
MONOGRAPH No-9
“National Police Commission”
9 October 2007



PROPATRIA INSTITUTE

Working Group on Security Sector Reform

Jl. Pancoran Barat IV No.2 (003/06) Jakarta Selatan 12780 INDONESIA
Phone/Fax: (62-21) 7996380 - 7990546 Website: www.propatria.or.id,
E-mail: propat@cbn.net.id/propatria.institute@gmail.com

Executive Summary

Structure differentiation and functional specialization are the precondition in policy making process and policy implementation democratically. For that reason, a supervisory institution plays an important role to assure the implementation of good governance is in accordance with the legality, competency and the interest of the public including in policing system. Without control, there are huge tendency for misuse of power. Nonetheless power tends to corrupt and absolute power corrupts absolutely. Therefore the use of state budget in order to implement the function of public service demands public accountability.

The National Police Commission (Kopolnas) was established due to the demand of democracy, the nature of public accountability and the will to demilitarize the structure and function of police. However since the year the commission was established, 2005, the existence of Kopolnas is hardly notice. The reformation mandate to control the POLRI's performance became vague as the authority of the commission become weak. The essence of reformation that was symbolized through Kopolnas is only a personification on a piece of paper. For that reason, strengthening the commission becomes mandatory to guarantee the implementation of good governance as well as the fulfilment of several demands on the professionalism that at the same time also guarantee the rewards for the officers who have perform their duty.

As the democratization in the implementation of police function becomes a demand, controlling must be conducted in every step of policy process, particularly in planning and implementation. Controlling in the planning and implementation level of human resources development also plays important roles. This is not merely this sector requires certain competency and efficiency but also a demand to guarantee the rights and professional accountability of POLRI. However, there are one point that need to be cleared that is the strengthening of the commission does not necessarily meant that the commission will become the new juggernaut that will hinder the POLRI's performance as well as the new political battle-field for the stake-holder. For that reason, the strengthening of the commission must be accompanied with certain obligation that will keep the commission under political control, functional authority and public control and for that purpose the term commission was chosen not institution.

The main purpose in establishing Kompolnas are to assist the President in determining the policy cycle of POLRI and provide consideration to the President in appointing and dismissing the Chief of POLRI (article 3 Presidential Decree 17/2005). For that purpose, the commission are authorize to (1) Collect and analyze data on budget, human resource development, and development of POLRI's structures and infrastructures, as reference in formulating inputs for the President; (2) Provide inputs and consideration to the President in the establishment of professional and independent POLRI; and (3) Register inputs and complaints from the community regarding the performance of the POLRI and forward them to the President.

These authorities are too simple for a national commission that have the duty to assist the President on the other hand it is too weak for a commission that was expected to run the controlling function towards the POLRI. If the commission was expected to only except the suggestion and complaints on POLRI's performance then this function can be conducted POLRI itself not necessarily a national commission. On the other hand, the effectiveness of POLRI's control will be doubtful if the commission are just limited to accommodate public complaints concerning law enforcement-report and/or investigation- without any authority to give correction towards the police's behaviour or discretion. No matter how important the level of obedience towards religion, social or ethic values, one of the important keys for the public to judge POLRI's performance is the ability for the POLRI to serve the society and enforce the law fairly, consistently and consequently.

In order to establish a democratic and professional police requires an institutional design that are able to distinct the political authority within the statehood system and scope of substance in functional policy on one side and the capacity to guarantee the accountability of the institutional implementation. With such indicators then we can observe several weakness on the Kompolnas institutional design, *first*, the simplicity of authority for a commission that are expected to run a controlling function; and, *second*, membership structure of the Kompolnas does not provide an opportunity for the commission to establish a functional, effective and dignified institution.

In that context, empowering the Kompolnas is a transitional measure to fulfil the demand of democracy as well as create an effective policing function. The transition it self was also the cause

that will effects the policy cycle of Kompolnas in the future which are based on several points: (a) sustain the policing function as one of the governmental function on the hand of the head of the government (President); (b) confirm the civilian identity of the POLRI; (c) POLRI's professionalism development through the authentication of duty and authority of POLRI limited to the function to protect and serve the society as well as enforcing the law; (d) development of police political accountability through functionalization and institutional development of Kompolnas; and (e) support the development of POLRI towards independency and professionalism.

Act No.2/2002 and President Decree No.17/2005 can be one of the foundations to strengthen the function of Kompolnas. Bearing in mind several political problems and the need to sustain effective performance of police, there are several things that should be considered to establish democratic policing. First is the need to strengthen the Kompolnas legitimacy in democratic life. Legitimacy, at practical level of democratic system, originated from the people then takes form through the branch of state authority (executive, legislative and judicative). President and the parliament are the form of state authority, executive and legislative, and for that reason both can be one of the sources for Kompolnas legitimacy. The issue on to determine the quantity, when and how the authority of the parliament should be accommodated will be another technical issue. So does other issue such as the number of members, qualification of members and/or the mechanism to become a member of the commission. For that reason, the parliament in particular the third committee should be supported to become Kompolnas's partner.

Second is the need to increase the Kompolnas's ability in accordance with its function. The institutional development can be conducted by completing the Kompolnas's structure with organizational structure that are specifically responsible to perform Kompolnas's function to provide suggestion for the President concerning the policy cycle of the police, appointment of Chief of POLRI as well as accepting public complaints. The independency of Kompolnas from POLRI, technically, functionally and organisatory are condition sine qua non for POLRI's reform and in particularly the Kompolnas. With the strengthening of Kompolnas's function then Kompolnas will become the institution outside POLRI's institution that are respected by the public and POLRI it self.

In order to empower the function mentioned above, an implementation stages that considers scale of priority and budget ability are required. Preliminary steps that can be implemented to empower the NPC include the following: (a) Adjustment of legal framework, whether prevailing laws, political decision or internal regulation of POLRI and NPC; (b) coordination between ex-officio ministries in the administering the authority of NPC; (c) Institutional preparation, both in terms of structure and membership, based on the new regulation, including budget and secretariat issues; (d) Adjustment between the NPC according to Presidential Decision No.17/2005 and the new empowered NPC; and (e) socialization of NPC to the internal POLRI and to the government including the third committee of Parliament.

Content

Executive Summary	.....	i
Content	.....	v
Background	.....	1
POLRI's Accountability and Kompolnas	.....	2
Function and Authority of Kompolnas	.....	4
Structure of Kompolnas	.....	5
Conclusion and Recommendation	.....	7
Attachment	.....
1. Table-1: Level of Police Accountability and Function	.....	10
2. Table-2: Function and Authority of NPC	.....	11

Background

State and its people are always into a relationship that is based on various basic agreements. The people will renounce their sovereignty and support to the government so the government shall hold the monopoly of the use of coercive instrument for the security of its people¹. In daily life, the political contract between state and people is transformed into various forms, one of which is security as public goods and therefore the state's ability to produce and manage the sense of security for the people becomes a key variable in maintaining the relation between state and its people. In practice, state's authority and responsibility for security are delegated to various security apparatus which, in peacetime, the responsibility for security is in the hand of the state police. As such, the state police institution reflects the state's function in security and public order.

As experienced by many other countries, the triangular relation among people-police-state needs to be framed within various regulations, starting from laws and comprehensive policies up to various professional and work ethics. Such regulations are needed in order to regulate the authorities of the state and develop the capacity of the implementing apparatus, as well as to protect the interests of the people. Political changes, the people's continuous need for security and public order and/or the professional requirement of the police, have often led to imbalance relationship among people – state – police. In Indonesia's experience, especially during the reform era, the state is yet to guarantee security as public goods.

Within the context described above, the national police reform is seriously needed, both

in terms of its general function and roles in maintaining security and public order, law enforcement and community protection and services, as well as in a smaller scope such as capacity to manage conflicts within the society. More importantly for the state to resolve in this reform era is how various institutions implement the basic principles of democracy, particularly in regards to the separation of political accountability from operational accountability.

In a democratic state, all the state's policies and instruments related to the possibility of the use of coercive instruments (both in terms of law and armaments) should be in compliance with principles of democracy and human rights. Civil supremacy, as one of the principles of democracy, holds the authority to use the coercive instrument responsibly. As an ethic in state administration, the "civil supremacy" constitutes a supremacy that derived from a political process of the implementation of the state's various powers. In reality, this supremacy is transformed into a hierarchy of authority, ranging from authority to make decision, to plan a policy and/or to carry out the policy. Controlling of the overall substance is the main pillar for governance that concern to the public interest as well as guarantee opportunity to enhance the state apparatus capacity and professionalism.

In Indonesia, Police reform has become the main agenda of the government after the fall of Soeharto. Several policy and political decision has been taken in the past eight years such as Presidential Decree No.2/1999 (April 1999) concerning the separation of POLRI and TNI, ² continue with 1999 Outline of Major Government Policies (GBHN) which confirm the role and function of POLRI and TNI as well as political decision such as Decision of

the Peoples Deliberative Council (TAP MPR) No.IV/1999 that obliges the government to determine the policy cycle to increase POLRI's and TNI's performance, Presidential Decree No.89/2000 which confirms the position of POLRI under the President and obliges the amendment the act of police.³ In particular, Decision of the Peoples Deliberative Council No.VII/MPR/2000 regulates the establishment of national police institution to assist the President in the scope of national policing.

It is debateable on how far does the reformation above has strengthen the security sector reform as a whole and/or in particular has provide a foundation for the performance of democratic and professional police. It is also a separate issue, as the question on how the reform should be conducted so the bits and pieces can synergize, coherent and coordinate to strengthen state institution that are responsible in the field of state defence and security. However, as far as it concerns police reform, the idea on a national police commission (Kompolnas) is an important thing. The Act No.2/2002 on State Police tried to provide a legal base for Kompolnas and Presidential Regulation No.17/2005 tried to operationalize such legality with an institutional design.⁴

The design is required to establish a democratic and professional police that are able to confirm, political authority in a state system and the substantial scope of policy at one side, and capacity to guarantee the accountability of the implementing institution (read:POLRI), on the other side.⁵ With such indicators, the Kompolnas institutional design does have several weaknesses, namely, *first*, Kompolnas authority that are too simple and weak for a commission that are expected to assist the President and conduct controlling function of

POLRI; and *second*, the structure of Kompolnas's membership does not provide opportunity to develop the commission into a dignify, functional and effective institution. These two weaknesses will affect the current function and structure of Kompolnas and cause in-affectivity of Kompolnas's function. This argument will be elaborated in the following part.

POLRI's Accountability and Kompolnas

The police reform was meant to establish democratic as well as professional policing. Each elements has its own criteria, whether it is related to functional authority compatible with its position is policy process and/or conducting its role competently and responsibly. As an organization that was formulated based on incoherent idea on power sharing as it is embodied in 1945 constitution,⁶ yet aware the variety of political complexity to perform a comprehensive reformation, providing POLRI's accountability is the only available option.

Internally, the internal accountability covers day-to-day performance management and the police's performance as an organization. Externally, he external accountability is required to ensure transparency and public legitimating in controlling POLRI's compliance with social norms and legal framework in all of its action. Police reform requires a sustain system and mechanism to guarantee political, policy and operational both internal and external accountability. Table-1 (*see Attached I*) shows that not all elements of political, policy and/or operational need to show at the scope of external and/or internal accountability. The limited scope of political and/or policy dimension from internal

accountability were causes since the POLRI are the implementation institution of the policy. On the other hand, the POLRI's current position requires a system that will guarantee the performance of internal and external at all functional operation.

Accountability in general can be arranged in three different levels. First is political accountability that rises due to the demand of democracy. One concrete form of this principle is the differentiation political and operational accountability, in relation to POLRI this accountability can be seen from the relation between the President and Chief of POLRI. Second is the policy accountability that rises as a demand which relates to the policy maker particularly DPR and horizontally with the institution that perform government's function. Other form that clearly shows in this context is the planning process and development of police posture, use of state budget and other strategic option that generally falls within the authority of government institution. Third is operational accountability which is a process in being accountable for policing performance. Issues that relates to profession including technical competency, organizational structure and ethic profession are included in this category.

Currently, POLRI has internal control institution that consists of (a) Inspectorate of General Control (Irwasum), that is responsible to control the compliance and corrected ness of the implementation of duty, and the use of budget; (b) Inspectorate of Profession and Internal Control (Propam), that is assigned to control violation of disciplines and ethics of the police members, as well as maintenances of justice profession; and (c) Inspectorate of Regional Control (*Irvasda*), that is assigned to supervise the heads of police' units at regional

level. Other than that, in the context of Community Police, there is also *Forum Kemitraan Polisi Masyarakat* (FKPM) or Community – Police Partnership Forum that is a partnership forum between the community and the police, and a forum for non-litigation (outside of the court) dispute settlements. Through this forum, the community and the police can exchange ideas and information. The community can also express their complaints on the police performance through this forum.

Basically, strengthening the function of Kompolnas should confirm the roles and position in relation with POLRI, President and parliament. In the context of external political accountability, President is clearly held the external political accountability that has the authority to appoint and dismiss Chief of POLRI however the prevailing regulation does not clearly determine who held the internal accountability of POLRI. The in clarity of the regulation on external policy accountability also occurred, DPR particularly committee III in its budgeting and legislation function should have an active roles in controlling the POLRI's policy.

Other important things are external operational accountability of POLRI. In general, there are three kinds of POLRI operational accountability that are to the DPR, public and legally. The DPR with its controlling function is authorized to watch the operational implementation of POLRI. Public through Kompolnas or other independent institution including NGOs should report POLRI's bad performance. Legally, a *pra-peradilan* was established to control POLRI's performance as a law enforcer. These types of accountability are open to public, for that reason POLRI's accountability will not be just a symbol of

democracy but rather a concrete manifestation both institutional and functional.

On that point, the empowerment of Kompolnas will be able to clarify the POLRI's accountability. In the context of external political accountability, based on article 38 of Act No.2/2002 will clarify the external political accountability of POLRI by providing inputs on the appointing and dismissing Chief of POLRI and assist the President in formulating the policy cycle of POLRI. With the same capacity, Kompolnas will also clarify the internal policy accountability of POLRI by assisting the Chief of KaPOLRI in dealing with the DPR. In the context of operational accountability both internal and external of POLRI, Kompolnas will be able to organize complaints that come from internal or external POLRI and can optimize the complaints.

Function and Authority of Kompolnas

National Police Commission is established to assist the President in formulating policy for POLRI as well as providing consideration to the President concerning the appointment and dismissal of Chief of POLRI. In carrying out its duty, NPC is authorized to: (1) Collect and analyze data on budget, human resource development, and development of POLRI's structures and infrastructures, as reference in formulating inputs for the President; (2) Provide inputs and consideration to the President in the establishment of professional and independent POLRI; and (3) Register inputs and complaints from the community regarding the performance of the POLRI and forward them to the President.

These authorities are too simple for a national commission that assist the President and too

weak for a commission that was expected to do controlling function towards the police. The police do not need a national commission to register public inputs and complaints and report it to the President. If the function of NPC is only to register the public inputs and complaints on the police performance in law enforcement, then NPC should be able to make judgment on the action and discretion the police have done. On the other hand, the affectivity of POLRI's control will be in question if Kompolnas are only accommodating public complaints concerning law enforcement -report and investigation- without any authority to correct such act or discretion. No matter how important the level of obedience towards religion norms, social and other ethics consideration, one of the important keys for the society to judge the POLRI's performance are the ability of POLRI to perform its service function and law enforcement fairly, consistently and consequently.

Such judgement should be issued without obstructing public's opportunity to express what they knew relating to any incidences of abuse of power and/or even corruption committed by the police members. This access is very important because it was often not clear what the police did with the report submitted by the public. This happened because the strong solidarity within the police institution where members tend to cover up each other. On the other hand, the public expect that the commission will have responsibility to not only register but also process the inputs and become the driving force for law enforcement.⁷

Other matter that is similarly important is the form or efficacy of the advice given by the NPC that is only "recommendation" in nature, and has no legal binding force. While in terms

of control and development, the NPC's recommendation should have certain impact on the policy issued by the POLRI. This too – simple authority needs to be further clearly defined in the Presidential Regulation and in the NPC's strategic program plan. The development of the NPC's function should become direction on the development of NPC as an institution. Table-2 (*see Attached II*) shows how Kompolnas authority and duty relates with one another in current situation and the strategic option that need to be conducted.

Structure of Kompolnas

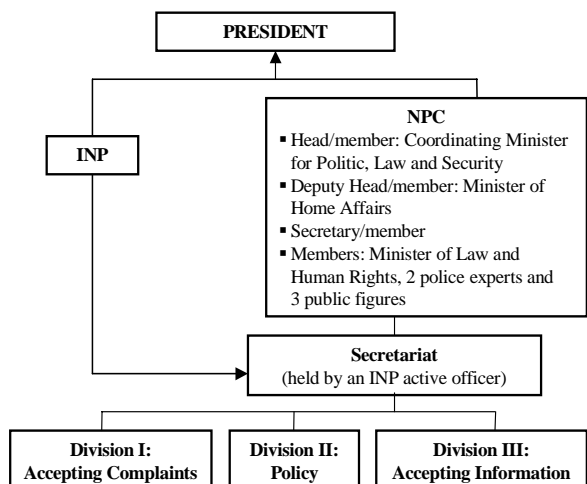
According to Presidential Regulation No.17/2005, the organizational structure of NPC is divided into two parts, i.e. structure of membership and secretariat of NPC. The NPC membership consists of the following institutions: (a) three representatives of the government (Coordinating Minister of Politic, Law and Security; Minister of Home Affairs; and Minister of Law and Human Rights); (b) three police experts, and; (c) three community key leaders. From the good governance's point of view, this structure is weak. In carrying out its duty, NPC is supported by a secretariat under the POLRI Headquarters and defined by the POLRI Chief. The secretariat is led by a Head of Secretariat who is appointed and dismissed by the POLRI Chief. The Head of Secretariat position is held by a POLRI high ranking official responsible to the NPC and work to support the NPC performance.

Such design is not enough to establish a dignified, functionalize as well as effective institution. From the composition of membership, Kompolnas reflect the combination of government and society. Three government representatives out of nine members of NPC may be too many. If government needs to be

represented at NPC, one representative who has time and dedication to the NPC may be sufficient. The remaining members could be community representatives who have time, commitment and dedication to the NPC. The current NPC members seemed to be selected in haste, therefore, not too many people including the POLRI members, recognize them.

For that reason, Kompolnas should accommodate concerns parties such as retired judges and prosecutors, community and NGO leaders who have genuine concerns for the improvement of POLRI performance. This combination is expected to contribute something towards POLRI's improvement in service as well as in addressing the community's needs and expectations. In relation with the need to establish democratic policing then the aspect of competency should be prioritize then aspect of proportionality.

Based on Presidential Regulation No.17/2005, the structure of Kompolnas can be drawn as follows:



The weakness of the above structure is there is no direct relation between the President and Parliament. In the provisional regulation in the Presidential Regulation No.17/2005, the NPC is described as institution attached to the President and assists the President in issues related to the police. Having only nine members but with national level responsibility, the NPC's performance capability is unsurprisingly slow and limited. Unfortunately, this institution is not empowered enough to improve its capacity to become more than just the Presidential advisor.

This structure is also suspected to influence the independency of the NPC's performance. This is because the secretariat is held by a unit within the POLRI headquarters, with the POLRI Chief having the authority to appoint and dismiss the head of the secretariat whom is also a high ranking police officer. As a result, NPC is perceived as belong to the POLRI and with the involvement of several ministers as its members, the NPC's objectivity and clarity in making judgement are also questioned. Another impact of the location of NPC secretariat within the POLRI headquarters is the dependency of NPC towards the authority of the POLRI Chief.

The other problem is that since the establishment of NPC in 2005, the President has not yet officially sworn in the selected nine members. In Indonesia's perspective, swearing in has an important meaning because it implies the justification and legal basis for the institution to declare its existence.

The President should have given special attention to the newly established institution and its performance, including in issues of funding, structure and infrastructures that are until today still being provided by the POLRI headquarters. This, also, could influence the independency of the NPC. It would be better if the NPC is close to the public in order to oversee the performance of POLRI and at the same time opening access for the public to express their complaints regarding POLRI's performance.

To address the above-explained issues, there are several alternatives to develop the NPC. *First*, maintain its function as described in the Presidential Regulation No.17/2005 but with more focus on the functionalization of NPC, approach on policy process and the political crystallization within the POLRI. Such policy can be formulated by coordinating the scope of policy formulation among the three ministers.⁸ *Second*, make NPC as government's non-departmental institution that has function to administer policy and public complaints. For this option, the public complaint administration function of NPC can be empowered as a link to forward public complaints to the existing controlling institutions including the Presidents.⁹

To certain extent, the first option is more feasible. The advantage of this option is access to internal POLRI for policy making. While the weakness of this option is there will be no independency of the NPC. If the NPC is to be

focused as policy maker/administration, then its function of public complaints administration better be eliminated and given to other independent body such as *ombudsman*. An *ombudsman* functions not only as administrator of public complaints, but they can also classify and differentiate the complaints and forward each different complaint to different authorised control body of the POLRI. This way, the NPC will be able to maximize its function as policy maker and POLRI can focus on technical implementation of the policy. It is important to note that organizationally, NPC should have a by laws that covers:¹⁰ (a) Regular and incidental meetings; (b) Principles of negotiation and deliberation, and; (c) mechanism for decision making.

Conclusion and Recommendation

POLRI has conducted many reform efforts, part of them is internal reform and most of them are reform from below/bottom up, unlike the process that proceeds in the military body that is more top down reform or reform from above. The separation of POLRI from the military (1999) was more a demilitarization or civilization of POLRI rather than police democratization. Separation of the two institutions is only a beginning and follow up measures need to be taken and shown by the change of attitudes and performance of the POLRI in its relation with the public and government.

Related to that, the empowerment of NPC is a transitional step to fulfil the demand of democracy and the affectivity of police function. Due to the transitional situation, the policy cycle of NPC's development should be based on several points: (a) maintain the function of the police as a governmental function led by

the President; (b) emphasize on POLRI's identity as a civil institution; (c) development of POLRI's professionalism by focusing its duty and authority on protecting, nurturing and serving the public and enforcing the law; (d) development of political accountability through functionalization and institutional development of NPC; and (e) support the development of professional and independent POLRI.

To establish a democratic police and maintain the affectivity of POLRI's performance, several political issues need to be considered. *First*, the NPC legitimation needs to be strengthened. In a democratic system, source of legitimation comes from the people that are represented through the branches of power (executive, legislative and judicative). President and Parliament as representatives of the state power, executive and legislative respectively, can become one of the sources of NPC legitimation. It then becomes a technical issue to determine the scale, the time and how Parliament authority will have to be accommodated. Therefore the Parliament, particularly commission III, need to consider NPC as their partner. Discussion on NPC budget, policy as well as membership recruitment can be done in various forums.

Second, the NPC need to build its capacity to functionalize the institution in accordance with its mandate. With this strategy, the NPC is expected to be able to implement its authority and task in the formulation of the policy, recruitment of Chief POLRI and public complaints administration in accordance with the Law No.2/2002 and Presidential Regulation No.17/2005.

Third, functionalization of NPC to assist the President in formulating POLRI's policy can

cover, for example, (a) national policy on crime prevention and crime fighting; (b) system of public order policing; (c) selection of Chief of POLRI; (d) Suggestion on recruitment system and basic curriculum of POLRI's education, including the adoption of human rights components and police code of conduct according to the universal standard; (e) suggestion on the policy formulation regarding police and society relation; and (f) suggestion on the control of operational discretion.

Fourth, functionalization of the NPC in relation to the POLRI. On one hand, this approach will enable NPC to oversee and suggest revision of the Chief of POLRI's regulation and/or code of conduct that may disadvantage the performance of the police members at the field level, such as use of violence and fire arms, the adoption of the basic principles of human rights for the law enforcement according to international/UN standards. On the other hand, NPC is also expected to not only administer public complaints but also the complaints of police members who are victimized by the unfavourable code of conducts.

The main purpose of NPC empowerment is the improvement of political accountability of INP which includes institutional accountability, organizational accountability and public accountability. A more active role of the Parliament will improve the institutional accountability of NPC as the NPC members could be selected through a fit and proper test by DPR. In addition, the empowerment will also strengthen the operational accountability which consists of organizational accountability and public accountability. The first one is related to the performance and professionalism of POLRI in policy implementation, while public accountability is related to the

POLRI's transparency regarding its performance to the public.

Preliminary steps that can be implemented to empower the NPC include the following: (a) Adjustment of legal framework, whether prevailing laws, political decision or internal regulation of POLRI and NPC; (b) coordination between ex-officio ministries in the administering the authority of NPC; (c) Institutional preparation, both in terms of structure and membership, based on the new regulation, including budget and secretariat issues; (d) Adjustment between the NPC according to Presidential Regulation No.17/2005 and the new empowered NPC; and (e) socialization of NPC to the internal POLRI and to the government including the third commission of Parliament.

=PROPATRIA@2007=

Endnotes

¹ Other than the ability to provide and manage security, other fields must also become the attention of state such as law, health, education, critical infrastructure, banking and monetary system, business environment, forum that guarantee freedom for civil society and method of regulating environment commons.

² See President Instruction No.2/1999 (April/1999) on Policy Measures to Separate the POLRI and ABRI.

³ Article 4 of the Decision stipulate that: "...prepare the draft bill to replace Act No.28/1997 on State Police of the Republic of Indonesia, six months after the release of this decision, at the latest."

⁴ The provision on Kompolnas can also be seen at article 37–40 of Act No.2/2002 and Presidential Regulation No.17/2005.

⁵ It must be acknowledge that Act No.2/2002 on State Police clarify the provision concerning Kompolnas on the Decision of the Peoples Deliberative Council and Presidential Regulation No.17/2005 has regulated some of the missing provision within the Act No.2/2002. However, in the end, the Presidential regulation is not enough to regulate the vacuum of regulation, for instances Kompolnas's weak position in relation with POLRI.

⁶ Article 2 of POLRI's Act uses the Van Vollenhoven theory that policing function are one of the branch of state power that would be irrelevant if the theory would be connected as the paradigm of separation of power as it is regulated in the constitution 1945. Theory of "catur praja" explain that power of state consist of *regelling*, *bestuur*, *rechtspraak*, *politie* (legislation, executive, judicial, policing). See, Muhammad Fajrul Fallakh, POLRI dan Keamanan Nasional, Makalah Lepas, Jakarta (2005).

⁷ In the context of violation of the law and law enforcement, the NPC may be developed to play greater role in the process of law enforcement up to the point of delivery of the case dossier from the police to the

attorney for prosecution. However, this issue is too premature and complex to resolve in the early stage of the process toward a democratic policing, when issues of institutional accountability and policy need to be prioritized. Law enforcement within the POLRI institution deserves special attention and separate analysis.

⁸ Matters that related to law enforcement will be formulated by the Minister of Law and Human Rights, the matters on internal security and public order will be formulated by the Minister of Home Affairs and the Coordinating Minister will coordinate the other ministers. The NPC's secretariate should be maintained as is.

⁹ If this option is chosen then NPC will likely to become a superbody and inefficacy in the institution's bureaucracy will occur. Then, again, the public complaints administration function cannot be maximized, while complaints is closely related to the institutional transparency which, eventually, relates to the issue of NPC capability as internal and external control. If such function cannot be maximized then the function of NPC will be diminished and, at the end, any effort to empower NPC through this option will be useless.

¹⁰ Article 14 - 16 Presidential Regulation No.17/2005.

ATTACHMENT I

Table 1
 Level of Police Accountability and Function

	External		Internal
Politic	Presiden Appointment & Dismissal Chief of POLRI	K O M P O L N A S	---
Policy	DPR (budgeting and legislation function)		---
Operational	<ul style="list-style-type: none"> ➤ DPR (controlling function) ➤ Public Complaint ➤ Legal (<i>pra-peradilan</i>) 		<ul style="list-style-type: none"> ➤ Internal Control ➤ Ethic

ATTACHMENT II

Table 2
Function and Authority of NPC

Task	Policy	Scope
Assists the President in determining the general policy of POLRI	<p>This task puts NPC in a ministerial / departmental position in nature (budgeting and policy function)</p> <p>If this alternative is to be chosen, then the NPC need to be expanded</p>	<p>NPC priority issues:</p> <ul style="list-style-type: none"> ➤ Human Resources (recruitment) <i>Example: education.</i> ➤ Control of discretion at in operation → legally allowable, but depends on the implementer <i>Example: does a corruptor need to be detained? What about traffic violation?</i> <p>All these policies are under the authority of the POLRI Chief. Therefore, a clear distinctive line which separates general policy with technical policy is required.</p> <p>Types of policy: grand policy, public policy, etc.</p> <p>Currently the formulation of policy guidance is developed by the POLRI itself. This happened because there is no separation between general policy and technical policy. Both POLRI and NPC are also not aware of the division of the two policies.</p> <p>Suggestion: NPC should cover macro policies while POLRI covers operational policies. Like NPC in other countries, the Indonesia NPC should act as a neutralizer of the POLRI's politic. NPC should also have access to POLRI high rank officials to provide suggestion.</p>
Provide inputs and consideration to the President regarding the appointment and dismissal of Chief of POLRI	Command.	
Register input and complaints concerning the performance of POLRI and forward them to the President.	Focus on operational matters of the police (professionalism, ethic, etc)	
<ul style="list-style-type: none"> ▪ The three tasks above have shortcomings, in the sense that there are two tasks with three types of authority. ▪ The scope of policy has not yet been elaborated in detail. 		