

Principals, Partners and Pawns

This dissertation analyzes the extent to which Indonesian CSOs have contributed to the institutionalization of civilian control over the military, one of the most important partial reforms the country had to complete in its transition to democracy after 1999. While international financial support for Civil Society Organizations (CSOs) is an accepted way to promote the deepening and consolidation of democracy, there are few, if any, systematic attempts to evaluate the immediate and tangible contributions civil society organizations have made. Based on a novel integrative theoretical argument the author employs a two-tiered research design that combines in-depth case studies down to the level of individual legal regulations with more concise congruence and process studies of the full sample of legislative projects touching on military reform. The dissertation finds that Indonesian CSOs have made a significant contribution to the institutionalization of civilian control. They managed to limit the political role and institutional autonomy of the military and pushed civilian decision-makers to extend the powers of President and Parliament over its budget and missions. However, CSO success was largely determined by a combination of the institutional interests of civilian decision-makers and the level of veto power and informal counter-pressure the military exerted over decision-makers. Where reform proposals ran counter to civilian institutional interests and met staunch resistance from the armed forces, CSOs were only successful if they could rely on assertive tactics like large-scale demonstration and continuous public pressuring campaigns. Over time, reductions in the level of international funding for CSOs and the proliferation of institutional veto actors on the government side have slowed down the reform process.

Keywords: Indonesia, Civil-military relations, TNI, civil society, NGO, democracy promotion, military reform, process tracing .

Principals, Partners and Pawns

Indonesian Civil Society Organizations
and Civilian Control of the Military

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Abbreviations

ABRI	Armed Forces of the Republic of Indonesia
BAIS	Army Strategic Intelligence Body
Baleg	DPR's Legislative Body
Bamus	DPR's Deliberative Body
BIN	National Intelligence Body
BPK	National Audit Agency
CSO	Civil Society Organization
Dephan/DoD	Department of Defense
DFID	British Department for International Development
DIM	Problem Inventory Lists
DM	decision-makers
DPD	Regional Representative Council
DPR	People's Representative Council
ELSAM	Institute for Study and Popular Advocacy
G2G	government-to-government assistance
HRWG	Human Rights Working Group
ICEL	Indonesian Center for Environmental Law
ICW	Indonesian Corruption Watch
ISAI	Institute for the Study of the Free Flow of Information
Komnas HAM	National Human Rights Commission
KontraS	Commission for the Disappeared and Victims of Violence
KPK	Corruption Eradication Commission
LBH	Legal Aid Institute
Lemhannas	The National Resilience Institute
Lesperssi	Indonesian Institute for Defense and Security Studies
LIPI	Indonesian Institute of Science
LKIN	planned State Intelligence Coordination Agency
LSN	National Cryptography Agency
M2M	military-to-military assistance
MOOTW	Military Operations other than War
MPR	People's Consultative Assembly
OTI	Office of Transition Initiatives
Panja	Working Committee
Pansus	Special Committee
Perpu	Government regulation in lieu of law
PKI	Indonesian Communist Party

Prolegnas	National Legislative Program
ProPatria WG	ProPatria Working Group
Raker	Working Meetings
ratih	trained people
RDPU	General Hearing Meetings
RIDEP Institute	Research Institute for Democracy and Peace
SANDI	National Alliance Branch for the Democratization of Intelligence
Sishankamrata	Total Peoples Defense and Security System
SSR	Security Sector Reform
Timcil	Small Team
Timsin	Synchronization Team
Timus	Drafting Team
TNI	National Armed Forces of Indonesia
TNI Law	Law on the National Armed Forces of Indonesia
USAID	United State Agency for International Development
UU	Indonesian abbreviation for law, followed by running number and year of promulgation
UUD'45	Indonesian Constitution of 1945
VP	Veto player
WALHI	Indonesian Forum for the Environment

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1 Introduction¹

On August 31, 2010 during my first research stay in Indonesia I was invited to join a group of Indonesian civil society activists for dinner at an Italian restaurant in South Jakarta. Before dinner the group had participated in an event celebrating the anniversary of Indonesian-Russian relations at the Russian embassy. The table talk was fast-paced and mostly in Bahasa Indonesia, which I hardly understood at the time. The conversation revolved around recent political events and an ongoing series of discussions hosted by the Indonesian NGO ProPatria to debate and improve the drafts of four pieces of Security Sector Reform legislation. I had witnessed several of the events and had been impressed by the sizeable crowd these specialized meetings drew and the professionalism with which they were hosted at a four-star hotel in West Jakarta. When I asked Hari Prihatono, executive director of ProPatria, what he had just talked about he told me he was disillusioned with the prospects of civil society influence on the bills and even questioned the approach ProPatria had taken to improve civilian control in the past. Finally, he said: “I think there has to be some time for self-criticism before the process can move on. So far, there has not been a blue print for reform, only the focus on passing laws”. Later, during a more formal interview, Hari reiterated this self-criticism: He said it would be better if Civil Society Organizations focused on supervising the conduct of defense and security rather than on passing laws, even if it meant civil society no longer had any influence on policy formulation (Prihatono 2013).

This evaluation puzzled me. The establishment of civilian control in Indonesia is largely considered successful, especially taking into account the country’s difficult starting conditions. The military has not been a dominant force in Indonesian politics since the transition (Croissant *et al.* 2013: Chapter 5). Not only that, but the consensus in the literature on the influence of civil society on Security Sector Reform in Indonesia is that civil society played a major role in this process (Scarpello 2014; Muna 2008; Sukma 2012; Makaanim and Yunanto 2008). Among the different groups ProPatria and its affiliates had been recommended to me as one of the most important actors in the field by almost anyone I had talked to about civilian control. I had heard stories and anecdotes told about the ProPatria Working Group and how its members had practically ghostwritten pieces of legislation for the government. I had expected the group to be proud of its past record. If even the head of one of the dominant NGOs in the security reform sector in a country with

¹ The field research for this dissertation was made possible through my work on the research projects “Democratic Transformation and Civilian Control of the Military: Comparing New Democracies in Northeast, Southeast, and South Asia”, based at Heidelberg University, led by my dissertation advisor Aurel Croissant and financed by the German Research Foundation (DFG research grant CR 128/4-1) as well as “Cultural Effects of Global Norm Transmission for SSR” based at the Peace Research Institute Frankfurt, led by Sabine Mannitz and financed by the Leibniz Foundation. I am deeply grateful for the financial support these institutions have provided and all the personal and academic support I have enjoyed while working on these projects and with people I consider friends.

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supposedly strong civil society influence berated himself and his organization for their failure to achieve true change, it seemed Civil Society Organizations could do little for Security Sector Reform.

The assessment is also surprising, considering how much emphasis the literature on Security Sector Reform puts on civil society involvement. And even though some donors, including the UN and inter-governmental aid initiatives, focus their development assistance on official government structures (Mannitz 2014: 272), other donors have consistently tried to promote civil society activities as part of their larger Security Sector Reform agenda. ProPatria alone reportedly received around 1.2 Million USD annually between 2001 and 2004 from donor organizations and it is only one of more than a dozen of organizations active in the Indonesian security sector, all of which are supported by international donors (Scarpello 2014: 142).

Despite the favorable appraisal, a survey of the literature on the activities of Indonesian Civil Society Organizations in the Security Sector Reform process or in the pursuit of civilian control provides no definitive answer for the actual role Civil Society Organizations played and how successful they were. First, these studies are few in number. Altogether only four studies focus on the role of civil society in the Indonesian Security Sector Reform process. Second, none of the studies measures civil society success or failure in a systematic and comparable way. In addition, the studies are usually short – mostly article-length – and cover only part of the reform process, focus on only a few pieces of legislation (Makaarim and Yunanto 2008; Scarpello 2014) or even present a general overview of the activities without going into details (Sukma 2012; Muna 2008). Third, while all studies provide explicit or implicit arguments for the relative success and failure of Civil Society Organizations, none of them bases these insights on either an extensive and transparent study of empirical cases or a coherent theoretical argument. While three of the four most relevant publications have been authored by individuals who were themselves active in the reform process and who have first-hand knowledge of the processes, these studies unfortunately share little of it with the reader, making the conclusions impossible to retrace (Muna 2008; Makaarim and Yunanto 2008; Sukma 2012). This study fills this lacuna.

ProPatria's work between 2000 and 2009 focused on advocating for the adoption of laws to improve the institutionalization of civilian control. Civilian control is defined as

“that distribution of decision-making power in which civilians alone have the authority to decide on national policies and their implementation. Under civilian control, civilians can freely choose to delegate decision-making power and the implementation of certain policies to the military while the military has no autonomous decision-making power outside those areas specifically defined by civilians. Furthermore, it is civilians alone who determine which particular policies, or policy aspects, the military implements, and civilians also define the boundaries between policy-making and policy-implementation.”
(Croissant et al. 2013: 955)

The “civilians” this definition refers to are those individual and corporate non-military actors with the “authority to formulate, implement, and oversee political decisions” (Croissant *et al.* 2013: 12). Civilian control is a necessary condition for democratic rule: Only if elected politicians and their agents can in principle make all relevant decisions in a polity is the democratic selection of these decision-makers meaningful, popular sovereignty that underlies democratic rule realized (Lauth 2004: 65; Merkel 2010: 33). Theoretically, a modicum of civilian control can exist without an institutional foundation, based purely on the personal authority of democratic rulers. However, this will result in a highly unstable situation in which every substantive decision, every change in government puts the democratic character of the regime at risk and civilians are constantly forced to reassert their authority over the military. Consequently, recent contributions focus their attention on the process of institutionalizing civilian control, i.e. the process of enshrining civilian control in laws and regulations as well as stable behavioral patterns (Croissant *et al.* 2010; Trinkunas 2005; Pion-Berlin 1992). If civilian control has a basis in formal institutions the authority of military and civilians is relatively fixed and there will be fewer conflicts between both sides. If civil society can further the process of creating a legal basis for civilian control, this is, hence, a valuable contribution to both the quality of democracy as well as democratic consolidation (Merkel 1998: 39).

Considering the importance of civilian control for democratic quality and survival and the high hopes Security Sector Reform initiatives apparently put in the ability of groups like ProPatria to contribute to the institutionalization of civilian control, Hari Prihatono’s self-conscious evaluation of civil society success led me to the two research questions of this study:

- 1) Did Civil Society Organizations like ProPatria contribute to the formal institutionalization of civilian control over the military in Indonesia’s young democracy?
- 2) Which factors account for these groups’ varying degree of success across and within different legislative reform projects?

In order to approach these questions, the following section first defines the object of this study and determines what kind of Civil Society Organizations it focuses on.

1.1 Civil society and Civil Society Organizations

Civil society as a whole is usually defined as an intermediary sphere between the individual, economic, and political spheres (cf. Croissant *et al.* 2000: 16). Apart from its more specific potential role for the institutionalization of civilian control, civil society is considered valuable or even necessary for the survival of democracy because it fulfills a series of functions for the broader political system (Croissant *et al.* 2000: 11–12).

The focus of this study will be on Civil Society Organizations rather than the more ambiguous and mediated effects of civil society as a whole, its structural and normative

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effects on the political process. There are three reasons for this. First, while fulfilling civil society functions has a beneficial effect for the whole of society, the actors who produce these benefits are Civil Society Organizations. Second, I am primarily interested in the effect of intentional civil society contributions to the institutionalization of civilian control. In order to be considered organizations, collectives need to be coherent, distinct from their environment and possess some form of collective intentionality, i.e. the willingness and ability to pursue a common goal, guaranteeing some degree of intentional behavior (Tollefsen 2002). Third, Civil Society Organizations are more open to external interventions by international donor organizations than civil society as a whole, its character and overall structure. Even though international donors often hope to improve the overall character of civil society or even create a civil society in a context where organization was made difficult before by repressive authoritarian regimes, it is through support for Civil Society Organizations that they pursue their more immediate goals. Understanding how and why Civil Society Organizations succeed at what they do is a first step to eventually finding an efficient use for donor money.

The term Civil Society Organization (CSO) denotes a relatively broad empirical concept. In practice, research on Civil Society Organizations often disaggregates CSOs into different subcategories. These subtypes – interest group, social movement, and non-governmental organization – have a distinct history and are rooted in different social science disciplines² but their referent objects and the actual strategies and tactics these groups employ to affect political outcomes overlap.

The concept of non-governmental organizations (NGOs) has emerged from International Relations or, more specifically, Development Studies. NGOs are defined as “self-governing, private, not-for-profit organizations that are geared to improving the quality of life of disadvantaged people” (Vakil 1997: 2060; see also Salamon and Anheier 1994). The NGO concept is significantly broader than the other two concepts and includes organizations which provide welfare, development aid, do advocacy work, are active in development education and networking or conduct research (Vakil 1997: 2063). Consequently, some NGOs do not have political goals but rather take over functions which would otherwise be fulfilled by the government (Shigetomi 2002: 1–2). Because of this broad focus the literature on NGOs has not produced a systematic theoretical literature that analyses the determinants of successful NGO influence on policies at the national level.

In contrast, both interest group and social movement research focuses on groups with explicitly political goals. The interest group concept is used almost exclusively by political scientists. Traditionally, groups that use “institutional” or “conventional” channels in their communication with political decision-makers are the focus of interest group research. These groups are considered the mainstay of “essentially rational, interest-oriented politics”

² A simple experiment illustrates this disciplinary specialization: An otherwise unmodified search for the terms “interest group*” (IG), “nongovernmental organization*” (NGO) and “social movement*” (SM) in top journals of the three disciplines via the International Bibliography of the Social Sciences delivers the following results: American Political Science Review (IG:81/NGO:1/SM:37), American Sociological Review (IG:7/NGO:1/SM:114), International Organization (IG:3/NGO:7/SM:0).

(Gamson 1990: 133). Today, the definition of interest groups encompasses “not only membership organizations but also advocacy organizations that do not accept members and any other organization that makes policy-related appeals to the government” (Baumgartner and Leech 2001: xxii). Consequently, the size of interest groups can differ but with their activities they usually try to realize the political goals of the group itself or the clientele the group represents (Werner and Wilson 2008).

The social movement concept was developed in political sociology (McAdam *et al.* 2001: 6). Social movements are defined as groups of people with a conflictual orientation towards an opponent, a collective identity and a set of common beliefs and goals as well as a repertoire of collective actions to pursue these goals (Kriesi 2008: 394). Social movements are often larger groups. Sometimes these are described as less organized and occupying a conceptual space “somewhere between spontaneous gatherings and formally structured interest groups” (Freeman 1999: 7). In practice, social movements pursue more transformative goals in relation to the political system, while interest groups work for and within the established political frame. Social movements are often defined as groups engaged in contentious politics with “non-traditional repertoires of contention” (McAdam *et al.* 2001), who act outside of established political channels, employ extra-institutional forms of protest like protest marches, large scale demonstrations or acts of civil disobedience (Tarrow 1998; McAdam 1982). Interest group literature on the other hand long focused on group activities inside established institutional channels even though it generally avoided including references to specific strategies in their definition of interest groups (Gamson 1990: 133). While this meant that organizations of a certain type became associated with a limited repertoire of tactics by definition or established research practice, either type of organization is actually more flexible tactically than this distinction implies. Social movements have been observed employing insider advocacy tactics (Kitschelt 1986; Diani 1992) and interest groups frequently resort to outsider tactics (Kollman 1998).

The definitions and the actual empirical scope of the three concepts show that the borders between the different subtypes are fuzzy. Because there is such a large conceptual overlap between interest groups, social movements and those non-governmental organizations focusing on advocacy work, there is no inherent reason to focus attention on just one of these subtypes. In fact, restricting the focus on the basis of specific organizational structure or the strategies and tactics a group employs will not be useful, since both are among the factors which could determine whether a group is successful or fails. Consequently, I have adopted the term Civil Society Organization to describe the object of this study. I define Civil Society Organizations as

those collective actors that are part of the intermediary sphere between individual, political and economic society³, which have a stable and at least basic organization and pursue a common goal that involves making direct claims to the political system.

³ In contrast to conceptualizations of civil society as a “normative aspiration” (Linz and Stepan 1996: 7) that require true Civil Society Organizations to comply with higher normative standards of non-violence, organizational autonomy from the state and political society and tolerance (Croissant *et al.* 2000), I relax these requirements. In order to be considered a Civil

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A group is within the scope of this study if realizing its goals would have a positive effect on the institutionalization of civilian control.

The remainder of this chapter will survey the literature on Security Sector Reform and civil-military relations to look for clues if and how Civil Society Organizations can contribute to the process of institutionalizing civilian control.

1.2 CSO and Security Sector Reform

The concept of Security Sector Reform (SSR) emerged from the development discourse in the late 1990s. Consequently, the reform agenda was initially developed without input from security or democratization experts (Mannitz 2014: 270). Its goal was to improve the production of security in target countries as a means to improve the chances of sustainable socioeconomic development (Edmunds 2012).

The OECD DAC Handbook on Security Sector Reform, one of the first reference documents, defined the more immediate goal of the reforms as a

“transformation of the ‘security system’ – which includes all the actors, their roles, responsibilities and actions – working together to manage and operate the system in a manner that is more consistent with democratic norms and sound principles of good governance, and thus contributes to a well-functioning security framework”. (OECD 2004: 20)

The new approach expanded the previous focus of development assistance in the security field from achieving civilian control to include police and judicial reform (Hänggi 2003: 14). However, so far there is no unified understanding of what exactly Security Sector Reform entails and what its immediate goals are. The one thing most authors agree on seems to be that “there is no consensus within the SSR area about what the term means” (Chuter 2006: 14) and a “lack of consensus on even basic terminology within the SSR field” (Edmunds 2012: 50).

These conceptual problems also include the definition of civil society. The term is sometimes defined widely, to include the whole adult population. More often, it narrowly refers only to organized groups like voluntary associations or interest groups which organize very specific groups (Chuter 2006: 15). Even though the exact scope of the civil society concept is unclear, it played an important role in SSR from the beginning. The OECD Handbook encouraged donors to develop their frameworks “jointly with partner governments and civil society” so input for the reforms would come from a circle wider than the traditional agencies dealing with security (OECD 2004: 22). A “holistic, governance-focused approach [...] should also include different non-state actors from civil society groups” (Keane and Bryden 2010: 4–5). Proponents of Security Sector Reform assumed there was a link between the quality of security provision, the immediate goal of Security Sector Reform and the quality of security governance (cf. Seifer 2009: 87) and hoped that

Society Organization, a group has to be situated between the private and the political sphere. This excludes purely economically motivated actors like firms and political parties.

improving governance would automatically improve security provision. If the civilian population was given a chance to participate in the security policy decision-making process, the security forces were likely to shift their focus from a state-centric understanding of their tasks to a people-centric model like “human security” (Mannitz 2014: 276). By building capacity in civil society (cf. Heinrich 2010), donors hoped to give the organizations a chance to take over a share of Security Sector Governance. Groups were to facilitate the transition from state- to people-centric security and the Security Sector Reform process as a whole through four channels.

First, civil society can act as a mediator in difficult environments where governments are opposed to certain aspect of the SSR agenda. Establishing contact to civil society would help to “prepare the political and policy terrain” for later reforms (OECD 2004: 22). The groups can start public debates on problems in the national context (OECD DAC 2007: 224) and “increase public literacy on security issues” (OECD 2004: 39). In politically charged context following democratizations or peace settlements engaging with all sides of the reform effort could “reduce polarizations between security institutions, newly elected political authorities and the populace” (Bryden 2004: 269).

Second, civil society groups can help monitor the security forces and the implementation of government reforms (OECD DAC 2007: 224). This form of “public control” would complement civilian control, parliamentary control and judicial control of security actors to add an element of vertical accountability and create an ideal type of Security Sector Governance (Hänggi 2003: 16–17). This oversight function is among the most consistently named ways in which civil society can contribute to the reform process (Ebo 2004: 82). As watchdogs, the groups create a supply of information but also force other actors to make additional information publicly available (Martin and Wilson 2008: 91).

Third, Security Sector Reform explicitly calls for an expansion of civil society input into the policy formulation process (OECD 2004: 58). If governments are unwilling to engage in reforms civil society can act as a push factor for reforms, “prodding governments to take action” (OECD 2004: 103; Nathan 2008). In a more conducive environment, civil society experts can help analyze security policy and influence the outcome of legislative deliberations or act as expert advisors to parliamentary committees (OECD 2004: 35).

Fourth and finally, civil society groups provide a way to increase local ownership of international reform initiatives and bring balance to an otherwise largely donor-driven process (Bryden 2004: 269). Local owners – including civil society – build the basic consensus for reform initiatives (Donais 2008). Neglecting civil society can have detrimental effects on both implementation and sustainability of reforms, so the involvement of civil society is increasingly seen as vital to their long-term success (Mannitz 2014).

Even though all these channels seem possible starting points for a theoretically informed analysis of civil society effectiveness the evolution of the security sector concept has so far precluded any attempts. Over time, the reform concept quickly grew into a “long and

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elaborate list of tasks” (Chuter 2006: 6). Since civil society engagement was first proposed as a means to accelerate and improve Security Sector Reform it has been swallowed up in this conceptual expansion and become a “sector” of Security Sector Reform itself (OECD DAC 2007). The focus of the SSR concept shifted from increasing the provision of security to establishing Security Sector Governance, a broad understanding of ruling the security sector which includes civil society actors as a necessary component of the desired decentralization of authority and pluralization of actors (Hänggi 2004; cf. Seifer 2009: 87). Both goals are now seen as equally important in their own rights: “Good” sector Security Sector Governance includes a security sector which effectively and efficiently provides security to the citizens but is well governed at the same time (Schroeder 2010: 11). When comparing the status of different reform processes, a “strong role of non-statutory civil society actors [is] more desirable than the contrary” (Hänggi 2004: 7). Civil society is now believed to deserve development funds as part of the reform effort not because it “is inherently progressive or supportive of SSR but rather [because] citizens and their organizations have a basic right to express their views on security” (Nathan 2008: 28–29). This shift is reflected in the goal definitions of all major proponents of SSR supporters, including the UN, OECD and EU (Schroeder 2010: 14–15).

Conceptually, an initial intuition about the roles civil society could potentially play for the realization of SSR had become a list of best practices of Security Sector Reform that in turn became the basis of a much-broadened concept of Security Sector Governance. By now, Security Sector Reform has become “too broad in conception and too unwieldy in practice to act as a policy guide for specific and distinct organizational reforms” (Edmunds 2012: 57). More importantly, however, Security Sector Governance can neither serve as a benchmark for evaluating the success of civil society activity nor provide theoretical insights for an explanation for three reasons.

First, analyzing the influence of civil society on the attainment of Security Sector Reform has become tautological. Because of the “conceptual stretching” (Sartori 1970), Security Sector Reform is successful as long as civil society is active. Any theory that sets out to explain the connection would necessarily become tautological. In order to analyze the effect of civil society activism the concept would need to be disaggregated again. Indeed, there are some indications, that civil society activity can help limit the extent of human rights violations by the military and improve security provision, but this effect is mediated by an expansion of civilian control narrowly defined (Croissant *et al.* 2013: 210–213). Second, since development is still the ultimate goal of the Security Sector Reform agenda, there seems to have been little interest in disaggregating the reform concept in this manner to analyze interaction effects between different SSR components so far. Consequently, no explanatory theoretical framework has been build, yet. Third, since the recent reorientation towards local ownership and people-centric security the goals of Security Sector Reform have become increasingly fuzzy. Proponents of this approach argue that “Security Sector Reform is ill-served by trying to impose some kind of homogenous or homogenizing external

framework on such complexity” (Edmunds 2012: 55). Instead, the population and individual stakeholders have to be consulted in order to address the “real problems” (Edmunds 2012: 56). Consequently, the reform agenda and even the meaning of security itself, the ultimate referent object of the reforms can no longer be derived theoretically or defined without taking the reform context into account, but has to emerge from the process itself (cf. Mannitz 2014: 279). This not only dissuades the search for generalizable causal connections, it makes it impossible to compare success across cases.

So far, the Security Sector Reform literature on civil society has produced mostly anecdotes celebrating its inclusion but often provides little information on what civil society actually contributed to the process, i.e. going beyond the very activities organizations conducted. Without the ability to systematically compare the outcomes and context of different reform processes, the recommended steps to involve civil society are still based on the theoretical intuition that civil society needs certain things to do their job – whatever its ultimate goal may be. These include expertise, funding, organizational capacity, institutional breathing space and contact to decision-makers and security actors. These intuitions have been turned into a body of recommendations for civil society groups active in SSR meant to improve their performance (Cole *et al.* 2008). None of this, however, has been or can be theoretically tested and supported because of the nature of the evolving Security Sector Reform concept.

1.3 *Civil society in the literature on civil-military relations*

In contrast to Security Sector Reform, the civil-military relations paradigm has traditionally put more emphasis on the explanation of different outcomes and several models include civil society as relevant factors.

In some cases, the lines between the civil-military relations and Security Sector Reform paradigm are quite blurred. Representative of what Lambert has called the “constructivist turn” of civil-military relations research (Lambert 2009: 190), Cottey, Edmunds and Forsters work have tried to direct attention towards the problems of a “Second Generation” of reforms in civil-military relations, going beyond the narrower concept of civilian control of the armed forces. These include the “engagement of civil society as a core component of oversight and accountability in defense and security matter” (Cottey *et al.* 2002: 41). Along the lines of the debate on local ownership, the authors believe citizens need the potential to shape and contribute to debates on public policy issues and Civil Society Organizations can help empower citizens (Cottey *et al.* 2002: 46). While this attempt to further democratize the civilian control concept underlying most of the literature on civil-military relations is laudable from the perspective of “deepening of democracy” (Schedler 1998), the approach shares many of the weaknesses of the Security Sector Reform approach. First, it remains largely descriptive and confounds mere civil society activity and successful second generation reforms in much the same way the expanded concept of Security Sector Governance. In fact, civil society is not even listed among the factors believed to influence the reform effort (Cottey *et al.* 2002: 10–15). As in the SSR literature, there are theoretical

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intuitions how Civil Society Organizations can contribute to the success of reforms which justify its inclusion as part of the concept of the dependent variable. However, there is no coherent theoretical argument underlying this intuition or the other factors presented. Rather, the authors merely state that these factors “shape the prospect of democratic control” (Cottey *et al.* 2002: 47). Civil society can help the reform effort by providing an alternative source of information, initiate and conduct public debates, create accountability for other actors in civil-military relations, help exposing malpractice, provide critical reviews on policy, and mobilize public opinion (Cottey *et al.* 2002: 47).

Another group of theories in this research paradigm provides more specific explanatory models but leaves no role for civil society. This includes institutionalist models focusing on the dispersion of civilian decision-making authority (Avant 1994; Pion-Berlin 1997), theories which place the biggest causal weight on military-internal factors like its cohesion, disposition to intervene (Stepan 1973) or normative convictions (Huntington 1957; Janowitz 1960) and finally structuralist theories which focus on the level of internal or external threat a country is subjected to in order to predict the degree of civilian control (Desch 1999; cf. Croissant and Kühn 2011 for the categorization).

Where theories provide a major role for civil society as an explanatory factor, it is usually based on a wide conception of civil society which includes the general public, public opinion or the dominant normative convictions in society and is not restricted to organized actors. Huntington argues that in the absence of institutional structures to moderate conflict an overly mobilized society – represented by “social forces” based on identity or socioeconomic markers – increases the likelihood of a military intervention, making too much activism dangerous when institutions are still weak (Huntington 1968). Putnam, on the other hand, finds that while short-term mobilization can increase the likelihood of military intervention into politics, more continuous and longer-term mobilization can help stabilize civilian rule (Putnam 1967). In a similar manner, Finer argues that while military endogenous factors determine a military’s disposition to intervene, it is societal factors which provide the occasion for an intervention (Finer 1962: 20). Unlike Huntington he believes that a strong and mobilized civil society makes interventions less likely, especially if there is a strong normative consensus in the public. Only in the absence of such consensus can organization become problematic (Finer 1962: 245). Mares picks up the latter argument and finds that the nature of the prevalent social values determine the military’s ability to intervene. If there is strong support for civilian rule and control, the military is less likely to risk an intervention or defend its prerogatives (Mares 1998)⁴.

While most of these theories aim to explain military intervention rather than the ability of civilians to increase civilian control, there are indications, that a similar mechanism might influence the likelihood of civilians challenging existing military prerogatives: Hunter reports that civilian unrest in Brazil, akin to the over-mobilization Huntington describes,

⁴ Innanchai (2012) conducted a dissertation-length study on the effect of civil society on the extent of civilian control is based on the models proposed by Finer and Mares.

reduced the civilian government's willingness to challenge military prerogatives (Hunter 1994: 33). In practice this means that CSO can help stabilize otherwise unruly societal mobilization or present a democratic reserve power which the armed forces have to take into account before deciding whether to resist a civilian government. Indeed Hunter models civil-military relations as a game between the civilian government and the military leadership in her rational choice account. Her model has the military consider the likelihood that its resistance to civilian control attempts is successful and takes into account the possibility that civil society might condemn their resistance which can be assumed to depend on both the level of organization and the normative convictions of civil society (Hunter 1998: 297–298). The behavior of civilian decision-makers on the other hand is determined by an electoral incentive to challenge the military which – like the other theories in this category – does not explicitly mention the possibility of civil society advocacy or pressure.

Whereas civil society expertise, monitoring, advocacy, or pressure – the causal mechanisms postulated by the SSR literature – are not explicitly singled out for their causal relevance or clearly specified in the theories discussed so far, several integrative theories of civil-military relations include more specific references to the role of Civil Society Organizations along these lines⁵. Among them, Muthiah Alagappa argues that more complicated societies reduce the role of coercion in governance and with it the military propensity to intervene into politics, much along the lines of some of the previously presented arguments (Alagappa 2001: 62). However, civil society also plays a role as an “influencing environmental factor” much like the international or political society (Kuehn and Lorenz 2011: 239). The actual changes in the level of civilian control depend on “the beliefs, interests and power of the key civilian and military actors tempered by the power and beliefs of civil society as well as the policies and actions of key external actors” (Alagappa 2001: 63). Alagappa explicitly acknowledges that civil society has a role to play, but he does not provide a clear theoretical mechanism for his argument which would allow the reader to single out any specific activities CSO can engage in to further the reform agenda (Kuehn and Lorenz 2011: 240).

Unlike Alagappa, Felipe Agüero provides such a mechanism. In his account, civilian government and the military leadership engage in a bargaining process which determines how successful civilians are at eradicating or reducing the institutional guarantees the military was given as part of the democratic transition process (Agüero 2001: 200). A set of variables determines the relative bargaining power, conceptualized as the political resources both actors can bring to the table. These variables are focused on the founding conditions; i.e. several military internal factors, whether the military was in control of the authoritarian government prior to democratization, the relative control military and civilians had over the transition process, the coherence of civilian elite actors as well as the level of manifest societal support for democratization and the civilians' ability to produce defense policies (Agüero 2001: 208). Even though the precise manner in which civilians use their power

⁵ Parts of the arguments concerning integrative theories have previously been published as Kuehn and Lorenz (2011)

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resources for bargaining is somewhat unclear – Agüero writes both parties “brandish” them – at least two of the relevant variables can accommodate civil society influence. First, civil society can generate or represent manifest public support for the civilian government, especially if mass mobilization played a role in bringing about the transition in the first place (Agüero 2001: 205, 196). Second, civil society can contribute the expertise needed to formulate a civilian defense policy (Agüero 2001: 205).

Like Agüero, Harold Trinkunas builds his theory around the strategic interaction of military and civilian actors but prioritizes the actions of the latter and puts a stronger emphasis on the agency perspective. In his account, civilian decision-makers looking to expand civilian control have to do this in two analytically separate steps. First, they have to manipulate the likelihood that the military will resist their control attempts. They can do so by employing a set of control strategies of varying “robustness”. These include appeasement, monitoring, divide and conquer, and finally sanctioning and they can enable civilians to “co-opt, recruit, or intimidate a sufficiently large number of military officers into supporting the government’s agenda so as to prevent the armed forces from acting cohesively to oppose civilian control in a new democracy” (Trinkunas 2005: 10). In order to implement these different control strategies, they need the appropriate political resources. Even though Trinkunas does not explicitly name Civil Society Organizations at this point, the previous discussion indicates that these are an important external resource for monitoring the military and help deter military resistance by improving the chances that misbehavior is detected (cf. Trinkunas 2005: 11). As a second step, civilians then have to consolidate or institutionalize their control over the military. In order to do so, they need an additional set of resources. These “institutional resources and civilian defense expertise may be found within state ministries, legislatures, and courts, as well as in an independent press or nongovernmental organizations focused on military-related issues” (Trinkunas 2005: 15). In his empirical analysis Trinkunas finds that Civil Society Organizations can even assume agency and act independently to undermine the plans of civilian decision-makers by forcing more robust strategies than originally intended (Trinkunas 2000: 92). In another example, human rights groups used the courts to initiate human rights trials against the military even though the government had decided to refrain from doing so (Trinkunas 2005: 242–243)⁶. While this explicitly leaves room for situations in which Civil Society Organizations push for more civilian control than the government is willing or able to bargain for, he believes a cooperative relationship between government and civil society more conducive:

“In civil society, monitoring and sanctioning strategies are most effective when groups and associations, such as think tanks or human rights organizations, are committed to sustaining regime control of the armed forces and to providing the government with external sources of defense expertise”. (Trinkunas 2000: 84)

⁶ This assessment violates Trinkunas own definition of civilian control which focusses on elected officials (Kuehn and Lorenz 2011: 239).

Even though Croissant *et al.* do not explicitly name Civil Society Organizations in their theoretical model, in principle they follow Trinkunas and Agüero in their conception of civil society as a possible strategic resource for civilians and Trinkunas in their conception of civilian control strategies as the main determinant of the level of civilian control in young democracies (Croissant *et al.* 2013: 47–49). Unlike Trinkunas, they do not separate the process of gaining military acquiescence and the institutionalization of civilian control but see the same basic mechanism behind both processes. This leaves the same role for civil society as an assistant force to civilian decision-makers. Civil Society Organizations can deliver public support for civilian decision-makers, or serve as a proxy for civilians and help them monitor military behavior or provide expertise useful for the institutionalization of civilian control (Croissant *et al.* 2013: 203). While one of the basic assumptions of their model is that civilian decision-makers always have an interest in expanding civilian control (Croissant *et al.* 2013: 45), empirically they find that “a strongly developed civil society increases the incentives and capabilities for civilian elites to act robustly if it demands political action (Croissant *et al.* 2013: 203).

This literature overview provides several important insights. First, it shows that no major theory of civil-military relations considers activities by civil-society organizations the most important or even a major determinant of the degree of civilian control in young democracies. There are two possible reasons for this. For one thing, the role of civil society activists as an important driver of reform could have been missed by most theorists of civil-military relations so far. While this alternative would make the endeavor of this study significantly more promising, it is, unfortunately, highly unlikely. For another thing, it is possible that the activities of Civil Society Organizations are not among the most important explanatory factors for the level of civilian control. If this is the case, civil society activism simply does not explain enough of the outcome variance to have been included as an explicit variable in more general studies of the determinants of civilian control. Still, civil society activity could have some impact, legitimizing the hope international donors have put in them.

Second, the integrative theories stress that the actual agents who increase civilian control are civilian decision-makers, i.e. those individuals or collective actors in the policy cycle who have the formal authority to formulate, change or pass legislation, but not civil society (cf. Croissant *et al.* 2013: 45). Considering that these theories largely focus on the institutionalization of civilian control this makes much sense: In order to institutionalize civilian control, decision-makers have to make laws and regulations. Civil Society Organizations are by definition not part of political society and, more importantly, not authorized to pass legislation. Any influence Civil Society Organizations have on the institutionalization of civilian control will have to go through civilian decision-makers because they are the only actors with the formal authority to institutionalize civilian control.

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Third, even though Trinkunas and Croissant *et al.* do not provide an explicit and detailed theoretical argument how civil society can contribute to the institutionalization of civilian control, their theories suggest possible connections. Since both theories assume that civilian decision-makers always have an interest in expanding civilian control and conceptualize parts of the structure or context in which civilian decision-makers act as political resources (Kuehn and Lorenz 2011: 241–242), Civil Society Organizations would only be able to affect the institutionalization of civilian control if they put themselves in the service of civilian decision-makers and contribute to their reform plans. At best, Civil Society Organizations could become a partner of government or parliament. However, the empirical results presented by Trinkunas and Croissant *et al.* indicate that under certain circumstances, civil society can act as a principal of civilian decision-makers who are unwilling to further institutionalize civilian control and force them to change their behavior to push for additional legal reforms.

1.4 Consequences for the study

The discussion so far has several consequences for the design of this study. The lack of attention Civil Society Organizations have received in the theoretical models developed by researchers working on civil-military relations indicates that the effect these groups have on the institutionalization of civilian control may be very small. In order to accurately measure civil society success and failure, the conceptualization of the dependent variable has to be able to measure success incrementally and not just between different pieces of legislation, but within the same piece of legislation. Fortunately, the concept of civilian control adopted earlier was developed to do just that (Croissant *et al.* 2010). It will be the focus of the following chapter.

Chapter 3 develops a theory to explain the differing degree of civil society influence across and within pieces of legislation. The literature overview has suggested that both the Security Sector Reform literature and the literature on civil-military relations assume that Civil Society Organizations can have an influence on the institutionalization of civilian control. Because Civil Society Organizations are not authorized to change laws themselves, any influence these groups have has to be channeled through the decision-makers who are authorized to change legislation. However, so far, there is no coherent theoretical account of how this influence actually works in the field specific literature. Still, both the theoretical intuition of the SSR literature and the resource model of civilian control suggest that CSO can help decision-makers who are looking to institutionalize civilian control by providing them with expertise and support. If this was the only way the influence of Civil Society Organizations should never be able to go beyond what decision-makers themselves want. However, the empirical results of the presented research on civil-military relations as well as the theoretical intuition of the SSR literature also suggest that CSO can actually force decision-makers to go further with their reforms than what they originally intended. The theory developed for this study will consequently have to be able to accommodate both of

these possible forms of influence. I look to the literature on interest groups and social movements for inspiration on how Civil Society Organizations can influence decision-maker behavior. Fortunately, there already is a sizeable literature on this matter (cf. Amenta *et al.* 2010 for a recent review). The existing literature proposes a number of different factors that play a role, including group inherent properties, as in the resource mobilization approach (Tilly 1978) and a large number of properties of the political context these groups operate in (cf. Meyer and Minkoff 2004 for an overview). Unfortunately these theories often do not provide an explicit mechanism that can integrate the different explanatory factors and demonstrate how they are translated into affecting the behavior of decision-makers.

To remedy this problem, I take inspiration from the recently proposed “political mediation model” of civil society influence (Amenta 2006). The integrative theoretical argument I develop starts from the mechanism of influence, i.e. the point where civil society activity translates into a change of decision-maker behavior that ultimately leads to the institutionalization of civilian control. From there, the model is expanded to include additional factors that provide causal leverage for the specific problems inherent in establishing civilian control. All explanatory factors have to develop their causal force through the central influence mechanism. These additional factors are taken from insights of the social movement and interest group literature and specified as resources, opportunities and constraints for Civil Society Organizations (cf. Kuehn and Lorenz 2011: 237). The theoretical argument developed in Chapter 3 yields two main hypotheses that guide the remainder of the study. First, the more a civil society demand is in conflict with the interests of the decision-maker it targets, the more assertive the tactics of an organization have to be in order to successfully affect decision-maker behavior. Second, if realizing the demand would endanger core military interests or abolish an institution that provides the military with the ability to formally or informally affect political outcomes, military officers in formal decision-making positions will oppose it and informal military counter-pressure on civilian decision-makers further increases the amount of assertiveness necessary to change their behavior.

The fact that the theoretical argument is built around an explicit causal mechanism is beneficial for additional reasons. First, establishing the presence and relevance of the mechanism empirically is a way to distinguish situations in which Civil Society Organizations are simply lucky that decision-makers adopt their proposals from instances of actual influence (Klüver 2013: 8). This is even more important because the impact of civil society activity could be rather small. Second, part of the motivation for this study is to determine whether the money invested in Civil Society Organizations working on the attainment of civilian control after democratic transitions is well spent and to make a first step to spending this money more efficiently. Only if the mechanism by which civil society groups have influence is clearly understood can this study produce some hints on how the targeting of international assistance could be improved so as to increase the chances that Civil Society Organizations can play their part.

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After Chapter 3 has laid out the theory, the remainder of the study focuses on the empirical analysis. Chapter 4 discusses the more stable properties of the Indonesian legislative process that are part of the expanded theoretical argument. Chapter 5 gives a short overview of civil-military relations in Indonesia before, during and shortly after the democratic transition which will identify institutions of civil-military relations that are particularly difficult to change. Chapters 6 to 8 then provide a detailed narrative and analysis of three major Indonesian legislative projects, the Law on National Defense, the Law on the National Armed Forces of Indonesia (TNI Law), and the National Security bill. These chapters focus on the role the ProPatria Working Group on Indonesian Security Sector Reform but also other civil-society organizations have played. Chapter 9 then conducts several shorter case studies of other pieces of legislation relevant for civilian control. This serves two purposes. First, it improves the confidence in the explanatory power of the theoretical argument and second, it will more systematically include legislation that was influenced by other civil-society organizations. Chapter 10 summarizes the results, draws conclusions, identifies the weaknesses of this study and identifies avenues for future research.

2 The dependent variable: The meaning of success⁷

When should the outcome of a legislative process in which Civil Society Organizations were involved be considered a success for the institutionalization of civilian control? Only after this question has been answered, will the next chapter be able provide a way to determine how civil society actually contributed to that outcome.

The most intuitive way of measuring success relies on the degree to which Civil Society Organizations achieve their own explicitly stated policy-related goals (Dür 2008: 566)⁸. This subjective standard (cf. Bartels 1996) has several advantages. First, it is pragmatic. Not only will stated goals likely represent an intra-organizational consensus, they are also easily accessible to observation (Burstein *et al.* 1995: 138). Researchers can simply take an organization's publicly stated goals at face value and compare these to the legislative outcome. Second, a subjective standard is fair in the sense that it neither gives a group credit for political outcomes it did not originally intend nor blame it for failing to achieve things it did not want to achieve. However, there are several problems with subjective standards as well. First, even though CSOs may be honest, they might have an incentive to misrepresent goals to the wider public for strategic reasons. Narrower, more radical goals on the one hand, attract more committed supporters which allow the group to act more coherently or employ more demanding or even dangerous tactics (Olson 1971). On the other hand, presenting wider or more moderate goals to the public can help the organization avoid evoking negative predispositions among negotiating partners (Tsebelis 2005: 378), minimize the probability of political repression and criminal prosecution or help attract a wider following (Schock 2005: 48; Benford and Snow 2000; Snow *et al.* 1986). Second, picking a subjective standard is unfair in the sense that it gives preferential treatment to groups with narrower, more moderate goals since these are easier to achieve than more transformative goals. Basing an analysis of the determinants of success and failure on such a skewed selection would limit its validity (Amenta *et al.* 2005: 518). Third, considering that judging success is much more difficult for the complex goals an organization is likely to have the researcher would still be faced with the question of how to rate less than ideal results if the organization itself does not provide a ranked order of outcomes (Amenta *et al.* 2010: 290).

In contrast, objective standards for measuring Civil Society Organization success avoid these pitfalls. At the most basic level, success can be understood and measured as a material

⁷ This Chapter largely builds on the ideas previously published as Croissant *et al.* (2013: Chapter 2), the conceptualization of civilian control was first elaborated in Croissant *et al.* (2010).

⁸ In addition to the substantive dimension of success presented here, research on interest groups and social movements research frequently includes a second, procedural dimension of success (Gamson 1990; Kitschelt 1986; Amenta and Carr 2004). If through their activities Civil Society Organizations manage to become a formal part of the decision-making process this institutionalizes their influence for the future. Along the same lines the institutionalization of civilian control prevents civilians from having to reassert their authority over the military for every substantive decision, such procedural success will make it much easier for an organization to influence policy in the future. However, since the focus of this study are substantive changes to civilian control, the procedural dimension of success will not be systematically evaluated in the case studies.

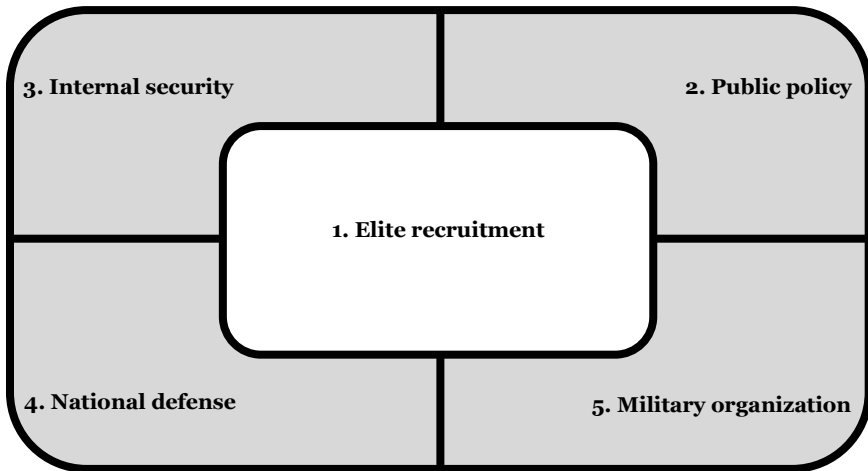
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benefit decision-makers provide for the group itself (e.g. Olson 1971; Dixit and Londregan 1996). Even though social movement organizations or non-governmental organizations usually claim to represent a group extending beyond the organization's membership and often seek public rather than private goods (Amenta 2006: 7) these society-wide effects can analytically be understood as collective benefits. However, since collective benefits are often complex and multi-dimensional, an objective standard has to avoid dichotomous categorization or else risk hiding partial successes (Soule and King 2006): If a civil society group fails to achieve an abstract goal like the institutionalization of civilian control to the fullest extent for a certain regulation but still improves the situation in relation to the status quo, the objective standard has to be able to reflect this. When picking an objective standard, the researcher has to avoid an excessive mismatch between the benchmark and the goals an organization strives to achieve by making sure the benchmark is appropriate to the field the organization is active in (Andrews 2004: 19). Considering the main research questions of this study, an improvement in the degree to which civilian control is institutionalized is an obvious objective standard. Even though many Civil Society Organizations working in SSR have a much broader agenda, achieving civilian control is an important part of the larger Security Sector Reform agenda (Hänggi 2004; Croissant *et al.* 2013: 213). Finally, as the empirical chapters will show, members of the ProPatria Working Group on Security Sector Reform, the main focus of this study, time and time again stressed that achieving civilian control was among their main goals.

In the introductory chapter, I have followed Croissant *et al.* in defining civilian control as “that distribution of decision-making power in which civilians alone have the authority to decide on national policies and their implementation.” (Croissant *et al.* 2010: 955). Rather than focus exclusively on whether civilians emerge victorious from confrontations with the military in instances of conflict (cf. Desch 1999), this definition focusses on the institutionalization, i.e. the process of enshrining civilian control in laws and regulations as well as stable behavioral patterns. According to this understanding, conflict or “contestation”, merely results from a lack of institutionalized control (Croissant *et al.* 2013: 27): Where laws and regulations are missing, the relative authority of military and civilians depends on existing informal rules (Lauth 2000; Merkel and Croissant 2000) and is open to contestation by the military at any time. Institutionalization shifts the basis of military compliance from an external motivator like coercion or remuneration towards an internalized normative compulsion over time and immediately provides stabilized expectations (cf. Huntington 1968: 12). If institutionalization of civilian control is successful, civilians no longer have to structure the military's incentive system actively whenever they want to assert their authority. Institutions of civilian control will do it for them until even the military itself has internalized the principle of civilian supremacy.

Increasing civilian control consists of two related endeavors: Civilians need to eradicate existing institutional prerogatives that grant the military autonomous decision-making

Figure 2.1: Decision-making areas of civilian control



Source: Croissant *et al.* (2013)

authority and they need to establish new rules that clearly regulate how authority over the military is organized and allocated to the relevant civilian decision-makers and determine how the military is to be monitored. In order to break down the necessary reforms analytically and evaluate the degree of civilian control empirically, the authors further disaggregate civilian control into five decision-making areas: Elite recruitment, Public policy, Internal Security, National Defense and Military Organization (Croissant *et al.* 2013: 26–28). Each of these areas has a different focus but for all five dimensions the authors provide indicators for the empirical analysis and rough guidelines for what would be considered a high, medium or low degree of civilian control.

1. The extent of civilian control over *Elite Recruitment* depends on how much systematic or episodic influence the military has over the electoral process or the recruitment for political offices. If this influence limits freedom of participation or skews the political contest, e.g. in the form of manipulations of electoral results or the electoral process, by reserving seats for the military or giving it the ability to influence the process of government formation and dissolution, civilian control is limited (Croissant *et al.* 2013: 28). In this decision-making area, civil society activity will be considered a success if it contributes to the removal of military prerogatives from existing laws by explicitly abolishing them or proscribing military behavior in violation of exclusive civilian authority. It will also be considered a success if civil society activity removes newly established prerogatives from an existing legal draft and thus helps avoid a new “perverse institutionalization” (cf. Valenzuela 1992) which would retrench previous success

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in establishing civilian control. If civil society influence merely precludes decision-makers from avoiding a reaffirmation of an existing prerogative it will not be considered a success because this does not result in or preclude an actual change in the level of institutionalization of civilian control.

2. Civilian control over *Public Policy* covers any decision about political content that is not part of Internal Security, National Defense or Military Organization. Civilian Control over this decision-making area is limited if the military can influence the allocation or volume of the civilian budget, has the power to exclude certain issues from political regulation by civilians or can influence their implementation through ministries or the rest of the government bureaucracy (Croissant *et al.* 2013: 28, 33). As in Elite Recruitment, civil society can successfully contribute to the institutionalization in this decision-making area only if their influence on legislation helps to explicitly abolish existing military prerogatives in this area and, e.g. establishes civilian control over a policy field previously excluded from the civilian decision-making process, but not if they merely stop reaffirmations of this prerogative. However, civil society influence will be considered successful if it stops decision-makers from introducing new prerogatives.
3. In many countries the military helps civilian security forces uphold *Internal Security*. Even though this is no problem for civilian control in and of itself, civilians need to define the relative authority of civilian and military security services regarding counter-terrorism and counter-insurgency as well as in everyday law enforcement and border protection. To do so, police and intelligence agencies need to be organizationally separate from the military to give civilians alternative agents to implement security policies and an independent source of information about the character of internal security problems. In case of actual operations, civilians need to be able to determine the scope, duration, intensity and frequency of military operations and have the capacity to monitor military compliance with their directives (Croissant *et al.* 2013: 33). This means civil society can contribute to the institutionalization of civilian control over Internal Security not only by abolishing existing military prerogatives but also by creating legislation that clearly establishes the roles and responsibilities of the armed forces in internal security operations, details the procedures by which civilians can involve the military and provide decision-makers with the institutional means to monitor the armed forces during these missions. Without specific regulations, existing informal habits will persist and the resulting allocation of decision-making authority will continue to favor the military. As before, if civil society manages to strike new prerogatives or blanket authorizations of military involvement in internal security from a draft law before it is passed, this will also be considered successful.

4. *National Defense* touches upon the core competency of the military. Even in established democracies the military leadership contributes to the decision-making process in this area. However, in order to guarantee civilian control, civilians need to retain the ultimate decision-making authority in all matters of defense policy, mobilization and use of military forces. As in internal security, this necessitates having adequate monitoring channels (Croissant *et al.* 2013: 34). As in Internal Security, civil society influence will be considered successful if it either contributes to the explicit abolishment of existing military prerogatives like autonomous control over mobilization decisions, introduces concrete regulations on civilian decision-making processes in National Defense like the use of force or the extent to which decision-making power or implementation of their decision can be delegated to the military. Again, if CSO influence averts new legal prerogatives or blanket authorizations, this will also be considered a success. While the creation of new defense policy under civilian auspices is a sign that there is civilian control in this decision-making area, the institutional regulations that allow civilians to formulate this policy – and not the policy itself – expand civilian control.
5. *Military Organization*, finally, is closely intertwined with the military's institutional interest. Civilian control in this area exists if civilians can determine the structure, organization and equipment of the military, including and not limited to the size and allocation of the military budget and details of procurement. Civilians also need to be able to determine basic military doctrine and guidelines for military education. Most importantly, civilians need to be able to pick their candidates for at least the top military ranks within reasonable limits based on seniority and professional standards (Croissant *et al.* 2013: 34–35). As in National Defense, civil society influence will be considered successful if it contributes to either the abolishment of existing military prerogatives or the establishment of positive civilian regulatory authority. Changing military doctrine in itself only expands civilian control if the previously existing doctrine had implications for the relative authority civilians enjoy in other decision-making areas. Again, while avoiding retrenchments does not literally increase the level of institutionalization, it will still be considered a success.

If civilian control is institutionalized across these five decision-making areas, civilians will not have to invest political resources constantly, in order to make sure the military follows their orders and can fulfill their executive and legislative function without undue interference from the armed forces. In the coming chapters, I will use this concept to determine if the outcome of civil society activity was successful or if groups at least helped to avoid an institutionalization of additional military prerogatives. The discussion above has two consequences for the empirical analysis.

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First, because the extent of civilian control is a complex and multi-dimensional phenomenon and legal acts rarely contain regulations on only a single issue, empirical situations are conceivable in which increasing control over some issues would come at the cost of decreasing civilian control or enshrining existing military prerogatives on another. Instead of resorting to an averaged success score across the whole law (cf. Barrett and Eshbaugh-Soha 2007), success and failure of institutionalizing civilian control has to be measured⁹ at the disaggregated level of individual regulatory matters within a law. If a law passes which expands civilian control on two dimensions but reinstates military prerogatives on a third, passing it would mean a success on only those two issues, a failure on the third. If the law was stopped, on the other hand, this would have to be considered a failure on two issues and a success on the third even though the status quo was not affected.

Second, because the reform of civil-military relations in young democracies is not necessarily a linear process (Croissant *et al.* 2013: 200), the level of civil society success cannot be fully determined in comparison to the status quo ante. Even if a group fails to realize their goal of changing the status quo towards the ideal point of more civilian control, this does not necessarily mean it failed to successfully influence decision-makers. If alternative proposals were discussed, a group can be considered influential “in the sense that it avoided an even worse outcome” (Dür 2008: 561). To reflect this, I have included civil society success in avoiding worse outcomes in the form of retrenchment of civilian control or the institutionalization of new military prerogatives as instances of success in the conceptualization above. For the empirical analysis this means CSOs’ policy influence has to be measured against both the status quo and alternative proposals discussed during the decision-making process. Otherwise, the variance between status quo and policy outcome might not fully represent the extent of influence.

After this chapter has established an objective standard to gauge whether changes to legislation can be considered a success, the following chapter will detail how Civil Society Organizations can bring these changes about.

⁹ Throughout this dissertation, I employ a wide understanding of measurement following Collier *et al.* (2012: 219).

3 Explaining CSO influence on the institutionalization of civilian control

After the last chapter established which kind of legal change civil society activity has to contribute to for it to be considered a success for the institutionalization of civilian control, this chapter will develop a series of theoretical arguments which will allow us to evaluate empirically whether this success was actually brought about by the actions of a Civil Society Organization (Andrews 2004: 14) and under what circumstances CSO can hope to succeed with their attempts to influence the institutionalization of civilian control.

In the introductory chapter I have argued that Civil Society Organizations differ from other political actors because they lack institutional authority and have to rely on other actors to change policies for them. Consequently, there is no unmediated causal link between organizations and political outcomes and a potential causal effect has to run through the actual decision-makers (DM), i.e. those individuals or collective actors in the policy cycle who have the formal authority to formulate, change or pass legislation (cf. Croissant *et al.* 2013: 45).

I assume that both Civil Society Organizations and decision-makers are rational, goal-oriented actors. In this chapter, I use these considerations as starting points for developing an integrative theoretical argument that is based around civil society strategy to establish a causal link between the organization, decision-makers and the ultimate legislative output. An influence attempt can be considered successful only if Civil Society Organizations can affect the behavior of decision-makers in a way that makes them formulate and pass legislation that provides more institutionalization of civilian control than the legislation would have provided without the actions of Civil Society Organizations. Civil Society Organizations have to find access to decision-makers, provide them with alternative formulations or influence their evaluation of different regulatory alternatives and thereby cause them to pick a course of action that furthers the institutionalization of civilian control. The timing, target, and tactic of such an influence attempt together constitute CSO strategy (Ganz 2000: 1009) and these three constituent parts are reflected in the first three parts of the argument. Finally, the resources and organizational capacity necessary to implement this strategy constitutes the last part of the argument.

The timing for a CSO approach to decision-makers is influenced by the policy cycle. The policy cycle is a heuristic developed for policy analysis that breaks down the policy-making process into a series of steps from agenda setting, policy formulation and decision-making to implementation and finally the ultimate outcome of a policy (cf. Jann and Wegrich 2007). In principle, Civil Society Organizations can try to influence the outcome of a piece of legislation at any point between agenda setting and the passage of the final law. In the first

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section of this chapter, I argue that access during the moment of initial policy formulation at the drafting stage is particularly consequential for the content of the final bill. Nevertheless, in order to protect an initiative and ensure its passage, Civil Society Organizations have to defend their achievement so it is not vetoed or voted down until the law is passed.

Second, based on insights from arguments on the political opportunity structure of Civil Society Organizations (Kitschelt 1986; Klüver 2013; Banaszak 1996) I argue that the transparency and openness of decision-makers determines if a group manages to enter the policy process at all and whom they are going to contact. Finding access is a necessary condition for influencing decision-maker behavior.

Third, and most importantly, in the third section of this chapter I detail how civil society tactics, i.e. the actual interaction with decision-makers aimed at changing their behavior, constitutes the causal mechanism for understanding civil society influence. This mechanism is inspired by the Political Mediation Model (Amenta 2006; Amenta *et al.* 2005). In order to change the behavior of a decision-maker, a Civil Society Organization needs to change his original evaluation of the proposal by manipulating him, offering him benefits or threatening him with sanctions. The task of civil society is more difficult and requires the application of more assertive tactics if the demand is in conflict with the target's interests or if the military exerts informal counter-pressure to marginalize the effectiveness of civil-society influence attempts. By separating the determinants of Civil Society Organizations' access to the decision-making process and the determinants of the actual influence their strategy yields, I part ways with Amenta and the majority of studies on civil society effectiveness who equate difficulty with accessibility (cf. Burstein *et al.* 1995: 142; Amenta *et al.* 2005).

Fourth and finally, Civil Society Organizations need the resources to implement influence tactics of an appropriate level of assertiveness and sufficient organizational development to coordinate their activities and facilitate internal decision-making (Ganz 2000). The chapter concludes with a summary of the hypotheses derived from the argument and outlines the research design to test them in the following empirical chapters.

3.1 *Timing: Civil Society Organizations in the policy cycle*

Civil society groups have to rely on actors with institutional authority to move their proposals forward. Consequently, any decision-maker provides an access point to the legislative process through which civil society can try to expand civilian control.

The typical legislative process begins when decision makers agree on the fundamental need to create or change legislation in a specific area and place it on the legislative agenda. Some authors conclude from this that agenda¹⁰ setting is a crucial stage for civil society to influence since a law that is never put on the agenda cannot be passed (Amenta 2005: 38).

¹⁰ Burstein *et al.* have a slightly wider conceptualization of the agenda stage of the policy cycle which includes the development of a draft bill as an initial policy proposal Burstein *et al.* (1995: 139). I have followed Amenta's definition of the agenda stage (Amenta 2005: 39) to further disaggregated the policy process in order to reflect the consequences of civil society influence at earlier stages on the decision-making at later stages and its effect on the ultimate policy outcome.

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However, while a spot on the political agenda is indeed a necessary condition for the legislative process to begin, Civil Society Organizations do not necessarily have to be the ones to place a law on the agenda to influence its content. Research on American interest groups and social movements in fact indicates that groups usually react to a political agenda and legislative schedule created by decision makers rather than actively try to influence it (Baumgartner *et al.* 2009: 110). Even one of the proponents of CSO's agenda setting role admits that these "will have to do far less work" if they choose their topics from an already existing agenda (Amenta 2005: 39). Since the actual content of the bill is not yet determined at this stage, little does it matter for the final law if it received its spot on the political agenda thanks to civil society influence or not.

During the drafting process, the second stage of the legislative policy cycle, decision-makers with the authority to formulate laws and introduce them to parliament determine the general scope and thrust of a legislative proposal. Even though the draft can still be amended during the following steps, the initial legislative language provides a point of reference for changes at a later point and anchors the following debate (Baron and Ferejohn 1987). Therefore, civil society influence at this early stage can be very consequential for the final law if it can be perpetuated throughout the rest of the policy process. This is especially true if the decision-maker in charge of drafting the bill bases it upon a draft he received from a Civil Society Organization (Hall and Deardorff 2006). In addition, even though the right of initiative is normally restricted, before formal introduction the drafting stage of the policy process is not as strictly regulated as later during the parliamentary discussion. This grants CSO more flexibility in their negotiations with decision-makers (Soule and King 2006: 1873).

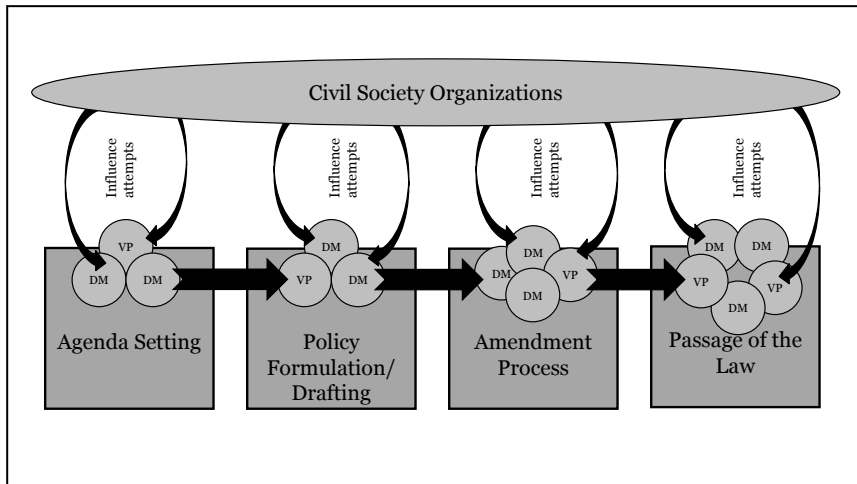
The power of early influence becomes more apparent at the next step of the legislative process, the amendment stage. After a draft bill has been introduced to parliament, the content is not fixed, yet, since members of parliament can still propose amendments. However, to amend a regulation or delete it from the original proposal changes to the existing draft have to attain the positive agreement of other decision-makers to be inserted into the bill. In contrast, the original regulation only needs tacit approval to remain in the bill until final voting: "if the amendment fails, the proposal remains on the floor" (Baron and Ferejohn 1989: 1185). Assuming the necessary majority of decision-makers under the decision rule at this stage is indifferent to the legislative outcome and there are no side payments the proposed amendment will fail while the original regulation would stand under the same conditions. On the one hand this means Civil Society Organizations still have a chance to influence the content of a bill during the back and forth of parliamentary deliberations if they only enter the legislative process after an initial draft has been proposed or their earlier attempt to influence it failed. On the other hand, all else equal, it will be more difficult for them to introduce additional changes at this stage than it would be to defend the changes introduced earlier.

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Once the bill moves to the next stage, its passage into law, the actual content of the bill is fixed. However, in most political systems the bill can still be pushed back to the amendment stage. For civil society this means that the consequentiality of influence at this stage is much bigger for the ultimate outcome than during the earlier stages (Soule and King 2006: 1873). Only if an organization carries their success in creating new institutions of civilian control or abolishing existing military prerogatives on earlier stages through to the enactment stage will they succeed in expanding civilian control. If not, their initiative will ultimately be a failure. If, on the other hand, the bill contains regulations which would retrench civilian control compared to the status quo, civil society still has a chance to stop them at this point in case they failed to amend the bill during an earlier stage. As pointed out before, this will mean the changes successfully introduced into the bill at an earlier stage of the policy process are lost.

While successful influence by Civil Society Organizations will have a different impact on the content of the bill and a different consequentiality for its ultimate passage, CSO can access the decision-making process at any stage (Amenta 2005: 39; Soule and King 2006)¹¹. However, to successfully expand civilian control they have to influence the substance of the bill during either the drafting or amendment stage and secure the passage of the bill until it is passed into law.

Figure 3.1: Civil society in the policy process



Source: Author's compilation

¹¹ Amenta (2005: 39) also includes the implementation stage in the policy cycle he uses as a heuristic to analyze the impact of Civil Society Organizations empirically. Since this analysis focusses only on laws I have omitted this stage.

Since Civil Society Organizations have to affect the legislative process through the decision-makers involved at each of its stages, a political process which involves more rather than fewer decision-makers provides CSOs with more options to introduce their changes. However, having more access options does not unequivocally improve the chances of CSOs to influence political outcomes. There is a subset of decision makers whose position at institutional *veto points* means they have to approve of an initiative at least tacitly before it can move along the legislative process. If they oppose a change, it fails. This approval requirement means these *veto players* (VP) are more powerful than other decision-makers (Tsebelis 2000)¹² and more important targets for Civil Society Organizations if they want to ensure the passage of their proposals. As soon as a veto player is determined to oppose a change proposed by a CSO this change will not pass into law. This also means that the more veto players there are at each step, the more difficult it will be for civil society to introduce new regulations. However, the situation is different if a Civil Society Organization is trying to stop a retrenchment of civilian control. In these cases the retrenchment is the change that needs veto player approval and consequently a larger number of veto players means Civil Society Organizations are more likely to successfully stop a problematic regulation. Even though they might not be able to convince a majority of decision-makers, convincing a veto player is enough to stop the retrenchment.

Empirically, the analysis will have to look at the formal rules regulating the legislative process to determine which political actor is involved as a decision-maker at each stage of the legislative process and which of these has the formal authority to veto a reform proposal. The above discussion of the policy process provides a first set of theoretical expectations about the process by which Civil Society Organizations can affect legislation on civil-military relations. First, Civil Society Organizations will try to access the policy process through decision-makers at the formulation stage because it provides the biggest chance for exerting substantive and sustainable influence on legislation. Second, civil society will also try to enter or remain in the policy process at later stages to either defend earlier achievements against possible vetoes or try to expand their previous success. Third, at the later stages Civil Society Organizations can ignore indifferent decision-makers if they are merely defending previous achievements but have to lobby them actively to introduce additional changes. Fourth, the higher the number of veto players at each step in the decision-making process, the more difficult it will be for civil society to introduce or defend increases in civilian control but the easier it will be to stop institutional retrenchment.

3.2 Target: Decision-maker accessibility

At each step in the policy process, the configuration of decision-makers and veto actors provides civil society with a potential access point to present their demands and the previous section concluded that an organization should ideally enter the process early and

¹² As a subset of decision-makers, only actors who are authorized by way of constitutional or legal regulations are considered veto players in this study. Tsebelis calls this subset "institutional veto players" (Tsebelis 2000). The remaining chapter conceptualizes informal veto potential in a different manner.

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stay engaged throughout. However, the ease with which civil society can communicate their proposals and demands differs from stage to stage and decision-maker to decision-maker. The majority of studies on the legislative effectiveness of Civil Society Organizations implicitly assume that the same set of factors determines an organization's ability to find access to the political process and its ability to influence policy outcomes (Burstein *et al.* 1995: 142). However, even though achieving access is a necessary condition for achieving success, there are empirical indications that the variables affecting both steps are different (Burstein *et al.* 1995: 142). Moreover, if the policy content of civil society demands has an effect on the willingness of decision-makers to accommodate them, as I will argue later on, the determinants of successful access and successful influence have to be specified separately: As long as Civil Society Organizations make complex or multi-dimensional policy demands, it is conceivable that decision-makers are willing to listen to and even agree to some of these demands but turn down others. If a theoretical model was based solely on the determinants of access, it could provide no explanation for this empirical finding¹³.

The accessibility of a decision-maker is determined by two related institutional factors. First, in order to determine an opportune timing for approaching a decision-maker, a civil-society organization needs information about the internal decision-making structure of collective decision-makers, the distribution of authority between different individuals, and their current agenda and activity. More *transparency* allows Civil Society Organizations to know when a decision is in progress or when the appropriate time to approach a particular decision maker about an issue would be and therefore creates a basis for successful and efficient communication between civil society and decision-makers. A minimal amount of transparency is a necessary condition for Civil Society Organizations to become involved in an ongoing legislative process. Second, *openness* describes a decision-maker's willingness to hear civil society demands and proposals. If decision-makers are legally mandated to listen to civil-society input to legislation or even have to actively solicit it, it will be much easier for civil society to approach them.

Even if transparency and openness towards Civil Society Organizations are not legally mandated, there are a number of institutional factors which give decision-makers an incentive to listen to outside input. In a democratic system, most decision-makers with the authority to formulate, change or pass legislation are either members of parliament or the government¹⁴. If we assume that any decision-maker is interested in keeping his position, i.e. avoid a demotion or being voted out of office, this provides an incentive to listen to the input provided by Civil Society Organizations under certain conditions. The social movement and interest group literature has identified five relatively stable institutional

¹³ In addition, the accessibility of decision-makers has to be specified in a way that is conceptually separate from actual civil society approaches. Otherwise, accessibility could only be determined in retrospect if civil society successfully approached a decision-maker (Meyer and Minkoff 2004: 1464).

¹⁴ In a young democracy it is quite possible the military is among the existing decision-makers as well, either because active officers are part of the government or if active officers have seats in parliament. Even though, as military officers, they could be assumed to be closed to civil society influence, their actual openness will depend on short term contextual factors like personal acquaintance.

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properties of the decision-making apparatus which affect the likelihood that decision-makers are accessible for civil society.

First, if a decision-maker is subject to some form of competition, the decision-maker will look for ways to gain competitive advantages over his opponents. Especially if the competition is close, input from civil society can provide a valuable way to improve relative standing. The more competitors are involved, the more likely it is that one of them will invite civil society input or at least listen to a proposal. By nature of its direct electoral system, parliamentary parties are likely to be more open. As long as there is some degree of centrifugal party competition, an increasing number of parties will make it easier for civil society to find a receptive decision-maker (Kitschelt 1986: 63). If interdepartmental competition is intense, for example if different departments are controlled by members of different parties, this competitive dynamic can also make government departments more likely to accept outside input. Similarly, more participants and more competition also make it more likely that one of the decision-makers decides to leak information to civil society to make life for his opponents more difficult, thereby increasing transparency as well.

Second, the degree to which individual decision-makers are accountable to their constituents is also expected to determine their openness to civil society input. In most political systems only members of parliament and the top executive have to win elections in order to keep their posts. This means that members of the legislature will be more open to societal influence attempts than members of the bureaucracy. This is especially true if they are directly elected rather than from closed party lists and depend on smaller constituencies than the national government (Kitschelt 1986: 63). By implication members of parliament and the top executive should be more open to outside input when their position is threatened by upcoming elections rather than shortly after elections.

Third, if a political system has a working system of horizontal accountability to control individual decision-makers, it is more likely that mistakes, professional ignorance or violations of mandate and mission are uncovered by other branches of government and eventually punished (cf. Lauth 2004: 78). If decision-makers are subject to such scrutiny by government departments or parliament, they will be interested in performing well at their jobs. Listening to civil society input is a way to improve the technical quality of laws and regulations and can improve a decision-maker's professional record, help him avoid public criticism and increase the likelihood he will keep his job (Klüver 2013: 48).

Fourth, if competition for parliamentary seats is determined primarily by the ability of political parties to provide public goods to voters, both previous mechanisms work well. However, if political competition is determined by the ability to generate patronage, decision-makers in parliament will be less likely to accept input which would increase their ability to provide public goods through well-crafted legislation (Amenta 2005: 32).

Fifth, in a similar fashion, if government departments and agencies are rational bureaucracies in which the professional future of decision-makers depends primarily on their professional ability - and in the case of party politicians as ministers their popularity -

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will more likely accept civil society input to improve either their public standing or performance. If, however, the government bureaucracy more closely resembles the neo-patrimonial model, the ability to generate patronage and disseminate it among patrons and clients, the department has less incentive to listen to input from civil society (Amenta *et al.* 2005: 520).

While these institutional properties of the political process rarely or only slowly change and are consequently likely to remain constant for the duration of a legislative process, another determinant of accessibility can change more quickly over or with time: Decision makers are more likely to hear input from civil society if they already enjoy amicable relations with them. There are two independent processes at work.

First, former or current members of Civil Society Organizations, social movements or interest groups can win parliamentary seats or be appointed to government positions. Even if they may be forced to forgo their organizational memberships, these actors in decision making positions will be willing to listen to their erstwhile colleagues and procure valuable inside information for them (Banaszak 2005: 154), increasing both openness and transparency.

Secondly, instances of successful cooperation between Civil Society Organizations and their counterparts in parliament and government will make future cooperation easier and more likely. They create trust and information networks between the participants and lower transaction costs (cf. Putnam 1993: 173–174). Those who have benefitted from civil society information or incentives in the past are even likely to resort to “inviting friends to lobby” in future legislative processes (Kollman 1997). The literature has long recognized this symbiotic relationship especially between interest groups and government departments (Finer 1958) and both processes can result in the establishment of a quasi-institutionalized relationship between civil-society organization, responsible parliamentary committee and bureaucratic agencies within a particular policy field, a “virtuous iron triangle” (Banaszak 2005: 154)¹⁵. Especially if the formal legislative process is not transparent or institutionally open for civil society influence, information and invitations from allies can help civil society improve their strategy and access the formal decision-making process. Table 3.1 (p.31) provides an overview of the factors determining decision-maker accessibility.

Considering the fact that different decision-makers will not be equally open to civil society input, Civil Society Organizations have two choices. They can either accept the fact that certain decision-makers are not willing to talk to them and opportunistically use those openings to the policy process that present themselves. Once they entered and are “at the table” they will have an opportunity to talk to decision-makers who are normally closed to influence as well. If there are no openings available or civil society wants to access an otherwise closed decision-maker, CSOs always have the option to expend time, effort and political resources to force a specific decision-maker to listen to them (Amenta *et al.* 2010:

¹⁵ Groups who have these kinds of allies in the decision-making process are also more likely to succeed in realizing their policy goals Giugni and Yamasaki 2009, likely due to the superior information which allows for a more efficient use of their resources.

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299). Apart from the fact that this can be an inefficient use of the group's resources, it can at worst alienate a possible ally and generate a backlash if the group approaches a decision-maker in a threatening or aggressive fashion through the public (Jenkins and Eckert 1986). Considering most factors determining decision-maker openness will remain stable throughout the period under observation, we would expect the following: CSOs will only be able to access the decision-making process if it is sufficiently transparent for them to realize a legislative process is underway. If there are legally mandated institutional channels they are likely to use them. Without institutional access points to the policy cycle, civil society will opportunistically use the openings that present themselves through informal channels. Only if Civil Society Organizations fail to find access will they try to force their way in.

Table 3.1: Factors determining decision-maker accessibility

	Factor	More accessible if...
Legal obligation	Transparency	Transparency mandated
	Openness	Access mandated
Parliament	Number of parliamentary parties	Large
	Party competition	Centrifugal/Intensive
	Electoral system	Smaller constituency
	Vertical accountability	Parliament (or top executive)
	Orientation of Parliament	Public goods
	Horizontal accountability	Well established
Government	Number of government departments involved in decision-making process	Large
	Pattern of interdepartmental competition	Intensive
	Character of bureaucracy	Rational bureaucratic
	Background of DM	Former CSO member/ Reformist orientation
Dynamic	Past interaction between CSO and DM	Cooperative
	Electoral cycle	Before elections

Source: Author's compilation

3.3 *Tactics: How civil society can influence decision-makers*

Once a Civil Society Organization has found access to the decision-making process, the real work begins. Since these groups are not authorized to change legislation themselves, they have to influence the behavior of those who are. At an abstract level influence can be defined as follows: "A has [influence] over B to the extent that he can get B to do something that B would not otherwise do" (Dahl 1957: 202–203)¹⁶. Consequently, the first step to explaining how Civil Society Organizations can exert influence and when influence is likely to be effective is to determine what a decision-maker *would* otherwise do, i.e. if he was not confronted with civil society influence attempts. This section will first specify the institutional interests of decision-makers which affect their base attitude towards specific changes to civilian control. In a second step, I will identify civil society tactics which manipulate the relative costs and benefits of certain policy decisions as the causal mechanism that is responsible for changing decision-maker behavior. In the final part of this section I identify the military as a particularly powerful counter-movement and specify how military resistance can make it more difficult for civil society to succeed with their attempts to sway decision-makers under certain circumstances.

Decision-maker interest

Trying to gauge how much influence civil society had on a given decision-maker requires a standard of expected behavior the actual decision-maker behavior can be compared to. Since it is logically impossible to observe decision-maker-behavior in a specific case at a specific time with and without influence, determining DM positions towards a specific regulation is always an exercise in "counter-factual" argumentation (cf. George and Bennett 2004: 167–170). Under otherwise equal conditions, I expect decision-maker behavior to depend on the effect a specific regulation would have on their basic interests. Before making a decision, they will compare the effects of a new regulation to the status quo and alternative proposals on the table to determine their position.

Rather than trying to access decision-maker interests and policy preferences empirically I will follow standard assumptions about these interests¹⁷. I assume that any decision-maker is interested in keeping his position. If he is an appointed position, that means keeping that position and avoid demotion or dismissal (Downs 1967), if he is in an elected position, that means being reelected to that position (Downs 1968). In order to improve his chances to do so, every decision-maker has a series of instrumental interests. Because the institutional authority of their office grants decision-makers the ability to provide patronage, positions and policies to their supporters and gives them control over resources, I assume that 1) any decision-maker will prefer to expand the authority of his office rather than reduce it relative to that of other institutional decision-makers. Because, depending on the established

¹⁶ This straightforward definition borrows heavily from Goldhamer and Shils (1939: 171). While Dahl actually talks about power, he later considered power a name for the accumulated political resources an individual possesses and not a relationship between actors. Only when power is actualized can it result in influence (Dahl 1961).

¹⁷ This also avoids the methodological problems associated with using revealed preferences to identify decision-maker-interests (cf. Pierson 2000; Bartels 1996).

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procedures of the political system, economic resources can be converted to electoral success or professional promotions, especially in corrupt systems, I assume that 2) decision-makers are interested in access to economic resources. Finally, in order to improve their chances of winning reelection and push through policy preferences, I assume 3) that any decision-maker is interested in generating democratic support. Any decision-maker thus seeks authority, material goods and legitimacy. Only when these interests have been taken into consideration, individual, and from the perspective of this model more idiosyncratic policy specific preferences can come into play (cf. Klüver 2013: 37, 40).

Applied to legislation on civilian control all democratic decision-makers will be interested in abolishing military prerogatives in elite recruitment and public policy. Croissant et al. argue that these areas are “of crucial importance for political parties and politicians to come into and stay in office, to patronage political supporters, to realize their policies, and to generate political legitimacy as genuine democratic leaders” (Croissant *et al.* 2013: 45). By expanding civilian control in these areas, they reduce the chances that the military, an actor that is ultimately more powerful than they are, infringes on the authority of their office or their chances for reelection. Under the uncertain conditions of unconsolidated democracies, civilian decision-makers have less reason to unequivocally prefer more civilian control over Internal Security, National Defense, or Military Organization. As long as the rules of democratic competition are not universally accepted and losers as well as winners cannot yet expect the other side to abide by the terms of the democratic game (LaPalombara 1987) civilian decision-makers will be weary to hand their political opponents control over agents of repression which they might use to secure their position of authority in constitutional crises or alter the terms of political competition (cf. Pion-Berlin and Trinkunas 2010). The same goes for monitoring regulations: While an increase in monitoring capacity improves the chances that decision-makers can use the knowledge against their political opponents, they will be weary to grant their opponents a similar advantage over their own institution. Illustrating this point for the area of National Defense Giraldo stresses “Parties in the legislature may have incentives to exercise oversight of an opposition executive, but they are likely to be less willing to give up some of their power by creating neutral institutional mechanisms for oversight, like auditing agencies or a nonpartisan legislative staff” (Giraldo 2006: 56). If a regulation with relevance for these three decision-making areas increases a decision-maker’s relative authority over the military, I expect this decision-maker to be in favor of the regulation. If a regulation does not affect a decision-maker’s relative authority over the military I expect that decision-maker to be indifferent¹⁸. If a regulation reduces a decision-maker’s relative authority over the military in these areas, I expect that decision-maker to oppose the regulation. The relative value decision-makers put in gains of material vs. democratic support depends on the feasibility of corrupt behavior to further individual career chances and on the fact how much a decision-maker depends on citizen support.

¹⁸ This assumption does not preclude the possibility that decision-makers might prefer certain policies over others empirically. However, since the determinants of these lower-order preferences are not derived theoretically and would have to be investigated empirically, they are beyond the boundaries of this theoretical model.

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Members of parliament are likely to put more value on support than non-elected members of the government.

*Civil society tactics*¹⁹

Following the assumption that decision-maker behavior during a legislative process is determined by their expectations about the effect specific regulations would have on their interests, civil society can change decision-maker behavior by affecting these expectations. Unlike much of the existing literature on social movements and interest groups that treats access and influence as a single concept and consequently focuses their attention on the avenue through which civil society communicate their proposals or demands to decision-makers, i.e. through institutional or non-institutional channels (see Chapter 1), I argue that the channel or form of communication is not as important as the content of the communication for the eventual success or failure of an influence attempt.

First of all, a civil society proposal or demand presents an alternative to the status quo or the present state of a legal draft. An attempt to influence decision-maker behavior is effective if the proposal or demand civil society presents is more attractive for the decision-makers than the status quo or alternative regulations. If a newly proposed regulation would expand a decision-maker's institutional authority, material resources or citizen support, the decision-maker will support its inclusion to a bill. If it does not affect his basic interests he will be indifferent and not try to change the status quo or an existing draft or oppose the regulation once it is in the bill. If it runs contrary to his interests, the decision-maker will oppose the change. If proposing changes was all Civil Society Organizations could do to affect legislation, Civil Society Organizations could never hope to realize demands not in line with the institutional interests of decision-makers they managed to access. All they could hope for to change decision-maker behavior would be to change the way a decision-maker perceives the result of a possible actions in relation to his own preferences: The group would have to convince their target that the proposed policy change is actually in line with the target's interests. Lukes calls this form of influence tactic *manipulation*, but CSOs do not necessarily have to lie to their targets when using it. Rational persuasion or some form of encouragement is also a viable form of manipulation (Lukes 2005: 36). However, without at least "rough congruence" between the goals of civil society and their targets influence attempts will be more difficult (Bratton 1990: 94).

Still, even if a policy change itself has no favorable effect from the perspective of decision-maker interests, Civil Society Organizations can still hope to affect the behavior of a decision-maker by changing his expectations of costs and benefits (Parsons 2007: 53): CSOs can either promise to provide the targeted decision-maker with a some form of positive incentive if he complies with their proposal or threaten him with negative consequences if he does not act on it. Civil society tactics, i.e. manipulation, benefit and sanction differ in

¹⁹ The idea of civil society tactics which work though the manipulation of costs, benefits and goals as causal mechanism for explaining the outcome of influence attempts is inspired by Croissant et al.'s idea of civilian strategies of differing robustness to avoid military resistance to reforms (Croissant *et al.* 2013: 47–51; Etzioni 1975: 4).

their degree of *assertiveness* (cf. Amenta *et al.* 2010: 299)²⁰. How much assertiveness is necessary to change the behavior of a decision maker depends on how much a demand is in conflict with the target's interest (Lukes 2005: 36).

First, *manipulation* works if a demand positively affects decision-maker interests anyway. In order to manipulate a decision-maker, an organization can conduct "Information politics", i.e. collect information and distribute it to "where it will have the greatest impact" (Keck and Sikkink 1998: 16). This can change a decision-maker's perception of an issue even if it is based solely on persuasion and therefore constitutes the least assertive tactic. Empirically, manipulation often takes the form of personal communication with decision-makers, participation in hearings or press conferences (Baumgartner *et al.* 2009: 151).

Second, providing *benefits* can be enough to convince an otherwise indifferent decision-maker to change his behavior. In practice, the conceptual border between manipulation and benefits can be fuzzy. Apart from its persuasive effect, information provided by a Civil Society Organization can have a value of its own and be considered an inducement (Klüver 2013: 40). If gathering information is expensive, handing it to decision-makers can be considered a form of *legislative subsidy*, for example if civil society provides decision-makers with finished drafts or provide comments on existing ones (Hall and Deardorff 2006; Baumgartner *et al.* 2009: 152) or participate in parliamentary or departmental hearings as experts. Other kind of information can be considered a benefit as well, if it can be used as political ammunition against the decision-maker's political opponents (Baumgartner *et al.* 2009: 124). Benefits can also come in the form of bribes, favorable publicity or political support in some other form.

Third, if a civil society demand stands in conflict with decision-maker interests, manipulation and benefits are not assertive enough to affect the behavior of a decision-maker and *sanction threats* or *actual sanctions* are necessary. Since Civil Society Organizations are by definition precluded from the use of actual force²¹, their sanctions have to deprive a decision-maker of something they value other than physical safety or survival. Usually, this is their office, their chances or resources necessary for reelection or their access to material resources (Amenta *et al.* 2005: 519). Public shaming is one of the most frequently used sanctioning tactics Civil Society Organizations employ which aim to reduce a decision-maker's level of public support (Klüver 2013: 48)²². Empirically, the threatened sanctions often include staging a media campaign, public rallies or demonstrations, protest marches or other forms of mass mobilization and public appeals which threaten decision-

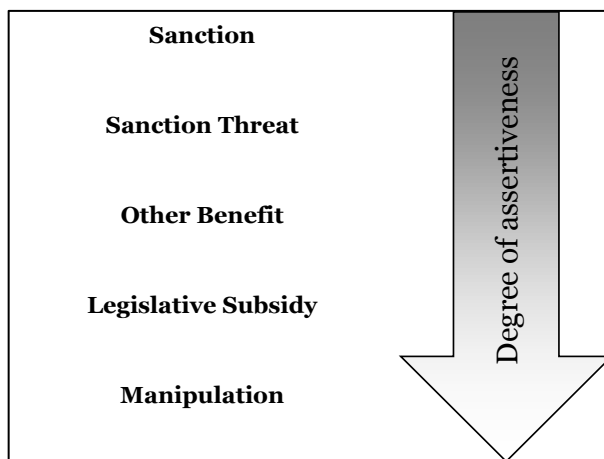
²⁰ Amenta never clearly defines what assertiveness means. Empirically, it describes "increasingly strong sanctions" Amenta *et al.* (2010: 299). I have adopted his term but expanded it to include the provision of benefits or manipulation in addition to sanctions and connected the concept to the idea of escalating amounts of "power" necessary to influence another's behavior depending on the conflict of interest Lukes (2005: 36). Escalating levels of assertiveness can hence be understood as tactics that exert more leverage on the target's decision-making calculus.

²¹ Within the confines of the civil society concept, staging rallies, demonstrations and acts of civil disobedience are the most assertive strategies organizations have available to influence decision-makers since the use of force would disqualify a group. This is a restriction on the basis of tactics that is necessary so the distinction between Civil Society Organizations and insurgency groups and the civil society concept itself remains meaningful Croissant *et al.* (2000); (cf. Croissant *et al.* 2000).

²² According to Klüver, shaming "plays a fundamental role in binding actors to the norms and values of the political community" and is, hence, a valuable tool for civil society (Klüver 2013: 48).

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Figure 3.2: Civil society tactics and degree of assertiveness



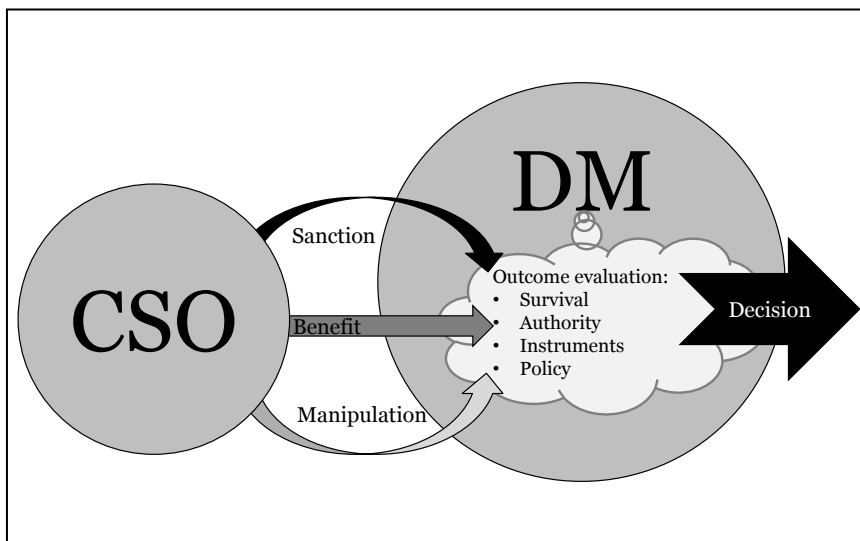
Source: Author's compilation

makers through their electoral implications (Baumgartner *et al.* 2009: 151). Figure 3.2 lists the different tactics ranked according to their associated degree of assertiveness.

In addition to their influence effect more assertive strategies can also be used to force decision-makers to listen to civil society demands if they are otherwise inaccessible (Amenta *et al.* 2010: 299). Nevertheless, it is important to keep in mind that the avenue of approach or outer form of communication and the actual tactic Civil Society Organizations employ are conceptually separate. In principle, an organization could choose to contact a government official during a parliamentary hearing in an attempt to influence legislation and use that forum to employ any of the three tactics: In order to change decision-maker behavior, civil society could use the hearing to threaten the participating members of parliament with a public shaming campaign should they not comply with the organization's demands, offer them an incentive like favorable publicity and possibly a completed alternative draft or merely provide information on how supporting the initiative would be in line with their current or actual best interests.

To summarize: Civil Society Organizations can change decision-maker behavior to extend civilian control or avoid retrenchments of civilian control if they employ a tactic that is assertive enough to overcome the obstacle posed by his institutional interests (see Figure 3.3, p.37). The more difficult the task, the more assertive the tactic has to be and the more likely it is that civil society has to use "increasingly strong political sanctions" (Amenta *et al.* 2005: 521). If this argument is correct, the empirical analysis should show that civil society can only convince decision-makers to change their stance on legislation if they employ tactics that are appropriate to the necessary assertiveness level.

Figure 3.3: Examples of Tactics as mechanism of CSO influence



Source: Author's compilation

Entrenched institutions and military counter-pressure

While decision-maker interests and CSO tactics are relevant for the ability of Civil Society Organizations to affect the legislative process in all political matters, there are additional problems unique to civil-military relations which potentially affect the difficulty of influencing decision-makers and which warrant an expansion of the model. While some of these have already been recognized empirically, they are yet to be clearly specified. There are three arguments that indicate civil society influence on military affairs might be inherently more difficult than on other fields. The first argument states that as a “high-profile policy domain” it is close to the national interest which several authors argue makes decision-makers less likely to listen to outside voices. The risk of following a proposal that could run counter to the preferences of the majority of voters would likely outweigh the benefits a CSO could provide (Giugni 2004: 227–228; Kriesi *et al.* 1995: 97). Turning this argument almost completely on its head but reaching similar conclusions, the second line of argument considers defense and military policy a topic of “marginal importance” for voters (Pion-Berlin and Trinkunas 2007) since it rarely affects them directly and – outside the United States – provides limited amounts of “pork” or patronage. It follows that if “the public pays no heed to defense unless there is a clear external threat” (Pion-Berlin 2005: 26-6) decision-makers would have to fear fewer repercussions should they turn down civil society appeals. Organizations would lose their ability to mobilize the public to sanction decision-makers for their unresponsive behavior and the menu of tactics would be severely

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limited²³. However, whether the salience of military reform expands or limits CSO tactics as these two arguments indicate is an empirical question and cannot be determined theoretically *ex ante*. In addition, the arguments are not concerned with the difficulty of convincing decision-makers but with the ability to implement certain tactics which rely on public mobilization to generate a threat of sanctions.

The third, and more convincing line of argument stresses that certain issues, including military politics, present a challenging environment for Civil Society Organizations because “in these policy areas there are more likely to be powerful state and non-state actors working in opposition to the movement” (Amenta *et al.* 2010: 295). If these actors exert opposing influence on decision-makers, it would make the task of pushing for reform more difficult. Since any expansion of civilian control by definition reduces military autonomy, which the military values highly (Finer 1962: 47), the armed forces are the most likely actor to mount such opposition. Even under otherwise ideal circumstances the military is an “opponent who commands overwhelming organizational and coercive power” and can consequently “impose high costs on civilians who attempt to change the institutional status quo, marginalizing the reformer’s possible benefits” (Croissant *et al.* 2013: 46). In addition to these sources of power, which are intricately linked to the military’s ability to fulfil their duty as agent of national defense (Feaver 1996: 152), many post-authoritarian armed forces can wield additional political influence that flows from existing institutions of civil-military relations. Owed largely to their immense coercive might and the resulting potential to make or break regimes, civilian and military authoritarian rulers alike provide the military with institutional incentives to remain supportive of their rule (Belkin and Schofer 2005). In order to give them a stake in the current regime, rulers grant the military institutionalized access to political office, influence over policies, extensive control over internal security operations or autonomy in determining their own recruitment and promotion process. In short, authoritarian rulers stabilize their rule by giving the military exactly those prerogatives a democratic civilian government will then have to eradicate in order to guarantee civilian control (Croissant and Kuehn 2015).

Since institutions not just mirror existing power asymmetries but have an independent effect on power distribution in a society (Knight 1992: 13–14) these institutional patterns can provide the military with additional power to defend the very institutions that gave them power in the first place. Where this happens, an institution of civil-military relations becomes entrenched and will more likely survive the conditions that led to its creation (Croissant *et al.* 2013: 46–47). Institutional entrenchment is based on two related mechanisms: Firstly, some existing institutions grant the military an opportunity to participate in the actual process of decision-making or even give them a formal veto position. Because the military can use the institution itself as a mechanism to defend it

²³ Even though the role of public opinion has no immediate explanatory function for the model adopted here, it should be pointed out that Giraldo is much more aware of the potential to garner votes with Security Sector Reform initiatives, especially in young democracies. She writes “Although defense issues may not retain political and electoral importance over the long term, there will be periods when they greatly matter” (Giraldo 2006: 52).

against potential changes, this is considered *institutional entrenchment in the narrow sense*. Secondly, some institutions can provide the military with access to political resources other than decision-making authority which they can then use to influence decision-makers informally. This influence is based on a similar manipulation of costs and benefits CSO have to rely on. The entrenched institutions can grant the military a relative increase in coercive potential vis-à-vis civilians, provide them with a normative basis to justify their autonomy which would make the existing pattern seem more legitimate or simply offer a source of remunerative resources they can use to pay off decision-makers who would otherwise prefer to push for reform (Croissant *et al.* 2013: 47). Since institutions that provide the military with this kind of political resources are useful to defend the institution itself but require an influence channel other than this institution to affect decision-maker behavior this mechanism is considered *institutional entrenchment in the wider sense*. Even though the mechanisms underlying institutional entrenchment are universal, the actual pattern is unique to any empirical case (Croissant *et al.* 2013: 56).

Considering this, the military²⁴ is not only motivated to protect its autonomy but in a comfortable position to spoil civilian attempts to institutionalize civilian control, especially if they are the beneficiary of either form of institutional entrenchments. Fortunately for reformers “the distinction between an actor’s potential strength and how likely it is to bring the full force of its power to bear is also critical” (Hunter 1997: 20).

Whenever the military decides to intervene openly, coerce civilians or obstruct their reform attempts, it makes military political influence visible. This in turn can hurt the interests of the armed forces in the long run. If the military oversteps what is perceived as their legitimate sphere of power, it “shine[s] a spotlight on the inadequacies of the existing rules and make[s] the crafting of new rules a legally and politically salient enterprise” (Giraldo 2006: 52). Public opposition to military tutelage will likely increase and the salience of the issue makes military reform an effective banner for reformist politicians to raise when they are hunting for votes. Unless they are willing to risk suspending the rules of democratic competition should this happen, the armed forces thus have an incentive to act with restraint and “reserve saber rattling for exceptional circumstances” (Hunter 1997: 21).²⁵ Consequently, the pertinent question changes: When will the military consider reform proposals enough of a threat to its institutional interests that it will use the power at its disposal to stop them?

First, the military will use their formal and informal power to resist policy changes that would endanger what they consider their institutional core interests. Second, however, they will also use their resistance potential if a policy change would negatively affect entrenched

²⁴ The military is treated as a unitary actor in this discussion and even though it is possible that factions within the military or even individual officers are the source of influence on decision-makers it is inconsequential for the model whether institutional, factional or individual beneficiaries are the actual source and agents of informal influence attempts. See Hunter (1997: 47) for the unitary actor assumption and Finer (1962: 39-47, 56-58) for the possibility of factional and individual interests behind military influence attempts.

²⁵ There are other ways for civilians to manipulate the likelihood that the military resists civilian reforms which Croissant *et al.* have aggregated into three families of strategies based on coercion, legitimization and compensation (Croissant *et al.* 2013: 49–50). However introducing these civilian strategies to avert military resistance into the overall model would run the risk of making the argument circular or tautological.

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institutions. The reason for this lies in the nature of democratic politics. A regime change confronts the military with an uncertain future. In order to decrease its uncertainty about its own institutional future, the military tries to maximize its autonomy during transition processes as a reassurance (Agüero 2001: 199). However, the deals the military leadership strikes with civilian opposition movements as part of a pacted transition are not set in stone. In order to complete the transition and finish the process of democratic consolidation, civilian politicians have to break these deals eventually (Valenzuela 1992) and reduce military autonomy. While the military slowly settles into their new role under democratic conditions it will begin to worry less about its immediate institutional future and potentially acquiesce to some retrenchment of their autonomy. However, considering the changing nature of democratic politics they will have to be weary of the plans future civilian politicians might have for military reform (Norden 2011). Holding on to entrenched institutions of civil-military relations – those institutions which provide the military with formal and informal ways to influence decision-makers below the level of open threats or coercion – serves as an insurance to the military that it will continue to be able to oppose an expansion of civilian control should it become necessary. Consequently, the military will use their formal and informal power to stop reforms affecting entrenched institutions concerning military organization and national defense but, depending on the military's established task profile, reaching into internal security as well²⁶. As long as the military still formally participates in the decision-making process, civil society will have to treat it like any other decision-maker as a potential point of access and potential veto player. If the military communicates their preferences to decision-makers informally rather than act as a decision-maker itself, it will be considered equivalent to a particularly powerful *counter-movement* that can undermine civil-society demands through diametrical pressure (Dixon 2008; Zald 1996). The military can use their accumulated resources to marginalize the relative benefit decision-makers would otherwise draw from a reformed regulation itself or the relative costs and benefits provided by Civil Society Organizations to influence decision-maker behavior. I therefore expect that the armed forces will resist if civil society proposes changes that either affect their institutional core interests or endanger institutions through which they have formal or informal influence on future decisions. If the military resists, I expect its resistance to increase the difficulty of a civil society influence attempt. Where previously tactics with lower degrees of assertiveness, like manipulation or legislative subsidy, might have been enough, more assertive strategies will now be necessary to sway decision-makers despite military counter-pressure (see Table 3.2, p.41).

²⁶ Even though, theoretically, remaining prerogatives in elite recruitment and/or public policy would provide the military with a formalized way of avoiding future reforms in any field, knowing that civilians are less likely to back down from reform attempts in these areas, the armed forces are less likely to risk a public confrontation (Kuehn 2012: 58).

Table 3.2: Illustration of effect of military resistance on necessary assertiveness levels

	Military does not resist proposal	Military resists proposal
Demand in line with target's institutional interest	Low level of assertiveness	Medium level of assertiveness
Target indifferent to demand	Medium level of assertiveness	High level of assertiveness
Demand in conflict with target's institutional interest	High level of assertiveness	Highest level of assertiveness or CSO pressure ineffective

Source: Author's compilation

3.4 The strategic capacity of Civil Society Organizations

The previous discussion has presented civil society influence on the extent of civilian control as a two-step process. First, an organization looking to expand the institutionalization of civilian control has to access the legislative process through one of the decision-makers empowered to formulate, amend and pass legislation. Their configuration provides the group with a menu of targets to influence, whereas their accessibility determines who the group will contact. Once communication is established, the degree of conflict between the decision-maker's interests and the newly proposed regulation determines how assertive the organization's tactics will have to be. However, whether a Civil Society Organization can actually choose the ideal strategy or combination of target, timing and tactic in a given situation largely depends on the group's strategic capacity, i.e. the resource and organizational base, properties endogenous to the group itself (cf. Heinrich 2010).

Resources

First, the group needs the political resources to influence the decision-makers it wants to target. In principle, the resources valuable for collective activity "may be labor power, goods, weapons, votes, and any number of other things, just so long as they are usable in acting on shared interest" (Tilly 1978: 7). In the case of Civil Society Organizations looking to influence decision-makers, the set of resources needs to reflect things useful for implementing the three tactics described above. Coercive resources are necessary for sanctioning or believable threats, remunerative resources for providing benefits and informational resources for convincing decision-makers that a reform is in their best interest (Kitschelt 1986: 61). While groups can become quite creative when they "turn what

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[they] have into what [they] need" (Ganz 2000: 1010), empirically, most organizations will need *expertise*, *funding* and *network resources* and will have to focus some of their time on *resource mobilization activities* (Meyer and Minkoff 2004: 1478). These are necessary to stabilize the group's resource base to ensure organizational survival and procure the resources necessary for the actual influence tactics.

A group's *expertise* determines the areas in which the group can speak with (academic) authority and provide information as a source of persuasion and benefit but also describes how well it knows the ins and outs of the policy process and advocacy work (Ganz 2000; Jenkins and Eckert 1986). It comes from two main sources. On the one hand, policy or advocacy experts can simply become member of the group. When former members of the decision-making process, experienced activists or individuals with political connections join a group on their own initiative or are invited in, this broadens their capacity for action. As the number of knowledgeable members increases, a group's aggregate expertise increases with it. On the other hand, Civil Society Organizations can conduct research activities in the group, pay external researchers to collect information or participate in activist trainings (Baumgartner *et al.* 2009: 124). In general, expertise is most needed for manipulation and providing legislative subsidies, but experienced grass roots activists can also contribute to sanctioning attempts.

Financial resources or funding are the most flexible resources and important for any kind of tactic. They can be used directly as a source of benefits for decision-makers or used in other resource mobilization activities like research, the holding of public events to build up pressure and establish communication with decision-makers or other groups and to pay wages for full-time members of the group who have to forego other employment. The initial funding for groups often comes from individual members of those constituencies that benefit from the public or private good the group produces. If the beneficiary constituency, i.e. those who will benefit if the CSO's demands are met, cannot be relied upon for funding, as it is often the case for social movements, organizations have to be funded by regular members sufficiently motivated to chip in part of their personal income to support the common cause or by external sponsors (McCarthy and Zald 1977; Lichbach 1996: 171–172). Money from external benefactors or "conscience constituents" (McCarthy and Zald 1990: 19) and international donors often comes with strings attached, like organizational or administrative requirements to keep track of the funds or limits on what the donations can be used for. This can even limit the group's flexibility in exchange for a resource grant rather than expand it (Bratton 1990). Individual payments of time and money remain important throughout the life of any Civil Society Organization, especially if a group strives to mobilize large number of outside supporters (Kriesi 2008: 395).

Network resources are necessary in addition to financial resources and expertise if groups are looking to create the public pressure and credibility necessary for sanctioning tactics. While an organization's own membership base can already provide an important source of protesters if the group is a membership organization, additional bodies in the streets will

often be necessary to make a point. In order to mobilize beyond its own membership base, groups need to establish connections to other relevant actors in addition to decision-makers. Connections to the media can help publicize events to raise awareness or report on decision-maker behavior to create pressure (Gamson 2004). Connections to other Civil Society Organizations with different resource profiles can allow one group to expand their tactical repertoire to compensate their weaknesses or coordinate activities (Baumgartner and Mahoney 2005; Kollman 1998). If Civil Society Organizations within a social movement sector are part of a formal network or umbrella organization (McCarthy and Zald 1977) or share the same goals, this kind of “mesomobilization” becomes more likely (Gerhards and Rucht 1992).

Empirically, I expect organizations with a larger and more diverse set of resources to be able to employ a larger set of tactics and tailor the tactics to the targeted decision-maker. In addition, Civil Society Organizations should be observed playing to their strengths tactically: If an organization is weak on expertise but strong on network resources, they will favor tactics that make use of this strength. If an organization realizes it lacks the resources base necessary to implement tactics of an appropriate assertiveness level to influence decision-maker behavior on a certain issue, I expect them to delay the issue or try to compensate by investing time in resource mobilization activities.

Organization

In order to coordinate resource mobilization activities every civil society group needs to spend some of their resources on *organizational development*. If money comes from members, someone needs to monitor the payment of dues and if the money is supplied from the outside, a CSO needs at least a rudimentary organizational structure to canvass for more funds and manage the existing ones (McCarthy and Zald 1990: 19). The same goes for the administration and acquisition of network resources and expertise.

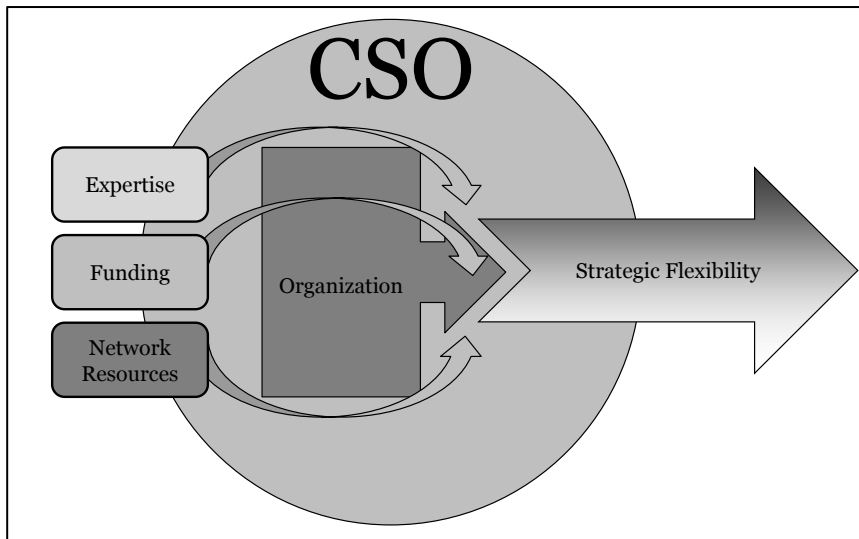
The stockpile of resources alone does not determine who prevails in political struggle (McAdam 1982: 20). Internal communication and decision-making structures are the main reason why organizational development often determines the mid- to long-term chances of success and even survival of a group (Meyer and Minkoff 2004). They determine how readily a group can adapt its strategy to changing circumstances (Andrews *et al.* 2010; Dixon 2008; Ganz 2000). The nature of the political environment constantly changes at different stages of the decision-making process and even for different regulatory issues within the wider issue of civilian control. Civil society groups are reportedly less successful during the later stages of the decision-making process because they lack the flexibility and leadership to change strategy if necessary (Amenta *et al.* 2010: 297). Since “smart” use of existing resources can allow even small and objectively weak groups to influence decision-makers successfully, resourcefulness often becomes more important than resources (Ganz 2000).

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Hierarchical and deliberative network models of group organization have different effects on internal communication and decision-making. A written set of group goals and principles, a formal membership list and a differentiated membership structure with leadership, sectional groups and rank and file members are marks of a hierarchical organization are good for a group's "combat readiness" (Gamson 1990: 91, 108). Hierarchical groups can quickly change track if the leadership recognizes an opening and a clear hierarchy also provides political opponents and potential allies with a counterpart for negotiations who is able to make binding decisions for the group and "structure sustained relations with authorities" (Tarrow 1998: 124). Deliberative procedures in the group leadership, on the other hand, often provide more accountability and improve networks within the group and beyond. This speeds up and broadens the flow of information so a CSO can make better use of the expertise of group members and it helps mobilize larger numbers of supporters for mass tactics (Ganz 2000). An ideal group has professional leadership and organization as well as committed grass roots activists to learn about new developments and still act decisively (Ganz 2000; Dixon 2008).

Empirically, I expect groups with a hierarchical structure to stay on message more effectively when communicating with decision-makers and have quicker decision-making structures to react appropriately to spontaneous access options. In contrast, groups with more network-like structures and deliberative structures in their leadership have an improved flow of information and are able to implement different tactics at the same time. However, because of their slower decision-making speed they are more likely to follow an established pattern of action if an opening presents itself or they start a new project.

Figure 3.4: Determinants of Strategic Flexibility



Source: Author's compilation

3.5 Summary of the argument and hypotheses

This chapter has demonstrated that any influence attempt is a three stage process from the perspective of a Civil Society Organization. First, the group has to pick time and target based on the configuration of decision-makers and veto actors in the legislative process and their relative accessibility to outside advice. If a group finds no way to approach relevant decision-makers or veto actors it will not be able to affect their behavior. Second, once it accessed a decision-maker, the organization has to implement a tactic aimed at changing the target's behavior. Whether they can convince a decision-maker to reform an issue within a piece of legislation depends on two things: The assertiveness of the tactic has to be sufficient to affect the choice the decision-maker would otherwise make based on his interests. In addition, the civil society group has to approach the decision-maker more assertively if the military defends the institution by threatening sanctions or offering benefits of its own to the target. If the CSO lacks the political resources to implement the necessary tactic, the organizational capacity to make the right decisions quickly or the ability to defend their success against later changes and vetoes, influence will ultimately fail (see Figure 3.5., p.46)

The influence argument at the center of the explanation presented in this chapter yields the following main hypotheses (M) about the relationship between the dependent variable (successful expansion of civilian control) on the one side and the two dependent variables that determine the difficulty of an influence attempt (degree of decision-maker interest conflict with a demand and the entrenchment of the targeted institution):

M₁: The more the CSO demand is in conflict with the interests of the targeted decision-maker, the more assertive CSO tactics have to be in order to successfully affect decision-maker behavior.

M₂: If realizing the CSO demand would endanger core military interests or abolish an entrenched institution, informal military counter-pressure on civilian decision-makers increases the amount of assertiveness necessary to change their behavior.

Whether a group can achieve their desired policy outcome is further determined by three scope conditions or necessary conditions for successful CSO influence (C):

C₁: A CSO has to find access to the legislative process in order to influence decision-maker behavior.

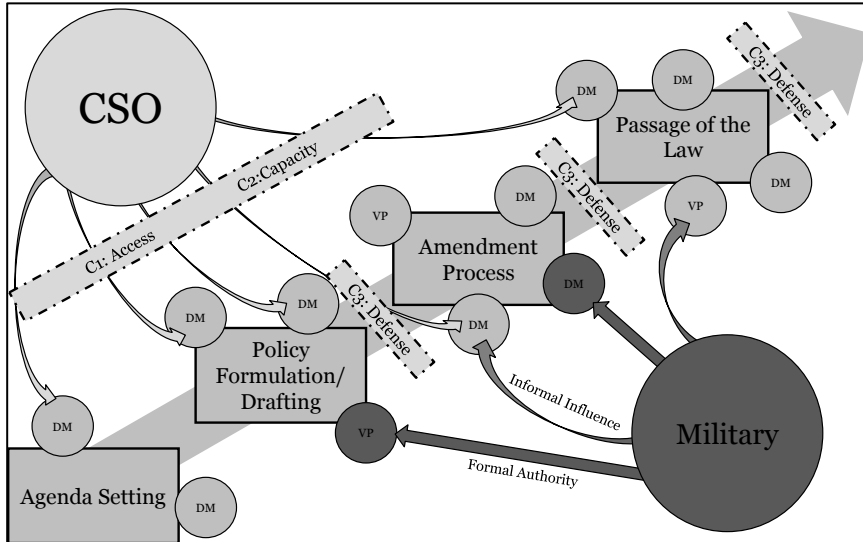
C₂: A CSO will only be able to use a sufficiently assertive tactic if it has the strategic capacity to do so.

C₃: A CSO has to defend successful influence at earlier stages of the policy process throughout later stages in order to successfully influence the extent of civilian control.

In addition to these core hypotheses the theoretical arguments also yield implications (I) for how the empirical process plays out:

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Figure 3.5: Model of CSO influence on decision-makers with military counter-pressure



Source: Author's compilation

I₁: The internal decision-making processes of the CSO show that it chooses its targets based on potential targets' transparency for outsiders and their openness to outside influence and will use institutional access channels if they are available.

I₂: The CSO is aware of decision-maker veto potential and tries to access veto players irrespective of their accessibility to either preclude a veto or use it to stop problematic regulations.

I₃: CSO internal decision-making processes show that the organization is aware that the difficulty of an influence attempt is determined by a combination of their institutional interests and potential military counter-pressure and CSO discuss the implications this has for the necessary tactics.

I₄: If the CSO realizes they lack the resources to implement a tactic that is sufficiently assertive they either try to access other decision-makers, focus their attention on other issues or try to expand their resource base.

I₅: Decision-makers do not actively oppose new regulations they are indifferent to once they are in a bill but they will not actively enter new regulations they are indifferent to either.

I₆: If the number of veto players at a decision-making stage is high it is more difficult for CSO to introduce new regulations to a bill, however the higher the number of VP, the easier it is to delete regulations which would retrench civilian control.

I₇: CSO try to access the political process at an early stage to capitalize on the fact that content already in a bill does not have to be defended against indifferent decision-makers.

I₈: If a CSO proposal affects core military interests or entrenched institutions of civil-military relations, military decision-makers oppose it and there are indications that the

Explaining CSO influence on the institutionalization of civilian control 47

military exerts informal counter-pressure on civilian decision-makers or uses formal decision-making power to stop a regulation.

I₉: The attitude a decision-maker has towards demands by CSO is partly determined by the effect specific regulations would have for their interests as civilians and their governmental branch and narrower institutional interests.

Unlike existing theories of civil-military relations, this explanation provides an explicit mechanism for the influence Civil Society Organizations have on the institutionalization of civilian control. Unlike theories on the political effects of Civil Society Organizations it can explain the outcome of individual influence attempts down to the level of individual regulations if the result falls short of a complete success because it analytically separates the problem of access and influence. In the following section I develop a research design based on this theory which allows us to answer the research questions formulated in the introductory chapter.

3.6 Research Design

Most existing theories on civil-military relations assign Civil Society Organizations a secondary role for the institutionalization of civilian control at best, as I demonstrated in the introductory chapter of this dissertation. Consequently, the extent of civil society influence on civilian control is likely to be dwarfed by alternative explanations if it is to be determined by means of a quantitative approach. Researchers looking to employ inferential statistics in this endeavor have to rely on measures of civil society activity and values far removed from the influence mechanism identified here like civic culture (cf. Innanchai 2012). However, there is another reason to approach the question with qualitative methodology: Owing to the lack of specific theories on CSO influence on civilian control, it is possible that additional factors beyond the proposed theories had an important influence on civil society influence. In contrast to quantitative studies, qualitative case studies are able to uncover such left-out variables in order to improve the existing theory because they “allow for both a holistic view of the story and a detailed view of events” (Bennett and Elman 2006: 260,262).

Method

To test the theoretical argument, I combine the benefits of what George and Bennett call the *congruence method* with systematic process tracing (George and Bennett 2004: Chapter 9). The congruence method would assume that the theoretical argument developed above is supported if the value of the explanatory variables matches the resulting pattern of change to the institutionalization of civilian control after a bill has been completed across a number of observations. However, there are two problems with an exclusive focus on congruence. First, while demonstrating congruence in line with the theoretical argument is a minimum requirement to support the argument presented, it alone cannot differentiate between

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instances where a group is merely lucky that decision-makers adopt their position without any lobbying and instances of actual influence (Klüver 2013: 8).

Second, the multi-stage and complex nature of the causal process can lead us to either falsely reject the theory or believe the argument supported even though the postulated mechanism was neither at work nor ultimately responsible for the outcome were we to focus on the variation of independent and dependent variables at the level of the finished law alone. CSO influence can succeed and fail at different stages of the policy process. Consequently, the final bill might appear to be in line with the argument even though the pattern of success and failure in the final bill might not match the value of the independent variables at the moment of civil society influence. Alternatively, the final bill could seem to be in conflict with the theoretical expectations leading us to reject the argument even though civil society managed to influence it at an earlier stage but their success was later vetoed when the configuration of independent variables had already changed.

Process tracing is a way to avoid black-boxing the connection between *explanans* and *explanandum* in the empirical analysis (Dür 2008: 568; Hall 2008) which allows the researcher to demonstrate that a Civil Society Organization actually “played any role in generating change” (Andrews 2004: 14). But unlike fully inductive approaches in the tradition of historical research, process tracing can be based on *a priori* theoretical arguments about the interaction of explanatory variables and their relationship with the dependent variable. If this is the case, researchers can first test the theory against their initial cases without sacrificing internal validity. Then, if the theory is supported, it can easily be tested against other cases in order to generalize its explanatory power beyond the scope of the original case. Process tracing is well suited to this kind of *theory-oriented explanation* which looks to identify “the most important elements in a causal chain through which the outcome is generated” by shifting the empirical focus towards the causal mechanism (Hall 2008: 306).

Merely demonstrating that an independent variable develops causal force through a series of other – intervening – variables is not enough (pace King *et al.* 1994). Process tracing is an attempt to come as close to the actual causal process as possible and ideally observe the underlying mechanism at work (Beach 2012). While the conceptualization and measurement of these “causal process observations” has not been adequately addressed yet (Kittel and Kuehn 2012: 4) – and it is indeed questionable if causal processes can be observed at all – researchers can increase their confidence in a theory if their empirical analysis yields observations that indicate independent and dependent variables are not merely co-varying according to the theoretical expectation but actually connected via the postulated mechanism. This additional empirical reassurance is viable as long as the theory presents a clear and detailed causal mechanism based on “deductions from more general contentions about the world based on previous observations and axiomatic premises” (Hall 2008: 309).

This chapter has constructed a theoretical argument based around an explicit causal mechanism and a set of additional variables which reflect the effect of institutions and structures on CSO agency and yielded the previously identified set of main hypotheses about the central influence mechanism and additional variables detailing the scope conditions under which the mechanism can become effective and its results be sustained to have an effect on the final law. In addition to these direct observations of the causal effect and the effect of scope conditions, the argument has also produced another set of observable implications which either detail expected events in the causal sequence or auxiliary outcomes that are not part of the causal sequence but a byproduct of its inherent logic (Mahoney 2010: 129–131). If the process analysis in the following chapters shows that 1) there is the theoretically expected congruence between the values of independent and dependent variables, 2) civil society activity is turned into influence through the expected mechanism, and 3) there are indications that both civil-society organization and decision-makers followed the theorized decision-making processes and resulting behavior – in short: if the empirical record confirms the hypotheses listed above – confidence in the argument is greatly strengthened (cf. Parsons 2007: 91).

Before moving to the selection of cases, a final cautionary note concerning the downsides of process tracing is in order. Many proponents of randomized large-n or small n-comparative case studies stress that the results of within-case methods like process-tracing, as a rule, cannot be generalized. And indeed,

“Empirical knowledge on decision-making processes, actors and how their interactions produce the outcome of interest, improves the internal validity of causal claims, but does not enhance the robustness of the inferences on the cross-case level.” (Kuehn 2012: 56).

Consequently, attempts to transfer knowledge gleaned from tracing the causal process in one setting to differing contextual conditions will likely result in overgeneralization (Bennett and Elman 2006: 340). Still, process tracing generates useful knowledge about causal mechanisms and interactions of explanatory variables in one or several cases that can subsequently be tested against additional evidence from other contexts to move closer to a generalizable argument (Hall 2008).

Case selection

While the validity of causal inference depends much more on the number and quality of the observations a study collects within a certain case²⁷ than on the actual process of case selection (Hall 2008: 311), researchers can still introduce bias into their results if they

²⁷ Hall proposes to define a case as “a unit in which the relevant outcome takes on a specific value”. This is in line with what King, Keohane and Verba define as an observation - “one measure on one unit for one dependent variable” (King *et al.* 1994: 117). They argue that differentiating between cases and observations is important since “although case-study research rarely uses more than a handful of cases, the total number of observations is generally immense. It is therefore essential to distinguish between the number of cases and the number of observations. The former may be of some interest for some purposes, but only the latter is of importance in judging the amount of information a study brings to bear on a theoretical question” (King *et al.* (1994: 52)). In order to avoid terminological confusion, I will follow King, Keohane and Verba and continue using “case” to refer to an empirically somewhat coherent set of single observations. However, only the observations are methodologically relevant units. Still, the selection of cases will also affect the availability of observations within these cases.

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approach that process carelessly. I have based my selection of cases to study within the Indonesian context on two main criteria.

First, I have decided to focus my attention on pieces of legislation that were considered relevant to military reform by the Indonesian CSO ProPatria. Since the activities of this group rarely went beyond the boundaries of narrowly defined security sector legislation even a full study of the group's activities systematically omits observations of civil society activities beyond this field which also had an effect on civilian control. This includes the more general democratization of Indonesian politics including reforms of the electoral or party laws and as well as most aspects of constitutional reform. These issues are only mentioned in passing in ProPatria's records. In addition, the group's activities only began after the military had already agreed to many important reforms in Elite Recruitment and Public Policy and implemented some of them during the Habibie and early Wahid Presidency (1998-2000; cf. Croissant *et al.* 2013: 101-105).

Second, I study the full population of cases of legislation considered pertinent to the military aspect of Security Sector Reform by both members of the ProPatria Working Group and other civil society groups and activists (Widjajanto 2007: 22-23; Sukma 2012: 154; Al Araf 2013; Azhar 2010). This includes the Law on State Defence (UU 3/2002), the Law on Fighting Terrorist Crime (UU 15/2003), the Law on the Armed Forces of Indonesia (UU 34/2004), the State Intelligence Law (UU 17/2011), the draft law on military justice, the draft law on state secrecy and its companion Law on the Freedom of Public Information (UU 14/2008), the draft laws on TNI assistance tasks and the state of emergency as well as the Law on the Management of Social Conflict (UU 07/2012), the draft laws on national security, Military Operations other than War, and finally a set of laws concerning defense resources, including the draft law on the reserve component and the Law on the Defense Industry (UU 16/2012).

Studying all these laws to the same level of detail would go much beyond the scope of this dissertation and, as the following section will show, the amount of data available for each law differs starkly. Consequently, I have opted for two-tiered design with several in-depth case studies as well as additional shorter case studies to increase confidence in the model (Lange 2009: 17). I conduct detailed studies of three legislative processes: the Law on State Defense, the Law on the Armed Forces of Indonesia, commonly known as the TNI Law and the process for the yet unfinished Bill on National Security. I focus on these laws for three main reasons. First, as will become apparent in the case studies, both the Law on State Defense and the TNI Law were deliberated during the height of ProPatria's activities and organizational strength. A focus on the group's strong years increases the chances to observe at least some instances of successful CSO influence. While the legislative process for the National Security Bill was never successfully concluded, initial deliberations on the bill began in 2002. The process thus includes significant variance in ProPatria's organizational and resource capacity as well as some changes in decision-maker accessibility over time. Second, all three pieces legislative processes revolved around a number of issues with

significant consequences upon the level of civilian control in at least four of the five decision-making areas of civil-military relations. Since the difficulty of influencing decision-makers varies depending on the regulatory issue, this generates a large number of outcome observations in addition to the procedural observations. Third, discussions about these laws generated a particularly large amount of data among the materials that I managed to obtain. Consequently, a focus on this dearth of empirical material provides ample opportunity to check a wide selection of observable implications in addition to the main causal mechanism. In order to further strengthen the confidence in the theoretical argument, I also conduct shorter case studies of the remaining legislative processes. Where other Civil Society Organizations tried to influence the decision-making process I expanded the scope of the studies in order to demonstrate that the argument also holds for other groups in the Indonesian context. Thanks to the large number of observations from different time periods and touching on different decision-making areas of civilian control, there will be significant variance on most independent variables which will allow for some cross-case observation in the concluding chapter.

Data requirements and discussion of available sources

The data necessary to conduct process tracing can be very difficult or even impossible to obtain. In many cases researchers looking for empirical proof of civil society group influence will have to decide whether “absence of proof may be taken as proof of absence” (Dür 2008: 563). In order to increase the likelihood that sufficient information is available, process tracing often makes it necessary to combine different sources information. Rarely will researchers be able to focus on just one type of material. However, depending on the research context, primary and secondary sources, newspaper reports and interviews all suffer from weaknesses researchers have to be aware of (George and Bennett 2004: Chapter 5) and which often cannot be fully compensated by careful triangulation.

Secondary sources, while easily accessible, rarely contain the level of detail necessary to conduct mechanism-oriented process tracing of legislative procedures specific to one policy field. Primary sources, especially official records of decision-making meetings can provide valuable insight in the positions parliamentarians and bureaucrats took and indicate position changes following influence attempts by civil society. However, even official sources can suffer from selection bias (George and Bennett 2004: 97–105) and can be difficult to attain if they are considered confidential for security or political reasons. While parliamentary record keeping in Indonesia today is much better than many observers of Indonesian politics have long complained (Sherlock 2012; Ziegenhain 2008), the available information is systematically skewed, depending on the transparency of the stage in the legislative process. The parliamentary library only makes parliamentary minutes publicly available once the respective laws have been passed so that failed legislation leaves no easily accessible paper trail. Those deliberations that make it into the library only contain records of the meetings which were declared open to the public at the time. Without connections to

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members of parliamentary commissions it is very difficult to find information on closed meetings and even then well-nigh impossible to attain information from previous parliamentary terms. Even when this information is available, many of the final decisions and deals are made during deliberations in the “lobby”, which is a quasi-institutionalized way of making informal deals during breaks in official negotiations that leaves no paper trail whatsoever (cf. Chapter 4). Finally, the official record only contains the draft version of a bill that was officially introduced to parliament. Earlier versions drafted by members of parliament or the government bureaucracy are not included and rarely available to outsiders or have even been completely lost so their content often has to be gleaned from other sources.

Newspaper reports, like secondary sources rarely provide information on the legislative process or civil society activities which go beyond reporting that a certain law is being discussed or that a human rights group held a public event. In addition, the Indonesian media often report on rumors and rarely investigate the truth behind statements uttered by individual government or parliamentary officials (Steele 2011). Consequently, newspaper sources will only be used sparingly if no other sources are available or the articles can be used to triangulate the information from other sources.

Because other sources are either unavailable or unreliable, researchers are often forced to rely on data generated *ex post facto* by interviewing individuals who participated in the process. This source suffers from all “well-known biases in the recollection of past events”, including “failings of human memory, the imposition of current knowledge on recollections of the past, the imposition of a narrative structure on unconnected events and so on” (Dür 2008: 563–564). In addition, civil society activists often have reason to over-, decision-makers to understate the actual level of civil-society influence (ibid.). Indeed, written and oral post-hoc accounts of the events surrounding civil-society influence attempts in Indonesia often differed markedly from primary sources, where triangulation was possible. Like newspaper reports, results from interviews will only be used sparingly, where their results could successfully be triangulated or fit the tendency of the remaining material reasonably well, or – cautiously – where they fill an important gap in the causal narrative.

In addition to the sources discussed so far, another set of primary sources will provide the main basis for the ensuing case studies. At the request of USAID, their main funding agency at the time the Civil Society Organization ProPatria, which coordinated the activities of a larger network of activists and experts in the security sector, kept written records of their internal and external meetings since 2000 (Mietzner 2013b). While some of the existing hard and soft copies were discarded or disappeared, Hari Prihatono graciously provided me with 290 documents in Bahasa Indonesia and occasionally English²⁸, which were transcribed from recordings taken during many of the group’s meetings between late

²⁸ To provide some perspective on the level of detail the transcripts provide: together, the transcripts contain roughly over 6 million words, which averages to almost 21.000 words per meeting transcript (Author’s calculation).

Table 3.3: ProPatria meeting transcripts per year

Year	Number of Transcripts	Average Word Count (arith.)
2000	6	34355
2001	74	13968
2002	26	19321
2003	61	23244
2004	35	20658
2005	33	29775
2006	12	20402
2007	22	17282
2008	9	26892
2009	2	25845
2010	10	18332

Source: Author’s calculation

September 2000 and July 2010 (see Table 3.3, p.53). While the earliest transcripts appear completely unedited for content and even contain discussions about sports or health problems, the group later began omitting items marked as “personal communication”. These verbatim transcripts cover strategy and planning meetings as well as lobbying and focus group discussion meetings with members of parliament, the Department of Defense, the military leadership and other activists active in the security sector and provide a wealth of information on most steps of the group’s internal decision-making process as well as their influence attempts towards decision-makers. There are, however, several problems with the data, the reader should be aware of.

First, ProPatria’s ability to compose and transcribe recordings is also an indication of its financial resources and organizational development at the time. A drop-off in resources the group experienced after 2005 also left them with fewer administrative personnel (Scarpello 2014: 142). After 2010, the group no longer kept up its archive in any systematic manner (Prihatono 2013). However while it is possible that this systematically skews the available information, the group’s ability to hold formal meetings was similarly bound to group finances. Still, the time between 2000 and 2005, i.e. before the drop-off in financial resources, should provide the most reliable coverage of information.

Still, it is uncertain if the transcripts report all pertinent information since existing transcripts mention informal socialization between meetings and reference meetings where no recordings were taken. However, these references at least provide a glimpse at what happened in between transcribed meetings. In the causal narrative it will always be clearly indicated where the events are based merely on hearsay. With few exceptions the available files contained the internal version of transcript with the full name and position of speakers reported. Following worries inside the group that handing unredacted copies to

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international donors might endanger the openness and frankness of invitees during discussions and invite characterizations of the group as a foreign spy, only redacted and anonymized versions were handed to actors outside the group to document its activities. While Hari Prihatono gave me permission to use the transcripts for my scholarly work, he did not wish them to become publicly available because of the confidential nature of their content and the offer of anonymity that had made many of the discussions possible. In order to find a compromise between the need to protect the privacy of the speakers and my own need to evaluate my theoretical argument, I only attribute quotes and statements to members of the core group who have consistently demonstrated their openness and frankness about the events during personal interviews. Other speakers will merely be identified by their organizational affiliation and, if relevant to the argument, their approximate position within their organization unless their position and role in the events has been otherwise been made available to the public already.

Structure of the remaining empirical chapters

There were few changes to the basic rules of the Indonesian legislative process and most of the variables determining decision-maker openness and the nature of entrenched institutions in Indonesia's civil-military relations throughout the analytical timeframe. In order to attenuate the need to include these details in every empirical chapter and to provide a better understanding of the basic political context of civil society activism in civil-military relations, the following chapter will first describe the more stable institutional properties of the decision-making process. This includes the basic legislative process, the formal rules for decision-maker transparency and openness as well as other determinants of decision-maker accessibility detailed before. In Chapter 5 I analyze the pattern of civil-military relations before and during the Indonesian transition to identify which institutions were still entrenched by the year 2000, the beginning of the earliest piece of legislation to determine where we would expect formal and informal military resistance to reform.

All case study chapters (Chapter 6-9) open with an introduction that establishes the background of the piece of legislation that is the focus of that chapter. A chronological narrative of the legislative process opens the main part of each case study chapter and serves to present the events of the case (George and Bennett 2004: 89). The narrative is also the beginning of a "descriptive explanation" which is then transformed into an analytic explanation in a separate section. In this section I also determine whether the central causal hypotheses hold for the observations in that chapter and whether the causal process observations and other observable implications are in line with the theoretical expectations (George and Bennett 2004: 92-94). Each analysis opens with a discussion of the strategic capacity of the civil society group, consisting of its expertise, financial and network resources as well as its organizational structure at the time. Next, I determine where the group managed to enter the policy process and whether the avenue approach of the group to decision-makers was in line with theoretical expectations. Then I trace the changes to the

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level of civilian control that have been brought about by ProPatria's activities or the activities of other Civil Society Organizations at different stages of the policy process, both compared to the status quo and alternative proposals. Following that, I discuss the expected interests of decision-makers, look for clues that they took their institutional interest into account when deciding on policy alternatives and determine whether the Civil Society Organizations included these considerations in their own strategy. After that, I discuss the expected military interests in relation to the proposed changes, look for evidence that the military actually had these interests and resisted and that ProPatria took this into account. Finally, I analyze the type of tactic the Civil Society Organization employed, whether the behavior of activists, decision-makers and the military was in line with the theoretical expectations concerning the main causal mechanism and why the tactics were effective or ineffective respectively. The conclusion of each chapter summarizes its results but also discusses the role of additional factors that have influenced the success or failure of civil society that were not originally included in the explanatory model.

4 The Indonesian legislative process: Access points and accessibility²⁹

In this chapter I describe the more stable elements of the Indonesian legislative process in order to determine which decision-makers were involved in national legislation between 1999 and 2013 and who among them had the power to veto legislation. In addition, I also apply the framework developed in Chapter 3 to arrive at theoretically informed expectations about their general accessibility for Civil Society Organizations.

During the Suharto era Indonesia's lower house of parliament, the People's Representative Council (*Dewan Perwakilan Rakyat*, DPR), played a subordinate role. Formal laws were not very relevant since Suharto made extensive use of his decree authority and even a series of important economic reforms in the 1980s was never formally adopted as parliamentary laws (Vatikiotis 1998: 175). From 1971 to 1998 DPR legislative output averaged only between 7.8 and 14.8 laws per year (Fealy 2001: 108). When laws had to be passed, the government dominated the legislative process and used DPR's formal authority as a mere rubber stamp. During these years, the DPR was overshadowed in importance by the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*, MPR), parliament's upper house, a "super parliament" that could pass legislative acts with semi-constitutional rank until 2003 (Braun 2008: 84). After Suharto had stepped down, the role and authority of DPR expanded significantly (Ziegenhain 2008). Already during the Habibie interim presidency, legal output soared and the constitutional reforms between 1999 and 2003 brought a series of changes for the institutional balance between president and legislature, regulated the legislative process more clearly and established several checks and balances on presidential power (Ellis 2005: 15). However, despite these changes government and parliament still share the authority to pass legislation throughout the legislative process.

*The legislative process*³⁰

The legislative process for most bills starts with the establishment of the annual DPR agenda. Each year, DPR leadership and government together develop the National Legislative Program (*Program Legislasi Nasional*, Prolegnas), which assigns legislation deemed a priority to DPR's four two-month long sitting periods. In exceptional circumstances both the government and DPR can propose drafts not listed in the Prolegnas but rarely do so. The original drafts for most laws listed in the Prolegnas are developed by an appropriate government ministry or agency, sometimes in cooperation with the Ministry of Justice. The State Secretariat acts as central coordination board, seeks presidential

²⁹ Some arguments and sections in this chapters are forthcoming as Lorenz and Croissant (2015).

³⁰ The following discussion is based on the DPR Standing Orders (Art. 99-150, Tata Tertib DPR).

authorization for the draft and then forwards it to DPR's Legislative Body (*Badan Legislatif*, Baleg) together with the so-called academic draft (*Naskah Akademik*), an explanatory document that outlines the purpose of the bill and explains its structure.

Parliamentary initiatives can technically be developed by every Member of Parliament, but usually a parliamentary commission or several commissions jointly take up this task. Should DPR and government both introduce a draft bill on the same matter, the DPR bill takes precedence. Ten Members of Parliament have to sign a proposal so it can be forwarded to DPR's Legislative Body. If the DPR leadership finds that the formal prerequisites for government or parliamentary initiatives are met it schedules the draft for a vote in the plenary session. If the plenary accepts the bill for deliberation the DPR's Deliberative Body (*Badan Musyawarah*, Bamus) either assigns it to one of the currently (2014) eleven Standing Commissions (*Komisi*) which in turn forms a Working Committee (*Panitia Kerja*, Panja) or directly establishes a Special Committee (*Panitia Khusus*, Pansus)³¹. The subcommittees consist of up to 30 members, taken proportionally from the parliamentary party groups (*fraksi*)³². When the bill is sent to committee the DPR leadership asks the government to name an official representative for the deliberations – usually a cabinet member in charge of an appropriate ministry – and the first and more important stage of the legislative process (Tingkat I) begins.

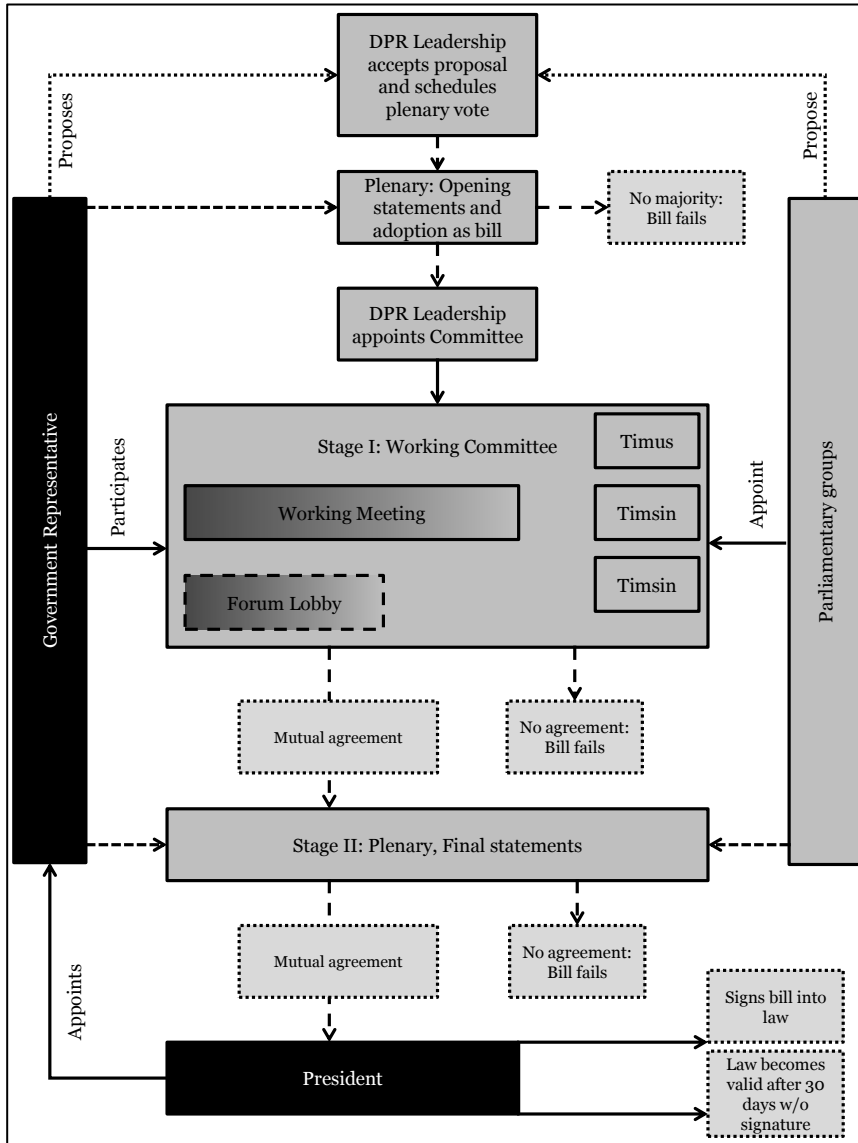
The first meetings of the subcommittee are dedicated to organizational matters: government and subcommittee leadership agree on a timetable for the deliberations, decide on general meeting procedures and discuss who will be invited to the General Hearing Meetings (*Rapat Dengar Pendapat Umum*, RDPU). After one or more RDPU sessions the government and each parliamentary group in the committee summarize their position in a general statement and then individually develop an inventory of issues to be addressed in the future deliberative process³³. These so-called Problem Inventory Lists (Daftar Inventarisasi Masalah, DIM) contain and number every sentence in the original draft bill and establish whether the party in question considers it “fixed” (*tetap*) or proposes alternative formulations if they want changes. Consequently, the DIM

³¹ To streamline the presentation of the legislative process, the following section presents the process for regular Working Committees. If a Special Committee is formed, the resulting process is identical except for the name of the committee.

³² *Fraksi* is usually translated as “fraction”. Since the English word “fraction”, unlike the German word “Fraktion” is generally understood to mean a subgroup within a parliamentary group, I will stick with the slightly more cumbersome term “parliamentary group”.

³³ If the draft originates from the government, only the parliamentary parties formulate their DIMs. However, the government later prepares a similar document to reply to the DIMs formulated by the parliamentary party groups.

Figure 4.1: Indonesian Legislative Process after 2000



Source: Lorenz and Croissant (2015)³⁴

³⁴ The Regional Representative Council (Dewan Perwakilan Daerah, DPD) is omitted from this overview. It also has the right of initiative and can advise the DPR and comment on bills relevant for subnational governments.

development often takes considerable time. When the subcommittee reconvenes, the substantive discussions of the consolidated DIM and proposed changes are first conducted in Working Meetings (*Rapat Kerja*, Raker) between members of the subcommittee and government representatives. If the participants of the Raker cannot agree on the substance of an article after several rounds of discussion, it is further discussed in the “forum lobby”, an informal gathering without official minutes until agreement is reached. If agreement is still impossible or the language is contested the issue is relayed back to the Working Committee. The Working Committee then forms a Drafting Team (*Tim Perumus*, Timus) to solve remaining substantive conflicts and sends the results back to the Working Committee where all parliamentary groups and the government declare the articles fixed if they agree with the changes. The Small Team (*Tim Kecil*, Timcil) then formulates the preamble and considerations that introduce every Indonesian law as well as the necessary elucidations which are attached to the text of the law itself. Finally, a Synchronization Team (*Tim Sinkronisasi*, Timsin) harmonizes the results of the other meetings. The first stage of the legislative process concludes with the final statement of government representative and parliamentary groups and if “mutual agreement” (*persetujuan bersama*) is reached, the bill is returned to the DPR leadership for the second – much shorter – stage of the legislative process (*Tingkat II*). The bill is scheduled for a plenary vote and, if government and parliament reach mutual agreement, the bill is forwarded to the President who signs it into law.

Decision-makers and veto players

This overview of the legislative process has identified the most important decision-makers who present potential targets for Civil Society Organizations. At the agenda setting stage, DPR Leadership or DPR’s Legislative Body and the government, represented by the State Secretariat control the creation of the annual Prolegnas. The initial drafting is done by one or more government ministries or agencies, or the Commissions, which do most of the legislative work in Indonesia’s working parliament (Juwono and Eckardt 2008: 298). Once a draft is accepted, members of the parliamentary party groups in the responsible Panja or Pansus are the dominant actors from the parliamentary side but from now on, the government is also present through its representatives. Since parliamentarians are members of only one Commission, each Commission develops distinct parliamentary procedures and power relations. The policy position of individual members of parliament is often determined more by their Commission membership than their party affiliation (Sherlock 2010: 166). It is only in the concluding plenary session vote that the leadership of the parliamentary groups can become more involved when they try to direct the voting behavior of their party colleagues. Formal votes are relatively rare except for very contentious issues. Consequently the overall low party discipline rarely plays a role for the outcome of the electoral process (cf. Sherlock 2008: 13). For Civil Society Organizations, this means individual committee members and chairs rather than parliamentary parties and

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parliamentary group leaders are the most relevant contacts when seeking to influence policy.

Along the legislative process, some actors are more influential than others. While the collection of the necessary signatures for a parliamentary initiative and the eventual acceptance as a bill by the plenary usually is a mere formality, a majority among the members of parliament can turn down a bill at this stage (Sherlock 2008: 108). Whereas both government ministries and parliamentary commissions could relatively freely introduce bills not part of the Prolegnas prior to 2005, Baleg and the Ministry of Justice and Human Rights were later given a gatekeeper position to check the urgency of the proposed bills for parliamentary and government initiatives respectively. Previously, ministries and committees had often accepted external initiatives in exchange for bribes, a practice the new gatekeepers were meant to stop³⁵

At Stage I and II of the legislative process the number of veto players multiplies because of two Indonesian peculiarities. The first, “deliberation until consensus” (*musyawarah untuk mufakat*) is a basic norm of the Indonesian parliamentary process that is enshrined in the DPR Standing Orders (*Tata Tertib DPR*). This principle is responsible for the fact that DPR rarely resorts to formal voting (Fealy 2001: 108). Instead, deliberations continue until none of the participating parliamentary groups raise objections to a proposal and the proposal is then considered accepted without a vote. “Deliberation until consensus” is not a formal veto in the sense that each faction has to positively agree to a proposal and majority votes are still possible but the majority will often rather drop a bill than violate the consensus principle and force a vote (cf. Febrian 2009): While consensus and voting are both valid ways of passing a law, they “are not equally valued” (Braun 2008: 127). Unless a law is considered important or a very clear and vocal majority has expressed support for a certain regulation the consensus principle gives any member of a committee the power to at least slow down the legislative process. If one or more parliamentary party groups oppose an article it is unlikely to be passed in that form. Since members of a specific Commission develop their own esprit de corps and their policy positions become colored by their institutional membership over time, deliberation until consensus often means that the number of veto players in a special committee is effectively multiplied by the number of participating Commissions.

The second peculiarity multiplying veto points is the shared legislative authority of government and parliament. Since the second round of constitutional amendments in August 2000 (Art.20.2, Indonesian Constitution of 1945, UUD'45) the government no longer has a pocket veto over legislation: Any bill passed by parliament will become valid even without presidential signature 30 days after its passage. Despite this innovation which has been celebrated as the end of the presidential veto in Indonesia and a significant

³⁵ This led to a led to a large number of legal initiatives to partition existing provinces and administrative districts Kimura (2010).

expansion of DPR's legislative authority (Kawamura 2013: 164) the government can still effectively veto any bill at five stages during the legislative process.

First, the president can refuse to appoint an official representative to respond to a parliamentary initiative in the plenary (King 2004: 83). Second, the president can refrain from appointing an official representative for the committee phase (cf. Schneier 2008: 201). Third, the Working Meetings can only proceed if a representative of the government is present for the deliberations. If the government does not send a representative the work on the bill is effectively stalled (Pareira 2013). Fourth, the government has to formally agree to a bill so it can move out of committee and be scheduled for a plenary vote session. Fifth, during the plenary session the government has a final chance to turn down the bill before it is finally passed. Mutual agreement at these last points is constitutionally mandated while a blockade based on the consensus principle can be broken by majority vote. If DPR and government cannot reach agreement in the plenary, the same bill cannot be introduced again during the current parliamentary term (Art. 20, UUD'45). Even without a formal veto, this means that the president could have stopped any law which ultimately finds its way to his desk at any one of these stages before he finally signs it (King 2004: 232).

Even though the president has the authority to order the government representative to vote this way or the other, sectoral or special interests often determine the official government position during deliberations in the absence of clear directives. This is more likely if the responsible minister orders his bureaucratic staff to represent the government during the deliberations in his stead (Braun 2008: 192–193).

In summary, the Indonesian legislative process is rich in veto positions and players. Each party representative in the committee stage and every party faction in the plenary proceedings have an effective suspensive veto. However, in contrast to the government veto, based on the need for mutual agreement, vetoes by parliamentary groups can be overruled by a clear majority vote. This makes the distribution of veto power lopsided and provides the government side with significantly more leverage than even a large parliamentary minority.

Accessibility

Faced by this large number of relevant decision-makers and veto actors, Civil Society Organizations looking to influence the legislative process are expected to take into account how transparent and open each of them are before deciding on their strategy. The openness of parliament is expected to depend on the election mode, the number of parliamentary parties, the degree of policy orientation among Indonesian members of parliament and finally the overall transparency of the parliamentary part of the legislative process and the existence of institutionalized consultation mechanisms.

Despite the changes to election and party laws, the basic election mode changed very little for the founding elections of 1999 and remained based on proportional representation. Electoral districts were based on the Indonesian provinces and candidates competed for between 4 and 82 seats on fixed lists. Before every one of the following elections the system

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was changed. Legislators expanded the number of districts to 69 in 2004, then 77 in 2009 and levelled the number of mandates per district to between 3 and 10 by 2009. Over time, the party lists were progressively opened. After a largely cosmetic attempt with almost unattainable quotas in 2004 (Thalang 2005) a ruling by the Constitutional Court effectively opened the lists completely in 2009 (see Table 4.1, p.62). Since then, an unfavorable list position no longer precluded chances of being elected and candidates began campaigning even against their party peers (Sherlock 2009a: 7). Despite the relatively large district size compared to single-member first past the post systems, members of parliament had an incentive to foster a relationship with their voters from 2009 on that should theoretically increase their willingness to listen to outside input. Indeed, the main reason democracy activists had pushed parliament to open the list system was the hope that it would make DPR members more responsive to their constituents (Sherlock 2009a: 5). However, rather than making the average member of parliament more responsive, it massively increased levels of campaign expenditure and made parties more reliant on independently wealthy candidates or illicit campaign financing (Mietzner 2013a: 73).

Table 4.1: Indonesian electoral system for DPR

	1978-1997	1999	2004	2009
Electoral system	PR	PR	PR	PR
Number of seats	500	500	550	560
Appointed members	75-100	38	0	0
Number of electoral districts	27	27	69	77
District size	4-68	4-82	3-12	3-10
List system	Fixed lists	Fixed lists	Half-open lists	Open lists
Number of votes	1	1	1	1
Electoral threshold	11-13 mandates	none	none	2,5 % national

Source: (Hicken and Kasuya 2003; Nohlen *et al.* 2001: 85; Schmidt 2010: 108; cf. Lorenz and Croissant 2015).

The lack of an effective electoral threshold meant that a total of 17 parties gained access to parliament in 1999 and even 19 in 2004. However, most of these were micro-parties which had to merge into larger parliamentary groups in order to be effective. The introduction of an electoral threshold in 2009 reduced the number of parties to only nine. Even ignoring extremely small parties, the Indonesian party system had to be considered a moderate multiparty system in 1999 and an extreme multiparty system in 2004 and 2009 (Croissant and Völkel 2012: 247; see table 4.2).

Table 4.2: Effective Number of Parties in DPR

	1999	2004	2009
ENPP (DPR)	5,0	7,1	6,1

Source: Croissant and Völkel (2012: 244)

This large number of parties and the consensus principle not only provide CSO with a host of possible access points with veto potential, the former should also make parties more willing to listen to Civil Society Organizations in order to gain an electoral advantage over the competition. In addition, parties should also be receptive to outside expertise to improve their chances of prevailing over the other parties and the government during legislative deliberations: The Indonesian parliament and the individual parliamentary groups lack a well-equipped scientific research service which could level the playing field for them when competing with the expertise of the government bureaucracy during a legislative process (Ziegenhain 2008: 198). Prior to 2003 there were no funds whatsoever for any expert staff based at the level of the parliamentary groups or individual funds going beyond personal assistants (Sherlock 2003: 22–23). Consequently, all parties should be especially receptive for outside expertise.

However, the competition for votes and expertise only improve accessibility if the parties in question focus on policy as a means to compete in elections as opposed to patronage. Following the 1999 elections, parliamentarians had mixed backgrounds and goals. Most of the more progressive democracy activists with clear policy goals had not joined political parties for fear of losing their status as a “pure” moral force (Nyman 2009: 262). Still, many former journalists and academics who had been active in the *reformasi* movement in 1998 as well as other opposition politicians were elected to DPR in 1999 to serve alongside experienced DPR members from the authoritarian era (Ziegenhain 2008: 117). Following the election of 2005 observers worried that the number of celebrities without political experience who were elected to parliament was on the rise and could reduce the overall quality of parliamentary work further (Ufen 2006). Still, the actual social background of most members of parliament did not change significantly. Most members were either reelected, were former bureaucrats or had a business background, albeit the number of academics and journalists declined. Even before this development started, members of supervisory commissions, including Commission III, IV, V, VIII and IX reportedly accepted bribes on a regular basis and seemed focused on expanding patronage potential rather than formulating policy (Ziegenhain 2008: 118). Now that parliament dominates the national budgeting process (Juwono and Eckardt 2008), parliamentary seats have become more attractive for those seeking kickbacks in exchange for public programs or courtesy legislation in exchange for bribes (Braun 2008: 196) and the open lists provide an additional incentive to offset the rising campaign costs through illicit income. Even for those members of parliament who are genuinely interested in performing their duties in order to maximize chances of reelection, participating in well-publicized events like inquiries or investigation

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of government officials is more attractive than the “slow and unrewarding work of studying a piece of legislation piece by piece” (Sherlock 2003: 29). Still, the open lists also allowed 37 vocal pro-democracy activists looking to influence policy in line with their previous occupation to win a parliamentary seat in 2009 (Mietzner 2013a: 102–103).

Finally, the institutional transparency and openness is influenced by the Commission system. Since members of parliament only join one Commission, different Commissions have become “balkanized” and developed very different traditions and patterns of authority that limit the transparency of the whole legislative process (Sherlock 2010: 166). In order to overcome differences in internal procedure and record keeping CSO have to specialize and focus their effort on Commissions active in their field or lose the ability to detect openings for influence attempts (Sherlock 2010: 165-166, 172; Rüländ *et al.* 2005: 230). The institutional openness of parliament and the likelihood for commissions to invite outside actors for hearings and “the quality of consultation tends to vary from one committee to another” (Sherlock 2010: 172). Only individuals and groups expressly invited get a chance to testify in front of parliament. Since committees often focus their list of invitees on members of the government or bureaucracy rather than external experts or civil society groups, the establishment of working relationship between civil society and parliament has been difficult (Schneier 2008: 206).

Compared to parliament, the government side provides even fewer institutionalized openings for civil society. The number of government departments participating in the legislative process differs and depends on who the government appoints as representative. The government is completely free in their choice, so sometimes the president nominates only one ministry but depending on the issue other ministries or agencies active in the respective policy field are involved as well. Theoretically, the more ministries are involved, the higher the chances that a CSO can gain access to any one of the participating decision-makers.

However, a strong neo-patrimonial organizational tradition in the Indonesian bureaucracy reduces the overall accessibility of government decision-makers for civil society input. The problem begins at the top. Members of the Indonesian cabinet are often accused of seeking patronage rather than looking to contribute to government policy (Sherlock 2009b: 342). Especially party politicians are expected to provide jobs and government contracts for clients within their party when they are selected for ministerial posts and “develop their bureaucracies into small fiefdoms” (Mietzner 2013a: 76–77). However, since the transition, most security related cabinet posts have been given to former military officers or technocrats without strong party connections (Diamond 2009). Whether ministers have a rational or neo-patrimonial leadership style and orientation consequently depends on the minister in question and cannot be determined at a general level. Below the level of the minister, the Indonesian bureaucracy is famously inefficient and suffers from

“non-transparent processes, underfunded institutions, an inadequately skilled public workforce, and institutionalized corruption reflecting a self-serving and opaque administration.” (Synnerstrom 2007: 160)

In the execution of their duty officials direct their loyalty towards individuals rather than offices (Blunt *et al.* 2012: 67–68). Since positions and promotions have to be bought like a commodity, rent-seeking behavior is rampant (Kristiansen and Ramli 2006) and officials often lack the requisite qualifications for their position (Turner *et al.* 2009). Leading bureaucrats siphon off funds from the budgetary allocations they receive to fill their “war chests”. These are used to finance agency activities in budgetary crisis situations or to “pay off politicians who might otherwise show an unwelcome interest in the budgetary affairs of government departments and other agencies” (Mietzner 2008: 246). Corrupt behavior is most severe in those government departments considered “wet” (*basah*), i.e. those controlling large budget positions providing ample opportunity for graft (McLeod 2005: 378). Even though the Indonesian Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*, KPK) began targeting this behavior after its establishment in 2003 and has since indicted officials at all levels of the bureaucracy, this only improved the transparency of processes touching on financial affairs but not those concerning the quality of regulatory or legislative activity (Butt 2011: 383–386). Furthermore, office abuse is still not prosecuted systematically enough, even though horizontal accountability as measured by the separation of powers improved considerably. Consequently, the quality of basic administration is not abysmal compared to other young democracies and has consistently been ranked as around average since 2006 (see Table 4.3, p.31), but the prevailing efficiency problems and low standard of professionalism provide little incentive for officials to make their activities transparent or seek outside advice to improve the regulatory quality of their department. Finally, there are few institutional openings on the government side and the bureaucratic process remains opaque. The policy-making process is least transparent at the drafting stage and ministries are not mandated to systematically seek outside advice. There is no clear legal process how governmental drafts are to be “socialized” prior to their introduction to parliament.

Table 4.3: Bertelsmann Transformation Index Partial Scores, 2006-2014

Indicator	2006	2008	2010	2012	2014
Separation of Powers, ID	6	7	9	9	9
Prosecution of Office Abuse, ID	4	3	5	4	5
Basic Administration, ID	6	7	7	7	7
Basic Administration, Sample Average	6,4	6,6	6,9	6,7	6,6

Source: BTI (2014), partial scores rank from 1 (worst) to 10 (best).

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To sum it up, Civil Society Organizations have little chance of even learning about drafts in progress and depend on the government to actively seek input into legislation if they cannot rely on personal connections to the government bureaucracy. The situation is similar for parliament. Between 1999 and 2014 there were conflicting trends in the theoretical predictors of parliament openness. On average, patronage orientation was more important than policy orientation for individual members and legislative activity mattered little for individual reelection chances. Thanks to the rising campaign costs and the increased chances for receiving kickbacks and bribes in exchange for favorable regulations parliamentary seats became more attractive for corrupt politicians after 2009. Simultaneously, the open list system provided an opening for a few strong reformist candidates and democracy activists to be elected on the basis of their policy position. Even considering the otherwise closed-off Commission system, these few parliamentarians from a range of parties had incentives to increase the transparency for Civil Society Organizations and provide access to deliberations. Without either generalized incentives to canvass for input or institutions mandating it and an opaque policy process at both the government and parliamentary side the actual accessibility of the policy process depends on the goals of individual decision-makers and the personal connections civil society groups can muster (see Table 4.4, p.66).

Table 4.4: Expectations for decision-maker accessibility in Indonesia

	Factor	Value for Indonesia
Legal obligation	Transparency	Few legal mandates
	Openness	Very limited institutional access
Parliament	Number of parliamentary parties	Large
	Party competition	Centripetal
	Electoral system	Proportional representation in medium-sized districts with closed, then open lists
	Orientation of Parliament	Mostly patronage, some reformers
Government	Horizontal accountability	Defective
	Number of government departments involved in decision-making process	Depends on specific legislative process
	Pattern of interdepartmental competition	Intensive
	Character of bureaucracy	Mixed

Source: Author's compilation

5 The legacy of Indonesian civil-military relations³⁶

The origins of the Indonesian military reach back to the Dutch colonial security forces (Teitler 2006) and groups of Indonesian nationalist guerillas armed by the Japanese during their occupation of Indonesia 1943-1945 (Ricklefs 2008: 255). Despite these largely foreign origins the ensuing struggle for independence between 1945 and 1949 made the ragtag military one of Indonesia's first national organizations. The Dutch were never in danger of losing the war militarily against the ill-equipped and largely untrained Indonesian troops (Sundhaussen 1982: 44) but their guerilla-style resistance created a founding myth the Indonesian armed forces would later rely on to justify their autonomy and political role and deeply influenced Indonesian military doctrine (McGregor 2007).

For decades to come, the Indonesian defense doctrine against an invading foe – the Total Peoples Defense and Security System (*Sistem pertahanan keamanan rakyat semesta*, Sishankamrata) – involved the mobilization of all national resources under military coordination to essentially recreate the war of independence. Ideally, the military and the Indonesian people were to become one. In the face of budget cuts following independence, the military was forced to finance their territorial operations autonomously through an expansive net of business ventures (Mietzner 2009: 48). Within a few years the territorial structure underlying the preparation for a guerilla-style deep defense had made the military an important force to reckon with not just for conducting internal security operations (Crouch 1988: 223). This underlined the military's demands for a permanent military role in politics (Sundhaussen 1982: 105). When President Sukarno ended Indonesia's experiments with parliamentary democracy and introduced "guided democracy" in 1957 he relied on military backing for his new authoritarian government and the armed forces received several cabinet posts in exchange (Sundhaussen 1982: 126). In 1962 the military officially gained exclusive responsibility for internal security when the police became part of the armed forces in 1962 and they were renamed Armed Forces of the Republic of Indonesia (*Angkatan Bersenjata Republik Indonesia*, ABRI). When the Indonesian Communist Party (*Partai Komunis Indonesia*, PKI) expanded its membership base and power in Sukarno's ruling coalition, the military even began running military candidates in local elections to counter PKI's political advances at the village level (Sundhaussen 1982: 174).

³⁶ Parts of this chapter have previously been published as Croissant *et al.* (2013: Chapter 5)

5.1 *The New Order*

The military's alliance with President Sukarno broke down when he showed increasingly leftist tendencies and moved closer to the PKI politically. After a botched coup attempt by left-leaning officers on 30 September 1965 resulted in revenge killings and political chaos, the military intervened and Major General Suharto rose to political power (Ricklefs 2008: 338). Suharto immediately began turning the military into an instrument of power. Its contributions to regime security and population control relied on a combination of surveillance and coercion. Over the years, the regime became increasingly personalistic (Slater 2010) and even though many of the existing institutions of civil-military relations remained – including the territorial structure, the military's business empire and its sociopolitical role – Suharto managed to subvert them into a franchise system (McLeod 2008: 200): Officers who were looking for personal career opportunities had to find individual access to political and economic resources in order to pay up to their superior officers to move up in the ranks. Individual rent-seeking became paramount to military institutional interest and influence.

Even the aforementioned territorial structure, the most enduring institution of civil-military relations in Indonesia, became subject to this development. With half of the Indonesian army spread across the archipelago in a network of territorial commands that mirrors the civilian administrative structure down to the village level, the territorial structure became the most important building block for early detection and repression of social unrest and political opposition. Since the territorial units still had to earn most of their budget through autonomous business activities, officer promotions were based on the candidates' ability to generate funds (Mietzner 2009: 48; Mahroza 2009: 51). Sukarno had officially charged the military with the administration of several foreign firms nationalized under guided democracy (McCulloch 2003: 100–101), but officers and rank and file soldiers also got involved in illicit activities like racketeering, smuggling or gambling (Hadiz 2010: 74).

Military influence over the administration and internal security also succumbed to this logic. With many civilian jobs in the bureaucracy vacant after the 1965 anti-communist purges, Suharto paid off officers “not wanted in the power circle” with leading positions in the civilian administration, a practice known as *kekaryaan* (loosely translated as “work assignment”, Said 2006: 92). ABRI's involvement in both politics and security was legitimized by introducing the ‘dual function’ (*dwifungsi*) doctrine that institutionalized the military's socio-political function of promoting national development next to its traditional roles of defending the state against internal and external enemies (Honra 2003: 3–5). Since external threats were minimal all through the New Order, the military could focus its attention on countering separatist movements, most notably in East Timor and Aceh, and suppressing opposition movements (Anwar 1998). In contrast to the wide autonomy ABRI enjoyed during counter-insurgency operations, crackdowns on opposition movements were carried out under Suharto's close surveillance (Jenkins 1984: 183; Lowry 1996: 211).

Even though the military was in a powerful position with parts of the bureaucracy under their control and Suharto in need of ABRI support as *ultima ratio* for crisis situations, the president managed to canalize its political potential at the national level: He embedded officers in important positions into his patronage system as individuals and fostered competition between the members of the official military parliamentary group and Golkar, the regime party. While Golkar had been created as a political vehicle for both military and bureaucracy, Suharto later promoted the career of civilians in the party so that ABRI had lost its ability to influence politics without Suharto's backing by the 1990s (Tomsa 2008: 39). Only at the local level the military still enjoyed considerable autonomy (Warren and McCarthy 2009: 234): Further down the chain of command, Suharto did not personally get involved in promotions and consequently the dependence of lower-ranking officers on their superiors for promotions improved hierarchical control within ABRI. In addition, an intricate network of military officers involving the territorial commands and the military-controlled Ministry of Home Affairs as well as intelligence and security officers allowed the armed forces to recruit their members into positions of power (Mahroza 2009: 52) and guaranteed central coordination of the military factions in local parliaments and the large number of military officers serving as district heads or governors (Sundhaussen 1982; Mahroza 2009: 49, 124-129).

By 1998 Suharto's use of patronage politics and divide-and-rule strategies had deeply factionalized the military. Armed forces influence over elite recruitment and public policy had largely been individualized to Suharto's cronies in the ABRI leadership. Even though the military had saved some political influence at the local level through the territorial structure, much of its economic and coercive potential had become a bargaining chip to advance in the patronage pyramid that had largely supplanted the institutional balance between President, bureaucracy and the armed forces which made up the original "New Order Pyramid" (Liddle 1985: 71). The system was held together by Suharto whose power of appointment rather than other institutional safeguards made him the apex of an entangled network of patronage going down the military chain of command.

5.2 *Civil-military relations during the transition years*

Suharto's personalized system proved flawed when the Asian financial crisis hit Indonesia after 1997. Faced with wide-spread popular unrest and challenges to the regime some military hardliners advocated cracking down on the protests (see e.g. Friend 2003; ProPatria 21.04.2003; Sebastian 2006) but finally, the Golkar leadership and ABRI Commander General Wiranto asked Suharto to step down in order to overcome economic and social upheaval (Mietzner 2009: 126; Lee 2009). Suharto gave in on 21 May 1998 and transferred power to his vice president Bahrudin Jusuf Habibie, ushering in the *reformasi* period of democratic reforms.

Even though many military officers had long enjoyed their comfortable positions at Suharto's pleasure, a sizeable group of officers had become disillusioned by the resulting

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politicization of the armed forces. This internal reform factions originated from a series of army seminars during the New Order and tried to turn the Indonesian military towards a “New Paradigm” focused on its traditional internal and external security roles and indirect influence on politics instead of direct political domination (Honna 2003: 74). They received a chance to realize their vision after Habibie took power. Since many democracy activists saw Habibie as Suharto’s puppet, the president lacked democratic legitimacy and had to depend on the military for support against remaining violent anti-government protesters and to elect a loyal chairman for Golkar (Honna 2003: 168; Mietzner 2009: 244; Hafidz 2006: 19). Habibie could no longer rely on Suharto’s patronage connections in the military leadership so he instead concentrated on promoting moderate and reformist officers to influential office, who in turn gave him the support he needed. As payment, his government did not issue a single decree regarding military organization (Mietzner 2009: 201) so that most of the early reforms were implemented as internal military regulations or Defense Ministerial decrees, taken verbatim from existing New Paradigm plans (Hafidz 2006: 119). According to these plans, the military was to divest itself at least of the most visible signs of direct political influence. There were several reasons why the military leadership was eager to implement these reforms as soon as possible. Not only would this soothe the mobilized public who demanded that the military end its sociopolitical activities (Honna 2003: 165). It was also meant to give the military a chance to find new strength in those areas they deemed their essential institutional interests and would help to consolidate the reformer’s position before more hardline officers could react. As Agus Widjojo, one of the core members of the reform movement told a researcher in October 1998, “House-cleaning should be done quickly, before the resistance forces consolidate their power” (as quoted in Honna 2003: 165). As part of this first round of reforms focused on Elite Recruitment and Public Policy the military leadership separated its institutional connections to Golkar and stopped campaigning openly for the former regime party so that elections in 1999 were generally regarded as free and fair (Tomsa 2008: 74). In addition, the sociopolitical staff was dissolved in accordance with the abolishment of the Dual Function doctrine in April 2000 (Honna 2003: 154). Most importantly, however, military officers in most parts of the government bureaucracy now had to retire in order to retain their civilian jobs. This deprived the military of its institutionalized influence over policy implementation in most ministries and government agencies (Rinakit 2005: 153). Finally, the military and police were formally separated in April 1999 and ABRI renamed to National Armed Forces of Indonesia (*Tentara Nasional Indonesia*, TNI) to give symbolic expression to the change. Finally, MPR decree VI of August 2000 formalized the separation and put the Indonesian military and police under direct control of the president.

5.3 *Military core interests and entrenched institutions after the transition*

Because Indonesia did not have to fear any external security threats, the severe budgetary crisis of the post-transition years meant that the Indonesian military had to rely on the existing internal security role as their main *raison d'être*. It was the sole essential rationale for the size of TNI and the budgetary allocations it received. Because of that, TNI institutional interests are significantly wider than those of most Western militaries. Besides common issues touching on internal coherence and institutional survival like personnel recruitment and selection, protection of doctrine and core values, force size and decisions about how to spend the military budget and of course an exclusive role in national defense, keeping an expansive role in internal security operations was considered an essential core interest of the military.

Despite the internal reforms military influence over many decision-making areas actually increased in the first years after the transition without Suharto as the central arbiter. Following the initial series of military-led reforms, four important formal avenues of influence – or entrenched institutions in the narrow sense – remained: the TNI/Polri parliamentary group in DPR and MPR, the active military officers who remained in security-related ministries and government agencies, the independent position of the TNI Commander with a resulting lack of ministry control over TNI Headquarter and finally, the military's control over the criminal persecution of their own soldiers.

In 1998 the military reduced the number of seats reserved for the TNI/Polri parliamentary group in the DPR from 75 to 38 and pledged to remain politically neutral (Honna 2003: 165, 174). TNI also lost the MPR seats it had previously enjoyed as a “functional group”. Since all DPR members were also *ex officio* members of the MPR, TNI still enjoyed some influence on Indonesia's upper house during the indirect presidential election of 1999, President Wahid's impeachment in 2001, the series of constitutional amendments deliberated between 1999 and 2003 and MPR Decrees, which had quasi-constitutional status. In several instances, the military made good use of their remaining influence. In 1998 Hari Sabarno, leader of the military's parliamentary group, chaired a special commission to investigate accusations of military human rights violations in Aceh. Unsurprisingly, the commission's final report did not contain any direct reference to military abuse (Miller 2009: 20). During the 1999 MPR session the military joined the political opposition and refused president Habibie's accountability speech. This effectively barred him from running for a new turn. Instead, the TNI parliamentarians backed Abdurrahman Wahid after some political horse-trading (Honna 2003: 176, 177). Compared to the New Order era, the influence of the TNI/Polri parliamentary group on the normal legislative process also expanded. While DPR had largely been a rubber stamp parliament under Suharto, its institutional authority grew significantly after 1999. Thanks to the DPR Standing Orders, the military's parliamentary group benefitted from the same emphasis on consensus in legislative decision-making as all other factions, increasing its potential to slow down legislation far beyond its numerical size.

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Still, as a sign that it supported democratic reform in Indonesia the military announced in 2000 that it was willing to leave DPR after the election of 2004 (Jakarta Post 26.02.2000). After MPR had lost its discretionary power in the constitutional amendment process and direct presidential elections had further weakened its institutional authority TNI also decided to leave the upper house in 2004, five years earlier than legally mandated (Chrisnandi 2007: 74).

Even though TNI had lost its influence on large parts of the civilian government bureaucracy when *kekaryaan* was officially abandoned, more than 1000 active officers still served in security-related ministries and government agencies. Among others, this included the Ministry of Home Affairs, the Coordinating Ministry of Politics and Security and the Department of Defense (Editors 1999: 144). Officers were often placed in higher echelons of these ministries, including powerful positions as secretary general or director general (Said 2006: 92) and remained primarily accountable to TNI Headquarter for promotions rather than to their civilian superiors. This gave TNI Headquarter direct influence on lower-ranking regulations drafted in these ministries but also legislative drafts which were prepared for introduction as government initiatives. If military officers were involved at this stage or later sent to parliament as representatives of their ministry, this gave them a chance to keep regulations violating military interests out of the draft or even the final bill. Among these ministries, military influence was most significant in the Department of Defense (DoD). Even though Abdurrahman Wahid had appointed Juwono Sudarsono as the first civilian Defense Minister in 1999, many observers saw this as a largely symbolic act because active officers “continued to occupy virtually all key positions in the ministry” (Mietzner 2006: 54). In 2001, active military officers were in charge of four of the ministry’s five general directorates even though both civilian ministers of defense had planned to civilianize the top echelon in the ministry quickly (Editors 2003: 11–12). Until today, the situation has hardly changed (Wandelt 2010). In addition to the formal authority this gave active soldiers, the military leadership could often use these officers as a way to informally influence the position of their ministry.

Another factor which weakened the position of the Minister of Defense but also gave the TNI leadership direct influence on the policy-making process, was the bifurcated chain of command which bypassed the Department of Defense and subordinated the TNI Commander and TNI Headquarter directly to the President. Since the heads of all government bodies subordinated to the Indonesian president become *ex officio* members of the cabinet, the TNI Commander routinely participates in cabinet meetings. In principle, this also means that the TNI Commander can be designated as the responsible government representative in legislative deliberations with parliament, gaining the status as a decision-maker in the legislative process.

Finally, the military was also interested in keeping their formal control over the criminal prosecution of soldiers who had violated civilian criminal laws or who had committed crimes off-duty even though it did not give them influence over policy decisions in the

narrow sense. However, it provided TNI with the ability to punish crimes according to their own evaluation of the severity of the crime, and it also meant that regular soldiers and top officers did not have to fear being prosecuted for crimes committed in pursuit of TNI institutional or private businesses. In general, human rights violations and off-duty crimes are either not punished at all or military courts hand down very light sentences (Yudhawanata 2009).

In addition to these formal avenues of influence, the Indonesian military also held on to several informal avenues of influence, i.e. entrenched institutions in the wider sense. These include the territorial structure, military business activities, and the military's vaguely defined role in internal security operations and the intelligence sector.

The territorial structure still provides the Indonesian military with an important role in local political decision-making and the potential to influence the outcome of elections at the local level for both national and local elections. Formally, the 1999 Autonomy Law weakened military influence over civilian candidates in local assemblies by eradicating the military-controlled screening in the Ministry of Home Affairs (Mahroza 2009: 130). However, initially decentralization of political power seems to have improved military grasp over leadership selection because the existing territorial command infrastructure provided an important access point to candidates (Mietzner 2009: 204). Since territorial commands were still mainly entrusted with sociopolitical rather than security-related tasks, they often enjoyed favorable relations with local magnates (Honna 2003: 154). This also made TNI officers at the local level important strategic partners for politicians. Even if members of the military avoided overt campaigning for members of parliament or – following the introduction of direct presidential elections in 2004 – presidential candidates, those hopefuls who won the approval of local military officers could rely on their local network of political and business contacts and dramatically increase their chances of winning. As a subtle reminder of this influence, Army Chief of Staff Ryamizard Ryacudu stressed in 2003 that while soldiers should remain neutral during the upcoming parliamentary election in 2004, “family members of the TNI are free to vote for contestants in line with TNI's aspirations” (Jakarta Post 17.10.2003: 94). Even though political competition was no longer systematically skewed and officers joined different political parties after retirement (Chrisnandi 2007: 94; Hasanuddin 2010; Widjojo 2010), most parties still try to take advantage of TNI as a resource for their campaigning and are looking to win the support of recently retired senior officers (Pratikno 2010; Tanuwidjaja 2010).

Even though members of the military reform faction agreed that in the medium term the Indonesia military would have to let go of their business interests in order to become a fully professional military, this was not part of the initial reform package. The military leadership was worried that operational readiness would otherwise suffer, now that the Asian Financial Crisis had made austerity the policy of the day for the national government. Consequently, military business activities still contributed large funds for both soldier welfare and upkeep of operational readiness especially during the early years of *reformasi* (McCulloch 2003:

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94) even though the financial crisis had diminished their official value (Mietzner 2008: 230). Until today, off-budget revenue accounts for around 20% of total military expenditure, down from around 70% in 2000 (Mietzner and Misol 2012: 102). Formal military businesses after 1999 include foundations, state-owned enterprises and cooperatives. Foundations operate as holding companies for smaller ventures. While they are supposed to focus on improving soldier welfare they often define this term loosely to buy cars for local commanders. Military control over state-owned enterprises provided a chance to receive massive kickbacks for awarding subcontracts to private enterprises willing to pay. Finally, cooperatives are meant to provide subsidized necessities for lower-ranking soldiers and their families but sometimes the officers in charge of them use their authority to establish illicit monopolies for basic goods like fuel in the area they operate in (McCulloch 2003: 107–110). While the military as an institution was no longer active in the informal business sector after the transition, many individual officers still were. They rented out military property, including vehicles and land to private businesses or received contributions to “welfare funds” from businesses in exchange for security guarantees, especially in conflict zones of the archipelago (Mietzner and Misol 2012: 110; Pratikno 2010). Mostly at lower levels of the military chain of command, individual officers and regular soldiers still engage in more opportunistic criminal activities like smuggling and racketeering (McCulloch 2003: 111–112). While the funds and business connections the military as institution and individual officers raised were no longer needed to pay off Suharto and his cronies, the military leadership tolerated the additional income to keep standards of living for individual soldiers at the levels they had come to enjoy previously in order to avoid discontent in the ranks (Mietzner and Misol 2012: 107). More importantly, business activities provided the military with financial resources to influence local political decision-making or avoid legal prosecution for their illegal activities thanks to the rampant judicial corruption in Indonesia (Hamid and Kencana 2010).

Finally, the military was keen to hold on to some of their responsibilities in Internal Security. Even after the police and military split ways, TNI remained a powerful force in internal security operations across Indonesia through its territorial structure and especially in zones with insurgent activities. The fact that civilians had to rely on TNI to manage communal conflicts, police public protests and fight separatist insurgencies especially between 1998 and 2004 provided the military with much political leverage and – in the absence of external threats – a *raison d'être* (cf. van Klinken 2007; Aspinall 2009). Since TNI's internal security role remained poorly defined during the first post-transition years, the military leadership and local military officers could decide relatively freely whether to get involved in the repression of violent confrontations. TNI did little to support civilian peace initiatives in Aceh and East Timor up until 2005 despite largely symbolic admissions of past abuses by the military leadership (Miller 2009: 21) and sometimes actively undermined them by using off-budget money to finance local militias (Mietzner and Misol 2012: 116–117; Moore 2001: 41; Robinson 2010). Military autonomy in internal security

reinforced the need of local and national politicians to foster amicable relations with “their” military, especially since the lack of oversight mechanisms for internal security and a truly civilian intelligence service made it difficult for civilians to even detect misbehavior (Croissant *et al.* 2013: 106; Jemadu 2007). If civilians wanted to rely on TNI assistance in times of crisis, they were well-advised not to alienate the military leadership by pushing for military reform beyond force modernization. The successful impeachment of President Wahid illustrates this point: Abdurrahman Wahid had initially tried to realize an ambitious military reform agenda (Croissant *et al.* 2013: 101–105), but after a series of corruption scandals he tried to mobilize the military in order to freeze parliament and stop the impeachment proceedings that threatened to remove him from office. The military turned down his request and the impeachment went through. His successor Megawati Sukarnoputri no longer actively pushed for military reform but focused on putting officers loyal to her into strategic positions to isolate from similar challenges to her authority in the future (Editors 2003). Even today, the military is in a privileged position since “no civilian president can govern the country without [TNI] assistance” (Sebastian and Iisgindarsah 2012: 30).

In summary, the Indonesian military not only has a significantly wider core interest than most western militaries because it depends on its internal security role as a *raison d’être*, it was also interested in securing its control over several formal and informal influence channels for the future. The formal influence channels included the TNI/Polri parliamentary group up to its abolishment with the end of the DPR of 1999-2004, the active military officers who remained in security-related ministries and government agencies, the independent position of the TNI Commander and with it the lack of ministry control over TNI Headquarter, and finally, the military’s control over the criminal persecution of their own soldiers. The informal influence channels TNI should be expected to protect with informal and formal resistance included the territorial structure, military business activities, and the military’s remaining role in internal security operations and the intelligence sector. In addition, the position of officers in government ministries and agencies also provided the TNI Headquarter with an informal influence channel on the policy of the house beyond their formal responsibilities.

6 Law on State Defense

The Law on State Defense (UU 3/2002) was the first military reform law Civil Society Organizations tried to affect in its substance. Previously all military reforms had been implemented under the auspices of TNI Headquarter (see Chapter 1). Even though two MPR decrees passed in August 2000 with negligible outside influence, brought one of the most important reform steps with the separation of the Police and the Military (TAP MPR VI/MPR/2000; TAP MPR VII/MPR/2000), neither decree contained details on how the separation of security – assigned to the police – and defense – assigned to the military – was to be implemented in practice (Sukma 2012: 150). The existing Law 20/1982 on the Basic Provision for Defense and Security of the Republic of Indonesia and its revision in Law 1/1988 were outdated: they had regulated defense and security together as a military problem as well as the basic structure of the armed forces. The law also enshrined the military's social and political role and perpetuated the Total People's Defense and Security System which was based on the mobilization of all social forces for national defense against internal and external threats (Lowry 1996: 20). The law was no longer considered appropriate for the democratic era and it was evident even to most military officers that this law would need to be reformed in order to institutionalize the limited military reform process imagined by the armed forces' "New Paradigm" (Honna 2003). The new law would have to eliminate vestiges of direct political influence of the military, but together with its companion law on the State Police it would also have to clearly demarcate the relative authority of police and military. Preparations for a new law began around the time the *dwifungsi* doctrine was officially abolished in April 1999 and TNI Headquarter finished an initial draft in June 2000 (Anggoro 2010).

Up to this point, a broad coalition of Civil Society Organization including the student movement, religious groups, NGOs and critical academics had demonstrated their ability to bring down the New Order and stop the enactment of illiberal laws, like the Law on the State of Emergency (cf. Chapter 9.1, p.185). Several groups had recognized the need to continue the military reform process on civilian terms and win the initiative from TNI Headquarter, the dominant force in the process so far. To do so, civil society needed a more constructive approach since criticism and public protest alone would not be able to create the necessary regulations to implement the MPR decrees. After the exceptional circumstances of the immediate post-transition era faded and Suharto no longer provided a common enemy, the disjoint between moderate reformers, student activists and religious mass organizations endangered civil society's ability to contribute to such constructive initiatives.

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The Indonesian Working Group on Security Sector Reform, also known as the ProPatria Working Group (ProPatria WG)³⁷, the focus of this and the following two chapters, set out to play exactly this kind of constructive role in the process of institutionalizing civilian control in Indonesia by bringing together more moderate experts with human rights activists. This chapter traces the group's activities during the legislative process for the Law on State Defense and applies the theoretical framework developed in Chapter 3 to determine whether outcome and process match the expectations the framework generated. In addition, the chapter will touch upon the parallel legislative process for the Law on the Indonesian Police (UU 2/2002) to illustrate how important early access on the drafting process was for ProPatria. In the course of the Defense Law negotiations ProPatria became the unofficial expert staff of the Minister of Defense and managed to realize many of their most important demands for this law. ProPatria did not find access to the Police Law drafting process, so that the law that was meant to fill the authority gap in security policy from the civilian side did little to improve civilian control. During the deliberations for both laws ProPatria failed to establish reliable access to parliamentary groups. Consequently the Working Group could do very little to expand civilian control once the bills had entered parliament.

6.1 *The ProPatria Working Group and the State Defense Law*

Following discussions with civil society activists about the problems of military reform in Indonesia, Marcus Mietzner, local program officer for USAID's Office of Transition Initiatives (OTI) approached T. Hari Prihatono of the NGO ProPatria with the idea to better integrate civil society activities. ProPatria's prior work had been focused on poverty alleviation, but Hari had been recommended as a skilled organizer and facilitator and asked to help coordinate and improve the effectiveness of civil society advocacy on military reform (Mietzner 2013b).

The initial discussions of what would become known as the ProPatria Working Group took place in Bogor between September 28 and October 1, 2000³⁸. In order to integrate constructive as well as critical voices ProPatria had invited defense experts and academics as well as several human rights activists (cf. Table 6.1, p.96). The first meeting was meant to exchange ideas and knowledge about the military reform process but also to discuss the scope and intent of the upcoming defense law and its effects on the wider military reform agenda (ProPatria 28.09.2000). TNI Headquarter had completed the first draft of a new defense bill in June with only minor input from the Department of Defense and disseminated it to a small group of academics to solicit comments (Mietzner 2001: 36).

³⁷ In the following case studies I use ProPatria, ProPatria Working Group and Working Group interchangeably, even though ProPatria and the Working Group are technically different organizations. However, the ProPatria Institute rarely conducted advocacy activity independent of the Working Group.

³⁸ Rizal Sukma (2012: 150) reports the first meeting to have taken place in October 1999 and subsequent meeting with the military, DPR and the Department of Defense between February and April 2000, before an official invitation to participate in the development of a new draft in by the Ministry in May. I have decided to follow the chronology established by the ProPatria transcripts.

After the participants had concluded that the June draft was highly problematic from a civilian control perspective they discussed how the Indonesian military could be adapted to the new democratic environment in order to improve its performance and reduce its detrimental influence on democratic quality. They focused on three issues: the role of history and military historiography in the legitimation of the New Order pattern of civil-military relations, changes to military doctrine and education, and necessary organizational changes to the military (ProPatria 28.09.2000). Initially, the goal was to develop a general critique rather than a detailed proposal. Participants repeatedly pointed out that proposing concrete doctrinal changes, shifts in the number of troops from service to service, possible reductions in troop strength altogether or discussions about the budget would harm the chances of successfully influencing the Defense Bill. After the discussion had touched upon a future shift from an army-centered to a joint military doctrine to overcome the territorial command structure, Cornelis Lay argued this should not be included in final paper or public communication of the group in favor of abstract principles:

„Talking numbers is very alarming to [the military]. That's difficult. The most fundamental task will be to get the formulation for the democratic state and maritime country into the law. Those will have consequences for redefining the whole doctrine later on.” (ProPatria 28.09.2000: 49)

The group feared being pulled into distributive struggles among the three military services should they choose to include budget estimates or troop numbers. Kusananto Anggoro cautioned his colleagues to steer clear of excessive detail:

“If we restrict it to procedural terms, I believe our law will work. But if the law enters into the core, the substance, that's a different matter.” (ProPatria 28.09.2000: 4)

Rather than fixing a certain budget frame for the services, they would try to expand civilian control over the budget process to make the necessary changes in the future. Most participants agreed that both the military's business activities as well as the territorial structure should be abolished slowly over time to make it easier for the military to accept the changes. One participant wondered how many posts would be lost if the Kodam, Kodim or Korem levels of the command structure were to be dropped as this would “surely have implications, since these positions also mean money and other stuff”. Rizal Sukma stressed that slowly phasing out both institutions would minimize military resistance to reform: If the law called for the abolishment of the territorial structure or military business activities, it should be on an extended timeframe so current high-ranking officers would not have to suffer the consequences and have no personal reason to resist (ProPatria 28.09.2000: 39–40).

In one important point, the group was looking to revise a previous reform: Most participants believed the current internal security situation in Indonesia meant a strict separation of the roles for military and police along the lines of the MPR decrees VI and VII of 2000 was not only unrealistic but dangerous. Since the police was not yet ready to take exclusive responsibility for internal security operations the military would still have to be able to

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conduct “Military Operations other than War” (MOOTW) in support of civilian agencies to avoid a breakdown of state capacity. The new law would have to make sure, however, that the frequency and scope of these operations depended on civilian authorization (ProPatria 28.09.2000: 22).

The group drafted a position paper on military reform which stressed the need for civilian supremacy and identified historical roots and necessary changes of the existing military posture and political control regime over the military. The paper would serve as a point of reference for the rest of civil society and civilian decision-makers in government and parliament who would have to enact the necessary reforms. In the future, the Working Group would try to provide constructive criticism to help create a new paradigm for TNI (ProPatria 28.09.2000: 114). To carry out their lobbying attempts, the Working Group decided to hold a series of separate meetings with TNI, the Department of Defense³⁹, parliament and the wider public after the dissemination of their paper so they could focus on each specific target audience. After they had refined their position with the results from these meetings, the working group would attempt to enter the legislative process at an early stage in order to slowly build up pressure for the eventual abolishment of the territorial structure and the restructuring of top level command authority. After enshrining these “big ideas”, other laws would follow to implement them (ProPatria 28.09.2000: 85)⁴⁰. Important fundamental decisions would need to be anchored in the law itself so that later government regulations had to be based on the right principles even without outside influence on implementation (ProPatria 28.09.2000: 101–102).

Gaining early access to the drafting and decision-making process had been an important problem for civil society during earlier reform initiatives. Civil society activists had often failed to influence the drafting process and had then been forced to employ a more confrontational course by “going directly to demonstrations” (ProPatria 28.09.2000: 85). Especially the drafts originating from TNI Headquarter had not been sufficiently discussed in public before they were transmitted to the DPR. In addition to the formal entry into the legislative process through consultations with DPR, Rizal Sukma believed civil society draft initiatives were a viable alternative to increase CSO influence (ProPatria 28.09.2000: 103). Early influence would be crucial because of the opaque decision-making process in parliament. If the June draft was to be entered into parliament and passed into law, little outside influence would be possible, especially since DPR members were used to make compromises with the military (ProPatria 28.09.2000: 2–3).

Even though all participants criticized the current state of civil-military relations harshly, they agreed the Working Group would need good working relations with TNI. Engaging the public too early in order to create pressure on the military and parliament would provoke

³⁹ The Department of Defense was renamed Kementerian Pertahanan Department of Defense in 2010. The title of the minister (Menteri Pertahanan) remained the same throughout the observation period (Wandelt 2010).

⁴⁰ Because the law was to be narrow in scope and focus on procedures, a reform of the military justice system was only briefly discussed. Even though one participant pointed to the fact that the MPR had already put down some guidelines on the topic, Munir cautioned that so far there were no regulations in place to implement this. However, military justice reform would be better suited to be included in a future bill rather than the Defense Bill (ProPatria 28.9.-1.10.2000: 69).

defensive reactions from the military and they would merely ask the group “Who the hell are you?” but not cooperate (ProPatria 28.09.2000: 110). The final declaration provided extensive background information so the group could establish their credentials as experts but consciously avoided divisive or overly academic language to accommodate the military’s sense of institutional honor and foster mutual understanding (ProPatria 28.09.2000: 110, 136).

Hari Prihatono said ProPatria would serve as a facilitator for civil society engagement instead of taking an independent position and lobbying actively. He would “take care of administrative and other chores while the team of 14 enters into material matters” (ProPatria 28.09.2000: 114). The Working Group hoped to find individuals more receptive and constructive and less likely to “sound off” against the reform plans and decided to focus on informal lobbying during individual meetings rather than towards the military-as-institution. While the ProPatria Institute lacked the necessary personal contacts, several Working Group members were closely acquainted with decision-makers and the military. Only if these lobby attempts failed and the military in the defense bureaucracy proved unwilling to listen to the working group’s proposals should the group go public and use the media to pressure for further reforms and create a support network of local NGOs and campus activists (ProPatria 28.09.2000: 112–113). Most participants considered the initial workshop a success and organizer Hari Prihatono proposed to turn the working group into a permanent forum to work for legal change in the security sector (*ibid.*).

Reaching out: Meetings with TNI and civilian decision-makers

The group had decided to extend no invitation to Journalists for their initial meetings with military and decision-makers starting on November 1, 2000 so that their military guests could “just relax and [...] not worry” (ProPatria 01.11.2000: 5). Despite the careful framing and accommodating language of the background paper, the atmosphere during this first meeting was tense. An air of suspicion and hostility is evident from the written transcript and reported by participants (Muna 2010; Anggoro 2010). At one point, a working group member explicitly commented on the hostile body language and facial expression of some officers (ProPatria 01.11.2000: 22).

The officers were suspicious because the event had been funded by USAID’s OTI. Even though the group stressed in their opening statement that it would not be a lackey to US interests before even prompted by participants to do so (ProPatria 01.11.2000: 1), some officers suspected them American puppets and worried they might “destroy the nation just because they are fed by the Americans”, as one critic put it (ProPatria 01.11.2000: 24). In retrospect, Rizal Sukma identified the foreign financing as the “most difficult challenge facing ProPatria WG in the early years of the Reform Era” (Sukma 2012: 158). In their remarks, Working Group members attempted to overcome these suspicions by stressing their academic and patriotic credentials and by using exceedingly polite language (Muna 2010). They repeatedly stressed that their results and especially the language were only

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preliminary, the meeting a trust-building exercise (ProPatria 01.11.2000: 24). Several officers complained about the term “*supremasi sipil*” (civil supremacy) in the title of the workshop and background paper. They believed the term assigned relative value to the military vs. civilian professions instead of decision-making authority. They believed talk of civilian supremacy clashed with the principle of popular sovereignty in the constitution and could create power struggles between the military and civilian leadership. One officer warned: “When the word power appears, there will be a tug of war” (ProPatria 01.11.2000: 14). Instead, the military preferred a partnership model with equality between civilians and the military (ProPatria 01.11.2000: 40–41). Even though the Working Group members repeatedly attempted to rectify this misperception, ProPatria promised to drop the term from future reference papers (ibid.: 48).

ProPatria had framed their plea for a thorough reform of civil-military relations by stressing that the image of the military had suffered during the New Order but some military officers made clear they would neither accept this nor any attempts to dismantle the Territorial Structure, Sishankamrata⁴¹ or subject the military to civilian investigation for crimes committed off-duty. When ProPatria attempted to corroborate their claims that the present situation was causing problems by presenting empirical evidence on past military human rights abuse, the officers challenged their data. Referring to the best-known human rights activist in the group, one officer finally exclaimed that “just because Munir thinks something is true, doesn’t make it so” (ProPatria 01.11.2000: 44).

Despite this hostility the military participants of the discussion meeting seemed to agree with ProPatria that the relative authority and responsibilities of military and police in internal security operations would have to be defined clearly to shorten reaction times in times of crisis and avoid situations in which inactivity of the security services would lead to human rights violation by omission (ProPatria 01.11.2000: 16). However, the officers were puzzled why ProPatria had approached the military directly instead of trying to influence the legislative process through parliament (ProPatria 01.11.2000: 9).

A second meeting on November 9, 2000 with members of parliament and the government had fewer, more passive participants. The Working Group used the meeting to present their results and incorporate some of the criticism received during the first meeting with TNI (ProPatria 09.11.2000: 4). The third dissemination meeting was held on November 15, 2000 with members of TNI, the political parties and the civilian government. In contrast to their previous behavior, the military participants no longer focused on terminology and contested ProPatria’s participation altogether. They seemed better prepared and systematically and calmly addressed specific points in ProPatria’s terms of reference during their contributions and proposed alternative interpretations and solutions. Again the military agreed with ProPatria’s central point: First, the clear separation of roles for the military (defense) and

⁴¹ One participant cautioned one „should not throw away the knife just because it was used mistakenly in the past” (ProPatria 01.11.2000: 29)

the police (order and security) created “grey areas”⁴² in which neither actor currently had the authority to act. The military demanded legal certainty that officers would not be persecuted for fulfilling their task. Second, in order to guarantee order in the military institution and avoid corruption, the leadership signaled willingness to gradually end their business activities. Third, the military leadership affirmed that it was looking to open up the military institution for monitoring, improve transparency and establish accountability (ProPatria 15.11.2000: 14).

The Working Group tried to take up these points and stressed the negative political consequences of the existing doctrine and territorial structure rather than its appropriateness for defense. Reforms would not need to be instantaneous but could be completed within the next eight to ten years (ProPatria 15.11.2000: 20). The discussion was led by ProPatria Working Group, TNI Headquarter and officials from the Department of Defense and members of the parliamentary parties remained passive. Hari Prihatono later told his colleagues that several officers had invited ProPatria to stay actively involved in the reform process during the informal part of the event (ProPatria 30.11.2000: 2).

The creation of the alternative draft

After these initial discussions with military and civilian decision-makers, ProPatria conducted an internal meeting to discuss their results from November 30 to December 3, 2000. The group decided to develop an academic draft to establish the rough outlines of an alternative defense bill which could then be turned into a complete alternative draft. In their opinion, the June draft put too much emphasis on military organization and too little on the actual procedures and relative authority in the field of national defense (ProPatria 30.11.2000: 5). It was agreed that only a completely new draft would prevent the group from being trapped within this existing frame (ibid.). Since the group so far consisted mostly of defense experts and social scientist, Hari Prihatono had invited Fajrul Falakh, from Gadjah Mada University’s Faculty of Law. The Working Group decided to prepare a three-pronged strategy.

First, the group had to gain more time for their preparations. They had just learned that there were already two government drafts that could be transmitted to parliament at any time. Deliberations on the draft would then start as early as mid-January 2001 after parliament returned from recess (ProPatria 30.11.2000: 7–8). This meant that the Working Group would need to approach Defense Minister Mahfud MD and convince him to stop the current draft before it was introduced to parliament. The group had learned that Mahfud had personally read both the June and October drafts even though the military leadership had presented them as issues of minor importance. Encouraged by his interest in the

⁴² Riefqi Muna later expressed regret for introducing this term to the Indonesian debate. It was initially meant as a way to establish a clearer delineation of authority between the police and the military but also avoid a power vacuum. Even though his goal had been to encourage an expansion of the authority of the police into these areas, the term quickly became a chiffre for reintroducing a relatively broad role for the military in internal security (Muna and Haripin 2013).

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matter, ProPatria decided to send him the group's academic draft (ProPatria 17.12.2000: 30).

Second, the group would have to prepare for parliamentary deliberations. Should they fail to stop the bill at the ministry, their alternative draft would have to be introduced through one of the parliamentary groups. To do so, the group needed to rely on their informal contacts because they enjoyed neither the same institutionalized access to parliamentary decision-making as political parties nor the organizational capacity of a mass organization which could force parliament to listen to them through public pressure (ProPatria 30.11.2000: 110–111). The group had well established contacts to two parties, PDI-P and PKB, but the Working Group decided to expand their focus and approach other parliamentary groups as well. Parliament would have to be educated and armed with arguments for the parliamentary phase in any case (ProPatria 17.12.2000: 30–31). Once the deliberations had begun, influence would become increasingly difficult as the parliamentary commissions usually went through bills article by article during the DIM-process and rarely completely changed them in the process. In order to approach both the party parliamentary groups at the plenary level as well as DPR's Commission I in charge of defense, ProPatria established small mixed teams, each consisting of members with different background (NGO, academics, defense experts) to stress the integrative character of their proposal (ProPatria 17.12.2000: 37–38). Along the same line, the finished alternative draft would not be presented as a product of ProPatria but the work of several authors to stress its inclusive character (ProPatria 30.11.2000: 110). To cover all bases, the group would use the informal contacts to request an invitation to the official hearings with DPR as well (ProPatria 17.12.2000: 30).

Third, the group considered a limited media strategy through radio talk shows to create more public awareness of the topic and prepare the ground for a possible pressure campaign later on (ProPatria 30.11.2000: 3). However, members with experience in parliamentary affairs later cautioned that if the group brought in the media too early, it might be "psychologically difficult for members of parliament to adopt" the alternative draft without looking weak (ProPatria 17.12.2000: 34). A lot of public pressure would be necessary to convince all parliamentary groups and the government to approve an alternative draft or changes to the current draft after it was introduced successfully to overcome the strict consensus requirements of the DPR's standing orders (ProPatria 30.11.2000: 106–107). Still, the media campaign was put on hold in favor of background talks with selected journalists about the defense bill in order to make it easier for parliament to accept the alternative draft in the first place (ProPatria 17.12.2000: 44–45).

The majority of the meeting was spent fleshing out the content of their alternative bill. The actual drafting was done by a smaller circle of Working Group member on December 17 and 18, 2000. By then, the group had acquired a copy of the October draft through a friend of Cornelis Lay. When they realized there were only marginal changes compared to the June draft, the drafting could move ahead (ProPatria 17.12.2000: 28). In line with the previous

discussions, the alternative bill focused on procedure and deferred material regulations to later laws or regulations (ProPatria 30.11.2000: 36). It would need a definition of defense, a process to identify threats, determine which actors were active in the field of defense and allocate relative authority to them. Also, the law would have to provide sufficient accountability mechanisms and a few more detailed articles to ensure the proper implementation of authority in daily practice (ProPatria 30.11.2000: 14–15). Within the narrow focus, the group hoped to avoid an active reaffirmation of those existing doctrines and institutions they liked to eventually see reformed, such as the current military doctrine, the existence of the TNI/Polri⁴³ parliamentary group or the territorial command structure (ProPatria 30.11.2000: 26, 32). In order to guarantee civilian control over military internal security missions the defense bill would need to establish a clear line of command with the President at the top and the TNI commander subordinated to the Department of Defense (ProPatria 30.11.2000: 100).

The new legal expert criticized the weak position of parliament in the June draft. To facilitate quick reaction in crisis situation without sacrificing democratic control the working group adopted the idea of post-hoc parliamentary approval of military operations (ProPatria 30.11.2000: 53). The group concluded that for now, threats should merely be defined as dangers to territorial integrity. The issue could then be enumerated in later legislation (ProPatria 17.12.2000: 56–57).

Lobbying the Department of Defense

After the Defense Minister had read the group's academic draft Mahfud reportedly asked President Wahid to stop the October draft before it was introduced to parliament (ProPatria 25.05.2005: 4). The minister also arranged a meeting with the group to express his interest in additional outside input for the Defense Bill from civil society on January 4, 2001. During the discussion, the Working Group stressed that the October draft could result in the military's return to the political arena, considering how much control over defense resources and intelligence it granted to TNI (ProPatria 04.01.2001: 2). They stressed that the Department of Defense did not have enough influence over defense policy-making and monitoring capability, a fact their alternative draft would remedy (ProPatria 04.01.2001: 5). Both sides agreed that ProPatria would complete their draft and the minister mentioned that Working Group members could be invited to join the Department's drafting team (ProPatria 04.01.2001: 13–14). During an internal follow-up meeting several group members seemed reluctant about this prospect and one of them stressed: "If we are asked to join the drafting team that's also risky. We have to be careful not to be taken advantage of". Among the rest of the group careful optimism prevailed that "they could also end up saying: 'alright, so if you have a bill already, we will just use that'" (ProPatria 15.01.2001: 55). To hedge their bets the group was still determined to approach DPR's Defense Commission and

⁴³ Polri is the official abbreviation of the Indonesian National Police, Kepolisian Republik Indonesia.

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the party groups directly should their attempts to sway the ministry fail (ProPatria 15.01.2001: 56).

The Working Group again presented their arguments during a discussion at the military Headquarter (ProPatria 16.01.2001) and a one-day seminar with members of the Department of Defense during which the members reiterated many of their previous points and stressed the need for a clear allocation of decision-making authority in the law⁴⁴. In the latter meeting, Defense Minister Mahfud said ProPatria's impulses should be given strong consideration during the legislative process to find common ground with the military proposal (ProPatria 17.01.2001: 1–2).

These two meetings proved essential for the Working Group's influence on the drafting process. Immediately following the seminar, ProPatria WG convened for a short de-briefing and discussed the options for the coming days as well as dangers of becoming involved in the drafting process in a more official fashion. It now seemed as if the Minister would indeed invite several of them to participate in the development of a completely new draft. Some members wondered how much they would need to compromise with the military but the group decided that they would always have the outside options to approach parliament and involve the media should their demands not be met completely (ProPatria 17.01.2001: 41).

Development of the February draft

The actual drafting was completed during only three working meetings between February 8 and 10, 2001, between Department of Defense and ProPatria. While Defense Minister Mahfud did not participate himself, he and the parliamentary leadership had agreed that the draft should be submitted to parliament on February 15 in order to be deliberated parallel to the Law on the State Police, which the government had already submitted to DPR. Mahfud had also accepted ProPatria's proposal to limit the scope of the new bill and decided that most matters of military organization should be regulated later (ProPatria 08.02.2001: 3). As ProPatria had hoped, the draft was completely rewritten. Several military officers in the drafting team proposed to use the October draft as a point of departure, since ProPatria's draft had been developed "by a small group" (ProPatria 11.02.2001: 12). However, since the scope of the alternative draft was much closer to the outlines Minister Mahfud had established and the drafting time was very limited the alternative draft became the de facto basis for deliberations. The Working Group experts dominated the discussion and the participating officers from TNI Headquarters were often steamrolled into accepting their proposals by the quick pace and high academic standard of the debate (ProPatria 14.02.2001: 5). Even though the drafting was not without conflict Working Group members managed to convince the ministry team to drop many problematic regulations. The new

⁴⁴ During the first meeting, retired Lt. Gen. Agus Widjono had stressed that fears that the military was trying to expand their authority with the October draft were unfounded. TNI rather subscribed to a restrictive interpretation of the law. Taking up this line of argument on the following day, Kusnanto Anggoro said that while he believed the military's intentions, the still had to be very clear in its language so that future military incursions into civilian domains could not be legitimated with the wording of the law (ProPatria 17.01.2001: 4).

regulation also gave civilians more freedom in their decision to involve the military in internal security operations, strengthened the authority of parliament and the president concerning the use of force and, most importantly, limited the authority of the TNI Commander in favor of the Minister of Defense (see Section 0 for a complete overview of the changes).

ProPatria failed to score a complete success, however. To begin with, there were several smaller issues: The Working group still considered the definition of military threats too broad, since it contained reference to unarmed threats to territorial integrity. Neither had the group managed to expand the circle of officers eligible for the TNI Commander post and the ministry had opposed the introduction of legally mandated integrated area commands to weaken the dominance of the army among the three armed forces. Most importantly, however, the military was unwilling to subordinate the TNI Commander to the Department of Defense (ProPatria 14.02.2001: 5). The military officers on the team argued they could not openly defy MPR decree VII/2000 that had made the TNI Commander responsible to the President⁴⁵. When ProPatria insisted the allocation of relative authority and position of all important actors had to be regulated now, a ministry official replied that the military was still learning about democracy. The Defense Minister would need sufficient personal authority for the military leadership to accept his orders. If he was given too many responsibilities now it might actually weaken civilian control in the end, should the military leadership choose to ignore him (ProPatria 10.02.2001b: 6–7). Consequently, the February bill created a parallel structure under which the TNI Commander remained in charge of operational decisions, the ministry in charge of defense administration and policy preparation.

ProPatria had also been unable to introduce a declaration of intent for the eventual abolishment of the territorial command structure into the bill. The military had stressed its role for defense readiness and kept up their resistance even though Rizal Sukma reportedly argued that a functioning defense structure was possible without it but the military members of the drafting team were not willing to concede this point (ProPatria 14.02.2001: 7). The drafting team agreed that the issue would be tackled in a future law to avoid further conflict when no agreement was in sight (ProPatria 10.02.2001a: 33–34). After a similar discussion the February draft did not explicitly put an end to the military's business activities, either (ProPatria 14.02.2001: 6–7).

Even though the drafting team had agreed on several changes to the law's elucidation, including a narrowed list of tasks falling under Military Operations other than War, Rizal Sukma later reported that this and several other changes to the elucidation proposed by ProPatria during the February drafting process were not properly transmitted to parliament and apparently lost (ProPatria 17.07.2001: 3, 5).

⁴⁵ For similar reasons, the Department staff turned down ProPatria's proposal to rename the draft bill from State Defense Law to National Defense Law. Even though ProPatria argued this would avoid the implication of a state-centered defense concept, the change had no relevance for civilian control (ProPatria 14.02.2001: 1–5).

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After the February draft was complete, ProPatria claimed to have realized 85% of their substantive goals during an open discussion (ProPatria 21.02.2001: 15). In an internal meeting the stressed the draft had “the ProPatria logo” on it and that it was merely put “on the letterhead of the Department of Defense” (ProPatria 14.02.2001: 4). Kusnanto Anggoro stressed that compared to any of his previous government consultations or jobs done by other NGOs or think tanks, this one had resulted in the largest policy implications but added: “At least at the governmental level. Of course success or failure will really be decided at the level of the law and [until that’s passed] we will have to keep fighting” (ProPatria 14.02.2001: 5).

Even before the actual drafting had started, the Working Group had stressed that their contribution was an expression of popular participation in the establishment of strong and professional armed forces. They explicitly warned the Department officials that they reserved the right to pass on their alternative draft to parliament and enter it through one of the parties should their demands not be met (ProPatria 08.02.2001: 6; Muna 2010). Hari Prihatono, Rizal Sukma and Riefqi Muna had each made a point of stressing the remaining problems in the February draft and Hari Prihatono repeated that the group would challenge the draft and lobby DPR to change it according to their original plans (ProPatria 10.02.2001b: 26). Indeed, the group was optimistic to achieve most of the changes during the parliamentary process. They hoped to break resistance to their plan to end the military’s business activities by offering the TNI parliamentary group a longer transition period (ProPatria 14.02.2001: 7–8).

Considering these pronouncements, it is surprising that the group was still granted access to parliamentary meetings courtesy of the Department of Defense. Its drafting team had asked Hari Prihatono to provide them with at least a defense and a legal expert. They would accompany the government delegation to parliamentary meetings and help explain the government’s position. Several members of the Working Group worried that ProPatria might be perceived as a mere appendix to the government should they go ahead with this plan. Even if they would send similar teams to assist the parliamentary groups, DPR members might wonder why the group would at the same time attack and support the government draft. Without ProPatria’s help, however, Hari Prihatono worried that the government officials would fail to explain the reasoning behind certain regulations adequately (ProPatria 14.02.2001: 2).

The group held a public discussion about the draft bill to kick off their activities during the parliamentary deliberations and inform the public about the ongoing reform process. During the discussion, they stressed that the new bill went beyond the simple dichotomy of defense and security in the MPR decrees which had created too many grey areas. They expressed their intention to continue their work on the draft and lobby parliament to subordinate the TNI commander to the Department of Defense since the alternative would be “awkward” (ProPatria 21.02.2001: 4). The group also started advocating for a quick succession of additional laws to regulate those areas not yet covered by the defense bill,

most importantly a TNI law (ProPatria 21.02.2001: 13). The open discussion seems to have been well received and several guests and discussants encouraged ProPatria to stay involved in the development of future reform projects in military politics (ProPatria 21.02.2001: 26).

From the plenary to the working meetings

The defense bill had officially been introduced to parliament February 15, 2001 and on March 6, the ministry held a consultative meeting with DPR during which ProPatria members brought up the same issues as during the open discussion in the usual conciliatory language. They again stressed that the group had mainly participated in order to strengthen and modernize Indonesia's defense system (ProPatria 06.03.2001). This meeting also saw the first systematic attempt to integrate discussions about the police law with the defense law debate. Previously, three military Secretary Generals from Dephan had participated in the development of that draft as observers only.

In order to expand their influence on the legislative process beyond the government side, ProPatria held a meeting with the PDI-P parliamentary group on the day prior to the plenary session during which parties delivered their initial response to the draft. During the meeting the group had to defend the bill against charges that it could bring the military back into politics. They returned to their, by now, well-rehearsed refrain of grey areas that made it difficult to draw a line between defense and security. Cornelis Lay stressed "We should not build a defense law, based on hatred of the armed forces of the past" (ProPatria 20.03.2001: 2) but instead focus on establishing clear civilian authority over the military. Still, several members of PDI-P expressed worries that the involvement of the military in things like drug policy could lead to the violation of human rights on a large scale and hence have repercussions for civilian policy as well (ProPatria 20.03.2001: 4). In contrast, PDI-P was very critical towards ProPatria's proposal to subordinate the TNI Commander to the Minister of Defense, worried that the former had a better democratic legitimacy because, unlike the minister, he had been approved by parliament. In addition, the parliamentary group saw the danger of politicizing the military by putting it under a party politician (ProPatria 20.03.2001: 9–10). ProPatria had no formal meetings with other parliamentary groups to advertise their ideas beyond the personal interaction discussed in earlier meetings. Their involvement in the drafting process and close coordination with the Department of Defense had taken too much of their time.

Few of the initial parliamentary group statements suggest that ProPatria influenced their position. PPP even opposed the subordination of the TNI-Commander to the Minister of Defense as had been mentioned in ProPatria's position paper (DPR 2002: 117–123). Not even PDI-P's position seems to have been influenced by the consultation meeting even though the party had been one of the main targets (DPR 2002: 103–110). Of all parliamentary groups, PKB and Reformasi were closest to ProPatria's position. PKB supported many of the group's positions already represented in the law and even pointed towards a possible reduction in the number of territorial commands and a clear end date for

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the military's business activities. Their parliamentary group did not, however, support the subordination of the TNI Commander to the ministry (DPR 2002: 125–133). Reformasi alone supported the subordination as well (DPR 2002: 135–143).

The Minister of Defense as official government representative in the deliberation gave a very broad and accommodating reply to the party positions on March 27 (DPR 2002: 155–168) and the bill was submitted to a Special Committee (Pansus) in charge of the Defense and Police Bill. Its members came from Commission I and Commission III. The first meetings were closed to the public and no public record is available. Starting on June 6, the Pansus held a series of hearings with outside experts. Members of ProPatria were only invited to speak during the second meeting. During their presentations, Kusnanto Anggoro, Riefqi Muna and Rizal Panggabean did not push for additional changes but focused on defending the law in its current state. Most questions hovered around the differentiation of conventional and non-conventional vs. military and non-military threats, a distinction ProPatria had managed to introduce into the bill's threat definition during the February drafting as a way to limit the military's role in internal security. After the initial round of consultations the parliamentary groups created their Problem Inventory Lists (DIM) starting in mid-June 2001 which would be the basis for the remaining legislative process. During meetings to deliver the government responses to parliament, Working Group members helped the ministry staff answer questions about the legal intent of several articles (ProPatria 19.06.2001, 20.06.2001, 21.06.2001).

During one of these meetings, ProPatria broke ranks with the Department and criticized the addition of unarmed threats to the threat definition. They also defended a distinction between conventional and non-conventional threats which caused much confusion in committee. It would be useful, so they argued, to further define the operational authority of TNI: "Conventional armed military [threats will be countered] by TNI. Non-conventional armed military threats [are handled] by TNI as well, non-conventional armed non-military threats by non-military Polri" (ProPatria 19.06.2001: 24).

When PDI-P proposed a fixed rotation of the TNI commander post among the three services members of the Working Group argued that this would actually limit presidential and parliamentary leeway in the selection of the TNI Commander and prevailed. They failed to convince parliament or the ministry to expand the group of eligible candidates for the post to high-ranking officers with command experience beyond the circle of current and former service chiefs (ProPatria 20.06.2001: 26). In several points, parliamentary groups demanded changes to the DPR's prerogatives. Members of the working group helped the ministry officials develop their argument that parliamentary influence on the establishment of permanent military facilities and training grounds would violate the military's functional autonomy as it touched matters of operational readiness rather than material defense policy (ProPatria 21.06.2001: 13–14). Somewhat surprisingly, several parliamentary groups had requested to strike the article about DPR oversight over defense issues from the law, but during later debates, this change turned out to be motivated by fear the section could be

construed to limit parliament's right of supervision in other cases (ProPatria 21.06.2001: 19).

Despite these small victories, ProPatria's influence during this phase waned: While the ministry delegation took over many of the groups arguments to defend regulations in the bill against changes by parliament (ProPatria 21.06.2001: 33, 25.06.2001: 13), they managed to add little to the substance of the bill. Most of their attempts failed as the discussion in the Working Meetings often became bogged down by insignificant or semantic details⁴⁶. In most instances, the government decided to iron out the details in the Working Committee (Panja) later on. After the DIM-phase was concluded, members only half-joked during an internal meeting that almost all their proposals had to be transferred to the Working Committee (ProPatria 17.07.2001: 14)

Preparations for the Panja during the parliamentary break

ProPatria had an internal meeting in June to evaluate the progress they had made so far and determine a plan for the upcoming Working Committee deliberations. While Golkar, PDI-P and the TNI/Polri parliamentary group had "expressed hope that ProPatria would also participate in the Panja phase" and Golkar specifically asked the group to identify some important points so they could "use them in the Panja" (ProPatria 17.07.2001: 1–2). Other members of parliament had reacted more hostile, however, and even those open to further participation remained skeptical. Fajrul Falakh said: "We have convinced the generals. But it seems we also need to reassure members of the House" (ProPatria 17.07.2001: 15).

Despite their defensive reactions when the joint drafting had begun, ProPatria had won close allies among the military officers at the ministry:

"Our entry was indeed through Mr. Mahfud, but during the process we became much closer with Mr. Jamhari and Mr. Gofar. Actually Mr. Gofar is still trying to defend [our accomplishments] because Mas Kus asked him not to stop doing so during the discussion." (ProPatria 17.07.2001: 15)

Jamhari Hamzah had even repeatedly apologized to the group for the hostile reception by some members of parliament who questioned the group's presence (ProPatria 17.07.2001: 5). Since the majority of parliamentary groups seemed much more skeptical than the government, Hari Prihatono asked the ministry for an invitation to the Panja meetings, so that ProPatria could participate in the otherwise closed meetings that would decide on those 60% of the law not yet confirmed by the Special Committee. Even though Cornelis Lay worried that ProPatria might lose the ability to be effective should they join the negotiations on the government side the group finally agreed that declining the invitation would only risk losing access altogether without a guarantee it would improve access to the parties (ProPatria 17.07.2001: 9–10).

⁴⁶ In several instances during the debates, the meaning and scope of terms like management or implementation was contested, usually prompting the parliamentary chair or had of the department of defense drafting team to declare "Leave it to the linguists!" and waiting with a solution until the Panja phase where language experts would be present (e.g. ProPatria 18.06.2001).

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Despite their remaining goals the group decided to take a break during late July and August. The upcoming impeachment proceedings against President Wahid and the parliamentary break would make access to parliament as well as gaining public attention difficult. In such a chaotic situation, lobbying and socialization activities should be all but impossible before the Panja sessions started again. Even though Hari Prihatono mentioned he would like to involve the public more, that was simply “not possible yet” (ProPatria 17.07.2001: 16, 12).

Before the Panja phase began in late September ProPatria again met at the Department of Defense to prepare a common strategy. One of the remaining points of contention with the ministry was the selection process for the TNI Commander. ProPatria had argued the president would only have a real choice if the Commander had to nominate at least two candidates for these positions. The military on the other hand was still worried that there might not be enough suitable candidates at any one time (ProPatria 10.09.2001: 1–3). During the meeting ProPatria members also tried to get the ministry to lift a limitation on DPR’s oversight function: According to the government draft, matters considered secret could be exempt from DPR’s monitoring authority. ProPatria argued this would have to be regulated by a future secrecy bill and that DPR would have to be kept informed, but they failed to do so at this time (ProPatria 10.09.2001: 22–25).

During these and later meetings with TNI Headquarter and the TNI/Polri parliamentary group several participants admonished the fact that the bill in its current stage did little to address grey areas between defense and security and blamed this on the hurried drafting of MPR decree VI and VII of 2000 (ProPatria 17.09.2001: 17–18). There was still no clear demarcation of authority between Polri and TNI yet, even though it was the “hottest problem” (ProPatria 19.09.2001: 11).

The other side of security: ProPatria and the Police Bill

So far, the draft Police Bill did little to fill this security gap from the civilian side. From a civilian control perspective, the Police bill needed to be an enabling bill in the first place, expanding and detailing the responsibilities of Polri in the more heavy-handed part of internal security, which the military had previously handled autonomously. For this reason, ProPatria had attempted to stay involved in the Police bill deliberations. However, since the bill had entered parliament in the original government version without any chance to adjust its content in prior cooperation with the Interior Ministry, the group needed to influence parliamentary deliberations directly. In order to enter the process, the group had met in March to develop a critical review, academic and alternative draft. Cornelis Lay had warned the rest of the group to focus on stopping items at odds with the defense bill and not be too ambitious with this bill (ProPatria 22.03.2001: 5), but the group approached the law exactly like they had approached the defense law: They started from the existing bill, identified what they thought of as bad regulations and developed a new bill to cope with these issues. The debate largely focused on differentiating those roles that were already well established as police tasks, most importantly in law enforcement. Even though the group realized that

the bill needed regulations on how the police would get military assistance (ProPatria 22.03.2001: 22), the initial discussion and later participation of ProPatria did little to fill in the grey areas in security from the civilian side (ProPatria 08.04.2001). Since the legislative process followed along the same lines as the Defense bill, there were few openings to exert influence through parliament and parliament consulted mostly Police officers (ProPatria 07.06.2001). Even a meeting with the Chief of Polri after the DIM phase to overcome this piecemeal approach to give more room for open discussion came to no avail (ProPatria 18.07.2001: 18). The Pansus meetings in December actually removed several pointers towards a more robust police involvement in security operations after the parliamentary groups had criticized the existing draft for its focus on internal security rather than law enforcement so that the new law restricted rather than expanded Polri's role in internal security (ProPatria 05.09.2001).

Even a senior member of the military staff at the ministry told the group he was worried that DPR's reluctance to assign security tasks to the police would cause problems in the future (ProPatria 17.09.2001: 21), but ProPatria could do little to fill the remaining gaps between defense and security in the bill. Members of the group worried that Polri's security role had been all but eliminated in favor of a focus on law enforcement when the Police bill had already been scheduled for a plenary vote (ProPatria 17.11.2001). A last-minute lobbying effort by ProPatria to return the law to committee through the PDI-P parliamentary group failed (ProPatria 22.11.2001). In the end, the police bill changed very little from the original government draft. Where it did, it narrowed and detailed rather than expanded the tasks of the police. While this was certainly important from the wider perspective of Security Sector Reform, it did nothing to improve civilian control over internal security. This made the outstanding changes to the defense bill even more important.

Final amendments and Enactment

As ProPatria had planned, Hari Prihatono gained access to the negotiations as an adjunct to the government delegation once the Working Committee discussions started. When the session chair wondered why an outsider participated even though the meetings were closed to the public the government delegation declared "he is indeed a member of our delegation". The parliamentary groups only agreed to admit him when the government provided the chair with a letter of legitimation from the new Minister of Defense, Matori Abdul Djilil. Still, the PDI-P parliamentary group seemed alienated that ProPatria was introduced as part of the government delegation even though they had previously approached the party as an NGO (ProPatria 24.09.2001: 5-7).

Even though ProPatria had planned to push for a more detailed regulation of the grey areas from the military side of things now that the police bill had failed to do so, the time for major changes was over at this stage. Several committee members indicated they were not empowered to change articles not explicitly referred to them and had to focus on DIM items which were still considered open (ProPatria 24.09.2001: 23-27). Like before, the discussion

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was hampered by the DIM-focused process and the law was again discussed as a series of separate items rather than a larger whole even though some of the committee members recognized the problem: The PBB parliamentary group complained during one of the last Panja meetings that the Working Meetings had never discussed the actual content and given most decisions to the Working Committee which then felt it lacked a sufficient mandate to dig deeper (ProPatria 11.10.2001: 20). With these restriction, the discussion again focused on minor details, like the question whether TNI should be called the main “force” (*kekuatan*) or rather “component” (*komponen*) in defense against military threats (ProPatria 25.09.2001: 2).

In substance, the ministry followed ProPatria’s recommendation and stressed the value of the non-conventional/conventional distinction for delimiting military and non-military defense but the remaining parliamentary groups finally decided to drop it to avoid additional confusion or redundancies (ProPatria 26.09.2001: 8–10). In order to retain civilian authority all parliamentary groups and the government agreed to establish TNI as the main component against military, but only a supporting component against non-military threats, giving civilians a choice whether to involve the military (ProPatria 26.09.2001: 34–36). The Committee discussed in great detail whether counter-terrorism should be included among the military’s core tasks. Even though the PDI-P parliamentary group was not happy about this important role for the military in anti-terror operations, they agreed to include it among the scope of MOOTW and accepted terrorism as a form of military threat after members of the ProPatria working group had convinced the skeptical parliamentary groups with the fact that the UN had just recently declared terrorism a military threat to all nations in the wake of the September 11 attacks in the United States during an informal lobby session (ProPatria 03.10.2001: 1–2). In return, the remaining elucidation of MOOTW was narrowed down to those already mentioned in the MPR decree and proposed by ProPatria originally (ProPatria 26.09.2001: 39, 27.09.2001: 36). Before, some parliamentary groups had openly wondered how the narrow explanation given by the ProPatria experts could be reconciled with the much broader elucidation (ProPatria 27.09.2001: 29–30).

The Committee also confirmed the changes to the threat definition proposed by ProPatria and followed the group’s proposal to drop unarmed threats from the scope of military support tasks. The Panja also convinced the government to go along with ProPatria’s initial formulation for the articles on parliamentary oversight and drop the secrecy caveat after several parliamentary groups had complained that this would limit the extent of parliamentary oversight. This moved the resulting formulation much closer to the original ProPatria proposal (ProPatria 04.10.2001: 38–40).

After the Panja phase, this and all other changes had to be approved by the drafting team (Timus) recruited from the members of the original Special Committee. The Timus went through all decisions made by the Working Committee but made only marginal changes to the draft (ProPatria 11.10.2001, 16.10.2001, 17.10.2001). After government and parliament

had expressed their mutual agreement during a last meeting of the Special Committee the bill was scheduled for a vote in the plenary (ProPatria 18.10.2001). The bill was passed without any material changes on December 10 2001 and was signed by President Megawati on January 8 to become Law 3/2002 on State Defense.

6.2 Analysis

After the chronological narrative established the general process behind ProPatria's influence on the Defense Law drafting and amendment process, the following section will use the theoretical arguments developed in Chapter 3 to analyze if and why ProPatria's influence attempts were successful. The analysis first looks at ProPatria's strategic capacity, then traces its access points to the decision-making process and analyzes the extent to which the group contributed to improvements across the five decision-making areas of civilian control. Finally, I will identify the expected institutional interests of civilian decision-makers and the military and determine whether these influenced the difficulty ProPatria had to overcome to change the content of the bill.

Strategic capacity: Resources and organization

This section will determine ProPatria's strategic capacity at the time of their influence attempts on the State Defense bill across three resource categories – expertise, networking resources, and funding – and the group's organizational development.

Expertise

From the beginning, ProPatria was intentionally built around the substantive expertise of its members in matters of defense studies, human rights and law rather than their ability to mobilize supporters. Even though several members had an affiliation with other groups as well – like Munir with the human rights group KontraS, Rizal Sukma with the think tank CSIS, Riefqi Muna with his own NGO Ridep – none of these groups were grass roots organizations or even larger membership organizations. Hari Prihatono himself had been selected to spearhead the attempt to integrate Indonesian civil society activities in the security sector for his knack for organization and his ability to bring together a diverse group. While the participants of the first meeting are not fully representative of the members most active in the group, they still reflect this integrative idea (cf. Table 6.1). By virtue of their past involvement in legislative lobbying, the group had also accumulated detailed knowledge about the inner workings of the Indonesian political system and members' experience as activists helped them develop an effective plan. The focus of his other activity made it difficult for Munir, a renowned human rights activist, to approach the military without generating hostile reactions so he had to opt out of certain meetings, since his colleagues were more at ease with TNI (ProPatria 01.11.2000: 44). The close cooperation with the government during the later stages was another reason so few of the original members with a background in political activism remained active throughout the legislative

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process (Ate 2013). Once the group realized they lacked detailed legal expertise, they compensated this weakness and invited a law expert to join them. Consequently, the group acquired the ability to develop an alternative draft that looked like a proper law, which made it much more attractive than a loose set of general principles and decontextualized regulations for ministry and legislators alike.

Table 6.1: Selected participants of first Working Group meeting

Name	Background
Dr. Daniel Sparringa	International Relations, Lecturer Airlangga University
Dr. Nasikun	Sociologist
Dr. Kusnanto Anggoro	Defense Expert, Lecturer Army Staff College
Dr. Karlina Leksono Supelli	Women's rights activist
Dr. Rizal Panggabean	Political Scientist, Center for Peace and Security Research Gadjah Mada University
Dr. Cornelis Lay	Political Scientist, Center for Peace and Security Research Gadjah Mada University
Dr. Rizal Sukma	Researcher at CSIS think tank, Expert in International Relations
M. Riefqi Muna	Defense Studies, Founder of Research Institute for Democracy and Peace (RIDEP Institute), Researcher at Indonesian Institute of Science (LIPI)
Munir, S.H.	Lawyer, Founder of Commission for the Disappeared and Victims of Violence (KontraS), later Indonesian Human Rights Monitor Imparsial.
Yohanis G. Bonay	Sociologist
Drs. Ulil Abshar Abdala	Islamic scholar, Activist of Liberal Islam Network
Suraiya Kamaruzzaman	Women's rights activist, Founder of Flower Aceh
Iriani Sophian Yudhoyoko	Historian
Ir. S. Indro Tjahjono	Sociologist
Stanley Yap	ProPatria staff
T. Harry Prihatono	Executive Director ProPatria

Source: Author's compilation

The group tried to capitalize on their diverse background in their approach to decision-makers to stress to the integrative character of their demands. Before ProPatria was established as a brand name, the Working Group members always made a point of listing their different backgrounds and stressed that the Working Group was not the same as ProPatria, a single NGO. During their earlier activities the speaker and authors of publications and drafts were usually referred to as individuals with separate affiliations instead of by a common ProPatria moniker. In November 2000 when the group planned their early lobbying activities with parliament, every team was deliberately designed to include members from different backgrounds and party affiliations.

Funding

The group's initial funding came mostly from the United State Agency for International Development (USAID), specifically its Office for Transition Initiatives (OTI). The fact that most members were established experts raised the group's initial overhead costs. While they kept their day job, they needed additional monetary compensation so they could afford their participation. Several members who couldn't be paid or did not have enough spare time had to quit the group for time constraints (ProPatria 14.02.2001) and even for the more committed paid members it was often difficult to find suitable time slots for common activities: The group spent considerable time during meetings for tailoring future events around the schedules of busier members. The money USAID provided freed up valuable time for the experts to meet but also gave the group a chance to create an appropriate environment for their meetings with members of the military, government and parliament at luxury hotels in Jakarta. The donor money came without strings attached: ProPatria had relatively large leeway to determine their course of action as well as the substantive goals within the field (Mietzner 2013b), and indeed, instances where USAID tried to influence the groups strategic direction were rare. The foreign source of their funding and its association with the US government only initially endangered the group's reputation. During the first meetings with the military leadership, several officers claimed ProPatria was a mere puppet of the Americans but its members quickly managed to convince the military of their patriotic and academic credentials (Muna 2010). After the first meetings, international donors had offered to extend additional funding for the work of the experts involved and pay the core members a regular income during their activities. However, the USAID coordinator explained that even though the Working Group had requested additional experts and was scheduled to meet more frequently than originally planned, he would not be able to increase the overall funding proportionally (ProPatria 30.09.2000: 29-30). When the group began plotting a course for consolidating their organization and plan future activities the members discussed the possibility of expanding their donor base beyond USAID to include the British Department for International Development (DFID). The USAID representative supported this idea but advised against broadening the group's presence to the regions outside Jakarta and further institutionalizing the group. He worried it would increase the group's base costs considerably (ProPatria 17.7.2001: 29-30). Scarpello reports the group had an estimated operating budget of 750.000USD annually in 2000 and 2001 (Scarpello 2014: 141).

Network Resources

Due to the professional focus of the founding members and fact that the Working Group was neither a membership organization nor its participants leaders of or at least active members in mass or grass-roots organizations, the groups network resources for mobilization were negligible. Some of them had been involved in demonstrations or other forms of mass protest in the past. However, it had always been through association with other groups much better able to field large numbers of supporters (Muna 2013). The group realized this when they compared their situation to that of mass organizations and ruled out any large-

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scale demonstration activities to build up pressure on decision-makers (ProPatria 30.11.2000: 110-111). Still, the group was still well networked through personal connections to other organizations. Thanks to the academic members like Cornelis Lay or Rizal Panggabean of Gadj Mada University the group had close contacts within the scientific community there and Rizal Sukma was in touch with many independent academics through his work at one of the country's most respected think tanks (Muna 2013). Through their professional connections the group also planned to establish and improve connections with other organizations, especially through university campuses to improve their ability to pressure for changes should other attempts fail. However, during the defense law it did not become necessary to capitalize on this potential resource (ProPatria 28.09.2000: 112-113). The Working Group did, however, attempt to expand their ability to mobilize supporters through the media and immediately after their first meetings began to prepare the ground for a potential media strategy, including background talks with journalists to improve their relationship with the media (ProPatria 30.11.2000: 3).

Organizational development

After USAID deemed the first few meetings a success, the agency was willing to provide ProPatria with additional money for organizational development and increase the group's administrative capacity as well. The more regular and frequent internal meetings had to be prepared, documents circulated and communication with decision-makers needed to be managed to create larger events (ProPatria 30.11.2000: 10). By 2001 the group included 12 permanent staff members, altogether 24 associated researchers who received monetary compensation from the group and eight additional temporary members of the administrative staff (Scarpello 2014: 141). The short-term money provided by USAID was sufficient for a limited project like the Defense Law. Still, the group started to look for more stable funding by cooperating with DFID when it became apparent that the group would need to stay involved in the reform process. Since the defense law had been designed as a basic law, many key decisions had been put off for future laws. Despite the impressive growth in personnel ProPatria's resources were still limited and had to be economized. The fast pace and extensive involvement in the drafting process meant the core expert staff was stretched so thin that little time was left for softening up members of parliament for amendment stage of the policy process.

Despite this organizational development the ProPatria Working Group did not develop a centralized or hierarchical structure. Only during the later stages fewer members could actually be present on a regular basis which created a de facto hierarchy of relative influence on the policy positions of the group. As long as members showed up to meetings, they were able to contribute. However, the lack of central hierarchy also meant the group sometimes lacked message control. The frank discussion culture within the group was apparent during meetings with decision-makers and since everyone had a chance to express their own opinion members often talked about items of technical or lesser relevance at length in their

response to questions instead of sticking to the group's agreed goals and focus on pushing through the items not yet part of the law.

In general, the Working Group members seemed happy with the organization and size of the group which allowed it to be effective and widely networked but at the same time small enough so that all members could coordinate their activities (ProPatria 17.007.2001: 32). The group reacted quickly when the Department of Defense provided them with an opportunity to access a decision-maker directly.

Altogether, ProPatria's resource base was skewed towards expertise and network connections to other Civil Society Organizations but there are strong empirical indications that ProPatria deliberately tried to compensate their perceived weaknesses in strategic capacity (I₄).

Choice of entry and decision-maker accessibility

Initially, the ProPatria Working Group planned for a broad approach to all relevant decision-makers before they had any definite information on their actual accessibility. The group realized that accessing the opaque parliamentary decision-making process would be especially difficult. They still decided to move along with the plan since entering the policy process early on with their own draft would promise better results than trying to influence an existing bill (ProPatria 28.09.2000: 2-3). The alternative – introducing an alternative draft through parliament – was considered difficult: Even though the large number of parties meant that finding a party to propose it to would be easy, the consensus necessary for its adaptation as a parliamentary initiative meant the group would have to approach and convince every parliamentary group, including the TNI/Polri group (ProPatria 30.11.2000: 106-107). In order to still get in contact with parliament the group relied on the individual members' personal connections to law-makers. The Working Group members also had some established contacts to members of parliament through their past work as expert advisors or from a common activist background (Muna 2013). Through these contacts the group hoped to expand their access to parliament and also be invited to formal hearings (ProPatria 17.12.2000: 30-31). As soon as the group managed to enter the policy process through the ministry, however, parliament became a mere backup solution until the group realized they would not be able to push through all their demands at the ministry (ProPatria 15.01.2001: 56). Part of the reason was that, while ProPatria had some success using their private channels to the parties, those members of parliament who actually participated in ProPatria events in late 2000 had remained very passive, did not engage with the group and in general did not seem interest in learning from the expertise of the Working Group members (ProPatria 09.11.2001). Consequently, ProPatria quickly decided against risking their access to parliamentary deliberations through the government side once closed-door deliberations began. In the end, parliament became somewhat mistrustful of ProPatria's apparent role as a quasi-non-governmental organization. Also, the group had failed to establish broader rapport with members of Commission I in charge of defense affairs which meant the group's

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ability to influence the outcome of negotiations was limited to the contacts during the official DPR meetings.

In contrast to parliament, ProPatria found access to the government easily after they approached Defense Minister Mahfud through mutual acquaintances. Before, the group's connections had already proved vital for the group's initial drafting work. Without early access to the draft bills from within the circle of isolated academics who had been consulted by the ministry, ProPatria would have been able to develop neither such a stinging academic critique of the two existing bills nor a detailed alternative draft (ProPatria 17.12.2000: 28). There were no formal requirements for the Department of Defense to involve CSO in their drafting procedures. However, Minister Mahfud was no defense expert when he took over his new portfolio in August 2000 and was reportedly not very popular at the ministry (Ate 2013). This probably resulted in an attempt to sideline him during the development of the October bill. Thanks to his outsider status he seemed more willing to seek support and expertise outside the department. Mahfud's predecessor, himself an accomplished civilian defense expert, had asked only individual academics to comment on draft laws after their development by the military Headquarter (Sudarsono 2013). Minister Mahfud apparently felt he could not trust the advice of either TNI Headquarter or his own experts with a military background and without outside help might lose his ability to influence policy at his own ministry. The chronological narrative has demonstrated that this avenue of access was essential for ProPatria's success in influencing the content of the final Defense Law. Even though Mahfud felt the need for outside help during the legislative process, the position of the minister was well-enough respected that he could stop the October draft from entering parliament and force the department's drafting team to cooperate with ProPatria. Even beyond the drafting, the ministry valued the advice ProPatria had to offer (ProPatria 14.02.2001: 2)⁴⁷: Despite their warnings that they would try to push for additional change during parliamentary meetings, the department provided the Working Group with access to these meetings and the members of the drafting team convinced the new minister Matori Abdul Djilil to extend an official invitation even after Mahfud had left office after president Wahid's impeachment in July 2001 (ProPatria 24.09.2001: 5–6).

ProPatria decided to contact the military mainly because of their large remaining influence on the president through TNI Headquarter, on the Department of Defense through their officers seconded there and parliament through the TNI/Polri parliamentary group. Again, the approach was through those members of the Working Group who had personal acquaintances in the military through their previous job experience, like Kusananto Anggoro who had worked as a teacher at the Army Staff College (Anggoro 2010; Muna 2013). After they initially reacted defensively, the military proved surprisingly willing to listen to ProPatria's proposals (ProPatria 30.11.2000:2). While ProPatria's conciliatory language and

⁴⁷ The Department seemed to appreciate the fact that ProPatria had proven a reliable contact that had not advertised their own alternative draft. Rizal Sukma later said about the deliberations: "When we made the Defense Law, when we did not pass it to the public, Dephan saw us doing this and going through them. Consequently they were much more receptive. So we just created the perspective but did not claim copyright for it. That way it was much easier to get them to accept our proposal." (ProPatria 10.07.2001: 29).

careful framing of their position as military-friendly during discussions might have precluded the military leadership from using all means at their disposal to oppose ProPatria's demands, there are no empirical indications that this was actually the case except that the less reformist members of the drafting team remained largely passive during the meetings in February 2001 and left the initiative to their opponents (ProPatria 14.02.2001: 5).

The timing of access also contributed to the group's overall success. The group had realized that previous influence attempts had failed because groups did not access the decision-making process early enough. Consequently, these groups had to focus on stopping laws rather than influencing them later on (ProPatria 28.09.2000: 85). Thanks to their early access to the drafting process, the group managed to shape the scope of the bill to a much larger extent than had they merely attempted to change it in parliament. Still, the group remained actively aware that the parliamentary stage would determine if their influence was an overall success or failure. Their achievements would at least have to be defended, if not expanded in Commission (ProPatria 14.02.2001: 5). ProPatria's experience during the parliamentary phase for the Defense Law but even more during the Police Law negotiations are an instructive example of how difficult it was to influence the substantive content of a bill without informal early access during the drafting stage or their access to the closed parliamentary sessions through the Department of Defense and their personal contacts in parliament. The nature of the DIM-focussed proceedings had made any deviation from the established content of the bill difficult, if not impossible, both for the Police Law (ProPatria 18.07.2001: 18) and the Defense Law without universal support from the civilian parliamentary groups (ProPatria 24.09.2001: 23).

In summary, there are strong empirical indications that accessibility played an important role for ProPatria's approach to decision-makers (I₁) and that the group took the veto potential of both the political party and military parliamentary group into account, was aware of – and used – the Minister of Defense's veto potential (I₂). There are at least indications that the group tried to access the political process early and through the Department of Defense in order to profit from the lower number of veto actors during the more informal internal negotiations there and to circumvent the problem of having to convince more decision-makers to adopt their proposals later on (I₇).

Changes and change attempts to the decision-making areas

ProPatria managed to push the boundaries of civilian control significantly, both indirectly by delaying the submission of the October draft, as well as directly by formulating the new articles together with the department drafting team. As the chronological narrative indicated, the government prepared three drafts for State Defense Bill between early 2000 and the law's passage. The first draft that reached an audience outside the Department of Defense was the so-called June draft, quickly followed by the October draft (Dephan 10/2000). Together with ProPatria the Department then prepared the February Draft (Dephan 02/2001) which was introduced to parliament, amended and passed to become

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Law 03/2002 on State Defense⁴⁸. Even though most changes were introduced at the drafting stage, several smaller changes during the parliamentary deliberations can also be traced back to ProPatria's influence. The changes touched upon all decision-making areas of civilian control and are summarized in the following section. A complete overview of civil society demands and changes at each step of the decision-making process can be found below (see Table 6.5, p.112).

Only two changes touched Elite Recruitment and were mostly symbolic. In Art. 42.2 the October draft reaffirmed that the military and police parliamentary group would stay in parliament until the end of its term and Art. 22.1 stressed that TNI's "loyalty and devotion is to state and nation". The latter could have been construed as a way to legitimize military interventions against an elected government and ProPatria originally wanted to replace the clause with an affirmation of TNI's responsibility to "all of society", but both articles were instead completely dropped during the drafting of the February bill.

Changes to Public Policy were more numerous and relevant for civilian control. Art.29 from the October draft guaranteed TNI the use of military installation and natural resources in the interest of defense, which was construed as a basis for seizing land for defense purposes as part of TNI's autonomous management of training grounds and other military installations (ProPatria 15.01.2001: 52)⁴⁹. The February draft instead took over a ProPatria proposal and stated that the use of national resources for defense had to "take into account the principles of sustainability, diversity and productivity of the environment" (Art. 20, Dephan 02/2001). ProPatria had initially wanted parliament and president to designate military training areas and installations jointly. As a compromise, the February draft required a government decree in Art. 21. The definition of threat in Art. 2 and 20.2 of the October draft was so wide, that it could have securitized center-periphery or religious relations by indirectly making the military responsible to counter all threats to the Unitary State of Indonesia, the Pancasila state doctrine⁵⁰ and the Indonesian constitution. ProPatria only scored a limited success during the February drafting by restricting threats to those affecting national sovereignty, territorial integrity and the safety of the nation. Threats still included those "with or without weapons" in Art. 1.2 of the February draft and ProPatria worried this might be used to target peaceful independence activists (ProPatria 17.01.2000: 23) and managed to convince the parliamentary groups to explicitly restrict the military to face down military – i.e. armed – threats in the elucidation in order to more clearly define the military's role (ProPatria 19.06.2001: 24). Several other regulations were dropped from the October bill in February. This included articles on the rights and obligations of citizens in defense and compulsory defense awareness education to be conducted in civilian schools,

⁴⁸ Unfortunately, the author could not obtain original copies of most original government drafts. However, the June draft has survived as part of a comparison document prepared by ProPatria WG (2001).

⁴⁹ Munir singled this article out as one of the reasons civil society had to get involved in the drafting process (ProPatria 15.01.2001:52).

⁵⁰ Pancasila (Five Pillars) is the Indonesian state philosophy. It consists of the five principles Belief in God, Just and civilized humanity, Unity of Indonesia, Democracy guided by inner wisdom, and Social justice (cf. Vatikiotis 1998)

housing complexes and work places and references to compulsory basic military training (Art. 12-19, Dephan 10/2001).

Four issues touching on both internal security and national defense saw changes. The first was civilian control over routine tasks and the use of force. The October draft determined in Art. 33.2 that all “routine tasks of detecting, deterring and dealing with hostile actions are delegated to the TNI Commander”, which would have exempted these from civilian involvement (ProPatria 04.01.2001: 8). In contrast, Art. 13 in the February draft reaffirmed presidential control and, as a compromise introduced the possibility of retroactive approval of urgent missions initiated by the president from DPR within 45 hours after mobilization. Even though ProPatria had proposed to regulate the use of force in a separate document, this compromise was found during negotiations in the ministry and remains in the final bill (ProPatria 19.06.2001: 2).

Second, the October draft had included all possible military operations including those in internal security under the rubric of the general defense concept without further elaboration. This regulation was unclear as to when the military would automatically be responsible and when civilians had a choice. ProPatria’s goal was to give civilians the freedom to decide whether to involve the military except for in narrowly defined security tasks. As a first step, they had demanded a clear list of military core tasks, including Military Operations other than War, which was adopted in Art. 10.3c of the February draft. The group had agreed to limit the MOOTW list but the draft transmitted to parliament still contained the extensive list of tasks the military had wanted. This included the task to “to confront rebels, separatist movements, terrorism, illegal immigration, drug problems, illegal fishing, natural disasters, environmental degradation and piracy”). The elucidation had apparently been changed again after the discussions with ProPatria were concluded. However, Art. 7.2 of the February draft explicitly restricted the military to a supporting role against all non-conventional threats. This gave civilians the option to have other security forces deal with these threats or involve the military under MOOTW (ProPatria 19.06.2001: 24). All non-military threats were explicitly given to civilian government agencies in Art. 7.3. This progress was lost when parliament later decided to delete the distinction between conventional and non-conventional threats, but instead, parliament followed ProPatria’s original proposal for the scope of military MOOTW and narrowed the list down considerably (Art. 10.3c, E).

Third, ProPatria had decided against pushing for the abolishment of TNI’s territorial command structure in the defense bill but they tried to keep the issue out of the legislation and instead introduce the idea of integrated area commands which would have weakened the relative authority of the dominant army in the territorial structure but failed. While there was no explicit reference to the territorial commands, the October draft listed regional defense commands meant to increase operational readiness and conduct military operations in Art. 10. After ProPatria’s intervention, Art. 21.1 of the February draft merely emphasized

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that these would have to respect the same basic democratic principles as the remaining defense system.

Fourth, while the October draft made no reference to an oversight role for parliament, at ProPatria's insistence the February draft explicitly gave DPR a right of interpellation of security officials in Art. 21.1 and an oversight function over matters of defense in Art. 21.2, which could, however, be restricted for matters considered secret. Even though several parliamentary groups were concerned that listing this power separately could be interpreted to limit their oversight function to enumerated subjects (ProPatria 21.06.2001: 19) ProPatria managed to convince parliament to keep it in the bill and the secrecy limitation was deleted.

ProPatria's involvement in the legislative process also brought about several changes to national defense and military organization. First, the October draft put the TNI Commander in charge of strategic planning, military operations, professional development and military management, leaving the Minister of Defense in charge of merely administrative tasks and defense resource development policy (Art. 35, 36.3 Dephan 10/2000). ProPatria helped the ministry significantly expand its authority in Art. 15. In addition to the previous list, the minister was now listed as an assistant to the president in charge of formulating defense policy, general guidelines on the use of force, setting the budget, developing a recruitment policy and developing defense technology and industry. ProPatria failed with their attempt to completely subordinate TNI Headquarter to the Minister in operational matters as well. During the parliamentary process, DPR did not want to introduce these changes despite several lobbying attempts, so that the Defense Law created a bifurcated chain of command and responsibility. ProPatria's proposal to put the Minister of Defense in charge of the strategic intelligence services previously controlled by TNI Headquarter was not included in the bill.

A second point in which ProPatria was unsuccessful concerns the selection of TNI's top officers. Contrary to their alternative formulation, the October draft had severely restricted the list of possible candidates for TNI Command to officers who had served as Chief of Staff in one of the armed services in Art. 32.2. ProPatria considered this problematic since, according to Art. 32.3, the President was to appoint the Service Chiefs "following the proposal" of the TNI Commander, which indicated limited leeway. While they managed to convince the ministry staff to change this latter clause to "taking the TNI Commander's opinion into account" (Art.17.3) the President's choice remained limited. Parliament later returned the article to its original formulation. On the insistence of ProPatria, the government merely inserted a clause into the elucidation which made sure the TNI Commander would present at least two candidates to the president (ProPatria 04.10.2001: 24).

Finally, like the Territorial Structure, ProPatria had also considered the military's role in business too difficult to abolish at this point in the reform process but the group was determined to place at least a declaration of intent in the bill. Unsurprisingly, the October

draft did not contain any regulations concerning this point. In ProPatria's alternative draft, two regulations were inserted to foreshadow this reform (cf. ProPatria 15.01.2001: 45-46): Art. 30 stated that state defense was to be paid from the state budget and Art. 33.1 mandated that within a year of enactment of the defense law, the minister had to develop a plan for the takeover of TNI business interests. The timeframe was to be determined by the president. While the latter mandate was not included, the former symbolic regulation made it into the February draft and was ultimately adopted as Art. 25.1.

In summary, most of changes were introduced at the drafting stage in the Department of Defense. At this stage, both the causal narrative and the resulting changes lend strong empirical support to the assertion that ProPatria successfully influenced the level of civilian control. By co-writing the bill, they managed to shape it largely in line with their previous plan. However, they still failed to influence the bill on several important issues. Even though the group was optimistic to convince parliament to amend the draft according to their proposal, they largely failed and their influence was much more limited. As the short discussion on the Police bill pointed out both laws together did little to achieve what the ProPatria Working Group had initially set out to do. Without regulations on military assistance to the police in either law informal arrangements between military, civilian decision-makers and the police still determined roles and responsibilities within the infamous grey areas. Consequently, ProPatria would have to tackle this issue in a future law.

Civilian interests, military resistance and CSO tactics

This section evaluates the explanatory power of the central influence argument to answer the question if the differential between CSO demand and civilian interests together with the military's motivation for and intensity of resistance to the changes actually determines the level of assertiveness civil society has to apply in order to successfully influence decision-maker behavior.

Government interests

Going back to the postulate about decision-maker interests, the first question is which regulations had consequences for civilian general or branch interests. First, all CSO demands which would expand civilian control over Elite Recruitment and Public Policy can be assumed to be in any civilian decision-maker's core interest. In their other interests, civilian decision-makers differ depending on the branch of government they belong to and their narrower departmental identity. In Chapter 3 we assumed that the Department of Defense would be interested in any regulation that either affects the relative authority of the government over the military or relative to other civilian decision-makers as well as any regulation that affects their own departmental authority over the military or relative to other civilian decision-makers. DPR on the other hand should be interested in any regulation that expands parliamentary authority over the military or relative to other civilian decision-makers. Table 6.2 (p.106) and Table 6.3 (p.107) list both relevant institutional decision-

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makers' expected positions relative to ProPatria's demands made during the crafting of the Defense Law. The overview indicates that despite some misgivings about ProPatria's influence in the middle echelon of the ministry at the beginning of the drafting in February both sides were actually natural allies. The interests of the Department were largely compatible with the group's demands because the Working Group had decided to focus on empowering the ministry vis-à-vis the military during their initial meetings. Realizing the plan would thus expand ministry control over the budget and oversight over the military. Theoretically, the ministry should only have been opposed to an expansion of parliamentary oversight before taking into account additional effects from military resistance.

While the observed decision-maker behavior does not offer information about their original interests, there are at least indications from the legislative process that 1) ProPatria based parts of their strategy on this expectation and that 2) decision-maker positions were actually influenced by these considerations.

Table 6.2: Defense Law; Expectations on CSO Demands and DoD Interests

Core Interests	Civilian	+	Veto June Draft
		+	Drop "TNI is loyal to state and nation"
		+	Drop TNI's guaranteed use of defense resources
		+	Create civilian authority over designation of military installations
		+	Focus military on armed military threats
		+	Drop citizen obligation to attend defense awareness classes
		+	Enumerate and limit military tasks
		+	Enumerate limits on Military Operations other than War.
		Branch Interests (Government)	
+	Create civilian authority over designation of military installations		
+	Focus military on armed military threats		
+	Keep routine military tasks under civilian control		
+	Expand the authority of the Department of Defense		
+	Give president more choice for office of TNI Commander		
+	Give president more choice for Service Chiefs of Staff		
+	End military business activity		
+	Add regulation that defense is financed from the state budget		
Departmental Interests (DoD)			
		+	Veto June Draft
		+	Create civilian authority over designation of military installations
		+	Expand the authority of the Department of Defense
		+	End military business activity
		+	Add regulation that defense is financed from the state budget
		-	Expand DPR's oversight role

Source: Author's compilation

ProPatria apparently believed that a combination of civilian core interests and more narrowly defined institutional interests would influence the behavior of the decision-makers they targeted. It was among the reasons the group focused their attention on the Department of Defense to introduce their changes. When the group approached Minister of Defense Mahfud with the request to veto the submission of the October draft, they argued that the bill was endangering civilian core interests and also limited his institutional authority (ProPatria 04.01.2001: 5). The position of the Department of Defense later also seemed different from the position taken by the rest of the military leadership. Even though military officers participated in the drafting team both as delegates from TNI Headquarter and as members of the Department of Defense the latter often seemed willing to strengthen their current institutional home. The fact that Minister Mahfud had used the first meeting of the drafting committee to issue a clear reform mandate and supported ProPatria’s proposal for the scope of the new bill seems to have encouraged this behavior (ProPatria 08.02.2001:03). Consequently, institutional interests of the Department of Defense could actually become relevant for the resulting drafting and amendment process. Reportedly, several military officers who worked at the Department privately stressed they would have no problem with a subordination of the TNI Commander to the ministry after the February draft had been completed. They apparently indicated the ministry might support the change should parliament introduce it (ProPatria 14.02.2001:5-7).

Table 6.3: Defense Law; Expectations on CSO Demands and DPR Interest

Core Interests	Civilian	+	Veto June Draft
		+	Drop “TNI is loyal to state and nation”
		+	Drop TNI’s guaranteed use of defense resources
		+	Create civilian authority over designation of military installations
		+	Focus military on armed military threats
		+	Drop citizen obligation to attend defense awareness classes
		+	Enumerate and limit military tasks
		+	Enumerate limits on Military Operations other than War.
	Branch Interests (DPR)	+	Focus military on armed military threats
	+	Enumerate limits on Military Operations other than War.	
	+	Expand DPR’s oversight role	
	-	Create govt. authority over designation of military installations	
	-	Expand the authority of the Department of Defense	
	-	Give president more choice for Service Chiefs of Staff ⁵¹	

Source: Author’s compilation

⁵¹ Since parliament already played a role in confirming the TNI Commander, more choice for the President would not have increased his relative authority over parliament.

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Parliamentary interests

ProPatria seemed optimistic they would convince parliament to enter several regulations they failed to introduce in the February draft, including the expansion of DPR oversight authority which, it was assumed, was in DPR's interest (ProPatria 14.02.2001: 7-8). There are also indications that parliament's stance on the bill's regulations was indeed influenced by institutional interests. When the draft was debated, all parliamentary groups except one worried that subordinating the TNI Commander to the Department of Defense would politicize the military and turn it into a political tool, apparently worried about the additional control the government would gain over the military (DPR 2002: 135-143). Before the deliberations began, several members of political parties indicated the TNI Commander should not be subjected to the Minister of Defense because the former had greater democratic legitimacy than the Minister because he had to be approved by DPR. During negotiations the parliamentary groups worried that the president would use any meaningful choice over the selection of the service chiefs of staff as a way to politicize the military, and consistently argued that the president would appoint the service chiefs "following the proposal" instead of "taking into account the position of the TNI Commander" even though Defense Minister Mahfud argued against it by stressing this would force the president to remain passive (ProPatria 16.07.2001: 15). Several arguments made by the PDI-P parliamentary group also indicated that parliament was worried about handing the president a *carte blanche* to involve the military in issues touching on public policy, like drug enforcement (ProPatria 20.03.2001: 4). The fate of empowering regulations in the Police Law also indicates that members of parliament were especially reluctant to introduce additional language to a bill that would give the police and therefore the government additional authority in internal security operations.

To summarize, there are at least indications that the stance of both the Department of Defense and parliament on certain regulations were influenced by their interests as civilians as well as their narrower institutional interests (I_9) as well as signs that ProPatria focused on parliament because they expected parliamentarians to be interested in an expansion of their own authority relative to other decision-makers (I_4).

Military interests and resistance

Almost all demands ProPatria tried to realize during the legislative process for the defense law either clashed with TNI's core institutional interest or touched upon an entrenched institution. In addition to the universal military interest in organizational autonomy, the Indonesian military specifically depended on a broad mission profile reaching deep into Internal Security to guarantee their institutional survival and sufficient financing since their role for national defense was negligible and competition for a part of the national budget had intensified thanks to the austerity measures necessary after the Asian

Table 6.4: Defense Law; Expectations on CSO Demands and Military Interests

Core Interests	Military	<ul style="list-style-type: none"> - Veto June Draft - Drop TNI's guaranteed use of defense resources - Create civilian authority over designation of military installations - Focus military on armed military threats - Enumerate limits on Military Operations other than War. - Keep routine military tasks under civilian control - Integrate services into area commands - Expand the authority of the Department of Defense - Give president more choice for office of TNI Commander - Give president more choice for Service Chiefs of Staff - End military business activity
		<ul style="list-style-type: none"> + Add regulation that defense is financed from the state budget
Formal authority		<ul style="list-style-type: none"> - Veto June Draft - Enumerate and limit military tasks. - Keep routine military tasks under civilian control - Expand the authority of the Department of Defense - Give president more choice for office of TNI Commander - Give president more choice for Service Chiefs of Staff - End military business activity
Informal influence		<ul style="list-style-type: none"> - Enumerate limits on Military Operations other than War. - Integrate services into area commands - Expand DPR's oversight role - Expand the authority of the Department of Defense - End military business activity

Source: Author's compilation

Financial Crisis. In addition, the military saw itself as guardian of Indonesia's territorial integrity and the military leadership believed they would need the territorial structure, a broad threat definition and some leeway in operational decisions in order to remain flexible in their reaction to separatist and other insurgent threats.

If a regulation demanded by CSO touched upon these interests, we would expect the military to be motivated to counter their demands and exert informal pressure on civilian decision-makers. Table 6.4 (p.109) provides an overview of the resulting military attitude towards ProPatria's specific demands.

There are indications that ProPatria was aware of the relevance of core military interests and entrenched institutions for the Indonesian armed forces and worried that TNI resistance would make reforming institutions touching upon them much more difficult. From their earliest meetings, ProPatria was acutely aware of the implications abolishing the

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territorial structure would have for general required troop strength and the number of available officer positions. They also discussed the relevance of individual and institutional TNI business activities for the welfare of soldiers and the overall volume of the military budget (ProPatria 28.09.2000: 39-40). Consequently, the group decided to delay the issue to a later point and only try to keep out reaffirmation of these institutions and potentially introduce a mandate for their eventual reform (ProPatria 28.09.2000: 39-40, 49). They also tried their best to make reforms seem cheaper by avoiding any mention of concrete reform steps in their early proposals. After putting the issue in the February draft failed, the group wanted to try to propose longer transition periods for at least mandating an eventual end of business activity to make it easier for the TNI/Polri parliamentary group to accept the change (ProPatria 14.02.2001: 7-8). ProPatria was also aware that TNI had an interest in limiting the circle of eligible candidates for the post of TNI Commander so the military could more easily influence who would be selected. Since the TNI Commander himself determined the list of candidates proposed for the three service Chief of Staff positions from which the president had to choose, this directly determined the circle of officers who could succeed him (ProPatria 14.02.2001:13).

Even though TNI would be expected to keep their informal influence attempts as secret as possible, there are some indications that the military was willing to use their political resources to stop certain reforms. During the initial meeting between ProPatria and members of TNI, several officers were very defensive about the idea of enshrining the principle of civilian supremacy in the bill and warned the group there would be a “tug of war” if their proposals would affect the relative distribution of authority between military and civilians (ProPatria 01.11.2000: 14). During drafting process at the ministry, military members of the drafting team opposed ProPatria’s idea to introduce a mandate to end the territorial structure and the military’s role in business, arguing it would endanger Indonesia’s defense posture and the military’s ability to keep up their operational budget (ProPatria 10.02.2001a: 33-34; 14.02.2001: 6-7). Finally, before the February draft was transmitted to parliament, someone at the ministry apparently switched out several articles from the elucidation and introduced a list of Military Operations other than War that contained missions in addition to those ministry officials and ProPatria had agreed on. While it is uncertain, this event seems to indicate a possible military attempt to use their position to informally introduce additional missions. In contrast, the TNI/Polri parliamentary group did not behave differently than other parliamentary groups: once it stood alone, they gave up their resistance and did not force a vote on issues they opposed, even though their initial remarks made clear they saw themselves as representatives of the military in the first place.

In summary, there are at least some indications that ProPatria was aware that the entrenchment of certain institutions would make reforms more difficult and might require more assertive tactics than those available to the group (I_3). Because of that, the group decided to delay certain issues for later laws (I_4).

Choice and effectiveness of tactics

ProPatria decided to focus on constructive tactics early on. They had hoped that their creation of the draft might convince the Minister of Defense to recognize their proposal as a form of legislative subsidy and take it over completely or at least use it as a point of departure for the final bill transmitted to parliament. The bill touched on civilian core interests as well as the interest of the executive branch and his own department. Consequently, ProPatria's offer to help Mahfud draft a new bill that would improve his position and the position of civilian decision-makers in general was enough to convince him to veto the bill and stop the transmission of the October draft to parliament. After this initial decision was made, the group's alternative proposal became valuable for the drafting team because it already looked like a proper law. Also, Mahfud had given the drafting team a relatively clear mandate to restrict the bill to the scope proposed by ProPatria and take into account the group's position. The deadline he imposed left little time for prolonged discussion about basic principles, gave the military members little time to learn TNI Headquarters' position on certain issues and contributed to the adoption of ProPatria's proposals on many issues. Even though ProPatria seemingly tried to threaten the Department of Defense with their option to approach parliament to push through the remaining changes, this was no real sanction: Since ProPatria tried to use the threat to convince the government side to accept the same changes they then would try to introduce to parliament, the cost of the possible but uncertain sanction was the same as the cost of complying with the request immediately, the sanction threat therefore ineffective (ProPatria 08.02.2001: 6; 10.02.2001b: 26).

The behavior of the Department of Defense during and after drafting the February bill is largely in line with attitude and behavior theoretically expected which results from a combination of civilian interests, expected degree of military resistance and the legislative subsidy ProPatria provided as a tactic. The level of assertiveness was not enough to overcome military resistance where military interest in resisting the influence attempt was particularly strong. This includes the subordination of the TNI Commander to the ministry where ProPatria only managed to convince the Department to expand the Minister's authority slightly and the demand to mandating an end to TNI's involvement in business. Similarly, where civilian interests were relatively weak or civilians were indifferent, as with the introduction of integrated military area commands, ProPatria was not successful either. However, where ProPatria's demands were either in line with stronger civilian interests or there was little or no military resistance to a reform, ProPatria succeeded in swaying the drafting team to include their formulation in the bill. There are only three exceptions to the expected pattern (cf. Table 6.5, p.112). First, the theoretical expectation would have been for the Department of Defense to accept the restriction of military involvement to armed threats at the drafting stage and not expand their mission to include unarmed threats to territorial integrity and national sovereignty as well. Still, altogether ProPatria achieved their goal of establishing the military as a main component only against military threats, a support

Table 6.5: Defense Law Changes from 10/2000-02/2001 (DM: Drafting Team, DoD)

CSO Demand	Civilian Interest	Military Interest	CSO Tactic	Expected Attitude	Expected Behavior	Actual Behavior	Support
Veto June Draft	Core, Institutional	Core, Formal, Informal	Legisl. subsidy	In Favor	Accept	Accepted	Yes
Drop State and Nation	Core	-	Legisl. Subsidy	In Favor	Accept	Accept	Yes
Drop Guaranteed use	Core	Core	Legisl. Subsidy	In Favor	Accept	Accept	Yes
Civilianize designation of military installations	Core, Institutional	Core	Legisl. Subsidy	In Favor	Accept	(Accept)	Yes
Focus on armed military threats	Core, Branch	Core	Legisl. Subsidy	In Favor	Accept	(Accept)	(Yes)
Drop defense awareness classes	Core	-	Legisl. Subsidy	In Favor	Accept	Accept	Yes
Enumerate and limit military tasks	Core	Informal	Legisl. Subsidy	In Favor	Accept	Accept	Yes
Limit scope of MOOTW	Core	Core, Informal	Legisl. Subsidy	Indifferent	Decline	Decline	Yes
Routine tasks under civilian control	Branch	Core, Formal	Legisl. Subsidy	Indifferent	Decline	Accept	No
Integrated area commands	-	Core, Informal	Legisl. Subsidy	Indifferent	Decline	Decline	Yes
Grant DPR explicit oversight authority	Branch	(-), Informal	Legisl. Subsidy	Opposed	Decline	(Accept)	(Yes)
Expand DoD authority	Branch, Institutional	Core, Formal, Informal	Legisl. Subsidy	Indifferent	Decline	(Accept)	(No)
More choice for TNI Commander	Branch	Core, Formal	Legisl. subsidy	Indifferent	Decline	Decline	Yes
Real choice for Service Chiefs	Branch	Core, Formal	Legisl. Subsidy	Indifferent	Decline	Accept	No
End military business activity	Branch, Institutional	Core, Formal, Informal	Legisl. Subsidy	Indifferent	Decline	Decline	Yes
Add financing from state budget	Branch, institutional	Core (-)	Legisl. Subsidy	In Favor	Accept	Accept	Yes

Source: Author's compilation

Table 6.6: Defense Law Changes from 02/2001-passage (DM:DPR, Commission I)

CSO Demand	Civilian Interest	Military Interest	CSO Tactic	Expected Attitude	Expected Behavior	Actual Behavior	Support
Limit TNI threat spectrum to armed threats	Core, Branch	Core	Manipulation	In Favor	Accept	Accept	Yes
Limit scope of MOOTW	Core, Branch	Core, Informal	Manipulation	In Favor	Accept	Accept	Yes
Give President more Choice for TNI Commander	-	Core, Formal	Manipulation	Opposed	Decline	Decline	Yes
Give President real choice for Service Chiefs	Branch (-)	Core, Formal	Manipulation	Opposed	Decline	Retrench	Yes
Accept government designation of military installations	Branch (-)	Core	Manipulation	Indiff.	Accept	Accept	Yes
Erase secrecy caveat from DPR oversight	Branch	Informal	Manipulation	In Favor	Accept	Accept	Yes
Subordinate TNI Commander to DoD	Branch(-)	Core, Formal, Informal	Manipulation	Opposed	Decline	Decline	Yes
Mandate civilian takeover of business activity	-	Core, Formal, Informal	Manipulation	Opposed	Decline	Decline	Yes

Source: Author's compilation

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component against all other forms of threats. Second, theoretically, the Department of Defense should have turned down any attempt to expand its own authority in the face of massive military resistance. The solution accepted in the end somewhat expanded civilian authority, but only to a fraction of the original ProPatria demand. Third and most surprisingly, the Department of Defense accepted ProPatria's demand to explicitly enshrine DPR's oversight authority over military and defense issues even though this demand violated both military and civilian interests. However, since the government imposed a limitation on the oversight function, both the ministry and TNI would still have been able to declare any sensitive issue secret and thereby out of bounds for DPR investigations.

At the amendment stage of the legislative process for the Defense Law, ProPatria had already dropped several demands in order to focus on those issues that seemed attainable but also lost some of their tactical flexibility. Since ProPatria had failed to find stable access to the members of parliament selected to deliberate the bill and still only had access to the government side, the group could only use the official meetings to try and manipulate the decision-makers there to realize that certain changes would be in their best interest. Without the strict time limit their alternative formulations were no longer as valuable as before. While the Working Group members had discussed more assertive strategies during their initial internal meetings they never openly threatened to use them when they approached parliament. Considering ProPatria's constrained network resources and the limited time that would have been available to publicize the group's role and demands it is highly unlikely that ProPatria could have employed more assertive strategies even if they had wanted to. At this stage, DPR's expected attitude and behavior is fully in line with their actual reaction to ProPatria demands (cf. Table 6.6, p.113).

While ProPatria still had more access to the government side than to parliament, the value of their alternative formulations had diminished since the government side now already had a full draft that was acceptable to the Minister of Defense. This meant ProPatria had to rely on the least assertive tactic available to Civil Society Organizations. Still, the group managed to get the government to accept all the improvements to civilian control parliament had requested but could not move the government to change their mind on the remaining issues (cf. Table 6.7, p.116). ProPatria could not convince the government to oppose the restrictions on the president's choice for the service chiefs of staff either. Only in one point the government's expected behavior deviates from their actual behavior: Again, the government side should have turned down DPR's demand to grant them full oversight powers over military and defense matters. While it is possible that ProPatria's argument that a future Secrecy Law would enable the government to still withhold certain information, this explanation is not fully satisfactory.

There are also strong indications that the early access made it easier for ProPatria to convince decision-makers at the following stages to accept previously entered changes but more difficult to get them to actively insert or turn down regulation. Once ProPatria had decided not to demand parliamentary involvement in the designation of military

installations any longer, parliament still did not stop the regulation and demand their inclusion actively, even though this would have been in their institutional interest. ProPatria's arguments and potential military opposition to the demand had made them indifferent. Similarly, the government declined ProPatria's requests to change additional items in the law where they were otherwise indifferent and accepted the changes already made earlier where they were indifferent.

There are additional indications even before the parliamentary process began that ProPatria realized it would be difficult to introduce additional regulations actively even though they later seemed to have forgotten about this. The group decided that introducing an alternative draft would be very difficult since all parliamentary groups had to be convinced to accept it, which would have taken a lot of pressure the group could not muster (ProPatria 30.11.2000: 106-107). During the amendment process, the large number of veto players made it difficult for ProPatria to move their proposals along even if they found several parliamentary groups that were willing to support their demand (ProPatria 17.07.2001: 14). In cases where no immediate consensus was possible, the issue was sent on to the Working Committee where participants then no longer felt empowered to completely change the scope of a regulation. As the group had debated earlier, the DIM process made it extremely difficult to enter additional regulations once the initial DIM phase was over (ProPatria 24.09.2001:23-27).

The comparison of theoretically expected attitude and behavior with decision-maker's actual behavior lends strong support to the claim that CSO influence is easier if civilian interests are in congruence with CSO demands and more difficult where they are not (M_1) and that military resistance makes reforms more difficult where these violate the military's core interest or touch on entrenched institutions (M_2). This section has also demonstrated that ProPatria had to defend their earlier achievement during later stages of the policy process (C_3) and that the status quo bias of existing regulations means indifferent decision-makers will accept regulations already in a law but not include additional regulations (I_7).

Table 6.7: Defense Law Changes from 02/2001-passage (DM: Government, DoD)

CSO Demand	Civilian Interest	Military Interest	CSO Tactic	Expected Attitude	Expected Behavior	Actual Behavior	Support
Accept limits to TNI threat spectrum	Core	Core	Manipulation	Indifferent	Accept	Accept	Yes
Give President more Choice for TNI Commander	Branch	Core, Formal	Manipulation	Indifferent	Decline	Decline	Yes
Remove limit on President's choice for Service Chiefs	Branch	Core, Formal	Manipulation	Indifferent	Decline	Decline	Yes
Accept limited scope of MOOTW	Core	Core, Informal	Manipulation	Indifferent	Accept	Accept	Yes
Accept full DPR oversight	Branch (-), Institutional (-)	Core	Manipulation	Opposed	Decline	Accept	No
Subordinate TNI Commander to DoD	Branch, Institutional	Core, Formal, Informal	Manipulation	Indifferent	Decline	Decline	Yes
Mandate civilian takeover of business activity	Branch, Institutional	Core, Formal, Informal	Manipulation	Indifferent	Decline	Decline	Yes

Source: Author's compilation

6.3 Conclusion

ProPatria could not realize many of their most important goals for the Defense Law, and had to drop several additional demands in order to focus their effort on those improvements that seemed attainable. Still, there is strong empirical support to the claim that ProPatria played a significant role in the expansion and institutionalization of civilian control. The two main hypotheses were equally supported by the results of a congruence analysis between dependent and independent variables (M_1 , M_2). Only the expansion of parliamentary oversight runs counter to the theoretically informed expectations about the outcome pattern. In addition, the case study also provided support for some observable theoretical implications. From the beginning of their activity, ProPatria realized that they lacked the resources for more assertive tactics and focused on constructive engagement and decided to delay more difficult issues to later legislation (C_2 , I_4). The Working Group had realized that some issues would be very difficult to change because of the resistance TNI was expected to mount (I_3). Even though the group initially approached decision-makers on a broad front, they quickly focused on the Department of Defense, when their personal approach to Minister Mahfud paid off and he vetoed the bill (I_1 , I_2). As expected, the limited institutional accessibility of Indonesian decision-makers meant that individual relations and contacts at a personal level determined the relative accessibility of different decision-makers. The group had sought early access to the drafting because it allowed the group more substantive influence (I_7). Even though the government did not accept all changes the group had tried to introduce at the drafting stage, the members still believed they would be able to realize them through parliament because of parliament's different interest structure (I_3). In fact, the group managed to defend most of the regulations they had introduced through the government against a subsequent veto by DPR (C_3) and there are signs that parliament agreed to changes they were indifferent to as long as they had already been included in the bill but turned down those ProPatria asked them to add to the bill or drop from it (I_5).

Still, the causal narrative has indicated that two factors not included in the theoretical framework so far had somewhat unexpected effects. First, the MPR Decrees VI and VII of 2000, originally celebrated as one of the most important early achievements of civilian control in Indonesia turned out to be an obstacle to further reform. Even though most participants agreed that the decrees had been composed hastily, worded poorly and had only seen minor input from civil society (Said 2013; ProPatria 17.09.2001: 18), the Department of Defense did not want to violate these quasi-constitutional regulations (Muna and Haripin 2013). The military Headquarter could use this to its advantage and perpetuated the dual chain of authority. As ProPatria's Ikrar Nusa Bhakti stressed during the parliamentary debates: "it seems we are bound as a result of the past and the transition to a dichotomy between the police and the military" (ProPatria 18.06.2001: 5).

Second, even though parliament's reluctance to cooperate with ProPatria can be explained by their failure to invest enough time in the establishment of good working relations with

DPR, ProPatria had also lost some of its NGO-credentials after they gained access to the legislative process from the government side and appeared to defend the government's position on several occasions. The group was no longer perceived as an independent Civil Society Organization that could give disinterested advice to the participants of the legislative process and most parliamentary factions seemed reluctant to trust their advice after this point.

In contrast, there were surprisingly few pointers for the influence of the political situation at the time. Severe tensions between the President, the DPR and the TNI leadership dominated the second half of 2000 until Wahid's impeachment in July 2001 (Honna 2003: 185–188). However, this did not show during the parliamentary debates but merely hindered ProPatria's lobbying activities during the parliamentary break. Wahid's behavior, however, probably increased DPR's reluctance to expand the president's choice for and influence over the selection of TNI's top posts just like the Police Law went into much greater detail describing the process of selection and dismissal for the Chief of Police thanks to the scandal that caused Wahid's impeachment⁵².

In the end, the Defense Law increased civilian control significantly, but it was unable to address the problem of grey areas ProPatria had wanted to tackle initially. However, ProPatria's lack of influence on the scope of the police bill was to blame more for this than their failure to completely realize their plans for the defense law. While decisions about internal security operations by the military were now more thoroughly civilianized, civilians still lacked a real alternative to calling in the military. In order to solve this problem, create a clear allocation of roles and authority in the security sector and also pursue their goal of abolishing the territorial structure and military business activities, ProPatria would have to stay involved in the reform process.

⁵² The president had tried to replace Police Chief Bimantoro with a loyalist without waiting for parliamentary approval in order to use the police as a counterweight to TNI which had turned down his prior request to freeze parliament (Croissant et al. 2013: 105-108)

7 Law on the Indonesian National Armed Forces

After the Defense Law, the next bill that was meant to update the existing institutional infrastructure of civil-military relations to the new democratic era was the TNI bill. The existing Law on the Soldiers of the Armed Forces of the Republic of Indonesia (UU 2/1988) had to be replaced in order to reflect the new values Indonesian soldiers were meant to respect and give the inner structure of TNI a more permanent legal base: Many changes during the late Suharto- and early *reformasi*-era had only been introduced through decrees by the TNI Commander. Consequently, the first preparations for the new law started at TNI Headquarter while the Defense Law was about to be passed into law (ProPatria 28.11.2001: 1). In addition to these issues, ProPatria planned to convince the government to introduce several additional reforms affecting the relationship between TNI, the civilian government, parliament and the civilian security forces once it became clear these would not be included in the Defense Law. When the group first discussed the outlines of the TNI Law, Kusananto Anggoro said:

“We still have to solve the problem how we have to control them. They want to draft the TNI law themselves. That is what they think.” (ProPatria 17.07.2001: 4).

This chapter will first describe ProPatria’s activities in the legislative process for the TNI Law chronologically and then analyze whether TNI’s supposedly optimistic expectations for the TNI Law turned out to be correct.

While the initial approach of government and ProPatria to the law was very similar to the Defense law, the legislative process for the TNI bill took much longer than anticipated and went through several draft bills during the approximately three years the bill was developed⁵³. Compared to ProPatria’s initial goals, the final bill did little to improve civilian control in those areas initially deemed most important. Still, civil society activity helped stop regulations which would have retrenched previous reforms achieved in the Defense Law. In addition, the group’s activities contributed to the eventual take-over of military business holdings. While ProPatria again took a constructive attitude towards the Department of Defense and TNI Headquarter, the Working Group was later forced to employ much more assertive tactics than before on two separate occasions when the government side shut them

⁵³ From the government side, there were at least four drafts. The first draft to reach a larger audience was the draft of March 2002 (Mabes 3/2002), followed by the November 2002 draft (Mabes 11/2002) which became the basis for discussion for Team 45. After the team’s deliberations were concluded it was changed only in small details to become the March 2003 draft (Mabes 3/2003). Since this draft is no longer available for independent confirmation, it will not be considered separately in the analysis. Finally, the government transmitted the June draft of 2004 to parliament for deliberation (Mabes 6/2004). ProPatria also went through a number of drafts. The first ProPatria draft of March 2002 (PP3/2002) was not developed as a critical reaction to an existing government draft, the second draft of November 2002 (PP11/2002) was slightly changed to reflect some discussion between the group and Mabes TNI. The draft was again reworked after consultation with the interdepartmental working group in March 2003 (PP3/2003) and then in August 2004 in preparation to the beginning of the parliamentary process (PP8/2004). Most drafts are available as part of a ProPatria comparison document (ProPatria WG 2002a; ProPatria WG 2002b; ProPatria WG 2004), the PKB draft is part of DPR’s public record in the proceedings on the bill (PKB 2004).

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out of the drafting process and tried to move their draft along without further outside influence. After ProPatria was generally successful with tactics with low levels of assertiveness for the Defense Law, this chapter can evaluate the effect of more assertive civil society tactics on legal outcomes.

7.1 The ProPatria Working Group and the TNI Law

After ProPatria received a preliminary draft from TNI Headquarter in late 2001 the Working Group decided to pursue two goals in their version of the new law immediately relevant for civilian control. First, the law would need to elaborate on organizational matters within TNI, i.e. the relationship between the services and TNI Headquarter as well as other agencies of horizontal accountability (ProPatria 28.11.2001: 12). Second, the law would need to revisit and elucidate inter-institutional relations in the defense sector between TNI and its civilian counterparts, for both policy-making and the use of force (ProPatria 28.11.2001: 3). Concerning the latter, the TNI law would need to make very clear that the police did not have the authority to involve the military in activities going beyond defense. Only civilian decision-makers had the responsibility and authority to do so (ProPatria 06.02.2002: 10). Internal security operations should require the same parliamentary approval as military mobilization and use for external defense already did, at least war-like operations (ProPatria 04.04.2002: 16). In order to strengthen civilian decision-making capacity, existing internal military regulations would need to be codified in proper law in order to isolate them from future changes by the military leadership itself, including a limited list of jobs in the civilian bureaucracy which could be filled with active duty officers (ProPatria 28.11.2001: 31). The TNI law would also need to strengthen the position of the civilian Department of Defense as a counterweight to the military leadership. TNI's current plans indicated the ministry would fulfill a largely logistical function while most authority was put in the hands of the TNI commander (ProPatria 28.02.2002: 7–8). If the TNI draft was allowed to pass in a form similar to the military draft, the minister would “become a lackey” of the military (ProPatria 28.11.2001: 9).

The Working Group remained skeptical that the territorial command structure could be abolished in this law but still wanted to avoid mentioning it explicitly to make future reforms easier (ProPatria 28.11.2001: 4). As an early attempt to increase soldiers' awareness of human rights, ProPatria also proposed the creation of soldier honor councils meant to make sure there would be professional consequences for human rights violation in addition to possible legal prosecution. After some discussion, the group determined that the new law would have to abolish both individual and institutional business activities by the military and mandate a civilian takeover of the existing military holdings (ProPatria 29.11.2001: 36, 18.01.2002: 23).

The group decided to attempt a reprise of their strategy for the defense law and focused on inserting their ideas into the government draft. The military had reportedly signaled their willingness to work with the group more directly instead of handling their interaction only

through the ministry (ProPatria 18.01.2002: 51). Even though the military had appeared defensive during a first meeting between the Working Group and TNI Headquarter, it hosted another preliminary discussion with ProPatria in early April 2002 during which officers mentioned that input received from their consultations with the group had already found its way into a new draft. They even seemed open to explicitly ban individual military business but refused a complete ban on institutional business activities. This would be too “difficult” and at least the military’s institutional activities should continue (ProPatria 02.04.2002: 3, 5, 13). Even Rizal Sukma who had been skeptical about the prospects for more direct engagement with TNI indicated his surprise that the military seemed willing to consider direct outside input at all (ProPatria 04.04.2002: 14).

Despite these direct contacts to the military, ProPatria seemed willing to bypass the government side should they fail to get access to the drafting process (ProPatria 29.11.2001: 29). While an initial idea to immediately enter an alternative draft through parliament was abandoned the group decided to still develop an “ideal” alternative draft with “no regard for the draft developed by the military” (ProPatria 18.01.2002: 9-10). To pave the way for an eventual media strategy the Working Group tried to improve their public profile and made more frequent use of the media. A press conference on their activities on the Defense Law provided a point of departure for this. Rizal Sukma stressed the need for additional reforms and criticized President Megawati’s government quite harshly when answering a question about a recent decline in civilian control over the military: “Mega never had control over the military so she cannot have lost it”. The military, they argued, was still very strong and the government had given up on reform: The “agenda [is] set by the military itself, not determined by those who have the right, which is government or DPR” (ProPatria 07.01.2002: 14, 5). The terms ‘civilian supremacy’ and ‘civilian control’ again dominated discussions after the Working Group had stopped using them in order to placate the military during the discussions about the Defense Law (e.g. ProPatria 18.02.2002).

Attempts to improve the draft

In May the Working Group received feedback from TNI Headquarter in which the military indicated that it would accommodate 60-70% of ProPatria’s demands made during their first meetings in a future draft (ProPatria 29.11.12.2002: 22). Official contacts then seized for several months and ProPatria busied themselves with meetings and focus group discussions about other bills between May and August 2002 during which time the bill was stuck at TNI Headquarter (ProPatria 25.08.2002: 3). The group only regained access to the drafting process in November 2002 when the Defense Minister invited ProPatria to a two-day deliberation meeting. The group brought a comparison of several exiting drafts to the meeting which provided the basis of discussion (ProPatria 26.11.2002; ProPatria WG 2002a). While the new draft contained almost none of the changes TNI had promised in their earlier feedback the group was still happy they would again get a chance to contribute to the draft (ProPatria 29.11.2002: 22). When the drafting resumed in mid-December

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ProPatria became part of a large inter-departmental group at the ministry that included representatives from several government offices, among them the Ministry of Justice and Human Rights, the State Secretariat, the Ministry for Bureaucratic Reform, Polri, the Department of Defense and of course TNI Headquarter. Defense Minister Matori had established "Team 45", referring to the number of participants, by decree.

The atmosphere during "Team 45" meetings was as contentious and heated as it had been during the early meetings between ProPatria and the ministry during the Defense Law negotiations. A member of the TNI delegation described his own state as "emotional" and he expressed worry that the country would be endangered, should the TNI commander not be given the ability to respond to emergencies without prior presidential authorization (ProPatria 19.12.2002: 11). The discussion moved very slowly and was repeatedly stalled by relatively minor legal or semantic questions (ProPatria 19.12.2002: 46, 50). It now seemed that it would be difficult even to put relatively straightforward items into the law, like the military's political neutrality. Points where ProPatria and TNI Headquarter were especially far apart saw "a lot of collision" during the meeting, as Ikrar Nusa Bhakti remarked (ProPatria 19.12.2002: 68-69, 70). When the talks stalled, both sides agreed to discuss several contentious issues separately first. Kusnanto Anggoro aptly concluded the meeting: "I guess it's better if we adjourn. The atmosphere is not very conducive" (ProPatria 19.12.2002: 70). After this initial clash, several members of ProPatria were invited to smaller, more informal meetings at the Department's Bureau of Legal Affairs in late December 2002 and very early January 2003. The atmosphere during these meetings was much less contentious as Andi Wijajanto, Riefqi Muna and Rizal Sukma later reported to the other members of the working group: The military members of the drafting team seemed willing to accept some proposals for the bill if they could introduce them to the draft as their own ideas, disguising the actual extent of outside influence. Even though this face-saving approach might be "cumbersome", Hari Prihatono hoped it would help save the relationship with TNI that ProPatria had managed to build (ProPatria 03.01.2003: 2). The institutional relationship between the ministry and TNI Headquarter made negotiations difficult: While several members of the ministry delegation had relaxed their resistance to change, the TNI Headquarter delegation was still determined to push through most of their draft and criticized the ProPatria proposals as too detailed. The group was reluctant to exploit this division and move closer towards the Department's position because they believed it would hurt the complicated relationship between the two government actors. To make matters worse, the moderator for the meetings – one of the more conservative members of the DoD delegation – was said to run his team "like a one-man show", making it difficult to hear more moderate opinions from other officers seconded to the ministry (ProPatria 03.01.2003: 1, 4-5).

Anticipating an impasse, ProPatria had earlier decided to focus its energy on those issues most important for an expansion of civilian control in order to avoid another long break in negotiations that could jeopardize their influence on the bill completely. Most importantly,

the Working Group decided to renew its attempts to subordinate the TNI commander to the Defense Department⁵⁴. For other contentious issues, the group would need to calculate how difficult they would be to change and only push for the important ones (ProPatria 03.01.2003: 2).

Still, their success at this stage was very limited. ProPatria found it difficult to establish more detailed regulations for the military's internal structure against the opposition of the officers from TNI Headquarter (ProPatria 06.01.2003: 7). This again resulted in a longer discussion about whether the Commander should have decision-making authority or merely implement government decisions (ProPatria 06.01.2003: 55–56). Similarly, ProPatria did not manage to establish more detailed regulations on military assistance missions (ProPatria 06.01.2003: 33, 39–40). The military proved especially adamant about an expansion of its mandate to include territorial operations that would go beyond upholding the defense network. The most difficult discussion focused on Article 19 in the military draft of November 2002 which would allow the TNI Commander to begin military operations without prior authorization by the President in emergency situations. The military argued that it would be enough of a restriction if the Commander needed to inform the President within 24 hours. TNI foresaw great danger of civilian casualties in a crisis, should the military be denied this authority. ProPatria had expected this line of argument and countered with a two-track strategy (Anggoro 2013). On the one hand, they stressed that the Indonesian military was “great” but should not be burdened by the political responsibility for the operations they conducted (ProPatria 06.01.2003: 70). Kusananto Anggoro said “If the president is wrong because he did not issue the political decision, that’s fine. It’s not your fault”. Alexandra Retno Wulan stressed, that as a friend of the military she wanted civilians to carry some responsibility so the military would not be the one to blame if things went wrong (ProPatria 21.01.2003: 176). On the other hand the group subtly pointed to possible popular resistance, should Article 19 remain in the law. Referring to an earlier piece of legislation, Rizal Sukma mentioned that this could even lead to the failure of the whole legislative process: “I worry that this law will suffer the same fate as the emergency bill” (ProPatria 06.01.2003: 79). The article would be “risky in the public eye”. The people were still prejudiced against the armed forces and needed to be convinced that the military would not cause trouble. However, only a handful of TNI members seemed to agree with this line of argument and worried that this degree of autonomy might be seen as excessive by the public (ProPatria 21.01.2003: 178, 180, 181). The discussion about Article 19 took up so much time that several key changes were not even discussed in detail, among them the ban on business activities and a possible government takeover of the existing TNI business interests. The chair finally decided to leave the article 19 in the law to be taken out should

⁵⁴ At length the group discussed the history of this decision and the negative consequences of the resulting dual chain of authority. TNI had seemed willing to accept subordination during the early *reformasi* period, albeit under a Defense Minister with a military background. However, the MPR decided to put the Commander directly under the President without even consulting the by-then civilian minister Sudarsono. Rizal Sukma said: “So in the end now, we are facing a dilemma between what should be and what is possible”. The divided authority resulted in a “ridiculous system” and Kusananto Anggoro stressed that the constant “bureaucratic fight between Dephan and Cilangkap is extraordinary”. If the military could be convinced, the group believed DPR would go along (ProPatria 29.11.2002: 3–4).

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there actually be public resistance (ProPatria 21.01.2003: 184). In general, the chair felt he lacked a clear mandate to make decisions where the participants could not agree after some discussion. He explained that instead, Minister Matori would be presented with the alternatives to make the final decision on which formulation would find its way into the final document (ProPatria 21.01.2003: 45).

Two weeks later, ProPatria met to evaluate the outcome so far. Hari Prihatono reported that the draft had not changed and was still the “same as the original when we went to [TNI Headquarter in] Cisarua, but now there are alternatives added”. To make matters worse, the meeting results would apparently be presented to the TNI Commander instead of the Defense Minister, as had been promised. He would then decide if the final drafting was to be done at TNI Headquarter or return to the ministry (ProPatria 05.02.2003: 1, 4).

Faced with the failure to exert any meaningful influence on the law so far, the Working Group decided that Hari Prihatono would approach Defense Minister Matori. The group would try to “scare” him with a public advocacy campaign⁵⁵ so he would grant ProPatria more access. Kusananto Anggoro mentioned it was strange that the Secretary General of the ministry apparently took orders from the TNI Commander and not from the minister who was his superior. Should they succeed it seemed unlikely that the military would bypass Matori and try to introduce the bill through parliament via the TNI parliamentary group: It would look bad to the public and the bill needed ministry approval during the legislative process in any case. Even though he often thought his public statements usually reflected military positions ProPatria still believed Matori an ally. Convincing him could at least cause a deadlock in the legislative process and force a reopening of the negotiations (ProPatria 05.02.2003: 6, 8-9). Together, the members drafted a communique for Matori that would send a clear message to the minister without becoming too dramatic in language (ibid.: 19).

While ProPatria decided against abandoning their attempts to influence the government side already, Munir encouraged the group to start preparing an outside advocacy campaign against Article 19 to generate publicity through the college campuses as ProPatria had discussed earlier for the Defense Bill (ProPatria 05.02.2003: 10). ProPatria would also continue lobbying DPR so they would be more willing to change the bill drastically or introduce an alternative bill (ibid.: 2-3). Unlike during the Defense Law negotiations, ProPatria had managed to improve their contacts to Commission I even before the drafting picked up speed in November. They went through several members of parliament they knew from the defense law negotiations and who kept ProPatria informed on the schedule for upcoming laws (ProPatria 29.11.12.2002: 6-7). Influencing the DIM formulation and proceedings would still be difficult. The group needed to make sure that the parliamentary groups chose vocal representatives for the subcommittee discussing the bill. So far, the small minority of DPR members who had accepted invitation to ProPatria events were all

⁵⁵ ProPatria had apparently promised to treat their participation in the drafting process confidentially and would not be able to talk about it publicly before the government actually submitted the bill to the DPR. However, this also meant that the government side could not argue that ProPatria had already provided some input into the draft: “When we got the invitation, we were told not to tell outside parties. That means as long as [DoD] and [TNI Headquarter] are still struggling they cannot tell outsiders about our involvement as well.” (ProPatria 05.02.2003: 5).

members of Commission I but not members of the party leadership (ProPatria 05.02.2003: 4).

Civil society influence cut short and the Kudeta leak

ProPatria's message to the Defense Minister resulted in a meeting between Matori, Edi Prasetyono and Rizal Sukma on February 21 2003 (as referred to in ProPatria 23.02.2003). During the meeting, Matori reportedly told the group that the TNI bill would soon be entered into parliament: The TNI parliamentary group had already begun their lobbying activity. ProPatria should not expect invitations to future meetings (ProPatria 23.02.2003: 1). The Minister warned ProPatria that the public advocacy campaign that was part of their contingency plan leading up to the introduction of an alternative draft might destroy ProPatria's relationship with the military when there was still much to be done. However, he also stressed that without a strong mandate from the president there was little he himself could do. He merely hoped change small things before forwarding the bill to the State Secretariat. TNI Headquarter was reportedly already aware of the contacts between ProPatria and the ministry and Matori did not want to increase TNI's suspicion (ProPatria 23.02.2003: 1-3). Options now were limited since the environment at the Defense Department seemed to become more and more difficult. Matori was unwilling to oppose the bill and TNI Headquarter had become more aggressive in their attempts to influence the DoD: The Chief of Staff of the Army had stressed that both Article 19 and the introduction of "territorial development" were now "fixed". Moreover, TNI Headquarter had retired several members of the drafting team who were not willing to go along with the army's wishes and used their regular troop rotation to introduce more conservative people to the ministry. Consequently, the group feared that the Minister would eventually forward the bill to the State Secretariat so the President could introduce it to DPR with Article 19 still in place. This was seen as the worst case scenario as it would increase the chances of the bill passing basically unaltered (ProPatria 23.02.2003: 30).

After learning about this, Ikrar Nusa Bhakti decided to talk to the media about the current state of the bill (ProPatria 17.03.2003: 6). He leaked the latest draft to the press in the last week of February and pointed to the possible effects of Article 19 specifically, which was quickly termed "Pasal Kudeta" (Coup d'État Article) in the ensuing media discussion (Jakarta Post 05.03.2003b)⁵⁶. Even though the reporters apparently first held back on publishing their sources, they asked to military leadership to comment on the issue. When the TNI Commander did so, he stressed the bill was in its final form, but that he was willing to be punished should he ever violate the spirit of Article 19. This statement confirmed the reports and made information about the bill available to the wider public (Tempo 28.02.2003).

After the initial leak, ProPatria decided to launch a full-on media assault on the existing draft. Munir had talked to reporters from the daily newspaper Tempo and Kusnanto

⁵⁶ The moniker was apparently first used in an article by Tempo (28.02.2003)

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Anggoro gave a TV interview. When the group met again on March 3 and 4 to discuss their options they held a press conference during the lunch break of the first day to press their publicity advantage (ProPatria 03.03.2003: 2, 18) and gained a strong media echo (Jakarta Post 05.03.2003b, 05.03.2003a). The group even went on record and accused government politicians to use the bill as a way “to establish ‘a good relationship’ with the military ahead of the 2004 general election” (Jakarta Post 27.03.2003). The initial reaction to the press campaign discussed during the second day of the meeting seemed to indicate that DPR parties were split on the TNI bill (ProPatria 03.03.2003: 33). DPR speaker Amien Rais (PAN) remarked that observers should stop their polemic about article 19 since DPR would discuss and evaluate the article during its debates (Tempo 03.03.2003). Most Working Group members were certain that a majority of politicians only supported the article because the military had convinced them it was necessary for both routine operations and emergencies and hence the only way for TNI to react swiftly in a crisis (ProPatria 14.03.2007: 1–2). Still, some politicians voiced support for ProPatria’s campaign against the bill. Permadi of the PDI-P parliamentary group said that “if the military is playing politics with Article 19, we also have to play politics” (ProPatria 17.03.2003: 8–9).

With the information out in the public, ProPatria became more aggressive. During their internal meeting, Hari Prihatono said that “all bullets we need are ready. We will be firm and anticipate a fight. We now have all kinds of ammunition which will be issued when it is certain [they move forward with the bill]” (ProPatria 03.03.2003: 36). Munir urged his colleagues to use the current momentum to present the group’s alternative bill to the public: “Rather than let the military do the drafting, we should make them do it on our terms” (ProPatria 03.03.2003: 38). In order to conserve their energy and keep negotiations going this time, the group tried to sharpen and unify their position. Should they start with less contentious issues rather than the most difficult ones, the military would not pull out of the discussion too quickly. Despite their newfound aggressiveness, nobody seemed to believe “All or nothing” would be a smart strategy. Rather, the group decided which items were important enough to risk a fight and delay other items to later laws (ProPatria 03.03.2003: 39). Cornelis Lay believed clear and concise arguments would help the group improve message control: “Even if we just say something it should be well prepared” (ProPatria 03.03.2003: 41, 60).

At first, it seemed the heated public discussion would give ProPatria another chance to influence the bill at the drafting stage. The TNI Commander had contradicted his earlier statement that the TNI bill was finalized and now told journalists from Tempo that it was still early in the legislative process and much could be changed before the bill was to be introduced to parliament (Tempo 05.03.2003b). Defense Minister Matori stressed that his department was still evaluating the law and had stopped the bill from advancing (Tempo 05.03.2003a). In addition, Department Secretary General Sudrajat extended another invitation to keep the group involved in other legislation (cf. Chapter 9). He seemed willing

to cooperate with ProPatria and agreed with their some of their criticism of the latest draft⁵⁷ even though TNI Headquarter was growing annoyed about the possibility of another delay for the TNI bill (ProPatria 03.03.2003: 1). However, when an NGO coalition began staging demonstrations against the bill in mid-May, TNI Headquarter realized that the pressure would not subside even now that the bill was stopped. Unbeknownst to the public, the TNI Commander asked Matori return the bill to TNI Headquarter to revise it internally and avoid further public debate (Tim Imparsial 2005: 125; Jakarta Post 03.08.2004).

Internal revisions and introduction to parliament

While Article 19 was still dominating the news, ProPatria continued earlier attempts to improve their relationship with parliament. The group had realized that most members of parliament who accepted an invitation to their events were quite willing to listen to ProPatria proposals, at least during closed-door meetings (ProPatria 03.04.2003: 59-60). All members of DPR agreed that they should expand their budgetary authority over the military so that all additional funding would have to pass muster before them. One DPR member even specifically requested a list with the most important issues that should be in a TNI bill acceptable from the standpoint of Security Sector Reform (ProPatria 01.04.2003: 25, 28). One DPR member, however, criticized the press campaign against Article 19, stressing it could endanger the group's comparative advantage. After what had happened, "you may have already become like a regular NGO, a conventional pressure group" (ProPatria 15.04.2003: 19). Later meetings with parliament expanded on budgetary issues, including the preservation of soldier welfare should TNI business activities be restricted and improvements in financial planning for force modernization (ProPatria 21.04.2003). A series of Focus Group Discussions funded by DFID allowed ProPatria to continue their attempts to stay in touch with interested members of parliament and also invite government and security actors. The meetings were meant as a way to increase contact between stakeholders and serve as a trust building measure. The talks were considered confidential to keep participants at ease and facilitate an exchange of ideas.⁵⁸ Starting in May, the Focus Group Discussions and meetings with the government about their handling of the Aceh crisis of that year dominated ProPatria's schedule all through September, October and November 2003 (Mietzner 2006: 39).

Unaware that TNI Headquarter had decided to shut ProPatria out from the TNI bill, the group continued their cooperation with the department staff on other bills. By now the department was gravitating more towards legislation of the "second generation" with much more limited effects on the extent of civilian control. Amid the conservative ministry staff the impression prevailed that TNI could now start to become a "normal military" (e.g.

⁵⁷ Sudrajat said the Kudeta article was like a "permanent Supersemar" (Surat Pemerintah Sebelas Maret, Government Letter of March Eleven, PL), referring to the Presidential letter by which Sukarno had given blanket authority to Major General Suharto to deal with the aftermath of the killings of 1965 which initiated Sukarno's downfall and led to the creation of the New Order regime (ProPatria 03.03.2003: 1).

⁵⁸ All of these meetings applied the Chatham House Rule: Things discussed during these meetings and arguments presented could be used by the participants for their respective policy goals but the identity of the participants who introduced them would be kept secret.

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ProPatria 16.04.2003; Anggoro 2013). Most of ProPatria's meetings with military and the ministry were happening at the level of individual group members rather than the Working Group as a whole (ProPatria 18.12.2003: 44). Even though ProPatria had questioned the government's priorities during some of these meetings, especially concerning the Reserve Component bill (ProPatria 29.04.2003: 67)⁵⁹, ProPatria was mostly distracted from pushing for a reformed TNI bill.

When 2003 came to a close, the upcoming national elections began dominating the news. ProPatria tried to keep the TNI issue alive by reminding people about the past campaign against Article 19 and stressed the need for military reform during the next parliamentary term (ProPatria 11.12.2003: 33). With her term running out, President Megawati finally decided to introduce the TNI bill to parliament on June 30, a mere 6 days before the first round of the Presidential elections. There had been no prior signs that the government was planning to finally move ahead. Indria Samego later expressed "great surprise" during parliamentary hearings that he only heard of the bill when it was introduced to parliament (DPR 2004c: 5). The bill transmitted to parliament had been largely rewritten. Even though Article 19 was no longer part of the bill and a few other demands by ProPatria had been met the draft added some new problems, including "territorial development" that stood next to military operations and Military Operations other than War as a third category of military tasks.

To stop the bill, a number of well-known academics, several of them affiliated with ProPatria, immediately began writing op-ed pieces in national newspapers (Tim Imparsial 2005: 25–114) or gave interviews about the shortcomings of the bill to the media (Jakarta Post 21.07.2004). However, even after a DPR meeting with NGO activists on July 29 and after a high-ranking retired military officer had asked lawmakers to stop the deliberations since it could "revive the military's role in politics", legislators seemed adamant to pass the bill. First, they stressed, the bill was too important to wait so that the future DPR Commission I could adjust to their job first. Secondly, parliamentarians said they wanted input from TNI's parliamentary group before it had to leave DPR for good (Jakarta Post 31.07.2004). Luckily, preparations for a national campaign meant to give a push to the incoming DPR's reform activities in the security sector had already been underway before the participating groups learned that law was to advance (Al Araf 2013). The organizing NGO network "Civil Society Welfare/Safety Coalition" quickly rededicated the events to campaign against the TNI bill. Between August 26 and September 26 2004 there were 21 public meetings, in different cities across the country. The national coalition partnered up with local NGOs and student organizations from local campuses that provided infrastructure and handled invitations. Kusananto Anggoro, Ikrar Nusa Bhakti and Andi Widjajanto were among the speakers. The campaign sparked a demonstrations as well, but

⁵⁹ Considering the large number of bills that were under discussion at the time, Andi Widjajanto cautioned that whenever new legislation or regulation was created, it would "create tensions of political interest, ideology and so on! So that every new law will cause the same problem. They will be out of sync again. It will never finish." (ProPatria 10.12.2003: 30).

these drew few participants⁶⁰. The campaign criticized the content of the bill for returning the Indonesian military to the political realm and the fact that a lame duck parliament in the last weeks of its term was set to deliberate it (Tim Imparsial 2005: 164-174).

Parliamentary hearings

Even before the public campaign started, ProPatria had tried to convince DPR to stop the bill by lobbying the parties' parliamentary groups and members of Commission I together with other NGOs⁶¹. The campaign was focused on PDI-P because of the party's reformist credentials and – more importantly – its position as the largest party. However, NGOs also targeted other parties (Al Araf 2013).

After the formalities of the initial plenary hearings had been completed the legislative process started on August 2 with a general hearing. The process for the hearing was contentious even among members of Commission I, one of whom criticized the fact that human rights organization and other sharp critics of the military had not gained access during the official hearings. He was reprimanded by the leadership that, as a decision of the Commission leadership, this fact should not be part of the deliberations (DPR 2004c: 34–35). In fact there were many former and active military among the experts heard, who all took hardline positions and criticized “other” NGOs for their position (DPR 2004c: 87). The third day of the hearings belonged almost exclusively to the military with half the witnesses retired generals, invited as individuals in an expert role (DPR 2004c: 168–270). The closer contacts with ProPatria seemed to have paid off, as those members of parliament most critical during the discussions turned out to be the frequent visitors to ProPatria events or those with close personal contacts to the group (DPR 2004c: 126–134).

During their actual testimony, all civilian experts, several of whom were either members of the ProPatria Working Group or had participated in several of their internal meetings⁶², stressed essentially the same procedural and material problems with the government draft. The most important point of procedural criticism was the fact that the current DPR lacked the time and democratic mandate to deliberate on the TNI bill. The law should be delayed until the elected members of the new DPR had been sworn in. Otherwise the limited official input DPR received from civil society would serve as a mere “fig leaf” of CSO participation (Bainus 2012: 172, 157). During his testimony Hari Prihatono alluded to a joke a PKB parliamentarian had made earlier when he said that one should probably ask the military whether they even wanted to have a Defense Minister, considering how long Matori, who had suffered an incapacitating stroke in late 2003, had been unable to work without being replaced (ProPatria 27.02.2004: 3):

⁶⁰ There were newspaper reports of a demonstration in Yogyakarta with “dozens” of participants and small demonstrations in Central Jakarta (Tempo 17.08.2004; Jakarta Post 02.09.2004).

⁶¹ Al Araf mentioned ProPatria and Imparsial meetings with Effendy Choirie, Happy Bone Zulkarnaen, and Ahmad Baskara explicitly (Al Araf 2013).

⁶² Invitees from ProPatria included Kusnanto Anggoro, Hari Prihatono and Ikrar Nusa Bhakti. Junus Kristiadi, Indria Samego and Jaleswari Pramoerwardhani had participated actively in several internal meetings previously (DPR 2004c).

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"About the position of Mr. Matori Abdul Djalil. What is his position now? Is he still Minister of Defense? Is he not working as an officer of [DoD], has he been retired or what? There is no explanation from the government about Matori Abdul Djalil's position. And because of that it is a joke or what seems to be one that TNI is very happy that there is no Minister of Defense and they can change around their men on their own. I believe that this is not all just a playful joke. It is very serious!" (DPR 2004c: 93).

He asked parliament to be careful and not to let the military weaken the position of DoD only because nobody from the department was there to oppose it (ibid.). Substantive criticism focused on a possible reintroduction of the dual function doctrine with the territorial development function and the lack of clear limits to the use of military officers in bureaucratic positions (Bainus 2012: 163).

Parliamentary proceedings and passage into law

Since preemptive influence by ProPatria on the drafting process had been cut short by the decision to deliberate the bill internally at TNI Headquarter and the outside campaign to stop the bill already seemed destined to fail, the legislative process would need to fix existing problems in the government draft. In contrast to the Defense Bill, ProPatria had to remain on the sidelines for much of the actual deliberations for this bill. However, they helped several factions in their formulation of their problem inventories for the Working Committee phase and tried to influence their positions. Andi Widjajanto, Edi Prasetyono and Junus Kristiadi assisted the PKB parliamentary group, Munir assisted PPP in their DIM formulation, Ikrar Nusa Bhakti consulted for Golkar, Kusananto Anggoro tried to influence PDI-P and Rizal Sukma assisted PAN in their DIM deliberations (Andi Wijajanto as quoted by Bainus 2012: 159). In some cases, parliamentary groups had invited ProPatria before the deliberations began in order to improve their understanding of the topics discussed (Al Araf 2013). In their DIM reply the PKB parliamentary group ended up closest to ProPatria's position. The party's parliamentary group decided to introduce an alternative bill in addition to their DIMs that was extremely similar to ProPatria's most recent draft (Bainus 2012: 170).⁶³

After all parties had handed in their DIMs the bill deliberations opened with the decision on parliamentary procedure. During this process, PKB and Reformasi, whose comments on the law came closest to ProPatria's position criticized that the Government side was to be represented only by former and active military officers. Hari Sabarno as Coordinating Minister for Politics and Security was to take the lead in the deliberation process, TNI Commander Endriartono Sutarto participated as an additional government representative and the Defense Department was officially represented by Air Marshal Madya Suprihadi

⁶³ A comparison of both drafts (PKB 2004; ProPatria WG 2004) shows only three minor differences in content. First, the PKB draft explicitly mentioned the idea of Regional Area Commands to change the focus of the territorial command structure. Second, in Art 16 (PKB) the TNI Commander is considered confirmed by DPR if parliament does not reply within 20 (instead of 30) days. Third, the PKB draft skips any regulations on the marriage of soldiers (Art 56 PPS/2004). Fourth, the PKB draft in Art 64 demands the takeover of military businesses by the government within five years instead of two (Art. 66 PPS/2004). Apart from this there are only slight differences in the ordering of paragraphs or rarely minor semantic differences. From the standpoint of civilian control, both drafts can be considered identical.

(Bainus 2012: 180). This resulted in a long procedural discussion during the first working group meeting on the bill. Members of parliament argued whether Hari Sabarno should be the one arguing this bill to the Commission or whether the Defense Department was more appropriate. Several members of parliament were also uncertain whether the TNI Commander could legitimately be sent as a government representative for the legislative process (DPR 2004c: 284). The factions finally agreed to accept the government delegation only to counter the government in another procedural matter. The government had wanted to accelerate parliamentary procedure and avoid going through the bill article-by-article as was the parliamentary norm. Instead, the parliamentary groups should focus on the points of criticism most important to them. In the end, the Commission agreed to accelerate the process only slightly because PKB and Reformasi opposed the expedited procedure. However, contentious issues would still be given to the Drafting Team (Timus) more quickly and without extensive debate in the Working Meetings (DPR 2004c: 297, 301).

Substantively, the parliamentary process resulted in many important changes to the bill since especially PKB and Reformasi were able to hold up negotiations and keep several issues open so the whole bill was put at risk. A discussion that ultimately led to the government mandate for a takeover of TNI's business holdings illustrates this process. Once PKB and Reformasi had introduced the formulation from their ProPatria-inspired alternative draft, several parliamentary groups stressed the positive aspects of an institutional business role for TNI, like activities supporting soldier welfare through providing insurance, housing and other necessities of life. Taking a self-described "tough position" (as quoted by Bainus 2012: 359) PDI-P argued that TNI should remain able to conduct these activities but be forced to increase accountability by expanding government and parliamentary monitoring capabilities of the remaining business interests. Nevertheless, PKB and Reformasi asked for a complete ban on military business activities and a handover of all military businesses to the civilian government within the next 5 years as opposed to the two years ProPatria had proposed (Bainus 2012: 355). This kept the issue open until the parties finally agreed on the mandate during an informal lobby session and the government accepted the deal.

This approach did not work in all cases. It initially seemed that a large parliamentary majority could accept the subordination of the TNI Commander to the Department of Defense. PKB, Golkar, PBB and Reformasi all agreed to this basic point. PDI-P claimed to agree, but wanted to keep responsibility for operations in the hand of the TNI Commander. PDI-P slowly won over the other parliamentary group, arguing that the military would only be politicized. Once a majority of parties had switched position, the session chair tried to mark the issue as settled and forward it to Timus for formulation but PKB insisted that the Department be at least strengthened in other points (DPR 2004c: 631, 641). In the end, PDI-P went along with PKB's demand and proposed a "consensus" solution (DPR 2004c: 656, 664).

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While a DPR member later traced back much of the changes in the bill to “input from the people” (as quoted by Bainus 2012: 181), the last days of deliberations were dominated by backroom dealing (Anggoro 2010; Muna 2010). Effendi Choirie (PKB) indicated there had been some deals when he reported to ProPatria via phone about the eventual inclusion of the business take-over, saying “It is all part of the formula” (ProPatria 27.09.2004: 14–16). Similarly, the reinforced ban on active military officers serving in bureaucratic positions was entered during the last days of deliberations as well (DPR 2004c: 455–456). Newspaper reports later stressed that informal lobbying sessions had been vital (Jakarta Post 29.09.2004).

After all parliamentary groups had agreed, even a last minute demonstration with “hundreds of participants” organized by a coalition of human rights groups could not convince the last plenary meeting of the DPR to turn down the bill. It was passed by the plenary on the last day before the new DPR was to be sworn in (Tempo 29.09.2004). The bill passed unanimously, even though at least PKB thought it necessary to apologize to the general public that the bill was not yet perfect in their final statement (DPR 2004a: 105). The bill was signed into law by Megawati on October 16 2004, only four days before she handed over power to the newly elected President Susilo Bambang Yudhoyono.

7.2 Analysis

Strategic Capacity: Resources and Organization

The basic membership characteristics of ProPatria did not change significantly during this phase. The group tried to include both human rights oriented activists as well as defense experts, even though the balance shifted slightly towards the latter. Still, as Kusnanto Anggoro remarked, ProPatria remained the only organization with contacts to the defense establishment as well as the public and wider civil society at the same time (ProPatria 28.03.2003: 18).

Expertise

Early in the drafting process for the TNI law and other laws the Working Group decided to invite additional experts from the defense field, most importantly Andi Widjajanto, an academic based at the University of Indonesia, as well as terrorism expert Bob Sugeng Hadiwinata from Parahyangan University in Bandung in order to improve their analytic capacity and collect additional scientific resources (ProPatria 10.07.2001: 9). Even though the Working Group expanded their membership, the large number of group activities, including Focus Group Discussions and the group's involvement in several other drafting processes and other lobbying activities meant that individual members often had problems finding the time for meetings. At one point Kusnanto Anggoro half-jokingly said "thinking about the scheduling has become more tiring than thinking about the actual concepts we are dealing with" (ProPatria 17.04.2003: 50). In fact, several members seem to have had too little time to prepare the Working Group meetings properly, so the group had to take frequent breaks to get a chance to read the prepared materials (ProPatria 28.11.2001: 5; 17.04.2003: 17).

Nevertheless, the group used the intermittent lulls in actual lobbying activity to work on their public profile as experts by writing several books which contained their contributions to the reform process. The group also launched a web site with documents for those interested in Security Sector Reform (ProPatria 01.04.2004, 02.04.2004).

Funding

Between 2001 and 2004, ProPatria managed to keep their institutional funding partners. While USAID still paid mostly for the drafting activities and parliamentary workshops, DFID provided funds for the Focus Group Discussions. The British government even wanted to establish closer cooperation with the group, but Hari Prihatono seems to have turned down this offer in order to keep ProPatria relatively independent from any one single donor (ProPatria 28.03.2003: 3). Altogether, ProPatria reportedly received around 1.2 Million USD annually between 2001 and 2004 (Scarpello 2014: 141). The additional money allowed ProPatria to host several larger workshops with parliament to extend the Working Group's contacts and improve relations with the parliamentary groups in order to prepare the ground for the introduction of an alternative bill (ProPatria 23.02.2003: 32–33).

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The connection to international funding agencies, especially those with connections to foreign governments remained a problem. After the government draft had been leaked to the press, a foreign journalist had tried to verify a quote from one of the drafting meetings at the Department of Defense. The team members had demanded to know how a foreigner had acquired the meeting minutes and accused ProPatria of acting as a spy for foreign interests (ProPatria 28.3.2003: 4). Ultimately, the group decided that they would anonymize all records from the Focus Group Discussions and internal meetings before handing them to their funding agencies for verification in order to avoid such accusations in the future and put government and military participants more at ease.

In retrospect, participants of the NGO coalition behind the campaign against the Kudeta article and the TNI bill judged “network funding” that brought together activists from different backgrounds in order to coordinate their activities and foster an exchange of ideas as especially valuable for influencing the legislative process (Al Araf 2013).

Network Resources

While advocating the TNI Law, ProPatria was at the height of its network capacity. The group had used the Focus Group Discussions as a forum not just for parliament but also other NGOs and members of the press. The good connections to the media and the ability to cooperate with human rights activists who knew and respected Munir allowed ProPatria to spread the news about the Kudeta article quickly. Later, the group also used their connections in their campaign to stop the TNI bill. However, there were already signs that interacting with both the military and human rights activists was not easy even for Munir. During the Focus Group Discussions, he mentioned that joining the group had not been without risk for him: “Among activists, ProPatria was accused of being a military tool. I still entered. For example I was never judged fairly by journalists from Tempo who always accuse me of playing with the military.” Even though the military had been hostile to him as well, both sides now were at least able to talk and Munir said they had become familiar. “It becomes a process for us, a process of educating each other. I learned a lot from it. This was very important” (ProPatria 18.12.2003: 37-38). Munir was still not usually invited to the government meetings because he was perceived as either too radical or not interested in technical details (Ate 2013), but he nevertheless kept the connection between the defense experts and organizations like LBH, Imparsial and KontraS going that were vital for the pressure campaigns in 2003 and 2004. However, the dependence on other groups also meant that ProPatria had to narrow down some of their demands to the lowest common denominators. While the group could campaign against TNI’s involvement in business activities, a return of military officers to the bureaucracy or the inclusion of the territorial development function, the other groups were not willing to go ahead with ProPatria’s demand to establish clearer regulations for the use of force or inter-institutional relations in the security sector.

Organizational development

During this time, the group only carefully increased their attempts to develop as an organization even though at least Ikrar Nusa Bhakti seemed unhappy that ProPatria still remained mostly a coordination agency with limited personnel. During a meeting after the Kudeta leak, he said he believed “a brain is necessary”. Kusananto Anggoro countered that it was exactly the group's role to coordinate and most other members seemed to agree (ProPatria 28.03.2003: 16). Instead, the group decided to establish a steering committee for their Focus Group Discussions which would give active members of the Security Sector a larger say in the topics to be discussed during these meetings. Hari Prihatono hoped this would make the meetings more relevant and thereby more attractive to a wider audience (ProPatria 28.03.2003: 6). Overall, the group's activities lost its focus during the lull in the TNI draft negotiations and several members began pursuing other projects loosely associated with the ProPatria logo, including revisions to the defense law, which were quickly dropped⁶⁴, plans to introduce a chapter on security in the constitution that ultimately failed (ProPatria 05.02.2004) and the group's involvement in the evaluation of government policy in Aceh.

Choice of entry and decision-maker accessibility

Since the basic institutional structure and workings of the Indonesian legislative process did not change after the Defense Law was completed and work on the TNI law began, ProPatria again had to rely on informal channels to gain access to the decision-making process.

Even though the group initially planned to approach parliament directly to introduce their “ideal draft” there (ProPatria 29.11.2001: 29), the group switched their attention to the government side quickly once their established contacts at the Department of Defense seemed accessible. On the government side, the drafting process for the TNI bill remained as oblique to outsiders as before and even more so since TNI Headquarter took a more active role. This meant ProPatria had to rely on those contacts at the Department who trusted the group from their previous cooperation to stay informed throughout 2002 and early 2003. These officers even provided the group with a preliminary draft so they could amend their alternative draft as a response. Still, when ProPatria had finished the alternative draft the leadership of the government drafting team was unwilling to even discuss most changes ProPatria had proposed. While Matori Abdul Djalil remained a potential avenue of influence, like Mahfud had been before, he did not take an active role in the drafting and since the majority of his subordinates at the ministry had a military background – ProPatria estimated that in 2004 only 40% of the bureaucrats at the ministry were civilians and served mostly in lower echelon positions (ProPatria 08.12.2004: 54) – the military could dominate not only the original drafting but also the discussions about the bill. Since the steps between drafting and transmitting the bill to parliament were particularly

⁶⁴ The group realized that it was “difficult to imagine that a revision of the act would run smoothly” considering the present problems with the TNI bill (ProPatria 10.12.2003: 28)

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opaque for outsiders, ProPatria only learned that the military had moved the bill forward essentially without changes from their friends at the Department. After they had leaked the draft to the press the Defense Minister still used his authority to stop the bill from advancing but TNI Headquarter quickly decided to take over the drafting completely so ProPatria no longer had access to the draft. A civilian member of the ministry team working on the TNI bill described the decision as follows:

“First Matori was worried about looking bad if the bill went to DPR so he stopped it. Then, when [TNI Headquarter] called they asked him to send them the bill. They wanted to make revisions internally without the public looking over their shoulder so he made the bill disappear for some time” (Anonymous 2013).

Once Matori had suffered an incapacitating stroke and Megawati failed to appoint a new civilian officer, de facto TNI control over the Department of Defense even precluded the group from learning that the draft was finally passed to parliament in what Kusnanto Anggoro later described as a “Blitzkrieg attack” (Anggoro 2013). What had remained of the group’s previous access to the TNI Law drafting was lost after the Kudeta leak and Matori’s stroke.

Parliament had quickly become a backup solution for ProPatria once talks with the government started. The group had discussed the problem of DPR’s patronage orientation very openly and members wondered how much it would cost to introduce a bill (ProPatria 23.02.2003: 5). Even when the government side cancelled the Working Group’s access after their media campaign against the Kudeta Article, intermittent openings were enough to discourage ProPatria from turning its full attention to parliament and introduce the alternative draft there. Still, ProPatria had improved relations with members of DPR’s defense commission. Since the institutional accessibility of the Indonesian parliament for Civil Society Organizations is low and most parliamentarians were patronage- rather than policy-oriented, personal connections determined ProPatria’s ability to influence parliament. Consequently, the group saw little chance that DPR would accept their draft: The Working Group would need to convince every single party leadership to listen to the proposal and then accept the draft (ProPatria 05.02.2003: 2-3). However, thanks to the Focus Group Discussions and workshop modules to educate DPR members about the bill the group now had several acquaintances in the defense commission who kept the group informed about the legislative process and later entered ProPatria’s alternative draft as their own. The group had decided that if ProPatria “just created the perspective but did not claim copyright for it”, DPR would be much more likely to accept the group’s proposal (ProPatria 10.07.2001: 29). After the formal hearings did not provide much access since time was very limited and the Committee leadership had not invited many outside experts beyond ProPatria (Tim Imparsial 2005: 184–186), the group was shut out of the decision-making again. Without official access to the final negotiations, ProPatria had no way to directly convince the remaining parties but could rely on their allies to make the arguments for them. Given the fact that the reformist parties who were close with ProPatria usually found

themselves in a minority position during negotiations only the veto-rich committee environment held ProPatria's indirect access open. Without their suspensive veto the reformist parliamentary groups would not have been able to force additional regulations into the bill and could have been easily overruled.

As during the Defense Law negotiations, ProPatria tried to convince the Minister of Defense to use his veto to cause a deadlock in the legislative process and force a reopening of the negotiations (ProPatria 05.02.2003: 8–9) but found him a much less receptive and reformist contact than Mahfud before. Because ProPatria realized the veto potential of the Department of Defense, they had decided earlier that they would not seek to include a reform of inter-institutional relations in the TNI bill and accepted the government's offer to delay this issue to a later National Security bill. At the parliamentary stage, the ability of individual parties to hold up and prolong the negotiations also proved vital for ProPatria's success and precluded the government from rushing their draft through with problematic regulations still in place. First, PKB and Reformasi vetoed the accelerated procedure which would have significantly reduced their later veto potential. Consequently, both parliamentary groups could keep the discussion on many items alive until shortly before the bill was passed: A week before the end of the DPR term one of ProPatria's closest contacts in the Working Committee reportedly told the media that "none of the crucial issues of the TNI bill had been settled" even though most were only criticized by a minority of the parliamentary factions (Jakarta Post 22.09.2004).

Again, informal access was essential for ProPatria's ability to influence the content of the law. Without access to the Department of Defense and without even the most basic information about the stage of the decision-making process, the group could not influence the content after TNI Headquarter took over the drafting. The internal decision-making processes again show that the group took into account the different openness and transparency of decision-makers (I₁) and that the group was both aware and took into account of the veto potential of both individual parliamentary groups and the Minister of Defense (I₂). The following section will trace the changes and change attempts through the different stages of the decision-making process and establish the extent to which ProPatria's influence contributed to an institutionalization of civilian control or at least to stopping its retrenchment.

Changes and change attempts to the decision-making areas

The non-continuous development of the TNI bill meant there were many changes to its scope and to items non-significant for the institutionalization of civilian control over time, including regulations on basic job requirements or procedures for dismissal and discharge of soldiers. The following section summarizes the relevant changes and most important failed influence attempts before the remainder of the chapter systematically assesses whether the theoretical framework can help understand this pattern of success and failure.

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There were only two mostly symbolic changes to Elite Recruitment with the TNI bill which could be traced back to civil society influence: First, even though it was one of the earliest demands of *reformasi* activists in Indonesia, the military had only passed a ban on military political activities as part of their internal regulation. The ProPatria Working Group had planned to use the TNI bill as a way to finally put this ban into law. Before the bill was introduced to parliament the military had only included an article that committed the military to political neutrality (Art. 10.2, Mabas 03/2002). The PKB faction proposed the additional regulation during the parliamentary process. This also helped reduce the remaining informal influence the military could wield at the local level. Since soldiers are now explicitly forbidden from becoming members of political parties and to run for any elected office (Art. 39, UU 34/2004), they can no longer plan their political careers as effectively as before. Previously, soldiers were able to run for local elections once their superior officers agreed and only had to retire after they won the seat. This gave some units an incentive to support their superior officer during the campaign (Mahroza 2009). Second, TNI Headquarter had added a reference to the “oneness” (*kemanungulan*) of TNI and the people to the final draft that was introduced to parliament (Art. 2.1, Mabas 06/2004). Previously, the law had merely stressed TNI was a people’s army. Ensuring the unity of TNI and the population also appeared as task of the individual services, and was interpreted by civil society activists as possible legitimation for a military coup. The section had been criticized harshly by activists and was finally deleted on proposal of several parliamentary groups (DPR 2004c: 616).

Five of the proposed changes touched upon Public Policy. First, ProPatria had always wanted the new TNI bill to introduce an explicit avowal of civilian supremacy to TNI’s basic principles but the military opposed it. The regulation was reintroduced through the PKB alternative draft and became a guiding principle of TNI in the final bill (DPR 2004b: 9; Art. 2d UU 34/2004). Second, the requirement to try soldiers in civilian courts for civilian crimes had been in the original March 2002 draft and was a mere implementation of an existing MPR decree regulation (Art. 71, Mabas 03/2002). ProPatria was indifferent to this issue since they wanted separate military justice law, but when the military added another regulation which would have guaranteed military police investigation even of civilian crimes committed by soldiers in November 2002 (Art. 60.4, Mabas 11/2002) ProPatria wanted the regulation dropped to regulate the issue in a separate military justice bill (ProPatria 03.01.2003: 7). TNI Headquarter complied⁶⁵. Third, in a relatively minor point, ProPatria had demanded the deletion of an article in the March draft which gave TNI the authority to forbid its soldiers to marry if the marriage was deemed incompatible with the military institutional interest (Art. 56.2 Mabas 03/2002). The drafting team accepted and the article was no longer part of the November draft. Fourth, an additional regulation had only become part of the bill after the Team 45 deliberations: the military had inserted several articles

⁶⁵ The final law included a regulation included that TNI is subject to civilian courts (Art. 65, UU 34/2004. However, the law later stresses that this regulation will only become effective once a new military justice law has been passed (Art. 74, UU 34/2002).

which referred a “territorial development function” as a third basic task for the military in addition to war and non-war missions (Art. 8.2, UU 34/2004). The Working Group and other activists worried this would give the military additional local influence, akin to the only recently abolished local security councils (Mahroza 2009; Jansen 2008) and further enshrine the territorial structure. The article was a major focus of the CSO campaign against the bill and it was finally dropped by parliament (Bainus 2012: 163). Fifth, ProPatria wanted the TNI bill to contain a clear ban on the military taking over government functions and advertised for an enumerated list of limited exceptions to this rule during the Team 45 discussions. However, the final draft contained reference to military role in the administration but did not list the departments where such service was possible (Art. 45, UU 34/2004). Parliament inserted an enumerated and limited list of exceptions in reaction to the public campaign against the bill which had chided the lack of limitations as a return to the New Order practice of *kekaryaan* (Bainus 2012: 163). Finally, touching on internal security and public policy, ProPatria had also demanded a clearly enumerated list of the tasks included under Military Operations other than War from the beginning but had little success at changing either the November or final draft. After the Team 45 Negotiations had been concluded, ProPatria also began arguing for clearer regulations of the military assistance function, but they dropped both demands when the bill was entered to parliament in favor of a separate law. Even though ProPatria no longer demanded the list actively, parliament still inserted a list. However, the resulting list was even more extensive than what the Defense Law had established (Art. 7.2b, UU 34/2004).

All the proposed changes in Internal Security also touched upon National Defense and again the record was mixed for ProPatria’s early plans. First, as most important part of the institutional reform, ProPatria wanted to subordinate the TNI Commander to the Department of Defense completely, including in operational matters. However, the proposal failed to sway the military leadership or the majority of parliamentary factions and was never adopted. Second, ProPatria also demanded that the Department of Defense would be strengthened vis-à-vis the TNI Commander during the Team 45 meetings so he would have clear authority over defense policy, policy on the use of force and doctrine. Previously it seemed the ministry had a purely administrative role and would “cooperate” with TNI Headquarter on most substantive issues. While the military long resisted this change, it was finally accepted as a consensus solution proposed by PDI-P once it became clear the bifurcated chain of command would persist (Art. 3.2, UU 34/2004). Third, ProPatria had originally planned to include some regulations on the decision to involve the military in internal security operations and the use of force with a strict need for written explanation by the authorizing civilian to include area of operation, scope and duration of any TNI assistance or non-war mission and restrict the approval to 20 days before a renewal would be needed (Art. 20-23 PP 3/2002). When the final draft was introduced to parliament, they abandoned the proposal in favor of regulating the issue in the National Security bill. Fourth, and most importantly, the so-called Kudeta-Article, first proposed by the military in

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November 2002 (Art. 19 Mabas 11/2002) would have meant a particularly severe blow to civilian control. Had it been accepted, the TNI Commander could have acted on his own initiative in urgent circumstances. He would have been empowered to begin military operations without prior authorization by the President and only have to inform him 24 hours after the fact. After the media campaign against the regulation TNI Headquarter dropped it from the final bill it introduced to parliament and the retrenchment of civilian control was stopped.

Finally, despite its supposed focus on the military organization, the bill actually did little to institutionalize civilian control over National Defense and Military Organization. First, the March draft contained very broad and general regulations which allowed for compulsory military service which was to be further regulated by government decree. This would have granted TNI influence over the precise regulations via the Department of Defense (Art. 42, Mabas 03/2002). ProPatria successfully argued that the question of compulsory military service should be regulated in an individual law in order to take into account the wishes of those critical of the idea and the article was dropped (ProPatria 03.01.2003: 9). Second, the Working Group wanted to give civilians more influence over the criteria for promotion to discourage human rights abuses by soldiers. They had proposed a civilian appointed Soldier Council to give input into the process and establish requirements for promotions (Art. 35-36, PP 3/2002). However, when the group narrowed down the focus of their advocacy activity, they no longer explicitly demanded this regulation and it was never adopted. Third, whereas earlier versions of the bill had given the TNI Commander the dominant role in determining TNI's budget needs and planning the allocation of funds (Art. 66, Mabas 03/2002), as part of ProPatria's plan to empower the Department of Defense the final law made clear that the Minister of Defense was in charge of budget planning and also the one to request additional funds from DPR in crisis situations via the finance ministry (Art. 67 UU 34/2004). Finally and most importantly, ProPatria managed to reach one of their earliest goals from the Working Group's founding meeting in 2000: a ban on business activity. ProPatria had wanted a ban on individual and institutional TNI business activities as well as a legally mandated take-over of all institutional business activities by the civilian government. After the group had ignored this issue earlier, the TNI Headquarter included a section in the final draft which banned individual soldiers from participating in any kind of business activity (Art. 39.3 Mabas 06/2004). The take-over was achieved in cooperation with the PKB parliamentary group in Commission I: They introduced a regulation from their alternative draft to the deliberation that was finally accepted during one of the last lobby sessions. The civilian government was to take over any businesses directly or indirectly owned or managed by TNI within 5 years (Art. 76, UU 34/2004, cf. Art. 64 PKB; Art. 66 PP 8/2004).

Civilian interests, military resistance and CSO tactics

As in the previous chapter, this section will identify how ProPatria’s demands related to the interests of decision-makers and the military, and look for evidence that decision-makers were actually pursuing these interests or that ProPatria incorporated decision-maker interests into their own strategic planning. Considering that many of the topics the TNI law touched upon were only slight variations on those that already dominated the discussion between ProPatria and decision-makers, one would expect a similar pattern.

Government interests

As during the Defense Law negotiations, almost all the demands ProPatria formulated during their meetings in early 2002, during the Team 45 sessions or afterwards during the smaller consignment meetings of the drafting team were in line with the essential interests of the Department of Defense (see Table 7.1, p. 143). Again, there are some indications that even the military members of the Department appreciated the fact that ProPatria tried to elevate their position. In March 2003, right after ProPatria had leaked the draft law to mobilize the public against the Kudeta article General Sudrajat who coordinated legal affairs at the ministry said he respected the Working Group’s work for contributing to “a balance between Dephan [DoD] and Mabes TNI [TNI Headquarter]” (ProPatria 14.03.2003: 2). Despite the increasing influence of TNI over the Department of Defense after Matori’s stroke, its bureaucrats still seemed happy about civil society requests for strengthening the

Table 7.1: TNI Law; Expectations on CSO Demands and DoD Interests

Core Interests	Civilian	+	Insert complete and explicit ban from politics
		+	Explicit reference to civilian supremacy
		+	Drop limits on soldier marriages
		+	Enumerate limits on Military Operations other than War
		+	Limit military positions in bureaucracy
		+	Drop MP responsibility for civilian crimes
		+	Delete territorial development function
Branch Interests (Government)		+	Explicit reference to civilian supremacy
		+	Expand authority: DoD vs. TNI
		+	Subordinate TNI HQ to DoD
		+	Civilianize creation of military budget
		+	Civilian input in promotion process
		+	Mandate takeover of military businesses
		+	Drop Kudeta article
		-	Add requirement for clear mandates for use of force
Departmental Interests (DoD)		+	Explicit reference to civilian supremacy
		+	Expand authority: DoD vs. TNI
		+	Subordinate TNI HQ to DoD
		+	Civilianize creation of military budget
		+	Civilian input in promotion process
		+	Explicit ban on military in business
+	Mandate takeover of military businesses		

Source: Author’s compilation

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ministry, even among the military officers. One of them who was otherwise close to the TNI line explicitly mentioned that it would be good for the prestige and capabilities of the officers working at the ministry to be elevated above the TNI Commander (DPR 2004c: 268).

Even though Matori should have had the same authority of office as Mahfud during the Defense Law drafting process he seems to have submitted to the military leadership or at least allowed them to completely overshadow the institutional goals of his own office. Like Mahfud, Matori Abdul Djalil was not known as a defense expert. When he took office, he had just lost his power base within his own party, the PKB, for his support of President Wahid's impeachment, himself PKB. In exchange for his support, Megawati gave him the Department of Defense. Some observers believe that he was trying to use his position as Minister of Defense to establish good relations to the military leadership to compensate for his loss of political influence (Mietzner 2006: 34). His policy position is not completely clear and some observers suspected him a hardliner and independently close to the military line on policy issues (Sebastian 2006: 154). In any case, Matori lacked the strong mandate for military reform from Megawati that Wahid had given Mahfud. Matori apparently felt powerless vis-à-vis the military leadership and members of ProPatria quote him as saying the Ministry was like a Regional Area Command to the military: clearly subordinated to TNI's senior level (ProPatria 28.11.2001: 9). Whenever he met with ProPatria he stressed that he would only be able to do what Megawati had asked him to do. The fact that he still approved the Team 45 deliberations is no clear indication that he was genuinely willing to consider civil society positions himself since the military leadership had previously signaled exactly the same to ProPatria and in fact most discussions about ProPatria's involvement had already bypassed the minister. Whenever his position was discussed in the ProPatria circle, members wondered why he seemed close to the TNI position on so many issues, including those that would weaken his own position relative to the military leadership. He even seemed willing to accept "cooperation" with the Headquarter on budgeting issues in contrast to the stronger role the ministry was supposed to play according to the defense bill, even though that would hurt the patronage potential of his office considerably (ProPatria 06.01.2003: 4). While Matori did not stop the contacts of his subordinates to ProPatria or actively discouraged their amicable relations, he did not encourage them either. After his debilitating stroke, the military officers at the department were free to "pursue TNI interests" (Mietzner 2006: 34).

During his absence, Megawati herself would have had the chance to pursue civilian interests in military reform more actively. However, like Matori, she seemed to waiver in her attitude toward the bill. When the parliamentary discussion about the bill began she appointed one former and two current military officers to represent her government, the TNI Commander among them, and did little to push for a strong role for the Department of Defense. In her position during the legislative process Megawati flip-flopped. While she repeatedly stressed that the bill would need further revisions and should not be rushed she had previously

allowed it to move forward by signing the draft. Later, during a meeting with an Islamic student organization she even contradicted her Coordinating Minister Hari Sabarno who stressed the bill needed to be passed before the current DPR term expired (Jakarta Post 05.08.2004) but did not order the Coordinating Minister to stop the bill or decline his agreement as the responsible government representative. A cynical observer pondered other motives behind Megawati’s frequent change of mind about the bill: “It is difficult not to believe that the move, expected to gain support of reformist voters, has no connection with the upcoming Sept. 20 presidential election run-off” (Razak 31.08.2004) in which she competed against Susilo Bambang Yudhoyono, himself a former – albeit reformist – general. Altogether it is uncertain if the civilian core, government branch or institutional interests of the Department of Defense actually determined the position the government side took during the negotiations before and especially after Matori could no longer serve as minister even though there were even still military officers who demonstrated institutional loyalty at their current post at the ministry.

While there are still indications that even military officers serving at the Department of Defense had embraced the institutional interests of the Department to a certain extent (I₉), there are few indications that the Department of Defense acted on these Departmental interests.

Table 7.2: TNI Law; Expectations on CSO Demands and DPR Interests

Core Interests	Civilian	+	Insert complete and explicit ban from politics
		+	Explicit reference to civilian supremacy
		+	Drop limits on soldier marriages
		+	Enumerate limits on Military Operations other than War
		+	Limit military positions in bureaucracy
		+	Drop MP responsibility for civilian crimes
		+	Delete territorial development function
Branch Interests (DPR)		-	Subordinate TNI HQ to DoD
		-	Expand authority: DoD vs. TNI

Source: Author’s compilation

Parliamentary interests

In contrast to the Department of Defense parliament had little to gain from the TNI bill at least in relation to the government. Apart from the core interests shared by all civilian decision-makers, DPR’s interests were only touched by two demands ProPatria tried to realize once the bill had entered parliament. As during the Defense Law negotiations DPR should have been opposed to the relative empowerment of the Minister of Defense over the TNI leadership in policy questions as well as operational responsibility (see Table 7.2, p.145). While a takeover of the military business activities would have slightly increased parliamentary leverage over the military in budgetary decisions, it would have also given the government control of additional state enterprises. ProPatria indicated at least some awareness that DPR interests might play a role for the likelihood DPR would accept their

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alternative draft, when the group still debated that possibility in early 2003. They had decided not to reduce the involvement of parliament for certain types of military deployment decisions for internal security operations even though the current Aceh crisis had shown that parliament was often split over their decision, causing a deadlock and forcing the President to extend deployment via decree. They believed this would alienate DPR and make it less likely they would be able to overcome the consensus requirement to have their bill accepted as a parliamentary initiative (ProPatria 03.03.2003: 11-12). However, the group never discussed that it might be difficult to get parliament to agree to the subordination of TNI to the Department of Defense. There is little explicit indication that DPR's institutional branch interests determined the stance of its own members consistently this time, potentially due to the more limited data about later negotiations during the parliamentary process.

Military interests and resistance

Even though the content of the TNI Law touched upon many of the same basic topics as the Defense Law, many of the regulations now had to be more detailed. Since the TNI Law was supposed to be mainly a law on military organization and the military's position in the institutional landscape, almost all the demands ProPatria formulated during their deliberations with Ministry and TNI Headquarter or in their alternative draft touched upon what TNI considered its essential core interests. Most regulations touched upon either the scope of TNI's mission profile and its remaining *raison d'être*, its ability to flexibly react to what they considered threats in internal security operations or would have reduced their control over their own finances or organization (see Table 7.3: 147). While there are reports that by 2004 the value of TNI business interests was already much reduced because of the Asian Financial Crisis (Mietzner 2008; HRW 2010), newer estimates contradict this finding and indicate that the Indonesian military still drew significant earnings from their institutional business activities until long after the transition which would indicate that the military considered their business holdings essential for TNI's financial security (Mietzner and Misol 2012). Explicitly, the military stressed their need for the territorial command structure in order to guarantee Indonesia's defense and argued that only the introduction of the Kudeta article would allow the military to defend the country effectively during a crisis situation. ProPatria based most of their strategic decisions and substantive ideas for the TNI bill on their earlier discussions. Consequently, the group was aware of the same difficulties military resistance would bring. Explicitly in relation to the TNI Law they merely discussed the fact that ending the territorial structure would not be a realistic goal for this bill yet (ProPatria 28.11.2001: 4).

Table 7.3: TNI Law: Expectations on CSO Demands and Military Interests

Core Interests	Military	<ul style="list-style-type: none"> - Drop MP responsibility for civilian crimes - Explicit reference to civilian supremacy - Clearly enumerate MOOTW - Regulate military assistance to civilians - Subordinate TNI HQ to DoD - Add clear civilian mandates for use of force - Drop Kudeta article - Expand authority DoD vs. TNI - Civilianize creation of military budget - Civilian input in promotion process - Mandate takeover of military businesses - Delete territorial development function
Formal authority		<ul style="list-style-type: none"> - Limit military positions in bureaucracy - Subordinate TNI HQ to DoD - Drop Kudeta Article - Expand authority: DoD vs. TNI - Civilianize creation of military budget - Mandate takeover of military businesses
Informal influence		<ul style="list-style-type: none"> - Insert complete and explicit ban from politics - Limit military positions in bureaucracy - Clearly enumerate MOOTW - Regulate military assistance to civilians - Subordinate TNI HQ to DoD - Add clear civilian mandates for use of force - Explicit ban on military in business - Mandate takeover of military businesses

Source: Author's compilation

Since the TNI Law was meant to reorganize formal decision-making authority in the Department of Defense and concerning the use of force, ProPatria's demands also touched upon several entrenched institutions, most importantly the formal influence the military had over policy implementation through their officers in civilian ministries, over the Department of Defense and the military leaderships influence over the official military budget as well as the military's independent earnings that were not yet part of the state budget. As far as the military informal influence was concerned, again, several regulations ProPatria demanded introduced or abolished would have diminished military influence over decision-makers.

In their internal decision-making ProPatria was still aware that the military valued many of the institutions they sought to reform. During one of the Focus Group Discussions, Kusnanto Anggoro identified one of the main reason for TNI attempted to do this: Should the Department of Defense gain the upper hand in the institutional balance and implement a far-reaching rationalization program with more budget accountability and oversight, the pressure to rationalize and cut red tape would endanger many jobs in the middle ranks of the military. That was one of the main reasons ProPatria wanted to reform this issue: Without a reformist TNI bill the ministry was not strong enough in relation to TNI to be a

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real supervisory institution (ProPatria 26.08.2003: 8–9). Even though the Working Group believed TNI had excellent relations to several parliamentary groups which would help them stop an alternative draft, they did not believe the military would use their formal influence and publicly bypass the ministry by introducing the bill through the TNI/Polri parliamentary group (ProPatria 05.02.2003: 2-6).

During the parliamentary deliberations there are several indications that the military actually employed their formal and informal authority to counter ProPatria's attempts to influence decision-makers. When member of parliament Djoko Susilo asked members of the Working Group about the chances that a ban on military business activities might pass, Rizal Sukma had replied: "The military is threatening resistance if the business issue is touched" (ProPatria 29.11.12.2002: 23). TNI seems to have relied on their informal influence at the Department of Defense particularly heavily to preclude ProPatria's attempts to influence the bill beyond what they considered acceptable. After one of the meetings at the Department, a member of ProPatria complained that one of the more conservative members of the department delegation ran his team "like a one-man show" which made it difficult to hear more moderate opinions from other officers ProPatria knew well (ProPatria 03.01.2003: 4–5). In addition, ProPatria rightfully suspected that TNI would exploit the fact that the unresolved issues from the drafting meetings at the Department of Defense in early 2003 were to be handed to the Minister for final decision (ProPatria 21.01.2003: 45). It later turned out that the TNI Commander had reserved that decision for himself (ProPatria 05.02.2003: 4). While there is no definite proof, the Indonesian media reported on two theories why the government had not caved under the public pressuring campaign in September and stopped the bill, both pointing to informal military influence. A member of Megawati's own party claimed she had been pressured to sign the draft by members of her own cabinet. The Jakarta Post reported him as saying "Megawati 'had no choice' in the matter, as she faced the 'authoritarian manner' of the interim coordinating minister of political and security affairs and former military officer Hari Sabarno, TNI Commander Gen. Endriartono Sutarto and others who had pushed for the immediate submission of the bill to the House" (Jakarta Post 14.08.2004). Other observers believe, Megawati was hoping to receive support from TNI officers at the local level during the parliamentary and presidential elections in 2004 in exchange for her endorsement of the TNI bill (Al Araf 2013; Bainus 2012: 155). As part of the government delegation during the parliamentary deliberations members of TNI tried to change the parliamentary procedure to ease the consensus requirements and take some of their ability to resist the passage of the bill away from minority parties. In addition several newspaper articles reported that members of parliament had received financial incentives from TNI to let the bill pass. While it is quite possible that the military leadership tried to ease the passage of the bill by remunerating some members of parliament, participants denied these accusations. In response to these articles Ibrahim Ambing, chairman of Commission I, said before the plenary session: "Let us

look at the substance of the bill. Do not be negative and think that we received something from the deliberations” (Jakarta Post 29.09.2004).

Choice and effectiveness of tactics

When ProPatria initially decided which tactic to use, the group’s focus was to reestablish the same access to the government decision-making process it had during the Defense Law drafting. Members decided the group did not have the resources available to convince all parliamentary groups to accept their alternative draft, since DPR’s patronage orientation made the costs of lobbying the DPR factions prohibitively high and in the cases where such initiatives had been accepted, the bills were not opposed by TNI (ProPatria 05.02.2003: 2-3)⁶⁶. Still, several members of the group were unhappy that the group again approached the government with constructive criticism. Before the actual discussions with the government had even started, Rizal Sukma believed that helping the military and ministry could result in a TNI law optimized in tone but unchanged in its essential content (ProPatria 18.02.2002: 19). Since there was no pressure to pass the bill in late 2002 and early 2003 and neither Matori nor Megawati had given clear directives, ProPatria’s proposal did not have the same value for the drafting team or the government side as a whole. All ProPatria could do was to try and manipulate decision-maker’s existing preferences.

Since ProPatria’s goals touched upon so many entrenched institutions and the military had a chance to exert influence over the negotiations most of their proposals failed to sway the drafting team. In most cases this is in line with the theoretical expectations (see Table 7.4, p.150). There are three deviations from theoretical expectations, however. First, the drafting team should have accepted the introduction of an explicit reference to civilian supremacy into the identity of TNI. Second, similarly, the military should have accepted an explicit ban of military officers from politics. At the time, the military had little to lose from this section since the remaining influence on issues outside of security policy the military leadership had was through informal channels at the national and, more importantly, subnational level which would not have been affected by this ban to the same extent as formal channels. Third and in contrast, the DoD team should have turned down ProPatria’s request to drop the introduction of compulsory military service from the bill. However, the government side seems to have either been worried that a public debate about this issue could derail the whole law or, more likely, been happy to establish the issue in a separate law. With the government unwilling to move, deliberations stalled and finally ground down during the Team 45 meetings as well as later with the smaller Department of Defense team. While ProPatria debated alternatives to their constructive approach any thoughts about more assertive tactics were dropped for vague offers of reengagement from the government side every time. During this phase, ProPatria decided to economize on their demands so they could keep their assertiveness level down and not risk alienating the government

⁶⁶ Successful initiative bills during the legislative period 1999-2004 were mostly bills splitting up existing Provinces and administrative districts which went through because the new territories usually paid for their passage (ProPatria 23.02.2003: 5; Kimura 2010).

Table 7.4: TNI Law Changes from 03/2002-11/2002 (Consultations, DM: DoD)

CSO demand	Civilian Interests	Military Interests	CSO Tactic	Expected Attitude	Expected Behavior	Actual Behavior	Supported
Insert and explicit ban from politics	Core	Informal	Manipulation	In favor	Accept	Decline	No
Explicit reference to civilian supremacy	Core, Branch, Institutional	Core	Manipulation	In favor	Accept	Decline	No
Drop limits on Soldier marriages	Core	-	Manipulation	In favor	Accept	Accept	Yes
Enumerate limits on MOOTW	Core	Core, Informal	Manipulation	Indifferent	Decline	Decline	Yes
Expand authority: DoD vs. TNI	Branch, Institutional	Core, Formal, Informal	Manipulation	Indifferent	Decline	Decline	Yes
Subordinate TNI HQ to DoD	Branch, Institutional	Core, Formal, Informal	Manipulation	Indifferent	Decline	Decline	Yes
Add requirement for clear mandates for use of force	Branch (-)	Core, Informal	Manipulation	Opposed	Decline	Decline	Yes
Eliminate regulations on compulsory military service	-	Core	Manipulation	Indifferent	Decline	Accept	(No)
Civilianize creation of military budget	Branch Institutional	Core, Formal	Manipulation	Indifferent	Decline	Decline	Yes
Civilian input in promotion process	Branch, Institutional	Core, Formal	Manipulation	Indifferent	Decline	Decline	Yes
Explicit ban on military in business	Institutional	Informal	Manipulation	Indifferent	Decline	Decline	Yes
Mandate takeover of military businesses	Branch, Institutional	Core, Formal, Informal	Manipulation	Indifferent	Decline	Decline	Yes

Source: Author's compilation

completely. The group realized that pushing through all their demands would be too difficult (ProPatria 03.01.2003: 2).

When they had learned that the Kudeta Article was to remain in the bill, they warned the government about the possibility of demonstrations should this regulation pass (ProPatria 21.01.2003: 184). However, only when the Working Group realized that their previous access did not have any effect and the government tried to bypass them completely and hand a virtually unchanged draft to parliament did they decide to use more assertive tactics. While the heated press campaign imposed sanctions on the government, in terms of substantive demands the Kudeta leak was meant to only get the government to drop the specific article and force them to develop the bill with CSO involvement. After the group had demonstrated their ability to mobilize public resistance through the media and their colleagues in other CSOs, they prepared to reengage the government. Still, the group did not believe an “all or nothing” approach would be smart. Rather, the group again narrowed down demands to those items deemed important enough to risk a fight and delay other items to later laws (ProPatria 03.03.2003: 39). Even though ProPatria did not focus their public campaign on any specific demands, the campaign served as a warning that the Indonesian CSO groups had the ability to mobilize the public against retrenchments of civilian control. Civilians at the Department of Defense – or even the more moderate military officers who had developed loyalty towards the Department – would now have been expected to revise the bill to a much larger extent than what actually happened (see column “w/civilians” in Table 7.5, p.153). However, TNI Headquarter used their influence over the ministry to completely take over the drafting again, marginalize the extent to which civilian interests were taken into account, and only adjusted those sections of the law where its own interests allowed this or where civil society had directed sanctions and already demonstrated their willingness to resist (see column “w/o civilians” in Table 7.5, p.153).

Once the bill entered parliament, civil society mobilized and even though they again demanded that the whole bill be stopped to be deliberated by the incoming DPR instead of the current lame duck assembly their criticism was much more detailed and targeted several specific regulations in the TNI-revised bill. Before the campaign started, a series of interviews the ProPatria Working Group or their associates gave and op-ed pieces they wrote created very good media coverage and helped increase the media’s awareness and coverage of the legal process and public protests later on (Tim Imparsial 2005: 184–186). In order to kick off the actual pressure campaign ProPatria and their civil society allies relied on a loose network of organizations. Members of the coalition agreed the bill needed to be stopped. However, they also agreed which specific regulations would need to be changed or introduced before the bill would be acceptable (Al Araf 2013). The campaign could be conducted nation-wide because the civil society alliance included national NGOs with branch offices across Indonesia like the Indonesian Legal Aid Institute (LBH; Tim Imparsial 2005: 186). Munir had acted as a fulcrum between the more academic, defense-oriented activities of the ProPatria Working Group and his more human rights-focused activist

friends and colleagues. In addition, many activists and the academics active in the working group activated their connections to the university campuses throughout the nation. Even though the campaign failed to reach its immediate goal it was at least partially effective because it demonstrated to the more reformist elements in parliament that there was enough societal support for their position and to the rest that DPR would not be able to simply ignore public criticism. The fact that elections had already been completed and the results announced limited the extent to which the mobilization would affect DPR's ability to remain in office. However, those members who had been reelected still worried that the campaign would diminish DPR's public standing further, should they simply wave through the bill (Anggoro 2010). At several points during deliberations, DPR members believed it necessary to stress that the "public's strong opposition" had impressed them (Razak 31.08.2004). When public interest peaked in mid-August, DPR speaker Akbar Tanjung said: "I can't guarantee the bill's deliberation will finish soon, given the increasing pressure from the public" (Jakarta Post 14.08.2004). Effendi Choirie told reporters that his party believed deliberations should go on but that DPR would try to accommodate public aspirations (Jakarta Post 24.08.2004). During the negotiations, reformist members of Commission I repeatedly used the public debate and demonstrations as an argument against the most contentious issues in the bill, including the territorial development function and the expansion of bureaucratic positions open to the military (DPR 2004c: 119, 307). While the pressure on DPR was not enough to introduce their complete alternative draft, it was enough to give the more reformist parliamentary groups the support to force through those issues explicitly targeted by the pressuring campaign. In other issues, like the subordination of the TNI Commander to the Department of Defense, PKB and Reformasi had to deliberate whether they would use their short term veto to stop the whole bill and then risk to be overruled by the majority and lose any influence on the rest once the consensus requirement was dropped or whether they would accept the fact that some of their points could not be realized. ⁶⁷Consequently, they limited their demands because the time to talk about the issues at length and potentially convince other parties to join them was simply not available with the term running out quickly. The outcome of parliamentary deliberations largely conforms to theoretical expectations (see Table 7.6, p.155). However, considering the extent of expected military and civil society pressure concerning the relative position of TNI Commander and the Department of Defense, DPR should have been indifferent to both regulations. However, all parliamentary groups finally agreed to accept PDI-P's consensus solution and grant the Department of Defense a limited expansion of authority.

⁶⁷ Among other things, Effendi Choirie told ProPatria that they had been correct that abolishing the territorial structure would be very difficult at the time. When they asked about the attitude of his colleagues, he replied "There is no supporters" (ProPatria 27.09.2004: 15).

Table 7.5: TNI Law Changes from 11/2002-06/2004 (DM:DoD/TNI HQ)

CSO Demand	Civilian Interests	Military Interest	CSO Strategy	Expected Attitude w/civilians	Expected behavior w/civilians	Actual behavior	Supported	Expected Attitude w/o civilians	Expected Behavior w/o civilians	Supported
Insert complete and explicit ban from politics	Core	Informal	Sanction threat	In favor	Accept	Decline	No	In favor	Accept	No
Limit military positions in bureaucracy	Core	Formal, Informal	Sanction threat	In favor	Accept	Decline	No	Indifferent	Decline	Yes
Drop MP responsibility for civilian crimes	Core	Formal, Informal	Sanction threat	In favor	Accept	Accept	Yes	Indifferent	Decline	No
Explicit reference to civilian supremacy	Core, Branch, Institutional	Core	Sanction threat	In favor	Accept	Decline	No	Indifferent	Decline	Yes
Clearly enumerate MOOTW	Core	Core, Informal	Sanction threat	In favor	Accept	Decline	No	Indifferent	Decline	Yes
Regulate military assistance to civilians	-	Core, Informal	Sanction threat	Indifferent	Decline	Decline	Yes	Indifferent	Decline	Yes
Subordinate TNI HQ to DoD	Branch, Institutional	Core, Formal, Informal	Sanction threat	Indifferent	Decline	Decline	Yes	Indifferent	Decline	Yes
Add clear mandates for use of force	Branch (-)	Core, Informal	Sanction threat	Indifferent	Decline	Decline	Yes	Indifferent	Decline	Yes
Drop Kudeta article	Branch	Core, Formal	Actual Sanction	In favor	Accept	Accept	Yes	In favor	Accept	Yes
Expand authority: DoD vs. TNI	Branch, Institutional	Core, Formal	Sanction threat	In favor	Accept	Decline	No	Indifferent	Decline	Yes
Civilianize creation of military budget	Branch, Institutional	Core, Formal	Sanction threat	In favor	Accept	Decline	No	Indifferent	Decline	Yes
Civilian input in promotion process	Branch, Institutional	Core	Sanction threat	In favor	Accept	Decline	No	Indifferent	Decline	Yes
Explicit ban on military in business	Institutional	Informal	Sanction threat	In favor	Accept	Accept	Yes	In favor	Accept	Yes
Mandate takeover of military businesses	Branch, Institutional	Core, Formal, Informal	Sanction threat	Indifferent	Decline	Decline	Yes	Indifferent	Decline	Yes

Source: author's compilation

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Once the parliamentary groups had established their position, the government – or rather TNI – accepted all substantive changes parliament had made. The remaining demands civil society had entered through the reformist factions had been narrowed down further by the parliamentary process. Even though TNI could have still used the government veto to stop those changes which were against military interests, this would have precluded passing the bill in its current form and risk a more reformist bill prepared by the incoming DPR (see Table 7.7, p.156).

The fact that civil society only managed to introduce most of their demands very late in the legislative process after exerting significant pressure on decision-makers indicates that later additions are more difficult than earlier ones because indifferent decision-makers are unlikely to actively introduce or drop regulations. However, because of the exceptional pressure created by the joint CSO campaign there are no instances where this made a difference (I₅).

Table 7.6: TNI Law Changes from 06/2004-passage (DM: DPR Commission I)

CSO Demand	Civilian Interest	Military Interest	CSO Tactic	Expected Attitude	Expected Behavior	Actual Behavior	Supported
Drop "Oneness" of TNI and people	Core	Core	Actual Sanction	In favor	Accept	Accept	Yes
Insert complete and explicit ban from politics	Core	Informal	Actual Sanction	In favor	Accept	Accept	Yes
Delete territorial development function	Core	Core, Formal, Informal	Actual Sanction	In favor	Accept	Accept	Yes
Limit military positions in bureaucracy	Core	Formal, Informal	Actual Sanction	In favor	Accept	Accept	Yes
Explicit reference to civilian supremacy	Core	Core	Actual Sanction	In favor	Accept	Accept	Yes
Subordinate TNI HQ to DoD	Branch (-)	Core, Formal, Informal	Actual Sanction	Indifferent	Decline	Decline	Yes
Expand authority: DoD vs. TNI	Branch (-)	Core, Formal	Actual Sanction	Indifferent	Decline	Accept	(No)
Civilianize creation of military budget	-	Core, Formal	Actual Sanction	In favor	Accept	Accept	Yes
Explicit ban on military in business	-	Informal	Actual Sanction	In favor	Accept	Accept	Yes
Mandate takeover of military businesses	-	Core, Formal, Informal	Actual Sanction	In favor	Accept	Accept	Yes

Source: Author's compilation

Table 7.7: TNI Law Changes from 06/2004-passage (DM: Government)

CSO Demand	Civilian Interest	Military Interest	CSO Tactics	Expected Attitude w/o civilians	Expected Behavior w/o civilians	Actual Behavior	Supported
Accept complete and explicit ban from politics	Core	Informal	Actual Sanction	In favor	Accept	Accept	Yes
Delete territorial development function	Core	Core, Formal, Informal	Actual Sanction	In favor	Accept	Accept	Yes
Accept limit to military positions in bureaucracy	Core	Formal, Informal	Actual Sanction	In favor	Accept	Accept	Yes
Explicit reference to civilian supremacy	Core, Branch, Institutional	Core	Actual Sanction	In favor	Accept	Accept	Yes
Accept expanded authority of DoD	Branch, Institutional	Core, Formal	Actual Sanction	In favor	Accept	Accept	Yes
Accept civilianized budget process	Branch, Institutional	Core, Formal	Actual Sanction	In favor	Accept	Accept	Yes
Explicit ban on military in business	Institutional	Informal	Actual Sanction	In favor	Accept	Accept	Yes
Mandate takeover of military businesses	Branch, Institutional	Core, Formal, Informal	Actual Sanction	In favor	Accept	Accept	Yes

Source: Author's compilation

7.3 Conclusion

The overall outcome pattern again fits the theoretical expectations well, especially when allowing for the exceptional influence TNI had on the final draft that was entered to parliament. CSO demands were only successful where military interests were affected to a lesser degree or once the Working Group increased the level of assertiveness of their campaign (M₂). Because civilian decision-makers in the government were marginalized and the institutional interests of government and parliament overwhelmed by the more assertive tactics used by civil society later during the process, there is only anecdotic evidence that it still affected decision-maker positions to some extent (M₁, I₉). In general, the more assertive tactics used by civil society during the later stages of the process and their earlier willingness to narrow down demands compresses the spectrum of actual outcomes so much towards acceptance that differences in civilian decision-maker and military interests are washed over. While this reduces the support a congruence analysis can provide for the role both factors play, there are at least indications that decision-makers and military had the expected interests and that ProPatria took them into account when making their decision (I₃, I₄, I₈). Also, ProPatria seems to have taken into account decision-maker accessibility and the relative ability of government and parliamentary groups to veto legislation in their strategic decision-making (I₁, I₂).

In addition, this case study again indicates that in the absence of institutionalized access channels and transparent procedures other factors like personal connections, past cooperation and the extent of reformist verve determined CSO access. Without pressure from the Minister of Defense his subordinates were not willing to accept ProPatria's legislative language as a subsidy to their own work. Later, the Department of Defense completely seized to defend civilian core, branch or institutional interests against military pressure. As during the Defense Law negotiations, the generally opaque government bureaucracy meant personal contacts were ProPatria's only chance to access the ministry. Once the military took over the draft, this opening vanished completely. Unlike before, the MPR decree no longer completely blocked the chance of subordinating the military under the Department of Defense. While the military still argued that the decree was valid (ProPatria 21.01.2003: 19), MPR had issued a decree which outright cancelled several existing decrees that had become redundant after the constitutional reforms as one of its last legislative acts. Decree VII on the tasks of military and police was declared valid only until regular legislation had taken its place (Art. 4.7 of TAP MPR I/MPR/2003).

In summary, the TNI Law negotiations have again demonstrated that ProPatria had substantial influence on the institutionalization of civilian control. However, more than in the Defense Law, this meant stopping a retrenchment of control under the influence of the resurgent military leadership. Because ProPatria had focused on the Department of Defense and narrowed down their demands in order to stay involved in the actual drafting the TNI Law did nothing to finally clear up civilian control over the grey areas between military and

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police. To the contrary, the law broadened the scope of Military Operations other than War and did not contain more detailed regulations how these were to be conducted or authorized in practice. ProPatria had again decided to put off the matter of inter-institutional relations until a future law. The next chapter will analyze the legislative process for this National Security bill.

8 National Security Bill

When the ProPatria Working Group had met for their very first discussion in late 2000, those assembled had quickly decided against fashioning a defense and security law with regulations on relative authority of Police, TNI, State of Emergency and other issues in one big packet and instead opted for a relatively short and concise framework law. The rest was to be regulated in the Police and TNI law and separate laws on state of emergency respectively (cf. Chapter 9). Under this plan, a future National Security law would only have to establish a basic definition of security and provide a procedure to identify threats which up to then were regulated by the Department of Defense White Papers on Defense (ProPatria 17.10.2002: 6). At the time, the political situation seemed too difficult to go a different route: In the wake of public worries about the state of emergency law, many reformers were suspicious of a “New Order spirit” that could creep into a National Security law (Jakarta Post 01.09.1999). In retrospect Kusananto Anggoro called the failure to go for a proper National Security law from the start “a sin of ProPatria” (ProPatria 19.12.2002: 18) since the Defense Law provided few details on issues of a non-defense role for the military and the Police Law failed to empower Polri sufficiently.

In order to finally fill the by-then infamous “grey areas” and restrict the military to a list of clearly enumerated and civilian controlled missions in internal security, a national security bill seemed the last big missing link to institutionalize civilian control over that area, national defense and military organization. However, the discussion proved to be even more difficult than the TNI Law because this time the military was not the only veto actor on the government side. ProPatria and the government exchanged initial thoughts about the bill as early as 2003 but it would take until 2011 before the bill was finally introduced to parliament, albeit in a form that did little to streamline responsibilities and fields of authority over internal security. Before that happened, Polri had managed to stop a previous version of the bill in 2007 by convincing the public that the reordering of authority ProPatria had proposed would erode civilian control rather than improve it. Even before, ProPatria had found it more difficult to approach the government and play a constructive role in the drafting. Over time, both the accessibility of government and parliament as well as ProPatria’s strategic capacity and the cohesion of civil society decreased. Even though the national security bill got stuck in the legislative process in two separate instances, once in 2007 and then finally failed in 2012, tracing its progress will allow us to identify which factors contributed to its eventual failure and with it ProPatria’s failure to contribute to a further institutionalization of civilian control.

As in the previous chapters, the following section will trace the process chronologically before the concluding part of this chapter analyzes the extent to which the combination of decision-maker accessibility, civilian and military interests and ProPatria’s strategic

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capacity can explain the failure of the National Security bill. Because none of the earlier drafts were ever officially released⁶⁸ and ProPatria's records after 2005 no longer cover the group's involvement as reliably or completely as before, the analysis cannot go into the same level of detail as the earlier chapters.

8.1 *ProPatria and the National Security Bill*

Early ideas and work on National Security Bill 1999-2004

When ProPatria discussed in 2003 which issues should be regulated in a national security bill in case the government continued holding up the TNI bill, the scope they envisioned had expanded significantly from their initial plans. Members argued the bill would have to include not only a conception of security and procedures for identifying threats but also a clear delineation of the roles and authority of both the military and the police in the remaining grey areas as well as the tasks and relative authorities of other government agencies in the field (ProPatria 29.04.2003: 16). This also included a National Security Council which had been conceived initially as a replacement for the existing and dysfunctional coordination structure in the field of security (ProPatria 17.12.2000).

These discussions were initially restricted to internal meetings concerning other bills, like the Support Component Bill on which the government had started work in 2003. In May 2003 the group learned from their new member Bob Sugeng Hadiwinata that the ministry had also started work on a National Security bill and approached several members of DPR to discuss it in an informal setting. Several members worried that the government had given the mandate to discuss the bill to the wrong institution and that this approach would only cause problems with the police because its leadership had not been invited to join the drafting (ProPatria 20.05.2003: 68)⁶⁹. ProPatria began working on an academic draft for the bill one month later and focused it on clear inter-agency relations even though Kusnanto Anggoro and Andi Widjajanto, the self-described conservative members of the group, believed the military might already be set too much in their ways to manage any improvements in this area. Instead of a broad security definition like "human security", the group opted for a narrow focus at first and meant to expand it later to make government pay heed to issues of human security:

⁶⁸ Before 2008, the Defense Department never officially handed out the drafts compiled during their internal meetings. Four different drafts had been discussed between June 2005 and early 2007 before the task was transferred to the Coordinating Ministry for Politics, Law and Security and then finally another draft in 2008 (Anggoro 2008: 18). The only drafts which were ever publicly available with their submission to parliament were the 2011 and 2012 drafts. Altogether there were, hence, at least seven government drafts for the bill. Unfortunately, the author was unable to obtain any of the pre-2011 drafts. Similarly, DPR only publishes the proceedings for a bill once it is passed. Despite a freedom of information request at Commission I and the DPR archive, the author was unable to obtain the minutes for any parliamentary meetings concerning the bill. Unfortunately there is no way to reliably gauge the changes debated and the arguments brought up by parliamentarians and compare them to the plans of ProPatria or the wider civil society. Unlike in the previous chapters, the analysis can hence only be based upon the ProPatria discussions during this time, accounts of the negotiations published in newspapers and information gleaned from interviews.

⁶⁹ During an interview, a member of this first departmental drafting team stressed that the ministry had always planned to merely begin the draft from the perspective of the military and then involve the police to fill in the gaps for their role in public order and security (Ate 2013).

"It's going to be easier anyway. The scope [of the alternative] would be amazing, we would need a new environmental law and so on. In the Indonesian context that is extraordinary" (ProPatria 23.06.2003: 8).

Even with this narrow focus, it would be important to establish a fault line between Military Operations other than War as routine military tasks to be decided by the government and the exceptional assistance tasks where the responsible agencies would be the ones to approach the president to get the military involved (ProPatria 23.06.2003: 13)⁷⁰.

The group seemed optimistic about the fact that Major General Sudrajat had been charged with developing the National Security bill because they had established close working relations with him during the initial TNI law negotiations. In fact, Sudrajat had already signaled the group that he wanted to complete the TNI bill before starting serious work on the National Security bill. Still, he had told Rizal Sukma privately that he would welcome a draft from ProPatria, reportedly saying "So you just work first, then we'll host a discussion when it's finished" (ProPatria 12.06.2003: 4). With the national security bill not yet prioritized, ProPatria would have enough time to draft it and integrate the existing elements into a coherent security architecture with clear responsibilities and "be much more thorough in the process" (ProPatria 10.07.2003: 1).

When ProPatria members finally met with the government side it quickly became apparent that both sides had a different scope for the bill in mind: DoD and military mainly wanted the bill to establish a basis for national security policy⁷¹. While ProPatria's Andi Widjajanto was adamant that the bill would also have to fill grey areas he also cautioned the group not to include a multi-dimensional conception of security for its consequences for the institutional order (ProPatria 12.08.2003: 14)⁷². Even though the internal discussion on the bill continued after this meeting, the approaching elections and the work on the TNI bill meant that the group did not get a chance to formally discuss their thoughts with the government side.

Reformist DPR and fragmented government 2005-2009

Immediately after the DPR had concluded the TNI bill, ProPatria began collecting ideas on the upcoming national security bill, now that both the TNI and the Defense Law had fallen short of their expectation. The group was still unsure what the law should focus on but during a series of workshops in the fourth quarter of 2004 to collect necessary revisions in existing laws they quickly agreed that clear interdepartmental relations now would be more

⁷⁰ Even if the law only regulated what constitutes a threat and how this process worked, it would still need to regulate inter-institutional relations. Munir stressed: "In fact if these matters become part of the functions of a body, this will also affect relations among different bodies" (ProPatria 23.06.2003: 62). Since the state would be the essential security provider the question would become: who in the state should be responsible.

⁷¹ A joke by a senior military officer present during the discussion sheds some light on the threat perception of the TNI at the time: "Because of what we experienced, we face an external and an internal threat to the survival of this nation. The external threats are called HAM [Human Rights; PL], the internal threat is called GAM [Movement Free Aceh; PL]" (ProPatria 12.08.2003: 34).

⁷² Reminding the others of Kusnanto Anggoro's earlier position, he said it would make the scope of the new law "enormous"; "suddenly it must regulate immigration authorities, the prosecutor's office, police, military and so on, formerly kept under stand-alone legislation so that the National Security Law will have to adjust relative authority of these actors. That is the most difficult problem to overcome" (ProPatria 12.08.2003: 14).

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important than ever (ProPatria 11.10.2004: 25). Considering that the law would have to cover a number of government agencies and probably cross the portfolio boundaries of Commission I as well, the group worried whether the Department of Defense would be able to request changes or draft a new law so ProPatria could make use of their working relations with DoD during the deliberations (ProPatria 22.11.2004: 11).

Despite their high hopes about the new and experienced Defense Minister who was well acquainted with several Working Group members, there had been very little personal contact between Juwono Sudarsono and the ProPatria team initially (ProPatria 22.11.2004: 1). In December, Juwono finally contacted Andi Widjajanto to get the ProPatria Working Group involved in the reform process again and serve as ministry experts. Juwono was looking for arguments why the police should be subordinated to a ministry. Even though they still worried that the Department of Defense might not be the ideally situated to regulate matters relating to the police, the Working Group still decided to comply with his request (ProPatria 08.12.2004: 19). The group's hopes to remain in regular personal contact with the minister after this (ProPatria 08.12.2004: 31) were disappointed when Juwono asked General Sudrajat to collect the recommendations for him to ponder (ProPatria 21.12.2004: 1).

Meanwhile, the disastrous Pacific Tsunami of December 2004 and the resulting humanitarian crisis in Aceh accelerated the need to evaluate and reform the whole civilian security environment (ProPatria 12.01.2005: 5). In the ensuing national emergency it took until March for the first official ProPatria meeting to take place. Shortly before, the Defense Department had formed their internal working group with the intent of sending the draft to parliament in April. It soon became clear that Juwono had not only overestimated his own department but also failed to anticipate "institutional resistance of state agencies that were affected by the bill but excluded from its drafting" (Mietzner 2009: 307). The resulting delay gave ProPatria enough time to start meetings about the actual framework for the bill in April. Partly influenced by the aftermath of the Tsunami, the group started with a broad definition of security as proposed by Cornelis Lay that was largely based on the UNDP terminology and concept of Human Security (ProPatria 05.04.2005: 6). There were some signs that ProPatria wanted to institutionalize civil society influence over future national security debates by inserting an article into the new bill that would require the Defense Department to hold public hearings and consultations before changes in its defense strategy to evaluate popular aspirations (ProPatria 20.04.2005: 51). While this never found expression in the government draft at least some of the work ProPatria had done seemed to pay off when the ministry published a series of academic papers that took up some of their ideas. Hari Prihatono said these documents were "a compilation of what we gave them" (ProPatria 25.05.2005: 1). However, there was still no official draft.

ProPatria began a series of Focus Group Discussions in May, including several evaluation meetings. Organized as informal gatherings they were meant to evaluate the group's past record and learn from their decision-maker counterparts in government and parliament

how ProPatria could become more relevant for them (ProPatria 10.05.2005: 1). Both CSO activists and stakeholders in the security sector stressed that ProPatria's position as a bridging agent was its main asset (ProPatria 09.06.2005). Unlike before even the more technical meetings were attended by a significant number of members from Commission I and the government side also began sending participants with higher institutional profiles (ProPatria 14.06.2005). In June Defense Minister Juwono joined one of ProPatria's Focus Group Discussions as the main speaker. He stressed that many changes to the national security architecture were possible as the MPR decrees VI and VII of 2000 could be overwritten by law now (ProPatria 02.06.2005). In general, both members of government and parliament seemed receptive to ProPatria's initiative. The senior member of the departmental team working on the draft said he appreciated the fact that ProPatria was always professional and strategically flexible. A Golkar politician from Commission I said that after reading the group's proposal for an encompassing national security framework he found it to be "nearly perfect" as it had obviously resulted from "ideal deliberations" (ProPatria 08.09.2005: 9).

Despite this praise the actual drafting work was complicated by several personnel changes at the ministry. The ministry team had already produced two early unofficial and only marginally different drafts in May and June of 2005 (Anggoro 2008: 22). Soon after the second draft was completed, the chair of the drafting committee at the Department of Defense was replaced by a new officer who had previously joined several meetings with ProPatria to discuss very detailed thoughts about decision-making at the level of the national security council (ProPatria 15.06.2005: 19). Only days later, however, the officer was transferred to the Home Affairs Ministry and the leadership of the drafting team changed again. The new chair told ProPatria, that the ministry would not adopt their existing approach but asked the group to contribute results from their discussions to help improve the government draft before it was entered to parliament. He indicated that he was willing to change the draft significantly and had already held meetings with several other – unnamed – CSO (ProPatria 19.09.2005: 1, 23).

At the same time several key members of DPR seemed willing to base their discussion of the bill on the ProPatria proposal so that, according to Hari Prihatono, the group would become DPR's "unofficial expert staff". DPR had even requested additional discussions in order to involve other activists as well (ProPatria 19.09.2005: 1). So far, attendance from other NGOs and Human Rights groups had been minimal. Considering the DPR request, Hari Prihatono said ProPatria would need to redouble their effort to involve these groups in order to remain a true facilitator (ProPatria 19.09.2005: 30–31).

During five meetings in October and November 2005 ProPatria tried to do so. It quickly became apparent that the different groups had very different projects in mind when it came to the national security bill. The Indonesian Forum for the Environment (WALHI) wanted to include a mandatory conflict resolution mechanism in the bill, human rights monitor Imparsial wanted a special complaint mechanism, KontraS with its focus on transitional

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justice was generally skeptical about any military involvement in internal security operations and feared that the broader security concept ProPatria had adopted would lead to securitization (ProPatria 03.10.2005: 20). Several participants had apparently expressed reservations to ProPatria members for their involvement in what they perceived as a remilitarization of internal security before the meeting (ProPatria 03.10.2005:40)⁷³. Hari Prihatono used his concluding statement during the first meeting to urge the other groups to cooperate with ProPatria to deter DPR and the government from backroom dealing (ProPatria 03.10.2005: 40). At an additional NGO meetings in December the participants worked on concrete alternative formulations for the National Security bill and Kusananto Anggoro informed those present about longer term funding opportunities that would make cooperation easier than the current short-term projects (ProPatria 21.12.2005: 36). While no immediate coalition grew out of the meetings, several participants lauded the attempt to bring together the different groups to exchange information and use ProPatria's closer relations with the government side (ProPatria 21.12.2005: 74).

Parallel to these discussions ProPatria began a series of discussions with parliamentary staffers in order to educate the new DPR staff for their work on security sector legislation (ProPatria 26.11.2005: 24). During the multi-day workshop, ProPatria members retold the stories of their past legislative activities, answered the staffers' questions but also asked for their perspective on past projects in order to learn for future lobbying activities (ProPatria 14.12.2005: 336–337). Hari Prihatono also used the meeting to stress that ProPatria did not want a confrontational relationship with either DPR or the government (ProPatria 14.12.2005: 401).

Shortly before their meeting with the parliamentary staffers, ProPatria had learned that the Police had begun work on their own draft for a national security law in order to fend off the Department of Defense's initiative (ProPatria 26.11.2005: 1). Like most of the CSOs, the police had remained extremely suspicious and sensed a "military-driven plot to subordinate the police to the Department of Home affairs, which has traditionally been headed by retired military generals" behind Juwono's publicly expressed intent to put more distance between the President and Polri (Mietzner 2009: 307). Kusananto Anggoro later complained, that despite their suspicions, the police rarely sent any participants to ProPatria meetings in order to stay in dialogue with the military (Anggoro 2008: 32). Still, ProPatria's Focus Group Discussions remained an important forum for members of Indonesia's other security agencies to exchange ideas throughout the third quarter of 2006 while the ministry worked on yet another unofficial draft which would eventually be finished – but never officially circulated – in December 2006. Even though the dialogue among the other actors hence continued and the Department of Defense hosted several unofficial interdepartmental meetings in mid-2006 to which individual members of the ProPatria working group had

⁷³ Kusananto Anggoro later told them that ProPatria was often misperceived as close to the government or conservative because when KontraS and ProPatria were asked to comment on something like the territorial commands, ProPatria's replies in comparison seemed softer, making the group look like they were in favor of things like the territorial command structure (ProPatria 21.12.2005: 47).

been invited (ProPatria 28.09.2006: 15–16), Hari Prihatono had become deeply skeptical about the chances of the bill moving forward any time soon. During an internal evaluation meeting in September he said “From the last meetings it seems there is no common ground between the departments” (ProPatria 07.09.2006: 1). By now all actors had recognized that “The issue boils down to: how should the cooperation between police and TNI be structured?”, as Juwono put it during a ProPatria book presentation (ProPatria 28.11.2006: 4). However, the inherently interdepartmental nature of and the large number of actors involved in national security were the main reason why it was so difficult for the government to determine the right mechanism for coordination and relative authority, as the head of the drafting committee at the Department of Defense told ProPatria (ProPatria 28.12.2006: 6). When the ministry had finished work on their third draft, the public finally learned about its contents when several newspapers published parts of the bill and the police saw their fear confirmed that the bill would subordinate them to a government ministry (Mietzner 2009: 307). This further escalated the conflict between police Headquarter and Department of Defense. Even though some issues with the draft were quickly changed in the fourth draft that was finished in January 2007 already the debate had become an outright public fight. The national newspaper Kompas featured an article in which the police accused the DoD of keeping the negotiations secret only to be told that a police delegation had always been and invited and indeed present for at least five of the ten interdepartmental meetings (Kompas 09.01.2007). Around this time, the police also issued their own research paper that warned the public about the potential risks of putting Polri under the ministry of home affairs, or any ministry at that (Anggoro 2008: 29). The public discussion in the national media heated up in late January and February with different actors and academics debating the relative merits and dangers of putting the police under a ministry vs. keeping it independent (Jakarta Post 09.01.2007, 10.01.2007, 13.01.2007, 13.01.2007, 12.02.2007). One journalist bemusedly wrote:

“as both the Defense Department and the police have promoted and defended their own interest, the dispute has at times reached the level of debat kusir (silly talk).” (Jakarta Post 16.01.2007)

In the end, most observers seemed to believe that President Yudhoyono would have to avoid dragging the discussion on for so long it might endanger his relationship with the police before the presidential election of 2009 (Jakarta Post 12.02.2007).

Even without this institutional bickering ProPatria had found it all but impossible to plan a coherent advocacy strategy. Hari Prihatono mentioned during an internal evaluation meeting that the situation was much more difficult than during previous legislative processes, because there was neither an official draft yet nor the semblance of coherent thought about the bill at the Department of Defense (ProPatria 11.01.2007: 6). Because of the difficult political climate at the time the group decided to renew their contacts to KontraS again in order to improve their pressure potential and begin identifying decision-makers in the legislative process for them to lobby (ProPatria 11.01.2007: 9, 12). To Fajrul

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Falakh it seemed that ProPatria had merely followed the discourse in the previous months rather than be more active (ibid.: 13). Andi Widjajanto said that if any progress was to be made about the group's plans,

"We will have two fronts later: One front with the police about their position and then a front with our human rights friends" (ProPatria 11.01.2007: 30–31)

In early February, President Yudhoyono asked the public to stop their "polemic" about the bill and invited both the police and the Minister of Defense for a talk in early February (Tempo 08.02.2007). After this came to no avail he finally ordered Juwono to "put the matter on hold" (Juwono as quoted by Mietzner 2009: 307). Any amount of appeals to the actors involved "to unfreeze their sectoral egos", as Hari Prihatono put it during a Focus Group Discussion, seemed pointless. When the public learned in late March that the draft would now be developed by the Coordinating Ministry for Politics, Law and Security the scope of this new initiative remained unclear (ProPatria 27.03.2007: 5). Still, ProPatria followed the course Andi Widjajanto had earlier proposed and get the police as well as the human rights groups to acquiesce to a national security bill in the broad scope ProPatria still believed necessary (ProPatria 28.03.2007: 35). It turned out that the national security law would indeed be completely shelved until the 2009 election. When ProPatria tried to revive the discussion once more in 2008, Rizal Sukma said he was surprised the group even attempted to reopen the issue while Yudhoyono was still in office (ProPatria 08.04.2008: 3). Kusnanto Anggoro admitted that even entering the ProPatria version of the bill through parliament would likely have failed without a change of heart on the government side (ProPatria 08.04.2008: 58).

Stagnation and debates about the proper course 2009–2013

It took until December 2009 before ProPatria had their next official internal meeting about the topic. During the meeting it became apparent that the group now worried more about defense efficiency but they had not changed their mind about establishing a strategic partnership between government, parliament and popular organizations (ProPatria 02.12.2009: 21). The group reconvened to review the newest government draft for the national security bill in late March of 2010, more than three months later. Kusnanto Anggoro believed that while the draft had changed a lot, the changes so far were "useless, not significant" (ProPatria 31.03.2010: 14–15). Like other CSOs, ProPatria began to worry that the broad security definition the government had opted for would allow them to classify mass demonstrations as a threat to national security and crack down on them with the help of the security forces (ProPatria 31.03.2010: 4).

In order to facilitate dialogue, the group also restarted their series of Focus Group Discussions in April. Apart from the national security bill, the meetings also looked at the intelligence bill, the state secrets bill and the reserve component bill (cf. Chapter 9) in order to establish a coherent national security system. It quickly became apparent that the positions of the different civil society groups present were as widely spread as during the

previous coordination attempt. ProPatria presenter David Raja Marpaung stressed that it was problematic that NGOs still argued about the basic definition of national security for the bill. Even though none of the groups had a very specific field, all had slightly different specializations that became apparent from the different things they wanted in the law (ProPatria 28.04.2010: 6). The consequence of this internal conflict was apparent: Fitri Bintang Timur of IDSPS argued that the government agencies coming to the discussions were not open to accepting input from civil society because none of the groups was able to regulate the whole deal with them. All had to concentrate on “what has been called sectoral interests” (ProPatria 28.04.2010: 26).

At this point the government again seemed interested in restarting the national security bill discussions and left it with the Coordinating Ministry of Politics, Law and Security to counter criticisms the past process had given the defense bureaucracy too much influence. Still, most observers believe the Defense Department continued to play key role (Al Araf 2013; Azhar 2013). The National Resilience Institute (*Lembaga Ketahanan Nasional*, Lemhannas), a state-owned security think tank, took the lead in reworking the draft and hosted a seminar to discuss it. The head of Lemhannas, said the draft had been completed and handed to the coordinating minister, retired admiral AS Widodo (Jakarta Post 23.06.2010). Based on the draft, ProPatria held a series of public seminars to collect more input on the four bills. However, parliament had not prioritized the national security bill for the 2010 legislative year, yet.

When DPR did so for its 2011 work year, it took until June for the discussion about the national security bill to intensify. As usual, parliament opened the discussion on the bill by inviting public participation and hosted several meetings with academics and NGOs. While, again, hearings did not involve all relevant NGOs, the media echo quickly made it apparent that most NGOs were still opposed to the bill. Most activists and academics focused on the overly broad threat definition which they believed would have allowed the government to crack down on mass protests or strikes as threats for national development (Jakarta Post 08.07.2011). Experts from LIPI and Edi Prasetyono called regulations in the draft “confusing”, “unclear” or “ambiguous” (Jakarta Post 28.06.2011), while others thought the National Security Council had too much authority. Human rights activists criticized the lack of an accountability mechanism for national security decisions, a generalized right to wiretap, investigate and arrest for all national security components which would have included the military and intelligence services. Imparsial’s Al Araf even argued, military and police already had “clear operating rules as stipulated in Law No. 34/2004 on the Indonesian Military and Law No.2/2002 on the National Police” and both should not get new operating rules (Jakarta Post 30.06.2011). Another commentator even believed the whole national security draft was “not urgent” (Jakarta Post 14.01.2012). These sentiments went against what most NGOs and academics close to ProPatria had argued for since the TNI law failed to establish clear operating procedures for Military Operations other than War. Despite this sometimes harsh criticism in the media and calls to put the bill on hold,

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TB Hasanuddin, chairman of Commission I, said the bill would soon be deliberated (Jakarta Post 27.06.2011). Most of the more moderate NGOs agreed with this sentiment and still believed the law would be necessary. The different bills should be deliberated together, even though the likelihood of passing them was small since coordination was so difficult (Pramodhawardani 06.10.2011). Even though the government disputed to harbor sinister motives and said those who criticized the bill “don’t understand security” (Jakarta Post 08.07.2011), the public discussion had created some opposition in parliament and the discussion dragged on.

In July and October 2012 it seemed DPR would stop their deliberation of the bill altogether. Representatives of several parties told the media they would ask the DPR leadership to return the bill to the government. Instead of going ahead with the current draft, the Department of Defense should involve other state agencies in the drafting as well. One of them told the Jakarta Post “We need to accommodate all stakeholders” (Jakarta Post 07.02.2012, 10.02.2012). Faced with this renewed opposition Vice Minister of Defense General (ret.) Sjafrie Syamsueldin held a series of closed-door meetings with several parliamentary groups in October (Jakarta Post 19.10.2012) and Defense Minister Purnomo issued a formal statement to pressure DPR into passing the bill. The effort seemed to have little effect, however. A total of six parties in the house had issued statements that they wanted to drop the bill, and Haris Azhar of KontraS told reporters that his group had formed an alliance to pressure lawmakers into rejecting the bill (Jakarta Post 23.10.2012). Even though the bill negotiations continued at first (Jakarta Post 27.10.2012) and the bill was never officially dropped, the government had decided not to pursue it so shortly before the 2014 parliamentary elections.

8.2 Analysis

Since the National Security bill was never successfully passed into law, it logically follows that it did not contribute to an institutionalization of civilian control. Nevertheless, a closer analysis of the content debated for the bill and the changes it went through during deliberations can still shed some light on the determinants of civil society influence. Its unfinished nature and the fact that none of the earlier drafts have survived for a systematic comparison means the following analysis cannot go into the same level of detail as for the Defense and TNI law.

Strategic Capacity: Resources and Organization

Funding

Between 2001 and 2004, CSO working on Security Sector Reform like ProPatria, the Indonesian Institute for Defense and Security Studies (*Lembaga Studi Pertahanan dan Studi Strategis*, Lesperssi), KontraS and Imparsial report they “could pick and choose who to work with”, but afterwards the funding quickly dried up (Scarpello 2014: 141). In late 2004 ProPatria’s funding situation was already very unclear and the group could not plan

their strategy for longer than six months into the future. USAID seemed unwilling to finance the group's ambitious plans to revise a large number of bills instead of focus on one or two bills at a time and reduced the previous funding levels so most of ProPatria's operating budget came from the British DFID which had focused on funding the Focus Group Discussions rather than the more immediate legislative or CSO-internal networking activities of the group (ProPatria 04.11.2004: 1-2, 26). Altogether, ProPatria's funding dwindled to only 200.000USD a year between 2004 and 2010 and is "close to nil since then" (Scarpello 2014: 142). While only ProPatria provided detailed data, other CSO reported similar drops in funding between 50 and 70% from their 2000-2004 budgets (ibid.). During an interview in March 2013 Bhatara Ibnu Reza of Imparsial mentioned he believed the funding crisis was most severe for those NGOs working closest to the government because they had often relied on governmental funding agencies like USAID and DFID which now switched their operations to direct support to the government. His organization, as a more critical voice, was still supported by many of the same donors, albeit to a somewhat lesser degree (Reza 2013).

In addition, several former members of the more established Civil Society Organizations had established their own more specialized groups which made coordination more difficult and had an increasing number of groups compete for a decreasing pool of funding (Azhar 2010; Makaarim 2010).

Expertise

Between 2004 and 2010 ProPatria tried to shift their basis of expertise from the provision of topical knowledge in the direction of aggregating civil society aspirations for Security Sector Reform. While many of the same members still participated in events and provided knowledgeable input in the group's communiqués and legal drafts, the group tried to expand their knowledge base on current security problems from a human rights perspective during a series of meetings with other NGOs in 2005: They told the participants that the material gathered from the meetings was to be used for future discussions with parliament as distilled popular aspirations (ProPatria 26.10.2005: 40). However, the lack of funding available for the group from 2004 on made internal activities difficult since most money the group received was earmarked for workshops and focus group discussions. ProPatria could no longer afford honoraria for member activities and attendance and involvement of some of the group's experts declined. The effects of the loss of funding are illustrated by an event in 2010: The group had planned to track all changes made from draft to draft of the security bill to verify the important changes the government had previously claimed and to stay consistent in their own message but the group member charged with this task had forgotten to do so in time for the meeting (ProPatria 30.03.2010: 14–15).

Network Resources

While the TNI law was debated in parliament, ProPatria's networking ability was dealt a severe blow, when Munir, who had worked with the group from the beginning, was poisoned by a suspected agent of the National Intelligence Body (Badan Intelijen Negara, BIN)

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during a flight to Amsterdam. Between 2000 and 2004 Munir remained the only active member of the ProPatria Working Group focused primarily on human rights and had made sure human rights groups remained involved in the constructive dialogue ProPatria had started with the government side and TNI. The group discussed the professional repercussions from this loss extensively and on numerous occasions. Hari Prihatono summarized the problem aptly: "Now there is no Munir and the stakes are higher" (ProPatria 19.09.2005: 31). While ProPatria still had better elite contacts they now lacked contacts to the people (ProPatria 10.05.2005: 64). Kusananto Anggoro recognized that in the face of resistance, ProPatria's constructive tactics would not work without the support of other groups: there would be "demonstrations outside, but not connecting" to what ProPatria wanted (ProPatria 21.12.2005: 6). Previously, Munir had used his standing with human rights groups in order to convince them not to oppose many of the articles on principle, especially those which were empowering the state to take a more active role in the protection of its citizens. During a meeting meant to evaluate ProPatria's past record and plan its future strategy, one of the outside experts who had been invited to comment stressed that without Munir ProPatria would have to figure out their role. They had to decide whether they wanted to be "the bad cop or the good cop" after Munir had played bad cop for the military in the past so ProPatria could be the good cop. "If you want to stand on two legs, then it should be made clear who is the right foot and who is the left" (ProPatria 10.05.2005: 59).

ProPatria tried to convince other groups to continue their work with the Working Group and disarm their fundamental critique against some of the group's plans (ProPatria 19.09.2005: 31). If the Working Group ever planned to emulate the dual approach that saved the TNI Law they would have to ask human rights groups to use their protest potential to improve rather than stop the necessary bills or "face much more difficult protests" as constructive critics of the government (ibid.). They would make the argument that the state needed to be strengthened first, and then they could "get ready to make the counter argument to protect civil liberty, to protect democracy, protect human rights" (ProPatria 15.03.2007: 32). However, in early 2007 a member of the group realized "the most serious problem we face is that without Munir we can no longer combine two strategies up front. Munir helped us stay in intensive contact with our NGO friends who could do advocacy towards those politicians actually in a position to make the necessary changes" (ProPatria 11.01.2007: 9).

ProPatria tried to compensate for the loss of Munir by investing some of their remaining funds in resource mobilization activities to expand and formalize their contacts to other NGOs in the security sector. Lately, members from Imparsial and KontraS had only occasionally attended public meetings ProPatria but used them to criticize the security forces rather than engage in a constructive discussion. Once several politicians from the 2005-2009 DPR had asked ProPatria to serve as a reliable bridge to the more activist groups for them during early discussions, the group decided to react. They hosted a series of meetings to consolidate the CSO positions and so CSO influence during later talks with the

government could be maximized. Since the Working Group no longer had regular participants from groups like KontraS or Imparsial the goal was to establish a loose advocacy coalition. However, even though during some meetings there were as much as 25 groups present, a coalition failed to materialize (ProPatria 03.10.2005; ProPatria 22.11.2005: 1). The other groups no longer believed that a broad coalition was as “a viable framework for their work” and instead opted for short term cooperation (Scarpello 2014: 143). In addition, ProPatria again faced claims that the group had become too close to the government and was even vilified as a minion of the army because it had not opposed the National Security bill as a whole without Munir’s arbitration (ProPatria 24.04.2008: 46). However, even among the more moderate CSOs, there was a rift between organizations like ProPatria, which focused on military reform, and those focusing on police reform (Anggoro 2008: 44). The Indonesian civil society sector had lost cohesion and with it much of their previous ability to exert constructive influence on Security Sector Reform.

Over time the rift between ProPatria and the more critical CSOs widened so that ProPatria had almost completely lost touch with them when the national security bill was finally introduced to parliament. Even those groups looking to mobilize opposition against the bill, however, found it increasingly difficult to find enough participants for demonstrations. Students, who had constituted the bulk of protesters between 1998 and 2004 no longer found the “activist model” attractive and were more difficult to mobilize (Scarpello 2014: 142). To overcome this in their demonstrations against the National Security bill, Imparsial, KontraS, LBH and other groups agreed to cooperate with a number of trade unions who were in turn interested in fighting the Law on Mass Organizations that was debated parallel to the national security law. Where the human rights groups would provide media commentary and advocacy, the trade unions would deliver the necessary personnel for staging larger protests (Al Araf 2013).

Organizational development

ProPatria’s funding crisis also affected their ability to remain afloat as an organization: By 2011, “with only 5 staff ProPatria has lost the ability to network and coordinate the Working Group on SSR” (Scarpello 2014: 142). The crisis affected other organizations as well: Lesperssi had to go from eight full time staffers in 2004 to only four in 2011. In addition, it became more difficult for the groups to attract qualified staff (Scarpello 2014: 142). The fact that the Working Group could only gather its members before or after other events aggravated the leadership problem and left much less time for planning content and coordinating strategy than before. The lack of institutionalized support and networking meetings is also visible from the small number of officially transcribed meetings ProPatria had between 2007 and 2010, when the official records stop (see Table 3.3, Chapter 3, p.53). Without funding ProPatria lost its remaining permanent staff in 2013 and now has to rely on volunteers. Hari Prihatono transferred the group’s Headquarter to a remote South Jakarta Café that now provides him with additional income. While he is still occasionally invited by political parties to comment on current events and to speak at workshop events

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on military and security affairs, ProPatria can no longer coordinate the Working Group and it has since ceased to exist or is “hibernating” (Prihatono 2013).

Choice of entry and decision-maker accessibility

In 2005, the legislative process was reformed in a minor point to reduce the number of drafts that were introduced by DPR or government departments because special interests paid for their passage. All drafts introduced by the government now needed to go through the justice and human rights ministry before going to the State Secretariat to receive the signature of the president whereas all parliamentary drafts had to pass through DPR's Legislative Body in order to be approved for deliberation (Jakarta Post 28.01.2005). However, this did not affect the basic ability of ProPatria to gain access to decision-makers. As before, personal connections ProPatria enjoyed and the individual willingness of civilian decision-makers' to listen to outside input was more important. ProPatria again decided to focus their attention on the government side, the pattern the group had established during their involvement in the two previous laws.

Since the Department of Defense had been put in charge of the development for the National Security bill, most of ProPatria's approaches again focused on this ministry. The ProPatria Working Group expected to find easier access than during the drafting of the TNI Law. President Yudhoyono had chosen Juwono Sudarsono as his Minister of Defense. He had already been Minister of Defense during the first year of the Wahid presidency and was a widely respected expert on defense and security. Juwono was closely acquainted with several core member of the group from his previous career as a university professor. According to Rizal Sukma, he himself worked under one of Juwono's colleagues at the London School of Economics, Edy Prasetyono and Andi Wijajanto had been his students at the University of Indonesia and he had been on the committee for Kusnanto Anggoro's PhD thesis (Sukma 2013: 156). The group could assume that the minister would be willing to meet them and potentially also be open to their advice and lobbying. However, those members of ProPatria who knew the minister worried about his willingness to actually confront the military should conflicts arise. Speaking about plans the minister had developed to reorganize his department, Cornelis Lay said he was “not sure Juwono has the courage to come far with this” (ProPatria 22.11.2005: 60). Apparently, the minister had so far had problems to reestablish his standing at the DoD and stayed aloft of his subordinates, as a senior department official told the Working Group (ProPatria 06.01.2005: 63). The fact that he himself was an expert with established ideas about military reform supposedly meant he did not easily accept outside advice: ProPatria believed the “problem is opening his mind, he is unwilling to accept things we cannot measure”. Indeed it turned out that meetings with him were usually short and very formal (ibid.). Even though the minister met with ProPatria staff later on and unlike the previous ministers Mahfud and Matori even participated in semi-public events, it quickly became apparent that he merely sought the group's advice, but would not include them in the drafting team as his colleagues before had

done. Instead of inviting ProPatria to join the internal decision-making, ministry officials used ProPatria events as a freely available resource pools without obligations. In contrast to his predecessors in office, Juwono also kept internal draft bills secret or issued them only unofficially to a very limited circle of experts between 2005 and 2009. This reduced transparency and made ProPatria's attempts to place concrete proposals and demands at the right moment more difficult. The last drafts handed out during Juwono's tenure in 2008 had even been individually numbered to make tracing easier and deter press leaks (Anggoro 2008: 6). When the president gave the Coordinating Ministry and Lemhannas the lead in the drafting process, there were few chances for external involvement before the draft was introduced to parliament and Juwono's successor Purnomo Yusgiantoro was not inclined to open the ministry to outside influence again (Prihatono 2013). He was generally regarded as less qualified for the office of Defense Minister than his predecessors. During a ProPatria meeting in 2010 the group debated the differences between Mahfud's and Purnomo's approach to his office and one member remarked "Mahfud didn't know much but could think clearly, Purnomo doesn't know much and cannot think clearly (ProPatria 30.03.2010: 58)⁷⁴.

After 2005, parliament seemed much more open and enthusiastic about ProPatria's reform ideas than before (ProPatria 28.09.2006) and several members of Commission I including chairman Theo Sambuaga stressed they wanted to become much more active in introducing legislation rather than wait for the government to act (ProPatria 28.11.2006: 6–7). Members of other CSO and even some members of parliament questioned whether ProPatria's executive-focused strategy was still appropriate now that the government seemed to close up to outside influence (ProPatria 11.10.2006: 27, 37). Most observers agree that the 2005–2009 DPR was more reform oriented than the previous one and arguably the most reform-oriented assembly until today (Azhar 2010; Al Araf 2013; Prihatono 2013; Anggoro 2013; Muna and Haripin 2013). Two-term Member of Parliament Effendi Choirie admitted that DPR had not been well prepared for the defense act and only slightly better for the TNI bill. Now with more time, he believed his commission would do a much better job (ProPatria 17.05.2005: 6). During a workshop for DPR staffers ProPatria hosted as part of their attempt to foster working relations with the new DPR members, a member of the expert staff reported that while there were certainly changes in the membership of Commission I, he felt there were still several very knowledgeable individuals left (ProPatria 14.12.2005: 352). These individuals were usually those with established connections to the group and civil society and often provided early information on the bills under discussion. Even Commission I's most senior members, including chairman Theo Sambuaga of Golkar, now regularly participated in ProPatria's events and the more experienced Commission members with established contacts to the group like Effendi Choirie often spoke at the events and helped recruit newcomers (ProPatria 17.05.2005). Even though the national security bill

⁷⁴ Unlike Mahfud, Purnomo had at least some previous experience in the defense and security field, however. He had served as vice governor of the National Resilience Institute between 1998 and 2000 and had contributed to a Working Group on defense and security issues for the national development plan under Suharto.

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was developed by the government, these connections helped keep civil society informed at the early stages of deliberations when information was especially valuable (Reza 2013). ProPatria's access to parliament was largely restricted to Commission I, however. Members of Commission III almost never participated in ProPatria events and in general seemed much less willing to accept input from experts who were not focusing on the police (Anggoro 2013).

The window of opportunity for a change of focus for ProPatria's work from the government to the parliament side again closed after the election of 2009. The elections had changed Commission I considerably. Only 5 members from the previous period remained. And those who remained have "shown little inclination of interacting with Civil Society Organizations and think tanks" (Rüland and Manea 2012: 141), among those voted out of parliament was Andreas Parreira who had previously worked very closely with ProPatria on other laws (Pareira 2013). While DPR members consistently turned down accusations that they accepted bribes for passing government bills with little scrutiny (ProPatria 17.05.2005: 6) and there were no instances between 2005 and 2009 where civil society activists raised this claim concerning security legislation, many were certain that DPR had been offered money to continue their deliberations in 2011 and 2012 after Syafrie Syamsuoddin and Minister Purnomo had made their tour of parliament. The Jakarta Post quotes Haris Azhar, coordinator of KontraS saying "All factions have agreed to discuss the bill, because they have been promised financial incentives in the coming sessions" (Jakarta Post 18.09.2012).

While ProPatria's decision to approach the government side first with their demands for the National Security bill seemed promising after the new Defense Minister Juwono took office in 2005, the group should have quickly realized that the government side was no longer willing to actively involve the group in the drafting and even grant them the same access to more concrete plans for the new bill. While ProPatria realized that they had been successful previously because "there was one condition that made it become possible and that is the openness of political stakeholders" (ProPatria 21.12.2005: 6). Even when the group later realized that DoD "cooperation with NGOs is not systemic but rather depends on the individual" (ProPatria 02.12.2009: 23) they never tried to change track and work with parliament instead. Even when DPR had asked the group to aggregate positions from different stakeholders, including other CSO, ProPatria had always planned to submit their newest proposals to the Department of Defense after their "safari" of consultation with different actors in the second half of 2006 (ProPatria 10.10.2006: 2). During this time, Commission I provided a much more permissive attitude towards outside input. Even though it is uncertain whether ProPatria could have managed to convince all parliamentary groups to support an initiative law, the group only became more interested in working with DPR on substance once the bill was entered to parliament. By this time, ProPatria had not only lost much of its organizational capacity, most of the group's well-established contacts had also left Commission I. Unlike before 2005, ProPatria no longer seems to have taken into account decision-maker accessibility in their strategic decision-making (I.). While it is

possible that ProPatria still focused on the government because they realized it would have a veto over any legislation ProPatria would manage to introduce through parliament, there are no indications that this was the main reason for ProPatria's behavior. The group did, however, try to access the Police Headquarter once they realized that the Polri's informal veto was the reason the National Security bill did not move along, so there is at least some support for the claim that ProPatria tried to target veto players irrespective of their openness (I₂).

Changes and change attempts to the decision-making areas

Even though the National Security bill was never passed, precluding any chance that it affected the institutionalization of civilian control in any way, there are some indications that civil society involvement affected the content of the bill during its development stages. In addition, the fact that a civil society coalition stopped the bill before it could be passed also stopped some regulations which would have retrenched the extent of civilian control. There are indications that civilian control over public policy might have been negatively affected, had the later drafts passed, however. After the idea had been discussed for earlier drafts, the government formally introduced the idea of a Provincial and Local Leadership Forum in 2011, which would be set up at both the provincial and local level. This would have provided local military commanders with a formal forum for influencing subnational governments (Art. 32, 33, Kamnas 03/2011). These forums were to be chaired by the local executive and included the highest military commander in the area as well as the local police chief, representative of the attorney general's office, the local officer of the National Intelligence Body, and the local representatives of the national development and narcotics agency. Even though the structure of the forum was taken out of the bill later to be regulated less visibly by decree, the same basic idea is still apparent (Art. 28-29, Kamnas 10/ 2012). Like the territorial development function included in earlier drafts of the TNI Law, the forums' coordination function reminded many observers of the highly problematic local security councils (ProPatria 08.04.2008: 21–22). The broad definition of security which had been included from the first draft and was still included in the 2011 and 2012 bills was heavily influenced by discussions the Department of Defense had held with ProPatria. Instead of the traditional focus on state security it expanded the notion in line with the Security Sector Reform paradigm to include individual security and the full breadth of human security (cf. Chapter 1). The threat definition derived from this broad security concept included allusion to endangering national development. Even though this might seem reasonable considering that security was to be upheld by all government agencies, not just military and police, many Civil Society Organizations still feared it would allow the suppression of mass protests and strikes (ProPatria 31.03.2010: 4). Still, from an analytical perspective it is unclear whether the military would have had any influence on the decisions to do so or could even be used against protesters, since its use should still be restricted to use against armed threats. In this regard, public criticism of the overly broad security

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concept seems misplaced especially since many of the NGOs arguing against this definition had previously demanded the inclusion of human security into the bill (Muna 2013; Anggoro 2013).

Even though ProPatria's early demands focused largely on the issue of clearing up the grey areas between police and military responsibilities in internal security operations, this issue had completely vanished from the bill by the time the National Security Bill was introduced to parliament. While no definitive draft existed prior to 2009, it seems the government had tried to include this issue in the earlier drafts (ProPatria 26.03.2007). However, neither of the later drafts regulated the military assistance tasks to the police, nor did they include any more specific procedures for Military Operations other than War which had created overlapping responsibilities with the police. This signifies an important failure to influence the bill and improve civilian control. Without substantive regulations, military autonomy would remain significant in this area. Even though the national security law drafts of 2011 and 2012 have regulations on the state of emergency, another priority ProPatria identified early on, these only cover rough guidelines for which situation should fall under which level of emergency. The draft is completely silent on the effects the different states of emergency have on the role of military and police or the relative authority of president and parliament. Neither does either draft ascribe clear responsibilities or selection process for an emergency governor in military emergencies. On the positive side, both later drafts explicitly prescribe DPR approval for military emergencies and the state of war (Art. 10-15, Kamnas 03/2011; Art. 10-15 Kamnas 10/2012). Even though it was the main reason the national security draft failed in the 2005-2009 DPR period, the fact that the police would have been successfully subordinated to a ministry as well under the first four drafts for the national security bill would have had no effect on civilian control.

The police's resistance also kept an important regulation for increasing civilian control over national defense out of the law. Between 2005 and 2008 it seemed had the Department of Defense consistently tried to put not only the police but also the military clearly under their respective ministries (Anggoro 2008: 38). Going through with this reform would have solved one of the most important remaining problems of civilian control over both military internal security operations as well as national defense and also kept the TNI Commander out of cabinet meetings to reduce his informal influence. Inter-institutional relations were no longer part of the 2011 and 2012 bills.

To sum it up, few elements remained in the bill until the end which can be traced back to early ProPatria initiatives, most importantly the broad security definition with its simultaneous restriction of TNI to armed threats. Earlier drafts which seemed much more focused on clear inter-institutional relations and a differentiation between Military Operations other than War and TNI assistance function – the center points of ProPatria's plans for the bill – had failed. From the perspective of civilian control, this failure can be considered a net loss considering the vague state of roles, relative authority and responsibility in the Indonesian security sector resulting from the earlier reforms now still

gave the military leadership considerable autonomy to informally influence when and how the armed forces were to be included in internal security or other tasks. While critics of the bill rightfully stress that both the 2011 draft and the only marginally different 2012 version were ambiguous and vague in their formulations, most importantly they included several articles which would have brought – albeit a small – retrenchment of civilian control in some areas. Since the later drafts contained none of the institutional reforms which would have redeemed the earlier drafts, stopping them can be considered a limited success for CSO influence on civilian control.

Civilian interests, military resistance and CSO tactics

In general, the more limited engagement of ProPatria with the government side also generated much less information about the internal stance of the Department of Defense, the government more general or the Indonesian parliament than before and the military also refrained from public statements concerning the National Security bill during the debate. ProPatria's events with government and parliament between 2005 and 2010 were focused on an exchange of ideas during their interaction with the government side more than advocating concrete policy proposals. Still, there are theoretical expectations how the issues ProPatria discussed relate to both civilian and military interests and some limited indications of whether civilian and military interests influenced the empirical behavior of all sides involved in the drafting and initial amendment process.

Government interests

The wider regulatory scope of the National Security bill and especially ProPatria's intended focus on clearer regulations on inter-institutional authority meant that on the government side several different institutional actors were involved. These issues include clearer regulations on the use of force and employing the military for non-war tasks, clearer regulations on the relative authority of police and military in internal security operations, the subordination of TNI Headquarter to the Department of Defense, a reform of the State of Emergency and the effect it would have on the relative authority of civilian and military decision-makers and the relative authority of civilian and military security forces.

The position of the President on these issues would be expected to be ambivalent. While clearer regulations would decrease the President's dependence on personal authority in relation to the armed forces, President Yudhoyono had managed to put moderate and loyal officers in important positions in the TNI leadership (Editors 2008). This increased his personal ability to monitor the armed forces. For him personally, additional restraints in the form of more liberal regulations on the state of emergency or fixed procedures and limited possibilities for involving the military in internal security operations would have reduced flexibility when dealing with threats and his institutional authority relative to parliament. The president should have been at best indifferent to improvements of civilian control aimed for by ProPatria, consequently. Indeed there are indications that the President would have preferred a framework law that delegated most substantial decisions to presidential or

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government decrees, maximizing his flexibility (ProPatria 30.06.2005: 12; ProPatria 10.10.2006: 9). While the President could have ordered his subordinates to stop their discussion and determined a mandatory course for the new bill, he never did.

As before, the Department of Defense should be interested in improving their position in relation to TNI Headquarter and subordinate the TNI Commander and establish clearer regulations on Military Operations other than War, especially if TNI was to be subordinated in operational matters as well. There are indeed indications that Defense Minister Juwono Sudarsono planned an institutional reform of his Department that would streamline the defense bureaucracy and increase his own authority over the TNI and the officers seconded to the Department of Defense (ProPatria 22.11.2005: 1). There are also reports that he had originally intended the National Security bill to clarify the position of the security actors to the presidency and his own Department but also regulate the relationship between state security agencies in the instance of democratic unrest and external attack (Mietzner 2009: 306–307). Indeed, Juwono consistently argued that the military should be subordinated to the Department of Defense. The drafting team even considered returning the police to DoD's portfolio and reestablish a Department for Defense and Security (Anggoro 2008: 38). The Indonesian Police was strictly opposed to these proposals and criticized the fact that the Department of Defense had been put in charge of the drafting process for the National Security law. In this, the police demonstrated the clearest indications of departmental thinking. Kusnanto Anggoro argues that the police wanted to avoid any additional regulations in excess of the 2002 Police law from the outset. The very abstract and general regulations in the law gave them a lot of autonomy, especially considering Polri was not subordinated to a ministry, either (Anggoro 2008: 38). The experts invited to ProPatria's focus group discussions realized from early on that the police would resist its subordination to ministry as status reduction (ProPatria 30.06.2005: 39). Without a ministry in charge of the police there was no actor interested in institutional reform outside the police itself either, that could take a position similar to the Department of Defense during military reform. This would make police reform much more difficult (ProPatria 21.12.2005: 68). Nevertheless, considering the tension between Polri and TNI, the police should have been interested in clearer regulations for involving the TNI in an assistance function to the police. The other government agencies involved in the development of the National Security bill also demonstrated signs of departmental thinking. The home affairs ministry had proposed to focus on individual rather than the full range of human security for the bill so that the participation of other actors would be more limited (Anggoro 2008: 29), the foreign ministry played down the importance of military options and stressed the importance on diplomacy and asked for a focus on human security in order to make the country appear more progressive to the international community (Anggoro 2008: 30). Altogether, there are some indications that the majority of government actors involved in the drafting process was either opposed to specific issues to be regulated by the National Security bill or at least preferred less regulation to more regulations.

In their internal discussions ProPatria quickly realized that coordinating actors and keeping the discussion about the National Security bill alive meant it would have to be conducted at a very abstract level without going into details of relative authority. Discussions about the concept of security and even different threat levels were fine, but as soon as the discussion turned towards the actual allocation of inter-institutional authority,

“in any arrangement it is as if we hit a wall. Whatever we are talking about, at that point we hit a wall because there is clearly no willingness to compromise.” (ProPatria 15.03.2007: 25)

The government side also realized that it would be problematic to include so many actors. After the first year of debate about the law Juwono acknowledged the broader understanding of security that ProPatria championed but explained the draft would be confined to a narrower understanding of security focused on the current portfolio of the ministry of home affairs, the foreign ministry and the Defense Department (ProPatria 10.10.2006: 8).

Parliamentary interests

Substantively, parliament should have been interested in expanding their ability to participate in the imposition of a state of emergency to guarantee they could not be overruled as under the current New Order legislation. There are reports that members of parliament between 2005 and 2009 were in general very interested in expanding DPR's monitoring function (Rüland and Manea 2012). The members of parliament who participated in Focus Group Discussions seemed happy about the encompassing character of the law and agreed that the current bill should also touch upon issues henceforth regulated in other bills, including their own role concerning military operational decisions (ProPatria 28.09.2006: 44–45). In contrast to both previous laws, the regulatory scope of the national security bill, which included the police, would make the whole process more difficult because it would necessitate the inclusion of Commission III as well (ProPatria 30.06.2005: 13). During the height of the conflict between DoD and Polri when Commission I had just started to involve their sister commission as well, Effendi Choirie indeed told ProPatria that this had made negotiations more complicated because both Commissions were interested in different things (ProPatria 28.12.2006: 32). Commission III had reportedly thought about using its right of initiative to introduce a national security law that would establish a separate police ministry (ProPatria 22.11.2004: 4-5, 11). Once the actual debates on the National Security Law started, public statements of members of parliament indicate that parliament was indeed still interested in avoiding legislation that would give the government, Polri or TNI too much freedom in their reaction to security threats. They criticized that several articles had multiple interpretations which “might lead to repression or the abuse of power” (Jakarta Post 05.10.2012).

Military interests and resistance

As before, the military should have opposed all attempts to subordinate TNI Headquarter to the Department of Defense with its civilian minister as well as the introduction of more detailed regulations on the military internal security role as well as the assistance function

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to the police in order to maximize their ability to resist operational and policy decision through formal and informal means. While there are no signs that Juwono's plans to complete the subordination of TNI would have met with resistance from military Headquarter at this point, indicating that the ministry had regained a position more independent from the military Headquarter than during the 2004 TNI bill negotiations, neither did the Department of Defense pursue this institutional reform without subordinating the Police at the same time. Observers believe that TNI would not have accepted a supposedly lower status of the TNI Commander in relation to the Police Commander (Tanuhandaru 2013). Concerning TNI's role in internal security operations, CSO activists outside the Working Group feared that the military would use its dominant position in the ministry to expand their influence over internal security operations without additional regulations (ProPatria 10.10.2006: 5). Along similar lines, Kusnanto Anggoro stresses that the military leadership wanted to keep the role in internal security the previous laws had established but eschewed additional regulations for both Military Operations other than War and their assistance role to civilian institutions. However, this resistance happened through informal channels through the Department of Defense mostly (Anggoro 2008; Anggoro 2013). Minister Juwono himself believes the NGO demands at the time were too much for the military to accept. While he believed the military trusted him, he still saw himself in a "difficult position" and could not have pushed through these demands (Sudarsono 2013).

Consequently, ProPatria seemed uncertain how resolute Juwono could be towards the military during their discussions about the bill. The Working Group was still concerned about the degree to which the military controlled the Department below him. Only a truly civilian institution would be able to defend its autonomy from TNI Headquarter. At the time, the group estimated that about 3/5th of ministry personnel consisted of military officers in 2004 (ProPatria 08.12.2004: 45). Indeed, Juwono had already proven too weak to "secure his preferred civilian candidate [...] for the post of Director Generalship in [the] Department of Defence" immediately after he took office (Anggoro 2008: 12).

Considering both the apparent willingness to accept a subordination to the Department of Defense and the reports about the precarious position of civilians at the department even under a civilian minister widely respected for his expertise on defense and security matters, it seems the military had consolidated a *modus vivendi*: While TNI would accept nominal subordination to the Minister, they were still guaranteed much formal and informal influence over the policy of the department. Observers see strong indications that defense and military policy still remains in the hands of the uniformed military which is protecting its "corporate interests under a civilian minister" (Editors 2008: 87; Aspinall 2010: 24). Alternatively, it is possible that the reports about military influence over the Department of Defense are misleading and TNI Headquarter was no longer willing to openly oppose civilians after President Yudhoyono had managed to place moderate and nonpolitical officers loyal to him in the top positions of TNI, establishing a system of democratized

personal control (Croissant *et al.* 2013: Chapter 5). This would indicate that the degree of civilian control as a whole had a positive effect on the chances to institutionalize civilian control in this instant.

In summary, considering the content ProPatria had proposed for the National Security bill almost all actors except parliament and the Minister of Defense had a preference to narrow down the bill or drop it completely rather than pass it with regulations in place which would reduce their authority in relation to other actors. With regard to the theoretical expectations, there are some indications that the institutional interests at least of the police made it difficult for the government to find a unified position and consequently for civil society to push a broader National Security bill through (I₉) and that the military used their formal and informal control over the Department of Defense to affect the scope of the National Security Law where it would otherwise be in conflict with its institutional interests (I₈). ProPatria took into account the possibility of police and military resistance in their internal decision-making and realized that the wider regulatory scope meant more different institutional interests had to be reconciled before the bill could move on to parliament where the likely inclusion of several DPR commissions would then complicate the parliamentary process (I₃).

Choice and effectiveness of tactics

Initially, ProPatria again tried to sway the position of the government side with tactics of lower assertiveness levels, including manipulation and legislative subsidies. There are indications that the group believed they were no longer able to effectively coordinate a more assertive approach, at least before they managed to regain some of their connections to the human rights groups. Hari Prihatono summarized the problem when he said "we relied much on what Munir did. Now that he's dead, there is no Munir and we have nobody who even comes close to him." (ProPatria 19.09.2005: 67). Once it became clear that the police would be the main obstacle to reform, the also tried to approach Polri Headquarter to convince them to give up their resistance for the sake of a more clearly regulated security sector but failed to manipulate the position of their counterparts there. Afterwards an officer from police Headquarters stressed that there was not enough trust between police and military to get them to cooperate on the law (ProPatria 15.03.2007: 27). Without a more assertive approach to the police, the bill could not move on before inter-institutional relations were taken out of the bill. ProPatria apparently also felt they lacked the resources to convince enough members of parliament to accept their alternative bill directly. While Hari Prihatono initially reminded his colleagues that they should look for an open fight in parliament about the bill and be willing to be aggressive (ProPatria 19.09.2005: 31), the group never did.

Considering the difficult strategic environment, assertive strategies would have been necessary to force the government to move the bill forward against Police resistance in 2007 or to widen the scope of the bill in 2012. However, employing these strategies was

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impossible for ProPatria at this stage. First, Propatria lacked the financial resources and organizational capacity to coordinate a more assertive strategy at this point of the drafting process. Second, ProPatria could no longer rely on a relatively unified front of supporters for their position in civil society. The Working Group's focus on the government had always raised suspicion among more activist Civil Society Organizations focused on human rights (ProPatria 10.05.2005: 60). Even though ProPatria tried their best to counter this criticism that they had become a proxy for the government (ProPatria 15.06.2005: 40)⁷⁵ the group finally realized that establishing cooperation within civil society would be just as difficult as picking up the work with government and parliament (ProPatria 02.12.2009: 50). Consequently, the group had little choice to continue their interaction with the government and parliament without much hope to sway either decision-maker into broadening the scope of the bill.

Not only did the rest of civil society decline ProPatria's plea for cooperation, after 2007 they immediately began pursuing their own agenda with regard to the National Security bill. Scarpello writes,

"ProPatria's initiative was nominally on behalf of the IWG-SSR, yet some of the NGO's members were not fully on board. KontraS and Imparsial were uneasy with the arrangements and the roles of the security sector (mostly the military) in relation to the various degrees of threats to "state security", and feared that the bill could return extraordinary powers to security actors. (Scarpello 2014: 145).

Even before the human rights groups had finally decided to completely oppose the bill, organizations working on police reform had already appealed to the media to fight the national security bill. They claimed it would undermine the professionalism of the Indonesian Police by subordinating them to a ministry and thereby politicizing them. Increasingly, Imparsial and LBH also came out against draft, believing it would turn back the successes of SSR by bringing the military back into internal security (Anggoro 2008: 44). Once the other human rights groups were asked to take positions for or against the bill, they joined the assertive media strategy the police groups had started against the bill. When the public debate about the bills intensified, Yudhoyono decided to rather sit out his term without passing the contentious national security bill. Several sources stressed that electoral considerations might have played a role in this and the *Republika* weekly magazine quoted Cornelis Lay in 2007 as saying "President Susilo Bambang Yudhoyono deliberately hold up [sic!] the discussion on the national security bill because of its potential impact to destabilize election 2009 [sic!], possibly due to losing support of the National Police" (as quoted by Anggoro 2008: 47).

When the bill was brought back again in 2011 and 2012, these same organizations used their newly created alliance with mass organizations to again stage large demonstrations against the bill. Even though parliament continued negotiating the bill for some time, the public

⁷⁵ ProPatria was careful to refer to their own proposals merely as consultation documents and not drafts to avoid the impression that ProPatria was behind the government position (ProPatria 15.06.2005: 40).

reaction finally convinced six parliamentary groups to oppose the bill. They stressed that parliament was “thankful to the civil society groups that reminded us” that the bill was still too vague (Jakarta Post 05.10.2012). Finally, the government decided not to pursue the bill since the public campaign threatened to overshadow the beginning of the national election campaign for 2014.

Even though the lack of data for the National Security bill means that the analysis has to remain superficial, there are indications that most decision-makers behaved as would have been theoretically expected. With the government side not fully behind a National Security bill that would more closely regulate many of their prerogatives, the Police fundamentally opposed to its own subordination to a ministry and TNI at least unwilling to accept subordination should Polri remain autonomous, ProPatria’s unassertive tactics failed to achieve any substantial improvements to the bill or at least preclude the government from narrowing the bill down. While the assertive tactics of the broader civil society alliance might have been able to convince parliament to amend the draft to include these issues again and the government to accept those changes, civil society could not agree on any constructive common agenda. Those groups in favor of more institutionalization of civilian control lacked the resources to push for it in the face of latent military resistance and governmental indifference whereas those who still had the resources to mobilize for more assertive tactics preferred the status quo to an expansion of formal parliamentary and government authority over police and armed forces.

8.3 Conclusion

While the legislative process for the National Security law cannot be as easily traced as that of the Defense and TNI law in the two previous chapters, it still produced observations that support some of the hypotheses. The lack of definitive surviving drafts does not allow for a systematic evaluation of congruence between decision-maker interests, determinants of military resistance and civil society tactics on the one side and legislative outcomes on the other side, but the process analysis indicates that a combination of military resistance and the irreconcilable interests of civilian decision-makers meant ProPatria’s manipulation attempts were no assertive enough to push the law forwards (M_1 , M_2 , I_8 , I_9). Once the opposition of the police was overcome by narrowing down the bill that was introduced to parliament it no longer contained most of what ProPatria had demanded but the group had lost the capacity to successfully advocate for an expansion (C_2). Public opposition to the remaining regulations was now carried on by other Civil Society Organizations. When a prolonged pressure campaign against the bill began in 2011, parliament seemed willing to accommodate many of the criticisms the CSO alliance had leveled against the bill but as soon as several parties had signaled opposition to the current draft the government dropped its attempts to pass the bill before the election of 2014. Presumably, the changes parliament

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demanding meant passing the bill was no longer preferable to the status quo for the government.

During ProPatria's activities on the bill the group again valued early access to the government (I₇). Since ProPatria failed to access the drafting process directly, there are no directly observable instances of military resistance to reform leading to the Department's ultimate refusal to regulate military internal security missions more closely, but there are still some indications military resistance played a role (I₈). Even when they realized that they lacked the assertiveness to push the bill forward, they did not change targets to a more easily accessible decision-maker, which contradicts two theoretical expectations (I₄, I₁), but the group did attempt to access Polri Headquarter once they realized that the bill was held up there because of Polri's institutional interests and ProPatria also took into account the possibility that the military might veto the bill through the Department of Defense or informally influence it (I₂, I₃).

While ProPatria's personal connections again enabled the group to come into contact with Department of Defense through the Minister, this chapter also indicated that even a qualified and respected Minister of Defense was not willing to confront the military leadership without a strong mandate for reform from the president. In this and other issues, the National Security bill is symptomatic of civil society influence attempts on the institutionalization of civilian control after 2004. The following chapter presents a series of shorter case studies to confirm some of the empirical patterns and processes that have emerged so far.

9 Civil society influence on other laws

After the previous chapters have analyzed the legislative processes of three laws in depth, in this chapter I conduct shorter case studies of other laws for which Civil Society Organizations have formulated substantive demands that affected the institutionalization of civilian control. These case studies allow me to evaluate the extent of civil society influence across a broader range of policy topics. In addition, if empirical observations of the legislative process support the predictions derived in Chapter 3 this further strengthens confidence in the explanatory model.

In addition to the Law on State Defense (see Chapter 6), the Law on the National Armed Forces of Indonesia (see Chapter 7), and the National Security bill (see Chapter 8), civil society activists considered nine bills relevant for the state of military reform and/or civilian control in Indonesia that moved beyond a preliminary drafting stage. This includes bills on military assistance to the police and civilian governments, the state of emergency, an anti-terrorism bill, an intelligence bill, a military justice bill, a bill on the reserve component, a bill concerning the defense industry, a freedom of information bill and a bill on state secrecy.

9.1 *Bills on assistance tasks and the state of emergency*

Legislation touching upon military assistance tasks and the state of emergency is relevant from the perspective of civilian control for two reasons. The concept of civilian control necessitates first, that the state of emergency needs to be invoked by civilians who are free from military pressure and second, that the scope of military assistance tasks during emergencies is clearly enumerated, authorized by civilians and monitored by parliament. After Suharto stepped down, the existing legislation on the state of emergency law was widely considered undemocratic and in need of replacement. Under Government Regulation in Lieu of Law 23/1959 (*Peraturan Pemerintah Pengganti Undang-Undang, Perpu*) the government alone was able to invoke a state of emergency which gave the appointed emergency authority extreme leeway, including the ability to suspend laws or make new ones. Since military officers often took position as emergency authority, this gave the military significant autonomy and the ability to infringe on civilian core interests in crisis situations. Still, the initial attempt to pass a revision for the management of the state of emergency is actually the first time civil society mobilization stopped a bill touching on the security sector from becoming law.

Process

This bill, originally called the Safety and Security bill, had been drafted by the military leadership under ABRI Commander General Wiranto (Jakarta Post 27.06.2000) and was

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submitted to parliament in July 1999. When deliberations on the bill began in early September of the same year, CSOs immediately staged demonstrations against the bill which intensified in mid-September. Still, the law was quickly passed by the plenary on September 23. Following DPR approval of the bill, the street protests in Jakarta turned violent and at least one protestor was killed by security forces in an event now known as Tragedy of Semanggi II. On the day following this escalation a TNI spokesperson announced that the government would delay signing the bill (Kompas 26.01.2001). The bill lingered in this unsigned state for several months even though the DPR leadership asked the President to sign it in March and again in June. DPR wanted to keep the government from invoking the more hardline 1959 predecessor bill for dealing with unrest resulting from a fuel price hike and communal conflict in Maluku. Civil society activists – Munir among them – immediately criticized the move and said the government should not use either bill and rather revoke the existing 1959 legislation (Jakarta Post 23.03.2000; Jakarta Post 27.06.2000). The government failed to enlist support from these same experts for revising the existing bill after the DPR set president Wahid an ultimatum to finally pass the bill. Only then the government finally asked parliament to “forget” the bill. Even though the state of emergency bill was put on the legislative priority list for 2001 together with more than 100 other bills (Jakarta Post 03.02.2001) it was never introduced to parliament and dropped from the priority list by the following DPR leadership without consultation with Commission I (ProPatria 17.05.2005: 27).

Even though most sectors of civil society had resisted this hurriedly passed revision, CSOs like ProPatria still believed regulations for “exceptional” situations were needed: The existing laws at the time were all relatively unclear or not participatory enough, which came to the public’s attention when President Megawati used the 1959 law to extend military operations in Aceh several times without seeking parliamentary approval (ProPatria 03.03.2003: 18; Miller 2009: 116–118). During their planning for a National Security bill immediately following the passage of the TNI law, ProPatria intended to regulate the state of emergency in that bill and stressed it would be important to reiterate that the military could not autonomously mobilize for assistance tasks and would remain under the authority of the civilian institution requesting the assistance (ProPatria 21.12.2004: 8–9). Even during a state of emergency a request by the central government would be necessary to mobilize the military for these missions (ProPatria 05.04.2005: 62–63). Even though ProPatria activists thought a reform urgent, the group never managed to push DPR or the government to pass either piece of legislation. The national security bill never became the omnibus law for inter-institutional relations ProPatria had hoped for (see Chapter 8) and Defense Minister Juwono now argued for a “less is more” approach that would put off detailed procedures for either military assistance tasks or the state of emergency to a later date or even regulate them only at the level of government decrees (ProPatria 30.06.2005: 12).

When it became clear that the National Security bill would not overcome public resistance, regulations for both the state of emergency and military assistance tasks to the police made

a surprising comeback. Parliament had at first shunned the proposal (Jakarta Post 02.02.2011), but in April 2011 DPR's Legislative Body accepted a draft bill for deliberation as a parliamentary initiative which supposedly had been championed by the NGO coalition Peaceful Indonesia (*Indonesia Damai*)⁷⁶. The plan originally formulated for this Social Conflict Management Bill after the transition had focused on establishing an early warning system. The bill introduced to parliament focused on reaction to crises and its regulations on prevention and peaceful mediation were rudimentary and vague. The DPR leadership assigned the bill to a Special Commission consisting of DPR members mostly from Commission II (domestic affairs), but also included members from Commission III (legal affairs) and Commission I (defense, information and foreign affairs; Jakarta Post 07.04.2012).

After the parliamentary procedures were agreed on during the initial working group meeting in mid-September (DPR 14.09.2012), the Special Commission hosted a series of five hearings between September 21 and 29 during which mostly experts on social conflict were heard. Only during the first and second hearing some of the NGO activists working on military reform on other bills were invited, including Haris Azhar of KontraS and ProPatria's Hari Prihatono (DPR 21.09.2012, DPR 22.09.2012, 22.09.2012). The whole legislative process was concluded in a mere four months and it took only three Working Committee meetings to complete the part of the deliberations that was open to the public after the hearings were concluded. By November human rights monitor Imparsial had begun raising awareness about the bill and tried to warn the public the bill would make military involvement in local conflicts much easier and would result in impunity for using violence to settle conflicts since it promoted out-of-court settlement. Al Araf told the Jakarta Post: "I think we simply don't need this bill. Conflict management is crucial, but it can also be accomplished if the government has the political will to optimize the roles of existing institutions in handling conflicts," (Jakarta Post 18.11.2011). When the public next heard about the bill, there had already been a plenary vote. However, the bill had been sent back to committee for revisions. The articles neglected to regulate which institutions would be in charge if the military was deployed in their assistance function to quell social conflict. TB Hasanuddin of Commission I (PDI-P) criticized that these articles empowered the heads of local governments and province governors to directly request military assistance (Art. 34). In addition, the deployment was to be coordinated by military and police instead of their institutional superiors (Jakarta Post 04.04.2012). An *ad hoc* coalition of human rights and civil liberty groups around Imparsial tried to use this delay to underwrite Hasanuddin's criticism and demand additional changes. They criticized that the bill granted district heads the ability to invoke a local state of emergency without presidential approval in a regional

⁷⁶ The author could not confirm the newspaper report about this coalition. Several members of parliament and parliamentary staffers involved in the negotiations and contacted about the alliance do not recall any such input (Electronic communication with Aditya Bhatara Gunawan, former parliamentary staffer, on 19.09.2014). If the original draft was inspired by a proposal of a civil society alliance, as the Jakarta Post reports, this could potentially be a significant contribution to improving civilian control. However, since the author could procure neither the original NGO draft nor any information about the actual organizations included in the civil society alliance, any analysis including this episode would have to remain guess work.

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forum which reminded observers of the recently abolished local security councils, which included and were often dominated by the local military commander during the Suharto-era and early democratization (Jansen 2008: 441). Despite this setback, the Special Commission again worked very quickly and agreed to all changes demanded by the plenary in a single meeting (DPR 05.04.2012), restoring the Presidential prerogative to mobilize TNI with the approval of the DPR leadership so the bill was passed by the plenary less than a week after it had been turned down (Jakarta Post 12.04.2012).

Analysis

During the early phase of democratization civil society was still fully mobilized, albeit somewhat less institutionalized than after 2000, but at the time the Social Conflict Management Bill was introduced, capacity and coherence of civil society actors had been much reduced as demonstrated in the previous chapters, making it much more difficult for them to remain active in the legislative process and employ assertive tactics where necessary.

These strategies were necessary in 1999 since neither parliament nor the government side had been open or receptive to outside input for the bill. The bill had been drafted exclusively by the military leadership at a time when the Department of Defense was not yet civilianized. In addition, the DPR which passed it was not democratically elected and many of its members had been voted out of office by the time the discussion began⁷⁷. As a lame duck parliament, members were no longer motivated by their reelection chances, making even assertive attempts stop the bill extremely difficult. On the other hand, President Habibie could still hope to win another term and was vulnerable to the demonstrations that were staged when the bill was passed by DPR, especially after one of the demonstrators had been killed in Jakarta. Additional demonstrations all over Indonesia with more civilian victims must have convinced the President to delay signing the bill further, at least until after the indirect Presidential election on October 20. With Abdurrahman Wahid winning the Presidency and Megawati elected Vice President two critics of the bill were in a position to decide its fate. The second constitutional amendment which abolished the presidential pocket veto was only passed in August 2000, much after the bill had cleared DPR, so the bill did not automatically become law after 30 days even without the President's signature (Jakarta Post 18.10.2000). President Wahid therefore could still use this suspensive veto on this last bill in order to stop it from becoming law and avoid public pressure. When President Megawati came into office following Wahid's impeachment, she was faced with more violence in Aceh and a DPR unwilling to mobilize TNI against it (ProPatria 26.11.2002: 25–26). The 1959 law on the state of emergency allowed the President to unilaterally decide on and extend Aceh's status as an Area of Military Operations so she had little reason to restrict her freedom of movement in this area by introducing a law that

⁷⁷ After the parliamentary elections on June 7 the official results were released on September 1 and the new DPR did not convene until October 1.

would have itself drawn public criticism. ProPatria realized that the opposition in 1999 had actually perpetuated a status quo that was much more problematic for the status of civilian control than even the law then when the Working Group debated why Megawati had used law the repressive Law 23/1959 to establish Martial law in Aceh. Rizal Sukma asked: “Who the hell opposed the [Law on the State of Danger] back then?” and Cornelis Lay replied “All the *reformasi* forces did. I did not” (ProPatria 02.09.2003: 12).

During Yudhoyono’s first term, the Department of Defense under Juwono had also decided against passing a bill to in order to avoid both the public pressure and limiting the President’s existing prerogative. In addition, Effendi Choirie suspected that the military never pushed for regulations on Military Operations other than War and had actually not included these in their budget estimates because this would have left less money for procurement and personnel. Instead, after 2005 the military constantly asked for clarifications and expansions of the assistance tasks since the money for these operations would come from the civilian part of the budget (ProPatria 28.12.2006: 36). Indeed, the military frequently complained during ProPatria meetings that the police was too reluctant to request TNI’s assistance (ProPatria 14.04.2010: 25).

While the idea to regulate the division of labor between military and police more clearly at least in one area could mean an improvement for civilian control, the draft version of the Management of Social Conflict Law introduced to parliament actually would have reduced civilian control. Since the local executives are often still influenced by the local military officers, empowering them to decide on a local state of emergency could have increased military influence over the decision. In addition, trusting in “coordination” between military and police would have short-circuited the regular control path which includes the national government.

However, chances for civil society groups focused on establishing civilian control to influence this bill in parliament were slim for several reasons. First, the bill was deliberated by a Pansus so the groups could not rely on established contacts to Commission I members or the Commission Secretariat which had proved useful for staying up to date in the past (Al Araf 2013). Second, none of the few remaining established members of Commission I with a focus on civilian control like Effendi Choirie and few senior members of the Commission were included in the special committee. Consequently, apart from Hari Prihatono and maybe Haris Azhar those experts invited were not focused on civilian control in the first place. Third, and most importantly, the speed at which the bill progressed gave civil society little time to react. Several experts including Haris Azhar complained that they had only been given a few days advance notice before their hearing sessions, making a thorough analysis difficult (DPR 21.09.2012). Haris believed the participation of KontraS was not meant to give the organization any substantive influence over content of the bill but that it should rather provide a “fig leaf” for parliament. If the human rights groups were given a chance to comment, they could not complain afterwards that the discussions had been secretive (Azhar 2013). In addition, Haris Azhar and Al Araf later said they were surprised

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the bill was brought up to a plenary vote in such a short time, leaving them almost no time to react (Azhar 2013; Al Araf 2013).

When some opposition to the bill had begun to form, the public response was not enough to sway the Special Committee. Discussion about the bill had been restricted to English language newspapers which made it difficult to raise awareness for the bill. Eva Sundari, vice chair of the Pansus from PDI-P told the Jakarta Post “We could not accommodate [the coalition’s] aspirations because the process [in the Pansus] was already complete. We are awaiting responses from House factions to be presented at the plenary session” (Jakarta Post 07.04.2012). However, in a rare occurrence during plenary votes, existing connections to other parliamentarians with closer relations to civil society groups created enough resistance to force additional revisions before it could be passed (Al Araf 2013). Even though KontraS and Imparsial failed to stop the bill as they had intended, the new bill was already much improved: The president would have to agree to TNI assistance missions and seek DPR approval to mobilize the military.

One question remains: Why did the government agree to a bill which only limited what it could do compared to the 1959 emergency bill when parts of civil society even demanded they drop the bill? This question is especially important, seeing that this issue had prevented the government previously from tackling these issues. Some believe the President was looking for a way to avoid his responsibility for tackling horizontal conflicts. Government intervention in social conflicts made it necessary to pick sides and risk political capital which the President was usually keen to avoid (Al Araf 2013). Others see the passage of this bill as an expansion of Presidential prerogative inspired by World Bank and IMF pressure to improve the business climate in Indonesia (Reza 2013) or the Presidential Master Plan to Accelerate Economic Development (Azhar 2013). Consequently, rumors abound among the human rights activists that DPR members received money for agreeing to pass the bill, that the DPR leadership had picked subservient members for the special committee (Al Araf 2013) or that the government picked a title for the bill that did not sound like it was relevant for Security Sector Reform efforts (Anggoro 2013).

The legislative process for laws which touch upon military assistance tasks and the state of emergency again provides some support for the relationships identified in earlier case studies. First, CSOs could rely on a broadly networked alliance that was able to stage mass demonstrations that consistently succeeded in stopping legislation on the state of emergency (C₂). Strategies of lower assertiveness were not successful at changing or stopping the bills because they were in the interest of the civilian government as long as they expanded their authority relative to the existing bill of 1959 (I₉). In addition, the military had ceased its resistance against clearer regulations for assistance missions once they realized that they could rarely convince the police to involve them otherwise. Since civil society never managed to be involved during the early stages of drafting, they had to resort to stopping complete bills (I₂). The bill was finally passed once the process had been accelerated to such a degree that CSOs had no chance to influence either draft or

parliamentary deliberations in time because of the opaque parliamentary process (C.). However, in a rare event, the *ad hoc* civil society alliance gained access to parliament through personal contacts in the plenary and the mass demonstrations managed to sway enough members of parliament to send the bill back to committee. By using the veto potential of the plenary (I₂), the CSO alliance could not stop the bill but could convince enough parliamentary groups to force through enough improvements that the outcome can now be considered a success for civilian control (I6).

9.2 The Law on Fighting Terrorist Crime (UU 15/2003)

The plans for an Indonesian anti-terror law were meant to improve Indonesia's ability to deal with Islamic extremism and provide the military with a clearer legal basis for their involvement in this task and establish clearer rules for the relative authority of military and police. Since most Civil Society Organizations believed such a law unnecessary and the prospect of involving the military in any kind of internal security operations dangerous, their goal was to stop rather than amend this law.

Process

First preparations for the Anti-Terror bill began as early as 1999 but were not shared with the public at first (Jakarta Post 12.12.2001). After the September 11 terrorist attacks in the United States, Indonesia decided to expedite work on the bill and introduce it to parliament in June 2002 in order to improve relations with the US. However, a host of Islamic organizations and other Civil Society Organizations, including ProPatria came out against the bill.

Apart from criticism that the draft bill allowed the government to violate the rights of those suspected of terrorism and had an overly broad definition of terrorism that might include political dissent, the law was also meant to provide a clearer basis for possible involvement of TNI in anti-terror operations (Jakarta Post 27.09.2002) which many saw as a precursor to returning the military to its traditional expansive internal security role. Most human rights groups and ProPatria also agreed that the bill was essentially unnecessary: terrorism was already a criminal offence and should be prosecuted and punished according to established criminal law. This public outburst slowed down proceedings and it seemed that especially the Muslim parties would make use of their veto powers to slow the bill, supported by the Indonesian Vice President Hamzah Haz who had told the media he would actively oppose the bill because it was "anti-Muslim" (ProPatria 10.06.2002: 20). The NGO campaign gained speed and publicity in late September and early October 2002 with Munir (Jakarta Post 07.10.2002), Kusnanto Angoro, Riefqi Muna and KontraS joining the public critics of the bill (Jakarta Post 10.10.2002; 12.10.2002).

After the Bali Bombings of October 12 2002 the government felt it had to act. Within a week, President Megawati passed two Government Regulations in Lieu of Law (Perpu 1/2002; Perpu 2/2002) that were "carbon copies" of the draft bill held up in parliament (Jakarta

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Post 19.10.2002). The Perpus expanded the government's ability to establish *ad hoc* coordination agencies which included the military and made it possible to use intelligence reports, including those originating from TNI's intelligence services, as valid evidence in terrorism cases. Both expanded military influence over internal security, albeit not to the degree civil society had previously argued.

After the constitutional amendments Perpu had to be presented to parliament within one month of their enactment. Parliamentary rejection would invalidate them, parliamentary approval would turn them into normal laws. Still, for the time being Megawati had "short-circuited the legislative process" (Lindsey 2002: 1). Initially the government asked parliament to immediately resume their discussion of the original anti-terrorism bill, but when the discussion again slowed down President Megawati changed her mind and asked parliament to instead accept the government regulation into law which passed DPR and were signed into law as UU 15/2003 in March (Jakarta Post 07.03.2003).

Analysis

How does the process of passing the Anti-Terror Law fit with the theoretical model developed and refined with the previous chapters? ProPatria's financial and organizational capacity at the time was still excellent. However, there were no specific funds available from USAID or DFID to oppose this law that was – on the contrary – even considered an important contribution for the international war on terror by many western governments. Consequently, the money had to come out of a special tactical fund, ProPatria decided to create for these occasions, which came out of the honoraria of the working group members (ProPatria 10.06.2002: 1–2).

When the bill was introduced to parliament, members of the Working Group initially saw few indications that the bill would pass quickly since so many different governmental institutions had to be accommodated (ProPatria 08.07.2002: 2–7). Still, as it would bring an overall expansion of government authority, even for the police, there were no absolute losers on the government side, even though TNI was formally strengthened. Parliament at the time was relatively open to outside influence, especially since at least a few DPR members close to ProPatria had been chosen for the Special Commission deliberating the bill (DPR 2003: 68–71). When ProPatria and other NGOs launched their media campaign against the bill, they had decided to focus on turning the bill down as a whole not changing it.⁷⁸ However, the first large-scale act of Islamic terrorism in Indonesia changed the discourse about terrorism and with it the political environment for the bill.

The Working Group was still worried that the military could use the changes to the intelligence system contained in the bill to bring back the large-scale surveillance of the population during the New Order and remained skeptical about the effect the new coordination body would have on military autonomy. After the bombing, they initially

⁷⁸ Kusnanto Anggoro later said: „In the past we didn't touch the articles because we were opposed to the idea of an anti-terror law for a variety of reasons [...] but after Bali the situation is different" and Rizal Sukma agreed, "the problem is no longer whether to refuse or not refuse" (ProPatria 14.10.2002: 68).

decided to change their strategy and tried influencing the Perpu (ProPatria 14.10.2002: 68), but the speed with which it was passed made this impossible, leaving no time for either a modified public relations campaign or the demonstrations the group had pondered. Megawati now had to actively push for more regulation in order to stay ahead of criticism levelled against the security services in the wake of the bombing. This unified the government position very quickly. At first it looked like parliament would still move slowly with the bill after Megawati had asked them to continue their work rather than accept the Perpu into law. However, when she changed her mind the veto potential was suddenly reversed. Even though parliament still needed to pass the bill into law, turning it down required an explicit majority against it. Faced with the change in public perceptions about the terrorist threat and unwilling to stand on principle and force a roll call, the DPR factions decided to pass the bill rather than drop it.

ProPatria's attempt to influence, or rather stop the bill was a failure for civilian control because it guaranteed the military the ability to conduct their intelligence operations within Indonesia. The Working Group focused attention on parliament as the more accessible actor on this bill (I₁). The government was interested in expanding its capacity and flexibility to deal with terrorist threats and would be difficult to convince, especially since the military would also profit from the bill (I₃). Also, the group recognized that convincing enough parties to support the bill would likely be enough to stop it, considering DPR's consensus requirement (I₂). Indeed, parliament took up the criticism that the government was granted too much authority with the bill (I₀). Thanks to its alliance with other CSO, ProPatria was able to implement assertive tactics (C₂) which only failed once the government interest in passing the bill was elevated and parliament's willingness to oppose it reduced after the Bali bombings (M₁). The use of a government decree forced parliament to take a definite position and eliminated DPR's ability to slow down the bill. Since ProPatria had not tried to influence the content of the law before, improving it at this stage was difficult because of the time constraints and the status quo bias of indifferent decision-makers, but there are no definite indications of that.

9.3 *Intelligence Law*

The Intelligence Law was meant to establish a clear legal basis for an Indonesian civilian intelligence service and to create a coordinating agency in charge of the remaining services to improve their effectiveness and reduce friction between them. To do so, clear inter-institutional relations within intelligence agencies and other security actors and decision-makers were needed, much like for the National Security bill. The main goal for the from a perspective focused on civilian control was to subordinate the military intelligence services to a civilian coordination agency and to DoD in their daily operation and administration.

Process

Like many other bills, the State Intelligence Bill already had a relatively long history before it was finally enacted into law as UU 17/2011. As early as 2000 Defense Minister Mahfud had planned to reform the intelligence sector (Jakarta Post 29.12.2000). The earliest drafts were prepared by the civilian intelligence agency BIN in 2002 and 2003. Without a new intelligence bill, BIN's existence itself was precarious, based only on a series of presidential decrees and regulations. When parliament signaled the government they would not accept the fact that BIN was to be given the ability to arrest suspects and detain them proactively (ProPatria 17.03.2003:10) and vice president Hamzah Haz joined the ranks of the bill's critics (Jakarta Post 05.03.2003c) the government retracted its support.

This botched attempt made ProPatria think more systematically about their position on intelligence reform. The group quickly decided that from a civilian control perspective, the most important question would be the position of the TNI intelligence services Strategic Intelligence Body (Badan Intelijen Strategis, BAIS) and the individual service's combat intelligence branches. In addition, military intelligence services were to require special authorization to become active internally (ProPatria 29.04.2003: 23–24).

When the debate began again in 2005, the group quickly decided that BIN as the main civilian agency would become the center-piece of their model and should be put directly under the President (ProPatria 03.05.2005: 29), BAIS would have to be subordinated to the Department of Defense (Jemadu 01.08.2005). Andi Widjajanto founded the NGO Pacivis, based at the University of Indonesia in order to focus his attention on intelligence reform and built up the National Alliance Branch for the Democratization of Intelligence (*Simpul Aliansi Nasional untuk Demokratisasi Intelijen*, SANDI) which consisted of several other NGOs like Indonesian Corruption Watch (ICW), LBH Indonesia, KontraS, the Institute for Study and Popular Advocacy (*Lembaga Studi dan Advokasi Masyarakat*, ELSAM), the Institute for the Study of Free Information (*Institut Studi Arus Informasi*, ISAI), ProPatria, Ridep (Research Institute for Democracy and Peace), Imparsial and the Human Rights Working Group (HRWG). Together, these groups focused on raising awareness for the problems caused by the current intelligence system (Makaarim and Yunanto 2008: 52).

SANDI and Pacivis decided to approach the intelligence law differently than the SSR Working Group had done for the Defense and TNI Law. Andi Widjajanto explained to parliamentary staffers: "If ProPatria does something about a bill, we usually become truly ghosts. We become invisible so the ProPatria logo never appeared on the Defense Law, the TNI Law and neither on the Security Bill." For this bill it would have to be different, however, since there was no government institution already working on the bill (ProPatria 21.12.2005: 62). While the group would have accepted a BIN initiative, Pacivis decided to work with parliament and civil society first, then discuss the bill with the government side at the DPR hearings (ProPatria 14.12.2005: 305). Neither the government nor DPR ended up introducing their version of the bill, even though the internal discussion had been continued all through 2005 and 2006 to produce a "humane spy bill", as Defense Minister Juwono had

put it (Jakarta Post 12.09.2005). Observers believed the government was not yet comfortable to discuss the topic while the public campaign was still fresh on the public's mind and DPR could not move ahead since the bill had not been prioritized between government and DPR leadership (Jakarta Post 13.10.2006).

The bill returned only in 2010 as one of four security-related priority bills for that year, even though there had been repeated calls to pass the bill quickly whenever terrorist attacks hit Indonesia. The draft the government presented was very similar to a draft circulated in 2006. Even though there were no indication that the draft would bring a militarization of intelligence as some had feared, the military intelligence services remained attached to TNI Headquarter instead of the Department of Defense (ProPatria 30.03.2010: 60). Pacivis worked closely with Commission I and in the end the DPR leadership decided to accept Pacivis' bill as a parliamentary initiative, giving it precedence over the government bill (DPR 03.10.2011). The bill that was finally passed into law in October 2011 had been changed in several details to accommodate the government position (Scarpello 2014: 148). Pacivis had to drop their proposal to install a State Intelligence Coordination Agency (*Lembaga Koordinasi Intelijen Negara*, LKIN) but DPR would still be given explicit authority to supervise intelligence operations via a special intelligence commission. While the military intelligence services would be coordinated by BIN, the law was silent about their position relative to the Department of Defense.

Analysis

Pacivis borrowed part of its organizational model from the ProPatria Institute. Apart from Andi Widjajanto, its core group consists of students and academics without connections to other NGOs. Similar to the ProPatria Working Group, Pacivis created SANDI as a way to increase its capacity. The official alliance with other groups increased the group's capacity to conduct a media campaign, which proved strong enough to stop the government bill from proceeding and later provided research and arguments for DPR. Pacivis did not suffer from the same funding cuts that crippled many other NGOs. Among other donors, UNDP and Partnership for Governance Reform (Makaarim and Yunanto 2008: 55) provided the group with enough money to establish the SANDI network to coordinate civil society activity and lobby parliament effectively over an extended period of time.

The leadership of Commission I, Defense Minister Juwono and the head of BIN were initially supportive of the resulting working group because of the academic expertise they were able to deliver but more importantly because they already had close personal relationships with individual members of the working group (Makaarim and Yunanto 2008: 55). Even though Pacivis could, consequently, expect to find the government side receptive and willing to grant the group access, they decided to focus their efforts on parliament even if the government should decide to push their own draft after all (ProPatria 26.11.2005: 25). Otherwise, Andi Widjajanto had stressed, the group's input into the draft might be lost in

the bureaucratic part of intradepartmental drafting later on (Makaarim and Yunanto 2008: 56) as it had happened with some of ProPatria's proposals for the TNI Law.

In order to gain access to parliament, Pacivis began lobbying DPR to increase the chances they would accept an external draft as their own initiative during SANDI's media campaign against the original BIN drafts (Makaarim and Yunanto 2008: 55). Initially, these parallel attempts confirmed that stopping a bill was easier than inserting an alternative draft – even for this well-organized coalition – if the government side wanted the issue dropped. Thanks to the new parliamentary procedures adopted after the 2004 election Commission I could not hope to introduce the draft without approval from the DPR leadership which was unlikely to grant it if the bill was not part of the Prolegnas priority list for that year that had to be agreed between government and the parliamentary leadership.

When parliament finally managed to introduce the bill in 2010, its members had become less receptive to outside influence on average. Still, Pacivis correctly believed that a parliamentary initiative was more likely to be discussed by Commission I instead of a Special Commission which in turn increased their chances to influence the bill: they had well established contacts there and would have to worry about fewer veto players entering from other commissions (ProPatria 31.03.2010: 50). However, contrary to what they had previously hoped, SANDI was not granted access to the final parliamentary deliberations in the Working Committee and could, hence, not make sure that all their demands would be met (Scarpello 2014: 148). At was at this point that the plan to introduce an additional fully civilianized coordination agency above BIN was dropped.

At the time the bill was introduced, the government had grown more interested in finally passing the bill because the media usually connected internal security problems to the government's failure to reform the intelligence system. Parliament on the other hand, accepted those items from Pacivis' proposal which expanded their own oversight capacity and resisted government demands to grant BIN the ability to arrest suspects or wiretap without any oversight, worried about public resistance to these items (Jakarta Post 27.09.2011). In fact, several human rights groups had continued their pressure campaign against the bill as a whole, even though the civil society coalition had begun to erode. Where DPR had to worry about resistance from government actors – most importantly BIN – when it came to the introduction of LKIN and TNI because of BAIS' subordination to the Department of Defense, civil society pressure was not enough to affect the final law.

In summary, the process and limited success of the Intelligence Law supports several theoretical expectations. First, Pacivis and SANDI took advantage of the fact that parliament was now much more open to outside influence than the government side and provided more transparent access for them (I₁), nevertheless, the group remained in close contact with the government side to preclude a possible veto. Nevertheless the finished draft bill could not be introduced at first because the DPR leadership and the government declined put it on the legislative agenda. However, once the government introduced their bill and put it on the agenda, DPR could reintroduce their bill and give it precedence over the government version

(I₂). Throughout the process, Pacivis demonstrated awareness that institutional interests and military resistance would influence the government position and worried that their proposal would not be accepted by the government bureaucracy (I₃). Even though the group had successfully introduced their changes at an early stage (I₇), they did not gain access to the later negotiations and could not defend some of the issues (C₃). The final outcome is in line with the theoretical expectations. As official government representative BIN was expected to oppose the introduction of an independent monitoring agency, TNI was expected to oppose the subordination of the military intelligence services to BIN and DPR was expected to defend their oversight function against attempts to limit it (M₁, M₂).

9.4 Military Justice Bill

Unlike many of ProPatria's core demands, the need for military justice reform was recognized by all Indonesian CSOs working in the security sector. The most important goal of the reform was to implement an earlier MPR decision to subject soldiers and officers of the armed forces to civilian courts for crimes against the civilian criminal code and for crimes committed off-duty. So far, TNI used their control over judicial proceedings to keep proceedings secret and hand out mild sentences for officers found violating civilian laws or committing human rights violations.

Process

A reform of the military justice systems was among the earliest demands by Indonesian reform activists after the fall of Suharto. Marzuki Darusman, Head of Indonesia's National Human Rights Commission (*Komisi Nasional Hak Asasi Manusia*, Komnas HAM) and Attorney General under President Wahid demanded in 1999 that past abuses by military officers should be tried in non-military courts in general, but the initiative failed against military resistance. Wiranto as Coordinating Minister for Politics and Security reportedly said it was impossible to "apply new parameters to past violations (Jakarta Post 25.11.1999). A reform of the military tribunal system would have unequivocally improved civilian control over public policy and provide an important sanctioning mechanism against military infringements.

ProPatria's early plans for a reform of the military tribunal law were limited to realizing the mandate for civilian trials for civilian crimes from MPR decree VII/2000. During a meeting in August 2002, the group identified a revision of Article 9 in the original law UU 31/1997 as most important, which stated that everyone who was a member of the armed forces at the time of committing a crime would be judged by a military court. TNI Headquarter had solicited input from the group on their own draft bill and ProPatria obliged, even though several members worried that the bill might be an attempt to rewrite the military tribunal law so that it would be easier to avoid prosecution for crimes committed under Suharto or while off-duty (ProPatria 25.08.2002: 68).

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When this government initiative did not seem to move forward, DPR initiated a reform bill of their own in reaction to a number of scandals involving light sentences for crimes committed by soldiers while off-duty (Mietzner 2009: 310) and some prodding by human rights groups. From the beginning, parliament focused their efforts on implementing civilian jurisdiction over off-duty crimes. At the time, the military still confidently told the media that the military police would “remain in charge of investigations into military personnel alleged to have violated the Criminal Code for the next five years, citing the unreadiness of the police” (Jakarta Post 28.08.2004).

The process to revise the military tribunal law began in August 2005 and discussions initially focused on court jurisdiction. Defense Minister Juwono argued, that the jurisdictional mandate from MPR decree and TNI bill could only begin to take effect once a comprehensive reform of the military justice system had already taken place but not by simply revising Art. 9 of the Tribunal Law (Braun 2008: 182). This led to media reports that the government was planning to undo this important reform step that had seemingly already been agreed upon (Jakarta Post 20.03.2006). The minister argued the military was “psychologically unprepared” to fall under civilian jurisdiction (as quoted by Mietzner 2009: 310). However, he indicated that the government would agree to a grace period during which military courts would still be responsible, a concession he later retracted. When the media criticized the President as weak in the face of military opposition to the bill Justice minister Awaluddin told the public that the president supported the prosecution of military officers in civilian courts in November, but Juwono insists that military should not have to stand trial in civilian court (Braun 2008: 182). The gridlock was only broken after three months, when President Yudhoyono publicly supported the DPR proposal (Jakarta Post 10.04.2007). Even though this obstacle had finally been removed, the process idled for three more months. When it resumed after a group of soldiers had shot and killed several villagers over a land-dispute (Jakarta Post 05.06.2007), the government had rediscovered the investigation issue and argued that the military police (MP) should be in charge of collecting evidence and interrogating soldiers. Andreas Pareira, chair of the Pansus debating the bill, said parliamentary parties opposed this change (Jakarta Post 28.06.2007).

Again, the DPR majority and the Department of Defense could not resolve these new differences for more than a year. In October 2008, Andreas Pareira told the Jakarta Post: “The government insists that the arrest and investigation of military officers involved in crimes should remain under the authority of the military police, not the police, as recognized in the Criminal Code” (Jakarta Post 09.10.2008). The Defense Minister later accepted civilian prosecutors which seemed to sway most parliamentary parties. In late December the latest government proposal was only opposed by three parties, including PDI-P and PKB, and was believed likely to pass (Jakarta Post 31.12.2008). DPR proposed a five year transition period in February 2009 in a last ditch effort to pass the bill before the end of the legislative session (Jakarta Post 02.07.2009). However, DPR had problems reaching the quorum necessary for sending the bill to the plenary. Andreas Pareira said “Ahead of an

election period like now, our biggest challenge is meeting the quorum. While government representatives have turned up, we often have to wait long before all factions at the House are represented and the session can start". By then two more parliamentary groups had joined the parties who demanded fully civilianized investigation with a grace period (Jakarta Post 18.02.2009). In the end, DPR failed to pass the bill before the end of the legislative term and a reform bill is yet to be introduced again.

Analysis

Despite ProPatria's early discussions the revision of the Military Tribunal Bill never became a focus for the Working Group. The group believed the main work was done by carrying over the mandate to try off-duty crimes in civilian courts into the TNI bill. After that, LBH Indonesia and Imparsial were the most active organizations on this bill, together with several members of the University of Indonesia Law Faculty (Widjajanto 2007: 23).

However, ProPatria had quickly realized that reforming the military justice system would be difficult for the military because there were numerous cases of off-duty crimes and the military leadership did not seem willing to bring these out in the open but rather wanted to continue their previous system of secretive and lenient punishments in military courts. After TNI Headquarter had contacted ProPatria to get feedback for their initial draft, Munir warned the group not to be too open about their advocacy for fully civilian trials and investigation. When Edy Prasetyono proposed to just bluntly put the police responsibility in the bill, Munir replied "That means subtle language" and the group finally agreed to call for "regular criminal process" (ProPatria 08.09.2002: 37).

Thanks to the well-publicized nature of off-duty crimes against civilians, the relatively reform-minded DPR was easily convinced to take up the issue and proved open to input from the CSO that focused on the issue. Whenever the bill got stuck, these groups also talked to the media about recent criminal cases involving the military to keep up the pressure on the government. In contrast, neither TNI Headquarter nor the Department of Defense proved open to outside influence after their very early discussions with ProPatria. Whenever the discussions gridlocked the government used parliamentary proceedings to their advantage in the special committee (Braun 2008: 183) and only budged when public pressure became too intense. Asked about the gridlock situations in 2006 and 2007, Andreas Pareira stressed "The government was the problem. They no longer wanted to come to the meetings. They said 'We'll be there next week' but they never showed up" (Pareira 2013). Without the President's full support behind the reform, the Defense Minister seemed unwilling or unable to overcome military resistance to the bill and the President was only willing to intervene if his political standing was questioned in public.

While Pareira explicitly mentioned the important role Civil Society Organizations had played when DPR convinced the government to stop their resistance at least against civilian trials, he bitterly complained that the pressure was not constant enough to force DoD to accept police investigation as well. Talking about CSO activities he said, "a few months

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before the election all of a sudden, nobody did anything even though we had worked well and were close. The process lacked public pressure. I don't know... maybe they were afraid" (Pareira 2013). As he had told the media before, he believed the coming elections were the main reason that the Pansus failed to reach quorum during the last few months the bill was deliberated. However, he suspected there might have been ulterior motives behind the behavior of his colleagues: "I am not certain, but maybe some DPR members have been paid to remain absent" (ibid.).

In summary, the legislative process for the Military Justice bill provides additional empirical support for several implications of the theoretical argument even though CSOs did not initiate the bill. First, ProPatria realized that changing the bill would be very difficult because of military resistance (I₃). Second, once DPR started deliberations, they actively invited CSO participation unlike during most other legislative processes, making deliberations very accessible (I₁). However, this bill is the only one in which ProPatria or other NGO's did not have their own substantive proposals for changing the bill. Support from Civil Society Organizations for their position nevertheless allowed DPR to overcome government attempts to stall negotiations at several points (M₂), but CSO's inability or unwillingness to keep up the pressure later let the process fail (C₃). Even though the president had publicly supported the bill, TNI was still able to use their formal and informal access through the Department of Defense to stop the bill and Juwono Sudarsono implies that legislator's might have been paid by the military might be correct, as Andreas Parreira suspected (I₈): Asked about the final fate of the bill Juwono said he blamed "the psychology of the military" and that "laws only get passed by parliament if legislators get paid" (Sudarsono 2013).

9.5 Bills concerning defense resources

The Bill on the Reserve Component and the Law on the Defense Industry both concern the management of defense resources and fall within military organization. The key question for civilian control in these laws is whether they allow civilians to keep control over the use and training of the reserve component as well as the purchase of military hardware as well as the development of the defense industry.

Process

The idea for a reserve component is rooted in the Indonesian military's guerilla tradition. It was meant to carry over from the New Order and institutionalize ABRI's control over training and arming citizen militias in the form of a "trained people" (*rakyat terlatih*, Ratih). A draft law on Ratih had been developed at the military Headquarter since the mid-1990s and handed to parliament in a last ditch effort to pass the bill before the new democratically elected DPR came into office in 1999 together with the Bill on the State of Emergency. However, DPR never actually began deliberations on this bill, so the draft was dropped when the new DPR came into office.

After the defense bill had been passed and work on the TNI law began, several military members mentioned that the TNI Commander should be in charge of regulating the reserve component rather than regulating the details for the reserve component the law mentioned in the form of a separate bill, (ProPatria 21.01.2003: 148). When ProPatria opposed this idea, TNI Headquarter developed a first unofficial draft for an individual reserve component law that was given to ProPatria to conduct a critical study (ProPatria 29.04.2003).

Two issues dominated the discussion. First, several members of ProPatria contested the idea that a reserve component or compulsory military service was necessary, considering Indonesia's strategic environment: it seemed highly unlikely that the country would be involved in an international armed conflict in the coming years and the legal framework for compulsory military service had "existed for 15 years and has never been used by the military" (ProPatria 14.03.2003: 22). This brought a second issue into focus: If the reserve component was not truly necessary for conducting an international war, the question was whether the government should be able to use it in an internal conflict (ibid.). Despite the military's initial enthusiasm for passing a reserve component bill, the public reaction to compulsory military service always kept it from being realized. Whenever the bill was mentioned in the media, civil society groups or academic experts quickly published opinion pieces criticizing the idea of a reserve component, followed by demonstrations, followed by a postponement of the bill. The cycle first played out in 2007 when the military introduced a draft bill to parliament. Rizal Sukma published an op-ed in the Jakarta Post saying "It's been a while since we've heard about the government's plan to introduce obligatory military service for citizens aged between 18 and 45 when required. [...] This renewed move by the Defense Department needs our full attention". He went on to warn the public about the bill's implications for civil-military relations and Indonesian politics in general. He worried the bill might be abused to silence government critics by subjecting them to the military while conducting compulsory military training (Sukma 06.11.2007). This piece was followed by massive public protests, resulting in growing opposition in the DPR. Finally, several members of parliament stressed that the bill was not urgent and wondered why the government insisted on pushing the bill (Jakarta Post 21.11.2007) and the draft disappeared until the end of the legislative period. The cycle repeated when the government prioritized the bill for deliberations in 2010. Initial reports that the house was willing to move along with the draft (Jakarta Post 12.01.2010) were followed by protests when deliberations were slated to begin.⁷⁹ Again, "legislators and activists [...] suggested the Defense Department delay a proposal to deliberate a draft bill that would create a national reserve army because it is unlikely that Indonesia will have to fight a war anytime soon" (Jakarta Post 21.05.2010)⁸⁰. Human Rights activists also criticized the draft because it did not provide for conscientious objection (Al Araf 2010) and Hari Prihatono worried that the government

⁷⁹ Even in 2010 the government had not provided a formal draft yet and the drafts out of the Department of Defense were still preliminary (ProPatria 14.04.2010).

⁸⁰ ProPatria tried to avoid this line of argument. Fajrul Falakh stressed in an internal meeting, that even though the group did no longer believe the reserve component was really necessary, ProPatria could now hardly oppose it since their draft laws included it at the beginning of the reform process (ProPatria 30.03.2010: 46).

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lacked the “economic and political capacity to support and maintain such an army”. Without a civilian management system to avoid abuses, “a third party” could benefit (Jakarta Post 16.08.2010). Again deliberations were delayed. The issue returned for a last attempt to pass the bill before the end of the 2009-2014 legislative term. Even though the service terms had been watered down considerably, most NGOs reiterate their earlier positions (Jakarta Post 03.06.2013; Jakarta Post 11.06.2013). Only Andi Widjajanto seemed in favor of passing the bill. He argued that the reserve component was necessary for Indonesia’s defense and that the number of citizens actually conscripted would neither diminish the workforce nor present an undue burden for those called upon to serve (Jakarta Post 03.06.2013). Again, the resulting public protests were enough to delay the bill until the end of the parliamentary term.

The government had more success passing the Defense Industry bill, a second piece of legislation meant to regulate defense resources. The earliest plans to develop Indonesia’s defense industry were developed in 2005. Before that time, procurement decisions had only made headlines because of the markup scandals they often caused. Still, the bill limbered until 2009 when the President declared the issue one of the 15 programs he would begin tackling within the first 100 days of the term (Jakarta Post 09.11.2009). In order to reduce Indonesia’s dependence on armament imports, which had crippled TNI’s material capacity in the 1990s following US arms embargoes, domestic production was to be boosted. This plan had implications for civilian control since it would increase the transparency of procurement decisions and provide shortcuts for domestic arms purchases by avoiding open tenders, prone to price increases from markup deals (Jakarta Post 21.12.2009). The move was also meant to limit the military’s ability to bypass the Department of Defense with smaller procurement projects (cf. Mietzner 2009: 325–326). After initial hearings at the Defense Department, the government prepared a draft bill (Jakarta Post 03.06.2010) that was introduced to parliament in October 2011. Even though some legislators believed the bill might face resistance from TNI officers who were able to take advantage from the previous import scheme that left more room for markups and some observers criticized DPR for “silently” deliberating “less urgent bills” like the defense industry bill instead of, e.g. the military tribunal bill, the bill passed without problems in October 2012 (Jakarta Post 05.10.2011).

Analysis

Even though the aspects of the Reserve Component bill touching civilian control, i.e. the question who would be in charge of training, administering and mobilizing the reserve component, never played an important role in the public discussion and despite the fact that civil society almost completely abstained from working on the Law on the Defense Industry, both processes help to underscore the mechanisms behind successful civil society influence on the institutionalization of civilian control.

Most importantly, the divisive topic on the one hand and the extremely technical content of the other bill overshadowed the bill's relevance for civilian control completely and largely determined civil society's ability and willingness to mobilize. While ProPatria began its work on the reserve component when its institutional capacity was at its peak, it had been much reduced by the time the Defense Department began to think about more specific regulations. Still, the establishment of compulsory military service was so relevant for the wider public that staging protests against the bill was very easy, even for a weakened and divided civil society (Al Araf 2010; Azhar 2013). Even when the government improved the bill, few defense experts supported the revisions. On the other hand, most activists never realized that the defense industry bill provided an important opening to improve control over procurement decisions, a topic which would have made mobilization for more assertive tactics extremely difficult to begin with (Anggoro 2013; Prihatono 2013).

Again, following the changes in the leadership of the Department of Defense, civil society activists gained very limited access to the initial drafting procedures of both bills. DPR also conformed to the established pattern: Whereas in 2008 civil society contacts to a more reformist DPR were still working well enough to immediately send the draft back to the government, the less reform-oriented DPR first accepted the bill for discussion in 2010 but then silently shelved it rather than publicly drop it when demonstrations began anew.

Institutionally, the government seemed little inclined to push for the reserve component bill. It provided civilians with no additional authority or resources they valued in exchange for the heavy burden it would put on the national budget. Consequently, the government was not swayed by TNI's attempts to have it finally passed in the face of demonstrations. In contrast, President Yudhoyono had publicly made the military industry bill his priority in order to streamline the procurement process. Even though the public discussion was very limited and framed mainly in terms of ideas about national self-reliance (Anggoro 2013), the government needed no additional pressure to involve a select group of defense experts in the drafting. Among other things, they provided advice on improving those sections of the bill that concerned procurement decisions. In line with both DPR's and the government's institutional self-interest, the bill left the government with more control over procurement decisions and gave DPR an explicit mandate to supervise the government.

These two bills provide evidence that, whereas exceedingly technical issues only provide openings for civil society if the government actively invites it, issues more relevant for the wider public allow CSO to create enough pressure to drop proposals even if neither parliament nor the government are much inclined to invite participation. However, even the massive pressure that stopped the reserve component bill from advancing so far has not been sufficient to force the government or DPR to revise the Defense or TNI law which first instituted the idea. The Reserve Component bill indicates that the military tried to exert informal pressure on the government to introduce the bill (I₈). However, the assertiveness civil society brought to bear on this topic overshadows all other factors. For this bill, mobilization was apparently very easy and most Civil Society Organizations agreed it was

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unnecessary and would impose large costs on individuals (C₂). The Defense Industry bill, on the other hand shows that the government actively invited criticism, making access very easy for a select group of experts (I₁). There are indications that the government was very interested in passing the bill (I₉). This meant that unassertive tactics were enough to sway the government to ignore possible military resistance to a streamlined procurement procedure and improve the bill considerably before it even entered parliament (M₁, M₂). An indifferent DPR did not affect the basic substance of the bill after introduction (I₅).

9.6 Freedom of Public Information and State Secrecy Law

This section will look at both the Freedom of Public Information Law and the bill on State Secrecy since they are two sides of the same coin. While the Freedom of Information Law requires government to share information with the public upon request, a secrecy law keeps certain information completely off limits to the public and even criminalizes sharing it with the public. Again, plans for both bills go back some time.

Process

A first draft for a secrecy bill was developed under Suharto in 1994 but never finished and the freedom of information act is a result of the democratization reform drive. When Suharto left office, Indonesia had a very restrictive system of public information. The Law on National Archives (UU 7/1971) not only designated the government keeper of all information but also established a prison sentence of up to 20 years for leaking state secrets and simultaneously gave government agencies, including TNI, the power to freely classify material without any detailed regulation in place (Jakarta Post 01.04.2000). Both laws were first discussed in public extensively in 2001. A newly established Coalition for Freedom of Information which consisted of a large number of NGOs immediately criticized the government draft for a secrecy bill for its overly broad definition of state secrets and the large number of government officials who would be able to classify without any oversight (Jakarta Post 25.08.2001).

After DPR officially introduced the Freedom of Information bill, the government quickly introduced their draft of a State Secrecy bill to counter the parliamentary initiative while public criticism of their attempts to limit access to government information continued (Jakarta Post 07.06.2002). Commission I and most civil society activists wanted to first pass the Information bill or integrate both bills to make government as transparent as possible. The government preferred to first pass the secrecy bill. Both drafts were finally shelved after the differences of both sides proved irreconcilable (Jakarta Post 21.04.2003; Braun 2008: 184).

When parliament decided to bring back the information act in 2005 and deliberations for it began in 2006 the process played out the same way. The Yudhoyono government appointed the Ministers of Information and Human Rights as government representatives for the

Information bill but again wanted to regulate secrecy first in order to avoid the release of sensitive information. For their Secrecy Bill, the government appointed the Ministers of Defense and Human Rights as representatives (Jakarta Post 08.03.2006). Again civil society worried the government would only use the bill to make secrecy the rule and openness the exception (Jakarta Post 27.06.2006).

Despite government resistance, DPR managed to continue deliberating their draft and finally, with the help of a constant barrage of media reports on the merits of transparency, overcame government resistance to the last issue under contention. The passage of the bill in April is largely lauded as a success for Civil Society Organizations (Sukma 2012; Scarpello 2014; Makaanim and Yunanto 2008).

Civil Society Organizations were now split over the fate of the government-sponsored Secrecy Bill. While most organizations opposed the plan to pass it, more moderate ones recognized that Indonesia would still need clearer secrecy regulations: The information bill contained exceptions for many issues pertaining to military matters in Art. 17c (UU 17/2008), so the successful conclusion of the transparency initiative meant little without a bill on state secrets that limited the ease with which government and military could classify information and declare it off-limits to the public. Without a proper bill, Andi Widjajanto feared, "the government could simply define all information as confidential and prevent any public access to it" (Jakarta Post 08.05.2009).

Even though human rights groups and the media urged president Yudhoyono to drop the secrecy bill throughout 2009, parliament had decided to continue their deliberations and revise the government draft. By September, government and DPR had resolved 200 contentious issues and it seemed the bill could finally be passed. Both sides aimed at forwarding the bill to the plenary by the end of the month (Jakarta Post 12.09.2009). Then, to the DPR's surprise, the government seemed to buckle under the public pressure campaign after all. Defense Minister Juwono announced that the government would withdraw the bill from deliberation. While many human rights groups celebrated this as a victory, the bill's moderate critics in civil society, ProPatria among them, announced they would be working on a more "humane" version of the bill and Juwono said the organizations would be consulted for an eventual revision. When the government reintroduced a draft in 2011, however, this time had not resulted in significant changes. The CSO coalition still criticized the bill for being overly broad (Jakarta Post 03.03.2011) and the government again silently shelved it.

Analysis

Even though ProPatria was active on this bill, it did not become a priority until it was included in the scope of the group's focus group discussions in 2010. Both the Freedom of Information Law and the Bill on State Secrecy had implications for civilian control by determining the ease with which civilians outside the military could monitor TNI activity in Internal Security, External Defense but also their procurement decisions. While most NGOs

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focused on the Freedom of Information bill in the hope of making government as transparent as possible, ProPatria and a few other organizations recognized that Indonesia would also need the secrecy bill in order to regulate the process of classification more clearly and restrict the extent of state secrets (ProPatria 04.04.2002: 1).

A strict secrecy bill could make it impossible for almost any information about the military to be publicly shared (ProPatria 07.09.2006: 57). The initial government draft left the burden of punishment fall on those who published secret information they obtained rather on those who caused the information leak in the first place. While most CSOs agreed that some defense issues could be exempt from the Freedom of Information Law they also believed that most information about defense and security should be available to the public “to ensure civilian supremacy”, as Hari Prihatono told the Jakarta Post (Jakarta Post 09.08.2007). So even though a secrecy bill that gave government and military broad authority to classify information would have been harmful for civilian control, the current state allowed both the government and military to classify excessively in any case.

While the initial deliberations on the bill in 2003 happened at the height of civil society capacity and unity, the later deliberations were shadowed by a general decline in financial resources and overall unity in civil society which showed especially in the differing attitudes towards the State Secrecy bill. The Coalition for Freedom of Information made up of 42 different CSOs which advocated the adoption of the Freedom of Information Law included most civil society heavyweights like ELSAM, LBH Indonesia, KontraS, Imparsial, Indonesian Corruption Watch (ICW), the Alliance of Independent Journalists (AJI), ProPatria and was coordinated and led by Mas Ahmad Santosa of the Indonesian Center for Environmental Law (ICEL). Unlike most other coalitions discussed so far with the exception of SANDI, this once was meant to push for the adoption of a bill, not against a bill or certain regulations in it.

The coalition remained in an outsider role without regular access to parliament in 2003 but many more accessible members of the 2005-2009 Commission I regularly consulted the coalition on the content of the bill and seemed willing to listen. Theo Sambuaga (Golkar), chair of the committee debating the bill was a frequent guest at ProPatria events and together with Andreas Pareira (PDI-P) remained in close contact with the group about the secrecy bill (ProPatria 28.11.2006: 6–7; ProPatria 20.03.2007: 1). The CSO coalition met with their parliamentary counterparts so often, that they considered themselves their “shadow expert staff” (Makaarim and Yunanto 2008: 67).

While Commission I was in charge of deliberating both bills from the parliamentary side, the government representatives were different for each bill. In general, the structural environment for the Information bill was more admissive, even though Commission I member Djoko Susilo had initially worried that the large number of government departments within the scope of the bill would make negotiations difficult (ProPatria 29.11.12.2002: 20). The Minister of Information Sofyan Djalil and presidential spokesperson Andi Mallarangeng publicly supported the initiative (Scarpello 2014: 149)

and the civil society coalition also received institutional support from several other government institutions, including the National Audit Agency (BPK), Komnas HAM and the National Cryptography Body (Lembaga Sandi Negara, LSN; Makaanim and Yunanto 2008: 67). As with the other bills during the 2005-2009 period, the Department of Defense remained more cautious and less open for outside input. Consequently, Kusananto Anggoro complained in 2007 that the government had not hosted any public discussion of the secrecy bill so far (ProPatria 16.02.2007: 15–16).

Looking at the institutional interests of the players involved for this bill is relatively straightforward. While parliament in general preferred more openness in order to improve their ability to monitor government activity the government generally preferred more secrecy and less transparency as long as the secrecy would not be used by one government institution against the other. Consequently, the freedom of information act was only passed when the government had secured relatively wide exceptions. In turn, the government, through the Department of Defense, stopped deliberations for the secrecy bill only when parliament had managed to liberalize the secrecy bill to a point where the status quo was preferable to the revised bill. This led a DPR member from Golkar to conclude “I believe the only reason the government withdrew the bill is because it is unhappy with the current version of the bill. We improved this bill to be very democratic and completely different from the original draft that was very repressive” (Jakarta Post 16.09.2009).

Considering this environment, civil society tactics showed many of the same strengths and weaknesses as before. The constructive engagement with parliament found most members receptive since the Freedom of Information bill was in line with their institutional interests, resulting in a productive cooperation. Where parts of the government side tried to use their veto to slow down the bill the coalition acted coherently and managed to use more assertive tactics, including demonstrations and media campaigns to push the bill forward. Finally, this convinced the government to let the bill pass when parliament and many NGOs seemed willing to accept relatively wide exceptions for defense and security that helped soothe the military.

After the Information bill was passed, the rifts between the expert and human rights groups became more apparent during the debate about the secrecy bill. Initially, the wide organized opposition by human rights groups to the bill made it easier for parliament to block the government draft long enough to force the Department of Defense to liberalize it. In the end, the draft was an improvement over the current situation (ProPatria 07.07.2010: 33) but protests against the draft continued. Andreas Pareira complained “at the end we were almost done with the law but civil society only ever said: ‘No, we don't want this law’ (Pareira 2013). Even though civil society and parliament, hence, managed to avoid the strict secrecy law the government had aimed for, they failed to reduce the autonomy government institutions – including the military – enjoyed under the existing Law on National Archives. In summary, these legislative processes again support many of the earlier findings. First, the coalition to push for this bill was built for the purpose of compensating the different

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weakness and pool resources for an assertive campaign for the bill and tried to keep a close connection to the media (I₄). DPR was receptive to the idea of the Freedom of Information law (I₁) and readily accepted the draft that was in parliament's interest without need for pressure (I₉, M₁). While the introduction of the law would have violated military interests, the law could pass once the government had secured exceptions for military and defense issues (M₂, I₈). For the secrecy law moderate Civil Society Organizations were severely restricted in their use of more assertive tactics (C₂) so they could not keep the government from retracting the bill once it had been liberalized so much it was no longer in the government's interest to pass it (I₉), especially since human rights groups continually staged protests against the bill, not realizing the status quo was still worse than the current draft.

9.7 Conclusion

This survey of other regulations CSOs considered part of the larger agenda for military reform supports many of the patterns identified earlier. An overview of the changes demanded for these laws, the expected civilian and military interests as well as civilian tactics employed to underline the CSO demands largely conforms with theoretical expectations (see Table 9.1, p.210; Table 9.2, p.212). In cases where both the government and the military were disinterested in complying with the civil society demand it took very assertive tactics to change their behavior. If CSOs could not muster that support because organizations could not agree on a specific goal, the influence attempt failed, as in the case of the secrecy law amendments. In most cases of successful civil society influence the employed tactic was either significantly more assertive than would have been theoretically necessary, including opposition to the Reserve Component bill or the original law on the State of Emergency in 1999 or the final content of the law had been amended to a point where civilian and military interests were no longer in conflict with the civil society demand to pass a piece of legislation as with the Freedom of Information act or the Management of Social Conflict Law. There are only two cases where government behavior was not in line with expectations. First, the government agreed to civilianize court proceedings against military officers charged with civilian crimes even though military resistance should have precluded them from doing so. However, since the government held up the bill with resistance to other regulations it is unclear whether the government side would have gone through with this decision had the bill been scheduled to move out of committee. Second, the government agreed to grant DPR explicit oversight of intelligence affairs in the Intelligence Law. As with the extension of DPR oversight over defense and military affairs included in the Defense Bill, the government would have been expected to oppose this relative increase in the authority of an opposing branch of government.

The behavior of DPR is also largely in accordance with expectations even though there are more instances of unexpected behavior. First, parliament would have been expected to decline the demand to centralize control over civilian decisions to involve the military in assistance missions, however, in exchange for this concession the government entered an

additional regulation that involved DPR in the decision to use force at this level as well. Second, DPR would have been expected to turn down the government's Perpu on Fighting Terrorist Crime because it granted the government additional prerogatives. However, after the Bali Bombings, civil society opposition to the bill had significantly decreased and the formal character of the bill called for a clear decision by parliament and eliminated the possibility to draw out deliberations until the process failed. Third and fourth, parliament would have been expected to accept the civil society request to drop the state secrecy bill and indifferent to the request to amend it. The empirical record shows that parliament would have liked to continue deliberations on the bill. In this case, the individual drive by reformist members of the Working Committee seems to have been enough to overcome the indifference of other members of parliament. However, the government managed to run out the clock and the bill could not be passed before DPR's term ended.

Overall, the congruence between theoretically expected and actual empirical results of CSO demands is still satisfactory. In addition, most legislative processes have produced at least empirical indications that support the postulated processes for CSO decision-making, decision-maker behavior and military interests and resistance activities. First, Civil Society Organizations seem to have taken into account the relative accessibility of government and parliament in their avenue of approach (I₁). During several laws parliament took a more active role in the drafting stage and purpose-build civil society alliances in two cases placed drafts in parliament successfully. In the case of the Intelligence Law this precluded the government from establishing their own draft as the basis for parliamentary deliberations, in the other it resulted in the passage of the Freedom of Information Law. The government had previously declined to pass it before the State Secrecy Law was completed. Second, civil society used their personal connections to members of parliament in the plenary to convince them to veto the unamended passage of the Management of Social Conflict bill, which was then significantly revised in Committee. In most cases, however, civil society groups failed to access or even approach the government to preclude government vetoes against amended legislation (I₂). In most legislative processes where information about civil society strategy planning is available, there are indications that the organizations realized the potential for military resistance and the role of civilian interests. This includes military resistance for the Law on Fighting Terrorist Crime and the Military Justice bill as well as government opposition to amending the Intelligence bill (I₃). In case of the Intelligence bill, Pacivis and SANDI preferred the costs of introducing their own alternative draft to parliament to trying to amend the existing government draft (I₇). At least for the Military Justice bill there are strong indications that the military used their informal influence over the Department of Defense to convince the Minister to oppose the establishment of civilian jurisdiction over crimes committed by military officers even though the president had publicly supported this move and later at least signs that TNI also used informal influence over some members of parliament to delay the bill's passage long enough for it to fail (I₈). Finally, the Intelligence Law and the Law on State Secrecy strongly suggest that the government position on the bill

Table 9.1: Other laws; Expectations on CSO demands and government position

Law: Demand	Civilian Interest	Military Interest	CSO Tactic	Expected Attitude	Expected Behavior	Actual Behavior	Supported
State of Danger: Drop	-	Core	Actual Sanction	In favor	Accept	Accept	Yes
Management of Social Conflict: Drop	Branch (-)	Core, Informal	Sanction Threat	Indifferent	Decline	Decline	Yes
Management of Social Conflict: Centralize control	Branch	Informal	Sanction Threat	In favor	Accept	Accept	Yes
Fighting terrorist crime: Drop	Branch (-)	Core	Sanction threat	Opposed	Decline	Decline	Yes
Intelligence: Subordinate	Institutional	Core, Formal, Informal	-	Opposed	Decline	Decline	Yes
Military Intelligence to DoD	Branch (-)	-	-	Opposed	Decline	Decline	Yes
Intelligence: Independent	Institutional (-)	-	-	Opposed	Decline	Decline	Yes
Monitoring Agency	Branch (-)	-	-	Opposed	Decline	Accept	No
Intelligence: Explicit DPR Oversight	Institutional (-)	-	-	Opposed	Decline	Decline	(No)
Military Justice: Civilian Courts	Core	Core, Formal, Informal	Manipulation	Opposed	Decline	(Accept)	(No)
Military Justice: Civilian Police	Core	Core, Formal, Informal	Manipulation	Opposed	Decline	Decline	Yes
Reserve Component: Drop	-	Core	Actual Sanction	In Favor	Accept	Accept	Yes
Military Industry: Civilianize	Branch, Institutional	Core, Informal	Legislative Subsidy	In Favor	Accept	Accept	Yes
Freedom of Information: Adopt unamended	Branch (-)	Core, Formal, Informal	Sanction Threat	Opposed	Decline	Decline	Yes
Freedom of Information: Adopt with exceptions	Branch (-)	-	Sanction Threat	In Favor	Accept	Accept	Yes
State Secrecy: Drop	Branch, Institutional	-	Actual Sanction	In Favor	Accept	Accept	Yes
State Secrecy: Amend	Branch (-) Institutional (-)	Core, Formal, Informal	Manipulation	Opposed	Decline	Decline	Yes

Source: Author's compilation

was determined by institutional interests. BIN's participation precluded the introduction of an independent monitoring agency and the government only changed its position on the State Secrecy bill once the amendment process had made it less attractive than the alternative of keeping the relatively unregulated status quo.

Together, implications and congruence indicate that civil society failed to exert influence in the first place or defend prior achievements during later stages if they did not gain or seek access to the decision-making process. Failure to access decision-making altogether meant civil society only learned about the Law on the Management of Social Conflict almost too late for substantial influence, that prior advances were lost during the Intelligence Law deliberations in parliament and the final stages of the Military Justice bill (C₁, C₃). Where the more moderate civil society groups were split over issues, they failed to muster the resources to implement tactics assertive enough to force decision-makers to accept amendments rather than drop the law, as in the case of the State Secrecy bill (C₂).

In addition to the theoretically expected factors and processes, the case studies have also underlined or introduced the role additional factors have played for civil society success. First, in the absence of a strong presidential mandate for reform, even a qualified and respected Minister of Defense had problems to overcome the informal resistance TNI exerted through his Department. Second, the Law on Fighting Terrorism and the Law on the Management of Social Conflict indicate that direct international pressure on the government to pass legislation can sometimes be an impediment to civil society access to the decision-making process or at least their ability to influence the outcome substantively. Finally, the broader civil society was not interested or willing to influence highly technical issues regulated in the Defense Industry Law, but very willing to stage massive protests against the Reserve Component Law even though it did not seem necessary to employ such assertive tactics at the time. This indicates that the ease to mobilize supporters might be an additional consideration Civil Society Organizations take into account when deciding on the tactics they employ or whether they try to influence legislation altogether.

After this chapter has presented the final empirical results, the following concluding chapter will summarize the results of this study, draw conclusions for the explanatory power of the model for the Indonesian context, identify the study's limitations and propose avenues for future research to evaluate which empirical results are indicative of causal relationships going beyond the context of Indonesian civil military relations and potentially civil society influence on other policy fields within Indonesia.

Table 9.2: Other laws; CSO demands and DPR position

Law: Demand	Civilian Interest	Military Interest	CSO Tactic	Expected Attitude	Expected Behavior	Actual Behavior	Supported
Management of Social Conflict: Drop	Branch (-)	Core, Informal	Sanction Threat	Indifferent	Decline	Decline	Yes
Management of Social Conflict: Centralize control	Branch	Core	Sanction Threat	Indifferent	Decline	Accept	No
Fighting terrorist crime: Drop	Branch	Core	Sanction threat	In favor	Accept	Decline	No
Intelligence: Subordinate Military Intelligence to DoD	-	Core, Formal, Informal	Legislative Subsidy	Indifferent	Decline	Decline	Yes
Intelligence: Independent Monitoring Agency	Branch (-)	-	Legislative Subsidy	Indifferent	Decline	Decline	Yes
Intelligence: Explicit DPR Oversight	Branch	-	Legislative Subsidy	In Favor	Accept	Accept	Yes
Military Justice: Civilian Courts	Core	Core, Formal, Informal	Sanction Threat	Indifferent	Accept	Accept	Yes
Military Justice: Civilian Police	Core	Core, Formal, Informal	Sanction Threat	Indifferent	Accept	Accept	Yes
Military Industry: Civilianize	Branch	Core, Informal	-	Indifferent	Accept	Accept	Yes
Freedom of Information: Adopt unamended	Branch	Core, Formal, Informal	Sanction Threat	In Favor	Accept	Accept	Yes
Freedom of Information: Adopt with exceptions	Branch	-	Sanction Threat	In Favor	Accept	Accept	Yes
State Secrecy: Drop	Branch (-)	-	Actual Sanction	In Favor	Accept	Decline ⁸¹	No
State Secrecy: Amend	Branch	Core, Formal, Informal	Legislative Subsidy	Indifferent	Decline	Accept	No

Source: Author's compilation

⁸¹ The government stopped deliberating the secrecy law with DPR and effectively withdrew their draft.

10 Summary and Conclusion

This study set out to answer two main questions. The first question concerns the extent of civil society influence on the institutionalization of civilian control. Because Civil Society Organizations do not have the authority to independently pass laws, civil society influence can only be effective if it affects the behavior of decision-makers in a way that 1) makes them pass legal regulations that provide more civilian control than those regulations they would have otherwise passed or 2) precludes them from passing regulations that would retrench the extent of civilian control they would have otherwise passed. The second question focuses on the determinants of successful civil society influence, i.e. those conditions under which civil society will have a lot of influence on the institutionalization of civilian control and those under which civil society influence will be limited or fail.

In the previous chapters I have adopted a concept of civilian control disaggregated into different decision-making areas proposed by Croissant *et al.* (2013) as an objective standard to gauge the extent of civil society influence against and developed an integrative theoretical argument that provides a clear specification of the actual influence mechanism. The argument is built on the idea that civilian decision-makers at any stage in the legislative process will base their decision about legislation on civil-military relations primarily on their interests as civilians as well as their more immediate interests as members of a certain branch of government or specific department. Civil society can influence this decision by changing civilian decision-makers' expectation of the associated costs and benefits. This can involve an attempt to affect their perception of the outcome based on their own interests (*manipulation*), an offer of information to make it easier to realize their interests within a piece of legislation (*legislative subsidy*), the provision of a positive incentive in exchange for a change in behavior (*benefit*), threatening decision-makers with negative consequences (*sanction threat*) or the imposition of actual negative consequences (*actual sanction*). These civil society tactics represent an escalating level of assertiveness. While manipulation is the least assertive approach, actual sanctions are highly assertive and allow civil society to exert more leverage on the rational calculation underlying decision-maker behavior. The difficulty of an influence attempt is determined by the degree of conflict between decision-maker interests and civil society request and the amount of counter-pressure the decision-maker faces from other actors with informal influence over them. For Civil Society Organizations that are trying to improve the institutionalization of civilian control the military is the most relevant opponent. As soon as a civil society demand would endanger what the military considers their core institutional interest or would abolish or reduce the military's ability to influence decision-makers formally or informally in the future, the military will exert counter-pressure to marginalize the effectiveness of civil society tactics. This in turn increases the degree of assertiveness a Civil Society Organization will have to apply to

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decision-makers in order to affect their behavior in a way that increases the degree of institutionalized civilian control.

Based on this core argument I derived two main hypotheses about the congruence between civil society success on the one side and the value of civilian interests, military interests and civil society tactics on the other side. In addition, based on the core argument and the nature of the legislative process, I derived a set of scope conditions that need to be fulfilled for civil society to successfully influence the institutionalization of civilian control. First, Civil Society Organizations need to gain access to decision-makers in order to have influence. Second, Civil Society Organizations will only be able to employ sufficiently assertive tactics if they have the strategic capacity to do so. Third, even if Civil Society Organizations have successfully influenced decision-makers at one stage of the legislative process, they have to defend this achievement against retrenchments and changes during later stages in order to be ultimately successful. Finally, I derived several additional observable implications from the theoretical argument in order to complement the congruence analysis with process-tracing to support the notion that the argument captures the causal mechanism behind civil society influence authentically. To evaluate the argument I described and analyzed the extent and determinants of civil society across twelve legislative processes between 1999 and 2013. In the following section, I summarize the empirical results and then draw conclusions for the ability of Civil Society Organizations to influence the institutionalization of civilian control in Indonesia. The chapter closes with the limitation of this study and avenues of further research to extend the range of the argument developed and tested in this study.

10.1 Summary of the results

This section summarizes the results of the case studies conducted in Chapters 6 through 9. Overall, Civil Society Organizations were relatively successful at realizing their demands which touched upon civilian control⁸². Of the 90 individual demands I analyzed, Civil Society Organizations were successful in 50 cases or 56% of the time (see Table 10.1, p.215). This number significantly misrepresents the actual extent to which Civil Society Organizations can realize their goals, however. The chronological narratives and causal analyses have demonstrated that civil society groups not only had a much broader agenda, including issues not relevant for civilian control, but they also limited their demands to those that seemed achievable considering the circumstances and the group's current strategic capacity. There is still ample reason to answer the first research question that motivated this study in the positive. Civil Society Organizations have contributed to the institutionalization of civilian control in Indonesia: The case studies have demonstrated that several issues Civil Society Organizations introduced to the debate had major implications for the relative authority between of Department of Defense and TNI Headquarter, helped expand the oversight authority of the Indonesian parliament and even laid the legal

⁸² As mentioned before, I have focused my attention on issues relevant from the perspective of civilian control exclusively, disregarding any demands which might have affected defense or internal security policy but did not have an effect on the relative authority of civilian decision-makers and the military.

foundation for ending the military’s business activities. Overall, groups were more successful at convincing decision-makers to oppose retrenchments of civilian control which they managed to achieve in 76% of all observations. In contrast, entering additional regulations was only successful 40% of the time. Civil Society Organizations have hence not only kept decision-makers from passing regulations retrenching civilian control but also actively contributed to the institutionalization of civilian control.

The remainder of this section will evaluate how much support the case studies have provided for the hypotheses derived from the explanatory model.

Table 10.1: CSO success rate and decision-making environment

Decision-making environment	Total Success	Total Failure	Success rate	Entry Success rate	Drop Success Rate
Parliamentary stage	25	16	61%	47%	73%
Governmental stage	25	24	51%	36%	81%
Overall	50	40	56%	40%	76%

Source: Author’s calculation

M1: The more the CSO demand is in conflict with the interests of the targeted decision-maker, the more assertive CSO tactics have to be in order to successfully affect decision-maker behavior.

Altogether, the congruence analyses conducted as part of the empirical chapters lend strong support to the claim that the conflict of interest between decision-maker goals and civil society demands determines the degree of assertiveness Civil Society Organizations have to employ in order to successfully influence decision-maker behavior. Where civil society demands were in congruence with decision-maker interests Civil Society Organizations managed to influence decision-maker behavior even with relatively unassertive tactics like manipulation and legislative subsidies. This includes most demands made by ProPatria for the Defense Law touching on key civilian interests, including the demand to drop TNI’s symbolic affirmation of loyalty for state and nation rather than the civilian government, the civilianization of the process to designate military installations and training grounds, and the introduction of a clear and limited list of Military Operations other than War but also civilian input into the Law on the Defense Industry. In contrast, where ProPatria’s demands were in conflict with civilian decision-maker interests, it took more assertive strategies to overcome this conflict or the influence attempts failed. Because of parliamentary resistance to an expansion of presidential authority over the selection of the service chiefs of staff, parliament turned down ProPatria’s request to give the president a real choice for the selection of service commanders. The pattern is most evident for demands that significantly narrow decision-maker authority: ProPatria and other CSO failed to convince the

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government to drop the Anti-Terror law, introduce an independent monitoring agency in the intelligence law, and accept the amended State Secrecy Law. However, the threat of sanction was effective at convincing the government to accept the Freedom of Information Law. There is one major exception to this observation. In both cases where DPR's oversight function was to be strengthened, as during the Defense Law negotiations and in the Intelligence Law, the government accepted these changes even though it should have opposed them considering their own institutional interests. The position of the government side during the second stage of the development of the TNI Law is a special case. Here, TNI's dominance over the drafting process and the medical condition of the Defense Minister during the final drafting meant that the civilian government decision-makers did not get a chance to see their own interests reflected in the bill.

M₂: If realizing the CSO demand would endanger core military interests or abolish an entrenched institution, informal military counter-pressure on civilian decision-makers increases the amount of assertiveness necessary to change their behavior.

The congruence analysis also lends strong support to the hypothesis that the military is motivated to marginalize the effect of civil society tactics if realizing CSO demands would affect institutional military core interests or affect entrenched institutions negatively. This effect is most apparent for the TNI Law where military control over the second stage of the drafting process completely overwhelmed core, branch, and institutional civilian interests. In total, the empirical studies included 90 individual observations of CSO demands directed at a specific decision-maker. If applying a restrictive interpretation, i.e. counting only the observations where the actual decision-maker behavior fully matches the expected decision-maker behavior the argument is supported for 76 observations (68%). If allowing for the fact that civilian decision-maker interests were completely overwhelmed by TNI control of the second drafting stage, this number rises to 81 (73%) observations that support the expected relationship.

C₁: A CSO has to find access to the legislative process in order to influence decision-maker behavior.

The case studies show that CSOs could only be effective without prior access to decision-makers in cases where the goal was to stop a law, not affect its content. This includes the campaign against the State of Emergency Law in 1999, the campaign against the National Security Law in 2011 and 2012 and the broader campaign to drop the State Secrecy bill in 2009. With the exception of the TNI bill, where the government changed several points ProPatria criticized during their internal revision process even though ProPatria had already lost access to the government side, any substantive influence ProPatria had was based on current access. The same was true for the cases where a purpose-built civil society alliance successfully placed a draft in parliament. In both these cases, the Intelligence Law and the Law on the Freedom of Information, substantive influence would have been significantly more difficult without immediate and constant access to decision-makers in parliament. However, once Pacivis lost their access to the later stages of the deliberations, two of the group's most important demands were taken out of the bill. The parliamentary phase of the

TNI law deliberations demonstrate, however, that access to a limited number of parliamentary groups was enough access for ProPatria to place their alternative proposal. Lack of access was particularly problematic when the quick pace of deliberations precluded the creation of a stable advocacy coalition as in the case of the Law on the Management of Social Conflict or during the campaign against the Law on Terrorist Crimes. ProPatria's ability to influence the government position was also hindered by the fact that they could not participate in government decision-making directly anymore since government representatives rather came to ProPatria events.

During their debate about the National Security bill, ProPatria developed an internal theory on the connection between access and substantive influence. Several group members believed that both the government and parliament were more likely to accept substantive input if they could claim it as their own initiative, avoiding the impression that they had buckled under outside pressure.

Altogether there is strong evidence to suggest that ProPatria and other Civil Society Organizations need prior access to decision-makers in order to have substantive influence on policy, whereas stopping a bill seems possible even if none of the participating decision-makers had closer interaction with the groups campaigning against a bill.

C₂: A CSO will only be able to use a sufficiently assertive tactic if it has the strategic capacity to do so.

In several cases, ProPatria did not have the resources to implement an assertive approach to decision-makers to overcome institutional resistance to one of their demands. First, during their initial meetings ProPatria realized that the group was not a mass organization and would have to focus on constructive engagement with decision-makers rather than mass demonstrations to achieve their goal. However, when it became necessary to employ more assertive strategies during the legislative process for the TNI bill, ProPatria could rely on their previously established network of media contacts for the campaign against the Kudeta article and their network of contacts among other CSOs and on Indonesia's university campuses in order to compensate for their own weakness in mobilizing capacity. After 2004, when Munir's murder had severed ProPatria's connection to other human rights groups, the group was no longer able to steer the direction of protests. During their discussions about the National Security bill, the group debated the possibility to enter the bill through parliament, but several members believed the group lacked the resources to convince enough parliamentary groups to accept their proposal. Later, when ProPatria tried to save the advances on the State Secrecy bill, they not only lacked the resources to stage their own pressure campaign but also faced a campaign to drop the bill as a whole.

Altogether, there are strong indications that Civil Society Organizations need sufficient resources to stage more assertive tactics, most importantly network resources, but also sufficient funding to establish coordination forums and fund meetings as a resource mobilization activity. Even though the existence of other civil society (mass) organizations within the same policy field can allow a group to compensate for their own lack of resources,

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without sufficient connections, coordination and the willingness to pursue a common goal, CSOs lack the ability to direct the use of the tactics towards their preferred demand.

C₃: A CSO has to defend successful influence at earlier stages of the policy process throughout later stages in order to successfully influence the extent of civilian control.

There are also empirical indications that the different configuration of institutional interests is responsible for the fact that progress at earlier stages of the decision-making process can be lost should a Civil Society Organization not gain access to these or lack the appropriate capacity to implement more assertive tactics at this stage. During the parliamentary stage of the Defense Law negotiations, ProPatria worked with the Department of Defense to preclude DPR from retrenching the government designation of military installations and then in turn convinced the government to accept the limits imposed on Military Operations other than War and the expanded DPR oversight function over Defense and Military matters. ProPatria failed, however to defend the expansion of presidential influence over the selection of the service chiefs of staff they had achieved at the drafting stage against a retrenchment by parliament. During the Intelligence Law deliberations in parliament Pacivis failed to defend the creation of an independent monitoring agency and the subordination of the military intelligence services to the Department of Defense because the group did not gain access to the parliamentary meetings. Finally, a lack of civil society activity during the last stages of the parliamentary process for the Military Justice Bill is blamed for its failure to be passed into law, but in this case Civil Society Organizations were not the initiators of this regulation. Similarly, ProPatria did not manage to defend their prior achievements on the State Secrecy bill against the demands of wider society to drop the bill.

The defense of prior achievements, e.g. from the drafting stage, at later stages of the legislative process only made a difference for the outcome in a few instances. Consequently, there is some support for this hypothesis. In cases, where civil society failed to defend their earlier success, this was due to lack of access to the later stages of the deliberation process or different institutional interests of the decision-makers at this stage.

I₁: The internal decision-making processes of the CSO show that it chooses its targets based on potential targets' transparency for outsiders and their openness to outside influence and will use institutional access channels if they are available.

Since the Indonesian legislative process and the decision-makers involved at the different stages do not provide institutionally guaranteed access for Civil Society Organizations and there are only weak incentives for government and parliament to actively seek input into legislation, personal connections and individual reform orientation of decision-makers determine the ease of access for Civil Society Organizations. During the early years of Propatria's activity the group focused almost exclusively on the government side. At the time of their first involvement, Defense Minister Mahfud provided an opening for the group while parliament was perceived as more difficult to access in general. Only during ProPatria's campaign against the Anti-Terror Law the group focused on parliament as the

more accessible actor, because they did not have to approach the whole breadth of parliamentary groups but only access enough groups to create opposition to the bill that was strong enough to veto and delay the bill. During negotiations for the TNI Law, ProPatria still believed the government side more open to outside input even though the change in Minister and Megawati's acquiescence made reliable access more difficult. Not even the personal connections ProPatria had established to the Department of the Defense were enough to increase the transparency of the drafting process at the ministry. However, these contacts informed ProPatria that the government planned to introduce the bill to parliament and thereby gave the organization a chance to leak the draft to the press and stop the Kudeta article. By the time the National Security bill was deliberated, parliament was more easily accessible for civil society but ProPatria decided against switching course even when parliament brought up the possibility of a parliamentary initiative because the Working Group members were worried about alienating the government side. Both the Freedom of Information Law and the Intelligence Law demonstrate that it was still possible for Civil Society Organizations to gain access to the early stages of the legislative process if they focused their attention on parliament. Unlike ProPatria, Pacivis and the Coalition for Freedom of Information were willing to use the increased access granted by the more reformist 2005-2009 DPR.

Altogether, there is very strong support for the claim that Civil Society Organizations pick their targets depending on their accessibility, i.e. the target's openness to outside input and transparency for observation. However, after 2006 ProPatria became reluctant to sacrifice the rapport they had established with the Department of Defense and concentrate on parliament instead. Other Civil Society Organizations working in that sector had realized the shift in relative accessibility and managed to enter the legislative process there to good effect.

I₂: The CSO is aware of decision-maker veto potential and tries to access veto players irrespective of their accessibility to either preclude a veto or use it to stop problematic regulations.

ProPatria seemed aware of the veto potential different decision-makers had over the policy process and tried to stay in contact with these groups even though they were sometimes less accessible than the alternatives. During the Defense Law negotiations, the group approached the Defense Minister to achieve a veto, but since he was also the most accessible decision-maker, this does not provide support for the hypothesis. Even though DPR had important veto potential for the Defense Law, the group failed to invest time and resources into their approach to parliament and consequently lost some of the changes they had successfully introduced earlier. Again, during the TNI Law negotiations, ProPatria focused on the government. Even though there is no definite indication that this was the Working Group's main reason, it is possible that the group's failure to shift their full attention to parliament prior to the bill's introduction to DPR had something to do with the government's strong veto position in the later stages of the parliamentary process. During the development of the National Security bill on the other hand, the CSO still focused its

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attention on the government even though parliament had become much more open. Even though it is still possible that the group did this by default rather than design, after they had focused their attempts on the government for several years already, the group also realized that government would have a veto later on, anyway. Once it became clear that Polri was the limiting factor for the government side, ProPatria decided to focus some of their attention on the police headquarter and even purposefully changed the topics of some of their Focus Group Discussions to make them more relevant for the police. Several of the shorter case studies also show that Civil Society Organizations included veto players in their approach. However, at least for the State of Emergency Law in 1999, the president was also much more accessible still and the most severe demonstrations only began at a time when the bill had already left parliament. The same is true for the Management of Social Conflict bill. Even though the plenary was usually more difficult to access for Civil Society Organizations than the Commissions they had regular contact with, the Special Committee deliberating the bill had proven so inaccessible because of its carefully picked members that the groups had no choice but focus their attention on the plenary as a *de facto* – albeit rarely active – veto player in the process. Only the Law on Terrorist Crime and the Intelligence bill show that CSO targeted veto players even though they were generally less accessible than the alternative. During the campaign against the Anti-Terror bill, ProPatria stayed in contact with their counterparts at the Department of Defense but they focused their attention on convincing DPR parliamentary groups to convince enough of them to slow the bill down rather than work with the government to change the bill or stop it there. This contrasts with the group's approach on almost any other law, including the TNI law at the time. Finally, the Intelligence Law shows the clearest indications that Pacivis and the SANDI coalition remained in constant contact with the government side about the bill even though they had successfully entered it into parliament already and thereby superimposed the DPR bill over the government's own initiative in a rare instance where this procedural regulation was useful for civil society. Once CSOs decided to employ more assertive tactics, these were no longer as targeted, or more specifically, the focus on several decision-makers at the same time did not call for the investment of additional resources. It made no difference whether a demonstration or media campaign was to be directed at DPR or the government. Once it was underway it usually targeted both decision-makers at no additional cost. While ProPatria always tried to involve the military leadership in their influence attempts, the group never seems to have targeted the TNI/Polri parliamentary group specifically. There is, consequently, only some indication that Civil Society Organizations invested significant resources when they contacted veto players. When this happened the veto player was usually also the actor more accessible to civil society in the first place. Alternatively, Civil Society Organizations often treated veto players as a backup solution to their main access point. Whether this was mostly due to resource constraints or because groups worried that a dual track strategy would risk alienating the decision-maker they had already successfully approached is unclear.

I₃: CSO internal decision-making processes show that the organization is aware that the difficulty of an influence attempt is determined by a combination of their institutional interests and potential military counter-pressure and CSO discuss the implications this has for the necessary tactics.

This hypothesis is among those best supported by the case study data, especially concerning military interests. From their earliest meetings, ProPatria discussed the position of the military towards the regulations they planned on introducing. They quickly realized that any demand touching upon the military's territorial command structure, their institutional and individual business interests, regulations on military justice or the autonomous position of the TNI Commander towards the Department of Defense would be particularly difficult, not only because the military considered these part of their institutional core interests but also because these institutions granted the military formal and informal access channels. This realization had important consequences for the scope of the demands the group formulated as well as their approach to the military itself. In their approach to Defense Minister Mahfud the group was optimistic they could convince him to veto the bill since it endangered the interests of his Department and later, ProPatria believed parliament would be easily convinced to expand their own oversight capacity. ProPatria debated many of the same institutional entrenchments during the TNI Law process, but this time they focused on the role of informal control of TNI Headquarter over the Department of Defense in much greater length. Later, during the discussion about the National Security law the group returned to the problem that the wider regulatory scope of the bill made influence much more difficult because more institutional interests had to be reconciled before the bill could move on from the drafting stage and then would face more resistance in parliament because of the different interests of the DPR commissions participating in the Special Committee for the bill. At several points, Civil Society Organizations appealed to different government agencies to let go of their egoistic resistance to the bill. The additional case studies also produced some indication that ProPatria and other Civil Society Organizations took into account civilian and military institutional interests in their internal debates about strategy. ProPatria realized during the Debate on the Law on Fighting Terrorist Crime that government and military would be difficult to sway because the new bill would empower them both. Similarly, Pacivis had decided to focus their attention on parliament because the group worried that the need to establish clear authority and inter-departmental relations would mean at least some government departments and agencies would lose authority relative to the status quo and endanger the bill's progress in the government bureaucracy. While the Freedom of Information Coalition also included the government in their approach, the group focused its attention on parliament because DPR had little to lose from an improvement of transparency of government work. Finally, ProPatria realized that the government would only be interested in limiting the scope of the State Secrecy bill up to a point where it was still preferable to the very restrictive Law on State Archives and would likely need public pressure to go beyond it.

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There are very strong indications that Civil Society Organizations realized that government sectoral interests and TNI's inclination to resist changes affected the difficulty of changing specific regulations and frequently discussed the implications this had for their own strategy.

I4: If the CSO realizes they lack the resources to implement a tactic that is sufficiently assertive they either try to access other decision-makers, focus their attention on other issues or try to expand their resource base.

One of the most important results of the frequent discussions about the difficulty of changing specific issues in a law was that it frequently resulted in strategic adjustments. Only rarely did civil society groups switch target once they realized that they lacked the resources to exert enough pressure on a decision-maker. During the Defense Law, ProPatria only decided to expand their focus to parliament once the governmental drafting process had already been completed. For most of the issues that the group believed difficult to change the group preferred narrowing down the scope of the bill to focus their attention on things they believed were attainable to switching targets. Nevertheless, there are strong indications that ProPatria slowly improved their relationship to the media in order to prepare the group for a pressure campaign. For the TNI Law, ProPatria again narrowed down the scope of their demands. Initially, they decided to drop the demand to abolish the Territorial Structure completely, but later, when the discussion with TNI Headquarter and Department of Defense stalled, the group decided to narrow down their demands to those issues that were important enough to risk a fight again. Similarly, ProPatria's demands for the National Security bill became smaller as the difficulty of establishing a unified government position became more apparent. In this case the government finally had to sacrifice clearer inter-institutional relations, their core demand for this and the previous laws. In contrast, the group never decided to switch the focus of their influence attempts to parliament, even though that would have been a much more promising way to realize the essential demands they had determined earlier in the discussion. In both cases where Civil Society Organizations established a purpose-built coalition to introduce their own draft to parliament, these groups had been designed to maximize the coalition's resources. The Freedom of Information Coalition, for example, focused their attention heavily on establishing a coalition with the country's major media outlets and journalists' associations to improve the coverage of their media campaign for the adoption of the bill. In all other cases, ProPatria or other Civil Society Organizations and coalitions failed to reintroduce the demands they had dropped for lack of more assertive tactics once they made the decision and gathered the resources to launch a pressure campaign. Only in the case of the TNI Law was the public criticism against the bill specific enough that it led to the deletion of almost all the regulations ProPatria had previously identified as problematic. Usually, these coalitions focused on turning down complete laws or were turned against specific regulations and did not advocate for the introduction of additional legislation. Again, the main exception to this pattern is the TNI bill where ProPatria's cooperation with a handful

of reformist members of parliament allowed for the introduction of the ban on TNI business activity via their alternative draft even though this demand was not a focus of the public campaign.

Even though there are indications that Civil Society Organizations adjust their strategy depending on the difficulty of the task if they lack the resources to implement assertive tactics, in most cases CSOs narrowed down the scope of their demands rather than switch targets. Once they had made the decision to employ more assertive tactics the scope of their demands was not expanded again, potentially because the coalition model did not allow for broad substantive agendas. Because CSOs never expanded their demands once more assertive tactics were employed it is uncertain if the use of more assertive tactics would have benefited the introduction of regulations previously deemed too difficult to push through. There are strong indications, however, that Civil Society Organizations are aware of their respective strengths and weaknesses and try to compensate for them through targeted resource mobilization activities, most importantly the establishment of purpose-built or ad-hoc coalitions based on prior network connections.

I₅: Decision-makers do not actively oppose new regulations they are indifferent to once they are in a bill but they will not actively enter new regulations they are indifferent to either.

Only the congruence analysis for the Defense Law has produced some indication that indifferent decision-makers accept civil society demands if they can do so passively and decline them if doing so requires them to become more actively involved in the deliberations. Theoretical expectations meant decision-makers were expected to be indifferent after 30 of the 90 overall observed influence attempts. Among these observations, decision-makers behaved according to expectation in 23 cases (69%). Considering that the present study has not attempted to verify decision-maker positions at an individual level, this overall pattern can only provide superficial support to the hypothesis. In order to corroborate the hypothesis, decision-maker positions would have to be tracked empirically through the decision-making process. This could be done by tracking the statements of individual decision-makers throughout the legislative process and then identify the position they took during the final debate on a regulation. With the present level of information it is possible that the behavior of indifferent decision-makers is affected by additional variables, including how the majority of other decision-makers at each decision-making stage behave or whether deals can induce decision-makers to trade their vote on one regulation for support on another they value more.

I₆: If the number of veto players at a decision-making stage is high it is more difficult for CSO to introduce new regulations to a bill, however the higher the number of VP, the easier it is to delete regulations which would retrench civilian control.

Overall, 61% of CSO demands directed at the parliamentary stage were granted, compared to 51% directed at the government drafting stage (see Table 10.1, p.215). Overall, the outcome pattern does not suggest that it was easier for civil society to stop regulations at the parliamentary stage with its additional veto players compared to the government stage.

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Stopping regulations at the parliamentary stage was successful in 73% of observations as compared to 81% of attempts directed at the government before bills had entered parliament. Similarly, entering additional regulations was also more successful at the parliamentary stage than during the governmental stage of negotiations with 47% of requests to enter regulations accepted by DPR compared to only 36% of entry requests by the government side. While several case studies have produced evidence that decision-makers take into account the configuration of veto players (see discussion for Hypothesis I₂) and the large number of veto players was important because it multiplied the number of access points for achieving vetoes, the overall outcome contradicts the claim that the number of veto players has an effect on the difficulty of introducing vs. dropping regulations.

I7: CSO try to access the political process at an early stage to capitalize on the fact that content already in a bill does not have to be defended against indifferent decision-makers.

The attempt to find early access to the decision-making process was among the main reasons the ProPatria Working Group came into being. The group was explicitly founded because earlier civil society initiatives for Security Sector Reform had consistently failed to gain access to the drafting stage, affect the content of a bill and then had to resort to demonstrations to stop rather than improve the bill. Similarly, during discussions for the National Security bill, the Working Group valued access to the early stages of the drafting process so much that they actually ignored their chance to access other decision-makers. The two purpose-built civil society coalitions for the Intelligence Law and the Freedom of Information Law also planned to achieve substantive influence at an early stage, Pacivis even making this plan explicit. However, there are fewer indications that this focus on the early decision-making stages was motivated by the fact that content already in the bill would have better chances to be accepted by indifferent decision-makers.

There is partial support for this hypothesis. While Civil Society Organizations indeed valued early access to the decision-making process, it is uncertain if they did so for the expected reason.

I8: If a CSO proposal affects core military interests or entrenched institutions of civil-military relations, military decision-makers oppose it and there are indications that the military exerts informal counter-pressure on civilian decision-makers or uses formal decision-making power to stop a regulation.

Even though especially informal military resistance is difficult to observe, the case studies have demonstrated that the military has used their ability to resist legislation directed against their core institutional interests or entrenched institutions on several occasions. First, the original drafting team for the Defense Law at the Department of Defense had accepted most proposals by TNI Headquarter without taking into account the institutional interests of the Department. Later, during the TNI Law negotiations there were several instances of suspected or confirmed military resistance attempts. First, TNI Headquarter used their formal control over military personnel at the Department of Defense to change

the leadership of the drafting team and exerted informal pressure on the Minister of Defense to decline most civil society requests. Once TNI Headquarter realized that they would not be able to push their bill through in the face of public resistance they convinced the Defense Minister to hand the draft back to them in order to finish the drafting without outside influence. Once Defense Minister was no longer able to fulfil his duties, TNI used their control over the ministry to defend their institutional interests during the legislative process. There are at least rumors, that TNI bribed legislators to keep them from delaying the passage of the bill. There are some indications that military resistance played a role for the decision to drop more detailed regulations on the use of force from the National Security bill as well, again through the Department of Defense. The Reserve Component bill is rumored to have been introduced to parliament after military pressure on the Department of Defense and the fact that the government agreed to the Freedom of Information Law only after DPR had introduced exceptions for military and defense issues at least suggests that military resistance might have played a role. The military justice bill presents the clearest evidence that TNI tried to stop the bill through informal channels. First, even after the president had publicly supported an expansion of the jurisdiction of civilian courts to include civilian crimes committed by members of the military the Minister of Defense opposed this decision and delayed the legislative process again later. In line with a rumor mentioned by the chair of the special committee deliberating the bill, the Minister of Defense also indicated that military influence might not only have played a role in his own decision to oppose the bill but also hints at the possibility that TNI could have bribed members of parliament. In contrast, TNI Headquarter did not use their formal decision-making authority through the TNI/Polri parliamentary group systematically to oppose regulations. Once the parliamentary group was in the clear minority, they usually did not force a vote but rather acquiesced to demands.

Despite the secretive nature of informal military influence there are strong indications that the Indonesian military used its informal influence to resist or threatened to resist reforms going against their core institutional interests or were directed against entrenched institutions.

I₉: The attitude a decision-maker has towards demands by CSO is partly determined by the effect specific regulations would have for their interests as civilians and their governmental branch and narrower institutional interests.

In several of the case studies decision-makers made statements that support the claim that their institutional self-interest was among the main determinants of their stance on regulations. First, during the negotiations for the Defense Law, Defense Minister Mahfud appreciated the fact that ProPatria tried to strengthen his Department in relation to TNI Headquarter and agreed to veto the current draft so ProPatria would get a chance to introduce their changes. Later it seemed several DPR parliamentary groups openly worked against their institutional interests when they demanded that a section granting DPR explicit oversight function of defense and security affairs be deleted from the bill. However,

once it turned out they believed the section could be construed to imply DPR was only empowered to oversee those issues explicitly enumerated by law ProPatria could clear up this misunderstanding and DPR changed their attitude to expand the scope of the oversight regulation. Later, during the Defense Law negotiations, even military members of the Department stressed they were happy that ProPatria helped balance the relationship between TNI Headquarter and the Department of Defense, indicating that their professional position even influenced their attitudes as military officers. While parliament demonstrated some signs of institutional interests, its effect was largely washed over by the assertiveness of the tactics civil society applied during the legislative process. The debate of the National Security Law was even completely determined by the institutional interests of different government departments. The resistance of Police Headquarter to the bill and the position of the Department of Defense and other government departments was determined by their “sectoral egos”. During the discussion about a Law on the State of Emergency, there are strong indications that the Megawati government did not pursue a separate law because the existing law of 1959 provided the government with much more flexibility and power to determine the state of emergency without parliamentary influence. In a similar fashion the government stopped deliberations on the State Secrecy bill once the amended draft no longer gave the government the same freedom to classify information. When the government introduced the expansive Law on Fighting Terrorist Crime to parliament, several members of parliament expressed opposition to the law because it gave the government exceptional powers. The Intelligence bill also indicates that the nominally civilian intelligence agency BIN defended its own position as coordinator of the other intelligence agencies against the introduction of an additional monitoring agency. Decision-maker institutional interests only lost some of their relevance for the final outcome of CSO influence attempts when either the military managed to completely override the participation of civilian government actors, most importantly during the later stages of the TNI Law drafting process or when civil society tactics became very assertive.

Considering the case studies, there is strong evidence that institutional interests played important role not just for the military but also to determine the position the different civilian decision-makers took on individual regulations or whole bills. Table 10.2 (p.227) summarizes the levels of empirical support for all hypotheses.

Table 10.2: Level of empirical support for hypotheses

Hypothesis	Level of empirical support
M1 Conflict of Interest between DM and CSO demand	Strong support from congruence analysis
M2 Military resistance because CSO demand against core interests or entrenched institution	Strong support from congruence analysis
C1 Access is necessary condition for CSO influence	Strong support, but only for constructive influence
C2 CSO can only use tactics if necessary resources are available	Strong support
C3 CSO has to defend early influence at later stages	Some support
I1 CSO picks access point for accessibility	Mostly strong support
I2 CSO knows about veto potential and accesses veto players	Some indication of support
I3 CSO realizes difficulty determined by institutional interests and military resistance	Strong indications
I4 If CSO lacks resources, it switches target, narrows goals or mobilizes resources	Strong support
I5 Indifferent DM accept regulations that are already in a bill but do not enter them	Superficial indications
I6 In environment with many veto players, introducing regulations is more difficult, dropping regulations easier.	Contradicted by evidence
I7 CSO wants early access to profit from indifference bias	Partial support, motivation unclear
I8 If demand against core interests or entrenched institutions, military resists formally or informally to stop the regulation	Strong indications
I9 Decision-maker interests determined by core civilian, branch and institutional interests	Strong indications

Source: Author's compilation

10.2 Comparative conclusions

In addition to the results of the tests of individual hypotheses presented in the previous section, a careful comparison of the empirical results from all case studies conducted for this dissertation also leads to several more general conclusions for the role Indonesian Civil Society Organizations have played in the past. This includes some of the most important determinants of their past successes but also some of the problems resulting from the strategies and tactics CSOs chose. The conclusions include the decision-making areas in which CSO can hope to influence civilian control, the role of individuals for finding access and bringing together advocacy coalitions, the potential and limitations of these advocacy coalitions, the role of the civilian government, political learning on part of military and civilian decision-makers over time, and finally the way the international community has affected success and failure of CSO influence attempts.

CSOs were influential across all decision-making areas

Civil society influence was not restricted to detecting and eradicating remaining military prerogatives in Elite Recruitment and Public Policy, the decision-making areas closest to the civilian core of civil-military relations. Instead, their influence has resulted in improvements to all decision-making areas. Still, the group's success rate differed significantly (Table 10.3, p.229). Whereas most influence attempts on Elite Recruitment, Public Policy and National Defense were successful, Internal Security regulations and regulations on Military Organizations were more difficult to change. Internal Security regulations probably fare particularly badly because these were often meant to regulate the relative authority of military and civilian security forces, which was made more difficult by the institutional interests of both actors involved. Considering that Indonesia's institutional decision-making system often grants additional decision-makers and effective veto to stop legislation in its tracks, the result is not surprising. However, particularly during the early years of reform, there are no indications that either civilian decision-makers or the military completely locked out civil society influence over those decision-making areas closest to national security, as several authors suggest (Amenta *et al.* 2010; Giugni 2004: 227–228; Kriesi *et al.* 1995: 97).

Table 10.3: CSO success per decision-making area of civilian control

Decision-making area ⁸³	Successful Influence	Failed Influence	Success Rate
Elite Recruitment	6	2	75%
Public Policy	19	8	70%
Internal Security	13	15	46%
National Defense	3	1	75%
Military Organization	9	14	39%

Source: Author’s calculation

Individual DM were important for determining access

The case studies have consistently pointed to the roles individuals played for ProPatria’s access and influence. The theoretical framework already suggested that personal contacts and individual orientations would play a major role because the Indonesian political system grants very little institutionalized access to Civil Society Organizations. Where ProPatria could rely on personal connections, they could become a partner for the government or parliament. They were able to present their arguments and were involved in drafting activities. Sometimes their role extended beyond a mere partnership and CSOs could even push decision-makers to go beyond what they might have originally intended. CSO took over the role of a democratic principal. This resulted in several of the group’s biggest successes. Most importantly, this includes the adoption of their alternative draft for the Defense Law or the adoption of their alternative draft for the TNI Law by PKB which ultimately contributed to the mandated takeover of military business interests. The fact that ProPatria had ample funds to invest in resource mobilization activities like the Focus Group Discussions allowed the group to expand the network of contacts among decision-makers and once previous cooperation had led to satisfactory results for all parties involved, these contacts were more likely to involve ProPatria in the future. The series of Indonesian Defense Minister’s was one of the most important determinants for the group’s success and failure. Among them, Mahfud MD, Minister of Defense under Abdurrahman Wahid granted ProPatria the most extensive access to decision-making processes in his Department and was also willing to support the group with the authority of his office. President Wahid had given him a strong reformist mandate and the Minister was motivated to compensate for his own lack of expertise by inviting ProPatria to join the drafting process. Thanks to his cooperation with ProPatria, the reform process could even continue when Wahid had to stop his own reform drive once he was politically weakened. In contrast, Matori Abdul Djalil was neither an expert for defense matters nor did he have the political backing of the president

⁸³ In cases where regulations had implications for two decision-making areas, the table lists it under the decision-making area that was further from the military’s institutional core. For example, regulations that touched on both Internal Security and National Defense are listed under Internal Security. This overlap is also responsible for the fact that only a few changes are listed under National Defense.

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to reform the armed forces. Consequently, he allowed the military to overrule ProPatria's proposals and finally shut the group completely out. Defense Minister Juwono, his successor in office, focused on implementing his own vision for defense reform but was very reluctant to challenge the military even where he had the explicit support of the president. Even though the power of his office had been somewhat strengthened by previous reforms, Juwono did not manage to finally subordinate TNI Headquarter to his ministry. Finally, Purnomo Yusgiantoro did not plan to focus on legislation that would increase civilian control but instead tried to push for the modernization of the TNI. Overall, this suggests that at least in a country like Indonesia where the office of the Defense Minister was respected by the armed forces, reformist credentials and strong support from the president were more important than personal expertise in defense matters to reform civil-military relations as long as civil society could provide substantive input into the reform process. At the same time, these observations underline the importance of a civilianized Department of Defense. Without a civilian Minister of Defense, ProPatria would not have been able to access the decision-making process with the same ease, with a fully civilianized Department of Defense, the group would have likely kept their access to the TNI bill drafting much longer.

Individual CSO members influenced the amount of network resources

Individuals were also important to establish connections to other Civil Society Organizations. Munir as a single individual guaranteed the group's contacts to civil society groups focusing on human rights that often had significant mobilization potential through student activists and a network of NGOs with branches all across Indonesia. Once this connection was lost, ProPatria tried to establish an institutionalized version of this cooperation. However, the group never managed to regain the same measure of integration through formal alliances because the participating groups could not or would not agree on a common reform agenda for civil-military relations. At several points during the ProPatria discussions Munir suggests that he was criticized both by the military as well as his activist friends for getting so closely involved with government and TNI. The Indonesian *reformasi* movement had long been obsessed with keeping their distance from political actors who they perceived as self-interested and not as morally "pure" in their representation of the people as the activists themselves (Nyman 2009: 262; Weiss 2006: 216). Without one of the human rights activists as a bridge between the different civil society groups, ProPatria could not have pursued their constructive course once the government side was more difficult to approach. The later reform process demonstrates that there were several instances where the only goal of public demonstrations was to stop legislation rather than improve it so civilian control could be further institutionalized, "grey areas" reduced. Without Munir's arbitration, the more activist groups were not willing to tolerate an expansion of state capacity which, they feared, would only be used for repressive measures.

Purpose-built coalitions can be highly constructive

Civil society coalitions could also play a constructive role if they were firmly led and focused on a specific piece of legislation. First, the civil society alliance SANDI purposefully established by Pacivis to unify civil society positions on intelligence reform and support their own attempts to develop a civil society draft. This unity was helpful both actively and passively. Actively, it meant that the groups could pool their resources and establish regular working group meetings akin to the ProPatria Working Group model. Like this, the coalition could coordinate their media strategy and stage targeted demonstrations to keep the matter of intelligence reform alive. Passively, the coalition helped Pacivis in their attempts to advocate the Intelligence Law because the participants were no longer motivated to attack the project as a whole. Nevertheless, the protests against certain parts of the law almost derailed the law and delayed its introduction to parliament. The second case of a successful purpose-built advocacy coalition is the Coalition for Freedom of Information. The alliance benefited from the same pooling of resources and established a smoothly working media machine that advocated the law.

In contrast, ad hoc civil society coalitions have been severely limited in their ability to affect laws constructively. While they can pool their resources just like purpose-built coalitions and compensate for the individual weaknesses of their member organizations, they have usually lacked central coordination of the goals they pursue. Due to the nature of mass mobilization, these coalitions have usually focused on simple demands, like the elimination of the Kudeta article from the TNI Law or dropping the State Secrecy bill. In addition, to maximize the size of the coalition, groups could only agree on a lowest common denominator as the goal of joint campaigns. The coalitions could not agree to push for more divisive regulations like those calling for an expansion of state capacity or would empower one branch of government over the other. Constructive influence, hence, could not work where strong military resistance or unfavorable civilian institutional interests called for the use of assertive tactics.⁸⁴

The government granted a window of opportunity for influence

The overall development of civil society influence on the institutionalization of civilian control suggests that there was a limited window of opportunity for constructive engagement with the government during the first decade of democratic governance in Indonesia. The window of opportunity was based on an interaction between the status of civilian control overall and the government's ability to institutionalize civilian control. Civilian governments need a minimum of control over the military so they can risk legal reforms that would institutionalize this control. However, once the civilian government achieved a sufficient degree of civilian control by other means – for example personal loyalty or acquiescence to military autonomy over certain areas – they were no longer motivated to

⁸⁴ The TNI Law is a notable exception, but here ProPatria had already provided the legislative subsidy for PKB at the time the demonstrations began and convinced the more reformist parliamentary groups that passing a defective bill would be preferable to not passing a bill at all.

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pursue reforms. Under President Wahid, the window of opportunity was open. The president started his term with a high degree of legitimacy and quickly managed to sideline some of the more powerful TNI officers in favor of more radical reformers (Croissant *et al.* 2013: 101–105). However, because he still lacked the same personal control over the military Suharto had previously been able to rely on, the president was still motivated to continue institutional reforms and gave his Defense Minister the mandate to do so. Later, president Megawati and president Yudhoyono relied on their personal connections to the military leadership to a much larger extent than Wahid. For both presidents it was no longer necessary to push for an institutionalization of civilian control, as their personal loyalists already guaranteed them a sufficient level of control. The behavior of the government during the latter case studies indicates that government interest in reforms was very limited if they did not increase the overall authority of their office. This would also mean that major reforms involving the relative authority of different government bodies and security forces can only be achieved during the initial years of the transition or under presidents who lack personalized control over the military. Only once democracy is otherwise almost consolidated and was allowed to stabilize over a longer period of time would civilian governments again be motivated to challenge the military with additional reform steps.

Military and civilian DM learned to deal with CSO challenges over time

Over time both the military and civilian decision-makers learned to control and counteract CSO challenges to their authority or institutional interests more effectively. This further compounded the effect of a closing window of opportunity for constructive influence from civil society. During earlier negotiations ultimately derailed by civil society, like the Law for the State of Danger, government actors often lost the initiative once civil society actors learned of their plans to expand government authority. Similarly, the Defense Law proceedings indicate that the military was overwhelmed by the quick reaction and professional demeanor of CSO activists participating in the negotiations at the behest of the defense minister. Often, the only way to avoid compromising the military's or government's original goals was to stop the progress of a bill completely once the public learned about it. Decision-makers and military alike quickly realized that their loss of initiative could lead to legislative proposals going beyond their own comfort zone.

Over time, however, decision-makers and military officers active in the decision-making process again professionalized and managed to “re-institutionalize” the decision-making procedure after drafting and parliamentary negotiations had become more open and transparent for outside influence in the wake of the Indonesian democratization.

Beginning during the late Megawati presidency but more so under Yudhoyono, the government was more careful to preserve its institutional interests by limiting CSO access to official government drafts. This was most visible during the deliberations on the National Security bill that was never made available to the public as an official draft until its introduction to parliament. Precluding CSO from commenting on an official draft

maximized government deniability and made it easier to renege on previous plans and statements without risking criticism from the media. After the more reformist parliament of 2005-2009 had left office, DPR was also less likely to provide informal information for outsiders and began to pick invited experts more strategically. This is most evident from the process for the Law on the Management of Social Conflict. Most CSO were surprised by the fact that it had been introduced and even more from the speed with which it was deliberated and passed by DPR. Formerly an important source of information for CSO activists and journalists, the commission secretariats are now much more tightly controlled, so that less information is leaked to CSO or the media (Anggoro 2013, Al Araf 2013).

Finally, the military apparently also adjusted to the new democratic environment. Not only is the military still very effective at controlling access through their formal and informal channels at the Department of Defense, TNI also seems to have recognized the potential power of civil society for pushing military interests. Several think tanks and civil society groups close to or financed by active or former military officers or their relatives have sprung up and claim to represent the aspirations of wider civil society. However, de facto they represent mostly the military line. These groups are sometimes referred to as “the military’s own civil society”. They sometimes even employ respected scholars or former CSO activists to bolster their credibility as agents of the people (Anonymous 2010).

CSO faced an access/scope dilemma

Civil Society Organizations seem to have faced a dilemma in their interaction with the government. ProPatria tried to maximize their early access to the government in order to have substantive influence on the content of reform legislation. This put the group in a good position to defend the changes they had achieved later on during the parliamentary phase as well, considering the need for “mutual agreement” of parliament and the government still gives the latter a strong veto position even after the presidential veto was officially abolished. However, in order to gain access and influence the content of the bill they had to narrow down the scope and substance of their initial demands, sometimes even to a point that let the group worry they would help the military improve the law and claim civil society involvement without actually affecting the content. Once these were narrowed down they were usually off the table even if the group later had to move to more assertive approaches. Throughout ProPatria’s internal debates participants alluded to their fear of becoming a pawn for the government or the military leadership. Until today, many civil society groups believe the government is using superficial consultations with civil society as a “fig leaf” to imitate and control true civil society influence on the reform process (Al Araf 2013; Azhar 2013). However, the alternative for groups like ProPatria would have been to insist on their initial demands, making access to the government and constructive influence much more difficult. If the group then needed to switch tactics, the decision to employ assertive strategies often meant groups had to establish larger advocacy coalitions that, again,

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necessitated narrowing down their demands to the lowest common denominator of the coalition.

CSOs were an effective funnel for international democracy assistance

The case studies have also demonstrated the promise of channeling international assistance for local institution-building through local Civil Society Organizations. The creation of the ProPatria Working Group and most of their particularly valuable networking activities would not have been possible without the financial support of USAID and later the British DFID. Even though the international support sometimes made it difficult for the activists to frame their own task appropriately and they faced accusations of being foreign spies or agents all throughout their existence, its overall effect was remarkable. At a time when government-to-government (G2G) or military-to-military (M2M) development assistance in the military and security field was still difficult or impossible because of the role the Indonesian armed forces had played during the late New Order and Indonesia's annexation of East Timor, foreign donors had a chance to contribute to an improvement of civilian control indirectly through their local partners. Because the cooperation did not impose substantive demands on the local partners, these were free to identify a speed, focus and process for the reforms that was appropriate to the Indonesian context. Overall, the money international donors invested especially in ProPatria's ability for internal and external networking seems well spent, considering the results the group produced in the first years of its existence.

In summary, the past role of Civil Society Organizations indicates that they were sometimes principals, mostly partners and rarely pawns in their relationship with civilian decision-makers. They were principals where they had the access to present substantive demands and the ability to create a coherent advocacy coalition to pressure indifferent decision-makers to accept them. They were partners where they could help decision-makers overcome military resistance and provided them with legislative language to improve existing drafts influenced by the military. Only very recently does the government try to control civil society involvement to an extent that means their influence is symbolic, demoting them to mere pawns meant to improve the legitimacy of otherwise divisive legislation (Azhar 2013).

10.3 Limitations of the study and avenues for future research

Theoretical limitations

The integrative theoretical approach to explaining the extent of civil society influence on the institutionalization of civilian control in Indonesia has several shortcomings. First, it assumes relatively homogenous interests and preferences for collective decision-makers. Even though the approach is able to deal with different sets of decision-makers at every stage of the decision-making process, all decision-makers who belong to once specific group, be that Commission I, DPR as a whole, Department of Defense or Polri are assumed to have

the same institutional interests as any other member of that group. Consequently, the way the independent variable “decision-maker interests” is conceptualized only allows for marginally different policy preferences between different parliamentary parties below the level of fundamental institutional interests. Even though the empirical analysis has demonstrated that the model is still able to explain the results of civil society influence, different parliamentary groups have sometimes taken different positions even on issues on which they should have taken the same basic stance. In some cases, individual party positions were closer to that of the government, e.g. that of Megawati’s PDI-P during the debate about the TNI Law, while parties like PKB and the Reformasi parliamentary group demonstrated positions significantly closer to ProPatria’s ideal position, indicating that civil society influence worked better for some parties. The fact that this has not caused any problems for the explanatory power of the theory likely results from the fact that the Indonesian parliament is strongly consensus oriented. Even if there are initial differences in policy orientation, these often cancel each other out during the process of establishing consensus by deliberation. However, the theory is not fully able to explain the internal decision-making process in parliament if civil society does not gain access to any parliamentary group or only to a few and can consequently not present an uninterrupted chain of causality between civil society influence and the ultimate behavior demonstrated by the collective decision-maker.

Second, and closely related to the last point, the theory cannot account for the way bargaining processes between different decision-makers have shaped the ultimate legal outcome. Since decision-makers do not value every change to a law equally, especially in relation to their institutional interests, it is possible that they cut bargains with other decision-makers which then determine whether a civil society demand will be represented in the final law. For example, it is possible that DPR valued their own oversight power so much that they were willing to compromise with the government side on other issues during the negotiations for the Defense Law or later for the Intelligence Law, which could explain why the government side agreed to granting DPR explicit oversight even though this ran against their own institutional interest.

Limitations of scope

This study’s focus on regulatory demands concerning the extent of civilian control and directed at civilian decision-makers means that it has not fully captured the role and effectiveness of Civil Society Organizations in the Security Sector Reform process. First, it has not systematically analyzed how monitoring of armed forces behavior and human rights violations have contributed to the institutionalization of civilian control, not only at the agenda setting stage. There are indications that civilian decision-makers have benefited from civil society monitoring activities during the legislative process for the Military Justice bill. The case study has identified at least one instance in which monitoring activity by human rights groups like Imparsial and KontraS has contributed to the revival of

negotiations between government and parliament. Monitoring also has an independent effect that can help civilian decision-makers expand the overall level of civilian control by reducing the chances that the military leadership will mount covert resistance to reforms for fear it would be discovered and punished (cf. Croissant *et al.* 2013: 49).

Second, the study has not covered civil society demands without immediate relevance for civilian control, but which might affect the chances to expand civilian control in the future. Most importantly, this includes changes of doctrine and military posture. Indonesia's doctrine focuses on the army which is also the most powerful and influential branch of the Indonesian armed forces. One of the reasons Indonesia still relies on the Territorial Structure, with all its problematic effects for civilian control at the subnational level (Mahroza 2009; Honna 2012; Jansen 2008), is the dominance of the army. Among ProPatria's demands not immediately relevant for civilian control was a shift towards a more integrated, less army-centric defense posture and military doctrine. In the long run, this slow shift might even contribute to an erosion of the territorial structure. However, in order to minimize the need to track indirect long-term effects prone to the influence of additional explanatory variables not contained in the model, this study focused on the immediately tangible effects of civil society activities for the institutionalization of civilian control.

Third and most importantly, the study has not covered the implementation stage, even though implementation is arguably at least as important for institutionalizing civilian control as creating basic legislation. This is true even more if the legislation that is passed fails to regulate detailed procedures as most legislation about inter-institutional relations in Indonesia has done. Empirically there are indeed strong indications that many of the advances made in legislation have not been fully translated into operational regulations, standard operating procedures and sometimes even backtracked from the level legally established. Most importantly, even though the TNI Law mandated an end to military business activity and a takeover of the existing military businesses by the civilian government, this takeover was seemingly implemented in 2009, but the presidential decree merely announced the takeover of TNI business "activities", not the actual businesses (Mietzner and Misol 2012: 113). Other sources also suggest that other regulation from the TNI Law have yet to be properly implemented (Sebastian and Iisgindarsah 2012). Even though this might diminish the impact civil society activities actually had on the institutionalization of civilian control, the theoretical arguments developed in this study can actually shed light on the implementation problems as well. First, without access to the implementation process, Civil Society Organizations cannot or can hardly influence the content of what happens inside the Department of Defense. Second, this allows the military to continue their informal influence of civilian decision-makers at the ministry as well as their formal control over the implementation process through their own officers seconded to the Department of Defense. Third, some of the regulations that are yet to be introduced would restrict the ability of civilian decision-makers to flexibly involve the military in

different kinds of operational activities in order to minimize their need to negotiate their authority for every single demand civilians formulate. Consequently, civilian decision-makers are not sufficiently motivated to implement these changes because of their own institutional interests as long as they have the political resources to convince the military by other means.

Methodological limitations

There are also a series of methodological limitations. First, the selection of cases misrepresents the overall effect of civil society influence on the institutionalization of civilian control across all decision-making areas for two reasons. First, the study fails to systematically study the activities of Civil Society Organizations around the reforms of electoral and party regulations, the original MPR decrees instituting the separation of military and police or the influence of civil society activism and protests in the wake of the transition that influenced the military at least indirectly in their announcement of immediate reform steps in 1998. The failure to include these projects possibly underestimates the overall influence civil society had on the process of institutionalizing civilian control. In addition, the study does not systematically include the fate of short-term projects the ProPatria working group engaged in or ideas for reforms the group debated but then dropped because they wanted to focus on other activities or believed their goals would only be feasible at a later point. The failure to include these smaller failed projects means the remaining cases likely overestimate the overall success rate of civil society activity. Nevertheless, I argue that the selection of legislative projects analyzed for this study still presents a tough test for the question whether civil society had influence on the institutionalization of civilian control: The included reforms are closer to the military's institutional core and should, therefore be more difficult to achieve, at least according to the expectations of other theories of civil society success and failure (Amenta *et al.* 2010; Giugni 2004: 227–228; Kriesi *et al.* 1995: 97).

Second, and most importantly, the fact that all case studies were conducted within the confines of an essentially unchanged environment of decision-making structures and patterns of entrenched institutions of civil-military relations means that the study provides no empirical leverage to generalize its results beyond these confines. The Indonesian legislative process is unique in the immediate influence the government has over parliamentary negotiations. Unlike in most other presidential systems, the government does not have to rely on their coalition partners in parliament to defend the government line. In addition to the absolute veto “mutual agreement” guarantees the government, “deliberation to reach consensus” also means that every single parliamentary group has the potential to hold up negotiations and force changes to the bill. Both of these factors have negatively affected the ability of civil society groups to introduce alternative legislation but also improved their ability to stop laws and regulations. Because of these dynamics the results of this study cannot be generalized. Still, this study has provided the first extensive and

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systematic attempt to analyze the extent and determinants of civil society influence based on an explicit causal mechanism derived from general assumptions and prior results of CSO and civil-military relations research. The way the theoretical argument is conceived means it contains no country specific variables that cannot easily be applied to other institutional contexts. While the results are not generalizable, there is no inherent reason to suspect that the explanatory framework should not be able to be tested against other cases.

Avenues for future research

Considering the limited generalizability of my findings, the most important avenue for future research would be an attempt to increase the argument's generalizability by testing it against new evidence. The substantive conclusions from this analysis will most likely not travel to other political contexts where the legislative process provides for different access points and a different configuration of veto players at the different stages and where institutional access channels might play a larger role for Civil Society Organizations. In addition, the pattern of institutional entrenchment differs widely between cases, depending on the nature of the autocratic predecessor regime and the course of the transition process. However, as outlined above, the general argument and causal mechanism is derived from basic assumption about decision-maker and military interests as well as the nature of the policy process and does not contain any variables unique to the Indonesian context. It could easily be adapted to the context of other young democracies.

Second, in order to improve our understanding of the empirical process that translated civil society influence attempts into an institutionalization of civilian control, future studies could attempt to more closely trace the path of individual regulations. This could reach from their development by the ProPatria Working Group or other Indonesian Civil Society Organizations through the public statements the groups made and alternative drafts they provided for decision-makers to changes in the public statements decision-makers made before and after civil society proposed changes to them. The substance of and language for individual regulations could then be traced through the decision-making process in order to further increase confidence that it was in fact civil society influence that affected the position of decision-makers and the content of a law. In addition, the scope of this study could be expanded to include more general goals of Security Sector Reform.

Third, the relatively general nature of the research design this study employed could be adjusted to evaluate and explain the role civil society played in other policy fields within the Indonesian reform process. However, because the explanatory model relies on the institutional interests of policy-makers to determine the difficulty of an influence attempt, the scope of such an analysis should be restricted to policy fields that have implications for the relative authority of decision-makers or their ability to remain in office. This includes policy fields like constitution-making or constitutional reforms, political party laws, election laws and legislation on independent watchdog agencies. Only for these quasi-constitutional pieces of legislation could the model generate expectations about decision-maker interests

going beyond individual policy preferences. The idea of “entrenched” and “core” interests could be easily adapted to analyze the interaction between CSOs and counter-movements which have the resources and access to marginalize CSO lobbying activities, including classical interest group politics or, often relevant for the political process in young democracies through political corruption.

10.4 Outlook

This study has provided considerable support for the claim that Civil Society Organizations have contributed to the institutionalization of civilian control in Indonesia. However, the conclusions drawn in this chapter also mean that it is unlikely civil society will play a similar role in the future. In the absence of a strong reformist mandate from the president, the military will still have strong formal and informal influence on policy development through the Department of Defense. The current Defense Minister Gen. (ret.) Ryamizard Ryacudu, the first former military officer to be appointed to the office since the transition, was among the most vocal hardliners in the military leadership during President Megawati’s term and is known for his hostile attitude towards Civil Society Organizations. Chances that he will actively invite input from groups like ProPatria are slim. In fact, Ryamizard recently announced that he would use the remaining broad definition of military assistance to civilians to reactivate TNI’s autonomous development assistance program “TNI enters the village” (Detik News 27.11.2014). During the New Order “ABRI enters the village” was a way for the military to increase control of the local population in the Indonesian periphery and the benefits the military provided to local elites gave it a lot of influence over local decision-makers.

Future civil society influence is also complicated by the fact that most of the remaining reforms either call for the improvement of oversight and accountability of decision-makers or more detailed regulations on matters currently handled in a flexible, *ad hoc* manner. For example, Military Operations other than War currently give the president relatively wide leeway in determining if and when to use the military for internal security or development tasks. As long as civilian decision-makers can otherwise guarantee a sufficient degree of civilian control in everyday interactions with the military, chances are slim that the government will pursue these reforms and limit its own flexibility. At least in the security sector, reform input now comes mainly from government-to-government or military-to-military cooperation. Civil society involvement is often tightly controlled and groups are no longer granted access to drafting processes. In addition, the fragmentation process in civil society has continued and the groups currently active no longer pursue coordinated long-term strategies (Scarpello 2014: 151). There is even a sizeable number of civil society groups founded by or closely associated with former military officers that frequently testify at legislative hearings to add the voice of the military’s own civil society to the mix of more critical voices and usually oppose expansions of civilian control.

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Considering this outlook, civil society influence on the institutionalization of civilian control is still needed to continue the Indonesian reform process. However, some of the same factors that increase the need for civil society advocacy also reduce the chances that it will have the desired effect.

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