

## Indonesia: Debate over a New Intelligence Bill

### I. OVERVIEW

A controversial bill defining the role and functions of Indonesian intelligence agencies has top priority in the Indonesian parliament. It was originally scheduled for enactment in July 2011 but will now be delayed until September or October. It would be better to put the bill on hold even longer until there is a more comprehensive assessment of security needs and how to address them.

The controversy centres around three issues: whether the State Intelligence Agency (Badan Intelijen Negara, BIN) should have arrest and detention powers; whether wiretapping and other intercepts should require a court order; and how to ensure oversight and accountability mechanisms consistent with democratic governance. The administration of President Susilo Bambang Yudhoyono is taking the hardest line, arguing for more powers and less oversight than even BIN itself sees as desirable. Human rights advocates and civil society organisations, including hardline Muslim groups, are at the other end of the spectrum, fearing a return to authoritarian practices of the past. In the middle are the parliamentarians who initiated the law with good intentions, most of whom are determined to resist government pressure but feel the NGOs are going too far.

The debate is taking place in a context where the main threats to the Indonesian state are defined as internal: separatism, terrorism and sectarianism. As such, the targets of arrest, detention or wiretapping would be overwhelmingly Indonesian nationals, and many fear that the combination of enhanced powers and weak oversight raises the spectre of a politicised intelligence agency being used in the future as it was in the past to crack down on domestic enemies. BIN rejects these arguments, saying times have changed and there will be no return to abusive practices.

The current bill follows an unsuccessful effort in 2002 to pass a law strengthening Indonesia's intelligence apparatus. That bill, drafted in the wake of the 11 September 2001 terrorist attacks in the U.S. and a changed perception of the security threat, encountered stiff resistance. The human rights community was worried about backsliding on civil liberties; hardline Muslim groups saw the bill aimed at themselves; and rival agencies, such as the police, saw BIN encroaching on its turf. It was eventually

shelved. Subsequent efforts by the government to revive the bill in 2004 and 2006 encountered similar opposition.

The law now under discussion, drafted in late 2010, had a more constructive genesis, as it was the initiative of a few newly elected legislators with intelligence backgrounds who were concerned that BIN was the only major security agency in the post-Soeharto era to lack a supporting legal framework. They wanted better coordination among security agencies, more information-sharing and more safeguards against rogue activities.

Civil society groups were concerned about the historic lack of accountability in BIN, as in other security agencies, and wanted more judicial and parliamentary oversight. They also wanted major structural changes and staffing restricted to civilians, except in the military intelligence body.

In March 2011, the government submitted a list of objections to the draft. It wanted no changes in structure or supervision and argued for giving BIN powers of preventive detention and "intensive" interrogation. A process of bargaining between the government and parliamentarians is underway.

Debate over the bill is taking place, however, as other security legislation is in the works, including a national security bill and amendments that would strengthen the anti-terrorism law. The lack of a coherent blueprint for Indonesia's security apparatus and the piecemeal approach to legislation may result in worsening the problem of unclear divisions of labour and overlapping responsibilities – quite apart from the problems of the intelligence law itself.

Under such circumstances, there is no good reason for ramming through the intelligence bill. Taking a step back and thinking more about how to balance Indonesia's security needs with its commitment to democratic values should be in the interests of all concerned.

## II. HOW THE INTELLIGENCE STRUCTURE EVOLVED

The current deliberations on the intelligence bill continue an effort to redefine the function of intelligence in a country that has made a largely successful transition to democracy since 1998.<sup>1</sup> As one of its drafters said, “I want to change the paradigm that intelligence is something dark that the public must not know about, that it is a political tool to cripple rivals or eliminate opposing views”.<sup>2</sup>

President Soeharto’s 32-year authoritarian rule, known as the New Order, left a legacy of intelligence as a military function overwhelmingly focused on domestic opposition.<sup>3</sup> His successors chipped away at that inheritance without subjecting the intelligence agencies to the kind of professional overhaul they need.

After he took power in the wake of an attempted coup in 1965 that was blamed on the Indonesian Communist Party (Partai Komunis Indonesia, PKI), Soeharto set up a network of military-dominated security agencies as part of a drive to eradicate the PKI and consolidate his own power. In October 1965, he created the Command for the Restoration of Security and Order (Komando Pemulihan Keamanan dan Ketertiban, KOPKAMTIB), the functions of which were “to destroy the PKI as an effective organisation and prevent its re-emergence; contain Islamic fundamentalism; counter opponents of the New Order at home and overseas; and deal with other threats to internal security and the regime”.<sup>4</sup>

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<sup>1</sup> For related reporting on Indonesia’s security reforms, see Crisis Group Asia Reports N°13, *Indonesia: National Police Reform*, 20 February 2001; and N°90, *Indonesia: Rethinking Internal Security Strategy*, 20 December 2004.

<sup>2</sup> Crisis Group interview, Major General (ret.) Tubagus Hasanudin, deputy chairman of the parliament’s Commission I, Jakarta, 18 March 2011.

<sup>3</sup> For more on the Soeharto-era military, see Crisis Group Report, *Indonesia: Rethinking Internal Security Strategy*, op. cit.

<sup>4</sup> Robert Lowry, *The Armed Forces of Indonesia* (St Leonards, Australia, 1996), p. 60. The local branches of KOPKAMTIB were called Special Regional Operatives (Pelaksana Khusus Daerah, LAKSUSDA) and were embedded in all territorial commands. The regional commander acted as the ex-officio leader of a LAKSUSDA, while his intelligence assistant served as its chief executive officer. These regional intelligence assistants reported to BAIS. This web connecting KOPKAMTIB, the territorial military commands and BAIS was supported by a special budget for KOPKAMTIB that came from the president, bypassing the parliament and the military headquarters. In 1988, Soeharto replaced KOPKAMTIB with the less draconian-sounding National Stability Coordination Agency (Badan Koordinasi Stabilitas Nasional, BAKORSTANAS) but the new agency continued to be based in the territorial commands. The

In mid-1967, soon after he became acting president, he established the State Intelligence Coordinating Agency (Badan Koordinasi Intelijen Negara, BAKIN) out of the disbanded civilian national intelligence body that was seen as too close to the PKI.<sup>5</sup> BAKIN was always headed by military officers with long-term appointments, unlike the service chiefs who had a higher turnover; they therefore had more opportunity to acquire significant power, though always subordinate to Soeharto.<sup>6</sup>

Soeharto also maintained a private intelligence body known as Special Operations (Operasi Khusus, Opsus), which among other things was tasked with arranging the Act of Free Choice in Papua in 1969 and the early New Order elections in 1971 and 1977. It also played a major role in 1971 in the revival of Darul Islam, an Islamic insurgency that the army defeated in the early 1960s.<sup>7</sup> New Order critics later used Opsus as an example of the dangers of intelligence agencies getting directly involved in politics.<sup>8</sup>

In 1983, the Strategic Intelligence Agency (Badan Intelijen Strategis, BAIS) was established under then armed forces commander-in-chief Leonardus Benyamin “Benny” Mordani, a career intelligence officer and former deputy head of BAKIN, who brought domestic and military intelligence services under his personal control and assumed some of the powers of KOPKAMTIB as well.<sup>9</sup> Indonesian in-

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unrest in early 1998 led Soeharto to dismantle BAKORSTANAS, but that did not stop the movement that led to his 21 May resignation.

<sup>5</sup> The civilian body was called the Central Intelligence Agency (Badan Pusat Intelijen, BPI) and was under the foreign ministry until 1962, when it came directly under the president. BPI was replaced briefly by the National Intelligence Command (Komando Intelijen Negara, KIN). See Robert Lowry, *The Armed Forces of Indonesia*, op. cit., p. 70.

<sup>6</sup> Ibid, pp. 69-71.

<sup>7</sup> “Darul Islam” (DI) was the name given to several regional rebellions, the first of which erupted in West Java in 1948. After Indonesia’s independence from the Netherlands in 1949, it continued to fight the new republic until its leader was captured in 1962 and executed. After Soeharto came to power, Opsus operatives saw former West Java DI leaders as potential allies in the 1971 election and brought them back together. This set the stage for the merger of the West Java group with individuals from the other DI rebellions in Aceh and South Sulawesi and the gradual emergence of a newly energised Islamist movement that became the parent organisation of Jemaah Islamiyah, the group responsible for the first Bali bombing in 2002. See Quinton Temby, “Imagining an Islamic State in Indonesia: From Darul Islam to Jemaah Islamiyah”, *Indonesia*, no. 89, April 2010, pp. 1-36.

<sup>8</sup> Robert Lowry, *The Armed Forces of Indonesia*, op. cit., p. 71.

<sup>9</sup> BAKIN was dominated by the military from the outset, but the agency developed a different institutional culture from BAIS. The two main intelligence bodies did not always see eye to eye

telligence authority was never again as concentrated in a single person as it was during Moerdani's five years as commander.

BAIS, renamed the Armed Forces Intelligence Agency (Badan Intelijen ABRI, BIA) in 1994, grew into the strongest of these agencies in terms of collecting and analysing information, using the military's territorial command structure to maintain a network of informants down to the village level and report back to Jakarta. The effectiveness of BAIS throughout the 1980s and 1990s has led many, especially but not only within the military, to assume that the military has a better intelligence-gathering network than anyone else and that its capacity has been underused since many of its internal security functions were ceded to the police in 1999. It also led to the assumption that persists to this day that the military is best placed to collect strategic – that is long-term – intelligence. The current draft of the intelligence bill continues to leave strategic collection, analysis and counter-intelligence activities to the Indonesian military (Tentara Nasional Indonesia, TNI).<sup>10</sup>

Soeharto's successors attempted some changes. President B.J. Habibie (1998-1999) revoked the 1963 Anti-Subversion Law, the main legal tool for suppression of dissent, but empowered BAIS and gave it additional directorates with which to quell spreading unrest. President Abdurrahman Wahid (1999-2001) wanted to restrict the military and saw the national intelligence service as a counterweight. He changed BAKIN's name to BIN, dropping the vital word "coordination", and strengthened its operational and strategic intelligence capabilities in the hope that it could outperform BAIS.<sup>11</sup> Wahid also developed a new intelligence wing for the police called the Security Intelligence Body (Badan Intelijen Keamanan, BAINTELKAM).<sup>12</sup>

The 12 October 2002 Bali bombings led to a fundamental shift in the balance of power among the intelligence agencies. Ten days after the bombing, President Megawati Soekarnoputri (2001-2004) ordered BIN to take charge of coordinating all intelligence activities, including the military.<sup>13</sup> Earlier, on 18 October 2002, she also broadened police powers to apprehend and detain suspected terrorists,

furthering the process that had begun in 1999 of making the police rather than the military the lead agency in internal security. These powers were set out in the 2003 Anti-Terrorism Law.<sup>14</sup> Shortly afterwards, a new police counter-terrorism unit, Special Detachment 88, was created that together with a unit known as the "Bomb Team" soon developed in-depth knowledge of violent extremist networks, surpassing that of BIN.

In January 2002, parliament enacted a Law on the Indonesian Police, cementing the 1999 separation. In 2003, as the police became stronger, the defence ministry, dominated by active military officers, produced a white paper, envisaged as a comprehensive assessment of the challenges facing the country in the 21st century. The document became the basis for the October 2004 Law on the Indonesian Military. Among other things, the law allowed "active soldiers" to hold state intelligence positions, although BIN was not mentioned by name.<sup>15</sup> BIN today has provincial stations manned by five to seven officers, many of them seconded from the military.

In 2003, a home ministry decree established a Regional Intelligence Community (Komunitas Intelijen Daerah, KOMINDA) in every province, district and municipality. The KOMINDA was designed as a forum where the police, military and BIN would share information with each other and the local administration, which then would be channelled upwards as necessary. Each KOMINDA is chaired by the deputy local executive – for example, the deputy mayor of a municipality – with the budget, which is not subject to oversight, coming from the administration's political office.<sup>16</sup> Several observers said this has led to people who do not understand intelligence leading an intelligence forum, and one noted that, in meetings he attended, participants did not distinguish between useful information, news reports and rumours.<sup>17</sup> In some cases the KOMINDAs have become tools of local politicians.<sup>18</sup>

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and competed for Soeharto's attention. See Ken Conboy, *Intel: Inside Indonesia's Intelligence Services* (Jakarta, 2004).

<sup>10</sup> Rancangan Undang-Undang Republik Indonesia tentang Intelijen Negara, 16 December 2010, the original parliamentary draft, Article 10 (2).

<sup>11</sup> Two deputies were added to the BIN structure; one handled strategic security intelligence, and the other covered strategic counter-intelligence, lobbying and cultivation operations. Keputusan Presiden no. 110/2001, Article 22-23.

<sup>12</sup> Presidential Decree no. 54/2001 on the Organisation and Work Flow of the Indonesian Police.

<sup>13</sup> Presidential Instructions no. 4 and 5 of 2002 to the Coordinating Minister of Politics and Security Affairs and the BIN chief.

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<sup>14</sup> The parliament passed Law no. 15/2003 in April 2003 as a rubber stamp of Megawati's October 2002 executive order – Peraturan Presiden Pengganti Undang-Undang no. 1/2002 on the Eradication of Terrorism Crimes.

<sup>15</sup> Law no. 34/2004 on the Indonesian National Military, Article 47 (2). It was the last legislation of Megawati's presidency and emerged when it was already clear she had lost to Susilo Bambang Yudhoyono, who served as her coordinating minister for security before their relations turned sour over his presidential ambitions.

<sup>16</sup> Surat Menteri Dalam Negeri no. X.300.08/SC/2003 tentang Pembentukan Panitia Penyelenggara Rapat Konsultasi Penguatan Sistem Jaringan Komunitas Intelijen Daerah, 25 February 2003. The office in question is the Office of National Unity, Politics and Public Defence (Kesbangpolinmas).

<sup>17</sup> Crisis Group interviews, Muhammad Hikam, a former minister who helped BIN draft its latest response to the intelligence

When President Yudhoyono took office in October 2004, BIN was tasked with coordinating intelligence units in the TNI and police, but it had weak legal and political power to do so, and little information-sharing actually took place. After he was re-elected in 2009, Yudhoyono took a major step, appointing a civilian, the respected former police chief Sutanto, to head BIN; it was the first time in almost 50 years that a major intelligence agency was headed by someone outside the military and further established the police as the paramount agency in internal security. But Sutanto, like his immediate predecessor, was closely associated with the president's election campaign, and many would have preferred greater distance.

### III. IDEALS AND REALITIES

Producing a law on intelligence in any democratising country is a challenge. As the Geneva Centre for Democratic Control of Armed Forces (DCAF), an international foundation of which Indonesia is a member, notes:

The secretive nature of the work of intelligence services, their recourse to special powers and their operation at the margins of the law combine to make [them] especially difficult subjects for democratic governance and accountability.<sup>19</sup>

In an ideal world, however, a law would emerge from a comprehensive assessment of threats and challenges to security; a consensus on an appropriate division of labour in addressing those challenges; and a firm commitment to establishing effective oversight and accountability mechanisms in the interest of protecting democratic values. In Indonesia, these prerequisites are not yet in place.

In 2004, Crisis Group recommended that the Yudhoyono government undertake a comprehensive security review to give strategic direction to security policy, clarify roles and responsibilities and establish a mechanism that can oversee operations.<sup>20</sup> Seven years later, that review is needed more than ever. Particularly if a new legal basis is

to be established for the intelligence services, there needs to be a clear understanding of the kind of information they are expected to gather and the uses to which it will be put.

#### A. THREAT ASSESSMENT

The major threat assessments made since 1998 – two defence white papers in 2003 and 2008 – were drawn up by the military and do not reflect the role of the police or intelligence. In 2009, an academic paper justifying the need for a new national security law was produced by the National Resilience Institute (Lembaga Ketahanan Nasional, LEMHANAS), also reflecting military views.<sup>21</sup>

All stress that the threat from traditional state actors remains very low and that the major dangers come from non-state actors, mostly internal.<sup>22</sup> Indonesia has no hostile neighbours, and the risk of deliberate destabilisation, let alone invasion or other forms of military aggression, from another country is virtually nil. There is little danger of spill-over from interstate global or regional conflicts.<sup>23</sup>

The papers stress the importance of territorial integrity and the danger of losing land to other countries as a result of poorly demarcated borders and insufficiently guarded islands. They note the danger from transnational crime, including international terrorism and piracy. They also make passing reference to threats from environmental damage, climate change, human trafficking, natural disasters and epidemics.<sup>24</sup>

But the main focus is on political threats from within: separatism, terrorism, radicalism and communal conflict, reflecting both long-entrenched thinking and concerns at the time the assessments were written. In 2003, when the first post-Soeharto white paper was issued, the first Bali bombing had just taken place; activities of pro-independence movements in Aceh and Papua had increased; East Timor, now known as Timor-Leste, had just become independent; and the wounds from the communal conflicts in Maluku

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bill, South Tangerang, 27 February 2011; and a retired general, Jakarta, 22 June 2011.

<sup>18</sup> Crisis Group interviews, East Java Deputy Governor Syaifulah Yusuf, Surabaya, 24 March 2011; and former Surabaya Deputy Mayor Arif Affandi, 25 March 2011. There have been instances of local politicians requesting information on political rivals or monitoring students who attend meetings hosted by foreign NGOs.

<sup>19</sup> See the section on intelligence governance at the website of the Geneva Centre for Democratic Control of Armed Forces, [www.dcaf.ch](http://www.dcaf.ch).

<sup>20</sup> Crisis Group Report, *Indonesia: Rethinking Internal Security Strategy*, op. cit., pp. 22-23.

<sup>21</sup> LEMHANAS is a state research and education centre that reports to the president but was once part of the armed forces and is seen as conservative. Its paper was in accordance with standard practice that all bills are accompanied by an academic paper setting out the justification for the law.

<sup>22</sup> See the 2003 white paper – “Mempertahankan Tanah Air Memasuki Abad 21”, defence department, Jakarta, March 2003; and the 2008 white paper – “Buku Putih Pertahanan Indonesia 2008”, defence department, Jakarta, February 2008.

<sup>23</sup> “Buku Putih Pertahanan”, op. cit., p. 15.

<sup>24</sup> See “Mempertahankan Tanah Air”, op. cit.; “Buku Putih Pertahanan”, op. cit., and Naskah Akademik untuk Rancangan Undang-Undang Tentang Keamanan Nasional, Jakarta, October 2009 – the academic draft for the national security bill.

and Poso were still fresh. In 2008 there was slightly more emphasis on the security problems posed by new technologies that could be used for cybercrime and attacks on the financial system, and the focus on terrorism was stronger, noting links between domestic and international terrorism.<sup>25</sup>

There was still a tendency to look backwards rather than forwards. In one section, the 2008 white paper notes Indonesia's experience with regional rebellions in the 1950s and the PKI in the 1960s and says that the danger is still present:

In recent decades, armed rebellion as a form of threat to Indonesia has developed into separatist movements that may be simmering under the surface. Past radical movements and remnants of the PKI's 1965 coup have successfully regenerated and metamorphosed into social organisations that exploit the euphoria of reform to slip into all aspects of national life. National vigilance is needed from all components of the Indonesian nation to follow [these developments].<sup>26</sup>

The 2009 LEMHANAS paper listed eight categories of threat: geographic, demographic, natural resources, ideological, political, economical, socio-cultural and defence/security. In the last category, the paper cited separatist movements, terrorism and radicalism as threats to internal security that all had an aim "to diminish trust among national elements or sow distrust against state administrators".<sup>27</sup> It also referred to a new domestic threat: "excess of democracy".<sup>28</sup>

The 2010 academic paper accompanying the intelligence bill copied many parts of the LEMHANAS paper verbatim. It defined threat as "any situation, natural or engineered, physical or non-physical, foreign or home-grown, direct or indirect, that has the potential to disturb, block, change, damage, or destroy the identity, integrity, existence, interest, struggle, livelihood or development of the nation".<sup>29</sup> It highlighted seventeen: espionage, subversion and sabotage; terrorism; border disputes; separatist movements;

horizontal, vertical and diagonal conflicts that may involve foreign intervention; transnational organised crime (narcotics, human trafficking, money laundering, illegal arms trade, smuggling, white collar crime, cybercrime, piracy); radicalism; religious, ethnic, racial or inter-group riots; natural resources theft; environmental damage; counterfeiting; decline in nationalism; national disintegration; immigration; poverty and unemployment; natural disaster; and new incurable diseases.

None of the above was further substantiated, giving no guidance on priorities or division of labour. A legislator said the academic paper was prepared by parliamentary staff and resembled "a compilation of minutes from meetings" on the subject rather than a serious study.<sup>30</sup> A retired military officer said that despite all the lip service to new non-military threats, many in BIN and the military subscribe to the old doctrine that communism is the problem: "Their perceptions are still from the New Order, and they don't want to read books on world developments".<sup>31</sup>

## B. DIVISION OF LABOUR

In an ideal world, there would be clear divisions of labour among national intelligence agencies but without the silo mentality that militates against inter-agency communication and cooperation.

In Indonesia, Soeharto's personal leadership of the intelligence agencies and the focus on domestic enemies left a legacy of unclear and overlapping mandates. BIN has a wide scope, stretching from collecting domestic and external intelligence, coordinating other intelligence agencies and formulating policies on intelligence to developing counter-intelligence efforts in and out of the country.<sup>32</sup> BAIS has separate directorates for collection of strategic information inside the country; foreign intelligence; and defence intelligence. The police intelligence body, BAINTELKAM, focuses on information to support criminal investigations. But officers from all three were on the ground in a raid on a terror suspect in Temanggung in August 2009 and following an attack on three Ahmadiyah members by radicals in Cikeusik, Banten in February 2011.<sup>33</sup>

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<sup>25</sup> "Buku Putih Pertahanan", op. cit., p. 30. It noted, contrary to available evidence, that poverty and low levels of education were major drivers of recruitment into terrorist organisations.

<sup>26</sup> Ibid, p. 29.

<sup>27</sup> Naskah Akademik untuk Rancangan Undang-Undang tentang Keamanan Nasional, op. cit., p. 54.

<sup>28</sup> Ibid. p. 3.

<sup>29</sup> Naskah Akademik untuk Rancangan Undang-Undang tentang Intelijen Negara, 19 November 2010. This paper followed meetings between legislators and experts. The academic paper of the current intelligence bill includes descriptions of intelligence services of other countries but fails to mention BIN, BAIS and BAINTELKAM and how the bill will position these three important branches.

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<sup>30</sup> Crisis Group telephone interview, Commission I legislator, 14 June 2011.

<sup>31</sup> Crisis Group interview, retired military officer, Jakarta, 18 March 2011.

<sup>32</sup> Presidential Ruling no. 34/2010 on the State Intelligence Agency.

<sup>33</sup> "Ini Dia 3 Daerah Basis Teroris Versi BAIS", *Kompas*, 11 August 2009; and comments from Indonesian police Inspector General Paulus Purwoko in a discussion held by the Asia Europe Foundation, "Who will Guard the Guards Themselves:

Beyond these three, specialised intelligence units exist in the attorney general's office, immigration services, tax office and several ministries. The creation in 2010 of a National Anti-Terrorism Agency (Badan Nasional Penanggulangan Terorisme, BNPT) added a new element to the mix, with a division for operations that includes an intelligence unit.<sup>34</sup>

The need to sort these out is one argument for a new law. DCAF suggests that any intelligence law should provide a clear and specific mandate, including geographic areas of responsibilities, subjects of investigation, limits of competence and restrictions imposed on activities, relations among services within the intelligence community and their coordination, means by which the services are held accountable, including mechanisms of executive control, legislative oversight and judicial review, and legal avenues to deal with complaints of misconduct.<sup>35</sup>

In Indonesia, there is no master document that sets out the functions of the different units or explains how they should relate to each other; all see themselves as playing a major role in assessment of domestic threats. BAIS is the one agency with a mandate to collect and assess strategic intelligence, but for all the references in the defence white papers to non-military long-term threats, such as environmental destruction and public health hazards, there is no indication that BAIS or any other agency has the capacity to produce high-quality, policy-relevant assessments on these issues.

BIN, BAIS, BAINTELKAM and BNPT all want a role in counter-terrorism. The 2008 white paper argues that the military should be involved in the fight against terrorism through "the intensification of its intelligence function, use of special forces with response capacity and empowerment of the territorial commands". BIN sees its role as focusing on external threats – for example, detecting an al-Qaeda operative entering Indonesia or communicating with Indonesian contacts from abroad.<sup>36</sup> Since 2003, by far the best information on radical networks has been held by the specialised counter-terror units of the police and a few of their officers working with BNPT. Before determining appropriate divisions of labour, Indonesian authorities should have a good understanding of the relative strengths and weaknesses of existing organisations.

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Human Rights and Accountability in Policing", Jakarta, 28 April 2011.

<sup>34</sup> "Struktur Organisasi BNPT (Revisi)", 21 July 2010, copy made available to Crisis Group.

<sup>35</sup> "DCAF Backgrounder: Intelligence Services", Geneva Centre for Democratic Control of Armed Forces (DCAF), March 2006, [www.dcaf.ch](http://www.dcaf.ch).

<sup>36</sup> Crisis Group interview, senior BIN official, Jakarta, 5 July 2011.

## C. ACCOUNTABILITY MECHANISMS

DCAF suggests that any intelligence law provide for accountability of the intelligence services through five layers of scrutiny: internal control, executive branch control, judicial review, parliamentary oversight and civil society oversight.<sup>37</sup> In Indonesia, the first two need improvement and the last three are close to non-existent.

BIN's internal controls have uncovered some crimes, such as the 2004 case of the head of the anti-counterfeiting directorate running a counterfeiting ring.<sup>38</sup> Allegations of political crimes rarely get investigated. The most high-profile of these was the fatal poisoning of human rights activist Munir Said Thalib when he was flying to Amsterdam in September 2004. An off-duty Garuda Indonesia pilot with longstanding ties to BIN was arrested and convicted for the murder.<sup>39</sup> Through him, the deputy head of BIN at the time, Muchdi Purwopranjono, a former army special forces commander, was also implicated. He was detained and tried but was eventually acquitted. The head of BIN at the time told an independent fact-finding team that the agency had conducted an internal investigation and found nothing linking any of its employees to the Munir murder. Nevertheless, Muchdi was quietly removed from his position in a general post-election changing of the guard not long afterwards.

There is no judicial oversight over the intelligence agencies now and none likely in the future, and parliamentary oversight is weak. Commission I, the legislative unit covering intelligence, defence, communication and foreign affairs, meets quarterly with BIN and can summon its leaders to meetings, but legislators have been powerless to compel the agency to answer questions on specific activities, even on budgetary matters that the parliament has the responsibility to scrutinise. BIN leaders have been sometimes more willing to share information with a small group of trusted legislators on the margins of these Commission I briefings, and a senior official said he supported the idea of a select oversight committee whose members would be appointed for a five-year period.<sup>40</sup>

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<sup>37</sup> "DCAF Backgrounder: Parliamentary Oversight of Intelligence Services", DCAF, March 2006.

<sup>38</sup> "Perebutan Kuasa Intelijen: Dari Otoritarian Menuju Penghormatan HAM", Imparsial, July 2010, pp. 14-16.

<sup>39</sup> Garuda Indonesia pilot Pollycarpus Budihari Priyanto was found guilty of administering the poisoning. Prosecutors argued he received a series of payments from BIN operatives on Muchdi Purwopranjono's orders but could not prove the transfers or their alleged link to the murder in court. Imanuddin Razak, "Muchdi's Acquittal: A Question of A Broken Promise", *The Jakarta Post*, 1 March 2009.

<sup>40</sup> Crisis Group interviews, Commission I members, Jakarta, March and May 2011.

There is also no effective complaint mechanism. Indonesia has a weak national ombudsman, whose role remains largely unknown to the general public.<sup>41</sup> The best check on intelligence excesses remains the country's outspoken media, but this is no substitute for more formal accountability procedures.

#### IV. THE INTELLIGENCE BILL

The current bill, initiated after the new parliament was elected in 2009, follows the failure of earlier efforts that sought to expand BIN's powers in the wake of 9/11. It was drafted by parliamentarians who for the most part want BIN made more professional and accountable. They face opposition, on the one hand, from human rights activists who want more safeguards built in against potential abuse and, on the other, from the military and intelligence establishment who, in the name of fighting separatism and terrorism, want a return to some of the powers wielded during the New Order.

The final version will depend on whether the president's political coalition in parliament supports the government position on arrest and detention. As of mid-July, it is tending toward opposition, but if the parliament successfully resists pressure to give BIN the extra powers, it may have to compromise on other issues.

Indonesia's unique legislative process is worth noting here, because laws are generally not made through voting. Most of the deliberation occurs first in commission, in this case Commission I, which then assigns an ad-hoc team consisting of up to half of the commission members, called the working committee (*panitia kerja, panja*), to discuss the bill with government representatives before it is submitted back to the full commission. After the commission approves, it then goes to a plenary session for enactment. If differences among the political parties represented in the commission can be settled within the *panja*, there will be no voting in either the commission or the

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<sup>41</sup> The nine-member Ombudsman Republik Indonesia (ORI) can recommend punishments against any civil servant other than elected or politically-appointed officials, and can ask the police bring before it, by force if necessary, anyone who ignores its recommendations. It has not been effective since it was created in 2000. The bulk of its cases deal with illegal levies in land and transport management. See the minutes of the 2010 hearing between the parliament and ORI, "Laporan Singkat Rapat Dengar Pendapat Komisi II DPR RI dengan Ombudsman Republik Indonesia", 1 February 2010. Danang Girindrawardana has led ORI since January 2011. He admitted that the agency had not made itself properly known to the public. See "Ombudsman Menjawab Harapan Publik", www.kbr68h.com, 21 February 2011, and www.ombudsman.go.id.

plenary session. In early July, the intelligence bill was still being debated within the *panja*, whose chairman, Agus Kartasasmita, said the process might be extended until October.<sup>42</sup>

#### A. BACKGROUND TO THE DRAFT

The first attempt at a comprehensive intelligence bill came in January 2002, in the wake of the 9/11 terrorist attacks in New York and Washington. BIN drafted a bill aimed at giving intelligence operatives the ability to conduct operations as well as powers to wiretap, summon suspects for interrogation, freeze bank accounts and, most controversially, arrest and detain suspects for an initial seven days, extendable up to nine months, all without external approval.<sup>43</sup> It also allowed for special funding from the president without parliamentary scrutiny.<sup>44</sup> More constructively, it proposed the creation of a permanent intelligence commission in the parliament to oversee the intelligence budget as well as the substance of covert operations and called for professional training for agents.

The draft faced immediate opposition from sceptics who doubted that terrorism posed any threat to Indonesia as well as from critics who feared a rollback of newly won civil liberties and accused BIN of trying to recoup powers lost in the democratic transition. BIN and its predecessors had documented the development of Islamic extremism, but many in the political elite denied there was a serious problem.<sup>45</sup> The 2002 draft never reached parliament. Instead, in the aftermath of the Bali bombings, the Megawati government concentrated its political energy on pushing through a new anti-terrorism law that also drew fire from Muslim groups and human rights activists but at least kept arrest and detention powers with the police.<sup>46</sup>

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<sup>42</sup> "DPR Memilih Menunda Pengesahan RUU Intelijen", www.tempointeraktif.com, 2 July 2011.

<sup>43</sup> Rancangan Undang-Undang Republik Indonesia no. \_\_\_/2002 tentang Intelijen Negara, January 2002, Articles 18, 20, 26 and 27 The bill also sought to deny the arrested person legal counsel, bail, visiting rights and the right to remain silent. Copies were obtained from Imparsial, the Indonesian Human Rights Monitor and www.akpol98.org, a website managed by the Indonesian police.

<sup>44</sup> Ibid, Article 17.

<sup>45</sup> State Intelligence Agency, *Radical Islam in Indonesia and the Role of Intelligence* (Jakarta, 2004). In March 2002, Vice President Hamzah Haz, who was then also the leader of the Islamist party Partai Persatuan Pembangunan (PPP), went on a campaign saying Indonesia had no terrorists. See, "Hamzah Haz: Kita Juga Akan Memusnahkan Teroris", *Gatra*, 21 March 2002. He only relented after the October 2002 bombings in Bali.

<sup>46</sup> The anti-terrorism law allows police investigators to arrest and detain for seven days without charge anyone suspected of

In 2004, a new draft from BIN started to circulate among legislators, with provisions similar to the 2002 document. In the intervening two years, home-grown terrorism had become an established reality. Although police had shown themselves capable of identifying the perpetrators quickly, BIN chief A.M. Hendropriyono, a former army general who was part of Megawati's campaign team, sought again to arm his staff with arrest and detention powers. The draft came up against competing priorities and election-year politics. TNI was pushing for a bill that would clarify its post-Soeharto status, and Vice President Hamzah Haz, who had presidential ambitions, came out publicly against the BIN draft that he thought would offend Muslim voters.<sup>47</sup> Fighting for re-election, Megawati opted to send only the military bill to parliament.<sup>48</sup>

BIN's 2004 draft produced a thoughtful response from civil society, however. On 23 August 2005, a group of ten academics, mainly from the University of Indonesia, offered an alternative version that became known as the Pacivis draft, after one of the research centres involved. It acknowledged the need for a new intelligence law but stressed that it needed to be guided by democratic values.

Inspired by the restructuring of the U.S. intelligence bureaucracy in the wake of 9/11, the group proposed separate services for foreign and domestic intelligence, overseen by a new coordinating body called the State Intelligence Coordination Institute (Lembaga Koordinasi Intelijen Negara, LKIN).<sup>49</sup> The head of LKIN would be appointed by the president from outside the intelligence community, and the whole apparatus would report to a ministry instead of directly to the president, in the interests of oversight and control. In the Pacivis plan, domestic intelligence would fall to BIN, and BAIS would be disbanded and replaced

by a new agency for foreign and defence intelligence. No one in the security sector endorsed the Pacivis draft at the time, and there was little advocacy on its behalf from public interest groups. A political scientist who worked for BIN said the LKIN idea would not work, because historically, only institutions with strong authority and resources were able to coordinate others with entrenched institutional interests.<sup>50</sup>

In March 2006, during Yudhoyono's first term, another short-lived attempt to draft an intelligence bill based on the 2002 template met the same fate as its predecessors. Then, in 2009, a new initiative from within the parliament began that had more staying power. It was prompted by the election that year of several first-time legislators with intelligence backgrounds, including newly retired generals like Tubagus Hasanuddin from the opposition Indonesian Democratic Party Struggle (Partai Demokrasi Indonesia Perjuangan, PDIP) and Salim Mengga from the president's Democrat Party.<sup>51</sup> Along with other Commission I members who had some knowledge of intelligence, they were concerned that BIN was the only security unit that operated without a supporting law and began hearings in mid-2010 with academics, state agencies and human rights groups.

By October 2010, they had a new draft that went straight to the top of the list of legislative priorities.<sup>52</sup> Endorsement by all parties on 16 December meant that deliberations could start as soon as the parliament reconvened in January 2011.<sup>53</sup> The relatively smooth passage of the bill through these early stages may have been in part a reaction to public criticism of the parliament over its inaction – it only passed sixteen laws in 2010 after promising to produce 70.<sup>54</sup>

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links to terror activities. After the person is named a suspect, the police can extend the detention to six months. See Law no. 15/2003, Article 25-28. Indonesia's criminal procedure code (KUHAP) only allows police to hold a person for one day without charge. See KUHAP, Articles 19 and 24.

<sup>47</sup> "VP, Activists Oppose Proposed Bill on State Intelligence", *The Jakarta Post*, 3 May 2003.

<sup>48</sup> The military bill was finally passed a few days before the completion of her term, and, in the end, Megawati and Haz failed to win the 2004 presidential election. The eventual winner, current President Susilo Bambang Yudhoyono, who served as the coordinating minister of political and security affairs, campaigned on a strong security platform and used official speaking opportunities to show his stance against terrorism without mentioning the bills, including remarks on the first anniversary of the Bali Bombings, 12 October 2003, that came out even stronger than the speech of Australian Prime Minister John Howard.

<sup>49</sup> Kelompok Kerja Indonesia Untuk Reformasi Intelijen Negara, Rancangan Undang-Undang tentang Intelijen Negara, Pacivis Universitas Indonesia, August 2005.

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<sup>50</sup> Crisis Group interview, Muhammad Hikam, a former minister who helped BIN draft its latest response to the intelligence bill, South Tangerang, 27 February 2011.

<sup>51</sup> Indonesia's 2009 legislative elections for the first time allowed voters to pick a candidate from party lists rather than just ticking the party that would later assign parliamentary seats using the order in the lists. Veteran politicians who usually get high places on the party list found that they were no longer safe. This change resulted in the emergence of many candidates who had never served in the parliament before (76 per cent). See Mochamad Ade Maulidin, "DPR Periode 2004-2009: Wajah Baru, Kualitas Lama", *Jurnalparlemen.com*, 8 February 2010.

<sup>52</sup> It was given top billing by Badan Legislasi, the parliamentary unit tasked with setting legislative priorities.

<sup>53</sup> Ignatius Mulyono, "Kebijakan Penyusunan Prolegnas RUU Prioritas Tahun 2011", paper presented in a discussion on legislative priorities between the parliament and the government, 14 October 2010. Mulyono is the head of the parliament's Badan Legislasi.

<sup>54</sup> "DPR 2009-2014 Lebih Buruk", *Poskota*, 16 April 2011; and Crisis Group interview, Teguh Juwarno, Commission I legislator, Jakarta, 21 March 2011.

The bill is a compromise of competing interest groups, and while it is difficult to see that it offers any significant improvements to the current structure, proponents say that these can still come in the implementing regulations – for example, spelling out information-sharing arrangements and the nature of the parliamentary oversight committee. There is no mention of detention powers for BIN, and while a body called the LKIN is included, a nod to the Pacivis draft, it is not the separate coordinating body that the academics envisioned but looks more like a forum of heads of existing intelligence units, who retain their individual authority.

The key provisions are as follows:<sup>55</sup>

- ❑ the scope of state intelligence covers domestic and foreign affairs – ideology, politics, economy, social culture, defence and/or security; law; natural resources; and information and communication technology (Article 7);
- ❑ the primary state intelligence agencies are in the military, police and attorney general's office (Article 9);
- ❑ these are to be coordinated by the State Intelligence Coordinating Institute (Lembaga Koordinasi Intelijen Negara, LKIN), which is also the main organisation for collecting and analysing intelligence information from within and outside the country (Article 28);
- ❑ the institute formulates a code of ethics for all intelligence officers and can form an internal ad-hoc board called the State Intelligence Honorary Council (Dewan Kehormatan Intelijen Negara) to investigate violations of the code (Article 29);
- ❑ LKIN has special powers to intercept communications and check financial flows that are believed linked to terrorism, separatism and other threats. (Article 31);
- ❑ the membership of the coordinating body consists of leaders of state intelligence units (Article 32);
- ❑ activities and conduct of state intelligence are reported to the president by the head of LKIN (Article 36);
- ❑ the parliamentary commission that covers intelligence can form a working committee “as needed” to inquire and resolve matters related to state intelligence policy, activities and budgetary matters (Article 37);
- ❑ anyone who intentionally leaks confidential intelligence information faces imprisonment of seven to fifteen years (Article 38);

- ❑ any intelligence operative who abuses his or her powers to intercept a communication faces seven to ten years imprisonment (Article 41); and
- ❑ BIN remains in existence until the new coordinating body is formed within a year after the law comes into effect (Article 42).

On 13 March 2011, the executive branch responded with a document called the Inventoried List of Problems (Daftar Inventarisasi Masalah, DIM), essentially a list of objections to the parliamentary draft. The most important were its rejection of the LKIN on the grounds that BIN should continue to play the coordinating role and its insistence that BIN be granted the authority to undertake preventive detention (*pencegahan dan penangkalan dini*) for up to seven days and “intensive interrogation” (*pemeriksaan intensif*) of individuals “believed linked to terrorism, separatism, espionage, subversion or other activities that threaten national security”.<sup>56</sup> Defence Minister Purnomo Yusgiantoro and Law and Human Rights Minister Patrialis Akbar, both civilians, defended the push to give expanded powers to BIN with a zeal that surprised even the former generals who had helped draft the bill.<sup>57</sup>

In May 2011, a coalition of civil society organisations held a series of meetings with prominent Commission I legislators to counter the DIM. They urged the parliamentarians to maintain human rights principles while also arguing for reinsertion of the articles from the 2005 Pacivis draft on the creation of new agencies.<sup>58</sup>

Commission I members have agreed to retain BIN as is, rather than create a new coordinating structure. The issues of arrest and detention, intercepts authority and oversight remain unresolved.

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<sup>55</sup> Rancangan Undang-Undang Republik Indonesia tentang Intelijen Negara. The original December 2010 parliamentary initiative on state intelligence. Copy downloaded from the parliament's official website, [www.dpr.go.id/](http://www.dpr.go.id/).

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<sup>56</sup> “Daftar Inventarisasi Masalah (DIM) Pemerintah Atas Rancangan Undang-Undang Intelijen Negara”, 16 March 2011, points 87-90. Copy obtained from a Commission I member. When the parliament as an entity proposes a bill that is endorsed by all parties, the government has the right to object or request changes via the DIM. When the government presents a draft, each party in the parliament can put forward a DIM. Civil society groups called their response a DIM, too, although it had no formal legal status.

<sup>57</sup> Crisis Group interview, Tubagus Hasanuddin, Commission I legislator, Jakarta, 17 March 2011.

<sup>58</sup> “Kertas Posisi Koalisi Advokasi Untuk RUU Intelijen Negara”, Koalisi Advokasi Untuk RUU Intelijen Negara, May 2011. The coalition consists of 22 civil society groups, most of which work in the field of human rights. Pacivis is not a member.

## B. KEY DEBATES

The state of debate on the most contentious issues is as follows:

**Arrest and detention.** Defence Minister Purnomo argued the lack of arrest powers had prevented intelligence operatives from stopping a spate of new terrorist actions in 2010 and 2011 targeting government officials, especially the police. He added that the government should not be blamed for failure to prevent them when laws were weak.<sup>59</sup>

The head of BIN, General (ret.) Sutanto takes a different position. He says that BIN never asked for arrest and detention powers to be included in the bill.

We don't want to arrest people because if we do, our cover will be revealed. If we arrest people, we need a place to hold them, which we don't have. We will be better off just giving information to other agencies. But if there is an imminent external threat, like someone from al-Qaeda entering Indonesia, we want to be able to stop and deport that person, or if an emergency situation arises, such as a terrorist carrying a bomb into a mall, we may not have time to alert the police. If we hesitate, we will be too late. We want to be able to take action and then turn that person over to the police.<sup>60</sup>

An opposition parliamentarian called the proposal for extra powers a way to legitimise "abduction" by the state.<sup>61</sup> The ruling Democrat party is divided on the issue; Commission I member Hayono Isman, a former minister in the Soeharto era, backs the government, while the parliament speaker, Marzuki Alie, who is often criticised for being out of step with it, opposes giving BIN extra powers.<sup>62</sup> President Yudhoyono's stance is unclear.

Civil society organisations have said that arrest and detention powers for intelligence would lead to violations of human rights and insist they be dropped.<sup>63</sup> In a fact sheet entitled "Why the Intelligence Bill Must Be Rejected", the Commission for the Disappeared and Victims of Violence (Komisi Untuk Orang Hilang dan Korban Tindak Kekerasan, KontraS), argues that those powers, even if applied to terrorism cases, would undermine the main function of early warning and reinforce the old image of intelligence as investigation without accountability.<sup>64</sup>

One possible compromise, according to a member of parliament, is for BIN to be given authority to question suspects detained by the police, rather than separate detention powers, but this too will almost certainly face opposition, and some suggested that unless the provisions in the bill relating to extra powers are carefully drafted, the law could trigger petitions for a judicial review by the Constitutional Court.<sup>65</sup>

**Interceptions of communications and financial transactions.** BIN officials say that while the police use communications intercepts to follow particular targets who have already committed crimes, they need the authority to prevent broader threats, such as the possibility of economic sabotage, even when there is no specific target of arrest. They point out that the current draft includes penalties for abuse of intercept powers, whereas no such sanctions apply to the police.<sup>66</sup>

The bill, however, has no provision for securing approval of intercepts, raising concerns that these could be undertaken arbitrarily without authorisation from the judiciary, the parliament or even the president. In its response to the draft, the government sought to broaden BIN's authority to cover "electronic documents" that are "strongly suspected to have links to terrorism, separatism, espionage, subversion, sabotage and other activities that threaten national security".<sup>67</sup> The nature of these documents is left undefined, although presumably it could refer to Indonesian translations of the al-Qaeda magazine *Inspire* and similar online material.

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<sup>59</sup> Irvan Sihombing, "Menhan Usul RUU Intelijen Harus Mengatur Penangkapan", *Media Indonesia*, 29 March 2011. Purnomo said that there was no power to arrest anyone who had the intention to carry out such acts, even though Article 9 of the anti-terror law (Law no. 15/2003) clearly states that anyone who is known to hide, transport, attempt to possess or hand over any dangerous materials for terrorism purposes faces the death penalty.  
<sup>60</sup> Crisis Group interview, 5 July 2010.

<sup>61</sup> "BIN Dbolehkan Menahan, Apa Bedanya dengan Penculikan?", *Jawa Pos*, 28 March 2011; and comments from PDIP politician Tubagus Hasanuddin in a series of discussions with civil society groups on the intelligence bill, Jakarta, March 2011.  
<sup>62</sup> "Penolakan atas RUU Intelijen Terus Bergilir", *tempointeraktif.com*, 27 March 2011; and "Ketua DPR Tolak Intelijen Menyadap Tanpa Ijin Pengadilan", *tempointeraktif.com*, 22 March 2011.

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<sup>63</sup> Crisis Group interviews, members of the Advocacy Coalition for the State Intelligence Bill, March and May 2011.

<sup>64</sup> "Intelijen: Menangkap Tanda Tak Cerdas", Komisi untuk Orang Hilang dan Korban Tindak Kekerasan (KontraS), June 2011. KontraS has a particular interest in pressing for accountability because it was set up in the aftermath of an intelligence operation that led to the disappearance of student activists in 1998, and its founder, the human rights lawyer Munir, was murdered in 2004.

<sup>65</sup> The precedent is a 2004 court decision that overturned a provision allowing the new anti-terror law to be applied retroactively. Also see "PDIP Minta Pembahasan RUU Intelijen Ditunda", *tempointeraktif.com*, 30 March 2011.

<sup>66</sup> Crisis Group interview, BIN officials, 5 July 2011.

<sup>67</sup> "Daftar Inventarisasi Masalah", *op. cit.*

Human rights groups, however, are concerned that BIN would undertake more intensive monitoring of Twitter and Facebook, the two social networking sites with millions of followers in Indonesia. Rights groups accept the need for intercept powers, but they have pushed for judicial oversight to ensure they would not be abused, while Commission I legislators are struggling to find a middle ground that can address concerns from the government that seeking approval would cause unnecessary delay.<sup>68</sup> Even those who advocate judicial oversight are worried that courts are too weak and corrupt to exert any real supervision, but the principle is gaining traction among legislators.<sup>69</sup>

**Oversight.** The draft calls for greater parliamentary oversight on policy, operations and budgetary matters, but it does not propose creating a permanent intelligence committee.

One parliamentarian said:

The oversight we have now only covers supervision of budget and general supervision, but BIN has never revealed sensitive information to the parliament. If BIN says they are using X billion rupiah to conduct an operation, we want to know who they are cultivating and what is their target and purpose. If they want to conduct covert operations against those who want to invade the country, we'd allow it, but if they want to target political rivals, that is not right. Of course, if we want to have oversight, we also need legislators who know the issues and can ask pertinent questions.<sup>70</sup>

The bill includes no requirement that legislators involved take oaths of silence in recognition of their access to classified information.<sup>71</sup> It is common practice for members of parliament to talk to the media when a briefing is underway, and leaks are not only possible but likely. This may require new procedures, such as forming a special intelligence committee whose members would be required to have special clearance. With a composition that includes two movie stars, a quiz show host and a football announcer, Commission I seems ill-equipped for the role, although as noted, it also includes experienced former intelligence officers.

Another legislator said the Indonesian parliament is not familiar with practices in use abroad, such as special clearances and select committees:

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<sup>68</sup> Crisis Group conclusions from comments by legislators and human rights activists in the series of meetings in the parliament on the intelligence bill, May 2011.

<sup>69</sup> Crisis Group interviews, members of the Advocacy Coalition for the State Intelligence Bill, March and May 2011.

<sup>70</sup> Crisis Group interview, member of parliament, Jakarta, 18 March 2011.

<sup>71</sup> Rancangan Undang-Undang Republik Indonesia No. \_\_\_\_\_ tentang Intelijen Negara, Article 37 (2).

Some people have asked the parliament to oversee intelligence, but I don't know what tools we have to do this. We can try to control them, but we just don't have any guidance on this from our laws on parliamentary structure. We want to have more accountability, not be kept in the dark like now. I am disappointed with [BIN chief] Sutanto because even in closed-door meetings he has been reluctant to tell us things.<sup>72</sup>

Parts of the government argue that more external oversight would encumber operations.<sup>73</sup> BIN itself is willing to explore the idea of a select committee.

**Human Rights.** The bill states that intelligence personnel should respect human rights, democracy and civilian supremacy. BIN chief Sutanto publicly asserted in a 24 May 2011 meeting that his subordinates would not ignore human rights and would face punishment if they did.<sup>74</sup> The bill, however, does not include procedures for investigating allegations of abuse or any penalties if the charges prove true. Sutanto has said that BIN should be able to deal with such problems internally, without recourse to the courts. Civil society groups argue that the bill should acknowledge fundamental non-derogable rights, such as the right to life and the right not to be subjected to torture or ill-treatment.<sup>75</sup>

**Separation of foreign and domestic services.** The bill does not suggest any structural changes are needed. The government list of objections states that BIN should be in charge of internal and external intelligence and should have operatives in stations throughout the country and beyond the national borders.<sup>76</sup> Civil society groups in May 2011 backed the idea in the original Pacivis draft to confine BIN to domestic intelligence and create a new body called the Strategic Intelligence Agency (Badan Intelijen Strategis, BIS) to replace BAIS, which would handle foreign as well as strategic intelligence. BIS would be part of the defence ministry, not the TNI, and the military would have its own intelligence capacity exclusively for

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<sup>72</sup> Crisis Group interview, member of parliament, Jakarta, 23 March 2011.

<sup>73</sup> On 23 March 2011, Coordinating Minister for Political and Security Affairs Djoko Suyanto said in a press conference any condition of getting court approval before specific BIN acts like surveillance would prevent rapid response and allow crimes to take place. See "Pemerintah Dukung BIN", *Liputan6.com*, 23 March 2011. Comments from Commission I legislators on BIN concerns in a series of meetings between intelligence bill drafters and civil society groups at the parliament, May 2011. Similar remarks emerged in Crisis Group interviews, Commission I members and active intelligence officials, March-April 2011.

<sup>74</sup> "BIN dan DPR Dukung Perubahan Wewenang Intelijen", *Media Indonesia*, 24 May 2011.

<sup>75</sup> Kertas Posisi Koalisi, op. cit.

<sup>76</sup> "Daftar Inventarisasi Masalah", op. cit.

support of military operations. LKIN would coordinate these units and have the authority to approve or reject any action proposed by them.<sup>77</sup>

While this proposal seemed to have been rejected out of hand in the government list of objections, the part relating to BIS has quietly been inserted into a new draft of a national security law, as discussed below – another reason for putting the intelligence bill on hold so that the various pieces of security legislation can be coordinated.

**Recruitment.** Many observers say that BIN needs to raise the quality of its personnel. One said, of a certain BIN station chief assigned to an outer island province:

He has never received any training and got the post just to warm the bench. He is from the military but without experience in intelligence. He should be able to map out the threats in his region, including economic ones. But he could not find any and kept talking about the extreme right and extreme left. He kept on talking about communism, but it was unclear what he meant by it. We need to overhaul this kind of assignment system.<sup>78</sup>

The bill says that personnel will be recruited from the public, the military, the police, the attorney general's office and other state intelligence institutions. Civil society groups want an end to military secondments to BIN and want all personnel except those in units directly under the TNI to be civilian.<sup>79</sup> The government proposes that BIN draw most of its personnel from a new civilian intelligence school, Sekolah Tinggi Intelijen Negara (STIN) founded in 2004, and leave recruitment for other intelligence units to their respective organisations.<sup>80</sup> Some parliamentarians agree that reliance on STIN graduates would be one way of gradually altering the dominance of the military within BIN; BIN officials suggest that dominance is overstated, saying today only 10 per cent of BIN staff come from the military.<sup>81</sup>

**Non-Partisanship.** The draft suggests that the intelligence services should be "neutral", but this is a step backwards from the government's first draft in 2002, which clearly stated that intelligence personnel should avoid politics and partisanship.<sup>82</sup> Civil society groups have demanded explicit statements that the operatives should refrain from

politics, business and association with any groups that promote a particular religion, race or ethnic group.<sup>83</sup>

The intelligence bill in March seemed to be on a fast track for approval.<sup>84</sup> In the same meeting in which the government presented its objections, Commission I set a timetable that included formation of a working committee in mid-May, comparative studies abroad by the working members in June, finalisation of the draft in late June, approval in the commission in July and final acceptance in plenary in late July 2011.<sup>85</sup> The original goal was to get the draft out before the president makes his budget proposals on 16 August 2011. By early July, however, deliberations in the working committee had not yet begun, and delay is now inevitable, even though bargaining is underway on key points.<sup>86</sup>

In this case, delay could be useful, allowing more time to think through security legislation as a whole and perhaps postpone the bill until consensus on national strategy can be reached.

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<sup>83</sup> "Matriks Tanggapan Koalisi", op. cit.

<sup>84</sup> The bulk of deliberation occurs in the commissions, which will assign an ad-hoc team consisting of up to half their membership called *panitia kerja* or *panja* (working committee), to discuss the legislation with government representatives before it is sent for commission approval (stage 1), then submitted to the plenary session to be passed (stage 2). If differences among parties can be settled in the *panja*, there will be no voting in either stage. Bribing *panja* legislators is reportedly common practice for stakeholders who have an interest in inserting specific provisions. Sometimes, *panja* meetings are held in five-star hotels, not in the parliament. Crisis Group interviews, former ministers and current members of political parties, February-April 2011. Also see Stephen Sherlock, "The Parliament in Indonesia's Decade of Democracy: People's Forum or Chambers of Cronies?", in Edward Aspinall and Marcus Mietzner (eds.), *Problems of Democratisation in Indonesia: Elections, Institutions and Society* (Singapore, 2010).

<sup>85</sup> Laporan Singkat Komisi I DPR RI, 16 March 2011. This is the note explaining the points of the meeting between Commission I and the government team that include Defence Minister Purnomo Yusgiantoro, Law and Human Rights Minister Patrialis Akbar and BIN chief Sutanto.

<sup>86</sup> Statement from Commission I deputy Tubagus Hasanuddin in a discussion on intelligence at the office of the Indonesian human rights group Imparsial, Jakarta, 29 March 2011. One possible deal was that legislators might be willing to allow BIN arrest powers if the government was willing to reduce allowable detention from seven to three days before legal proceedings take place.

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<sup>77</sup> Matriks Tanggapan Koalisi Tentang Rancangan Undang-Undang tentang Intelijen Negara dan Daftar Inventarisasi Masalah pemerintah, 12 May 2011.

<sup>78</sup> Crisis Group interview, retired military officer, 18 March 2011.

<sup>79</sup> "Matriks Tanggapan Koalisi", op. cit.

<sup>80</sup> "Daftar Inventarisasi Masalah", op. cit.

<sup>81</sup> Crisis Group interview, senior BIN official, Jakarta, 5 July 2011.

<sup>82</sup> Rancangan Undang-Undang Republik Indonesia no. \_\_\_/2002 tentang Intelijen Negara, op. cit.

### C. RELATED LEGISLATION AND THE NEED FOR COORDINATION

There are several other security-related bills pending that have a direct bearing on the role of intelligence, but no effort is underway to consider them as a package or coordinate debate or discussion around them. Two deserve particular note. One, a bill on national security, sets out the overall structure for policymaking on security issues and attempts to define the respective roles of various security agencies. A second is a strengthened anti-terrorism law that is still under discussion and has not yet been submitted to parliament but would keep the police as the sole agency with arrest and detention powers. Since the government proposal to give BIN the authority to “preventively detain and intensively interrogate” – was very much made with terrorism in mind, there could be serious contradictions between the two. Unless there is coordination, the problem of overlapping mandates is likely to get worse, not better.

The National Security Bill has a troubled history, with several failed attempts to move it through parliament.<sup>87</sup> A draft in August 2010 reached the level of a cabinet discussion but was sent back for further revisions. In June 2011, the government submitted a new draft to the legislature.<sup>88</sup> A main difference between the two is a much stronger focus in the new one on the role of the president at the apex of the national security structure, assisted by a National Security Council that would be responsible for formulating national security policy and strategy.

The bill emphasises the role of intelligence in maintaining national security. It cites BIN as the lead agency in a community that includes military and police intelligence units, but a reference in the August 2010 draft to the BIN chief as coordinator of these units has been removed in the new draft.<sup>89</sup> The BIN chief is tasked with formulating intelligence policy in detecting and managing sources of threats,

while leaving it to him (or her, though no woman has held the post) to decide when the involvement of multiple parties is needed.

The new draft appears to accept the Pacivis proposal about disbanding BAIS and setting up a new strategic intelligence unit within the defence ministry.<sup>90</sup> This at least opens up the possibility of greater oversight, although no details are offered. It removes problematic references in the earlier draft that tried to define some divisions of labour among the police, military and BIN in countering terrorism and separatism.<sup>91</sup> The problem of overlapping mandates, however, remains.<sup>92</sup>

There is fear among rights activists that the bill could be another route to giving expanded powers of arrest and detention to the intelligence services. While there is no explicit mention of this in the bill, Article 54 says there would be oversight on “the use of special powers”. In an appendix, the phrase is defined as “the right for national security elements to wiretap, investigate, arrest and conduct other legal forms of coercion”.<sup>93</sup>

The creation in July 2010 of BNPT, the anti-terror agency, gave a new boost to police efforts to get a stronger anti-terrorism law that would, among other things, allow longer periods of pre-trial detention and looser rules of evidence, including the use of intelligence reports in court. The BNPT reportedly wants its own wire-tapping authority and wants the police to have increased powers in suspected terrorism cases; this could clash with provisions in the intelligence bill. The lack of coordination may be an inevitable consequence of the fact that these various bills are being drafted by different institutions in a new democracy: a little democratic messiness is better than authoritarian precision. Still, more strategic direction would be useful.

Some Commission I parliamentarians seem inclined to let the discussion on the national security bill take precedence

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<sup>87</sup> In 2007, a draft by the military was publicly criticised by the police, forcing the president to halt the process and order a change in the drafting team. The first draft of the current version was prepared in November 2008, led by the defence ministry with police involvement, and put on the legislative agenda of the 2004-2009 parliament but never discussed. After the 2009 elections produced a new parliament, completion of the bill was listed as a priority in President Yudhoyono’s first presidential instruction of 2010 and considered as a performance goal for the defence ministry.

<sup>88</sup> It was dated 30 March 2011. Rancangan Undang-Undang no. \_\_\_\_/\_\_\_\_ Tentang Keamanan Nasional, dated 30 March 2011. The document only reached the parliament in June 2011. Crisis Group obtained a copy from a Commission I legislator.

<sup>89</sup> See Article 22 in the 17 August 2010 draft and Article 23 in the 30 March 2011 draft.

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<sup>90</sup> Rancangan Undang-Undang no. \_\_\_\_/\_\_\_\_ Tentang Keamanan Nasional, Article 23, 30 March 2011.

<sup>91</sup> Article 55 of the August 2010 draft of the National Security Bill had a highly problematic division of labour for handling separatism that has been removed in the new draft. It said that for armed movements, the lead agencies would be defence, TNI and the police. For political movements, the lead would be taken by home affairs, foreign affairs and the police; for clandestine movements, the lead agency would be BIN.

<sup>92</sup> Article 44, for example, says the president can form a joint task force to thwart any threat to civil order, although a law defining when the military would come to the aid of the police during such a threat has never been enacted, in part because the police and military have not been able to agree on the appropriate threshold.

<sup>93</sup> Penjelasan atas Rancangan Undang-Undang no. \_\_\_\_/\_\_\_\_ Tentang Keamanan Nasional, Article 54, 30 March 2011.

over the intelligence bill, which would seem to be a more logical order. BIN officials say the former is not breaking any new ground in terms of division of labour, only “crystallising what already exists”. Since military and the police functions are already set down in separate laws, the law on intelligence might as well be enacted first, and then the national security bill could be the umbrella erected over them.<sup>94</sup>

## V. CONCLUSION: THE WAY FORWARD

The idea of giving a formal legal basis to the intelligence agencies is a good one, but the process seems to have created more problems than it has solved, opening up new opportunities for strengthening BIN’s powers without improving accountability. Arrest and detention powers should remain solely with the police, and in the process of working out differences with the government, parliamentarians should stand their ground on the questions of enhanced parliamentary oversight and court orders for wiretapping and financial transaction intercepts.

The drafting process was backwards. A concept paper on national security strategy should have come first, with an assessment of the security challenges the country faces in the coming years and the appropriate roles for different agencies, including the intelligence services, in addressing them. It should have been prepared in consultation with but independent of the agencies concerned. The white papers prepared by the defence ministry in 2003 and 2008 are not sufficient, because they only address the role of the military, from a military perspective. The strategy paper should then have informed the drafting of the national security law, and the intelligence law could then have followed.

While it is too late to start from scratch, at the very least the inconsistencies and possible contradictions between the national security and intelligence bills, and between those and the proposed amendments to the anti-terrorism law, should be ironed out before any of them goes further.

Whatever happens to the bill, it is critical to ensure that intelligence agencies avoid politicisation. This requires getting more professional analysts in place working under directors who themselves are independent of the executive, political parties and political campaigns. The Yudhoyono government takes great pride in the success of Indonesia’s democratic transition. Instead of resisting efforts to reform the intelligence agencies, it should lead the way.

**Jakarta/Brussels, 12 July 2011**

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<sup>94</sup>Crisis Group interview, BIN, 5 July 2011.

## APPENDIX A

### MAP OF INDONESIA



## APPENDIX B

### GLOSSARY OF TERMS

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BAKORSTANAS	Badan Koordinasi Stabilitas Nasional, National Stability Coordinating Agency, an internal security agency that existed from 1988 to 1998
BAKIN	Badan Koordinasi Intelijen Negara, State Intelligence Coordination Agency, the former national intelligence body, created in 1967 that became BIN in 2001
BAINTELKAM	Badan Intelijen Keamanan, Security Intelligence Agency, the police intelligence body
BAIS	Badan Intelijen Strategis, Strategic Intelligence Agency, the military's intelligence body since 1983, had a different name between 1994-1998
BIA	Badan Intelijen Angkatan Bersenjata Republik Indonesia, Armed Forces Intelligence Agency, the military's intelligence body from 1994 to 1998
BIN	Badan Intelijen Negara, State Intelligence Agency, the main national intelligence body since 2001
BIS	Badan Intelijen Strategis, Strategic Intelligence Agency, a non-military intelligence body proposed by civil society to handle external and strategic intelligence
BNPT	Badan Nasional Penanggulangan Terorisme, National Anti-Terrorism Agency, the main counter-terrorism body created in 2010 that reports to the president
BPI	Badan Pusat Intelijen, Central Intelligence Agency, a national intelligence body disbanded after the 1965 coup
Commission I	The parliament unit that covers intelligence, defence, communications and foreign affairs
Darul Islam	The name given to several regional Islamist rebellions, the first of which emerged in West Java in 1948. Several factions of DI exist to this day. It was the parent organisation of Jemaah Islamiyah
Democrat Party	The current ruling party, vehicle of President Susilo Bambang Yudhoyono
Densus 88	Detasemen Khusus 88, Special Detachment 88, police counter-terror unit formed in 2003
DIM	Daftar Inventarisasi Masalah, Inventoried List of Problems, a list of objections that the government or political parties make in response to a legislative proposal
DPR	Dewan Perwakilan Rakyat, People's Representative Council, the parliament
Kesbangpolinmas	Kesatuan Kebangsaan Politik dan Perlindungan Masyarakat, Office of National Unity, Politics, and Public Defence, exists under all local governments, part of the home ministry
KOMINDA	Komunitas Intelijen Daerah, Regional Intelligence Community, local intelligence bodies established in 2003
KOPKAMTIB	Komando Pemulihan Keamanan dan Ketertiban, Command for the Restoration of Security and Order, an internal security agency that existed from 1965 to 1988
KUHAP	Kitab Undang-Undang Hukum Acara Pidana, Criminal Procedure Code
LAKSUSDA	Pelaksana Khusus Daerah, Special Regional Operatives, internal security agencies embedded in military territorial commands, part of the KOPKAMTIB structure
LEMHANAS	Lembaga Ketahanan Nasional, National Resilience Institute, a policy research and education centre that reports to the president, once was part of the military
LKIN	Lembaga Koordinasi Intelijen Negara, State Intelligence Coordination Institute, the proposed body to coordinate the various intelligence units
New Order	President Soeharto's period in power from 1967 to 1998
Opsus	Operasi Khusus, Special Operations, an unofficial intelligence body created by President Soeharto that operated apart from the official structure
Pacivis	A University of Indonesia unit that led efforts for the civil society's intelligence bill draft in 2005
PDIP	Partai Demokrasi Indonesia Perjuangan, Indonesian Democratic Party Struggle, the current main opposition party
PKI	Partai Komunis Indonesia, the Indonesian Communist Party, banned after the 1965 coup
STIN	Sekolah Tinggi Intelijen Negara, the State Intelligence College, a civilian academy founded in 2004 to feed BIN
TNI	Tentara Nasional Indonesia, the Indonesian military