

## **The Existence of Military Court in Handling General Crime Committed by Soldiers of the Indonesian National Army**

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**Abstract:** The soldier of the Indonesian National Army or military personnel in any country are citizens with special treatment compared to civilians in general. This research is normative and empirical law research. By normative research, the researcher wanted to study how the application of legislation related to the military justice system. By empirical research, the researchers want to examine how the application of legislation among the personnel of the Indonesian National Army. The results show that the military justice is performed by military justice, namely the court which is the executive body of judicial power within the armed forces. Courts in military justice consisted of military justice, high military justice, major military justice, and battle military justice. Therefore, it must be interrelated and synergize with the national goals of a just and prosperous society. Underlying the regulated in the previous law, for the purpose of the effectiveness of law can be done and at least underlies the initial principles of the establishment of the regulation concerning the Military Court. The new regulation should contain paradigms and also accommodate the reforms in the field of military justice.

**Keywords:** Criminal Crime, Military Court, National Army, Soldiers

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### **I. BACKGROUND**

Law enforcement of the government apparatus, law enforcers and the general public will generally backed from a State based that based on mere power (*Machstaat*), where this power is clearly contrary to the ideals of the law supremacy. For soldiers of the Indonesian National Army as citizens apply all applicable laws and regulations unless the provisions of the law set otherwise. In addition to not being regulated in the provisions of the legislation in particular, any provisions applicable to citizens shall also apply to the soldiers of the Indonesian National Army, including the rights and duties as citizen.<sup>1</sup>

In the science of criminal law, military law is *lex specialis*, because the subject of perpetrator and the object of their act specifically directed to the military. Therefore, there is the Military Criminal Code (KUHPM) and the Law of Military Criminal Procedure, while the other specificity is the existence of the Law of Discipline.<sup>2</sup> Recently, the soldiers of Indonesian National Army who committed criminal acts either military crimes or those set forth in KUHPM, or other crimes outside the Criminal Code, such as: drugs, psychotherapy, corruption, traffic, others are still on trial in military justice, except for cases jointly committed by 2 (two) or more persons each of which is subject to different justifiable. The provisions about the jurisdiction of the military justice relating to certain categories or subjects of criminal act are contained in article 9 (1) of Act No. 31 of 1997 on military justice, where in paragraph (1) letter 1 states that courts within the military justice are authorized prosecute criminal act whose subjects are soldiers.<sup>3</sup> The soldier of the Indonesian National Army or military personnel in any country are citizens with special treatment compared to civilians or citizens in general, such specificities as the right to "kill" the enemy, as stated by *Jean Pictet*, in the principle of humanitarian law contained In the *Geneva* convention of 12 August 1949 on protection of war victims, it clear that only members of the armed forces were entitled to attack and detain the enemy.<sup>4</sup>

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<sup>1</sup> Mulyanto, *Azas-azas Hukum Pidana*, (Jakarta: PT. Bina Aksara, 1987) page 20

<sup>2</sup> Indonesia, Article 1 paragraph 2 of Act No. 26 of 1997 concerning Discipline Punishment of Soldiers that Discipline Law of Soldier is a series of regulation and norm to arrange, uphold and develop discipline and life order of the soldier for every duty and time can be used perfectly.

<sup>3</sup> Amiroeddin Sjarif, 1996, *Hukum Disiplin Militer Indonesia*, Jakarta: Rineka Cipta, page. 7

<sup>4</sup> Arlina Permatasari, et al. *Pengantar Hukum humaniter*, (Jakarta : *International committee of the red cross*, 1999), page.75

Until now, all criminal acts committed by the soldiers of the Indonesian National Army, both violations of KUHPM and general criminal law are still being tried by military justice. In this case, the jurisdiction of the military justice has a principle *in personal* which is the principle that the jurisdiction of the court is based on the nature of the perpetrator, i.e every the soldier of the Indonesian National Army.

## II. METHOD OF RESEARCH

This research is normative and empirical law research. By normative research, the researcher wanted to study how the application of legislation related to the military justice system applicable among the personnel of the Indonesian National Army. By empirical research, the researchers want to examine how the application of legislation among the personnel of the Indonesian National Army, so that in law enforcement for every military member can operate and correspond to the general crime handling.

The research is conducted within the territory of the Unitary State of the Republic of Indonesia and specifically will be carried out in DKI Jakarta, in Dilmu 08 Jakarta which is considered to represent other territories. The sample chosen in this research is the soldiers of Indonesian National Army as selected by random system after conducting field interview. To be able to solve the problems raised in this research, we conduct an analysis included in qualitative-descriptive analysis. Where, after collecting the data, we analyze so that it can be drawn a conclusion that can be justified scientifically.

## III. HANDLING PROCESS OF CRIMINAL CASES IN MILITARY JUSTICE SYSTEM

The aspect of justice in the military justice system has been the main focus, especially with a plan to amended Act No. 31 of 1997 on Military Justice. Evidenced by numerous cases that have received considerable attention from the public, military justice has become a *safe-haven*, for military members who commit crimes.<sup>5</sup> What is meant by military law are the basis of specific legal, written and unwritten applicable within the armed forces and the wider environment in certain circumstances, especially in an emergency or war or a series of related legal provisions that affect the interests of national defense.<sup>6</sup>

The government team at the Working Committee Meeting stated the importance of connectivity to be regulated in the Bill is Major General of the Indonesian National Army FX. J. Sukiman by presenting the related example there will be legal vacancy if not set by connectivity, as follows:

*“If one day occurs a criminal act through weapon theft or important military documents, or mobilizing/advocating the military for desertion, or civilian moves military units to engage in military uprisings, divulge military secrets undertaken jointly by a person subject to a justifiable of military justice with a person subject to the justifiable of general court, then the military is clearly tried in a military justice for committing a military crime, but what about the civilian action? Is he released? Such matter is not yet regulated, so in our opinion it is necessary to set the connectivity provisions in this Bill, if not there will be a general void.”<sup>7</sup>*

Head of Legal Bureau of the Ministry of Defense of the Republic of Indonesia said that the problem of connectivity has been finalized and discussion on the specific Problem Inventory List about connectivity has been agreed in the discussion meeting, so in the future the connectivity is still regulated in the Bill on military justice.<sup>8</sup>

The authors argue that after the subjugation of military to the general court in the case of a public crime, if there is a military committing a general offense then there is no need for regulation of connectivity. This is in line with the Bill on the Criminal Code of 2007 which its explanation as conveyed by Andi Hamzah that is in the case of military who commits a violation then be tried with military justice and no need to set again its connectivity.

However, judicially the military justice which in principle has power over the subject (military) still needs regulation of connectivity. This is as stated by the government team and has been confirmed to the Head of Legal Bureau of the Defense Department of the Republic of Indonesia, that the connectivity (the judicial version/military justice) has been approved in the deliberations of the Parliament, so that if the Bill on military justice is passed into Act, then Act No. 4 of 2004 on the Supreme Court of the Republic of Indonesia, especially Article 24, should be amended again. Underlying matters the thoughts that wants the military subject to a general court in the case of general crime are outlined as follows:

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<sup>5</sup> Al Araf, et al, 2007, Reformasi Peradilan Militer di Indonesia, Jakarta: Imparsial, page. 1

<sup>6</sup> Afandi, 2004, *Faktor-faktor Non Hukum dalam Kasus Militer*, Unpublished Paper, page. 6

<sup>7</sup> Kompas News, 7 September 2016, page.5

<sup>8</sup> Head of Legal Bureau of the Ministry of Defense RI, Jakarta : 19 Oktober 2007

### **3.1 The Principle of Equality Before the Law**

The assumption that the military is an exclusive institution that is not same in position in law with other citizens, underlying the civil society wants the military subject to the general court in the case of a public crime. Actually, the specificity of military justice is still in the corridor of the legal system prevailing in Indonesia.<sup>9</sup>

Its specificity is that the jurisdiction of the military justice is based on the perpetrators of criminal acts rather than their actions. Meanwhile, the military community considers military justice required by the military as a means of increasing and fostering discipline for the military. Thus, the subjection of military to the military justice is not because the military is an exclusive institution but indeed the law in Indonesia that enables it.

### **3.2 Lighter Criminal Sanctions Imposed by the Military justices**

Many cases in the military have led to allegations that military justice is used as a means to punish with low penalties or to protect offenders by their superiors or commanders. In fact, the criminal may be considered light by the community, but the adjudication of additional crimes without dismissal is the heaviest criminal than any other (except for dead penalty), which is why none of the military were sentenced to additional sanctions in the form of dismissal of non-judicial appeals, because it concerns their life, self-esteem and honor and dignity in the future.

### **3.3 Not transparent**

If the issue of transparency relates only to the presence of civil society to assess whether the courts in accordance with the prevailing legal rules (the Military Criminal Procedure Code), then the legislation are incorrect, as this is not the fault of the sub-system of the military justice, since the reality, the military justice is open for the public and not for military (members) only, unless the decency matters are declared closed to the public.

Visitors who come to the court are based on an interest, for the media, of course, based on the business background, whether the news will be sell well to the public or not, while for the citizens present in the hearing are based on the interests of their families who are tried and/or victim in a crime being tried or other reasons.

Military justices have been carried out in accordance with the provisions and principles of existing criminal law (military) or not, if the existing provisions as contained in the law of military crime, which is contained in Act No. 31 of 1997 has been implemented by military judges, it can be said that military justice have been conducted in a transparent manner, but otherwise, it can be said that military justice are conducted in a not transparent matter.

While, the presence of civilians in military justice proceedings is not necessarily physically present in the courtroom, as more important is whether civilians or the public in general can gain access to military justice, for example hearing the proceedings of the session through loudspeakers or monitor screen provided or through the mass media that report the trial.

### **3.4 Independence in Judge Profession**

Independence of judge' profession is indispensable in the law enforcement and the drafting of the Law by placing the judges with the Supreme Court of the Republic of Indonesia as advancement for the military criminal justice system in Indonesia. The interference of commanders or superiors can be eliminated organically, administratively and financially in a one-stop system, the Development Board of the Indonesian National Army as the commander staff no longer has the authority to interfere with the independence of military judges.

The Head of Indonesia Military Match argues that despite one-stop but factually that the current military judges are still largely the past product of the system which is still based on the way of appointment based on observations of commanders within the corps of law.

The judges who captain (who have followed "Selapa"<sup>10</sup> education) are appointed to follow development education as judge specialization for only 3 months, while the captain who will serve as a judge in a military justice (formerly a military tribunal) after being appointed by the Commander of the Indonesian National Army through any education directly commissioned to prosecute. And in time they will follow a specialist development education that is only 3 (three) months after meeting the requirements.

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<sup>9</sup> Gunawan, Y. (2017). Arbitration Award of ICSID on the Investment Disputes of Churchill Mining PLC v. Republic of Indonesia. *Hasanuddin Law Review*, 3(1), 14-26. doi: <http://dx.doi.org/10.20956/halrev.v3i1.948>

<sup>10</sup> Sekolah Lanjutan Perwira (Selapa) as highest education in the Indonesian National Army

#### IV. IDEAL CONCEPT OF INDONESIAN MILITARY JUSTICE SYSTEM FOR FUTURE

As practical consideration of the military subjection to the general justice in the case of committing a general crime, changes are needed of material law, formal and other related legislation. The momentum of change towards a better legal development should be understood maximally by the entire nation of Indonesia, so that an integrated military criminal justice will be created.

Clearly that the difference of law plays most important and decisive role for implement and not-implement the legal system, because this legal culture is related to compliance or denial of the law (substance) and the reality that the existence of *Ankum* and *Papera* is important in the armed military life order so that in the implementation their duties requires high discipline.

The law supremacy is an opportunity for the components (sub-system) of the military criminal justice system to demonstrate to the people (civil society) that military justice is capable of realizing its objectives, namely the establishment of a law-abiding military society, and making strong military and no longer military for politics, so that their energy can be distributed to military professionalism alone.

Until now, there are 2 (two) types of crimes contained in KUHPM which are pure military crimes (*zuiver militaire delict*) or forbidden/prohibited acts and in principle may only be violated by a military. Due to circumstances of a special nature or because of a military interest requires such action is determined as a criminal act, an example of military crime article 8 on desertion.

Military criminal act (*gemengde militaire delict*) is prohibited acts which are substantially determined in other criminal legislation, but are regulated in KUHPM because of a typical military or because of one other characteristic, so that a heavier punishment is required, perhaps even heavier than a criminal punishment on a crime originally with such denunciation in article 52 of the Criminal Code.<sup>11</sup>

Reviewing from the aspect of legal substance, including material criminal law and formal criminal law for the military, the material criminal law for military applied today is regulated in the Criminal Code. The formal criminal law substance contained in Act No. 31 of 1997 need to be reviewed its suitability with the overall rules of procedural law contained in the Criminal Procedure Code and Act No. 4 of 2004. It even needs to be studied in an integrated manner with the Bill of KUHPM because the formal criminal law is closely related to its material criminal law.

From the aspect of legal structure, due to the institutional structure of the judiciary and the competence of military is part (sub-system) of the whole judicial system (law enforcement system), it should be conducted a comprehensive review for all institutional structure and authority/judicial authority (law enforcement power) in the field of criminal law (that commonly termed as the integrated criminal justice system).

The renewal of the military criminal law system must also be accompanied by a renewal of the military legal culture, which includes, among other; the renewal of cultural aspects of legal behavior and legal awareness related to the "military culture" and military education/jurisprudence aspects. Hence, legal behavior, legal science and legal education reform are required.<sup>12</sup>

Various amendment of regulatory that enabling will occur, among other; the addition of several new articles regulating the existence of new types of crimes not previously regulated in KUHPM (Proceedings Code of Military Justice) will appear in the Bill of military criminal law being discussed its formulation by the Ministry of Defense of the Republic of Indonesia. Some examples of the form of criminalization performed by the drafter will be the civilian input in trials of military justice if the civilian commits a military crime (as happened in Philippine, Senator Antonio Trilanes commits a military rebellion together with a Brigadier General Panilo Lim),<sup>13</sup> that is as a feeling to the perpetrators of criminal acts solely (as provided in article 67 of the Criminal Code) committed by enemy civilians.

In response to the case in Philippines above, if it occurs in Indonesia, J.E Sahetapy believes that there are 2 (two) possibilities; tried in military justice and perpetrator (civil) may be tried in temporary military justice as the second possibility to be tried in general court (because it is connectivity act) by attend military judges. Rudi Satrio M. argued that the case should be tried in military justice either by civilian or military action, because the crime committed is a military crime (in the context of connectivity).

Prastopo argue that a military crime if consistent in the opinion of Andi Hamzah should be tried in military justice but there is a major problem is whether civilians will be subject to military justice? If following the opinion of Andi Hsmzah then in the draft of Criminal Procedure Code must be added to the civil regulation subject to military justice if committing a military crime. But it would be better to keep the connectivity policy alive instead of making changes that have difficulty in practice.

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<sup>11</sup> SR. Sianturi, *Loc.Cit*, page.21

<sup>12</sup> Barda Nawawi Arief, *Loc.Cit*, page.9

<sup>13</sup> SR. Sianturi, *Loc. Cit*, page.21

The researcher is same the opinion of Rudi Satrio and Prastopo that the two actors should be tried in military justice in the context of the crime of connectivity so that the draft of Criminal Procedure Code should still regulate about connectivity to avoid the legal vacuum. Projected coverage of future criminal offenses in the military justice, as follows:

#### **4.1 Object of Crime**

Prof. Muladi' opinion is deals with the jurisdiction of the military justice, which is to judge only typical military cases, in which civilians cannot do so such as desertion or insubordination.<sup>14</sup> While, other criminal acts, such as the theft of intelligence data, the corruption of combat equipment (military facilities), although there are connectivity to military duties or to position, but not a typical military crime, where civilians can also do so, then this is not categorized as a criminal offense that becomes the jurisdiction of military justice.

In article 9 of Act No. 31 of 1997 on military justice there is a narrowing of authority from the original authority to try all criminal offenses, both general crimes, as well as military crime (typical/pure). Thus, the object of criminal offenses under the jurisdiction of the military justice in the future is a criminal offense both military (typical/pure) and general crime related to duties or position in the military.

#### **4.2 Locus Delicti**

Criminal acts committed within headquarters or bases are categorized as general criminal, such as adultery (article 284 of KUHP), but are deemed to affect the mental or cohesive forces that will ultimately affect the performance of unity.

The Ministry of Defense argues that what is meant by the criminal act in KUHPM is like a military rebellion, desertion, insubordination, receiving of goods for war, etc. and these crimes are feared to affect the performance of the Indonesian National Army.

While criminal acts committed by soldiers in the military service, can be interpreted as criminal acts committed in officials, such as logistics officials ordered to buy the war items, and later corrupted or in mark-up.

#### **4.3 Subject of Crime**

The perpetrator or subject of crime who subject to the future jurisdiction of military justice is remain the soldier of the Indonesian National Army or equivalent, as it relates to the specificity or existence of military judiciary, namely to hear certain cases or concerning certain factions, and certain cases are criminal acts (typical military and common) and the soldiers of the Indonesian National Army or equivalents are certain factions. While, the general justice are justice for people in general in civil- and criminal cases.

The researcher argue that it is added with *locus delicti* in the headquarters, bases, ships and warplanes because this is in addition to avoiding the resistance of the Indonesian National Army, nor the punishment by civilian judges will weaken the Indonesian National Army, as it relates to the understanding of civilian judges whether he understand or animate military life.

The essence of military justice is as part of the development of personnel and units, so that the soldiers of the Indonesian National Army can commit their main duties properly, because the criminal sanctioned to the soldiers of the Indonesian National Army is not merely a deterrent effect, but more than that to educate by providing tactical training and military technical combined with physical and mental development as long as he is not dismissed from the military service, in the hope that he can be a good military and law-abiding.<sup>15</sup>

Adaptation or synchronization with various laws and regulations contained in the old Military Criminal Code (KUHPM), the addition of criminal provisions will also develop after the synchronization of the Military Criminal Code with the provisions of international legislation such as: *Geneva Convention*, *Den Haag Convention* and International Agreements that have been certified by the Indonesia. In the past, the theory and practice of eradicating before consolidating post-combat was by firing or stabbing by using a bayonet that had been installed in the gun barrel. This practice has been banned in the Den Haag convention. The possibly cleaning up or eradication is by inspect the victim of the battle with the position of bayonet or gun upwards and if there is an enemy hit by a shot, then must be applied as prisoner of war.

## **V. CONCLUSIONS**

Legal consequences arising from the establishment of military justice according to Act No. 31 of 1997, military justice is the executor of judicial power in the armed forces to enforce the law and justice with attention to the interests of the state defense. In its implementation, the military justice is performed by military justice, namely the court which is the executive body of judicial power within the armed forces.

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<sup>14</sup> *Ibid*

<sup>15</sup> Kompas, 16 March 2006, Page.3

National politics (the State) should be able to implement defense policy as a national strategy to achieve its national goals. The policy of defense and security strategies concerning the dignity of the nation, for that the politics of country should understand the root of State authority as basic consensus of Pancasila, 1945 Constitution, the Unitary State of the Republic of Indonesia and Bhinneka Tunggal Ika. Thus, our country is not affected to the situation that weakens the dignity of the nation in the eyes of the world. The root of the problem of insecurity related to civil order through law enforcement should be Out Word Looking and In Word Looking cause in state politics should be a round of Defense and Security reflected in foreign policy. Therefore, it must be interrelated and synergize with the national goals of a just and prosperous society. Should in the establishment of a new law, underlying the regulated in the previous law, for the purpose of the effectiveness of law can be done and at least underlies the initial principles of the establishment of the law and expected the government immediately create and validate the new law that amended Act No. 31 of 1997 on the Military Court. New law should contain paradigms and also accommodate the reforms in the field of Military Court.

#### REFERENCES

- [1] Afandi, 2004, *Faktor-faktor Non Hukum dalam Kasus Militer*, Unpublished Paper, page. 6
- [2] Al Araf, et al, 2007, *Reformasi Peradilan Militer di Indonesia*, Jakarta: Imparsial, page. 1
- [3] Amiroeddin Sjarif, 1996, *Hukum Disiplin Militer Indonesia*, Jakarta: Rineka Cipta, page. 7
- [4] Arlina Permatasari, et al. *Pengantar Hukum humaniter*, (Jakarta : *International committee of the red cross*, 1999), page.75
- [5] Gunawan, Y. (2017). Arbitration Award of ICSID on the Investment Disputes of Churchill Mining PLC v. Republic of Indonesia. *Hasanuddin Law Review*, 3(1), 14-26. doi: <http://dx.doi.org/10.20956/halrev.v3i1.948>
- [6] Head of Legal Bureau of the Ministry of Defense RI, Jakarta : 19 Oktober 2007
- [7] Indonesia, Article 1 paragraph 2 of Act No. 26 of 1997 concerning Discipline Punishment of Soldiers that Discipline Law of Soldier is a series of regulation and norm to arrange, uphold and develop discipline and life order of the soldier for every duty and time can be used perfectly.
- [8] Kompas News, 7 September 2016, page.5
- [9] Kompas, 16 March 2006, Page.3
- [10] Mulyanto, *Azas-azas Hukum Pidana*, (Jakarta: PT. Bina Aksara, 1987) page 20
- [11] Sekolah Lanjutan Perwira (Selapa) as highest education in the Indonesian National Army
- [12] Yohanes, T., Sulistiyono, A., & Hawin, M. (2017). Legally Binding of the World Trade Organization Dispute Settlement Body's Decision. *Hasanuddin Law Review*, 3(2), 160-174. doi:<http://dx.doi.org/10.20956/halrev.v3i2.1107>

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