

The Criminal Policy in Efforts to Overcome Crimes Perpetrated by the Indonesian National Army

Yulianto Timang^{*)}, Widayati Widayati^{**)} and Nanang Sri Darmadi^{***)}

^{*)} Police Academy Officer, E-mail: opsnalmerahputih@gmail.com

^{** & ***)} Faculty of Law, Universitas Islam Sultan Agung, Semarang

Abstract.

This study aims to find out and analyze and seek answers to criminal policies in an effort to tackle crimes committed by the Indonesian National Armed Forces and to find out and analyze and seek answers to policies for regulating criminal law enforcement against TNI soldiers in the future. The results and discussion of the research show that Criminal Policy in Efforts to Overcome Crimes Committed by the Indonesian National Armed Forces is subject to wetboek van Militair Strafrecht (WvMs)/Stb.1934 Number 167 in conjunction with UURI Number 39 of 1947, which was translated into the Military Criminal Code (KUHPM). Its enforcement is the same as in law in Indonesia, if the Criminal Procedure Code is a material criminal law, then Act No. 6 of 1950 in conjunction with Act No. 1 Drt of 1958 concerning Military Criminal Procedure Code which was later revised and set forth in Chapter IV of Article 264 of the Law. Law on Military Courts, while Act No. 31 of 1997 applies as a formal criminal law, and the realization of the revision of Act No. 31 of 1997 concerning Military Courts. Criminal Law Enforcement Against Indonesian National Army Soldiers in the Future.
Keywords: Army; Criminal; National; Policy.

1. Introduction

The Republic of Indonesia is a state of law or what we know as *Rechtsstaat*, which is a state based on law, which has the consequence that every citizen must submit to and comply with existing laws, including state officials, state civil servants, bureaucrats, including members. The Indonesian National Army, abbreviated as TNI. The TNI has a role and is regulated in Act No. 34 of 2004. The TNI plays a role as a state instrument in the field of defense which in carrying out its duties is based on state political policies and decisions and functions as a means of state defense from various forms of military and armed threats from outside and from within the country.¹ As a state of law, of course every citizen who commits a violation or criminal act must receive the same treatment without discriminating against the status or position of the person concerned, whether he is an official or a member of the TNI or POLRI or not. This means that if there are Indonesian citizens who violate the law, then the application of sanctions to those who violate is the same, but the difference in law enforcement against them is the Legislation and Procedural Law applied to the person concerned.

The TNI plays a role as a state instrument in the defense sector which in carrying out its duties is based on state political policies and decisions. As a state apparatus, the TNI is obliged to carry out the task of upholding state sovereignty, defending the territorial integrity of the Unitary State of the Republic of Indonesia

¹Chalim, Munsharif Abdul, & Faisal Farhan. (2015). (TNI) Di Dalam Rancangan Undang-undang Keamanan Nasional Di Tinjau Dari Perspektif Politik Hukum Di Indonesia. *Jurnal Pembaharuan Hukum* 2(1), 102-109, <http://dx.doi.org/10.26532/jph.v2i1.1419>

based on Pancasila and the 1945 Constitution of the Republic of Indonesia which is abbreviated as UUD's 1945, and protecting the entire nation and all of Indonesia's bloodshed from threats and disturbances to the integrity of the nation and state². For those with Military or TNI status, the Criminal Procedure Code applied to those who commit criminal acts is the Military Procedure Code (KUHAPM), as regulated in Act No. 31 of 1997 concerning Military Courts. As for those who are not from the TNI group, the Criminal Procedure Code used and applied is the Criminal Procedure Code (KUHAP) as regulated in Act No. 8 of 1981.

Article 9 of Act No. 31 of 1997 concerning Military Courts stipulates that TNI soldiers are subject to the authority of military courts. The military justice law was formed on the basis of delegation from the mandate of Article 24 paragraph 2 of the 1945 Law (before the amendment) and is a formal law that functions to enforce military criminal law, which is materially contained in Act No. 39 of 1947 concerning the Criminal Code.³ In the Military Criminal Procedure Code, the Prosecutor who acts as the Public Prosecutor is known as the Military Prosecutor, while in general criminal acts, the Public Prosecutor acts as a Public Prosecutor. In the Criminal Procedure Code, the authority to conduct preliminary examinations rests with the investigators of the State Police. Meanwhile, in the military, according to Article 69 of Act No. 31 of 1997 concerning Military Courts, it is explained that investigators are:

- The superior who has the right to punish (ANKUM)
- Military police; and
- prosecutor

El Fateh Abel Salam, quoted from Zulkarnaen.SH.,MH argues that there is a dichotomy regarding the nature of the case. Social scientists are divided on the issue of whether criminal cases should be viewed as rational, constructive, and socially functioning, so that the case must be resolved based on various existing mechanisms, or the case is something irrational, pathological, and not functioning socially, so that the solution does not affect the social system, because the case is individual⁴. Regardless of the opinion of whether a criminal case in society can be seen as rational or not, that a case in whatever form its name, whether the perpetrator is a civilian or an individual TNI soldier (military member) must be resolved through an honest and fair judicial process. It doesn't stop there during the Pandemic and during the recent PPKM policy which became the headline news for mass media and electronic news. An individual member of the TNI with the initials FS who is suspected of being involved in the escape of the celebgram Rachel Vennya from quarantine at the Jakarta Athlete's Wisma threatened with disciplinary or criminal punishment. Party Kodam Jaya currently conducting investigation⁵. If there is a violation of a criminal act by a TNI soldier, the

²Markas Besar Tentara Nasional Indonesia, (2005), *Himpunan Peraturan Perundang-Undangan Bagi Prajurit TNI*, Babinkum TNI, Jakarta.p.440.

³S. Supriyatna. 2014. Memahami Urgensi Peradilan Militer dari Sudut Kepentingan Pertahanan dan Keamanan Negara. *Jurnal Yuridis*, Vol.1, No.2, 183-202.

⁴Zulkarnain, (2002), *Praktik Peradilan Pidana Panduan Praktis Kemahiran Hukum Acara Pidana*, Laboratorium Hukum Universitas Widyagama, Malang. p.2

⁵<https://www.republika.co.id/berita/r10dh1409/oknum-tni-bantu-rachel-vennya-kabur-terancam-pidana>, accessed on October 19, 2021, at 22.00wib

settlement is through a legal process referring to Act No. 31 of 1997 concerning Military Courts.⁶ Article 8 paragraph (1) which reads: "The court within the military court is the implementing agency of judicial power within the Armed Forces".

Military Courts are in accordance with what criminal acts have been violated by each TNI Soldier, even though if we look at the provisions of Article 65 Paragraph (2). Act No. 34 of 2004 concerning the Indonesian National Armed Forces which reads: "Soldiers are subject to the power of military courts in terms of violations of military criminal law and are subject to the power of general courts in terms of violations of general criminal law regulated by law". However, general justice has not materialized for TNI soldiers who have committed general crimes, as if TNI soldiers are above the law and also as if the golden child is number one in this republic, this is also inconsistent if we remember one of the principles in the law, namely Equality Before The Law, namely equality before or before the law for all people. A criminal law expert at Diponegoro University Semarang, Nyoman Sarikat Putrajaya, assessed that the legal process for TNI personnel who committed general criminal offenses in the general court was still "gray". Whereas, Act No. 34 of 2004 regarding the TNI, it is possible if there are individuals who commit general acts to be tried in the general court, just like the rest of the general public.⁷ To reduce this problem, legal reform must be directed to the development of the legal system, which includes the legal structure, legal substance and legal culture. The development of the legal structure in this case the legal institution must be directed to the formation of a legal institution, namely an independent judiciary (Independence of Judiciary).⁸

Responding to these problems, the researchers wanted to analyze, research, and find answers to the problems so that the researchers raised the title "Criminal Policy in Efforts to Overcome Crimes Committed by the Indonesian National Army". This study aims to find out and analyze and seek answers to criminal policies in an effort to tackle crimes committed by the Indonesian National Armed Forces and to find out and analyze and seek answers to policies for regulating criminal law enforcement against TNI soldiers in the future.

2. Research Methods

This study uses a normative juridical research method. The researcher uses normative juridical method because the target of this research is law or norm. The norms in question are regarding the principles, rules and regulations of the legislation. In this study, the author uses normative legal research with the nature of the research, research approach, types of data, data collection techniques and data analysis. The approach in normative research is the basis or initial rejection of researchers in taking a point of view and thinking to conduct analysis. This

⁶Faisal Salam, (2006), *Hukum Acara Pidana Militer*, Mandar Maju, Bandung, p.31

⁷ <https://www.hukumonline.com/berita/baca/lt4fa8f297c8db5/penidanaan-umum-tni-dinilai-masih-samar/>, accessed on 19 October 2021

⁸ Chandra, R. (2020). Penyelesaian Kasus Hukum Di Lingkungan Pengadilan Militer Dalam Perkara Tindak Pidana Penipuan Yang Dilakukan Oleh Anggota TNI. *Pamulang Law Review*, 1(2), 175-186. doi:<http://dx.doi.org/10.32493/palrev.v1i2.5328>

research was conducted using a statutory research approach, a concept research approach and researchers using a case approach.

3. Results and Discussion

3.1. Military Criminal Law and Military Criminal Procedure Code for Members of the Indonesian National Armed Forces

Military criminal law is given a brief and simple understanding as a criminal law that applies specifically to members of the military. Military members in Indonesia are also referred to as TNI Soldiers, in Article 1 point 42 of Act No. 31 of 1997 that soldiers and the Armed Forces of the Republic of Indonesia hereinafter referred to as Soldier is a citizen who meets the requirements specified in the provisions of the legislation and is appointed by an authorized official to devote himself to the defense of the State by carrying a weapon, being willing to sacrifice his body and soul and participating in national development and subject to military law. Thus Article 1 point 42 of Act No. 31 of 1997 basically regulates people who are referred to as members of the military, which according to Act No. 3 of 2002 now only includes members of the TNI AD, TNI AL, TNI AU. In addition to the definition of "military/soldier" mentioned above, Article 9 point 1 of Act No. 31 of 1997 also regulates provisions regarding groups of people who are considered to have the same characteristics as "military/soldiers", so that this group of people can also be subject to law and military criminal law, this group consists of:

- Soldier;
- Which by law is equated with soldiers;
- Members of a group or service or agency, or who are equated or considered to be soldiers under the law.
- A person who is not included in letter a, letter b, and letter c, but at the decision of the Commander in Chief with the approval of the Minister of Justice must be tried by a court within the Military Court.

Based on the provisions of the article above, it can be concluded that basically the definition of "military" can cover a wide scope, this is because people who can be categorized as members of the military can include the following groups:

- Pure military in the sense of the Armed Forces (TNI AD, TNI AL, TNI AU).
- A group of people who are equated with the military or army.
- Member of an organization that is equated with the military/Army.

Ankum's involvement in investigations into the military criminal justice system is closely related to the principles and characteristics of military life, namely:⁹

- The Principle of Unity of Command. In military life with its organizational structure, a commander has a central position and is fully responsible for the unit and its subordinates, therefore a commander is given the authority to hand over cases in the settlement of criminal cases. In accordance with the principle of unity of command mentioned above, the Military Criminal Procedure Code

⁹Nikmah Rosida, (2019). *Hukum Pidana Militer*. Aura:Lampung,p 5

does not recognize the existence of compensation and rehabilitation institutions.

- The principle of the commander is responsible for his subordinates. The military life and organizational characteristics of the Armed Forces have the function of a commander as leader, teacher, father, friend, brother and trainer, so that a commander must be fully responsible for the unit and his subordinates.
- The principle of military interest. To carry out national defense and security, military interests are prioritized over group and individual interests. Especially in the judicial process, military interests are always balanced with legal interests. These principles are the specificity of the general criminal procedure law principles. Nevertheless, the Military Criminal Procedure Code is still guided by the principles stated in UURI Number 14 of 1970 (without ignoring the principles and characteristics of the military life system). Likewise, the Military Criminal Procedure Code was prepared based on UURI Number 8 of 1981 concerning the Criminal Procedure Code with exceptions.

3.2. Basis for the Applicability of Military Law for Members of the Indonesian National Armed Forces

Punishment does not only start with the idea of retaliating against the perpetrators of crime or prevention in order to protect the community but has expanded to an integrated criminal system that unites the various joints of law enforcement in carrying out the system in accordance with what is aspired to.¹⁰

The enactment of Criminal Law in the Criminal Code (KUHP) when associated with places and people regarding several principles, where according to Prof. Moelyatno in the National Law seminar in 1963, which was in line with Pompe's opinion, said that the principles contained in Articles 2 to 8 of the Criminal Code are considered as crossing boundaries between criminal law and criminal procedural law with time, and in Article 2 of the Criminal Code to Article 8 of the Criminal Code, it is related to the place and the person/perpetrator. According to the history of law, the first time it was known regarding the linking of the enactment of the law (criminal) was to people who were referred to as the principle of personality, which later developed with regard to territory, which was called the principle of territory.¹¹

- Loyalty is expected from a citizen to the State and its Government.
- Awareness of a citizen not to commit a crime abroad where the action is a crime in the country;
- Expanded with officials (civil servants) who are generally citizens who, in addition to their loyalty as citizens, are also expected to have their loyalty as duties/positions entrusted to them.

The Criminal Code does not provide an authentic understanding of who is meant by an official (civil servant) but the limitation in Article 92 paragraph (3) of

¹⁰Warsito, Dafit Supriyanto Daris. (2018). Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika. *Jurnal Daulat Hukum* 1(1), 31-42, DOI: <http://dx.doi.org/10.30659/jdh.v1i1.2562>

¹¹Ibid, p. 7

the Criminal Code reads: "All members of the armed forces are also considered as officials. Thus, the Criminal Code is also applied to members of the armed forces, members of the Armed Forces, members of the Indonesian National Armed Forces, or members of the military, in addition, the laws and regulations that apply to the military are known, namely *wetboek van Militair Strafrecht* (WvMs)/Stb.1934 Number 167 in conjunction with UURI Number 39 of 1947, which was translated into the Military Criminal Code (KUHPM). Its application is the same as its application in law in Indonesia, if the KUHPM is a material criminal law.

The Criminal Code does not provide an authentic understanding of who is meant by an official (civil servant) but the limitation in Article 92 paragraph (3) of the Criminal Code reads: "All members of the armed forces are also considered as officials. Thus, the Criminal Code is also applied to members of the armed forces, members of the Armed Forces, members of the Indonesian National Armed Forces, or members of the military, in addition, the laws and regulations that apply to the military are known, namely *wetboek van Militair Strafrecht* (WvMs)/Stb.1934 Number 167 in conjunction with UURI Number 39 of 1947, which was translated into the Military Criminal Code (KUHPM). Its application is the same as its application in law in Indonesia, if the KUHPM is a material criminal law,

For the sake of legal certainty, to prevent a legal vacuum at the beginning of independence, through the transitional articles of the 1945 Constitution and Government Regulation No. 2 of 1945, the WvMS applicable in the Netherlands and the Military Disciplinary Law, abbreviated as KUHDH, are declared still valid in the Republic of Indonesia with several amendments, reductions and additions to the two laws in Laws No. 39 and 40 in 1947. The implementing law of the KUHPM which was made in 1946, was renewed in 1950 with the Law Drt. Number 16 of 1959 in conjunction with UURI Number 5 of 1950 LN Number 52 of 1950 concerning the composition and power of the judiciary and the prosecutor's office within the Military Courts.

3.3. Criminal Policy for Members of the Indonesian National Armed Forces Who Commit Crimes

A general crime, also known as *Delicta communia*, is a criminal offense under the Criminal Code, which starts with the word "whoever" while it can be committed by anyone. This can be seen in almost every military crime with the meaning of the definition of a special crime or *delicta propria*.¹² It is the Criminal Code in its implementation still applies to the military. This is in accordance with the provisions of Article 1 of the Criminal Procedure Code which stipulates that for the application of the Military Criminal Code (KUHPM) the provisions of general criminal law apply, which is none other than the Criminal Code itself. Thus the provisions regulated in Article 2 of the Criminal Procedure Code which stipulates that criminal acts committed by the military or those who are subject to military justice are not contained in the Criminal Procedure Code, then general criminal law is applied which is none other than the Criminal Code itself unless there are deviations stipulated by law. Every member of the military or the Indonesian

¹²Moeljatno & Marlilan Prodjohamidjojo, (1997). *Memahami Dasar-dasar Hukum Pidana Indonesia*, Jilid 2, Cet.3, Jakarta: Pradnya Paramita. p.5

National Armed Forces of high or low rank is obliged to uphold the honor of the military and stay away from actions or words that can tarnish or damage the good name of the military.¹³

Considering that there are still criminal acts that occur among the military that have violated the rules of law in force in the Republic of Indonesia, the settlement mechanism carried out is also different from that of civilians. The soldiers will be tried through a military mechanism with due observance of the applicable laws. The existence of the principle of "Equality Before The Law" as stated in Article 27 paragraph (1) of the 1945 Constitution which makes a reference that anyone who commits a crime will still be sentenced, because they are Indonesian citizens who are duly obliged to obey the rules what happened¹⁴.

3.3.1. Investigation Stage for TNI Members Who Commit Crimes

The Military Criminal Procedure Code (HAPMIL) as regulated in Act No. 31 of 1997 concerning Military Courts does not distinguish the meanings of "Investigator", "Investigation", Investigator and Investigation as regulated in Article 1 point 1, 2, 3, 4, 5, and Articles 102, 106 of the Criminal Procedure Code. The meaning is not distinguished because the Military Criminal Procedure Code (HAPMIL) is a Special Criminal Procedure Code, so there is no need to regulate all things that have been regulated by the General Criminal Procedure Code, the General Criminal Procedure Code rules that are not regulated in the Special Criminal Procedure Code automatically apply for the Special Criminal Procedure Code as long as the provisions do not conflict with the Special Criminal Procedure Code, either implied or expressed. Investigation and investigation is the most important thing in the mechanism of the justice system. For this reason, investigations and investigations are regulated in Act No. 8 of 1981 concerning the Criminal Procedure Code or often referred to as the Criminal Procedure Code. The function of the investigation is to find and find an event that is suspected of being a criminal act

The implementation of the case to be investigated is that before a case is examined in court, a preliminary examination is carried out where the case is investigated first, then investigated and examined by the police. The emphasis of the investigation pressure is placed on the act of "searching and collecting evidence" so that the criminal acts found become clear, and so that they can find and determine the perpetrators.¹⁵

The implementation of investigations in Military Courts in Indonesia includes several activities, namely:

- Preliminary action, consisting of:
 - Police report generation,
 - The first action on the scene,

¹³Sry Agnes Rosalina Silalahi. (2016). Pertanggung Jawaban Bagi Anggota Militer Yang Melakukan Tindak Pidana Kekerasan Dalam Rumah Tangga. Jurnal Fakultas Hukum, Universitas Atma Jaya Yogyakarta.

¹⁴Aulia Jihan Rifani, A., & Satria Unggul Wicaksana Prakasa. (2021). Independensi Peradilan Militer Terhadap Prajurit Tni Sebagai Pelaku Tindak Pidana Narkotika. *Audito Comparative Law Journal (ACLJ)*, 2(3), 131-142. <https://doi.org/10.22219/aclj.v2i3.16756>

¹⁵Bogi Prihastiawan, (2016). *Penyidikan Terhadap Tindak Pidana Militer*, Purwokerto: UMP

- Inspection, consisting of:
 - summoning,
 - Arrest,
 - Detention,
 - Search,
 - Foreclosure.
- Administration of investigations In essence, completing a preliminary examination is carried out to complete the examination of a case or investigation of a criminal event in finding and collecting evidence which can be carried out through three processes, namely:
 - Information, namely investigating and collecting information and evidence by the police, which is commonly referred to as “processing the crime scene”;
 - Interrogation, namely examining and hearing information from suspected persons and witnesses which can usually be obtained at the crime scene;
 - Instrumentarium is the use of technical tools for case investigations such as photography, microscopes, and others at the crime scene.

In these three processes, investigators always try to:

- Obtain evidence in criminal proceedings relating to crimes that have occurred (*corpora delicti*) and the tools that have been used to commit crimes (*instrument delicti*);
- Trying to find ways or methods that have been used by criminals when committing crimes (*modes operandi*), for example in terms of theft, whether criminals steal by climbing, prying, using fake keys and others in terms of sex crimes, how criminals rape victims and so on;
- Trying to find who (identity)).

Based on Article 71 of Act No. 31 of 1997 concerning Military Courts, investigators have the authority to:

Paragraph (1):

- 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 photographing a person;
- Summon someone to be heard and examined as a suspect or witness;
- Request the assistance of an expert or bring in the necessary experts in connection with the examination of the case;
- Take other legally responsible actions.

In addition to having the authority as referred to in paragraph (1), the investigator as referred to in Article 69 paragraph (1) letter b or letter c, also has the authority to:

- Carry out orders from superiors with the right to punish to detain suspects;

- Reporting the results of the investigation to the superior who has the right to punish.

3.3.1. Arrest Stage for TNI Members Who Commit Crimes

For the purposes of investigation, investigators are authorized to make arrests. The arrest of a suspect outside the domicile of the Supervisor with the Right to punish who directly supervises him can be carried out by a local investigator at the place where the suspect is found, based on a request from the Investigator who is handling the case. The arrest is carried out by order. An arrest order is made against a person who is strongly suspected of committing a crime based on sufficient preliminary evidence. No arrests can be made against a suspected perpetrator of a violation, except in the event that the suspect has been legally summoned 2 (two) times in a row and does not fulfill the summons without a valid reason. Arrests can be made for a maximum of 1 (one) day.

The arrest task is carried out by the investigator or member of the Military Police or subordinate member of the superior with the right to punish the person concerned by showing an arrest warrant that includes the identity of the suspect, mentions the reason for the arrest, a brief description of the suspected crime case, and the place where he was examined. In the case of being caught red-handed, the arrest is carried out without a warrant, provided that the catcher must immediately hand over the suspect and the evidence to the nearest investigator. A copy of the arrest warrant was given to his family immediately after the arrest was made. After the arrest is made, the investigator is obliged to immediately report to the superior who has the right to punish the person concerned.

3.3.2. Detention Stage for TNI Members Who Commit Crimes

For the purposes of the investigation, the superior with the right to punish with his decision letter, is authorized to detain the suspect for a maximum of 20 (twenty) days. The detention period, if necessary for the purpose of examination, may be extended by the authorized Case Submission Officer by decision for every 30 (thirty) days and a maximum of 180 (one hundred and eighty) days. Does not rule out the possibility of releasing the suspect from detention before the end of the detention period, if the interests of the examination have been fulfilled. After a period of 200 (two hundred) days, the suspect must be released from detention by law. Detention or extension of detention is carried out against a suspect who is strongly suspected of committing a crime based on sufficient evidence in the event of a situation that raises concerns that the suspect will run away, destroy or destroy evidence, or repeat a crime, or cause trouble. Detention can only be imposed on a suspect who is suspected of having committed a criminal act and/or attempted as well as providing assistance in a criminal act which is punishable by imprisonment of 3 (three) months or more. Detention or extension of detention can only be carried out if the conditions are met.

Detention or extension of detention of a suspect is carried out by the investigator with a warrant based on a decision on detention or a decision on extension of detention which includes the identity of the suspect and states the reasons for detention and a brief description of the crime case suspected and the place where he was detained. A copy of the warrant for the execution of the

detention or extension of the detention shall be given to the family of the suspect. Detention is carried out in a military detention house or other place determined by the Commander in Chief. At the request of the suspect, the superior with the right to punish or the officer who submits the case in accordance with their respective authorities based on the advice of the military police or the public prosecutor may hold a suspension of detention with the specified conditions.

3.3.3. Examination at the Military Court Session

After the Military Court/High Military Court received the delegation of case files from the Military Authority/High Military Court, the Head of the Military Court/Head of the High Military Court immediately studied whether the case was within the jurisdiction of the Court he was leading. In the event that the Head of the Military Court/High Military Court is of the opinion that the criminal case does not fall under the authority of the Court he leads, he shall make a determination containing the reasons and immediately return the dossier of the case to the relevant Military Oditurat/High Military Court to be delegated to the Military Court/ Court. Another High Military in authority. The Military Oditurat/High Military Authority concerned shall submit the decision along with the case files to the Military Oditurat/High Military Authority in the jurisdiction of the Military Courts/other High Military Courts listed in the stipulation. A copy of the stipulation as referred to in paragraph (1) shall be submitted to the Defendant or his Legal Counsel and the relevant Military/High Military Authority. In the event that the Prosecutor object to the stipulation of the Military Court/High Military Court as referred to in Article 133, he/she may file a challenge to the Military Court/High Military Court within 7 (seven) days after the decision is received. The non-fulfillment of the time as referred to in paragraph (1) results in the cancellation of the fight. The resistance which contains the reasons shall be submitted through the relevant Military Court/High Military Court. Within a period of 7 (seven) days after the resistance is received, the Military Court/High Military Court is obliged to forward the resistance to the competent High Military Court/Main Military Court.

Based on the determination of the day, the Prosecutor issued a summons to the Defendant and the Witness containing the day, date, time, place of trial, and for what case they were summoned. The summons must be received by the Defendant or Witness no later than 3 (three) days before the trial begins. If the summoned is abroad, the summons shall be made through a representative of the Republic of Indonesia at the place where the summoned person usually resides. Receipt of summons by the Defendant, Witness, or other person, is carried out by means of a receipt. The superior who has the right to punish or the direct supervisor of the defendant and/or the witness or the official after receiving the summons must order the defendant and/or witness to appear before the court session.

3.3.4 Implementation of Military Court Decisions

Court decisions that have obtained permanent legal force, are implemented by the Prosecutor for which the Registrar sends a copy of the decision to him. Prior to the copy, the Prosecutor implements the Court's decision based on the excerpt of the verdict. The implementation of the death penalty is carried out according to the provisions of the applicable laws and regulations and not in public.

Imprisonment or confinement is carried out in a Military Correctional Institution or in other places according to the provisions of the applicable laws and regulations. In the event that the convict is sentenced to imprisonment or confinement and is subsequently sentenced to imprisonment or the like, before serving the sentence previously imposed, the sentence shall be carried out with the sentence imposed first. If the convict is dismissed from the military service, the punishment is carried out at the General Penitentiary. In the event that the Court imposes a conditional sentence, its implementation is carried out with serious supervision and observation and according to the provisions of this Law. In the event that the Court imposes a fine, the convict is given a grace period of 1 (one) month to pay the fine, except in the decision of the expedited examination process where the payment of the fine must be paid off immediately. If there is a strong reason, the grace period can be extended for a maximum of 1 (one) month. In the event that the Court's decision determines the confiscation of evidence for the state, the Prosecutor shall authorize the object to the State Auction Office to be sold at auction within 3 (three) months and the proceeds shall be deposited into the state treasury on behalf of the Oditurat.

The grace period can be extended for a maximum of 1 (one) month. In the event that the Court also imposes a decision on compensation, the implementation is carried out according to the procedure for a civil decision. If in 1 (one) case there are more than 1 (one) convict, the payment of compensation is charged to the convicts together in a balanced manner. The cost of the case determined in the court's decision is paid by the convict within a grace period of 1 (one) month. The grace period as referred to in paragraph (1) may be extended for a maximum of 1 (one) month. If in 1 (one) case there are more than 1 (one) convict, the payment of court fees shall be borne by the convicts together in a balanced manner.

Supervision and observation of Court decisions that impose criminal deprivation of liberty is carried out by the Head of the Court concerned and in its implementation is assisted by one or more judges as supervisory and observer judges. Judges are appointed by the Head of the Court for a maximum of 2 (two) years

3.4. Policy on Regulation of Criminal Law Enforcement Against Indonesian National Army Soldiers in the Future

Indonesia is a state based on law, (*rechtstate*), which is stated in article 1 paragraph (3) of the 1945 Constitution of the 4th Amendment. Law is the mental infrastructure of the community to actualize the potential of humanity and social instincts in order to be able to live safely and with dignity.¹⁶ In practice the law can run effectively or not depending on how the community can accept the law and implement it in their lives. In order to enforce the rule of law, Indonesia requires the existence of an institution called the judicial power, which is tasked with

¹⁶Artidjo Alkostar, (2000). *Negara Tanpa Hukum: Catatan Pengacara Jalanan*, Pustaka Pelajar, Yogyakarta.p.62

enforcing and supervising the enactment of the applicable laws and regulations (*ius constitutum*).¹⁷.

Indonesia is a state of law, with the Indonesian National Armed Forces (TNI) to maintain state defense and security (military realm). Professional soldiers have basic characteristics, namely, expertise, responsibility to society or the state, corporatism, and ideology. TNI Soldiers (Indonesian National Army) are citizens who meet the requirements determined by laws and regulations and are appointed by the authorized official to serve in the soldiering service, fight for and defend the independence of the State¹⁸. But today's soldiers need to have modern management skills and strategies as a TNI soldier (Tentara Nasional Indonesia)¹⁹.

As a TNI soldier who is trained and armed, he has the authority to defend the Unitary State of the Republic of Indonesia, all of which is given by law. However, if a TNI soldier violates the military criminal law in accordance with the Criminal Procedure Code, he will be tried in the Military Court in accordance with Act No. 31 of 1997 concerning Military Courts, but oddly enough, TNI soldiers who commit general crimes are still being tried in military courts. From several cases that the researcher has described in the background of the research, it is very difficult to bring TNI soldiers to the general court related to general criminal offenses, this will certainly hurt the community's sense of justice. In accordance with Act No. 31 of 1997 concerning Military Courts that have the right to investigate cases related to TNI soldiers are the TNI Military Police (POM).

In this case, the superior with the right to punish (Ankum) has full command authority over his subordinates. once a member commits a criminal act, then the Superior with the Right to Punish (Ankum) as the Case Submission Officer has the right to decide whether the case will proceed to the Military Court trial or not.²⁰ To decide this, the role of theory and principles in the military emerged. Authority theory is used as the basic theory of all actions based on law, where in military criminal law the role of the Criminal Procedure Code and other military legislation is used. Authority is the ability to act given by the applicable law to carry out legal relationships and actions²¹. In the substance of Act No. 31 of 1997 concerning Military Courts, provides protection for TNI soldiers who are involved in general criminal offenses and based on Act No. 31 of 1997, where TNI soldiers are not subject to the General Court.

For example, a general criminal case involving the misappropriation of funds in the procurement of defense equipment (the main weapon system) for the TNI is being investigated by the corruption eradication commission (hereinafter referred to as the KPK), where the KPK has difficulty investigating TNI soldiers, because TNI soldiers are only subject to the law. No. 31 of 1997 concerning Military Courts, on the other hand the KPK is a superbody institution in this Republic in accordance

¹⁷Bambang Sutiyoso, (2006). *Metode Penemuan Hukum Upaya Mewujudkan Hukum yang Pasti & Berkeadilan*, UII Press, Yogyakarta, p.2

¹⁸Sianturi (I), (1985). *Hukum Pidana Militer Di Indonesia*, Alumni AHAEM-PETEHAEM, Jakarta, p.2

¹⁹Yudi Krismen, 2014. Dilema Penegakan Hukum Pidana Terhadap Prajurit TNI, *Jurnal Selat*, Vol.2 No 1. p.148

²⁰SF. Marbun, (1997). *Peradilan Administrasi Negara & Upaya Administrasi di Indonesia*, Liberty, Yogyakarta, p. 154

²¹ibid

with the authority it has, nor can it do much because it collides with Act No. 31 of 1997 concerning Military Courts.

In line with the opinion of Military Observer from Imparsial, Pungky Indarti, said: "KPK is difficult to enter military courts, KPK itself is civilian. So far, military courts have detained problematic military personnel, namely military police, and punished them militarily," Pungky continued.²²

Furthermore, Adnan Buyung Nasution argues that law enforcement within the TNI in the past decade has been in the spotlight. This problem arose because the community considered that in many cases involving members of the TNI, the law was often untouched and the outcome was unclear intestines in actions or actions that are not included in general crimes outside of military crimes do not occur in the future.

The dilemma of enforcing criminal law against TNI soldiers in Indonesia is like a problem that still needs to be completely and clearly resolved, so that there is legal certainty to ensure the comfort of living in the nation and state by upholding the principle of equality before the law for every citizen who violated the law. The existence of Act No. 31 of 1997 concerning Military Courts, that it is difficult for TNI soldiers who commit criminal offenses to be prosecuted in a general court, even though in accordance with the reform mandate contained in TAP MPR No. VII of 2000 it has been emphasized that TNI soldiers who commit general crimes will be tried in general courts and if TNI soldiers commit military criminal offenses according to the Criminal Procedure Code, they will be tried in military courts. However, the mandate of TAP MPR No.

In relation to the conception of judicial jurisdiction over TNI soldiers who commit crimes, various opinions can be expressed in the community, both from civilians and the military themselves. Civil law professors such as Muladi, Mardjono Reksodiputro, Andi Hamzah and F. Sugeng Istanto have expressed opinions from the civil society.²³ Muladi argued that military courts were still needed, but only limited to cases that were typical of the military, which civilians could not do, such as desertion and insubordination. Other criminal acts such as stealing weapons, stealing military secrets, committing adultery, corruption and so on, even if these occur in the headquarters or are directly related to military duties or positions, are still brought to the general court and investigated by the police, because these crimes are not unique. Mardjono Reksodiputro stated that when the army takes actions involving military law, there is indeed a special court that resolves it, namely a military court, but the problem in Indonesia is that soldiers who commit ordinary offenses also go to military courts. Military courts should adjudicate offenses related to military interests, such as theft of weapons, theft of military data or secrets and so on. Andi Hamzah was of the view that the military courts only tried purely military offenses, such as desertion.

4. Conclusion

¹⁷http://www.waspada.co.id/index.php?option=com_content&view=article&id=312568:kpk-cepat-tembus-tni-karena-peradilanmilitary&catid=59:kriminal-a- Hukum&Itemid=91 (accessed on 11 January 2022)

²³Niken Subekti Budi Utami, 2014, *Yurisdiksi Peradilan Terhadap Prajurit TNI Sebagai Pelaku Tindak Pidana*, Jurnal Yustisia, Vol 3 No 2, p105

Criminal Policy in Efforts to Overcome Crimes Committed by the Indonesian National Armed Forces is subject to *wetboek van Militair Strafrecht* (WvMs)/Stb.1934 Number 167 in conjunction with UURI Number 39 of 1947, which was translated into the Military Criminal Code (KUHPM). Its enforcement is the same as that of law in Indonesia, if the Criminal Code is a material criminal law, then Act No. 6 of 1950 in conjunction with Act No. 1 Drt of 1958 concerning Military Criminal Procedure Code which was later revised and set forth in Chapter IV of Article 264 of the Law concerning Military Courts, while Act No. 31 of 1997 applies as a formal criminal law. Indonesian Military Law has a basis, sources and scope that are in line with national law, but the dilemma of criminal law enforcement against TNI soldiers in Indonesia, such as a problem that still needs to be completely and clearly resolved,

5. References

Journals:

- [1] Aulia Jihan Rifani, A., & Satria Unggul Wicaksana Prakasa. (2021). Independensi Peradilan Militer Terhadap Prajurit Tni Sebagai Pelaku Tindak Pidana Narkotika. *Audito Comparative Law Journal (ACLJ)*, 2(3), 131-142. <https://doi.org/10.22219/aclj.v2i3.16756>
- [2] Chandra, R. (2020). Penyelesaian Kasus Hukum Di Lingkungan Pengadilan Militer Dalam Perkara Tindak Pidana Penipuan Yang Dilakukan Oleh Anggota TNI. *Pamulang Law Review*, 1(2), 175-186. doi:<http://dx.doi.org/10.32493/palrev.v1i2.5328>
- [3] Chalim, Munsharif Abdul, & Faisal Farhan. (2015). (TNI) Di Dalam Rancangan Undang-undang Keamanan Nasional Di Tinjau Dari Perspektif Politik Hukum Di Indonesia. *Jurnal Pembaharuan Hukum* 2(1), 102-109, <http://dx.doi.org/10.26532/jph.v2i1.1419>
- [4] Niken Subekti Budi Utami, 2014, Yurisdiksi Peradilan Terhadap Prajurit TNI Sebagai Pelaku Tindak Pidana, *Jurnal Yustisia*, Vol 3 No 2.
- [5] S. Supriyatna. 2014. Memahami Urgensi Peradilan Militer dari Sudut Kepentingan Pertahanan & Keamanan Negara. *Jurnal Yuridis*, Vol.1, No.2, 183-202.
- [6] Sry Agnes Rosalina Silalahi. (2016). Pertanggung Jawaban Bagi Anggota Militer Yang Melakukan Tindak Pidana Kekerasan Dalam Rumah Tangga. *Jurnal Fakultas Hukum, Universitas Atma Jaya Yogyakarta*.
- [7] Warsito, Dafit Supriyanto Daris. (2018). Sistem Pidana Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika. *Jurnal Daulat Hukum* 1(1), 31-42, DOI: <http://dx.doi.org/10.30659/jdh.v1i1.2562>
- [8] Yudi Krismen, 2014. Dilema Penegakan Hukum Pidana Terhadap Prajurit TNI, *Jurnal Selat*, Vol.2 No 1.

Books:

- [1] Artidjo Alkostar, (2000). *Negara Tanpa Hukum: Catatan Pengacara Jalanan*, Pustaka Pelajar, Yogyakarta.
- [2] Bambang Sutiyoso, (2006). *Metode Penemuan Hukum Upaya Mewujudkan Hukum yang Pasti & Berkeadilan*, UII Press, Yogyakarta.

- [3] Bogi Prihastiawan, (2016). *Penyidikan Terhadap Tindak Pidana Militer*, Purwokerto: UMP
- [4] Faisal Salam, (2006), *Hukum Acara Pidana Militer*, Mandar Maju, Bandung,
- [5] Markas Besar Tentara Nasional Indonesia, (2005), *Himpunan Peraturan Perundang-Undangan Bagi Prajurit TNI*, Babinkum TNI, Jakarta.
- [6] Moeljatno & Marliman Prodjohamidjojo, (1997). *Memahami Dasar-dasar Hukum Pidana Indonesia*, Jilid 2, Cet.3, Jakarta: Pradnya Paramita.
- [7] Nikmah Rosida, (2019). *Hukum Pidana Militer*. Aura:Lampung
- [8] Sianturi (I), (1985). *Hukum Pidana Militer Di Indonesia*, Alumni AHAEM-PETEHAEM, Jakarta
- [9] SF. Marbun, (1997). *Peradilan Administrasi Negara & Upaya Administrasi di Indonesia*, Liberty, Yogyakarta.
- [10] Zulkarnain, (2002), *Praktik Peradilan Pidana Panduan Praktis Kemahiran Hukum Acara Pidana*, Laboratorium Hukum Universitas Widyagama, Malang.

Etc:

- [1] <https://www.republika.co.id/berita/r10dh1409/oknum-tni-bantu-rachel-vennya-kabur-terancam-pidana>, accessed on October 19, 2021, at 22.00wib
- [2] <https://www.Hukumonline.com/berita/baca/lt4fa8f297c8db5/penidanaan-umum-tni-dinilai-masih-samar/>, accessed on 19 October 2021
- [3] http://www.waspada.co.id/index.php?option=com_content&view=article&id=312568:kpk-cepat-tembus-tni-karena-peradilanmilitary&catid=59:kriminal-a-Hukum&Itemid=91 (accessed on 11 January 2022)