



## Ratio Legis Investigation of Common Criminal Actions Completed by Military Members Are Investigated by Indonesian National Police Investigators

Sonder John Wendhy; Prija Djatmika; Abdul Madjid; Nurini Aprilianda

Brawijaya University Malang, Indonesia

E-mail: [sonder91@gmail.com](mailto:sonder91@gmail.com); [prija.djatkika@ub.ac.id](mailto:prija.djatkika@ub.ac.id); [majid@ub.ac.id](mailto:majid@ub.ac.id); [nurini.aprilianda@ub.ac.id](mailto:nurini.aprilianda@ub.ac.id)

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### **Abstract**

Law enforcement for the military, which is the spearhead of state sovereignty, cannot be avoided. The form of law enforcement can be seen from the submission of military members to military law. From a legal point of view, military members are Indonesian citizens, so naturally all legal provisions that apply to Indonesian citizens in general, namely criminal law, civil law, criminal procedural law and civil procedural law apply. The difference is that in the military environment, the duties and obligations that are carried out are more specific than civil society, especially related to the defense of state sovereignty, so that special laws are also enforced to ensure the integrity of INA members. Military soldiers in carrying out their duties, of course there are the possibility of irregularities in criminal acts committed by members of the military. It should be noted further, that there are two types of criminal acts for members of the military, namely general crimes and special crimes. General crimes are crimes whose provisions are contained in the Criminal Code, while military crimes are crimes that can only be committed by members of the military with the provisions contained in the Criminal Procedure Code, such as crimes of insubordination and desertion.

**Keywords:** *Code; Criminal; Military*

### **Introduction**

Law enforcement for the military, which is the spearhead of state sovereignty, cannot be avoided. The form of law enforcement can be seen from the submission of military members to military law. From a legal point of view, military members are Indonesian citizens, so naturally all legal provisions that apply to Indonesian citizens in general, namely criminal law, civil law, criminal procedural law and civil procedural law apply.[1] The difference is that is that in the military environment, the duties and obligations that are carried out are more specific than civil society, especially related to the defense of state sovereignty, so that special laws are also enforced to ensure the integrity of Indonesian National Army (INA) members.[2] Military soldiers in carrying out their duties, of course there are the possibility

of irregularities in criminal acts committed by members of the military. It should be noted further, that there are two types of criminal acts for members of the military, namely general crimes and special crimes. General crimes are crimes whose provisions are contained in the Criminal Code, while military crimes are crimes that can only be committed by members of the military with the provisions contained in the Criminal Procedure Code, such as crimes of insubordination and desertion.[3]

The presence of Law No. 34 of 2004 concerning the Indonesian National Armed Forces, specifically regarding the provisions of Article 65 which states that:

- 1) Soldier Students are subject to legal provisions that apply to soldiers.
- 2) Soldiers are subject to authority of military court in terms of violations of military criminal law and are subject to the authority of the general court in cases of violation of general criminal law which are regulated by law.
- 3) If the powers of the general judiciary as referred to in paragraph (2) do not function, soldiers will be subject to the jurisdiction of the judiciary as regulated by law.

In Article 65 paragraph (2) above which states that Soldiers are subject to the power of military justice in cases of violations of military criminal law and are subject to the power of general justice in cases of violations of general criminal law regulated by law, contrary to the provisions of Article 9 paragraph (1) Law no. 31 of 1997 concerning Military Justice. Every member of the military who commits a crime, both specific and general, must be investigated by the military police as a consequence of the existence of a special court, namely a military court.

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 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.

### **Research Methods**

This research is normative legal research with statutory and conceptual approaches.[4]

### **Discussion**

According to Sudarto, criminal law can be divided into general criminal law and special criminal law, where general law contains criminal law rules that apply to everyone, for example those contained in the Criminal Code. Special criminal law contains rules of criminal law that deviate from general criminal law. The military law contained in the Military Law Code (KUHPM) is a specificity of the Criminal Code (KUHP), so that it is said to be a special law by looking at the person without seeing what type of crime was committed. As long as the person concerned is a member of the military or is equated with a soldier and commits a criminal act, then he will be tried in a military court.

There are several reasons for the need for special regulations, including:[1]

- a. There are several acts that can only be carried out by soldiers, which are purely military in nature and don't apply to the public.
- b. Some acts that are grave in nature in such a way, if committed by members of the military under certain circumstances, the threat of punishment under the general criminal law is deemed too light.
- c. If aforementioned issues are included in the Criminal Code, it will make the Criminal Code difficult to use, because these provisions are subject only to a small number members of public, as well as the judiciary who has the right to administer military justice.

Investigations based on Article 1 point 16 of Law no. 31 of 1997 concerning Military Courts are a series of actions by investigators from the Armed Forces of the Republic of Indonesia in matters and according to the methods regulated in this law to seek and collect evidence with which evidence sheds light on the criminal acts that occurred and to determine the suspects. The Military Police in enforcing military criminal law, as the main element and the earliest element dealing with crime, perpetrators of crimes, and carrying out crime prevention activities. The military police is one of maintenance functions within INA, the task is to maintain the order or pattern of life that already exists. Law enforcement here is simply to ensure that everyone carries out their role as determined.[5]

Since the founding Republic of Indonesia, it has realized the need for a Military Court which is organizationally separate from the General Court. There are several reasons why it is necessary to establish a military court that stands apart from general courts, namely:

- a. There is a heavy main task to protect, defend and maintain the integrity and sovereignty of the nation and state, which if necessary is carried out by force of arms and means of war.
- b. The need for special organization and special care and education with regard to their important and difficult main task.
- c. He is allowed to use weapons and gunpowder in carrying out the tasks assigned to him.
- d. It requires and then treats them with strict, severe and specific legal rules and norms and is also supported by severe criminal sanctions as a means of monitoring and controlling every member of the military so that they behave and act and behave according to what is required by the main task.

The repositioning of INA and Indonesian National Police (INP) in its development has received a strong legal basis through the Annual Session of the People's Consultative Assembly (PCA) which was held from 7 to 18 August 2000. The legal basis for repositioning the INA and INP can be seen from the two PCA Decrees produced in Annual Session PCA, namely PCA Decree Number VI/MPR/2000 concerning the Separation of the Indonesian National Armed Forces and the Indonesian National Police and PCA Decree Number VII/MPR/2000 concerning the Role of the Indonesian National Armed Forces and the Role of the Indonesian National Police. These two PCA Decrees essentially redefined the position and role of the INA and INP in Indonesia.

The institutional separation of INA and INP from Indonesian Armed Forces (IAF) has resulted in the existence Indonesian military only covering the Indonesian National Armed Forces, which consists of the Army, Navy and Air Force. This is different from the existence of the Indonesian military before the separation of the INA and INP, where the military was integrated into IAF, its components consisted of the Army, Navy and Air Force plus the INP. The separation of the INA and INP institutions from IAF was apparently also followed by a change in the paradigm of the criminal justice system that applies to the Indonesian military, particularly regarding judicial jurisdiction over the military who commit general crimes.

This change in the paradigm of the criminal justice system can be seen from the provisions of Article 3 paragraph (4) letter a PCA Decree Number VII/MPR/2000 which states that " INA soldiers submit to the authority of the Military Court in cases of violations of military law and submit to the authority of the General Court in matters general criminal law violations". The provisions of Article 3 paragraph (4) letter a PCA Decree Number VII/MPR/2000 are in fact reaffirmed in Article 65 paragraph (2) of Law no. 34 of 2004 concerning the Indonesian National Armed Forces which states that " INA soldiers are subject to authority of Military Court in terms of violations of military criminal law and are subject to authority of General Court in terms of violations of general criminal law which are regulated by law."

The ups and downs in the discussion of this provision, the more it experienced a long debate, some agreed to just omit it because later it would be regulated in an amendment to the law on military justice and some agreed to keep it included. The reasons for each faction are equally strong in this regard.

The stipulation of Law no. 34 of 2004 concerning the Indonesian National Armed Forces is the answer to demands for reform of military institutions in Indonesia after the fall of the New Order. During the New Order era, the military was positioned as an instrument of power and political vehicle. The military's political role was very large and repressive towards the people, giving rise to many violations of human rights in all walks of life.

General Court jurisdiction over the military who commit general crimes as mandated by Article 65 paragraph (2) of Law no. 34 of 2004 cannot be implemented in judicial practice. In other words, the judicial jurisdiction over the military perpetrators of general crimes is still carried out by the Military Court. This is due to the existence of Transitional Provisions contained in Article 74 of Law no. 34 of 2004. In Article 74 paragraph (1) of Law no. 34 of 2004 emphasized that *"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 provisions Law Number 31 of 1997 concerning Military Courts"*.

Article 74 Law no. 34 of 2004 above essentially mandates the establishment of a new Military Court Law as a substitute for Law no. 31 of 1997. As long as the new Military Court Law cannot be realized, the military which commits general crimes will remain subject to jurisdiction of Military Court in accordance with Law no.31 of 1997. This means that judicial jurisdiction over the military for general criminal offenses will still be carried out by the Military Court until a new Law on Military Courts is enacted. In fact, the formation of the new Law on Military Justice as mandated by Article 74 of Law no. 34 of 2004 has not been realized until now.

It should be pointed out that the 1999-2004 People's Representative Council (DPR) had actually attempted to enact a new law which stipulated that the military who committed general crimes could be tried in the General Courts. It turned out that the Bill on Amendments to Law Number 31 of 1997 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). Discussion on the revision of Law no. 31 of 1997 by the DPR and the Government (the Minister of Defense and the Minister of Law and Human Rights) hit a stalemate due to differences of opinion between the DPR and the Government, particularly regarding the draft Article 9 which regulates the jurisdiction of Military Courts. Discussing the revision of the Military Court Law, the DPR wants INA soldiers who commit general criminal law violations (general criminal acts) to be tried in the General Courts regardless of the perpetrators. On the other hand, the Government wants all INA soldiers to be tried in Military Courts regardless form of crime, both military crimes and general crimes. As a result, discussions on revision of Law no. 31 of 1997 concerning Military Justice there is no clarity until now.

The presence of Article 65 paragraph (2) of Law no. 34 of 2004, is too forced because this INA Law should talk about the INA organization institutionally, its duties and functions as a unit in maintaining national defense. For matters of the military justice system, it should be regulated in a separate Law on Military Justice. Military justice is justice for all members of the military who commit crimes and violations, whether committing specific crimes or general crimes. Here, military justice speaks specifically about the subject or perpetrator of a crime, namely members of the military.

There are several reasons, military members who commit specific crimes or general crimes, are tried in military courts, namely:

1. The military court is one of the courts under the Supreme Court which has independent powers to uphold law and justice.
2. Absolute competence, the military court in the system of judicial power is a special court for all members of the military.
3. All law enforcers in the military field, starting from the Military Police, Auditors, and Military Judges have more competence in dealing with the military criminal justice system.

### **Conclusion**

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 INA and INP. Even though since the reformation, the separation of INA and INP into independent institutions and already having their respective duties and authorities indicates that they do not need to interfere with one another. The jurisdiction of the military police investigation authority actually lies with the subject or perpetrator of the crime, not in the object or crime committed. This is because the military court procedural law is a special court for members of military.

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