

Reconstruction of Military Prisoner Coaching Arrangement on The Military Penitentiary in Indonesia

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Abstract

This study aims to a) Analyze and describe the philosophical foundation for the formation of Military Correctional Institution in Indonesia; b). Analyze the arrangement of military prisoners in the Military Penitentiary; c) Analyze and formulate the construction of military correctional development in the future. This research used juridical-normative method with statute approach, conceptual approach, historical approach, and analytical approach. Primary, secondary, and tertiary legal materials obtained by the author will be analyzed using juridical-qualitative analysis techniques. The results of the research show that in a philosophical manner the military correctness is based on the Pancasila, the 1945 Constitution and the Reintegration of *Sapta Marga*. While the pattern of coaching military inmates is regulated in the Decree of the TNI Commander Number: Kep / 976 / XII / 2014 dated December 16, 2014, in which the rules concerning the pattern of coaching military prisoners need to be accommodated in the form of a more binding draft law based on aspects of legal certainty (*Rechtmatigheid*), legal justice (*Gerechtigheit*) and legal benefits (*Zwechmatigheid*).

Keywords: Coaching, Prisoners, Military Penitentiary

1. Introduction

The essence of military crime is punishment for a military which is basically more of an act of education or coaching than an act of enmity or retaliation, as long as the convict will be reactivated in military service after serving a sentence or punishment.¹ Arrangement for the formation of military inmates in the military penitentiary written in the Decree of the Commander of the Armed Forces (*Pangab*) Number: Skep / 792 / XII / 1997 on December 31st, 1997 concerning the Temporary Manuscript of the Technical Guidelines for the Implementation of Military Corrections. The Commander's Decree was then followed by the issuance of the Decree of the TNI Commander Number Kep / 24 / VIII / 2005 concerning the Organizational Principles and Procedures of the Military Penitentiary (*Pusmasmil*) and the Decree of the TNI Commander Number Kep / 976 / XII / 2014 dated December 16, 2014 concerning Instructions on Administration of Military Corrections in the Indonesian National Army. Thus, the issuance of Skep / 792 / XII / 1997 and Kep / 24 / VIII / 2005 and Kep / 976 / XII / 2014 laid the legal basis for the implementation of the concept of guiding military / TNI prisoners.

This commander's decree shows that the concept of coaching military inmates has adopted the correctional system and left the prison system, as well as submission to the concept of coaching regulated in the Act. No.12 of 1995 concerning Corrections. Thus, the system of coaching prisoners in the military sphere has been specifically regulated despite the rules of the commander-level decision.

On the other hand, in the Book of the Law on Military Criminal Law (*KUHPM*) also regulates the additional criminal dismissal from the Military board for a Soldier. In Article 6 letter b to 1, the *KUHPM* states that one type of additional criminal punishment that can be imposed on members of the Military is dismissal from the military board with or without revocation of its right to enter the army forces. Article 26 (1) of the *KUHPM* only states that additional criminal dismissal can be imposed by a Military Judge against a Military member who commits a crime if according to the Judge's consideration, it is deemed inappropriate to be retained in Military board. While regarding the criteria or parameters worthy of a Military member to remain maintained in Military board used as a basis for Judges' consideration in imposing additional criminal dismissal not explained in the *KUHPM*.

The impact arising in judicial practice due to the absence of parameters is related to the suitability of Indonesian soldiers to be maintained in the Military board. From the perspective of military criminal procedural law, it is very possible that there are differences in interpretation and understanding of inappropriate criteria or parameters which are the basis of Judge's consideration in dismissal from Military board. Therefore, by considering the lack of formulations listed in the *KUHPM*, it is necessary to formulate a more specific military penal law considering its relation to the Law. No.31 Year 1997 Article 256 paragraph (3) which regulates the formation of military prisoners who are fired from the military board carried out in the public penitentiary.² Based on the description above, it can be understood that some of the problems behind this research attracting

¹ E.Y Kanter dan S.R Sianturi, *Indonesian Military Criminal Law*, Jakarta: Alumni AHMPH, 1981, Hal. 66

² Law Number 31 of 1997 concerning Military Courts

the attention of the authors to research. These problems can be identified as follows:

a. Philosophical Problem

1) Ontology

Military prisoner coaching (*Napimil*): Systematic efforts in the field of technical administration, Security and Rehabilitation to make (*Napimil*) return to being a good soldier, improve the quality of the army, be in the army, guided by the code of ethics of soldiers / officers, aware of mistakes, improve themselves and not repeat again the criminal act, so that it can be accepted again in their unit, the military community and the general public, and again play an active role in carrying out the duties of the *TNI*. In addition, coaching is intended to guide military inmates to be able to know themselves and have a high level of self-awareness of actions to do it. In order to foster self-awareness, the coaching process must have a more specific and casuistic orientation towards the actions it takes.

2) Epistemology

a) Partial separation of criminal places for military prisoners; it means that military prisoners who are fired from military board are fostered in the Public Penitentiary (*Lapas*), while those who are not fired from military service are fostered in the Military Penitentiary (*Lemasmil*). This rule is based on Law No. 31 Year 1997 concerning Military Justice, which explains the main purpose of the Military Penitentiary (*Lemasmil*) as a means of returning *TNI* prisoners back to the soul of the *Sapta Marga* Soldiers. The existence of this partial treatment (military inmates in public prisons) will have the effect / opportunity of disharmony in life in the general prison environment, remembered the different backgrounds of other prisoners.

b) The enactment of the Act. No. 31 Year 1997 Article 256 paragraph 3, which regulates the formation of military prisoners who are dismissed in a public penitentiary, will have logical implications on the model of guidance and regulation of the rights of prisoners. Therefore, in the future, it is necessary to formulate specifically the model for the formation of military prisoners who conform to the background of prisoners.

3) Axiology

a) The handling of military prisoners in military correctional proceedings is carried out in accordance with the pattern of guidance that has been standardized as stated in the Decree of the *TNI* Commander Number Kep / 976 / XII / 2014 on December 16th, 2014 concerning Instructions on Administration of Military Corrections in the Indonesian National Army. The implementation of this coaching pattern is carried out routinely and comprehensively without seeing the type of case or criminal act committed by inmates. This will cause coaching activities to be less effective; in the sense of coaching activities do not have specific objectives with a casuistic approach in accordance with the stated criminal objectives.

b) In addition to the perspective of crime / type of case, the coaching pattern is also carried out generally towards all prisoners regardless of age, unit, and military career level. As it is known that military inmates can come from different units (*TNI-AD, TNI-AL, TNI-AU*), as well as different military levels (*Perwira, Bintara, Tamtama*) who surely have a psychological and sociological background different as well.

b. Theoretical Problem

The target of coaching prisoners in correctional institutions is to improve the quality of correctional prisoners who are in part or in full under conditions. Therefore, the Correctional and Counseling System are functioned to form correctional inmates to become fully human, be aware of mistakes, improve themselves, and not repeat the crime so that they can be accepted again by their environment. Simply, the Correctional and Coaching System should lead to deterrence effects, self-awareness, and general prevention for others not to commit crime. Theoretically, these functions and objectives are not achieved given the increasing level of military criminal offenses.

c. Juridical Problem (Legal Protection)

The Guidelines for the Implementation of Military penitentiary still refer to the Decree of the *TNI* Commander Number: Kep / 976 / XII / 2014 on December 16th, 2014 concerning Instructions on Administration of Military Corrections in the Indonesian National Army. This Decree of the *TNI* Commander became a complement to the Decree of the Armed Forces Commander Number: 792 / XII / 1997 concerning the Temporary Manuscript of the Technical Guidebook on Military Corrections Organizers. In a hierarchical manner, the *TNI* Commander's Decree is in the lower position when viewed from the hierarchy of laws in Indonesia as set forth in Law Number 12 Year 2011 concerning the Establishment of Indonesian Legislation.

Based on the background of the study above, the focus of the problems to be discussed in this study can be formulated systematically as follows:

a. What is the philosophical basis for setting up military penitentiary inmates in Indonesia?

b. What is the arrangement for the formation of military prisoners in the Military Penitentiary?

c. How is the reconstruction of the military prison management arrangements going forward?

2. Research Method

This research design steps on a normative legal approach. In implementing normative legal research, so-called doctrinal legal research, it usually only uses secondary data sources, namely in the form of legislation, court decisions, legal theories, and opinions of prominent law scholars, while the analysis used is in the form of analysis normative-qualitative. The approach used in this study includes several approaches, namely: 1). Statute approach; 2). Conceptual approach; 3). Historical approach¹, and 4). Analytical approach.

The source of legal material used in this study is secondary legal material obtained and collected by means of documentation studies or literature studies², both through electronic media and all other literature media. The legal material analysis technique used in this study is a qualitative normative analysis, also known as qualitative juridical analysis, in which legal materials obtained through research are examined first and then systematically arranged and presented in the form of descriptive sentences. Furthermore, the collected data / legal material is analyzed based on the prevailing laws, theories, and legal doctrines to then be deductively deduced by starting from the study of general matters towards specific matters.

3. Results and Discussion

3.1 *Philosophical Foundation for Arranging the Coaching of Military Prisoners in Indonesia*

Philosophically, correctionalism demonstrates a commitment in an effort to change the conditions of the convicted person through the process of coaching and treating humanely through the protection of the rights of the convicted person. This commitment is explicitly affirmed in Article 5 of the Penal Code, that the correctional development system is carried out based on: patronage, equality of treatment and service, education, guidance, respect for human dignity, loss of independence are the only suffering and guaranteed the right to remain dealing with certain families and people.

The main task of the correctional system is the treatment towards prisoners and clients in terms of coaching, care, and guidance in the framework of human rights. Starting from this, it can be understood that the basic idea of correctional systems is that humans are creatures who have the ability to adapt to their environment.³ In the adaptation, people often violate the way of life that applies in society to face the challenges of life that arise due to the increasing complexity of life and livelihood. In addition, if humans are unable to adjust to their environment, then humans will be left behind by other humans. The human being really does not like to be left behind, but because he is left behind, he adjusts in his own way to the situation, one of which is a violation of the way of life that applies in society. So, it causes conflict between him and the community.⁴ In fact, in essence, he and the community are both human beings who have the potential to live in peace and maintain integrity. From this basic idea, it can be seen that the philosophical view of the penal system on crime is that crime is a form of adjustment of the perpetrator to the challenges of his life.

Moreover, crime is also a mistake of the community because they have left these individuals in the midst of their inability to adjust to the expectations and procedures of community behavior. In other words, crime is not something based on the perpetrator's free will, but something that the perpetrator is forced to do because he is left behind or abandoned by society. Therefore, the correctional system must be able to resolve conflicts and restore relations between perpetrators and their communities so that integrity is created between actors and society in life.

This shows a change in the view of the correctional system, which is no longer based on retributive justice philosophy, but it is based on a philosophy of social reintegration. The philosophy of social reintegration emphasizes that punishment is no longer suffering and eliminates happiness as understood in the philosophy of retaliation by means of individual isolation and the elimination of human rights, but punishment must eliminate suffering and provide benefits to actors and society so that the philosophy of social reintegration encourages criminal punishment based on the community, in which coaching and mentoring is not only carried out in the correctional institution, but also outside the institution, namely at a certain stage the convict can interact with the community directly so that they can reintegrate even though they are still in the period of punishment. This interaction and reintegration aim to increase the willingness of the community to accept prisoners again and minimize stigma so that when they are free, they are expected to be able to live normally again as members of the community. The implication of this philosophy is that there is a change in the form of punishment that is no longer in the form of imprisonment, but in the form of fines, social work, restitution or compensation for victims, conditional punishment, and other forms of community based sentences.⁵

¹ Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana (first edition third printing), 2007), p.93.

² Adi Rianto, *Social and Legal Research Methods*, Jakarta: Granit, 2004, p. 61

³ Iqraq Sulhin, *Correctional Philosophy (System)*, "Indonesian Criminology Journal", Vol. 7 No. 1 (May 2010)

⁴ *Ibid.*

⁵ Iqraq Sulhin, *Correctional Philosophy (System)*, "Indonesian Criminology Journal", Vol. 7 No. 1 (May 2010)

In the implementation of the correctional system in Indonesia, the prisoner coaching system must be based on the 10 guiding principles based on the "10 correctional principles", namely:

- a) Protect and give a life so that they can carry out their role as good citizens;
- b) Penalty is no longer based on a background of retaliation;
- c) Give guidance rather than torture so that they repent;
- d) States do not have the right to make them worse or more evil than criminal;
- e) During the loss of limited freedom of movement, prisoners and students must not be exiled from the community;
- f) The work given to prisoners and students must not only fill time;
- g) The guidance and coaching given to prisoners and students are based on Pancasila;
- h) Prisoners and students are like sick people, need to be treated so that they are aware that the violation of the law that has been committed is damaging himself, his family and environment, then being nurtured and guided to the right path;
- i) Prisoners and students are only punished in the form of limiting independence within a certain period of time;
- j) For the guidance and coaching of prisoners and students, the necessary facilities are provided.¹

Guidance carried out on prisoners must be adjusted to the principles written in Pancasila, the 1945 Constitution and the Standard Minimum Rules (SMR) reflected in the 10 Principles of Corrections. Correctional system is the final part of the criminal justice system in criminal justice system is an integral part of the Integral Justice System. Thus, Correctional Institutions, in terms of the institutional system, coaching methods, and correctional officers, are an integral part of a series of law enforcement processes taking into account the upholding of human rights.

In the military context, the law that regulates the coaching of military prisoners has not been specifically regulated because currently the concept which is used as the legal basis is *Staatsblad* 1934 Number 169 as amended by Law Number 41 Year 1947 concerning Army Prison. The concept in this law still adheres to the concept of "Imprisonment" which can be nuanced by the system of imprisonment emphasizing elements of revenge and enmity. Therefore, in connection with the promulgation of Law No.12 Year 1995 concerning Corrections which laid the foundation of a concept of guidance to prisoners, then by the Commander of the TNI on December 31st, 1997, through the Decree of the Commander of the Indonesian Armed Forces (ABRI) Number: Skep / 792 / XII / 1997 concerning the Temporary Manuscript of the Technical Guidebook for the Implementation of Military Correctional Institutions (*Masmil*), which was then followed by the issuance of the Decree of the Commander of the Indonesian National Army (TNI) Number: Kep / 24 / VIII / 2005 concerning the Organizational Principles and Procedures of the TNI Legal Development Agency . Thus, the issuance of Skep / 792 / XII / 1997 and Kep / 24 / VIII / 2005 laid the legal basis for the implementation of the concept of guiding military / TNI prisoners and abandoning the concept of imprisonment.

Thus, the *Staatsblad* Year 1934 No. 169 as amended by Law No. 41 Year 1947 concerning Army Imprisonment as a legal basis is still valid, but still uses the concept of "prison" so that it is not in accordance with the concept of coaching. Meanwhile, if referred to the TNI Commander's Skep it appears that there has been a change in concept from the prison system to the correctional system. Decree of the Commander of the TNI Number Skep / 792 / XII / 1997 concerning Temporary Manuscripts The Technical Guidelines for the Implementation of Military Penitentiary and the Decree of the TNI Commander Number Kep / 24 / VIII / 2005 concerning the Principles of Organizations and Procedures of the Military Penal Center are a concept of submission to Law No. 12 Year 1995 concerning Corrections, as a meant by correctional means in Article 1 number 1 is an activity to foster correctional Citizens based on the system, institutions and ways of coaching which are the final part of the criminal system in criminal justice system. Its function in Article 3 of the Correctional Act is affirmed, namely, to prepare correctional Citizens in order to integrate healthily with the community, so that they can play a role as free and responsible members of society.

3.2 *Regulating the Development of Military Prisoners at the Indonesian Military Penitentiary.*

The study of prisoner coaching is a study that is closely related to the purpose of prosecution. For Tolib Setiady,² the determination of the criminal objectives was influenced by two disciplines of criminal law, namely:

- a) Classicism is a flow that requires criminal law that is systematically arranged and focuses on actions and not on people who commit criminal acts;
- b) Modernism is a flow that focuses attention on the creator of a crime.

Based on classical ism, the purpose of punishment is more to the purpose of retribution. Whereas based on the modernism, the purpose of punishment is to foster and prevent crime or criminal acts. In the criminal context

¹ Hamzah dan Siti Rahayu, 1983, *A Brief Overview of the Indonesian Criminal System*, Jakarta: Akademika Pressindo, Jakarta, p. 87

² Tolib Setiady, *Principles of Indonesian Penitentiary Law*, Bandung: Alfabeta, 2010, p. 19

in Indonesia, modernism in punishment is the main orientation in the penal/correctional system.

The orientation and purpose of the treatment of prisoners in Indonesia began to appear since 1964 after Sahardjo stated that at the Prison Conference in Lembang, Bandung. The aim of criminal prosecution was to correctionalism, so those who became prisoners were no longer deterred but fostered and then socialized. The purpose of coaching is correctional. It can be divided into three things, such as:¹

- a) After leaving the penitentiary, he is no longer committing a crime.
- b) Be a useful human being, play an active and creative role in developing the nation and country.
- c) Able to get closer to God Almighty and get happiness in the world and hereafter.

The purpose of guiding these prisoners will influence and determine the direction in formulating the method of guidance. The coaching method is a way of delivering coaching material. So, effectively and efficiently can be accepted by inmates and can provide change to the inmates, any changes in mindset, behavior or in action. Submission of material is not only based on the readiness of the material giver, but also it must be considered the readiness of the inmates themselves in accepting it.

In the context of military correctionalism, the method of fostering military inmates at the Military Penitentiary Institution (*Lemasmil*) is written in the Decree of the TNI Commander Number: Kep / 976 / XII / 2014 on December 16th, 2014 concerning Instructions on Administration of Military Corrections in the Indonesian National Army. In this decision it was stated that in carrying out coaching for military prisoners in *Lemasmil*, officers must live and practice the duties of military correctional development with full sense of responsibility, professional ability and moral integrity adjusted to the conditions and background of each military prisoner, so that the coaching function can be efficient, effective in accordance with the objectives and targets of the development of military prisoners by applying the coaching method including:²

- a) Communicative and accommodative approaches. Directly interacting with the family between officers with military inmates individually and / or in groups by counseling, and interviewing to find and resolve personal problems, emotional control, spiritual reinforcement and adjustments in order to foster a sense of sincerity, responsibility, instill loyalty in his service to TNI, the Republic of Indonesia (NKRI), law and society.
- b) Educative-persuasive approach. This approach is trying to influence and change the behavior of military prisoners through mental coaching of personality, education, skills and exemplary behavior and giving equal treatment without discrimination, placing military prisoners as human beings who have new potential / hope for a better future, having self-esteem with the same rights and obligations, and given encouragement, enthusiasm, to be aware of their mistakes, improve themselves, not repeat the crime and return to TNI and guided by the code of ethics of the soldiers and / or the code of ethics of the officers, so that their hearts are encouraged to do things that are good, commendable and become useful soldiers in their unity and ready to play an active role again in carrying out TNI duties.
- c) Integrated Approach. *Napimil* Coaching in the Military Community Institution is carried out in a systematic, integrated and continuous manner among the Head of the Military Penitentiary (*Kalemasmil*), the Eligible Authority (*Ankum*) and Military Oditur (*Otmil*) as the executors of the Military Court's decision (*Dilmil*) and Supervisors / Observers in charge of overseeing the implementation of the Military Courts, Mental Guidance (*Bintal*) and TNI Health Services (*Yankes*), the Regional Head of the Provincial Ministry of Law and Human Rights and the Director General of Correctional Services at the Ministry of Law and Family.

From the guidance method above, it can be seen clearly that the purpose of organizing military prisoners is to re-establish military prisoners to become good soldiers, improve the quality of military personnel, and become TNI personnel, guided by the Soldier's Code of Ethics and / or Officer Code of Ethics, aware of mistakes, improve themselves and not repeat the criminal act so that it can be accepted again by their unit and play an active role again in carrying out the duties of the TNI.³

3.3 Reconstruction of the Arrangement of Future Military Convicts.

As mentioned earlier, the problem of regulating the coaching of military prisoners in the military correctional environment can be identified into ontological, epistemological, axiological and theoretical problems. This problem is a gap that can be used as an entrance to the improvement of the arrangement of military prisoners in the future. The idea of reconstructing arrangements for the formation of military prisoners in the future begins from the above problems, in which the reconstruction concept is described systematically using the terminology of legal values that Gustav Radbruch put forward as follows:

¹ Petrus Irwan Panjaitan, *Attempts to Renew Thought of Dr. Sahardjo Regarding Corrections as the Purpose of Prison Crimes*. Jakarta: University of Indonesia, 1996, p. 41

² Decree of the TNI Commander Number Kep / 976 / XII / 2014 dated December 16, 2014 concerning Administrative Guidelines for the Implementation of Military Correctional Facilities in the Indonesian National Army, p. 6

³ Decree of TNI Commander Number Kep / 976 / XII / 2014 On December 16, 2014 concerning Administrative Guidelines for the Implementation of Military Correctional Facilities in the Indonesian National Army, p. 6

a) Legal certainty (*Rechtmatigheid*)

The development of military prisoners in military correctional institutions is regulated by the commander's decree, namely, ABRI Commander's Decree Number: Skep / 792 / XII / 1997 concerning the Temporary Manuscript of the Technical Guidance Book for the Implementation of Military Corrections; Decree of the TNI Commander Number: Kep / 24 / VIII / 2005 concerning the Organizational Principles and Procedures of the Military Penitentiary (*Pusmasmil*); Decree of the TNI Commander Number: Kep / 976 / XII / 2014 on December 16th, 2014 concerning Instructions on Administration of Military Corrections in the Indonesian National Army.

Seeing from the perspective of Hans Nawiasky's legal norm hierarchy, also known as "*theorie von stufenaufbau der rechtsordnung*", this inspires the structure of the legal system in Indonesia as stipulated in Law Number 12 Year 2011 concerning the Establishment of Legislation, the legal position and strength from the Decree of TNI Commander in Indonesian legislation. Thus, clearly stronger and binding legislation is needed. The need for higher and binding regulations is in line with the existence of the Military Penal Code (*KUHPM*) which in several respects differs from the Criminal Code (*KUHPP*). On the other hand, in relation to the system of fostering military prisoners, Article 256 paragraph (1) of the Act. No. 31 Year 1997 concerning Military Justice, mentioned about Military Correctional Authority (*Masmil*) in carrying out its guidance, that: "A prison sentence or imprisonment is carried out in *Masmil* or in another place according to the provisions of the prevailing laws and regulations", and paragraph 3 confirms that "If the convict is fired from the army service, then the criminal as referred to in paragraph (1) is carried out in the Public Penitentiary". The consequence is clear. If it is implemented in the General Penitentiary, the legal basis for its coaching will be guided by the Law. No. 12 Year 1995 concerning Corrections, and no longer based on the Decree of TNI Commander Number Kep / 976 / XII / 2014 on December 16th, 2014 concerning Instructions on Administration of Military Corrections in the Indonesian National Army.

Then, the law number 31 year 1997 on military court, the adjudication by the authority is not clearly determined when dealing with ex-Indonesian National Armed Forces (TNI) personnel who already received penalty as an addition of the dismissal from their rank title, but still need to be imprisoned in a civilian prison. This is supported by the article 262 number (3) from law number 31 of 1997 which implied that the *judge for supervision and observation* (Supervisory Judge) conducted adjudication to ensure the court ruling has been made fairly. From that, the role of the *judge for supervision and observation* is only to monitor whether the execution or the judgment has been done correctly based on the court ruling.

Supervision and observation to the TNI personnel who has been dismissed from the military service is not continuously done by the *judge for supervision and observation*, as in article 262 number (4), law number 31 of 1997 which indicated that the *judge* conduct *supervision and observation when the charged is imprisoned in military prison, and it continues after the charged finish the penalty. Thus, the observation to the dismissed TNI personnel who finish the penalty in the civilian prison is done by the judge for supervision and observation* limited to the scope of during the imprisonment, while the further observation do not become the responsibility of the *judge for supervision and observation*.

Therefore, specific and clear law on monitoring and observation of military prisoners who are dismissed and then reformed in civilian prison are needed considering the following:

- 1) An ex-military personnel who is sentenced into civilian prison will receive different rehabilitation treatment compared to the treatment given in military prison, so Supervisory Judge still has authority to do further supervision in the civilian prison.
- 2) The observation of prisoners in civilian prison is needed for this research about "the benefit of imprisonment" in civilian prison to make the ex-military personnel can adjust themselves to the civilian community. For example, when ex-military personnel who is an expert on weapons and explosives is imprisoned and does not receive a suitable rehabilitation treatment in the prison, it will be possible that he will be a danger for civilian community because of his expertise since this expertise can be misused for criminal purposes.

b) Law of Justice (*Gerectigheid*)

The rehabilitation system of military prisoners is conducted based on the decree of The Commander of the Indonesian National Armed Forces Number: Kep/976/XII/2014 of 16 December 2014 on the Instruction of Administration for Military Correction Procedures in Indonesian National Armed Forces. On the decree of decree of The Commander of the Indonesian National Armed Forces, it is stated that the rehabilitation system for military prisoners covers:

- 1) Educational Rehabilitation
 - a. Religious rehabilitation
 - b. patriotic tradition (*Tradisi Juang*) rehabilitation

- c. *Matra* rehabilitation
- d. mental ideology rehabilitation
- e. law education
- f. Basic military regulations
- 2) Basic Skills Rehabilitation
 - a. agricultural skill
 - b. woodcraft skill
 - c. fishery skill
 - d. sewing skill
 - e. weaving skill
 - f. etc.
- 3) Activities Related to Rehabilitation Tasks
 - a. Sport exercise
 - b. art and performance activities
 - c. library activities
 - d. accepting visits from family and relatives
 - e. remission
 - f. permission
 - g. sending and receiving letters
 - h. prisoners welfare
 - i. job opportunity
 - j. assessment and reward
 - k. punishment for military community regulations offences

Besides that, the data of military prisoners who is categorized into military correction are from different military ranks. Below is the table of military prisoners data categorized into military correction and the military ranks from 2014-2016:

Year	Forces	Military Ranks			Total number of person
		Perwira (officers)	Bintara (NCOs)	Tamtama (enlisted ranks)	
2014	TNI – AD	62	198	375	635
	TNI – AL	7	19	27	53
	TNI – AU	7	19	11	37
2015	TNI – AD	60	291	423	774
	TNI – AL	14	21	31	66
	TNI – AU	8	33	15	56
2016	TNI – AD	74	256	365	695
	TNI – AL	10	18	32	60
	TNI – AU	7	16	13	36

Source: Pusat Pemasarakatan Militer, Jakarta, 2017

Note:

AD: Army

AL: Navy

AU: Air Force

According to the data above, it is clear that the types of offences done by TNI personnel are different in the form of type of offences and forces. The offender of desertion crime act has different motives from other crime offences. Further, desertion crime offender from officer rank will have different motives and background from offenders of desertion crime from enlisted rank.

In the future, the treatment and rehabilitation for military prisoners must be adjusted to the characteristics of the military personnel. The idea of individualization concept of treatment and rehabilitation for military personnel must be manifested in the regulation in the form of laws as the treatment and rehabilitation for civilian prisoners rules have been stated in UU number 12 year 1995 about correction. The idea of individualization development in the rehabilitation of military personnel is needed to be done to achieve the aim of prisoner rehabilitation. Besides, the idea of individualization is also needed to prevent the imprisonment effect of the military prisoners to the social community.

c) Benefit of Law (*Zwechmatigheid* or *Doelmatigheid*)

The rehabilitation system for military prisoners is conducted based on the decree of The Commander of the Indonesian National Armed Forces Number: Kep/976/XII/2014 of 16 December 2014 on the Instruction of Administration for Military Correction Procedures in Indonesian National Armed Forces.

The concept of military prisoner rehabilitation which is regulated in this commander decree is determined as representative to be applied as a rehabilitation concept for military prisoners considering the crime acts done by the military prisoners so far.

However, change is needed to reach the benefits of the rehabilitation which is in the form of treatment contextualization and individualization, and the application of the existed regulation to the military prisoner by considering the suitability to the prisoners' background. The prisoners' background involved his military rank record, type of crime committed, age, and gender. Using this contextual implementation method, it will increase the benefits of the prison rehabilitation and treatment, and the purpose of the imprisonment will be easier to be accomplished.

In the aspect of law justice, rights and obligations of rehabilitating the prisoners in substantial context is a law subject which emphasizes the balance in treating the military prisoners. This balance will be completed through the application of proportional rehabilitation. This proportionality is defined as the rehabilitation material adjustment process to the prisoners' background and types of crime conduct. Therefore, the value of justice in the military prisoners rehabilitation system can be done through the individualization of military prisoners similar to the individualization of civilian prisoners, as stated in Law Article 12, Number 12 of 1995 concerning corrections.

In the aspect of legal certainty, the rehabilitation system for military prisoners is seen through formal legality. The aim is no other than to help in providing legal certainty to the related legal subject, whether the subject is an individual and/or a group/community. Considering the increase of offences done by *Indonesian* National Armed Forces personnel, legal certainty becomes the binding guidance of military personnel's acts. On the other hand, the Law Number 12 of 2011 about The Construction of Law Regulations which explains about the hierarchy of Indonesian Law system also indicates the hierarchical position of the decree of The Commander of the *Indonesian* National Armed Forces Number which is used as the foundation of military correction conduct. Hence, to provide stronger and tighter legal protection, there is a need of specific law rules regarding the military correction in which also covers and explains the system of military rehabilitation.

Meanwhile in the benefit value, Jeremy Bentham stated that in order to reach happiness in law, it is not only about justice or certainty, but also about benefit. It is also mentioned that a norm is considered as proper when it covers the happiness felt by the dominant society (legal subject). In the context of law of crime, the value of legal benefit (*zweckmasigkeit*) is closely related to the purpose of imprisonment especially as a specific prevention, so the charged will never repeat the same act of law violation, and as a general prevention which can make people to be more careful not to violate the law because there will be consequences. The high correlation between the law's value of benefit and the objective of imprisonment makes rehabilitation holds a significant role in determining the criteria of benefit. It means that the suitable and appropriate rehabilitation model will improve the benefit value of law which results in the achievement of imprisonment purpose.

According to the discussion above, justice, law certainty and law benefits play significant role to support the manifestation of law norms. The better the law, the more possibility exist to support the law enforcement. In general, a good law regulation is the law which can cover four concepts as follow:

1. Juridically applicable, meaning the law implication is based on the higher effective principle, and is formed from the applied manners.
2. Sociologically applicable, meaning the law is accepted by the people to whom the law is applied.
3. Philosophically applicable, meaning the law is match to the law purpose (*rechtsidee*) as a high positive value.
4. Futuristically applicable, meaning the law can be applied in general and continuously (not temporarily) which will result in law benefit.

Conclusion

According to the analysis and findings discussed above, it can be concluded that:

1. The philosophical foundation of military correction is *Pancasila* (article 2 and 3), and the 1945 *Constitution of the Republic of Indonesia* (paragraph IV Amendment 4). While the philosophical foundation of military correction is "reintegration of *Sapta Marga*", military offences is a form of conflict happening in someone as a *Sapta Marga* individual as a part of the forces, as military society, and as a civilian, so the military imprisonment in military correction rehabilitation is aimed to recover the that conflict and to unite the military prisoners to the community. The point is that it is a form returning the identity of military prisoner as military personnel whose value is *Sapta Marga*, because the soul of TNI personnel is *Sapta Marga*, one who is willing to sacrifice to the greatness of nation.
2. The rehabilitation of military prisoners in military prison is ruled by only in the form of decree, which is the decree of The Commander of the *Indonesian* National Armed Forces Number: Kep/976/XII/2014 of 16

December 2014 on the Instruction of Administration for Military Correction Procedures in *Indonesian* National Armed Forces. That decree is as a complementary to the decree of Armed Forces of *Indonesia* (ABRI) Number Skep/792/XII/1997, of 31 December 1997 about the temporary manuscript of the instruction of military correction techniques. The decree of The Commander of the *Indonesian* National Armed Forces Number: Kep/976/XII/2014 covers the rules of rehabilitation procedures of military prisoners as follows:

- a. Educational Rehabilitation
 - a. Religious rehabilitation
 - b. patriotic tradition (*Tradisi Juang*) rehabilitation
 - c. *Matra* rehabilitation
 - d. mental ideology rehabilitation
 - e. law education
 - f. Basic military regulations
 - b. Basic Skills Rehabilitation
 - a. agricultural skill
 - b. woodcraft skill
 - c. fishery skill
 - d. sewing skill
 - e. weaving skill
 - f. etc.
 - c. Activities Related to Rehabilitation Tasks
 - a. Sport exercise
 - b. art and performance activities
 - c. library activities
 - d. accepting visits from family and relatives
 - e. remission
 - f. permission
 - g. sending and receiving letters
 - h. prisoners welfare
 - i. job opportunity
 - j. assessment and reward
 - k. punishment for military community regulations offences
3. Reconstruction of future military correction rehabilitation can be described through the three law paradigms below:
- a) **Law Certainty** (*Rechtmatigheid*)

It is necessary to construct laws who describe in detail about military correction such as in Law Number 12 of 1995 about Correction which becomes the guideline in the civil correction. Besides accommodating the decree of the Commander of TNI which has become the basic guideline of military correction so far, the construction of law considering the military correction also describes in detail about the rehabilitation of military prisoners who has been dismissed from the army forces and has been rehabilitated in the civilian prison.
 - b) **Law Justice** (*Gerechtigheit*)

In the context of rehabilitation for military prisoner, the law justice is defined as the moral foundation of act and treatment to the prisoner appropriate to the prisoner's background, type of crime, and military rank. Considering that the type of crime done by TNI personnel is different from one another, whether it is based on the background, type of crime, and military rank, the writer argues that the construction of individualization idea which is suitable to the prisoner background about the model and procedure of military prisoner rehabilitation is necessary.
 - c) **Benefit of Law** (*Zwechmatigheid*)

The effort of contextualizing the form of rehabilitation that has been ruled in the decree of The Commander of the *Indonesian* National Armed Forces Number: Kep/976/XII/2014 of 16 December 2014 on the Instruction of Administration for Military Correction Procedures in *Indonesian* National Armed Forces is needed. This contextualization process covers the form of rehabilitation material and its application to the military prisoner. Therefore, the rehabilitation of military prisoner will be empowering and appropriate, and hopefully can help the achievement of proper, fast, and easy condemnation, so the benefit can be experienced by the military prisoners.

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