Reserve Component Mobilization for State Defense: A Critical Study from International Human Right Perspective

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Abstract. The enactment of Law Number 23 of 2019 concerning the Management of National Resources for National Defense (PSDN Law) authorizes the state to mobilize the community to become Reserve Components for national defense. This law enactment is to respond to the threats of national defenses, including increasing violations of Indonesia's sovereign territory. However, problems arise when mobilization becomes mandatory, followed by criminal provisions for those who refuse it. So, this paper aims to study the mobilization of Reserve Components in national defense critically. Especially to answer whether the mobilization in the PSDN Law aligns with international legal instruments that regulate human rights. If not, what alternative solutions can be offered? Therefore, the author uses a normative legal research method by combining statutory and conceptual approaches. The research data is obtained by studying literature on legal materials, especially international legal instruments, legal principles, and doctrines. The findings indicate a discrepancy between the regulation of Reserve Components in the PSDN Law and international human rights instruments, particularly the International Covenant on Civil and Political Rights. More precisely, it is against the principle of conscientious objection. Therefore, the initial solution that can be offered is that participation in the Reserve Component must be voluntary and reinstating the criminal provisions for the refusal as an ultimum remedium.

Keywords: Reserve component mobilization; national defense; international human rights, conscientious objection

1 Introduction

On September 26, 2019, a legal agreement was reached between the President and the House of Representatives to ratify Law Number 23 of 2019 concerning the Management of National Resources for National Defense (PSDN Law). These regulations respond to the dynamic development and complexity of challenges to Indonesia's defense and state ownership, including increasing the boundaries of the border, sea, and air areas. Today, these threats have transformed and are no longer limited to external threats but also internal ones. As a result, threats have developed—at first, they were only in the form of the military (conventional). However, they can now also be non-military (non-conventional)[1], so in maintaining state sovereignty, it is necessary to integrate elements of the military, police, and society.[1]

[1] This is described in depth by Robert Birrell in his book *A Nation of Our Own: Citizenship and Nation-Building in Federation Australia*, mainly in Chapter 1. Normatively, the perspective of integration of the three elements above has

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Furthermore, the Chairman of Commission I of the DPR, Abdul Kharis Almasyhari, explained that there are five *ratio legis* from the formation of the PSDN Law [2]. First, strategic efforts to organize the effectiveness and orderliness of the national defense system. Second, the posture of the defense system, which consists of the primary and reserve components, must be regulated by Law. Third, the universal defense and security system (Sishankamrata) can be applied and has a formal legal basis. Fourth is the manifestation of Sishankamrata as a large part of the national strategy in the field of national defense. Fifth, Sishankamrata involves all citizens, natural resources, and infrastructure in a total, integrated and sustainable manner. This ratio legis is then formulated in norms broadly covered in several primary materials regulated in the PSDN Law, including a. State defense; b. Reserve components; c. Supporting component; d. Mobilization and Demobilization; e. Funding; f. Supervision; and g. Punishment.

The arrangement of these materials empirically results in a dichotomy of society. On the one hand, some support it, and on the other hand, they reject it. The party that is most aggressively supporting is none other than the actor from the PSDN Law initiator, namely the Indonesian Ministry of Defense. However, from the academic side, not a few also support the Ministry of Defense's steps, even since the PSDN Law is still in the nomenclature of the Reserve Component Bill. For example, Jerry Indrawan, Military and Defense Observer from Paramadina University, believes that using reserve components is needed to strengthen national defense considering Indonesia's geography and the change in the defense paradigm longer on land (territory) but more towards maritime.[2]

Meanwhile, many are opposing parties to the enactment of the PSDN Law. For example, the National Human Rights Commission assessed that the government's move to pass the PSDN Law had hurt the spirit of reform. This rule may indicate the government's return to the pre-reform era, which was thick with the militarization of civilian doors and indoctrination [4]. Because of the potential for human rights violations, several parties[3] immediately submitted a judicial review of the PSDN Law to the Constitutional Court—which was subsequently registered with case 27/PUU-XIX/2021. There are at least 16 (sixteen) norms whose validity is tested, namely: Article 4 (2) and (3), Article 17, Article 18, Article 20 (1a), Article 28, Article 29, Article 46, Article 66 (1) and (2), Article 75, Article 77, Article 78, Article 79, Article 81, and Article 82.

Apart from the pro-contra parties above, the question that arises then is, related to the legal aspect, does the content stipulated in the PSDN Law guarantee and fulfill human rights? Specifically, has Komcad's mobilization been in line with the international law standards? These questions then become the basis for moving on to the purpose of this paper, namely, to examine the mobilization of Komcad for national defense from the perspective of international human

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been accommodated through the Indonesian constitution—UUD 1945. To be precise in Article 30 paragraph (2) which stipulates, *the defence and security of the state shall be conducted through the total people's defence and security system, with the Indonesian National Military (TNI) and the Indonesian National Police (POLRI) as the main force, and the people as the supporting force*. Then it is better known as the total people's defence and security system (Sishankamrata).

[2] Almost the same thing was said by Ria Marsella and Putri Hilaliatul Badaria H in their article, that the use of reserve components for military purposes was necessary because of Indonesia's strategic geographical position. It was also added that the participation of the people in national defense is a form of nationalism and patriotism. In fact, it is explicitly stated that military service is a form of state defense mandated by the constitution of the Republic of Indonesia (UUD 1945). See in Ria Marsella and Putri Hilaliatu Badaria, "Penerapan Wajib Militer di Indonesia," *SALAM: Jurnal Sosial dan Budaya Syar-i* 2, no. 2 (2015): 1–13.

[3] The parties are: 1. Pekumpulan Inisiatif Masyarakat Partisipatif untuk Transisi Berkeadilan (IMPARSIAL); 2. Perkumpulan Komisi untuk Orang Hilang dan Korban Tindak Kekerasan (KontraS); 3. Yayasan Kebajikan Publik Jakarta; 4. Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia; 5. Ikhsan Yosarie, S.IP; Gustika Fardani Jusuf, B.A. (Hons.); dan Leon Alvinda Putra.

rights instruments. The discussion in this paper will be divided into three parts. First, to describe the ambiguity of Komcad's regulation in the PSDN Law. Second, it outlines the criticism of the mobilization of reserve components with the approach of international human rights law instruments. Third, describe alternative solutions to solve the problem of mobilizing reserve components in the PSDN Law.

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2 Research Method

To answer the issues above, the author uses a normative legal research method (library research), namely research that examines a document study that uses secondary data related to the problem [5]. The approach used is a legal approach and a conceptual approach. These several approaches are undoubtedly based on Enid Cambell's and E.J. Glasson's statements: "no single technique is miraculously right for all problems [6]." Data sources consist of primary legal materials, secondary legal materials, and tertiary legal materials, especially legal materials in the form of international legal instruments, legal principles, and doctrines. Data were collected by using library research techniques. The data is then analyzed qualitatively with a deductive thinking method to get a specific conclusion.

3 Results and Discussion

3.1 The Problems of Komcad Arrangement

The enactment of the PSDN Law emphasizes the utilization of Komcad for national defense. Article 28 PSDN Law has regulated what elements are contained: citizens, natural resources, artificial resources, and social infrastructure. Specifically, Komcad from the citizen element is a voluntary form of service in the national defense effort.

The use of Komcad, which is based on a voluntary participation system, certainly deserves appreciation. However, the authentic interpretation of volunteering itself is not clear. Elucidation of Article 17 (2) defines "voluntary" in the provisions of this article as the attitude and behavior of citizens inspired by their love for the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The definition tends to be mandatory because the benchmark is nationalism. It is difficult for someone to stick to a voluntary attitude when faced with the issue of a nationalist attitude that puts forward a sense of loyalty to the state. So, even though it is voluntary but its size is objective. That is, is it a *contrario* that those not willing to participate in defense of the country are considered not to love the country, or worse, are seen as defecting from the state?

According to the Indonesian Dictionary, this differs from the understanding, which puts forward subjective measures. It is said that there are two meanings, first, by one's own will; willingly; and second, of their own volition [7]. This understanding explains that volunteering

depends on choices that come from internal personal, namely conscience and belief. When an objective measure follows this subjectivity, actually personal authority over the choice of one's heart and beliefs is not entirely free.

Comparing these definitions, if the terminology of the PSDN Law is used to translate Komcad's participation in national defense, then there is ambiguity regarding the guarantee of human rights for individuals. Even if it is voluntary, it cannot be a justification for eliminating, revoking, or limiting the fulfillment of the fundamental rights of citizens. One form of guarantee that is not fulfilled in the PSDN Law is as contained in Article 6 paragraph (2) letter c jo. Article 14, which in essence regulates the participation of citizens in the effort to defend the state, can be in the form of "service as soldiers of the Indonesian Armed Forces voluntarily or on a mandatory basis." Unfortunately, this distinction is not clarified, so the legal question is, what is the status of volunteers to defend the country? Whether as a TNI soldier who enters as the main force of national defense or is still in the status of the people who act as a supporting power. This question is entirely unanswered in the regulation of the PSDN Law, so the confusion of norms will also have implications for fulfilling other fundamental rights, such as guarantees of legal protection, welfare, and equal treatment before the Law.

This ambiguity is more evident when mobilization can be justified and legitimized to negate this voluntary nature and turn it into an obligation. Criminal provisions also follow not only that but this obligation. Related to mobilization and punishment as coercion will be discussed further in the next section. However, from this, it can be seen that the state monopoly in state defense which was supposed to protect citizens, turned out to be opposed to the fulfillment of citizens' human rights.

Indeed, the state can limit the fulfillment of human rights through laws, or according to Max Weber, the state can claim to have a monopoly on legitimate physical violence [8]. On the positive side, a monopoly is carried out under necessary conditions. On the other hand, the legal use of such power and violence places full responsibility on the state for the fulfillment of the people's fundamental rights, state sovereignty, and territorial integrity—which in this case cannot be taken over or delegated to anyone [9]. One form of monopoly is reflected in the national defense system. This can be seen, for example, in the General Elucidation of the PSDN Law, which outlines "[…] a universal defense system involving all citizens, territories, and other national resources, which was prepared early by the government and carried out in a total, integrated directed manner, and continues to uphold the sovereignty of the state, territorial integrity, and the safety of the entire nation from all threats. This explanation explains that only the state can prepare Komcad for national defense.

However, the state monopoly—providing guarantees for the protection of human rights for individuals who participate in military service voluntarily—may be lost. Apart from the ambiguity, the PSDN Law does not specify which rights are guaranteed and what obligations the state has in administering Komcad.

In line with that, the *rechtsidee* of Indonesia determined "[...] to form a Government of the State of Indonesia that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace, and social justice [...]" From this, it can be understood that the meaning of the word protecting concerning national defense is not narrowly interpreted enough to deal with threats to national defense and security. However, furthermore, it must also be interpreted as guaranteeing, respecting, and fulfilling the constitutional rights of citizens and universal fundamental rights recognized by international Law, or in other words, aspects of people's security.

In addition, in terms of the state's authority to limit the human rights of its citizens, it must meet proportional requirements. These requirements must, of course, be built on scientific evidence. This is why Law Number 12 of 2011 concerning the Establishment of Legislations[4] incorporates the principle of proportionality so that there is scientific evidence for issuing a legal product [10]. In line with that, Aharon Barak said that if there is a conflict between constitutional rights and interests that want to limit them, then the restrictions can be constitutional if they are proportional. [11]

According to Mathias Klatt and Moritz Meister, several steps can be taken to assess the proportionality of rights restrictions [12]. First is a legitimate purpose. Second, the state's suitability of the method of limitation with the objectives to be achieved. Third, it is necessary, or there is a need to carry out these restrictions, and no other alternative can be used. Fourth, in a narrow sense, proportionality is related to the profit and loss generated by the limitation of rights. So based on this view, it appears that the third and fourth conditions are not fulfilled, significantly when the use of Komcad changes its status to become an obligation after being declared mobilized by the President. Then, from the perspective of human rights, the people are the most harmed in terms of profit and loss.

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3.2 Criticism of Komcad Mobilization

The most crucial setting in the PSDN Law concerns mobilization because this provision determines how Komcad is utilized and what threats are directed. If it refers to several provisions in the PSDN Law regarding mobilization, the writer can reduce it to several points

a. Komcad mobilization in defending the country is mandatory in the face of military threats and hybrid. [13]
b. Komcad mobilization in defending the country is mandatory in the face of military threats and hybrid
c. Although the recruitment of Komcad is voluntary, fulfilling the call for mobilization is an obligation.[14]
d. Komduk that is subject to mobilization [15] is upgraded to Komcad [16], then the owner is obliged to surrender its use for the benefit of mobilization [17].
e. There are criminal provisions against Komcad and the surrender of Komcad if it does not fulfill the obligation to mobilize. [18]

The author considers that the legal construction built by the PSDN Law is a contradiction between one provision and another. For example, in point (a) above, legally, Komcad's function is to enlarge and strengthen the main components in dealing with military and hybrid threats [19]. Article 7 paragraph (2) of Law Number 3 of 2002 concerning National Defense has explicitly limited the deployment of Komcad to only be used to deal with military threats, not including hybrid threats, because the National Defense Law does not recognize this term. This means that the PSDN Law has created ambiguity in the regulation and implementation of Komcad functions because the hybrid threat has mixed up the forms of military and non-military

[4] This act has been amended several times and most recently through Law Number 13 of 2022.

threats [20]. Although there is no empirical evidence[5], the regulation's ambiguity can cause inter-civil conflict and be "used" for the benefit of power [21]. Unfortunately, the hybrid threat is interpreted as a threat from within the country and should not need to be responded to with a state defense pattern.[6] For example, threats in the form of proxy wars, which nowadays also include demonstrations, clashes between groups, various forms of provocative media coverage, drug trafficking, the spread of pornography, and free sex. [22]

Another matter, the participation of citizens in Komcad, essentially voluntary, is interpreted, but in the case of the President declaring mobilization, his status is an obligation. The paradigm of voluntary participation is the embodiment of the recognition of human rights, and that right is immediately abolished when mobilization occurs.

Unfortunately, this change in status is not protected by the principle of conscientious objection, which is the main principle in military service. This can be seen if you do a thorough reading of the PSDN Law, where there is no single provision that regulates this principle. However, this principle has become a consensus in international Law; for example, in the International Covenant on Civil and Political Rights (ICCPR), Indonesia has been recognized as a nationally binding source of Law through Law Number 12 of 2005. Thus, the Indonesian state must recognize, respect, protect, fulfill, and uphold the human rights enshrined in the ICCPR and other universal human rights principles. Because according to this Covenant, the state bears the obligation and responsibility to fulfill the rights of its citizens, which are guaranteed in international human rights instruments.

This universal principle is often defined as an attitude of rejection of military service based on considerations of conscience and belief—especially since the 20th century [23]. So that it can be interpreted that conscientious objection is the right of every citizen for reasons of conscience or deep beliefs arising from religious, ethical, moral, humanitarian, philosophical, political, or other similar reasons, refusing to carry out armed service or participating directly or indirectly in war or armed conflict, both before and after joining military service. This principle in its development applies not only to countries that adhere to mandatory military service but also to countries that practice military service voluntarily and reserve components. [24]

Regarding this principle, the United Nations Human Rights Committee has stated that—against the obligation of citizens to participate in various forms of use of armed force that gives rise to conscientious objection—states should provide a mechanism for complaints. The call is stated in General Comment No. 22/1993, which evaluates the application of Article 18 of the ICCPR, that

> "Many individuals have claimed the right to refuse to perform military service (conscientious objection) because 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 of conscientious objection, but the Committee believes that such a right can be derived from article 18, in as much as the obligation to use lethal force may seriously conflict

[5] This is because the utilization of Komcad is still at the stage of recruiting and developing members. Until October 2021, at least 3,103 members have been appointed as Komcad to participate in the coaching program.

[6] This potential becomes even more evident when re-reading the Academic Paper of the PSDN Bill. It is said that the threat of hybrid war is faced using a military defense pattern with non-military defense forces that are formed into Supporting Components according to the nature and escalation of the hybrid threat that arises.

> with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by Law or practice, there shall be no differentiation among conscientious objectors based on the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States parties to report on the conditions under which persons can be exempted from military service based on their rights under article 18 and the nature and length of alternative national service." [25]

The birth of this general comment cannot be separated from the case of Westerman v. The Netherlands. From this case, the term total objector was known, which means that citizens not only have the right to refuse to join the military service, which requires the use of force of arms but also in other military fields even though the duties are non-combatant. This recognition of the right to refuse military service was further strengthened by the resolution 1995/83, which was issued on April 22, 1998, at the 58th meeting of the Commission. In addition, Resolution 1998/77 states that conscientious objection is a legal part of the right to freedom of thought, conscience, and religion and recognizes that people who undertake military service may develop conscientious objection. The UN Human Rights Commission also calls on member state authorities to establish independent and impartial decision-making bodies to determine whether a conscientious objection is being carried out and consider the needs of conscientious objectors, not discriminating against them. Article 4 of the resolution explicitly mandates that conscientious objectors be given various alternative civilian services for the public interest, which are not intended as punishment.

The importance of recognizing the principle of conscientious objection is not imaginative because several countries can be examples of how the impact will be when the principle is abolished. For example, the State Solemn Training Program was implemented in Malaysia. It was recorded that from 2004-2008, 16 Exercise program participants died due to illness, food poisoning, and the severity of the training [26]. Later, some female participants became victims of rape and sexual harassment. Several others were imprisoned with criminal prisoners for six months for being absent from training and resigning; for example, Ahmad Hafizal was imprisoned only for a technical error in absenteeism from training [27]. Another case is the imprisonment of Sir Bertrand Russell in England, who refused military service and campaigned for the peace movement during the first world war [28]. Legendary boxer Muhammad Ali was also imprisoned for fighting for his beliefs against the atrocities of the war in Vietnam in the period 1969-1971.

Another criticism is that the right to refuse military service based on the principle of conscientious objection is part of the non-derogable rights. Article 4 (2) of the ICCPR provides for "no derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision." This provision indicates that acknowledging the principle of conscientious objection is absolute. This means that the fulfillment of these rights cannot be reduced in the slightest by the state, even in an emergency.

In other words, as long as human rights are regulated in international conventions and adopted in the constitution of a country whose absoluteness is guaranteed, then the implementation of these human rights cannot be contested even if the country is in a state of emergency [29] because the rights in the article above are hardcore human rights that cannot be lost from within humans. Therefore, according to international human rights instruments, the limitation and reduction of the fulfillment of rights in these articles can be interpreted as a violation of human rights by the state. The justification is that the state is considered not to fulfill

its obligations to protect, fulfill, and enforce the human rights of citizens. Therefore the state must be responsible. [30]

In particular, regarding non- can be demeaned rights, one of which, in Article 18 section (1) of the ICCPR, is determined, everyone shall have the right to freedom of thought, conscience, and religion. The following paragraph stipulates that no one shall be subject to coercion that would impair his freedom to have or to adopt a religion or belief of his choice. Although these two verses are based on belief and religion, this right also protects the rights of individuals to freedom of conscience and non-believers [31]. Based on a study by the UN Working Group on Arbitrary Detention by analyzing the jurisprudence of the Human Rights Committee and previous Commission on Human Rights and Human Rights Council resolutions, any violation of the principles in this article is considered a violation *per se*. For this reason, the state cannot limit the right of conscientious objection in military service. [32]

Unfortunately, in Indonesia, the implementation of human rights restrictions has failed to separate derogable and non-derogable rights. So that all rights are considered to be limited,[7] which in turn creates criticism, polemics, and bias in enforcing human rights. As a result, the implementation of human rights restrictions in Indonesia is often excessive, including the mobilization of Komcad.

3.3 Alternative Solutions

The criminal law approach is also used in the PSDN Law and is even prioritized. For example, Article 66 (1) of the PSDN Law affirms that Reserve Components originating from the Citizen element are required to fulfill the summons for mobilization. If the provisions of the article a quo are not heeded, the owner or manager will be subject to criminal sanctions as stipulated in Article 77 of the PSDN Law, which is quoted in its entirety as follows:

1) Any Reserve Component that intentionally makes itself unable to comply with the summons for mobilization or commits a ruse that causes itself to avoid mobilization, as referred to in Article 66 paragraph (1), shall be subject to a maximum imprisonment of 4 (four) years.
2) Any person who intentionally or deceptively makes the Reserve Components fail to comply with the summons for mobilization as referred to in Article 66 paragraph (1) shall be punished with imprisonment for a maximum of 2 (two) years.

The existence of criminal provisions as a "coercive power" for the obligation to mobilize also injures the freedom to express thoughts and attitudes according to one's conscience. The inclusion of this criminal provision also indicates that for the obligation to participate in the mobilization, the punishment is *primum remedium* (first choice). Theoretically, the conditions for criminal sanctions that can be used as the first choice are as follows: (i) if it is urgently needed and other laws cannot be used (mercenary); (ii) inflicting heavy casualties; (iii) the suspect/defendant is a recidivist; (iv) the loss is irreparable; (v) if other lighter law enforcement mechanisms have been ineffective or not seen. [33]

In this regard, it is clear that laying down criminal provisions as the first choice of the obligation to mobilize does not fulfill any of the conditions. Moreover, the PSDN Law does not

[7] Article 28J section (2) UUD 1945 formulates, in exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

provide a preliminary alternative so that the settlement is carried out from an administrative or civil law perspective. At the same time, the Constitutional Court, through several decisions,[8] has ordered that the criminal provisions in the Law be returned to their original position, namely the *ultimum remedium* as the basic principle. Once again, the prioritizing conception of punishment will limit the right to fair recognition, guarantees, protection, and legal certainty.

Then, Article 67 paragraph (2) of the PSDN Law regulates Natural Resources, Artificial Resources, as well as private or individual National Facilities and Infrastructure that are used during mobilization, are treated as state property and are given official care following the material development system carried out by the provisions of laws and regulations. It is clear that the PSDN Law gives the state the authority to take over the use of all-natural, manufactured resources, and social infrastructure as Komcad for mobilization needs—even though it is temporary, that is, it is returned no later than three years after Demobilization is declared [34]. The phrase "treated as state property" certainly has the potential to be interpreted in multiple interpretations, which incur losses to the rightful owner or manager. In other words, it is possible for abuse of power by the state to occur, which has implications for new conflicts between the state and the people, such as over land tenure or land owned by individuals, groups, or customary land (layout).

They are treated as state property in principle, different in meaning from the right to control by the state. Ownership has more precise and more definite legal rules that show the legal relationship between legal subjects and legal objects [35]. Fitzgerald, as quoted by Satjipto Rahardjo, stated that the characteristics and rights included in ownership are as follows: [36]

a. The owner has the right to own the goods.
b. The owner usually has the right to use and enjoy his goods.
c. The owner has the right to consume, damage, or transfer the goods.
d. Ownership is characterized by no period.
e. Ownership has residual characteristics.

In the context of the opinion above, it becomes a question, regarding the use of natural, artificial, and infrastructure resources which are "treated as state property," does it also include the inherent rights to use, spend, enjoy, damage, and so on? Then does it also include the use of exclusive economic rights? Unfortunately, the PSDN Law does not regulate rigidly and in detail regarding the limitations of its use and the extent to which the meaning is treated as state property. Even though everyone has the right to have private property rights and these property rights cannot be taken over arbitrarily by anyone. This includes the state.

Instead of guaranteeing ownership rights, PSDN Law threatens anyone who refuses to hand over Natural Resources, Artificial Resources, and National Facilities and Infrastructure with criminal sanctions as stipulated in Article 79. According to Muladi, several criteria must be doctrinally met when criminalizing a legal act [37]. First, criminalization should not appear to cause overcriminalization, categorized as the misuse of criminal sanctions. Second, criminalization cannot be ad hoc. Third, criminalization must contain elements of victimizing victims, both actual and potential. Fourth, criminalization must consider the analysis of costs, results, and the principle of ultimum remedium; criminalization must produce enforceable regulations. Fifth, criminalization must be able to gain public support. Sixth, criminalization must contain sub-social elements that can cause harm to the community, even if it is minimal. Seventh, criminalization must pay attention to the warning that every criminal regulation limits the freedom of the people and allows law enforcement officials to curb that freedom.

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[8] For example in the Constitutional Court Decision Number 4/PUU-V/2007 concerning judicial review of Article 75 paragraph (1), Article 76, and 79 of Law Number 29 of 2004 concerning Medical Practice.

Based on Muladi's view, the criminalization of the act of "not surrendering the use of part or all of the Natural Resources, Artificial Resources, and National Facilities and Infrastructure" tends to lead to overcriminalization. Given the legal provisions for refusal to surrender ownership rights, it should not be regulated by a criminal mechanism because it is irrelevant and tends to be counterproductive. As previously explained, from the human rights aspect, this provision is contrary to the spirit of freedom for everyone to have a conscience, think, and act, which is guaranteed by human rights.

This also applies to the provisions for criminalizing the act of "not fulfilling the summons for mobilization." So, the legal approach should be used not through criminal sanctions but with an administrative sanction mechanism because registration activities and forming Komcad are more administrative. Moreover, the attitude of citizens for reasons of freedom of thought and conscience is not adequately addressed with criminal sanctions.

4 Conclusion

Based on the description above, it can be concluded that the Komcad regulation in the PSDN Law does not guarantee the realization of freedom of thought and conscience as affirmed in international legal provisions such as Article 18 of the ICCPR. In addition, there is the potential for abuse of power by the state under the pretext of mobilization, particularly for ownership of natural and artificial resources and social infrastructure. This is indicated by the phrase "treated as state property," as stated in Article 67 paragraph (2) of the PSDN Law. This phrase is not in line with the recognition of private property rights, which should not be taken over arbitrarily, both from a theoretical and normative perspective. In addition, the criminal approach as the *primum remedium* imposed on parties who refuse to mobilize has limited the fulfillment of the rights to recognition, guarantees, protection, and fair legal certainty.

Therefore, there is a need for a thorough evaluation of PSDN Law by accommodating the existence of the principle of conscientious objection in its content. For the fulfillment of the fundamental rights of citizens to be carried out correctly. Komcad's involvement must also be consistent from the start, which is voluntary, even though there is mobilization. In addition, it is also necessary to minimize criminal provisions for violations of mobilization and make it an ultimum remedium because the state cannot criminalize a conscientious objector.

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