

Investigation of the Criminal Act of Theft Committed by Military Soldiers Based on Justice

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Abstract. *The purpose of this study is to determine and analyze the implementation of the investigation of theft crimes committed by military soldiers based on justice and to determine and analyze the obstacles to the implementation of the investigation of theft crimes committed by military soldiers and their solutions. This legal research uses an empirical legal research approach method. Implementation of the Investigation of Theft Crimes Committed by Military Soldiers Based on Justice, the investigation process begins with a report or complaint from the Superior Who Has the Right to Punish (Ankum) to the Military Police (POM) investigator section. After that, the report is submitted to the Military Police Service Complaints Unit (UPPPM) to be signed by the reporter and UPPPM, then submitted to the Military Police Detachment Commander (Dandempom) to obtain a disposition. Then the investigator makes a summons to the suspect and at least 2 witnesses, then the investigator makes a resume of the investigation file. Obstacles to the Implementation of Investigations into Criminal Acts of Theft Committed by Military Soldiers and How to Solve Them, Obstacles in the implementation of military investigations against TNI members who commit theft are Military Hierarchy and Culture, Dualism of the Courts, Lack of Resources, Political Influence and Institutional Interests, Lack of Transparency. While the solutions to deal with these obstacles include, Increasing Coordination between Military and General Courts, Reforming Military Investigations, Enforcing Stricter Disciplinary Rules, External Supervision, Increasing Internal Military Integrity*

Keywords: *Complaints; Investigation; Military; Service.*

1. Introduction

According to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that "the Republic of Indonesia is a state of law". The concept of a state of law is often translated with various different terms such as the rule of

law, rechtsstaat, etat de droit or estado de derecho.¹The concept of rechtsstaat is based on the continental legal system called civil law which has an administrative character, while the concept of rule of law is based on the legal system called common law which has a judicial character.²

The Unitary State of the Republic of Indonesia (NKRI) is a State of Law, so it is the state's responsibility to uphold human rights and guarantee every citizen the same position in law and government without exception. The enforcement of justice based on law must be carried out by every citizen including everyone who is in the scope of the military. This affirmation contains the meaning that our country does not discriminate against anyone in the legal process either as an individual, organization, or group. One type of legal process in Indonesia is military law.³

The provisions governing Military Criminal Law are set out in the Military Criminal Code (KUHPM), which is used as a guideline for military personnel, especially law enforcement officers in the military field, in conducting investigations, prosecutions, and court hearings. With the enactment of the KUHPM, there is an implementation of the procedures for resolving military cases in Indonesia.⁴

The legal basis and guidelines for military institutions, especially in the realm of criminal law, the Criminal Code of course regulates criminal sanctions that can be imposed on military members or officers if there are provisions of the Criminal Code that are violated by said military members or officers.⁵

One of the criminal acts regulated in the Criminal Code is the crime of theft. The definition of the crime of theft itself is not included in the provisions of the Criminal Code, but the Criminal Code regulates the criminal sanctions that can be given to its members who commit the crime of theft. The rules regarding this criminal act are regulated in Article 140 of the Criminal Code which stipulates that "Threatened with a maximum imprisonment of seven years, anyone who commits theft and in that act has misused (the opportunity) of his residence or housing obtained based on general authority".⁶Based on the provisions contained in the article, we can see

¹Dayanto, "Reconstruction of the Paradigm of the Development of the Indonesian Legal State Based on Pancasila", *Journal of Legal Dynamics*, Vol. 13 No. 3, September 2018 Edition, p. 500

²Titon Slamet Kurnia, "The Concept of a Rights-Based State as a Justification Argument for Testing the Constitutionality of Laws", *Jurnal Konstitusi*, Vol. 9 No. 3, September 2012 Edition, Jakarta: Constitutional Court of the Republic of Indonesia, p. 575

³Saputera, WA Analysis of Legal Protection Efforts for Victims of Sexual Harassment in the Military Environment. *Indonesian Law Student Writers Association Law Journal*, 2(1), 2022, pp. 131-142

⁴Mau, H. Legal Politics of the Formation of Implementing Regulations for Military Operations Other Than War by the Indonesian National Army. *Journal of Education and Teaching Review (JRPP)*, 7(1), 2024, pp. 2875–2880.

⁵Pribadi, Riky, and Danny Rahadian Sumpono. "Implementation of Criminal Law Enforcement Against TNI Personnel Who Facilitate Narcotics Crime Perpetrators Based on Law Number 31 of 1997 Concerning Military Justice". *Journal Presumption of Law 3 (1)*: 2021, p. 36-54

⁶Military Criminal Code, p. 6

that the type of criminal sanction that can be given to military members who commit the crime of theft is imprisonment.

Crimes that often occur are thefts of various types that are motivated by unmet living needs. The crime of aggravated theft is ordinary theft that in its implementation is accompanied by certain aggravating circumstances, for example, it is carried out by two or more perpetrators in league and is carried out at night.

In the Criminal Code, the crime of theft is regulated in two articles, namely Article 140 and Article 141 of the Criminal Code. Article 140 of the Criminal Code stipulates that: "Threatened with a maximum imprisonment of seven years, anyone who commits theft and in that act has misused (the opportunity) of his residence or housing obtained under the authority of law."

Article 141 of the Criminal Code stipulates that: "Theft committed by the military in a place designated under their guard or security is punishable by a maximum prison sentence of nine years."

It can be seen in Article 140 of the Criminal Code that there is the word opportunity which means that the opportunity is not always in the perpetrator and the perpetrator is charged with maintaining the security of the stolen goods, while in Article 141 of the Criminal Code the opportunity to commit theft is in the perpetrator because he is charged with maintaining the security of the goods being guarded so that they are not stolen by others. That is why the criminal threat in Article 141 is heavier than in Article 140 of the Criminal Code.⁷

If the military or TNI members commit the crime of theft, then in this case Article 140 of the Criminal Code concerning theft applies, however the Criminal Code does not regulate it in detail, so in Article 2 of the Criminal Code it is regulated that if a crime is not regulated in detail in the Criminal Code committed by people who are subject to the authority of the military justice body, general criminal penalties are applied, unless there are deviations that are applied by law. Article 6 of the Criminal Code specifically regulates the type of criminal penalty, namely dismissal from military service with a trial process through the Military Court. It can be concluded that the crime of theft by TNI members is included in the "Principle of *Lex Specialist Derogatlegi Generalis*" or the principle of preference.⁸

2. Research methods

This legal research uses an empirical legal research approach method. Empirical legal research is legal research using legal principles and principles in reviewing,

⁷Moch. Faisal Salam, *Military Criminal Procedure Law in Indonesia*, Mandar Maju, Bandung, 1996, p. 108

⁸Interview with Captain Heriyanto, SH, CPM.

viewing, and analyzing problems in research, in addition to reviewing the implementation of law in practice.⁹ The empirical research method is a combination of doctrinal legal research methods and empirical legal research methods, so what is done by the researcher is a document study accompanied by a field study (interview). The document study in this study is a literature study using laws and regulations.

3. Results and Discussion

3.1. Implementation of Justice-Based Investigation of Criminal Acts of Theft Committed by Military Soldiers.

Criminal law is one of the subsystems in the legal system in a country, there are two terms, namely law and criminal. Law according to Prof. Dr. Van Kan, law is the entirety of life regulations that are coercive to protect human interests in society.¹⁰

Criminal law has a division of criminal law, one of which is general criminal law and special criminal law. General criminal law is the provisions of criminal law that apply generally to all people, for example, special criminal law is the provisions of criminal law whose regulations are specifically focused on certain groups, for example the military.¹¹

Special criminal law applicable to the military is military criminal law with a formulation regarding the definition of military criminal law reviewed from a justiable perspective, namely people who are subject to and subject to a certain judicial body. Formal and material military criminal law is part of positive law, which applies to the justiable of military justice, which determines the basis and regulations regarding Actions that are prohibited and mandatory and against violations that are subject to criminal penalties. However, in the sense that criminal law applicable to the military is not only limited to military criminal law, but general criminal law as regulated in the Criminal Code (KUHP) will remain or still apply to the military, in this case the Indonesian National Army, namely applicable as long as it is not regulated in a special law (Military Criminal Code), this has been regulated by the KUHPM in Article 2.¹²

The principle of application of military criminal law applies the "Principle of Lex Specialist Derogatlegi Generalis" that special criminal law is prioritized over general provisions is one of the principles of preference known in legal science. The principle of preference is a legal principle that indicates which law is prioritized (to be enforced), if in an event (law) related to or violated several regulations. In

⁹Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetrics*, Ghalia Indonesia, Jakarta, 1990, p. 33.

¹⁰Mukhlis R, "Criminal Acts in the Land Sector in Pekanbaru City", *Journal of Legal Studies*, Vol.4 No.1 2016, p. 23

¹¹Andi Sofyan, et al., 2016, "Criminal Law", Makassar, Pustaka Pena, p. 4

¹²Ibid

military criminal law doctrine it is referred to as *ius speciale* because the imposition of law is based on the offender and not offenses, meaning, if he is a member of the military, even though he commits a general violation, he will still be tried using military law.¹³ If the military or TNI members commit the crime of theft, then in this case Article 140 of the Criminal Code concerning theft applies, however the Criminal Code does not regulate it in detail, so in Article 2 of the Criminal Code it is regulated that if a crime is not regulated in detail in the Criminal Code committed by people who are subject to the authority of the military justice body, general criminal penalties are applied, unless there are deviations that are applied by law. Article 6 of the Criminal Code specifically regulates the type of criminal penalty, namely dismissal from military service with a trial process through the Military Court. It can be concluded that the crime of theft by TNI members is included in the "Principle of *Lex Specialist Derogatlegi Generalis*" or the principle of preference.

The Indonesian National Army (TNI) in carrying out its duties is limited by laws and military regulations so that all actions are regulated in several laws, including the Military Disciplinary Law (KUHDH) and Military Disciplinary Regulations and other regulations. The Military Disciplinary Law is regulated in Law Number 25 of 2014 concerning Military Disciplinary Law. While military criminal law is regulated in Law Number 39 of 1947 concerning the Criminal Code. This law actually enforces the *Wetboek Van Militaire Strafrecht*, a legacy of the Dutch Colonial, which was later translated into the Military Criminal Code. While the Military Criminal Procedure Law enforced in the Military Criminal Procedure Law process is regulated in Law Number 31 of 1997 concerning Military Justice.

In Article 100 of Law Number 31 of 1997 concerning Military Justice, every person who is a victim or who experiences or witnesses or sees or hears directly about the occurrence of a crime committed, has the right to submit a report or complaint to the investigator either verbally or in writing. The investigator referred to here is the superior who has the right to punish, the Military Police and the Auditorate. Criminal acts committed by TNI members against civilians often occur and become a topic of discussion among the public whether they are processed in general courts or military courts, related to the ability and independence of the two courts in handling cases when TNI members become suspects of a crime. The Superior Who Has the Right to Punish and the Case Referring Officer have the authority to detain, the implementation of which is only carried out in a military detention center, because in the Military Court environment only one type of detention is recognized, namely detention in a military detention center.

The Superior Who Has the Right to Punish (Ankum), Military Police (POM), and the Auditor are investigators. However, the investigative authority that is in the

¹³Faisal Farhan, 2011, "The Crime of Desertion Reviewed from the Perspective of Military Criminal Law", (Pasundan University, Faculty of Law, Bandung), p.1.

Superior who has the right to Punish is not carried out alone, but is carried out by the Military Police investigator and/or the Auditor. This law does not specifically regulate investigation as one of the stages of investigation, because investigation is a function inherent in the commander whose implementation is carried out by the Military Police Investigator.

Military circles a person with military status is the subject of military crimes and also the subject of general crimes, meaning here that if a mixed military crime occurs, the military who commits the crime is simultaneously the subject of general crimes and military crimes. It can be understood that the subject of military crimes is only "Humans" who can be said to be military or TNI, corporations are not included as subjects of military law.¹⁴

Formal and material military criminal law is part of positive law, which applies to military justice, which determines the basis and regulations on actions that are prohibited and mandatory and against violations that are subject to criminal penalties. However, in the sense that the criminal law applicable to the military is not only limited to military criminal law, but general criminal law as regulated in the Criminal Code (KUHP) will remain or still apply to the military, in this case the Indonesian National Army, namely as long as it is not regulated in a special law (Military Criminal Code), this has been regulated by the Criminal Code in Article 2. In the Criminal Code, the act of theft is a serious crime and especially if the theft is committed during the period of service

3.2. Obstacles to the Implementation of Investigations into Criminal Acts of Theft Committed by Military Soldiers and How to Solve Them

The Constitution of the Republic of Indonesia states that all citizens have equal standing before the law and government and are required to uphold the law and government without exception. Article 27 paragraph (1) of the 1945 Constitution, fourth amendment, no citizen is immune from the law, even if the crime is committed by a civilian or a member of the TNI. Crimes committed by TNI members, then the law enforcement officers who have the right to prosecute are military prosecutors and military judges. Even if a TNI member commits a crime, he must still be punished without any privileges, where the process of examining the case in court is carried out according to military court procedures regulated in Law Number 31 of 1997 concerning Military Courts. In Indonesia, the jurisdiction or competence of Military Courts is regulated in Article 9 of Law Number 31 of 1997 concerning Military Courts which emphasizes that every TNI member who commits a crime becomes the authority or competence of military courts.

Criminal acts committed by military legal subjects are called military crimes. Military Crimes are divided into two types, namely Pure Military Crimes and Mixed

¹⁴A. Fadilah, 2016, "Criminal Acts of Insubordination" (Faculty of Law, Muhammadiyah University, Yogyakarta), p. 26

Military Crimes. Pure military crimes are crimes that can only be committed by a military person, because of their nature specifically for the military. While mixed military crimes (*germengde militaire delict*) are crimes that have been determined in other laws and regulations, but are regulated again in the Criminal Code due to a situation that is typical of the military or because of something else, so that a heavier criminal threat is needed.

Pure military crimes that are often committed by TNI members are the crime of withdrawing from service obligations, in the form of absence without permission or abbreviated as *THTI* which is regulated in Articles 85 and 86 of the Criminal Code, and the crime of desertion which is regulated in Article 87 of the Military Criminal Code. The crime of desertion is quite prominent in the military justice environment compared to other crimes. Therefore, in handling the crime of desertion where the defendant cannot be present at the trial, it is necessary to get very serious attention in resolving cases that are still pending and whose legal status is uncertain. Before the existence of Law Number 31 of 1997 concerning Military Justice, if there was a defendant in a desertion case who could not be present at the trial, it was resolved through a Supreme Court ruling which stated the rejection of the *Oditur's* demands with the *Niet Ontvankelijke* decision.

Obstacles in military investigations are often related to internal institutional problems and legal dualism, but with the right solutions and consistent reforms, the investigation process can be carried out more effectively and transparently.

In Malaysia, the resolution of military crimes, including theft committed by soldiers, involves several stages starting from investigation to the military court process. When a soldier is suspected of theft, the first process that occurs is an internal investigation led by military authorities, often by the military police. They are tasked with gathering evidence and determining whether there is sufficient reason to proceed to further investigation.

If there is sufficient evidence, the case will be referred to the Military Court (Major Military Court) which specifically handles violations of the law by military personnel. This legal process is generally carried out in accordance with the provisions of the Armed Forces Act Malaysia which regulates criminal acts and violations of discipline in the military. The suspect will be tried in a military court consisting of a military judge and legal counsel who have a special understanding of military law.

During the trial, evidence and testimony from various parties will be examined, and the accused will be given the opportunity to defend himself. If found guilty, the military court will impose the appropriate punishment. Punishments can include imprisonment, demotion, fines, or even dismissal from military service. All legal decisions made by the military court are strictly carried out in accordance with applicable regulations.

The process is generally closed to maintain the confidentiality and security of the military institution, although the principle of justice is still upheld. There is also supervision from higher authorities in the military to ensure that the legal process is carried out fairly and in accordance with the rules. If the accused is not satisfied with the decision of the military court, there is an appeal mechanism that allows them to apply for a review of the decision.

Indonesia, Military law enforcement against TNI members who commit theft must be based on the principles of justice, transparency, and professionalism. Ideally, when a TNI member is involved in a criminal act of theft, the initial step taken is an investigation to determine strong evidence related to the allegation. This investigation process is carried out by military investigators who have special expertise in handling criminal cases in the military environment.

After the investigation, the case must proceed to a more in-depth investigation stage to ascertain the facts and collect more detailed evidence. Military investigators will conduct interrogations, witness examinations, and forensic analysis if necessary. It is important that this investigation is conducted objectively and without influence from other parties, both from within and outside the military institution, to ensure justice.

Once the investigation is complete and sufficient evidence has been gathered, the case will be forwarded to a military court. The military court is tasked with examining the case, hearing testimony, and weighing the evidence to make a decision in accordance with military law. In court, accused TNI members have the right to defend themselves and be assisted by legal counsel.

If found guilty, TNI members who commit theft will be punished according to the applicable laws in the military environment, which can be imprisonment, demotion, or dismissal from military service. These penalties must be enforced consistently to ensure that violations of the law are not tolerated in the TNI environment.

Ideal military law enforcement does not only focus on sanctions, but also on prevention. Military institutions must have strict supervision and discipline mechanisms to prevent criminal acts within the corps. Education on military ethics, legal responsibility, and moral development must be improved so that TNI members understand the consequences of their actions. In addition, transparency in handling criminal cases in the military environment is important to maintain public trust and ensure that justice is upheld evenly without discrimination or special treatment.

The Criminal Sanctions Regulation for Theft in Indonesia is contained in the Criminal Code in Articles 140-141,

- 1) Article 140 of the Criminal Code: Anyone who commits theft and in that act has misused (the opportunity) of his residence or housing which he obtained based on general authority shall be subject to a maximum prison sentence of seven years.
- 2) Article 141 of the Criminal Code: The threat of a maximum prison sentence of nine years, theft committed by the military in a place designated under their guard or security.

The formulation of Article 141 is different from the formulation in Article 140 of the Criminal Code, which is because Article 140 of the Criminal Code uses the word "opportunity". This means that the opportunity is not always present in the perpetrator and the perpetrator is charged with maintaining the security of the stolen goods. Whereas in Article 141 of the Criminal Code, the opportunity to commit theft depends on the perpetrator because he is charged with maintaining the security of the goods being guarded so that they are not stolen by others. Therefore, the threat of punishment for acts regulated in Article 141 of the Criminal Code is heavier than the threat of punishment for theft as regulated in Article 140 of the Criminal Code.¹⁵

Military criminal law is part of military law, namely special regulations that only apply to members of the military itself. However, in the sense that the criminal law that applies to the military is not only limited to military criminal law, but general criminal law as regulated in the Criminal Code (KUHP) will remain or still apply to the military, in this case the Indonesian National Army, namely as long as it is not regulated in a special law (KUHPM).

4. Conclusion

Implementation of Investigation of Criminal Acts of Theft Committed by Military Soldiers Based on Justice, the investigation process begins with a report or complaint from the Superior Who Has the Right to Punish (Ankum) to the Military Police (POM) investigator section. After that, the report is submitted to the Military Police Service Complaints Unit (UPPPM) to be signed by the reporter and UPPPM, then submitted to the Military Police Detachment Commander (Dandempom) to obtain a disposition. Then the investigator makes a summons to the suspect and at least 2 witnesses, then the investigator makes a summary of the investigation file. The Superior Who Has the Right to Punish (Ankum), Military Police (POM), and the Oditur are investigators. However, the investigative authority that lies with the Superior Who Has the Right to Punish is not carried out alone, but is carried out by the Military Police investigator and/or Oditur. This law does not specifically regulate investigation as one of the stages of investigation, because investigation is a function inherent in the commander whose implementation is carried out by the Military Police Investigator. Obstacles to the Implementation of Investigations

¹⁵Faisal Salam, 2006, Military Criminal Law in Indonesia, Bandung: Mandar Maju, p. 309

into Criminal Acts of Theft Committed by Military Soldiers and How to Solve Them, Obstacles in the implementation of military investigations against TNI members who commit theft are Military Hierarchy and Culture, Dualism of the Courts, Lack of Resources, Political Influence and Institutional Interests, Lack of Transparency. While the solutions to deal with these obstacles include, Improving Coordination between Military and General Courts, Reforming Military Investigations, Enforcing Stricter Disciplinary Rules, External Supervision, Improving Internal Military Integrity.

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