



RESEARCH ARTICLE

The Nature of the Position and Function of the National Police Commission in Supervising the Performance of the Republic Of Indonesia National Police

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ARTICLE INFO	ABSTRACT
Received: Oct 15, 2024 Accepted: Nov 21, 2024	This study aims to determine the regulation of the Kompolnas supervisory function on the performance of Polri and to determine the effectiveness of the implementation of the Kompolnas supervisory function on the performance of Polri. This type of research is descriptive, namely research that describes legal phenomena relating to Kompolnas supervisory function on the performance of the National Police. As a legal study the approach used is an empirical legal approach that is to examine the law conceptualized as actual behavior as a social phenomenon that is not written, which is experienced by everyone in the relationship of community life. Based on the National Police Commission's institutional structure and location, the independent supervisory institution frequently fails to fulfil its responsibilities. The manner the organisation handles every public complaint demonstrates Kompolnas's lack of authority. This is because Kompolnas, a state institution that is in charge of the police's external oversight, is weak and limited in its ability to supervise activities. In implementing its supervisory function, Kompolnas needs to increase the number of personnel, especially in the section that handles community suggestions and complaints. It is necessary to make a specific rules in the form of laws to strengthen the authority and functions of Kompolnas. Because so far the position of Kompolnas based on Law No. 2 of 2002 concerning the Police of the Republic of Indonesia only, therefore it is necessary to separate the regulations because Kompolnas and Polri are two types of institutions that have different duties and functions.
Keywords	
Function Oversight Kompolnas Polri	
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INTRODUCTION

The principle of checks and balances is a constitutional principle that requires that legislative, executive, and judicial powers are equal and control each other. State power can be regulated, limited, and even controlled as well as possible, so that abuse of power by state officials or individuals who are holding positions in state institutions can be prevented and overcome. The mechanism of checks and balances in a democracy is a natural thing, even very necessary. This is to avoid abuse of power by an individual or institution, because with a mechanism like this, one institution and another will control or supervise each other, and can even complement each other.¹

¹ Sunarto, "Prinsip Check and Balances dalam Sistem Ketatanegaraan di Indonesia". Masalah Hukum, Jilid 45 No. 2 April, 2016

Through the principle of checks and balances, the organs of state power are expected to control each other and provide supervision with the aim of avoiding the concentration of power that leads to arbitrariness. The application of checks and balances is also applied in the relationship between the main body and the supporting state body. Based on the provisions of Article 30 paragraph (4) of the 1945 Constitution, the Indonesian National Police has a very strong position as an auxiliary state organ because it is stipulated by the 1945 Constitution and its authority is regulated by law. The constitutional provisions that regulate the function of the Indonesian National Police make this state institution have a constitutional position in the Indonesian state system, the same as the MPR, PRESIDENT, DPR, DPD, MA, MK, BPK and Judicial Commission. Secara hierarki, dalam sistem ketatanegaraan Indonesia, kedudukan Kepolisian Negara Republik Indonesia berada di bawah Presiden. Oleh karena itu, dapat ditafirkan bahwa Kepolisian Negara Republik Indonesia sebagai lembaga negara pembantu (auxiliary state organ) bertugas untuk membantu Presiden. Pasal 8 ayat (1) UU Nomor 2 Tahun 2002 sebagai berikut “Kepolisian Negara Republik Indonesia berada di bawah Presiden”. Sebagaimana diketahui, dalam sistem ketatanegaraan Indonesia, kekuasaan eksekutif tertinggi terletak pada Presiden. Pasal 2 ayat (1) UUD 1945 menentukan sebagai berikut “Presiden Republik Indonesia memegang kekuasaan pemerintahan menurut Undang-undang Dasar.” Ketentuan Pasal 2 ayat (1) UUD 1945 di atas menempatkan dan memusatkan pertanggungjawaban atas kekuasaan eksekutif dalam sistem ketatanegaraan dan sistem pemerintahan Indonesia pada lembaga Presiden.²

Supervision of Polri performance by Kompolnas is very important because it can guarantee effectiveness, accountability, and professionalism in carrying out state security duties. Supervision carried out by Kompolnas can help Polri improve its performance and provide suggestions and recommendations for improvements in its role. In addition, supervision by Kompolnas can minimize acts of corruption, abuse of power, or human rights violations that may be committed by police officers.

The existence of Kompolnas as a supervisor of performance and determination of the direction of Polri policy is regulated in Law No. 2 of 2002 concerning the Republic of Indonesia National Police, Article 38, which states that Kompolnas' duties are:

1. Assisting the President in determining the direction of Polri policy;
2. Providing considerations to the President in the appointment and dismissal of the Chief of Police.

In order to carry out the two main tasks above, Kompolnas has the authority to³ :

1. Collecting and analyzing data as material for providing advice to the President related to the Polri budget, Polri human resource development, and Polri facilities and infrastructure development;
2. Providing advice and other considerations to the President in an effort to realize a professional and independent Polri; and
3. Receiving suggestions and complaints from the public regarding police performance and conveying them to the President in terms of:
 - a. abuse of authority;
 - b. alleged corruption;
 - c. poor service;

² Ibid, hlm. 99

³ UU No. 2 Tahun 2002 tentang Polri, Pasal 38 Ayat (2)

- d. discriminatory treatment; and
- e. misuse of discretion.

Furthermore, the regulation regarding the supervisory function of Kompolnas is also regulated in Presidential Regulation no. 17 of 2005 as amended by Presidential Regulation No. 17 of 2011 concerning Kompolnas. Kompolnas' authority is to receive suggestions and complaints from the public regarding police performance and then submit them to the President. Kompolnas has the authority to collect and analyze data as material for providing suggestions to the President. Both regarding the budget and development of human resources (HR), as well as the development of Polri facilities and infrastructure. This commission also has the authority to provide suggestions and other considerations to the President in order to realize a professional and independent Polri.⁴

Supervision of the police institution is absolutely carried out as part of the principles of democratic state governance. Unfortunately, this is not in line with the initial hopes of the establishment of the Kompolnas Institution. Unlike other countries, police supervisory institutions in a number of democratic countries have been implemented optimally.

If we look at the initial enthusiasm for the establishment of Kompolnas, the public really hopes that this institution can supervise and control the police. Kompolnas in Indonesia is not independent from the institution it supervises, namely the police. Instead of being separate, Kompolnas is actually attached to the police. In addition, the composition of Kompolnas commissioners is still dominated by former police members and government representatives which has an impact on the lack of independence of Kompolnas.

Another important issue is the limited duties and authorities of Kompolnas, namely only providing input to the President regarding the use of the budget by the Police. In addition, regarding police policy, the appointment of the Chief of Police and receiving public complaints. In fact, in order to supervise the complex police, Kompolnas' authority is needed to be broader and stronger. That way, Kompolnas does not only become an advisory institution to the president and a receptacle for public reports.

The effectiveness of Kompolnas can be a matter of debate and varies depending on the perspectives of various different parties. Kompolnas is seen as only being able to accommodate suggestions and complaints from the public regarding all law enforcement processes carried out by the Police without having the authority to provide assessments or investigations into police actions or discretion.⁵

Based on the description above, the researcher wants to conduct research and study the nature of the position and function of the National Police Commission in supervising the performance of the Republic of Indonesia National Police.

METHOD

This research is a non-doctrinal legal research or empirical legal research as a study of the implementation of legal rules regarding the existence of Kompolnas as a Functional Supervisory

⁴ La Ode Husen, et.al, Community Policing Is A Study In South Sulawesi , Imperial Journal of Interdisciplinary Research (IJIR) , Vol-3, Issue-5, 2017, ISSN: 2454-1362, <http://www.onlinejournal.in> Imperial Journal of Interdisciplinary Research (IJIR) , pg 1026

⁵ Catur Cahyono Wibowo, Kebijakan Strategis Guna Mengoptimalkan Peran Kompolnas dalam Mempercepat Reformasi Polri: Tesis Universitas Diponegoro Semarang, hal.10

Institution for the performance of the Police. This research also uses an approach with a comparative method that aims to compare the existence of Kompolnas in Indonesia with several Police Supervisory Institutions in. Several countries such as England, the Philippines, Japan, and Hong Kong. Comparative research can be done through analysis of various documents relating to the object of the researcher.

RESULT AND DISCUSSION

The Nature of the Position of the National Police Commission (Kompolnas) in Supervising the Performance of the Republic of Indonesia National Police (Polri)

A. Institutional Structure of the National Police Commission

The National Police Commission was first established based on the Decree of the MPR RI Number VII of 2000 concerning the Role of the Indonesian National Armed Forces and the Role of the Indonesian National Police. Based on Article 8, it is stated that the National Police Institution is established by the President whose function is to determine the direction of the policies of the Indonesian National Police assisted by the National Police Institution.

Then, based on the Decree of the MPR, the National Police Institution was confirmed through Article 37 of Law No. 2 of 2002 concerning the Indonesian National Police which was changed to the National Police Commission which is positioned under and responsible to the President.

The position of the National Police Commission was then regulated separately through Presidential Regulation No. 17 of 2005 as amended to Presidential Regulation No. 17 of 2011 concerning the National Police Commission as an elaboration of Law No. 2 of 2002 concerning the Indonesian National Police, issued by President Susilo Bambang Yudhoyono.

In this regulation, Kompolnas is intended to be a forum for public suggestions and complaints regarding the performance of the Police accompanied by supporting and accurate evidence. In such conditions, every complaint/complaint received by Kompolnas will be immediately responded to by all commissioners in the institution.

Based on Article 37 of Law Number 2 of 2002, the scope of Kompolnas' supervision of Polri performance is:

- a. Abuse of authority, a Polri official or an official carrying out police functions uses his authority (rights and powers to act) for improper purposes so that the objectives of the Polri are not achieved.
- b. Alleged Corruption, a Polri official and other Polri Officials or Polri members or members carrying out police functions are suspected of committing corruption in the form of asking for compensation and so on for work that should have been done, or embezzling state funds.
- c. Poor service, a Polri official and other Polri Officials or Polri members and members carrying out police functions in providing services experience prolonged delays, do not handle, collusion, collusion and nepotism, deviate from procedures, embezzle evidence, act unfairly, commit unlawful acts, so that the public is not served well and the objectives of the Polri are not achieved.
- d. Discriminatory treatment, a Polri official or other Police Function Officer or Polri member or police function officer in providing services is clearly biased, acting one-sidedly, and prioritizing one party without considering the applicable provisions so that the decision taken is detrimental to the other party which results in the Polri's objectives not being achieved.

B. Incorrect use of discretion, is the use of free authority and/or police authority unwisely and with little consideration resulting in inappropriate decision-making choices and/or actions by police members or police function officers which result in harming others or causing victims so that the objectives of the police are not achieved.

The membership of Kompolnas consists of 9 people (3 people from the government, 3 police experts and 3 community leaders), with the composition of a Chairperson concurrently as a member, Deputy Chairperson concurrently as a member, Secretary concurrently as a member and 6 members.

Based on the Regulation of the Coordinating Minister for Political, Legal and Security Affairs of the Republic of Indonesia Number 2 of 2018 concerning the Organization and Work Procedures of the Secretariat of the National Police Commission, it is explained that the Secretariat of the National Police Commission is a technical and administrative support element that assists the National Police Commission in organizing secretariat at the National Police Commission. The Kompolnas Secretariat consists of:⁶

- a. Technical Support Section;
- b. Legal, Information, and Communication Section;
- c. Planning and Cooperation Section; and
- d. General Section.

When viewed from the position and institutional structure of the National Police Commission, the independent supervisory institution tends to be unable to carry out its duties and functions properly. Kompolnas has weak authority as seen from the way the institution follows up on every complaint from the public. This is due to the weakness and limitations of Kompolnas in carrying out monitoring activities in its position as a State Institution that oversees the external supervision of the Police.

This can be seen through Presidential Regulation No. 17 of 2011 concerning Kompolnas which regulates the authority of Kompolnas. In this case, it can be concluded that Kompolnas' authority is still abstract and limited. The National Police Commission does not obtain binding achievements from the results of monitoring and evaluation carried out on the performance of the Police. Proposals or recommendations made by Kompolnas are not binding on the institution it supervises, in this case the Police. This means that based on these results, Kompolnas does not provide an effect that determines the final result, especially in the preparation of the direction of strategic police policies or in providing considerations and dismissal of the Chief of Police.

This can also be seen through the Joint Agreement between the National Police Commission and the Indonesian National Police concerning the Relationship between work procedures, functions, duties and authorities.

The intent and purpose of the Joint Agreement is to be a guideline in organizing work relations, functions, duties and authorities in order to continue and improve synergy for the parties.

Based on Article 4 Paragraph 1 in the Joint Agreement, the National Police Commission's Supervisory function on the performance of the Republic of Indonesia Police is through monitoring and assessment activities on the performance and integrity of members and officials of the Police. The implementation of the supervisory function is in the form of:

- a. Handling of public suggestions and complaints;
- b. Joint activities with the Polri internal supervisory unit;
- c. Analysis of Polri data and input of opinions from Polri members and/or officials, government agencies, the public and/or parties deemed necessary.

⁶ Peraturan Menteri Koordinator Bidang Politik, Hukum, Dan Keamanan Republik Indonesia Nomor 2 Tahun 2018 Tentang Organisasi Dan Tata Kerja Sekretariat Komisi Kepolisian Nasional

It can also be seen in Article 8, that Kompolnas exercises its authority such as providing advice and other considerations to the President in order to realize a professional and independent Polri that can work together to carry out activities such as:

- a. Discussion;
- b. Research;
- c. Comparative study;
- d. Seminar/workshop;
- e. Other agreed activities.

The function of an independent police oversight institution can be compared to the form of supervision implemented by several countries such as the UK and Japan. For example, the Independent Office for Police Conduct (IOPC) is a Non-Departmental Institution as a representation of the new structure of the Institution. The IOPC institution plays an important role in improving police performance by ensuring that the police can be held accountable for their actions and can improve their performance. The IOPC expands its performance supervision and provides guidance to help the police handle complaints at the local level which also monitors police performance.

Another comparison can also be seen in the NPSC in Japan, where the National Public Safety Commission (NPSC) is formed from the Council/Representatives of the community so that the police system is operated democratically and is responsible for supervising the National Police Agency (NPA).

The institutional structure of the NPSC in Japan also reflects its independence as a police supervisor because although it is under the auspices of the Prime Minister, in carrying out its duties the NPSC is responsible for all activities related to the Police.

Efforts to strengthen the National Police Commission can also be seen and compared with other countries as practiced by the National Public Safety Commission (NPSC) in Japan. NPSC is a government agency responsible for administrative supervision of the National Police Agency (NPA) of Japan which is in a structure under the Prime Minister.

Looking at the development of police supervisory institutions in other countries, the actions that can be taken by the National Police Commission as a police supervisor are very limited. The National Police Commission only acts as a passive observer in the process of investigating and investigating police members who are suspected of violating the code of ethics or criminal acts. On the other hand, as a police supervisory institution in England and Wales, the Independent Office of Police Conduct (IOPC) has broad authority in supervising the police including the authority to conduct its own investigations and inquiries regarding public complaints against the police.

Through the comparative law method, it can be seen that the authority of the IOPC provides space for the institution to carry out effective supervision of the police. Therefore, KOMPOLNAS can increase the effectiveness of its supervision performance if it has the same authority as the IOPC

Implementation of the Function of the National Police Commission in Supervising the Performance of the Republic of Indonesia National Police.

The implementation of the Kompolnas supervision function is carried out by the Technical Support Section which has the task of providing technical support in receiving and analyzing public suggestions and complaints as well as monitoring and evaluating public suggestions and complaints.

Seeing the Role and Function owned by Kompolnas is still very limited which is feared to be unable to balance the role and function of the Police which is a State Institution with a very broad scope in the territory of Indonesia.

Implementation of the Function of the National Police Commission in Supervising Police Performance Reporting Handling of Public Suggestions and Complaints Kompolnas is now formed and managed online which is intended for the convenience of the public in providing The mechanism is as follows:

1. Complainants can submit or provide their reports related to the Police either directly (prepared by Computer) or online (e-report);
2. Then, through the Kompolnas e-office, a clarification process is carried out to Apk. Dumas Presisi consisting of Irwasum and Irwasda Polda;
3. From the results of the clarification, a Plenary is held every Thursday and attended by at least ½ of the number of Kompolnas Commissioners +1 person (waiting for orders) whose main topics are:
 4. Incoming Public Suggestions and Complaints;
 5. Clarification Results.

The problem is processed by the operator and will be added/corrected by the related parties, namely:

- a. Kassubag Klarifikasi;
 - b. Kabag Duknis;
 - c. Kaset Kompolnas;
 - d. Sekretaris Kompolnas.
6. The results of the Plenary Session above will be notified to the Complainant who is satisfied with the results or dissatisfied with the results.
 7. If the Complainant is not satisfied with the results of the Kompolnas clarification and makes a Follow-up Complaint, the complaint will be recorded in a new Register Number.

Factors Influencing the Position and Function of the National Police Commission in Supervising the Performance of the Republic of Indonesia National Police

Legal Structure Factors

Viewed from the beginning of its formation, Kompolnas is a new state institution that was formed along with the structural reform in the Polri which was previously under ABRI then became an independent institution that is institutionally separate from the ABRI organizational structure, so that the position of the National Police Institution or Kompolnas is intended to provide consideration to the President as the holder of executive power who oversees the Polri institution, in order to determine/determine the direction of the Polri institution, and in terms of appointing/dismissing the highest leader of the Polri institution (Chief of Police).

In addition, the position of Polri and Kompolnas which are institutionally placed under the President, so that it can influence the implementation of Kompolnas' supervisory duties and functions over Polri, where Polri institutionally is one of the state organs/institutions regulated in the 1945 Constitution, while Kompolnas is a supporting state organ/institution that is under the President and is formed only based on a Presidential Regulation, so that institutionally the position of Kompolnas is not strong enough to supervise Polri as a state institution under the executive power (President).

Therefore, to strengthen Kompolnas in carrying out supervision of the National Police, structurally the position of Kompolnas, which was initially established as a national police organ/institution based on Article 8 of TAP MPR No. VII/2000, then the position of Kompolnas in the state system should be strengthened, not only as a supporting state institution under the President to provide

considerations (advisory institution), but Kompolnas as a state institution that functions as an external supervisor of the National Police that is independent and free from the influence of power.

Legal Substance Factors

Viewed from the aspect of legal substance, based on the provisions of Article 8 of MPR Decree No. VII/2000, and Article 37 of the National Police Law, in essence, the National Police Commission is a state organ/institution of a supporting nature that is placed under the executive power (President), with the task of providing input, suggestions/considerations to determine/set the wise direction of the National Police institution, and in appointing/dismissing the highest leader of the National Police institution (Chief of Police), considering that at that time there was a structural reform within the National Police, namely the separation of the National Police from the TNI in the ABRI organizational structure as demanded by the ongoing reform, so that the formation of the National Police Commission was intended as a supporting institution to help provide considerations/advice to the President in order to determine/set the wise direction of the National Police which is under the President.

In connection with this, in carrying out its duties, the National Police Commission does not have the authority that is explicitly stated in Article 38 paragraph (2) of the National Police Law and Article 7 of Presidential Decree No. 17/2011, namely the authority of Kompolnas to conduct investigations to collect evidence related to suggestions and complaints from the public that are received and received by Kompolnas regarding the performance of the Police; the authority of Kompolnas to conduct audits/examinations within the Police related to suggestions and complaints from the public so that they are not only carried out by the internal Polri supervisory unit, and the authority of Kompolnas related to the imposition of administrative sanctions if the recommendations given by Kompolnas are not followed up by the Police. Therefore, to strengthen Kompolnas from the aspect of legal substance in carrying out supervision of the Police, it is appropriate that Kompolnas' authority needs to be increased which is stated explicitly in the Polri Law, namely the authority related to supervision of the Police, including, the authority to conduct audits/investigations/inquiries related to suggestions and complaints from the public received by Kompolnas, the authority to conduct examinations within the Police related to suggestions and complaints from the public regarding the performance of the Police, and the authority related to administrative sanctions if the recommendations given by Kompolnas are not followed up by the Police.

Legal Culture Factors

To strengthen Kompolnas from the aspect of legal culture in carrying out supervision of the Police, Kompolnas together with the Police can carry out scheduled and continuous legal counseling activities for members of the Police in general, and Police Investigators in particular, both Investigators assigned to the Police Headquarters, as well as regional ranks, namely the Regional Police, Resort Police and Sector Police, with the aim of increasing knowledge/understanding of the position, duties, functions and authorities of Kompolnas which is a partner of the Police in providing input/considerations to the President, in order to realize an independent and professional Police institution, especially in investigating criminal acts.

Human Resource Factors

One of the determining aspects of strengthening Kompolnas in supervising criminal investigations by the Police is the aspect of human resources which are the driving force/actors who run the organization, where according to Article 14 of Presidential Regulation No. 17 of 2011, in essence, Kompolnas members consist of 3 groups, namely 3 people from the government, 3 people from police experts, and 3 people from community leaders, so that the total is 9 people. Meanwhile, Kompolnas members from the Government element are ex-officio held by the Coordinating Minister for Political, Legal and Security Affairs, the Minister of Home Affairs, and the Minister of Law and Human Rights,

this means that Kompolnas members from the government element hold dual positions, namely in addition to being Ministers in the Government Cabinet, they also carry out duties as Kompolnas members in providing advice/input/considerations to the President.

Thus, to strengthen Kompolnas from the aspect of human resources in carrying out supervision of the Police, it is only natural that Kompolnas members from the Government element as stated in Article 14 of Presidential Regulation No. 17/2011, it is necessary to make changes by eliminating the government element as a member of Kompolnas which is held ex-officio by the Minister in the Government cabinet, so that all members of Kompolnas can come from professionals/experts in the fields of law, police science or other fields of science related to the duties and functions of the Police, as well as members from community leaders who have a reputation, integrity, and credibility in accordance with the needs of Kompolnas in supervising the Police.

Furthermore, in terms of human resources, based on the description of the condition of Kompolnas human resources in 2022 as previously described, the List of Personnel Composition (DSP) of the Kompolnas Secretariat is 90 people, but the number of real Kompolnas employees in 2022 was recorded at only 79 people so there is still a shortage of 11 people. Of the number of real employees, 17 people have the status of Operational Control (BKO) of the Police, and 37 people are Pramubakti workers who have contract status. The details of the number of Kompolnas employees show that until now the number of permanent Kompolnas employees is only 25 people, while the other 54 people are non-permanent employees with BKO status from the Police and Pramubakti.

Infrastructure Factors

Infrastructure is also another important aspect in supporting the strengthening of Kompolnas in supervising criminal investigations by the Police, where based on the description of the condition of Kompolnas infrastructure in 2022 as previously described, that until now Kompolnas does not have its own office building, and occupies the STIK-PTIK Polri office building located in Kebayoran Baru, South Jakarta with a borrowed status. This means that Kompolnas does not yet have facilities in the form of an office building with its own status to support the implementation of its duties, where the office building currently occupied by Kompolnas with a borrowed status can end at any time because it is not a fixed asset belonging to Kompolnas.

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