupied by active TNI members in accordance with applicable laws and regulations, so that there is no vague interpretation for various reasons.

2. Implications of Reciprocal Policy in ASN Law on the Potential for Dual Function of the Armed Forces in the Indonesian Armed Forces

The Ministry of State Apparatus Empowerment and Bureaucratic Reform (KemenPAN RB) is currently drafting the Draft Government Regulation (RPP) on ASN Management. Based on a written statement on March 12, 2024, the Minister of PAN RB, Abdullah Azwar Anas, said that the RPP on ASN Management contains 22 chapters and consists of 305 articles, including regulating the filling of civil servant (ASN) positions originating from the Indonesian National Army (TNI)/Indonesian National Police (Polri) and vice versa. The rules for filling these positions are reciprocal, meaning that if the TNI/Polri can fill ASN positions, ASN can also fill positions within the TNI/Polri. This regulation is to follow up on the mandate of Article 19 and Article 20 of Law Number 20 of 2023 concerning State Civil Apparatus (UU ASN). Regarding ASN positions that can be filled by TNI soldiers and Polri members, it is emphasized in Article 19 paragraph (2) of the ASN Law that it is for certain ASN positions. Furthermore, the ASN Law orders that implementing regulations be stipulated no later than April 30, 2024.

The filling of ASN positions from the TNI/Polri has become a controversy in itself in public debate. The Chairman of the Centra Initiative Management Board, Al Araf, said that the regulation on filling ASN positions from the TNI/Polri in the RPP on ASN Management is a form of denial of the goals of reform and is considered the same as the dual function of the ABRI during the New Order. The TNI and Polri should still occupy positions in the defense and security sector. Meanwhile, Setara Institute Researcher, Ikhsan Yosarie, is of the opinion that the draft regulation on filling ASN positions in the RPP on ASN Management should provide a clear picture of what positions can be filled by the TNI/Polri because the regulation can have an impact on the career ladder of ASN employees and the TNI/Polri. On the other hand, a lecturer in public administration at the University of Indonesia, Sidik Pramono, said that filling ASN positions from the TNI/Polri is a mandate of the ASN Law which must be further regulated through PP and the reciprocal goals to be achieved in the regulation so that it can be truly realized.

So that it does not only accommodate the TNI/Polri to be able to occupy ASN positions, but on the contrary accommodates ASN employees to be able to occupy positions within the TNI/Polri. The Minister of PAN RB, Abdullah Azwar Anas, responded to the controversy in the public debate, emphasizing that the government does not approve of the return of the dual function of ABRI. Therefore, filling ASN positions from the TNI/Polri and vice versa will be regulated selectively with certain restrictions and adjusted to the needs of the relevant agencies with talent management. So that it is hoped that government agencies will get the best talent from the TNI/Polri and the TNI/Polri will also get the best ASN.

The issue of filling ASN positions from the TNI/Polri was discussed in the Hearing Meeting (RDP) of Commission II of the Indonesian House of Representatives with the Minister of Administrative and Bureaucratic Reform and the Acting Head of the State Civil Service Agency (BKN), on March 13, 2024. The Chairman of Commission II of the

Indonesian House of Representatives, Ahmad Doli Kurnia Tandjung, emphasized that TNI soldiers and Polri members can fill ASN positions or vice versa, only at echelon I and within the central government. Referring to Article 47 paragraph (2) of Law Number 34 of 2004 concerning the Indonesian National Army (UU TNI), active soldiers can occupy positions in offices that handle defense and security, if the article is detailed, there are 10 defense and security agencies within the central government. MenPAN RB revealed that the RPP on ASN Management is in line with the filling of ASN positions from the TNI/Polri which was previously regulated in Government Regulation Number 11 of 2017 concerning Civil Servant Management (PP 11/2017) in Articles 147-Article 160. The status of PP 11/2017 is currently still valid and does not conflict with Article 75 of the ASN Law. However, PP 11/2017 does not sufficiently regulate certain positions within the TNI/Polri environment that can be occupied by ASN.

In this regard, to realize balance in the implementation of filling positions, the substance of certain positions within the TNI/Polri environment that can be filled by ASN still needs to be discussed in more depth. Commission II of the Indonesian House of Representatives in carrying out its supervisory function needs to emphasize to the Ministry of Administrative and Bureaucratic Reform to be consistent in formulating rules for filling certain ASN positions from TNI soldiers/Polri members and vice versa in the RPP for ASN Management, in accordance with the mandate of the ASN Law and by considering the limitations determined by Law 34 of 2004 concerning the Indonesian National Army (UU TNI) and Law Number 2 of 2002 concerning the Indonesian National Police (UU Polri). These limitations are emphasized so that TNI soldiers/Polri members can only occupy certain ASN positions in agencies that handle defense and security within the central government, and their placement is based on the agency's request.

In addition, Commission II of the Indonesian House of Representatives can encourage a balance in filling positions through implementing regulations that are made in detail, strictly, and clearly in regulating the process and criteria for placing ASN, TNI soldiers, and Polri members in certain positions based on the competencies required by the agency.

Literally, professionalism refers to a profession, namely a job based on educational expertise. Its scope includes quality, mastery, and consistency of both. While reciprocity means reciprocal or reciprocal actions in order to achieve balance, including profit and loss (proportionality). This means that any consequences must be accepted as a responsibility in the position, not just taking advantage.

The definition of reciprocity is a reciprocal or reciprocal relationship. In the Big Indonesian Dictionary (KBBI), the definition of reciprocity is reciprocal, this word is often used in learning methods. In general, the definition of reciprocity is a method where there is a reciprocal relationship between one person and another in discussing a problem topic. Reciprocity is also defined as a relationship between two variables that are reciprocal, meaning that one variable can be the cause and also the effect of another variable, and vice versa, so that it cannot be determined which variable is the cause or which variable is the effect. for example, at a certain time, variable x affects variable y, and at another time, variable y can affect x. For example, the relationship between learning motivation and reading interest, learning motivation can affect reading interest, and vice versa, reading interest can affect learning motivation. Another example, investment brings profit, and vice versa, profit will allow investment to come. Based on these examples, the affected variable at this time will change into an influential variable at another time, and vice versa.

If the mobility of ASN and non-ASN is based on the above principles, it is important to remember *first*, the legal consequences for non-ASN officials in the civil

space must be applied the same as ASN in general. This is to show the seriousness of the principle of proportionality and legal certainty. It is unfair for non-civil officials to commit violations of the law in the civil realm but hide behind the jacket of non-civil law. The case of BNPB officials the other day is quite a lesson.

It should be realized that non-civil and civil bureaucracies have their own characteristics. Non-civil spaces such as the military and police are accustomed to a classic bureaucratic culture that is strictly hierarchical, structural, *ego-system*, legalistic, and formal. While the civil bureaucratic space is now more adaptive, flexible, functional, *eco-system*, and para-legalistic. Forcing mobility in certain positions is not against the principle of professionalism.

The non-rigid, adaptive, and functional civil bureaucratic space often changes its nuance when entered by non-civil officials. For civilians, obedience to the system and process is as important as obedience to superiors and the end result. The way of working is different from the military and police. Non-civilian space is enough to give orders, civil space requires deliberation. If forced, it is the same as exchanging Catfish for salt water and Tuna for fresh water.

One of the professionalism enhancers is when a person's track record is seen in their career up to the highest level. To sit in echelon 2 and 1, ASN needs to have held a position that is at least similar to the category of the position being auctioned. It is difficult to imagine *the track record* of the army and police in that direction if they have never sat in a linear position in that position, let alone without an auction and immediately sitting pretty. The culture of civil organizations that emphasizes the process, emphasizes that civil organizations need leaders who not only understand the ins and outs of bureaucracy, but are also humane, civilized, accommodating, and functional, not authoritarian and formalistic. When the army and police are busy entering the civil realm, it is not uncommon for the organizational culture to return to ancient bureaucracy, full of formality, symbolism and sword-fighting. This also has consequences for *high-cost public services*.

The ratio of police and military to the population, which has now reached 278.69 million, is clearly unbalanced. With a ratio of around 1:700 population, the number of police is only able to reach 62.3 % (436,432) of the total requirement (Mustajab, 2023). Although the number of Indonesian police is among the fifth largest in the world, the ratio of community protection is still low. The ratio of soldiers is even lower than the police, which reaches around 438,410 people. Even though the Indonesian military is among the first class in Southeast Asia, the ratio of protection to the community is only around 0.00613 % . This fact is clearly very different from Malaysia, which has a smaller ratio of soldiers to the community.

The above picture shows that the need for police and soldiers is still far from the ideal ratio of a country, around 1:450 or 225 officers for every 100,000 civilians. If all soldiers and police migrate to civilian space, one can imagine the empty barracks and the absence of public protectors.

supporting positions such as administration, planning, and libraries, not strategic positions considering the confidentiality of positions on the command line. While the civil bureaucracy is open from *low*, *middle* and *top* managers such as director generals and secretary generals.

same starting point in the shelter case when open bidding often draws criticism from ASN. Not infrequently, civil servant positions are only a stepping stone to achieve stars, or extend the term of office which is 2 years apart . We also do not understand much whether the performance of the bureaucracy filled with non-civil servants is better than ASN. Take for example the BNN, which is mostly filled with police but the number of drug trafficking is relatively uncontrolled.

The opening of opportunities in several departments since the old ASN Law has actually been *a warning*. Moreover, the legal reform team recently reminded that there is a need for restrictions on the military and police in the civilian sphere. Simply put, the return of dual functions through the ASN Law is important to be aware of in order to prevent the failure of bureaucratic reform, the return of new-style authoritarianism, and the dimming of meritocracy.

In the managerial view of ASN, Management is a process that contains elements in the form of functions that influence each other, these functions are Planning, Organizing, Actuating and Controlling. The managerial activities that must be carried out by the unit commander seem simple, only planning, organizing, implementing and supervising, but if not carried out properly or one of the managerial functions is neglected, then it is not impossible that management activities will end up not in accordance with the plan or goals that have been set.

Managerial skills should also be possessed by unit commanders at all levels or strata of leadership so that the organization can function well and be able to support the implementation of the main tasks of the Indonesian Army in general. But in reality there are still many unit commanders who emphasize leadership skills in carrying out tasks, or carry out managerial functions but not completely resulting in frequent administrative errors, especially those related to performance, treasury and budget use.

Military involvement in the life of civil social and political development, especially the role in making state development policies almost always raises pros and cons. The competence of placing high officials in state institutions should ideally be filled by experts in their fields, such as economists to occupy economic positions, development experts to occupy development positions, and many more positions that must be filled by human resources who are indeed experts in these fields, so that state goals can be achieved more precisely and quickly.

The placement of human resources must also be reviewed first to meet the requirements and criteria stipulated in the laws and regulations in force in Indonesia. Human resources that meet these requirements can come from anywhere, be it civilians or the military. For civilians, of course, there will be no debate to fill civilian positions as long as they meet the required criteria. However, what if the filling of civilian positions, the human resources come from the military, namely in this case in the form of active TNI soldiers.

There are several other reasons behind the military in Indonesia being heavily involved in non-military tasks. In the development of the country as a whole, outside the military's primary function as national security defense, the military also plays a very important role in socio-political and economic development. Quoting Samuel Huntington, a professor from Harvard University, this military political involvement is a result of weak political institutions, which is an indication of the inability of civilians to govern.

The background and reasons were agreed by Moh. Mahfud MD, who stated that the TNI's role in politics was because based on historical experience, the civil government had failed to run a stable government. This can be seen from the journey of liberal democracy supported by many political parties that tend to hinder the government's performance from being good, so that various rebellions emerged. The TNI does not want to be positioned as a firefighter so it must take a proactive role in making political decisions so that the country does not fall into destruction due to threats that are not anticipated properly. The role taken by the TNI is to participate in making national policy by entering government agencies outside the military field.

The current military-civilian relationship in Indonesia requires the military to review its role. The entry of TNI officers into civilian positions is no longer due to the weakness

of the civilian government or the threat of destruction as mentioned above. The problem faced by the TNI as an institution is the large number of active generals who do not have a position (*non-job*). Since the enactment of Law Number 34 of 2004 concerning the TNI, one of the concerns is that there will be a problem in the form of a surge in the number of high and middle-ranking officers. The enactment of the law ended the dual function of the ABRI which explicitly cut several sectors of the military's role. This is not balanced with personnel management and cadre formation within the TNI as an effort to anticipate the loss of the military's role in participating in the lives of civilians. In addition, there are many other factors that are the root of the problem of the accumulation of non-job TNI officers.

Active soldiers can still hold civilian positions as long as they are within the corridor of state institutions regulated by the Law. It must be observed more closely, the institutions regulated by the Law are indeed in charge of the field of national security and defense. But the problem is that currently many TNI officers occupy and reciprocal positions as civil officials both in government institutions, even to state-owned enterprises (BUMN) which should not be the realm of national defense and security. This of course violates the applicable laws and regulations.

The cause was the emergence of pressures in the midst of civil society who wanted the TNI to return to its focus as a tool for national defense. According to Saurip Kadi, the pressure arose after historical experiences regarding bad events experienced by some people due to the consequences of the doctrine and dual-function role of the TNI before the reformation. The TNI was considered to have taken a non-neutral position in Indonesian politics at that time because it became a tool to perpetuate government power. Such a position made the people distance themselves or more precisely avoid the TNI, this would have an impact on reducing the loyalty of the people as part of the total defense which is the main task of the TNI. Article 2 of Law Number 34 of 2004 concerning the TNI which discusses the identity of the TNI as the People's Army, the Fighter Army, the National Army, and the Professional Army is considered as one of the efforts to restore the people's trust in the TNI.

III. CONCLUSION

The reciprocal concept of filling state apparatus positions emerged after Article 19 paragraph 2 of the ASN Law stated that certain ASN positions can be filled by TNI soldiers and Polri members. Furthermore, in paragraphs 3 and 4, it was concluded that filling certain ASN positions is only for central agencies (ministries and non-ministerial government institutions) as regulated in the TNI Law, Polri Law and the procedures for filling them are regulated in Government Regulations. The plan to place military officials in civilian positions has sparked many comments from the public and public policy observers. The filling of ASN positions by TNI soldiers and Polri members is actually not a new matter. Law Number 2 of 2002 concerning the Indonesian Police and Law Number 34 of 2004 concerning the TNI have also long allowed the filling of positions by civil servants. This certainly has implications for the increasingly shrinking role of civilians in government. The large influence of the military in politics and government is also feared to erode democratic practices which could lead to human rights violations in this country. The concept of reciprocity in filling military positions by ASN itself is considered to be far from the mark. In other words, in terms of quantity it will be difficult to find a balance point between filling state apparatus positions from military to civilian and vice versa. In terms of quality, there is currently no reciprocity in equal positions between civil servants and military apparatus.

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