

ARTIKEL

**JURIDICAL IMPLICATIONS OF THE REVISION OF ARTICLE 47 OF THE TNI
LAW ON CIVILIAN SUPREMACY IN INDONESIA**



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FAKULTAS HUKUM

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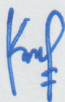
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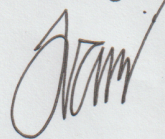
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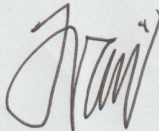
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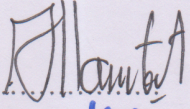
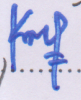


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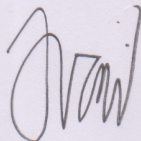
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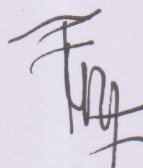
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KATA PENGANTAR

Puji dan syukur penulis panjatkan ke hadirat Tuhan Yang Maha Esa atas segala kasih, penyertaan, dan anugerah-Nya sehingga penulis dapat menyelesaikan Jurnal/Artikel Ilmiah yang berjudul " Juridical Implications Of The Revision Of Article 47 Of The Tni Law On Civilian Supremacy In Indonesia" dengan baik. Artikel ilmiah ini disusun sebagai salah satu syarat untuk memenuhi tugas akhir dalam memperoleh gelar Sarjana Hukum pada Fakultas Hukum Universitas Palangka Raya.

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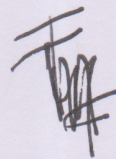
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kehilangan arah, dipenuhi keraguan, dan dihadapkan pada berbagai keadaan yang membuat seolah-olah tidak ada kesempatan untuk memulai kembali. Kesepian, kelelahan, dan berbagai emosi negatif pernah menjadi bagian dari proses yang harus dihadapi. Namun, di balik semua itu, penulis memilih untuk tetap bertahan, terus belajar, dan perlahan bangkit meskipun langkah yang diambil terkadang terasa sangat kecil. Penulis menyadari bahwa masa lalu adalah bagian dari kehidupan yang tidak dapat dihapus, tetapi bukan sesuatu yang harus terus membatasi langkah menuju masa depan. Setiap pengalaman, baik yang membahagiakan maupun yang menyakitkan, telah membentuk penulis menjadi pribadi yang lebih kuat, lebih dewasa, dan lebih menghargai setiap proses kehidupan. Terima kasih kepada diri sendiri karena tidak menyerah, karena tetap percaya bahwa selalu ada harapan meskipun jalan yang ditempuh terasa gelap dan penuh tantangan. Kiranya setiap perjuangan yang telah dilewati menjadi pengingat bahwa tidak ada usaha yang sia-sia, dan setiap luka dapat menjadi pelajaran untuk terus melangkah menjadi pribadi yang lebih baik (PTP).

Penulis menyadari bahwa artikel ilmiah ini masih memiliki berbagai keterbatasan dan belum sepenuhnya sempurna. Oleh karena itu, penulis mengharapkan kritik, masukan, dan saran yang bersifat membangun demi penyempurnaan karya ilmiah ini di masa mendatang. Penulis berharap artikel ilmiah ini dapat memberikan manfaat, menambah wawasan, serta menjadi referensi yang berguna bagi pembaca maupun pihak-pihak yang berkepentingan.

Palangka Raya, 30 Juni 2026

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Date: May 2, 2026

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Dear:

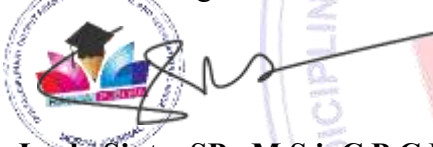
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Thank you for publishing with us. We look forward to receiving future manuscripts from you.

With warm regards,



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Editor in Chief

JURIDICAL IMPLICATIONS OF THE REVISION OF ARTICLE 47 OF THE TNI LAW ON CIVILIAN SUPREMACY IN INDONESIA

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Abstract

The revision of Article 47 of Law Number 3 of 2025 concerning Amendments to Law Number 34 of 2004 on the Indonesian National Armed Forces (Tentara Nasional Indonesia/TNI) has generated debate within Indonesia's constitutional system, particularly regarding the appointment of active TNI personnel to civilian positions. The expansion of such assignments raises questions concerning its consistency with the principles of civilian supremacy, military professionalism, and the merit system under Law Number 20 of 2023 on the State Civil Apparatus. This study aims to analyze the juridical implications of the revision of Article 47 from the perspective of constitutional law and to examine its conformity with the constitutional principles of the rule of law and post-1998 security sector reform. This study employs normative legal research using statutory, conceptual, and historical approaches through an analysis of primary and secondary legal materials. The findings indicate that, formally, the revision is valid as a legislative product; however, materially, it gives rise to potential normative tensions with the principles of civilian supremacy and the merit-based bureaucratic system. Therefore, more comprehensive implementing regulations and harmonization with civil service regulations are necessary to ensure that the appointment of active military personnel to civilian positions remains within the framework of the rule of law and constitutional democracy.

Keywords: *Civilian Supremacy, Military Professionalism, Revision of the TNI Law, Civilian Positions.*

INTRODUCTION

Indonesia's constitutional history is inseparable from the crucial role of the military in political and governmental dynamics. For more than three decades under the New Order regime, the Armed Forces of the Republic of Indonesia implemented the dual-function doctrine, which not only dominated politics but also weakened democratic principles and the rule of law. With its hierarchical command structure, the military at that time penetrated the sphere of public policy and displaced governmental functions¹. The 1998 Reform marked an important turning point in efforts to build civilian supremacy and uphold military professionalism. One of its principal agendas was the restructuring of civil-military relations through the abolition of the dual-function doctrine of the Armed Forces of the Republic of Indonesia. This mandate was subsequently institutionalized through a series of laws as a new constitutional foundation, namely People's Consultative Assembly Decree Number VI/MPR/2000 concerning the separation of the Indonesian National Armed Forces and the Indonesian National Police, as well as People's Consultative Assembly Decree Number VII/MPR/2000, which clearly defined the role of the TNI as an instrument of national defense, with TNI personnel subject to military courts for violations of military law and general courts for violations of ordinary law². Accordingly, Law Number 34 of 2004 on the Indonesian National Armed Forces was enacted as an antithesis to the dual-function era. This law was intended to establish a more professional TNI while affirming the prohibition against active military personnel engaging in practical politics, conducting business, or holding civilian positions, except under very limited circumstances or after retirement. Thus, the law became a legal safeguard limiting the role of the TNI solely to the function of national defense under the control of a legitimate and democratic civilian government.

¹ Aditya Batara Gunawan, 'Kontrol Sipil Atas Militer Dan Kebijakan Pertahanan Di Indonesia Pasca Orde Baru', *Jurnal Politik* 2, no. 2 (2017): 197–197, <https://doi.org/10.7454/jp.v2i2.117>.

² Muradi Muradi, 'Professionalism in the Post Soeharto Indonesian Military', *Journal of Politics and Law* 10, no. 5 (2017): 124–124, <https://doi.org/10.5539/jpl.v10n5p124>.

After more than two decades serving as the foundation of security sector reform, the commitment to returning the military to the barracks and refocusing its role on national defense now faces serious challenges. Law Number 34 of 2004 has been amended through the enactment of Law Number 3 of 2025 concerning Amendments to Law Number 34 of 2004 on the Indonesian National Armed Forces, which was recently passed in a plenary session of the House of Representatives and approved by President Prabowo Subianto on 26 March 2025. Although this revision covers several provisions, the principal focus has been on Article 47, which expands civilian positions available to military personnel.

Under Article 47 of Law Number 34 of 2004, paragraph (1) stipulates that “Military personnel may only hold civilian positions after resigning or retiring from active military service,” while paragraph (2) provides that “Active military personnel may hold positions in offices responsible for coordinating political and national security affairs, national defense, the President’s Military Secretariat, state intelligence, state cryptography, the National Resilience Institute, the National Defense Council, National Search and Rescue (SAR), the National Narcotics Agency, and the Supreme Court”.

Meanwhile, under Law Number 3 of 2025, Article 47 paragraph (1) was amended to provide that “Military personnel may hold positions in ministries/agencies responsible for coordinating political and national security affairs, national defense including the National Defense Council, state secretariat affairs handling presidential secretariat and the President’s Military Secretariat, state intelligence, cyber and/or state cryptography, the National Resilience Institute, search and rescue, national narcotics, border management, disaster management, counterterrorism, maritime security, the Attorney General’s Office of the Republic of Indonesia, and the Supreme Court”.

This amendment has generated controversy because it is considered to potentially weaken the principle of civilian supremacy, which constitutes a central pillar of the democratic system. From the perspective of constitutional law, the relaxation of boundaries between military and civilian functions risks reviving the dual-function doctrine of the Armed Forces of the Republic of Indonesia in disguised form and threatens the military professionalism developed over two decades of reform³. In addition, this revision raises concerns regarding the potential remilitarization of bureaucracy, inefficiencies in civilian governance, and the disruption of checks and balances within the constitutional system.

Normatively, the appointment of active TNI personnel to civilian positions without open selection mechanisms and a merit system, as regulated under Law Number 20 of 2023 on the State Civil Apparatus, has the potential to create normative conflict and violate the principle of equality before the law. Moreover, such practice risks weakening military professionalism by drawing active military personnel into the sphere of civilian administration beyond the function of national defense. From the perspective of civilian supremacy, this condition raises concerns regarding regression in security sector reform and the re-normalization of military involvement in civilian governance.

A number of previous studies have examined civil-military relations, the military dual-function doctrine, and the assignment of TNI personnel to civilian positions. However, most of these studies have focused on the regulation of Article 47 of Law Number 34 of 2004 prior to its amendment, or have treated the assignment of TNI personnel to civilian positions as an exceptional policy without comprehensive constitutional scrutiny. These studies have not adequately examined the normative implications of the revision of Article 47 of Law Number 3 of 2025, particularly in relation to the principle of civilian supremacy, normative conflict with the State Civil Apparatus Law, and the consistency of security sector reform after the 1998 Reform. This limitation demonstrates a research gap that requires further examination through more in-depth normative legal analysis.

Based on the foregoing, the revision of Article 47 of Law Number 3 of 2025 cannot be understood merely as an administrative policy within the framework of defense human resource management, but rather as a legal change with structural consequences for civil-military relations within Indonesia’s constitutional system. The expansion of civilian positions available to active TNI personnel raises fundamental questions regarding its conformity with the principle of civilian supremacy, the constitutional limits of the national defense function, and its harmonization with the merit system in the filling of public office. On the other hand, the existence of implementing regulations governing the military’s internal assignment mechanism also gives rise to issues concerning transparency, accountability, and equality before the law.

³ M. A. Kamil et al., ‘Legalitas Anggota TNI Aktif Dalam Rangkap Jabatan Sipil: Studi Terhadap Undang-Undang Nomor 34 Tahun 2004 Tentang Tentara Nasional Indonesia’, *Journal of Legal Research* 4, no. 2 (2022), <https://doi.org/10.15408/jlr.v4i2.21921>.

Accordingly, this study is focused on analyzing the juridical implications of the revision of Article 47 for the principle of civilian supremacy, examining its conformity with the constitutional mandate of the TNI as an instrument of national defense, and assessing its synchronization with the merit system under the State Civil Apparatus Law. In this regard, this study is expected to provide conceptual and normative contributions to ensure that any policy expanding the role of active military personnel remains within the framework of the rule of law and the spirit of democratic reform.

METHOD

This study employs normative legal research and is conducted based on library research⁴. The study focuses on binding legal norms embodied in statutory regulations, namely the 1945 Constitution of the Republic of Indonesia, Law Number 34 of 2004 on the Indonesian National Armed Forces as amended by Law Number 3 of 2025, Law Number 20 of 2023 on the State Civil Apparatus, Law Number 30 of 2014 on Government Administration, Minister of Defense Regulation Number 38 of 2016 concerning Procedures and Requirements for Indonesian National Armed Forces Personnel Holding State Civil Apparatus Positions, legal doctrines, and other scholarly literature. The analytical method developed for this assessment examines conformity with several principal constitutional principles, namely civilian supremacy, military professionalism, good governance, and checks and balances.

RESULTS AND DISCUSSION

Juridical Analysis of Amendments in the Revision of Article 47 of the TNI Law

The revision of Law Number 3 of 2025 concerning amendments to Law Number 34 of 2004 on the Indonesian National Armed Forces introduced changes to the regulation governing the placement of active military personnel in civilian positions. The principal amendment lies in Article 47, which regulates the number of institutions in which active military personnel may serve, increasing from ten institutions to fourteen institutions.

Under the previous Article 47 of Law Number 34 of 2004, paragraph (1) stipulated that “Military personnel may only hold civilian positions after resigning or retiring from active military service,” while paragraph (2) provided that “Active military personnel may hold positions in offices responsible for coordinating political and national security affairs, national defense, the President’s Military Secretariat, state intelligence, state cryptography, the National Resilience Institute, the National Defense Council, National Search and Rescue (SAR), the National Narcotics Agency, and the Supreme Court”.

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⁴ S. H. Masidin, *Penelitian Hukum Normatif: Analisis Putusan Hakim* (Kencana, 2023), <https://books.google.com/books?id=qDDZEAAAQBAJ>.

No	Law Number 34 of 2004	Law Number 3 of 2025
1	Coordinating Ministry for Political and Security Affairs	Coordinating Ministry for Political and Security Affairs
2	Ministry of Defense	Ministry of Defense (including the National Defense Council)
3	President's Military Secretariat	State Secretariat responsible for Presidential Secretariat Affairs and the President's Military Secretariat
4	State Intelligence	State Intelligence
5	State Cryptography	Cyber and/or State Cryptography
6	National Resilience Institute	National Resilience Institute
7	National Defense Council	Incorporated into the Ministry of Defense
8	National Search and Rescue (SAR)	Search and Rescue (SAR)
9	National Narcotics Agency	National Narcotics
10	Supreme Court	Supreme Court
11	-	National Border Management Agency
12	-	National Disaster Management Agency
13	-	National Counterterrorism Agency
14	-	Indonesian Maritime Security Agency
	-	Attorney General's Office of the Republic of Indonesia

Table 1.1 Comparison of the Normative Provisions of Article 47 of Law Number 34 of 2004 and Law Number 3 of 2025

Based on the comparison of norms, the amendment to Article 47 is not merely quantitative in the sense of increasing the number of institutions from ten to fourteen, but also demonstrates that the expanded scope creates exceptions to the general principle that active military personnel should not hold civilian positions. Under the previous norm, this was structured through a general prohibition in paragraph (1), which was subsequently limited through exceptions set out restrictively in paragraph (2). This structure emphasized that the appointment of active military personnel to civilian positions constituted a restrictive exception.

Normatively, this amendment broadens the interpretation of the scope of participation of active military personnel within civilian governmental structures. Although it does not abolish the principle of limitation, the expanded scope of ministries and agencies indicates a functional expansion that requires further examination within the framework of the constitutional mandate of the TNI as an instrument of the state in the field of defense. This expansion of norms also demands further scrutiny within the relationship between defense functions and civilian governmental administration. Within Indonesia's constitutional system, the Indonesian National Armed Forces is constitutionally positioned as an instrument of the state in the field of defense, as affirmed in Article 30 paragraph (3) of the 1945 Constitution. This constitutional norm not only determines the principal duties of the TNI, but also limits the scope of its participation within governmental structures.

The change in the construction of Article 47 from a prohibition-based limitation model toward a model more focused on institutional enumeration essentially broadens interpretive space regarding civilian positions that may be occupied by active military personnel. However, such expansion cannot be separated from the functional parameters formulated under Article 7 of the TNI Law concerning Military Operations for War and Military Operations Other Than War. These parameters constitute the conceptual boundary between defense functions and civilian governmental functions.

In this context, the appointment of Brigadier General TNI Andi Chandra As'aduddin as Acting Regent of West Seram in 2022 constitutes a concrete example of how such functional boundaries are tested in constitutional practice⁵. At the time of appointment, he remained an active military officer holding a structural position within state intelligence. Although security stability has often been invoked as a justificatory argument, the office of Acting Regent is, by its nature, an administrative-civilian office exercising regional governmental functions rather than defense functions as contemplated under Article 7 of the TNI Law.

⁵ Fiqri Maulana Nuzulianto and Ilham Saputra Sukalumba, 'Analisis Dampak UU TNI 2025 Terhadap Potensi Terbentuknya Junta Militer', *Jurnal Studi Ilmu Sosial Dan Politik*, ahead of print, 5 June 2025, <https://doi.org/10.35912/jasispol.v5i1.4481>.

Thus, the case demonstrates that the central issue is not merely whether such assignment is permissible, but rather the extent to which the functional relevance of such civilian positions can be justified within the constitutional mandate of the TNI as an instrument of the state in the field of defense. It is in this regard that a systematic reading of Article 47 and Article 7 becomes crucial to maintaining the boundary between administrative expansion and the principle of civilian supremacy. For this reason, it is essential to refer to the revision of Article 7 of Law Number 3 of 2025 amending Law Number 34 of 2004 on the Indonesian National Armed Forces, which regulates the principal duties of the TNI. Within Indonesia's national defense framework, the TNI is entrusted with the duties of upholding state sovereignty, defending territorial integrity, and protecting the entire nation. On the one hand, Article 7 distinguishes two forms of operation, namely Military Operations for War (Operasi Militer untuk Perang/OMP), which constitute the classical military function as an instrument of state power to defend sovereignty and territorial integrity against foreign aggression⁶. However, in line with shifts in the global security paradigm, the role of the TNI also encompasses Military Operations Other Than War (Operasi Militer Selain Perang/OMSP), consisting of sixteen assistance functions. Such OMSP constitutes a manifestation of the Total People's Defense and Security System (Sistem Pertahanan Keamanan Rakyat Semesta/Sishankamrata), in which the TNI is positioned as a driving force in addressing non-traditional threats, including terrorism, natural disasters, and cyber defense threats.

No	Article 7 of Law Number 34 of 2004	Article 7 of Law Number 3 of 2025*
1	Addressing armed separatist movements	Addressing armed separatist movements
2	Addressing armed rebellions	Addressing armed rebellions
3	Addressing acts of terrorism	Addressing acts of terrorism
4	Securing border areas	Securing border areas
5	Securing strategic national vital objects	Securing strategic national vital objects
6	Carrying out world peace missions in accordance with foreign policy	Carrying out world peace missions in accordance with foreign policy
7	Securing the President and Vice President and their families	Securing the President and Vice President and their families
8	Empowering defense regions and supporting forces at an early stage in accordance with the total defense system	Empowering defense regions and supporting forces at an early stage in accordance with the total defense system
9	Assisting governmental duties in the regions	Assisting governmental duties in the regions
10	Assisting the Indonesian National Police in maintaining public security and order as regulated by law	Assisting the Indonesian National Police in maintaining public security and order as regulated by law
11	Assisting in securing visiting heads of state and foreign government representatives in Indonesia	Assisting in securing visiting heads of state and foreign government representatives in Indonesia
12	Assisting in disaster relief, displacement management, and humanitarian assistance	Assisting in disaster relief, displacement management, and humanitarian assistance
13	Assisting search and rescue operations in accidents	Assisting search and rescue operations in accidents
14	Assisting the government in safeguarding shipping and aviation against hijacking, piracy, and smuggling	Assisting the government in safeguarding shipping and aviation against hijacking, piracy, and smuggling
15	-	Assisting efforts to address cyber defense threats
16	-	Assisting in protecting and rescuing citizens and national interests abroad

Table 1.2 Comparison of the Normative Provisions of Article 7 of Law Number 34 of 2004 and Law Number 3 of 2025

Philosophically, Military Operations Other Than War (OMSP) are situated within the framework of assistance functions intended to support civilian authority during times of crisis or under conditions in which military competence is required in the national interest. It is important to note that, pursuant to Article 7 paragraphs (3) and

⁶ Ikhwan Syahdi and Sujono, 'Kajian Yuridis Peran Tentara Nasional Indonesia (TNI) Dalam Operasi Militer Selain Perang (OMSP) Terkait Penanggulangan Tindak Pidana Terorisme', *Indonesian Journal of Multidisciplinary Sciences (IJoMS)*, ahead of print, 31 December 2024, <https://doi.org/10.59066/ijoms.v3i2.1039>.

(4), all deployments of force, whether in the context of war or non-war operations, must constitutionally remain subject to the political policies and decisions of the state⁷. This means that TNI involvement beyond combat functions should not be autonomous or permanent in nature, but rather constitute a functional response limited to the state's strategic exigencies. Therefore, positioning the TNI within OMSP functions does not constitute a license for unlimited expansion of its role, but rather a specific assignment that must remain within the framework of civilian supremacy.

The revision of Article 47 of Law Number 3 of 2025, which expands the placement of active military personnel to fourteen institutions, may be analyzed from two distinct yet complementary perspectives. From the perspective of strategic necessity, this policy is viewed as an effort by the state to integrate military managerial competence into institutions closely related to national stability. Placement in institutions such as the National Counterterrorism Agency (BNPT), the National Disaster Management Agency (BNPB), or the National Cyber and Crypto Agency (BSSN) is considered consistent with the mandate of Military Operations Other Than War (OMSP) under Article 7, given that these institutions require personnel possessing operational agility and a high degree of discipline in responding to crises. In this context, TNI involvement is regarded as an optimization of state human resources to strengthen national resilience in sectors vulnerable to disruption⁸.

The placement of active military personnel in the National Counterterrorism Agency (BNPT) may be directly linked to the OMSP mandate in addressing acts of terrorism. Although under the previous law the TNI functioned in support of the Indonesian National Police, the dynamics of modern terrorism threats, which are asymmetric and transnational in nature, provide an argumentative basis for the legislature to expand the military's coordinating role within the institution. From a policy perspective, the presence of active military personnel is considered capable of strengthening the integration of intelligence capacity, special operations, and national counterterrorism strategy. However, from an administrative perspective, challenges arise in the form of potential overlap of authority between the TNI and the Indonesian National Police, as well as issues concerning command structure and accountability where active military personnel remain within the military chain of command.

Placement in the National Disaster Management Agency (BNPB) has a relatively strong normative basis within OMSP, as disaster management and humanitarian assistance are explicitly included within the TNI's non-war functions. From the perspective of policymakers, empirical experience demonstrates that the TNI possesses rapid mobilization capacity, large-scale logistical capabilities, and a structured command system effective in crisis situations. Nevertheless, from an administrative perspective, challenges may arise from differences in organizational culture between civilian bureaucracy and the military, particularly with respect to participatory decision-making and administrative accountability grounded in the merit system.

Placement in the National Cyber and Crypto Agency (BSSN) may be analyzed within the framework of expanding the spectrum of defense threats into the cyber domain. If Military Operations Other Than War (OMSP) are understood to encompass non-conventional threats and hybrid warfare, then cyber defense may be positioned as part of national resilience. From the legislature's perspective, the integration of active military personnel into BSSN may be viewed as a response to the escalation of digital threats against the state's strategic infrastructure. The administrative challenge lies in the need for specialized technical competencies distinct from conventional military competencies, as well as the need for harmonization with a civilian personnel system based on open selection.

Placement in the National Narcotics Agency (BNN) has a more indirect relationship to OMSP. Narcotics threats are often positioned as threats to national resilience and social stability, particularly when involving transnational networks. From a policy perspective, the legislature may regard military support as part of a comprehensive security strategy. However, administratively and constitutionally, the challenge lies in defining the boundary between defense functions and law enforcement functions, which have traditionally fallen within the domain of the Indonesian National Police and civilian authorities.

Placement in the National Border Management Agency (BNPP) may be linked to OMSP insofar as it encompasses border security. As an archipelagic state with extensive land and maritime borders, Indonesia faces complex territorial security challenges. From a policy perspective, the integration of active military personnel into border management may be viewed as strengthening coordination between defense and territorial administration. The administrative challenge lies in distinguishing between security functions and territorial governance functions.

⁷ Shinjiro Yabuki, 'PROFESSIONALISM OF THE INDONESIAN ARMED FORCES: NEW, OLD, OR HYBRID PROFESSIONALISM?', *JWP (Jurnal Wacana Politik)* 9, no. 2 (2024): 169, <https://doi.org/10.24198/jwp.v9i2.53960>.

⁸ Resma Bintani Gustaliza et al., 'TNI Bill and Regional Autonomy: Implications for Central-Regional Relations in Security Management', *Journal of Politica Governo* 2, no. 2 (2025): 1–10, <https://doi.org/10.62872/5fksge09>.

Placement in the Indonesian Maritime Security Agency (Bakamla) also correlates with OMSP, particularly in securing maritime areas and preventing violations of maritime sovereignty. From the legislature's perspective, the presence of active military personnel may strengthen operational maritime surveillance capacity. However, administratively, there is potential for overlapping authority between Bakamla, the Indonesian Navy, and other maritime institutions, requiring clearer functional delineation. Overall, the addition of institutions under Law Number 3 of 2025 may be understood as a response to the expansion of the concept of national security, which is no longer confined to conventional military threats. However, substantive relevance to Military Operations Other Than War (OMSP) does not automatically eliminate the need for normative and administrative limitations. The principal challenge lies in harmonizing strategic security needs with the principles of civilian supremacy, military professionalism, and the merit system in governmental administration. Without clear limitations regarding positions, selection mechanisms, and accountability during the period of assignment, such expansion risks generating tension within the state administrative system.

Substantive Implications of the Revision of Article 47 of the TNI Law

The revision of Article 47 of Law Number 3 of 2025 concerning Amendments to Law Number 34 of 2004 on the Indonesian National Armed Forces constitutes a crucial legal change with significant implications for Indonesia's constitutional structure, particularly civil-military relations. This revision opens broader opportunities for active military personnel to occupy civilian positions in state institutions beyond the ten institutions previously regulated under Law Number 34 of 2004. From the perspective of constitutional law, any statutory revision must be examined comprehensively, not only in terms of policy considerations and legislative politics, but also in terms of its formal and substantive juridical validity and its conformity with legal theory and constitutional principles.

From a formal perspective, the revision falls within the authority of the legislature as provided under Article 20 of the 1945 Constitution of the Republic of Indonesia and reaffirmed in Law Number 13 of 2022. Within this framework, a normative amendment may be considered valid insofar as it complies with the prescribed legislative procedures, including the principles of openness and public participation⁹. However, formal validity does not automatically resolve the question of its substantive conformity with higher norms in the hierarchy of laws and regulations. Referring to Hans Kelsen's Stufenbau theory, every legal norm derives its validity from a higher norm¹⁰. Accordingly, the expansion of active military personnel placements must remain consistent with Article 30 paragraph (3) of the 1945 Constitution, which positions the Indonesian National Armed Forces as an instrument of the state in the field of defense. This constitutional provision embodies a principle of functional limitation, namely that the role of the TNI is, in principle, confined to the domain of national defense.

In the context of civil-military relations, several constitutional theories provide an analytical framework for understanding this dynamic. Samuel P. Huntington's concept of objective civilian control emphasizes that military professionalism is preserved when the military remains under objective civilian authority and does not directly engage in political administration or civilian bureaucracy¹¹. Similarly, Peter Feaver's agency theory views the military as an agent implementing the mandate of civilian authority, such that the ideal relationship is hierarchical yet controlled¹². From the perspective of the rule of law, A.V. Dicey emphasizes the importance of the supremacy of law and equality before the law. These theoretical approaches do not automatically reject the expansion of military roles, but rather situate such expansion within a framework of clear oversight and limitation so as not to obscure the line of demarcation between defense functions and civilian administrative functions. Materially, the change in the construction of Article 47 from a prohibition-based limitation model toward a model of institutional enumeration reflects a shift in normative emphasis. Whereas the previous norm was structured through a general prohibition limited by restrictive exceptions, the revised formulation incorporates those exceptions directly into a list of permitted institutions. Although the exceptions remain limitative in nature, this change in structure broadens

⁹ Vina Rohmatul Ummah, 'Politik Hukum Pembentukan Undang-Undang Nomor 13 Tahun 2022 Tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan', *Staatsrecht Jurnal Hukum Kenegaraan Dan Politik Islam* 2, no. 2 (2022), <https://doi.org/10.14421/staatsrecht.v2i2.2813>.

¹⁰ FX Adji Samekto, 'MENELUSURI AKAR PEMIKIRAN HANS KELSEN TENTANG STUFENBEAUTHEORIE DALAM PENDEKATAN NORMATIF-FILOSOFIS', *Jurnal Hukum Progresif* 7, no. 1 (2019): 1–11, <https://doi.org/10.14710/hp.7.1.1-19>.

¹¹ Risa Brooks and Sharan Grewal, "'Twice the Citizen': How Military Attitudes of Superiority Undermine Civilian Control in the United States', *Journal of Conflict Resolution* 66 (March 2022): 623–50, <https://doi.org/10.1177/00220027211065417>.

¹² David Pion-Berlin and Danijela Dudley, 'Civil-Military Relations: What Is the State of the Field', in *Springer eBooks* (Springer Nature, 2020), https://doi.org/10.1007/978-3-030-02866-4_37-1.

interpretive space regarding civilian positions that may be occupied by active military personnel. From the perspective of constitutional law, this expansion must be read systematically with Article 7 of the TNI Law, which distinguishes Military Operations for War and Military Operations Other Than War (OMSP), so that the functional boundary between defense duties and civilian administration remains preserved.

The constitutional issue that emerges is not merely whether active military personnel may hold civilian positions, but rather the mechanism through which such positions are filled. To date, the technical mechanism for assigning active military personnel outside the TNI structure still refers to Minister of Defense Regulation Number 38 of 2016 and TNI Commander Regulation Number 61 of 2018, which adopt an internal assignment paradigm based on military career development. This model differs from the position-filling regime under Law Number 20 of 2023, which prioritizes a merit system and open selection for Senior Leadership Positions. This divergence has generated discourse regarding harmonization between legal regimes, particularly where active military personnel occupy positions that, by their nature, constitute administrative-civilian offices.

It must be emphasized that the issue in the context of the revision of Article 47 does not lie in the existence of the internal assignment mechanism itself. Within the framework of national defense, internal assignment constitutes an inherent component of the military career development system, which is based on command structure and the strategic needs of the organization. Such a mechanism remains relevant when applied to positions that are functionally and directly related to defense and national security duties as formulated under Military Operations Other Than War (OMSP). In this context, internal assignment may be understood as an extension of defense functions within certain institutional structures.

The constitutional issue begins to arise when the internal assignment mechanism is used to fill positions that are administrative-civilian in character and fall within the management regime of the State Civil Apparatus. Positions that are normatively subject to the principles of the merit system and open selection require appointment mechanisms based on competition, transparency, and objective evaluation of qualifications. When two position-filling regimes, namely military internal assignment and open selection under the State Civil Apparatus system, operate within the same category of positions, potential normative tension emerges from the perspective of constitutional law.

Such differences in mechanisms do not automatically conflict with the Constitution. However, within the framework of Article 28D paragraph (3) of the 1945 Constitution, any difference in treatment concerning access to public office must have an objective, rational, and proportionate basis. Accordingly, the relevant inquiry is not to oppose the merit system and internal assignment as separate concepts, but rather to assess their functional boundaries. Internal assignment remains constitutional insofar as the positions concerned have direct relevance to the defense mandate. Conversely, where such positions are purely administrative-civilian in nature and lack substantive connection to defense functions, harmonization with the principles of the merit system becomes necessary to preserve consistency with the rule of law and civilian supremacy.

From a constitutional perspective, Article 28D paragraph (3) of the 1945 Constitution guarantees every citizen the right to equal opportunity in government¹³. This principle of equality constitutes an important parameter in assessing the design of public office appointments. Nevertheless, it must also be recognized that the TNI is an institution with distinct characteristics operating within the legal regime of national defense, such that not all principles governing civilian personnel can be applied identically. Accordingly, the relevant issue in constitutional law is not to frame the merit system and internal assignment as dichotomous opposites, but rather to assess the extent to which the expanded scope of placements under Article 47 remains within the framework of civilian supremacy and the constitutional limitation of defense functions.

In this context, the revision of Article 47 may be understood as a formally valid legislative policy which, materially, requires further harmonization at the implementation level. The expansion in the number of institutions without reconstruction of position-filling mechanisms may generate normative tension between the defense regime and the civilian administrative regime. Therefore, adjustment of implementing regulations is necessary to ensure that the placement of active military personnel remains limited to positions having functional relevance to the defense mandate and is carried out within a framework of public accountability. Under this approach, the expansion of Article 47 is not positioned as a form of unlimited expansion, but rather as a policy that must continue to be tested for conformity with the principles of the rule of law, civilian supremacy, and the balance of power within Indonesia's constitutional system.

¹³ Tanti Kirana Utami, 'THE POSITION FILLING OF PRATAMA HIGH LEADERSHIP IN CIANJUR REGENCY UNDER GOOD GOVERNANCE CONCEPT', *Jurnal Dinamika Hukum* 17, no. 2 (2017): 129–129, <https://doi.org/10.20884/1.jdh.2017.17.2.726>.

CONCLUSION

Based on normative legal analysis, the revision of Article 47 of Law Number 3 of 2025 is formally valid because it was enacted pursuant to the constitutional authority of the legislature. However, materially, the expansion of active TNI personnel placements into fourteen civilian institutions carries implications for the design of civil-military relations within Indonesia's constitutional system. The shift from a limitation-based framework toward institutional enumeration broadens interpretive space regarding civilian positions that may be occupied by active military personnel, thereby requiring interpretation consistent with Article 30 paragraph (3) of the 1945 Constitution, which affirms the TNI as an instrument of the state in the field of defense.

From the perspective of civilian supremacy and objective civilian control, this expansion is not merely a question of legality, but one of balance of power. Without position-filling mechanisms that ensure accountability and equality as provided under Article 28D paragraph (3) of the 1945 Constitution, this policy risks blurring the functional boundary between defense and civilian administration. Therefore, harmonization between the defense regime and the civilian administrative regime, clarification of the functional relevance of positions, and strengthening civilian control constitute prerequisites to ensure that its implementation remains within the framework of a democratic rule-of-law state.

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JURIDICAL IMPLICATIONS OF THE REVISION OF ARTICLE 47 OF THE TNI LAW ON CIVILIAN SUPREMACY IN INDONESIA

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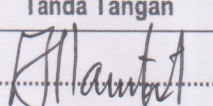
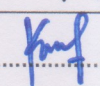
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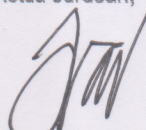
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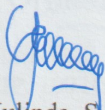
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JURIDICAL IMPLICATIONS OF THE REVISION OF ARTICLE 47 OF THE TNI LAW ON CIVILIAN SUPREMACY IN INDONESIA

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Abstract

The revision of Article 47 of Law Number 3 of 2025 concerning Amendments to Law Number 34 of 2004 on the Indonesian National Armed Forces (Tentara Nasional Indonesia/TNI) has generated debate within Indonesia's constitutional system, particularly regarding the appointment of active TNI personnel to civilian positions. The expansion of such assignments raises questions concerning its consistency with the principles of civilian supremacy, military professionalism, and the merit system under Law Number 20 of 2023 on the State Civil Apparatus. This study aims to analyze the juridical implications of the revision of Article 47 from the perspective of constitutional law and to examine its conformity with the constitutional principles of the rule of law and post-1998 security sector reform. This study employs normative legal research using statutory, conceptual, and historical approaches through an analysis of primary and secondary legal materials. The findings indicate that, formally, the revision is valid as a legislative product; however, materially, it gives rise to potential normative tensions with the principles of civilian supremacy and the merit-based bureaucratic system. Therefore, more comprehensive implementing regulations and harmonization with civil service regulations are necessary to ensure that the appointment of active military personnel to civilian positions remains within the framework of the rule of law and constitutional democracy.

Keywords: Civilian Supremacy, Military Professionalism, Revision of the TNI Law, Civilian Positions.

INTRODUCTION

Indonesia's constitutional history is inseparable from the crucial role of the military in political and governmental dynamics. For more than three decades under the New Order regime, the Armed Forces of the Republic of Indonesia implemented the dual-function doctrine, which not only dominated politics but also weakened democratic principles and the rule of law. With its hierarchical command structure, the military at that time penetrated the sphere of public policy and displaced governmental functions¹.

The 1998 Reform marked an important turning point in efforts to build civilian supremacy and uphold military professionalism. One of its principal agendas was the restructuring of civil-military relations through the abolition of the dual-function doctrine of the Armed Forces of the Republic of Indonesia. This mandate was subsequently institutionalized through a series of laws as a new constitutional foundation, namely People's Consultative Assembly Decree Number VI/MPR/2000 concerning the separation of the Indonesian National Armed Forces and the Indonesian National Police, as well as People's Consultative Assembly Decree Number VII/MPR/2000, which clearly defined the role of the TNI as an

¹ Aditya Batara Gunawan, 'Kontrol Sipil Atas Militer Dan Kebijakan Pertahanan Di Indonesia Pasca Orde Baru', *Jurnal Politik* 2, no. 2 (2017): 197–197, <https://doi.org/10.7454/jp.v2i2.117>.

instrument of national defense, with TNI personnel subject to military courts for violations of military law and general courts for violations of ordinary law².

Accordingly, Law Number 34 of 2004 on the Indonesian National Armed Forces was enacted as an antithesis to the dual-function era. This law was intended to establish a more professional TNI while affirming the prohibition against active military personnel engaging in practical politics, conducting business, or holding civilian positions, except under very limited circumstances or after retirement. Thus, the law became a legal safeguard limiting the role of the TNI solely to the function of national defense under the control of a legitimate and democratic civilian government.

After more than two decades serving as the foundation of security sector reform, the commitment to returning the military to the barracks and refocusing its role on national defense now faces serious challenges. Law Number 34 of 2004 has been amended through the enactment of Law Number 3 of 2025 concerning Amendments to Law Number 34 of 2004 on the Indonesian National Armed Forces, which was recently passed in a plenary session of the House of Representatives and approved by President Prabowo Subianto on 26 March 2025. Although this revision covers several provisions, the principal focus has been on Article 47, which expands civilian positions available to military personnel.

Under Article 47 of Law Number 34 of 2004, paragraph (1) stipulates that “Military personnel may only hold civilian positions after resigning or retiring from active military service,” while paragraph (2) provides that “Active military personnel may hold positions in offices responsible for coordinating political and national security affairs, national defense, the President’s Military Secretariat, state intelligence, state cryptography, the National Resilience Institute, the National Defense Council, National Search and Rescue (SAR), the National Narcotics Agency, and the Supreme Court”.

Meanwhile, under Law Number 3 of 2025, Article 47 paragraph (1) was amended to provide that “Military personnel may hold positions in ministries/agencies responsible for coordinating political and national security affairs, national defense including the National Defense Council, state secretariat affairs handling presidential secretariat and the President’s Military Secretariat, state intelligence, cyber and/or state cryptography, the National Resilience Institute, search and rescue, national narcotics, border management, disaster management, counterterrorism, maritime security, the Attorney General’s Office of the Republic of Indonesia, and the Supreme Court”.

This amendment has generated controversy because it is considered to potentially weaken the principle of civilian supremacy, which constitutes a central pillar of the democratic system. From the perspective of constitutional law, the relaxation of boundaries between military and civilian functions risks reviving the dual-function doctrine of the Armed Forces of the Republic of Indonesia in disguised form and threatens the military professionalism developed over two decades of reform³. In addition, this revision raises concerns regarding the potential remilitarization of bureaucracy, inefficiencies in civilian governance, and the disruption of checks and balances within the constitutional system.

Normatively, the appointment of active TNI personnel to civilian positions without open selection mechanisms and a merit system, as regulated under Law Number 20 of 2023 on the State Civil Apparatus, has the potential to create normative conflict and violate the principle of equality before the law. Moreover, such practice risks weakening military professionalism by drawing active military personnel into the sphere

² Muradi Muradi, ‘Professionalism in the Post Soeharto Indonesian Military’, *Journal of Politics and Law* 10, no. 5 (2017): 124–124, <https://doi.org/10.5539/jpl.v10n5p124>.

³ M. A. Kamil et al., ‘Legalitas Anggota TNI Aktif Dalam Rangkap Jabatan Sipil: Studi Terhadap Undang-Undang Nomor 34 Tahun 2004 Tentang Tentara Nasional Indonesia’, *Journal of Legal Research* 4, no. 2 (2022), <https://doi.org/10.15408/jlr.v4i2.21921>.

of civilian administration beyond the function of national defense. From the perspective of civilian supremacy, this condition raises concerns regarding regression in security sector reform and the re-normalization of military involvement in civilian governance.

A number of previous studies have examined civil-military relations, the military dual-function doctrine, and the assignment of TNI personnel to civilian positions. However, most of these studies have focused on the regulation of Article 47 of Law Number 34 of 2004 prior to its amendment, or have treated the assignment of TNI personnel to civilian positions as an exceptional policy without comprehensive constitutional scrutiny. These studies have not adequately examined the normative implications of the revision of Article 47 of Law Number 3 of 2025, particularly in relation to the principle of civilian supremacy, normative conflict with the State Civil Apparatus Law, and the consistency of security sector reform after the 1998 Reform. This limitation demonstrates a research gap that requires further examination through more in-depth normative legal analysis.

Based on the foregoing, the revision of Article 47 of Law Number 3 of 2025 cannot be understood merely as an administrative policy within the framework of defense human resource management, but rather as a legal change with structural consequences for civil-military relations within Indonesia's constitutional system. The expansion of civilian positions available to active TNI personnel raises fundamental questions regarding its conformity with the principle of civilian supremacy, the constitutional limits of the national defense function, and its harmonization with the merit system in the filling of public office. On the other hand, the existence of implementing regulations governing the military's internal assignment mechanism also gives rise to issues concerning transparency, accountability, and equality before the law.

Accordingly, this study is focused on analyzing the juridical implications of the revision of Article 47 for the principle of civilian supremacy, examining its conformity with the constitutional mandate of the TNI as an instrument of national defense, and assessing its synchronization with the merit system under the State Civil Apparatus Law. In this regard, this study is expected to provide conceptual and normative contributions to ensure that any policy expanding the role of active military personnel remains within the framework of the rule of law and the spirit of democratic reform.

METHOD

This study employs normative legal research and is conducted based on library research⁴. The study focuses on binding legal norms embodied in statutory regulations, namely the 1945 Constitution of the Republic of Indonesia, Law Number 34 of 2004 on the Indonesian National Armed Forces as amended by Law Number 3 of 2025, Law Number 20 of 2023 on the State Civil Apparatus, Law Number 30 of 2014 on Government Administration, Minister of Defense Regulation Number 38 of 2016 concerning Procedures and Requirements for Indonesian National Armed Forces Personnel Holding State Civil Apparatus Positions, legal doctrines, and other scholarly literature. The analytical method developed for this assessment examines conformity with several principal constitutional principles, namely civilian supremacy, military professionalism, good governance, and checks and balances.

RESULTS AND DISCUSSION

Juridical Analysis of Amendments in the Revision of Article 47 of the TNI Law

⁴ S. H. Masidin, *Penelitian Hukum Normatif: Analisis Putusan Hakim* (Kencana, 2023), <https://books.google.com/books?id=qDDZEAAAQBAJ>.

The revision of Law Number 3 of 2025 concerning amendments to Law Number 34 of 2004 on the Indonesian National Armed Forces introduced changes to the regulation governing the placement of active military personnel in civilian positions. The principal amendment lies in Article 47, which regulates the number of institutions in which active military personnel may serve, increasing from ten institutions to fourteen institutions.

Under the previous Article 47 of Law Number 34 of 2004, paragraph (1) stipulated that “Military personnel may only hold civilian positions after resigning or retiring from active military service,” while paragraph (2) provided that “Active military personnel may hold positions in offices responsible for coordinating political and national security affairs, national defense, the President’s Military Secretariat, state intelligence, state cryptography, the National Resilience Institute, the National Defense Council, National Search and Rescue (SAR), the National Narcotics Agency, and the Supreme Court”.

Meanwhile, under Law Number 3 of 2025, Article 47 paragraph (1) was amended to provide that “Military personnel may hold positions in ministries/agencies responsible for coordinating political and national security affairs, national defense including the National Defense Council, state secretariat affairs handling presidential secretariat and the President’s Military Secretariat, state intelligence, cyber and/or state cryptography, the National Resilience Institute, search and rescue, national narcotics, border management, disaster management, counterterrorism, maritime security, the Attorney General’s Office of the Republic of Indonesia, and the Supreme Court”.

No	Law Number 34 of 2004	Law Number 3 of 2025
1	Coordinating Ministry for Political and Security Affairs	Coordinating Ministry for Political and Security Affairs
2	Ministry of Defense	Ministry of Defense (including the National Defense Council)
3	President’s Military Secretariat	State Secretariat responsible for Presidential Secretariat Affairs and the President’s Military Secretariat
4	State Intelligence	State Intelligence
5	State Cryptography	Cyber and/or State Cryptography
6	National Resilience Institute	National Resilience Institute
7	National Defense Council	Incorporated into the Ministry of Defense
8	National Search and Rescue (SAR)	Search and Rescue (SAR)
9	National Narcotics Agency	National Narcotics
10	Supreme Court	Supreme Court
11	-	National Border Management Agency
12	-	National Disaster Management Agency
13	-	National Counterterrorism Agency
14	-	Indonesian Maritime Security Agency

-	Attorney General's Office of the Republic of Indonesia
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Table 1.1 Comparison of the Normative Provisions of Article 47 of Law Number 34 of 2004 and Law Number 3 of 2025

Based on the comparison of norms, the amendment to Article 47 is not merely quantitative in the sense of increasing the number of institutions from ten to fourteen, but also demonstrates that the expanded scope creates exceptions to the general principle that active military personnel should not hold civilian positions. Under the previous norm, this was structured through a general prohibition in paragraph (1), which was subsequently limited through exceptions set out restrictively in paragraph (2). This structure emphasized that the appointment of active military personnel to civilian positions constituted a restrictive exception.

Normatively, this amendment broadens the interpretation of the scope of participation of active military personnel within civilian governmental structures. Although it does not abolish the principle of limitation, the expanded scope of ministries and agencies indicates a functional expansion that requires further examination within the framework of the constitutional mandate of the TNI as an instrument of the state in the field of defense. This expansion of norms also demands further scrutiny within the relationship between defense functions and civilian governmental administration. Within Indonesia's constitutional system, the Indonesian National Armed Forces is constitutionally positioned as an instrument of the state in the field of defense, as affirmed in Article 30 paragraph (3) of the 1945 Constitution. This constitutional norm not only determines the principal duties of the TNI, but also limits the scope of its participation within governmental structures.

The change in the construction of Article 47 from a prohibition-based limitation model toward a model more focused on institutional enumeration essentially broadens interpretive space regarding civilian positions that may be occupied by active military personnel. However, such expansion cannot be separated from the functional parameters formulated under Article 7 of the TNI Law concerning Military Operations for War and Military Operations Other Than War. These parameters constitute the conceptual boundary between defense functions and civilian governmental functions.

In this context, the appointment of Brigadier General TNI Andi Chandra As'aduddin as Acting Regent of West Seram in 2022 constitutes a concrete example of how such functional boundaries are tested in constitutional practice⁵. At the time of appointment, he remained an active military officer holding a structural position within state intelligence. Although security stability has often been invoked as a justificatory argument, the office of Acting Regent is, by its nature, an administrative-civilian office exercising regional governmental functions rather than defense functions as contemplated under Article 7 of the TNI Law.

Thus, the case demonstrates that the central issue is not merely whether such assignment is permissible, but rather the extent to which the functional relevance of such civilian positions can be justified within the constitutional mandate of the TNI as an instrument of the state in the field of defense. It is in this regard that a systematic reading of Article 47 and Article 7 becomes crucial to maintaining the boundary between administrative expansion and the principle of civilian supremacy.

⁵ Fiqri Maulana Nuzulianto and Ilham Saputra Sukalumba, 'Analisis Dampak UU TNI 2025 Terhadap Potensi Terbentuknya Junta Militer', *Jurnal Studi Ilmu Sosial Dan Politik*, ahead of print, 5 June 2025, <https://doi.org/10.35912/jasipol.v5i1.4481>.

For this reason, it is essential to refer to the revision of Article 7 of Law Number 3 of 2025 amending Law Number 34 of 2004 on the Indonesian National Armed Forces, which regulates the principal duties of the TNI. Within Indonesia's national defense framework, the TNI is entrusted with the duties of upholding state sovereignty, defending territorial integrity, and protecting the entire nation. On the one hand, Article 7 distinguishes two forms of operation, namely Military Operations for War (Operasi Militer untuk Perang/OMP), which constitute the classical military function as an instrument of state power to defend sovereignty and territorial integrity against foreign aggression⁶. However, in line with shifts in the global security paradigm, the role of the TNI also encompasses Military Operations Other Than War (Operasi Militer Selain Perang/OMSP), consisting of sixteen assistance functions. Such OMSP constitutes a manifestation of the Total People's Defense and Security System (Sistem Pertahanan Keamanan Rakyat Semesta/Sishankamrata), in which the TNI is positioned as a driving force in addressing non-traditional threats, including terrorism, natural disasters, and cyber defense threats.

No	Article 7 of Law Number 34 of 2004	Article 7 of Law Number 3 of 2025*
1	Addressing armed separatist movements	Addressing armed separatist movements
2	Addressing armed rebellions	Addressing armed rebellions
3	Addressing acts of terrorism	Addressing acts of terrorism
4	Securing border areas	Securing border areas
5	Securing strategic national vital objects	Securing strategic national vital objects
6	Carrying out world peace missions in accordance with foreign policy	Carrying out world peace missions in accordance with foreign policy
7	Securing the President and Vice President and their families	Securing the President and Vice President and their families
8	Empowering defense regions and supporting forces at an early stage in accordance with the total defense system	Empowering defense regions and supporting forces at an early stage in accordance with the total defense system
9	Assisting governmental duties in the regions	Assisting governmental duties in the regions
10	Assisting the Indonesian National Police in maintaining public security and order as regulated by law	Assisting the Indonesian National Police in maintaining public security and order as regulated by law
11	Assisting in securing visiting heads of state and foreign government representatives in Indonesia	Assisting in securing visiting heads of state and foreign government representatives in Indonesia

⁶ Ikhwan Syahdi and Sujono, 'Kajian Yuridis Peran Tentara Nasional Indonesia (TNI) Dalam Operasi Militer Selain Perang (OMSP) Terkait Penanggulangan Tindak Pidana Terorisme', *Indonesian Journal of Multidisciplinary Sciences (IJOMS)*, ahead of print, 31 December 2024, <https://doi.org/10.59066/ijoms.v3i2.1039>.

12	Assisting in disaster relief, displacement management, and humanitarian assistance	Assisting in disaster relief, displacement management, and humanitarian assistance
13	Assisting search and rescue operations in accidents	Assisting search and rescue operations in accidents
14	Assisting the government in safeguarding shipping and aviation against hijacking, piracy, and smuggling	Assisting the government in safeguarding shipping and aviation against hijacking, piracy, and smuggling
15	-	Assisting efforts to address cyber defense threats
16	-	Assisting in protecting and rescuing citizens and national interests abroad

Table 1.2 Comparison of the Normative Provisions of Article 7 of Law Number 34 of 2004 and Law Number 3 of 2025

Philosophically, Military Operations Other Than War (OMSP) are situated within the framework of assistance functions intended to support civilian authority during times of crisis or under conditions in which military competence is required in the national interest. It is important to note that, pursuant to Article 7 paragraphs (3) and (4), all deployments of force, whether in the context of war or non-war operations, must constitutionally remain subject to the political policies and decisions of the state⁷. This means that TNI involvement beyond combat functions should not be autonomous or permanent in nature, but rather constitute a functional response limited to the state's strategic exigencies. Therefore, positioning the TNI within OMSP functions does not constitute a license for unlimited expansion of its role, but rather a specific assignment that must remain within the framework of civilian supremacy.

The revision of Article 47 of Law Number 3 of 2025, which expands the placement of active military personnel to fourteen institutions, may be analyzed from two distinct yet complementary perspectives. From the perspective of strategic necessity, this policy is viewed as an effort by the state to integrate military managerial competence into institutions closely related to national stability. Placement in institutions such as the National Counterterrorism Agency (BNPT), the National Disaster Management Agency (BNPB), or the National Cyber and Crypto Agency (BSSN) is considered consistent with the mandate of Military Operations Other Than War (OMSP) under Article 7, given that these institutions require personnel possessing operational agility and a high degree of discipline in responding to crises. In this context, TNI involvement is regarded as an optimization of state human resources to strengthen national resilience in sectors vulnerable to disruption⁸.

The placement of active military personnel in the National Counterterrorism Agency (BNPT) may be directly linked to the OMSP mandate in addressing acts of terrorism. Although under the previous law the TNI functioned in support of the Indonesian National Police, the dynamics of modern terrorism threats,

⁷ Shinjiro Yabuki, 'PROFESSIONALISM OF THE INDONESIAN ARMED FORCES: NEW, OLD, OR HYBRID PROFESSIONALISM?', *JWP (Jurnal Wacana Politik)* 9, no. 2 (2024): 169, <https://doi.org/10.24198/jwp.v9i2.53960>.

⁸ Resma Bintani Gustaliza et al., 'TNI Bill and Regional Autonomy: Implications for Central-Regional Relations in Security Management', *Journal of Politica Governo* 2, no. 2 (2025): 1–10, <https://doi.org/10.62872/5fksge09>.

69 which are asymmetric and transnational in nature, provide an argumentative basis for the legislature to expand the military's coordinating role within the institution. From a policy perspective, the presence of active military personnel is considered capable of strengthening the integration of intelligence capacity, special operations, and national counterterrorism strategy. However, from an administrative perspective, challenges arise in the form of potential overlap of authority between the TNI and the Indonesian National Police, as well as issues concerning command structure and accountability where active military personnel remain within the military chain of command.

Placement in the National Disaster Management Agency (BNPB) has a relatively strong normative basis within OMSP, as disaster management and humanitarian assistance are explicitly included within the TNI's non-war functions. From the perspective of policymakers, empirical experience demonstrates that the TNI possesses rapid mobilization capacity, large-scale logistical capabilities, and a structured command system effective in crisis situations. Nevertheless, from an administrative perspective, challenges may arise from differences in organizational culture between civilian bureaucracy and the military, particularly with respect to participatory decision-making and administrative accountability grounded in the merit system.

Placement in the National Cyber and Crypto Agency (BSSN) may be analyzed within the framework of expanding the spectrum of defense threats into the cyber domain. If Military Operations Other Than War (OMSP) are understood to encompass non-conventional threats and hybrid warfare, then cyber defense may be positioned as part of national resilience. From the legislature's perspective, the integration of active military personnel into BSSN may be viewed as a response to the escalation of digital threats against the state's strategic infrastructure. The administrative challenge lies in the need for specialized technical competencies distinct from conventional military competencies, as well as the need for harmonization with a civilian personnel system based on open selection.

29 Placement in the National Narcotics Agency (BNN) has a more indirect relationship to OMSP. Narcotics threats are often positioned as threats to national resilience and social stability, particularly when involving transnational networks. From a policy perspective, the legislature may regard military support as part of a comprehensive security strategy. However, administratively and constitutionally, the challenge lies in defining the boundary between defense functions and law enforcement functions, which have traditionally fallen within the domain of the Indonesian National Police and civilian authorities.

Placement in the National Border Management Agency (BNPP) may be linked to OMSP insofar as it encompasses border security. As an archipelagic state with extensive land and maritime borders, Indonesia faces complex territorial security challenges. From a policy perspective, the integration of active military personnel into border management may be viewed as strengthening coordination between defense and territorial administration. The administrative challenge lies in distinguishing between security functions and territorial governance functions.

Placement in the Indonesian Maritime Security Agency (Bakamla) also correlates with OMSP, particularly in securing maritime areas and preventing violations of maritime sovereignty. From the legislature's perspective, the presence of active military personnel may strengthen operational maritime surveillance capacity. However, administratively, there is potential for overlapping authority between Bakamla, the Indonesian Navy, and other maritime institutions, requiring clearer functional delineation.

42 Overall, the addition of institutions under Law Number 3 of 2025 may be understood as a response to the expansion of the concept of national security, which is no longer confined to conventional military threats. However, substantive relevance to Military Operations Other Than War (OMSP) does not automatically eliminate the need for normative and administrative limitations. The principal challenge lies

in harmonizing strategic security needs with the principles of civilian supremacy, military professionalism, and the merit system in governmental administration. Without clear limitations regarding positions, selection mechanisms, and accountability during the period of assignment, such expansion risks generating tension within the state administrative system.

Substantive Implications of the Revision of Article 47 of the TNI Law

The revision of Article 47 of Law Number 3 of 2025 concerning Amendments to Law Number 34 of 2004 on the Indonesian National Armed Forces constitutes a crucial legal change with significant implications for Indonesia's constitutional structure, particularly civil-military relations. This revision opens broader opportunities for active military personnel to occupy civilian positions in state institutions beyond the ten institutions previously regulated under Law Number 34 of 2004. From the perspective of constitutional law, any statutory revision must be examined comprehensively, not only in terms of policy considerations and legislative politics, but also in terms of its formal and substantive juridical validity and its conformity with legal theory and constitutional principles.

From a formal perspective, the revision falls within the authority of the legislature as provided under Article 20 of the 1945 Constitution of the Republic of Indonesia and reaffirmed in Law Number 13 of 2022. Within this framework, a normative amendment may be considered valid insofar as it complies with the prescribed legislative procedures, including the principles of openness and public participation⁹. However, formal validity does not automatically resolve the question of its substantive conformity with higher norms in the hierarchy of laws and regulations. Referring to Hans Kelsen's Stufenbau theory, every legal norm derives its validity from a higher norm¹⁰. Accordingly, the expansion of active military personnel placements must remain consistent with Article 30 paragraph (3) of the 1945 Constitution, which positions the Indonesian National Armed Forces as an instrument of the state in the field of defense. This constitutional provision embodies a principle of functional limitation, namely that the role of the TNI is, in principle, confined to the domain of national defense.

In the context of civil-military relations, several constitutional theories provide an analytical framework for understanding this dynamic. Samuel P. Huntington's concept of objective civilian control emphasizes that military professionalism is preserved when the military remains under objective civilian authority and does not directly engage in political administration or civilian bureaucracy¹¹. Similarly, Peter Feaver's agency theory views the military as an agent implementing the mandate of civilian authority, such that the ideal relationship is hierarchical yet controlled¹². From the perspective of the rule of law, A.V. Dicey emphasizes the importance of the supremacy of law and equality before the law. These theoretical approaches do not automatically reject the expansion of military roles, but rather situate such expansion within a framework of clear oversight and limitation so as not to obscure the line of demarcation between defense functions and civilian administrative functions.

⁹ Vina Rohmatul Ummah, 'Politik Hukum Pembentukan Undang-Undang Nomor 13 Tahun 2022 Tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan', *Staatsrecht Jurnal Hukum Kenegaraan Dan Politik Islam* 2, no. 2 (2022), <https://doi.org/10.14421/staatsrecht.v2i2.2813>.

¹⁰ FX Adji Samekto, 'MENELUSURI AKAR PEMIKIRAN HANS KELSEN TENTANG STUFENBEAUTHEORIE DALAM PENDEKATAN NORMATIF-FILOSOFIS', *Jurnal Hukum Progresif* 7, no. 1 (2019): 1–1, <https://doi.org/10.14710/hp.7.1.1-19>.

¹¹ Risa Brooks and Sharan Grewal, "'Twice the Citizen': How Military Attitudes of Superiority Undermine Civilian Control in the United States", *Journal of Conflict Resolution* 66 (March 2022): 623–50, <https://doi.org/10.1177/00220027211065417>.

¹² David Pion-Berlin and Danijela Dudley, 'Civil-Military Relations: What Is the State of the Field', in *Springer eBooks* (Springer Nature, 2020), https://doi.org/10.1007/978-3-030-02866-4_37-1.

5 Materially, the change in the construction of Article 47 from a prohibition-based limitation model
6 toward a model of institutional enumeration reflects a shift in normative emphasis. Whereas the previous
38 norm was structured through a general prohibition limited by restrictive exceptions, the revised formulation
incorporates those exceptions directly into a list of permitted institutions. Although the exceptions remain
limitative in nature, this change in structure broadens interpretive space regarding civilian positions that
may be occupied by active military personnel. From the perspective of constitutional law, this expansion
must be read systematically with Article 7 of the TNI Law, which distinguishes Military Operations for
War and Military Operations Other Than War (OMSP), so that the functional boundary between defense
duties and civilian administration remains preserved.

The constitutional issue that emerges is not merely whether active military personnel may hold
civilian positions, but rather the mechanism through which such positions are filled. To date, the technical
mechanism for assigning active military personnel outside the TNI structure still refers to Minister of
Defense Regulation Number 38 of 2016 and TNI Commander Regulation Number 61 of 2018, which adopt
an internal assignment paradigm based on military career development. This model differs from the
position-filling regime under Law Number 20 of 2023, which prioritizes a merit system and open selection
for Senior Leadership Positions. This divergence has generated discourse regarding harmonization between
legal regimes, particularly where active military personnel occupy positions that, by their nature, constitute
administrative-civilian offices.

22 It must be emphasized that the issue in the context of the revision of Article 47 does not lie in the
18 existence of the internal assignment mechanism itself. Within the framework of national defense, internal
assignment constitutes an inherent component of the military career development system, which is based
on command structure and the strategic needs of the organization. Such a mechanism remains relevant
when applied to positions that are functionally and directly related to defense and national security duties
as formulated under Military Operations Other Than War (OMSP). In this context, internal assignment
may be understood as an extension of defense functions within certain institutional structures.

13 The constitutional issue begins to arise when the internal assignment mechanism is used to fill
positions that are administrative-civilian in character and fall within the management regime of the State
Civil Apparatus. Positions that are normatively subject to the principles of the merit system and open
selection require appointment mechanisms based on competition, transparency, and objective evaluation
of qualifications. When two position-filling regimes, namely military internal assignment and open
selection under the State Civil Apparatus system, operate within the same category of positions, potential
normative tension emerges from the perspective of constitutional law.

14 Such differences in mechanisms do not automatically conflict with the Constitution. However,
within the framework of Article 28D paragraph (3) of the 1945 Constitution, any difference in treatment
concerning access to public office must have an objective, rational, and proportionate basis. Accordingly,
the relevant inquiry is not to oppose the merit system and internal assignment as separate concepts, but
rather to assess their functional boundaries. Internal assignment remains constitutional insofar as the
positions concerned have direct relevance to the defense mandate. Conversely, where such positions are
purely administrative-civilian in nature and lack substantive connection to defense functions,
harmonization with the principles of the merit system becomes necessary to preserve consistency with the
rule of law and civilian supremacy.

From a constitutional perspective, Article 28D paragraph (3) of the 1945 Constitution guarantees every citizen the right to equal opportunity in government¹³. This principle of equality constitutes an important parameter in assessing the design of public office appointments. Nevertheless, it must also be recognized that the TNI is an institution with distinct characteristics operating within the legal regime of national defense, such that not all principles governing civilian personnel can be applied identically. Accordingly, the relevant issue in constitutional law is not to frame the merit system and internal assignment as dichotomous opposites, but rather to assess the extent to which the expanded scope of placements under Article 47 remains within the framework of civilian supremacy and the constitutional limitation of defense functions.

In this context, the revision of Article 47 may be understood as a formally valid legislative policy which, materially, requires further harmonization at the implementation level. The expansion in the number of institutions without reconstruction of position-filling mechanisms may generate normative tension between the defense regime and the civilian administrative regime. Therefore, adjustment of implementing regulations is necessary to ensure that the placement of active military personnel remains limited to positions having functional relevance to the defense mandate and is carried out within a framework of public accountability. Under this approach, the expansion of Article 47 is not positioned as a form of unlimited expansion, but rather as a policy that must continue to be tested for conformity with the principles of the rule of law, civilian supremacy, and the balance of power within Indonesia's constitutional system.

CONCLUSION

Based on normative legal analysis, the revision of Article 47 of Law Number 3 of 2025 is formally valid because it was enacted pursuant to the constitutional authority of the legislature. However, materially, the expansion of active TNI personnel placements into fourteen civilian institutions carries implications for the design of civil-military relations within Indonesia's constitutional system. The shift from a limitation-based framework toward institutional enumeration broadens interpretive space regarding civilian positions that may be occupied by active military personnel, thereby requiring interpretation consistent with Article 30 paragraph (3) of the 1945 Constitution, which affirms the TNI as an instrument of the state in the field of defense.

From the perspective of civilian supremacy and objective civilian control, this expansion is not merely a question of legality, but one of balance of power. Without position-filling mechanisms that ensure accountability and equality as provided under Article 28D paragraph (3) of the 1945 Constitution, this policy risks blurring the functional boundary between defense and civilian administration. Therefore, harmonization between the defense regime and the civilian administrative regime, clarification of the functional relevance of positions, and strengthening civilian control constitute prerequisites to ensure that its implementation remains within the framework of a democratic rule-of-law state.

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¹³ Tanti Kirana Utami, 'THE POSITION FILLING OF PRATAMA HIGH LEADERSHIP IN CIANJUR REGENCY UNDER GOOD GOVERNANCE CONCEPT', *Jurnal Dinamika Hukum* 17, no. 2 (2017): 129–129, <https://doi.org/10.20884/1.jdh.2017.17.2.726>.

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