

Obstacles To The Investigation Process In The Military Justice System Related To *Ankum's* Authority As Investigator

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Abstract

The purpose of this research isto analyze the obstacles to the investigation process by Military Police investigators and/or Otmil faced with Ankum's role as an investigator in resolving cases of TNI soldiers. This legal research is a normative juridical research using the Act as the primary legal material. The Military Justice System has three investigator components, namely superiors who have the right to punish (Ankum), Military Police (Pom), Military Oditur (Otmil). Ankum as a criminal investigator is regulated in Article 69 paragraph (1) of Law No. 31 of 1997 concerning Military Courts. Law enforcement in the military justice environment sometimes encounters obstacles, with the large authority of the unit commander as Ankum. The conclusion from this paper is that the obstacles that are often faced are:by investigators of the Military Police and/or Otmil faced with Ankum's role as an investigator in resolving cases of TNI soldiers, among others, a conflict of authority in the investigation process, a conflict of norms in determining the detention of a suspect, Ankum does not meet the formal requirements as an investigator, Ankum tends to defend his subordinates and the investigation takes a relatively long time due to bureaucratic problems. The solution to this problem must be an amendment to the Military Court Law so that there is clear certainty about Ankum's authority in resolving criminal cases committed by soldiers under his command to provide legal certainty for all parties.

Keywords: Investigation, Military Courts, Authority, Superiors who have the right to punish.

1. Introduction.

The State of Indonesia is a legal state based on Pancasila and the 1945 Constitution (UUD 1945), with the aim of realizing an orderly, safe, prosperous, just and prosperous Indonesian state. To realize a just and prosperous Indonesia, it must be accompanied by a steady state of national stability, while maintaining the sovereignty and integrity of the Unitary State of the Republic of Indonesia (NKRI). In order to support security stability and uphold the sovereignty and integrity of the Indonesian state, the role of the Indonesian National Army (TNI) is urgently needed.¹. The role of the TNI as a means of state defense is specifically regulated in daily life, both in the form of military/soldiary discipline regulations and statutory regulations/military law.

Article 27 of the 1945 Constitution states that all citizens have the same position in law and government and are obliged to uphold the law and government without

¹The provisions of article 7 (1) of the Republic of Indonesia Law Number 34 of 2004 concerning the TNI, it is stated that the TNI's main task is to uphold state sovereignty, maintain the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and protect the entire nation and all spilled areas. Indonesian blood from threats and disturbances to the integrity of the nation and state

exception, meaning that the provisions in the constitution apply to all citizens, including TNI soldiers. Members of the TNI or community must comply with and are obliged to respect the laws that apply in our country. TNI soldiers are people who are given a special task as a means of state defense, so it is also regulated in special legal provisions.

In Law Number 31 of 1997 concerning Military Courts, it is regulated about judicial institutions that exercise judicial power within the Military Courts and one of them is to regulate the Military Criminal Procedure Code (hereinafter referred to as HAPMIL). HAPMIL as a formal criminal law within the TNI, regulates how those who have committed violations can be punished according to the threats according to the articles of the law, which contain provisions on how to investigate, prosecute and how cases are resolved before a court session. In other words, formal criminal law is how material criminal law regulations are maintained and implemented²

Law Number 31 of 1997, in principle has the same principles as the principles applicable in the Criminal Procedure Code (Law Number 8 of 1981) which are generally applicable to the general public/civilians. However, in Hapmil there are principles or principles that apply specifically to members of the military that are characteristic of life in the military environment that apply to the Hapmil, such as the principle of unity of command, the principle of the commander being responsible for his subordinates or subordinates and the principle of military interests.

The principle of unity of command means that in military life with its organizational structure, a commander has a central role and is fully responsible for the unit and its subordinates. The principle of the commander being responsible for his subordinates means that in the life and organizational characteristics of the TNI, the commander functions as a leader, teacher, father and trainer, so that the commander must be fully responsible for the unit and his subordinates. Meanwhile, the principle of military interest means that in carrying out state defense and security, military interests are prioritized over group and individual interests. However, especially in the judicial process, military interests are always balanced with legal interests.³

In the explanation of RI Law Number 31 of 1997 concerning Military Courts, Article 69 paragraph 1 (a) *Ankum* as an investigator that, in accordance with the principle of unity of command, commanders are fully responsible for the unit and its subordinates, the authority to investigate and investigate criminal acts committed by a subordinate who is under his command authority is an inherent authority of a superior with the right to punish (*Ankum*), in order to determine the fate of the subordinate referred to in the settlement of a criminal case, whose implementation (investigation) is delegated to the Military Police Investigator.

Regarding the authority of *Ankum* in the investigation process (*Ankum* as investigator), Faisal Salam explained that in the Military Criminal Procedure Code (HAPMIL/Law Number 31 of 1997), the preliminary examination process is very different from the Criminal Procedure Code (UU Number 8 of 1981), where The commander's power includes two kinds of authority, namely the authority usually

² Moch. Faisal Salam, 2002, *Hukum Acara Pidana Militer di Indonesia*, Mandar Maju, p. 8-9

³General explanation, on the Law of the Republic of Indonesia Number 31 of 1997 concerning Military Courts

called the command right and the right to punish. Command rights include three things; (1) directing, (2) coordinating and (3) controlling. The right of command from the Commander is obtained from a delegation from the top leadership of the TNI, while the right to punish his subordinates is regulated by law.⁴A commander must be able to direct, coordinate and control his duties perfectly, because if one of these authorities does not exist, the peace/order of the troops will be disturbed.

The involvement of *Ankum* as an investigator in the military justice system also opens opportunities for *Ankum's* intervention against military police investigators, for example in determining what violations/crimes will be applied to suspects (*Ankum's* subordinates).⁵ Regarding the opportunity for *Ankum* and Papera's intervention in the investigation process, T. Gayus Lumbun stated that the functions of *Ankum* and Papera in the military justice system are issues related to the legal structure of the military court. *Ankum* and Papera have strong authority to determine the legal mechanism that will be applied to violations of the law committed by members of the military. *Ankum* and Papera have the authority to determine whether an offense is classified as a disciplinary offense, a military offense or a general offence. Even when a criminal act is only considered a disciplinary offense, *Ankum* can immediately determine and give punishment, this represents intervention.⁶*Ankum's* role as an investigator in addition to having the potential to intervene in law enforcement, also creates ambiguity in the authority of the investigation, and often becomes an obstacle in the investigation process, considering that *Ankum* is not neutral, tends to defend his subordinates in the investigation process, so that it does not realize a fair law enforcement process and with legal certainty.

From the problems described above, the purpose of this study is to analyze the obstacles to the investigation process in the Military Justice system associated with the authority of *Ankum* as an investigator.

2. Research methods.

The approach method used is a doctrinal method, namely a normative juridical approach with a statute approach. While the type of legal research carried out in this research is to use the type of analytical descriptive research because specifically this research aims to provide an overview of analysis. The problem with the investigation process in the Military Court system is related to the authority of *Ankum* as an investigator in accordance with Law Number 31 of 1997 concerning Military Courts.

Considering the approach method used in this research is normative juridical, the type of data used in this study is secondary data with data collection carried out by literature studies. Furthermore, the authors analyze the data qualitatively, or the data obtained will be analyzed qualitatively.

3. Research Results and Discussion

⁴Moch. Faisal salam, Op.Cit, p. 26

⁵*Ibid.* p. 119

⁶T. Gayus Lumbun, T *Peranan Peradilan Militer Dalam Penegakan Hukum Pidana Militer Di Indonesia* (Material for Public Lecture at STHM Ditkumad, on May 2, 2018), Journal of Military Law/STHM/Vol.4/No.1/June 2019, p. 50.

The investigative authority within the military courts has been regulated in the Military Criminal Procedure Code in accordance with Law No. 31 of 1997. Criminal procedural law, both within the military court (specifically) and in the general court environment, has the same objective, namely to protect rights of suspects/defendant and also to regulate and limit the authority of law enforcement officers such as Police/Military Police as investigators, Prosecutors/Prosecutor as prosecutors, Judges as case breaker, implementation of judge's decisions in Correctional Institutions and legal advisors as legal service holders/ as an element of law enforcement as well.

Military criminal procedural law with its specific regulation, in addition to protecting the interests of the suspect/defendant, is also to maintain a balance between legal interests and military interests. However, there are several problems that must be observed and solutions are needed to realize the professionalism of investigators and investigations in order to maintain a balance between individual interests and public interests, between legal interests and military interests.

Problems that arise in the military justice system are related to the authority of investigators in this case the superior who has the right to punish (*Ankum*), among others, as follows:

1. *Conflict of Authority in the Investigation Process.*

As we know that in the Military Criminal Procedure Code contained in Law Number 31 of 1997 concerning Military Courts, there are three investigative institutions in the military justice system in Indonesia, namely, *Ankum* (the superior who has the right to punish), the Military Police and the Public Prosecutor. have the same authority in the investigation of criminal cases within the military court. The authority of investigators is regulated in Article 71 of Law Number 31 of 1997, which states, investigators are authorized;

- Receiving a report or complaint from a person regarding the occurrence of an event that is suspected to be a criminal act;
- Take the first action at the time and at the scene;
- Looking for information and evidence;
- Ordering someone who is suspected to be a suspect to stop and check their identification;
- Make arrests, search, confiscate and examine documents;
- Taking fingerprints and taking pictures of a person;
- Summon someone to be heard and examined as a suspect or witness;
- Request assistance from an expert or bring in the necessary experts in connection with the examination of the case; and
- Take other legally responsible actions.

In the event that the Military Police investigator receives a report or complaint from the public regarding a criminal act by a member of the military/TNI soldiers, the Military Police Investigator is obliged to carry out an investigation as a follow-up to the community report. However, problems may occur, when coordinated or reported to the *Ankum*, it turns out that the *Ankum* does not want the suspect's case to be processed by law by carrying out an investigation of the suspect or not giving the suspect permission to be examined, on the grounds that the suspect's case will be

examined/processed and an investigation carried out by the *Ankum* himself. . *Ankum* feels he has the authority to handle cases that occur to his subordinate members,

In the provisions of Law Number 31 of 1997, there is no provision that requires *Ankum* to submit the case of a suspect to his subordinates for investigation to the Military Police investigator/ Prosecutor. In the provisions of Article 69 paragraph (1), and in Article 74 of Law Number 31 of 1997, as well as the explanations only provide an explanation that, in carrying out the investigation, *Ankum* delegates to Military Police investigators or the Public Prosecutor. However, for the sake of justice for all parties (victims and their families, suspects as well as superiors and for the benefit of their unit), it is *Ankum's* obligation that the criminal cases that occur and the suspects be handed over to Military Police investigators to be resolved according to the applicable legal provisions.

2. *Conflict of norms in determining the detention of suspects.*

In the case of detention of a suspect, *Ankum's* authority to detain a suspect who is a member of his subordinates is stated in Article 74 letter d of Law Number 31 of 1997, if it is related to the explanation of article 69 (1) letter a, namely: *Ankum* delegates the conduct of the investigation to the Military Police investigator / Prosecutor, academically raises questions because *Ankum's* authority in investigation has been delegated to Military Police investigators / Prosecutor, but in the case of detention of suspects, Military Police investigators / Prosecutor are not given the authority to detain. In this case, it creates a conflict of norms that requires a normative study / review, so that the investigation process of TNI soldiers can run according to applicable legal norms, in order to realize fair legal certainty. For more details we consider;

In the explanation of Article 74, it is stated that; "For the effective implementation of the investigative authority of the superior with the right to punish and to help the superior with the right to punish be able to focus more attention, energy and time in carrying out his main duties, the conduct of the investigation is carried out by the military police investigator or the public prosecutor".⁷

Furthermore, related to the authority of this investigation, in the explanation of Article 69 paragraph (1) letter a, it is stated; "In accordance with the principle of unity of command, the commander is fully responsible for the unit and his subordinates, the authority to investigate and investigate criminal acts committed by subordinates who are under the authority of his command is an inherent authority of the superior with the right to punish, in order to determine the fate of the subordinates referred to in this article. settlement of criminal cases whose implementation is delegated to the Military Police investigators or the Public Prosecutor."

The two explanations between Article 69 (1) letter a and the explanation of Article 74 are closely related, it can even be interpreted that the explanation in Article 69 (1) letter a is implemented in Article 74 paragraph (1). If we look at the explanation of Article 69 (1) letter a, in essence, "*Ankum* delegates the authority of investigation (towards its members) to the Military Police investigator or the Prosecutor". The sentence delegated, in the explanation of article (69) letter a, when viewed from the

⁷Elucidation of Article 74, Law Number 31 of 1997, Regarding Military Courts.

legal aspect of state administration, the authority (investigation) has been "delegated", then the "delegans" or people who have delegated the authority, "can no longer use their own authority. which has been delegated."⁸

Ridwan HR explained about delegation which is defined as "the delegation of authority by government organs to other organs to make decisions with their own responsibility, meaning that in the delegation of authority through this delegation, the authorizing authority has been freed from legal responsibility or demands of third parties, if in the use of authority it causes harm to the other party."⁹

From the description above, it appears that the authority obtained by attribution is genuine originating from statutory regulations, meaning that government organs obtain authority directly from the editors of certain articles in legislation. In the attribution, the recipient of the authority can create new authority or expand the existing authority, with internal and external responsibility for the implementation of the authority attributable entirely to the recipient of the authority (attributaries). At attribution there is no creation of authority, there is only the delegation of authority from one official to another. Juridical responsibility no longer rests with the delegates (delegans), but shifts to the delegates (delegators). As for the mandate,¹⁰

It is proper for Military Police investigators or the Prosecutor (as investigators) to be given the authority to detain during the investigation process. Regarding the detention authority of Military Police investigators or Public Prosecutor investigators, not only because Military Police investigators or Public Prosecutor investigators are legally responsible for the process and results of investigations, but also investigators who carry out investigations (Military Police/ Prosecutor) who can determine subjectively the need for detention of suspects for investigation purposes. The authority to determine subjectively about the need for detention of suspects is also in accordance with the provisions of Article 79 paragraph (1) of Law Number 31 of 1997, where investigators who handle the investigation process against suspects will be able to suspect or fear that the suspect will escape. destroying or destroying evidence, or repeating a crime or causing trouble. Thus, it is natural and appropriate if Military Police investigators or Public Prosecutor's Offices are given the authority to detain suspects by being responsible for *Ankum*, Papera and legally responsible.

3. *Ankum does not meet the formal requirements as an investigator.*

In Article 70 of Law Number 31 of 1997 concerning Military Courts, it is stipulated that the requirements, appointment and dismissal of investigators and assistant investigators are regulated in the Decree of the Commander in Chief. Based on the provisions of article 70, the Decree of the Commander of the TNI, Number: Perpang/171/XII/2011, dated December 29, 2011 concerning the requirements for the appointment, dismissal of investigators and assistant investigators of the military police, was issued. In the provisions of article 2 it is explained, to be able to be appointed as an Investigator or Assistant Investigator, one must meet the requirements; in letter (d) must pass the investigator course. Then in article 4

⁸Nuryanto A. Daim, 2014, *Hukum Administrasi, Perbandingan Penyelesaian Maladministrasi oleh Ombudsman dan Pengadilan Tata Usaha Negara*, Surabaya : Laksbang Justitia, p. 42

⁹Ridwan HR, 2010, , *Hukum Administrasi Negara*, Edisi Revisi, Rajawali Press, Jakarta, p. 103-104.

¹⁰ Ibid., p. 105.

paragraph (1) before taking up their positions, investigators and assistant investigators are required to take an oath or promise according to their religion.¹¹In the Decree of the Commander of the TNI, it is specifically for Military Police investigators and Military Police Assistant Investigators, not including *Ankum* investigators, but in the practice of investigating Pro Yustisia, the formal requirement that investigators must be sworn in is important, considering that if the investigator is not sworn in, then the investigator is and the results of the investigation are invalid. As a result, the resulting file becomes legally invalid. From a formal juridical point of view, that the investigator must have attended investigator education and must be sworn in as an investigator, the determination of *Ankum* as an investigator contains legal defects and it is not necessary for *Ankum* to be given the authority as an investigator.

4. *Ankum tends defend his men.*

Ankum as an investigator, although in the explanation of Article 69 (1) of Law Number 31 of 1997 concerning Military Courts it is stated that *Ankum* as an investigator in its implementation is delegated to Military Police investigators, but in practice, before the cases of subordinate soldiers are delegated to Military Police investigators, *Ankum* and his staff handled the initial inspection themselves. It often happens that *Ankum* tends to subjectively judge the actions/mistakes of its members, tends to cover up and defend its subordinates, and is even reluctant to delegate its members who commit crimes to Military Police investigators, on the grounds that they will be handled by the internal unit and finally resolved according to the provisions of disciplinary law (not criminal law).). The reason behind the *Ankum* policy is basically *Ankum* is worried that if its members who violate the law are delegated to Military Police investigators, then the unit is considered a bad unit because there are many violations of the law by its members, so that the development of the unit (Binsat) is considered a failure. There are times when *Ankum* deliberately defends/protects its members who are guilty because of certain interests, so that *Ankum* tends to make decisions for violations of the law of its members by means of internal unit resolution through disciplinary legal mechanisms. *Ankum's* decision like this is more of a personal factor, *Ankum* does not understand and realize the importance of law enforcement against his subordinate soldiers and a decision like this is clearly unfair and sets a bad precedent in law enforcement for soldiers. then the unit is considered a bad unit because of the many violations of the law by its members, so that the development of the unit (Binsat) is considered a failure. There are times when *Ankum* deliberately defends/protects its members who are guilty because of certain interests, so that *Ankum* tends to make decisions for violations of the law of its members by means of internal unit resolution through disciplinary legal mechanisms. *Ankum's* decision like this is more of a personal factor, *Ankum* does not understand and realize the importance of law enforcement against his subordinate soldiers and a decision like this is clearly unfair and sets a bad precedent in law enforcement for soldiers. then the unit is considered a bad unit because of the many violations of the law by its members, so that the development of the unit (Binsat) is considered a failure. There are times when

¹¹Decree of the Commander of the Indonesian National Armed Forces, Number: Perpang/171/XII/2011, dated December 29, 2011 concerning Requirements for the Appointment, Dismissal of Investigators and Assistant Investigators of the Military Police.

Ankum deliberately defends/protects its members who are guilty because of certain interests, so that *Ankum* tends to make decisions for violations of the law of its members by means of internal unit resolution through disciplinary legal mechanisms. *Ankum's* decision like this is more of a personal factor, *Ankum* does not understand and realize the importance of law enforcement against his subordinate soldiers and a decision like this is clearly unfair and sets a bad precedent in law enforcement for soldiers. There are times when *Ankum* deliberately defends/protects its members who are guilty because of certain interests, so that *Ankum* tends to make decisions for violations of the law of its members by means of internal unit resolution through disciplinary legal mechanisms. *Ankum's* decision like this is more of a personal factor, *Ankum* does not understand and realize the importance of law enforcement against his subordinate soldiers and a decision like this is clearly unfair and sets a bad precedent in law enforcement for soldiers. There are times when *Ankum* deliberately defends/protects its members who are guilty because of certain interests, so that *Ankum* tends to make decisions for violations of the law of its members by means of internal unit resolution through disciplinary legal mechanisms. *Ankum's* decision like this is more of a personal factor, *Ankum* does not understand and realize the importance of law enforcement against his subordinate soldiers and a decision like this is clearly unfair and sets a bad precedent in law enforcement for soldiers.

5. *The investigation takes a relatively long time.*

As an impact of *Ankum* becoming an investigator starting from the initial process of examining suspects, *Ankum* (because he feels he has the authority as an investigator) conducts examinations of suspects (members of *Ankum's* subordinates) by utilizing the organs owned by his unit, such as intelligence staff or unit provost. The initial internal inspection often takes a relatively long time and there is often a loss of tools/evidence, whether intentional or not, or because *Ankum* does not understand the importance of the tools/evidence. In prominent cases within the TNI, such as cases of drug abuse or TNI soldiers who are indicated to use drugs, then Dansat/*Ankumnya* conduct an investigation in their unit (as a consequence of *Ankum* as an investigator), after some time later it was delegated to Military Police investigators for further investigation. When *Ankum* delegates examination files (BAP results from the investigation by the provost or his unit's intelligence staff) and the suspect to the Military Police investigator, it often happens that the evidence (drugs) is not included, even if there is evidence in the form of narcotic substances, it is handed over to the Military Police investigator, but the amount is small. so it does not meet the requirements to be tested in a forensic laboratory (Labfor). Other evidence, for example in the form of the perpetrator's urine or the perpetrator's blood, has expired (in the sense that the evidence has not been processed for too long), so that when the test is carried out at the laboratory, it is negative. This situation makes it difficult for Military Police investigators to prove the suspect's actions, because the evidence is invalid. In the case of drugs as described above, if the suspect and his evidence were directly handed over to the Military Police investigators, the investigation process would run faster and the processing of the drug evidence/evidence would be fast and avoid the possibility of expiration (meaning; evidence is quickly processed at the Labfor). So that the content of addictive substances and others can still be

read/positive, considering that there are addictive substances/amphibians or others, in about 2 hours it has turned negative).

4. Closing

Based on the results of the analysis described above, the authors can draw conclusions about the obstacles in the investigation process in the current military justice system associated with *Ankum's* authority as an investigator, among others: There is a conflict of authority in the investigation process; There is a conflict of norms in determining the detention of a suspect; *Ankum* does not meet the formal requirements as an investigator; *Ankum* tends to defend his men; The investigation took a relatively long time due to bureaucratic problems.

As a contribution of scientific thought, based on the results of research that has been carried out, suggestions are proposed which are expected to be used as input in discussing the Draft Law on Military Courts, namely the need for dialogue or further discussion on Amendments to Law No. 31 of 1997 regarding Military Courts, especially with regard to the investigation process that places *Ankum* as an investigator in order to obtain legal certainty and evaluation where it is better that *Ankum's* position is more likely to act as a supervisor of the investigation process against his subordinates who are being investigated by Military Police investigators/Prosecutor. This is a manifestation of the implementation of the principle of a commander being responsible for his subordinates. As investigative supervisor,

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