



INDONESIA

# Unkept Promise

Failure to End Military Business Activity in Indonesia

HUMAN  
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## **“Unkept Promise”**

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## Summary

Five years after the government of Indonesia committed to end the money-making ventures of the Indonesian armed forces, the promise of reform remains unfulfilled. New reform measures will perpetuate military businesses, rather than eliminate them.

Dismantling the military's independent businesses has long been recognized as a crucial step to make the Indonesian armed forces (*Tentara Nasional Indonesia* or TNI) fully accountable to civilian authorities. A law passed by the Indonesian parliament in September 2004 required the Indonesian government to shut down or take over all TNI businesses by October 16, 2009. While the 2004 law was flawed, since it did not clearly cover illegal and informal businesses, it represented a landmark commitment. As the five-year deadline drew near, however, the government had not yet implemented the required transfer of businesses. While sell-offs and business failures had reduced the scale of the TNI business empire, the armed forces still retained extensive holdings.

Faced with the impending deadline, President Susilo Bambang Yudhoyono issued a decree on October 11, 2009, which was followed by Ministry of Defense regulations on October 21. Most importantly these new measures do not require the military to give up its businesses, but merely provide for a partial restructuring of the entities—military cooperatives and foundations—through which it holds many of its investments. The government formed an inter-ministerial team on November 11 to oversee the limited transformation of TNI businesses. However, this team has no clear authority over the TNI or its businesses, lacks independence, is not required to report publicly on its work, and faces no deadline to complete its work. Instead, the government's actions at best set in motion a new process to gradually assert greater government oversight, but not ownership, over TNI business activities. Nor do the new measures address accountability for human rights violations and economic crimes associated with military business activities.

This report assesses the new measures. After describing the nature of the TNI's involvement in business and the push for reform, it details the lack of progress since 2004 and identifies the TNI's main business holdings. Next, it analyzes the recent presidential decree and ministerial regulations in detail, noting their positive aspects as well as the ways in which they fall short. The report ends by offering recommendations to the Indonesian government. In particular, Human Rights Watch calls for changes to the government's planned reform process so that, at a minimum, it covers a wider set of businesses, incorporates adequate civilian oversight, and provides for needed transparency and accountability.

## I. Military Business in Indonesia

Indonesia's armed forces have a longstanding practice of raising independent income outside the approved budget process.<sup>1</sup> The military's role in Indonesia's economy takes several forms: military-owned businesses organized under TNI foundations and cooperatives; collaboration with the private sector, including protection payments and leasing of public land for profit; criminal enterprises, such as involvement in illegal logging; and various forms of corruption, including inflating the cost of military purchases.

The military has long argued that they need to operate independent businesses in order to supplement the funds allocated by the government, but the reality is that these businesses do little to cover unbudgeted expenses. According to government data, the military's foundations and cooperatives had gross assets of Rp3.2 trillion (US\$350 million) and net assets of Rp2.2 trillion (\$235.4 million) as of the end of 2007 and their business activities brought a profit of Rp268 billion (\$28.5 million) that year. (No estimates are available for protection payments, land and building leases, criminal enterprises, and corrupt practices.) By contrast, the official budget allocation to the TNI (which reflects only part of government spending on the armed forces), was Rp29.5 trillion (\$3.2 billion) in 2007 and by 2009 had grown to Rp33.6 trillion (\$3.6 billion).

Many government agencies in Indonesia have established foundations and cooperatives to provide funds and services to supplement official budget allocations, some of which have been involved in business. However, military businesses raise special concerns because of the potential for conflicts of interest and abuse of power. In fact, although the TNI's businesses contribute very little to the bottom line, they come at a great cost. As documented by Human Rights Watch, money-making ventures by the military undermine civilian control over the armed forces and fuel human rights violations.<sup>2</sup> They also contribute to crime and corruption, impede military professionalism, and distort the function of the military itself.

An extreme example of the problem of conflicts of interest took place in 2007, in the East Javanese district of Pasuruan. The Navy had expropriated land from several local villages decades earlier and by 2007 was leasing it to a state-owned company to operate a

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<sup>1</sup> See, for example, Harold Crouch, *The Army and Politics in Indonesia* (Ithaca and London: Cornell University Press, 1978), pp. 273-303; Richard Robison, *Indonesia: The Rise of Capital* (North Sydney: Allen & Unwin, 1986), pp. 250-270; Lesley McCulloch, "Trifungsi: The Role of the Indonesian Military in Business," in Jörn Brömmelhörster and Wolf-Christian Paes, eds., *The Military as an Economic Actor* (New York: Palgrave MacMillan, 2003), pp. 94-123.

<sup>2</sup> Human Rights Watch, *Too High a Price: The Human Rights Cost of the Indonesian Military's Economic Activities* (New York: June 2006), <http://www.hrw.org/en/reports/2006/06/20/too-high-price>.

plantation. On May 30, 2007, after villagers protested the bulldozing of their productive land to expand the plantation, Navy personnel providing security for the company opened fire, killing four villagers and wounding eight.<sup>3</sup>

In other examples, the military has had a prominent role in large timber operations that have displaced communities from their ancestral lands and fueled rampant illegal logging.<sup>4</sup> Military units providing protection services to companies have earned off-budget cash payments, raising serious corruption concerns.<sup>5</sup> The armed forces lease government buildings and land to private companies for a profit, which constitutes a misuse of state assets.<sup>6</sup> The military also has been implicated in illegal businesses and extortion operations.<sup>7</sup> Individual officers allegedly own their own businesses, frequently together with a private partner who serves as the public face of the company while the military officers take a percentage of the profits.<sup>8</sup>

## II. 2004 Mandate for Reform

On October 16, 2004, at the end of her administration, then-president Megawati Sukarnoputri signed Law No. 34/2004 on the TNI, which Indonesia's parliament had approved in late September of that year. Among other changes, the law sought to give effect to existing prohibitions on military businesses by requiring the Indonesian government to assume full control over all legitimate businesses by 2009.

Article 76 of that law states: "Within five years ... the government must take over all business activities that are owned and operated by the military, both directly and indirectly." Other provisions emphasize that "professional soldiers ... do not do business" and include an unequivocal prohibition on soldiers taking part in business activities, which broadly restate long-ignored internal TNI rules governing military conduct.

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<sup>3</sup> Kontras, "Shooting of Farmers During Peaceful Protest in Alas Tlogo, Pasuruan, 30 May, 2007," undated, <http://www.kontras.org/data/Alastlogo%20Report,%20English%20Version.pdf> (accessed January 4, 2010). In August 2008, the Surabaya Military Court convicted 13 marines and gave them light sentences of 18 months to three-and-a-half years. The Navy rotated two senior officers from their posts but failed to investigate or prosecute anyone for command responsibility.

<sup>4</sup> Human Rights Watch, *Too High a Price*, pp. 38-44.

<sup>5</sup> *Ibid.*, pp. 45-56.

<sup>6</sup> *Ibid.*, pp. 44-45, 97-98.

<sup>7</sup> *Ibid.*, pp. 56-79.

<sup>8</sup> *Ibid.*, pp. 29-30.

The law, however, did not clearly identify which types of business activities were covered. This lack of specificity allowed for a narrow interpretation that excluded several types of money-making ventures, including protection payments for security services, criminal enterprises, and corruption. In addition, the law did not clarify how the reforms were to be implemented, instead stating that such details should be clarified in a presidential decree.

### **III. 2004-2009: Five Years of Delays and Inaction**

President Yudhoyono took office for his first term on October 20, 2004. The incoming Yudhoyono government pledged to implement the mandated reform of military business, which had strong support from the public and parliament. Military leaders signaled that they would not resist the changes. This was significant because the armed forces exercise important influence in Indonesia. The commander of the TNI reports directly to the president, with the same status as the minister of defense. The Ministry of Defense is itself largely staffed by uniformed military personnel. In addition, retired officers hold many positions of influence within political parties and elected office.

The 2004 law provided a watershed opportunity to assert greater civilian control over the TNI, consistent with democratic principles. Yet, from the very beginning, the Indonesian government demonstrated extreme reluctance to act swiftly or effectively on military reform.<sup>9</sup>

The government's unwillingness to act was exemplified by the lax attitude of Minister of Defense Juwono Sudarsono, who served from October 2004 until October 2009. Although he had been the first civilian to hold that post (under a previous administration) and was a critic of military self-financing and corruption, Defense Minister Sudarsono frequently made excuses for the TNI. He argued that the TNI should not have to give up its businesses until the official military budget was raised.<sup>10</sup> For example, he stated in 2007 that "[t]he government's operational budget for the TNI is still very low, so in order to finance defense and security operations the military institutions must fund themselves through business activities."<sup>11</sup> Such claims lost force when audits showed that many TNI businesses were nearly worthless after years of mismanagement and corruption.

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<sup>9</sup> For further information, see Human Rights Watch, *Too High a Price*, especially at pp. 111-114; Human Rights Watch, "Indonesia - Reform of Military Business," February 16, 2007; and Usman Hamid and Lisa Misol, "Presidential Push Needed on TNI's Internal Reform," opinion-editorial, *Jakarta Post*, February 26, 2007.

<sup>10</sup> Human Rights Watch interviews with Juwono Sudarsono, then minister of defense, Republic of Indonesia, Jakarta, February 17, 2005, and June 19, 2006. For a further discussion of this argument and the myths on which it rests, see Human Rights Watch, *Too High a Price*, pp. 100-110.

<sup>11</sup> Ditulis Oleh, "TNI Business [Reform] Cannot be Completed by 2009," *Bisnis Indonesia (Indonesia Business)*, <http://idsps.org/idsps-news/berita-idsps/bisnis-tni/> (accessed January 6, 2010).

He also argued repeatedly that the government take over only the handful of TNI businesses of high value and leave the rest in military hands. According to him, “the smaller ones will not be taken over. They will still be owned by the TNI to help fulfill the soldiers’ needs.”<sup>12</sup> That rationale has long since been discredited: although ostensibly established to independently fund welfare activities for the troops and their families, the TNI’s businesses no longer generate significant funds for social programs, as even military officers have acknowledged.<sup>13</sup> Human Rights Watch research has demonstrated that foundations and cooperatives instead largely have benefited the officer corps and frequently have been implicated in financial scandals and abuses of power.<sup>14</sup>

For example, in a case documented by Human Rights Watch in late 2004, a coal mining company recruited a local military cooperative to help it combat the activity of illegal small-scale miners. Instead, the cooperative organized the illegal miners, using violence and intimidation to keep them in line, and earned profits by brokering sales of the illegally mined coal.<sup>15</sup> Military authorities at TNI headquarters failed to crack down on the cooperative or to punish those involved when the problem was brought to their attention in 2004, 2005, and 2006.<sup>16</sup> Such lack of accountability was typical and continued despite the adoption by Indonesia’s parliament of the 2004 law requiring the government to take over all military businesses.

For years the government took no action to formally implement that law. A government team formed in 2005, the Supervisory Team for the Transformation of TNI Businesses (*Tim Supervisi Transformasi Bisnis TNI* or TSTB), spent years reviewing and verifying data on military-owned businesses, ostensibly to determine which ones would be eligible for restructuring and which should simply be liquidated. The TSTB put forward deeply flawed reform plans in 2006 and 2007 but ultimately dropped these proposals.<sup>17</sup> Meanwhile, President Yudhoyono failed to issue the presidential decree needed to implement the 2004

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<sup>12</sup> Kurniawan Hari, “Govt to take over TNI businesses,” *Jakarta Post*, December 9, 2004.

<sup>13</sup> Wahyu Dhyatmika and Raden Rachmadi, “TNI Businesses: The Crawling Offensive,” *Tempo Magazine*, No. 13/VIII, November 26-December 3, 2007, <http://www.etan.org/et2007/november/30/26tni.htm>. For additional information, see Human Rights Watch, *Too High a Price*, pp. 109-110.

<sup>14</sup> *Ibid.*, including at pp. 105-110.

<sup>15</sup> *Ibid.*, pp. 56-63.

<sup>16</sup> *Ibid.*, pp. 61-63.

<sup>17</sup> *Ibid.*, pp. 110-121; Human Rights Watch, “Indonesia - Reform of Military Business,” February 16, 2007, <http://www.hrw.org/en/news/2007/02/16/indonesia-reform-military-business>; and Usman Hamid and Lisa Misol, “Presidential Push Needed on TNI’s Internal Reform,” opinion-editorial, *Jakarta Post*, February 26, 2007.

law. The absence of this instrument gave an excuse to the TSTB to claim that it did not have any authority to assume management control over the military's enterprises.

The absence of clear rules also gave the military the opportunity to sell off valuable businesses without adequate oversight. For example, in 2005 the army independently sold off its stake in Bank Artha Graha, a private company in which it held shares via a foundation, for Rp121 billion (\$12.1 million). There were also persistent rumors that the military drained companies of value, transferring assets to private allies in anticipation of an eventual handover.<sup>18</sup>

The long-stalled reform effort appeared to gather some momentum when an official advisory group led by the former deputy head of the anticorruption commission, Erry Riyana Hardjapamekas, was formed in April 2008. It undertook a new accounting of the TNI's business activities and presented the government with several options for reform. Disappointingly, all of the options involved transferring the TNI's businesses to the Ministry of Defense, which as noted is dominated by uniformed military personnel. However, some of the options offered greater potential for reform than others. One proposal would have required the Ministry of Defense to liquidate the TNI's foundations and assume control over most of its cooperatives in order to clean them up.

Hardjapamekas, announcing the recommendations in late 2008, said his team had worked quickly so the government would have a year to complete the handover process by the legal deadline, October 16, 2009. As that date approached, however, the government had not decided on a reform plan for military businesses, much less implemented it.

#### **IV. The TNI's Business Holdings**

Even after its sell-offs and business failures, the TNI at the end of 2007 maintained 23 foundations and over 1,000 cooperatives, including ownership of 55 companies, as well as leases on thousands of government properties and buildings. (Data for 2008 and 2009 was not available at this writing.)

Most military-owned companies—53 of the 55 identified in the review—were held by foundations. TNI headquarters and its service branches have at least one foundation each, the army alone having 16 different foundations. The military foundations, in turn, control holding companies through which they invest in individual businesses.

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<sup>18</sup> See, for example, Alfian, "Business as usual for military, says group," *Jakarta Post*, November 1, 2007.

The main foundations are:

- TNI headquarters: Yayasan Markas Besar ABRI (Yamabri)
- Army: Yayasan Kartika Eka Paksi (YKEP)
- Army Strategic Reserve Command (Kostrad): Yayasan Kesejahteraan Sosial Dharma Putra (YKSDP Kostrad), previously known as Yayasan Dharma Putra Kostrad (YDPK)
- Army Special Forces Command (Kopassus): Yayasan Kesejahteraan Korps Baret Merah (Yakobame)
- Navy: Yayasan Bhumyamca (Yasbhum)
- Air Force: Yayasan Adi Upaya (Yasau)

Government officials involved in the process shared with Human Rights Watch the names of the largest TNI businesses identified during the Indonesian government's 2008 review. According to their findings, as of the end of 2007 the following business interests were held by the military through foundations, either as fully-owned companies or joint ventures, all of which were legally registered companies with significant assets:

- TNI headquarters (value of assets not specified)
  - PT. Manunggal Air Service
- Army (assets exceeding Rp10 billion, or approximately \$1 million)
  - PT. Kobame Propertindo
  - PT. Dharma Medika
  - PT. Sumber Mas Timber
  - PT. Saguaro
  - PT. Sinkona Indonesia Lestari
  - PT. Meranti Sakti Indonesia
  - PT. Meranti Sakti Indah Plywood
  - PT. Sumber Mas Indah Plywood
  - PT. Kartika Airlines
  - PT. Buana Graha Artha Prima
  - PT. Tri Usaha Bakti
- Navy (assets exceeding Rp10 billion/\$1 million)
  - PT. Jala Bhakti Yasbhum
  - PT. Jalakaca MitraGuna
  - PT. Admiral Lines
- Air Force (assets exceeding Rp10 billion/\$1 million)
  - Klub Persada Halim

In addition, the Indonesian government identified two legally registered companies held by the Army headquarters cooperative, Induk Koperasi Angkatan Darat (Army Parent Cooperative), known as Inkopad:

- PT. Reka Daya Kartika
- PT. Mina Kartika

## V. The 2009 Decree and Regulations

On October 11, 2009, five days before the expiration of the legal deadline imposed five years earlier, President Yudhoyono signed Presidential Decree No. 43 of 2009 on the Takeover of Business Activities of the TNI (*Peraturan Presiden Nomor 43 Tahun 2009 Tentang Pengambilalihan Aktivitas Bisnis Tentara Nasional Indonesia*).<sup>19</sup> That decree directed the Ministry of Defense to establish a new inter-ministerial team, the Oversight Team for TNI Business Activities (*Tim Pengendali Aktivitas Bisnis TNI*), to oversee a partial reform of military businesses. The decree was supplemented on October 21 by Minister of Defense Regulation No. 22 of 2009 Concerning the Implementation of the Takeover of TNI Business Activities (*Peraturan Menteri Pertahanan Nomor 22 Tahun 2009 tentang Pelaksanaan Pengambilalihan Aktivitas Bisnis Tentara Nasional Indonesia*).<sup>20</sup>

Despite the title of these instruments and a statement in article 2 of the October 11 presidential decree that “[t]he government takes over all business activities owned and managed by the TNI, directly or indirectly,” they do not give effect to an immediate and complete handover of all such business activities and thus fail to meet the October 19 deadline. Instead, the government’s actions at best set in motion a new process to gradually assert greater government oversight, but not ownership, over TNI business activities. At the time the decree was announced, outgoing Defense Minister Sudarsono (who was replaced in a cabinet reshuffle) acknowledged this but was unconcerned, arguing that the deadline was only a technicality.<sup>21</sup>

The decree and regulations include elements that, if fully implemented, could lead to positive changes, but the few improvements are outweighed by numerous and serious

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<sup>19</sup> <http://www.bphn.go.id/jdih/index.php?action=reg&cat=regPeraturanPusat&cid=2009121805000003> (accessed January 4, 2010).

<sup>20</sup> <http://74.125.93.132/search?q=cache:Ceft3fgJ360J:www.djpp.depbumham.go.id/inc/buka.php%3FczozMToiZD1ibisyMDA5JmY9Ym4oMDctMjAwOS5wZGYmanM9MSl7+site:go.id+nomor+22+2009+%22Pelaksanaan+Pengambilalihan+Aktivitas+Bisnis%22&cd=1&hl=en&ct=clnk&gl=us&client=safari> (accessed January 4, 2010).

<sup>21</sup> See “Perpres Bisnis TNI Tanpa Tenggat ( No Deadline for TNI Business Decree),” *Kompas*, October 15, 2009, and Adhitya Cahya Utama “Tim Pengendali Bisnis TNI Dibentuk (TNI Business Oversight Team Formed)” *Jurnal Nasional (National Journal)*, October 15, 2009, <http://antikorupsi.org/indo/content/view/15493/2/> (accessed January 4, 2010).

weaknesses. Foremost among these is that the decree does not transfer the businesses to civilian hands as required by the 2004 law and instead permits the TNI to retain many businesses under its foundations and cooperatives. The Oversight Team is set to be composed primarily of uniformed members of the military, who will operate with neither a clear deadline nor provisions on transparency and accountability.

## **Positive Elements**

On the positive side the government's plans finally set in motion a process to address military business holdings, overcoming long-standing inertia. The new Oversight Team was formed on November 11, 2009, in keeping with the 30-day timeframe indicated in the decree, and several officials stated that the process was part of the priority agenda for the first 100 days of the president's second term. The new decree and corresponding regulations also reinforce the landmark 2004 law in some measure. For example, both the decree and the ministerial regulations echo the 2004 law by including an expansive definition: "TNI business activities are all commercial enterprises owned and managed by the TNI directly or indirectly." The presidential decree states that the process will be guided by several important principles, including participation, transparency, and accountability.

The decree and regulations assign the Oversight Team a monitoring and supervisory function over the military cooperatives and foundations, through which the TNI owns many of its businesses. This role aims to ensure that the foundations and cooperatives are managed in line with long-ignored requirements that restrain somewhat the business activities of such entities. Under the decree and regulations, TNI foundation or cooperative businesses that do not conform to these basic legal requirements are subject to liquidation or merger. The new instruments also require advance approval from the minister of defense before any transfer of ownership or assets from TNI foundations or cooperatives and forbid foundations from distributing wealth to officers, other than for payment of salaries or honoraria (as provided for under a 2001 law on foundations). Each of these changes reflects an improvement over the previous state of affairs, although they come late in the process, well after many company shares and valuable assets have already been sold or otherwise transferred and the proceeds distributed.

The decree also states that continued use of state assets for financial gain must conform to laws and regulations which require that any income must go to the state treasury. Further rules are to be spelled out in forthcoming regulations from the Ministry of Finance. The effort to regularize the TNI's continued use of state assets represents progress, particularly given that the issue was not explicitly addressed in the 2004 law. However, it falls short of a

proposal by the government advisory team in 2008 that the TNI be blocked from leasing out state assets to private parties and that any land and buildings not utilized for a legitimate military purpose be immediately transferred to government control.

The government announced its plans and engaged with its critics in a fairly open manner. The then-defense minister and other senior officials introduced the presidential decree at a press conference, and an official spokesman publicly acknowledged the concerns of independent observers who said that the measures amounted to no more than cosmetic change, arguing that the government was firmly committed to removing conflicts of interest. He also circulated new details about audits of TNI businesses and made himself available to explain the government's plans to interested parties such as journalists and human rights organizations, including Human Rights Watch. These explanations were helpful in assessing the substance of the government's plan, including the positive elements, but also the problematic provisions that seriously compromise the reform effort.

### **Failure to Withdraw the Military from Businesses**

Although the presidential decree, echoing the 2004 law, states in general terms that all TNI businesses, whether owned and managed directly or indirectly, are to be handed over to the government, neither the decree nor the accompanying regulations accomplish this essential task. The decree and the regulations cover three categories of business activity: 1) directly owned businesses; 2) indirectly owned businesses; and 3) exploitation of state assets. The only businesses to be taken over by the government are those in the first category: "business activities directly owned and managed by TNI," which must be in the form of legally registered companies of the TNI headquarters or the service branches. But government representatives have made clear to Human Rights Watch that such directly owned TNI businesses have not existed for many years and they included this first category only to match language contained in the original 2004 decree.

This weak and misleading approach—which contradicts the clear mandate of the 2004 law—is rooted in the false logic that businesses owned by the "private" foundations and member-owned cooperatives organized under each of the branches of the armed forces and TNI headquarters are not really owned by the military. Five years of discussion and debate provided many opportunities for the government to address the military's self-serving argument that the TNI as an institution does not itself "own" any businesses, but instead it capitulated to the TNI, significantly undermining the potential for reform.<sup>22</sup>

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<sup>22</sup> For a further discussion, see Human Rights Watch, *Too High a Price*, pp. 119-121.

Once it is understood that businesses owned by military cooperatives and foundations are not included in the government “takeover,” it becomes clear that neither the decree nor the regulations grant the Oversight Team or any other government entity ownership or managerial control over any of the TNI’s businesses.<sup>23</sup> The category of “indirect” TNI businesses (defined in the ministerial regulations as covering all businesses held by foundations and cooperatives) is subject only to “restructuring” (*penataan*), a process that may, over time, clean up some of the foundations and corporations and their businesses. The Oversight Team’s task with respect to such entities, as detailed in the decree, is vaguely stated as “suggesting steps for the transfer of business activities ... consistent with laws and regulations” and then monitoring implementation. The ministerial regulations slightly expand the team’s mandate, stating that the Oversight Team is to “carry out oversight over the restructuring” (*melakukan pengendalian terhadap penataan*) of the cooperatives and foundations to make sure they follow relevant laws.

Specifically, under the new regulations, the Ministry of Defense, acting through the Oversight Team, is to monitor how the TNI’s foundations and cooperatives operate and bring their activities in line with long-ignored rules that apply to all foundations (for example, business holdings may not exceed 25 percent of a foundation’s assets) and cooperatives (for instance, business activities must be approved by the cooperative’s members). In both cases the businesses must serve an overarching social purpose, such as supporting soldier welfare. The regulations also specify that serving members of the military would continue to hold some, though not all, of the governance posts in TNI foundations and, as noted above, prohibit office holders from receiving any of the foundation’s wealth, other than a salary or honorarium.

Moreover, it is unclear whether the Oversight Team will have the power to vigorously monitor military foundations and cooperatives and to ensure that their operations are revamped. The regulations state that the restructuring will be subject to forthcoming regulations from the commander of the TNI, but the TNI hierarchy has not shown itself willing to crack down on military businesses. Prosecutions of military personnel for economic crimes are extremely rare.<sup>24</sup> The Oversight Team, for its part, is limited to “carrying out oversight over the restructuring,” a policy-level responsibility to supervise progress in cleaning up the

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<sup>23</sup> The government earlier had considered transferring the TNI’s businesses to the Ministry of Defense, which would not have resulted in a meaningful shift to full government control given the TNI’s influence with that ministry. A proposed alternative to name an impartial body to take temporary control of TNI businesses until they could be liquidated or sold apparently was not considered. See Human Rights Watch letter to President Yudhoyono on Human Rights Concerns in Indonesia, August 6, 2009, <http://www.hrw.org/en/news/2009/08/06/letter-president-yudhoyono-human-rights-concerns-indonesia> (accessed January 7, 2010).

<sup>24</sup> See Human Rights Watch, *Too High a Price*, pp. 17-19, 22-24, and 115-117.

foundations and cooperatives without clear operational control. For example, a government official consulted by Human Rights Watch said the Oversight Team would not attempt to assert managerial control but could propose new guidelines for military foundations and cooperatives that would be consistent with existing laws on foundations and cooperatives.

In some cases, if it is determined that these entities are unable to comply with relevant rules, the regulations provide that they may be merged or liquidated. The regulations fail to make clear who will make and enforce such decisions. The Oversight Team does not have clear management authority and, according to a government official whom Human Rights Watch consulted, it would need to submit a request that foundations be liquidated by the foundations' own senior officers; alternatively, the government could seek a court order. If actively wielded, this power in principle could be used to reduce the number of TNI businesses and could make the foundations and cooperatives more focused on soldier welfare. These would be welcome developments, though far short of the comprehensive reform needed to correct the fundamental problem of conflicts of interest between the military's proper defense role and its business interests.

Erry Riyana Hardjapamekas, the head of the government's 2008 advisory team on military business matters, expressed disappointment with the government's planned approach to reform, saying "If we want to change the attitude [of the military] we should liquidate all the business."<sup>25</sup>

## **Lack of Independence**

Oversight responsibility for monitoring and restructuring the TNI's foundations and cooperatives will reside with the Ministry of Defense, which is largely staffed by uniformed officers and is usually aligned with the TNI's interests. The Oversight Team will report to a top ministry official, the secretary-general, a post that at the time of this writing was filled by a senior TNI officer, and its work will be subject to review by the office of the Ministry of Defense's inspector general, another senior TNI officer. The Oversight Team will include representatives of nine government entities, as specified in the presidential decree, with TNI headquarters and its three service branches accounting for four of the designated seats. A fifth, that of the Ministry of Defense representative and chair of the team, has been filled by the director general for defense capability, a post currently occupied by a two-star general.

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<sup>25</sup> Tom Wright, "Indonesian Military Misses Its Deadline," *Wall Street Journal*, October 19, 2009.

## **Incomplete Mandate**

The government's plans do nothing to address the military's many other forms of money-making, including informal and individual activities not registered as businesses, security payments from companies, and the extensive problem of illicit business such as illegal logging and extortion. There is no indication that the government intends to even track any of these illegal military money-making ventures. In the past when this issue has been raised, officials have said that such matters fall outside the scope of their work. This represents a missed opportunity.

## **Lack of a Clear and Reasonable Time-frame**

The government's plan also may take many years to carry out. No timeline for reform is provided in the decree or regulations, and as Said Didu of the Ministry for State-Owned Enterprises said publicly, the process could take years because of the complication of third parties that share ownership in the TNI's businesses.<sup>26</sup> Didu had made the same point in 2006, but the government has taken no discernible steps to address it.

## **Lack of Accountability**

The new plan presumes that military foundations and cooperatives can be cleaned up and run according to non-profit principles, but these same rules have long been in place and have routinely been flouted. The fact that the government's plans entrust the process to the TNI commander does not inspire confidence. The Oversight Team is intended to monitor this transformation, but as a body established under the Ministry of Defense, it does not have authority over members of the armed forces.

If the government is serious about reforming the foundations and cooperatives, it needs to put in place an effective mechanism to identify, deter, and punish misbehavior. The government's decree and regulations do not address accountability for the TNI's unscrupulous behavior, including past misuse of state assets, unauthorized sales of its business interests, or any of the abuses associated with its commercial activities. Nor do they call for thorough forensic and legal audits of TNI businesses that would help to uncover such misdeeds and ongoing abuses. They do not explicitly authorize strict enforcement actions and identify corresponding penalties.

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<sup>26</sup> See, for example, *Jakarta Post*, "Defense Ministry takes over military assets," October 14, 2009, and *Jakarta Post*, "TNI business takeover 'merely a formality'," October 15, 2009.

## **Lack of Transparency**

The government has issued only aggregate data, and has never made public a complete list of the names, values, or activities of individual businesses, cooperatives, or foundations. It will thus be difficult or impossible for members of parliament, watchdog groups, or journalists to effectively monitor the activities of the Oversight Team or evaluate claims of progress. To give just one example, the 2008 advisory body on military business reform found that there were 53 registered companies under the TNI's foundations (and two more under its cooperatives) but a government announcement in October 2009 instead referred to 109 TNI businesses under foundations, citing the results of an earlier review. It is unclear if the two studies defined businesses differently or why the government did not cite the more updated figure.

As the decree and regulations were being finalized and issued, the government usefully issued regular media updates and answered questions, which helped to keep the public informed. The instruments do not include an explicit commitment to extend and expand upon this practice in the future, such as by requiring regular progress reports.

## **VI. Conclusion and Recommendations**

To address the main weaknesses of the government's effort, Human Rights Watch recommends that the president and the ministers of defense and finance take the steps detailed below.

### **Widen the Scope of Military Business Reform**

Comprehensive reform is needed to fully disentangle the military from business. The Indonesian government should:

1. Reject the fiction that the businesses under the military's foundations and cooperatives are independent from the TNI as an institution and reject the argument that such foundations and cooperatives should be permitted to retain businesses that can be said to be consistent with the original social purpose of those entities. Instead, the government should require the military, including its foundations and cooperatives, to fully divest all business holdings and cease any profit-oriented activity consistent with the spirit of the 2004 law. The regulations of the Ministry of Defense should be revised accordingly.
2. Further tighten the planned reforms to regularize income from military use of state assets, along the lines proposed by the 2008 advisory team. Namely, any public land

- or buildings the TNI is not utilizing for a legitimate military purpose should be immediately transferred to government control and the military should be prohibited from leasing out state assets to private parties.
3. Address other forms of military business (for example, individually owned businesses, protection payments from private companies, and other informal arrangements) with a view to eliminating them. The government should require the Oversight Team to monitor all military business activity and grant it powers to coordinate with law enforcement bodies to shut such activity down. Alternatively, it could create an independent body to carry out this oversight and coordination function.
  4. Task an additional mechanism, complementary to the Oversight Team and involving law enforcement personnel, with cracking down on illegal military businesses and reporting to the government, parliament, and the public on its progress. Again, the government could create an independent body for this purpose.

## **Ensure Civilian Oversight and Participation**

A central purpose of military business reform is to strengthen civilian control over the armed forces, so civilians should be thoroughly involved in planning for, executing, and monitoring the reform process. The Indonesian parliament should have a clear role in tracking the government's progress in implementing changes. In addition, the government should seek input from civilian experts, including critics of military business from civil society organizations. Specifically, the president should:

1. Explicitly require the ministers of defense and finance to submit regular reports to Indonesia's parliament and the public concerning progress on military business reform. Parliament's Commission I, which is responsible for defense matters, and Commission III, which has responsibility over law and human rights, should also call these ministers to answer questions about the failure to meet the deadline and other requirements set out in the 2004 law, and to hear their plans to ensure that the process is transparent and accountable as provided for in the decree. In addition, they should hold periodic hearings to ensure appropriate parliamentary oversight of the reform effort.
2. Amend the presidential decree to alter the composition of the Oversight Team to reduce the dominance of the military and ensure greater civilian representation, including at the leadership level.
3. A complementary step is also needed to enhance participation in the reform process by persons outside of government. The ministries and the Oversight Team should

actively seek advice and input from independent experts, including members of nongovernmental organizations and think-tanks, to inform their plans. The presidential decree authorizes the minister of defense to create additional sub-teams or working groups as needed and authorizes the Oversight Team to consult with outside experts. These government institutions should fully utilize this provision to ensure that civilian experts are given a meaningful role in such mechanisms.

### **Provide for Greater Transparency and Strict Accountability**

The problem of military businesses has festered for years in part because of a failure to enforce existing rules governing military conduct. For the current reform effort to have an impact the government needs to counteract this longstanding impunity. It is also essential that the government itself be held accountable for completing the reform, particularly as it has already missed the legal deadline. The government should:

1. Release any legal and financial audits already undertaken on military foundations, cooperative, and businesses, and carry out new ones on those that have not been audited. The audits should be carried out by qualified independent personnel. It is particularly urgent that a detailed legal audit be conducted of the businesses under the TNI's foundations and cooperatives, as proposed in 2008 by the government's advisory body on TNI business reform. Such audits might clarify the degree to which they do fall under the effective control of active-duty military officers, contrary to their ostensibly independent status.
2. Hold military personnel, including commanding officers, accountable for abuses connected to military economic activity, including violence, extortion, property seizures, and misuse of state assets.
3. Bolster the ability of the Supreme Audit Agency (BPK) to review military finances in full. Particularly in light of the government's assertions that it has imposed some measure of control over military foundations and cooperatives by requiring closer supervision, these entities must be subject to BPK audits. The government also should facilitate prompt and full public dissemination of BPK's audit findings, including past audits on military finances, consistent with international best practices and the principle of maximum transparency.
4. Impose a clear deadline on the work of the Oversight Team and mandate regular briefings to the parliament and public, as indicated above, regarding progress.

## **VII. Acknowledgements**

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Human Rights Watch bears sole responsibility for the contents of the report.

# Unkept Promise

## Failure to End Military Business Activity in Indonesia

Five years after Indonesia's government promised to end the money-making ventures of its armed forces, the promise remains unfulfilled. Dismantling the military's independent businesses has long been recognized as a crucial step to make the Indonesian armed forces fully accountable to civilian authorities.

A landmark September 2004 law required the government to shut down or take over all military businesses within five years. Faced with the impending deadline, the government of President Susilo Bambang Yudhoyono issued a decree and implementing regulations in October 2009.

This report assesses the new measures. It finds that they at best offer a belated process for increased government oversight, but not ownership, of military businesses controlled through military cooperatives and foundations. They do not address many other military money-making activities, including payments from companies for protecting private assets; criminal enterprises, such as involvement in illegal logging; and various forms of corruption, including inflating the cost of military purchases. And they do not address accountability for human rights violations connected to military business.

*Indonesian soldiers on patrol in West Java.*

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