



UDC 34

REFORMATION OF MILITARY JUSTICE SYSTEM IN THE INDONESIAN MILITARY LAW

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ABSTRACT

The military court, as a judicial institution within the military, is assigned to process "Due Process of Law" within the military environment and to enforce discipline in Indonesian Military Armed forces. The Military court must guarantee that law mechanisms will protect the rights of the Indonesian Military Armed Forces (*Tentara Nasional Indonesia*). Military justice is operationally under the Supreme Court (*Mahkamah Agung Republic of Indonesia*) but administratively is within military organizations. Military justice is the administration of justice based on Law number 31 of 1997 concerning military justice that is for the scope of military law and general law. Legal instruments used as guidelines for TNI, especially military enforcement office in the context of conducting investigations, prosecution and court examination, since the enactment of the Military Criminal Code, implementation of procedures for resolving military cases in Indonesia. Military justice is under the Supreme Court in a one-roof system with 3 other courts. Draft amendments to the KUHPM as material military law, there is a military justice section under the Supreme Court, prosecution under the Attorney General (*Kejaksaan Agung Republic of Indonesia*), led by the Deputy Attorney General for Military Crimes, the implementer is the Assistant for Military Crimes at each High Prosecutor's office.

KEY WORDS

Military, justice system, Indonesian military law.

The military court, as a judicial institution within the military, is assigned to process "Due Process of Law" within the military environment and to enforce discipline in Indonesian Military Armed forces. The Military court must guarantee that law mechanisms will protect the rights of the Indonesian Military Armed Forces (*Tentara Nasional Indonesia*). Military justice is operationally under the Supreme Court (*Mahkamah Agung Republic of Indonesia*) but administratively is within military organizations, as stated in Article 18 and Article 25 paragraph (1) Law Number 48 of 2009 concerning Judicial Power stipulates that there are 4 judicial environments, namely the General Court, Religious Courts, Military Courts and State Administrative Courts.

The intention of judicial power is to execute independent law and justice under the Supreme Court of the Republic of Indonesia, as one of the implementations of legal supremacy based on Pancasila and the 1945 Constitution. It is limited according to the provisions of Article 1 number 1, namely: The court is a body that exercises Judicial Power within the environment of military justice which includes the Military Court, High Military Court, Main Military Court, and Combat Military Court. TNI soldiers who are suspected of committing a crime are obliged to undergo a legal process through a military court trial, and if they are found innocent before there is a permanent legal force then they must have their rights restored back to normal. Based on the development of the role of TNI soldiers in the military and government, it runs in accordance with the programs and budgets that have been derived from the State Budget (*Anggaran Pendapatan Belanja Negara*).

This is in line with the main tasks related to the implementation of the rights and obligations of law enforcement officers in military environment. Every military court must match its work ethic targets, because it has gained approval of the State Budget. The essence of the TNI's existence is to optimize its ability to help the duties of the central and regional governments which are based on the main duties of the TNI in Article 7 paragraph (1) of the Law Number 34 of 2004 concerning the TNI, namely: "*Upholding state sovereignty,*



defending the territorial integrity of the State of unity of the Republic of Indonesia which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and protecting the entire nation and the entire bloodshed of Indonesia from threats and disturbances against integrity of the nation and state”.

Based on the statement by the Coordinating Minister for Political, Legal and Security Affairs of the Republic of Indonesia, Prof. Mahfud M.D. preparing an academic manuscript to revise Law Number 31 of 1997 concerning Military Justice. The revisions proposal in the form of a *Transitional law* for the priority national legislation program 2024. In accordance with TAP MPR Number VII of 2000 concerning the Role of the TNI and the Role of the Police of the Republic of Indonesia, the decree has mandated that TNI soldiers submit to public justice if they violate on the law general crime. After the revision was carried out, military criminal offenses committed by TNI soldiers will be processed in military courts, while general criminal offenses are processed in general courts. This provision has been ratified in Law Number 34 of 2004 concerning the TNI, but has not yet been implemented considering Article 74 which stipulates that these provisions apply after the new Law applies. TNI Headquarters also wishes to immediately revise the Law on Military Justice in accordance with the mandate of reform and fight against corruption. The proposed revision is targeted entering the 2024 priority (*Program Legislasi Nasional*) which requires the study of academic texts prepared by the government to be reviewed by the DPR RI to see its substance and the views of other party factions.

The polemic occurred when the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*) determined that the Head of the National Search and Rescue Agency and administrative coordinator as suspect in an alleged corruption case involving TNI AU officers. The determination of the suspect received protests from the Military Police TNI which was based on the law of military justice. The legal basis for the existence of the TNI is regulated in TAP MPR Number VI of 2000 concerning the Separation of the TNI - Polri and TAP MPR Number VII of 2000 concerning the Role of the TNI – Polri, is in accordance with the military justice system, to eliminate TNI intervention. One of them is the separation of the TNI - Polri, namely the *rule of law* and restrictions state power and guarantee of people's safety by the TNI.

In the current development of TNI functions, many TNI as active military members can serve in the Agency State Owned Enterprises. TNI on duty can commit violations of discipline and military law. The military is one component of the nation that has its own characteristics both in behavior and act in accordance with the responsibilities and duties given to him by the state. The daily lives of TNI are also synergy with the lives of the general public, so that General legal provisions also apply and are binding on TNI, namely the legal provisions in the Criminal Law Act Book. TNI are subjects to military law, with rights and obligations attached to them whereas obligations regarding applicable special legal provisions. TNI can avoid prohibited actions; therefore severe threats of punishment are needed more than the criminal threat of the original crime, namely aggravated punishment. Terms or the special rules that apply to a TNI are the Military Criminal Law which is regulated in the Soldier Disciplinary Regulations and the Military Criminal Law that apply in the life system of TNI soldiers are known for the provisions of military discipline law in accordance with Law Number 25 of 2014 regarding TNI Disciplinary Law.

RESULTS AND DISCUSSION

The placement of military legal claims is the Supreme Court of the Republic of Indonesia under one roof with 4 judicial environments, refers to military legal claims that only military trial on criminal acts based on Law Number 34 of 2004 concerning the TNI, Article 65 reform paragraph (2), namely: Soldiers are subject to military legal authority in cases of violations of military criminal law and are subject to general legal authority in cases of violations of general criminal law as regulated by law.

As a subject of general law and military law, the legal instrument used as a guideline for military law, is the enactment of the Military Criminal Code, as a procedure for resolving



military criminal cases. This applies to especially for law enforcement officers in military institutions in the context of carrying out investigations, prosecutions and examinations in military justice. Settlement of connectivity cases which are based on Presidential Decree Number 15 of 2021 concerning the Organization of Duties and Work Procedures of the Indonesian Attorney General's Office in the formation of the Deputy Attorney General for Military Crimes and his staff to coordinate technical processes and handle connectivity cases in accordance with the Memorandum of Understanding of the Minister of Defense of the Republic of Indonesia, the Attorney General of the Republic of Indonesia and the TNI Commander regarding the permanent team formation of connectivity investigators, to carry out investigations into connectivity cases. A general crime committed by TNI and civilians is tried through a district court, unless according to the Joint Memorandum of the Minister of Defense of the Republic of Indonesia and the Minister of Justice of the Republic of Indonesia, the case will be tried in a military court in accordance with Article 198 paragraph (1) of Law Number 31 of 1997. The distribution of types of criminal acts is as follows:

Table 1 – Type of court for TNI as criminal acts

Type Criminal Actions	KUHP	KUHPM	Special Criminal Offenses
1. Desertion/Absent without leave	-	Military court articles 86-87	-
2. Insubordination	-	Military court articles 126-127	-
3. Immoral	Military court articles 281-284 KUHP	-	-
4. Persecution	Military court article 351 KUHP	-	-
5. Refusing Orders	Service military court article 527 KUHP	-	-
6. Drugs	Military court articles 126-127 narcotics law	-	-
7. Corruption	-	-	Corruption court articles 11-13 of the corruption law

The revision of military criminal law book used as material for military law has begun to change the process of prosecution by the Deputy Attorney General for Military Crimes which is under the authority structure of the Indonesian Attorney General's Office to make the investigation authority by Indonesian National Police investigators, in case of TNI commit general crimes. Settlement of criminal cases KUHP, KUHPM and special criminal acts. A criminal act that can be categorized as a military crime is when a TNI commits an act that is contrary to the rules of military law in force. It is stated that a military criminal act, due to the circumstances that are special in nature or conflict with military interests and the act is not determined to be a criminal act, the criminal act will be processed until it is tried in a military court. The handling of criminal cases of desertion and absence without leave committed by a TNI applies to the Military Criminal Code, namely Article 86 and Article 87 KUHPM. Handling of cases of criminal acts of subordination committed by TNI in Article 126 and Article 127 KUHPM.

Resolving cases of abuse that occurred between fellow TNI-Polri or criminal acts involving the TNI extended family in the form of immorality and drug cases, did not attract public attention because it is considered not to be interesting. The main task of military judges in the future will only be to carry out trials of military criminal cases, in the form of cases such as abuse of authority, desertion and insubordination. Cases of alleged immoral crimes committed by TNI are handled abiding to the Criminal Code, namely Articles 279 to 284 which regulate violations of morality and adultery. The threat of punishment that will be given to TNI soldiers is based on the level of the offense committed, from the lowest being nine months in prison and the heaviest up to dishonorable discharge from military service.

The occurrence of immoral crimes within the TNI is due to a lack of understanding of the consequences of threats or punishment applied to TNI soldiers who violate moral norms. In the Criminal Code which specifically regulates crimes against morality, the highest criminal



threat is imprisonment for nine months. The Military Justice Chamber of Supreme Court is serious about resolving immoral crimes committed by TNI. Extended TNI families or women who are not part of TNI families (living within a TNI family) are threatened with additional punishment in the form of dismissal from military service, therefore the existence of this regulation should have a deterrent effect for TNI who do not commit crimes of morality. The influence factor that occurrence of immoral crimes committed by TNI include cause immoral crimes to occur due to a lack of mental and spiritual development in the unit. Currently, the National Commission on Women's Human Rights still objects to holding military court trials without making maximum decisions because within military institutions there is the possibility of helping to reduce sentences. It is sensed that there is injustice in conveying an opinion on the legal facts regarding the crime of domestic violence experienced by the victim witness (wife) committed by the accused TNI soldier. On the basis of legal and military interests, the TNI Commander issued a Telegram Letter requesting dismissal from military service for TNI soldiers who committed immoral crimes to victim witnesses from the TNI extended family.

Other regulations regarding immoral acts are set as disciplinary violations that are contrary to the norms of soldier life as referred to in the TNI Commander's Regulations on Soldier Disciplinary Regulations, which regulate matters that TNI are prohibited from doing, namely visiting brothels, committing prostitution and committing other unlawful acts. These regulations should be carried out by soldiers, and/or contrary to official orders or regulations, where the resolution of immoral acts that violate the norms or rules of soldier's life is resolved according to Law Number 25 of 2014 concerning Military Discipline Law. The imposition of military disciplinary punishment on a TNI who violates the norms of decency is also worsened by imposing a sentence of dishonorable discharge from military service in accordance with the Kasad's Regulation. Immoral acts are also seen as unlawful acts that conflict with general criminal law or military criminal law. They are stated to be military criminal acts because the criminal act was committed by a military person, or is specific to the military.

Special developments regarding the threat of punishment for perpetrators of immoral crimes, more specifically for crimes of Homosexual/Lesbian morality, MARI has issued Circular Letter Number 10 of 2020 dated 18 December 2020 which regulates that TNI who are suspected of having committed such immorality can be tried by applying Article 103 paragraph (1) of the KUHPM as an act that violates official orders. In accordance with the Circular Letter of the Supreme Court, in case of a withdrawal of a Police Report against a TNI who committed an immoral crime which violates article 284 KUHP, based on the alternative charge of article 281 KUHP, the TNI therefore will still be examined and tried at the military court. New provisions for military institutions, especially in the realm of criminal law in KUHPM which regulates criminal sanctions that can be imposed on military officers in case of there are provisions of the KUHPM that are violated by military members or officers. Based on law number 1 of 2023 concerning criminal law code in Article 527, a position offense applies to TNI Commanders, namely: An Indonesian army commander (*Kasad*) who refuses or ignores a request for assistance from forces under his command which was requested by an authorized official according to the law, shall be punished with a maximum imprisonment of 4 (four) years.

There are three corruption cases at *Badan SAR Nasional* which involves suspected TNI officers, namely military, civil and connectivity. The results of the military police TNI investigation are used as a consideration for the justice system adopted by the TNI officer. This system was considered together with the KPK to complete investigation case files assisted by military police TNI investigators in the context of examining suspects and preparing witnesses who received bribes. The implementation of TNI reform was carried out in stages starting with the enactment of Law Number 34 of 2004 concerning the TNI. The existence of military justice under MARI and the final stage is prosecuted under the Indonesian Attorney General's Office. The process of prosecuting connectivity cases, such as resolving cases of human rights violations and criminal acts of corruption, occurs as a result of a lack of budget supervision. Difficulty in proving the difference between policy considerations of military interests and personal or group interests, is caused by the doctrine



of TNI soldiers is to be loyal to the policies of their leaders. Crimes of connection with TNI soldiers for legal and military purposes require the role of prosecuting connection cases by the Deputy Attorney General for Military Crimes together with the TNI Prosecutor General, carrying out duties and being responsible to the Attorney General as prosecution system. The prosecution technically carried out by the military prosecutor together with the Military Criminal Assistant in handling connection cases is responsible to *Jaksa Agung Muda Pidana Militer* in accordance with the provisions of Article 25C of Presidential Regulation Number 15 of 2021. The scope of the technical coordination of prosecutions carried out by the judiciary and the handling of connectivity cases includes several things such as investigating connectivity cases, prosecution, resistance, legal action, implementation of judge's determinations and court decisions which have permanent legal force, supervision of the implementation of criminal decisions.

The role of the Military Criminal Assistant is to assist military prosecutors in accordance with the provisions of Article 8A of Presidential Regulation Number 15 of 2021. One of the important roles of *Jampidmil*, the technical coordination of prosecutions carried out by military prosecutors in handling connection cases, is a criminal act carried out by the military together with civil society. Cases of criminal acts of corruption involving military and civil servants. In practice, the role of *Jampidmil* is needed to handle and resolve this case. The duties and authority of *Jampidmil* at the Prosecutor's Office in the field of technical coordination of prosecutions are carried out by military prosecutors and the handling of connectivity cases is directly responsible to the Attorney General.

The immoral crime case is in accordance with the TNI Commander's Telegram Letter for aggravation of witnesses, victims of the TNI extended family and their families. The criminal offense case for TNI leaders is in accordance with the provisions of Article 527 of Law Number 1 of 2023 concerning the Criminal Code. Formulating policies in the field of technical coordination of prosecutions carried out by military prosecutors and handling connectivity cases. The technical coordination of prosecutions is carried out by prosecutors and law enforcement. The handling of connectivity cases is carried out by coordinating and synchronizing the implementation of policies in the technical field of prosecution which is carried out by the judiciary and law enforcement and handling, along with the differences.

Table 2 – Role and authority for examining connectivity cases

Comparison	Military and General Courts	Connectivity Court
Concept	KUHPM AND KUHP are used for trials in military courts.	The corruption law is used in the connectivity court formed by the Supreme Court which has the authority to determine the amount of losses incurred by the parties.
Tempus	Military crime and criminal crime was delegated from the military police investigator to the military prosecutor.	The corruption law was delegated from national police investigators to the high prosecutor's office.
Process	Investigation by military police TNI, investigation and prosecution by the military prosecutor.	Investigation by military police TNI, investigation and prosecution by <i>Asisten pidana militer</i> at the high prosecutor's office.
Characteristic	Military courts are set permanent for mild or severe cases in nature. As long as the basic of law still applies and does not change the authority of the judiciary then the position remain the same.	The connectivity court is not permanent therefore it will be formed when an act of criminal or crimes are detrimental and on certain events only. It means the connectivity court is temporary until the resolved case has been tried.

In its application, it applies the legal principle of *lex specialis derogate lex generali* (Purnadi Purbacaraka, 1967), meaning regulations that general nature (criminal procedural law) is excluded by the governing regulations. A criminal procedure is special if the maker is the same, meaning in a special event it is mandatory treated. Criminal procedural law contains peculiarities, but the system that is developed must be appropriate and able to support the implementation of an integrated criminal system. An integrated criminal system requires synchronization or simultaneity and harmony, which can be distinguished as follows: Structural synchronization, namely unison and harmony in the framework of relations



between law enforcement agencies, in this case the existence of the Deputy Attorney General for Military Crimes, supervises the Military Criminal Assistant at each provincial High Prosecutor's Office together with the TNI Prosecutor General supervising military prosecutors; Substantial synchronization, namely vertical synchronization and harmony, and also horizontal, in relation to positive law; The role of military court judges; and Cultural synchronization, namely simultaneity and harmony and appreciation in criminal justice system, the role of future military legal advisors at trials is urgently needed by showing professionalism in performance in the interests of freeing those who are not guilty and give the defendant his rights properly and correctly that can be done at a court trial.

Justice and legal certainty are two essential goals of the rule of law. For a country of laws, it is a must to understand and develop them as a unified system. The legal system is divided into three functions of state power, namely: legislative function (regulation), executive function (administrative) and judicial function (G Bell and Sons, 1964). All elements, components, hierarchies and aspects are systemic and interconnected with each other, that is based on the Constitution of the Republic Indonesia in 1945 what the meaning of the legal system should be and be developed within the framework of the Indonesian legal state. The national legal system is based on elements, namely rules and regulations in the form of statutory regulations as a legal system in a national legal system on conditions that its validity can be traced well directly or indirectly to the first constitution (Hans Kelsen, 1961).

In Indonesia, justice is described in Pancasila as the basis of the state, namely in the Second Principle "Just and civilized humanity" and the fifth principle "Social justice for all Indonesian people". Thus contains values which are the goal of living together. Justice is based and inspired by the essence of human justice, namely justice in the relationship between human and himself, humans with other humans, humans with society, nation and state, as well as human relationship with his God (M. Agus Santoso, 2014). Values of human justice and social justice imply the essence of human as creatures, those with culture and nature must be fair, that is, fair in relation to themselves, fair towards other human beings, fair to the people of the nation and state, fair to the environment and fair to The One Almighty God.

The essence of justice is an attitude of treating someone in accordance with their right to be recognized and treated in accordance with dignity, with the same degree of rights and obligations, without distinction between race, descent, religion or class. Justice is one of the goals of law, namely to provide balanced treatment between rights and obligations. According to the Indonesian dictionary fair comes from the word *adl* (Arabic), meaning impartiality, harmony between demanding rights and carry out obligations. Justice does not mean equality, but rather giving according to its place and to those who deserve it.

The values of justice must be achieved in living as a society, as a state to achieve state goals, namely prosper and educate all citizens in its territory. Likewise, the values of justice act as a basis for relations between fellow nations in the world and the principle of wanting to create order in living together in an association between nations in the world based on a principle of independence for every nation, eternal peace, and justice in living together (social justice).

The formulation of legal certainty in the criminal law system can be seen in Article 1 paragraph (1) KUHP known as "principle of legality" by Montesquieu in his book *L'Esprit des Lois* (1748) which aims to protect humans from arbitrariness, and also Asseln von Feuerback in his book *Lehrbuch des frein lichen Rechts* (1801) stated that to prevent crime (prevention), a threat of punishment is needed that can restrain people from committing crimes (Ermansyah, 2010). According to Laden Marpaung, namely: "In the field of criminal law, legal certainty is formulated in Article 1 paragraph (1) The Criminal Code (KUHP) known as the Asseln von Feuerback principle (1775-1833) which is formulated: "*Nullum delictum nulla poena sine praevia lege poenali*". In the Criminal Code, namely Article 1 paragraph (1). This principle is formulated as follows: "No act can be punished except by the force of criminal provisions in legislation that existed before the act was committed" (Laden Marpaung, 1967).

Legal certainty is a principle in a legal state that prioritizes the legislation basis, propriety and justice in every state administrator. Therefore, legal certainty cannot be



separated from justice because it is a human value and need for a civilized society. Justice belongs to and is for everyone and the entire society and the absence of justice will cause destruction and chaos in the existence of society itself (E. Fernando Manullang, 2007). Legal certainty (*rechtszekerheid*) is a guarantee for society members that they will be treated by the state/authority based on legal rules and not arbitrarily, as well as the certainty regarding the contents of the rules. Legal certainty is the desire of each person, how the law should be applied in real events. Legal certainty is a justifiable protection against arbitrary actions, which means that someone will be able to obtain something they hope for in certain circumstances (Franz Magnis, 2009).

CONCLUSION

The direction of reformation in the military justice system is in accordance with the draft Amendment to the TNI Law in resolving criminal cases related to TNI for legal and military purposes. *Jampidmil's* role in connectivity cases is in the form of investigation, prosecution, implementation of judge's decisions and court decisions that have obtained permanent legal force, supervision of implementation of criminal decisions with the aim of being both beneficial for the government and the understanding of TNI in order to obtain legal certainty in the form of justice, hence it must still be fought professionally, to gain a sense of justice for the interests of TNI in fighting for the rights of the accused in military court trials which are in accordance with the analysis of the legal theory of justice and legal certainty. Based on the legal and military interests, the TNI Commander's Regulation to propose dismissal from military service for TNI soldiers who commit immoral crimes against witnesses of victims acting as the TNI extended family and their families. Case of criminal offense concerning position for leadership, TNI soldiers can be prosecuted in accordance with the provisions of Article 527 of Law Number 1 of 2023 concerning the Book Criminal Law Act. nLegal provisions for TNI soldiers who commit general crimes, military crimes and criminal acts specifically has been adapted to the provisions of regulations and legal norms that apply within the TNI, threat to TNI soldiers as perpetrators of criminal acts. Every TNI soldier who is a perpetrator of a criminal act may be given additional punishment in the form of dismissal from military service, with the aim of providing a deterrent effect on other perpetrators and become an example for other TNI soldiers of what consequences may be faced in the future.

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