

THE MILITARY AND CIVIL SUPREMACY IN INDONESIAN DEMOCRACY: TOWARDS AN IDEAL MODEL IN *SIYĀSAH SHAR‘IYYAH* PERSPECTIVE

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Abstract: *In the history of Indonesia, civil-military relations changed in the reformasi era with the separation of the military and the police, resulting in the removal of the dual-function doctrine and military reform. Despite so, two decades after reformasi has not formed a standard and ideal mechanism to govern civil-military relations within the framework of objective civilian control. This paper addresses issues regarding (a) how the dual-function concept and internal reform within the military; (b) regulatory issues that govern military operations other than war; (c) the ideal model of civil-military relations in Indonesia to ensure democratic life and an overview of the siyāsah shar‘iyyah aspects. Using descriptive qualitative method and conducting discussions with military and human rights experts, this paper demonstrates that military reform in Indonesia after the New Order has not yet been fruitful to accomplish the mission to form professional soldiers. The military is still involved in political and civilian life under the pretext that there is no military assistance law. As a consequence, the ideal model of civilian control that puts the military under the control of civilian authority according to siyāsah shar‘iyyah principle has not been fully successful and effective.*

Keywords: *The Dual Function, Reformasi, Military, Civilian Control, Siyāsah Shar‘iyyah*

Abstrak: *Dalam sejarah Indonesia, relasi sipil militer berubah pada era reformasi dengan pemisahan militer dan kepolisian yang berdampak pada pencabutan doktrin dwifungsi dan reformasi militer. Meskipun demikian, dalam dua dekade era reformasi, tampaknya belum ada mekanisme yang baku dan ideal yang mengatur relasi sipil militer dalam kerangka kontrol sipil objektif. Tulisan ini akan menjawab permasalahan mengenai (a) bagaimana konsepsi dwifungsi dan reformasi internal di lingkup militer; (b) persoalan regulasi yang mengatur operasi militer selain perang; (c) bagaimana model ideal relasi sipil dan militer di*

Indonesia untuk memastikan kehidupan demokratis dan tinjauan aspek siyāsah shar‘iyyah. Dengan menggunakan metode kualitatif dan penulisannya dilakukan secara deskriptif serta diperkuat dengan diskusi terfokus dengan ahli bidang militer dan hak asasi manusia, tulisan ini menunjukkan bahwa reformasi militer di Indonesia pasca orde baru belum sepenuhnya tuntas menuju profesionalisme prajurit. Militer masih berevolusi terlibat dalam kehidupan sipil politik dengan dalih belum adanya undang-undang perbantuan militer. Dampaknya, model ideal kontrol sipil yang menempatkan militer dalam kendali otoritas sipil sebagaimana prinsip siyāsah shar‘iyyah belum sepenuhnya berhasil dan efektif.

Kata kunci: *Dwifungsi, Reformasi Militer, Kontrol Sipil, Siyāsah Shar‘iyyah*

Introduction

On 12 June 2019 President Joko Widodo signed Presidential Regulation No. 37 of 2019 on military's functional positions.¹ This regulation then turned polemical. On the one hand, it was deemed as a legitimation for the intensification of positions and the structuring of human resources considering the big number of top-ranking military officers who were jobless. On the other hand, for civil society, especially for democracy and human rights activists, such a regulation was not merely an official governance system relating to assignments / appointments in civilian positions, but has fundamental problems in civil-military relations,² that is trauma and fears of military's highly possible return to social, political and economic spheres like

in Indonesian past under the Old Order and the New Order regimes.

This paper argues that the reemergence of the discourse and problems of civil-military relations in Indonesia is due to civilian elites' inconsistency in conducting a total placement of the military under civil authority. This uncertainty is influenced by several factors, one of which is due to the historical effect that is so central when military officers occupied civilian life through the dual-function concept of the military. While Indonesia's highest political foundation is the 1945 Constitution, Decree of People's Consultative Assembly (TAP MPR) No VI / MPR / 2000 and Law Number 34/2000 on the Indonesian National Armed Forces (TNI) which regulates the omission of the dual-function doctrine and urges the military to focus on national defense, yet the reform within the military is still incomplete. Instead, the military has transformed into an instrument of domestic security. It even functions beyond its primary duty, establishing Memorandum of Cooperation (MoUs) with civil institutions and state-owned

¹ Presidential Regulation No. 37 of 2019 on Functional Positions of the Indonesian National Army

² Golda Eksa, "Perpres 37/2019 Dinilai Degradasi Kemampuan Sipil", accessed on October 17th, 2019, <https://mediaindonesia.com/read/detail/244031-perpres-372019-dinilai-degradasi-kemampuan-sipil>

enterprises. The absence of a law regulating military assistance in operations other than war is used as a pretext for the military's return to civilian domain through internal cooperation schemes carried out without getting political elements involved, especially the DPR. This paper discusses a number of questions (1) how to place the military in the concept of *siyāsah shar'iyah*?; (2) what is the concept and the implementation of the dual function of the Indonesian military and internal reform within the military?; (3) What is the urgency of enacting an assistance law to regulate military operations other than war?; and (4) how to seek forms or models of civil and military relations in Indonesia to ensure democratic life and Islamic law?

Previous studies on civil-military relations in Indonesia have been done quite intensively. Dewi Fortuna Anwar³ in a policy paper entitled *Negotiating and Consolidating Democratic Civilian Control of the Indonesian Military* highlighted revocation efforts of military's socio-political functions and recommended strong, precise political will to handle them. Dewi's research was conducted in 2001, which is two years after the *reformasi* era and the democratic order is still vulnerable. Meanwhile, research conducted by John Bratford, *The Indonesian Military as A Professional Organization: Criteria and Ramifica-*

tions for Reform,⁴ revealed that the solidarity of the military's internal corps was very strong, but control and surveillance mechanism of its members to fulfill professional responsibilities was still weak. In addition, civil-military relations were also influenced by factions within the military and permissive behavior of corrupt practices that reduce accountability. Based on this background, this paper aims to reflect on the two decades of the *reformasi* era that is still seeking effective forms of civil-military relations amid all dynamics that occur. Besides, this paper offers an alternative model for regulating civil-military relations in the context of *siyāsah shar'iyah* that has not been discussed in previous research.

This paper uses a qualitative descriptive method. To strengthen the analysis, a focused discussion was held with some experts, namely Syamsudin Haris (*LIPi*), Al Araf (*Imparsial*) and Agus Widjodjo (*Lemhanas*). Meanwhile, secondary data was obtained from books, journals, reports and laws and regulations.

This paper begins by discussing the concept of the military in *siyāsah shar'iyah*. Next, I will highlight the dual function of the military in Indonesian history and military reforms in post-Old and New Order regimes or more precisely in the *reformasi* era. Before dis-

³ Dewi Fortuna Anwar, "Negotiating and Consolidating Democratic Civilian Control of the Indonesian Military," East-West Center Occasional Papers Politics and Security Series (Hawaii, USA, 2001).

⁴ Jhon Bratford, "The Indonesian Military as A Professional Organization: Criteria and Ramifications for Reform," vol. 73, RSIS Working Paper (Singapore: Nanyang Technological University, 2005).

cussing the ideal civil-military relations in Indonesia in *siyāsah shar‘iyyah* perspective, which will be followed by some concluding notes, this paper first reviews military's functions in Military Operations Other Than War.

The Military in *Siyāsah Shar‘iyyah*

Various models of government characterized by democracy, including that of Islam, always have three formulations of establishment, namely the existence of society (*ummah*), laws (*sharī‘ah*) and leadership (*khilāfah*).⁵ In Islamic law, the conception is fully regulated in *siyāsah shar‘iyyah*. According to Ibn Qayyim al-Jauziyah, *siyāsah shar‘iyyah* is "government's authority to impose desired policies based on benefits through rules that are not contrary to Islam even though there is no certain *dalil* (proof)". Thus, in the context of *siyāsah shar‘iyyah*, a legitimate government (executive and legislative) as a governing body is given the authority to make laws and regulations that govern all affairs within a country. The making of regulations or policies is solely aimed at the benefit of the *ummah* (community) as well as upholding justice (*al-‘adālah wa murā‘at al-maṣāliḥ al-jāmi‘ al-nās*).⁶

⁵ Suwantinah, "Analisis Fiqh Siyasah Tentang Bela Negara Di Indonesia" (Universitas Islam Negeri Raden Inten Lampung, 2017).

⁶ M Muhtarom, "Kedudukan Peraturan Perundang-Undangan Negara Dalam Institusi Hukum Islam," *Jurnal Suhuf* 27, no. Mei 2015 (2015): 22-37.

Clark Benner Lombardi formulated the definition of *siyāsah syar‘iyyah*, which is based on a combination of definitions in Arabic: *al-siyāsah* and *al-shar‘iyyah*. In general, *al-siyāsah* is a model of regulating public affairs by establishing laws and regulations that are applied in a country, including law enforcement. Some considerations in the formulation of the regulation are philosophical values of a country, humanity and ethics. Meanwhile, *al-shar‘iyyah* emphasizes consistency with sharia principles.⁷ Thus, *siyāsah shar‘iyyah* is to give instructions on how a country should be governed to ensure the survival of a civilization. In this context, *siyāsah syar‘iyyah* provides arrangements regarding aspects that must be done by all elements of a country and society, and regulates various traits that are prohibited by the country.⁸

Taking the conception of the Indonesian state into account that also refers to *shar‘iyyah siyāsah*, a constitutionally legitimate civilian government is given a mandate to regulate all aspects of its people's lives, including handling the

⁷ Clark B Lombardi, "Constitutional Provisions Making Sharia 'A' or 'The' Chief Source of Legislation: Where Did They Come From? What Do They Mean? Do They Matter?," *American University International Law Review* 28, no. 3 (2013): 733-774.

⁸ Fariza Binti Mohd. Sham & Fazilah Binti Idris Nurliana Binti Mohd. Hassan, Khairul Anwar Bin Mastor, "Bringing Islamic Leadership, Unity and Tolerance into Reality for the Stability of ASEAN Community," *Jurnal Reflektika* 11, no. 11 (2016): 1-11.

military in carrying out its main functions. With the authority of *siyāsah shar'iyah*, a state through its constitution, the provisions of the people's consultative assembly and the law, after the *reformasi* era, has set military duties to maintain sovereignty, fight the threat of foreign countries and protect Indonesia.

The Dual Function of the Military

The term dual function was first coined by Abdul Haris Nasution at the commemoration of the National Military Academy on November 12, 1958 in Magelang. The concept was influenced by General Sudirman's brilliant idea that the military was a tool of life and not a tool of death which had participated in the nation's journey. The concept of the dual function was again conveyed at a police heads meeting in Porong, East Java in 1960. This dual function reflects a wide-ranging role of the military as an implementing force in defending the state (combat force) as well as functioning to give territory education to society.⁹

Peter Carey in *The Indonesian Army and the State: Problems of the Dual Function in Early Nineteenth-Century Perspective*¹⁰ illustrates that since the

very beginning of the Indonesian independence, the Indonesian military had influenced almost all aspects of life. The power of the military had immensely been aggressive and culminated by monopolizing political power and developing the dual-function doctrine that encompassed ideological, political, social, economic, cultural, and religious fields. The military even got itself involved as interpreters of the Pancasila doctrine, filled executive positions at all levels of Indonesia's civil administration, functioned as an intermediary for political parties and was actively involved in commercial projects through military business organizations. The implication is that there was a serious problem regarding military's efficiency as an effective fighting force as seen during the conflict of Timor Leste.

The military views the dual function as a philosophy, a heart, a soul and spirit in carrying out duties. This doctrine gives an inspiration that the fields of defense, state security, and social and political development are inseparable.¹¹ It started in the Old Order and later in the New Order it was officially perpetuated by Suharto in 1982 through an enactment of regulation regarding basic provisions for the defense and security of the Republic of Indonesia.¹² The

⁹ Korenlis Rikan, "Konsep Dwifungsi ABRI Dan Perannya Dimasa Pemerintahan Orde Baru Tahun 1965-1998" (Yogyakarta, 2014).

¹⁰ Peter Carey, "The Indonesian Army and the State: Problems of Dwi Fungsi in Early Nineteenth-Century Perspective," *Indonesia Circle. School of Oriental & African Studies. Newsletter* 9, no. 26 (1981): 51-58.

¹¹ Naureen Nazar, "Involvement of Military in Indonesia Politics," *Asia Pasific, A Research Journal of Far East & South East Asia* 25, no. June (2007): 75-89.

¹² Law Number 20 of 1982 on Principal Provisions for the Defense and Security of the Republic of Indonesia

regulation was more determined by political policies of military leaders who occupied almost all civilian's political positions in Indonesia. The existence of the dual function during the New Order period was also influenced by several factors: (a) A reward for being considered successful against PKI rebels; (b) a perception that military leaders were more qualified compared to civilian elites; (c) a commitment to maintain economic and development stability; (d) an effort to preserve power; (e) an obedience to obey military leaders; and (f) safeguarding military's interests.¹³

The implementation of the military's dual function was carried out massively during the New Order period, which received an open public protest in 1998. Socio-political development influenced by student movements became a locomotive of change for the fundamental order of the Indonesian people, especially the demands for reform and democratization in social, political, economic and security fields. Student movements' success to end Suharto's rule would not have been possible without support from the military. The support was motivated by an increasingly intense, changing direction of Soeharto's relations with Islamic groups; Soeharto's family and crony's businesses that were seen dominating compared to that of the military; military's ambition for a political change in

¹³ Akhmad Junaidi, "Kegagalan TNI Dalam Membangun Demokrasi Di Indonesia Tahun 1966 - 1997" (Universitas Jember, 2008).

line with its interests; and an effort to avoid the destruction of Indonesia.¹⁴

The culmination of this social movement was Soeharto's resignation as President of the Republic of Indonesia and the revocation of the dual function doctrine in the socio-political life. State political decisions through Article 30 paragraphs (3) and (4) of the 1945 Constitution¹⁵, MPR Decree No. VI / MPR / 2000¹⁶, and Article 39 of the TNI Law¹⁷ give a total mandate to ban military's involvement in social, political and economic activities. The military's focus is to concentrate on state sovereignty, national defense and the separation of the TNI and the Police.

Military Reform

The political situation after 1998/1999 and the fundamental phase in the structuring of military professionalism in the context of state administration is the constitution that governs TNI's authority and duties. The three dimensions of land, sea and air have a joint responsibility to ensure the defense of the country, to protect the Indonesian people, and to ensure the unity and sovereignty of Indonesia. This context was then

¹⁴ Ikrar Nusa Bhakti, *Tni-Polri Di Masa Perubahan Politik*, ed. Al Araf, ke-2 (Bandung: Magister Studi Pertahanan ITB dan Imparsial, 2008).

¹⁵ The 1945 Constitution, Amendment II

¹⁶ MPR Decree No. VI / MPR / 2000 on the Separation of the Indonesian National Army from the Indonesian National Police

¹⁷ Law Number 34 of 2004 on the Indonesian National Army

strengthened by the separation of the TNI and the Police which set a demarcation between national defense and state security tasks. Likewise, the birth of the TNI Law¹⁸ was based on a consideration to make the armed forces become more professional in carrying out duties and submissive to state's political decisions. The military is prohibited from carrying out insubordination actions against legitimate civilian government orders. The implementation of this professional task is intended to protect values and principles of democracy and to uphold civil supremacy and human rights to ensure the fulfillment of national law, including international legal instruments that have been ratified into domestic law.

The next professionalism change is a paradigm shift. Before *reformasi* the military authoritatively determined its own actions that influenced national policies. The military even exerted its influence on politics to determine the scale of national threats, entered foreign politics sphere, and took action on behalf of the country. For the sake of military professionalism now all military actions must be subject to political decisions made based on the mandate of power based on election results by president and House of Representatives. The military no longer decides unilaterally as to what decision is best for the nation.¹⁹

¹⁸ Law Number 34 of 2004 on the Indonesian National Army

¹⁹ Agus Widjojo, "Reformasi TNI," in *TNI-Polri Di Masa Perubahan*, ed. Al Araf,

Nevertheless, it has to be admitted that the transition to a more agile, professional military with sophisticated technology requires a long adaptation. Adjustment to new doctrines or paradigms, personnel's power revitalization, and organization's vision planning are all complex aspects. The stages of this reform are carried out gradually to bridge the interests of all elements of national politics. Adaptation needs for both civilian and military elites are influential to one another and requires a calculation. The supporting factor is the importance of building commitment and trust in each other. Military elites must be convinced that there is no decrease in prestige, organizational integrity and the interests of national defense with the application of civilian control. Conversely, this adaptation is also required for civil elites to increase self-confidence, a preparation for managing and regulating the interests of the state.²⁰

The new paradigm is a key element that determines the direction of military reform based on an analytical and prospective way of thinking towards the future. This attitude is based on a comprehensive approach that plays a role in military's socio-political field, including (a) changing the method that is not always at the forefront of the direction of

Pertama (Bandung: ITB dan Imparsial, 2008), pp. 22-33.

²⁰ Larry Diamond & Mark F. Plattner, *Civil Military Relations and Democratization*, First (Baltimore, USA: The Johns Hopkins University Press, 1996).

the state, (b) changing the concept from occupying to giving influence, (c) changing the method of influence from being directly to policy makers to be indirect, and (d) attitude and willingness to carry out political and role sharing with all elements in Indonesia.²¹

The next phase after the paradigm shift is internal reposition and reorganization according to the demands of the reform. Professional commitment affirmation of the military is needed to realize a new, better Indonesia. In order to ensure the commitment and achieve the ideal goals as intended, various internal military reform efforts have been carried out, including: (a) revocation of the concept and implementation of the dual function; (b) restructuring territorial command; (c) reform of military justice system; (d) prohibition of doing business; and (e) military professionalism in national defense.²²

Technical implementation in military reform of the TNI is carried out through twenty-four agendas aimed at making the military more professional, namely:²³

Table 1: Agenda for Military Reform in Indonesia

No	Reform Agenda
1	To arrange and determine the direction and new paradigm of the 21st century military.
2	To develop a roadmap for the role of the military as a preventive and anticipatory measure to face future challenges which is a new paradigm actualization of the 21st century military.
3	To Separate functions, institutions (organizations) and authority of the Police from the Armed Forces of the Republic of Indonesia (ABRI) since the ruling dated April 1, 1999 which was an initial transformation step towards military professionalism.
4	To remove military's involvement or the dual function through an early retirement or a switch of civil service status through Decree Number 03 / II / 1999.
5	Measures to abolish the Social and Political Council at the national and regional levels as part of the abolishment of military's involvement.
6	To gradually revitalize members of the TNI / Polri faction in the DPR RI and DPRD I and II and the elimination of the faction in the context of eliminating socio-political functions.
7	Prohibition from engaging in all forms of practical politics.
8	Impartiality with all Indonesia's political parties and terminating organizational relation with <i>Golkar</i> .
9	Affirming a consistent attitude

²¹ Amarulla Octavian, *Militer Dan Globalisasi*, ed. Deniek G Sukarya, Kedua (Jakarta: PT Sukarya & Sukarya Pandetama, 2012).

²² Al Araf, "Dinamika Peran TNI," *Diskusi Publik Quo Vadis Reformasi Militer* (Jakarta, 2019) .

²³ "Sejarah TNI", accessed on october 18th, 2019, <https://tni.mil.id/pages-10-sejarah-tni.html>

	and neutrality in all elections, including regional elections.		In education field the military
10	Restructuring military relations with the TNI's Greater Family	21	revokes social and political contents from the curriculum.
11	Renewal and revision of military doctrines in accordance with the mandate of <i>reformasi</i> and TNI's role in the 21st Century.	22	Liquidity towards the TNI Territorial Chief of Staff organization.
12	Revitalization of roles and tasks of Social Political Staff to be Social Communication Staff.	23	Elimination of Social Communication Staff based on the TNI Commander's SKEP No.21 / VI / 2005.
13	Conducting structural changes to Head of Social and Political Staff (<i>Kassospol</i>) to be Chief of Territorial Staff (<i>Kaster</i>).	24	Imposing the doctrine of Tri Dharma Eka Karma (Tridek) to replace Catur Dharma Eka Karma (Cadek). The policy is mandated by the TNI Commander Decree No. Kep / 2 / I / 2007, dated January 12, 2007.
14	Abolition of units related to socio-political matters, especially from the central level, <i>kodam</i> , <i>korem</i> and <i>kodim</i> .	Source: Processed from TNI History	
15	Dissolution of organizations such as staff of security and public order, Employee Development Agency and ABRI's Employee Staff.	Although various agendas have been carried out, contemporary conditions indicate that internal military reform has not yet been complete, especially as to the role of the military beyond national defense. In social and economic aspects, the MoUs between the military and other agencies become a new model of military's involvement in various domains. In fact, the House of Representatives Commission I recorded 30 MoUs initiated by military elites without political decisions of the state with House of Representatives' approval as the authority holder of <i>siyāsah shar'iyah</i> . Some MoUs were deemed out of context by the public, including the ones regulating rice production and the establishment of an Integrated Rice Farmers Service Center (SP3T) to support government policies related to food self-sufficiency. ²⁴	
16	Establishing accountability for foundations or business entities owned by the military.		
17	Dissolution of the organization concerning the placement of Deputy TNI Commander.		
18	Elimination of National Stability Strengthening Assistance (<i>Bakorstanas</i>) at central and regional levels.		
19	Affirmation of early retirement commitment for military personnel running for regional election since screening time or candidate registration.		
20	Abolition of the Alert Command Center.		

²⁴ Kristian Edrianto "Pimpinan Komisi I Kritik TNI soal Pembuatan MoU dan Program

Another urgent problem is military's transformation from exerting influence at national executive level to regional. Marcus Mietzner in his 'Business as Usual? The Indonesian Armed Forces and Local Politics in the Post-Suharto Era' describes the phenomenon of power consolidation and migration of the military to influence regional autonomy policies.²⁵ The implication is that military elites influence and participate in determining local elections, although support for candidates is given secretly, limited and in a sporadic manner. One of the paradoxes of military reform efforts after Soeharto era and external institutions' insistence regarding good governance such as from the World Bank and the International Monetary Fund is that military's power has shifted and rooted in local commanders. The patronage network consolidation and rent-seeking practice are localized when problematic accountability becomes more decentralized.²⁶

This practice of influence is previously conducted behind a closed door,

Cetak Sawah", accessed on October 18th, 2019,
<https://nasional.kompas.com/read/2017/11/23/22391541/pimpinan-komisi-i-kritik-tni-soal-pembuatan-mou-dan-program-cetak-sawah>

²⁵ Evan A Laksamana, "Dari Reformasi Militer Menuju Transformasi Pertahanan: Tantangan Dan Prospek Ke Depan," *Jurnal Indonesian Review* 1, no. Agustus (2010): 2-14.

²⁶ Mark Beeson, "Civil-Military Relations in Indonesia and the Philippines: Will the Thai Coup Prove Contagious?," *Armed Forces and Society* 34, no. 3 (2008): 474-490.

yet the first phase of the 2015 simultaneous local elections becomes a turning point. During that period the military reappeared in social and political life. The General Election Commission (KPU) recorded 16 candidates from the TNI and the Police. The peak is the 2018 simultaneous elections, which was referred to as war of generals. Six generals (active and retired) were fighting to become governors and vice governors, they were Lieutenant General Edy Rahmayadi, Major General Sudrajat, Major General TB Hasanudin, Inspector General of Police Anton Charliyan, Inspector General of Police Murad Ismail, and Inspector General of Police Sa-farudin. There were 8 active military and police officers fighting for regent / mayor positions and 4 nominating themselves for vice regents / mayors.²⁷

Based on these empirical facts, it is worth-noting that military reform is a worth-noting that military reform is a long-term process that does not have a definite end point. This process will keep developing along with Indonesia's political and social evolution that continues from autocracy to democracy, which is in line with national objectives. The process of acculturation and modernization as well as the socialization of reformist defense structures are a long process whose outcome is seen after 25

²⁷ Reja Hidayat, "Perang Perwira TNI dan Polri dalam Pilkada 2018", accessed on October 27th, 2019,
<https://google.com/amp/s/amp.tirto.id/perang-perwira-tni-dan-polri-dalam-pilkada-2018-c1M>

years.²⁸ John Bradford reminded the importance of political and institutional structure of society to balance military evolution.²⁹ Military intervention on civilian's political life in the long run will damage its professionalism. To anticipate this, the establishment of a good political structure and the consolidation of civil society groups to supervise the military in a constructive manner become indispensable.

Military Operations Other Than War

Military Operations Other than War, hereinafter referred to as the MOOTW, is a series of Indonesian military authorities regulated in Article 7 letter b of the TNI Law.³⁰ The MOOTW is a supplementary to the main function of the military, which is to conduct war in the framework of upholding country's sovereignty, maintain territorial integrity, and protect Indonesia from threats and instabilities.

The implementation of the MOOTW often clashes with law enforcement officials, government agencies and other civil elements. In the TNI Law there are

no clear provisions that define the MOOTW and there is only a stipulation of fields (list of provisions). In general, fields in which the military can get involved are activities related to: (a) confronting armed movements; (b) overcoming armed rebellions; (c) dealing with terrorism; (d) border surveillance; (e) securing national objects / assets; (f) carrying out world peace on the basis of free and active politics; (g) securing President and Vice President, including their families; (h) fostering universal defense system; (i) assisting Regional Leaders in their duties; (j) giving assistance to the National Police within the framework of security and public order; (k) giving assistance to safeguard state guests at the level of state leader and representatives of foreign governments; (l) natural disaster relief, humanitarian assistance, refugee management; (m) searching and rescuing victims of accidents; (n) giving assistance to safeguard flights and shipping from piracy and smuggling.

Regulating the MOOTW is not an easy thing to do, including for a developed country like the United States after the end of World War II. James R. Ayers in 'Military Operations Other Than War in the New World Order: An Analysis of Joint Doctrine for The Coming Era'³¹ reveals the difficulty of determining a precise and comprehensive definition of the MOOTW. The MOOTW approach is simply based on

²⁸ John B Haseman, "Indonesian Military Reform: More Than a Human Rights Issue," *Journal Southeast Asian Affairs*, vol. 2006 (Maryland, USA, 2006).

²⁹ Bradford, "The Indonesian Military as A Professional Organization: Criteria and Ramifications for Reform." Vol. 73. RSIS Working Paper. Singapore: Nanyang Technological University, 2005

³⁰ Law Number 34 of 2004 on the Indonesian National Army.

³¹ Diandra Megaputri Mengko, "Problematika Tugas Perbantuan TNI," *Jurnal Keamanan Nasional* 1, no. 2 (2015): 175-196.

the purpose of preventive operations which is to maintain peace and prevent war. In practice, there are variations regarding the MOOTW's scope and regulations that are influenced by internal circumstances of a country, factors of political system, historical aspects, and threats faced by a country. USA's Navy and Army departments in Joint Pub 3-07: Joint Doctrine for Military Operations Other Than War provides roadmaps and guidelines on the MOOTW for the military. The MOOTW is positioned as a combination of military's power instruments that are different from war operations. All actions taken are carried out within the framework of promoting peace aimed at protecting national interests. For this reason, professional military personnel are required, a force that understands political objectives of their country and potential impacts of the actions.³²

However difficult it is to define and regulate the MOOTW, the Indonesian military needs it as a legal basis and tactical needs. For elites and civilians the MOOTW serves as part of control over military's roles in various spheres. This need has actually become a focus of DPR's Commission I since 2007.³³ Therefore, it is important that we urge the government and DPR which, in the

³² U.S. Joint Chiefs of Staff, *Joint Doctrine for Military Operations Other Than War*, Pertama (Washington DC: Department of The Army and Department of The Navy US, 1995).

³³ Theo L Sambuaga, "TNI-Polri Di Masa Perubahan Politik," in *TNI-Polri Di Masa Perubahan*, ed. Al Araf, Petama (Jakarta: ITB dan Imparsial, 2007), pp. v-x.

conception of *siyāṣah shar'iyah*, function as leaders (rulers) to determine laws or policies that are in line with the needs of the people based on situations and conditions of the country as well as its people to begin an initiation of regulation formation that regulates military assistance tasks. The urgency is based on: (a) a clear and detailed legal foundation that regulates assistance tasks adopted and agreed upon by all elements in Indonesia; (b) a comprehensive roadmap to regulate and determine limitations to control military initiatives that affect social and political life or occupy strategic positions beyond the main tasks of national defense; (c) an effective means to review all military's programs and policies, especially various collaborations (MoUs) with institutions / agencies, and state-owned enterprises that are not related to the main tasks and scope of the MOOTW; (d) a means to elaborate, mitigate and resolve chronic problems in the military with regard to the positional needs of its officers³⁴; and (e) to regulate legal relations for the military when occupying civilian positions and / or performing assistance tasks, including criminal liability.

Civil-Military Relations in *Siyāṣah Shar'iyah* Perspective

Civil-military relations in Indonesia since the beginning of independence

³⁴ Agus Widjojo, "Diskusi Terfokus: Quo Vadis Militer Dalam Urusan Sipil", Komnas HAM RI, March 1th, 2019.

until now have continued to revolutionize. The dynamics of the independence had created an intense pattern of civil-military relations that was strengthened in the New Order. Suharto's focus was not only on civil and politics, but also almost on all fields, including economy, society, and culture. Through the dual-function doctrine, the military exercised control over civilian life, regulated and influenced the direction of the nation which lasted until Suharto's fall from power. Referring to Clark Benner Lombardi's view of *siyāsah shar'iyah* whose concept gives authority to the government (legislative and executive) to regulate government affairs and make laws and regulations, yet in practice they were all under the shadow of the military. It was the 1998 demonstration leading to Soeharto's withdrawal became the momentum to bring about reform to the constitution, erasing the dual-function concept and efforts to return the military to their barracks, and made the civilian government as a power holder in government affairs of Indonesia.

Nevertheless, to establish ideal civil-military relations is not easy, especially for a new democratic state. Civil-military relations depend on actions of elected civilian leaders. The factor of being capable to improve people's welfare, economic level, law, and of course maintaining public order will be keys to constructing civil supremacy. Failing to manifest control, potential and internal needs of the state by civil elites will allow them to use the military in every

issue. The implication is detrimental if military's involvement is aimed at fulfilling political ambitions.³⁵

Indonesia, although not a religion-based country, is in line with principles of an Islamic state that governs the structural relations model of leaders (government), society (*ummah*) and law (sharia) in which there is a legal concept of *siyāsah shar'iyah*, that is giving authority to leaders (government) to determine and enforce laws. Since *reformasi* it has clearly chosen the concept of civil-military relations. The government serves as a power controller while the military acts as an instruction executor, and the delivery of influence (inputs) to the leader is conducted indirectly.

The selection of this *siyāsah shar'iyah* civil-military relations model is in line with Samuel P Huntington's concept and theory regarding objective civilian control.³⁶ Civil-military relations in 'objective civilian control' concept put military power under civilian control so that government and state systems are fully determined by civilians. The military is required to be professional to focus on its duties and responsibilities as a national defense body without interfering in the dynamics of national and international political. This model places the military in a subordi-

³⁵ Larry Diamond & Mark F. Plattner, *Civil Military Relations and Democratization*, First (Baltimore, USA: The Johns Hopkins University Press, 1996).

³⁶ Samuel P. Huntington, "Civilian Control and The Constitution," *American Political Science Review* 50, no. 03 (2011): 676-699.

nation position to civilian authority, gives room for military autonomy and minimizes military's intervention in politics.³⁷ In addition, it is also in line with Peter D Feaver's agency theory³⁸, which emphasizes three key elements of civil-military relations in both non-intrusive and intrusive conditions, namely: (a) that there is a competitive difference between civilians and military roles; (b) that the key to civilian control is professionalism, and (c) that the key to professionalism is military autonomy.

Some indicators demonstrate that objective civilian control and agency theory has been carried out and seen in several aspects in Indonesia: first, internal military reforms that conceptually abolish the dual-function doctrine and strive towards professional military focusing on national defense tasks; second, the military is subject to civil supremacy. The implications of the dual function abolishment are that the military returns to its main tasks and avoids to exert its influence on civilian's political life. The military acts to carry out official duties of the highest authority, which is the President as head of government, head of state, as well as war commander; third, in the administrative

and budgetary aspects, the military is under the ministry of defense control. As a consequence, all planning, implementing and evaluating process of the military is carried out by Minister of Defense.

Autonomy given to the military through a commander is in the framework of improving capability, tactical and war strategy. Government's success to regulate civil-military relations is inseparable from various internal and external factors. The internal factors are based on civilian and military elites' awareness of situations and conditions faced by Indonesia in economic, social, and political fields that can lead to national divisions. Meanwhile, the external factors are a shift of paradigm for military elites who receive education and training from developed countries regarding military professionalism and civilian control over the military.³⁹

Thus, after two decades of *reformasi* the objective civilian control model and agency theory have been selected by Indonesian leaders as a relation pattern to regulate civil-military law relations and the military's structural position in the state. The model is used as a desired policy to regulate the state (*siyāṣah shar'iyah*) with an aim of upholding the principle of *al-'adālah wa murā'at al-maṣāliḥ al-jāmi' al-nās* which is oriented towards justice and the interests of civil society. Even so, it seems that the re-

³⁷ Samuel P Huntington, "Civil Military Relation Reform," in *Civil Military Relation and Democracy*, First (Baltimore, USA, 1996), pp. 3-16.

³⁸ Peter D. Feaver, "Crisis as Shirking: An Agency Theory Explanation of the Souring of American Civil-Military Relations," *Armed Forces and Society Journal* 24, no. 3 (1998): 407-434.

³⁹ Samuel P Huntington, "Civil Military Relation Reform," in *Civil Military Relation and Democracy*, First (Baltimore, USA, 1996), pp. 3-16.

structuring efforts have not yet been comprehensive as seen in the ups and downs or lack of a standard format of civil-military relations after *reformasi*.

Under the BJ Habibie administration, the model of civil-military relations was turbulence that the relations built were still sporadic and very dependent on military elites in carrying out reforms. The Abdurrahman Wahid's model was a pattern of conflict and confrontation. This condition is mainly related to issues of conflicts in Aceh and Papua and changes in tradition of military commanders with a rotation pattern, bringing dynamics within the military aimed at reducing the dominance of one unit. Negotiation pattern was Megawati's government's preferable choice. This model was carried out by not interfering in the internal role of the military and tended to be defensive against civil society's insistence on military reform acceleration, including a state of emergency declaration in Aceh so that the military would then be asymmetrical in dealing with human rights.⁴⁰

Susilo Bambang Yudhoyono's administration (SBY) used a compromise model.⁴¹ The model is in line with SBY's

accommodating leadership style embracing all civilian and military elites, trying to avoid conflicts, and starting to encourage an active role of the military in the international world through peacekeeping forces. Such a model is most evident in the return of military's role to civilian realm through MoUs with civilian institutions or *BUMN*. One aspect that is still problematic for the military is perception of internal threats, an insecure perspective towards the rise of leftist or the PKI.

Likewise, civil-military relations in the Joko Widodo's administration use a compromise model. The military and former military elites are still given significant roles in the government, including occupying ministerial positions.⁴² Military's involvement in various grounds through MoUs is also not evaluated or eliminated. The issue to resolve gross human rights violations that allegedly involves military elites is stagnant despite it being Jokowi's *nawa cita* promise and program. The Relationship with victims of the 1965 incident, including reconciliation process with a demand for an apology has also failed. The role of the military is increasingly visible in the counter-terrorism program that the military is given a role through the revision of the

⁴⁰ Muhamad Haripin, "Relasi Sipil-Militer Dan Ancaman Di Indonesia Pasca Orde Baru," in *Menimbang Demokrasi Dua Dekade Reformasi*, ed. Syamsudin Haris, Pertama Ju (Jakarta: Yayasan Pustaka Obor Indonesia, 2019), p. 556.

⁴¹ Syamsudin Haris, "Diskusi Terfokus: Quo Vadis Militer Dalam Urusan Sipil", Komnas HAM RI, March 1th, 2019

⁴² Devira Prastiwi, "Deretan Jenderal TNI dan Polri Ini Dipilih Jadi Menteri Jokowi", accessed on August 11th, 2019, <https://www.liputan6.com/news/read/4093316/deretan-jenderal-tni-dan-polri-ini-dipilih-jadi-menteri-jokowi>

anti-terror laws.⁴³ The birth of special regulations from the government, including Presidential Regulation No. 37 of 2019, apart from its substance that aims to regulate and expand new positions of the military, shows government's dominance in making decisions that do not involve civilian parliamentary authorities because it is not an option to make law assistance as an implementation of the MOOTW arrangements.

Based on the description delivered and related to the two decades of *reformasi* with the government periodization of *siyāsah shar‘iyyah* from BJ Habibie, Abdurahman Wahid, Megawati, Susilo Bambang Yudhoyono and Joko Widodo, which is marked by the regulation of civil-military relations, there seems to be no right model and still requires serious improvement. Formally, a civilian government is positioned in a format of power controller, but if we look at the dynamics of the civil-military relations model that have occurred from turbulence, confrontation, negotiation and compromise, the relations have been greatly influenced by the politics of a ruling president and politicians' seriousness in the parliament. Civil groups, academics and various social organizations have thus far sidelined and need to consolidate themselves to oversee *reformasi*'s big agenda, namely civil su-

premacy, democratization and human rights enforcement for a purpose of the *Ummah* and upholding justice (*al-‘adālah wa murā‘at al- maṣāliḥ al-jāmi‘i al-nās*).

Conclusion

From the discussion above it can be concluded that: (a) Indonesian leaders since the independence phase until the New Order have determined the arrangements of (*siyāsah shar‘iyyah*) related to civil-military relations by assigning the military as a dominant actor in socio-political life through the dual-function doctrine. Since the 1998 *reformasi*, civilian leaders have undertaken constitutional reforms and enacted laws to place the military under civilian control through encouragement of internal military reforms to get the military focused on national defense. Despite so, the military has now evolved in civilian's political life taking part in regional elections and bilateral approaches with ministries / institutions through cooperation (MoUs); (b) there has not been political will from Indonesian leaders to enact laws as an implementation of the concept of *siyāsah shar‘iyyah*, especially laws that regulate military assistance for operations other than war to avoid potential clashes with other institutions / agencies, regulates scope, boundaries, implementation, and accountability mechanisms of the military in roles outside of its main task as a national defense force. (c) Indonesian leaders in the post-*reformasi* era have established objective civilian control as a model of civ-

⁴³ Law Number 5 of 2018 on the Amendment of Law Number 15 of 2003 on the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 on the Eradication of Terrorism Crimes Into Law.

il-military relations as the implementation of *siyāsah shar‘iyyah* for the purpose of justice and public interest. In practice, the placement of the military in civilian subordination is varied and patronized. It is indicated in changes of models; turbulence, confrontation, negotiation and compromise. Military elites (including those who are no longer active) remain to be accommodated in civilian government structure, while demands for reforms regarding the resolution of gross human rights violations have merely become ‘lip-service’ political programs in every five-year political contestation.

Based on this conclusion, several alternative actions are encouraged: (a) encouraging civilian elites to consistently comply with the constitution and its derivative regulations that place the military as a professional army whose task is to ensure national defense and state sovereignty, by avoiding efforts to drag the military to re-engage in socio-political affairs; (b) enacting a military assistance law as a vehicle for adopting military roles outside military operations other than war. The enactment of this law is a civil agreement for legitimacy and legal basis to put restrictions on military’s roles beyond its main tasks and functions; (c) ensuring civilian control over the military which is strengthened by all civilian elements; the government, parliament and the public. The strengthening is carried out at the level of regulation, infrastructure and political policies, while at the same time maintaining military professional-

ism through autonomy in tactical, technical and combat strategy management.

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