

Reconstruction of Authority Arrangements in the State Defense and Security Sector in the National Security System of the Republic of Indonesia

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Abstract— National security is an inherent element of the objectives of the country. National Security described the condition of the state, society, and citizens are free from all forms of action and / or threats, which are influenced by internal and external factors. National security creates a sense of security that includes a sense of ease, discipline, a sense of comfort and peace. Implementation of national security need the laws and institutions to create a comprehensive departure of national resources. Therefore, it is necessary to reconstruct various legal instruments that regulate national defense and security that can fulfill the concept of national security while at the same time fulfilling the rules or principles of establishing good legislation. This research is focused on formulating reconstruction of authority arrangements in the field of defense and state security in the future national security system. The approach used in the form of an approach: historical, conceptual, statutory, comparative and philosophical. This study uses primary legal materials and secondary legal materials. Meanwhile, analysis of the subject matter and legal material is carried out in an analytical prescriptive manner, namely presenting ideas to answer the main problems in the research. The results of this study indicate that the reconstruction of the regulation of authority in the field of defense and security in the future must be based on the ideology of the Pancasila and the Constitution; consider opposing groups and supporters of the National Security Bill; pay attention to the principles of drafting the national security concept; and pay attention to important issues related to the National Security Bill that surfaced. So it can be concluded that the reconstruction of authority arrangements in the field of defense and state security by forming rules and laws that are integral, synergistic, coordinative and integrated; and able to affirm the intent and purpose, nature, division of domains and portions of the functions of implementing national security.

Keywords— National security, reconstruction, regulation, authority, defense and security.

I. INTRODUCTION

National security is defined based on two perspectives: first, the domain perspective that views national security coverage as consisting of: external defense, internal security, public order and disaster management; second, the point of view of objects that view national security as something that includes state safety, public safety and individual safety (Hasanudn, 2001).

Changes in a country's security strategy and system are inevitable. The strategy and security system of a country is not something that is static, but rather dynamic with changes in strategy and security systems strongly influenced by the dynamics of the strategic environment that continues to evolve and change (Al Araf, 2012). National security is an inherent element of the objectives of state administration. As state administrators, the government needs a national security arrangement regarding the level of authority of institutions that play a role in efforts to realize national security. The authority itself is the power that has the right to demand obedience so that it has the right to give orders. However, power must be limited because power has a tendency to act outside the applicable law. as Sudarsono (2008) argues that abuse of power including authority (détournement de pouvoir) and arbitrary acts (willekeur / abus de pouvoir) is a symptom that has long existed, as well as reminds us of the importance of control over the authority's use own.

Technical legislation related to national defense and security post-reform has been established, namely, among others: Law Number 2 of 2002 concerning National Police, Law Number 3 of 2002 concerning National Defense, and Law Number 34 of 2004 concerning TNI, in addition to the three laws, there are also several laws that are relevant to national security issues, among others, Law Number 39 of 1999 concerning Human Rights, Law Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism, Law Number 19 Year 2004 concerning Forestry, Law Number 24 Year 2007 concerning Disaster Management, Law Number 14 Year 2008 concerning Public Information Openness, Law Number 35 Year 2009 concerning Narcotics, Law Number 17 Year 2011 concerning State Intelligence, and Law Number 7 of 2012 concerning Handling Social Conflict.

The field of defense in substance Indonesian Presidential Regulation No. 2 of 2015 on the National Medium Term Development Plan 2015-2019. In Chapter 6.1.2 on strengthening its defense system, it is mentioned that the goals are realized is the increase in national defense capacity through the establishment of a professional TNI (Kastika, 2013).

The legal instruments that regulate the defense and security of the post-reform state that have been formed are unable to overcome legal problems related to national security concepts and systems that are able to protect the entire nation and state of the Republic of Indonesia. The implementation of

these laws can not be categorized as legal instruments are comprehensive, but still partial and sectoral. national security system in its implementation are in uncertainty due to the legal norms are vague.

To overcome the problem of the obscurity of the national security concept, various arrangements have been established that dynamically separate and combine questions about national defense and security, as follows:

- a. Prior to Presidential Decree No. 290 of 1964, the Police separated from the ABRI.
- b. Presidential Decree No. 290 of 1964 incorporated the National Police into ABRI.
- c. Presidential Instruction No. 2 of 1999 is instructive to take policy measures in the framework of the separation of the National Police and the ABRI
- d. MPR Decree No. VI / MPR / 2000 separates the Police and TNI, and institutionally in accordance with the roles and functions of each.
- e. MPR Decree No. VII / MPR / 2000 determines that the TNI is an instrument of the state in the Homeland Defense.
- f. Law No. 2 of 2002 on the Police asserted that the police serve to provide shelter, service to the community and has preserved public order and safety.
- h. Law No. 3 of 2002 on National Defense asserts that the military is a major component in the country's defense system. TNI is an instrument of state in charge of maintaining, protecting, and maintaining the integrity and sovereignty of the country. Law No. 3 of 2002 was a continuation of MPR Decree No. VI / MPR / 2000 and MPR Decree No. VI / MPR / 2000.

The strengths of the concept of separate defense and security arrangements, namely National Police which is separate from the TNI, is that it is institutionally in accordance with each of its roles and functions. TNI is a state instrument in national defense, while the National Police is a state instrument in the field of security maintenance. If defense and security activities have relevance, TNI and National Police can work together and help each other.

The lack of defense and security arrangements, namely National Police joining the TNI, resulted in the National Police being in a weak position because it became a subordination of military institutions which principally had characteristics and functions that were contrary to the police as civil institutions. The merger of the Indonesian National Police and the TNI resulted in confusion and overlap between the roles and functions of the TNI and National Police.

Unclear/vague arrangements regarding institutions that have authority in the field of national security result in legal uncertainty and norm conflicts. This uncertainty led to a prolonged polemic. Effectiveness and implementation have problems. In the end, the functions and duties of defense and security in operations cannot accommodate various interests in society. As a result, national security should create people's welfare as mandated. The opening of the 1945 Constitution of the NRI experienced obstacles in its implementation. Therefore, it is necessary to reconstruct various legal instruments that regulate national defense and security which

can fulfill the concept of national security while fulfilling the rules or principles of establishing good legislation..

Reconstruction includes a comprehensive field that not only regulates legal or statutory aspects, but also regulates institutional aspects, as well as duties and functions in a suitable national security system in the context of increasing threats in the context of globalization. In other words, comprehensive reconstruction has been urged to be carried out because the construction of concepts and regulations regarding state defense and security has not yet been able to synergize to achieve a national security system that is in accordance with the 1945 Constitution of the Republic of Indonesia. the scope of the national security system that is able to overcome fundamental problems, namely the non-synergy of existing legislation governing national defense and security.

Based on the background of the problem above, the problem examined that how is the reconstruction of authority arrangements in the field of defense and security in the national security system in the future?.

II. RESEARCH METHOD

This research is a normative legal research. The research approaches used include historical approaches, conceptual approaches, legislative approaches, and comparative approaches (Marzuki, 2010) and philosophical approaches (Fadjar & Achmad, 2012). Types of legal materials in this study consisted of primary legal materials, secondary and tertiary. The primary source is comprised of law, treatise or official records legislation. Secondary sources consist of all publications in the form of law which is not an official documents. Publication of the law may dictionaries law, legal journals and books related to defense and security.

The collection of legal materials do with the study of documents or library materials in some libraries such as the Library of Brawijaya University in Malang, Library of the Ministry of Defense of the Republic of Indonesia, Library of the Ministry Secretariat of the Republic of Indonesia, Indonesian Constitutional Court Library, and the Library of the University of Defense. Research is also carried out by collecting articles in magazines or newspapers, collecting articles in scientific journals related to research, official documents issued by the government and searching the internet (Ibrahim, 2006). Analysis of legal materials using analytical prescriptions by prioritizing legal reasoning using legal interpretation (authentic, historical, and teleological).

III. RESULTS & DISCUSSION

1. Concept of Reconstruction of Authority Arrangements in the field of Defense and State Security based on the ideology of Pancasila and the Constitution

Reconstruction of authority arrangements in the field of defense and state security for the future is carried out by laying the groundwork for Pancasila ideology and the constitution. Pancasila is full of democratic and humanitarian values, Pancasila values are formulated more concretely in the Preamble and Body of the 1945 Constitution of the Republic of Indonesia, so that the ideology of Pancasila has constitutive and regulative functions. Pancasila does not reject the theories

of democracy which are considered universal and which are practiced by other countries.

The formulation of the reconstruction of authority arrangements in the field of defense and state security requires a holistic approach inspired by the ideology of the Indonesian nation. Ideology will provide direction stability in life in groups and at the same time provide the dynamics of movement towards the aspirations. The ideology of Pancasila can be implemented in the field of national security and the idea is expressed or formulated into a national security system. The ideology of Pancasila which was originally an idea and thought which is believed to be true can be more realized in a concept of national security.

In carrying out reconstruction of authority arrangements in the field of defense and security in the future, Pancasila must be given the main place as the main source of the national security system. This is important given the increasingly complex dynamics of threats whose character and character are increasingly complex. Imaginary and artificial boundaries are increasingly blurred. National borders are increasingly open, acceleration of globalization has increased and non-military aspects such as economics, politics, social, environment and technology have affected the dynamics of threats.

Ideally, national security can formulate more concretely the ideas and values of the Indonesian people regarding security for themselves. The values of the national security system can be extracted from the Opening of the 1945 NRI Constitution which contains the philosophy of life of the nation and state. This philosophical aspect requires further meaning so that values can be obtained for the reconstruction of authority arrangements in the field of defense and state security.

Idealism of the founding fathers of the Republic of Indonesia is an ideal to protect the entire Indonesian people and the entire bloodshed of Indonesia. The scope of national security intended by the founding fathers of the Republic of Indonesia in essence has reflected a comprehensive national security system, which cover:

- a. protection of human security and human rights;
- b. protection of society;
- c. protection of the state.

Reconstruction of state defense and security authorities must also take into account the experience of the Indonesian people in managing state defense and security so far, including also understanding various theories and views on the concept of comprehensive security that are developing internationally including human security.

The concept of authority requires clarity about the system of formation of power in the theory of the formation of power, especially the formation of state power which applies one principle, that every power in this case state power must be accounted for. In the formation of this kind of power led to new powers. On the other hand the giving of power which is derivative in nature is the giving of power in the form of delegation of power because of the existing power transferred to other public legal entities. Therefore, it is derivative (Mulyosudarmo, 1997). The use of the concept of authority

must be clear in carrying out the reconstruction of authority arrangements in the field of defense and security in the future.

The legal basis for the formation of power by a state body is generally given through a constitution. Every constitution is a rule regarding attribution or authority. With the construction of such thoughts, every power that arises because of the distribution of power will give birth to a power that is original. Thus, it can be concluded that the granting of power to the state to reconstruct the regulation of authority in the field of defense and state security in the national security system can be interpreted as a form of power after the establishment of state organizations established and given directly through the constitution.

I Dewa Gede Atmadja (1996) in his constitutional interpretation speech stated that the Indonesian constitutional system distinguishes two authorities, namely (i) authoritative authority, which is constitutionally determined to interpret the constitution and is in the hands of the MPR as a constitution-forming body; and (ii) persuasive authority that is not constitutional authority explicitly. The concept of authority can also be approached through review of the source of authority and the concept of justifying the actions of governmental powers. The source theory of authority includes attribution, delegation, and mandate (Atmosudirdjo, 1995).

2. The Concept of Reconstruction of State Authority and Defense Authority Arrangements by Considering Opposing Groups and Supporting the National Security Bill

The national security system continues to be a long-standing discussion and debate, debates still occur on the issue of national security values, concepts and systems, even regarding substantial matters of national security. The pros and cons of the National Security Bill then emerged when the National Security Bill was first submitted to the 2007 National Legislation Program by the Ministry together with TNI Headquarters. The proposal for the National Security Bill actually illustrates that policies relating to national defense and security are still patchy, not comprehensive and long-term. The Indonesian National Police institutionally refused to discuss the Bill on National Security, because of the existence of Law No. 3 of 2003 which has regulated national defense, it is considered sufficient.

Reconstruction of the concept of authority regulation in the field of defense and security in the future, must also pay attention to the discussions and debates that arise related to the formation of the National Security Bill. Not only support groups, but also groups that reject the National Security Bill. The group argues that if for example there is threatening terrorism, what is done is to revise the Law on Terrorism so that there is no need to make log laws that counter all sectors. This is due to the existence of empty space in the defense and security sector legislation which until now has not been made by the state, namely the revision of Emergency Law Number 23 of 1959. The law is considered very excessive so it needs to regulate the departure of military involvement in TNI relations and National Police.

On the other hand, those who agree with the National Security Law, in this case the Government has the perspective that the country's defense and security are above all else. The National Security Bill is considered a legal instrument to strengthen all measures to safeguard state security. The National Security Bill was submitted to the 2015 National Legislation Program not at all recycled from Law No. 11 / PNPS / 1963 concerning Eradication of Subversive Activities which have been revoked by Law Number 26 of 1999. The National Security Law is intended to organize all security actors so that there is no overlap in the implementation of their duties. In other words, to minimize the gray area in the security sector which is often a debate between the TNI and National Police.

3. The Concept of Reconstruction of the Authority and Authority for Defense and State Security Arrangements Noting the Principles for Preparing the National Security System Concept

The regulation of authority must also consider several principles. The concept of national security is oriented to national interests based on the Pancasila philosophy and mandate of the Preamble of the 1945 Constitution of the Republic of Indonesia to maintain the existence of a nation state and its identity amidst the dynamics and changes of the times. The concept of national security must be based on empirical, theoretical, and demands of the times so as not to forget the failures and successes of the past, can accommodate various interests in society, differences in understanding and understanding of universal security.

The concept of national security will be responsive to the dynamics of environmental development, both global, regional and national. Its implementation is managed synergistically by all ministries and institutions and is supported by community participation, future reach, and adaptive to the dynamics of environmental development. The national security system must be able to anticipate external dynamics, both at the regional and global levels related to the security paradigm, which is initially oriented to the state centered security, shifts to become wider so that its orientation includes state centered security and people centered security (country/people centered country).

The national security system must be able to respond to the complexity and interrelation of various forms and types of threats, both traditional and non-traditional threats. Traditional threats change in magnitude and quality, while non-traditional threats are increasingly complex, including in the form of separatist movements, international terrorism, ethnic crime, ongoing chronic poverty, human trafficking, climate change, health pandemics, economic collapse, and financial crises. Efforts to overcome these threats require a transnational dimension and move beyond the views or national security systems that focus only on military threats. In connection with these efforts, the concept of comprehensive security is needed to utilize the widest possible opportunity to overcome threats in an integrated manner.

The main objective of the security sector reform process is the creation of good governance in the security sector and then also create a safe and orderly environment so that it can support the country's goal of prosperity and prosperity for the people. Not only that, the security system in the present is no longer limited to making the country an object that must be guarded, but also must protect and protect the sense of security of human beings and humanity itself.

Reconstruction of authority arrangements in the field of defense and security also pays attention to the national security system as a system consisting of subsystems, namely, national defense, internal security, public security, and human security. Each subsystem is interrelated, so as to form a complete system. Each of these subsystems needs to be safeguarded and protected so that it requires synergy between authorities to ward off or overcome various threats, both from within and outside the country that will destroy the NKRI; including the deployment and coordination of various components involved in overcoming these threats.

4. The Concept of Reconstruction of Authority Arrangements in the State Defense and Security Sector Paying Attention to Important Issues related to the Emerging National Security Bill

The regulation of authority in the field of defense and state security which will be designed, should have the concept of understanding basic requirements to maintain the survival of the country by using economic instruments, diplomacy, military power, and political power (Nugroho, 2013).

The national security system must be understood as a broad meaning not only covering defense and order with the defense function by the military, and the function of order by the police. Thus, security is not a matter of mere police institutions as is often debated, nor is the military understood by the police that the military will take over the authority of the police.

Efforts to reconstruct the regulation of authority in the field of defense and security in the future, should be able to fulfill basic needs to protect and safeguard the national interests of the nation and state of Indonesia. These efforts can be achieved by overcoming all threats that come from within and from abroad. To clarify and reinforce the implementation of the functions of national security in an integral, synergic, coordinative, and integrated manner, it needs to contribute to productivity and performance effectively and efficiently..

For this reason, the reconstruction of authority arrangements in the field of defense and security must be able to answer important issues as a basis for criticizing the drafting of the National Security Bill. Some important issues related to the National Security Bill have been reviewed by the National Police, namely, first, the TNI (TNI-AD) will immediately revive territorial commands to the village level to counteract the problems of the nation today. Secondly, the Ministry of Defense has mistakenly interpreted the sentence of the TNI's non-war assignments which are interpreted as being able to be immediately involved and enter into civilian authorities which are not their authority. The task of non-war

operations in various international conventions is interpreted as Military Operation Other than War in charge not for war, but for humanitarian operations in the framework of peace keeping, handling natural disasters and international and other duties on the UN mandate. Third, the National Security Bill involving military involvement in various civil authorities is suspected to be permanent as the New Order era is excessively detrimental to the democratic order and civil society. Fourth, two basic things are the National Security Bill, the TNI will enter and reduce the authority of the National Police.

The issues raised were based on the analysis of the early Bandung Formulation of 1999 and there were five polemistic thoughts, namely that the TNI was no longer always ahead; no longer occupying but influencing; make a conceptual contribution to the state; acting based on role (role sharing); and make decisions in important matters in the fields of state and government.

To avoid important and critical issues related to the authority of the TNI, the reconstruction of authority arrangements in the field of defense and state security that would be established must look at some basic principles of managing the national security system. In addition, it also needs to pay attention to the strategic issues and issues that are a priority in the 2015-2019 RPJMN in the field of defense and security. Reconstruction that will be built can anticipate proxy war (proxy war). Proxy War is a war that takes the form of war when opposing forces use third parties instead of directly fighting each other. Proxy war is dangerous because it is not carried out directly by the countries involved in it. Proxy war is a war that uses third parties played by state actors (state actors), but also non-state actors (non-state actors). The actors can be international institutions, aid agencies, non-governmental organizations to press institutions (Suryowati in Kompas 2018).

Actions in proxy war not only endanger national security, but also constitute violations of law or illegal acts. Therefore, actions in the proxy war are not only related to the aspects of the defense and integrity of the Unitary Republic of Indonesia, but also can be dealt with legally. To exercise the authority of defense and law enforcement, legal authority is needed.

5. Urgency for the Establishment of the National Security Council

Indonesia is still in an era of transition to a more democratic country. The process is still at the stage of struggling democracy, limited to performance democracy-procedural, has not yet manifested itself in a habit, norm, a substantial value as there is a solid democratic principle. In terms of national security objectives, the process is through a national security system which is carried out by the presidential office in its operations. The President requires an advisory institution that provides analysis of national security threats and risk analysis of actions as the basis for policy making in the face of urgent and strategic threats.

National security is a collective responsibility, not only the responsibility of the TNI and National Police, but also the responsibility of institutions that are widespread in ministries

and institutions supported by paying attention to the active participation of civil society. Under certain conditions, national life management can no longer be carried out with normal management so it must implement emergency management to restore emergency status to be stable again. Process to anticipate, determine decisions / policies or implement decisions based on cross-ministerial principles by the National Security Council. Normally management is the responsibility of the government, namely the President and the ministers, while emergency management is carried out by the President as the head of state who acts as the holder of full authority assisted by the ministers through a cross-ministry method in synergy.

In the context mentioned above, efforts are needed to integrate national security issues and policies through strong analysis and assessment. Therefore it is necessary to transform the National Resilience Council (Wantannas) and the Wantannas General Secretariat into the National Security Council (DKN) and DKN Secretariat.

The DKN organization can be a trial forum to discuss and formulate a draft national security management policy that is expected to escalate or be explosive in nature, beyond the specified risk tolerance degree. Thus, DKN can formulate a comprehensive and integrative national security policy. Changes to the National Resilience Council and the Secretariat General of the National Security Council to become DKN and DKN General Secretariat can be an important institution and complete with various underlying considerations.

The formation of the DKN needs to be realized immediately as the implementation of Presidential Regulation No. 2 of 2015 concerning the 2015-2019 National Medium-Term Development Plan (RPJMN), which included the targets to be realized, namely increasing national defense capacity. The existence and role of DKN is very important to be followed up with the Presidential Regulation which regulates, among other things, several tasks / authorities to disseminate widely and comprehensively an understanding of national security which is basically the interests of all elements of the nation without leading to a monopoly of an institution or particular interest.

DKN must be able to adapt to changes in the National Security paradigm which was originally oriented towards state security. In its development, DKN also focused on human security. Related to this, national security is a collective responsibility, and not only the responsibility of security institutions, but also the institutions of civil society and civil society.

Reconstruction of authority arrangements in the field of defense and state security is expected to clarify anyone who becomes an actor in overcoming the problems of National Security and the authority of each actor or institution related to national security. The authority of the DKN to regulate the role of actors based on escalation of national security threats is expected to eliminate sectoral ego and the obscurity of the authority of the actors handling in the field.

The regulation of the authority of actors in tackling terrorism is not to eliminate the authority of the National Police in cases of terrorism, but rather to optimize the special

units owned by the state from the threat of non-state actors (non-state actors).

Reconstruction of authority is carried out by forming new rules or laws relating to or relating to existing laws (positive law). Reconstruction of authority arrangements in the law does not need to make changes to the rules contained in the existing positive law relating to the authority of each actor in defense and state security. All legal subsystems are in the same system, and each of them is interrelated or related or supporting one another.

Reconstruction with a system approach is related to the epistemological aspect, which is carried out without the need or without having to deconstruct the law or law, namely touching or changing existing positive law, but rather by forming new positive law as a subsystem in a more complete or comprehensive. Reconstruction with epistemological aspects can be illustrated by the following chart:

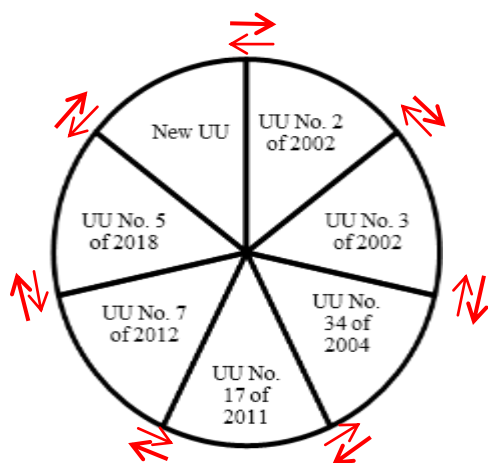


Fig. 1. Reconstruction of Epistemological Aspects.

The axiology is the achievement of the departure of the rules or subsystems in a comprehensive national security system so that the goals or benefits can be achieved or optimal to prevent and overcome threats to the existence of state ideology, internal security, public security, and human security that will destroy the NKRI as mandated by the 1945 Constitution of the Republic of Indonesia.

Reconstruction of authority arrangements in the field of defense and state security is carried out in the form of a new law governing National Security in a comprehensive arrangement and synergizing the authorities of the TNI, National Police and other actors who also have the authority as stipulated in various laws - invite existing. The new law that will be formed has a hierarchy that is parallel to the relevant existing laws as mentioned in the circle chart above.

Reconstruction of authority arrangements is not necessary by deconstructing or reducing the legitimacy of the existing law. Legitimacy and the enactment of the law remain strong, with new laws. Reconstruction of authority arrangements in the field of defense and state security in accordance with a comprehensive national security system as referred to in the Preamble of the 1945 Constitution of the Republic of Indonesia and the establishment of the National Security Council requires legal political support. The politics of law as

a policy is needed by the Government and Parliament so that threats to national security can be resisted or overcome so as not to endanger the existence of state ideology, internal security, public security, and human security, both from within the country and abroad that aim to destroy the NKRI.

The authority and relationship between authorities in the national security system that is comprehensive and synergistic is not only in the scope of the relationship between the authority of the TNI and National Police, but also related to the relationship of the authority possessed by each actor in national security which is also regulated in law. This regulation of authority and relations between authorities has become a fundamental problem that needs to be addressed. Improvement is also expected to consider the breadth of the scope of authority which includes legal authority that is intended to be synergized based on the Government's and DPR's legal political policies.

This is necessary because in reality there is a close connection between politics and law. Politics affects the law, and vice versa the law affects politics. So there is interdependence between the two. Therefore, this interdependence should be a very strategic consideration and factor in giving birth to the regulation of authority in the field of defense and state security in the national security system.

IV. CONCLUSION

Reconstruction of authority arrangements in the field of national defense and security in the future national security system is carried out by:

- The concept of reconstruction of authority arrangements by establishing new laws on national security, without deconstructing the law of the laws that already exist, or make changes to the rules contained in the existing positive law related to the national security system.
- The concept of the reconstruction is done by systemic approach related to the epistemological aspect of the way forming a new positive law as part of the subsystem in a system that is more complete or comprehensive. The formation of the new law is expected to clarify or reinforce the authority of the actors in the national security system to act in a comprehensive and synergistic system.

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