

Analysis of Military Justice in General Criminal Acts

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ABSTRACT

Military justice is one of the recognized judicial environments in the Indonesian legal system based on the 1945 Constitution of the Republic of Indonesia. The existence of military justice raises its own and fundamental problems related to the authority to prosecute soldiers of the Indonesian National Army (TNI) who commit general criminal acts. This article aims to analyze juridically normatively the authority of military justice, procedural procedures, and legal implications caused when military members are faced with general criminal offenses. This research uses normative legal research methods with a legislative approach and a conceptual approach. The results of the study show that Indonesia's military judicial system has special characteristics that distinguish it from general justice, including in terms of legal subjects, absolute and relative competencies, and procedural procedures. Found a number of fundamental problems related to the independence of military judges, the guarantee of the rights of the defendants, and the effectiveness of law enforcement against TNI members who commit general criminal acts. This article recommends the need for a comprehensive reform of Indonesia's military judicial system to be in line with the principles of the rule of law, human rights, and the renewal of the national judicial system.

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1. INTRODUCTION

The State of Indonesia is a state of law (*rechtsstaat*) as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The consequence of the rule of law principle is that every citizen, the law without exception, includes members of the Indonesian National Army (TNI). In practice, military members can not only commit military crimes, but also general crimes such as murder, persecution, theft, corruption, narcotics, and other criminal acts. (Moch. Faisal Salam, 2006) is a member of the military, subject to the rule of law and must be held accountable for his actions in front of the competent court. In this context, military justice becomes a very strategic institution and is very necessary as well as controversial in the Indonesian legal system.

Military justice in Indonesia is regulated in Law Number 31 of 1997 concerning Military Justice. (S.R. Sianturi, 1985) After the reform, there was a demand for members of the TNI who committed general criminal acts to be tried in the general judiciary in order to realize the principle of equality before the law. (Law Number 31 of 1997).

The military as a national defense institution has different characteristics from civilians in general. The peculiarity of the military is reflected in the value system, organizational culture, command hierarchy, and very strict discipline demands. Such conditions make legislators feel the need to create a separate legal and judicial system that accommodates the uniqueness of military institutions, so that military justice was born as one of the judicial environments recognized by the state.

In the history of the development of military law in Indonesia, the existence of military justice has existed since the Dutch colonial era through various regulations that regulate the procedure for settling criminal cases for military personnel. After independence, Indonesia made various adjustments to the military judicial system until finally Law Number 31 of 1997 concerning Military Justice was born which became the main legal foundation until now.

The problem that then arises is when military members not only violate military law (disciplinary law or military crime), but also commit criminal acts regulated in the general criminal law, such as murder, persecution, rape, corruption, and various other forms of crime. The fundamental question that arises is: does the military judiciary have adequate authority and competence to prosecute common criminal acts committed by members of the military, or should the competence be handed over to the general judiciary?

This debate is not just a technical-legal issue, but touches on more fundamental aspects, namely the guarantee of judicial independence, the fulfillment of the rights of the defendants, the principle of equality before the law (equality before the law), and the effectiveness of law enforcement against military members. In various democratic countries, there is a tendency to limit the jurisdiction of military justice only to purely military crimes, while general crimes committed by military members are tried by civil justice.

Based on the background above, this article formulates several main problems as follows (1) What is the authority and competence of the military justice in judging common criminal acts committed by TNI members based on Indonesian positive Law. (2) What is the prosedur in the military justice for general criminal cases and what is the difference with the general justice procedure. (3) What are the problems and legal implications that arise from the current military justice system, especially in handling general criminal acts. (4) What is the prospect of Indonesian military judicial Reform to be in harmony with the principles of the rule of law and human rights.

This article aims to: (1) analyze and describe the authority of military justice in trying general criminal offenses; (2) review the procedural procedures in military justice; (3) identify problems and legal implications that arise; and (4) give recommendations for the renewal of the Indonesian military justice system.

2. METHODS

This research uses a normative legal research method (doctrinal legal research), which is research that examines positive legal norms through literature studies of primary, secondary, and tertiary legal materials. The approach used includes a statute approach, a conceptual approach, and a historical approach. Primary legal material includes laws and regulations related to military justice, military criminal law, and the national justice system. Secondary legal materials include legal textbooks, scientific journals, and other scientific works. The analysis is done qualitatively-descriptively.

3. FINDINGS AND DISCUSSION

Basic Concept of Military Justice

Military justice is one of the special forms of justice recognized in the Indonesian state system. The constitutional basis is contained in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that judicial power is carried out by a Supreme Court and a judicial body under it in the general judicial environment, religious judicial environment, military judicial environment, state administration judicial environment, and by a Constitutional Court.

Normatively, Law Number 48 of 2009 concerning Judicial Power stipulates that military justice is a justice for people who are subject to military law. Meanwhile, Law Number 31 of 1997 concerning Military Justice defines military justice as a judicial environment under the Supreme Court that exercises judicial power over crimes related to military crimes.

Romli Atmasasmita defines military justice as a judicial body that has absolute competence to try criminal cases in which the defendant is a member of the military or who is equated with the military. This understanding emphasizes the aspect of the subject of law as a determining factor of the absolute competence of military justice, not solely the type of offense carried out.

History of Military Justice Development in Indonesia

The history of military justice in Indonesia can be traced back to the Dutch colonial era. During the colonial period, the Dutch enforced the Militaire Strafwetboek (MSW) as a military criminal law and the Wetboek van Militair Strafrecht as the military criminal procedure law. Military judicial institutions under the colonial regime were aimed mainly at maintaining order and discipline of the Dutch army (KNIL/Koninklijk Nederlandsch-Indische Leger).

After the proclamation of independence on August 17, 1945, the Indonesian government took over the existing judicial system with various adjustments. Based on Article II of the 1945 Constitution Transition Rules, existing laws and regulations remain in effect as long as they have not been replaced. Military justice in the early period of independence still refers to colonial legacy military law with various modifications.

An important milestone in the development of Indonesian military law is the promulgation of the Military Criminal Code (KUHPM) which is effective from January 1, 1947. The Criminal Code regulates various types of military crimes (*delicta propria militaria*), namely criminal acts that can only be carried out by military members because of their relationship with military status and obligations.

The next development is marked by the birth of various laws and regulations that regulate the organization and procedures of military justice, including Law Number 7 of 1946, Law Number 8 of 1946, to Law Number 5 of 1950 which regulates the structure and power of the military court. The highlight of this development is the promulgation of Law Number 31 of 1997 concerning Military Justice which comprehensively regulates the position, composition, power, and procedural law of military justice.

Judicial Competence Theory

In procedural law, two forms of court competence are known, namely absolute competence (absolute competence) and relative competence (relative competence). Absolute competence is related to the authority to adjudicate based on the type or material of the case, while relative competence is related to the authority to adjudicate based on the jurisdiction.

For military justice, absolute competence is determined mainly by the status of the legal subject (the perpetrator), not solely by the type of offense. This is different from the general judiciary whose competence is determined based on the type of case. As a consequence, a military member who commits a general criminal act will still be tried in the military justice, not the general judiciary, as long as the person concerned is still an active member of the TNI.

Military Justice Authority in General Criminal Acts

Absolute Competence of Military Justice

The absolute competence of military justice is expressly regulated in Article 9 of Law Number 31 of 1997. Based on these provisions, the court in the military judicial environment is authorized to prosecute criminal acts committed by someone who at the time of committing a criminal act is: (1) soldier; (2) who based on the law is equated with a soldier; (3) a member of a group or position or body or who is equated or considered as a soldier based on the law; or (4) a person who is not included in the above group but based on the decision of the Commander on the approval of the Minister of Justice must be tried by a court within the military judicial environment.

This provision contains the basic principle that the competence of military justice is determined by the status of personnel (soldiers or those who are equated), not by the type of criminal act committed. Thus, a soldier who commits the crime of murder, persecution, theft, or other general crimes is still tried in the military court, not in the general court. This is one of the most fundamental and controversial characteristics of Indonesia's military justice system.

Relative Competence and Military Court Level

The court structure in the military justice environment consists of the Military Court, the High Military Court, the Main Military Court, and the Battle Military Court. The relative competence of each military court is based on the rank of the defendant, not on the place where the criminal act occurred as in the general judiciary.

The division of relative competence based on the rank of the defendant is as follows: The Military Court is authorized to prosecute criminal acts committed by soldiers with the rank of Captain and below. The High Military Court is authorized to try cases at the appeal level and try at the first level of soldiers with the rank of Major to Colonel. Meanwhile, the Main Military Court acts as an appeal court from the High Military Court and tries at the first level of cases where the defendant has the rank of Brigadier General and above.

This relative competence system based on rank has important implications. First, the rank of the defendant determines the competent court forum. Second, the difference in rank between the defendant and the military judge can cause psychological and structural problems that have the potential to affect the independence of the judge. Judges whose rank is lower than the defendant psychologically tend to experience pressure that can affect the objectivity of their verdict.

Legal Basis for the Application of General Criminal Law in Military Justice

When military members commit general criminal acts, the material criminal law that is applied is the Code of Criminal Law (KUHP). This is expressly stated in Article 1 of the Criminal Code which states that for criminal acts committed by soldiers that are not regulated in the Criminal Code, the provisions of the Criminal Code apply. That is, the Criminal Code applies subsidiarily to the Criminal Code in the event of a void of military criminal law.

Although the material criminal law that is applied is the same as the general judiciary (namely the Criminal Code), but the procedural law used is different. Military justice uses the procedural law regulated in Law Number 31 of 1997, which has its own characteristics that are different from the general criminal procedure law (KUHAP).

Wirjono Prodjodikoro emphasized that the principle of legality as stipulated in Article 1 paragraph (1) of the Criminal Code also applies to military members. Thus, there is no discrimination in terms of the application of material criminal law between civilians and military members. The difference lies in the judicial forum and procedural law used.

Procedures for Processing in Military Justice

Investigation in Military Criminal Cases

One of the fundamental differences between procedural procedures in military justice and general justice lies in the institution that is authorized to conduct investigations. In the general judiciary, the investigation is carried out by the National Police of the Republic of Indonesia (Polri). While in criminal cases carried out by military members, the investigation is carried out by the Military Police (PM) or Superiors who have the Right to Punish (Ankum).

Article 69 of Law Number 31 of 1997 stipulates that investigators in military justice are Military Investigators, namely superiors who have the right to punish, military police, and military officers. The involvement of superiors who have the right to punish in the investigation process is a peculiarity of the Indonesian military judicial system which reflects the principle of command hierarchy in military institutions.

This investigation system involving command elements raises questions about the independence of the investigation process. Marwan Effendy reminded that command intervention in the investigation process has the potential to reduce the objectivity and effectiveness of the investigation. Strong command hierarchy pressure in military institutions can affect the course of the investigation, especially if the perpetrator of the crime has a high rank or position in the command structure.

Prosecution by Military Oditur

In the military justice system, the prosecution function is carried out by the Military Oditur (Odmil). The Military Audit is under the Military Audit which is the body that implements the prosecution in the military judicial environment. The function and position of the Military Oditur in military justice is analogous to the Public Prosecutor in the general judiciary.

The important difference between the Military Oditur and the Public Prosecutor lies in the status of his staff. The Military Oditur is an active TNI officer who carries out the prosecution function, while the Public Prosecutor is a civil servant. This condition raises questions about the neutrality of the Military Odition, especially when it has to sue fellow TNI officers who have a higher rank or have a close institutional relationship.

Examination of Cases in the Trial

The trial process in the military justice basically follows the same principles as the general justice, which is open to the public, guarantees the rights of the defendant, and is based on valid evidence. However, there are some peculiarities that distinguish it from the public trial.

The panel of judges in the military court consists of military judges who are active TNI officers. This is different from the general judiciary where the judge is a separate profession that is separate from the military structure. The composition of the panel of judges consisting of active officers raises fundamental questions about judicial independence (judicial independence), considering that the judges are still subject to the TNI command hierarchy.

In terms of evidence, military justice uses the same system of evidence as KUHAP, namely the negative-wettelijk system (negative wettelijk stelsel), where the judge is free to determine the defendant's fault based on his beliefs accompanied by at least two valid evidence. Evidence that is recognized in military justice includes witness statements, expert statements, letters, instructions, and defendant statements.

Legal Efforts and Execution of Judgments

The legal system in the military justice includes appeal, cassation, and reconsideration, whose structure and procedure are analogous to the general judiciary. The appeal was submitted to the High Military Court, cassation to the Supreme Court, and reconsidered to the Supreme Court.

The implementation of decisions in the military judiciary has its own peculiarities, especially related to additional penalties in the form of dismissal from military service. This additional crime is a

specific punishment for military members and is not recognized in the general criminal law. Another peculiarity is that in the execution of prison sentences, military convicts can serve their sentences in military correctional institutions (Military LP) which is separate from the general LP.

The Problem of Military Justice in General Criminal Acts

The Issue of Independence of Military Judges

The most fundamental problem in Indonesia's military justice system is the issue of judge independence. As an active TNI officer, military judges structurally are still under the TNI command hierarchy. This has the potential to create a conflict of interest (conflict of interest) between the duty of a judge to be independent and impartial with compliance with the command hierarchy as a TNI soldier.

Mardjono Reksodiputro emphasized that judicial independence is an absolute prerequisite for the realization of justice. Judge independence includes two dimensions: institutional independence (institution) and personal independence (individual judge). In the context of military justice, these two dimensions of independence are questioned because military judges are still part of the TNI institution, both structurally and culturally.

Some indicators that are often used as arguments about the lack of independence of military judges include: (1) the career and promotion of the position of military judge is determined by the TNI Headquarters, not by the Supreme Court; (2) military judges receive salaries and allowances from the TNI budget; (3) a strong corps culture (*esprit de corps*) in the military can affect judges in judging fellow military members; and (4) psychological pressure due to the difference in rank between judges and defendants.

Guarantee of Defendant's Rights

The principle of equality before the law (equality before the law) requires every citizen to get the same legal protection without discrimination. The Universal Declaration of Human Rights (DUHAM) Article 10 states that everyone has the right to a fair and open justice by an independent and impartial court.

In a national context, Law Number 39 of 1999 concerning Human Rights guarantees the right of everyone to receive equal treatment before the law. The question is whether the current military judicial system is sufficient to guarantee the fulfillment of the defendant's rights on an equal footing to the general judiciary?

Loebby Loqman stated that in a good criminal justice system, every defendant must be guaranteed his fundamental rights, including the right to have a lawyer, the right to be faced with an open trial, and the right to object to a judge who is considered impartial. In the practice of military justice, the fulfillment of these rights is still a question that needs to be studied more deeply.

Jurisdiction Problems in Criminal Acts Involving Civil and Military

The complexity increases when a criminal act involves members of the military together with civilians (involence). In this case, there is a conflict of jurisdiction between military justice and general justice. Law Number 31 of 1997 Article 198 stipulates that in the event of a participation between the military and the civilian, the provision of connectivity shall apply, where the competent court is determined by the point of gravity of the loss caused.

The provision of connectivity in practice causes its own difficulties. First, determining the weight of loss is not always easy and can cause interpretation debate. Second, the separation of the examination between the military and civilian defendants can result in inconsistency in the verdict. Third, the same witnesses and evidence must be submitted in two different judicial forums, thus causing inefficiency and potential contradictions.

Accountability and Impunity Issues

One of the most serious criticisms of the military justice system is the high risk of impunity, which is a situation where criminals escape legal responsibility. Impunity in the military context can occur through various mechanisms, including: manipulation of the investigation process by the chain of command, the application of disproportionate sanctions (too light), or the use of service status to avoid judicial proceedings.

Todung Mulya Lubis noted that throughout the history of the New Order, military justice functions more as a tool for justifying military actions rather than as a justice enforcement institution. Although the reform era has brought significant changes, the cultural heritage of military impunity is still a serious challenge faced by military justice to this day.

Muladi reminded that the effectiveness of the criminal justice system is not only measured from the aspect of law enforcement alone, but also from the extent to which the system is able to achieve justice for victims. In many cases of common criminal acts committed by military members, the interests of the victims often do not receive adequate attention because the judicial process takes place in a closed and less transparent environment.

Comparison with Military Justice System in Other Countries

To get a broader perspective, it is important to see how other countries regulate military justice, especially in handling common criminal acts committed by military members. Comparative law (comparative law) can provide inspiration and reference for Indonesian military judicial reform efforts.

In the United States, the military justice system is regulated through the Uniform Code of Military Justice (UCMJ). Although members of the US military are still tried in the military court (court martial) for most criminal acts, there are various mechanisms to guarantee the independence of the judge and the rights of the defendant. US military judges have a more separate status from the command hierarchy, and the defendant has the right to be represented by a military or civil lawyer.

In Germany and the Netherlands, the adopted system is more progressive, where the common criminal acts committed by members of the military in peacetime are handed over to ordinary civil justice. The military justice is only authorized to prosecute pure military offenses, which are criminal acts that can only be committed by military members because of their relationship with military status and obligations. This model is considered more in line with the principles of human rights and a democratic rule of law.

Implications and Prospects of Military Justice Reform

Implications to the National Legal System

The existence of a military judicial system that prosecutes common criminal acts with a different procedural law from the general judiciary creates dualism in the national legal system. This dualism has several important implications for the Indonesian legal system as a whole.

First, the dualism of the judicial system has the potential to create inconsistency of judgments. The same criminal act (for example murder) committed by civilians and military members will be tried through different procedures, with different judges, and potentially produce different verdicts. This can cause injustice and hurt people's sense of justice.

Second, the existence of a military judiciary that handles general criminal acts causes the absence of equal access to justice for victims. Victims of criminal acts committed by military members must face a more closed judicial system and less familiar with the victim's interests, compared to victims whose cases are handled by the general judiciary.

Third, the current military judicial system makes it difficult to develop integrated jurisprudence. Military court decisions for general criminal cases are often not properly integrated into the general judicial jurisprudence system, thus hindering the systematic development of the law.

Implications for the Supremacy of Law and Human Rights

From the perspective of human rights, the military justice system that prosecutes general criminal acts causes a number of serious problems. The United Nations Human Rights Committee has repeatedly emphasized that military courts that try human rights violations tend not to meet fair trial standards.

Satjipto Rahardjo stated that a good law is a law that is able to respond to the community's needs for justice proportionally. In this context, the military justice system needs to be evaluated critically: is the current system capable of providing proportional justice for all citizens, including those who are victims of criminal acts committed by military members?

Law Number 34 of 2004 concerning the TNI has given an important signal towards reform by affirming that soldiers are subject to the power of military justice in case of violation of military law and subject to the power of general justice in case of violation of common criminal law. Unfortunately, this norm has not been implemented because there has been no revision of Law Number 31 of 1997 which should be the operational foundation.

Military Justice Reform Agenda

Military judicial reform has long been an important agenda in the discourse of Indonesian law reform. Topo Santoso identified several strategic issues that must be resolved in military justice reform, including: (1) reorientation of military justice competence; (2) strengthening the independence of military judges; (3) updating the military procedure law; and (4) transparency and accountability of the military justice process.

Related to the reorientation of competence, the discourse that develops in various academic forums and legal advocacy leads to a model that limits the competence of military justice only to purely military criminal acts. General criminal acts committed by military members, especially in peaceful conditions, should be tried by the general judiciary. With this model, the principle of equality before the law can be more guaranteed, while encouraging the professionalism and integrity of the military apparatus.

The Supreme Court in the 2010–2035 Judicial Renewal Blueprint has also highlighted the need for comprehensive military justice reform, including in terms of military justice career development, integration of military jurisprudence into the national jurisprudence system, and strengthening of supervisory mechanisms for military justice.

Prospects for Changes in Military Justice Law

The discourse of the revision of Law Number 31 of 1997 concerning Military Justice has been part of the national legislation agenda for a long time. The Academic Manuscript that has been compiled by the National Law Development Agency (BPHN) recommends several fundamental changes, including: the transfer of authority to prosecute common criminal acts committed by military members to the general judiciary, strengthening the independence of military judges by separating the career path of judges from the TNI command structure, as well as increasing transparency and public access to the military judicial process.

Indrianti Azhari noted that the biggest challenge in military justice reform is resistance from the TNI institution itself, which views military justice as an integral part of the defense system and military discipline. Therefore, military justice reform requires a comprehensive approach and involves a constructive dialogue between all stakeholders, including the TNI, the Ministry of Defense, the Supreme Court, the DPR, and civil society.

Supriyadi Widodo Eddyono emphasized the importance of building a national consensus on the ideal military justice model for Indonesia, taking into account geopolitical conditions, legal culture, and commitment to human rights. Hasty reforms without a strong consensus foundation can actually be counterproductive and threaten the stability of military institutions.

Yusril Ihza Mahendra argues that the military justice reform must go hand in hand with the overall military reform, including the professionalization of the TNI, the strengthening of the personnel development system, and the repositioning of the TNI in the state system. A good military justice can only be realized in the context of a military institution that is professional, accountable, and subject to the rule of law.

4. CONCLUSION

Based on the description and analysis above, several conclusions can be drawn as follows:

First, Indonesia's military judicial system based on Law Number 31 of 1997 adheres to the principle of competence based on the subject of law (personal jurisdiction), not based on the type of misdemit. As a consequence, military members who commit general criminal acts are still tried in the military court with a different procedural law from the general court, even though the material criminal law that is applied is the Criminal Code.

Second, the current military justice system has a number of serious structural weaknesses, especially in relation to the limited independence of military judges because military judges are active TNI officers who are still subject to the command hierarchy. This weakness has the potential to affect the objectivity and impartiality of the judicial process.

Third, in the event of a connection between criminal acts committed by military members and civilians, the Indonesian legal system regulates a connectivity mechanism which in practice causes various jurisdictional difficulties and has the potential to create inconsistency in the decision.

Fourth, the current military justice system is not fully in line with the mandate of Law Number 34 of 2004 concerning the TNI which wants military members to be tried in the general judiciary for general criminal acts. The gap between the desired norm and its implementation reflects the unfinished Indonesian military judicial reform agenda.

Based on the conclusion above, this article proposes several recommendations as follows: (1) It is necessary to carry out a thorough revision of law number 31 of 1997 concerning military justice to implement the mandate of law number 34 of 2004 concerning the TNI which wants to separate the competence of military justice and general justice in the handling of criminal acts. (2) The competence of military justice is limited Only to pure military Crimea (*Delicta Propria Militaria*), while general crimes committed by military members are tried by the general coursera according to the principle of equality before law. (3) It is necessary to update the career structure of military judges to be more separate from the TNI command hierarchy, for example by adopting a system where military judges are under the coaching of the suplemen court, not the TNI headquarters. (4) The transparency and accountability of the military judicial proses needs to be significantly improved, including by expanding public access to trials, obligating the publication of verdicts, and strengthening external surveillance mechanisms for military justice. (5) A constructive and continous dialogis is needed between the TNI, the government, The DPR, the supreme courtym and the civil society to built a national consensus on the most appropriate military justice Reform model for Indonesia.

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