

## Legal Politics Aspect of Regulation, Efforts of Safeguard, Supervision, and Control Over the Commercial Explosives in Indonesia

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### Abstract

The consequence of Indonesia as a state of law in accordance with Article 1 Paragraph (3) of the Constitution 1945 is that it creates legal politics which continues to develop in accordance with the dynamics of political life in the Indonesia state. Legal politics that has occurred in Indonesia was when the reform movement emerged demanding the separation of the Indonesian National Police and the TNI which had long been integrated into the Indonesian Armed Forces. Based on this incident, it has an impact on the regulation of Commercial Explosives in Indonesia according to the Decree of the President of the Republic of Indonesia Number 125 of 1999 about Explosives, with licensing arrangements generally still being issued by the Ministry of Defense of the Republic of Indonesia. However, the technical licensing arrangements for Commercial Explosives in Indonesia have been issued by the Police of the Republic of Indonesia.

**Keywords:** legal politics, reform, commercial explosives, regulation

### Abstrak

Konsekuensi Indonesia sebagai Negara Hukum sesuai Pasal 1 Ayat (3) UUD 1945 yaitu menimbulkan politik hukum yang terus berkembang sesuai dengan dinamika kehidupan politik pada negara Indonesia. Politik Hukum yang sudah terjadi di Indonesia adalah ketika munculnya gerakan reformasi yang menuntut pemisahan POLRI dan TNI yang sekian lama sudah terintegrasi dalam tubuh ABRI. Berdasarkan peristiwa itu, telah berdampak terhadap pengaturan Bahan Peledak Komersial di Indonesia sesuai Keputusan Presiden Republik Indonesia Nomor 125 Tahun 1999 Tentang Bahan Peledak, dengan pengaturan perizinan secara umum masih dikeluarkan oleh Kementerian Pertahanan Republik Indonesia. Namun, pengaturan perizinan Bahan Peledak Komersial di Indonesia secara teknis telah dikeluarkan oleh Kepolisian Republik Indonesia.

**Kata kunci:** politik hukum, reformasi, bahan peledak komersial, pengaturan

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## Introduction

Indonesia is a state of law which is in accordance with the concept of legal state (*Rechtsstaat*). It has been confirmed in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia that “The State of Indonesia is a state of law”. Furthermore, it is restated in the Elucidation of the 1945 Constitution of the Republic of Indonesia, that Indonesia is a state based on the rule of law (*Rechtsstaat*), not a state of power (*Machtsstaat*), and the government system is based on constitutional system (basic law), not absolutism (unlimited power).

Article 1 Paragraph (3) of the third Amendment of 1945 Constitution have consequences of three basic principles that must be upheld by every citizen, they are:

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legal supremacy; equality before the law, and law enforcement in the ways that are not prohibited by the law (**Marbun, 2014**).

The law of Indonesia is the law which has strong characteristic based on the values of Pancasila, and it will never be realized without the efforts of many parties, especially those who are competent in forming/developing law in Indonesia. There are some steps in the formation of common law, namely: legislation, judge made law, customary dan contract. As regards the law character building, we must pay attention to the legal system in which there are three legal subsystems: legal substance, legal structure and legal culture. To be able to determine the agenda of legal development, we have to identify in advance, the problems exist in each legal subsystem (**Mansyur, 2014**).

The relationship between law and politics is that the law existing (it means: positive law) is a political decision. The Constitution of Indonesia is organized by People's Consultative Assembly (MPR) as a political institution. And so are the other law and regulations, as the implementation of The Constitution, are also political decisions (**Saragih, 2006**).

The most decisive factor in a legal process is the conception and structure of political power, that is always—more or less—a political tool, and the law position in a state, depends on the balance of politics, definition of power, political ideology evolution, politics, economy, social, etc. Eventhough the law process is not identical with the purpose of law formation, practically, the process and dynamics face similar issue: the concept and structure of political power in the society are very important in the formation of law products. Therefore, to understand the relationship between politic and law in any country, it is necessary to learn the background of culture, economy, political power in the society, body of state, and its social structure, in addition to its own legal institution (**Hajiji, 2013**).

Legal politics is a part of legal science. If a tree is an analogy of legal science, then philosophy is the root, while politics is the tree itself, which bears branches of many legal fields such as Civil Law, Criminal Law, State Administration Law, etc. Here, legal politics can be seen as a part of legal science. Likewise, it turns out that there is a causal relationship between law and politics. If we compare to a train trip, law is the railroad, and politics is the locomotive. Politics and law will be better to cooperate and strengthen each other to form a state of welfare law (*welfare reshstaat*) (**Sujasmin, 2018**).

Legal politics—as a legal agenda to actualize the common goals—has to present in realizing the ultimate goal of law, which are ensuring fair regulation, providing legal certainty, and distributing benefits. This is what distinguishes legal politics from the others such as economic politics, cultural politics, etc. Therefore, in this perspective, the law should not be used for any purposes other than the ideal goal of society, state, and nation (**Rahayu, 2015**).

The factors that determine legal politics are not only our aspiration or the will of the law makers, practitioners, or theorists, but also the reality and development of law in

other countries and the international law. The differences of legal politics in one country to the others then result in what we call the National Legal Politics (**Agustine, 2017**).

Literally, national legal politics means a legal policy which will be applied or implemented at national scale by a certain state government. The national legal politics includes 1) consistent implementation of existing legal provisions; 2) legal development which essentially means renewal of the existing legal provisions and considered out of date, and the creation of new legal provisions needed to meet the demands of society development; 3) affirmation of law enforcement department or law officers function and supervision of the members; and 4) the increase of public legal awareness according to the perceptions of elite policy makers (**Putuhena, 2013**).

One of the mechanisms of legal provisions creation is through legal politics which is desired by the authorities at the time. Consequently, the recent mechanism of legal provisions creation in Indonesia is based on the will and authority of the power holder. Thus, through its legal politics, Indonesia can make design and planning in national legal development (**Fitriana, 2015**).

In efforts to make law as the process of achieving state goals and objectives, Indonesian legal politics must rest on the following basic framework (**Limpo, 2018**):

1. National legal politics must always lead to the state objectives: a fair and prosperous society based on Pancasila.
2. National legal policy must be aimed at achieving the objectives of the state: protecting the entire nation and all Indonesian territories; promoting shared prosperity; educating people in the life of nation; implementing world order based on the independence, perpetual peace and social justice.
3. National legal politics must be guided by the values of Pancasila as the basis of state: moral based religion; respect and protection towards basic human rights without discrimination; unity of nation elements with all the primordial ties; power in the name of people; and social justice.
4. National legal politics must be lead to: protect all elements of nation for the integrity the nation which includes ideology and territory; realize people justice in the field of social economy in Indonesia; actualize democracy (people sovereignty) and nomocracy legal state); create a tolerance of religious life based in civilization and humanity.
5. The national legal system to be built is Pancasila based legal system, a system which takes or integrates various values of importance, social wisdom, and the concept of justice into prismatic legal ties by taking the good elements.

Legal politics in Indonesia has begun to change greatly since the onset of reform movement, which can be said a way to improve the life of state and nation (**Sarip, 2018**). Then, in the context of politics development, after the fall of President Soeharto's authoritarian power on May 21, 1998, Indonesia is also mentioned as the third largest democratic state in the world after United States and India (**Manan, 2010**).

The reform movement in May 1998 has brought fundamental changes to Indonesian people and the Nation. First, since the fall of Soeharto, people no longer have a decisive leader. The new emergence of power centres abroad has shifted the position of the President of Indonesia from hegemonic and monopolistic leader to be an ordinary head of government, which can be sued and even overturned in anytime. Second, the emergence of a more liberal political life has led a too liberal political process. Third, political reform has also accelerated the enlightenment of people's state politics. The spirit of the transparencies among people has shown the high level of distortion in the State administration process. Fourth, at the level of state institution, the awareness of check and balance process among the branches of power has developed in such a way, more than what already exist, by stating that State organization is similar to those in family principle. Fifth, political reform has encouraged Indonesian influential public and political elits to systemically and peacefully make fundamental changes based on the Constitution of the Republic of Indonesia (**Yuhdi, 2016**). Reformation movement in the era of Soeharto was a result of the weak political activity in Indonesia, which limits the activities of other political parties to build networks as to smooth the way of their election campaign during the New Order (**Berenschot, 2018**).

One of the most basic problems often discussed in the reform era is legal aspect. The legal aspect here covers various dimension, basically qualified into three aspects as follows: 1) structure (institutional order and performance of institutions); 2) substance (legal material); and 3) legal culture. These three aspects are Lawrence M. Friedman's theory which is often referred to in various studies, especially the studies of legal system in Indonesia (**Budianto, 2016**).

The separation reform of POLRI (Indonesian National Police) and TNI (Indonesian National Armed Forces) was strengthened by MPR Decree VI/ MPR/2000 on the Separation of the Indonesian National Army and the Indonesian National Police, MPR Decree VII/2000 on the Role of the Indonesian National Army and the Role of the Indonesian National Police, Law Number 2 of 2002 on the National Police of the Republic of Indonesia, and Law Number 3 of 2003 on National Defense (**Muhammad, 2003**).

In line with that, one of the directions of national legal politics proclaimed by Indonesia after the agenda of constitutional reform was to continue the agenda of legal formation and reform. Legal fields that need the formation and renewal are grouped according to the fields needed. The fields are *first*, politics and government, second, economy and business world; third, social welfare and culture, and fourth, system and apparatus regulation (**Kartono, 2012**).

Thus, MPR Decree/VI/MPR/2000 on the separation of TNI and Polri explains that ABRI has been replaced by TNI and POLRI, and ABRI dual function has been eliminated by the formula stating that TNI is a means of the state which is responsible for the state defence. Meanwhile, MPR Decree VII/MPR/2000 on the role of the Indonesian National

Army and the National Police of Republic of Indonesia, emphasize the elimination of TNI (formerly ABRI) dual function (**Saragih, 2006**).

The separation reformation of POLRI from ABRI organizational structure (which later becomes TNI) has also given impact to the activity of explosives industry in Indonesia, both in military or commercial. The license of commercial explosives is not published by the Minister of Defense but Indonesian National Police. It can be seen here that there is a dynamic legal politics towards the commercial explosives industry in Indonesia.

The evidence of these changes can be found in Law Number 2 of 2002 on National Police of the Republic of Indonesia, Article 15 Paragraph (2) E: *“There is an authority of the National Police of the Republic of Indonesia to give permission and conduct surveillance of firearms, explosives, and sharp weapons”*. Based on Article 15 Paragraph (2) E, Law Number 2 Year 2002 about the National Police of Republic of Indonesia, result in the Regulation of the Chief of the Republic of Indonesia National Police Number 17 Year 2017 about licensing, safeguarding, supervision, and control of commercial explosives.

Basically, not everyone can use the explosives freely for they may only be used by certain parties in certain situation and criteria. Therefore, agencies which have authority to deviate from general prohibition rules are also given the responsibility to carry out inspections and tests, and make appropriate decision, whether they are given permission to use explosives, etc (**Pudyatmoko, 2009**) This is to anticipate the disruption of national security stability from the misuse of the Commercial Explosives. So that several licenses were issued for the Commercial Explosives industry in Indonesia by several authorized agencies.

Based on the background, this paper will discuss the legal politics aspects of commercial explosives in Indonesia and the efforts to secure, supervise, and control over the commercial explosives in Indonesia as the impacts of the legal politics aspects.

## Discussion

Today, the explosives in Indonesia have been used by a limited number of industries. In the explosives industry, there are business entities which have been established by Ministry of Defense of the Republic of Indonesia, as stipulated in Article 1 Number 2 of the Minister of Defense Number 5 Year 2016 concerning the supervision and development of explosives industry.

Based on Article 1 Number 4 of the Regulation of the Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Supervision and Development of the Explosives Industry, explosives are defined as materials or substances in the form of solid, liquid, gas or mixtures, of which when subjected to heat, impact or friction will change chemically into other substances that are mostly or entirely in the form of gases. The changes take place in a very short time with very high effects of heat and pressure. Meanwhile, the use of explosives in industry can be divided into two categories.

1. Military Explosives are various chemical products which can be used as explosives for military purposes (Article 1 Number 5 on the Regulation of the Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Development and Development of the Explosives Industry).
2. Commercial Explosives are various chemical products that can be used as explosives for mining work, public works, special applications or used in certain industrial production processes (Article 1 Number 6 Regulation of the Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning Fostering and Development of the Explosives Industry)

According to Article 3, Regulation of the Minister of Defense of the Republic of Indonesia Number 5 Year 2016 concerning the supervision and development of the explosive industries, the explosives are grouped based on: 1) Composition of chemical compounds; 2) The use; 3) Raw materials; and 4) User's environment.

The classification of explosives based on the environment where they are used, in accordance with Article 12 Paragraph (1) of the Regulation of the Minister of Defense of the Republic of Indonesia Number 5 of 2016 on the Supervision and Development of the Explosives Industry, consists of:

1. Military explosives, can be used in military training and operations. It can also be used for commercial purposes in accordance with the provisions of legislation (Article 12 Paragraph (2) and Paragraph (3) of the Regulation of the Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry). Military explosives are divided into several sections according to Article 12 Paragraph (4) of the Minister of Defense Regulation of the Republic of Indonesia Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry:
  - a. Main charges, consists of *Tri Nitro Toluent (TNT), Research Development Explosive (RDX), tetryl, picric acid, amatol, tritonal, pentolite, tetrytol, pikratol, ammonal, ednatol, explosive D, composition B, High Melting Explosive (HMX), Haleite, Polymer Bonded Explosive (PBX), C<sub>4</sub>*, etc;
  - b. Propellant consists of *nitrous glycerine based such as single base propellants, double base propellants (ball powder), triple base propellants, extruded impregnated Propellants (EIP), Composite Modified Cast Double Based (CMCDB), Elastomeric Modified Cast Double Based (EMCDB), Crosslinked Cast Based Double (XLCBD)*, etc, and
  - c. *Composite consists of Hydroxyl Terminated Poly Butadiene (HTPB), Carboxyl Terminated Poly Butadiene (CTPB), Glycidyl Azide Polymer (GAP), poly urethane, poly sulfide*, etc.
2. Commercial Explosives, according to Article 12 Paragraph (5), the Regulations of Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry, are divided into:
  - a. *Nitro glycerine based explosives (dynamite)*;

- b. *Blasting agents (ammonium nitrate, ammonium nitrate fuel oil, emulsion matrix);*
- c. *Water based explosive (slurry, watergel, emulsion explosives); and Shaped charges, such as RDX, HMX, etc.*

Based on Article 12 Paragraph (5) of the Regulation of the Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Nurtutr and Development of the Explosives Industry, there are other parts of Commercial Explosives namely Accessories Explosives which include: *booster; detonator; axis of fire; explosive axis igniter; MS connector (detonating relay); igniter; igniter cord; connector; etc.*

Commercial Explosives, according to Article 1 Number 5 of the Regulation of Indonesian Police Chief Number 17 of 2017 concerning Licensing, Safeguarding, and Supervision and Control of Commercial Explosives, namely *Explosives used for national development purposes and production processes, in industry, mining and/or construction.*

Further regulation of commercial explosives in terms of the use which involves several parties referring to the Regulation of the the Chief of Police of the Republic of Indonesia Number 17 Year 2017 on Licensing, Security, and Supervision and Control of Commercial Explosives:

1. Producer is a legal business entity which has a license to produce commercial explosives (Article 1 Number 12 of the Regulation of the Chief of the Republic of Indonesia Police Number 17 of 2017 concerning Licensing, Safeguarding and Supervision and Control of Commercial Explosives).
2. Importer is a legal business entity that has a license to import explosives and/or chemicals that are explosives to be used for a production process (Article 1 Number 13 Regulation of the Chief of the Republic of Indonesia Police Number 17 of 2017 concerning Licensing, Security and Supervision and Control of Commercial Explosives).
3. Distributor is a legal business entity that has a license to procure, supply and distribute Commercial Explosives (Article 1 Number 14 of the Regulation of the Chief of the Republic of Indonesia Police Number 17 of 2017 concerning Licensing, Security and Supervision and Control of Commercial Explosives).
4. End User is a legal business entity that carries out government and/or private project work that is directly responsible as a user of Commercial Explosives (Article 1 Number 15 Regulation of the Chief of the Republic of Indonesia Police Number 17 of 2017 concerning Licensing, Security, and Supervision and Control Commercial Explosives).

The types of Commercial Explosives in Indonesia have been regulated in detail in Chapter II of the Regulation of Indonesian Police Chief Number 17 Year 2017 on Licensing, Safeguarding and Supervision and Control of Commercial Explosives as follows:

1. Article 2 of the Regulation of the Chief of the Republic of Indonesia Police Number 17 of 2017 on Licensing, Safeguarding, and Supervision and Control of Commercial Explosives states:

*Types of Commercial Explosives:*

- a. *Dynamite;*
  - b. *Blasting agents are commercial explosives which use ingredients other than nitroglycerine;*
  - c. *Water based explosives are commercial explosives which does not contain its component of water and its mixture, including slurry, watergel, and explosive emulsion.*
  - d. *Ammonium nitrate prill/liquid ammonium nitrate/solution ammonium nitrate;*
  - e. *Anfo, a commercial explosives consist of the mixture of ammonium nitrate and fuel oil;*
  - f. *Commercial explosives accessories consist of:*
    1. *Primary (booster);*
    2. *Detonator, includes:*
      - a) *Electric detonator;*
      - b) *Nonelectric detonator; and*
      - c) *Electric detonator*
    3. *Safety fuse;*
    4. *Blasting cord or detonating cord or fuse is a high-energy commercial explosive which can be initiated by detonator to ignite explosion;*
    5. *Connector (detonating relay); and*
    6. *Igniter*
  - g. *Shaper charges, commercial explosives that have a certain geometrical to carry out activities such as logging, casing-pipe/conductor cutting, perforating, sample taking or ditching;*
  - h. *Raw materials for commercial explosives production, at least consist of:*
    1. *Blasting gelatine (master mix);*
    2. *Nitroglycerine;*
    3. *Nitroglycol;*
    4. *Nitrocellulose;*
    5. *Pentaeritritol tetranitrate (PETN);*
    6. *Black powder;*
    7. *Mercury fulminate;*
    8. *Lead azide;*
    9. *Diazodinitrofenil (DDNP);*
    10. *Lead styphnate;*
    11. *Pyrotechnic materials; and*
    12. *Fireworks.*
2. Article 3 of the Regulation of the Chief of Republic of Indonesia Number 17 Year 2017 on Licensing, Security, Supervision, and Control of Commercial Explosives, states:  
(1) *Fireworks as referred to in Article 2 Point h Number 12 include:*



- a. *Fireworks that have more than 20 grams of filling with a size of more than 2 inches; and*
  - b. *Gunpowder as referred to in Point a is a material or mixture that can cause explosion.*
- (2) *Materials or mixtures which can cause explosion as referred to in paragraph 1 point b includes:*
- a. *A mixture of sulfur, saltpeter, wood charcoal; and*
  - b. *A mixture of saltpeper powder, sulfur, antimony sulfur, and aluminium powder.*

## **Legal Polics Aspects to the Commercial Explosives in Indonesia**

The connection between legal politics aspects and commercial explosives in Indonesia cannot be separated from the reform of TNI-POLRI separation, which is considered as legal politics which bring the legal system closer to the social reality or populist law (Saragih, 2006). The cause is, however, in New Order era, elitist law is always prepared in the presidential house then discussed by DPR in the term of language and the way it is written, with no significant changes. In the pas times, it was known that Indonesian legal system is positivistic-instrumentalistic. It means that the law was only a means to justify the will of the authorities, both those who have been done or will be done. With a character like this, the law or regulations often become a means to justify the wrong or inappropriate policies (Mahfud MD, 2009)

Consequently, the legal politics post- TNI-POLRI separation reform bring impact to the activity of commercial explosive business entities di Indonesia. It is contained in the license of Indonesia explosive business entities. In business world, license has the most important role. The license and business world development are similar to both sides of a coin which has a very close relationship. Business world will not develop without a clear legal license, and it is what the business world need (Adil H.U., 2016).

The aspect of legal politics towards commercial explosives in Indonesia can be seen in the Presidential Decree of the Republic of Indonesia Number 125 of 1999 on Explosives in Article 2 explaining that:

- (1) Production, procurement, storage and distribution of explosives are carried out by business entities after getting the license from the Minister of Defense and Security.
- (2) When business entities referred to in paragraph (1) export and import the explosives and their components, then the license will be given by the minister who is responsible for trading after the recommendation from Minister of Defense and Security.
- (3) The regulation, nurture, and development of explosives industry are carried out by Minister of Defense and Security.

The arrangement of explosive business enitites, as the main requirement of the establishment of the commercial explosives industry along with several recommendations and licenses related to the explosives, is still issued by the Minister of

Defense and Security, in accordance with the Regulation of Republic of Indonesia Minister of Defense and Security Number 5 Year 2016 on the nurture and development of explosives industry, in Article 13 Paragraph (2) includes:

- a. *Giving or rejecting recommendation and/or factory building license;*
- b. *Giving or rejecting the application of production license.*
- c. *Giving or rejecting recommendation of factory development and enlargement;*
- d. *Giving or rejecting application for a procurement business license through the import of explosives.*
- e. *Allowing or rejecting application for explosives distribution business licenses;*
- f. *Giving or rejecting a warehousing business license application;*
- g. *Giving or rejecting applications for Commercial Blasting services;*
- h. *Giving or rejecting a research and development business license application;*
- i. *Establishing a business entity as an Explosive Business Entity;*
- j. *Giving or rejecting application for extension of license as an explosive business entity;*
- k. *Granting or rejecting application for quota allocation of explosives and accessory explosives;*
- l. *Granting or rejecting applications for additional recommendation for quota allocation of Explosives and Accessory Explosives;*
- m. *Granting or rejecting application for appointment recommendation as Registered Importer of Nitro Celullosa (NC);*
- n. *Granting or rejecting application for appointment recommendation as Importer Producer of Nitro Celullosa (NC);*
- o. *Giving or rejecting applications for explosives recommendations and license;*
- p. *Granting or rejecting application for appointment recommendation as an importer of fireworks; and*
- q. *Carrying out supervision and control.*

After the separation reform of TNI and POLRI, the legal politics aspects of Commercial Explosives in Indonesia for the use of commercial explosives have technically transferred the authority to the Indonesian National Police (POLRI). This has been arranged in the Regulation of the Indonesia Chief of Police of Number 17 of 2017 concerning Licensing, Security, and Supervision and Control of Commercial Explosives:

1. The classification of Commercial Explosives Business Entity has been regulated in the Regulation of the Indonesia Chief of Police Number 17 of 2017 concerning Licensing, Security, and Supervision and Control of Commercial Explosives as follows:
  - a. Article 4 of the Regulation of the Indonesia Chief of Police Number 17 of 2017 concerning Licensing, Safeguarding and Supervision and Control of Commercial Explosives states:  
Commercial Explosive Business Entity, consists of:
    - a. Manufacturers, including:
      1. Commercial Explosives; and
      2. Fireworks Producers;
    - b. Importers, including:
      1. Commercial explosives; and
      2. Fireworks importers;

- c. Distributors, including:
  1. Commercial Commercial Explosives; and
  2. Fireworks
- d. End users, including:
  1. End user in the environment of mineral, coal and geothermal mining;
  2. End user in the oil and gas mining environment; and
  3. Non-mining End Users.
- b. Article 5 of the Regulation of the Indonesia Chief of Police Number 17 of 2017 concerning Licensing, Safeguarding and Supervision and Control of Commercial Explosives states:

In addition to the Business Entity as referred to in Article 4, other business entities engaged in services related to Commercial Explosives include:

  - a. Blasting service business entity, to assist End Users of Commercial Explosives in blasting;
  - b. Warehousing service business entity, for the supply of commercial explosives storage warehouses to be rented for producers or suppliers or end users of commercial explosives;
  - c. Transportation service business entity, to transport commercial explosives; and
  - d. Management service business entity, for the management of commercial explosives by operators and/or suppliers or representatives of foreign companies working with importers and/or End Users.
2. Further provisions for other business entities in services related to commercial explosives are based on Article 12 of the Regulation of Indonesia Chief of Police Number 17 of 2017 concerning Licensing, Safeguards, Supervision and Control of commercial explosives:
  - (1) Business Entity as referred to in Article 5, must have a license from Indonesia Chief of Police and report its activities periodically through the Head of the Indonesian Police Intelligence and Security Agency.
  - (2) Application for recommendation as referred to in paragraph (1) shall be submitted to Indonesian Chief of Police through the Head of the Indonesian Police Intelligence and Security Agency.
  - (3) Business entities which have the license are only permitted to carry out operations in the field of commercial explosives services.
3. According to Article 13 of the Regulation of Indonesian Chief of Police Number 17 of 2017 concerning Licensing, Safeguarding, Supervision and Control of Commercial Explosives, the license of Producers, Importers and Distributors Commercial Explosives which are issued by the Republic of Indonesia Police include:
  - a. Article 13 Paragraph (1) namely:
    - (1) In carrying out their business activities, producers, importers and distributors are given permission in terms of:

- a. Warehousing;
  - b. Ownership, control and storage;
  - c. Manufacture (production) or mixing and distribution
  - d. Import;
  - e. Re-import;
  - f. Expenditures (export);
  - g. Reissue (Re-Export);
  - h. Purchasing and distribution;
  - i. Transfer (grant);
  - j. Transportation; and/or
  - k. Demolition.
- b. Article 13 Paragraph (2) regulates the license of import in terms of:
- (2) License to import Commercial Explosives as referred to in paragraph (1) Point d include:
    - 1) permission to import (import) foreign-made Commercial Explosives stored or stockpiled on Momoi Island in the Batam area and / or in Commercial Explosives warehouses at the PLB; and
    - 2) permission to import (import) foreign-made commercial explosives distributed to end-users of commercial explosives in the territory of the Republic of Indonesia.
- c. Article 13 Paragraph (3) regulates expenditure permits (export), namely:
- (3) Expenditure permits (export) of Commercial Explosives as referred to in paragraph (1) letter f, include:
    - 1) export permit for domestically-made explosives or origin of removal from within the territory of the Republic of Indonesia that is stored or stockpiled in the Momoi Island Explosives warehouse in the Batam area and / or at the PLB which is then distributed or issued outside the territory of the Republic of Indonesia;
    - 2) permit for export (export) of domestically made explosives distributed outside the territory of the Republic of Indonesia.
- d. Article 13 Paragraph (4) regulates re-export permits, namely:
- (4) Explosive Re-export Permit as referred to in paragraph (1) letter g, Commercial Explosives stored in Momoi Island Explosives warehouses in the Batam area and / or PLB from the territory of the Republic of Indonesia.
- e. Article 13 Paragraph (5) regulates the existence of permits to make or produce Commercial Explosives, namely:
- (5) In addition to licensing as referred to in paragraph (1), Producers, Importers and Distributors may be given permission to make or produce Commercial Explosives using MMU, MP and / or other machine tools

used to make Commercial Explosives of bulk emulsion types, emulsion matrix, and Ammonium Nitrate Fuel Oil (ANFO).

4. According to Article 14 of the Regulation of the Chief of the Republic of Indonesia Police Number 17 of 2017 concerning Licensing, Security and Supervision and Control of Commercial Explosives, that for licensing Fireworks as part of Commercial Explosives for Producers, Importers and Distributors issued by the Indonesian National Police include:
  - a. Article 14 Paragraph (1), namely:
    - (1) Producers, Importers and Distributors of Flame Flowers in conducting their business activities can be given permission:
      - a. Warehouse;
      - b. Ownership, Mastery and Storage;
      - c. Production, Import and Distribution Business;
      - d. Import (import);
      - e. Expenditures (export);
      - f. Transportation;
      - g. Production and Distribution; and / or
      - h. Demolition.
  - b. Article 14 Paragraph (2) regulates production, Import and Distribution Business license, namely:
    - (2) Production, import and distribution business licenses as referred to in paragraph (1) point c, are given when they already have certificates as manufacturer, importer and distributor.
5. According to Article 15 of the Regulation of Indonesian Chief of Police Number 17 of 2017 on Licensing, Security, Supervision and Control of Commercial Explosives, that for fireworks as part of Commercial Explosives for End Users issued by the Police of Republic of Indonesia:

In carrying out their activities, end users can be given permission in terms of:

  - a. Warehouse;
  - b. Ownership, control and storage;
  - c. Purchase and Use;
  - d. Transfer of Use;
  - e. Residual Use;
  - f. Transportation; and/or
  - g. Demolition.
6. According to Article 15 of the Regulation of Indonesia Chief of Indonesia Police Number 17 of 2017 on Licensing, Security, Supervision and Control of Commercial Explosives, that the license of Commercial Explosives for End Users issued by the Police of the Republic of Indonesia, are:
  - a. Fireworks Warehouse;
  - b. Ownership, possession, and fireworks storage;

c. Purchase and Use of Fireworks.

Based on the previous explanation about the legal politics aspects of Commercial Explosives in Indonesia, it has been known that in the Regulation of the Indonesia Minister of Defense Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry, there are several licenses or recommendations for Commercial Explosives industries. Technically, it is arranged in the Regulation of Indonesia Chief of Police, Number 17 of 2017 concerning Licensing, Safeguarding, Supervision and Control of Commercial Explosives. In addition, there is also the license for the Explosives industry for the use of Commercial Explosives issued by the Indonesia Chief of Police.

### **Efforts to Safeguard, Supervise, and Control over Commercial Explosives as the Impact of Legal Politics Aspects in Indonesia**

Supervision is one of the organic functions of management, a process of leadership activities to ensure and guarantee that the goals, objectives, and tasks of the organization will be and have been carried out properly according to the plan, policy, instructions, and stipulated provisions (**Lembaga Administrasi Negara Republik Indonesia, 1996**). In other words, supervision is a form of mindset and pattern of action to give understanding and awareness to someone or several people who are given the task by using a variety of resources available, properly and correctly, so that there is no institution or organization's mistakes and deviations can create the loss (Makmur, 2015).

Every organization must have a goal. It is the goal that keeps an organization moving dynamically and make changes continuously in order achieve the goal. To ensure the achievement of these goals, an organization needs a control system (**Adhitama, 2017**).

Supervision and control in work implementation is needed to ensure that the activities and results or objectives are as expected. Supervision means discovery and application of methods and equipment to ensure that the plan has been carried out in accordance with the objectives. Meanwhile, control is the process of regulating various factors in a company to conform to the provisions in the plan. Therefore, it can be said that supervision and control are systematic efforts to set standards of implementation with planning objectives (**Fadlan, 2016**).

The essence of supervision is to prevent as early as possible the occurrence of irregularities, waste, fraud, obstacles, mistakes and failures in achieving the goals, objectives, and organizational tasks. Then the goal of supervision is to realize and improve efficiency, effectiveness, rationality and order to achieve goals and carry out the organizational tasks (**Lembaga Administrasi Negara Republik Indonesia, 1996**).

Supervision has to be followed up with concrete and precise steps, so the results can be used as input by the leaders in making important decisions to (**Lembaga Administrasi Negara Republik Indonesia, 1996**):

- a) Stop or eliminate errors, deviations, fraud, waste, obstacles and disorder;

- b) Prevent the recurrence of errors, irregularities, frauds, waste, obstacles and irregularities;
- c) Find some better ways or maintain what has been good for achieving goals and carrying out organizational tasks.

Commercial explosives in Indonesia cannot be separated from the efforts of safeguard, supervision and control. That is because explosives have a lot of risk and impact on security stability in Indonesia. Consequently, safeguards, supervision and control of commercial explosives require the existence of legal certainty, the clarity of behavior scenarios which are general and tie all citizens with legal consequences (Wijayanta, 2014).

The Presidential Decree of the Republic of Indonesia Number 125 of 1999 concerning Explosives in Article 5 Paragraph (1) has stipulated that the Minister of Defense of the Republic of Indonesia supervises the explosives business entities that have obtained production license, procurement license, storage license, and explosive distribution license, in coordination with:

- a) TNI Headquarters, in terms of supervision and control of the activities of production, procurement, storage, distribution, export, use and destruction of military explosives and explosives for industrial (commercial) purposes.
- b) The National Police Headquarters of the Republic of Indonesia, in terms of supervision and control over the activities of production, procurement, storage, distribution, export, use, transfer of use and destruction of industrial (commercial) explosives.
- c) Ministries which are responsible for health and industry, in terms of determining the types of chemicals that can be classified/categorized as hazardous materials, explosives raw materials.
- d) Ministries which are responsible for trade, in terms of supervision of trade and distribution of explosives.
- e) Ministries which are responsible for the financial sector in the fulfillment of customs obligations related to explosives export/import.

Furthermore, Article 5 Paragraph (2), President Decree of the Republic of Indonesia Number 125 of 1999 concerning explosives has stated that the Minister of Defense of the Republic of Indonesia may revoke license from explosives business entities, if the results of supervision by the Minister of Defense of the Republic of Indonesia along with TNI, the National Police of the Republic of Indonesia, the Ministry responsible for health and industry, the Ministry responsible for trade, and the Ministry responsible for finance shows that those business entities do not fulfill the following conditions:

- a) When explosive business entities do production activities, procures storage and distribution of explosives before obtaining permission/license from the Minister of Defense of the Republic of Indonesia. Then for explosive business entities which export and import explosives and its components before obtaining

permission/license from the Minister of Trade of the Republic of Indonesia with a recommendation from the Minister of Defense of the Republic of Indonesia.

- b) When the requirements of the stipulation of explosive business entities after receiving consideration from the minister responsible for finance, industry, trade and health and the Head of Police of the Republic of Indonesia, are unfulfilled.
- c) When explosive business entities do not make an annual work program for every activity of production, procurement, storage and distribution of the explosives.

Thus, after the reform of the separation of the TNI and POLRI there was legal politics in efforts to safeguard, supervise, and control the commercial explosives in Indonesia with sanctions in it, in accordance with The Regulation of Minister of Defense of Republic of Indonesia Number 5 of 2016 concerning the Development and Development of the Explosives Industry, namely:

1. Article 50 of the Regulation of the Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry, regulates the implementation of supervision and control of Explosives Business Entities must be in coordination with the Explosives Supervisory Team (Washandak Team).
2. Article 14 of the Regulation of the Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry, regulates the nurture and development of Explosives Business Entities carried out by the Minister of Defense of the Republic of Indonesia, in coordination with the Explosives Monitoring Team (Tim Washandak). The team is formed by the Minister of Defense of the Republic of Indonesia, with the Directorate General of Defense Potential of the Ministry of Defense as the chairman, and the team members consist of the ministry officials or related agencies consist of: TNI Headquarters, Republic of Indonesia National Police Headquarters, Ministry of Industry, Ministry of Trade, Ministry of Finance, Ministry of Energy and Mineral Resources, Ministry of Environment, and the Board of Investment Coordination.
3. Article 15 of the Regulation of the Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry, regulates various tasks of the Explosives Supervisory Team (Washandak Team) as follow:
  - a. Giving advice to the Minister in accordance with the hierarchy, about the activities and other problems related to explosives;
  - b. Arranging meetings periodically, once in 3 (three) months, and more if it is needed.
  - c. Verifying and evaluating the applications for recommendations and/or licenses submitted by business entities; and



- d. Conducting direct site visit, in a coordinated, integrated and planned manner in the context of monitoring explosives.
4. Article 16 of the Regulation of the Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry states that in the nurture and development of explosives business entities, the Ministry of Defense of the Republic of Indonesia is in coordination with:
  - a. TNI Headquarters in matters of supervision, control of the activities of production, procurement, storage, ownership, distribution, export, use and destruction of Explosives;
  - b. The National Police Headquarters of the Republic of Indonesia in terms of supervision and control of production, procurement, storage, distribution, export, use, transfer of use, and destruction of explosives.
  - c. Ministry of Trade in terms of supervision of trade and distribution of Explosives;
  - d. Ministry of Industry in terms of determining the types of chemicals that can be classified or categorized as hazardous materials for explosives;
  - e. The Ministry of Energy and Mineral Resources in terms of supervising the purchase or use of explosives, implementing the provisions governing mining, explosive warehouse technical requirements, and handling workplace safety issues;
  - f. Ministry of Finance in terms of fulfilling customs obligations related to the export or import of Explosives;
  - g. Ministry of Environment in terms of management, monitoring, feasibility and efforts to handle impacts on the environment caused by businesses related to Explosives; and
  - h. The Board of Investment Coordination in terms of investment and domestic investment operations and foreign investment in Explosives business.
5. Article 51 of the Regulation of the Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry. In the context of guidance, the explosive business entity is obliged to:
  - a. Carry out activities according to the license; and
  - b. Arrange and submit reports made by explosives business entities as stipulated in Article 52 of the Regulation of the Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry, which includes:
    - 1) Realization of explosive and accessory explosives production;
    - 2) Procurement of explosives and accessory explosives;
    - 3) Warehousing of explosives and accessory explosives;
    - 4) Distribution of explosives and accessory explosives; and/or
    - 5) Blasting services.
  - c. The report of poin b is directed to the Minister of Defense of the Republic of Indonesia, and it consists of:

- 1) Monthly report, a report of one month activities, directed to the Minister and its carbon copy is sent to the related institution, maximum within 10 months;
  - 2) Semester report, a report in 6 months, directed to the Minister and its carbon copy is sent to the related institutions, maximum within 10 months;
  - 3) Annual report, a report in 1 year, directed to the Minister and its carbon copy is sent to the related institutions, maximum January within next year;
  - 4) Incidental report, a report of occurrences happens in the company environment which is caused by mistakes, human error, or nature disturbance, and lead to human victims, material losses, and environmental damage. Incidental report is submitted no later than 2 x 24 hours to the Minister of Defense of the Republic of Indonesia and the Indonesia Chief of Police, and its carbon copy is sent to the related institutions.
6. Article 53 of the Regulation of the Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry, stipulates that all explosive business entities that already have the license from Minister of Defense of the Republic of Indonesia must be registered in the Indonesia Explosives Association.
7. Article 54 of the Regulation of Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry states that every explosive business entity is prohibited from:
- a. Transferring its business license to the third parties;
  - b. Expanding its business without prior approval from the Minister;
  - c. Moving its business location without prior approval from the Minister; or
  - d. Changing the name of its company or company shareholders without notice.
8. Article 55 of the Regulation of Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry states that each explosive business entity which violate its obligations as referred to in point 5 and 7, including its negligence or intention not to carry out its activities in accordance with the license given for 1 year since its stipulation, shall be liable to administrative sanction.
9. Article 56 of the Regulation of the Minister of Defense of the Republic of Indonesia Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry states that the administrative sanctions include:
- a. The first written warning will be given to the explosive business entity since the violation was discovered.
  - b. The second written warning is given to the explosives business entity after 3 (three) month grace period when the first written warning goes unheeded.
  - c. Revocation of the license towards the explosives business entity after a period of 3 months, the second warning goes unheeded. The revocation is the last step to take when the explosives business entity can not be nurtured. The Minister of Defense of the Republic of Indonesia stipulates the revocation due to the input

from the Explosives Supervisory Team (Washandak Team) through the existing channel hierarchy.

Specific regulation in terms of security efforts, supervision and control of commercial explosives in Indonesia, along with the sanctions is a result of the legal political aspects after the separation of TNI and POLRI. The Regulation of Republic of Indonesia Police Chief Number 17 of 2017 concerning Licensing, Safeguard, Supervision, and Control of Commercial Explosives states:

1. In Article 1 Number 23 of the Regulation of the Chief of the Republic of Indonesia Police Number 17 of 2017 concerning Licensing, Safeguards, Supervision and Control of Commercial Explosives, it is explained that a Police Officer is a member of the National Police assigned to safeguard, supervise and control the commercial explosives.
2. Article 44 of the Regulation of the Chief of the Republic of Indonesia Police Number 17 of 2017 concerning Licensing, Safeguarding, Supervision and Control of Commercial Explosives mentions the security of commercial explosives:
  - (1) Safeguarding Commercial Explosives is carried out in the process of:
    - a. manufacture;
    - b. transportation;
    - c. storage; and
    - d. use.
  - (2) The safeguard of commercial explosives is carried out to secure and supervise the process as referred to in paragraph (1).
  - (3) The safeguard of commercial explosives in the process as referred to in paragraph (1) shall be carried out by the Police Officer of the security Intelligence function and the manufacturer or importer or distributor or end user of commercial explosives and/or fireworks.
  - (4) Safeguard as referred to in paragraph (2) may be assisted by Gegana Forces Police Mobile Brigade Corps/Ministry of Gegana Regional Police Mobile Brigade Unit and other police functions as needed.
3. Article 68 of the Regulation of the Chief of the Republic of Indonesia Police Number 17 of 2017 concerning Licensing, Safeguard, Supervision and Control of Commercial Explosives, contains the supervision and control by the Indonesian National Police towards the commercial explosives industry:
  - (1) Supervision and control is carried out on Commercial Explosives which are in the warehouse of producers, importers, distributors and end users of the explosives.
  - (2) Beside the supervision and control as stated in paragraph (1), it is also done to the chemicals which can be assembled into explosives.
  - (3) Supervision and control as referred to in paragraph (1) shall be carried out through:
    - a. data collection; and
    - b. report.

4. The collection of data of the commercial explosives, according to Indonesian Police Chief Regulation Number 17 of 2017 concerning Licensing, Safeguard, Supervision and Control of Commercial Explosives, especially Article 69 to Article 72, starts from the level of: Sector Police (Polsek), Resort Police (Polres ); Regional Police (Polda), and National Police Headquarters (Mabes Polri). Data Collection of Commercial Explosives according to Indonesian Police Chief Regulation Number 17 of 2017 concerning Licensing, Safeguard, Supervision and Control of Commercial Explosives, especially Article 73 is intended for commercial explosives manufacturs, importers, distributors, and the end users. Then, according to the Regulation of the Indonesian Chief of Police Number 17 of 2017 concerning Licensing, Safeguard, Supervision and Control of Commercial Explosives, especially Article 77, the data collection of commercial explosives is carried out in the case of issuing commercial explosives from commercial explosives warehouses.
5. The report of commercial explosives according to Indonesian Police Chief Regulation Number 17 of 2017 concerning Licensing, Safeguard, Supervision, and Control of Commercial Explosives, especially Article 78, must be carried out by Polri Officers by making reports on the implementation of safeguard, supervision, and control tasks. The report is sent hierarchially to: Sector Police (Polsek), Resort Police (Polres); Regional Police (Polda), and National Police Headquarters (Police Headquarters) which include:
  - a. Periodic report:
    - 1) Daily report;
    - 2) Weekly report;
    - 3) Monthly report;
    - 4) Quarterly Reports;
    - 5) Semester Report; and
    - 6) Annual Report.
  - b. Incidental report
6. The report of commercial explosives according to Indonesian Police Chief Regulation Number 17 of 2017 concerning Licensing, Safeguard, Supervision and Control of Commercial Explosives, especially Article 82, is about the storage and use of commercial explosives which must be made by:
  - a. The Head of Warehouse to The Head of Administration, in terms of the exit or entry of commercial Explosives and remaining inventory;
  - b. The Explosive blaster to the Chief of Engineering and Head of Administration in the terms of the use and remaining use of commercial explosives;
  - c. The Head of Administration to the Head of Producers, Distributors and end users in terms of the use and remaining inventory of Commercial Explosives in the warehouse, both incidentally and monthly; and
  - d. The Head of Producers, Distributors and End User to the National Police Chief through the National Police Headquarters concerning production,

implementation of revenue and distribution, as well as the use of incidental and monthly supplies of commercial explosives in warehouses.

7. According to the Indonesian Chief of Police Regulation Number 17 of 2017 concerning Licensing, Safeguard, Supervision and Control of Commercial Explosives, especially Article 83, local police officers must conduct supervision periodically and request reports to chemicals (that can be made explosives) traders based on the Chief of Police Decree, and records:
  - a. Types and quantities of chemicals; and
  - b. Complete identity of the buyer and the purpose of using chemicals
8. According to the Indonesian Chief of Police Regulation Number 17 of 2017 concerning Licensing, Safeguard, Supervision and Control of Commercial Explosives, especially Article 84, business entities of commercial explosives management which violate laws and regulations shall be liable to sanctions in the form of:
  - a. Administrative sanctions, if the business entity of commercial explosives management violates the Regulation of Indonesian Chief of Police Number 17 of 2017 concerning Licensing, Safeguard, Supervision and Control of Commercial Explosives, in the form of:
    - 1) Written warning;
    - 2) Temporary operational delay; and/or
    - 3) Revocation of licenses;

Criminal Sanctions, if the business entity of commercial explosives management violates the laws and regulations related to criminal acts

## Conclusion

Legal politics in Indonesia has started to change greatly since the reformation movement of POLRI-TNI separation. It was strengthened by MPR Decree Number VI/MPR/2000 Year 2000 concerning The Separation Reform of the Indonesian National Army and the Indonesian National Police, and MPR Decree Number VII Year 2000 concerning the Role of Indonesian National Army and the Indonesian National Police. This has affected the regulation of commercial explosives in Indonesia, started from the Presidential Decree Number 125 of 1999 concerning Explosives which is further elaborated in the Regulation of the Minister of Defense Number 5 of 2016 concerning the Nurture and Development of the Explosives Industry which is issued by the Minister of Defense.

The efforts of safeguard, supervision and control of Commercial Explosives are regulated in the Presidential Decree of the Republic of Indonesia Number 125 of 1999 concerning Explosives. Then after the separation reform of POLRI and TNI as an impact of legal politics aspects in Indonesia, it was also regulated through the Regulation of the Minister of Defense Number 5 of 2016 concerning the Nurture and Development of Explosives Industry, and Regulation of the Indonesian Chief of Police Number 17 of 2017 concerning Licensing, Safeguard, Supervision and Control of Commercial Explosives.

## Suggestion

The regulation of Commercial Explosives in Indonesia has involved many parties, due to the nature of the Commercial Explosives which could endanger the stability of national security. Therefore, it needs to be maintained and improved in the future, especially in the efforts of safeguard, supervision, and control of the commercial explosives in Indonesia.

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