

Criminal Liability of Military Members as Perpetrators of Criminal Acts of Abuse Resulting in Death (Decision Study Number: 83-K/PMT-II/Bdg/AD/VII/2024)

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Abstract. *Assault is a common and easily occurring offense in society. The consequences of such criminal acts are widespread and frequent, with many cases resulting in the victim's death. Therefore, the punishment demanded for perpetrators must truly reflect a sense of justice for the victims. However, what happens if the perpetrator of an assault resulting in death is a member of the military, an institution under the Indonesian military command structure? The purpose of this study is to examine and analyze the legal construction of criminal liability for military personnel as perpetrators of assault resulting in death, and to investigate the judicial considerations made by judges in sentencing military members convicted of such offenses. This research falls under the category of normative or doctrinal legal research. The term "doctrinal" derives from the word "doctrine," meaning legal principles or norms that are adhered to. The construction of criminal liability for military personnel who commit assault resulting in death illustrates the complexity between the general criminal law system and military criminal law. Although military personnel are subject to the military legal system, the principles of legality and criminal liability remain universally applicable. In Decision Number 83-K/PMT.II/BDG/AD/VII/2024, there was a discrepancy between the indictment under Article 351 paragraph (3) of the Criminal Code and the verdict, which only applied Article 351 paragraph (1) of the Criminal Code. This raises concerns of potential violations of the due process of law and the principle of legal certainty. On the other hand, the judge considered juridical aspects, such as the alignment between the indictment, evidence, and witness testimony, to determine the fulfillment of criminal elements. Non-juridical considerations were also taken into account, including the background of the defendant, social impact, and the defendant's cooperative attitude and remorse during trial. Thus, the judge's ruling reflects a combination of legal, moral, and institutional considerations aimed at upholding justice and preserving the integrity of the Indonesian National Armed Forces (TNI).*

Keywords: *Assault; Criminal; Justice; Military; Perpetrators.*

1. Introduction

In the context of violence, Article 89 of the Criminal Code explains that violence can cause unconsciousness or helplessness. In Book II Chapter V of the Criminal Code, Article 170 regulates crimes against public order, including acts that harm the victim and require justice. One of the crimes of violence is assault, regulated in Article 351 of the Criminal Code with sanctions of imprisonment and fines. The provisions for criminal assault are also contained in Article 170 of the Criminal Code, with sanctions of imprisonment of up to seven years, nine years if it results in serious injury, and twelve years if it causes death. These articles emphasize that the crime of assault or violence, whether against people or objects, requires a person to be held accountable for their actions.¹ The trial of TNI soldiers who commit general crimes, both in the jurisdiction of general courts and in military courts in cases where TNI soldiers commit non-military crimes, has been regulated in Article 65 paragraph 2 in conjunction with Article 74 of Law No. 34 of 2004 concerning the TNI. However, its implementation has not been possible because the Military Court Law has not been amended. Article 65 paragraph (2) of the TNI Law states that: "Soldiers are subject to the authority of the military court in cases of violations of military criminal law and are subject to the authority of the general court in cases of violations of general criminal law as regulated by law."²

Then Article 74 of the TNI Law states that:

1. The provisions referred to in Article 65 shall apply at the time the new law on Military Courts is enacted;
2. As long as a new military justice law has not been formed, it remains subject to the provisions of Law Number 31 of 1997 concerning Military Justice.

Abuse is a common and easy thing to happen in society. The consequences of criminal acts of abuse have been numerous and frequent, even resulting in the death of the victim, so the demands of punishment for the perpetrators of the crime must really provide a sense of justice for the victim, the victim's family and even the perpetrator himself in order to provide a lesson and a deterrent effect.³ Abuse is also one of the phenomena that is difficult to eliminate in community life. Various acts of abuse that often occur, such as beatings and physical violence often result in injuries to the victim's body or limbs, sometimes even causing the victim to be physically disabled for life, including death.⁴ But what if a member of the Military commits a crime of persecution that causes death, while we know that members of the military are an institution under the auspices of the Indonesian military. Members of the Military are also citizens who obey discipline, obey their superiors, and are loyal to the Unitary State of the Republic of Indonesia (NKRI) which is based on Pancasila and the 1945

¹Dinur Wikra Ananta, Tofik Yanuar Chandra, and Berlian Marpaung, Law Enforcement against TNI Members Who Perpetrated Criminal Acts of Abuse Resulting in Death, *Multidisciplinary Research Journal*, Vol. 2, No. 3, 2024, p. 195-204

²RoliPebrianto, Criminal Law Policy Regarding the Examination of TNI Soldiers Who Commit General Crimes, *SEIKAT: Journal of Social, Political and Legal Sciences*, Vol. 3, No. 1, 2024, p. 71-80

³I Kadek Agus Irawan, I Nyoman Sujana, and I Ketut Sukadana, Criminal Acts of Assault Resulting in the Death of a Person, *Journal of Legal Analogy*, Vol. 1, No. 3, 2019, p. 342

⁴Laola Subair and Umar Laila, Legal Analysis of the Criminal Act of Assault, *Tociung Journal*, Vol. 2, No. 2, 2022, p. 83-84

Constitution.⁵ From a legal perspective, whether military members have the same status as civilians, this means that as citizens, they must obey all applicable laws, such as criminal law, civil law, criminal procedure, and civil procedure. Civilians are basically responsible for participating in the defense of their country based on article 30 of the 1945 Constitution, in matters relating to the country, it is carried out by the armed forces to defend a country's sovereignty and for the government's obligation to fight domestic and foreign enemies.⁶ It can be said that members of the Military are also subject to both national and international laws and even subject to special laws and only apply to the Indonesian National Army (TNI), and if a soldier violates the rules will be subject to sanctions. According to Pompe, the two criteria for special criminal law are special people, meaning the subject or perpetrator, for example military criminal law and second is a special act. A member of the military and also a military cadet do not have a special position in a legal rule, either in criminal law or civil law, in fact the laws or rules that exist in the military are more than the laws or rules that apply to the general public or other citizens.⁷

In the Criminal Code (KUHP) Article 89 explains that committing violence is a form of action using physical strength or power that is not small in an illegal manner that makes people faint or helpless. Violence committed by someone either together or alone against people or goods is increasing and disturbing the community and law enforcement officers. In Book II Chapter V regulates crimes against public order contained in Articles 153-181 of the Criminal Code. In Article 170 of the Criminal Code it is explained that what can cause damage to an item, serious injury or cause the loss of life of another person, must clearly be viewed as an act that is very detrimental to the victim as a Legal Subject who deserves justice.⁸ As in Decision Number 83-K/PMT-II/BDG/AD/VII/2024 which is the object of this study. This case began with a series of thefts that occurred in Rafada II Housing, Meteseh Village, Boja District, Kendal Regency since the end of 2022. Based on investigations by residents and clues from various witnesses, the perpetrator of the theft pointed to a resident with the initials JAL. On May 30, 2023, residents managed to secure JAL. who was then interrogated and admitted some of his actions. In the process, two active Indonesian Army soldiers, namely Defendant-1 and Defendant-2, committed physical violence against JAL in front of residents. The violence continued when the victim was taken to the Boja Police, where one of the police officers committed abuse that caused serious injuries to the victim. This abuse caused the victim JAL. to die.

2. Research Methods

This research is included in the type of normative or doctrinal legal research. Doctrinal comes from the word "doctrine" which means principle, legal basis, which is obeyed.⁹ Ian Dobinson

⁵Aditia Yusniadi (et. al.), Implementation of Administrative Sanctions Against Military Members Who Violate Military Disciplinary Rules Based on Law Number 25/2014 Concerning Military Disciplinary Law (Study at Kumdam I/Bb), *Iuris Studia: Jurnal Kajian Hukum*, Vol. 5, Issue 2, 2024, p. 504-518

⁶Luh Suryatni, Defending the State as an Manifestation of National Resilience Based on the 1945 Constitution of the Republic of Indonesia, *Scientific Journal of Aerospace Law*, Vol. 10, No. 1, 2019, p. 49-63

⁷Aditya Wiguna Sanjaya, Competence of Money Laundering Crime Investigation Committed by Members of the Indonesian National Army, *Fairness and Justice*, Vol. 14, No. 2, 2016, 154-167

⁸Gandhi Effendi, *Ideas on Criminal Law*, Cipta Adhikarsa, Jakarta, 2014, p. 71

⁹Bryan A Garner, *Black's Law Dictionary* 9th Ed. Thomson West. USA, 2009, p. 553.

and Francis Johns explain that doctrinal legal research is research that asks about the law in a particular field or is known as pure theoretical research (*sui generis*).¹⁰ Paul Chynoweth said that doctrinal legal research is related to the formulation of legal doctrine through analysis based on legal rules. Legal doctrine explains ambiguity in the rules, places them in a logical and coherent structure and connects them with other legal rules. Through relevant legal doctrines, it can be decided which rules can be applied in a particular situation.¹¹

3. Results and Discussion

3.1. Legal Construction of Criminal Liability for Military Members as Perpetrators of Criminal Acts of Assault Resulting in Death

In carrying out their duties and responsibilities as a national defense tool, TNI soldiers are not free from all forms of problems, one of the problems is the occurrence of criminal acts committed by TNI soldiers. Military crimes are acts or actions of a military person that are contrary to the rules of military law that are subject to criminal sanctions, one of the military crimes that often occurs in the TNI environment is acts of abuse.

Legal Consequences are a result or incident that occurs due to a legal act committed by a legal subject and is regulated by law. Legal acts committed by the perpetrator that cause a legal consequence where the legal consequence is regulated in the Criminal Code, is an obligation for the perpetrator to accept sanctions for his actions that harm other parties.¹² Basically, a criminal act exists because the principle of legality applies, while the perpetrator who commits a crime can be punished is the principle of guilt to carry out responsibility because of the criminal act that has been committed by someone and in essence criminal responsibility is a solution created by criminal law as a form of rejection of an act that is stated to be able to disrupt stability in society.¹³

Types of criminal liability. Liability is an obligation to provide compensation for actions committed to others that violate applicable legal norms. Compensation is an act of giving or replacing something as a form of accountability for actions that have caused a loss.

The basis of responsibility for a criminal act is a mistake, in the narrow sense it can be in the form of intent (*Dolus*) and negligence (*Opzet*). The elements of criminal responsibility are subjective elements, namely the existence of an error in the form of intent and negligence, so that the unlawful act can be accounted for. The objective element is the existence of an act that is contrary to the law or in other words, there must be an element of unlawfulness. The objective elements are the act, the unlawful nature, the reason for the elimination of the criminal penalty, namely included in the reasons for forgiveness contained in the Criminal

¹⁰Ian Dobinson & Francis Johns, *Qualitative Legal Research*, In *Research Methods For Law*, Edinburgh University Press, Edinburgh, 2007, p. 18-19.

¹¹Amrit Kharel, *Doctrinal Legal Research*, Securities Board of Nepal Silver Jubilee Publication, Lalipur, Vol. 13, no. 11, 2018, p. 237-252.

¹²Hanafi Amrani, and Mahrus Ali, 2015, *Criminal Responsibility System: Development and Implementation*, Jakarta: Rajawali Press. Page 21

¹³Kornelia Melansari D Lewokeda, *Criminal Accountability for Criminal Acts Related to the Granting of Delegation of Authority*, *Mimbar Keadilan*, Vol 14 No 28, August-January 2019, P 186.

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Code, namely Relative coercive power (Overmacht), Article 48 of the Criminal Code, Defense of excessive force (Noodweer), Article 49 Paragraph 2 of the Criminal Code. An invalid office order, but when carrying out the act the perpetrator. Thinking it is valid, Article 52 Paragraph (2) of the Criminal Code.

In this case, the imposition of punishment for TNI members who commit criminal acts of assault is in the Criminal Code (KUHP) which is explained in Article 10 of the Criminal Code and it is also explained in the provisions on the imposition of sanctions between the Criminal Code and the Criminal Code. There are differences which can be used as a comparison in the imposition of sanctions on TNI members who commit criminal acts.

In the imposition of legal sanctions there are differences between the Criminal Code and the Military Criminal Code. namely the imposition of the main sentence or the absence of additional sentences. In this case, additional sentences also cannot be imposed without the main sentence based on the Military Criminal Code. In imposing sentences, judges have the authority to consider a decision. However, this must also be in accordance with the interests reviewed from a military criminal perspective. According to Sudarto, the Judge determines the imposition of criminal sanctions, with its limits, and then its implementation will be handed over to the correctional institution.¹⁴

A TNI soldier who is proven to have committed a crime will be held criminally responsible.¹⁵ Criminal liability is a consequence that is given and must be carried out by the accused who commits a criminal act or an unlawful act. In this case, the punishment or sanction can be in the form of dismissal, demotion or revocation of certain rights. This can be seen in Article 6 to Article 31 of Chapter II Book I of the Military Code.¹⁶

Military punishment aims for military education and deterrence of perpetrators of criminal acts, because in general criminal acts are considered to disturb the balance of society. Imposing criminal penalties in criminal acts is considered necessary as a last resort for perpetrators. Those who commit criminal acts of persecution against the community can be punished if their actions have fulfilled the elements of criminal acts of persecution as regulated in the Criminal Code in Article 354 which is formulated in the Criminal Code, which is a serious criminal act of persecution as contained in Article 354 of the Criminal Code which is contained in paragraphs (1), (2), namely:

1. Anyone who intentionally seriously injures another person is threatened, for committing serious assault, with a maximum prison sentence of eight years.
2. If the act results in death, the guilty party will be punished with a maximum prison sentence of ten years.

¹⁴Syaiful Bahkri, The Function of Correctional Institutions in Resocializing Convicts in the Criminal Justice System, *AlQisth Vol. No.2*, 2017, P. 121.

¹⁵Sulistiriyanto, Haryo. "Criminal Liability of TNI Military Members Who Commit the Crime of Desertion." *Perspective 16*, No. 2 (2011): p. 82-94.

¹⁶Fadhilurrahman, Rafiqi, Arie Kartika, Investigation Process in Resolving Domestic Violence Crimes Committed by the Indonesian Army, *Juncto: Scientific Journal of Law*, 1(1), 2019, p. 60

The legal subject is a TNI member who must obey the legal norms that apply to him as a form of criminal responsibility for the crime of assault. In military crimes regulated in the Military Criminal Code, it is a special law, becoming a specialty because it is to differentiate it from the general criminal law that applies to everyone so that the application of this criminal law is known in the legal principle (*Lex Specialist Derogat Legi Generale*) which means that special rules override general rules. Military Criminal Law is "Military who refuse or intentionally disobey a service order, or with all exceed such orders, are threatened for intentional disobedience, with a maximum prison sentence of two years and four months". However, in the provisions used for TNI members who commit crimes as long as they are categorized as general crimes, then using the rules contained in the Criminal Code (KUHP) but still tried in a Military court. In this case, TNI members who commit serious assault on the community can be subject to Article 354 paragraph (1), paragraph (2) which states as follows:

1. Anyone who intentionally seriously injures another person is subject to criminal penalties for committing serious assault, with a maximum prison sentence of eight years.
2. If the act results in death, the guilty party will be subject to a maximum prison sentence of ten years.

Abuse means doing something with the intention (*oogmerk*) to cause pain, while according to article 351 paragraph 4 of the Criminal Code (KUHP), abuse is equated with intentionally harming someone's health. The crime of abuse is one of the phenomena that is difficult to eliminate, various acts of abuse that often occur such as beatings and physical violence often result in serious injuries to parts of the victim's body or limbs, and can even cause the victim to suffer physical disabilities for life, including death.

The forms of criminal responsibility for TNI soldiers who commit crimes can be resolved according to disciplinary sanctions or the imposition of criminal sanctions through Military Courts.¹⁷ that is:

1. Military Disciplinary Sanctions

Military disciplinary sanctions are regulated in Law Number 25 of 2014 concerning Military Disciplinary Law in Article 9. These military disciplinary sanctions include:

- a. Reprimand
- b. Minor disciplinary detention for a maximum of 14 (fourteen) days
- c. Severe disciplinary detention for a maximum of 21 (twenty one) days

Furthermore, Article 10 of Law Number 25 of 2014 concerning Military Disciplinary Law explains that the imposition of military disciplinary punishment as referred to in Article 9 is followed by administrative sanctions in accordance with the provisions of laws and regulations.

2. Military Criminal Sanctions

Military Criminal Sanctions serve to prevent soldiers from repeating the criminal acts they have committed. Military Criminal Law regulates the types of punishments that are appropriate in Article 6 of the Military Criminal Code, namely:

- a. Main Crime

¹⁷Waworundeng, Rinaldo F. "Criminal Responsibility for TNI (Indonesian National Army) Members Who Commit Desertion." *LEX ET SOCIETATIS* 4, no. 2 (2016). P. 54

1) Death Penalty

The death penalty for military personnel is a punishment in the form of forced deprivation of life carried out by a military squad unit. According to Article 255 of the Military Criminal Procedure Code, the execution of the death penalty is carried out according to the provisions of applicable laws and not in public. If the convict sentenced to death is a member of the TNI, then during the execution of the death penalty he will be dressed in daily uniform without rank and honors.

2) Prison Sentence

Imprisonment is a form of criminal sanction in the form of restrictions on freedom of movement carried out by locking or attaching the convict in a correctional institution by requiring him to obey all the rules and regulations in force in the correctional institution.

3) Imprisonment

Imprisonment is only imposed on minor criminal cases such as desertion, which is leaving duty without permission, disciplinary violations, which is violating regulations set by military institutions, and general crimes, which is committing crimes that are also regulated in civil law. Imprisonment is only threatened with a maximum sentence of 3 months to be completed with disciplinary violations.

4) Cover-up Crime

Covered Criminal is a criminal offense that can be replaced by imprisonment in this case soldiers who commit crimes or violations are threatened with imprisonment because they are motivated by respectable intentions. However, this depends on the judge, if in the judge's opinion the act is more deserving of imprisonment, then the judge can impose a prison sentence. The existence of a closed sentence is intended for crimes of a political nature so that people who commit political crimes will be distinguished from ordinary crimes.

b. Additional Criminal Penalties

Additional Criminal Punishment is a criminal sanction that is additional to the principal punishment that has been imposed, additional punishment cannot stand alone except in certain cases. Additional punishment is very specific so that its criminal nature is often lost and its preventive nature is prominent. Additional punishment is also often included in the possibility of receiving clemency.

1. Dismissal from Military Service means a military criminal law sanction resulting in the permanent dismissal of a military serviceman from military service as a result of a very serious violation of criminal law.
2. Demotion based on interview in the military environment there is no such thing as demotion, but there is a delay or postponement of the time in the promotion that has been determined.
3. Revocation of Rights, which means this military criminal law sanction involves the revocation of special rights held by military personnel, such as the right to wear a uniform, the right to bear arms, or the right to membership in a military organization.

Example of a case in the decision Decision Number 83-K / PMT.II / BDG / AD / VII / 2024 with defendant IH, Praka, 3114051489XXXX. Stating that the Defendants above, namely Defendant-1 IN, Praka NRP 3114051489XXXX and Defendant-2 HA, Praka NRP 3114051497XXXX, were proven legally and convincingly guilty of committing the crime of "Assault committed together.

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Sentencing the Defendants therefore with: Defendant-1: Imprisonment for 4 (four) months minus the temporary detention period that has been served. Ordering that the said sentence need not be served unless later there is a Judge's decision because the Convict committed a criminal act or violation of disciplinary law in accordance with the provisions of Law Number 25 of 2014 concerning Military Disciplinary Law or because he did not fulfill a condition determined before the end of the 6 (six) month probation period.

Defendant-2: Imprisonment for 4 (four) months minus the temporary detention period that has been served. Ordered that the sentence need not be served unless later there is a Judge's decision because the Convict committed a criminal act or violation of disciplinary law in accordance with the provisions of Law Number 25 of 2014 concerning Military Disciplinary Law or because he did not meet a specified requirement. before the end of the 6 (six) month probationary period.

Considering, that regarding the appeal memorandum submitted, the Military Auditor, Legal Advisor to the Defendants in his counter appeal memorandum in essence stated that he agreed with the Decision of the First Instance Court which had handed down a conditional sentence to the Defendants and rejected the objection from the Military Auditor who considered the sentence imposed on the Defendants by the First Instance Court was inappropriate and caused injustice because the Military Auditor's objection was not supported by legal facts and evidence that strengthened the argument. In fact, the Military Auditor in the trial was unable to prove the Indictment that was charged to the Defendants, namely "Assault resulting in death in accordance with Article 351 paragraph (3) of the Criminal Code, so that the Defendants should be acquitted of all charges, this was strengthened by the request submitted by the Military Auditor to the Panel of Appellate Judges in his appeal memorandum which requested the Panel of Appellate Judges to cancel the Decision of the First Instance Court and try the Defendants themselves by declaring the Defendants, namely Defendant-1 IN, Praka NRP 3114051489XXXX and Defendant-2 HA, Praka NRP 3114051497XXXX was proven legally and convincingly guilty of committing the crime of "Assault committed together" and sentenced the Defendants to imprisonment for 7 (seven) months, however, the Defendants' Legal Counsel at the end of their counter-appeal memorandum requested the Panel of Judges at the Appellate Level to formally accept the Counter-Appeal Memorandum from the Appellants/Defendants on behalf of, Ilham Nugraha Praka NRP 3114051489XXXX and Husni Aditya Praka NRP 3114051497XXXX Ta Lanumad A.Yani Puspenerbad; and Reject the Appeal Memorandum from the Appellant Military Auditor II - 09 Semarang Number: NUMBER: 03 1 V112024 dated June 24, 2024; and Revise the Decision of the Military Court 11-10 Semarang Military Court 11-10 Semarang Number 27-K / PM 11-10/AD/III/2024 dated June 11, 2024. Or if the High Military Panel of Judges has a different opinion, we request the fairest decision (Ex aequo et bono).

That before the Panel of Judges at the Appellate Level examines the main case in the decision being appealed, it is necessary to first provide an opinion on the Decision of the Military Court II-10 Semarang Number 27-K/PM II-10/AD/III/2024 dated June 11, 2024 which has decided the aquo case is not in accordance with the Indictment where the Military Prosecutor charged the Defendants with committing a crime under Article 351 Paragraph (3) of the Criminal Code

in conjunction with Article 55 Paragraph 1 point 1 of the Criminal Code according to Indictment Number Sdak/17/II/2024 dated February 12, 2024 and the Military Court decided the Defendants' Case with Article 351 Paragraph (1) of the Criminal Code in conjunction with Article 55 Paragraph 1 point 1 of the Criminal Code as follows:

1. That in accordance with the provisions of Article 188 paragraph (2) of Law Number 31 of 1997 concerning Military Justice, the Panel of Judges in deliberation in making a decision must be based on the indictment and everything proven during the trial examination.
2. That according to the legal principle of the Supreme Court of the Republic of Indonesia Cassation Decision Number 103 K/Mil/2015 dated June 17, 2015, which is one of the decisions with the status of Landmark Decisions in 2016, "The indictment is the basis for examination for judges in trying a criminal case, so that judges may not decide on cases that are not charged by the Public Prosecutor (Military Prosecutor).

In the case of Decision Number 83-K/PMT.II/BDG/AD/VII/2024 involving two defendants from the military, namely Praka IN and Praka HA, it can be seen that the appeal process filed by the Military Auditor was a response to dissatisfaction with the decision of the first instance court which was considered not to reflect a sense of justice, both in terms of evidence and sentencing. This appeal is a form of judicial control over the decision which was considered to deviate from the charges that had been prepared and submitted by the Military Auditor. In this case, the Military Auditor charged the defendants with Article 351 paragraph (3) of the Criminal Code, namely assault resulting in death. However, the decision of the first instance court only found the defendants guilty of ordinary assault as per Article 351 paragraph (1) of the Criminal Code.

The discrepancy between the indictment and the verdict is a serious problem in criminal procedure law because it can cause legal uncertainty and injustice for the parties involved. Based on the principle of legality and the principle of due process of law, a defendant can only be sentenced for an act that is legally charged and proven in court. In this context, the judge should decide based on the charges filed by the prosecutor, not based on an interpretation that is not supported by formal changes to the charges during the trial. This is the main basis for the Military Prosecutor's objection.

The Panel of Judges at the First Instance Military Court decided that the element of abuse resulting in death was not proven,¹⁸ thus lowering the classification of the crime to ordinary assault. This reduction has an impact on the light or conditional sentence imposed. In fact, according to the Military Auditor, the facts revealed during the trial have sufficiently proven that the defendants' actions caused death, so they should have been given a heavier sentence. Therefore, an appeal was filed to revise the verdict which was considered inconsistent with the proven legal reality.

The Military Auditor's concerns in this case are rooted in the importance of upholding justice. If a defendant commits an assault that results in death, but is only given a light sentence of

¹⁸Aziz, Noor M. "Legal Analysis of the Criminal Act of Allowing a Superior to Commit a Crime to a Subordinate (Case Study of Military Court Decision I-03 Number 48-K/PM-I-03/AD/XI/2019): Military Law Journal/STHM/Vol. 13/No. 2/August 2021." MILITARY LAW JOURNAL 13, no. 2 (2021): p. 59-72.

probation, then this can weaken the authority of the law and harm the victim's family. In the criminal justice system, justice is not only intended for the perpetrator, but must also be felt by the victim and the general public who want proportional law enforcement.

In his appeal memorandum, the Military Prosecutor stated that the first instance judge's decision was not in line with the legal facts presented in the trial. In other words, the Prosecutor's objection was not solely based on subjective dissatisfaction, but rather because there was a discrepancy between the evidence and the verdict. This was then reinforced by a reference to the decision of the Supreme Court of the Republic of Indonesia Number 103 K/Mil/2015 which has become a landmark decision, which states that judges are required to decide based on the indictment.

In the criminal procedure system, the indictment is the basis for examining a case and becomes a legal guideline for judges in making a decision. Therefore, if the panel of judges deviates from the indictment without formal changes, then it can be said that the decision is legally flawed. Therefore, the filing of an appeal by the Military Prosecutor is a form of correction of the violation of this principle, with the hope that at the appeal level, the case will be retried fairly and consistently with the valid indictment.

On the other hand, the defendants' legal counsel argued that the first instance decision was correct, even requesting that the Military Auditor's appeal be rejected. This shows a sharp difference in interpretation between the prosecutor and the defense regarding the legal construction of the facts. However, the task of the appellate court is to reassess the facts and laws that have been considered at the first instance and to ensure that there is no violation of the principles of legality and legal certainty in the trial process.

It should be noted that the sentences imposed on the defendants are conditional (probation), namely for 4 months with a probationary period of 6 months. This means that the defendants do not need to serve a prison sentence unless they commit a crime or disciplinary violation during the probationary period. The Military Auditor considered this too light and did not provide a deterrent effect, considering that the initial charge was assault resulting in death. The imbalance between the consequences of the act and the severity of the sanctions creates an imbalance in the military criminal justice system.

Finally, although the first instance judge has discretionary authority in assessing evidence and imposing a sentence, such authority must not conflict with the legal limitations specified in the indictment. Therefore, the appeal in this case is a legal tool to ensure that the criminal sentencing process is carried out in accordance with the principles of a fair trial, namely that each defendant is tried not only on the basis of the judge's opinion, but also on the basis of official charges and valid evidence proven in court.

Taking all of these things into consideration, it is very justified that the appeal filed by the Military Auditor is not merely due to dissatisfaction, but because there is an indication that the first instance judge's decision does not reflect the principles of justice and legality in the military legal system. This appeal is an important test for the appellate court to reconstruct the legal truth that may have been set aside in the previous decision.

3.2. Basic Considerations of Judges in Sentencing Military Members as Perpetrators of Criminal Acts of Abuse Resulting in Death

The criminal sanction for assault by one person against another can be directed at civilians or members of the Indonesian National Army. Indonesia is a country of law that has the Criminal Code (KUHP) as the basis for its implementation. There are many criminal acts listed in the Criminal Code, one of which is assault. The discussion of the law on assault is explained in Article 351 Paragraph 1 of Law Number 1 of 1946 concerning Criminal Law Regulations.

The judge's decision is an important and necessary aspect to resolve criminal cases, so it can be stated that the judge's decision on the one hand is useful for the accused to obtain legal certainty about his status and at the same time can prepare the next steps regarding the decision in the sense that it can be in the form of accepting the decision or taking legal action and so on.¹⁹

In practice, even though it has been based on the nature of a good judge, the framework of thinking/acting and through the four points of question above, the judge is apparently an ordinary human being who is not free from negligence, mistakes/errors (*rechterlijk dwaling*), a sense of routine, carelessness, and mistakes. Judicial practice shows that there are certain aspects that are overlooked and often not considered by judges in making decisions.²⁰

According to Sudikno Mertokusumo, a judge's decision is a statement made by a judge as a state official who is authorized to do so in court and aims to end or resolve a case.²¹ In principle, the judge only accepts every case submitted to him to be resolved and this means that there has been a criminal incident or a criminal act that has arisen, then the criminal incident is brought before the judge so that the judge determines the law that applies to the criminal incident.

The criminal event submitted by the parties must first be confirmed by the judge. According to Sudikno Mertokusumo, an event or incident means seeing, acknowledging or confirming that the criminal event submitted has occurred, but to reach its confirmation, it must have certainty. In its confirmation, the judge does not merely make superficial or rash assumptions or conclusions. The judge must use means or tools to ensure the event in question.

The phrase Based on Belief in the Almighty God, is a symbol that judges in upholding law and justice, are tasked with representing the Almighty God. In addition, the phrase can be interpreted as a guarantee that judges in resolving cases will work honestly, objectively and fairly, because they act in the name of God in making their decisions. If not, then judges who do not act honestly, objectively and fairly will later be held accountable before the Almighty God. Court decisions, especially in Military Courts, are judges' statements pronounced in open court for the public, in order to resolve or end a case. The decision is rendered after the case examination is complete, and the parties to the case have nothing more to say.

¹⁹Ahmad Rifai, *Discovery of Law by Judges in the Perspective of Progressive Law*, Sinar Grafika. Jakarta 2010, page 103

²⁰Lilik Mulyadi, *Judicial Power*, Bina Ilmu, Surabaya, 2007, p. 120

²¹Sudikno Mertokusumo, *The Discovery of Law: An Introduction*, Liberty.Yogyakarta, 1996, p. 167

In order to provide a court decision that truly fulfills the sense of justice, the judge who carries out the trial. In essence, must understand and know the actual facts of the case, and the legal regulations relating to the case to be applied, both regarding the legal provisions contained in the legislation. However, in reality, judges do not always have the awareness to seriously uphold the law and justice. Therefore, it is not uncommon for judges' decisions in criminal cases to be seen as not reflecting the values of justice.

Judge's considerations²² is a judge's decision based on material facts that are the focus because the judge and the parties will seek the appropriate legal basis to be applied to the case at hand.

1. Legal Considerations²³

Legal considerations are the judge's considerations based on factors revealed in the trial and have been determined by law as things that must be included in the verdict, including the Military Prosecutor's indictment, witness statements, defendant's statements and evidence. Considering, that the defendants were brought to trial by the Military Prosecutor with indictment letter Number Sadk/15/K/AL/III-14/VIII/2023, in essence the Defendants were proven legally and convincingly guilty of "Jointly committing assault resulting in serious injury" as regulated and threatened with a criminal offense under Article 351 paragraph (2) Jo Article 55 Paragraph (1) ke-1 of the Criminal Code.

Considering that in order to prove the truth of the indictment, the trial has been supplemented with witness statements that are sworn by Witnesses 1-6, the main points of which are as stated in the trial minutes. Considering that furthermore, Defendants 1, 2 and 3, at the trial provided statements that were in essence as stated in the trial minutes. Considering that based on the witnesses, evidence, statements of the defendants connected to each other, the following facts were obtained: That it is true that the defendants have committed the crime of "Assault resulting in serious injury committed together". Considering that based on these facts, the defendants can be blamed for committing the crime as charged against them, violating Article 351 paragraph (2) in conjunction with Article 55 paragraph (1) ke-1 of the Criminal Code, the elements of which are as follows:

a) First Element: "Whoever"

What is meant by "Whoever" is a legal subject, while what is meant by a legal subject in the Criminal Code is a person or legal entity with reference to the provisions of Article 2 to Article 9 of the Criminal Code, what is meant by the definition of "Whoever" as a supporter of rights or legal subject is a person/human being (Natuurlijk Persoon) or a legal entity (Recht Persoon). Therefore, from the formulation of the Article, all Indonesian citizens and foreign citizens who

²²Juanda, Nur Fadillah Juanda Putri, Mulyati Pawennei, and Muh Rinaldy Bima. "Law Enforcement Against Domestic Violence (KDRT) Crimes Committed by Members of the Indonesian National Armed Forces (TNI)." *Journal of Lex Generalis (JLG)* 3, No. 5 (2022): p. 1208-1219.

²³Rizki, Aghisni Kasrota. "Basic Considerations of Military Court Judges in Handing Down Verdicts Against the TNI (Indonesian National Army) as Perpetrators of Immoral Acts (Study of Verdict No. 28-K/Pm. li-10/Ad/iv/2013 at the Military Court II-10 Semarang)." *Unnes Law Journal* 4, no. 1 (2015). P. 111

meet the requirements stipulated in Article 2 to Article 9 of the Criminal Code, which in this case includes members of the armed forces (Members of the Indonesian National Army).

b) Second Element: "Intentionally committing abuse" That what is meant by "Intentionally" or the intention of an act of abuse or assumption is not an error of interpretation, but intention (*dolus*). Viewed from the level (gradation) of "intention" is divided into 3 (three), namely:

1. *Dolus Directus* namely Intention as a goal (*oogmerk*)
2. *No-nonsense, no-nonsense existencen* namely, intention with definite awareness or necessity which is the basis of the perpetrator/defendant regarding certain lessons and consequences.
3. *Dolus Eventualis* namely Intention with awareness of the possibility (*Voorwaardelijk opzet*) or also called conditional intention which is the basis for the extent of the knowledge or awareness of the perpetrator/defendant about the lesson or forbidden consequences (along with the lesson or consequences) That "causing pain or injury to others" is the goal or will of the perpetrator/defendant. The will or purpose must be concluded from the nature of the act, namely an act that can cause pain or unpleasant feelings to others. consequences) that may occur.

c) Third Element: "Causing serious injury"

That causing pain or injury to/to another person is the purpose or will of the perpetrator/Defendant. This will or purpose must be concluded from the nature of the act that can cause pain or discomfort to another person. The definition of "injury" is damage to skin tissue or organ tissue of the body in part or in whole as a result of the actions of another person, in this case the Defendant; and That what is meant by "to another person" means that the person suffering the pain or injury is another person, not the Defendant, and in order to be included in this element, the victim must become ill or be hindered in carrying out his/her daily work or position.

d) Fourth Element: "What is done together"

That based on the provisions of Article 55 Paragraph (1) 1 of the Criminal Code, those who are classified as perpetrators (*dader*) are those who carry out a criminal act themselves (*plegen*), those who order other people to carry out a criminal act (*doen plegen*), those who participate (jointly) in carrying out a criminal act (*medeplegen*) and those who intentionally encourage (motivate) other people to carry out a criminal act (*uitlokking*). Considering that because the defendants were found guilty and sentenced to a criminal penalty, the defendants must also be ordered to pay court costs in the amount stated in the verdict.

4. Conclusion

The legal construction of criminal liability for military personnel who commit acts of assault, especially those resulting in death, reflects the complexity of the application of law between the general criminal law system and military criminal law. Although TNI members are subject to the military law system, the principles of legality and criminal liability remain universally applicable, so that every criminal act, including serious assault, must be legally proven in court

and decided according to the indictment. In the case of Decision Number 83-K/PMT.II/BDG/AD/VII/2024, there was a deviation between the charge of assault resulting in death as per Article 351 paragraph (3) of the Criminal Code and the verdict which actually charged the defendant only with ordinary assault as per Article 351 paragraph (1) of the Criminal Code, with a conditional light sentence. This raises serious problems related to the incompatibility of the charges and the verdict, which is contrary to the principle of due process of law and the principle of legal certainty. The appeal filed by the Military Auditor is not merely an expression of dissatisfaction, but is a correction of potential legal defects in the first instance decision, to ensure that the sentencing is carried out fairly, proportionally, and in accordance with the applicable legal framework, including protection of substantive justice values and the rights of victims.

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