

**Monitoring Team on the Public's Beliefs  
(Tim Pengawas Aliran Kepercayaan Masyarakat/PAKEM)  
LEGAL INSTRUMENTALISATION  
A LEGACY FROM THE NEW ORDER ERA**

**The Existence of PAKEM Team**

PAKEM team is established based on Decision of General Attorney No 004/JA/01/1994 dated January 15 1994. At that time, Singgih SH served as General Attorney. This team is coordinative in nature. It consists of a number of State institutions which at that time were considered relevant to conduct monitoring on various beliefs in the society. Lately, mass media called this team as PAKEM Coordinating Team or PAKEM Coordinating Body.

State institutions under PAKEM central team are:

1. General Attorney
2. Department of Internal Affairs
3. Department of Culture and Tourism
4. Department of Justice
5. Department of Religious Affairs
6. Armed Forces (ABRI) Headquarter/ KOPKAMTIB
7. State Intelligence Coordinating Body (Badan Koordinasi Intelijen Negara/BAKIN)
8. Police Headquarter

PAKEM team is headed by Junior General Attorney in Intelligence (Jaksa Agung Muda Bidang Intelijen)

PAKEM team also is included in the vertical structure because similar teams are set up in provincial, district (kabupaten) and sub-district (kotamadya) (now is called city). Membership of PAKEM team in the local levels is different compared to the one in the national level.

In the provincial level, PAKEM team is headed by General Attorney Intelligence Assistance with Head of General Attorney's Special Section as secretary. Members of this team are representatives from:

1. Provincial regional government.
2. Military Zone Command (Komando Daerah Militer) or Military Resort Command (Komando Resort Militer)
3. Local or regional police force
4. The Offices (Kantor Dinas) in the local level: Culture and Tourism, Justice, Religious Affairs and Education.

Meanwhile, in the district/city level, PAKEM team is headed by Head of State Attorney and as Vice Head is the Head of Intelligence Section of the State Attorney and as Secretary is Head of Sub Special Section of State Attorney. Members are representatives from:

1. District/City administration
2. Military District Command (Komando Distrik Militer)
3. Resort Police Force
4. The Offices of Culture and Tourism, Religious Affairs, Education in district/city level

In its monitoring framework on beliefs in the society, PAKEM team is responsible to:

- a. Analyze information gathered and make conclusion or prediction
- b. Propose suggestion of action to the General Attorney
- c. When necessary, PAKEM team can take action and immediately report the action taken to the General Attorney

In carrying out its task, PAKEM team could:

- a. Set up meetings, be it periodical ones or when necessary.
- b. Conduct consultative meeting with other institutions or bodies, be it the government or non government.
- c. Exchange information regarding beliefs in the society.

### **The Authorities of Attorney**

Decision of the General Attorney on PAKEM team was made under the umbrella of Law no 5/1991 on General Attorney. This decision refers specifically to provisions stipulated in Article 27 Point (3d) which mandates tasks and authorities to the attorney to conduct monitoring on beliefs in the society which is considered as dangerous to the State and the society.

In the new law (Law no 16/2004 on General Attorney), other than tasks and authorities in the field of criminal and civil laws, attorney also has the tasks and authorities in the field of maintaining public order and security. One of the tasks and authorities of in the field of maintaining public order and security, as stipulated in Article 30 point (3d) is to conduct monitoring on beliefs in the society. According to this law, there are beliefs which should be monitored due to the possibilities of danger to the society and the State.

Article 30 point (3d) serves as the cornerstone for the attorney in dealing with various issues of sects or organization of beliefs in the society. Such tasks and authorities are common to the attorney as similar ones could be founded in the previous Law no 5/1999 on General Attorney. Based on this provision, attorney is positioned as the leading component in PAKEM team in the national or local levels.

By examining its organizational structure, the PAKEM team itself and the New Order political context at that time, it is clear that PAKEM team is part of an instrument of

political control and monitoring of the New Order administration on beliefs in the society. Organization wise, this team was taken on board by the organizational structure of the attorney, from General Attorney to State Attorney. This team becomes some sort of steering body which is able to propose recommendation to the General Attorney, Head of High Attorney and Head of State Attorney. Moreover, PAKEM team is authorized to take direct action toward beliefs which are suspected or are about to disturb the public order and security. In this case, reports to the General Attorney are submitted after the action was taken.

Article 30 point (3) of Law no 16/2004 on General Attorney authorizes the Attorney to be involved in the field of public order and security. There are six tasks and authorities given, one of them is to conduct monitoring on beliefs. As explained in the explanatory part of this law, tasks and authorities in the field of public order and security, including monitoring on beliefs in the society, are preventive in nature. No provision in this law authorize the Attorney or General Attorney to issue a decision related to this monitoring tasks and authority, including categorizing certain belief as to be prohibited, to be closed down or to be frozen.

In various cases in which certain belief organization or group is categorized, the attorney is frequently found to declare that a certain organization should be prohibited or frozen. Therefore, challenges should be made on the fact that the attorney claims itself as an authority in issuing decision over beliefs, which is fully recognized as basic human rights, which is right for assembly and equality before the law.

None of the Law no 16/2004 on Attorney or Presidential Decree no 86/1999 on Organizational and Work Structure of the Attorney ever authorize the attorney to decide whether certain organization is to be to be prohibited, to be closed down or to be frozen.

In the context of State of law, it is the court which is authorized to decide whether certain organization could assemble or should be prohibited. A thorough legal process is required to guarantee the fulfillment of the principle of equality before the law. Without an examination by an independent and fair, decision regarding status of an organization would fall on the hand of the government. Therefore, the organization has no opportunity to defend itself. Moreover, arguments to prohibit certain organizations or groups to exist would never be tested and debated in an open manner. It is clear that in this case, the attorney exceeds the authority of a court.

Ideas, policies and practices of the State that violate the very core principle of State of Law should be mended. If not, these would breed norms, policies, institutions and social behavior ignorant to the judicial system.

### **Military in the PAKEM team**

Besides constitutional problems, PAKEM team which was established based on the 1994 Decision of the General Attorney which accommodates the military (or the Armed Force, according to the decision) as its member is no longer relevant

When PAKEM team was established, Indonesia's political system is dominated by military politics represented institutionally by the Armed Forces. Military became part of almost all sectors of governance as it tried to control social and political life of the public. One way to do so was by monitoring beliefs in the society. It confirms territorial structure of the Armed Force, ranging from KODAM to Babinsa which penetrates right to the village. Moreover, in the provincial and sub-district levels, military at that time always installed its personnel in key positions in the government, ranging from the position of a governor, head of sub-district or mayor. Even Land Eviction Committee (Panitia Pembebasan Tanah) in the sub-district level is equipped with representatives from the Armed Forces.

An examination of the abovementioned context would lead to a conclusion that PAKEM team is integral with the agenda of political control designed by the New Order administration and implemented by the Armed Forces at that time as part of its politics to control the public's social and political life.

Nowadays, the position of military in Indonesian politics has changed. As stipulated in Law No 34/2004 on Indonesian National Military, the military no longer has the function, authority and task related to social and political life, be it in its political life or via direct involvement in managing public order. Article 7 point (2) of this law lists down tasks of the Indonesian National Military besides war. This article does not mandate Indonesian National Military to be involved in monitoring beliefs in the society.

Therefore, as a policy product, PAKEM team is no longer relevant because the implementing element is not relevant anymore, particularly in relation to the military/Armed Forces (then)/Indonesian National Military component in its team.

Similar stance happened to Department of Justice and Human Rights (then Department of Justice). Drastic changes in its authorities and tasks as a department makes it no longer relevant in the PAKEM team.

### **Extra-Judicial Institutions**

In PAKEM team, there are components or representatives of three judicial institutions: attorney, police force and Department of Justice. In the New Order era, besides the police and attorney, Department of Justice is a judicial institution with authorities beyond the court (see Law no 14/1970 on Judicial Authority). From the politics of law enforcement at that time, three institutions were installed in PAKEM team to create an impression that decisions taken by PAKEM team were judicially strong and final, even though they were not decided through judicial process. PAKEM team served as a symbol of a mixture of executive and judicial authorities. This is the extra-judicial nature of the team. The existence of PAKEM team is a clear gesture of the New Order regime ignorant to law supremacy and judicial system.

The New Order regime institutionalized such extra-judicial coordinative function to effectively control the political life of its society. In the early 90s, New Order regime set

up the Forum of Makehjapol (Mahkamah Agung, Departemen Kehakiman, kejaksaan dan kepolisian) which consists of the Supreme Court, Department of Justice, attorney and police force. This forum was to ensure that criminal justice system would be under complete control of the New Order regime. It was expected that such criminal justice system could justify governance practices of the New Order which violated basic rights of its own people.

### **Recommendation**

1. The government is expected to return to the constitution as corridor in responding the existence of beliefs in the society by using constitutional framework. Therefore, State responses should be based on respect and recognition of the principles of freedom of assembly, equality before the law and fair and independent trials.
2. PAKEM team authorized to monitor beliefs in the society is no longer relevant and it is clearly a violation of the core principle of law supremacy and it threatens human rights. Therefore, the General Attorney should revoke its Decision related to PAKEM team.
3. In the meantime, monitoring function of the attorney in this problem should be repositioned within tasks and authorities framework of the attorney as a law enforcement institution according to the existing law and implemented in an independent and accountable manner, free from any intervention and pressure from other institutions or parties.
4. In its monitoring task, the function of intelligence of the attorney should be optimized without having to create another institution which engaged other institutions which are also no longer relevant.
5. Only an independent and accountable court is authorized to declare whether a belief organization is to be prohibited, to be closed down or to be frozen.