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Active Duty TNI and Polri Members Holding Dual Office: Problematic

Synopsis

Active duty members of the TNI and Polri are increasingly holding office at ministries/state institutions or as commissioners at state-owned enterprises (SOEs). This phenomenon is problematic due to legal, ethical, and professional reasons. Dual office holding violates TNI Law and Polri Law, creates conflicts of interest, and does not fit one of the reasons which is to handle conflicts and cases of the SOEs.

Commentary

Recently, we witnessed the increase of offices that active duty members of the Indonesian National Armed Forces (TNI) and Indonesian National Police (Polri) can hold. For example, Article 48 of the proposed Pancasila Ideology Bill (RUU HIP) regulates that the active duty TNI and Polri members can become members of the steering committee of the Agency for Pancasila Ideology Education (BPIP), in addition to retired TNI and Polri officers.¹ This bill was proposed as the outcome of a meeting of the House of Representatives (DPR)'s Legislative Body on April 22, 2020. Before the bill, Article 7 of Presidential

¹ See the Pancasila Ideology Bill (RUU HIP) at <http://www.dpr.go.id/dokakd/dokumen/BALEG-RJ-20200609-010923-6831.pdf>.

Regulation No. 7 of 2018 on the BPIP regulates that only retired TNI and Polri officers can become members of the steering committee of BPIP, not active duty members. There are currently members of the steering committee of BPIP who are retired TNI and Polri officers, i.e. General (Ret.) Try Sutrisno and Maj. General (Ret.) Wisnu Bawa Tenaya.

On June 16, 2020, the government announced that they would postpone the deliberation of the RUU HIP with the DPR, thus the plan to appoint active duty TNI and Polri members as members of the steering committee of BPIP might not happen in the near future. However, BPIP is not the only ministry/state institution in this country where active duty TNI and Polri members can hold office. At least, there are three active duty Polri members serving in ministries: Comm. Gen. Antam Novambar as Secretary General of the Ministry of Marine Affairs and Fisheries (KKP), Insp. Gen. Andap Budhi Revianto as Inspector General of the Ministry of Law and Human Rights, and Insp. Gen. Reynhard Saut Poltak Silitonga as Director General of Corrections at the Ministry of Law and Human Rights.

In addition to dual office holding, active duty TNI and Polri members have also been appointed by Minister of State-Owned Enterprises (SOEs) Erick Thohir as commissioners at SOEs. According to Erick Thohir, the appointments aimed so that active duty TNI and Polri members could resolve if their respective SOE faced conflicts such as land disputes and licensing, as well as handle cases such as financial fraud.² The appointments were even more problematic because the appointed TNI and Polri members are still holding positions at other ministries/state institutions (see Table 1). According to Ombudsman member Ahmad Alamsyah Saragih, there was indication that 564 commissioners of SOEs were holding dual office, 27 of whom were active duty TNI members, while 13 were active duty Polri members.

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Table 1 Several Active Duty TNI and Polri Members as Commissioners of SOEs

Active Duty TNI and Polri Members	Service	Position at Ministries/ State Institutions	Position as Commissioner of SOEs
VAdm Achmad Djamaludin	TNI-AL	Secretary General of Wantannas	President Commissioner of PT Pelabuhan Indonesia I
Air Mshl. Andi Pahril Pawi	TNI-AU		Commissioner of PT Bukit Asam

² See the statement of Minister of SOEs Erick Thohir at Tempo (June 13, 2020), "Alasan Jenderal TNI-Polisi di BUMN: Tangani Konflik hingga Kasus", at

<https://bisnis.tempo.co/read/1352947/alasan-jenderal-tni-polisi-di-bumn-tangani-konflik-hingga-kasus>.

³ See the statement of Ombudsman member Ahmad Alamsyah Saragih at Kompas (June 28, 2020), "397 Komisaris BUMN Terindikasi Rangkap Jabatan, Ini Rinciannya...", at

<https://nasional.kompas.com/read/2020/06/28/15282151/397-komisaris-bumn-terindikasi-rangkap-jabatan-i-ni-rinciannya>.

Comm. Gen. Bambang Sunarwibowo	Polri	Main Secretary of BIN	Commissioner of PT Aneka Tambang
Insp. Gen. Arman Depari	Polri	Deputy for Eradication at BNN	Commissioner of PT Pelabuhan Indonesia I
Insp. Gen. Carlo Brix Tewu	Polri	Deputy for Law and Legislation at the Ministry of SOEs	Commissioner of PT Bukit Asam

Observers compare this phenomenon of active duty TNI and Polri members holding dual office to the New Order era. For example, Deputy Director of Imparsial Ghufon Mabruri said that the plan to appoint active duty TNI and Polri members as members of the steering committee of BPIP would “trigger a repressive security approach in Pancasila ideology education to the society, as was done through P4 during the New Order”.⁴

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Setara Institute researcher Ikhsan Yosarie said that the appointment of active duty TNI and Polri members as commissioners of SOEs “show a setback for reform and pulled the TNI and Polri back into ‘doing business’ like during the New Order era”.⁵ Presidium Chairperson of the Indonesian Police Watch, Neta S Pane, called it the same as the conditions during the New Order.⁶ Executive Director of the Haidar Alwi Institute, R Haidar Alwi, said that it would “revive the legacy of the New Order”.⁷ National Coordinator of Generasi Muda Kasih Bangsa, Noman Silitonga, called it would “repeat the romanticism of the New Order”.

Why are the offices that active duty TNI and Polri members can hold expanding? Some scholars have tried to explain this phenomenon. On the TNI, Evan A. Laksmana (2019a) argues that the promotional logjams in TNI – because there were too many officers but too few positions available – over the past decade explained several regressive behaviors

⁴ See the statement of Deputy Director of Imparsial Ghufon Mabruri at CNN Indonesia (June 13, 2020), “LSM Khawatir TNI-Polri di BPIP Jadi Alat Politik Ala Orba”, at <https://www.cnnindonesia.com/nasional/20200612153227-20-512690/lsm-khawatir-tni-polri-di-bpip-jadi-alat-politik-ala-orba>.

⁵ See the statement of Setara Institute researcher Ikhsan Yosarie at Tirto (June 24, 2020), “Risiko & Potensi Masalah Perwira TNI-Polri Menjabat Komisaris BUMN”, at <https://tirto.id/risiko-potensi-masalah-perwira-tni-polri-menjabat-komisaris-bumn-fKPN>.

⁶ See the statement of Presidium Chairperson of the Indonesian Police Watch, Neta S Pane, at JPNN (20 Juni 2020), “Perwira Tinggi Jabat Komisaris BUMN, Dwifungsi ABRI Jadi Dwifungsi Polri?”, at <https://www.jpnn.com/news/perwira-tinggi-jabat-komisaris-bumn-dwifungsi-abri-jadi-dwifungsi-polri>.

⁷ See the statement of Executive Director of the Haidar Alwi Institute, R Haidar Alwi, at ThreeChannel (14 Juni 2020), “Kangkangi UU TNI-POLRI, Erick Thohir Hidupkan Kembali Warisan Orde Baru”, at <https://threechannel.co/2020/06/kangkangi-uu-tni-polri-erick-thohir-hidupkan-kembali-warisan-orde-baru/>.

of TNI, including its increased intrusion into civilian positions.⁸ Laksmana (2019b) also writes that President Joko Widodo tended to adopt a hands-off approach in daily management of military affairs and defense policy. Jokowi relied on a group of retired generals as intermediaries with the TNI and also gave TNI organizational autonomy.⁹ Meanwhile, on Polri, Mufti Makaarim (2020) finds that Polri had been “dragged” by turmoil of the political elites, who dragged Polri to come forward in the politics of development interests and security stability.¹⁰

The phenomenon of active duty TNI and Polri members holding dual office is problematic due to three reasons: legal, ethical, and professional. From the legal aspect, this phenomenon violates the Law No. 34 of 2004 on TNI and Law No. 2 of 2002 on Polri. Article 47 of the TNI Law stipulates that active duty TNI soldiers can only hold civilian positions after retiring from military service, except in offices in charge of coordinating political and security affairs, national defense, Presidential Military Secretary, State Intelligence, State Cryptography, National Resilience Institute, National Defense Council, National Search and Rescue (SAR), National Narcotics, and the Supreme Court. In addition to these institutions, Setara Institute (2019) also reports that some discourse on the revision of TNI Law had included the addition of six ministries/state institutions that could be held by active duty TNI soldiers, i.e. the Coordinating Ministry for Maritime Affairs, Presidential Staff, BNPT, BNPB, BNPP, and Bakamla.¹¹

Meanwhile, Article 28 of the Polri Law also stipulates that active duty Polri members can only hold positions outside the police force after retiring from police service. However, unlike the TNI Law, the Polri Law does not provide a list of civilian positions exempted from the provision, thus can be held by active duty Polri members. However, the explanation of the Polri Law states that “positions outside the police force” means offices that have no connection with the police or are not based on appointment by the Polri Chief.

Besides the TNI Law and Polri Law, dual office holding by active duty TNI and Polri members also violates Article 17 of Law No. 25 of 2009 on Public Services, which prohibits public servants from being commissioners or managers of business organizations. Based on the three laws, active duty TNI and Polri members should not hold office at ministries/state institutions or at SOEs.

From the ethical aspect, this phenomenon contributes to ethical misconduct especially “soft corruption”. William E. Schluter (2017) argues that dual office holding creates conflicts

⁸ Evan A. Laksmana (2019a), “Reshuffling the Deck? Military Corporatism, Promotional Logjams and Post-Authoritarian Civil-Military Relations in Indonesia”, *Journal of Contemporary Asia*, 49(5), hlm. 806–836.

⁹ Evan A. Laksmana (2019b), “Civil-Military Relations under Jokowi: Between Military Corporate Interests and Presidential Handholding”, *Asia Policy*, 26(4), hlm. 63–71.

¹⁰ Mufti Makaarim (2020), “Polri dalam Pusaran Politik Kepentingan Pembangunan dan Stabilitas Keamanan”, dalam Anton Aliabbas dan Hussein Ahmad (peny.), *Involusi Reformasi Sektor Keamanan Indonesia*, Imparsial, hlm. 71–86.

¹¹ Setara Institute (8 Oktober 2019), “Jalan Sunyi Reformasi TNI”, at <http://setara-institute.org/jalan-sunyi-reformasi-tni/>.

of interest and generates many of the bad things related to patronage.¹² This is because dual office holding phenomenon limits the opportunities for other qualified people to obtain the position. To relate it to dual office holding by active duty TNI and Polri members, can we imagine that there are other people who are more qualified to audit and monitor the financial risks of SOEs and understand good corporate governance, competencies not taught in military or police academies?¹³

Schluter also writes that dual office holding can be so embedded in the political culture if the office is part-time while the pay is modest to low, thus the office holders feel the need to have other sources of income.¹⁴ Without debating whether the positions at ministries/state institutions are part-time or not, can we agree that the pay of the active duty TNI and Polri members are not so low that they need other sources of income? The basic salary of high-ranking TNI and Polri officers ranges from Rp3.2 million to Rp5.9 million,¹⁵ while the performance allowance for high-ranking TNI and Polri officers (class 12 and above) ranges from Rp. 7.2 million to Rp. 34.9 million,¹⁶ plus other benefits.¹⁷

Finally, from the professionalism aspect, the dual office holding phenomenon can compromise the performance of the active duty TNI and Polri members. Schluter writes, “a fundamental conflict of interest occurs ... because, as an ethical matter, the dual office holder cannot always serve two masters at the same time”. Schluter argues that the performance of a dual office holder is often compromised as he is “unable to devote sufficient time and attention to the role”.¹⁸

“ *What is certain is that the involvement of TNI and Polri in conflicts such as land and licensing disputes often results in violent incidents.* ”

Imagine, how do the active duty TNI and Polri members devote their time and attention to carry out their police duties, their role at other ministries/state institutions, while carrying out their functions as commissioners of the SOEs at once? For example, Insp. Gen. Arman Depari might have difficulty carrying out his function as Commissioner of PT Pelabuhan Indonesia I, because as Deputy

¹² William E. Schluter (2017), *Soft Corruption: How Unethical Conduct Undermines Good Government and What to Do About It*, Rutgers University Press, hlm. 109–113.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ See Government Regulation (PP) No. 16 of 2019 on the Twelfth Amendment to PP No. 28 of 2001 on the Regulation of Salary for TNI Members and PP No. 17 of 2019 on the Twelfth Amendment to PP No. 29 of 2001 on the Regulation of Salary for Polri Members.

¹⁶ See Presidential Regulation (Perpres) No. 102 of 2018 on the Performance Allowance of Employees at TNI and Perpres No. 103 of 2018 on the Performance Allowance of Employees at Polri.

¹⁷ See Defense Ministerial Regulation (Permenhan) No. 33 of 2017 on the Income of TNI Soldiers in the Ministry of Defense and the TNI.

¹⁸ Schluter (2017), *op cit.*

for Eradication at BNN he is also burdened with the fact that drug trafficking to Indonesia is not declining during the COVID-19 pandemic, as he said at the end of last June.¹⁹

Will the appointment of active duty TNI and Polri members as commissioners of SOEs help the SOEs deal with conflicts and handle cases, as what Minister of SOE Erick Thohir said as one of the reasons for their appointment? What is certain is that the involvement of TNI and Polri in conflicts such as land and licensing disputes often results in violent incidents. The Agrarian Reform Consortium (KPA) said that in 2019, there were 279 agrarian conflicts. The number of conflicts decreased from the previous year, but the level of brutality increased as indicated by the increasing number of victims. Among the violent actors in the land conflict, Polri dominated in 37 cases, while TNI members were involved in six cases.²⁰ Even worse, according to a commissioner of the National Commission on Human Rights (Komnas HAM) Beka Ulung Hapsara, Polri tends to ignore the Commission's inputs and recommendations related to alleged human rights violations involving its members.²¹ The potential escalation of conflict shows that dealing with conflicts such as land disputes and licensing might not be a good reason to appoint active duty TNI and Polri members at SOEs.

Because of the above problems, the author suggests the government does not increase the offices that active duty TNI and Polri members can hold, either in ministries/state institutions, SOEs, and other civilian positions. Active duty TNI and Polri members who have been appointed at ministries/state institutions should retire early or resign from their positions at the ministries/ institutions. In addition, Minister of SOEs Erick Thohir needs to dismiss the active duty TNI and Polri members from the board of commissioners at SOEs, unless they retire early. Finally, the government should provide a list of civilian positions that are excluded from the Polri Law and can be held by active duty Polri members, not only explaining that what active duty Polri members cannot hold are "positions outside the police force" because the meaning is vague.

List of Abbreviations

Air Mshl.	Air Marshal (a three-star rank for TNI-AU high-ranking officers)
Bakamla	<i>Badan Keamanan Laut</i> (Maritime Security Agency)

¹⁹ See the statement of Deputy for Eradication at BNN, Insp. Gen. Arman Depari, at Merdeka (29 Juni 2020), "BNN Sebut Pandemi Covid-19 Tidak Kurangi Pasokan Narkoba ke Indonesia", at <https://www.merdeka.com/peristiwa/bnn-sebut-pandemi-covid-19-tidak-kurangi-pasokan-narkoba-ke-indonesia.html>.

²⁰ See the statement of KPA at CNN Indonesia (7 Januari 2020), "Catatan KPA 2019: Polisi Aktor Utama Kekerasan Konflik Lahan", at <https://www.cnnindonesia.com/nasional/20200107065718-12-462975/catatan-kpa-2019-polisi-aktor-utama-kekerasan-konflik-lahan>.

²¹ See the statement of commissioner of the National Commission on Human Rights (Komnas HAM) Beka Ulung Hapsara at Tempo (30 Juni 2020), "Watchdog: Police Subjected to Many Human Rights Violation Reports", at <https://en.tempo.co/read/1359459/watchdog-police-subjected-to-many-human-rights-violation-reports>.

BIN	<i>Badan Intelijen Negara</i> (State Intelligence Agency)
BNN	<i>Badan Narkotika Nasional</i> (National Narcotics Agency)
BNPB	<i>Badan Nasional Penanggulangan Bencana</i> (National Disaster Management Agency)
BNPP	<i>Badan Nasional Pengelola Perbatasan</i> (National Border Management Agency)
BNPT	<i>Badan Nasional Penanggulangan Terorisme</i> (National Counterterrorism Agency)
BPIP	<i>Badan Pembinaan Ideologi Pancasila</i> (Agency for Pancasila Ideology Education)
Comm. Gen.	Commissioner General (a three-star rank for Polri high-ranking officers)
DPR	<i>Dewan Perwakilan Rakyat</i> (House of Representatives)
Insp. Gen.	Inspector General (a two-star rank for Polri high-ranking officers)
KKP	<i>Kementerian Kelautan dan Perikanan</i> (Ministry of Marine Affairs and Fisheries)
Komnas HAM	<i>Komisi Nasional Hak Asasi Manusia</i> (National Commission on Human Rights)
Maj. Gen.	Major General (a two-star rank for TNI-AD high-ranking officers)
P4	<i>Pedoman Penghayatan dan Pengamalan Pancasila</i> (Guidelines for Living Up and Practicing Pancasila; guidelines for practicing the Pancasila ideology during the New Order)
Perpres	<i>Peraturan Presiden</i> (Presidential Regulation)
Polri	<i>Kepolisian Negara Republik Indonesia</i> (Indonesian National Police)
Ret.	Retired (TNI and Polri retired officers)
RUU	<i>Rancangan Undang-Undang</i> (bill)
RUU HIP	<i>Rancangan Undang-Undang tentang Haluan Ideologi Pancasila</i> (Pancasila Ideology Bill)
SOEs	state-owned enterprises
TNI	<i>Tentara Nasional Indonesia</i> (Indonesian National Armed Forces)
TNI-AL	<i>Tentara Nasional Indonesia - Angkatan Laut</i> (Indonesian Navy)
TNI-AU	<i>Tentara Nasional Indonesia - Angkatan Udara</i> (Indonesian Air Force)
VAdm	Vice Admiral (a three-star rank for TNI-AL high-ranking officers)
Wantannas	<i>Dewan Ketahanan Nasional</i> (National Resilience Council)



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This article can be seen at:

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