

Implementation Of Sanctions For Corruption Toward Personnel Of The Indonesian National Armed Forces

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ABSTRACT

This legal research examines the management and sanctions given to Indonesian National Armed Forces personnel who committed acts of corruption. This research aims to examine the legal procedure for personnel of the Indonesian National Armed Forces who committed acts of corruption, as well as the decision of the Military Court on the case. Corruption is a particularly extraordinary crime, and its eradication has become one of the government's primary objectives through the enactment of legislation. This legal research will primarily address two issues. First, the military court will conduct criminal justice proceedings for every Indonesian National Armed Forces personnel who commits a corrupt act. Second, apart from being subject to military criminal law regulations, Indonesian National Armed Forces personnel are also subject to general law regulations. Normative legal research is the method applied in this research. The researchers conducted a study on Corruption Laws and Military Laws, as well as the Military Penal Code. To complement this normative research, the researchers also reviewed some literature regarding criminal law. Results of the research reveal differences between the imposition of sanctions for Indonesian National Armed Forces personnel who engage in acts of corruption and Indonesian National Armed Forces personnel who abuse their positions of authority, according to the Military Penal Code. The difference arises as a result of military interests in every decision-making. However, consideration of military interests should not prevent action from being taken against personnel of the Indonesian National Armed Forces who are engaged in any acts of corruption. Therefore, any instance of corruption committed by Indonesian National Armed Forces personnel should be addressed legally and punished appropriately.

Keywords: Sanction, Corruption, Indonesian National Armed Forces.

INTRODUCTION

The Unitary State of the Republic of Indonesia is one of the sovereign states in the world, which has an armed force that it employs to defend itself against threats and disruptions that may come from inside and outside the nation. The Army, Navy, and Air Force comprise Indonesia's military forces, also known as the Indonesian National Armed Forces. The Indonesian National Armed Forces are attempting to create a new paradigm and image to meet the increasingly challenging demands of their job.

The primary duties of the Indonesian National Armed Forces are to uphold state

sovereignty, to maintain the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila (the five principles of Indonesian philosophical theory) and the 1945 Constitution, and to protect the entire nation from all kinds of disturbances.¹ The Indonesian National Armed Forces, which were initially involved in security concerns, have returned to their primary function as a means of national defense following Law Number 34 of 2014. The Indonesian National Armed Forces have a history of being oppressive and engaged in practical politics. The Indonesian National Armed Forces are now progressively transforming following their new paradigm, their identity. Article 2 of Law Number 34 of 2004 on the identity of the Indonesian National Armed Forces states that: People's Forces, precisely the armed forces whose personnel are Indonesian citizens; Warrior Forces, precisely the armed forces which strive to uphold the Unitary State of the Republic of Indonesia and never surrender in implementing and accomplishing their duties.²

The Indonesian National Armed Forces are equal before the law. They are obliged to uphold the law, as stipulated in Article 27, paragraph (1) of the Fourth Amendment of the 1945 Constitution, which reads: "All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions."

The Academy of the Indonesian National Armed Forces was established and evolved by developing professional forces that obeyed the Indonesian state's political objectives. The Indonesian National Armed Forces are a part of society who have been appropriately prepared to defend their nation from external threats.³ According to Article 5 of Law Number 34 of 2004, the Indonesian National Armed Forces serve as the instrument of the state in the sphere of defense, carrying out its duties based on state policies and political decisions. Other than that, the citizens serve as the secondary force, with the Indonesian National Armed Forces as the primary force.

Law enforcement within the Indonesian National Armed Forces is carried out collaboratively in the military justice system across several long stages involving numerous interested parties. It includes several subsystems, such as the Investigator subsystem, which consists of the Superiors with Authority to Convict, Military Police, and Military Auditors; the Prosecutor subsystem, which consists of the Military Authorities; the Trial Court Subsystem, which decides cases; the Subsystem for Implementing Court Decisions and Counseling, which consists of the Military Prison. According to Law Number 31 of 1997, Article 69 paragraphs (1) and (2), those qualified to serve as investigators include Superiors with Authority to Convict, Military Police, Military Auditors, and auxiliary investigators, or the provost of each class, which ultimately refers to the Military Court.

The Corruption Law, also known as Law No. 20 of 2001 concerning the Eradication of Corruption Crime, regulates crimes involving corruption. The Corruption Law is in force as of its stipulation by the central government on November 21, 2001. Political and business affairs in Indonesia have long been tainted by corruption.⁴ Before the era of independence, there was

¹ Amiroeddin Sarif, *Hukum Disiplin Militer Indonesia* (Jakarta: PT Rineka Cipta, 2006).

² Jerry Indrawan, "Perubahan Paradigma Pertahanan Indonesia dari Pertahanan Teritorial menjadi Pertahanan Maritim: Sebuah Usulan", *Jurnal Pertahanan* 5, no 2 (2015): 93–114.

³ Sarif, *Hukum Disiplin Militer Indonesia*.

⁴ A Djoko Sumaryanto, *Pembalikan Beban Pembuktian Tindak Pidana Korupsi Dalam Rangka Pengembalian Kerugian Keuangan Negara* (Jakarta: Prestasi Pustaka, 2009).

corruption at the government and bureaucracy levels, and it even got worse throughout Soeharto's presidency from 1967 to 1998.⁵ In the following years, the government's efforts to eradicate corruption were acquired with various extents of success.

The Corruption Law guarantees legal certainty, prevents various legal interpretations, defends the community's social and economic rights, and fairly eradicates corruption. There are both penalties and fines for those who engage in corruption.⁶ According to Article 2, paragraph 1 of the Corruption Law, corruptors are subject to a minimum fine of IDR 200 million and a maximum fine of IDR 1 billion, as well as a sentence of life in prison or a minimum of 4 years and a maximum of 20 years in prison. According to Article 3 of the Corruption Law, corruptors who abuse their position of authority are subject to a minimum fine of IDR 50 million and a maximum fine of IDR 1 billion, as well as a life sentence in prison or a minimum of 1 year and a maximum of 20 years in prison.

Based on the background of the research given above, the problems that can be formulated are as follows: (1) What aspects did the panel of judges consider when deciding on the military interests' principle?; and (2) How is the principle of military interest applied to the sentencing of Indonesian National Armed Forces personnel engaged in corruption?

METHODOLOGY

The method used in this legal research is normative legal research, frequently referred to as normative jurisprudence. This research aims to learn how laws and regulations, the Military Criminal Code, and other legal materials are applied to punish Indonesian National Armed Forces personnel who engage in corruption. The Corruption Eradication Law, Indonesian National Armed Forces Law, Military Crime Law, Indonesian Criminal Code, and Military Penal Code are the laws and regulations which comprise the object of the research. This research adopts a case approach, such as examining the High Military Court III Surabaya's Verdict on Case Number: 13-K/PMT.III/AD/VIII/2016.

RESULTS AND DISCUSSIONS

The word 'military' is derived from the Greek word 'milites,' which denotes an individual who is armed and ready to engage in combat, particularly as part of a nation's defense. The military comprises regular citizens who have received military training and are equipped with weapons of war to defend their nation or region from external threats. The military is known for its regulated organization, uniformity in clothing, strict discipline, and obedience to the laws of armed conflict. If these qualities are not present or fulfilled, the entity in question is not a military force but rather an armed group.

Individuals known as servicemen (and women) serve within the military environment. Servicemen fulfill the requirements stipulated in laws and regulations and are appointed by authorized officials to serve in the military (Article 21 of Law Number 34 of 2004). The Army, Navy, and Air Force constitute the Indonesian National Armed Forces, commanded by the

⁵ Adami Chazawi, *Hukum Pidana Korupsi Di Indonesia*, Edisi Revi (Depok: RajaGrafindo Persada, 2019).

⁶ Shahrul Kresna Imansyah en A Djoko Sumaryanto, "Trading in Influence as a Crime in Indonesia Criminal Law System: A Juridical Study", *Yuris: Journal of Court and Justice* 1, no 2 (2022): 29–38.

Commander of the Indonesian National Armed Forces, and perform their duties individually or collectively.

'Indonesia is a state based on law' is what Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia declares. This demonstrates the crucial and basic significance that law provides for the nation and state of Indonesia. As a result, Indonesia also provides a law that regulates military criminal law and general law. The majority of the military laws in Indonesia today are remnants of the Dutch East Indies' colonial past.

Discipline for Indonesian National Armed Forces was first regulated in *Wetboek van Krijgstucht voor Nederlands Indie* (Staatsblad 1934 Number 168). It was subsequently modified by Law Number 40 of 1947 regulating the Military Discipline Code. It was then superseded by Law Number 26 of 1997 regulating the Disciplinary Law of the Republic of Indonesia Armed Forces. The Indonesian National Armed Forces Disciplinary Regulations, which were ratified by the Decree of the Commander of the Indonesian National Armed Forces Number/KEP/22/VIII/2005 dated August 10, 2005, further detailed the regulations. Ultimately, it was replaced by Law Number 25 Year 2014 Concerning Military Discipline Law.

Military Discipline Sanctions are administrative sanctions that replace criminal punishment for violations of penal law. Military discipline is evaluated administratively with the intention of preserving justice. Every Indonesian National Armed Forces personnel is liable to administrative sanctions based on the demonstrated disciplinary violations.⁷ Personnel of the Indonesian National Armed Forces are evaluated based on the extent of disciplinary violations, which range from mild to severe.

The Military Penal Code in Indonesia can be discovered in Law Number 37 of 1947, which was authorized on December 27, 1947, and was enacted on June 8, 1948, as stated in Article 4 of the *Staatsblad* 1934, no. 167. It is also known as *Wetboek Van Militair Starfecht*, where Military Justice is turned into a regulation of criminal law for military personnel.

The principles stated in the primary law on judicial power serve as a guide for Military Courts, according to Law Number 31 of 1997 regulating Military Courts.⁸ The principles of the military, such as the principle of a unitary command responsible to its subordinates and the principle of military interests, are not disregarded by the principle of military justice.

The imposition of a sanction against the Indonesian National Armed Forces personnel also depends on how the Military Judge determines that the Defendant's crimes do not qualify for a sentence under the Military Penal Code and the Indonesian Criminal Code. The authority granted to Military Judges to impose sanctions cannot be transferred to General Court Judges. The legal considerations of the judge's decision and the most important matters must contain and imply the imposition of sanctions by military judges. If the sentence is not imposed, it is anticipated that the Defendant's continued military service after completing the sanction would not disturb the military community's sense of order.⁹ The question that emerges is what the minimum period of imprisonment should be imposed on the Defendant.

⁷ A. S. S Tambunan, *Hukum Militer Indonesia: Suatu Pengantar*, Cet. 1 (Jakarta: Pusat Studi Hukum Militer, 2005).

⁸ Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence)*, Cet. 4 (Jakarta: Kencana Prenada Media Group, 2012).

⁹ Haryo Sulistiryanto, "Pertanggungjawaban Pidana Anggota Militer TNI yang melakukan Tindak Pidana Desersi", *Perspektif XVI*, no 2 (2011): 82–94.

Considering the primary factors of the Panel of Judges at the Surabaya High Military Court III in corruption cases, judges constantly consider and implicitly apply the principle of military interests. The Panel of Judges will consider the nature, substance, repercussions, and other factors that influence the Defendant's behavior in committing a crime because, in terms of upholding the law, the Defendant should serve as an example to other personnel.¹⁰ However, in truth, the institution's trust in the Defendant had been misused by him. In order to prevent Defendant from repeating these actions and other members from imitating his behavior, which would negatively impact how the Unit's primary functions are carried out, Defendant will undergo severe consequences.

Since the Military Prosecutor's admissible evidence had relevance to the offense the Defendant committed, the elements of the Defendant's acts were established to be illegal at trial.¹¹ Due to the witnesses' testimony that Defendant had committed a crime involving corruption, the evidence produced in the form of witness testimonies also supported each other. According to the guidelines of the military justice system, the testimony is admissible as evidence.¹² The researchers conclude that the evidence is sufficiently strong in terms of materiality. So, in accordance with the researchers, both procedurally and substantively, the aspects of substantive justice for the defendant "Major Adjutant General Corps Muhammad Sahroni" have been fulfilled.

Justice is a matter of conscience, not merely an expression or a formality. Justice and the practice of daily life are strongly intertwined. Therefore, Gustav Radbruch's remark that "Summum ius summa iniuria"—conscience is the highest form of justice—is valid.

The judge's convictions in reaching a decision must be logical and wise, even based on faith or conscience. Considering the evidence produced at the trial and the exposure of the trial facts, which are already substantial, the judge has to impose a criminal sentence based on his legal beliefs rather than just on the demands stated by the Military Prosecutor, according to Verdict Number 13-K/PMT.III/AD/VIII/2016, the judge must take into consideration of further evidence, including testimony from experts and witnesses who testified throughout the trial. During the trial, the judge exclusively gave consideration to the idea of military interests while making a decision regarding the Defendant. Judges ought to emphasize justice, benefits, and legal certainty in military courts to uphold the law.

The researcher draws the conclusion that the court's decision lacks any genuine, substantial justice from the discussions above. The provisions addressing the evidence provided by the Military Prosecutor are sufficiently reliable due to the fact that they are based on witnesses and facts revealed during the trial. However, based on the Military Auditor's application of the article and the panel of judges' decision, it is inappropriate. The military prosecutor sought to sentence Major Adjutant General Corps Muhammad Sahroni to 6 (six) months in prison; nevertheless, he was granted a conditional discharge. Additionally, this is contrary to the government's continuous attempts to minimize further corruption acts, one of which was the establishment of the Corruption Eradication Commission. It would be more

¹⁰ Sumaryanto, *Pembalikan Beban Pembuktian Tindak Pidana Korupsi Dalam Rangka Pengembalian Kerugian Keuangan Negara*.

¹¹ Faisal Salam, *Hukum Pidana Militer di Indonesia* (Bangkok: Mandar Maju, 2006).

¹² Darwin Prinst, *Peradilan Militer* (Bandung: Citra Aditya Bhakti, 2003).

fitting if the Defendant received a sentence appropriate for his crimes, such as a prison sentence rather than a conditional discharge. The judge must consider the organization's losses in terms of recruiting personnel when rendering the verdict.

CONCLUSIONS

The Indonesian National Armed Forces are a national defense force in charge of preserving the sovereignty of the Unitary State of the Republic of Indonesia, as inferred from the previously presented discussion. In order to successfully carry out its primary duties and functions, the Indonesian National Armed Forces must be reliable and competent. As an outcome, legal norms were enacted to regulate personnel life, with the goal of transforming the Indonesian National Armed Forces into professional forces. The Indonesian National Armed Forces put a high priority on the role of the Principle of Military Interests. Each human being has the fundamental right to uphold justice, certainty, and legal protection, including military personnel. In order to maintain professionalism, which must take precedence over personal interests, the principle of military interest is prioritized within the Indonesian National Armed Forces, in case number 13-K/PMT.III/AD/VIII/2016 at the High Military Court III in Surabaya, it is expected that everything will proceed according to plan and that no criminal acts of corruption by the Indonesian National Armed Forces personnel will come up so that when verdicts are rendered, the Principle of Military Interests is taken into account both explicitly and implicitly in addition to matters involving aggravating and mitigating circumstances.

REFERENCES

- Ali, Achmad. *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence)*. Cet. 4. Jakarta: Kencana Prenada Media Group, 2012.
- Chazawi, Adami. *Hukum Pidana Korupsi Di Indonesia*. Edisi Revi. Depok: RajaGrafindo Persada, 2019.
- Imansyah, Shahrul Kresna, en A Djoko Sumaryanto. "Trading in Influence as a Crime in Indonesia Criminal Law System: A Juridical Study". *Yuris: Journal of Court and Justice* 1, no 2 (2022): 29–38.
- Indrawan, Jerry. "Perubahan Paradigma Pertahanan Indonesia dari Pertahanan Teritorial menjadi Pertahanan Maritim: Sebuah Usulan". *Jurnal Pertahanan* 5, no 2 (2015): 93–114.
- Prinst, Darwin. *Peradilan Militer*. Bandung: Citra Aditya Bhakti, 2003.
- Salam, Faisal. *Hukum Pidana Militer di Indonesia*. Bangkok: Mandar Maju, 2006.
- Sarif, Amiroeddin. *Hukum Disiplin Militer Indonesia*. Jakarta: PT Rineka Cipta, 2006.
- Sulistiriyanto, Haryo. "Pertanggungjawaban Pidana Anggota Militer TNI yang melakukan Tindak Pidana Desersi". *Perspektif XVI*, no 2 (2011): 82–94.
- Sumaryanto, A Djoko. *Pembalikan Beban Pembuktian Tindak Pidana Korupsi Dalam Rangka Pengembalian Kerugian Keuangan Negara*. Jakarta: Prestasi Pustaka, 2009.
- Tambunan, A. S. S. *Hukum Militer Indonesia: Suatu Pengantar*. Cet. 1. Jakarta: Pusat Studi Hukum Militer, 2005.