

# The Authority of The Ministry of Defense in Exporting and Importing the Defense and Security Tools

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**Abstract.** This research aims to describe and analyze the Authority of the Ministry of Defense in exporting and importing Defense and Security Tools based on the Law Number 16 of 2012 about Defense Industry. It needs to be observed since in the Law of Defense Industry it is mentioned that the users of defense industry are Indonesian Armed Force, Indonesian Police, ministries and/or non-ministry government institutions, and parties with the license based on the legal regulations. Regarding the export and import of the Defense and Security Tools, it is perceived that there is a discrepancy between the Law no. 16/2012 on Import Security Tools. The method used in this research is normative juridical using secondary sources of data as the theoretical foundation, then the data is analyzed descriptive qualitative. Based on the research results, it can be concluded that the Ministry of Defense has an attributive authority in exporting and importing Defense and Security Tools based on positive law stated within the constitution, yet its implementation has not been optimal.

**Keywords:** Defense and Security Tools; Authority; Ministry of Defense

## 1. Introduction

Defense and security aspects are very important factors in ensuring the survival of the country. The ability to defend against the foreign and domestic threats is needed for a country to maintain its existence. The defense and security of the Indonesian state is carried out through the universal defense and security system, in accordance with Article 30 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely: "The national defense and security effort is carried out through the defense and security system of the people of the universe by the Indonesian National Army and the National Police The Republic of Indonesia, as the main force, and the people, as a supporting force" [1].

After the 1999 reforms, through a political decision, there was a separation between the Army and Police which was then stipulated in the MPR Decree No. VI/2000 on the Separation of the Indonesian National Armed Forces (TNI) and National Police jo. the MPR Decree No. VII/2000 on the Role of the TNI and National Police, which was later strengthened by enacting and passing Law No. 2/2002 on the National Police [2]. It was also promulgated and passed in the Law No. 3/2002 on the National Defense jo. the Law No. 34/2004 on the Indonesian National Armed Forces (TNI), thereby emphasizing the separation of duties and responsibilities between defense and security. Domestic security is defined as a condition marked by the guarantee of security and public order, orderly and upholding the law, as well as the implementation of protection, patronage and service to the community [3]. Whereas, national defense is defined as all efforts to maintain national sovereignty, the territorial integrity of the Unitary State of the Republic of Indonesia, and the safety of all nations from

threats and disturbances to the integrity of the nation and state [4]. The explanation further emphasizes the separation of handling of defense and security issues by whom and doing what, in which the defense issues by the TNI while security issues by the National Police as the main force.

National defense and security efforts carried out through the defense and security system of the universe require the availability of defense and security equipment supported by the ability of domestic industries, ownership of sophisticated technology and appropriate technology, control of economic resources, and accelerating the achievement of national goals. So far, the availability of defense and security equipment has not been supported by the ability of the defense industry in an optimal and independent manner which causes dependence on Security Defense Equipment Tools from abroad. The Republic of Indonesia has a strategic defense and security industry, such as PT. Perindustrian Angkatan Darat (Pindad), PT. Dirgantara Indonesia, PT. Penataran Angaktan Laut Indonesia (PAL Indonesia), which can answer global demands and challenges. However, it should be recognized that the capability of the defense industry is still limited so that integrated implementation and management is needed through the empowerment of the defense industry. Efforts to realize the implementation of the defense industry have been enacted and passed in the Law No. 16/2012 on the Defense Industry, as the legal basis for the implementation of the national defense industry.

Based on this description, the problem to be discussed in this study is how is the authority of the Minister of Defense in the export and import of defense and security equipment, is the application of such authority effective in the import of firearms for the benefit of the National Police, and what are the obstacles and supporters of the application of the authority of the defense minister in the import of Security Defense Equipment Tools, especially firearms.

## **2. Methods**

The method used in this study is a normative juridical approach, meaning that the law is conceptualized as norms, rules, principles, or dogmas. Data were obtained from library observations, namely secondary data, which were then compiled, explained, and analyzed by providing conclusions [5].

## **3. Result and Discussion**

### **a. Analysis based on statutory regulations**

Indonesia as a state of law, legislation must be a source of authority for each action and decision of a government official or other legal body and/or legal entity delegated to carry out government functions [6]. In the rule of law, there is executive power to carry out a government. Executive power is the power regarding the implementation of laws as well as carrying out the will of the state [7]. The Indonesian government system adheres to a presidential government system which is a government system that is centered on the position of president as head of government as well as head of state, the executive power is in the hands of the president. As head of government, the president is assisted by the vice president and ministers in the cabinet. The Minister has the authority to carry out daily government tasks. Authority is the right to exercise power in the field of government in the administration of the state based on law. The authority of a state institution is an authority strengthened by

positive law to regulate and maintain it. Without authority, a right juridical decision cannot be issued [8].

Analyzing the authority of the Minister of Defense in the export and import of Security Defense Equipment Tools begins with a discussion of the authority itself. Based on Article 11 of the Law No. 30/2014 on Government Administration, Authority is obtained through Attribution, Delegation and/or Mandate [9]. The authority of attribution is defined as the granting of Authority to Government Agencies and/or Officials by the 1945 Constitution or Law. Authority is the right to exercise power in the field of government in the administration of the state based on law. According to Hadjon, the term "authority" is often interchangeable with the term "power". The terms "authority" or "power" are often equated with the term *bevoegdheid* in Dutch law [10]. As a concept of public law, authority (*bevoegdheid*) is described as a legal power (*rechtsmacht*), where the concept is also related to the formation of government decisions. It can be said that the authority must be clearly regulated and stipulated in the legislation in force.

The authority of the Minister of Defense in the export and import of Security Defense Equipment Tools is the authority of attribution because it is clear and stipulated in the legislation in force or found in positive administrative law, i.e. the Law No. 16/2012 on the Defense Industry. The establishment of attribution authority for the Minister of Defense in regard to the exports of Security Defense Equipment Tools is stipulated in Article 55 of the Law No. 16/2012 on the Defense Industry, i.e. everyone who exports and/or transfers equipment used for defense and security of other countries must obtain the minister's permission to carry out government affairs in the defense sector [11]. With these provisions, a person who will export Security Defense Equipment Tools to the Defense Industry production from home to abroad must have an export permit from the Minister of Defense. The issuance Security Defense Equipment Tools export permit documents is under the authority of the Minister of Defense obtained by attribution. The Minister of Defense also has the authority to ban the export of Security Defense Equipment Tools, in accordance with Article 68 of the Law No. 16/2012 on the Defense Industry, i.e. every person is prohibited from selling, exporting and/or transferring Defense Equipment Tools and Strategic security without the permission of the minister who carries out government affairs in defense field.

Article 69 of the Law No. 16/2012 states that "Everyone is prohibited from buying and/or importing strategic Defense and Security Equipment Tools without obtaining permission from the minister who carries out government affairs in the field of defense." The word "prohibited" in Article 69 indicates that there is a statutory prohibition on the activity of importing goods in this case Security Defense Equipment Tools into customs areas without obtaining permission from the Minister of Defense. The formulation of the prohibition also stipulates the authority of attribution to the Minister of Defense to issue Security Defense Equipment Tools import licenses to everyone who will carry out Security Defense Equipment Tools import activities. At the level of "prohibition" both regarding exports and imports of Security Defense Equipment Tools, the Minister of Defense's permission is regulated in the same pattern and degree. Likewise, it should also be at the "mandatory" level regarding the Minister of Defense's permission for exports and imports of Security Defense Equipment Tools.

In that case, Security Defense Equipment Tools at home cannot yet be fulfilled by the defense industry, users and the defense industry "can" propose to the Defense Industry Policy Committee (KKIP), to use foreign products through procurement through direct processes between governments or to manufacturers, in accordance with Article 43 of the Law No. 16/2012, stating that one of the requirements for procuring Security Defense Equipment Tools

from abroad is the existence of trade returns, local content and/or offset of at least 85% of the contract value. The trade-offs for procuring Security Defense Equipment Tools from abroad are approved by the Defense Industry Policy Committee (KKIP). Since the proposal is submitted to KKIP, even for national strategic interests needs to be considered by the House of Representatives, it is not obligatory to obtain the minister's permission to conduct government affairs in the defense sector. This shows that there is no attributive authority given to the Minister of Defense in procuring Security Defense Equipment Tools from abroad through trade-off mechanisms including offset, in contrast to exports that are expressly stated "obligatory" to obtain the Minister of Defense's permission.

The results of the investigation of the implementing laws and regulations, at the level of the Minister of Defense's regulations regarding the Defense Minister's authority on export and import of Security Defense Equipment Tools are stipulated in the Minister of Defense Regulation No. 6/2017 on the Defense Industry Determination, Licensing for Production, Export and Import of Security Defense Equipment Tools. In the Minister of Defense Regulation No. 6/2017 on the Establishment of the Defense Industry, Licensing for Production, Export and Import of Security Defense Equipment Tools, the authority of the Minister of Defense in the export and import of Security Defense Equipment Tools is clearer and more straight forward. There are provisions that are not in line between the Act and the Minister of Defense Regulation as an implementation regulation. Therefore, it can be interpreted differently by the stakeholders, particularly in the implementation of Security Defense Equipment Tools imports.

**b. Effectiveness of the Application of The Minister of Defense's Authority in Importing Firearms for The Benefit of The National Police.**

In accordance with Article 8 paragraph (1) of the Law no. 16/2012, it is stated that defense industry users consist of TNI, Police, ministries and/or non-ministerial government agencies, and the parties given licenses in accordance with statutory provisions. Users must use Security Defense Equipment Tools which can already be produced by the domestic defense industry, thus encouraging the independence of the defense industry. Thus, the National Police as one of the users of the defense industry must share responsibility for the development of the defense industry, and must use Security Defense Equipment Tools which can already be produced by the domestic defense industry.

In Article 69 of the Law No. 16/2012 on Defense Industry, it is stated that everyone is prohibited from buying and/or importing strategic Defense and Security Equipment Tools without the permission of the minister who runs government affairs in the field of defense. However, Minister of Defense Regulation No. 6/2017 on the Establishment of the Defense Industry, Licensing for Production, Export and Import of Defense and Security Equipment Tools, as an implementation regulation, does not specify in more detail what procedures must be taken for users when importing Defense and Security Equipment Tools. The National Police as one of the defense industry users who need firearms, whose specifications cannot be produced by the defense industry, are permitted to import with the issuance of the Defense and Security Equipment Tools import license (in this case firearms Stand Alone Grenade Launcher (SAGL)) by the Minister of Defense. Therefore, the procedure for submitting Defense and Security Equipment Tools import licensing for users is not described in the Minister of Defense Regulation No. 6/2017. The National Police in the procurement of firearms (SAGL) from abroad (through imports) found it difficult to obtain an import permit from the Minister of Defense. In the end, the import of firearms (SAGL) continues without the import permit

document from the Minister of Defense, so it is not in accordance with Article 69 of the Law No. 16/2012 on the Defense Industry. Based on positive law in force, the import of firearms (SAGL) for the interests of the National Police can be qualified in violation of the laws and regulations, in this case the Law No. 16/2012 on the Defense Industry, although there are shortcomings to the implementation rules.

The implementation of the Minister of Defense's authority in importing firearms for the benefit of the National Police is not running as required by law, both in laws relating to the defense industry and firearms. The National Police ignored the Minister of Defense Regulation No. 7/2010 on Guidelines for Licensing, Supervision, and Control of Firearms for Military Standards Outside the Ministry of Defense and the TNI, even though SAGL weapons imported by the National Police, according to caliber, can be classified as military standards. The National Police did not heed because the Regulation of the Minister of Defense was a follow-up to Presidential Instruction No. 9/1976 on Enhancing the Supervision and Control of Firearms which are considered by the National Police to be incompatible with the Law No. 12/2011 on the Establishment of Laws and Regulations [12]. In addition, the National Police considers that Minister of Defense Regulation No. 7/2010 only applies to the TNI and defense, but not for the interests of the National Police institution. The National Police ignored the Law No. 16/2012 on the Defense Industry. Even though the National Police is referred to as one of the defense industry users, the National Police must use Security Defense Equipment Tools which can already be produced by the domestic defense industry in order to encourage the realization of the independence of the defense industry. However, if the defense industry cannot meet the needs of the National Police, import can be carried out with the permission of the Minister of Defense in advance and the import can be carried out through a trade return mechanism. Since it was not done by the National Police in the import of SAGL weapons, the application of the authority of the Minister of Defense in importing firearms for the benefit of the National Police can be concluded ineffective.

**c. Constraints and Supporting Factors for the Implementation of the Defense Minister's Authority in Importing Security Defense Equipment Tools, Especially Firearms.**

In accordance with the mandate of the Defense Industry Law, the Minister of Defense has the authority related to the control of firearms as part of Security Defense Equipment Tools, especially in the case of imports. In this case, everyone is prohibited from buying and/or importing strategic Security Defense Equipment Tools without obtaining the minister's permission to administer government affairs in defense field. However, the extent to which the application of this authority can be implemented is influenced by factors that are both obstacles and their supporters.

1) Constraint Factor

a) Usability of Legislation related to firearms is not optimal.

At present, the regulation of firearms at the level of the law is no longer in accordance with the changes that occur due to the changing times. The latest statutory regulation regarding firearms is Government Regulation in Lieu of the Law No. 20/1960 on Licensing Authorization Given According to Laws on Firearms. Previously, the provisions regarding firearms had also been regulated by the Firearms Act of 1936; the Law No. 8/1948 on Registration and Granting of Firearms Use Permits; Emergency Law No. 12/1951. The law

does not contain substance regarding the control and supervision of imported firearms, but firearms classified as Security Defense Equipment Tools are part of the substance of the Law No. 16/2012 on the Defense Industry, but it still has to be spelled out in the implementing regulations regarding firearms.

b) Coordination between institutions or agencies is not optimal.

The coordination between institutions or agencies related to the regulation and supervision of firearms is not optimal. Coordination between these institutions or agencies is important, because the issue of firearms is not only the authority of one agency, but including many institutions. This is proven by the emergence of issues of firearms and ammunition of military standards imported by the National Police from abroad for the benefit of the Mobile Brigade Corps and the State Intelligence Agency which are withheld by customs, because they did not have permission to issue goods from the TNI Strategic Intelligence Agency at the command of the TNI Commander.

c) Definition of Strategic Security Defense Equipment Tools needs explanation.

Article 69 of Law No. 16/2012 on the Defense Industry stating that everyone is prohibited from buying and/or importing strategic Security Defense Equipment Tools without obtaining the minister's permission to carry out government affairs in the defense sector, it is necessary to explain the phrase "strategic." However, strategic definitions or explanations of Security Defense Equipment Tools are not found in the Defense Industry Law, or its implementing regulations, thus confusing stakeholders including the National Police.

d) Law enforcement is not working

The law on firearms does not contain substance that discusses the permit to import firearms. However, for firearms with military standards, there is a Minister of Defense Regulation No. 7/2010 on Guidelines for Licensing, Supervision, and Control of Firearms for Military Standards Outside the Ministry of Defense and the TNI. Meanwhile, the National Police is not subject to the regulation, even though firearms imported for the interests of the National Police including the classification of military standard firearms. In this case, the National Police is one of the institutions outside of Ministry of Defense and the TNI, as stated in Article 8 letter j of the Minister of Defense Regulation No. 7/2010.

Law enforcement related to the import of firearms for the benefit of the National Police can be reviewed based on the Law No. 16/2012 on the Defense Industry. In accordance with Article 69 of Law No. 16/2012 on the Defense Industry stating that everyone is prohibited from buying and/or importing strategic Security Defense Equipment Tools without obtaining the minister's permission to carry out government affairs in the defense sector. Furthermore, in Article 75 of Law No. 16/2012, it was stated that every person who buys and/or imports strategic Defense and Security Equipment Tools without obtaining permission from the minister conducting government affairs in the field of defense, as referred to in Article 69 shall be liable to a maximum imprisonment of 7 (seven) years and/or a maximum fine of Rp 100,000,000,000.00 (one hundred billion rupiah). The problem arises is how to enforce the law related to the import of military standard firearms if in this case what is considered to violate the law is a government agency, i.e. the Police and firearms importers who obtain permits from the National Police. Therefore, the law enforcement in the form of the

application of fines as stipulated in Article 75 of the Law No. 16/2012 has also not yet implemented.

e) Long bureaucratic chains

Noting Article 53 of the Minister of Defense Regulation No. 6/2017 on Determination of the Defense Industry, Production, Export and Import Licensing of Defense and Security Equipment Tools, as well as the Defense and Security Equipment Tools import licensing mechanism chart, there is a long bureaucratic chain in order to implement the Defense Minister's authority to grant Defense and Security Equipment Tools import licenses. It was started with the application for import permit Security Defense Equipment Tools by the defense industry or users accompanied by the requirements as specified with a copy to the Minister of Trade in this case the Director General of Foreign Trade. Afterwards, a request for security clearance was submitted by the Director General of the Ministry of Defense to the TNI Commander, in this case the TNI Commander's Assistant Intelligence. The processing of security clearance is carried out according to input from the TNI Strategic Intelligence Agency after receiving confirmation from the Defense Attache of the Republic of Indonesia in the country of origin of the goods regarding the validity of import document for Security Defense Equipment Tools. The issuance of security clearance greatly affects the granting of import permit for Security Defense Equipment Tools from the Minister of Defense, which is mandated to the Director General of the Ministry of Defense. In the event that the TNI Commander's Intelligence Assistant on behalf of the TNI Commander does not approve the application for security clearance, on the recommendation of the TNI Strategic Intelligence Agency, a security clearance denial is issued for the defense industry or users who will import Security Defense Equipment Tools. Vice versa, if the TNI Strategic Intelligence Agency recommends the issuance of security clearance, then the TNI Commander's Intelligence Assistant on behalf of the TNI Commander will approve the application for security clearance and issue it. In addition to the request for security clearance, the Director General of Defense Potential of the Ministry of Defense also asked KKIP for recommendations or considerations regarding the issue of offset regulation, trade returns and local content, and ascertain whether the defense industry is capable of domestic production. In certain conditions, strategic Security Defense Equipment Tools need to gain the consideration from the house of representatives.

2) Supporting factors

a) The authority of the Minister of Defense is obtained by attribution.

One of the main supporting factors to the application of the authority of the Minister of Defense in the import of Security Defense Equipment Tools, especially firearms, namely the existence of attribution authority to the Minister of Defense as mandated by Law No. 16/2012 on the Defense Industry. In accordance with Article 12 paragraph (1) of the Law No. 30/2014 on Government Administration, stating that Governmental Agency and/or Officer obtains Authority through Attribution if it is regulated in the 1945 Constitution of the Republic of Indonesia and/or the law.

b) The union of the words "defense" and "security".

Based on MPR Decree No. VI/MPR/2000 on the Separation of the TNI and the National Police and MPR Decree No. VIII/MPR/2000 on the Role of the TNI and the Role of the Police, as well as Article 30 of the 1945 Constitution of the Republic of Indonesia which has separated the authority of security from national defense, the National Police has responsibility in the security sector while the TNI carries out duties in the field of defense. As a consequence of the separation of the TNI and the National Police as one of the results of the reformation, the National Police considers that domestic security affairs are the duties and responsibilities of the National Police including the supervision and control of firearms and ammunition that have the potential to disrupt public security and order because they can be misused.

In line with the times and political dynamics after the reforms lasted for more than 14 years, the Law No. 16/2012 on the Defense Industry, which again consolidates the words "defense" and "security" into one phrase, like two sides of a coin, namely "defense and security" as stated in the Defense and Security Equipment Tool. In the law, the discussion of defense and security related to the issue of equipment is not separated. However, the title of the Act only mentions "defense", and the National Police is one of the users required to use domestic defense industry production as needed. Thus, if the National Police intends to import firearms that cannot be provided by the defense industry, it is necessary to obtain prior permission from the Minister of Defense, even though the firearms are for security matters and their caliber is not a military standard. As the principle of interpreting the law of *lex posteriori derogat lex priori* (the new law put aside the old law), the Police must comply with the Law No. 16/2012 on the Defense Industry when importing firearms.

#### **4. Conclusion**

The research results show that the authority of the Minister of Defense in the export and import of Security Defense Equipment Tools is an attribution authority because it is determined in the applicable laws and regulations i.e. the Law No. 16/2012 on the Defense Industry. The authority of the Minister of Defense regarding the export of Security Defense Equipment Tools is stipulated in Article 55 and Article 68 of the Law No. 16/2012 on the Defense Industry. The authority of the Minister of Defense in terms of imports is that regulations are not as strict as exports, which has the effect of creating uncertainty for those who will import Security Defense Equipment Tools. For this reason, there is consistency in the export and import arrangements for Security Defense Equipment Tools related to the authority of the Minister of Defense. Thus, in Article 43 of Law No. 16/2012 on the Defense Industry, it is necessary to add a clause that "the import of Security Defense Equipment Tools through trade returns or offset must obtain the minister's permission to carry out government affairs in the field of defense".

Regarding to the authority of the Minister of Defense on firearms import for the benefit of the National Police is not effective, because the implementation of import is not in accordance with positive law in force. The National Police ignored the Minister of Defense Regulation No. 7/2010 on Guidelines for Licensing, Supervision, and Control of Firearms for Military Standards Outside the Ministry of Defense and the TNI, even though SAGL weapons imported by the National Police, according to caliber, can be classified as military standards. In addition, the National Police ignored the Law No. 16/2012 on the Defense Industry, even though the National Police is referred to as one of the defense industry users so it is obligatory



to use Security Defense Equipment Tools which can be produced by the domestic defense industry.

The constraining factors to the authority of the Minister of Defense in the import of Defense Security Equipment Tools, especially firearms, include the effectiveness of legislation related to firearms is not optimal, coordination between agencies or agencies is not optimal, the definition of Defense Security Equipment Tools is not clear, strategic law enforcement does not work, and long bureaucratic chains. Meanwhile, supporting factors include the authority of the Minister of Defense obtained by attribution and the union of the words "defense" and "security" in defense and security equipment.

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