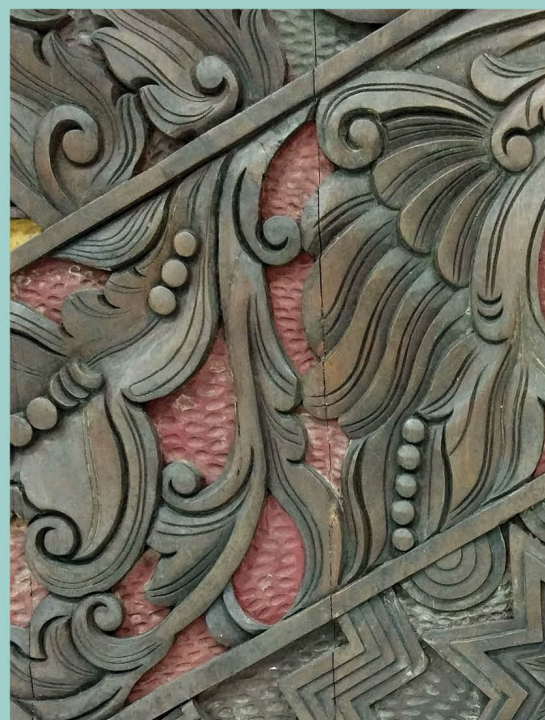


CSIS WORKING PAPER SERIES
WPSPOL– 01/2018




CENTRE FOR
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Security Sector Governance and the Role of Oversight: The Case of Indonesia



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Security Sector Governance and the Role of Oversight: The Case of Indonesia

By Iis Gindarsah

Abstract

This working paper discusses on the current progress and challenges that faces actors involved in the oversight of Indonesia's security sector governance (SSG). There are 4 main actors in focus, namely the parliament, independent or internal oversight bodies, civil society organizations (CSOs), and think tanks. The paper argues that despite progresses are evident, all four actors are still laden with problems that hamper their effort in effectively providing oversight to Indonesia's SSG. Common issues such as the lack of human capacity, funding, and coordination needs to be resolved in order for the actors to be able to effectively provide the needed oversight.

Keyword: security sector governance, military, oversight

Introduction

Overseeing security sector governance (SSG) remains a complex subject. In Indonesia, a community of civilian actors has played a crucial role in that process. Close coordination and cooperation among these actors is important in enforcing democratic civilian control of the armed forces, and raising public support for reforms in the military, police and intelligence services. However, civilian oversight of security-related institutions is not without challenges, including interferences stemming from the political system, regulation loopholes, and the lack of strategic cooperation and expertise among civilian actors.

Against that backdrop, this country brief provides an analysis on the extent to which the oversight actors have mattered in Indonesia's SSG. Specifically, it focuses on the roles of four key institutions – namely the parliament,

independent or internal oversight bodies, civil society organizations (CSOs) and think tanks. This brief also discusses each actor's institutional constraints and strategic challenges to exert oversight of security institutions. It concludes with an outlook on the potential role of international actors to promote better oversight in SSG.

Parliamentary Oversight: Constitutional Roles and Enduring Challenges

The principal legislative body in Indonesia remains the House of People's Representatives (*Dewan Perwakilan Rakyat* – DPR). It has the power to draft and pass legislation, and oversee the implementation of the government's policies. Although the fourth amendment of the 1945 Constitution led to the establishment of a second chamber in 2004, the House of Regional Representatives (*Dewan Perwakilan Daerah* – DPD) is not an “upper house” with power to review legislation passed by the DPR. It has only advisory powers related to legislation on regional matters and the oversight of executive government. The DPD can draft bills for the consideration of the DPR, but it has no independent legislative authority. Therefore, Indonesia cannot be considered to have a bicameral parliamentary system as that term is conventionally understood.

The parliament has the potential to be a powerful institution in Indonesian politics. Organizationally, the basic working organs of the DPR is called Commissions (*Komisi*) with respective responsibilities for a number of policy areas and counterparts in the executive government. Each legislative member is assigned to one and only one of 11 commissions. The DPR has two standing committees dealing with defense and security matters, namely (1) Commission-I overseeing foreign affairs, defense and intelligence, and (2) Commission-III overseeing homeland security and law enforcement. The idea of this institutional arrangement is to foster the specialization and division of labor among parliamentary members.

However, because DPR members tend to focus almost all their attention on the work of their own commission, many of them are sometimes barely aware of the details of the issues being discussed in other parliamentary committees.

This is because plenary sessions are such a peripheral part of the work of the legislative body. While all important decisions are made in committee meetings, the role of plenary sessions is mainly ceremonial and procedural formalities. With a small number of exceptions apart, no significant issues have ever been resolved in a plenary session.

In the case of bills that consider a subject crossing the boundaries of the sectoral commissions, a Special Committee (*Panitia Khusus*) will be formed out of the members of two or more commissions. The commissions often argue for their involvement in the deliberations on a particular bill either because of perceived pecuniary opportunities that might accrue from their involvement, or a need created by a policy interest. Similarly, because the budget bill involves all areas of government, they fall under the responsibility of a Budget Committee (*Panitia Anggaran*) that is formed from equal numbers of each commission's members.

Recent constitutional reforms have gave more explicit legislative powers to the DPR. The legislative body now plays a crucial role in the appointment of a range of state officials, including members of the independent audit agency, judicial and anti-corruption commissions, as well as Indonesian ambassadors and foreign ambassadors to the country. Based on the Law No. 2/2002 and Law No. 34/2004, the designated police and military chiefs have to undergo fit-and-proper tests by the parliament. Article 17 and 18 of the military law also requires the President to obtain parliamentary approval on the use of military forces.

Aside from legislation and oversight functions, the Indonesian Parliament plays a constitutional role in the budget process. It is responsible for passing the budget bill and overseeing its implementation. The budget process is set out in the Law 17/2003 on State Finances, with the role of the DPR described in Articles 12 to 15. The legislature involves in three stages of budgetary planning, namely (1) the formulation of the government work plan (RKP) and fiscal framework, (2) the preliminary discussions on ministerial budgets, and (3) the formulation of the budget bill itself. The DPR provides comments and

¹ See Stephen Sherlock, *The Indonesian Parliament after Two Elections: What has Really Changed?* (Canberra: Centre for Democratic Institutions, 2007).

views in all stages of the budget process, but the quality of input varies considerably according to the different stages.

Therefore, there is considerable parliamentary input on the budget including before detailed proposals are presented by the executive government. As with all other bills, decisions about the budget bills are made in committee meetings, not in plenary sessions. In an event that the DPR fails to approve the budget bill, the constitution provides that the government shall implement the budget of the previous year. Article 16 of the Law on State Finances states that, in such circumstances, the government may continue to incur expenditure up to a maximum amount of the previous year's budget.

With regard to openness and transparency, working meetings between the DPR and government counterparts are generally open to the public. The major exception is meetings discussing issues relating to national security. Such meetings are usually closed, even though security-classified information may not necessarily be under discussion. Apart of government institutions, the DPR regularly consults with outside sources of opinions and technical expertise. Commission-I, for instance, spends a lot of its time meeting relevant stakeholders such as retired military officers, defense industrial practitioners, think-tank scholars and representatives of non-government organization regarding issues of service conditions, soldier's welfare and alleged legal violations.

Although the performance of the Indonesian Parliament is mixed, a critical assessment should not belittle the fact that there have been improvements in democratic civilian oversight of security sector. According to the Law No. 34/2004, the designated TNI Chief has to undergo the fit-and-proper tests by the DPR. This legal requirement is ceremonial in nature, because it is highly unlikely that, in the end, the DPR will refuse to endorse the designated candidate of the president. However, the practice provides an opportunity for the Parliament to commit the new TNI Chief publicly to a reformist course, political neutrality, and the recognition of democratic principles, against which his or her leadership may be evaluated.

Some independent observers have also evaluated parliamentary oversight positively. The International Crisis Group, for instance, noted that despite a lack of research support, the DPR has become increasingly active in demanding information from the government, holding hearings and scrutinizing the executive.² It is also assertive in overseeing the country's arms procurement, which is widely believed to be a corruption-prone process. The acquisitions of Sukhoi jetfighters and Mi-35 assault helicopters (2003), as well as French-built armored personnel carriers (2006), were among major cases that came under parliamentary scrutiny. In-depth probes have led to publicized questionable deals, attracting media attention, initiating public debates on them and increasing the pressure on the government officials, brokers and contractors to be less blatant in violating procurement rules.

However, the problems of scrutinizing procurement are representative of the legislature's general limitations in budgetary oversight. Members of Commission-I overseeing defense budgeting are overwhelmed by the flood of data and often lack the technical expertise to screen the items in sufficient depth. However carefully the DPR may scrutinize the budget proposals, parliament members are still unable to thoroughly examine budget implementation. This is partly because defense officials and military officers reluctantly provide information on actual spending. On the spot inspection is hardly able to bring to the fore misallocations, as potential offenders may have sufficient time to cover up irregularities before the auditors and legislators arrive.³

Political interference may also distract the DPR from exercising oversight of the security sector. Under the current political system, parliament members are grouped according to their respective political parties (*Fraksi*). Each political party may issue directives on how their respective parliament members should respond to certain issues or policies. Outspoken legislators may be reprimanded or even "recalled," requiring them to step down from their parliamentary position if they adopt a stance contradicting their

² See International Crisis Group, "Indonesia: Rethinking Internal Security Strategy," *Asia Report*, No. 90 (20 December 2004).

³ See Jurgen Ruland and Maria-Gabriela Manea, "The Legislature and Military Reform in Indonesia," Jurgen Ruland, Maria-Gabriela Manea and Hans Born (eds.), *The Politics of Military Reform: Experiences from Indonesia and Nigeria* (Geneva: Springer, 2013), p. 137.

respective party's directives on specific issues related to defense policy, particularly on issues like procurement. Consequently, legislators find themselves in an awkward position by being forced to act according to their party's directives, which may go against their obligation to exercise proper parliamentary oversight. Such conflict of interest is a common occurrence in coalition politics where parties forming a coalition government are forced to adopt a compromise position.

Independent and Internal Oversight Institutions: Challenges and Opportunities

Aside of parliament, Indonesia has adopted a comprehensive framework of "internal" and "independent" oversight bodies to ensure good governance in the security sector. The former refers to oversight mechanisms within the security services – often called an inspector general – that enable the organization to effectively police itself. Based on Article 48 of the Government Regulation No. 60/2008, inspector generals have responsibilities to audit, review, evaluate, monitor and report on conducts of the members of ministries and agencies in accordance with their respective professional standards. Unlike non-security institutions, the Indonesian military and national police have respectively "military police corps" (CPM) and "profession and internal security division" (Propam) to enforce discipline and sanction abusive practices.

The internal oversight mechanisms are also instrumental to prevent irregularities relating to the use of state finances. Like other ministries, the defense ministry, military and police headquarters have inspector generals to undertake internal financial audit. Although the primary user of internal audit report is the minister or chief of respective institutions, the work of inspector generals is overseen by the Financial and Development Oversight Agency (*Badan Pengawasan Keuangan dan Pembangunan* – BPKP). According to the Presidential Regulation No. 192/2014, the agency reports directly to the President. Rather than conducting financial audits, it adopts a preventive approach to avoid and mitigate risks of resources mismanagement. Assessments made by BPKP are not shared with the legislative bodies.

Another important instrument is independent oversight bodies. The establishment of special statutory institutions that are separated from the ministries of agencies is not only important to ensure good governance, but also critical in building the legitimacy of the security sector.⁴ The Supreme Audit Agency (*Badan Pemeriksa Keuangan* – BPK) is an independent state institution in the sense of being free from any government intervention. Based on the third amendment of the Indonesian Constitution, the agency is overseen by the Parliament in two ways, namely (1) through the selection of its members, and (2) the submitting of its investigation results to legislative bodies. The DPR has appointed a few staff to assist in the analysis of BPK reports, but its ability to attract highly-qualified staff is hampered by rigid recruitment and human resources management procedures.

BPK's audit reports take the form of six-monthly financial reports of government as a whole and individual audits of particular agencies. The reports are sent to the parliament speakers for presentation to a plenary session. They are then distributed to the commission with specific responsibility over certain ministries or agencies for analysis and review. For example, reports on defense ministries and military headquarters will be scrutinized by Commission-I. Each commission will decide on a time for a session to discuss the BPK report, fitting it into the wider schedule of meetings for the commission.

The content of BPK reports is discussed in working groups of each commission. The meeting of a working group normally includes a session of discussion with the counterpart institution examined in the report, with questions put to the government officials by the commission members. The former will either respond to the questions on the spot or request time to provide an answer at a later meeting. Questions arising from BPK reports may become major issues of public and political importance. DPR Members may also use the information provided by BPK reports to issue media statements and as background information to strengthen their overall activities as legislators.

⁴ See Alexander Mayer-Rieckh, "On Preventing Abuse: Vetting and Other Transitional Reforms," in Alexander Mayer-Rieckh and Pablo de Greiff (eds.), *Justice as Prevention: Vetting Public Employees in Transitional Societies* (New York: Social Science Research Council, 2007), pp. 498-499.

Nevertheless, the follow-up on DPR's questioning of matters raised in BPK reports is relatively weak. In general terms, the government's responsiveness to parliamentary inquiry is influenced by its perception of the political appropriateness of any reply. Instead of insisting on a reply to questions about suspected budget misallocations, parliament members are often preoccupied with the controversial or equally important issues. The government may promise to provide a response to parliamentary inquiries at a later meeting, but, if the meeting is held weeks or months later, both DPR and public interest in the issue may have disappeared. Practices as such are certainly disturbing given the potential loss to the state. According to a BPK official, intermittent audits of the defense budget revealed serious irregularities in the form of disobeying the rules and regulations (70 percent), inefficient use of state finance (20 percent) and ineffectiveness (10 percent).⁵

The Law No. 15/2006 has empowered the role of BPK. However, the agency is still in the process of building its institutional capacity to undertake financial and policy audits. With the number of institutions it has to audit greatly increasing, BPK still lacks of funding and human resources to produce timely audits. BPK reports also provide little qualitative assessment and are composed mainly of general matrices documenting potential losses to the state from the total number of financial irregularities in a particular agency. Thus, the agency has to move beyond a traditional way of presenting its audit reports both to the Parliament and public at large.⁶

Another problem facing an independent auditor in Indonesia and the limitations of parliamentary oversight is the poor quality of accounting practices within government institutions. This fact is highlighted in the BPK reports, which issue a "disclaimer" on central government finances, stating that it could not guarantee the accuracy of the information. The DPR therefore became an important avenue for the BPK to present its concerns; but, apart from various statements from leading parliament members, the DPR has not taken up this issue in a concerted way.

⁵ See I Gde Artjana, "The Accountability of the Military Budget," <http://www.lesperssi.org/id/component/content/article/5-security-sector-in-democratic-oversight/41-accountabilty-of-the-military-budget>. Accessed on 3 February 2017.

⁶ See Asian Development Bank, *Sector Report on Accountability and Audit in Indonesia* (Jakarta: ADB, 2007), p. 72.

Civil Society Oversight: High Expectations and Intrinsic Problems

CSOs and think tanks play a crucial role in democratic development in Indonesia. The introduction of democracy in the country has provided space for civil society to express their voices and influence and take part in the reform process. The contributions of Indonesian civil society have since been substantial, with many of their networks active in monitoring state institutions and others influential in affecting legislation or advocating human rights reform.

In that context, Indonesia's epistemic community on SSG emerged from a confluence of human rights advocates and scholars with a common interest in military and security affairs. The former specifically focus on monitoring human rights abuses and criticizes weaknesses in laws for regulatory reforms. Operating at the grassroots level, they often launch campaigns for specific issues. For outreach to both policymakers and public at large, human rights groups rely on conventional and social media to amplify their concerns and voices.

In contemporary Indonesia, it is unlikely that abuse by the security sector goes unreported and that international human rights groups are not involved in eventual campaigns. The combined weight of the information technology, media industry and cross-border human rights groups has forced the government to act and, on occasion, pushed for long-term reforms of the security sector. Among leading human rights groups are Imparsial, the Commission for the Victims of Violence and Forced Disappearance (KontraS), and the Indonesian Legal Aid Foundation (YLBHI).

The second category of the SSG-focused epistemic community consists of numerous academicians associated with top universities, such as the University of Indonesia and Gajah Mada University, and think tanks – including the Indonesian Institute of Sciences (LIPI) and Centre for Strategic and International Studies (CSIS). These scholars work either through formal or informal channels with reform-minded politicians and security professionals. The regular activities of the academic community include

holding focused-group discussions, policy research and strategic reviews. The ProPatria Institute and Pacivis, for instance, have been the driving forces behind the alternative drafts of laws on state defense, military and police.

Moreover, the academic-led organizations often engage in cooperation with other CSOs to influence policymaking and promote norms of good governance in the security sector. Most military and police officers still understand SSG through the lens of national security, rather than human security. However, their broad knowledge on the latter perspective has increased. This trend is due to not only informal contact between civil society and security professionals, but also the benefits benefited of establishing postgraduate studies at the University of Indonesia and the newly established Defense University.

Further collaboration has taken place when other non-governmental organizations, such as the anti-corruption and environmental movements, have dealt with issues that involve security actors. Cooperation between the SSG focused-CSOs and journalist associations, for instance, has been developed to train the local media in reporting security-related issues. There are also foreign-funded entities, including the Friedrich Ebert Stiftung (FES), International NGO Forum on Indonesian Development (INFID), the Partnership for Governance Reform in Indonesia (*Kemitraan*) and the International Organization for Migration (IOM), that support SSG-related capacity-building programs.

Despite the positive achievements above, the effectiveness of the SSG epistemic community has been decreasing in recent years. According to recent studies, this worrying trend is a consequence of the changing political landscape, declining international aid, and enduring weaknesses of CSOs in Indonesia. Even though civilian elites are now relatively free from military intervention, they still perceive it as a formidable political force. In a highly competitive political environment, party leaders have been reluctant to initiate policy measures that might harm the military's corporate interests. The repeated calls by civil society actors for further and faster reform have

largely been ignored. In other words, fractured civilian politics tend to complicate SSG.⁷

By and large, CSOs in Indonesia suffer from longstanding internal problems. A comprehensive study by the Institute for Defense, Security and Peace Studies highlights that SSR-focused CSOs are far from optimal in terms of their level of cooperation, professionalism and image projections. Due to different political positions and veiled suspicions, the SSG-focused epistemic community today relies on informal and loose working groups according as per need. This means that it is unable to agree on a strategic framework and take part in agenda setting on security sector governance. Another intrinsic problem is the lack of institutionalization in the CSO agenda. While some leading scholars move on other research projects, this has left a void within the SSG-focused epistemic community. Moreover, the internal management of CSOs is partially professional. Although a few have clear guidelines on ethical conduct, some remain secretive about their funding sources and spending patterns.⁸

At the peak of the democratic transition in Indonesia, CSOs enjoyed huge support of international donors for the reform agenda. However, since 2004, the latter scaled back its support to CSOs in favor of building the capacity of the military and the policy of combating terrorism. Consequently, the lack of funds has had a negative impact on the SSG-related programs. Some CSOs have attempted to raise funds domestically, but the results have been largely unsuccessful. This means that they remain dependent on international donors.⁹

⁷ See Rizal Sukma, "The Role of Civil Society in Indonesia's Military Reform," in Jurgen Ruland, Maria-Gabriela Manea and Hans Born (eds.), *The Politics of Military Reform: Experiences from Indonesia and Nigeria* (Geneva: Springer, 2013), p. 159.

⁸ See Institute for Defense, Security and Peace Studies, *The Effectiveness of Civil Society Organization Advocacy Strategies in Security Sector Reform in Indonesia, 1998-2006* (Jakarta: IDSPS, 2008), pp. 98-102.

⁹ See Fabio Scarpello, "Stifled Development: The SSR—Civil Society Organizations Community in Post Authoritarian Indonesia," in Felix Heiduk, ed., *Security Sector Reform in Southeast Asia* (New York: Palgrave Macmillan, 2014), pp. 141-143.

The Potential Role of International Actors

Apart from its domestic role, Indonesian civil society seeks to expand its international engagements. Exchanging good practices and lessons learned on SSG in other countries is seen as a potential means to enhance cooperation on dealing with SSG-related issues. The role of scholars and practitioners is particularly instrumental to improve and expand the needed expertise in countries emerging from conflict or undergoing political transition. There have been numerous civil society initiatives to provide platforms for exchanges between Indonesian experts and international stakeholders on relevant issues to the SSR agenda.

Although the exchange programs are varied in terms of agenda and scope, Indonesian civil society appears to adopt two approaches in their international engagement. First, it usually conducts a “need assessment” to understand local contexts, identify key actors or stakeholders and set priority issues. Second, in terms of financial support, Indonesian CSOs develop a trilateral cooperation with donor countries and development agencies to help funding knowledge-sharing events. Overall, these strategies are consistent with the Indonesian government’s view that national ownership is critical to ensure the effective implementation of SSG-related programs.

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