Jurnal Bestuur

Vol. 8, Issue 2, December, 2020
E-ISSN 2722-4708 **P-ISSN** 2302-3783
DOI: 10.20961/bestuur.43140

The Principle of Control of Non Primary Gun System of the Indonesian National Army Protect Soldiers

Said Gunawan
Faculty of Law, Universitas Bandar Lampung, Indonesia
Email Coresponden: saidgunawan892@gmail.com

Abstract

This study aims to analyze and discover the principle of non-defense equipment regulation as a legal protection effort for members of the Indonesian Armed Forces and to reconstruct non-defense system arrangements in the context of legal protection for members of the TNI based on the value of certainty and justice with dignity. The research method in this research is descriptive juridical using statute approach, conceptual approach, analytical approach, philosophical approach and case approach. These approaches can be combined. The results of the research show that first, the principle of non-defense system regulation is subject to Law Number 34 of 2004 concerning the Indonesian National Army, especially the principle of civilian supremacy. The principle is only included in the basis of consideration. Does not specifically regulate the general provisions and body of the regulation regarding the terms and meaning of non-defense equipment and has not become one of the main tasks of the TNI in non-war military operations. Second, reconstruction of the value of alusista and non-alusista abuse must be subject to sanctions.

Keywords: Defense Equipment; Indonesian National Army; Defense.

Abstrak

Penelitian ini bertujuan untuk menganalisis dan menemukan prinsip pengaturan non-alutsista sebagai upaya perlindungan hukum bagi anggota Tentara Nasional Indonesia serta merekonstruksi pengaturan non-alutsista dalam rangka perlindungan hukum bagi anggota TNI berbasis nilai kepastian dan keadilan berartabat. Metode Penelitian dalam penelitian ini adalah juridis deskriptif dengan menggunakan pendakatan perundang-undangan (statute approach), pendekatan konsep (conceptual approach), pendekatan analitis (analytical approach), pendekatan filsafat (philosophical approach) dan pendekatan kasus (case approach). Pendekatan-pendekatan dimaksud dapat digabung. Hasil Penelitian menunjukkan pertama, rinsip pengaturan non-alutsista tunduk pada Undang-Undang Nomor 34 Tahun 2004 tentang Tentara Nasional Indonesia khususnya asas civilian supremacy. Asas tersebut hanya dicantumkan dalam dasar pertimbangan saja. Tidak mengatur secara spesifik dalam ketentuan umum dan batang tubuh peraturan tersebut mengenai istilah dan pengertian non alutsista serta belum menjadi salah satu tugas pokok TNI dalam operasi militer non perang. Kedua, rekonstruksi Nilai penyalahgunaan alusista dan non-alusista wajib dikenakan sanksi.

Kata Kunci: *Alutsista; Tentara Nasional Indonesia; Pertahanan.*

Introduction

In order to create the law for the certainty and dignity values of soldiers and Indonesian, Justice found in this study and generally reflected in the case of the task force formed in a organized and presented in response to liquisitoir. The decision that the Military Judge's decision supports vs. Yogi Gunawan that was the focus of a picture or a summary of the non-use of the setting there in the

Pancasila legal system. The verdict intentionally printed sideways to adhere to the presentation pattern, or to present and interpret court decisions that are already widely recognized around the world. Concession of the same name, i.e. A vs. B is called, and is found often in common law countries. In this case, a military judge argues, who is the first party in the name of the decision is a party claimant, representing in this case the public interest or interests of the Republic of Indonesia 's unity. And in the context of the decision the second party is, i.e. Yogi Gunawan was a defender, who in this case acts as a private party but is involved, the TNI soldiers and subject to the authority of or prevailing in Indonesia under military law. (Said Gunawan, Anis Mashdurohatu, Teguh Prasetyo, I Gusti Ayu Ketut Rachmi Handayani, 2017)

The award is seen as a weakness in an setting applied to a judge who violates the matter in question, namely that the use of Article 149 KUHPM is only possible to ensnare members of the TNI known as Yogi Gunawan, while civil parties are involved in actions considered as a criminal offense by a judge of the Tribunal in the case, namely the Emi, which is therefore not recognized as the Passe penalties equivalent to those put on them. The decision was officially issued by the Republic of Indonesia's Supreme Court (MARI) is referred to the Court's ruling in the Field registry number of the Military High Court with a PUT/02-K / PMT-I / AD / III/2010. Work found that the accused party's position in Ruling number: PUT/02-K / PMT-I / CE / III/2010 when the case reached flag rank / Nrp: Lt. Inf/31544. The criminal, that is to say, Yogi Gunawan was in Office, too. As for the accused party's position arranged then, that of Pamen Pusterad. UP: Pusterad. In a Ruling which has become an observation unit of this study, it is understood that the content of the party's Military Judge advocate 's claim or requisitor consists of five key claims. First, with regard to the grounds of the indictment, in this case involving an agreement infringed by the Defendant, that is a breach of the statutory provisions preventing the use of non-military parties for it. (Yukhi Mustaqim Kusuma Sya'bana and K.H. Sanjaya, 2016)

According to the Military Judge Advocate, the Plaintiff party is found to be legitimately and convincingly guilty of committing a criminal offense committed by the state, including the army in preparation for the war, without obtaining written authorization from or on behalf of the officer who has the right to borrow anything that the State gives to a more state On the basis of the language of the article or the non-use of the settings there, as formulated in Article 149 of the above-mentioned KUHPM, the Military Judge advocates, in this situation, that is, the Military Judge advocates High Faction, then please convict the accused by a High Military Trial. The military judge favors seeking strong litigation for the military criminal, the defendant has made demands for twelve months of incarceration. In other words, from the perspective of Indonesian jurisprudence,

violation of the non-there contract, as seen in Verdict Yogi Gunawan 's case summary, is liable to a defendant for as many as five years. (Fransiska Adelina Sinaga, 2020)

As it has been mentioned above, according to the opposition of the parties Defendant has to breach the non-use contract there, but the defendant knows that he has a mistake (negligence). Defendant of revealed parties, that the mistake arose because he was misled to the party that he would support. Confirmed by the Plaintiff that a majority of art suspects, a civilian, had lied to him, calling the parties t. Emi Passepartout. According to the defendant, the most sincerely and with complete knowledge and appreciation from the bottom of his heart, the truth is to be told that he acknowledged that he was done wrong. While he had erred from all that had happened, according to the defendant, he is nevertheless very hopeful and perseverance and the goodness of the soul of the Judges of the Tribunal to remove the punishment as light as possible. Definition of the accused parties involved who would like to be responsible for the act that he has momentarily led astray, as well as the criminal elements specified in Article 149 KUHPM.

Based on propositions that have been outlined above, the legal counsel of the Defendant felt justified to apply to the Tribunal Judges that:

1. Declares the defendant not proven legally and convincingly guilty of committing a criminal act as Claims and demands from the military judge advocate;
2. Freeing or at least release the Defendant from all Claims and demands of the Military judge advocate;
3. Restore the rights of the defendant in the ability, rank and dignity his dignity;
4. Free the fees on the defendant and charge it to the State or other Tribunal Judges argued, the defendant's legal counsel appealed to the parties the Tribunal Judges to drop a ruling that fairly.

According to the Tribunal judges' logic, this is the material not only that which is entrusted to him alone, but also that which is entrusted to other armies. In that basis, it is held by the Tribunal that the criminal is in the dictum, that Article 149 KUHPM is fair and balanced with the defendant's fault. In fact, according to the Assembly 's understanding, if the criminal would still be convicted, so the accused would be burdened with charging fees. Referring to Article 149 KUHPM and to the rules of the law relating to invitations, the Tribunal judges in adjudicating the matter by noting that: the defendant was found to be legitimately and convincingly guilty of the offence, 'including the military force prepared for war without borrowing permission, the goods handed over to other countries including military clothes. Then the Tribunal Judge

criminalizes the defendant with 7 months' incarceration. An outline of the jurisprudence narrating the application of the rules relating to the non-use of defense equipment as set out above demonstrates that the concept of the laws regulating the use of non-contained equipment found in the Staatsblad 167 Number 1934 as amended by Law No. 39 of 1947 on the Military Criminal Law Book (KUHPM) in Article 149 causes legal uncertainty In applying the provisions for the use of non-KUHPM Article 149, only the military will be subject to the law enforcement mechanism by the Military Law judicial body and is subject to special cases, including the military judiciary.

Discussion

1. The Setting and the Implications of Non There in Various Countries

Comparative research on the law of the non-setting there in the various countries managed to identify the settings in there non United States, Netherlands and United Kingdom. Recalling the principle on non-setting there in the United States is seen in the case-law Fernando Montas also used as common law which governs the non-there for countries that are members of NATO (North Atlantic Treaty Organization) or Nato, then the overview of settings for non-there in the United States automatically become the setting principle also applies in the Netherlands and the United Kingdom. The settings on non-there in the United States can be found in section 250.43 (2) of the Act of the State of Florida. The application of top atuan has become a common law for countries which are members of NATO. Below follows an overview of the settings of a non-visible there at once with the implementation in case-law. (Bambang Eko Suahrianto,, 2018)

American Court decision, at the Court of appeal conducted the State of Florida in the perdisangan sessions in July, 2008. (the District Court of Appeal of the State of Florida in the Fifth District). The matter of case No. numbered 5D07-3962, involved parties plaintiff, namely, Comparison, State of Florida against Fernando Montas, the Terbanding. Plaintiff pleading Comparison in memory so that the Court of Appeal State of Florida check and disconnect errors are made in the Court ruling to the effect that Article 250.43 (2) of the Act of the State of Florida, the year 2007 as the provisions unconstitutional (unconstitutional). The matter in question begins from the events as follows. A representative of an agency Transportation Security with Transportation in the State, namely the Security Administration (TSA), look at the Orlando International Airport was a man named Fernando Montas wearing uniforms, United States, standing in a part that was not given a marker, which is monitored because it is the area of military security lines that are frequently used by the United States military. Party representatives who saw it felt strange, because he saw was hair from the suspect Montas is longer than the standard should be a hair from the United States military servicemen.(Bambang Eko Suahrianto, 2018)

Given the parties a suspect, Montas, i.e. not able to show an identity card that explains that he is a United States military soldiers, and that he confessed,

Montas later arrested for violating a law that prohibits the use of United States military uniforms and use the attribute or the marks line of military, i.e. as provided for in article 250.43, laws of the State of Florida, year 2007. More information, the following formulation of article 250.43, laws of the State of Florida the year 2007. Follow postulates Montas, the Court cut off that Article 250.43, laws of the State of Florida the year 2007 was a provision that is contrary to the Constitution, because it contains rules that have a broad understanding of and goes against the principle of due process. (Tri Ubayanto, Sudarsono, Iwan Permadi, Setyo Widagdo, 2020)

Refers to the common law, the Tribunal in the case that Hakm argues that laws that are used to ensure Montas too broad (overbroad). Given the activities that are used to be legitimate and in accordance with constitutional protection duration or later criminalized and also declared as invalid or declared as activity is not protected. The reason he granted Montas petition, because according to the Court, the lawmakers made a formula a meaningful article too broad (article rubber) with the aim to ensnare all things criminal acts or behavior that deviates in the community and leave it to the court party to enter into it and determine who can be lawfully arrested, and anyone who must be freed. The Court also argued that they cannot apply the prohibition to apply article rubber (the doctrine of "the law too broad"). According to the Court, a reference to common law anymore, that doctrine is a doctrine that is awkward and therefore must be used carefully, especially when the legislation was indeed held to regulate behavior, and not solely set up pure suggested. A law known as the rubber article, because it was deliberately designed in such a way that it can be used to restrict conduct that is protected by the Constitution.

The principle of arrangement in force in various countries (USA, Netherlands and United Kingdom), that the person may interfere with the final legislation by reason of the Statute was too broad. Provided, that person, must reconstruct the legal reasons that his behavior which he admits himself is a behavior that is totally innocent and setting limitations or prohibiting who sued by those concerned is not supported by any rational reason, that laws are indeed legitimate held and applied to achieve the objectives of the Government, in this case limits the use of the non-abuse there. The same public prosecutor's Party, representing the Country doing construction aggression, that Montas did not have a fundamental right to wear a military uniform; Therefore, according to the public prosecutor, the actions and behavior of Montas is not protected by the Constitution, in this case by the First Amendment. Both cite the common law, the Prosecutor said that: in determining whether a particular behavior or actions have an element which is quite communicative in bringing the provisions of the First Amendment apply, then that should be tested is whether there is a will to express a message that is certain in nature, and whether there is a possibility that very big that the message will be understood by those who watched him.(Ichsan Anwary, 2018)

Montas suggests evidence that he wore military uniforms as an act of patriotism and valued support of members of his family who became a soldier.

When people doubt if the message is conveyed Montas it will be well understood by those who saw him wearing the military uniform, one can imagine a number of situations when a person can wear some of the uniforms, to communicate a message to her feedback. For example, someone doing that to express its support to the army, or perhaps just to express the attitude of his protest against a military action that does not approve of him. Recalling Article contains potentially protect 250.43 stated opinions and also the behavior, then one must determine if the provisions are supported by convincing Governments and interests are strictly limited and are manufactured or formulated to really provide protection to those interests. The award in question, the Supreme Court of Florida Third District Court and also provides clues to the case, to understand the central hand. (Abdul Basyir, 2018)

In the Sult and Rodriguez, the courts solve the question of the constitutionality of Article 843,085, of the Laws of the State of Florida, who did the criminalization of illegally discharged, because it does not get authorization for it, an emblem of the police or the indicia of other law enforcement agencies. In both cases the Sult or Rodriguez Court determines that Article 843,085 the Article is too broad and violates due process because there is no difference between an innocent behavior, and the behavior that is intended to mislead the public (the public). The courts adjudicate cases the Sult draws a conclusion that there is not any way to find out an element from the will to deceive or trick in legislation to create a narrow interpretation that limits the scope of behavior which is not constitutionally protected. Same thing with that, the Article does not list 250.43 an element or elements will in particular. Article that simply does not contain the proviso that certain actions are performed with the intent to deceive or mislead a sane or be an attempt to replicate as if was a member of the military. The judge eventually decided that the preformance case was concurred, that the Court of first instance Article 250.43 is a form that is too broad and therefore constitutionally also violates the principle of due process. Fernando Montas was freed.(Suahrianto, Bambang Eko, 2018)

In essence, from the advanced explanation above wish to put forth is that the laws of the State of Florida that prohibited Civilians Using Uniforms was declared too broad and violated the constitutional rights of civilians. According to the analysis performed, the author of a law that prohibits any person who uses military uniforms, except the military, in the case above is the law that violates the Constitution. Summed up the case for such arrangements prohibits a substantial amount of protection for anyone to express opinions. In addition to the case law or that is generally known with the common law and the judge made law in the case Fernndo Montes, the Netherlands also refer to the common law in the case of United States v. Schacht is case numbered law 628. The case was filed to the Supreme Court on March 31, 1970, expressed above have become states in the common law countries who are pertained to the NATO. The ruling was taken less than a month later, after being registered at the Supreme Court, i.e. precisely on May 25, 1970.

In case law, the Plaintiffs (meaning, i.e., the parties filed a Cassation, and hereinafter referred to Applicants of Cassation), previously a Defendant or Petitioner. The applicant of Cassation is called Schacht, with the full name Daniel Jay Schacht, as Parties involved in an Appeal. The play was performed several times in front of a military training center. The offender performed the play to protest or statement of disapproval on the American involvement in the armed conflict in Viet Nam. When the case was in State Court, the jury convicted for violating Article 18 U.S.C. 702. The formulation of this provision contains provisions that constitute a criminal offense the use without consent (the unauthorized wearing), civilian use military uniforms or parts of military uniforms in question.(Yehu Wangsajaya,, 2016)

On the other hand, the offender submits his defense that he was allowed to wear a military uniform in question in accordance with the formulation of article 10 U.S.C. 772 (f). That provision contains a favor to use military uniforms when someone was taken the picture because of his role as a member of the armed forces in a theater staging, or production of moving images (film), as far as shooting or taking of moving images does not have the intent to pollute or to discredit the armed forces (if the has does not tend to discredit the armed forces). In the High Court (the Court of Appeals), in this case, in the context of a comparison with the legal system in Indonesia pursued a legal process procedure through the civil Judiciary, the verdict of guilty parties Schacht above strengthened. As the findings of the (finding) the drama in which Schacht parties participated as a result of the staging of the theater as intended in the formulation of the provisions of article 772 (f), carry the implications that the overthrow of a punishment for Schacht justifiable or obtain justifications in intents and purposes behind the staging done parties Schacht is a form of speaking out in opposition to the military's role.

Table 1
Comparatieve Analysis of the Regulation for the Use of the
Non-Primary Gun System in Indonesia and Other ountries

Num	Regulation	Indonesia	NATO		
			America	England	The Netherlands
1	Regulated at	The Law Num. 34 of 2004	The General Penal Code and the Common Law		
2	Law Enforcement	Military Court	Civilian Court		
3	The using by the civilian	No regulations	License System		
4	Virtues in the controle and regulations	There has been many lacunaes within the legal system, prticularty the principle of equality before the law, the principle of legal ccertainty in the using of the non primary gun system in Indonesia.	constitualisme, Freedom of expression dan human right		

The practice of law enforcement in both the United Kingdom and in the United States, is also different from the non-existent enforcement of laws governing in Indonesia. Both in the United Kingdom, as well as in the United States, law enforcement over non-abuse there in both countries that submit to the jurisdiction of the civil judiciary. This is in contrast to jurisdiction in Indonesia, is currently still subject to Article 149 KUHPM. In these settings, the judiciary authorities to resolve the problems of criminal abuse of non-military judicial bodies are there. In order to clarify the principle of comparison between observations in different countries, in countries such as the United States, the Netherlands, the United Kingdom incorporated within NATO with the prevailing in Indonesia, presented here below a comparison table of the principles of the arrangement in question.

2. The Reconstruction of Value Upon the Principle of Non-Primary Gun System

The reconstruction of value upon the principle of non-standard settings there can be done with reference to the soul of the nation called the theory of Justice dignified as Volksgeist Indonesia, namely the Pancasila. The value in this, namely the question of morals. As propounded Anis Mashdurohatun, that basic moral Pancasila: put ". Furthermore expressed Anis Mashdurohatun that: "with the basic moral, the country doesn't matter, (including the Government which became part of the system settings there are non-Pen.) gain a solid foundation, who ordered to do properly, administer justice, goodness and honesty and brotherhood to the outside and into the. (Said Gunawan, Anis Mashdurohatu, Teguh Prasetyo, I Gusti Ayu Ketut Rachmi Handayani, 2017)

According to Mashdurohatun, the base of the divinity of the one true God be the foundation that led the country's ideals that give souls to attempt organizing all that is true, just and good. While the basic fair and civilized humanity is the continuation in deed and practice basic life than lead. Two basic values can also be used to reconstruct a non-setting there as already expressed in advance, both contained in article 149 KUHPM, in conditions which are common in law No. 34 of the year 2004 of TNI and the Indonesian armed forces Commander Decree expressed above have flaws. Pancasila which laid the foundations of the divinity of the one true God can close gaps and weaknesses in the setting of jurisprudence in Indonesia as expressed above. With the divinity of the one true God then the settings on non-there can provide protection to the TNI soldier who confronted to the Military Judiciary, as experienced in the case of Yogi Gunawan. On the basis of a just and Civilized Humanity, then it might be the obscurity concerning the arrangements who are authorized to issue a permit the use of non-there are not applied with only sacrificing Yogi Gunawan that has good intentions to help Parties fosterage as a worker of the art. (Said Gunawan, Anis Mashdurohatu, Teguh Prasetyo, I Gusti Ayu Ketut Rachmi Handayani, 2017)

Table 2
The Reconstruction of the Non Primary Gun Sistem
in the Article 49 of the Code of the Military Crime

Before the ReconstructionRekonstruksi	**Weknesses**	**After Reconstruction**
Staatsblad No.167 of 1934, reformed by the law number 39 of 1947 on the military code. A military who has been involved as the force of combatan that has been prepared to be ready for war is not allowed without a written licence on behaf of the authorised officers let any military goods whatsoever given by the state to other military, while he know that the uniform is part of the military equipment.	Other regulations can be used to give a deterrent effect to the civilian, not only impossing of sanctions for the military. There has been a weakness, in the case Number PUT/02-K/PMT/I/AD/III/2010. In that case, a penal santion hs been imposed to Yogi Gunawan using the Article 149 of the Military Criminal Code, but the Civilian, Emy Passe (Sipil) was freed by the system. This will have the effect that the Indoesian law is far from make human as human being. The dinity of the human being is down graded by the system of 149 KUHPM (Military Criminal Code).	In order to protect the military, equal treatment. A reform should be made by adding the Article 149 with one sub section and it read as sub section (2), the misusing of the non primary gun system by the civil society is subject to the existing laws and regulations. This will restore the principe of the rule of law, equality before the law. This reconstruction is called virtue reconstruction.
Law Number 34 of 2004 on the Indonesia National Army has stated a general principle of civilian supremacy. `one of the principles in the civilian supremacy is equality before the law. This principle must be stipulated in the body of the Law Numbr 34 with the clear threat of criminal sanctions.	There has been no specific criminal sanctions in the Law Number 34 of 2004 for those who missusing the non-primary gun system either they are civilian or military.	Change has to be made to the Law Number 34 of the 2004, so that the Law will be good enought to “catch” those civilian like Emi Pase who had missused the non-military gun system. This is coined as the rule reconstruction.

Pancasila values as set forth above in the perspective of the theory of Justice Dignity thus can lay the Foundation of moral juridical law (the principle of non-standard settings there) that did not seem to have certainty and can inflict injustice on behalf of members of the Indonesian armed forces. With the basic moral principle that non-setting there can be directed to the objective of creating equations in front of law. It can be achieved for example by adding to paragraph (2) of Article 149 with the formulation that "the abuse of Non-Civil Party There refer to the legislation in force". In this case the theory of legal system, which is also known in the theory of Justice dignified as grand theory can help solve the question of uncertainty, unidentified legal vacuum in the field of non-there, whether in Act No. 34 of the year 2004 of the TNI is not set explicitly about the threat of punishment and procedures of civil sanctions to the overthrow of the non-abused there as well as other provisions such as those contained in article 149 KUHPM. (Yahaya Kwaghga, Olagoke Battan, 2018)

Reference to other rules in the legal system that for example by reference to a formula of applicable legislation such as the criminal provisions regarding the prohibition of forgery in Indonesia criminal code, nor the regulations governing

of intellectual property rights (HKI), for example, contained in Act No. 13 years 20016 about patents. In addition to setting the intellectual property law patent, also pay attention to the terms of reference of the settings can be general, such as criminal Forgery Article set in article 378 (fraud), whoever with intent to benefit your self or others against the law by wearing a false name or a false dignity with a series of lies moves others to submit to him or something so that give debt or eliminating debt was threatened due to fraud with imprisonment of not longer than four years. (A D Prayogi, D S Dewi and A Sudiarno, 2019)

Article 362 of the CRIMINAL CODE concerning Theft, that whosoever shall take something that is entirely or partially belonging to another person with the intent to unlawfully owned threatened with imprisonment because of the theft of the longest longest five years. Similarly, Article 263 para (1) whoever makes false or falsified letters that can publish rights, an agreement or a debt or exemption may be used as a description for something the Act with the intention of going to use or to have other people using those letters as if the letter was genuine and not faked if exercise can bring something was convicted of mail loss ever six years. Article about the forgery of a letter is addressed here, because there is no possibility of parties who are not entitled to use the symbols of the military, who also may be included as an element of the non-there to publish letters that give rise to the right are against the law and harming the interests of military organizations.(Lutfi Adin Affandi, Ma'ruf Akbar, Dedi Purwana, 2018)

Reference to the formulation of the provisions of the Patents can be done while the ownership of a patent over military uniforms, for example, ruled by the civil party. In this regard it is important to put forward here that according to the provisions of article 1 of the Act No. 13 of the year 2016 about patents, the Patent Holder is the Inventor as owner of the patent. Whereas, in the system or stelsel registration according to law No. 13 year 2016, the party that receives the Patent Rights of Patent owner, or other party that received more rights to the Patents listed in the General list of patents. If a patent is, in this case an intellectual property that arises because the filing of a patent by the Inventor, for example, patent rights against one type of military uniforms that was a civil party held by the military then the status of the patent rights that theoretically involve the legal relationship between the two parties (the agreement). The party in question that is party to the TNI (military) as the holder of a patent over military uniforms and the owner (owner + proprietor) the patent namely civil parties. In the circumstances (legal relationship pattern) like this one then in the system governing patents, legal issues arising between the parties (a military-civilian relationship) with regard to ownership and control over the Patent is subject to its own legislation, namely Act No. 13 of the year 2016 about patents. It's just, uncertain, for example, there is abuse by persons/members of TNI, then jurisdiction for solving it (dispute settlement). (Teguh Prasetyo, 2019)

According to article 1 of that law, a patent is an exclusive right granted by the State to the inventor's top results in the field of technology for a certain period of time carrying out the invention itself or to give consent to the other party to carry it out. According to the legal regime (Law No. 13 year 2016)

governing patent, a Patent can be controlled by the holder of the patent, and the Patent holders, parties may of TNI party then give the license, i.e. the permissions granted by the holder of a patent, either exclusive or non-exclusive licensee, to which in fact is the owner of the patent. The patent holder, gained those rights because the Treaty or on the basis of a written agreement to use the Patents that were still protected in a time period and specific terms. Such a relationship is possible in the system of legal regulations governing patents, notably Article 13.

Article 13 law No. 13 year 2016 formula contains a provision that the holder of a patent over the Invention that is produced by the Inventor in the relationship Department with government agencies (in this case namely TNI party), are government agencies (TNI party) is the Inventor of the parties, unless enforced by others. This relationship, according to the patent regime is in the interest of Commerce (commercial law). After the patent was commercialized, the Inventor is entitled to a Patent in return for acceptance of his country is not a tax. In terms of government agencies as the patent holder cannot exercise its patent, Inventor's Patent Holder agreement can enforce a patent by third parties. Towards the implementation of the Patent as such, in addition to government agencies, the Inventor obtain royalties from third parties that obtain economic benefits from the commercialization of Patents. The legal relationship between the patent holder (TNI) and the Inventor (citizens or civil law) does not eliminate the right of Inventor to remain imprinted his name in the Patent certificate.

A right that is interesting in the relationship of the law relating to Patents that occurs between the (civilian) inventor and patent holder, and can only be a government agency, and in this case that is the military or TNI (military), which is regulated in article 154 of the Act number 13 year 2016 about patents. Formulated in there that in the event of criminal charges against patent infringement Patent or simple the parties must first complete a through line of mediation. This mechanism when analyzed from the perspective of comparative law (comparative laws) are very different when compared to 149 regime happens in KUHPM. In the regime of article 149 KUHPM, completion of criminal cases directly handled (conventional) by the military judiciary on the law of military events. Whereas under the patent regime, law No. 13 year 2016, mandatory mediation is done in advance (penal mediation), and it is guaranteed in the patent regime.

Conclusion

The theory of non-defense equipment is subject to Law No. 34 of 2004 concerning the TNI, the concept of civil supremacy in particular. The concept is included in the analysis framework only. Does not explicitly control the concept and meaning of non-defense equipment in general provisions and the body of Law No. 34 of 2004, and has not been one of TNI's key roles in non-war military operations. In addition, the provisions of Article 149 of the Indonesian Criminal Code strictly govern only TNI leaders and TNI Commander No decree. SKEP/346 / X/2004 which is directly applicable to TNI members. "Allusian and non-alusian misconduct must be subject to punishments" Although reconstructing legal

norms through Article 7, namely in paragraph (14), which originally contained only the formula "assisting the government in combating piracy, piracy and smuggling shipping and aviation." Becomes, "assisting the government in securing TNI defense equipment and non-defense equipment for shipping and aviation against piracy, piracy and smuggling." The military justice authority, in conceptual words, refers to Law No. 31 of 1997 on Military Justice. The paradigm change of military court jurisdiction does not apply to legal matters but to military offenses focused on the forms of actions that are harmful to the TNI 's interests. This can also be resolved as an alternative, culturally linked to attempts to settle non-TNI defense equipment cases initiated by civil society, by mediation / outside the court. Therefore, we definitely will not allow the trial a single means of seeking justice on the basis of that.

References

Said Gunawan, Anis Mashdurohatu, Teguh Prasetyo, I Gusti Ayu Ketut Rachmi Handayani, "Development Concept Of Non-Alutsista Abuse By Indonesian National Army", *International Journal of Business, Economics and Law*, Vol. 13, Issue 4 (August), 2017.

Yukhi Mustaqim Kusuma Sya'bana and K.H. Sanjaya, "Camouflage Design and Head Measurement Characteristic of Indonesian Armoured Vehicle Helmet", *International Conference on Engineering, Science and Nanotechnology* 2016 (ICESNANO 2016) AIP Conf. Proc. 1788, 030075-1–030075-8; doi: 10.1063/1.4968328.

Fransiska Adelina Sinaga, "Urgensi Pelibatan TNI dalam Operasi Militer Selain Perang dalam Menanggulangi Aksi Terorisme", *Jurnal Legislasi Indonesia*, Volume 15 Number 3 (2020)

Bambang Eko Suahrianto, 2018, *Rekontruksi Pengaturan Kewenangan di Bidang Hankamneg Dalam Siskamnas*, Jakarta, The Indonesian Ministry of Defense

Tri Ubayanto, Sudarsono, Iwan Permadi, Setyo Widagdo, "Legis ratio of the Indonesian national army's authority arrangements to overcome armed separatism movements, armed insurgency, and the terrorism", *International Journal Of Research In Business And Social Science*, Volume 9, Number 3, (2020).

Ichsan Anwary, 2018, Lembaga Negara Dan Penyelesaian Sengketa Kewenangan Konstitusional Lembaga Negara, Yogyakarta, Genta Publishing.

Abdul Basyir, "The importance of academic script in the statutes formatting to realize aspirasional and responsive law", *Jurnal IUS Kajian Hukum dan Keadilan*, Volume 2, Number 5 (2018).

Suahrianto, Bambang Eko, 2018, *Rekontruksi Pengaturan Kewenangan di Bidang Hankamneg Dalam Siskamnas.* Jakarta, The Indonesian Ministry of Defense.

Yehu Wangsajaya, 2016, *Meningkatkan Kewaspadaan Nasional Terhadap Proxy War,* Jakarta, Raja Grafindo Persada.

Yudi Rusfiana, Udaya Madjid, "Synergy of Local Government and Indonesian National Army in Establishing State Border Area", *Mimbar: Jurnal Sosial dan Pembangunan,* Volume 33, Nomor 2, Desember 2017.

Curtis Holland, "Political Violence, Child Soldiers, and Neo-Liberal Globalization: The Cases of Indonesia and Columbia", *Undergraduate Review,* Volume 4, Number 8 (2018)

Yahaya Kwaghga, Olagoke Battan, "Transition Operation as a Contribution to the Use of Environmental and Earth Resources per the Indonesian", *International Policy Review,* Vol.4, No.12, 2018.

A D Prayogi, D S Dewi and A Sudiarno, "Design of Ergonomic Assault Vest for Indonesian Army with Modular Concept", *IOP Conf. Series: Materials Science and Engineering* 598 (2019).

Dwi Edi Wibowo, "Ewuh Pakewuh Cultural Reconstruction to Equal Consumer Protection", *Jurnal Bestuur,* Volume 8, No. 1 (2020).

Najella Zubaidi, Regy Gusti Pratama, Sholahuddin Al-Fatih, "Legal Perspective on Effectiveness of Pre-Work Cards for Indonesian People", *Jurnal Bestuur,* Volume 8, No. 1 (2020).

Nurfaika Ishak, Rahmad Ramadhan Hasibuan, Tri Suhendra Arbani, "Bureaucratic and Political Collaboration Towards a Good Governance System", *Jurnal Bestuur,* Volume 8, No. 1 (2020).

Lutfi Adin Affandi, Ma'ruf Akbar, Dedi Purwana, "Esprit De Corps And Desertion Intention In Indonesian Navy", *Journal of Business and Behavioural Entrepreneurship*, Volume.2 Nomor.2 2018.

Teguh Prasetyo, *Criminal Liability of Doctor in Indonesia* (*From A Dignified Justice Perspective*), International Journal of Advanced Research (IJAR), 1(10).

Teguh Prasetyo, October, 2016, *Pancasila the Ultimate of All The Sources of Law* (*A Dignified Justice Perspective*), Journal of Law, Policy and Globaliation, International Institute for Sciene, Technology and Education (IISTE), vol., 54.

Rudy Iskandar Ichlas, "Questioning the Independence of Media Coverage in the 2019 Elections", *Jurnal Bestuur,* Volume 8, No. 1 (2020).

Triwanto Triwanto, Esti Aryani, "The Urgency of Granting Authority to Assess Corruption Justice Collaborators", *Jurnal Bestuur,* Volume 8, No. 1 (2020).

Teguh Prasetyo & Tri Astuti Handayani, *Legal Aid*: (*Dignified Justice Theory Perspective*), International Journal of Advanced Research (IJAR), 5(03).