**AUTHORITY OF THE STATE INTELLIGENCE AGENCY IN NATIONAL SECURITY LAW**

**Abdas Raga Sugara\*, M. Hadin Muhjad, Rudy Indrawan**

Law Study Program, Doctoral Program, Faculty of Law, Universitas Lambung Mangkurat, Banjarmasin City, South Kalimantan, Indonesia

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**\*Corresponding author**

**Abstract**

This study examines the authority of the State Intelligence Agency (Badan Intelijen Negara, BIN) from the perspective of national security law based on the Constitution of the Republic of Indonesia. The central issue arises from the constitutional mandate to protect the nation and the state, alongside the contentious debates concerning the scope of intelligence authority within the contexts of law, democracy, and human rights. This research employs a normative legal method with constitutional, statutory, and conceptual approaches, drawing upon analyses of both primary and secondary legal materials. The findings reveal that although BIN possesses strong philosophical, juridical, and sociological legitimacy, the provisions of Law No. 17 of 2011 continue to leave unresolved problems. These include the ambiguous definition of threats, the authorization of wiretapping without judicial oversight, and weak mechanisms of accountability. The absence of a National Security Law further exacerbates the uncertainty of BIN’s authority due to the lack of a comprehensive legal framework, resulting in institutional disharmony and potential human rights violations. The discussion emphasizes that the principle of the rule of law requires legal certainty, limitation of powers, and independent oversight mechanisms, while the principle of human rights obliges intelligence authority to be exercised proportionally, accountably, and democratically. In conclusion, reconstructing BIN’s authority is urgently needed through the establishment of a National Security Law as a comprehensive legal framework, ensuring that intelligence powers operate in accordance with constitutional principles, the rule of law, and the protection of human rights.

**Keywords:** Authority, Indonesia, Law, National Security, State Intelligence Agency.

**INTRODUCTION**

The Unitary State of the Republic of Indonesia (NKRI) upholds its national ideals as stipulated in the second paragraph of the Preamble to the 1945 Constitution, namely the independence of a united, sovereign, just, and prosperous Indonesian people. Furthermore, the fourth paragraph affirms Indonesia’s national objectives: *“…to establish an Indonesian Government that shall protect the whole nation of Indonesia and all the blood spilled of Indonesia, and to advance general welfare, to educate the life of the nation, and to participate in establishing a world order based on freedom, lasting peace, and social justice…”* (Hamidi & Lutfi, 2010). This constitutional formulation reflects the state’s obligation to provide comprehensive protection for the nation while simultaneously playing an active role in maintaining global order (Darmono, 2010; Asshiddiqie, 2005).

Even before the United Nations formulated the concept of security, the founders of Indonesia had emphasized the significance of national security. This concept encompassed: (i) the security of citizens from the threat of war; (ii) societal security through the realization of welfare; (iii) individual security in accessing health, education, and employment; and (iv) security in contributing to the maintenance of global peace (Muladi, 2004; Perwita, 2004). However, along with the dynamics of globalization, democratization, and the emergence of non-state actors, the concept has undergone a transformation—from being solely military defense-oriented to becoming multidimensional security (Buzan, 1991; Buzan, Wæver & de Wilde, 1998).

National security is understood as the condition in which the state, society, and citizens are free from both external and internal threats (Nugroho, 2014). This concept is not static but constitutes a governmental function that must be realized, namely the protection of the entire nation, state, and citizenry. Hence, national security is a constitutional mandate that must be implemented by the state (Darmono, 2010).

Within this framework, state intelligence emerges as a crucial instrument. Intelligence serves as the first line of the national security system, providing accurate information as the basis for strategic decision-making and preventing unexpected events that could threaten national security (Bhakti, 2005; Lowenthal, 2009). Law No. 17 of 2011 defines intelligence as knowledge, organization, and activities related to policy formulation and decision-making through detection and early warning for the prevention, deterrence, and mitigation of threats (State Gazette No. 105/2011).

Intelligence carries three essential meanings: as knowledge, as activity, and as organization. Its outputs include detection and early warning, while its activities cover information gathering, analysis, counterintelligence, and covert operations (Widjajanto, Lay & Keliat, 2006). According to Shulsky and Schmitt, intelligence forms part of the national security system, an early warning system, information management, and strategic analysis to prevent strategic surprise (Schmitt, 2002).

The characteristics of intelligence are flexible, encompassing both domestic and foreign domains, distinguishing it from the military (TNI) and the police (Polri) (Widjajanto, 2006). Lowenthal (2009) underscores three urgencies of intelligence: preventing strategic surprises, supporting national policies with swift and precise reporting (*velox et exactus*), and safeguarding national secrecy. Thus, intelligence professionalism is imperative to anticipate threats and provide strategic inputs to the President (Bahtiar et al., 2021).

Nevertheless, the principle of secrecy in intelligence often becomes problematic. While secrecy is necessary for operational effectiveness, democratic principles demand transparency and accountability (Law No. 14/2008; Law No. 43/2009). To prevent abuse of power, each intelligence body must have clear and specific functions as well as oversight mechanisms (Asshiddiqie, 2005).

Article 1 paragraph (3) of the 1945 Constitution states that Indonesia is a state based on law, which means all state actions must be grounded in law. Accordingly, intelligence authority must be explicitly regulated to avoid abuse (Hadjon, 2007). The principle of compartmentalization in intelligence is necessary to prevent overlapping authority and to ensure mechanisms of information verification (*check and recheck*) (Law No. 17/2011).

Following the 1998 Reform, Indonesian intelligence also underwent reforms towards becoming a professional, democratic, and accountable institution (Widjajanto & Wardhani, 2008). However, despite Law No. 17 of 2011 regulating BIN’s duties and authorities, the urgency of intelligence authority as the first line of national security has not yet been reinforced with a National Security Law. This creates a legal vacuum concerning the principle of legality in intelligence authority (Nugroho, 2014).

Currently, BIN faces internal challenges such as limited resources, institutional orientation, and technological development, as well as external challenges including the complexity of global threats, competition among intelligence agencies, and balancing secrecy with transparency (Bahtiar et al., 2021). Additionally, the absence of an independent supervisory body beyond the DPR raises accountability concerns (Djafar, 2012).

Sociologically, intelligence regulation also encounters resistance from civil society. Law No. 17 of 2011 was once subjected to judicial review by a coalition of NGOs before the Constitutional Court, as it was deemed ambiguous, repressive, and potentially threatening to human rights (MKRI, 2012). Such critiques stem from experiences during the New Order era, where intelligence was often used as a tool of power (Nashidik, 2005; Imparsial, 2005).

Based on the above, this study is essential to analyze the authority of BIN within the framework of national security law under the Indonesian Constitution. The research problems include: (1) how BIN’s authority is regulated under constitutional national security law; (2) the legal nature of the intelligence institution within the national legal system; and (3) how to reconstruct the scope of BIN’s authority within the Constitution and its derivatives. The objective is to identify and formulate these three aspects as the foundation for reconstructing intelligence regulation in Indonesia.

Therefore, the urgency of this research lies in contributing to the development of a strong and democratic national security legal system capable of anticipating multidimensional threats.

**RESEARCH METHODS**

This research constitutes normative legal research (doctrinal research), namely a study that positions law as a set of norms or rules prevailing in society, particularly written law contained in statutory regulations (Soekanto, 2008). Its focus is to examine the authority of the State Intelligence Agency (BIN) within the framework of national security law as regulated by the 1945 Constitution and related legislation.

The research is descriptive-analytical in nature, aiming to provide a detailed and comprehensive account of statutory provisions, concepts, and theories relevant to BIN’s authority, followed by an analysis to identify legal problems and propose solutions (Soemitro, 1994). Accordingly, the study not only describes legal norms but also evaluates their relevance to constitutional principles.

The type of research is normative juridical with prescriptive analysis. Normative juridical research is employed to identify legal principles, doctrines, and norms relevant to intelligence authority, while the prescriptive dimension seeks to provide legal arguments concerning how BIN’s authority should be regulated in accordance with the Constitution (Hadjon, 2007; Asshiddiqie, 2005).

This study employs several legal approaches, as summarized in Table 1.

**Table 1.** Approaches in the study of national security law

| **No.** | **Type of Approach** | **Description** |
| --- | --- | --- |
| 1 | Statute Approach | Examining the 1945 Constitution, Law No. 17 of 2011 on State Intelligence, and related regulations |
| 2 | Conceptual Approach | Employing concepts of national security, theories of authority, and the principle of the rule of law |
| 3 | Historical Approach | Tracing the development of BIN’s authority from the colonial era to the post-reform period |
| 4 | Comparative Approach | Comparing the regulation of intelligence authority in several democratic countries |

The types of legal materials used consist of:

1. Primary legal materials, including the 1945 Constitution, Law No. 17 of 2011, Law No. 14 of 2008, Law No. 43 of 2009, the Information and Electronic Transactions Law, and Constitutional Court decisions related to intelligence.
2. Secondary legal materials, such as legal textbooks, journals, research findings, and expert opinions on intelligence, state authority, and constitutional law.
3. Tertiary legal materials, including legal dictionaries, encyclopedias, legal media articles, and official online sources.

Legal materials were collected through library research, which involved inventorying statutory regulations, examining legal doctrines, and reviewing relevant previous studies (Soemitro, 1994). This technique was intended to obtain valid, systematic, and accountable legal data. The analysis was conducted using normative qualitative analysis, whereby the collected legal materials were elaborated, systematized according to the legal issues under study, and interpreted using grammatical, systematic, and historical methods of legal interpretation (Hadjon, 2007). The purpose of this analysis is to produce argumentative conclusions and provide legal prescriptions for reconstructing BIN’s authority within the framework of national security law.

**RESULTS AND DISCUSSION**

**The Constitutional Basis of Intelligence Authority in Indonesia**

The existence of state intelligence within Indonesia’s constitutional system is rooted in the constitutional mandate requiring the state to protect the entire nation and all the people of Indonesia. This mandate is enshrined in the fourth paragraph of the Preamble to the 1945 Constitution, which explicitly positions security as one of the state’s fundamental objectives. From the perspective of constitutional law, security is not only defined as the absence of threats but also as the active function of the state in ensuring order, integrity, and national continuity (Asshiddiqie, 2005; Darmono, 2010).

The Preamble to the 1945 Constitution holds a pivotal position as the source of constitutional legitimacy for all state actions, including those in the field of security. From the standpoint of constitutional theory, the fourth paragraph contains three key aspects: (1) the mandate for the state to protect the entire nation; (2) the obligation to promote general welfare; and (3) the commitment to world peace (Hamidi & Lutfi, 2010; Muladi, 2004). Accordingly, intelligence, as one of the state’s security instruments, derives constitutional legitimacy to carry out protective and preventive functions against threats.

Article 30 of the 1945 Constitution explicitly regulates the rights and obligations of citizens in national defense and security efforts. Paragraph (1) stipulates that every citizen has the right and duty to participate in national defense and security. Paragraph (2) further provides that defense and security efforts are organized through a universal people’s defense and security system, with the military (TNI) and police (Polri) as the main forces and the people as the supporting force. However, this constitutional provision does not explicitly mention intelligence as a state institution. This implies that the existence and authority of intelligence require a derivative legal foundation in the form of legislation to ensure juridical certainty (Salim, 2009; Hadjon, 2007).

As a state governed by law (*rechtsstaat*), as affirmed in Article 1 paragraph (3) of the 1945 Constitution, all state actions must be based on law. Consequently, intelligence authority cannot be exercised without a clear legal foundation. The doctrine of the rule of law requires limitations on intelligence powers to align with the principles of legality and respect for human rights (Santoso, 2001; Muladi, 2004). In other words, while intelligence serves the function of safeguarding national security, its authority must remain subject to the principle of constitutional supremacy.

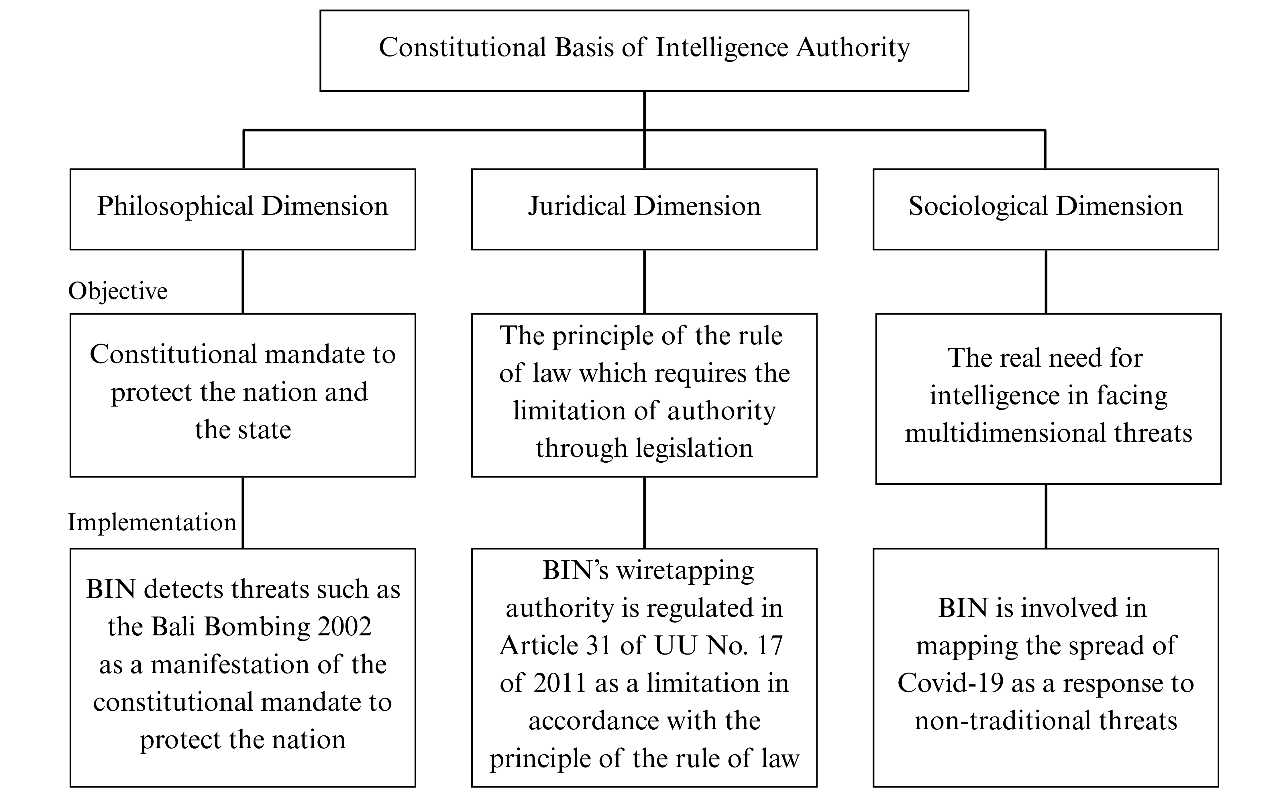
Philosophically, state intelligence is a strategic instrument in safeguarding national sovereignty and integrity. Its existence can be situated within the framework of national security theory, which positions security as a core state function. Barry Buzan (1991) emphasizes that security is the condition in which a political community is free from fundamental threats to its existence. Thus, intelligence constitutes a vital element enabling the state to fulfill its constitutional function of protecting national security against both internal and external threats.

Indonesia’s constitutional history also demonstrates that intelligence has been an integral part of the defense system since independence. Over time, the intelligence institution has undergone various transformations, from the *Badan Rahasia Negara* (State Secret Agency) to the *Badan Koordinasi Intelijen Negara* (BAKIN), and eventually the State Intelligence Agency (BIN) under the direct authority of the President. This evolution reflects the state’s need to adjust the role of intelligence to political and security dynamics (Bhakti, 2005; Widjajanto, Lay & Keliat, 2006). Nonetheless, these institutional changes must be understood within a constitutional framework that demands legal certainty.

Moreover, the constitutional legitimacy of intelligence authority must also be viewed in relation to the doctrine of separation of powers. The 1945 Constitution embraces the principle of checks and balances, dividing state functions into the executive, legislative, and judiciary. Intelligence, as part of the executive, remains subject to legislative oversight (by the DPR) and judicial review under the principle of the supremacy of law. This signifies that intelligence is not a supra-constitutional body that can act without limits, but rather must be situated within a legal framework subject to constitutionalism (Asshiddiqie, 2005; Hadjon, 2007).

Juridically, although the Constitution does not explicitly mention the term “intelligence,” within the framework of constitutional law, intelligence authority can be derived from constitutional norms on defense and security. The absence of direct provisions in the 1945 Constitution necessitates that legislators establish a clear legal framework to prevent ambiguity in intelligence authority. In this regard, Article 20 of the 1945 Constitution affirms the power of the DPR to enact laws in conjunction with the President, including in the field of intelligence (Salim, 2009).

Therefore, the constitutional foundation of intelligence authority in Indonesia can be formulated across three dimensions, as illustrated in Figure 1.



**Figure 1.** Dimensions of the Constitutional Basis of Intelligence Authority in Indonesia

These three dimensions serve as the foundation justifying the existence and authority of the State Intelligence Agency (BIN) within the Indonesian legal system, while at the same time providing limitations to ensure that such authority does not exceed the principles of democracy, human rights, and constitutionalism.

**Analysis of Law No. 17 of 2011 on State Intelligence**

Law No. 17 of 2011 on State Intelligence was enacted as a response to the national legal needs in the post-reform era, following demands for clearer, more transparent, and accountable regulation of state intelligence. The enactment of this law was also a consequence of the rule of law principle as stipulated in Article 1 paragraph (3) of the 1945 Constitution, which declares that Indonesia is a state based on law. Therefore, intelligence authority cannot be exercised solely on the basis of political policies or institutional practices, but must rest on a strong and explicit legal foundation (Asshiddiqie, 2005; Hadjon, 2007).

In general, the State Intelligence Law defines intelligence as knowledge, organizations, and activities related to policy formulation, decision-making, and planning concerning detection and early warning for the prevention, deterrence, and countermeasures of any threat to national security. Based on this definition, intelligence is positioned as a vital instrument in the national defense and security system (Law No. 17/2011).

1. The Position of BIN in the State System

Law No. 17 of 2011 affirms the position of the State Intelligence Agency (BIN) as a non-ministerial government institution directly under the President. This status establishes BIN as the coordinator of state intelligence, tasked with coordinating all intelligence elements within the military (TNI), police (Polri), and other sectoral agencies. Juridically, this strengthens BIN’s role as a strategic institution providing information and analysis to the President for state administration purposes (Widjajanto, Lay & Keliat, 2006).

With this position, BIN has broad authority in carrying out the functions of state intelligence. However, the problem is that the State Intelligence Law does not regulate in detail the mechanisms of coordination, division of authority, and delineation of tasks between BIN and other intelligence agencies. As a result, overlaps in functions and authority occur, especially in relation to military and police intelligence (Bhakti, 2005; Nugroho, 2014).

2. Scope of BIN’s Authority

Law No. 17 of 2011 grants BIN authority in three main functions: investigation, security, and mobilization. In addition, Article 31 of the Law provides BIN with special powers, namely conducting wiretapping, examining financial flows, and extracting other information related to efforts to prevent and counter threats to national security.

This authority is intended to enable BIN to act quickly and precisely (*velox et exactus*) in addressing threats to the state. However, several provisions of the Law are controversial. The wiretapping authority, for instance, has been criticized because it does not require judicial approval, which is seen as contradicting the principle of protecting human rights, particularly the right to privacy (Djafar, 2012; ELSAM, 2012).

Moreover, the definition of “threat” in the Law is considered too broad and open to multiple interpretations. Article 1 point 6 defines threats as any attempt, work, activity, or action, both domestic and foreign, that is deemed to endanger national security. Such a broad definition risks legitimizing intelligence actions against civil society groups, political opposition, or activists critical of the government (Imparsial, 2005; Nashidik, 2005).

3. Implementation Problems

Since its enactment, Law No. 17 of 2011 has faced serious challenges in implementation. First, the broad powers granted to BIN are not balanced with adequate oversight mechanisms. The DPR (House of Representatives) only carries out its supervisory function through Commission I, but this supervision is more political than operational in nature. There is still no independent body that comprehensively oversees BIN’s performance (Widjajanto & Wardhani, 2008).

Second, in practice, BIN’s wiretapping authority is often debated because it potentially overlaps with the powers of other institutions such as the Police and the Corruption Eradication Commission (KPK). This has led to disharmony among law enforcement agencies and legal uncertainty (Asshiddiqie, 2005; Nugroho, 2014).

Third, the State Intelligence Law has not fully addressed the challenges of the digital era. Advances in information technology have given rise to new forms of threats, such as cybercrime, online radicalism, and disinformation. BIN’s authority in the Law is still focused on conventional wiretapping, not on mastering cyber technology and artificial intelligence (Bahtiar et al., 2021).

4. Criticism and Judicial Review

Law No. 17 of 2011 was once subjected to a judicial review at the Constitutional Court. Articles that were challenged included Article 31 on wiretapping and Article 34 on the authority to examine financial flows. The petitioners argued that these provisions violated the constitutional rights of citizens, particularly the right to privacy and protection from arbitrary state actions (MKRI, 2012).

In its ruling, the Constitutional Court declared that BIN’s wiretapping authority must be aligned with the principles of the rule of law. The Court emphasized the importance of clear control mechanisms to ensure that this authority does not conflict with the Constitution (MKRI, 2012). This decision affirmed that although BIN’s authority has a legal basis, it must remain subject to the principles of constitutionalism.

5. Juridical and Constitutional Evaluation

Normatively, Law No. 17 of 2011 has provided a legal foundation for BIN’s authority, thereby fulfilling the principle of legality in a state based on law. However, constitutionally, this Law still leaves several fundamental issues, namely:

1. A vague and overly broad definition of “threat,” which risks excessive use.
2. Wiretapping authority without judicial approval, which contradicts human rights principles.
3. The absence of an independent supervisory body to ensure BIN’s accountability.
4. Lack of harmonization between BIN’s authority and that of other intelligence agencies.

**The Legal Vacuum Problem Due to the Absence of a National Security Law**

One of the fundamental problems in regulating intelligence authority in Indonesia is the absence of a National Security Law, which should serve as the main legal umbrella for comprehensively organizing the national security system. To date, national security regulations remain fragmented across various sectoral laws, such as the Law on National Defense, the Law on the National Police, the Law on the Armed Forces (TNI), and the Law on State Intelligence. The lack of a law specifically governing national security has led to disharmony among regulations and created a serious legal vacuum (Darmono, 2010; Nugroho, 2014).

In the constitutional legal system, the existence of a National Security Law is crucial as a *lex generalis* governing the overall national security system, while sectoral laws function as *lex specialis* regulating specific areas. Without such a law, intelligence authority operates without a comprehensive legal framework, making it vulnerable to overlapping powers with other institutions, including the TNI, the Police, and other law enforcement agencies (Asshiddiqie, 2005; Hadjon, 2007).

This legal vacuum also undermines the legitimacy of intelligence authority, particularly when the State Intelligence Agency (BIN) carries out strategic functions such as wiretapping, monitoring financial transactions, or counter-intelligence operations. While these powers are granted under Law No. 17 of 2011, they are not integrated within a holistic concept of national security. This situation generates juridical problems, such as ambiguous definitions of threats and overlaps with the authority of other law enforcement agencies (Djafar, 2012; ELSAM, 2012).

The absence of a National Security Law also raises issues of oversight. BIN operates directly under the President and is supervised by the House of Representatives (DPR), but such oversight is insufficient since it is not detailed in a comprehensive national legal framework. In practice, DPR’s supervision is more political than substantive, leaving intelligence accountability frequently in question (Widjajanto, Lay & Keliat, 2006; Widjajanto & Wardhani, 2008).

Another consequence of this legal vacuum is weak harmonization among intelligence agencies. Institutions such as BIN, the Armed Forces Intelligence Agency (BAIS TNI), the Police Intelligence Unit, and ministerial intelligence bodies often work with a sectoral orientation without effective coordination. This results in overlapping authority, inefficiency, and even conflicts of interest among intelligence agencies (Bhakti, 2005; Nugroho, 2014).

In comparative perspective, democratic countries generally possess national security laws that serve as the legal umbrella for all security institutions, including intelligence. In the United States, for example, the National Security Act of 1947 comprehensively regulates the national security system, including the relationship between intelligence, defense, and foreign policy institutions (Johnson, 2019). Similarly, in Australia, the ASIO Act of 1979 ensures that intelligence authority operates within a clear national legal framework, with independent oversight mechanisms provided by the Inspector-General of Intelligence and Security (IGIS) (Lowenthal, 2009).

Indonesia’s lack of a National Security Law clearly creates legal uncertainty. BIN, which should function as the coordinator of national intelligence, often faces disputes over its authority because no legal umbrella comprehensively regulates the position of intelligence within the national security system. Consequently, BIN’s exercise of authority is often considered excessive, particularly when it touches upon human rights and civil liberties (Imparsial, 2005; Nashidik, 2005).

The absence of a National Security Law also weakens the integration of national security policy. While the President, as head of government, has the authority to coordinate security institutions, without a clear legal framework such coordination lacks legal certainty and depends largely on political discretion. This condition risks the use of intelligence for practical political interests, as occurred during the New Order era (Bhakti, 2005; Widjajanto & Wardhani, 2008).

**Implications of the Rule of Law and Human Rights Principles on Intelligence Authority**

The principle of the rule of law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution, states that Indonesia is a state based on law (*rechtsstaat*), not a state based on power (*machtsstaat*). Consequently, every authority exercised by state institutions, including the State Intelligence Agency (BIN), must have a clear, proportional, and accountable legal basis. In the context of intelligence authority, this means that all actions taken must adhere to the principles of legality, the supremacy of law, and respect for human rights (Asshiddiqie, 2005; Hadjon, 2007).

The implications of the rule of law on intelligence authority are evident in three main aspects. First, intelligence authority must be based on law. Without a clear legal foundation, any intelligence activity may be considered arbitrary and unconstitutional. Second, intelligence authority must operate within legal limits and may not exceed the scope of power defined by law. Third, intelligence authority must be subject to oversight mechanisms, both by the legislative body and independent institutions, to prevent deviations from democratic principles (Widjajanto, Lay, & Keliat, 2006).

Meanwhile, human rights principles are also an integral part of Indonesia’s Constitution. Articles 28A through 28J of the 1945 Constitution comprehensively regulate the fundamental rights of citizens, including the right to life, the right to privacy, the right to freedom of expression, and the right to security. Therefore, intelligence authority must not be exercised in ways that violate human rights. On the contrary, its implementation must strike a balance between the need to safeguard national security and the protection of citizens’ constitutional rights (Santoso, 2001; Muladi, 2004).

In practice, a recurring problem is the tension between security needs and human rights protection. For example, BIN’s authority to conduct wiretapping, financial transaction monitoring, or counterintelligence operations often draws criticism for threatening citizens’ right to privacy. Although these powers have a legal basis under Law No. 17 of 2011, they must still be exercised with regard to human rights principles such as proportionality, accountability, and transparency (Djafar, 2012; MKRI, 2012).

Furthermore, the rule of law requires oversight mechanisms for the execution of intelligence authority. In Indonesia, oversight of BIN is conducted by the President and the House of Representatives (DPR) through Commission I. However, this mechanism is still considered weak, as DPR’s oversight tends to be political rather than substantive with respect to intelligence operations. Therefore, from a rule-of-law perspective, the establishment of an independent oversight body is necessary to ensure that BIN operates in accordance with the law and does not violate human rights (Lowenthal, 2009; Johnson, 2019).

Another implication of the rule of law is the need for legal certainty in defining threats to national security. Law No. 17 of 2011 defines threats too broadly, which risks multiple interpretations and potential abuse. This contradicts the principle of legality, which requires legal norms to be clear, firm, and unambiguous (Asshiddiqie, 2005; Hadjon, 2007).

In comparative perspective, many democratic countries have established legal mechanisms to ensure that intelligence authority does not conflict with human rights. In the United States, for instance, wiretapping may only be conducted with court authorization through the Foreign Intelligence Surveillance Act (FISA) Court. In the United Kingdom, the Investigatory Powers Act 2016 strictly regulates surveillance oversight by involving an independent investigatory court. In Australia, intelligence oversight is carried out by the Inspector-General of Intelligence and Security (IGIS), an independent body with the authority to audit all intelligence activities. These mechanisms demonstrate a balanced application of rule-of-law and human rights principles (Lowenthal, 2009; ISC UK, 2020; ASIO Act 1979).

Thus, the implications of the rule of law and human rights principles for intelligence authority in Indonesia can be summarized as follows:

1. Intelligence authority must have a clear and unambiguous legal basis.
2. Intelligence authority must be limited by law to ensure compliance with rule-of-law principles.
3. Intelligence authority must be subject to effective and independent oversight mechanisms.
4. Intelligence authority must respect human rights, particularly the rights to privacy, freedom of expression, and personal security.
5. The definition of threats must be clearly and precisely formulated to prevent misuse of authority.

**Table 2.** Relationship between the legal vacuum problem and the implications of the rule of law and human rights principles on intelligence authority

| **Aspect** | **Emerging Problems** | **Implications for BIN’s Authority** |
| --- | --- | --- |
| Legal Basis | Absence of a National Security Law as *lex generalis*, with only sectoral laws (TNI, Police, BIN). | BIN’s authority operates without a comprehensive legal framework; weak legal legitimacy. |
| Institutional | BIN, BAIS TNI, police intelligence, and sectoral intelligence work without integrated coordination. | Overlapping functions, disharmony among institutions, potential conflicts of authority. |
| Oversight | DPR oversight is political rather than substantive; no independent supervisory body. | Weak accountability of BIN, potential for arbitrary actions. |
| Definition of Threat | Definition of “threat” in Law No. 17/2011 is overly broad and open to multiple interpretations. | Vulnerable to excessive use in restricting civil liberties and human rights. |
| National Policy | No integration of national security policy within a unified legal framework. | Presidential coordination is based only on political policy, not legal certainty. |
| International Comparison | Other countries have National Security Laws (e.g., National Security Act 1947 in the US, ASIO Act 1979 in Australia). | Indonesia lags in regulation; risks using intelligence without clear legal limits. |

The legal vacuum resulting from the absence of a National Security Law has serious implications for the exercise of authority by the State Intelligence Agency (BIN). Without a *lex generalis* regulating the national security system comprehensively, intelligence authority relies solely on sectoral laws such as Law No. 17 of 2011 on State Intelligence, the TNI Law, or the Police Law. This condition clearly contradicts the rule of law principle as enshrined in Article 1 paragraph (3) of the 1945 Constitution, which requires legal certainty as the foundation of every action by state institutions. The lack of a general legal framework often raises questions about BIN’s authority, both due to its ambiguous interpretation and its lack of integration within a coherent national security policy framework.

From an institutional perspective, the absence of a National Security Law weakens coordination among intelligence agencies. BIN, BAIS TNI, police intelligence, and other sectoral intelligence units frequently perform overlapping functions, leading to disharmony in authority. From a rule of law perspective, this contradicts the principle of checks and balances, which demands clear divisions of tasks and authority. Moreover, weak coordination increases the risk of human rights violations, especially when intelligence operations are carried out repressively against civilians without strong oversight mechanisms.

Oversight is another fundamental issue. In the absence of a National Security Law, oversight of BIN is carried out only by the President and the DPR through Commission I. However, DPR’s oversight tends to be political rather than substantive, while no independent supervisory body exists with the authority to monitor intelligence operations. This clearly contradicts the rule of law principle, which requires state accountability, and human rights principles, which demand guarantees of protection for privacy and civil liberties against potential abuse of power.

Furthermore, the broad and ambiguous definition of threats in the Intelligence Law becomes more problematic without a National Security Law to clarify its limits. The rule of law requires legal norms to be clear and precise (*lex certa*), while human rights principles demand guarantees that state authority will not be used arbitrarily to restrict citizens’ freedoms. This legal ambiguity allows intelligence authority to be used for suppressing political opposition or limiting freedom of expression.

At the policy level, the absence of a National Security Law causes national security policy integration to depend solely on presidential decisions as head of government. This carries the risk of intelligence being misused as a tool for political purposes, as occurred during the New Order era. From the rule of law perspective, this condition clearly contradicts the principle of constitutional supremacy, while from the human rights perspective, it risks violations of citizens’ fundamental rights.

In comparison with democratic countries, Indonesia’s shortcomings are evident. The United States has the National Security Act of 1947, the United Kingdom has the Investigatory Powers Act of 2016, and Australia has the ASIO Act of 1979—all of which comprehensively regulate intelligence authority alongside human rights–based oversight mechanisms. The legal vacuum in Indonesia leaves its intelligence practices lagging behind international standards and inconsistent with Article 28I paragraph (4) of the 1945 Constitution, which asserts that the protection, advancement, enforcement, and fulfillment of human rights are the responsibility of the state.

Thus, the relationship between the legal vacuum and the principles of the rule of law and human rights is direct: the absence of a National Security Law undermines legal certainty, accountability, and oversight of intelligence, while at the same time increasing vulnerability to human rights violations. In other words, BIN’s authority exists in a gray area—legitimate sectorally, but weak constitutionally, and prone to overreach unless it is placed within a comprehensive national legal framework.

**CONCLUSSION**

The constitutional foundation of intelligence authority in Indonesia derives from the Preamble of the 1945 Constitution and Article 30, which emphasize the state’s mandate to safeguard the nation and ensure security. Although intelligence is not explicitly mentioned, its existence gains strong philosophical, juridical, and sociological legitimacy as an essential instrument of national security.

However, the absence of a comprehensive National Security Law has created legal fragmentation, weakened the legitimacy of the State Intelligence Agency (BIN), and left gaps in oversight and coordination mechanisms. This condition raises constitutional concerns regarding legal certainty, the principle of legality, and the protection of human rights.

As a rule-of-law state, Indonesia must ensure that BIN’s authority is clearly regulated, limited by law, and subject to strict accountability. Intelligence power should not undermine constitutional rights but instead operate proportionally and in alignment with democratic principles. Without such safeguards, intelligence risks becoming a tool of power that threatens democracy and constitutionalism.

This study contributes to the discourse on national intelligence law by proposing a trigger mechanism for BIN’s authority, enabling swift, measurable, and lawful cross-agency coordination. This concept reinforces BIN’s role as both an operational body and an integrative hub of intelligence synergy. Ultimately, it provides an innovative conceptual and policy foundation for enhancing the effectiveness of Indonesia’s national intelligence system in an adaptive, transparent, and responsive manner amidst the evolving challenges of the digital and global era.

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