

Siyasah Dusturiyah and the Limits of Military Power TNI Protection of the Prosecutor's Office in Post Reform Indonesia

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Abstract: *This article examines the legal and constitutional limits of the Indonesian National Armed Forces' (TNI) recent role in securing the Prosecutor's Office following amendments introduced by Law No. 3 of 2025 (amending Law No. 34 of 2004). Although protection of civilian institutions traditionally falls within the Indonesian National Police's (Polri) remit, the 2025 revision frames certain activities as Military Operations Other Than War (OMSP), arguably authorising TNI participation. Employing normative legal research with a statutory approach and qualitative typology, the study analyses statutory texts, constitutional provisions particularly Article 30 of the 1945 Constitution and relevant doctrinal debates on civilian supremacy and separation of defence and security functions. Findings show that the statutory basis in Law No. 3/2025 provides a general foundation for TNI involvement but lacks clear delineation of scope, procedures, and operational limits. This ambiguity risks blurring the constitutional separation between defence and internal security, creating overlapping authority with Polri, facilitating a functional shift of the TNI toward domestic security tasks, and eroding principles of civilian control and democratic quality. The article argues for urgent legal and institutional clarifications through specific statutory criteria, procedural safeguards, and oversight mechanisms to preserve constitutional boundaries and democratic accountability.*

Abstrak: Artikel ini mengkaji batas-batas hukum dan konstitusional terhadap peran Tentara Nasional Indonesia (TNI) dalam pengamanan Kejaksaan setelah perubahan yang diperkenalkan oleh Undang-Undang Nomor 3 Tahun 2025 (sebagai perubahan atas Undang-Undang Nomor 34 Tahun 2004). Meskipun tugas pengamanan institusi sipil secara tradisional berada pada kewenangan Kepolisian Negara Republik Indonesia (Polri), revisi 2025 mengkategorikan beberapa kegiatan sebagai Operasi Militer Selain Perang (OMSP), yang dipandang memberi landasan bagi keterlibatan TNI. Dengan menggunakan penelitian hukum normatif berpendekatan perundang-undangan dan tipologi kualitatif, studi ini menganalisis teks undang-undang, ketentuan konstitusi khususnya Pasal 30 UUD 1945 dan perdebatan doktrinal terkait supremasi sipil serta pemisahan fungsi pertahanan dan keamanan. Temuan menunjukkan bahwa dasar hukum dalam UU No. 3/2025 memberikan landasan umum bagi keterlibatan TNI tetapi kurang memberikan perincian mengenai cakupan, prosedur, dan batas operasional yang jelas. Ambiguitas ini berisiko mengaburkan pemisahan konstitusional antara pertahanan dan keamanan dalam negeri, menciptakan tumpang tindih kewenangan dengan Polri, mendorong pergeseran fungsi TNI menuju tugas keamanan domestik,

serta melemahkan prinsip pengendalian sipil dan kualitas demokrasi. Artikel ini menegaskan perlunya klarifikasi hukum dan kelembagaan yang mendesak melalui kriteria undang-undang yang spesifik, jaminan prosedural, dan mekanisme pengawasan untuk menjaga batas konstitusional dan akuntabilitas demokratis.

Keywords: *Indonesian National Armed Forces (TNI), Military Operations Other Than War (OMST/OMSP), Civilian Supremacy, Security Separation*

Introduction

In 2025, Law No. 3 of 2025, which amends Law No. 34 of 2004 on the Indonesian National Armed Forces (TNI), was enacted and subsequently triggered extensive public controversy. The revision contains several provisions considered contentious, one of which is the expansion of TNI authority within Military Operations Other Than War (MOOTW/OMSP). This amendment has been viewed as creating a tension between military operational duties and the democratic principles enshrined in the 1945 Constitution, particularly because it extends TNI involvement into domestic security affairs, an area traditionally assigned to the Indonesian National Police (Polri) under the newly revised provision replacing Article 7. In practice, the TNI has also been involved in securing prosecutorial institutions. This involvement is based on Law No. 3 of 2025 on the amendment of the TNI Law, applied at both the Provincial Prosecutor's Office and the District/City Prosecutor's Offices across Indonesia. The assignment is linked to military operations for war and Military Operations Other Than War (OMSP), specifically Article 7 paragraph (2) letter b point 5, which refers to the protection of strategically vital national objects. However, the law does not clearly define the limits of TNI involvement in non-war affairs, leaving room for multiple interpretations.

The 1945 Constitution regulates national defense and security in Article 30. Paragraph (3) stipulates that the TNI, consisting of the Army, Navy, and Air Force, is a state instrument responsible for defending, protecting, and maintaining the sovereignty and territorial integrity of the state. Meanwhile, paragraph (4) states that the Indonesian National Police is the state instrument tasked with maintaining public order and security, enforcing the law, and providing protection, guidance, and service to the public. One manifestation of defense and security sector reform was the separation of the TNI and Polri structures. Previously, both institutions were united under the Indonesian Armed Forces (ABRI). However, since 1 April 1999, they have been formally separated by President B.J. Habibie, and this separation was reinforced by Presidential Decree No. 89 of 2000 concerning the status of the Indonesian National Police, issued on 1 July 2000. Since then, Polri has no longer been part of ABRI. This separation was further strengthened by People's Consultative Assembly Decree No. VI/MPR/2000 on the Separation of the TNI and Polri. The decree affirms that the TNI is a state instrument functioning as the defense force of the Unitary State of the Republic of Indonesia in facing various threats and disturbances to national integrity. In addition, Article 5 paragraph (1) of Law No. 2 of 2002 states that the Indonesian National Police is a state instrument that plays a role in maintaining public security and order, enforcing the law, and providing protection, guidance, and service to the public in order to preserve domestic security.

Harli Siregar, Head of the Legal Information Center of the Attorney General's Office, stated that the TNI has a duty to safeguard vital state objects and that the Prosecutor's Office falls within the category of strategically vital objects. At the same time, Hendaridi, Chair of the SETARA Institute Advisory Board, argued that cooperation between the TNI and the Attorney General's Office in securing office premises should not occur in such a manner, because the TNI and the prosecution service possess different authorities. This issue deserves deeper examination because Law No. 3 of 2025 is a relatively recent legal product and has not yet received sufficient scholarly attention. This study is expected to strengthen the theoretical and practical foundations of constitutional law, particularly regarding the division of authority among state institutions in the fields of defense and security. Therefore, the urgency of the study titled *Juridical Analysis of the Involvement of the Indonesian National Armed Forces in Securing Civilian Institutions: A*

Case Study of Prosecutorial Security after Law No. 3 of 2025 on the Indonesian National Armed Forces lies in clarifying the boundary between the defense function of the TNI and the security function of Polri.

Literature Review

Theory of the Rule of Law

The rule of law is a foundational constitutional principle that rejects the notion of a *Machtstaat*, or a state governed primarily by power, and instead places law and constitutionalism at the center of state authority. In this framework, all public power must operate within legal limits, and no state organ may act outside the boundaries established by law. The rule of law requires not only the supremacy of statutes and the constitution, but also the separation and limitation of powers, protection of human rights, equality before the law, and the existence of an independent and impartial judiciary. It also presupposes that legal norms must be general, clear, and predictable so that they can serve as an effective restraint on arbitrariness. In this sense, state authority is legitimate only when it is exercised through objective legal norms that are formally valid and substantively consistent with the ideals of justice. For this reason, the rule of law becomes highly relevant in evaluating the legal basis and constitutional limits of military involvement in civilian security affairs.

Theory of the Separation of Powers

The separation of powers emerged as a response to absolute monarchy and the concentration of authority in the hands of a single ruler. Its main purpose is to distribute state functions among different institutions so that power does not become centralized and abuse of authority can be prevented. Classical constitutional thought, especially that of Locke, emphasizes that state power should be divided into distinct functions such as legislation, adjudication, and execution, each performed by different organs. In modern constitutional systems, this doctrine has developed into both horizontal and vertical division of authority. Horizontal separation prevents the accumulation of power within one branch of government, while vertical separation regulates authority between central and regional levels. In the Indonesian context, this theory is reflected not only in the relationship among state branches, but also in the differentiation of defense and security functions between the Indonesian National Armed Forces (TNI) and the Indonesian National Police (Polri). Such differentiation is essential to prevent overlap of authority and to maintain a balanced constitutional order.

Theory of Civil Supremacy

Civil supremacy affirms that sovereignty lies with the people and is exercised through civilian institutions that obtain legitimacy through democratic processes. In a democratic constitutional state, the military must remain subordinated to elected civilian authority and should not independently determine public policy. This principle is especially important in post-authoritarian societies, where the military historically played a dominant political role. Civil supremacy therefore requires clear legal boundaries on military involvement in civilian affairs, particularly in matters that are not directly related to national defense. It also demands effective civilian oversight mechanisms to ensure that military institutions remain accountable, transparent, and limited to their constitutional mandate. When military personnel are assigned to roles outside the defense sector, such oversight becomes even more essential to prevent mission drift, institutional overlap, and the weakening of democratic governance. In this study, civil supremacy provides a critical analytical lens for assessing whether the involvement of TNI in securing the Prosecutor's Office remains within constitutional limits or instead signals an expansion of military authority into the civilian domain.

Method

The research method used in this study is normative legal research, namely a legal study that examines the law as a norm by analyzing relevant legislation and secondary legal materials related to the topic of the research. The approach employed is the statutory approach, used to analyze the consistency,

coherence, and legal implications of the norms governing the involvement of the Indonesian National Armed Forces (TNI) in the security of civilian institutions, particularly the protection of the Prosecutor's Office following the enactment of Law No. 3 of 2025 on the TNI. This study applies a qualitative research typology, as the data obtained from library research are analyzed in depth, systematically, and comprehensively to explain the position and limits of TNI authority within the framework of the new legal regime.

Results and Discussion

Limits of TNI Authority in Securing the Prosecutor's Office under Law No. 3 of 2025

Functional Limits under Law No. 3 of 2025

The separation of authority between the TNI and the Indonesian National Police (Polri) is established in MPR Decrees No. VI/MPR/2000 and No. VII/MPR/2000, which affirm the institutional and functional differentiation between the two bodies. Article 30 paragraph (3) of the 1945 Constitution states that the TNI is responsible for defending, protecting, and maintaining the integrity and sovereignty of the state. Meanwhile, Article 30 paragraph (4) assigns Polri the mandate to maintain public security and order and to enforce the law. This separation reflects the constitutional design that distinguishes defense from security functions. Law No. 3 of 2025 expands the scope of Military Operations Other Than War (MOOTW), including the protection of strategically vital national objects. Article 7 paragraph (2) letter b point 5, which refers to "securing strategically vital national objects," provides the normative basis for this involvement. Under this law, the protection of the Prosecutor's Office is not the TNI's primary mandate, but rather a form of assistance to a civilian institution.

However, because the law does not explicitly define the limits of action or the operational parameters, such involvement may go beyond mere physical security and open space for the expansion of military roles into civilian affairs. The provision on "securing strategically vital national objects" in Article 7 paragraph (2) letter b point 5, if not accompanied by clear definitions and operational boundaries, may conflict with the principle of legal certainty and the strict legality required in a rule-of-law state. The Prosecutor's Office may then be categorized as such a vital object, yet the law does not set objective parameters regarding emergency conditions or concrete threats, duration of deployment, and civilian oversight mechanisms.

The Nature of TNI Authority in Prosecutorial Security

The authority of the TNI in securing the Prosecutor's Office is an attributed authority derived directly from Law No. 3 of 2025, particularly within the framework of MOOTW. Since this authority is granted by statute, it has a formal legal basis within the Indonesian legal system. Nevertheless, this attribution is not absolute. It remains subject to the principle of limiting governmental authority within a rule-of-law state. The general wording of MOOTW provisions, without detailed operational limits, indicates that this authority is exceptional rather than regular in domestic security governance. Therefore, TNI involvement in securing the Prosecutor's Office can only be justified under specific conditions that meet strategic threat parameters and remain under civilian control. Within the perspective of *fiqh siyasah*, the principle of *al-amanah* (trust and responsibility) requires a strict separation of roles so that military and civilian authorities do not overlap in ways that undermine governmental objectivity. This also relates to the principle of *al-'adalah* (justice). The Qur'an states: "Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice." (Q.S. An-Nisa: 58)

Scope of Security Duties

The revision of the TNI Law reflects an expanded military role beyond the defense sector, particularly through broader involvement in MOOTW and the placement of military personnel in civilian institutions. Article 7 of the law outlines the TNI's core duties and the forms of operation through which those duties are carried out. Before the revision, Law No. 34 of 2004 on the TNI and Law No. 2 of 2002 on

the National Police had already clearly regulated the respective duties of both institutions. Polri was given full authority over domestic security, while the TNI was directed toward defense functions. Law No. 3 of 2025, however, does not provide a sufficiently clear scope, thereby creating ambiguity. Article 7 paragraph (2) letter b point 5 has become the basis for expanding military roles into civilian matters, such as the security of the Prosecutor's Office, even though civilian supremacy must constitutionally remain protected. The law also does not explicitly and specifically define the scope of such assistance, either in terms of the form of involvement or operational parameters in the field. This absence of clear limits creates a gray area that may broaden the interpretation of TNI authority beyond mere physical security. In terms of the theory of authority, attribution must be clear, explicit, and limited. Authority that is not narrowly formulated risks producing interpretations that exceed its constitutional purpose. Accordingly, TNI involvement in prosecutorial security can only be justified as an exceptional measure, not as a routine practice.

Implications for the Defense-Security Division

Functional Shift in the Defense-Security Division

After the 1998 Reform era, security sector reform became a central agenda in Indonesia's democratization process. The elimination of ABRI's dual function and the separation of TNI and Polri were fundamental achievements in strengthening civilian supremacy. TNI involvement in securing the Prosecutor's Office indicates a tendency toward a functional shift from the defense domain to internal security. This shift may reopen space for an implicit form of dual function, albeit in a different form from the pre-reform era. In the constitutional structure of Indonesia, defense and security are two distinct domains. Article 30 paragraphs (3) and (4) of the 1945 Constitution clearly separate the role of the TNI as the state instrument in defense from the role of Polri as the state instrument in public security and order. This separation is part of the post-1998 constitutional reform design aimed at building checks and balances and strengthening civilian supremacy. The involvement of the TNI in securing the Prosecutor's Office through MOOTW under Law No. 3 of 2025 shows a shift from external defense to domestic security. Conceptually, the separation of powers concerns not only the distribution of authority among the legislative, executive, and judicial branches, but also differentiation of functions within the executive itself. In this context, the TNI-Polri distinction is a manifestation of limiting coercive power so that it is not concentrated in one institution.

Weakening of Civil Supremacy

The revision of the TNI Law has significant implications for the principle of civilian supremacy, which since reform has served as a cornerstone of defense governance. To maintain a balance between security reform and the prevention of militarization, strengthening civilian supremacy is a normative necessity that cannot be ignored. Civilian supremacy places the military under the control of democratically accountable civilian authority. In a democratic rule-of-law state, the military does not have the political legitimacy to determine public policy because it does not receive a direct mandate through electoral mechanisms. Therefore, military functions must remain strictly within the defense domain, while public security and order belong to civilian institutions. If MOOTW is formulated in broad terms without measurable threat parameters and without effective civilian oversight, it may normalize military involvement in internal security affairs. This could weaken military subordination to civilian authority and create a regression in security sector reform. Thus, TNI involvement in securing civilian institutions such as the Prosecutor's Office must be understood as an exceptional authority that is tightly limited by law. Without firm normative limits and strong oversight, such expansion may erode the principle of civilian supremacy that underpins Indonesia's post-reform constitutional democracy.

Conclusion

The authority of the Indonesian National Armed Forces (TNI) in securing the Prosecutor's Office derives from attributed authority under the revised Law No. 3 of 2025 on the TNI, particularly within the framework of Military Operations Other Than War (MOOTW). Formally, this authority has a legal basis within Indonesia's legislative system. Substantively, however, the broadly formulated MOOTW norm

without clear parameters of threat, time limits, and civilian oversight mechanisms has the potential to blur the separation between defense and security functions as affirmed in Article 30 of the 1945 Constitution of the Republic of Indonesia. The main issue therefore does not lie in the existence of a legal basis, but in a normative construction that has not yet fulfilled the principles of legal certainty, limited authority, and effective civilian control. For this reason, TNI involvement in securing the Prosecutor's Office should be treated as an exceptional measure: temporary, proportionate, and subject to clear democratic oversight mechanisms.

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Conflict of Interest

This article has no conflicts of interest.

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