

# TNI Must Be Involved To Overcome Acts Of Terrorism

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**HumasUPNVJ** - In dealing with acts of terrorism, the Indonesian National Armed Forces (TNI) must be involved. This was raised at the Implementation of the National Seminar with the Theme of the Draft Presidential Regulation Concerning the Duties of the Indonesian National Armed Forces in Overcoming Terrorism Acts as the Implementation of Military Operations Tasks Other Than War", which was held by the Faculty of Law UPN Veterans Jakarta on Thursday 12 November 2020, 0900 to 13.00 WIB.

The seminar was held with a combination of online and offline. The national seminar was opened directly by the Chancellor of UPN Veterans Jakarta Dr. Erna Hernawati, Ak, CPMA, CA.

In his remarks, the Chancellor conveyed that the results of this national seminar were hoped to be able to find, find a middle way for solutions to the problems encountered in the process of establishing the Presidential Decree on the Task of the Indonesian Armed Forces in Overcoming Terrorism.

The Faculty of Law as the organizer is represented by the Deputy Dean of the Faculty of Law UPNVJ Dwi Aryanti, SH, MH. This seminar is one of the implications of defending the country for the UNPV Jakarta academic community, especially the law faculty. The academic tradition in conducting seminars like this is a very good tradition for lecturers and students. In addition to this seminar, the UPN Veterans Jakarta Faculty of Law will also organize a series of scientific activities, including a national webinar which will be held on

This national seminar presented 5 speakers, Maj. Gen. TNI (Ret.) Supiadin Aries Saputra (Chairman of the DPP Nasdem Party for Defense and Security), Rear Admiral TNI (Ret.) Soelaman B. Ponto, ST., MH. (kabais TNI 2011-2013), Brigadier General Edi Imran SH., MH, Msi. (Inspector Babinkum TNI), Dr. Wicipto Setiadi, SH, MH (Expert in Statutory Law at UPN Veterans Jakarta Faculty of Law), Khoirur Rizal Lutfi, SH, MH (Lecturer in International Law at UPN Veterans Jakarta Faculty of Law/Deputy Dean II of FH).

The first speaker, Maj. Gen. TNI (Purn.) Supiadin Aries Saputra (Head of the DPP Nasdem Party Bid. Defense and Security) emphasized that the prosecution of acts of terrorism was carried out by the TNI directly based on coordination with the agency in charge of counter-terrorism, POLRI, TNI and the ministries /relevant institutions. The determination of high escalation is carried out together with POLRI, TNI and agencies that carry out affairs in the field of counter-terrorism. Recovery is carried out by the TNI under the coordination of the agency in charge of counter-terrorism affairs and carried out in accordance with the provisions of the applicable laws and regulations. Cooperation in overcoming acts of terrorism, the TNI can carry out cooperation between relevant ministries/agencies, other countries and international organizations in accordance with statutory provisions.

The second speaker, Rear Admiral TNI (Purn) Soelaman B. Ponto, ST., MH. (kabais TNI 2011-2013) conveyed that in dealing with terrorism there are two laws that are used by two legal instruments: humanitarian law, namely Law no. 34 of 2004 concerning the TNI and criminal law, namely Law no. 5 of 2018 concerning Terrorism. Based on Article 7 paragraph (2) Law no. 12 of 2011 concerning the formation of Legislation which states that the legal force of fellow laws is equally strong, meaning that Law no. 34 of 2004 concerning the TNI has the same legal force as Law no. 5 of 2018 concerning Terrorist Crimes. In the explanation of Law no. 34 of 2004 concerning the TNI according to paragraph (2) that overcoming acts of terrorism is the main task of the TNI which is carried out by carrying out military operations other than war (OMSP). Here it is very clear that the principle of the TNI to overcome terrorism is to carry out *military operations*, not *law enforcement*.

The third speaker, Brigadier General Edi Imran SH., MH, Msi. (Inspector Babinkum TNI). The legal basis for the TNI's task of dealing with acts of terrorism is in paragraph 4 of the preamble to the 1945 Constitution, article 30 of the 1945 Constitution, article 7 paragraph (2) of Law No.3 of 2002, Article 6 of Law no. 34 of 2004, Article 7 paragraph (1) and (2) letter b number 3 of the TNI Law, Article 11 of the TNI Law and Article 43i of Law no. 5 of 2018. The formation of a Presidential Regulation on countering acts of terrorism is an order/delegation of a law, namely article 43i paragraph (3) of the Terrorism Law, the deadline for forming a Presidential Decree is 1 (one) year from the promulgation of the Terrorism Law (22 June 2018 to 22 June 2019) according to Article 46B, the formation of the Presidential Decree must be consulted with the DPR RI before it is formed.

Substance R of the Perpres regarding the task of the TNI in overcoming terrorism consists of (a) 7 Chapters and 15 Articles which will be followed up by a Regulation of the TNI Commander; (b) The TNI's function in overcoming acts of terrorism includes the functions of deterrence/prevention, prosecution and recovery; (c) Limited involvement of the TNI towards 8 (strategic and specific targets); (d) The involvement of the TNI is limited and the TNI Commander must be ordered by the president; (e) BNPT as the leading sector for combating terrorism; (f) Polri as an institution/institution carrying out the legal process; (g) There is no overlap, takeover of duties, or damage to *the criminal justice system*; (h) The involvement of the TNI will actually strengthen the BNPT and Polri. Eradication of terrorism must be integrated between law enforcement and prosecution of terrorism. The TNI in dealing with terrorism is more about prosecution, not law enforcement, which is the domain of the Police as law enforcers.



The fourth speaker, Dr. Wicipto Setiadi, SH, MH (Expert in Legislative Law at UPN Veterans Jakarta Law) The involvement of the TNI is ordered by law, namely Law Number 5 of 2018. The TNI has the authority to carry out military operations other than war (OMSP) based on Article 43 I of Law Number 34 of 2004 concerning the TNI, namely: (1) TNI's duties in overcoming acts of terrorism are part of military operations other than war; (2) In overcoming acts of terrorism as referred to in paragraph (1) it is carried out in accordance with the main tasks and functions of the TNI; (3) Further provisions regarding the implementation of overcoming acts of terrorism as referred to in paragraph (1) are regulated by a Presidential Regulation. The strategic role of the TNI is still needed to assist and support the National Police in eradicating acts of terrorism in the country. The TNI's participation in overcoming terrorism is an integral part of the main task of the TNI in defending Indonesia's sovereignty based on Pancasila and the 1945 Constitution, and protecting the entire nation and all of Indonesia's bloodshed from threats and disturbances, both from within and from outside.



The fifth speaker, Khoirur Rizal Lutfi, SH, MH (Lecturer in International Law at UPN Veteran Jakarta Faculty of Law/Deputy Dean II of FH) emphasized that there are several international agreements related to the issue of terrorism. The involvement of the TNI in the practice of various countries can be fully militarized which is the logic of the defense paradigm of war ( *kill or to be killed* ) and *military aid to the civil authorities* whose logic is *law enforcement*. Article 43 I paragraph (1) Law no. 5 of 2008 concerning the Eradication of Criminal Acts of Terrorism states that the task of the TNI in dealing with acts of terrorism is part of military operations other than war. Furthermore, in paragraph (2) it is stated that in overcoming acts of terrorism as referred to in paragraph (1) it is carried out in accordance with the main tasks and functions of the Indonesian National Armed Forces. The main tasks of the TNI in article 7 of Law no. 34 of 2004 concerning the TNI, paragraph (2) states that the main tasks as referred to in paragraph (1) are carried out by: (a) military operations of war (OMP); (b) military operations other than war (OMSP). Furthermore, in paragraph (3) it is stated that the provisions referred to in paragraph (2) are carried out based on state policy and politics.

This national seminar was followed by a discussion, the participant's questions were read by the moderator Heru Suyanto, SH, MH, CLA (Deputy Dean 3 FH UPNVJ). The national seminar was attended by approximately 1000 participants who attended via zoom cloud meeting, consisting of various groups: law enforcement officials, academics, practitioners, students and the general public.







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