

CONSCIENTIOUS OBJECTION BEFORE THE INDONESIAN CONSTITUTIONAL COURT

Heribertus Jaka Triyana*

Faculty of Law, Universitas Gadjah Mada, Indonesia
jaka.triyana@mail.ugm.ac.id

Received: 14 September 2022 | Last Revised: 17 November 2022 | Accepted: 7 December 2022

Abstract

The issuance of Indonesia's Law No. 23 of 2019 on the Management of National Resources for State Defense (PSDN Law) sparked a national debate on conscription and conscientious objection. Consequently, a coalition of civic society organizations submitted the PSDN Law before the Constitutional Court for judicial review. They argued that the PSDN Law violates the Indonesian Constitution's Article 28 on human rights protection. One of the legal submissions is based on the argument that the PSDN Law deliberately ignores human rights in order to provide reserve and backup components to the military. This argument is supported by Article 18 of the International Covenant on Civil and Political Rights (ICCPR) and the ICCPR's General Comment No. 22 of 1993 paragraph 11, justifying conscientious objection as an inherent human right. The analysis in this paper is mainly uses the legal positivism paradigm and the human rights-based approach. This paradigm provides a framework for analyzing how the PSDN Law generates a distinctive legal feature for Indonesia's legal system. In line with Article 28 of the Indonesian Constitution, the Constitutional Court should explicitly assess the preservation of civil rights. It may be claimed that conceivable legal gaps (norm versus reality) and legal loopholes add to the Constitutional Court's obligation to consider the omission of conscientious objection recognition. This article argues the Constitutional Court should adjudicate on the issue of citizens being conscripted as reserve and backup components in situations of military threats, hybrid threats and/or non-military threats. This research further maintains that the Constitutional Court should recognize the existence of conscientious objection as an inherent human right, as a form of judicial activism. In accordance with the doctrine of judicial activism, the Court could resolve and offer solutions to

* Lecturer at the Department of International Law, Faculty of Law, Universitas Gadjah Mada, Yogyakarta, Indonesia.

the existence of conscientious objection as a democratic civil right. The Court should also determine the area, scope, application and orientation of conscientious objection as a distinct feature of human rights based on Indonesia's context and perspective on defense required by international human rights treaties, conventions, or general comments on such instruments.

Keywords: Conscientious Objection, Conscription, Human Rights Abuses, Military Service.

I. INTRODUCTION

The protection of all the people and land of Indonesia is one of the objectives of the Government of Indonesia, according to paragraph 4 of the Preamble to the Indonesian Constitution.¹ Accordingly, the House of Representatives issued Law No. 23 of 2019 on the Management of National Resources for State Defense (the PSDN Law). The PSDN Law stems from a positivistic point of view, fostering principles such as proportionality, rationality, non-discrimination, equity and justice, which are the basis for establishing a comprehensive national defense strategy that clarifies the right and obligation to participate in national defense.² The establishment of a national defense management is focused on enhancing national peace, security and stability in the event of future disruptions by involving civilians as defense reserves and backup forces.³

The PSDN Law has legitimate reasons and authority to enhance state defense strategy, based upon Indonesia's state philosophy, Pancasila.⁴ The PSDN Law provides a transparent management system to ensure maximum available resources are rendered by Indonesian citizens as reserve and backup forces. This expectation for more active and meaningful participation is in line with Article 30

¹ The 1945 Constitution of Indonesia has been amended four times, namely on 19 October 1999, 18 August 2000, 10 November 2001 and 10 August 2002.

² Martin Krygier, "Critical Legal Studies and Social Theory," *Oxford Journal of Legal Studies* 7, no. 5 (1987); Eric Margolis and Stephen Laurence, "Concepts and Cognitive Science," in *Eric Margolis and Stephen Laurence*, (Stanford: Stanford University, 1996); Korner, "Deductive Unification and Idealisation," *The British Society for Philosophy of Science* 63, no. 20 (1964); Satjipto Raharjo, *Biarkan Hukum Mengalir, Catatan Kritis Tentang Pergulatan Manusia dan Hukum [Let the Law Flow, A Critical Note on the Struggle of Man and Law]* (Jakarta: Kompas, 2000).

³ Law No. 23 of 2019 on the Management of National Resources for State Defense.

⁴ BPIP and University of Bangka Belitung, "Kajian Evaluasi Undang-Undang Nomor 23 Tahun 2019 Tentang Pengelolaan Sumber Daya Nasional Untuk Pertahanan Negara [An Evaluation Study of Law No. 23 of 2019 on the Management of National Resources for State Defense]" (Final Report, BPIP and University of Bangka Belitung, 2019) 11-12.

(1) of the Indonesian Constitution, which stipulates, “Every citizen has the right and duty to participate in the defense and security of the state.” This provision may be interpreted broadly to mean that citizens’ participation in military service is both a right and an obligation. Moreover, Article 30 (5) of the Constitution includes the provision that, “... the requirements concerning the participation of citizens in the defense and security of the state, and other matters related to defense and security, are regulated by law.” Supporting the implementation of the Constitution, the PSDN Law provides modes of accountabilities among actors such as the military and central and local governments for the mobilization, deployment and demobilization of reserve and backup components. Thus, the PSDN Law sees the coexistence of the state organs commonly recognized in the separation of powers, namely the legislative, executive and judicative organs, from central to local levels, applicable to the Indonesian state structure.⁵

Article 4 of the PSDN Law defines the scope of threats to national sovereignty, territorial integrity and security. Next, Article 5 details how the management of national resources for national defense is implemented. These articles reveal two distinct features. First, internal coordination and cordial support between the President, as the commander-in-chief, and the military creates a status of mission agreement to maintain national safety and security in facing military, hybrid and non-military threats. Second, at the operational and technical levels, the creation of a status of force agreement and rules of engagement based on the aforementioned types of threats determines the most acceptable options for the deployment of all available resources ranging from manpower, natural and/or man-made resources, especially civilians, as reserve and backup components. Furthermore, the PSDN Law also regulates national defense strategy in a more comprehensive, total, sustainable and well-organized manner required by the Indonesian Constitution. The PSDN Law is also seen as paving the way for a more active and adaptive plan of action in dealing with new phenomena of national threats, such as potential armed conflicts with their various characteristics,

⁵ Article 3, Law No. 23 of 2019 on the Management of National Resources for State Defense, states, “The management of National Resources for State Defense aims to transform Human Resources, Natural Resources and Artificial Resources, as well as National Facilities and Infrastructure, into National Defense forces that are ready to be used for the interests of State Defense.”

complex emergencies, and disasters deemed as military threats, hybrid threats and non-military threats.⁶ These threats require the government to take extraordinary measures to sustain the national interest and national resilience by involving active and meaningful participation from all citizens.⁷

To this end, the hybrid threat category was introduced to cover grave national safety and security threats. Consequently, extraordinary measures are construed as substantial matters in the PSDN Law, triggering debate over the Law's implementation.⁸ As a result of implementation issues, a lack of stipulations, and loose interpretation, there is an opportunity for improvement, particularly with regard to conscription of reserve and backup components for military service. If the obstacles are resolved, participation will be safer and more meaningful through the use of legitimate objections, such as conscientious objection, as an alternative form of participation.⁹ It is hoped that the issuance of the PSDN Law will result in greater public awareness regarding civilian conscription for military service, as well as protection of private premises, better safety for civilian engagement in times of war, more precise recording of zones of national resources, and flexible forms of meaningful participation by highlighting different expertise, resources, risks and conditions during situations of state emergency, particularly based upon respect and protection of human rights.¹⁰ However, the PSDN Law is also deemed to be centralistic and mandatory, paying less attention to legitimate objections legally possessed by individuals or group of individuals, such as conscientious objection, as inherent human rights.

This article will provide an analytical analysis of three different topics. First, judicial review before the Indonesian Constitutional Court will be proposed

⁶ Article 4, Law No. 23 of 2019 on the Management of National Resources for State Defense.

⁷ Osgar S. Matampo, "Pembatasan Terhadap Hak Asasi Manusia dalam Prespektif Keadaan Darurat [The Restrictions on Human Rights in the Perspective of Emergencies]," *Jurnal Media Hukum* 21, no. 1 (2014): 67-68; Siti Marwiyah, "Kewenangan Konstitusional Presiden Terhadap Hal Ikhwal Kegentingan yang Memaksa [The President's Constitutional Authority on Emergency Matters]," *Jurnal Masalah-Masalah Hukum* 4, no. 3 (2015): 297.

⁸ Nanda Perdana Putra, "Pro Kontra Rekrutmen Komponen Cadangan, UU PSDN Digugat ke MK [Pros and Cons of Reserve Component Recruitment, PSDN Law Challenged at the Constitutional Court]," Merdeka, published 31 May 2021; Andi Saputra, "Hikmahanto Juwana di MK: UU PSDN Adalah UU yang Disiapkan Bila Ada Perang [Hikmahanto Juwana at the Constitutional Court: The PSDN Law is a Law Prepared for the Event of War]," DetikNews, published 10 February 2022.

⁹ United Nations Human Rights Office of the High Commissioner, *Conscientious Objection to Military Service* (Geneva and Switzerland: United Nations Publication, 2012), 20-21.

¹⁰ Saputra, "Hikmahanto Juwana di MK [Hikmahanto Juwana at the Constitutional Court]."

to test the second and the third issues in accordance with Article 28 of the Indonesian Constitution and relevant international human rights standards on the recognition of conscientious objection to military service as an inherent human right. Second, civilian conscription to military service as reserve and backup components under the rubric of international human rights law, international humanitarian law and international criminal law will be outlined to determine the area, scope and application of Indonesia's international obligations under human rights standards to justify the relevance of conscientious objection. Such application will be utilized to determine whether or not the enactment of the PSDN Law in Indonesia complies with international standards on the recognition of conscientious objection. Meaningful involvement based on conscientious objection to military service will be evaluated according to the extent to which certain components of understanding have been met, possible risks have been taken, and civilian resources have been allocated. In addition to the issue of legitimacy and accountability, it must also be evaluated from the government's perspective to justify the nature of "absolute choice and mandatory manner" as the cause of possible human rights abuse and ignorance of the essence of conscientious objection in the PSDN Law.

II. JUDICIAL REVIEW BEFORE THE INDONESIAN CONSTITUTIONAL COURT

A coalition of civil society organizations, namely Imparsial (the Indonesian Human Rights Monitor), Elsam (*Lembaga Studi dan Advokasi Masyarakat*, the Institute for Community Studies and Advocacy), and KontraS (*Komisi untuk Orang Hilang dan Korban Tindak Kekerasan*, the Commission for Disappeared and Victims of Violence), deemed several articles of the PSDN Law as a threat to civilian rights and an abuse of constitutional power.¹¹ The organizations in 2021 submitted a petition to the Constitutional Court for judicial review of the

¹¹ They submitted the judicial review application to the Constitutional Court on 3 August 2021, questioning the legality of Articles 4, 5, 17, 18, 20, 28, 29, 46, 66, 75, 77, 78, 79, 81 and 82 of the PSDN Law toward the Indonesian Constitution, specifically Articles 28 and 30. On 31 October 2022, the Constitutional Court rejected the application, although it did order legislators to improve the definitions of threats in the PSDN Law and to ensure that its determination of resources is democratic and respects human rights.

constitutionality of the PSDN Law. This step was taken as an advocacy and adjudication mechanism, appealing that the participation of citizens in defending the State must be in accordance with national objectives, civil reformation and human rights standards. The applicants noted the PSDN Law allows for direct and rapid military plans implemented at the strategic, operational, and tactical levels, commanded by the military commander-in-chief, that is, the Indonesian President.¹² The organizations believe the PSDN Law systematically reduces the spirit of Indonesia's reformation agenda due to overwhelming military characteristics directed to civilians as reserve and backup components, military conscription with no room for objection or alternative modes of military service.¹³ Moreover, they were concerned by the Law's centralization of policy deliberation, programs, actions and funds, citizens' mandatory participation and military reserves, appropriation of properties owned by citizens, and penalization of non-compliance with such measures as crimes.¹⁴ The organizations submitted their judicial review request before the Constitutional Court on 31 May 2021, arguing that certain articles in the PSDN Law breach Article 28 of the Indonesian Constitution, especially concerning the duty to respect, protect and fulfil human rights and their legal limitation.¹⁵

One of the most crucial issues concerns the legitimacy of conscientious objection to mandatory military service under the PSDN Law.¹⁶ Such objection is absent from the PSDN Law. However, Indonesia does have some laws and regulations on this matter. To some extent, the issue of mandatory military service may breach Indonesia's legal obligations as a member state to the International Covenant on Civil and Political Rights (ICCPR).¹⁷ Article 18 of the ICCPR stipulates that "everyone shall have the right to freedom of thought, conscience and religion"

¹² KontraS, Elsam and Imparsial, *Judicial Review Legal Argument*, 3 August 2021.

¹³ The Indonesian Human Rights Monitor, *Menggugat Komponen Cadangan [Claiming Reserve Components]* (Jakarta: Imparsial, 2022), 1.

¹⁴ The Indonesian Human Rights Monitor, 85-86.

¹⁵ Massimo La Torre, *Law and Institutions* (London: Springer, 2009), 61; Robert S. Summers, *Form and Function in A Legal System A General Study* (Cambridge: Cambridge University Press, 2006), 15-19 and 3-7.

¹⁶ The Indonesian Human Rights Monitor, 82.

¹⁷ ICCPR entered into force on 23 March 1976, 993 UNTS 171, 1966 UNJYB 193; 1977 UKTS 6.

with its distinguished features on personal coverage relevant to law, policy, program and action issued by the government affecting their civil and political entitlements.¹⁸ In addition, General Comment No. 22 (48) (Art. 18) of 1993 of the United Nations Human Rights Committee endorses conscientious objection as a reference for individual legal entitlement for military service that must be respected, protected and guaranteed by member states.¹⁹ This raises the question of why the PSDN Law does not recognize conscientious objection – a question reviewed by the Indonesian Constitutional Court. The Constitutional Court’s decision can be deemed a measure of Indonesia’s willingness and compliance in fulfilling its obligations under the ICCPR and other international standards. Such compliance shall be measured based on several factors such as availability of regulation, transparency and non-discriminatory nature of procedures, and whether there are alternative choices to military service.²⁰

Within the framework of human rights standards, Indonesia is obliged to fulfil its international obligations, i.e., duties to protect, to ensure and to respect from its membership to major human rights conventions.²¹ In other words, these duties enshrine the principle of effectiveness, which requires that the provisions of peace treaties shall “be interpreted and applied so as to make their safeguards practical and effective” including use of force in time of emergencies

¹⁸ Commission on Human Rights, “Commission on Human Rights, Resolution 1998/77 on Conscientious Objection to Military Service” (Report, E/CN/4/RES/1998/77, 1998); D. Prasad and T. Smythe, *Conscription: A World Survey - Compulsory Military Service and Resistance to It* (London: War Resisters’ International, 1968), 56; Anne M. Yoder, *Conscientious Objection in America: Primary Sources for Research* (Pennsylvania: Swarthmore College Peace Collection, 2003), 6-7.

¹⁹ Markus Burgstaller, *Theories of Compliance with International Law* (Leiden: Martinus Nijhoff Publishers, 2005), 85; Andrew Guzman, *How International Law Works, A Rational Choice Theory* (Oxford: Oxford University Press, 2008), 22.

²⁰ UN Office of the High Commissioner for Human Rights, “Approaches and Challenges with Regard to Application Procedures for Obtaining the Status of Conscientious Objector to Military Service in Accordance with Human Rights Standards” (Report (published) presented for the United Nations High Commissioner for Human Rights, 2019); Human Rights Committee, “Compilation of General Comments and General Recommendations” (Report (published) presented for the United Nations High Commissioner for Human Rights, 1981).

²¹ Hans-Joachim Heintze, *Convergence Between Human Rights Law and International Humanitarian Law and the Consequences for the Implementation* (London: Springer, 2011), 83-101; Heribertus Jaka Triyana, “Pengaruh Pasal 4 Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia Terhadap Upaya Penegakan Hukum Pelanggaran Berat Hukum Humaniter Internasional [The Effect of Article 4 of Law No. 39 of 1999 on Human Rights on Law Enforcement Efforts for Serious Violations of International Humanitarian Law],” *Jurnal Mimbar Hukum* 1, no. 3 (2004): 46-49.

and imminent threats.²² Within the PSDN Law, imminent threats are defined as military, non-military and hybrid threats. Consequently, state organs bear the responsibility to protect and respect human rights law, especially in exercising legal entitlement between the duty-bearer (i.e., the state, state organs) vs. rights holders (i.e., the individual, groups).²³ Particularly, such provisions apply in terms of the conduct of state organs to achieve legitimate mandates in the PSDN Law. State organs also bear responsibility to be held accountable if they violate international human rights law in their duties in handling threats or emergencies once people are mobilized and deployed.²⁴ State defense policies, programs and actions as a manifestation of duty to respect of human rights law have been incorporated by the PSDN Law as a matter of law. However, the PSDN Law itself does not provide any references to effectively control activities and measures carried out by the reserve and backup components of military forces once they are deployed. Consequently, matters relating to training, active dissemination, education, and the interpretation of international human rights law must be put into simple language to ensure understanding and awareness of the reserve and backup components. It is also necessary to include legitimacy or reasons why the troops are deployed for missions. This step should be taken by the president when he/she mobilizes or demobilizes reserve and backup components in complex emergency situations based on the PSDN Law.

From a legal point of view, the issuance of the PSDN Law has also created a discourse on the status and applicability of International Human Rights Law (IHRL), International Humanitarian Law (IHL) and criminal law in the Indonesian legal system, especially on the issue of conscription and criminal

²² Human Rights Committee, "Compilation of General Comments and General Recommendations" (Report (published presented for the United Nations High Commissioner for Human Rights, 2019); European Court of Human Rights, Case of *Loizidou vs. Turkey*, Preliminary Objections No. 15318/89 (European Court of Human Rights, 1995).

²³ Rick Lawson, "Out of Control, State Responsibility and Human Rights: Will the ILC's Definition of the 'Act of State' Meet the Challenges of the 21st Century?" in *The Role of the Nation-State in the 21st Century, Human Rights, International Organizations and Foreign Policies: Essays in Honor of Peter Baehr*, eds. Monique Castermans-Holleman, Fried van Hoof, and Jacqueline Smith (Cambridge: Kluwer Law International, 1999), 91.

²⁴ Eva Rieter and Karin Zwaan, *Urgency and Human Rights, The Protective Potential and Legitimacy of Interim Measures* (The Hague: T.M.C. Asser Press, 2020), 28-29; Eva Rieter, *Preventing Irreparable Harm: Provisional Measures in International Human Rights Adjudication* (Antwerp: Intersentia, 2010), 5-8.

sanctions imposed for refusing to be reserve or backup components.²⁵ In simple terms, conscientious objection is legally assumed to be a crime punishable under the PSDN Law. This shows the PSDN Law ignores generally accepted human rights standards. As a result, it reduces the legitimacy of the PSDN Law and its implementation. Such concerns prompted several civil society organizations to review the validity of the PSDN Law at the Constitutional Court, as described above.

The petition for judicial review of the PSDN Law was submitted to test the legal position of Indonesia on the implementation of international human rights standards on the recognition and application of conscientious objection.²⁶ Military service and human rights standards on conscientious objection have relevance in four features tested in the Constitutional Court. First, they are the means of the legal basis for legitimate sources (just causes) to conduct actions in situations of military, non-military and hybrid threats, and who is obligated to act in conformity with them (duties to respect as preventive action for violations); the degree of military control over individuals (duties to protect and respect, which can hold them accountable for any potential breaches), where and when the operation is ultimately conducted among military forces (all the duties).²⁷ Thus, it was believed that submitting a judicial review to the Constitutional Court would clarify the area, scope and application of conscientious objection for military service as an inherent human right. Furthermore, it would also create a standard to prevent abuse of power by state authorities in future situations of military, non-military, and hybrid threats.

²⁵ T.O. Elias, *New Horizons in International Law*, 2nd ed. (Leiden: Martinus Nijhoff Publishers, 1979), 15; Isabella Daoust, Robin Coupland and Rikke Ishoey, "New Wars, New Weapons? The Obligation of States to Assess the Legality of Means and Methods of Warfare," *International Review of the Red Cross* 84, no. 846 (2002): 345-62; George H. Aldrich, "The Law of War on Land," *American Journal of International Law* 94, no. 42 (2000): 54; George H. Aldrich, "Compliance with International Humanitarian Law," *International Review of the Red Cross*, no. 282, (1991): 294; Timothy L.H. McCormack, "From Solferino to Sarajevo: A Continuing Role for International Humanitarian Law," *Melbourne University Law Review* 21 (1997): 642; Marco Sassòli and Antoine Bouvier, "How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law," ICRC, published 9 June 2020.

²⁶ Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia [Procedural Law of the Constitutional Court of the Republic of Indonesia]* (Jakarta: Sinar Grafika, 2015), 5-20.

²⁷ D. Fisher, "Domestic Regulation of International Humanitarian Relief in Disasters and Armed Conflict: A Comparative Analysis," *International Review of the Red Cross*, no. 866 (2007); Alan Page Fiske, "Complementarity Theory: Why Human Social Capacity Evolved to Require Cultural Complement," *Personality and Social Psychology Review* 4, no. 1 (2000).

III. MILITARY SERVICE, CONSCIENTIOUS OBJECTION AND HUMAN RIGHTS IN INDONESIA

In Indonesia, military service is primarily by those who applied voluntarily as regular military forces.²⁸ Military power served by regular forces aims to sustain national interests and protect sovereignty from external threats, so military force is last resort and a legitimate coercive tool of the state.²⁹ Every year, thousands of Indonesians enlist, based on their competence, in air, sea and land forces. Military personnel have their own functional imperative characters and uniqueness compared to civilians in their legal obligations as citizens.³⁰ Consequently, primary responsibility for national defense is carried out by military forces, while reserve and backup components serve as complementary organs.³¹ This primary function of defense is mainly directed at military threats from other states or international armed conflicts, based on the concept of state security. However, the concept of threat has been developed into more fluid individual security issues, marked by human rights, democracy and good governance.³² Comprehensive security for a state's existence under international law and international relations involves active participation from citizens to

²⁸ Article 7 (2), Law No. 3 of 2002 on National Defense states, "The national defense system in dealing with military threats places the Indonesian National Armed Forces as the primary component, supported by reserve components and backup components."

²⁹ Timothy L.H. McCormack, "From Solferino to Sarajevo: A Continuing Role for International Humanitarian Law," *Melbourne University Law Review* 21 (1997): 1059–60; Isabella Daoust, Robin Coupland, and Rikke Ishoey, "New Wars, New Weapons? The Obligation of States to Assess the Legality of Means and Methods of Warfare," *International Review of the Red Cross*, no. 84 (2002): 345-62.

³⁰ Katherine Doherty and Timothy L.H. McCormack, "'Complementarity' as a Catalyst for Comprehensive Domestic Penal Legislation," *University of California Davis Journal of International Law and Policy* 5, (1995): 171; John Tobin, "Seeking Clarity in Relation to the Principle of Complementarity: Reflection on The Recent Contributions of Some International Bodies," *Melbourne Journal of International Law* 8, (2017); Jann K. Kleffner, "The Impact of Complementarity on National Implementation of Substantive International Criminal Law," *Journal of International Criminal Justice* 1, no. 1 (2003): 88-89.

³¹ Article 8 (1) of Law No. 3 of 2002 on National Defense states, "The reserve component consists of citizens, natural resources, artificial resources, and national facilities and infrastructure, which have been prepared to be deployed through mobilization to enlarge and strengthen the primary components." Article 8 (2) of Law No.3 of 2002 states, "The backup component consists of citizens, natural resources, artificial resources, as well as national facilities and infrastructure that can directly or indirectly increase the strength and capability of the primary component and the reserve component."

³² Benjamin Miller, "The Concept of Security: Should it be Redefined?" *Journal of Strategic Studies* 24, no. 2 (2001): 19–22; The Preamble of the ASEAN Charter also recognizes the shifts in regional threats and challenges by mentioning the need "to effectively respond to current and future challenges and opportunities", while the AICHR Terms of Reference states that one of its purposes is "To enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights".

counter global threats, such as climate change, pollution and poverty, affecting individual needs and concerns.³³ This concept of threat inspired the purposeful rationales for the enactment of the PSDN Law. Reserve and backup components should be controlled and prepared in line with regular military forces in order to bolster Indonesia's resilience against all foreign and internal threats.³⁴

In addition to the aforementioned facts, Indonesia has taken steps since 1998 to sustain its reform program, including in its security sector. Such reform emphasizes good governance, democracy and human rights. Maintaining civilian supremacy in politics, professional and competent military welfare arrangements, and a clear and powerful assignment of foreign defense authority dictate the rationales.³⁵ In 2005, the Organization for Economic Cooperation and Development (OECD) issued guidelines for Security Sector Reform (SSR). In order to minimize abuse of power by the military or military leaders, resulting in egregious human rights abuses, unnecessary suffering, and impunity, one of the prominent goals of SSR is to ensure that heads of state or those in authority are held accountable.³⁶ To this end, Indonesia has made efforts to prevent gross violations of human rights or potential abuses committed by military

³³ Daniel Yergin, *The New Map, Energy, Climate and the Clash of the Nations* (New York: Penguin, 2020), 423; Bill Gates, *How to Avoid Climate Disaster* (New York: Penguin, 2021), 227; Dieter Helm, *Net Zero: How We Stop Causing Climate Change* (United Kingdom: HarperCollins, 2022), 231; Gearoid Tuathail, Simon Dalby, and Paul Routledge, *The Geopolitics Reader* (New York: Routledge, 2007), 263.

³⁴ Constitutional Court of the Republic of Indonesia, "Penguujian Undang-Undang Nomor 23 Tahun 2019 Tentang Pengelolaan Sumber Daya Nasional Untuk Pertahanan Negara Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, No. 27/PUU-XIX/2021 [Judicial Review of Law No. 23 of 2019 on the Management of National Resources for State Defense Against the 1945 Constitution of the Republic of Indonesia, No. 27/PUU-XIX/2021]" (Report, Constitutional Court of the Republic of Indonesia, 2021).

³⁵ Dewi Fortuna Anwar, "Demokrasi, Keamanan dan Peranan Militer [Democracy, Security and the Role of the Military]" in *Ikrar Nusa Bakti, Dinamika Internal Tentang Peran dan Fungsi TNI [Nusa Bakti Pledge, Internal Dynamics of the Role and Functions of the TNI]*, ed. Ikrar Nusa Bhakti (Jakarta: LIPI Political Research Center, 2001), 19-21; Faculty of Law, Universitas Gadjah Mada, "Reposisi TNI-POLRI dalam Sistem Hukum Indonesia [TNI-POLRI Reposition in the Indonesian Legal System]" (Research Paper funded by USAID, 2001), 19-26.

³⁶ Organization for Economic Cooperation and Development, *Security Sector Reforms and Governance* (Paris: OECD Publishing, 2005), 20; Steven Ratner and Jason Abrams, *Accountability for Human Rights Atrocities in International Law Beyond the Nuremberg Legacy*, 2nd ed. (Oxford: Oxford University Press, 2009), 21; Neil Kritz, "Coming to Terms with Atrocities: A Review of Accountability Mechanism for Mass Violations of Human Rights," *Law and Contemporary Problems* 59, (1996): 127; United Nations Development Programme, "Public Accountability of Democratic Institution" (Report (published), 2002), 65; Louis Joinet, "Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political)" (Report (published) presented for Sub-Commission Decision 1996/119, 1996), 13-14.

members or their superior officers.³⁷ This commitment has been manifested by enacting effective penal sanctions and creating national institutions to monitor the protection of human rights. Indonesia's National Commission on Human Rights, created in 1993, was strengthened by new legislation in 1999. Similarly, the National Press Council, established in 1968, was made independent in 1999. The National Commission for the Protection of Children was founded in 1998, as was the National Commission on Violence Against Women, and the Judicial Commission was founded in 2004. Since the onset of Indonesia's reform era in 1998, prosecution of persons suspected of committing or ordering human rights abuses is mainly conducted in accordance with international standards for a fair trial. Measures have also been taken to ensure the accountability of trials, and to enact appropriate laws for victims of abuse and those who have suffered a miscarriage of justice. All of these norms and institutions, including the establishment of the Ad Hoc Human Rights Tribunal for Timor-Leste, have also been launched with mutual state cooperation in handling criminal issues, whether in times of peace or war.³⁸

In addition to these initiatives, other measures have been taken concurrently to ensure that Indonesia complies with international human rights law, including the creation of policies, programs and actions. Examples include the enactment or recognition of inquiry procedures, cooperation with the United Nations (UN) and the Association of Southeast Asian Nations (ASEAN), special reports on violence against women and children, and the enhancement of cooperation with the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the

³⁷ For example, in the Ad Hoc Tribunal for Timor-Leste, Case register: 01/PID HAM/Ad Hoc/PN JKT PST; a former governor of East Timor was found guilty and sentenced to three years' imprisonment. He was convicted for his involvement in crimes against humanity. As governor, he intentionally ignored information of the atrocities and did not try to stop atrocities in which 22 people were killed and 21 wounded. He was charged pursuant to Article 42 (2) a, b, Article 7(b) and Article 37 of the 26 of 2000 Law. Also, in a judgment in January 2003, a former Police Chief of Dili was sentenced to three years in jail for failing to prevent violence in East Timor.

³⁸ Article 8, Law No. 39 of 1999 on Human Rights; Article 49, Compared with Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 1949; Article 50 of the Convention (II) for the Amelioration of the Condition of the Wounded and Sick and Shipwrecked Members of the Armed Forces at Sea; Article 129, Convention (III) Relative to the Protection to the Prisoner of War of 1949; Article 146, Convention (IV) Relative to the Protection of Civilian Persons in Time of War of 1949; The 1949 Geneva Conventions were ratified by Indonesia by Law No. 59 of 1958 on the Participation of Indonesia in all the 1949 Geneva Conventions; International Committee of the Red Cross, *The Geneva Conventions of August 12, 1949* (1949), 44-5, 70-1, 132-3, 212-3; Article 89, Additional Protocol I to the 1949 Geneva Conventions of 1977.

ASEAN Commission on Women and Children (ACWC).³⁹ In particular, national courts have been given authority to prevent abuse of power and gross human rights violations by military personnel or their superiors.⁴⁰ Law No. 26 of 2000 on Human Rights Courts furthered Indonesia's security sector reforms.⁴¹ Thus, military forces have been regulated by mainstreaming respect to human rights standards as it is believed this will increase their professionalism and capabilities, in addition to enhancing their accountability and legitimacy in a democratic society, as required by Article 28J (2) of the Indonesian Constitution.⁴² Hence, factors such as responsibility, professionalism, competence and welfare of the armed forces, mainstreamed by proper human knowledge and values, determines accountability as well as legitimacy for any deployment of military forces.

The most logical framework for revealing patterns, trends or orientations to critically assess the future application of the PSDN Law is an analysis of prior experience. It has been demonstrated that professional armed forces ensure accountable civil, political, economic, social, cultural and social exchanges between state authority and its citizens. In a democratic society, professional armed forces aid in the reduction of the state's coercive dominance.⁴³ In the past, state authority championed by military intervention led to abuses of powers as well as gross human rights violations due to military hegemony, especially in

³⁹ Henry J. Steiner and Phillip Alston, *International Human Rights in Context: Law, Politics, Morals: Text and Materials*, 2nd ed. (Oxford: Oxford University Press, 2000), 28; Tommy Koh and Rosario G Manalo, *The Making of the ASEAN Charter* (Singapore: World Scientific Publishing, 2009), 117; ASEAN, *ASEAN Masterplan* (ASEAN, 2020), 26; Michelle Staggs Kelsall, *The New ASEAN Intergovernmental Commission on Human Rights: Toothless Tiger or Tentative First Step?* (United States: East-West Center, 2009), 2-3; Li-an Thio, "Implementing Human Rights in ASEAN Countries: Promises to Keep Miles to Go Before I Sleep," *Yale Human Rights and Development Journal* 2, no. 1 (2014): 7, 40, 41.

⁴⁰ Miriam Budiardjo, *Demokrasi di Indonesia: Demokrasi Parlemen dan Demokrasi Pancasila [Democracy in Indonesia: Parliamentary Democracy and Pancasila Democracy]* (Jakarta: Gramedia Pustaka Utama, 1994), 10-21.

⁴¹ Saputra, "Hikmahanto Juwana di MK [Hikmahanto Juwana at the Constitutional Court]."; Nihal Jayawickrama, *The Judicial Application of Human Rights National, Regional and International Jurisprudence* (Cambridge: Cambridge University Press, 2002).

⁴² Law No. 3 of 2002 on National Defense states, "That state defense efforts are carried out by building, maintaining, developing, and using national defense forces based on the principles of democracy, human rights, general welfare, the environment, provisions of national law, international law and international custom, as well as the principle of peaceful coexistence." Article 28J (2) of the Indonesian Constitution states, "In exercising their rights and freedoms, every person shall be subject to any restrictions established by law solely for the purpose of ensuring the recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, religious values, security, and public order in a democratic society."

⁴³ Andi Widjajanto, *Reformasi Sektor Keamanan Indonesia [Indonesia's Security Sector Reform]* (Jakarta: Pro Patria, 2004), 15-18; Shanty Sibarani, *Antara Kekeuasaan dan Profesionalisme Menuju Kemandirian Polri [Between Power and Professionalism Towards Police Independence]* (Jakarta: PT Dhramapena, 2001), 51-52.

the economic and security sectors.⁴⁴ Consequently, there is public scrutiny and negative perceptions over the possible deployment of reserve and backup military components by means of conscription, mandatory appropriation of private properties, and enactment of criminal sanctions, as such policies are deemed to have been made without any possible considerations of individual or group of individual risks, resources and knowledge assessments. There are concerns over assigning the military to non-military threats, while civilians are prepared and equipped with military status and capabilities with no clear link to internal or international armed conflict situations. In simpler terms, citizens become military personnel without understanding the legal and lethal implications. Extensive and systematic military engagement with civilians raises the question of whether the security sector in Indonesian reform will be strengthened or weakened when the majority of military characteristics and capabilities are attached to civilians as reserve and backup components.⁴⁵

Indonesia's legal system has been augmented by the development of human rights standards in which human rights have been exercised, guaranteed and enforced as a prerequisite to a democratic society.⁴⁶ The Indonesian Constitution highlights the supremacy of law, equality before the law,⁴⁷ and human rights to balance the use of force in order to maintain public order, national interests, public morality and public health.⁴⁸ The concepts of supremacy of law and equality before the law are fundamental to Indonesian SSR by strengthening the Indonesian

⁴⁴ Moch. Nurhasim, *Praktek-Praktek Bisnis Militer: Pengalaman Indonesia, Burma, Filipina, dan Korea Selatan* [*Military Business Practices: Experiences of Indonesia, Burma, Philippines, and South Korea*] (Jakarta: The RIDEP Institute, 2003), 8-10; Muradi, *Metamorfosis Bisnis Militer: Sebaran Bisnis TNI Pasca UU TNI Diterbitkan* [*The Metamorphosis of Military Business: Distribution of TNI Business After Issuing the TNI Law*] (Jakarta: The RIDEP Institute, 2007), 15-20.

⁴⁵ Constitutional Court of the Republic of Indonesia, "Pengujian Undang-Undang Nomor 23 Tahun 2019 Tentang Pengelolaan Sumber Daya Nasional Untuk Pertahanan Negara Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, No. 27/PUU-XIX/2021 [Judicial Review of Law Number 23 of 2019 on the Management of National Resources for State Defense Against the 1945 Constitution of the Republic of Indonesia, No. 27/PUU-XIX/2021]" (Report, Constitutional Court of the Republic of Indonesia, 2021).

⁴⁶ The People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*, MPR) promulgated its decision on human rights by MPR Decree Number XVII on Human Rights in 1998. This was followed by the enactment of Law No. 39 of 1999 on Human Rights, which entered into force on 23 September 1999, and then the direct enactment of the Law No. 26 of 2000 on Human Rights Courts, which entered into force on 23 November 2000. See Boer Mauna, *Hukum Internasional, Pengertian Peranan dan Fungsi dalam Era Dinamika Global* [*International Law, Understanding the Role and Function in the Era of Global Dynamics*] (Bandung: PT. Alumni, 2003), 623-24.

⁴⁷ Indonesian Constitution, Chapter IX.

⁴⁸ Indonesian Constitution, Chapter XA.

judiciary's composition of impartial, independent and competent bodies.⁴⁹ Human Rights, i.e., rights to life,⁵⁰ freedom,⁵¹ and protection,⁵² are guaranteed by the Constitution. Such rights are relevant to the issues of conscription and conscientious objection. In addition to the Constitution, numerous laws have been enacted for the respect, protection and fulfilment human rights enjoyed by civilians in their defense rights and duties. Examples of this progress include MPR Decree Number XVII/MPR/1998 on Human Rights,⁵³ Law No. 39 of 1999 on Human Rights, and Law No. 26 of 2000 on Human Rights Courts.⁵⁴ To enforce material elements, the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, KUHP),⁵⁵ the Military Criminal Code (*Kitab Undang-Undang Hukum Pidana Militer*, KUHPM)⁵⁶ and Law No. 26 of 2000 have been promulgated to stop potential abuses of power and to prosecute perpetrators of gross human rights violations. In this regard, the Indonesian courts have a role in creating, guaranteeing and enforcing the enjoyment of human rights standards for individuals within Indonesian jurisdiction and territory. Besides this, they also exercise human rights legislation as a legal basis to hold perpetrators of human rights abuses accountable and to give remedies to victims of past gross human rights violations.⁵⁷

There are certain 'pressures' in a military operation involving direct engagement of civilians as reserve and backup components. These can be examined and compared to international experiences gathered by the United

⁴⁹ Indonesian Constitution, Chapter IX, Article 24 states, "The judicial power is exercised by a Supreme Court with its subordinated judicial bodies within the form of general courts, religious courts, military courts, administrative courts, and by a Constitutional Court."

⁵⁰ Indonesian Constitution, Article 28A.

⁵¹ Indonesian Constitution, Article 28E.

⁵² Indonesian Constitution, Article 28G.

⁵³ A Decree of the People's Consultative Assembly (*Ketetapan Majelis Permusyawaratan Rakyat*, TAP MPR) is the second-highest hierarchical source of law in the Indonesian legal system.

⁵⁴ State Gazette No. 208 of 2000, which entered into force on 23 November 2000.

⁵⁵ Law No. 8 of 1981 on Criminal Procedure Law.

⁵⁶ Law No. 31 of 1997 on Military Courts.

⁵⁷ Benedetto Conforti, *Enforcing International Human Rights in Domestic Courts* (The Netherlands: Martinus Nijhoff Publishers, 1997), 3; Jo Stigen, *The Relationship Between the International Criminal Court and National Jurisdictions, The Principle of Complementarity* (Leiden: Martinus Nijhoff Publishers, 2008), 6-8; John T. Holmes, "The Principle of Complementarity" in *The International Criminal Court: The Making of the Rome Statute - Issues, Negotiations, Results* (Boston: Kluwer Law International, 1999), 41-78; Katherine Doherty and Timothy L.H. McCormack, "'Complementarity' as a Catalyst for Comprehensive Domestic Penal Legislation," *University of California Davis Journal of International Law and Policy* 5, (1995): 667-68.

Nations during its deployment of peacekeeping operations around the globe.⁵⁸ Indicators of legitimate aims, proportionality, prompt situations and clarity of status of the military members construed in peacekeeping operations' status mission agreements, the status of force agreements, and rules of engagement can be used as a comparative study to test the legal relationships of military service and compliance to human rights standards in the PSDN Law. Deployment of civilians as reserve and backup components in operations involving military, hybrid and non-military threats is difficult to comply with the aforementioned indicators on the ground. Crimes could easily be committed, leading to an attitude of superiority once the reserves become well-trained and fully equipped combatants. Further, the distinction between military and civilian targets regulated in IHL becomes at risk of being eroded when subjects are a mix between regular military forces and civilians (reserve and backup components), and when a situation has no nexus with armed conflicts, such as riots, tensions or internal disturbances.

At the international level, for example, precedent from the Kosovo War of 1998-99 highlights this matter, although the UN forces applied the application of IHL.⁵⁹ In such circumstances, it will be more difficult to demonstrate the difficulties associated with combining humanitarian aims with efficient control and political administration of military forces. It may also happen in Indonesia when threats are construed as military, non-military and hybrid.⁶⁰ Undoubtedly, there is a need for a clear concept for deployment and procedures for military responses to crises to reduce the likelihood of individual crimes carried out by reserve and backup components. Applicable laws on the ground must be in line

⁵⁸ United Nations Security Council, "S/Res/758," S/Res/758 (1992); United Nations Security Council, "S/Res/761," S/Res/761 (1992); United Nations Security Council, "S/Res/770," S/Res/770 (1992); United Nations Security Council, "S/Res/1270," S/Res/1270 (1999); United Nations Security Council, "S/Res/918," S/Res/918 (1994); United Nations Security Council, "S/Res/975," S/Res/975 (1995); United Nations Security Council, "S/Res/814," S/Res/814 (1993); United Nations Security Council, "S/Res/1101," S/Res/1101 (1997); United Nations Security Council, "S/Res/1199," S/Res/1199 (1998); United Nations Security Council, "S/Res/1272," S/Res/1272 (1999).

⁵⁹ United Nations Secretary General, "Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law" (Report, ST/SGB/1999/13, 1999).

⁶⁰ Swedish National Defence College, *Challenges of Peace Operations: Into the 21st Century* (Sweden: Elanders Gotab, 2002); Christian J. Tams, *Enforcing Obligations Erga Omnes in International Law* (Leiden: Martinus Nijhoff Publishers, 1996); Fernanon Teson, *Humanitarian Intervention: An Inquiry into Law and Morality* (Leiden: Martinus Nijhoff Publishers, 1996); The Asia Pacific Center, *The Responsibility to Protect in Southeast Asia* (California: The Asia Pacific Center, 2009).

with international human rights and humanitarian laws. Such measures are necessary for accountability for military forces' rules of engagement applicable for civilians as reserve and backup components.⁶¹

The degree of control over civilians in armed conflicts triggers the application of international human rights law treaties or customs. Once reserve and backup components are deployed, irrespective of the types of operations, the state authority shall bear responsibility to apply international human rights law.⁶² If the reserve and backup components then violate provisions in human rights law, they will be held accountable for their actions irrespective of their status as civilian or quasi-military. This raises the question of whether they have awareness of such legal consequences. Article 1 of the UN Code of Conduct for Law Enforcement Officials states, "Law enforcement officials shall all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession."⁶³ Article 2 then states, "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons." The Commentary for Article 2 states that the human rights in question are identified and protected by national and international law.⁶⁴ Clarity of mission objectives, structures of force, and fixed interpretation of the use of force in rules of engagement are three fundamental elements that must be complied with to ensure the respect and protection of human rights for military deployment affecting civilians and to reduce possible abuses or human rights violations. Factually, the PSDN Law is silent on this reference determining the obligations of commanders, field officers and civilians

⁶¹ Adam Roberts, "Humanitarian Issues and Agencies as Triggers for International Military Action," *International Review of the Red Cross* 82, no. 839 (2000): 679; Borhan Amrallah, "The International Responsibility of the United Nations for Activities Carried Out by UN Peace-Keeping Forces," *Revue Egyptienne de Droit Internationale* 57 (1976): 57–59; Michael H. Hofmann, "Peace-Enforcement Actions and Humanitarian Law: Emerging Rules for Interventional Armed Conflict," *International Review of the Red Cross* 82, no. 837 (2000): 201.

⁶² John Cerone, "Minding the Gap: Outlining KFOR Accountability in Post-Conflict in Kosovo," *European Journal of International Law* 12, no. 3 (2001): 472, 476.

⁶³ United Nations Human Rights Office of the High Commissioner, "Code of Conduct for Law Enforcement Officials" (Report, General Assembly Resolution 34/169, Article 1, 1979).

⁶⁴ United Nations Human Rights Office of the High Commissioner, "Code of Conduct for Law Enforcement Officials" (Report, General Assembly Resolution 34/169, Article 2, 1979).

serving as reserve and backup components when deployed in a situation deemed a state of emergency due to military, non-military and hybrid threats.

Overall, the PSDN Law has legitimate reasons to comply with human rights standards on controlling military personnel and civilians who serve as military members, yet there is no reference to the existence of conscientious objection possessed by civilians. This is not line with accountability and legitimacy of actions, which have been institutionalized with human rights mainstreaming. Many institutions have been created to manifest human rights standards carried out by military forces. Management of maximum available resources is intended to improve the military's capacity for defense of the state. However, conscription of civilians can reduce the level of control between military commanders and their subordinates. The absence of reference to this issue will lead to the potential abuse of power by a military commander toward reserve and backup component members. Furthermore, there is the risk that civilians may commit crimes or even human rights abuses when deployed in military, non-military and hybrid threats. The PSDN Law's lack of attention to the degree of control over civilians exercised by military superiors endangers compliance with human rights standards. This lack of accountability and lack of legitimacy for military service by civilians needs to be continuously criticized in order to maintain the spirit of the Indonesian security sector's reform.

IV. CONSCIENTIOUS OBJECTION TO MILITARY SERVICE IN INDONESIA

Conscientious objection is part of the inalienable right to freedom of thought, conscience and religion under Article 18 of the ICCPR, to which Indonesia is a member state upon ratification of the Convention by Law No. 12 of 2005. This means that Indonesia has to take action to comply with the ICCPR. However, the scope of the PSDN Law does not support the obligation to determine and regulate conscientious objection to military service by civilians as reserve and backup components.⁶⁵ Furthermore, the PSDN Law is also silent on any possible alternative modes of

⁶⁵ KontraS, Elsam, and Imparsial, *Judicial Review Legal Argument*, 3 August 2021, paras. 99, 23.

national service or legitimate forms of conscientious objection and the duration of claims before, during and after conscription.⁶⁶ Consequently, there may be unwillingness among civilians to participate in military service as reserve and backup components. Ignorance of international standards and a lack of compliance become challenges in managing and controlling mobilization and demobilization to be more accountable for engagement of civilians.⁶⁷

Following the promulgation of the PSDN Law, the notion of conscientious objection has become a common topic in public discourse, especially among legal practitioners and academics. It opens different interpretations between reality and normativity, ambiguity of meanings, overlapping institutionalization, non-existence of norm, and possible conflicts of norms in the Indonesian legal system.⁶⁸ Even though conscientious objection is recognized as an inherent human right, it has not been familiarly used nor practiced in Indonesia. In the PSDN Law, the scope for clear rights and obligations between the state as duty-bearer and citizens, especially those who object to being conscripted, are under question. Conscription under the PSDN Law is tailored to a specific scenario involving potential military, non-military and hybrid threats. In this regard, a lack of public awareness and potential dangers have been raised as issues by people opposed to the possibility of being drafted into the military. Such arguments could indicate the PSDN Law involves low accountability as reduces meaningful participation from civilians, thereby hindering basic acceptance of the PSDN Law.⁶⁹

Upon further examination, it is apparent that there is an absence of implementing legislation regulating protection of conscientious objectors and of specific references to recognize conscientious objection in the PSDN Law

⁶⁶ KontraS, Elsam, and Imparsial, *Judicial Review Legal Argument*, 3 August 2021, paras. 101-2, 123-24.

⁶⁷ National Commission on Human Rights, "Menyoal Undang-Undang Pengelolaan Sumber Daya Nasional Untuk Pertahanan Negara (PSDN) [Questioning the Law on the Management of National Resources for State Defense (PSDN)]," Komnas HAM Republik Indonesia, published 23 March 2020.

⁶⁸ SETARA Institute, "Pemerintah Bergerak Cepat Membuat Aturan Turunan UU PSDN, Tapi Lamban Merespon Sorotan [Government Moves Quickly to Create Derivative Regulations for the PSDN Law, but is Slow to Respond to Scrutiny]," SETARA Institute, published 22 January 2021.

⁶⁹ Edna C. Pattissina, "Amandemen Penundaan UU PSDN Diperkuat [Amendment to Postponement of PSDN Law Strengthened]," Kompas, published 5 August 2021.

in times of emergencies.⁷⁰ A specific reference is vital as reserve and backup components are among the persons most vulnerable during emergencies, being at risk of unavoidable harm, injuries and death. Another issue of the PSDN Law is why it does not provide alternative national service options for non-combatant roles that are more suitable for the expertise of civilians. The safety of civilians is the ultimate task to be guaranteed by the state at any time. The state has a special duty to take all appropriate measures to protect the dignity of its mission against any intrusions or damage and to prevent any disturbance of the peace or impairment of the dignity of its own nationals.⁷¹ Without further regulations, there would not be a contingency plan against threats, which may strike at any moment and may cause fatalities among those who are conscripted and those who resist conscription due to conscientious objection.⁷² This regulatory element is vital in cases of emergencies, for instance, in situations of armed conflict affecting national security, as the safety and security of reserve and backup components is paramount. There have been numerous instances where civilians were subjected to harm as a result of conflict with the military. For example, four farmers were shot dead and eight wounded in a land ownership dispute with the Indonesian Navy at Alas Tlogo village in Pasuruan district, East Java province on 30 May 2007.⁷³

Technical arrangements for facilitating conscientious objection should be considered in the PSDN Law. The Constitutional Court could use the framework of judicial activism to recognize this right and its relevance. Arrangements should also be made for a database on reserve and backup components. Data on

⁷⁰ Dede Anggara Saputra, "Analisis Politik Hukum Undang-Undang Nomor 23 Tahun 2019 Tentang Pengelolaan Sumber Daya Nasional Untuk Pertahanan Negara [Political Analysis of Law No. 23 of 2019 on the Management of National Resources for State Defense]," *Lex Renaissance* 5, no. 4 (2020): 967; Media Indonesia, "Penguujian UU PSDN, TNI/POLRI Komponen Utama Pertahanan Keamanan [Judicial Review the PSDN Law, TNI/POLRI Main Components of Defense and Security]," Media Indonesia, published 21 October 2021.

⁷¹ Constitutional Court of the Republic of Indonesia, "Penguujian Undang-Undang Nomor 23 Tahun 2019 Tentang Pengelolaan Sumber Daya Nasional Untuk Pertahanan Negara Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, No. 27/PUU-XIX/2021 [Judicial Review of Law Number 23 of 2019 on the Management of National Resources for State Defense Against the 1945 Constitution of the Republic of Indonesia, No. 27/PUU-XIX/2021]" (Report, Constitutional Court of the Republic of Indonesia, 2021).

⁷² Joko Sadewo, "Ketua PBHI Sebut UU PSDN Banyak Masalah Substansial [PBHI Chairman Says PSDN Law Has Many Substantial Problems]," *Republika*, published 17 June 2022.

⁷³ Federasi KontraS, "Desakan Penyelesaian Kasus Alas Tlogo [Pressure to Settle the Alas Tlogo Case]," *KontraS*, published 2 August 2008.

potential reserves, the number of potential legitimate conscientious objectors, non-combatant roles and sustainable funding are essential for the recognition of conscientious objection. Factually, the PSDN Law is silent on these matters. Regrettably, the PSDN Law stipulates in strong terms the obligation for compulsory military service and penalties for those who refuse to participate. A penal sanction for conscientious objection, to some extent, breaches Indonesia's obligations under the 1949 Geneva Convention.⁷⁴ As a matter of law, this stipulation is indiscriminate in nature and neglects the state's proper protection system for its own nationals.⁷⁵ The proper system provides prompt services and protection for Indonesian citizens, as well as providing guiding principles to fulfil these obligations through, among others, an integrated, standardized, accurate and secure defense system.⁷⁶

The aforementioned elements of the logical framework are derived from a human rights-based approach. This is "is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights".⁷⁷ In the context of conscientious objection to military service in Indonesia, this approach enables plans, policies and processes of development to be firmly secured in a system of rights and corresponding obligations established by

⁷⁴ Article 49, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 1949; Article 50, Convention (II) for the Amelioration of the Condition of the Wounded and Shipwrecked Members of the Armed Forces at Sea; Article 129, Convention (III) Relative to the Protection to the Prisoner of War of 1949; Article 146, Convention (IV) Relative to the Protection of Civilian Persons in Time of War of 1949;

⁷⁵ Thomas Graditzky, "Individual Criminal Responsibility for Violations of International Humanitarian Law in Internal Armed Conflicts," *International Review of the Red Cross* 38, no. 322 (1998): 29-56; Fred Tanner, "Conflict Prevention and Conflict Resolution: The Limits to Multilateralism," *International Review of the Red Cross* 83, no. 541 (2000): 547-56.

⁷⁶ Constitutional Court of the Republic of Indonesia, "Penguujian Undang-Undang Nomor 23 Tahun 2019 Tentang Pengelolaan Sumber Daya Nasional Untuk Pertahanan Negara Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, No. 27/PUU-XIX/2021 [Judicial Review of Law No. 23 of 2019 on the Management of National Resources for State Defense Against the 1945 Constitution of the Republic of Indonesia, No. 27/PUU-XIX/2021]", (Report, Constitutional Court of the Republic of Indonesia, 2021).

⁷⁷ Leena Avonius and Damien Kingsbury, *Human Rights in Asia: A Reassessment of the Asian Values Debate* (New York: Palgrave Macmillan, 2008); Jakob Kirkemann Boessan and Thomas Martin, *Applying a Rights-Based Approach: An Inspirational Guide for Civil Society* (Denmark: The Danish Institute for Human Rights, 2007); Philip J. Eldridge, *The Politics of Human Rights in Southeast Asia* (London: Routledge, 2002); Deiter Helm, *Net Zero: How We Stop Causing Climate Change* (London: William Collins, 2020); United Nations Human Rights Office of the High Commissioner, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (New York and Geneva: United Nations Publication, 2006); Jude Rand and Watson, *Rights-Based Approaches: Learning Project* (Boston: Oxfam America and Care, 2007).

international human rights law.⁷⁸ It also promotes sustainability to empower people and communities, especially regarding the rights and obligations of conscripts.

This approach also increases the sensitivity of the government to human rights protection in emergency situations when mobilization and demobilization are proportionally deployed.⁷⁹ Every human is a rights holder with entitlements to exercise human rights, including conscientious objection. Meanwhile, the duty-bearers who correspond to their obligations are decision-makers. The work of an advocacy program in this matter employs the human rights-based approach that must be directed toward capacities of rights-holders as well as meaningful participation to claim legal recognition, alternative modes for national service, non-discrimination of their rights, and flexibility of claims of conscientious objection to mandatory military service and to make duty-bearers realize their obligations to recognize and to determine area, scope and institutionalization of conscientious objection in the PSDN Law.⁸⁰ All of these concerns should be prudently taken into account by the Constitutional Court as elements of conducting judicial activism to protect human rights and to review constitutionality of the PSDN Law.

Conscientious objection is accepted as one of cardinal principles and legal rights when military service is enacted in certain laws, policies, programs and actions affecting individual rights to freedom of thought, conscience and religion.⁸¹ This objection derives from the legitimate interpretation and application of

⁷⁸ Robert E. Robertson, "Measuring State Compliance with the Obligation to Devote the "Maximum Available Resources" to Realizing Economic, Social and Cultural Rights," *Human Rights Quarterly* 16 (1994): 699; Daniel Turk, "The Realization of Economic, Social and Cultural Rights" (Report (published) presented for United Nations Economic and Social Council, 1989); Daniel Turk, "The Realization of Economic, Social and Cultural Rights" (Report (published) presented for United Nations Economic and Social Council, 1990); Daniel Turk, "The Realization of Economic, Social and Cultural Rights" (Report (published) presented for United Nations Economic and Social Council, 1991); Daniel Turk, "The Realization of Economic, Social and Cultural Rights" (Report (published) presented for United Nations Economic and Social Council, 1992).

⁷⁹ Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford: Oxford University Press, 2000), 599.

⁸⁰ Dede Anggara Saputra, "Analisis Politik Hukum Undang-Undang Nomor 23 Tahun 2019 Tentang Pengelolaan Sumber Daya Nasional Untuk Pertahanan Negara [Political Analysis of Law Number 23 of 2019 on the Management of National Resources for State Defense]," *Lex Renaissance* 5, no. 4 (2020): 956; Bilal Ramadhan, "Pengamat: Penerapan UU PSDN Bisa Berdampak Negatif [Observer: The Implementation of the PSDN Law Can Have a Negative Impact]," *Republika*, published 2 June 2022.

⁸¹ D. Prasad and T. Smythe, *Conscription: A World Survey – Compulsory Military Service and Resistance to It* (London: War Resisters' International, 1968), 56; Larry Minear, "Conscience and Carnage in Afghanistan and Iraq: US Veterans Ponder the Experience," *Journal of Military Ethics* 13, no. 2 (2014).

Article 18 of the Universal Declaration of Human Rights (UDHR) 1948 and Article 18 of the ICCPR.⁸² Moreover, conscientious objection is recognized by Paragraph 11 of ICCPR General Comment No. 22 (48) (Art. 18) 1993 by the UN Human Rights Committee, which states, “Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under Article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from Article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief...”⁸³ The UN Human Rights Committee’s recognition of conscientious objection has led to widespread international acceptance and commitments on that matter. In its practical application, this general comment assigns member states to make regulations voluntarily and provide alternative modes of military service.⁸⁴ Furthermore, the UN Human Rights Committee imposes specific measures and standards to be taken by state parties to the ICCPR to provide alternative services as non-combatant status, non-punitive conditions, creation of independent and impartial decision-making bodies on conscientious objection, availability of

⁸² Article 8, Universal Declaration of Human Rights, stipulates, “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” This article is extensively developed in its area, scope and application in the Article 18 of the ICCPR. This article determines that, “(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching; (2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice; (3) Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others; and (4). The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

⁸³ UN Office of the High Commissioner for Human Rights, “General Comments 22: The Right to Freedom of Thought, Conscience, and Religion” (Report, No. CCPR/21/Rev.1/Add.4, 1993).

⁸⁴ UN Office of the High Commissioner for Human Rights, “Conscientious Objection to Military Service, Resolution 59/1989” requires “Appeals to State to enact legislation and to make measures aimed at exemption from military service on the basis of genuinely held conscientious objection to armed forces”.

information,⁸⁵ refraining from subjecting conscientious objectors to imprisonment, non-discrimination between those who accept military service and conscientious objectors,⁸⁶ and non-discrimination to conscientious objectors in civil, political, social and cultural rights at any time.⁸⁷

The aforementioned standards have evolved and influenced the UN Human Rights Committee's legal standpoints based upon its own views on individual communications, such as from Finland, the Netherlands and Korea. All these communications are critically examined to reveal rationales, reasons and logical frameworks on conscientious objection's area, scope and application as best practices for state parties to the ICCPR. In the case of *L.T.K vs. Finland*, the Committee assumed that the ICCPR generally or Article 18 specifically does not refer to conscientious objection in its existence.⁸⁸ In *J.P.K vs. The Netherlands*, the Committee observed that the "Covenant does not preclude the institution of compulsory military service by State parties ... and the communication is inadmissible under Article 3 of the Optional Protocol" since the communication was also submitted to other dispute mechanisms.⁸⁹ In *Jarvinen vs. Finland*, the Committee recognized conscientious objection as a right under the ICCPR. It concluded on the matter of conditions to be implemented for alternative military service for conscientious objectors, namely non-discriminatory, non-punitive and reasonable.⁹⁰

In addition to those overviews, the UN Human Rights Committee also emphasizes that recognition from national laws for conscientious objection is needed to uphold justice, certainty and purposiveness of conscientious objection

⁸⁵ The High Commissioner for Human Rights, "Conscientious Objection to Military Service, Resolution 1993/84," War Resisters' International, published 10 March 1993.

⁸⁶ The High Commissioner for Human Rights, "Conscientious Objection to Military Service, Resolution 1995/83," War Resisters' International, published 8 March 1995.

⁸⁷ The High Commissioner for Human Rights, "Conscientious Objection to Military Service, Resolution 1997/98," War Resisters' International, published 22 April 1998.

⁸⁸ Human Rights Committee, *L.T.K. vs. Finland*, No. Communication No. 185/1984, U.N. Doc. CCPR/C/OP/2 pp. 61.

⁸⁹ United Nations Human Rights Committee, *J.P.K. vs. The Netherlands*, No. CCPR/C/43/D/401/1990, CCPR/C/43/D/401/1990 (November 18, 1991).

⁹⁰ United Nations Human Rights Committee, *Jarvinen vs. Fin*, No. Comm. 295/1988, U.N. Doc. A/45/40, Vol. II, pp. 101; UN Office of the High Commissioner for Human Rights, "Selected Decisions of the Human Rights Committee under the Optional Protocol" (Report, Vol. III, at 262," No. U.N. Doc. CCPR/C/OP/3, U.N. Sales No. E.02.XIV.1, 2002).

based on legitimate reasons, non-discrimination and proportionality. In *Yeo-Bum Yoon and Myung-jin Choi vs. Republic of Korea*, the Committee affirmed the requirements that a state party to the ICCPR has to provide rules and regulations regarding conscientious objection to compulsory military service even though Korea presented a factual reason of being invaded and that the threat is always imminent.⁹¹ Compliance with the Committee's decisions shown by the Netherlands as well as by Finland has enlarged acceptance of the aforementioned standards, institutionalization and situations on how conscientious objection is experienced in a national legal system. At the same time, Korea maintains that conscientious objection is managed according to its national law to sustain national interests and resilience from an imminent threat of invasion. The process has been developed, but for its contextual application, it still opens room to debate and interpretation since it involves national interests and resilience as manifestations of state sovereignty. Flexibility to bring a claim has also become an important legal notion possessed by those who claim conscientious objection "either before or after entering the armed forces, given that belief can change over time".⁹²

All the aforementioned developments, standards and guidance direct Indonesia to take action compatible with conscientious objection as one of the legal rights possessed by an individual in their own legal system to which the PSDN Law does not regulate conscientious objection to military service. In fact, the PSDN Law is silent on the area, scope and orientation of conscientious objection's norms and institutionalization, whereas international authorities have created comments and opinions to be used as legitimate references on the matter. It seems that the lack of attention to this matter denies Indonesian compliance to its international obligations in the ICCPR, where public scrutiny

⁹¹ Human Rights Committee, *Yoon and Choi vs. Republic of Korea*, No. Comm. 1321-1322/2004, U.N. Doc. A/62/40, Vol. II pp. 195 (Human Rights Committee 2006); Human Rights Committee, "Report of the Human Rights Committee" (Report, No. U.N. GAOR, 62nd Sess., Supp. No. 40, U.N. Doc. A/62/40, Vol. II, Annex VII, sect. V, pp. 195, 2007); Human Rights Committee, "Selected Decisions of the Human Rights Committee under the Optional Protocol" (Report, Vol. IX, pp. 218," U.N. Doc. CCPR/C/OP/9, U.N. Sales No. E.08.XIV.9, 2008).

⁹² Human Rights Committee, "Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee" (Report, No. CCPR/C/79/Add.61, 1993) states, "Finally, the Committee is greatly concerned to hear that individuals cannot claim the status of conscientious objectors once they have entered the armed forces, since that does not seem to be consistent with the requirements of Article 18 of the Covenant as pointed out in general comment No. 22 (48)."

has the momentum to call for advocacy and an adjudication process. The PSDN Law reduces the human rights entitlement of individuals as well as groups of individuals' legitimate expectations based on conscientious objection to military service in Indonesia. There had been hopes that legal lacunae might be answered when the Constitutional Court ruled on this matter; that it might exercise judicial activism to recognize conscientious objection to military service.

V. CONCLUSION

As a party to major international conventions on human rights and humanitarian law, such as the 1949 Geneva Conventions, the ICCPR and ICESCR, Indonesia introduced the PSDN Law, which allows for conscription and mandatory appropriation of properties without giving space to any alternative modes of public participation in defense. Thus, political willingness from the government and the legislature are required to deal with such issues in the PSDN Law. Indeed, political considerations have effectively implemented legislation that fails to properly recognize conscientious objection as an inherent human right. These political considerations cause Indonesia to not seriously bear its international obligations. By way of analogy, when some blind men were asked to describe an elephant, they each touched a different part, such as the tusks, ears, tail and trunk, and therefore gave conflicting descriptions. Ideally, the PSDN Law should be composed of all elements to describe, regulate and fulfill the broad notion of conscientious objection as one of the legal rights possessed by individuals, equivalent to the right to conscience and religion, rather than emphasize certain aspects but neglect other components. Thus, non-conformity, inconsistency, inappropriateness and overlapping provisions emerged as the main weaknesses in the PSDN Law in respect of international human rights standards reviewed before the Constitutional Court. As the protector of human rights, the Constitutional Court has the authority to decide and recognize the existence of conscientious objection as a new norm for better human rights protection. Such a move would have demonstrated originality in judicial activism carried out by the Constitutional Court.

The Constitutional Court on 31 October 2022 rejected the application against the PSDN Law.⁹³ However, the Court did acknowledge that the definition of threats in the PSDN Law is vague and creates legal uncertainty. The Court therefore ordered legislators to revise the PSDN Law. In its consideration of the case, the Court said that determination of the components of Human Resources, Natural Resources, Artificial Resources, and National Facilities and Infrastructure must be democratic and respect human rights. The Court also stated the PSDN Law already accommodates the principle of contentious objection because the government does not require citizens to follow conscription. The Court further stated that the determination of reserve components does not ignore the principle of volunteerism, while recognition and protection of property rights are implemented as part of human rights.

Disappointed by the Constitutional Court's decision, the petitioners said the PSDN Law means the Minister of Defense can make a unilateral determination of conscription without the voluntary consent of the people. Non-conformity, inconsistency, inappropriateness and overlapping provisions in the PSDN Law hinder civilians as the main stakeholders of the right to conscience and religion in Indonesia. This is because general principles and a rights-based approach, to some extent, needed to apply or receive more attention in the formulation of the PSDN Law. Furthermore, Indonesia's obligations under the ICCPR, i.e., to ensure respect and protection of human rights, are not effectively guaranteed, enforced and fulfilled by the PSDN Law, as it was not properly formulated in conformity with existing principles recognizing conscientious objection to military service by civilians. The Constitutional Court could have remedied this weakness through its judicial review of the PSDN Law by amending and/or changing compulsory and mandatory matters and giving room for citizens to deliver objections based on their religion and conscience.

⁹³ Constitutional Court of the Republic of Indonesia, Decision Number 27/PUU-XIX/2021 handed down on 31 October 2022 (Constitutional Court of the Republic of Indonesia, 2022).

BIBLIOGRAPHY

1945 Constitution of Indonesia.

Aldrich, George H. "Compliance with International Humanitarian Law." *International Review of the Red Cross*, no. 282 (1991).

Amrallah, Borhan. "The International Responsibility of the United Nations for Activities Carried Out by UN Peace-Keeping Forces." *Revue Egyptienne de Droit Internationale* 57 (1976).

Anwar, Dewi Fortuna. "Demokrasi, Keamanan dan Peranan Militer [Democracy, Security and the Role of the Military]." In *Ikrar Nusa Bakti, Dinamika Internal Tentang Peran dan Fungsi TNI [Nusa Bakti Pledge, Internal Dynamics of the Role and Functions of the TNI]*, edited by Ikrar Nusa Bhakti, 19-21. Jakarta: LIPI Political Research Center, 2001.

ASEAN Secretariat. *ASEAN ICT Masterplan*. Jakarta: ASEAN Secretariat, 2020.

Avonius, Leena and Damien Kingsbury. *Human Rights in Asia: A Reassessment of the Asian Values Debate*. New York: Palgrave Macmillan, 2008.

Boessan, Jakob Kirkemann and Thomas Martin. *Applying a Rights-Based Approach: An Inspirational Guide for Civil Society*. Denmark: The Danish Institute for Human Rights, 2007.

BPIP and University of Bangka Belitung. "Kajian Evaluasi Undang-Undang Nomor 23 Tahun 2019 Tentang Pengelolaan Sumber Daya Nasional Untuk Pertahanan Negara [An Evaluation Study of Law No. 23 of 2019 on the Management of National Resources for State Defense]." Final Report, BPIP and University of Bangka Belitung, 2019.

Budiardjo, Miriam. *Demokrasi di Indonesia: Demokrasi Parlementer dan Demokrasi Pancasila [Democracy in Indonesia: Parliamentary Democracy and Pancasila Democracy]*. Jakarta: Gramedia Pustaka Utama, 1994.

Burgstaller, Markus. *Theories of Compliance with International Law*. Leiden: Martinus Nijhoff Publishers, 2005.

- Cerone, John. "Minding the Gap: Outlining KFOR Accountability in Post-Conflict in Kosovo." *European Journal of International Law* 12, no. 3 (2001).
- Conforti, Benedetto. *Enforcing International Human Rights in Domestic Courts*. The Netherlands: Martinus Nijhoff Publishers, 1997.
- Constitutional Court of the Republic of Indonesia. "*Pengujian Undang-Undang Nomor 23 Tahun 2019 Tentang Pengelolaan Sumber Daya Nasional Untuk Pertahanan Negara Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, No. 27/PUU-XIX/2021* [Review of Law Number 23 of 2019 on the Management of National Resources for State Defense Against the 1945 Constitution of the Republic of Indonesia, No. 27/PUU-XIX/2021]." Report, Constitutional Court of the Republic of Indonesia, 2021.
- Daoust, Isabella, Robin Coupland, and Rikke Ishoey. "New Wars, New Weapons? The Obligation of States to Assess the Legality of Means and Methods of Warfare." *International Review of the Red Cross* 84, no. 846 (2002).
- Doherty, Katherine and McCormack, Timothy L.H. "'Complementarity' as a Catalyst for Comprehensive Domestic Penal Legislation." *University of California Davis Journal of International Law and Policy* 5 (1995).
- Elias, T.O. *New Horizons in International Law*. 2nd ed. Leiden: Martinus Nijhoff Publishers, 1979.
- Eldridge, Philip J. *The Politics of Human Rights in Southeast Asia*. London: Routledge, 2002.
- European Court of Human Rights. Case of *Loizidou vs. Turkey*, Preliminary Objections, No. 15318/89 (European Court of Human Rights March 23, 1995).
- Federasi KontraS. "Desakan Penyelesaian Kasus Alas Tlogo [Urge for the Settlement of the Tlogo Pedestal Case]." KontraS, published August 02, 2008. <https://kontras.or.id/kontras-surabaya/desakan-penyelesaian-kasus-alas-tlogo>.
- Fiske, Alan Page. "Complementarity Theory: Why Human Social Capacity Evolved to Require Cultural Complement." *Personality and Social Psychology Review* 4, no. 1 (2000).

- Fisher, D. "Domestic Regulation of International Humanitarian Relief in Disasters and Armed Conflict: A Comparative Analysis." *International Review of the Red Cross*, no. 866 (2007).
- Gates, Bill. *How to Avoid Climate Disaster*. New York: Penguin, 2021.
- Gearoid Tuathail *et al.* *The Geopolitics Reader*. New York: Routledge, 2007.
- Graditzky, Thomas. "Individual Criminal Responsibility for Violations of International Humanitarian Law in Internal Armed Conflicts." *International Review of the Red Cross* 38, no. 322 (1998).
- Guzman, Andrew. *How International Law Works, A Rational Choice Theory*. Oxford: Oxford University Press, 2008.
- Heintze, Hans-Joachim. *Convergence Between Human Rights Law and International Humanitarian Law and the Consequences for the Implementation*. London: Springer, 2011.
- Helm, Deiter. *Net Zero: How We Stop Causing Climate Change*. United Kingdom: HarperCollins, 2022.
- Hofmann, Michael H. "Peace-Enforcement Actions and Humanitarian Law: Emerging Rules for Interventional Armed Conflict." *International Review of the Red Cross* 82, no. 837 (2000).
- Holmes, John T. "The Principle of Complementarity." In *The International Criminal Court: The Making of the Rome Statute – Issues, Negotiations, Results*. Boston: Kluwer Law International, 1999.
- Human Rights Committee. "Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee." Report, No. CCPR/C/79/Add.61 (1993).
- Human Rights Committee. *L.T.K. vs. Finland*, No. Communication 185/1984, U.N. Doc. CCPR/C/OP/2 pp. 61 (n.d.).
- Human Rights Committee. "Human Rights Committee." Report, No. U.N. GAOR, 62nd Sess., Supp. No. 40, U.N. Doc. A/62/40, Vol. II, Annex VII, sect. V, pp. 195 (2007).

- Human Rights Committee. "Selected Decisions of the Human Rights Committee under the Optional Protocol." Report, Vol. IX, pp. 218, No. U.N. Doc. CCPR/C/OP/9, U.N. Sales No. E.08.XIV.9 (2008).
- Human Rights Committee. *Yoon and Choi vs. Republic of Korea*, No. Comm. 1321-1322/2004, U.N. Doc. A/62/40, Vol. II pp. 195 (2006).
- J., Christian. *Enforcing Obligations Erga Omnes in International Law*. Leiden: Martinus Nijhoff Publishers, 1996.
- Jayawickrama, Nihal. *The Judicial Application of Human Rights National, Regional and International Jurisprudence*. Cambridge: Cambridge University Press, 2002.
- Joint, Louis. "Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political)." Report (published). Sub-Commission Decision 1996/119, 1996.
- Joseph, Sarah, Jenny Schultz, and Melissa Castan. *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*. Oxford: Oxford University Press, 2000.
- Kelsall, Michelle Staggs. *The New ASEAN Intergovernmental Commission on Human Rights: Toothless Tiger or Tentative First Step?* United States: East-West Center, 2009.
- Kleffner, Jann K. "The Impact of Complementarity on National Implementation of Substantive International Criminal Law." *Journal of International Criminal Justice* 1, no. 1 (2003).
- Koh, Tommy and Rosario G Manalo. *The Making of the ASEAN Charter*. Singapore: World Scientific Publishing, 2009.
- Korner. "Deductive Unification and Idealization." *The British Society for Philosophy of Science* 63, no. 20 (1964).
- Kritz, Neil. "Coming to Terms with Atrocities: A Review of Accountability Mechanism for Mass Violations of Human Rights." *Law and Contemporary Problems* 59, no. 4 (1996).

- Krygier, Martin. "Critical Legal Studies and Social Theory." *Oxford Journal of Legal Studies* 7, no. 5 (1987).
- Lawson, Rick. "Out of Control, State Responsibility and Human Rights: Will the ILC's Definitions of the Act of State Meet the Challenges of the 21st Century." In *The Role of Nations State in the 21st Century, Human Rights, International Organizations and Foreign Policies, Essay in Honor of Peter Baehr*, edited by Monique Castermans-Holleman, Fried van Hoof, and Jacqueline Smith, Cambridge: Kluwer Law International, 1999.
- Margolis, Eric and Stephen Laurence. "Concepts and Cognitive Science." In *Margolis and S. Laurence*. Stanford: Stanford University, 1996.
- Marwiyah, Siti. "Kewenangan Konstitusional Presiden Terhadap Hal Ikhwal Kegentingan yang Memaksa [The President's Constitutional Authority on Emergency Matters]." *Jurnal Masalah-Masalah Hukum* 3, no. 44 (2015).
- Matompo, Osgar S. "Pembatasan Terhadap Hak Asasi Manusia dalam Prespektif Keadaan Darurat [The Restrictions on Human Rights in the Perspective of Emergencies]." *Jurnal Media Hukum* 21, no. 57 (2014).
- Mauna, Boer. *Hukum Internasional, Pengertian Peranan dan Fungsi dalam Era Dinamika Global [International Law, Understanding the Role and Function in the Era of Global Dynamics]*. Bandung: PT. Alumni, 2003.
- McCormack, Timothy L.H. "From Solferino to Sarajevo: A Continuing Role for International Humanitarian Law." *Melbourne University Law Review* 21 (1997).
- Media Indonesia. "Pengujian UU PSDN, TNI/POLRI Komponen Utama Pertahanan Keamanan [Judicial Review the PSDN Law, TNI/POLRI Main Components of Defense and Security]." Media Indonesia, published 21 October 2021. <https://mediaindonesia.com/politik-dan-hukum/442853/pengujian-uu-psdn-tnipolri-komponen-utama-pertahanan-dan-keamanan>.
- Miller, Benjamin. "The Concept of Security: Should it be Redefined?" *Journal of Strategic Studies* 24, no. 2 (2001).
- Miner, Larry. "Conscience and Carnage in Afghanistan and Iraq: US Veterans Ponder the Experience." *Journal of Military Ethics* 13, no. 2 (2014).

Muradi. *Metamorfosis Bisnis Militer: Sebaran Bisnis TNI Pasca UU TNI Diterbitkan [The Metamorphosis of Military Business: Distribution of TNI Business After Issuing the TNI Law]*. Jakarta: The RIDEP Institute, 2007.

National Commission on Human Rights of the Republic of Indonesia. “Menyoal Undang-Undang Pengelolaan Sumber Daya Nasional Untuk Pertahanan Negara (PSDN) [Questioning the Law on the Management of National Resources for State Defense (PSDN)].” Komnas HAM Republik Indonesia, published 23 March 2020. <https://www.komnasham.go.id/index.php/news/2020/3/23/1338/menyoal-undang-undang-pengelolaan-sumber-daya-nasional-untuk-pertahanan-negara-psdn.html>.

Nurhasim, Moch. *Praktek-Praktek Bisnis Militer: Pengalaman Indonesia, Burma, Filipina, dan Korea Selatan [Military Business Practices: Experiences of Indonesia, Burma, Philippines, and South Korea]*. Jakarta: The RIDEP Institute, 2003.

Organization for Economic Cooperation and Development. *Security Sector Reforms and Governance*. Paris: OECD Publishing, 2005.

Pattissina, Edna C. “Amandemen Penundaan UU PSDN Diperkuat [Amendment to Postponement of PSDN Law Strengthened].” Kompas, published August 05, 2021. <https://www.kompas.id/baca/polhuk/2021/08/05/argumen-penundaan-uu-psdn-diperkuat/>.

Prasad, D. and T. Smythe. *Conscription: A World Survey – Compulsory Military Service and Resistance to It*. London: War Resisters’ International, 1968.

Putra, Nanda Perdana. “Pro Kontra Rekrutmen Komponen Cadangan, UU PSDN Digugat ke MK [Pros and Cons of Reserve Component Recruitment, PSDN Law Sued to Constitutional Court of the Republic of Indonesia].” Merdeka, published 31 May 2021. <https://www.merdeka.com/peristiwa/pro-kontra-rekrutmen-komponen-cadangan-uu-psdn-digugat-ke-mk.html>.

Raharjo, Satjipto. *Biarkan Hukum Mengalir, Catatan Kritis Tentang Pergulatan Manusia dan Hukum [Let the Law Flow, A Critical Note on the Struggle of Man and Law]*. Jakarta: Kompas, 2000.

- Ramadhan, Bilal. "Pengamat: Penerapan UU PSDN Bisa Berdampak Negatif [Observer: The Implementation of the PSDN Law Can Have a Negative Impact]." *Republika*, published June 02, 2022. <https://www.republika.co.id/berita/rcuptz330/pengamat-penerapan-uu-psdn-bisa-berdampak-negatif>.
- Rand, Jude and Watson. *Rights-Based Approaches: Learning Project*. Boston: Oxfam America and Care, 2007.
- Ratner, Steven and Jason Abrams. *Accountability for Human Rights Atrocities in International Law Beyond the Nuremberg Legacy*. 2nd ed. Oxford: Oxford University Press, 2009.
- Rieter, Eva and Zwaan, Karina. *Urgency and Human Rights, The Protective Potential and Legitimacy of Interim Measures*. The Hague: T.M.C. Asser Press, 2020.
- Rieter, Eva. *Preventing Irreparable Harm: Provisional Measures in International Human Rights Adjudication*. Antwerp: Intersentia, 2010.
- Roberts, Adam. "Humanitarian Issues and Agencies as Triggers for International Military Action." *International Review of the Red Cross* 82, no. 839 (2000).
- Robertson, Robert E. "Measuring State Compliance with the Obligation to Devote the "Maximum Available Resources" to Realizing Economic, Social and Cultural Rights." *Human Rights Quarterly* 16 (1994).
- Ruqoyoh, Siti. "Ada 17 Pasal UU PSDN yang Bermasalah [There are 17 problematic articles of the PSDN Law]." *Viva*, published June 17, 2022. <https://www.viva.co.id/berita/nasional/1486277-ada-13-pasal-nbsp-di-uu-psdn-yang-dianggap-bermasalah>.
- Sadewo, Joko. "Ketua PBHI Sebut UU PSDN Banyak Masalah Substansial [PBHI Chairman Calls PSDN Law Many Substantial Problems]." *Republika*, published June 17, 2022. <https://www.republika.co.id/berita/rdkxu7318/ketua-pbhi-sebut-uu-psdn-untuk-pertahanan-banyak-masalah-substansial>.
- Saputra, Andi. "Hikmahanto Juwana di MK: UU PSDN Adalah UU yang Disiapkan Bila Ada Perang [Hikmahanto Juwana at the Constitutional Court: The PSDN Law is a Law Prepared for the Event of War]." *DetikNews*, published February

- 10, 2022. <https://news.detik.com/berita/d-5935786/hikmahanto-juwana-dimk-uu-psdn-adalah-uu-yang-disiapkan-bila-ada-perang>.
- Saputra, Dede Anggara. "Analisis Politik Hukum Undang-Undang Nomor 23 Tahun 2019 Tentang Pengelolaan Sumber Daya Nasional Untuk Pertahanan Negara [Political Analysis of Law No. 23 of 2019 on the Management of National Resources for State Defense]." *Lex Renaissance* 5, no. 4 (2020).
- Sassòli, Marco and Antoine Bouvier. "How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law." ICRC, published 9 June 2020. [http:// https://www.icrc.org/en/publication/0739-how-does-law-protect-war-cases-documents-and-teaching-materials-contemporary](http://https://www.icrc.org/en/publication/0739-how-does-law-protect-war-cases-documents-and-teaching-materials-contemporary).
- SETARA Institute. "Pemerintah Bergerak Cepat Membuat Aturan Turunan UU PSDN, Tapi Lamban Merespon Sorotan [The Government Moves Quickly to Create Derivative Regulations for the PSDN Law, but is Slow to Respond to Highlights]." SETARA Institute, published January 22, 2021. <https://setara-institute.org/pemerintah-bergerak-cepat-dalam-membuat-aturan-turunan-uu-psdn-tetapi-lamban-merespons-sorotan/>.
- Siahaan, Maruarar. *Hukum Acara Mahkamah Konstitusi Republik Indonesia [Procedural Law of the Constitutional Court of the Republic of Indonesia]*. Jakarta: Sinar Grafika, 2015.
- Sibarani, Shanty. *Antara Kekeuasaan dan Profesionalisme Menuju Kemandirian Polri [Between Power and Professionalism Towards Police Independence]*. Jakarta: PT Dhramapena, 2001.
- Steiner, Henry J. and Phillip Alston. *International Human Rights in Context: Law, Politics, Morals: Text and Materials*. 2nd ed. Oxford: Oxford University Press, 2000.
- Stigen, Jo. *The Relationship Between the International Criminal Court and National Jurisdictions, The Principle of Complementarity*. Leiden: Martinus Nijhoff Publishers, 2008.

- Summers, Robert S. *Form and Function in A Legal System A General Study*. Cambridge: Cambridge University Press, 2006.
- Swedish National Defence College. *Challenges of Peace Operations: Into the 21st Century*. Sweden: Elanders Gotab, 2002.
- Tanner, Fred. "Conflict Prevention and Conflict Resolution: The Limits to Multilateralism." *International Review of the Red Cross* 83, no. 541 (2000).
- Teson, Fermanon. *Humanitarian Intervention: An Inquiry into Law and Morality*. Leiden: Martinus Nijhoff Publishers, 1996.
- The Asia Pacific Center. *The Responsibility to Protect in Southeast Asia*. California: The Asia Pacific Center, 2009.
- The Indonesian Human Rights Monitor. *Menggugat Komponen Cadangan [Claiming Reserve Components]*. Jakarta: Imparsial, 2022.
- Thio, Li-an. "Implementing Human Rights in ASEAN Countries: Promises to Keep Miles to Go Before I Sleep." *Yale Human Rights and Development Journal* 2, no. 1 (2014).
- Tobin, John. "Seeking Clarity in Relation to the Principle of Complementarity: Reflection on The Recent Contributions of Some International Bodies." *Melbourne Journal of International Law* 8 (2007).
- Torre, Massimo La. *Law and Institutions*. London: Springer, 2009.
- Triyana, Heribertus Jaka. "Pengaruh Pasal 4 Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia Terhadap Upaya Penegakan Hukum Pelanggaran Berat Hukum Humaniter Internasional [The Effect of Article 4 of Law No. 39 of 1999 on Human Rights on Law Enforcement Efforts for Serious Violations of International Humanitarian Law]." *Jurnal Mimbar Hukum* 1, no. 3 (2004).
- Turk, Daniel. "The Realization of Economic, Social and Cultural Rights." Report (published). United Nations Economic and Social Council, 1989.
- Turk, Daniel. "The Realization of Economic, Social and Cultural Rights." Report (published). United Nations Economic and Social Council, 1990.

- Turk, Daniel. "The Realization of Economic, Social and Cultural Rights." Report (published). United Nations Economic and Social Council, 1991.
- Turk, Daniel. "The Realization of Economic, Social and Cultural Rights." Report (published). United Nations Economic and Social Council, 1992.
- UN Office of the High Commissioner for Human Rights. "Approaches and Challenges with Regard to Application Procedures for Obtaining the Status of Conscientious Objector to Military Service in Accordance with Human Rights Standards." Report (published). United Nations High Commissioner for Human Rights, 2019.
- UN Office of the High Commissioner for Human Rights. "Commission on Human Rights, Resolution 1998/77 on Conscientious Objection to Military Service." Report, No. E/CN/4/RES/1998/77 (1998).
- UN Office of the High Commissioner for Human Rights. "General Comments 22: The Right to Freedom of Thought, Conscience, and Religion." Report, No. CCPR/21/Rev.1/Add.4 (1993).
- UN Office of the High Commissioner for Human Rights. "Selected Decisions of the Human Rights Committee under the Optional Protocol." Report, Vol. III, pp. 262, No. U.N. Doc. CCPR/C/OP/3, U.N. Sales No. E.02.XIV.1 (2002).
- United Nations Development Programme. "Public Accountability of Democratic Institution." Report (published). 2002.
- United Nations Human Rights Committee. "Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, General Comment 3." Report, No. HR1/GEN/1/Rev.1 (1981).
- United Nations Human Rights Committee. *Jarvinen vs. Fin*, No. Comm. 295/1988, U.N. Doc. A/45/40, Vol. II, pp. 101.
- United Nations Human Rights Committee. *J.P.K. vs. The Netherlands*, No. CCPR/C/43/D/401/1990, CCPR/C/43/D/401/1990, (November 18, 1991).
- United Nations Human Rights Office of the High Commissioner. "Code of Conduct for Law Enforcement Officials." Report, No. 34/169 (1979).

- United Nations Human Rights Office of the High Commissioner. *Conscientious Objection to Military Service*. Geneva and Switzerland: United Nations Publication, 2012.
- United Nations Human Rights Office of the High Commissioner. *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation*. New York and Geneva: United Nations Publication, 2006.
- United Nations Secretary General. "Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law." Report, No. ST/SGB/1999/13 (1999).
- United Nations Security Council. S/Res/758, No. S/Res/758 (1992).
- United Nations Security Council. S/Res/761, No. S/Res/761 (1992).
- United Nations Security Council. S/Res/770, No. S/Res/770 (1992).
- United Nations Security Council. S/Res/814, No. S/Res/814 (1993).
- United Nations Security Council. S/Res/918, No. S/Res/918 (1994).
- United Nations Security Council. S/Res/975, No. S/Res/975 (1995).
- United Nations Security Council. S/Res/1101, No. S/Res/1101 (1997).
- United Nations Security Council. S/Res/1199, No. S/Res/1199 (1998).
- United Nations Security Council. S/Res/1270, No. S/Res/1270 (1999).
- United Nations Security Council. S/Res/1272, No. S/Res/1272 (1999).
- Widjajanto, Andi. *Reformasi Sektor Keamanan Indonesia [Indonesia's Security Sector Reform]*. Jakarta: Pro Patria, 2004.
- Yergin, Daniel. *The New Map, Energy, Climate and the Clash of the Nations*. New York: Penguin, 2020.
- Yoder, Anne M. *Conscientious Objection in America: Primary Sources for Research*. Pennsylvania: Swarthmore College Peace Collection, 2003.