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Renewal Of The Military Justice System In Indonesia In The Implementation Of The Authority Of The Military Prosecutor In Corruption Cases

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Abstract

The Military Court as an actor of judicial power under the Supreme Court has the authority to try criminal offenses committed by military personnel or persons equivalent to military personnel, to resolve military administrative disputes, to combine compensation cases in criminal cases, and to try cases of connexity as provided in Article 9 paragraph (1) of Law No. 31 of 1997 on Military Justice, with the jurisdiction of the Military Court based on the aspect of the rank of military members as the scope of work, through the authority to enforce the law within the Indonesian National Army by the agency / institution as a system in the Military Court, namely the Military Court, which becomes a problem in the existence of the Military Court including the authority of the Military Court in conducting prosecutions in handling corruption cases committed by members of the TNI.

The method used in this research is normative juridical, using descriptive analytical specifications, through literature studies and field studies, and data collectiontechniques are carried out in the form of document studies, namely secondary data collection, followed by data analysis.

The results showed that the authority of the Military Prosecutor to prosecute corruption crimes is based on the Military Justice Act, which adheres to the principle of lex specialis, except in cases of connexity. The prosecutorial authority granted to the Military Prosecutor in cases of corruption committed by members of the TNI still lacks legal certainty and often clashes with the authority of the Public Prosecutor and even the Papera, so that a reconstruction of the authority of the Military Prosecutor in the Corruption Court Law and the Military Justice Law is necessary.

Keywords: Corruption, Military Advocate, Prosecution, Military Court.

A. Background

The Military Court of Justice is one of the judicial bodies that exercise judicial power to uphold law and justice, taking into account the interests of the implementation of the defense and security of the State. The existence of the Military Court is emphasized in Article 18 of Law No. 48/2009 on Judicial Power, which states that the Military Court is one of the judicial bodies other than the General Court, the Religious Court, and the State Administrative Court under the Supreme

Court. This shows that the Military Court has a strong position both in the State Constitution and in other laws and regulations. The special and separate nature of the Military Court is a characteristic that distinguishes it from the civil courts in general. (Mulyana, 2020)

The Military Court, as an actor of the judicial power under the Supreme Court, has the authority to try crimes committed by soldiers or persons equivalent to soldiers, to resolve military administrative disputes, to combine compensation cases with criminal cases, and to try connectivity cases. This is expressly regulated in Article 9(1) of Law No. 31 of 1997 on Military Justice (hereinafter referred to as the Military Justice Law), i.e. crimes committed by members of the military, both general crimes as regulated in the Criminal Code (hereinafter referred to as the CC) and other criminal legislation, as well as crimes as regulated in the Military Criminal Code (hereinafter referred to as the MCCP), are tried in the Military Court.

The existence of military tribunals, which are special courts, certainly has certain peculiarities, both in terms of jurisdiction, legal structure and case handling procedures. (Sihotan, 2016) As a special institution, the jurisdiction of the Military Court is not the same as that of the General Court. If the jurisdiction of the General Court is based on the territorial aspect as its legal scope, the jurisdiction of the Military Court is based on the aspect of the rank of military personnel as its scope of work. The determination of the jurisdiction of the Military Court is a consequence of the emphasis on the principle of personality with regard to the applicability of criminal provisions to military personnel.

The structure and powers of the Military Tribunal (to examine, judge and decide a case) to uphold law and justice by taking into account the defense of state security (military interests) as required by Article 5 (1) of the Military Tribunal Act. What is meant by taking into account the interests of the military is that the element of benefit or purpose (doel) is more dominant when faced with 2 (two) other legal elements (justice and certainty). In other words, for the sake of and in the interests of the military (military necessity and national interest or the interests of the nation and the state), the elements of certainty and justice can be set aside or ignored for the sake of and in order to achieve the objective (doelmatigheid). (Sagala, 2019)

The existence of these levels is also related to the division of duties and functions of institutions or other bodies (Article 38 Paragraph (1) of Law of the Republic of Indonesia No. 48 of 2009 Concerning Judicial Power) whose functions are related to judicial power in accordance with the provisions of Article 38 of Law of the Republic of Indonesia No. 48 of 2009 Concerning Judicial Power (hereinafter referred to as the Judicial Power Law).

The prosecutor as one of the law enforcement officials who has a function as a prosecutor within the TNI has a very important role in the creation of justice, which means that every prosecutor is required to be professional in handling every criminal case, no matter who the perpetrator is, whether it is military members among enlisted, non-commissioned officers or officers and whatever form it takes. (Salam, 2004)

The duties of the Public Prosecutor in the prosecution of a criminal case are basically the same as those of the Public Prosecutor in the General Court, including the conduct of additional investigations as provided in Article 30 (1) (e) of Law No. 16 of 2004 on the Public Prosecutor's Office and Law No. 11 of 2021 on Amendments to Law No. 16 of 2004 on the Public Prosecutor's Office (hereinafter referred to as the Public Prosecutor's Office Law). The same authority is attached to the Prosecutor as contained in the provisions of Article 124

paragraph (3) of the Code of Military Justice, which states that:

"If the results of the investigation turn out to be insufficient, the Prosecutor conducts additional investigations to complete or returns the case file to the Investigator along with instructions on matters that must be completed".

The Military Court, which originally tried only military criminal cases, evolved to try general and special crimes committed by TNI members, including corruption cases. Corruption that occurs in the military environment is handled in the Military Court by positioning the Prosecutor as a prosecutor like the prosecutor in the General Court.

Based on the mandate contained in Article 9 of the Code of Military Justice, there are two permanent criminal justice systems for different jurisdictions, namely the General Court for civilians and the Military Court for military personnel, each of which has different jurisdictions. Each judicial environment has competence and authority to adjudicate that are independent and separate from each other. Each has absolute jurisdiction, so that absolutely one judicial environment cannot be entered and interfered with by another judicial environment.

The legal uncertainty about the existence of the Military Court in dealing with corruption crimes committed by members of the TNI will also make the existence of the Military Prosecutor unclear in dealing with corruption cases in the military environment. This will certainly make the prosecutorial authority of the Military Prosecutor unclear. This lack of clarity will certainly make the handling of corruption cases in the This lack of clarity will certainly make the handling of corruption cases in the military environment as if there were no legal basis, so that the authority of the Military Prosecutor in prosecuting corruption cases committed by TNI soldiers appears to have no legal basis and creates uncertainty about the authority of the Military Court in corruption cases.

This situation should require changes in criminal law, especially with regard to the existence of the Military Court in handling corruption crimes committed by members of the TNI, with clarity on the existence of the Military Prosecutor in handling corruption cases in the military environment, regarding the implementation of the authority of the Military Prosecutor in terms of prosecuting corruption cases committed by TNI soldiers in the context of reforming the military justice system in Indonesia.

B. Literature Review or Previous Studies

The special provisions of the Military Court Procedure Law, as stipulated in the Military Court Law, shall apply. (Araf, 2007) The law regulates the jurisdiction of the military courts, the organizational structure and functions of the military courts, military court procedure and conveyance, and military administrative law.

One of the bodies/institutions whose functions are related to the judicial power and as a sub-system in the military justice is the Military Court of Appeals with its executor called Prosecutorat. Although Prosecutorat is not explicitly mentioned in the 1945 Constitution, as a law enforcement agency within the Indonesian National Army (hereafter TNI), Prosecutorat is an integral part of the judicial power. This is formulated in Article 1 item 2 of the Military Justice Law, which states that Prosecutorat is an agency within the Armed Forces of the Republic of Indonesia (now TNI) that exercises state government power in the field of prosecution and investigation based on delegation from the Commander of the Armed Forces of the Republic of Indonesia.

According to article 1, paragraph 7 of

the Code of Military Justice, the Military Prosecutor and the Chief Military Prosecutor, hereinafter referred to as the Prosecutor, are officials who are authorized to act as public prosecutors, as executors of decisions or decrees of courts within the military justice system or courts within the general judicial system in criminal cases, and as investigators in accordance with the provisions of this law.

The Code of Military Justice does not provide a specific definition of prosecution, but only regulates the authority of the Prosecutor to conduct prosecutions, so the definition of prosecution refers to Article 1(7) of the Criminal Procedure Code (hereinafter KUHAP) as a general criminal procedure law.

C. Research Materials and Methods

This research is a normative juridical study of legal research on legal principles, legal regulations as well as comparative legal inventory of positive law. Normative legal research is a library material or secondary data in the form of primary, secondary and tertiary legal materials needed to discuss legal issues in the study. The main research is literature research supported by field research.

As is the opinion of Terry Hutchinson: Doctrinal research: Research that provides a systematic exposition of the rules governing a particular category of law, analyzes the relationships among the rules, explains areas of difficulty, and perhaps predicts future developments; Theoretical Research: Research that promotes a more complete understanding of the conceptual underpinnings of legal principles and of the combined effects of a set of rules and procedures affecting a particular area of activity. (Marzuki, 2014)

The connection between doctrinal research and the legal research paradigm was further developed by Terry as follows: "A paradigm is a model or pattern based on a set of rules that defines boundaries and specifies how to succeed within those boundaries." (Marzuki, 2014)

According to Sunaryati Harotono, legal research is a daily activity of law scholars. Normative legal research can only be done by law scholars as a person who is deliberately educated to understand and master the legal discipline. Furthermore, it is mentioned that the normative researchmethods can be used also together with social research methods. (Hartono, 2006)

D. Discussion

Implementation of the Military Tribunal's Authority to Prosecute Corruption Cases Committed by TNI Soldiers in the Framework of the Reform of the Military Justice System in Indonesia.

The provision of Article 9 Number 1 of the Military Justice Act that the courts within the military justice environment are authorized to try criminal offenses committed by TNI soldiers, if interpreted a contrario, it can be seen that if a criminal offense is committed by a civilian (not a TNI soldier), then the courts within the military justice environment are not authorized to try it. From this provision, it can be seen that Article 9(1) is a statutory provision that is lex special derogat lege generali to the provisions of Article 50 of Law No. 2 of 1986 on General Courts. Thus, it can be said that crimes committed by civilians (not TNI soldiers) are within the jurisdiction of the courts of general jurisdiction. (Nainggolan, 2022)

When talking about the authority of the military court in handling criminal cases, there is the authority of the Military Prosecutor in its implementation. According to the Military Justice Law Article 1 point 2 relating to the Military Prosecutorate, the High Military Prosecutorate, the General Prosecutorate of the Armed Forces of the Republicof Indonesia, and

the Military Battle Prosecutorate, hereinafter referred to as Prosecutorate, is an agency within the Armed Forces of the Republic of Indonesia that exercises state government power in the field of prosecution and investigation based on delegation from the Commander of the Armed Forces of the Republic of Indonesia.

According to Article 1, item 7 of the Code of Military Justice, the Military Prosecutor and Senior Military Prosecutor, hereinafter referred to as the Military Prosecutor, is an official who is authorized to act as a public prosecutor, as an executor of a decision or order of a court within the military justice system or a court within the general justice system in criminal cases, and as an investigator in accordance with the provisions of the Code of Military Justice. From this definition, it can be seen that the role and authority of the Military Prosecutor is almost similar to that of the Public Prosecutor in the General Court.

The implementation of the authority of the Military Tribunal in handling corruption cases of TNI members based on the Military Justice Act is a form of law enforcement of the applicable law. But on the other hand, law enforcement cannot be carried out due to overlapping regulations, so legal certainty is also needed to deal with the overlapping problem. According to Soerjono Soekanto, the main problem of law enforcement actually lies in the factors that can affect it. These factors have a neutral meaning, so the positive or negative impact lies in the content of these factors. These factors are the legal factors themselves, law enforcement factors, facilities or institutions that support law enforcement, community factors, and cultural factors. (Soekanto, 1983)

The Military Tribunal in the implementation of the criminal prosecution of corruption crimes has duties and powers that are regulated by law, both from the stages when the perpetrators of corruption crimes are soldiers with the rank of captain and below, those referred to in Article 9 number 1 letter b and letter c of the Military Justice Law, whose accused belong to the rank of captain and below. They shall be tried by the military court in accordance with Article 9(1)(d) of the Code of Military Justice.

The above-mentioned duties and powers of the public prosecutor do not exclude the handling of corruption cases. If a criminal act of corruption has been committed by a military member, the Prosecutor has the authority to prosecute the military member who committed the crime of corruption through the military court.

Authority is a formal power, a power that comes from the power granted by law, whereas power is only about an "onderdeel" or a certain part of authority. Within authority there are legal powers. Authority is the scope of public legal action, the scope of governmental authority, not only includes the authority to make governmental decisions (bestuur), but also includes authority in the context of carrying out tasks, and providing authority and distribution of authority primarily stipulated in legislation. In legal terms, the definition of authority is the ability given by legislation to cause legal consequences.

Regarding the jurisdiction between the Military Court and the Corruption Court, there are actually 2 (two) benchmarks, namely the Military Court is based on the subject of the crime, while the Corruption Court is based on the object (act/criminal act). If the offender is a member of the military, it is clear that the military court has the authority to try the offender. However, if the object is an act of corruption, then the Anti-Corruption Court has the authority to try the perpetrator (Article 5 of the Anti-Corruption Court Law). The problem

is that if the perpetrator of a corruption crime is a member of the military, there will be a conflict of authority between the military court and the corruption court.

It can be said that the 2 (two) benchmarks cause a conflict of norms. If there is a criminal act of corruption by members of the military, the position of the Military Court in this case is no exception and the position of the Military Advocate becomes ambiguous, so it becomes an obstacle for the Military Court and the Military Advocate to handle corruption cases committed by members of the military. According to the author, the government must anticipate the conflict of norms so that there is no overlap between the authority of the Military Court and the Corruption Court in the prosecution of corruption crimes.

Laws, enforced by law enforcement agencies, must provide "legal certainty" for the sake of order and justice in public life. Legal uncertainty will create chaos in people's lives, and they will do whatever they want and take the law into their own hands. This kind of situation makes life in an atmosphere of social disorganization or social chaos. A concrete example of this social chaos is the existence of the Military Court of Justice, which is not provided for in Article 5 of the Corruption Court Law, which states that the Corruption Court is the only court authorized to investigate, try and decide corruption cases.

The existence of article 18 paragraph (2) of the Anti-Corruption Law, which states that the public prosecutor is the one authorized to investigate corruption crimes. This seems to discriminate against the existence of the Military Prosecutor in the handling of corruption cases within the Military Court. At this level, the concept of legal certainty is lost and turned into legal uncertainty, which will lead to social disorganization or social chaos.

The authority of the Military Prosecutor in carrying out prosecutions is not only externally problematic, as described above, but there are also internal problems. The authority of the Military Prosecutor as a prosecutor often clashes with the authority of the Papera, especially when filing a case.

At the stage after the investigator, in this case the military police, finishes investigating the suspect, then submits the case file to the military prosecutor, and the prosecutor's action after receiving the file is that the prosecutor examines the file, then prepares and submits a legal opinion to the papera with a request that the case be submitted to the court, disciplined or closed.

From this, the author argues that the existence of the authority of the Papera divides the authority of the Prosecutor and the Papera in handling a criminal case. In fact, Article 43(3) of the Code of Military Justice, which states that "The Supreme Military Court shall decide on the disagreement between the person in charge of the case and the Prosecutor as to whether a case should be submitted to a court within the military justice environment or to a court within the general justice environment", proves that this article is concerned that there are often disagreements between the Prosecutor and the Papera, so that it becomes an obstacle for the Prosecutor in exercising its authority, especially in the prosecution phase.

The clash between the authority of the Military Prosecutor and the Papera is an internal problem of the military justice system, therefore, there must be a reconstruction, especially with regard to the authority of the Military Prosecutor. The authority of the Papera should be abolished and then transferred to the initial stage of investigation only to determine whether the criminal case (including Typikor cases) can continue or not, so that the Prosecutor's authority to prosecute remains intact.

More specifically, based on Article 123 paragraph (1) of the Military Justice Law, Papera has the authority:

a. Order the investigator to conduct an investigation;
b. Receive reports on the conduct of investigations;
c. Order forcible measures to be taken;
d. Extending detention as referred to in Article 78;
e. Receive or request legal opinion from the Prosecutor on the settlement of acase;
f. Submitting the case to the court authorized to examine and try the case;
g. Determining cases to be resolved according to the soldiers' disciplinarylaw; and
h. Closing the case in the interest of the law or in the public/militaryinterest.

The authority of the Papera that often clashes with the authority of the Military Prosecutor is the authority as point f, in practice the Military Prosecutor can only provide opinions or suggestions to the Papera to submit a case, in this case a corruption crime committed by a member of the military to the Military Court, so itis not in the form of a decision or order, so that the form of opinion or suggestion given by the Military Prosecutor can still be rejected by the Papera. Not to mention, in the trial process, a case will also still be examined by the Panel of Judges of the Military Court, so it can still be rejected by the Panel of Judges for the case submitted by the Military Prosecutor.

From this point of view, it will take a lot of time if the Military Prosecutor first has to get an approval or decision from the Papera in order to submit a case to the Military Court. The author argues that the Papera's authority as point f in Article 123 paragraph (1) of the Code of Military Justice should be abolished so that the military prosecutor can submit a case, in this case a corruption case, to the military court without having to wait for the Papera's approval or decision.

In addition to the authority of point f, the authority of Papera that often clashes with the authority of the Military Prosecutor is the authority of point h, because the authority of point h is related to the application of the principle of opportunity, where the principle of opportunity is owned only by the Attorney General (Article 14 letter h of KUHAP), in this case the Military Prosecutor should also have the principle of opportunity.

If the powers of Papera as described above are still implemented and not eliminated, there will continue to be a clash of authority between the Military Prosecutor and Papera, and there will often be disagreements between the Military Prosecutor and Papera, which will undoubtedly create internal conflict within the TNI institution as feared by Article 43(3) of the Military Justice Act. Thus, what the author recommends as a form of renewal of the military justice system does not require the elimination of the existence of Papera, but there are several powers of Papera that need to be addressed in order to avoid internal conflict within the TNI institution itself.

E. Summary

The authority of the Military Prosecutor to prosecute corruption crimes committed by members of the TNI is based on the Military Justice Act, which adheres to the principle of lex specialis, except in cases of connexity. The prosecutorial authority granted to the Military Prosecutor in cases of corruption committed by members of the TNI still lacks legal certainty and often clashes with the authority of other parties, in this case externally with the Prosecutor and internally with the Papera.

It is necessary to reconstruct the powers of the military prosecutors in conducting prosecutions as a whole, namely by

revising Article 5 of the Anti-Corruption Court Law and Article 18(2) of the Anti-Corruption Law, and by removing some of the powers of the Papera contained in Article 123(1) of the Military Justice Law. The revision can be done through legislative amendments or in the form of a Supreme Court Decree.

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