



Independence of the National Police Commission According to Presidential Regulation No. 17 of 2005

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ABSTRACT

The purpose of this study is to determine the implementation of the duties and functions of the police commission according to Presidential Regulation No. 17 of 2005 concerning the National Police Commission, to determine the independence of the National Police Commission, to determine the factors that support or hinder the independence of the Police Commission. The approach used is a normative and sociological juridical approach. The normative juridical approach is the process of analyzing the problem from the point of view/according to the applicable laws/statutory provisions. The sociological approach, namely by looking at aspects of social dynamics that are developing and always changing in society, and in the administration of the state. *Kompolnas* independence is not mentioned in writing in Law Number 2 of 2002 concerning the Indonesian National Police and Presidential Regulation Number 17 of 2005 concerning *Kompolnas*, however when viewed from hierarchical relationships, recruitment patterns, performance and accountability, *Kompolnas* is still relevant for referred to as an independent institution in carrying out its duties and functions. Various factors that support the independence of *Kompolnas* such as the Organizational Principles and *Kompolnas* Regulations, the composition of *Kompolnas* members and also the *Kompolnas* decision-making system further strengthen the independence of *Kompolnas* which can then cover for weaknesses which become factors inhibiting *Kompolnas* independence such as Normative Factors, Appointment and Dismissal of *Kompolnas* members, and *Kompolnas* Secretariat.

1. Introduction

After the reform in 1998, the law and its implementation as well as law enforcement institutions which were the main pillars damaged during previous administrations, had to be repaired drastically and immediately. Reformers think "now or never", that legal reform which includes structural reform, statutory reform and cultural reform to support the achievement of supremacy of law must be fully implemented.¹

Structural reform includes demands from society to form new institutions as a result of dissatisfaction with the performance of existing state institutions. As a response to the demands of the community, a number of commissions were born. For example, the establishment of

¹Sri Bintang ultimate, Reform must be complete, available in <http://www.seasite.niu.edu/indonesian/Reformasi/Chronicle/Kompas/May27/sri01.htm>

various kinds of commissions as state auxiliary agencies/institutions, including the National Ombudsman Commission, the National Law Commission, the Corruption Eradication Commission (KPKPN) and KPK.

The public demand then also led to the establishment of an external monitoring agency for law enforcement agencies. In the end, the legislators responded to this demand by mandating the establishment of various commissions, for example the Judicial Commission³ in Law no. 22 of 2004, Law no. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia which mandates the establishment of the Prosecutor's Commission⁴ even though it is not mandatory and Law no. 2 of 2002 concerning the Indonesian National Police which regulates the formation of the National Police Commission (Kopolnas) in Chapter VI (Articles 37-40). The Kopolnas concept is based on two thoughts, namely the status of civil-police in Indonesian governance and the notion of the need for "community oversight of the exercise of police authority". These two thoughts are set forth in Article 37 (1): "domiciled under the ... President" and Article 38 (2) sub c: "authorized to ... accept suggestions and complaints from the public".

The formation of the Police Commission was based on a crisis of confidence in the performance of the Police institution. The crisis of trust occurs not only because the Police as the spearhead of law enforcement is often accused of not being able to carry out optimal supervision but also occurs because reforms to law enforcement officials within the Police themselves are still minimal.

The degradation of public trust in the police institution is closely related to the professionalism, integrity and inefficiency of members of the police. ⁶ Because of this, the National Police Commission that has been formed today is determined to create a professional and better police institution.

Seeing the duties and authorities possessed by an institution called the National Police Commission, the public has high hopes for an increase in police performance in the future. Police performance will only increase if it is supported by officers who have high dedication in carrying out their duties without forgetting their welfare and rights.

2. Method

This research is a scientific attempt to find out or study new factors, so the following research methods are needed.

2.1 Research Object

The research object is in the form of things to be examined in this case according to the research title, namely, the Independence of the National Police Commission according to the Presidential Regulation of the Republic of Indonesia Number 17 of 2005 concerning the Indonesian National Police Commission.

2.2 Research Subjects

The parties selected by the researcher to provide opinions, information or explanations on the problem under study. In this case, the subject is the chairman or members of the National Police Commission and/or staff of the National Police Commission.

2.3 Data Source

Data sources can be divided into 2, namely:

- a. Primary data source

Is legally binding data which includes laws and regulations. The primary data sources used are as follows: the 1945 Constitution and its amendments, Law no. 2 of 2002 concerning the Police and PERPRES No. 17 of 2005 concerning the Indonesian National Police Commission.

b. Secondary data sources

Is legal data that provides an explanation of primary legal data such as scientific articles, research results, books, opinions of legal experts, mass media and so on related to the problems in this research.

c. Tertiary data source

Sources of data in the form of encyclopedias, dictionaries and other sources of information.

2.4 Data Collection Technique

In an effort to collect data, in this study the authors will apply two kinds of methods, namely:

- a. Literature study, namely a way of collecting data by reading and studying reading materials consisting of literature, laws and regulations, doctrines, mass media and other sources that have relevance to the problem.
- a. Interview, which is a way of collecting data by asking questions directly to the subject of the interview, in this case the chairman or members of the National Police Commission or Police Commission staff.

3. Analysis and Results

3.1 Benchmark of Independence of the National Police Commission

The term independent comes from English. The word independent means “free from external control and constraint, an independent mind; a series of independent judgments; fiercely independent individualism; an independent republic or not controlled by a party/interest group”, “not dependent on or conditioned by or relative to anything else” or grammatically, “able to stand alone syntactically as a complete sentence; the main (or independent) clause in a complex sentence has at least a subject and a verb”².

From the description above, in broad outline the word independent can be interpreted as something that is completely free from external influences without any relationship or independent from political control or interest groups. So, if it turns out that there is still a relationship, dependence in any case, or can still be influenced by certain parties who have an interest, then there is no such independence.

The formation of the National Police Commission is regulated in Law Number 2 of 2002 concerning the Indonesian National Police in articles 37-40. The articles in the Law only regulate in general regarding the duties, powers and membership of Kompolnas where in the law it is stated that Kompolnas is under the President and is responsible to the President. Further arrangements regarding the composition and selection of Kompolnas members, duties and authorities of Kompolnas and so on are regulated by the President in the form of Presidential Regulation Number 17 of 2005. In the Perpres, it is emphasized that Kompolnas members are appointed and dismissed by the President where the leader is ex-officio minister³.

Neither the Police Law nor the Kompolnas Presidential Decree mentions in writing the status of independence and freedom of Kompolnas in carrying out its functions and powers. Therefore, to assess the independence of Kompolnas, several benchmarks can be used as follows:

- a. Kompolnas hierarchical relationship

²English Dictionary, in [http://stardict.sf.net/stardict\[/url\]](http://stardict.sf.net/stardict[/url])

³Ex-officio is the assignment and authority given to structural officials to carry out other tasks related to their position. See CHAPTER I, Article 1, number 1 General Provisions of the National Police Commission Regulation concerning the Organization and Work Procedure of the National Police Commission, Jakarta: Kompolnas Secretariat, 2007 p. 2

Like the Indonesian National Police, Presidential Decree No. 17 of 2005 in article 2 also places the National Police Commission under and directly responsible to the President. The placement of Kompolnas under the President is based on the tasks assigned to Kompolnas by the Police Law.

b. Kompolnas member recruitment pattern

Presidential Regulation Number 17 of 2005 in article 12 paragraph (1) states that "Except for members who come from elements of the Government, for the first time candidates for members of the National Police Commission are proposed to the President by the Head of the Indonesian National Police."⁴

In its implementation, the process of recruiting Kompolnas members from non-governmental elements was carried out by a selection committee team formed by the National Police Headquarters. The selection committee for Kompolnas members consists of 19 people from internal and external police circles. They included Prof. Awaloedin Djamin, Prof. Sarlito Wirawan Sarwono, Prof. Satjipto Rahardjo, and Fachry Ali, while from within the National Police, among others (at that time) Deputy Chief of Police Commissioner General Adang Daradjatun and Inspector for General Supervision of the Police. Their appointment as the selection committee is justified because they are considered as experienced people and have mastered related issues⁵.

After screening according to the conditions regulated by the Presidential Decree, the applicants then follow the selection through oral and written exams. From the number of applicants who passed the selection, twelve candidate members were taken to be submitted to the President and then six people were selected (three people from the Police Expert element and three people from the Community Figures element.)

The Perpres of Kompolnas submits proposals for Kompolnas members for the next term of office to Kompolnas members for the previous term of office. 20 In order to prevent the possibility of the recruitment and selection process for members not being independent, Kompolnas issues Kompolnas regulations which contain specific explanations regarding matters surrounding the recruitment of members.

c. Kompolnas Funding

All financing needed to support the implementation of the duties of the National Police Commission is fully borne by the State Revenue and Expenditure Budget⁶. Thus, Kompolnas funding comes separately from Polri financing.

With separate budget arrangements from the National Police budget, Kompolnas does not have a budget dependency with the National Police or with any other institution. So that the independence integrity of Kompolnas in carrying out its duties can be maintained from the intervention of the Police or other institutions.

d. Kompolnas performance

In carrying out its duties, Kompolnas is guided by Law Number 2 of 2002, Presidential Regulation Number 17 of 2005 and Presidential Decree Number 50/M/V/2006.

Apart from that, Kompolnas also has internal regulatory tools as guidelines, namely: National Police Commission Regulation No. 1 of 2006 concerning the Organization and Work Procedure of the National Police Commission, National Police Commission Regulation No. 2 of 2006 concerning the Kompolnas Code of Ethics⁷ and Regulation of the

⁴See Article 12 paragraph (1) Regulation of the President of the Republic of Indonesia No. 17 of 2005..., Loc. Cit.

⁵Interview results with Adnan Panda Praja, SH, Spn, LLM (Member of National Police)

⁶See Article 12 paragraph (2) Presidential Regulation of the Republic of Indonesia No. 17 of 2005...Loc.Cit.,

⁷The Kompolnas Code of Ethics is a collection of Principles, Principles, Rules, Norms and Values related to behavior, character, morals adhered to in the Kompolnas organization, see CHAPTER I, Article 1, number 1 of the National Police Commission Regulation concerning the Code of Ethics of the National Police Commission, Jakarta: Kompolnas Secretariat, 2007, p. 2

National Police Commission No. 2 of 2007 concerning Procedures for Handling Public Suggestions and Complaints (SKM).

Kompolnas internal regulations are related to and affect its performance. With the aim of maintaining the quality and quality of Kompolnas work/performance, Kompolnas internal regulations are also intended as a means of transparency and accountability to the public. As a form of direct transparency, Kompolnas has an annual schedule of activities as a form of absorbing aspirations, accountability and outreach to the public in addition to monitoring the performance of the National Police, candidates for the National Police Chief and cooperation with various similar commissions both at home and abroad.⁸

e. National Police Accountability

The accountability system is one way to create checks and balances as well as a mechanism to assess or evaluate the entire implementation of the functions, duties and authorities of those in power. With good arrangements regarding the accountability system, we can minimize acts of abuse of power or at least make it easier for competent parties to see any abuse of power. In addition, the assessment of the ability and performance of those in power can be carried out better.

Perpres number 17 of 2005 does not regulate the form of Kompolnas accountability at all, it only states that Kompolnas is responsible to the President⁹. Then, in Komponas Regulation No. 1 of 2006 concerning Organization and Working Procedures, added that the responsibility of Kompolnas to the President is carried out by the Head of Kompolnas.

This accountability should and should have been designed in such a way by the drafters of the Police Law and Presidential Regulation regarding Kompolnas when viewed from the functions, duties and authorities of Kompolnas which only works to assist the President. However, it would be nice if this institution was responsible or also responsible to the DPR, bearing in mind that Kompolnas also has obligations to the wider community.

3.2 Factors Supporting And Inhibiting The Independence Of The National Police Commission In Carrying Out Its Duties And Functions.

Based on an interview with Adnan Pandu Praja (Kompolnas member) on January 25, 2007, the author found three supporting factors for Kompolnas independence.

a. Supporting factors:

a) Kompolnas Organizational Principles and Regulations

One of the five principles of Kompolnas is the principle of impartiality, which means that Kompolnas is not co-opted by any interests that could distort the nobility of its duties and authorities. This principle means that there is a unity of thought and enthusiasm to always be independent from Kompolnas members (compilers of Kompolnas regulations themselves).

The Kompolnas Regulations concerning Organization and Work Procedures, the Kompolnas Code of Ethics and Procedures for Handling Public Suggestions and Complaints (SKM), apart from functioning as work guidelines, also function as a preventive measure against Kompolnas contamination from outside interests. These regulations also complement the Kompolnas arrangements from the legal umbrella of the Law and the Presidential Decree regarding Kompolnas which are unclear or unclear.

b) Member composition

As mandated by the Perpres Kompolnas, three of the nine members of Kompolnas come from the cabinet of ministers, three are from the police expert element and the other three are from the community leaders element. The inclusion of six representatives from the community made the presence of a direct intervention from the community in Kompolnas work procedures.

As Ex-officio representatives from the government were Menkopolhukam Widodo AS (Chairman concurrently member), Minister of Home Affairs M Ma'ruf (Deputy

⁸Interview results with Adnan Panda Praja, SH, Spn, LLM (Member of National Police)

⁹See article 37 of Law Number 2 of 2002,.....Op.Cit.,

Chairperson concurrently member) who was later replaced by Mardiyanto and Minister of Law and Human Rights Hamid Awaludin who was later replaced by Andi Mattalatta (member). Representatives from police experts are Novel Ali and Adnan Pandupraja and from members of the public are Sukarni Ilyas, Ronny Lihawa, La Ode Husen and Erlyn Indarti. They were proposed by a selection team formed by the National Police Headquarters.

c) Decision making system

In Kompolnas, as also stipulated in the Perpres and Kompolnas Regulations, that every decision is taken based on the results of deliberations for consensus -which ends with voting- where there is no discrimination whatsoever between the Chairperson and Members where all members are equal and equal both in deliberations and in voting. So that in making any decision, there is no difference between members and the votes cast by each member are one.

b. Obstacle factor :

Based on the results of an interview with Adnan Pandu Praja (Kompolnas member) on January 25, 2007, the author did not find the factors that impede the independence of Kompolnas. However, based on literature studies and field observations, the authors found several factors inhibiting Kompolnas independence as follows:

a) Normative Factors

The position and guarantee of Kompolnas independence are not expressly contained in the Law or Presidential Decree regarding Kompolnas. The formation of Kompolnas regulated in Law Number 2 of 2002 in articles 37-40 only provides general arrangements regarding the duties and powers and membership of Kompolnas. The law also states that Kompolnas is located and is responsible to the President. Further arrangements regarding the composition and selection of Kompolnas members, duties and powers of Kompolnas and so on are regulated by the President in the form of Presidential Regulation Number 17 of 2005 in which it is emphasized that Kompolnas members are appointed and dismissed by the President where the leader is ex-officio Minister (government representative).

The Police Law and the Presidential Regulation regarding Kompolnas are two things which then give rise to the inhibiting factors for the independence of Kompolnas itself. The loss of the DPR's role in forming Kompolnas resulted in the loss of the spirit of forming Kompolnas from the start. Ideally, if the government wants to create an effective Commission, it should be created as a checker with clear and firm independence and due diligence by the People's Representative Council.

b) Appointment and Dismissal of Kompolnas Members

Article 10 of Presidential Regulation Number 17 of 2005 explains that Kompolnas members are appointed and dismissed by the President. It is about dismissing members that can interfere with the independence of Kompolnas because it could be that intervention from the executive is based on negative things. Even though Kompolnas is still an assistant to the president, it is still hoped that Kompolnas will not legitimize the political affair between the President and the National Police.

c) Kompolnas Secretariat

In carrying out its duties, Kompolnas is assisted by the Secretariat. The secretariat in question is carried out by a work unit within the Republic of Indonesia National Police Headquarters, which is determined by the Head of the Indonesian National Police. The secretariat is led by a secretariat head who is appointed and dismissed by the Head of the Indonesian National Police, who in carrying out his duties is functionally responsible to the National Police Commission. The head of the Kompolnas Secretariat is held by the Senior Officer of the Indonesian National Police.

The secretariat office of the National Police Commission, which is located in the same complex as the National Police Headquarters on Jalan Trinojoyo, South Jakarta, will directly or indirectly have an impact on the independence of Kompolnas. This is based on the reason because it will facilitate access to lobbying between the police and Kompolnas.

Responding to this, Adnan Pandu Praja replied that the placement of the secretariat was based on a mandate from the Kompolnas Presidential Decree and aimed at facilitating Kompolnas in carrying out its duties. Meanwhile, the appointment of an active member of the National Police as Head of the Kompolnas secretariat has been specifically regulated in the Kompolnas Regulation concerning the Organization and work procedures of the Kompolnas where in carrying out their daily duties they must coordinate and assist the Kompolnas secretary.

4. Conclusion

Kompolnas independence is not stated in writing in Law Number 2 of 2002 concerning the Indonesian National Police and Presidential Regulation Number 17 of 2005 concerning Kompolnas, however when viewed from hierarchical relationships, recruitment patterns, performance and accountability, Kompolnas is still relevant for referred to as an independent institution in carrying out its duties and functions.

Various factors that support the independence of Kompolnas such as the Organizational Principles and Kompolnas Regulations, the composition of Kompolnas members and also the Kompolnas decision-making system further strengthen the independence of Kompolnas which can then cover for weaknesses which become factors inhibiting Kompolnas independence such as Normative Factors, Appointment and Dismissal of Kompolnas members, and Kompolnas Secretariat.

Acknowledgments

Even though Kompolnas is proven to be an independent body, it would be nice if the Government further strengthened the position and guarantees for the Police Commission, because the existence of the Police Commission which is supported by a Presidential Regulation (Perpres), means that at any time this commission could be dissolved by the President without asking further approval from any state institution including the DPR if the President deems this institution is no longer needed.

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