



STATE CONSTITUTIONAL LEGAL REGULATIONS ON WAR AND NATIONAL DEFENSE IN THE INDONESIAN CONSTITUTION AND ITS IMPLICATIONS FOR NATIONAL SOVEREIGNTY

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Article Info	Abstract
Article History Received: 2025-05-05 Revised: 2025-05-06 Published: 2025-06-01 Keywords: <i>Constitutional Law, War, National Defense, National Sovereignty.</i>	<p>The regulation on war and national defense in the Indonesian constitutional law system has a strategic position in maintaining national sovereignty. The provisions in the 1945 Constitution of the Republic of Indonesia, especially Article 10, Article 11, and Article 30, provide a constitutional basis for the President as the holder of the highest power over the Armed Forces, with a checks and balances mechanism through the approval of the House of Representatives in making decisions to declare war. In addition, the universal people's defense and security system (Sishankamrata) emphasizes the participatory role of all citizens in maintaining the integrity of the nation and state. However, in a global era marked by non-conventional threats such as cyber warfare, disinformation, cross-border terrorism, and hybrid conflicts, the existing constitutional law regulations are considered not yet fully adaptive and responsive.</p> <p>This study uses normative legal research methods with a statutory, conceptual, and comparative approach. The research findings show that there are normative gaps in defining a "state of war" and decision-making mechanisms in dealing with non-conventional threats. In addition, the implementation of the principle of civilian supremacy over the military and the optimization of legislative oversight in defense policy still face various obstacles. The implications of the weaknesses in these regulations have the potential to hinder the effectiveness of protecting national sovereignty. Therefore, it is necessary to update the regulation of constitutional law in order to be able to respond to the dynamics of modern threats and ensure that national sovereignty is effectively protected within the framework of a democratic state of law.</p>

I. INTRODUCTION

In the dynamics of modern state administration, the regulation of war and state defense is one of the fundamental aspects in the realization of a nation's sovereignty. Sovereignty, which in the doctrine of constitutional law is often interpreted as the highest power inherent in the state, is not only reflected in political and legal aspects, but also in the state's ability to maintain its existence from various threats, both military and non-military.(Aspan 2017)The Constitution, as the basic law of the state, contains norms that regulate the principles, authorities, and decision-making mechanisms related to war and national defense, which are directly correlated with the protection of national sovereignty.(Saputra and Chalim 2018)

In the context of Indonesia, the 1945 Constitution of the Republic of Indonesia contains

a number of provisions governing war, national defense, and national sovereignty, which are spread across various articles, particularly in Article 1 paragraph (3), Article 30, and Article 11. Article 1 paragraph (3) emphasizes that Indonesia is a state of law, meaning that all state actions, including in situations of war or armed conflict, must be subject to applicable legal principles. Meanwhile, Article 30 explicitly regulates matters of national defense and security, by giving a role to the Indonesian National Armed Forces (TNI) and the Indonesian National Police (Polri) in maintaining national security. In addition, Article 11 regulates the President's authority to declare war, make peace, and international agreements with the approval of the House of Representatives (DPR), which shows that the state's decision to go to war is not a unilateral decision, but involves a

mechanism of checks and balances between branches of state power.(PRE-2016)

However, if examined more deeply, the constitutional regulation faces a number of conceptual and practical challenges. In the context of globalization, threats to state sovereignty are no longer limited to conventional military invasions, but have expanded to new dimensions such as cyber warfare, transnational terrorism, hybrid conflicts, and proxy wars. Therefore, understanding the concept of war and state defense must develop in line with the dynamics of contemporary threats. Unfortunately, the regulation in the 1945 Constitution still tends to be normative and has not explicitly accommodated the variety of new threats. This raises complex legal issues, especially in terms of determining when a condition can be qualified as "war", who has the authority to determine it, and what the constitutional mechanism is.(Setiani 2017)

In addition, the provisions spread across various laws under the 1945 Constitution, such as Law Number 3 of 2002 concerning National Defense, Law Number 34 of 2004 concerning the Indonesian National Armed Forces, and Law Number 23 of 2019 concerning Management of National Resources for National Defense, also indicate fragmentation and potential overlapping of authority between state institutions. The unclear boundaries of function and coordination between the President as the holder of the highest power over the armed forces, the DPR as the supervisory and approving institution for decisions on war, and the TNI as the operational implementer, can have implications for the vulnerability of national defense governance. In an emergency or escalation of conflict, legal clarity and speed of decision-making are crucial factors that can determine the effectiveness of the state's response. Thus, the design of constitutional and legislative regulations must be able to provide an adequate framework to deal with these situations.

Furthermore, the regulation of war and national defense cannot be separated from the principles of international law. As a member of the United Nations (UN), Indonesia is bound by the UN Charter, especially Article 2 paragraph (4) which prohibits the use of force or the threat of force against the territorial integrity or political independence of another country, except in cases of legitimate self-defense or with the mandate of the UN Security Council. Therefore, every state policy and action in the context of war must be in line with this international obligation. The

question that then arises is to what extent do the regulations in the 1945 Constitution and national laws and regulations provide sufficient space to ensure compliance with these international norms? Have the mechanisms for monitoring defense and security policies been designed by prioritizing the principles of the supremacy of law and respect for human rights?(Hamza 2017)

On the other hand, changes in the global strategic environment, such as geopolitical tensions in the Indo-Pacific region, arms races, and dynamics of relations between major countries, also influence the configuration of Indonesia's defense policy. In facing this situation, strengthening national sovereignty is a strategic priority. However, this strengthening must go hand in hand with strengthening democratic legal governance, so that defense policy does not develop into an instrument of repressive or authoritarian power. Therefore, it is important to examine how the Indonesian constitution regulates the relationship between executive, legislative, and military powers in making war decisions, and what its implications are for the protection of democratic national sovereignty.

Furthermore, the history of Indonesian constitutional law shows that the concept of national defense has experienced dynamics in line with changes in national politics. During the Old Order and New Order, the concept of national defense was very identical to the doctrine of national security which was often misused to suppress political opposition and civil disobedience. The post-1998 constitutional reform brought important changes by emphasizing the principle of the rule of law and civilian supremacy over the military. However, new challenges have emerged in maintaining a balance between defense needs and respect for the principles of democracy and human rights. In this context, the regulation of constitutional law on war and defense must always be reviewed so that it remains relevant to the development of the times and the aspirations of the people.(Azmi Fendri and Kn 2023)

Constitutional regulations on war and national defense also have a strategic dimension in strengthening national resilience comprehensively. Strong national resilience does not only depend on military capabilities, but also on the resilience of the nation's ideology, politics, economy, social, culture, and technology. Therefore, the concept of national defense should be integrated with a multidimensional approach that involves all elements of the nation. This

requires adjustments in the constitutional legal framework, including through a review of the role of local governments, civil society, and the private sector in supporting national defense policies. Without adaptive and inclusive regulations, defense policies are feared to be partial and less effective in maintaining national sovereignty.

As non-conventional threats such as cyber warfare and disinformation increase, the need to strengthen the constitutional legal framework becomes increasingly urgent. Cyber warfare, for example, can damage strategic infrastructure, create political instability, and disrupt government functions, without the direct involvement of military forces. However, the 1945 Constitution and related laws do not explicitly regulate the handling of cyber threats within the framework of national defense.(Pariangu 2023)This creates a legal gap that can hamper the state's response to complex forms of modern attacks. Therefore, this study is also important to examine the extent to which current constitutional law arrangements are able to anticipate these new threats, as well as their implications for strengthening national sovereignty in the digital era.(Judge 2019)

Based on the above description, an in-depth study of the constitutional law regulations on war and national defense in the Indonesian Constitution is very relevant and significant. This study not only aims to identify the strengths and weaknesses of existing regulations, but also to contribute to the development of adaptive, democratic, and modern constitutional law theories and practices. Thus, national sovereignty can be effectively maintained, in line with the principles of the rule of law and constitutional democracy.

II. RESEARCH METHODS

This study uses a normative legal research method, with a statute approach, a conceptual approach, and a comparative approach. The data used are in the form of primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, various laws related to state defense and security, and relevant international legal instruments; and secondary legal materials in the form of literature, books, journals, and related previous research results. Data collection techniques are carried out through literature studies and document analysis. Data are analyzed qualitatively using descriptive-analytical methods, in order to examine and understand the

regulation of state constitutional law on war and state defense and its implications for national sovereignty.

III. RESULTS AND DISCUSSION

A. Constitutional Regulations on War and National Defense in the Indonesian Constitutional Law System

The provisions regarding war and national defense in the Indonesian constitutional legal system are based on the provisions contained in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) as the highest basic law. The articles in the 1945 Constitution that directly or indirectly regulate the authority for war and national defense can be found in Article 1 paragraph (3), Article 10, Article 11, Article 27 paragraph (3), and Article 30 along with their explanations.

Article 1 paragraph (3) of the 1945 Constitution states that "The State of Indonesia is a state based on law." This provision is the basis that all state actions, including decision-making regarding war and defense, must be based on legal norms and subject to the principles of a state based on law.(Salsabila, Nugroho, and Gusthomi 2024)This means that the implementation of war powers should not be based solely on considerations of power, but must be carried out within the applicable legal corridor and respect the principles of human rights and international law.(Sitepu and Piadi 2019)

Article 10 of the 1945 Constitution states that "The President holds the highest power over the Army, Navy, and Air Force." This provision provides constitutional legitimacy for the President as head of state and head of government to control the country's military power. The highest power over the country's defense apparatus means that all forms of use of military power in the context of maintaining the country's sovereignty, including the decision to engage in war, are in principle the authority that lies in the hands of the President.

Furthermore, more specific regulations regarding war are regulated in Article 11 of the 1945 Constitution which states:

- (1) *The President, with the approval of the People's Representative Council, declares war, makes peace and agreements with other countries.*
- (2) *The President, in making other international agreements which have broad and fundamental consequences for the lives of the people related to the financial burden on the*

state, and/or require changes to or the creation of laws, must have the approval of the People's Representative Council.

(3) Further provisions regarding international agreements are regulated by law.

This provision stipulates that the President cannot unilaterally declare war or make peace without involving the approval of the House of Representatives (DPR). The obligation to obtain the approval of the DPR is a manifestation of the principle of checks and balances in the Indonesian state system. The DPR as a representative institution of the people has a supervisory function over government policies, including in very crucial matters such as war that has the potential to have a major impact on the people, state finances, and Indonesia's position in international relations.

This regulation is in line with the principle of a democratic state of law, which places the highest authority not only in the hands of the executive, but also gives a significant role to the legislative institution to prevent abuse of power in war policies. In other words, the decision to engage in war is a collective state decision, not just the prerogative of the President alone.

Furthermore, Article 27 paragraph (3) of the 1945 Constitution states that: "Every citizen has the right and obligation to participate in efforts to defend the country." This provision shows that national defense is not only the responsibility of the TNI or the government, but is the obligation of all citizens. The concept of total defense is part of the characteristics of the Indonesian national defense system, where all elements of the nation - both government, defense apparatus, and civil society - are obliged to participate in maintaining the country's sovereignty. (Setiani 2017)

In more detail, Article 30 of the 1945 Constitution regulates national defense and security as follows:

(1) Every citizen has the right and obligation to participate in national defense and security efforts.

(2) National defense and security efforts are implemented through a total people's defense and security system by the Indonesian National Army and the Republic of Indonesia National Police, as the main force, and the people, as the supporting force.

(3) The Indonesian National Army consists of the Army, Navy and Air Force as state apparatus tasked with defending, protecting and maintaining the integrity and sovereignty of the state.

(4) The Republic of Indonesia National Police as a state apparatus that maintains public security and order has the duty to protect, serve and serve the public and enforce the law.

(5) The composition and position of the Indonesian National Army, the Republic of Indonesia National Police, the relationship of authority between the Indonesian National Army and the Republic of Indonesia National Police in carrying out their duties, the conditions for citizen participation in defense and security efforts are regulated by law.

The regulation in Article 30 of the 1945 Constitution strengthens the principle that the national defense and security system in Indonesia is a total people's defense and security system (sishankamrata). This system involves all national forces in an integrated manner, both military and non-military. This concept is relevant considering that challenges to state sovereignty in the modern era do not only come from conventional military threats, but also from non-military threats such as terrorism, cyber warfare, biological threats, and economic disruption. (Lubis 2021)

To implement these constitutional provisions, a number of laws and regulations were issued which became the legal basis for the implementation of national defense. Among them are:

1. Law Number 3 of 2002 concerning National Defense. Article 1 number 2 of this Law states that national defense is "all efforts to defend the sovereignty of the state, the territorial integrity of the Unitary State of the Republic of Indonesia, and the safety of the entire nation from threats and disturbances to the integrity of the nation and state." Article 5 paragraph (1) states that the President is the holder of the highest authority in managing national defense. While Article 5 paragraph (2) stipulates that the implementation of this authority is carried out through the Minister of Defense.

2. Law Number 34 of 2004 concerning the Indonesian National Armed Forces. Article 7 paragraph (1) emphasizes that the main task of the TNI is "to uphold state sovereignty, defend the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and protect the entire nation and all of Indonesia's territory from

threats and disturbances to the integrity of the nation and state."

3. Law Number 23 of 2019 concerning Management of National Resources for National Defense. This law strengthens the role of all components of the nation in the national defense system through the management of human resources, natural resources, artificial resources, and national facilities and infrastructure that can be used in the context of national defense.

From the various constitutional provisions and laws and regulations above, it can be concluded that the regulation of constitutional law on war and national defense in Indonesia contains several main principles. First, the supremacy of law and accountability in decision-making related to war. Second, strengthening the participatory role of citizens in national defense. Third, civilian supremacy over the military with the affirmation of the role of the President and supervision of the DPR. Fourth, strengthening the synergy between military forces and other supporting components, both civilian and local government, in facing threats to national sovereignty.

However, in the practice of state administration, there are still challenges that must be faced in implementing these regulations. One of the main challenges is the clarity of the mechanisms and limitations in the use of war authority by the President, especially in the context of non-conventional threats such as cyber warfare. Until now, the 1945 Constitution and the laws and regulations under it have not explicitly regulated the criteria for a "state of war" outside of conventional military threats.

In addition, coordination between state institutions in managing defense policies also needs to be continuously strengthened, considering the complexity of geopolitical challenges in the era of globalization. In this context, the renewal of constitutional law in the field of war and national defense needs to be directed at creating a more responsive, adaptive, and accountable system, which always guarantees the upholding of national sovereignty based on the principles of a democratic state of law.(Son 2014)

B. Implications of Constitutional Law Regulations on War and National Defense for National Sovereignty

As explained in the previous discussion, the regulation on war and national defense in the Indonesian constitutional law system has a fairly strong normative foundation. The regulation is based on the 1945 Constitution and is supported by various sectoral laws that regulate the implementation of national defense.(Sagala et al. 2025)However, the existence of these regulations does not necessarily guarantee that Indonesia's national sovereignty is automatically protected in all conditions. Herein lies the main problem underlying this research, namely how do the constitutional law regulations regarding war and national defense contained in the constitution and laws and regulations provide effective guarantees for Indonesia's national sovereignty amidst increasingly complex global challenges?

The essence of the main problem of this research can be formulated as follows: although formally there are regulations that regulate the authority of the President, the role of the DPR, the main tasks of the TNI, the obligations of citizens in defending the country, and the management of national resources for defense interests, there are still normative and implementative gaps that can hinder the effectiveness of protecting national sovereignty. These gaps are mainly related to the lack of clarity in regulations regarding:

1. legal definition of "state of war" in the context of modern threats;
2. operational procedures for decision-making on war or the use of military force;
3. integration between primary and reserve components in a universal defense system;
4. regulating the role of the state in dealing with non-conventional threats (cyber warfare, information warfare, disinformation, economic attacks, and so on).

The direct implication of this less than fully adaptive legal arrangement is the potential for legal gaps that can reduce the effectiveness of the state in dealing with cross-dimensional threats that go beyond traditional state boundaries. National sovereignty, which essentially includes territorial sovereignty, legal sovereignty, political sovereignty, and digital sovereignty, will be easily disrupted if the state constitutional law apparatus is unable to keep up with the dynamics of the threats that occur.

As a concrete example, Article 11 paragraph (1) of the 1945 Constitution only stipulates that the President with the approval of the DPR can declare war. However, in the modern era, forms of

warfare are often no longer declarative as in conventional times. Cyber war, for example, can occur without a formal declaration of war. Attacks on a country's vital digital infrastructure can paralyze the government and national economy, even without the physical involvement of foreign military forces. However, to date there has been no explicit legal regulation regarding whether large-scale cyber attacks can be qualified as a "state of war" that allows the state to take certain defense measures in accordance with Article 11 of the 1945 Constitution.

In addition, the parliamentary oversight system for defense policy also still faces implementation challenges. Although normatively the DPR has the authority to give approval for declarations of war and peace agreements (Article 11 of the 1945 Constitution), in practice, the decision-making process in the field of defense and military policy often takes place in a very executive-centric context. This is due to the regulation of operational authority which is mostly under the President and the Minister of Defense, as stipulated in Article 5 paragraphs (1) and (2) of Law Number 3 of 2002 concerning National Defense.

On the other hand, the concept of the Total People's Defense and Security System (Sishankamrata) as mandated in Article 30 of the 1945 Constitution faces implementation challenges at the national and regional levels. The role of the people as a supporting force is often not optimally integrated into the national defense doctrine. Limited understanding, lack of community involvement in defense exercises and simulations, and low security literacy among civilians are obstacles to realizing a solid total defense system.

This imbalance in regulation has direct implications for national sovereignty. In the theory of constitutional law, national sovereignty does not only mean external recognition by the international community, but also includes the state's ability to effectively protect its territorial integrity, governance, and socio-political order from various forms of threats. Thus, when there is legal ambiguity in making war decisions, or when the national defense system is unable to respond to various contemporary threats, the level of effectiveness of protection of national sovereignty will be disrupted.

In addition, from an international legal perspective, Indonesia as a member of the United Nations is bound by the UN Charter which prohibits the use of military force except in the

context of self-defense or based on the mandate of the UN Security Council (Article 2 paragraph (4) and Article 51 of the UN Charter). This requires that every policy on the use of military force by Indonesia, both domestically and abroad, must be formulated within a framework that is not only constitutional, but also in accordance with the principles of international law. The absence of clear regulations regarding the role of the TNI in operations abroad, for example in the context of UN peacekeeping missions, can create legal uncertainty both at the national and international levels.

From the above explanation, it can be concluded that the implications of the regulation of constitutional law on war and national defense on national sovereignty are highly dependent on the quality of the regulation and the effectiveness of the implementation of the relevant policies. In the current Indonesian context, there is an urgent need to strengthen and harmonize legal regulations in this area to be more responsive to changes in the global threat landscape. National sovereignty as a constitutional mandate, as mandated in the Preamble to the 1945 Constitution which emphasizes the purpose of the state to "protect the entire Indonesian nation and all of Indonesia's territory", can only be realized in real terms if the state has a constitutional legal apparatus that is adaptive, accountable, and in accordance with the challenges of the times.

IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the discussion that has been outlined, it can be concluded that the regulation of constitutional law on war and national defense in the Indonesian Constitution, especially as regulated in Article 10, Article 11, and Article 30 of the 1945 Constitution, has provided a basic framework for the implementation of defense policies and war decision-making in a constitutional and democratic manner. However, in facing increasingly complex contemporary threats, especially in the cyber realm and non-conventional threats, there are still gaps in regulation both from the normative and implementative sides. This has implications for the effectiveness of protecting national sovereignty, where the state requires a more adaptive, responsive, and integrative constitutional legal apparatus to anticipate all forms of threats to the integrity and sovereignty of the state.

As a suggestion, steps are needed to update and harmonize laws and regulations in the field of national defense to be more in line with current developments. There needs to be a strengthening of the legislative role in overseeing defense policies, strengthening of the universal people's defense system involving all elements of the nation, as well as more explicit legal regulations regarding the handling of non-conventional threats, including cyber warfare and hybrid threats. In addition, strengthening security education and literacy for citizens and increasing coordination between state institutions are absolutely necessary to ensure that national sovereignty can be optimally maintained in accordance with the mandate of the constitution.

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