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The Weaknesses of the Principle of Arrragement of Non-aluutsista of the Indonesian National Army

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Abstract: The purpose of this research is to examine and analyze the principles of non-defense system and its implications in various countries, and to examine and analyze the weaknesses of the principle of Arrangement of Non-Alutsista (Main Equipment and Weapon) of the Indonesian National Army. The method used in this research was empirical juridical, using primary and secondary data types. And the method of data analysis is qualitative descriptive. The findings of this study are the comparison of the principles of the regulation of Non-Alutsista Indonesian National Army, Law enforcement practices both in the United Kingdom and in the United States, as well as the Netherlands is different from law enforcement that regulates the non-alutsista in Indonesia. Neither in Britain nor in the United States, is law enforcement of non-altarista misuse in both countries subject to the jurisdiction of civil justice. This is different from jurisdiction in Indonesia, until now still subject to Article 149 KUHPM. In such arrangements, the judicial body authorized to resolve the issue of non-alutsista abuses is the military jurisdiction. The weaknesses of the TNI non-defense armament principle, underlying the theory of the legal system, have three subsystems, among which are the legal substance, Legal Structure and Legal Culture. The values of Pancasila as the source of the source of law, in which the discussion/ mediation of the culture becomes the first alternative in solving the case, but the reality is only the judicial institution which is the only access road to justice.

Keywords: Principle of Arrangement of Non-Alutsista, Indonesian National Army

A. INTRODUCTION

Indonesia is a constitutional state, as formulated in the provisions of Article 1 paragraph (3) of the Constitution of the Republic of Indonesia[1]. The idea of a legal state is a modern idea that has many perspectives and is always said to be actual. The term law state is a direct translation of the term (rechtsstaat) [2]. In giving an understanding of the idea of this legal state[3], everyone can give excessive weight of judgment

to both the word "state" and the word "law".[4] There are at least two major Egyptian traditions called *rechtsstaat* and the state law in the Anglo-Saxon tradition called the rule of law. [5]

Indonesia's national reforms fueled by the spirit of the Indonesian nation to organize the life and future of a better nation have resulted in fundamental changes in the state and state system. The amendment has been followed up, among others, through institutional arrangement in accordance with the development of the environment and the demands of the lever forward. Changes in the state system have implications for the Indonesian National Army, including the separation of the Indonesian National Army and the Indonesian National Police, which led to the need to reorganize the roles and functions of each Decree of the People's Consultative Assembly Number VI / MPR / 2000 on the Separation of the Indonesian National Army and the State Police of the Republic of Indonesia and the Decree of the People's Consultative Assembly Number VII / MPR / 2000 on the Role of the Indonesian National Army and the Role of the Police of the Republic of Indonesia, as well as being a juridical reference in developing a law regulating the Indonesian National Army.[6]

The Indonesian National Army is developed and developed professionally in accordance with the political interests of the country which refers to the values and principles of democracy, civil supremacy, human rights, the provisions of national law, and the provisions of ratified international law, with the support of state budgets that are managed transparently and accountable.[7]

Article 149 of the Criminal Code (KUHPM), states that: The military which belongs to an armed force prepared for war is prohibited without obtaining written permission from or on behalf of officers entitled to borrow using any goods supplied by the state to another military man, was aware of the goods including clothing or military equipment.

In the formulation of Article 149 of the Indonesian Criminal Code as mentioned above it can be seen that military clothing and equipment (non-alutsista) can indeed be lent to other (military) and there is an extended understanding to civilian groups. However, under the provisions of the legality principle, through licensing mechanisms by eligible officers, non-defense equipment may be lent or to evangelize any goods supplied by the state to another military, which is extended to civilians.

Based on the above descriptions it is interesting to examine more in depth, on the regulation of the principles of setting up the Non-Alutsista and its implications in various countries as well.

B. RESEARCH METHODS

This research is a doctrinal research/juridical and non-doctrinal/empirical.[8] With the Research Type descriptive qualitative is a research method that tries to describe the object or subject under study in accordance with what it is. [9] Sources of data used in this study are primary and secondary data. Data collection technique was done through literature and field studies (through observation, interviews, and questionnaires). The analysis used in this research is using qualitative analysis.[10]

C. RESULTS AND DISCUSSION

1. Arrangements and Implications of Non-Alutsista in Various Countries

Comparative law studies on non-alutsista settings in various countries have identified non-defense equipment settings in the United States, the Netherlands and the United Kingdom. Given its principles of

non-defense equipment arrangements in the United States seen in case-law Fernando Montas is also used as a common law governing non-defense equipment for the NATO countries (North Atlantic Treaty Organization), then the picture of non-alutsista arrangement in the United States automatically becomes a regulatory principle that also applies in the Netherlands and the UK.[11]

The arrangement of non-alutsista (Main Equipment and Weapon) in the United States can be found in Article 250.43 (2) of the Florida State Act. The adoption of these blocs has become common law for NATO countries. Below is a description of the non-alutsista setting that can be viewed at once with its implementation in case-law.

Judgment of the United States Court, at the Florida State Court of Appeals at the July 2008, 2008. (the District Court of Appeal of the State of Florida in the Fifth District). Case Numbered Case No. 5D07-3962, involving the Plaintiffs, namely, Comparator, State of Florida against Fernando Montas, the Comparable party. The Plaintiffs Party pleaded in its Appeals Memory to the Florida State Court to examine and decide on a mistake made in the Court's Decision stating that Article 250.43 (2) of the Florida State Act of 2007 constitutes an unconstitutional provision.

The case starts from the following events. A representative of a Transportation Security Agency in the state, Security Administration (TSA), sees at Orlando International Airport a man named Fernando Montas wearing a United States uniform, standing in an unmarked section, which supervised because it is the area of the military security line that is often used by US military soldiers. Representatives who saw the incident felt something strange, because what he saw was the hair of the Montas Suspect longer than that should be the standard hair of the US military soldiers.

Considering the Suspect, Compared, Montas could not show an identity card explaining that he was a US military soldier, and it was admitted, Montas was later arrested for violating laws prohibiting the use of US military uniforms and the use of military attributes or marks, as set forth in Article 250.43, of the State Law of Florida, of 2007.

Read more, the following is the formulation of Article 250.43, Florida State Law of 2007, which regulates the following:

(1) Uniform or insignia of rank used by Florida United States National Security soldiers may only be used by those entitled to it due to the rights imposed by law and legislation applicable in the United States. Any person who violates this provision is subjected to a punishment that is classified in, and is subject to criminal sanction as provided in Article 775.082 or Article 775.083, and may also be tried according to a Letter of Establishment established by the Military Tribunal.

(2) Any person other than a military soldier or such person is registered as a Florida State Security Officer, a naval soldier, or corps of a special maritime security force from this state, or any other state, marine corps of this state, Puerto Rico, or the District of Columbia, or of the American Federal Army, the US Federal Navy, Marine Force, or the American Air Force, using uniforms of the Federal Army, the Federal Navy or Marine Force or parts of any particular part of the uniform, or uniform or part of the same uniform, or which is imitation or imitation, within the territorial boundaries of the State, shall be recourse if the use of such uniforms with the permission granted in writing in accordance with applicable laws and regulations and the permission of the

> Minister of Defense declared a criminal act threatened with the type p light idana as provided for in Article 775.082 or Article 775.083. The provisions of this Article shall not prohibit persons who work as actors / performers in the performing arts, or theaters and cinemas in order to use the uniform as mentioned above because they have to carry out the profession, whether in a closed or open space of practice, nor prohibit parades of unity in civil society, does not apply to military cadets or schools or scout members.

Following the arguments of Montas, the Court ruled that Article 250.43, Florida State Law of 2007 is a provision that is contrary to the constitution, because it contains rules that have a broad understanding and violate the principle of due process.

Referring to the common law, the Panel of Judges in the Case argues that the law used to lure Montas is too wide (overbroad). Recalling activities were originally valid and in accordance with or acquired constitutional protection were later criminalized and also declared invalid, or otherwise expressed as unprotected activity. The reasons for the granting of the petition of Montas, because according to the Court, the legislator made a formulation of the article which meant too broad (rubber article) in order to ensnare any crime or misbehavior in society and leave it to the court to enter into it and determine who can be legally arrested, and who should be released[12]. The court also believes that they cannot impose a ban on applying rubber articles (the "overly broad legal doctrine").

According to the Court, referring to the common law again, the doctrine is an odd doctrine and should therefore be used with caution, especially when a law is indeed held to regulate behavior, and not merely governing purely expressing opinion[13]. A law is referred to as a rubber article, because it is deliberately designed in such a way that it can be used to limit the behavior protected by the Constitution. [14]

The regulatory principles prevailing in various countries (America, the Netherlands and the UK), that is, a person can interfere with a law by reason of the law is too broad. Provided that the person must construct a legal reason that his or her own acknowledgment is a completely innocent behavior and that the restriction or prohibition order being sued by the person concerned is not supported by any rational reason, that the law is legitimate held and implemented to achieve the objectives of government[15], in this case limiting the misuse of non-alutsista use.

Equally the Public Prosecutor, representing the State undertaking the construction of the argumentation, that Montas has no fundamental right to use any kind of military uniform; therefore, according to the Public Prosecutor, the actions and behavior of Montas are not protected by the American Constitution, in this case by the First Amendment.

Equally citing common law, the Public Prosecution Team says that: in determining whether a particular behavior or action has a sufficiently communicative element in bringing the provisions of the First Amendment into effect, what should be tested is whether there is a will to declare a message already is certain, and is there a great possibility that the message will be understood by those who witness it. [16]

Montas proposed his proposition of wearing military uniform as an act of patriotism and of supporting members of his army family. Whenever people hesitate that the message Montas would convey would be well understood by those who saw him in the military uniform, one could imagine some situations when one could use some of the uniform to communicate a message to convey. For example, someone does that

to express his support for the army, or perhaps to express his protest against a military action he does not approve of.

In view of Article 250.43 potentially containing the protective nature of opinion and conduct, one shall determine if such provision is supported by a convincing and strictly and finely construed governmental interest established or formulated to actually provide protection to such interests.[17]

In the decision[18], the Florida Supreme Court as well as the Third District Court provides guidance, to understand the case at hand. In Sult and Rodriguez, the Court solves the constitutionality of Article 843.085 of the Florida State Act, which criminalizes its unlawful entry, for not obtaining authorization for it, an emblem from the police or indicia of other law enforcement authorities.

In the section governing it, the law declares legitimate to everyone:

To use or display the legitimate emblems of the authorities, including all types of symbols, marks of rank, emblems, identity cards, or uniforms, or colored imitations of such objects, which belong to Federal agencies, state or municipal and county law enforcement agencies or criminal law enforcement agencies currently or later regulated in Section 943.045, which can deceive sane persons and believe that such objects are permitted by one or more representative or apparatus that has mentioned above for use by those who study or use it, or who perform the appointment in any manner or combine words or words such as "police", "patrolman," "agent," "sheriff," "deputy, "" Trooper, "" highway patrol, "" Wildlife Officer, "" Marine Patrol Officer, "" state attorney, "" public defender, "" marshal, "" constable, or "bailiff," who will deceive people into believing that the sane and the objects permitted by the above institutions to be used by people who display or use.[19]

In both the Sult and Rodriguez cases the Court determines that Article 843.085 is too broad an article and violates due process because there is no difference between an innocent behavior, and a behavior intended to deceive the public.[20]

The court adjudicating the Sult case drew the conclusion that there is no way to know an element of a special will to deceive or deceive in law to create a narrow interpretation that limits the scope of constitutionally unconverted behavior. Similarly, Article 250.43 does not contain any specific element or element of will. The article does not contain the requirement that a particular act be done with the intent to deceive or deceive a sane person or an attempt to imitate as if it were a member of the military.

The judge in the event finally decided to strengthen the first-level Court Decision, that Article 250.43 is a form of regulation that is too broad and therefore constitutionally also violates the principle of due process. Fernando Montas was released.

In essence, from the foregoing description it is proposed that the Florida State Act Prohibiting Citizens Using Army Uniforms Is Wrong and Violates Constitutional Rights of Civilians. According to the author's analysis, the law prohibiting anyone who uses military uniforms, except the military, in the above Case is a law that violates the Constitution. It is concluded so, for such an arrangement prohibits a very substantial amount of protection for anyone to express an opinion.

In addition to case law or commonly known as common law and judge made law in the case of Fernndo Montes, the Netherlands also referred to the common law in the case of Schacht v. United States is a case law numbered 628. The case was filed with the Supreme Court on 31 March 1970, argued above

has become common law in countries that belong to NATO. The verdict was taken less than a month later, after being registered with the Supreme Court, precisely on May 25, 1970.

In the case law, the Plaintiff (the Cassation Party, hereinafter referred to as the Cassation Accredited), was previously as the Defendant or Petitioner. The Cassation Appetizer named Schacht, with the full name of Daniel Jay Schacht, as the Custodian Party is involved in a performance of the artwork of a comedy (a skit). The performance was performed several times in front of a military training center.

Perpetrators staged a protesting or disagreement plot against US involvement in armed conflict in Vietnam. When the case is in the District Court, the judges are guilty of violating Article 18 U.S.C. 702. The formulation of this provision contains the provision that it constitutes a unauthorized wearing, civilians using military uniform or part of the military uniform.

On the other hand, the Performer filed his defense that he was allowed to wear the military uniform in accordance with the formulation of Article 10 U.S.C. 772 (f). The provision contains the permission to use military uniform when a person is being photographed for the role of a member of the armed forces in a theatrical performance, or the production of motion pictures (films), insofar as the shooting or shooting of the intended motion has no intent to contaminate or discredit the generation armed (if the portrayal does not tend to discredit that armed force). In the Court of Appeals, in this case, in the context of comparison with the Indonesian Legal System the procedure of pursuing the legal process through the Civil Court, the Guilty verdict to the Schacht party was upheld. Schacht therefore filed an appeal, in the form of a petition through a certiorari procedure, in accordance with the period of the filing of the Cassation, as provided in the Supreme Court Rule 22 (2)).

The United States Supreme Court ruled that:

1. The performance of the Schacht, or the performance which Schacht follows, is the performance of a theatrical production which is permitted, because it is consistent with what is meant in 772 (f), as the formula can be found on pages 61 to page 62 Verdict.
2. The wording or the formulation of the provision (criminal element) in the form of the shooting or shooting of the intended motion does not have the intention to contaminate or discredit the armed forces, in Article 772 (f), constitutes arrangements that prohibit unconstitutional restrictions on freedom of expression and therefore a different understanding with the provisions of the provisions of the law shall be omitted from that Article so that its constitutionality is assured. It is formulated in the Verdict, pages 62 to 63.
3. The deadline as regulated in the Supreme Court Regulation, namely in the formulation of Article 22 paragraph (2) is not a jurisdictional provision and therefore may be waived by the Supreme Court.

As a finding, the drama in which Schacht participated as a result of the theatrical performances as intended in the provisions of Article 772 (f), implies that Schacht's penalization may be justified or justified if the intent and purpose behind Schacht's staging is a form of speaking out that goes against the role of the military.

Law enforcement practices both in the UK and in the United States, as well as the Netherlands are different from law enforcement that regulates the non-alutsista in Indonesia. Neither in Britain nor in the

United States, is law enforcement of non-altarista misuse in both countries subject to the jurisdiction of civil justice. This is different from jurisdiction in Indonesia, until now still subject to Article 149 KUHPM. In such arrangements, the judicial body authorized to settle non-alutsista criminal abuse matters is a military court body. In order to clarify the comparison between regulatory principles applicable in various countries, in this case countries such as the United States, the Netherlands, the United Kingdom incorporated in NATO with those in force in Indonesia, the following table sets forth the comparison of the principles of regulation.

Table
Comparison of Non-Alutsista Setting Principles in Various Countries and in Indonesia

No	*Regulation*	*Indonesia*	*NATO*		
			America	*England*	*Netherland*
1	Legal Basic	Law No.34 of 2004 and KUPM	General Criminal Law and Common Law		
2	Law Enforcement	Military Court	Public Court		
3	Used by civil people	No general regulation control it	The people must get permission to use it		
4	Values in controlling or regulating	there is a regulatory vacuum so that there is a threat to the value of equality before the law and the principle of legality in the use of non-defense equipment by the civilian and military	Constitution, Freedom of expression and human right		

2. Weaknesses of the Principle of Arrangement of Non-Alutsista in the Framework of Legal Protection for Members of the Indonesian National Army

The description of jurisprudence which tells about the implementation of the regulation concerning the use of non-alutsista as mentioned above proves that the legal principle governing the use of non-alutsista contained in Staatsblad 1934 Number 167 as amended by Law Number 39 Year 1947 regarding the Book of Law Military Criminal Code (KUHPM). In Article 149 raises the issue of legal uncertainty. In the application of the regulation on non-alutsista use Article 149 of the Civil Code only the military may be subject to law enforcement by the Military Courts and subject to Special Procedure Law, namely military court.

Another issue arising from the existence of regulation concerning non-alutsista in Article 149 KUHPM is that rule of law will endanger Indonesian National Army member. In the case of Yogi Gunawan, the existence of Article 149 of the Criminal Code has led to a harmful interpretation of Yogi Gunawan. It is unclear who should have the authority to grant written permission for non-alutsista use by the civilian authorities to incriminate TNI members. Yogi Gunawan has been the victim of a multi-interpretive non-alutsista arrangement and has no clarity regarding the party that has the authority to issue a non-alutsista use permit by civilians.

The application of non-defense equipment use arrangements that apply only to the military as stated in the description of jurisprudence above also raises the question of fairness. Apparently, the description

of the jurisprudence above proves that the civil party (Emi Pasee) even had time to be arrested by the authorities, but the prosses of law enforcement did not bring the civilians who use non-alutsista can be subject to criminal sanctions. The civil party, in fact, is free from the enforcement of the law regulating the use of non-alutsista because the concerned is not a member or a military party. This has led to injustice, and a violation of the principle of civil supremacy, that is, the absence of equality before the law in the rule of law, nor the existence of equality before the law as is known in the theory of the State of Law.

The issue of law enforcement (Article 149 KUHPM) above is also exacerbated by the fact that in Law No. 34 of 2004 on the TNI there have been arrangements on the principle of civil supremacy, only that the arrangement is only included in the general section of Law Number 34 of 2004 dn is not endorsed by specific provisions that may prevent the non-alutsista use by civilians in the body of Law No. 34 of 2004 and the absence of threats of sanctions that can serve as a deterrent means for both individuals and civil society in general not to abuse the use of non-alutsista.

Similarly, in the research on the principle of non-defense equipment arrangements there is no visible aspect of legal protection for TNI members, since the Decree of the TNI Commander Number SKEP / 143 / X / 2004 is merely an internal legal product, arranging in and not regulating publicly. This enlarges the issue of legal vacuum, and consequently results in legal uncertainty and issues of dignified justice, namely the legal protection of TNI members and TNI organizations from the use of non-alutsista use by civilians.

In the principle of the state of the law the main thing is that there is equality before the law or the so-called equality before the law. In the principle of equality before the law, the priority shall be all parties without exception subject to applicable laws and regulations. Any violation of law by a legal subject may be subject to legal proceedings and criminalized in accordance with the formulation of pre-determined and applicable provisions without being generally subject to a jurisdiction of the judiciary.

The weakness lies behind the fact that the principle of the law state as stated above is less well under way in Indonesian jurisprudence, especially the Yogi Gunawan story which has been described in the previous chapter. In the case it seems that there is a difference between the treatment of civilians (Emi Pasee) and citizens who are members of the TNI (Yogi Gunawan). The different treatments are as follows. The Yogi Gunawan party may be prosecuted for committing a violation of non-alutsista regulations as regulated in Article 149 UKUPM. While on the other hand, in this case Emi Pasee, despite being exposed to acts of arrest by Military Intelligence officers, but concerned cannot be prosecuted in abusing non-alutsista. Such a crippling condition can lead to defiance of two legal values of concern in this study. The first value, the legal certainty value and the second value is fairness.

The violation of the legal certainty is caused by even though there is a regulation on the use of non-alutsista, as regulated in Article 149 of the Criminal Code, but the formulation of the provisions, enforcement process and sanctions can only be imposed on the TNI members only, while civilians who use non-alutsista without permission, or violate the formulation of the provisions of Article 149 is not subject to due process of law, even though it was arrested by the intelligence and also not subject to the same sanctions imposed on military personnel.

While the value of justice or fairness is caused by the formulation of regulations on non-alutsista looks biased. Intended with one-sidedness, because TNI members may be subject to sanctions for violating

the legal provisions governing the use of non-armaments only because they are members of the Indonesian National Army, while civilians who may also be said to have committed violations of the same provisions shall not be subject to criminal sanctions just because the concerned is a civilian.

If the state of legal uncertainty and unfairness as mentioned above continue to be left, then over time it will lead to defamation of the principle of the rule of law. As is known, the principle of a constitutional state is a basic principle of the Indonesian state administration recognized in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, which contains the affirmation that Indonesia is a state of law. The implications of violation of the rule of law in non-alutsista arrangement as mentioned above resulted in the protection of Indonesia National Army members and also affected the Indonesia National Army organization, ie the image of the institution may be subject to contaminated threats.

Unlike the rule of law which is the basic principle which is the Volksgeist Indonesia, the principle of the rule of law is a basic principle known in the legal system of countries that embrace common law. In the rule of law, the principle of equality before the law is strictly interpreted. Strict interpretation of the principle of equality before the law, namely the submission of every person is for both civilian groups and military groups before the general judicial system.

From the point of view of the rule of law principle which gives a strict meaning to the equality before the law principle, the sociological reality of the law in Indonesia that the military is subject to the Special Judicial System while the civilian side is subject to the general judicial system can be viewed as a deviation principle equality before the law. The next result is from the point of view of the rule of law, and then one may come to the conclusion that in the Legal System in Indonesia there is no equality before the law. Although in this case it is necessary to note that the meaning of equality before the law does not mean to close the possibility for the military to be subjected to a separate judicial system with applicable laws and regulations. Therefore it follows from the meaning just mentioned above that one may argue that in Indonesia, with the self-subordination of military groups in the non-defense system arrangements to the system and the individual judiciary and the subordination of civilian groups which still cannot be processed law and even subject to criminal sanctions in connection with the misuse of non-alutsista, theoretically cannot be called as the absence of equality before the law.

The above issue has been argued that the principle of human rights is a pillar of the rule of law. Applied to the non-alutsista arrangements prevailing in Indonesia today, it can be argued that the non-defense equipment arrangements reflected in their implementation in the existing Jurisprudence have not proceeded as they should. In the principle of respect for human rights the preferred thing is that human beings cannot be sacrificed for the benefit of society. Between man and society there must be balance. In the context of non-alutsista setting, man, in this case such as Yogi Gunawan, cannot be used as a tool to deterrent effect others do the same deeds later on.

Concretely, it can be argued here that in the case of Yogi Gunawan, the Defendant put forward his argument that what he did was in accordance with the provisions of Article 149 of the Criminal Code. According to the Yogi Gunawan, the use of his authority as Damdim (district military commander), an officer who, according to him, has the authority to grant written permission to Emi Pasee as a member of civil society is intended to assist Emi Pasee as a civilian party to be able to run his profession as an artist who has been in his coaching.

The judicial process against Yogi Gunawan who disregards the intention (mens rea) of Yogi Gunawan, who issued a non-armory use permit to Emi Pasee to be able to run his profession as an art worker can be said to have committed a violation of human rights. Human rights are meant here, namely the implementation of the profession of Emi Pasee as an art worker. On the other hand violation of human rights also occurs when the law is imposed on a member of the military who performs actions with good intent and in his view does not violate the law because it is still in accordance with the provisions of Article 149 of the Criminal Code.

The above has been stated that in the principle of legality there is a legal dictation that all government action can only be done if the action has been determined in advance (lex stricta) in the prevailing legislation. It should be pointed out here that the non-defense system arrangements contained in Law No. 34 of 2004 are strict, but the provision is not accompanied by a formulation of offenses threatened with criminal defamation for non-alutsista abusers, especially abusers of civilians. The absence of strict formulation provisions (lex stricta) that the use of non-alutsista by civilians is a criminal act threatened with criminal sanctions and formulated in the body of the Law Number 34 of 2004 looks contrary to the principle of legality. This will have further implications or implications, namely law enforcement that is not based on an explicit formulation of offense and a pre-formulated criminal threat in prevailing laws and regulations will lead to arbitrariness or what is known as criminalization.

Another problem in the principle of non-armaments arrangement is regulation which is regulating non-defense equipment is only a formulation of provisions that the type of legislation is only applicable inward. The type of provision applicable to, in this case that is applicable in the military environment alone may lead to problems of legal uncertainty.

Montesquieu which has the full name of Charles Louisde Secondat Baron de la Brede et de Montesquie in his *De l'esprit des lois* stated that "Judge is only a mouthpiece of the law or" *la bouche qui prononce les paroles de la loi* ". In relation to what Montesquieu disclosed earlier in the provisions of Article 5 paragraph (1) of Law no. 48 of 2009 on Judicial Power, that "Judges and judges of the constitution are obliged to explore, follow and understand the values of law and sense of justice living in society". As for the meaning implied in this article, that "the court or judge in the Indonesian legal system is not a passive judge who is a mere mouthpiece of the law" as portrayed by Mostesquieu.

Thus the weaknesses of the Indonesia National Army non-defense arms principles, underlying the legal system theory, are three subsystems, including the following:

1. Substance of Law, provisions of Law Number 34 of 2004 on Indonesia National Army, Article 1 CHAPTER General Provisions; KUHPM Article 149 has not regulated the use of non alutsista Indonesia National Army by civil Society; and Law Number 31 of 1997 on military justice, Article 2.
2. Legal Structure, Law Number 31 Year 1997 on Military Justice is still paradigm on the subject of military law.
3. Legal culture ignores the values of Pancasila as a source of legal sources, where discussion/ mediation becomes the first alternative in solving cases, but the reality is only the judiciary which is the only access road to justice.

D. CONCLUSION

1. Comparison of non-defense armed forces principles of the Indonesian National Army, Law enforcement practices both in the United Kingdom and in the United States, as well as the Netherlands are different from the law enforcement that regulates the non-alutsista in Indonesia. Neither in Britain nor in the United States, is law enforcement of non-altarista misuse in both countries subject to the jurisdiction of civil justice. This is different from jurisdiction in Indonesia, until now still subject to Article 149 KUHPM. In such arrangements, the judicial body authorized to settle non-alutsista criminal abuse matters is a military court body.
2. The weaknesses of TNI non-defense arms principles, underlying the theory of the legal system, there are three subsystems, among them are legal substance, legal structure and legal culture. The values of Pancasila as the source of the source of law, in which the discussion/mediation culture becomes the first alternative in solving the case, but the reality is only the judicial institution which is the only access road to justice.

NOTES

1. The state of Indonesia is a state of law. This is clearly stated in Article 1 Paragraph (3) of the 1945 Constitution of Third Amendment, which reads "The State of Indonesia is a state of law". The inclusion of this provision into the section of the 1945 Constitution shows the strengthening of the legal basis and the mandate of the state that the state of Indonesia is and should be a legal state. Previously, the foundation of the legal state of Indonesia is contained in the section of General Elucidation of the 1945 Constitution on State Government System, namely as follows: 1) Indonesia is a state based on law (rechtsstaat). The state of Indonesia is based on law (rechtsstaat), not based on mere power machtstaat) .2) The Constitutional System. The government is based on the constitutional system (basic law), not absolutism (unlimited power).
2. Padmo Wahjono cited Oemar Seno Adji's statement in Indonesia that the State of Law concludes that the application of general principles of the law-based state lies in two respects: (1) Rechtsstaat theory characterized by the recognition of human rights, the existence of Trias Politica, the existence of a government based on the Law and the existence of administrative courts; and (2) the theory of The rule of law characterized by the existence of a constitution based on human rights, the existence of equality according to law for all people and the principle that law overcomes everything. Padmo Wahjono, "Indonesia is a State Based on the Law", Speech inauguration of Professorship at Faculty of Law University of Indonesia, pronounced on 17 November 1979.
3. In the concept of The rule of law and Rechtsstaat always progress from time to time, so the understanding of both in the present have some differences with the understanding of both in the past. About this see for example Jimly Asshiddiqie, 1997, *Teori dan Aliran Penafsiran Hukum Tata Negara*, Cet. I, Ind Hill-Co., Jakarta, hlm. 4
4. Oemar Seno Adji, 1985, *Peradilan Bebas Negara Hukum*, Erlangga, Jakarta, hlm.11
5. Wolfgang Friedmann says that the idea of a legal state is not always synonymous with The rule of law. While the term Rechtsstaat contains an understanding of the existence of restrictions of state power by law. Wolfgang Friedmann, Legal Theory, (London: Steven & Son Limited, 1960), p. 456. According to Moh. Kusnardi and Harmaily Ibrahim, that in English the term for the state of law is The rule of law, whereas in the United States: "government of law, but not of man". Kusnardi dan Harmaily Ibrahim, 1976, *Pengantar Hukum Tata Negara Indonesia,* Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia, Jakarta, hlm. 8.
6. Elucidation of Law Number 34 Year 2004 on Indonesian National Army
7. ibid

8. Soetandyo Wignjosoebroto, 2002, *Hukum: Paradigma, Metode dan Dinamika Masalahnya*. Perkumpulan HuMa dan ELSAM, Jakarta, h. 121.
9. Sukardi, 2012, *Metodologi Penelitian; Kompetensi dan Praktiknya*, Sinar Grafika Offset, Jakarta, h.157.
10. Noeng Muhajir, 1996, *Metodologi Penelitian Kualitatif* , Rake Sarasih, Yogyakarta, h.151
11. Keterangan diperoleh dari Wawancara yang dilakukan di Amsterdam dengan Robert Belmore tanggal 20 Juli 2017.
12. *Schultz v. State*, 361 So. 2d 416, 418 (Fla. 1978) (citing *Coates v. Cincinnati*, 402 U.S. 611 (1971); *State v. Wershow*, 343 So. 2d 605 (Fla. 1977)).
13. *Shapiro v. State*, 696 So. 2d 1321, 1324-25 (Fla. 4th DCA 1997) (quoting *Schmitt v. State*, 590 So. 2d 404, 412 (Fla. 1991)).
14. *Shapiro*, 696 So. 2d at 1324-25; see *State v. Bryant*, 953 So. 2d 585, 587 (Fla. 1st DCA 2007)
15. *State v. Ashcraft*, 378 So. 2d 284, 285 (Fla. 1979).
16. *Texas v. Johnson*, 491 U.S. 397, 404 (1989) (mengutip *Spence v. Washington*, 418 U.S. 405, 410-11 (1974)).
17. *Firestone v. News-Press Pub. Co*., 538 So. 2d 457, 459 (Fla. 1989).
18. *Sult v. State*, 906 So. 2d 1013 (Fla. 2005), and *Rodriguez v. State* , 906 So. 2d 1082 (Fla. 3d DCA 2004).
19. § 843.085(1), Fla. Stat.
20. *Sult*, 906 So. 2d at 1021; *Rodriguez*, 906 So. 2d at 1088.