THE NATURE OF THE MILITARY POLICE’S INVESTIGATIVE AUTHORITY AGAINST MEMBERS OF THE MILITARY POLICE WHO COMMIT GENERAL CRIMINAL ACTIONS

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Abstract

The purpose of this research is to find out the nature of the authority of the military police to investigate military members who commit general crimes. This research is normative legal research with statutory and conceptual approaches, and legal material analysis techniques are carried out with prescriptive analysis. The results of the analysis show that the investigative authority of the military police lies with the subject or perpetrator of the crime, not in the object or crime committed. This is because military justice is a special court for members of the military. All criminal acts committed by members of the military, both general crimes and specific crimes, fall under the authority of the military court and their investigative powers are carried out by the military police and military prosecutors. Based on Article 9 paragraph (1) Law no. 31 of 1997 concerning Military Courts, the word "Criminal Act" explains that the authority of a military court is not only to try violations or crimes contained in the Military Criminal Code, but also has the authority to try other criminal cases, as long as the subject or perpetrator complies with the provisions of Article 9 paragraph (1) of this.

Keywords: Authority, Investigation, Military Police, Military Court.

JEL Codes: K23, K36, K38

1. Introduction

The Military Court is a law enforcement measure within the Indonesian Military, which is part of the exercise of judicial power within the Indonesian National Armed Forces abbreviated TNI which aims to provide legal sanctions to members of the military involved in legal cases. The existence of courts within the military court environment is contained in Article 24 paragraph (2) of the fourth amendment of the 1945 Constitution of the Republic of Indonesia. Law enforcement in the military court environment as a manifestation of the administration of judicial power as stipulated in Article 25 paragraph (4) of Law no. 48 of 2009 concerning the main provisions of judicial power, it is stipulated that one of the organizers of

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judicial power is carried out by a court within the military court environment, including the composition and procedures regulated in a special law (Hariri, 2014).

TNI members are part of Indonesian citizens. The TNI bears the burden of the state as the defender and defense of the country, this makes it seem as if the TNI is a separate group that has its own duties and goals (Salam, 2002). For this reason, military courts are needed to deal with legal problems that occur within the TNI organization itself, and these courts are made specifically and must be separate from courts in general in Indonesia.

It is this special law within the scope of military studies that regulates the lives of military members, in which there are special regulations for military members known as military criminal law. The military criminal law currently in effect has been regulated and contained in the Military Criminal which originates from Wetboek van Militaire Strafrecht voor Nederlandsch Indie, Staadblad 1934 Number 167 and through Law no. 39 of 1947 is called the Army Criminal Code (KUHPT).

A specialty in resolving a case carried out by a military person is the existence of unity of command or the principle of unity of command which means that in law enforcement within the military environment the role of the commander concerned cannot be ruled out, there are even times (for example in combat areas) it is prioritized over on the role of enforcers of law/justice (Military Police, Military Prosecutors, Military Judges), but as a country that upholds the law, without neglecting one's interests, it is only natural that a balance be held between the principles of "unity of command" and "unity of command" prosecution unit (de een onondeelbaarheid van het parquet) (Kanter & Sianturi, 1981).

Unity of Command is the principle for the entry into force of the Law on Military Justice, this principle is known as unity of command and when viewed from the perspective of military operational strategy, a commander has command rights over his troops which include three things, namely directing, coordinating and control. The Commanding Rights of the Commander are obtained from the delegation of the top leadership of the Armed Forces/TNI so that his responsibility as a commander cannot be separated from his leadership, while the rights of the commander as a Superior Who Has the Right to Punish (ANKUM) for his subordinates are regulated and obtained attributively by law. Responsibility as Ankum cannot be separated from the provisions of the applicable law. Regarding the principle of unity of command in Law no. 31 of 1997 concerning Military Courts, translated through the formulation of Article 123 paragraph (1) letter f which authorizes commanders as Case Submitting Officers (Papera) to submit cases to the competent court to examine and adjudicate; so that without the submission of cases from a Commander, criminal trials against military soldiers cannot be carried out, whether criminal courts through general courts or through special military courts which are separate courts for the military.

The existence of a separate court for members of the TNI means that members of the TNI in their trials are subject to the provisions of the Law on Military Justice where according to the provisions of Article 69 paragraph (1) of Law no. 31 of 1997 concerning Military Courts it is stated that there are 3 (three) investigative components namely Ankum, Military Police and Prosecutors, but Ankum's daily legal practice has never carried out investigations, and not all of these investigators have the authority to make temporary detentions for the sake of investigations, the authority to carry out temporary detention of the suspect for the sake of investigation was given to Ankum in accordance with the formulation of Article 78 paragraph (1) of Law no. 31 of 1997.

Article 9 paragraph (1) Law no. 31 of 1997 states that the Court within the military justice environment has the authority to try criminal acts committed by someone who at the time of committing the crime was:

a. Soldier;

b. which is based on the law with Soldiers;
c. a member of a group or service or body or who is equated or considered as Soldiers by law;

d. a person who does not belong to the class in letters a, b, and c but on the decision of the Commander in Chief with the approval of the Minister of Justice must be tried by a court within the military court environment.

Based on Article 9 paragraph (1) Law no. 31 of 1997 above, the word "Criminal Act" explains that the authority of the military court is not only to try violations or crimes contained in the Military Criminal Code, but also has the authority to try other criminal cases, as long as the subject or perpetrator complies with the provisions of Article 9 this paragraph (1). For this reason, the military court has the authority to try all crimes committed by the military, both general crimes and military crimes. In line with the above, in the criminal justice system, if all crimes committed by the military fall under the authority of the military court, then the military police are authorized to carry out investigations, and military prosecutors are authorized to carry out prosecutions. This is a form of consequence of military justice.

In essence, members of the military (army) are also Indonesian citizens, but the military has special duties. Members of the military carry out tasks that are not the same as citizens of other countries, because members of the military are a means of national defense. Members of the military as a means of national defense, so in the field of law enforcement, the military has a police force that is different from civilians, namely the military police. It is the military police who discipline and investigate members of the military if there are mistakes made by the military. In matters of sanctions, members of the military get more severe punishment than civilians. In addition to corporal punishment/imprisonment, members of the military also received administrative punishment. The problem is, how to carry out administrative punishments, for example removal, if soldiers are brought before civil courts, because the judge or prosecutor does not have the authority to remove them. Lastly, members of the military cannot be in two legs, namely military and civil justice, because each judiciary has absolute competence.

There are several studies regarding military justice, one of which is research conducted by Soebagijo (2011) which examines criminal law policies in examining TNI soldiers who commit general crimes. This research only focuses on formal criminal law policies in examining TNI Soldiers who commit general crimes according to the Criminal Procedure Code and Law no. 34 of 2004 concerning the TNI. This research does not discuss about the rule of law which states explicitly that the police as investigators against members of the military who commit crimes. Therefore the researcher wants to conduct research that focuses on the investigative powers of the military police against members of the military who commit general crimes.

2. Literature Review

The Indonesian National Armed Forces or members of the military are part of Indonesian citizens who have the same status as members of ordinary society who are likely to commit a violation of the law. When viewed from the perspective of the criminal justice system in Indonesia, members of the military have the same position as members of ordinary society (civil society). Against members of the military who commit a violation of the law in addition to being enforced by regulations that apply in general, special regulations are also enforced. Sianturi (2011) in his book states that military law can include: Military Discipline Law; Military Criminal Law; Criminal law; Military Criminal Procedure Code; Criminal Procedure Code; Military Imprisonment Law; Military Administration Law or Military Constitutional Law (Emergency); Military Administrative Law; International Law (Law of War/Law of Armed Disputes); Military Civil Law.
The basic idea behind the existence of special treatment for members of the military is based on several main ideas: 1. First: the existence of special tasks that are the responsibility of members of the military in a country and the specifics inherent in military life. 2. Second: the tendency of the international community to include military (criminal) law as part of the legal system of the countries in dispute. 3. Third: military criminal law is a special criminal law that is known and recognized in the field of criminal law. Based on the above, the existence of military justice in Indonesia must also be a part of the Indonesian criminal law system which is used as a means to achieve goals. This implies that the Military Criminal Law must be able to become a means of controlling and monitoring members of the military in carrying out their roles and duties in achieving state goals.

Article 1 paragraph (3) of the 1945 Constitution states that Indonesia is a state based on law. Based on the provisions mentioned above, one of the principles of a rule of law is a state that upholds the rule of law to uphold truth and justice, and that there is no power that is not accountable, both in the administration of the state and in the life of the nation and society. In general, in every country that adheres to the rule of law, three basic principles can be seen, namely the supremacy of law, equality before the law, and due process of law. In the elaboration that follows, each rule of law state will show the following characteristics: 1. Guarantees for the protection of human rights. 2. Judicial power or an independent judiciary. 3. Legality in the sense of law, namely that both the government/state and citizens in acting must be based on and through law. Article 24 paragraph (1) of the 1945 Constitution which reads: "Judicial power is an independent power to administer justice in order to uphold law and justice, paragraph (2) reads "Judicial power is exercised by the Supreme Court and judicial bodies under it within the General Court environment, within the Religious Courts, within the Military Courts, within the State Administrative Courts, and by a Constitutional Court.

The Military Court is the executor of judicial power within the TNI in enforcing law and justice by taking into account the interests of implementing national defense. The ratification of the 1945 Constitution has brought major changes in the life of the administration of the state, especially in the exercise of judicial power. Based on these changes, it is emphasized that judicial power is exercised by the Supreme Court and judicial bodies under it within the General Court, Religious Court, Military Court, State Administrative Court, and a Constitutional Court. The role and duties of the Indonesian National Armed Forces (TNI) in order to guarantee and support its implementation, a special regulation is issued that applies to members of the military, in addition to general regulations. It is this special regulation within the scope of military studies that regulates military members. Likewise, criminal law has been created and enforced special regulations for members of the military known as military criminal law (Sjarif, 1996). The current military criminal law has been regulated and contained in the Military Criminal Code (KUHPM). The KUHPM actually originates from the wetboek van Militaire Strafrecht voor Nederlandsch Indie, Staadblad 1934 Number 167 which through Law Number 39 of 1947 is called the Military Criminal Code (KUHPT) and is now better known as the Military Criminal Code (KUHPM).

Article 3 paragraph (4a) MPR Decree Number VII/MPR/2000 in conjunction with UURI Number 34 of 2004 concerning the Indonesian National Armed Forces, Article 65 states that "Indonesian National Armed Forces soldiers are subject to the power of military justice in cases of violations of military law and are subject to general justice in general criminal law violations. This means that the authority to examine and try (jurisdiction) within the military court environment in relation to criminal cases is only limited to members of the military who commit violations of military criminal law. The jurisdiction of the military court in the provisions of Article 3 paragraph (4a) of the MPR Decree Number VII/MPR/2000 in conjunction with the Law of the Republic of Indonesia Number 34 of 2004 concerning the Indonesian National Armed Forces (hereinafter referred to as the TNI Law) turns out to be
different from the jurisdiction of the military court contained in the Law Law Number 31 of 1997 concerning Military Justice (hereinafter referred to as the Law on Military Justice). Article 9 point 1 of the Law on Military Justice states that a court within the military justice environment has the authority to try crimes committed by someone who at the time of committing the crime was a soldier, a member of a group or service or agency or who is equated with a soldier based on the law and someone who is not belongs to this group, but based on the decision of the commander in chief with the approval of the minister of justice, he must be tried in a court within the military court environment. This means that all members of the military who commit criminal law violations, both military criminal law violations and general criminal law violations, are tried in military courts.

3. **Research Method**

This research is normative legal research with statutory and conceptual approaches. Types of legal materials consist of primary and secondary legal materials. The research Method for obtaining legal materials by studying laws and regulations and literature studies. The method of analyzing legal material uses prescriptive analysis, namely identifying how the law should be based on applicable legal rules, so that ideal legal conditions will be created. This perspective analysis is meant to provide arguments for the results of the research that has been done. This argument is to provide a perspective or assessment of knowing right or wrong according to law against facts or legal events from the research results

4. **Results and Discussion**

The existence of law in society is expected to be in accordance with considerations about the principles and basis in the formation of law, so that the law produced is in accordance with the ideals and needs of living together. Thus, the principle is the broadest basis for the birth of a legal regulation. The legal principle is an abstract basic rule and becomes the background for concrete regulations and law enforcement. Regarding its general and abstract form, legal principles sometimes appear in the form of simple concepts. Unlike other types of regulations, such as statutes or legal agreements, legal principles are not a source of formal law, but are still considered part of positive law, even though their position in everyday life is only as a complementary tool for understanding positive legal regulations.

The adage ubi societas ibi ius illustrates that in a society, everyone wants binding regulations to regulate the order of life in society. Societies with simple to complex arrangements also need binding legal regulations in order to create order. The existence of law functions as a means of control (a tool of social control) as well as an instrument of social engineering (a tool of social engineering). With the implementation of these two functions, the purpose of law can be realized to guarantee an orderly and peaceful life. The legal objectives to be realized are justice, benefit and legal certainty (Friedmann, 1975).

The principle of legal justice emphasizes the aspect of equal rights. In the context of the judge's decision in court, the application of the principle of justice is given substantially, not formal justice, so that the justice received is real justice according to the circumstances of the litigants (Margono, 2019). The principle of expediency emphasizes laws that bring benefits or uses to society. This principle is related to Jeremy Bentham's view that the good and bad of law is determined by the extent to which the law brings happiness to humans. Then the principle of legal certainty emphasizes the aspect of law enforcement. Legal certainty can be interpreted as the implementation of the law in accordance with the sound so that people can ensure that the law can be implemented (Mertokusumo, 1999).

The embodiment of the principles of justice, benefit and legal certainty can be seen primarily in the judicial process. The judiciary holds an important position in a country's legal system, because it is the spearhead that embodies the applicable legal provisions. The judiciary
refers to the process of adjudicating, from receiving, examining, to passing judgments and minutation of cases (Rahardjo, 1986). To carry out the judicial process, it is inseparable from individuals or judicial officers who carry out judicial functions according to their positions, in this case investigators. Investigators as officials who carry out the investigative process aim to find the bright spot in a criminal case by collecting available evidence so that the suspect is found. In general courts, investigations are carried out by the Police, without interference from other parties. Whereas in military justice, the investigation process is carried out by superiors who have the right to punish (ANKUM), Military Police and Military Auditors.

The first stage of handling a crime is to begin with investigative actions to seek and find an event that is suspected of being a crime. The purpose of the investigation is to collect evidence, facts related to the alleged crime and obtain statements and explanations from relevant witnesses to be proven juridically in accordance with valid means of proof according to law. The next step is to conduct an investigation. Article 1 Point 16 of Law no. 31 of 1997 concerning Military Courts it is stated that investigation is "a series of methods carried out by investigators of the Indonesian Armed Forces to find and collect evidence that sheds light on the crime that occurred and determine the suspect".

The implementation of investigations in cases is that before a case is heard in court, a preliminary examination is carried out by investigators with the aim of gathering evidence, so that the crime becomes clear and the culprit can be found (Prihastiawan, 2016). Investigation is the initial stage of determining whether a case is a crime or not, so that through investigation it is assessed whether the case meets the elements of a crime. For this reason, mistakes that occur in the investigation process will have an impact on the misguided trial in the subsequent law enforcement process. The importance of this investigative process indicates that investigators must master good investigative techniques and processes so that the judicial process is carried out properly (Pramono, 2020).

Article 69 Paragraph (1) Law no. 31 of 1997 explains who investigators mean in military courts, including superiors who have the right to punish (Ankum), Military Police (POM) and Military Auditors, in carrying out the investigation process, investigators are also assisted by assistant investigators, as written in Article 69 Paragraph (2) which states that the assistant investigators consist of the Provos TNI Army, Provos TNI Naval, Provos TNI Air Force. Ankum or a superior who has the right to punish is a superior who is authorized to impose military disciplinary punishment on subordinates under his command. Although Ankum is included in the ranks of the investigators of the Armed Forces, in practice, Ankum does not carry out the investigative process itself, but the investigation is carried out by the military police or military prosecutors. This is because Ankum in his position as a commando has its own duties and obligations so that it cannot carry out criminal investigations. Investigations in military courts are carried out by (Rosidah, 2019):

a. preliminary action, consisting of making a police report and first action at the scene;

b. examination, consisting of summons, arrest, detention, search and confiscation;

c. investigation administration.

The preliminary examination process is carried out by gathering information from the scene of the incident, interrogating witnesses who are suspected as well as an instrumentarium, namely using investigative tools such as photography, microscopes, and others. The investigator's authority is stated in Article 71 of Law Number 31 of 1997. Investigations in general courts are carried out by the Police. As mandated in Article 4 of the Criminal Procedure Code, the apparatus authorized to carry out investigations is only National police officials, without interference from other parties. Furthermore, Article 5 of the Criminal Procedure Code also mentions the authority of the Police as investigators, among others:

a. receive reports or complaints;

b. looking for information and evidence;
c. ordering a suspected person to stop;
d. other actions according to law.

There are several differences between investigations conducted in military courts and general courts, including:

a. differences in the organizational structure of the investigation;
b. differences in authority in carrying out arrests, detentions, and termination of investigations;
c. differences in pre-trial and pre-prosecution processes where in military courts there is no known pre-trial and pre-prosecution like general courts.

The apparatus authorized to carry out investigations in general courts is the Indonesian National Police who are specifically assigned to do so. As written in Article 4 of the Criminal Procedure Code, namely "An investigation is every official of the state police of the Republic of Indonesia". Whereas in the Military Court, there are three institutions involved in the investigation process, including Ankum, Military Police and Prosecutors. Furthermore, the authority to arrest in a general court rests with the investigator or assistant investigator by showing a letter of assignment (except when caught in the act) containing the reasons for the arrest and a brief description of the related crime case. Meanwhile, in military justice, if a member of the military is caught red-handed in committing a crime, the investigator will make the arrest. Investigators who make arrests against members of the military can be members of the Military Police themselves or members of their superiors who are entitled to give punishment by observing the arrest warrant. The arrest warrant must contain information regarding the suspect's identity, why the suspect was arrested, what crimes the suspect committed, and the place where the suspect was questioned. This is in accordance with Article 77 Paragraph (1) of Law 31 of 1997 concerning Military Justice. The elucidation of Article 77 Paragraph (1) states that the arrest warrant is issued by the Ankum or command concerned.

The further authority of the investigator is to make detention if it refers to general justice, the detention is carried out by the investigator. This is explained in Article 7 Paragraph (1) Letter d of the Criminal Procedure Code. In military courts, only Ankum and Papera have the authority to make arrests, because investigators do not have the authority to make detentions. The authority of the investigator to stop the investigation, in general court, the authority is the investigator based on the provisions of Article 7 Paragraph (1) of the Criminal Procedure Code. In military courts, the authority to stop investigations is not the investigators themselves, but Papera after receiving legal advice from the military prosecutor. Furthermore, in military court there is no pre-trial and pre-prosecution. This is because in military justice there is the principle of unity of command, namely a commander is fully responsible for his subordinates and has a central position in his unit. The commander is given the authority to submit cases in the settlement of criminal cases and is obliged to resolve administrative disputes of his subordinates.

The principle of unity of command or unity of command gives commanders the right to lead their troops through 3 (three) things, namely (Salam, 2002): directing, coordinating, and controlling. The principle of unity of command can be seen in Article 123 Paragraph (1) Letter (f) of Law no. 31 of 1997 concerning Military Courts which authorizes commanders as Case Submitting Officers (Papera) to submit cases to the court for examination and trial. The legal impact is that without submitting cases from the commander, the soldier's criminal trial cannot be carried out, both for military courts and general courts (Utomo, 2018). In the investigation process there is a possibility that the suspect may experience arbitrary acts or not according to investigative procedures, but because of the Unity of Command principle, military members cannot carry out pre-trial efforts as is the case in the general criminal justice process.

During the reform period, there was a change in the jurisdiction of military courts, which had an impact on the structure of the military court investigation agency. Article 65
paragraph (2) Law no. 34 of 2004 concerning the Indonesian National Armed Forces, states that military personnel are subject to the authority of the military court in terms of violations of military criminal law and vice versa are subject to the authority of the general court in terms of general criminal offenses. The implication of the provisions of this article is that an investigative institution tasked with investigating general criminal cases is different from investigators investigating military crimes, where for general crimes the investigation is carried out by the National Police, while for military criminal cases the investigation is carried out by Ankum, Military Prosecutors and Military Police.

In connection with Law no. 34 of 2004 there is a transitional provision for Article 65 Paragraph (2), which is contained in Article 74 Paragraph (1) which reads "The provisions referred to in Article 65 apply when the new Law on Military Justice is enacted". Article 74 paragraph (2) further states that "As long as the new Military Court Law has not been established, it remains subject to the provisions of Law no. 31 of 1997 concerning Military Courts". The transitional provisions above basically mandate the formation of a new Judicial Law to replace Law no. 31 of 1997 concerning Military Justice. Until now there has been no clarity regarding the replacement regulations for Law no. 31 of 1997 concerning Military Justice. This results in reduced legal certainty regarding investigators who are authorized to carry out investigations if members of the military commit general crimes. The explanation above proves that the logical aspects contained in the principle of legal certainty have not been achieved. The logical aspect of the principle of legal certainty means that a system of norms does not clash with other norms.

Provisions of Article 65 paragraph (2) of Law no. 34 of 2004 concerning the Indonesian National Armed Forces needs to be reformulated because it will have an impact on many things and will potentially create chaos for the two institutions, namely the TNI and National police. Even though since the reformation, the separation of the TNI and National police into independent institutions and already having their respective duties and authorities indicates that they do not need to interfere with each other.

In essence, the jurisdiction of the military police investigation authority actually lies with the subject or perpetrator of the crime, not the object or the criminal act committed. This is because military justice is a special court for members of the military. All criminal acts committed by members of the military, both general crimes and specific crimes, fall under the authority of the military court and their investigative powers are carried out by the military police and military prosecutors.

The presence of the military police as criminal investigators against members of the military, because they already know and understand the ins and outs of military service. It should be noted that a soldier is a member of the military who has graduated from a military academy, they are trained and have received military education, and they have special expertise in the field of soldiering. For this reason, it is appropriate for the military police to investigate members of the military who commit all criminal acts, both general crimes and special crimes.

5. Conclusion

The presence of Article 65 paragraph (2) of Law no. 34 of 2004 concerning the Indonesian National Armed Forces, reformulation must be carried out immediately, because it will potentially create chaos between the two institutions, namely the TNI and Polri. With the issuance of Law no. 34 of 2004 concerning the TNI, especially the content of article 65 paragraph (2) jo. Article 74, In this case there are no supporting regulations so that this Law can be implemented properly. For this reason, it is necessary to complete the supporting laws or regulations so that they can be implemented, especially in the field of material law.

The military court as a special court is to deal with all members of the military who commit criminal acts, both general crimes and special crimes, so that the authority to
investigate them is carried out by the military police and military prosecutors. The Military Court as the executor of judicial power in carrying out its duties and functions (to examine, try and decide on a case) to uphold law and justice by taking into account the defense and security of the state (military interests or military necessity and national interest or the interests of the nation and state).
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