

The Military Prosecution System Within Scope of Military Criminal Law Enforcement

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Abstract. *The purpose of this research is toknowing and analyzingprosecution system by the military auditor as enforcer of military criminal law. In this writing, the author uses a normative juridical method with research specifications in the form of descriptive analysis. The existence of the Military Auditor in enforcing the law against members of the Indonesian National Armed Forces (TNI) who commit criminal acts which are judicially included in the scope of the Military Auditor's authority to prosecute military criminal cases with implications on how the Military Auditor's prosecution system works and whether the connectivity of the Military Auditor with the Prosecutor's Office has its own impact on the scope of military justice, especially the prosecution of military crimes. Prosecution within the Military Court can be interpreted as the Military Auditor's action to delegate a criminal case to the competent court according to the method regulated in Law No. 31 of 1997 concerning Military Justice with a request that it be and decided by a judge in a court hearing.*

Keywords: *Examined; Included; Judicially; Military.*

1. Introduction

In the concept of the Legal State (rechtsstaat), it is idealized that what should be the commander in the dynamics of state life is law, not politics or economics.¹Therefore, the jargon commonly used in English to refer to the principle of the rule of law is "the rule of law, not of man." What is meant by government is essentially the law as a system, not individuals who merely act as "puppets" in the system's scenario that regulates them.

AV Dicey explains that there are three characteristics of a state of law which he calls the Rule of Law, namely supremacy of law, equality before the law and due

¹Sulistiyawan Doni Ardiyanto, Eko Soponyono and Achmad Sulchan, (2020), Judgment Considerations Policy in Decree of the Court Criminal Statement Based on Criminal Destination, Jurnal Daulat Hukum, 3 (1) March. p 179

process of law.²One of the concepts of a state based on the rule of law is the existence of an independent and impartial judiciary. The existence of the Supreme Court as the supreme court that enforces the law by judicial bodies under the Supreme Court which is an instrument of judicial power as regulated in Article 24 paragraph (1) of the 1945 Constitution, that: "Judicial power is an independent power to administer justice in order to uphold law and justice."

From a competency perspective, the Indonesian judicial system recognizes five types of courts: general courts, religious courts, state administrative courts, military courts, and the constitutional court. Each court has its own distinct objectives and subjects, as well as its own specificities. The reality is that, among the vast majority of Indonesians, only a small percentage pay attention to military law. Some believe that military law is sufficient for military personnel alone. This is certainly not wrong, but it's not entirely accurate either.

In terms of representation, the position of military justice is as a manifestation of the implementation of the principle of the rule of law in the Indonesian state constitutionally, the interpretation of which is that the Unitary State of the Republic of Indonesia is a state based on law, so every Indonesian citizen obeys and submits to the law, including soldiers of the Indonesian National Army who are known for their disciplined attitude.

The implementation of military justice, from investigation and prosecution to trial and execution, differs from general justice, not only technically but also from the involvement of law enforcement officers in the case resolution process within the military justice system. The Criminal Investigation Agency (Ankum), Military Police, and the Prosecutor (Oditur) serve as investigators, the Prosecutor (Oditur) as prosecutors, and the Judge appointed as Military Judge. The levels of justice within the military justice system include the Military Court, the High Military Court, the Main Military Court, and ultimately the Supreme Court.

Law 31 of 1997 concerning Military Justice Article 1 Paragraph (7) explains that the Military Prosecutor, hereinafter referred to as the Prosecutor, is an official who is given the authority to act as a public prosecutor, as an implementer of decisions or court rulings within the military justice system or courts within the general justice system in criminal cases, and as an investigator in accordance with the provisions of this Law.³

In connection with this topic, to research it further and include it in writing a legal work with purpose of writing for knowing and analyzing the prosecution system by the military auditorate as enforcers of military criminal law.

²Muhammad Ishar Helmi, (2013). Implementation of the Principle of "Equality Before the Law" in the Military Justice System, *Jurnal Cita Hukum*. I (2) December. p. 304

³Darwan Prints, (2003). *Military Justice*, Medan, Citra Aditya Bakti

2. Research Methods

The approach used in this research is a normative juridical or written legal approach (statutory approach). The normative juridical approach is an approach based on primary legal materials by examining theories, concepts, legal principles, and laws and regulations related to this research. This approach is also known as a literature approach, namely by studying books, laws and regulations, and other documents related to this research.

3. Results and Discussion

3.1. Military Auditorate

The Military Prosecutor is a functional official who exercises state government power in the field of prosecution and investigation. As a functional official, the Military Prosecutor acts as a representative of the unity of government and state. Thus, the implementation of prosecution must also take into account the sense of justice that exists in society in general and within the Indonesian Military in particular, and the direction of prosecution must be aligned with government policy, the state, and the interests of national defense and security in handling criminal cases. To strengthen honor, authority, and technical justice. The Prosecutor in the Military Court environment is technically justisia, its guidance is under the Prosecutor General, while organizational and administrative are under the commander.

In the process of examining criminal cases, both in the Military Law and Civil Law environments, there are almost the same procedures or sequences, namely from the investigator handed over to the prosecutor who then forwarded to the Court for trial. However, in military law, a Decision must still be obtained from the officer as the superior of the military who committed the crime so that the case by the Military Auditorate can be submitted to the Military Court. The term Prosecutor is what in military law is referred to as the Military Auditor. In general, the function of the position and role of the prosecutor in civil law and the Military Auditor in military law are not much different, namely as a public prosecutor in criminal trials. But in military justice, the military auditor also becomes or has a role as an investigator, in addition to the main investigator, namely the Direct Superior Who Has the Right to Punish (ANKUM) and the Military Police Corps (CPM) to handle criminal cases of each soldier and based on the decision of the commander.⁴

Military Criminal Law (HPM) is a special criminal law (*bijzondere strafrecht*), because this criminal law applies to certain legal subjects, or certain acts that can be carried out by certain legal subjects. The existence of Military Criminal Law does not mean that General Criminal Law (HPU) does not apply to the military. So for

⁴Article 1 paragraph (8) of the Republic of Indonesia Law No. 31 of 1997 concerning Military Courts

the military, both HPU and HPM apply, which is seen in Article 1 of the Military Criminal Code which states: "to implement this Code, the provisions of General Criminal Law apply, including Book I Chapter IX of the Criminal Code, unless there are deviations stipulated by law." This means that the Military Criminal Code, in addition to the Criminal Code, applies to members of the military and other people who are subject to judicial power in military courts.

Military crimes are crimes that are subject to the law in military circles and are specifically military in nature. Therefore, anyone armed and ready to fight can be considered a member of the military.⁵ A crime can be categorized as a military crime if a military member commits an act that violates applicable military law. It is considered a military crime because the specific circumstances or military interests require the act to be classified as a crime.⁶

Discussing military crimes, they are divided into two types: pure military crimes (*zuiver militaire delict*) and mixed military crimes (*gemengde militaire delict*). Pure military crimes are synonymous with prohibited acts, usually prohibited by military regulations. The categorization of pure military crimes, in addition to their specific nature, is also related to military interests.⁷

3.2. Prosecution System by the Military Auditorate as the Enforcer of Military Criminal Law

Military Criminal Law is specifically applied to TNI soldiers who will be tried and sentenced in a special court, namely a military court. Military courts are judicial institutions within the military that have the authority to enforce formal military criminal law.⁸ In addition to ensuring that there is fair law for military members and enforcing discipline among military members, military justice must also ensure that the legal mechanism also protects the civil rights of military members and upholds justice when a military crime occurs, including in carrying out the prosecution function.

In military justice, the manifestation of law enforcement tools in criminal cases that occur within the TNI military environment consists of several stages, namely:

- 1) Military Police and Public Prosecutors (*Oditur Militer*), which are higher authorities with the power to punish, investigate and prosecute;

⁵Moch Faisal Salam. (1994), *Indonesian Military Justice*, Mandar Maju, Bandung. p. 14.

⁶Herdjito, (2014), *Disparity in Sentencing in Cases of Desertion Crimes*, Research, Center for Legal and Judicial Research and Development, KUMDIL Training and Development Agency, Supreme Court, p 39.

⁷SR Sianturi, (1985), *Military Criminal Law in Indonesia*, Jakarta, Alumni, p 16-17.

⁸Syawaludidinsyah, et al., (2021). *Settlement of the Crime of Desertion in Absentia*, *Doctrinal Law Journal*, 6 (2)

- 2) Case Submission Rate;
- 3) Level of Implementation of Decisions.

Article 1 number 7 of Law Number 31 of 1997 concerning Military Justice states that the Military Prosecutor and the High Military Prosecutor, hereinafter referred to as the Military Prosecutor, are officials who are authorized to act as public prosecutors, as executors of decisions or court rulings within the Military Court or Court within the General Court environment in criminal cases, and as investigators in accordance with the provisions of the law. Then in the general explanation of Law Number 31 of 1997, it is explained that the Military Prosecutor, the High Military Prosecutor and the TNI General Prosecutor are functional officials who carry out state government powers in the fields of prosecution and investigation. From the provisions above, it can be concluded that the authority of the Military Prosecutor includes the fields of prosecution and investigation, but the most dominant authority of the Military Prosecutor is the field of prosecution because the authority of the Military Prosecutor in the field of investigation is only limited to certain cases on the orders of the TNI General Military Prosecutor.⁹

In the Indonesian military legal system, law enforcement against military personnel involved in criminal acts follows different procedures and mechanisms than those used in general courts. This process is designed to maintain discipline and integrity within the military, which are crucial to the operational effectiveness of the armed forces.

The authority of the Military Prosecutor as public prosecutor as regulated in Article 64 of Law 31 of 1997 concerning Military Justice includes:

- 1) Carrying out prosecution in criminal cases where the defendant:
 - a. Soldiers with the rank of Captain and below;
 - b. Those who are equated include those at the rank of Captain and below;
 - c. Those who must be tried by a Military Court.
- 2) Implementing the determination of a judge or court decision within the Military Court or Court within the General Court.
- 3) Perform additional checks.
- 4) Apart from having duties and authority, the Military Auditorate can conduct investigations.¹⁰

⁹Arief Fahmi Lubis, (2022), Professionalism of Military Prosecutors in Conducting Prosecutions. *Das Sollen: Journal of Contemporary Studies of Law and Society*, 1 (1) October. p 3

¹⁰Article 64 of Law Number 31 of 1997 concerning Military Justice

By referring to the terminology of prosecution in the Criminal Procedure Code, prosecution in the Military Court environment can be interpreted as the action of the Military Prosecutor to transfer a criminal case to the competent court according to the method regulated in Law No. 31 of 1997 concerning Military Courts with a request to be examined and decided by a judge in a court hearing. However, the transfer of cases to the General Court carried out by the Prosecutor is the direct authority of the prosecutor as public prosecutor without the need for a decision from another official, while the action of transferring cases in the Military Court environment carried out by the Military Prosecutor is an indirect authority because the transfer of the case is the implementation of the Handover of the Case from the Papera (Case Handover Officer).¹¹

This is in accordance with the provisions of Article 130 paragraph (1) which states that "The handover of the case by Papera as referred to in Article 123 paragraph (1) letter f¹² carried out by the Military Auditor by submitting the case files to the competent court accompanied by an indictment."¹³

Thus, in legal norms, the person authorized to submit a case to the court is the Case Submission Officer (Papera) by issuing a Case Submission Decision (Keppera), while the Military Prosecutor is the official authorized to implement it. The Case Submission Decision (Keppera) issued by Papera is the basis for the Military Prosecutor to transfer and carry out other prosecution actions in court. In other words, the Military Prosecutor cannot transfer a case or take prosecution actions in an authorized court without a Keppera from Papera because according to Article 123 paragraph (1) letter f of Law Number 31 of 1997, in essence, the authority to carry out Case Submission is the authority of Papera, not the authority of the Military Prosecutor.

For this reason, the Military Prosecutor's responsibility in carrying out the prosecution is technically and legally responsible to the TNI Prosecutor General (Orjen TNI), while operationally and judicially it is responsible to the Case Submitting Officer (Papera). Before the prosecution process begins, namely transferring the case to the competent court, there are several pre-prosecution actions that are the duties and authorities of the Military Prosecutor, including

¹¹Case Referring Officer, namely an officer who has the authority to determine whether a criminal case committed by soldiers under his command will be resolved out of court (through disciplinary law) or submitted for further processing in a military or general court. This task is part of the military justice system which is centered on the commander as the Superior with the Right to Punish (Ankum). See in: Muhammad Reyhan Farabi, (2024). The Role of Ankum and Case Referring Officer (Papera) in the Settlement of Criminal Acts in the Military Court I-03 Padang. Contribution 12 Journal. 3 (2) January. p 118

¹²In Article 123 paragraph (1) letter f of Law no. 31 of 1997 concerning Military Justice states "Case Handing Officers have the authority to hand over cases to the Court which has the authority to examine and try".

¹³Article 130 paragraph (1) of Law No. 31 of 1997 concerning Military Justice

conducting case file research, perfecting and processing case files, and preparing the indictment.¹⁴

After receiving the case files resulting from the investigation from the Investigator, the Military Auditor conducts a case file research as stipulated in Article 124 paragraph (1) of Law 31 of 1997. The Military Auditor conducts a case file research which includes research into formal and material requirements which in its implementation is carried out by the Kabaglahkara/Kasilahkara/Kaurlah kara, however, according to the mandate of the law, research is the duty and responsibility of the Military Auditor. The research action is a step to determine whether a case file is complete or not, whether it is suitable or not to be submitted and examined in court. With this research process, it is hoped that only cases that have met formal and material requirements will be submitted to the court and examined through the trial process.¹⁵

Regarding its duties and authority regarding prosecution, after the Military Prosecutor issues a Decree, the Military Prosecutor will then draft an indictment based on that Decree. The urgency of the indictment is that it serves as the basis for the trial, as the basis for making charges, as the basis for the judge to issue a verdict, and as the basis for further examination.

The Military Court Procedure Law does not recognize the Pre-Prosecution stage. This is due to the synergy of the existence of the commander in resolving disputes in the Military Court. The existence of the commander which is based on important principles in the Military Court is then emphasized in the explanation of Article 69 letter a which states that in accordance with the principle of unity of command, the commander is fully responsible for the unit and his subordinates, the authority to investigate and investigate criminal acts committed by subordinates under his command authority is an authority inherent in the Superior Who Has the Right to Punish, in order to determine the fate of the subordinate in question in the settlement of criminal cases whose implementation is delegated to the Military Police Investigator and/or the Prosecutor.¹⁶

In determining the appropriate criminal sanction for the defendant's actions as stated in the charges, the Military Prosecutor must determine the exact nature of the crime committed by the defendant. This is to ensure justice for the defendant and to prevent prosecution exceeding the maximum criminal sanction stipulated in the article the defendant violated.

Meanwhile, in relation to the trial facts, in the form of witness statements, statements by the defendant, evidence presented, and all other matters relevant

¹⁴Arief Fahmi Lubis, (2022). Professionalism of Auditors...Op.Cit, October. p. 5

¹⁵Ibid

¹⁶Ni Luh Ayu Widhiarcani Laksmidewi & Ni Nengah Adiyaryani, (2024). Specificity in the Case Handover Stages in Military Courts, Glorification of Justice, 1 (4) October. p 37

to the case being tried, the Military Auditor will form the basis for determining aggravating and mitigating circumstances in determining the severity of the sentence by the Military Auditor in the planned charges.

Civilian criminal cases committed by active military personnel are handled in military courts, taking into account that military courts are currently subordinate to the Supreme Court. The validity of military courts under the Supreme Court is followed by the Military Auditorate (hereinafter referred to as the Auditorate), which is the body that implements state government prosecutorial powers within the Indonesian National Armed Forces (TNI).¹⁷ However, improvements are still needed regarding mixed crimes committed by active military personnel. For example, if a military personnel commits assault on a civilian in a civilian environment, a connected judicial role is needed, involving civilian prosecutors as a vital law enforcement tool in Indonesia. As stated, the prosecutor's office is a government institution that exercises state power in the field of prosecution and other statutory authorities.¹⁸

The function of military prosecutors in the realm of law enforcement within the military environment represents that Indonesia is a state of law (*rechtstaat*), which has implications for three basic principles or principles in law enforcement in every country that adheres to the concept of a state of law, namely the supremacy of law, equality before the law, and law enforcement in a manner that does not conflict with the law (due process of law). One of the important principles or principles of a state of law is the principle of equality before the law. Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that all citizens have equal standing before the law and government and are obliged to uphold the law without exception. This principle firmly emphasizes that every citizen has equal standing before the law without exception. This means that all citizens have the same standing in terms of law enforcement. There is no such thing as immunity from the law or selective enforcement. All Indonesian citizens, from the highest positions to ordinary citizens who violate the law, will be treated fairly according to the criminal offense they committed.¹⁹ and this also applies to subjects who have the status of TNI members.

¹⁷Article 5 paragraph (2) of Law Number 31 of 1997 concerning Military Justice

¹⁸Article 1 paragraph (1) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia

¹⁹Nadya Thamariska, Suzanalisa, and Sarbaini, (2023). Application of the Principle of Equality Before the Law to Perpetrators of General Crimes of the Suku Anak Dalam (SAD) in the Jurisdiction of the Sarolangun Police, *Legalitas: Jurnal Hukum*. 15 (1) June, p. 111

4. Conclusion

Prosecution in the Military Court environment can be interpreted as the action of the Military Prosecutor to transfer a criminal case to the competent court according to the method regulated in Law No. 31 of 1997 concerning Military Courts with a request to be examined and decided by a judge in a court hearing. However, the transfer of a case to the General Court carried out by the Prosecutor is the direct authority of the prosecutor as public prosecutor without the need for a decision from another official, while the action of transferring a case in the Military Court environment carried out by the Military Prosecutor is an indirect authority because the transfer of the case is the implementation of the Handover of the Case from the Papera (Case Handover Officer). This is as stipulated in Article 130 paragraph (1) which states that "The Handover of the Case by the Papera as referred to in Article 123 paragraph (1) letter f is carried out by the Military Prosecutor by handing over the case file to the competent court accompanied by an indictment." Thus, in legal norms, the person authorized to submit a case to the court is the Case Submission Officer (Papera) by issuing a Case Submission Decision (Keppera), while the Military Prosecutor is the official authorized to implement it. The Case Submission Decision (Keppera) issued by Papera is the basis for the Military Prosecutor to transfer and carry out other prosecution actions in court. In other words, the Military Prosecutor cannot transfer a case or take prosecution actions in an authorized court without a Keppera from Papera because according to Article 123 paragraph (1) letter f of Law Number 31 of 1997, in essence, the authority to carry out Case Submission is the authority of Papera, not the authority of the Military Prosecutor.

5. References

Journals:

- Arief Fahmi Lubis, (2022), Profesionalisme Oditur Militer dalam Melakukan Penuntutan. *Das Sollen: Jurnal Kajian Kontemporer Hukum dan Masyarakat*, 1 (1) Oktober
- Herdjito, (2014), Disparitas Penjatuhan Pidana Dalam Perkara Tindak Pidana Desersi, *Penelitian, Puslitbang Hukum Dan Peradilan Badan Litbang Diklat KUMDIL Mahkamah Agung*
- Muhammad Reyhan Farabi, (2024). Peranan Ankum dan Perwira Penyerah Perkara (Papera) dalam Penyelesaian Tindak Pidana di Pengadilan Militer I-03 Padang. *Sumbang 12 Journal*. 3 (2) Januari
- Muhammad Ishar Helmi, (2013). Penerapan Azas "Equality Before The Law" Dalam Sistem Peradilan Militer, *Jurnal Cita Hukum*. 1 (2) Desember

Nadya Thamariska, Suzanalisa, dan Sarbaini, (2023). Penerapan Asas Persamaan Dihadapan Hukum (Equality Before The Law) Terhadap Pelaku Tindak Pidana Umum Suku Anak Dalam (SAD) di Wilayah Hukum Polres Sarolangun, *Legalitas: Jurnal Hukum*. 15 (1) Juni

Ni Luh Ayu Widhiarcani Laksmidewi & Ni Nengah Adiyaryani, (2024). Kekhususan dalam Tahapan Penyerahan Perkara di Peradilan Militer, *Pemuliaan Keadilan*, 1 (4) Oktober

Sulistiyawan Doni Ardiyanto, Eko Soponyono and Achmad Sulchan, (2020), Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination, *Jurnal Daulat Hukum*, 3 (1) March

Syawaludidinsyah, dkk, (2021). Penyelesaian Tindak Pidana Desersi Secara in Absentia, *Jurnal Hukum Doctrinal*, 6 (2)

Books:

Darwan Prints, (2003). *Peradilan Militer*, Medan, Citra Aditya Bakti

Moch Faisal Salam. (1994), *Peradilan Militer Indonesia*, Mandar Maju, Bandung

S.R Sianturi, (1985), *Hukum Pidana Militer di Indonesia*, Jakarta, Alumni