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THE MANY POLICE INSTITUTIONS OF TIMOR-LESTE How Are They Different?

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Fundasaun Mahein (FM)

Website: www.fundasaunmahein.org

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Introduction

The term “police” in Timor-Leste makes people think only of the National Police of Timor-Leste (PNTL), because the PNTL works in and amongst the community every day. Another police force operating in Dili is the Military Police (PM) of FALINTIL-Defense Force of Timor-Leste (F-FDTL).¹ Because the PM is often seen within the community, it is sometimes contacted by the population to provide police services. Indeed, people often prefer contacting PM because of its perceived rapid intervention compared to other police, including the PNTL (particularly in Dili). With various active forms of ‘police’ beyond the PNTL, the concept deserves further discussion.

As already mentioned the PNTL is well known amongst the population in terms of uniforms, weapons and other equipment which it has used since it was established in 2000.²

However, more confusion was created in the last few years, when investigators from the Commission of Anti-Corruption (KAK) received weapons training from the PNTL - and thus being perceived more as a police force. Furthermore, the Scientific Police of the Criminal Investigation (PSIK) has recently been established and is considered as the supreme corps of the criminal police. According to its organic law members of PSIK can carry and use their weapons.³ So KAK and PSIK can also be considered as Police? Timor-Leste presents both as a small nation, yet one that possesses many police institutions.

Regarding various interpretations on the term “Police” this report is going to describe and clarify the differences of police institutions according to each nature, mission and competency of the military police (PM) on the national legal framework of Timor-Leste.

Methodology

The main references which is to be considered in this research is made review for literatures or previous reports such as law organic of the PNTL, KAK, PSIK, F-FDTL, Military Police (PM), penal code process and the Constitution Republic Democratic of Timor-Leste (RDTL). Other references are report of Fundasaun Mahein and etcetera. To conclude this report the FM research team adopts a discussion called *Security Sector Discussion (SSD)*.

¹ The PM constitutes a unit inside the F-FDTL which is direct dependent to Chief State Major General of the Army Force (CEMGFA) with purpose to secure order and internal discipline of the F-FDTL, and also to ensure security for infrastructure, material and military member, according to decree law No. 26/2009 September 9th, Statute Organic of the Military Police. Article 3, number 1.

² Decree Law No. 9/2009, February 18th of the PNTL organic Law.

³ Decree Law No 15/2014, May 14th of the Scientific Police of the Criminal Investigation (PSIK).



Police: Definition and Legal Framework in Timor-Leste

According to Dalton di Franco (2008) that the police is a conjoint mechanism with its function link to maintenance order and a society which is established by the state; So police means securing society according to the law order on the general context which is executed by the government as a strong power and will execute by auxiliaries whether direct or indirectly. Dalton di Franco quoted Aurelio Buarque's idea (2008) that the police are "the conjoint of law and rules that impose to all citizens, order and public security." Police is a manifestation of public power and abstract authority of the state, also as the protector and agent of law.⁴

Constitution of RDTL article 147 over police and force for security; describe the police's responsibility as:

- 1) Police defends the democratic legality and ensure security safety for citizens internally and should not involve in political party.
- 2) Prevention for crime should respect for human rights.
- 3) Law fixes police and other force's regime.

However, this constitution of RDTL (article 147) only describes to the police and security force; do not only refer to an institution.

And on the penal code process of Timor-Leste of 2006, chapter V over police, article 52 about general police authority does not mention clearly an institution but only states the police's mechanism and processes of penal and have obligations to obey requirement and support the public ministry in any investigation.⁵

Signify that on the legal framework of Timor-Leste, the term "police" is not only the PNTL but other organ or institution that work responsible for police service according to the public ministry's process.⁶ Those police institutions that mentioned above and with each nature are PNTL, KAK and PSIK. So;

Decree law No 9/2009. February 8th, the organic law of the PNTL nature states that the PNTL is a security force with the mission to defend the democratic legality, ensure security safety for citizens also protect the citizens' rights according to the established term on the constitution and laws.⁷

Other public institution with its police nature is the commission of anti-corruption

⁴ Franco, Dalton di (2008). *Agente da Lei*. Porto Velho, Rondonia. (Unofficial translation from Fundasaun Mahein (FM)).

⁵ Penal Code Process of Timor-Leste, 2006 article 52 number 1 and 2.

⁶ Vital, Nelino (2014). Director Direccão Nacional da Assesoria Juridica e Legislação (DNAJL). Private Interview.

⁷ Decree Law No. 9/2009, February 18th of the PNTL organic law, article 1.



(KAK), according to law No. 8/2009, July 15th states that KAK is the specialized criminal police organ that is independent, do intervention should obey the legality criteria and objectivity order.⁸

Also the Scientific Police of the Criminal Investigation (PSIK), according to decree law No. 15/2014, May 14th states that the PSIK is criminal police supreme corps that organized according to the hierarchy of the justice ministry with the administrative autonomy, finance and patrimonial.⁹

Different between police institutions

On the previous session explained the legal framework of Timor-Leste which has lots of institutions formed to be the “Police” institution. If it is true what makes them different? This question will make us to understand the difference of those institutions even they all have each nature as “Police” between PNTL, KAK and PSIK.

1. National Police of Timor-Leste (PNTL)

The PNTL is a security force with its mission to defend the democratic legality, ensure citizens’ security safety and rights according to the established term of the constitution and laws.¹⁰ From this law, established as well unit and service within the PNTL such as Special Police Unit (UEP), Border Patrol Unit (UPF) and Maritime Police Unit (UPM). Yet, it was occurring confusion amongst people because there are various units inside the PNTL command with various types of guns seems military.

According to strategy and philosophy of police the PNTL owns characteristic of community policing, even its organizing, discipline, instruction and private statute are based on the military nature, the PNTL will not constitutes for a military force nature. PNTL has its legal personality and subordinate directly to Ministry of Defense and Security,¹¹ its only one organization to all territory. PNTL is organized based on the hierarchy in all level of its structure and its members obey the command’s hierarchy and law.¹²

Therefore, the PNTL according to article 2, decree law No. 9/2009 describes it’s (PNTL) competency based on the national security law and internal’s¹³ as well as the frameworks over its permanent purpose which has been defined on the security law in terms of maintenance of public order,¹⁴ criminal prevention, institutional cooperation on

⁸ Law No. 8/2009, July 15th, article 3 number 2.

⁹ Decree Law No. 15/2014, May 14th, article 2 number 1.

¹⁰ Decree Law No. 9/2009, February 18th, PNTL organic law article 1 number 1.

¹¹ Current Interim Minister.

¹² Decree Law No 9/2009, February 18th of the PNTL organic law, article 1 number 2 - 5.

¹³ Law No. 4/2010, Internal Security Law.

¹⁴ Law No. 2/2010, Internal Security Law.



issues of the information service, monitoring land border and maritime. Promoting execution acts of administrative required by the competent authorities based on the law.

2. Commission of Anti-Corruption (KAK)

This commission is collective person which has public right, with private responsibility jurisdiction, technical independence, administrative autonomy and finance. This commission responsible as the special criminal police organ independently and should make intervention according to legality criteria and objectivity of the law order. It has quality as the criminal police organ and act according to law.¹⁵

The commission's mission is to prevent and investigate for corruption issues in various ways such as peculation, power abuse, trafficking influence, economy and business participation as defined on the penal legislation.¹⁶

KAK's competency is based on law No. 8/2009 July 15th, law over the commission of anti-corruption article 5 states that the commission's competency is prevention, criminal investigation in regards with corruption issues and the penal process according to public ministry's procedure.

3. Scientific Police of the Criminal Investigation (PSIK)

According to decree law No. 15/2014, May 14th of PSIK article 2 describes that PSIK is the criminal police supreme corps that organizes according to the hierarchy of justice ministry with the administrative autonomy, finance and patrimonial.

The PSIK's mission is to support those judicial authorities, develop and promote the preventive actions, detention and investigation that belong to its competency which is considered securing the national centralization for the criminal information and the operational coordination also the International police cooperation. The PSIK obeys the law, penal code process and obey to the constitution and laws. The PSIK is only to act defense for the society, according to democratic legality and for citizens' rights.¹⁷

Following is the PSIK's competency on article 5 over criminal prevention:

1. Only the PSIK owns competency for criminal prevention such as:
 - a) Act to reduce criminal practical and motivate citizens to avoid and reduce action or situations which are possible to appear crime;

¹⁵ According to Law No. 8/2009, July 15th, Law on Commission of Anti-Corruption, Article 3 Number 1-3.

¹⁶ According to Law No. 8/2009, July 15th, Law of Commission Anti-Corruption, Article 4.

¹⁷ Decree Law No 15/2014, May 14th, The Scientific Police of the Criminal Investigation (PSIK), article 3 number 1-3.



- b) Making procedure for detention and prevention to situations which is consider would appear crimes, through supervising to areas that can appear criminal or illegal practical.
- c) Making procedure for analyzing information over organized crime.
2. There is exercise that has been mentioned in the anterior number, the PSIK access to information related to characterization, identification and localization of situation and can make identification for people when needed with resource in various ways and register technic for son and image such as revising research according to the law of the penal code process and legislation.

And on article 6 over the criminal investigation as describes on the following lines.

1. in regards to the criminal investigation, the PSIK owns competency to investigate for the following crimes:
 - a. Against peach and humanity;
 - b. Against life, create disengage or aggravate to disappear someone's life;
 - c. Confiscating, rap, slavery;
 - d. Human trafficking, people's organ and sell people;
 - e. Torture or cruel treatment, displease or other inhuman;
 - f. Aggression, exploration, sexual abuse and it is not important to focus on fraud as well as sexual exhibitionism;
 - g. Violence for correspondence or telecommunications;
 - h. Criminal associations
 - i. Participation in army movement;
 - j. Influence trafficking;
 - k. Against the state's security and do not focus on crimes over perturbing of the constitutional organ functioning and do not respect to the national symbols;
 - l. Against environment and do not focus on crimes over illegal fishing, how the fisheries forbade.
 - m. Let prisoners, escape away and revolt from prisoners;
 - n. Break of mark, pay and edits;
 - o. Close road or made destruction for objects that owned public power;
 - p. Robs and destructive fire;
 - q. Mockery aggravate and informatics including mockery of aggravate informatics;
 - r. Bribery, denied justice, cohesion of magistrate and obstruction for jurisdiction activities;
 - s. Prevarication and private favoritism;
 - t. Stimulation of crime and violence for justice secret;
 - u. Abusive employ from public force;
 - v. Crimes of falsifying documents;
 - w. Crime of falsifying money;
 - x. Capital banking and fiscal fraud;
 - y. Exploring of illegal gambling;
 - z. Crimes that link with barbiturate traffic and psychotropic substance as well as illicit drugs when participate or informed;
 - aa)Any complexity crimes, object for the value or social alarm, the general prosecutor will delegate for them.
2. The other criminal police organ should communicate soon facts that they knew in regards to the preparation and execution for crimes that have been mentioned on



the anterior numbers for the PSIK and practice till when will it is intervene, related with all needed and urgent acts to secure mechanisms over the prove.

How is the different with Military Police (PM)?

The PM becomes famous in Dili city works as an internal security. As a report of FM published in 2011 urged that was the PM's role deserve to support PNTL or not? With a conclusion that the PM's intervention is happened because there is no trust from people to PNTL which is not hold soon intervention for the happened or violent cases so far, involved by PNTL members.¹⁸

However, the PM is different with other police according to decree law No. 26/2009, September 9th of the statue organic of PM order. The PM constitutes a unit inside the F-FDTL which is direct dependent to Chief State Major General of the Army Force (CEMGFA) with purpose to secure order and internal discipline of the F-FDTL, and also to ensure security for infrastructure, material and military member.¹⁹ The PM is established based on terms of article 12 and 4 of the decree law No. 15/2006 November 8th as an integrate unit within the PNTL.

Article 2 of such decree law states the PM's responsibility is to avoid and combat military threats including subversion and other threat against military discipline and the F-FDTL's integrity, and always use negotiation mechanism to resolve dispute or conflict with peaceful and use weapon not for killing.

While on article 6 of competency, in point 1 explains that the PM is responsible to ensure order and internal discipline of the F-FDTL, maintain rule in all jurisdiction areas that belongs to the territorial commander which has been attributed and to secure that the military side will not hold indiscipline action or intends to put down the institution's prestige.²⁰

Therefore, the main purpose of the Police Military Unit establishment is to regulate rules and norms, maintain discipline of the F-FDTL soldiers, so its responsibility can be realize better and can avoid security threats against military as well as protect the F-FDTL integrity including keep maintain all rules inside the army organization.²¹

¹⁸ Report of Fundasaun Mahein. Mahein's Voice No. 22, 18 August 2011, Military Police: Support or acts more the PNTL?

¹⁹ Decree Law No. 26/2009 September 9th, Statute Organic of the Military Police. Article 3.

²⁰ Decree law No. 26/2009 September 9th, Statute Organic of the Military Police.

²¹ Report of Fundasaun Mahein. Mahein's Voice No. 22, 18 August 2011, Military Police: Support or acts more the PNTL?



Conclusion and Recommendation

Naturally, several of police institutions with various interpretations, yet the law define their difference according to nature, mission and competency of the institution which has been stated on the organic statute of each institution. So the PNTL is a security force with mission to defend democratic legality, ensure citizens' security safety and rights based on the establishment terms of the constitution and laws.

KAK is an organ of the specialized criminal police independently to intervene based on the legality criteria and objectivity ordered by the law. It possesses the qualities as the criminal police organ and focuses on the prevention and investigation of corruption.

PSIK is the criminal police corps that organized according to the hierarchy under the Ministry of Justice. PSIK's mission is to support judicial authorities develop, promote, coordinate and centralize preventative action, detention, investigations and criminal information, including working with international police (particularly in complex cases).

On the other side, PM constitutes a unit inside the F-FDTL directly responsible to the Chief State Major General of the Army Force (CEMGFA) with a clearly defined legal jurisdiction to secure order and internal discipline of the F-FDTL and also to ensure the security of infrastructure, material and military members. Simply put, the PM is designed as a police force for the military only.

FM recommends to:

1. The National Parliament and Government to create a law in order to define and distinguish the nature of each criminal investigation institution or "police" force.
2. The Government to socialize and clarify the role of each police institution in the community, to resolve confusion and allow for better interaction.



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