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## REFORM THE AUTHORITY OF MILITARY POLICE INVESTIGATION ON COMMON TYPES OF CRIMINAL ACTIONS IN INDONESIA

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### ABSTRACT

Renewal of the investigative powers of the military police must be seen as part of efforts to renew or develop the national legal system. Renewal of the military criminal law system should include integral (systematic) renewal, namely changes in the entire sub-system which includes aspects of legal substance, and culture. The renewal of the authority of military police investigators regarding general crimes committed by members of the military in Indonesia is by revising the provisions of Article 3 paragraph (4) letter a MPR Decree Number VII/MPR/2000 and Article 65 paragraph (2) of Law no.34 year 2004 concerning the Indonesian National Armed Forces.

### KEY WORDS

Reform, criminal actions, military, courts.

Renewal of the investigative powers of the military police must be seen as part of efforts to renew or develop the national legal system. Renewal of the military criminal law system should include integral (systematic) renewal, namely changes in the entire sub-system which includes aspects of legal substance, and culture (Khomchik, 2022).

The renewal of this military criminal law must further dig into soldiering values that apply and are maintained in the life of Indonesian military community. The renewal of military criminal law essentially implies an effort to reorient and reformulate military criminal law in accordance with the central socio-political, socio-philosophical and socio-cultural values of Indonesian society which underlies social policy, criminal policy and law enforcement policy (Koryakin, 2022).

In its development, there has been a paradigm shift regarding judicial jurisdiction over TNI soldiers who committed criminal acts after the reform. As it is known that reform movement in Indonesia has pushed for demands for change in various aspects of national and state life (Hassan et al., 2022). One of the fundamental demands for change is the need to realign or reposition the existence of the Indonesian military, namely the Indonesian National Armed Forces (TNI) and the Indonesian National Police (POLRI), which are integrated within the Indonesian Armed Forces (ABRI). This is because the integration of the TNI and POLRI into ABRI is seen as a manifestation of denying universal tendencies regarding the management of national defense and security. These two institutions have fundamentally different doctrines in order to carry out their roles and duties. The TNI Indonesian National Armed Forces has a doctrine that is oriented towards destroying enemies to defend state sovereignty, while the POLRI carries out governmental duties in the field of law enforcement with authority to conduct investigations and investigations into suspected criminal acts (Suherdin & Maryanto, 2020).

Based on above, the criminal acts in question include military crimes as well as general crimes. However, the provisions regarding judicial jurisdiction over TNI soldiers who commit criminal acts have changed quite significantly after reformation took place. This can be seen in the provisions of Article 3 paragraph (4) letter a MPR Decree Number VII/MPR/2000 and reaffirmed in Article 65 paragraph (2) of Law no. 34 in 2004 concerning the Indonesian National Armed Forces. The two articles essentially state that TNI soldiers are subject to authority of Military Court in case of committing military crimes and subject to the authority of the General Court in case of committing general crimes.



## RESULTS AND DISCUSSION

This study used normative research method (Michael, 2020).

Starting from the provisions of Article 3 paragraph (4) letter a MPR Decree Number VII/MPR/2000 and Article 65 paragraph (2) Law No. 34 of 2004 above, it can be seen that there are two judicial jurisdictions that apply to TNI soldiers who commit criminal acts, namely Military Court and the General Court. The Military Court has authority to try TNI soldiers who commit military crimes, while the General Court has the authority to try TNI soldiers who commit general crimes. This is different from judicial jurisdiction that applies to TNI soldiers who commit criminal acts in Law no.31 of 1997 which is only given to Military Court. This causes legal uncertainty which will have an impact on many things, one of which is state security, because the main task of a TNI soldier is to maintain national defense which stands at the forefront (Lubis, 2021).

It should be noted that the jurisdiction of the judiciary or the authority of the court to examine and decide on a case can be divided into absolute judicial jurisdiction and relative judicial jurisdiction. Judicial jurisdiction that is absolute or often known as absolute competence relates to the authority of the judicial environment to examine and decide a case, while judicial jurisdiction that is relative or often referred to as relative competence relates to the authority of a similar court in examining and deciding a case. It is impossible for the military to stand on two legs in different types of justice, namely military courts and general courts.

Draft Amendment to Law no. 31 year 1997 apparently did not have time to be discussed by the 1999-2004 DPR until the end of its term, so the bill was proposed by the DPR for the following period (2004-2009). Draft Amendment to Law no. 31 year 1997 in its development has been included in the Priority List of the Bill on the National Legislation Program (Prolegnas) based on DPR RI Decree No. 01/DPR-RI/III/2004-2005. After being included in the Priority List for the National Legislation Bill, at the DPR Plenary Meeting in May 2005 all factions agreed to propose the right of initiative to revise Law no. 31 year 1997. Based on DPR Decree, a Special Committee (Pansus) was formed for the Draft Amendment to Law No. 31 of 1997 concerning Military Courts on 28 June 2005 (S.H & Mukti, S.H., M.H., 2017).

At this time the institutional aspects regarding military justice have been regulated in Law no. 48 year 2009 concerning Judicial Power and Law no.31 year 1997 concerning Military Justice. The Law on Judicial Power only regulates connectivity trials, but does not regulate individual trials of TNI soldiers. This means that this law has not yet regulated powers of the general judiciary as mandated by the TAP MPR Number V11/MPR/2000 in Article 3 paragraph 4a in conjunction with Article 65 paragraph (2) of Law no. 34 year 2004, namely trials for TNI soldiers who commit individual violations of general criminal law. In article 9 paragraph (1) of Law no.31 year 1997 has been regulated regarding connectivity trials and individual trials for TNI soldiers who commit violations military law and general criminal law (Permanasari, 2019).

Law of stipulates that the submission TNI soldiers who commit general criminal law violations to general judicial powers has not been regulated individually by Law no.48 year 2009, then starting from Article 3 paragraph 4b MPR VII/2000 Decree, TNI soldiers must submit to the jurisdiction of the judiciary which is regulated by law. This was also reaffirmed in Article 65 paragraph (2) of Law no.34 year 2004. This means that TNI soldiers are still subject to individual justice as stipulated in Law no.31 year 1997. Not to mention the provisions of Article 65 paragraph (3) of Law no. 34 year 2004 which basically states that if the jurisdiction of the General Court is not functioning, TNI soldiers who commit criminal acts are tried at the Military Court, both military crimes and general crimes. This is also reaffirmed in Article 74 paragraph (1) of Law no. 34 year 2004, which states that the provisions referred to in Article 65 apply when the new Law on Military Justice is enacted (Adnyani, 2021).

If at this time there are some parties who wish that members of military who commit general crimes are subject to the jurisdiction of the general court, this is very unfounded and unreasonable, by removing the provisions of Article 9 paragraph (1) of Law no. 31 year 1997,



it violates the mandate of Article 3 paragraph 4a MPR VII/2000 Decree because members of the military who commit general crimes are subject to the jurisdiction of general court cannot be implemented, and Law no.48 year 2009 does not regulate the powers of general judiciary, especially trials for TNI soldiers who commit general criminal law violations. This will only create a legal vacuum.

The judicial process for soldiers who break the law must be seen as coaching for those concerned. The holding of trials within the military court environment is not solely for processing and imposing criminal sanctions on mistakes committed by TNI soldiers, but rather for emphasizing aspects of coaching and also military interests which include the interests of national defense. The principle of law enforcement in the military justice system is not solely based on the principle of legal interest, but also the principle of military interest in relation to the task of national defense (Michael & Princes Elsa Nafatilopa, 2022).

The existence of military justice is based on the clear and present dangerous principle, namely a principle that determines in essence that a crime committed by members of the military is a real condition and situation which endangers the security state so that the qualifications or parameters of an act are included in a military crime. With regard to the dignity and security of state as basis for jurisdiction, military justice has always been domain of military. For this reason, what happened and what was done by members of the military is a full military aspect and is subject to military law and its strata. Connection is related to the material offense, but it should still be submitted to a military court and not to a general court because the context is clear and present dangerous and dignified security of state (Mitchell, 2019).

TNI personnel who commit general crimes by taking into account the principle of fostering military command which places the stages of pre-adjudication, adjudication and post-adjudication, namely from the process of investigation, investigation, prosecution, execution, and the principle of clear and dangerous, namely the principle that determines in essence that the crime committed by military is a real condition and situation which endangers the security of state, so the military element must be maintained. The process and procedures for settling cases remain under the jurisdiction of the military court as one of efforts to build independence of military court in Indonesia.

The jurisdiction of military courts with regard to the specifics of the military is maintained to try certain soldiers, except for human rights violations because there is already a special court, namely the human rights court (Suherdin & Maryanto, 2020). In the context of substantive reform, it is necessary to regulate and stipulate in advance what norms fall into the category of military crimes or criminal acts related to military crimes. The substantive norm governing criminal acts committed by the military is the KUHPM. For this reason, in the future it is also necessary to make changes to the KUHPM because this is a legacy Dutch East Indies and most of its contents are not in accordance with legal developments in Indonesia.

## **CONCLUSION**

The renewal of the authority of military police investigators regarding general crimes committed by members of the military in Indonesia is by revising the provisions of Article 3 paragraph (4) letter a MPR Decree Number VII/MPR/2000 and Article 65 paragraph (2) of Law no.34 year 2004 concerning the Indonesian National Armed Forces. The jurisdiction of military courts, taking into account the specifics of military, is maintained to trial military members who committed general crimes.

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