

# Judicial Reconstruction of Indonesian National Army as Criminal Actors

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## Abstract

By the issuance of TAP MPR Number VII/ MPR / 2000 and Act Number 34 of 2004, particularly provisions of Article 65 paragraph (2), based on the law principle of *Lex Posteriore Derogat Lex Priori*, the competence of General Court should include the Indonesian National Army soldiers for violating general criminal law. The enforcement of judicial competence adhered to the provision of Article 65 paragraph (2) of Act Number 34 of 2004, shall be preceded by reformation of criminal law in the military court or general court environment which is adapted to the substance of Article 65 paragraph (2) Act Number 34 of 2004. Furthermore, the settlement of general criminal dispute by the National Army after the enforcement of Act Number 34 of 2004 shall constantly be under the guidance of KUHPM and Act Number 31 of 1997 on Military Court. The reformation of criminal law within the General Court is related to General Court Competence for TNI who commits general criminal acts in the future, As *Ius Constituendum*, it is necessary to regulate the roles and functions of Superiors who have the right to punish (hereinafter referred to as *Ankum*) and Case Transfer Officers (hereinafter referred to as *Papera*) in the settlement of general criminal cases for TNI soldiers. Some other matters need to be regulated namely; the investigators shall be from the Military Police Officers, public prosecutors are carried out by the Military Prosecuting Attorney, and the judges are both Military and general Judges, as well as TNI soldiers whose sentences as convicts have been decided, are fostered in the Military Correctional Institution.

**Keywords:** Juridical Review, Act Number 34 of 2004, Indonesian National Army (TNI)

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## 1. Introduction

The essence of the soldier's identity is the People's Army, namely soldiers from Indonesian citizens. Fighters Army are soldiers who struggle to uphold the Unitary State of the Republic of Indonesia regardless of the tasks and challenges. Third is the National Army i.e., Indonesian Army serving for the interests of the state above other interests. Fourth, the Professional Army are trained, educated, and well equipped, and are able to appreciate and implement democratic norms, human rights and the rule of law in accordance with the demands of the times. On May 5, 1947, President Soekarno issued a decision to unite the Indonesian Army into the Indonesian National Army (hereinafter referred to as TNI). The unification took place and was inaugurated on June 3, 1947.

The military are people who are educated, trained and prepared to be engaged in a combat. Thus, special norms or rules are established for the military. The military shall adhere to the code of conduct clearly determined and in which the implementation is closely monitored by the superiors. Discipline is commonly known as the most important matter for the military; however, a law is required to enforce this element, because the law indirectly serves for the maintenance of military discipline. Military Courts as a tangible manifestation for the general public are law enforcement or discipline agencies for the military. The Military Criminal Law is regulated in the Military Criminal Code (hereinafter referred to as KUHPM).

Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that the State of Indonesia guarantees its citizen to have the same position in law and government. It can be concluded that the enforcement of justice based on the law must be carried out by every citizen, including the military. Law enforcement in Indonesia as a manifestation of the administration of judicial power as regulated in Act Number 4 of 2004 concerning Judicial Powers is implemented by four court environments, namely the general court, the religious court, the state administrative court and the military court.

The courts existence within the Military Judiciary is also contained in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia stating that judicial power is exercised by a Supreme Court and the lower judicial bodies within the Military Courts, the Religious Courts, the State Administrative Courts, General Court and the Constitutional Court. The Indonesian National Army (hereinafter referred to as TNI) is the state defense organization of the Republic of Indonesia, carrying out the state defense policies to uphold the sovereignty of the State, maintain territorial integrity, protect the safety of the nation, carry out military operations for war and military operations other than war, and actively participate in regional and international peacekeeping duties. To implement their responsibilities, the possibility of irregularities committed by members of TNI may happen. The forms of deviation include violations of human rights and violations of disciplinary law

and criminal acts. Every criminal act committed by TNI is settled in a Military Court.

The TAP MPR Number VII/MPR/2000, article 3 (4) letter (a) and Act Number 34 of 2004, article 65 (2) stated that "Soldiers are subject to the power of military courts in the case of violations of military criminal law, and adhere to the power of the general court for violations of general criminal law regulated by law.<sup>1</sup> The Military Criminal Code as a material law and military criminal procedural law is a formal law as regulated in Act Number 31 of 1997 on Military Courts. Every legal violation carried out by TNI soldiers or their equivalent is processed through a Military Court based on the provisions of the Military Criminal Law. Like the General Criminal Law, the process of resolving military criminal cases is divided into several stages which include the stages of Investigation, Prosecution, and Examination before a court session.

In the effort of military law reformation as a *Ius Constituendum* perspective (the law aspired to in the future), it is necessary to research and study the whole aspects, especially legal substance, legal institutions and legal culture aspects that apply in the military environment. By the representation of various legal issues behind the research, the researcher focuses on the study of the juridical review of Article 65 paragraph (2) of Act no. 34 of 2004 on the Indonesian National Army. The formulations of the problems are:

**First**, what are the legal consequences of the Law on the Indonesian National Army (TNI) - Article 65 paragraph (2) which regulates the general judicial authority for TNI who commit general crimes or non-military crimes?; **Second**, what kind of judicial reconstruction must be carried out as a result of the Law on the Indonesian National Army (TNI) article 65 paragraph (2)?

## 2. Research Methods

The normative juridical method is applied in this research. It emphasizes the science of law on the normative side, namely by conducting an assessment based on legal materials from the literature as a process to find the rule of law, legal principles, or legal doctrine to answer the legal issues at hand. The approaches used are the conceptual approach, case approach, historical approach and statutory approach. The statutory approach is carried out by examining all laws and regulations related to the legal issues raised.<sup>2</sup> Conceptual Approach is a method referring to legal principles, which can be found in the views of scholars or legal doctrines. A case approach examines a case viewed from certain legal aspects. The Historical Approach is to examine the historical aspects of the historical arrangements of various laws and regulations.<sup>3</sup>

## 3. Results and Discussion

### 3.1. Legal Consequences of the Law on the Indonesian National Army (TNI)-Article 65 paragraph (2) regulating the authority of the general court for TNI who commit general crimes or non-military crimes

The substance of Article 65 paragraph (2) of Act Number 34 of 2004 is a mandate of the law that must be implemented. In relation to the provisions of Article 65 paragraph (2) of Act Number 34 of 2004, it is also necessary to consider the generally accepted legal principle, namely *Lex Posteriore Derogat Lex Priori*. It means that the new law nullifies the old law on the same material. Therefore, it is determined that military personnel who violate the general criminal law will be tried in the general court, those who violate the military criminal law will be tried in the military court. Thus, the existence of Article 65 paragraph (2) of Act Number 34 of 2004 nullifies the provisions of Article 9 of Act Number 31 of 1997, concerning transformation of the competence of Military Courts.

By the provisions of Article 65 (2) of Act Number 34 of 2004 and following the legal principle of *Lex Posteriore Derogat Lex Priori*, the competence of the general judiciary covers perpetrators of military personnel who commit general crimes, thus military personnel shall submit and are tried in general court, however its enforcement shall be preceded by an implementation rule. The substance of Article 65 (2) of Act Number 34 of 2004 is the will of the law that must be realized, In addition to the existence of *Lex Posteriore Derogat Lex Priori* legal principle and its legal implications as above describe, it is necessary to carry out legal reforms applicable in the Military Court environment as well as the applicable law in the General Court environment.

### 3.2. The Concept of Judicial Reconstruction as a Result of the Law on the Indonesian National Army (TNI) article 65 paragraph (2)

#### 3.2.1. The Philosophy of Judicial Reconstruction

Philosophically, legal reformation in Indonesia must be based on Pancasila philosophy as the basis and ideology of the state as well as the source of all legal sources in Indonesia. As a strong basis and ideology of the State, Pancasila is applied as a paradigm (frame of thought, source of values and orientation of direction) in legal development, including all legal reformation in Indonesia.<sup>4</sup> Likewise, in the judicial law reformation, military

<sup>1</sup> TAP MPR RI Number VII/MPR/2000 on the Role of TNI and Polri and Act Number 34 of 2004 on Indonesian National Army.

<sup>2</sup> A'an Efendi M.H S. H. and Dr Dyah Ochtorina Susanti M.Hum S. H., 2021, *Ilmu Hukum*, Prenada Media.

<sup>3</sup> *Ibid.*, p.94

<sup>4</sup> Moh. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi*, LP3ES, Jakarta, 2006, p.52

personnel must also be guided by the values of Pancasila which reflect Indonesian cultural values. The cultural values of the Indonesian people are also preserved in the life culture of the Indonesian military, where the Indonesian military highly respects and adheres to the orders of the leadership according to the Sapta Marga and the Soldier's Oath. In its implementation, in solving all problems that occur in the life of soldiers, such as official problem, family matters, or legal violation, the involvement of the Superiors is required as a form of responsibility and guidance (*Ankum* and *Papera*) to their subordinate.

### **3.2.2. Legal Basis of Judicial Reconstruction**

The reformation or amendment of the military court law is based on MPR Decree Number VII/MPR/2000 concerning the Role of the TNI and POLRI, Article 3 (4) a, then is strengthened by Act Number 34 of 2004, article 65 (2) which states: that TNI soldiers are subject to military justice for any violations of military criminal law, and adhere to the power of general courts for violations of general criminal law. The provisions of the law contain the basic idea of reforming the military justice law.<sup>1</sup> In addition, it is necessary to comply with general judicial law, considering the substance of article 65 (2) of Act Number 34 of 2004 relating to the settlement of general criminal cases for TNI soldiers in courts within the general court, so that MPR Decree Number VII/MPR/2000 on The role of the TNI and POLRI, article 3 (4) a, and Act Number 34 of 2004, article 65 (2) can be used as a legal basis for the reformation of the judicial law for TNI soldiers.

In addition to the existence of a legal basis for Article 65 (2) of Act Number 34 of 2004, it is also related to the development of the national strategic environment, since Indonesia entered the reform era where law enforcement, human rights and equality before the law (equality before the law) are demanded by the community for all citizens, followed by growing aspirations of the community on the implementation of General Courts for TNI Soldiers who violate general criminal law. Thus, it becomes consideration for military and general court law reformation related to general criminal cases settlement for TNI Soldiers.

### **3.2.3. Reconstruction of the Military Law on General Crime Cases Settlement for TNI Soldiers in the Future Legal Perspective (*Ius Constituendum*)**

The development of idea on military justice in the reform era is significant after the issuance of MPR Decree Number VII/MPR/2000 and article 65 (2) of Act Number 34 of 2004. With the issuance of these legal provisions, it must be responded with concrete steps through reconstruction of Military Justice Law. The reconstruction must refer to the provisions of article 65 (2) of Act Number 34 of 2004.

The law that applies within the military court environment includes formal law (Procedural Law), namely Act Number 31 of 1997 concerning Military Courts and its material laws which include: the Military Criminal Code (hereinafter referred to as KUHPM), the Criminal Code (hereinafter referred to as KUHP), and other special criminal laws. The reformation of the military justice law must be carried out in an integral (systemic) manner, namely the renewal of the entire sub-system which includes:

#### **1) Aspects of legal substance, both in the form of substantive military criminal law and military criminal procedural law.**

Act Number 31 of 1997 needs to be reconstructed regarding the competence of military courts. In the provisions of Article 9, which regulates the competence of Military Courts, it is explained that the competence of military courts is based on or guided by military personnel as legal subjects who commit military crimes and general crimes. If it is related to the provisions of Article 65 (2) of Law Number 34 of 2004, which requires the competence of military courts to only cover types of military crimes, the formulation of Article 9 of Act Number 31 of 1997 must be changed to: Courts within the military environment is authorized to adjudicate military crimes committed by:

- (1) Soldier
- (2) Someone who is equated with a Soldier under the law
- (3) Members of a group/service/agency/which are considered as Soldiers under the law
- (4) A person who does not include in categories 1, 2 and 3 above, but by the decision of the Commander in Chief with the approval of the Minister of Justice must be tried by the military court
- (5) To examine, decide and resolve Armed Forces Administration (TNI) disputes.

The KUHPM (Act Number 39 of 1947) contains 2 (two) parts, namely: first, pure military crimes, i.e., prohibited actions or actions which in principle can only be violated by a military personnel, for example desertion. Second, mixed military crimes, i.e., prohibited actions or actions which have basically been stipulated in other laws, but are also regulated in the Criminal Procedure Code, for example, a military member commits theft.<sup>2</sup> In relation to these types of crime, pure military crime and mixed military crime, Article 1 of the Criminal Code states that the application of the Military Criminal Code also applies general criminal law provisions, unless there are deviations stipulated by the law.

<sup>1</sup> Nawawi Arif, Barda, Ibid

<sup>2</sup> S.R. Sianturi, *Loc. Cit.* p.19

Then Article 2 of the Criminal Procedure Code which states: For criminal acts that are not listed in this law book, which are committed by people who are subject to the power of military judicial bodies, general criminal law is applied, unless there are deviations stipulated by the law. The two articles above clearly indicate that general criminal acts (KUHP) are also applied in the application KUHPM. If it is related to the provisions of Act Number 34 of 2004 article 65 (2), which stipulates that TNI soldiers are subject to military justice for violating military criminal law, then the substance of the Criminal Procedure Code should be renewed by only regulating/containing pure military crimes. Thus, the substance of military crimes in the KUHPM is in accordance with the competence of the military court as required by Article 65 (2) of Act Number 34 of 2004.

Furthermore, it concerns the provisions in the Criminal Code (Act Number 1 of 1946 in jo to Act Number 73 of 1958). The substance of the existing KUHP only regulates people and is still general, and has not explicitly regulated the subject of military personnel/TNI Soldiers. In relation to the provisions of Article 65 (2) of Act Number 34 of 2004, which emphasizes that Soldiers are subject to the power of the general court for violating the general criminal law regulated by law, then substantively the law requires the existence of norms that regulates violations of general criminal law by TNI Soldiers. It means that a material criminal law (KUHP) must first be made for TNI soldiers who violate the general criminal law.<sup>1</sup> The obligation to make this special Criminal Code is also reflected in the last sentence of the law, which is regulated by law. Thus, to apply the Criminal Code to military personnel/TNI Soldiers in the future, a Criminal Code that regulates the subject of TNI Soldiers or the current Criminal Code must be revised/updated to comply with the will of Article 65 (2) of Act Number 34 of 2004. Likewise, the provisions of the law on special criminal acts which have not explicitly regulated TNI Soldiers should also be amended according to the will of Article 65 (2) of Act Number 34 of 2004.

**2) Aspects of the legal structure relating to law enforcement agencies/officials.**

The legal structure relates to law enforcement agencies and officials in the courts. TNI soldiers who violate the military criminal law are subject to the authority of the military court. The Military Judicial Institution has been regulated in the Act Number 31 of 1997, particularly in Article 9 which regulates the competence of military courts. Regarding the military justice institution, its existence is in accordance with the applicable law and has been running according to its function to date. The law enforcement officers for TNI soldiers who violate military criminal law have been regulated in the Act Number 31 of 1997, article 69 which includes; *Ankum*, Military Police Officer, Military Prosecutor, *Papera* and Military Judge. Law enforcement officers of the military judiciary have been running according to their functions.

**3) Aspects of legal culture, concerning the culture of legal behavior and legal awareness on military culture.<sup>2</sup>**

This legal culture renewal includes a culture of legal behavior and legal awareness of Soldiers related to military culture, as well as aspects of military law education and knowledge.<sup>3</sup> The culture of legal behavior is closely related to the condition of the TNI's internal environment. The enforcement of legal behavior culture requires a role model leader. A leader who can enforce the rule of law properly in accordance with applicable law and disciplinary regulations within the TNI. Besides a leader figure, legal rules that meet the requirements for the benefit of law enforcement Soldiers are also important. The integration between role model leader (as law enforcers and discipline) and the availability of disciplinary legal instruments, will give birth to a culture of good legal behavior in the life of TNI Soldiers. Furthermore, the culture and behavior of the soldier's legal awareness is also related to educational institutions/educational patterns and the science of military law. The role of educational institutions as research institutions and education patterns of soldiers adapted to the material of military law will contribute to the realization of legal awareness. A good Soldier education pattern in synergy with the substance of good military law knowledge according to the culture of military life will provide a good understanding for Soldiers on the rule of law, so that it will form a culture of legal behavior of Soldiers who obey the law and uphold the rule of law. The existence of harmony between aspects of legal substance, legal structure, and legal culture, will provide certainty and justice in law enforcement against TNI Soldiers. Such conditions will greatly support the implementation of general justice for military personnel/TNI Soldiers in the future.

**3.2.4. Settlement of General Crime Cases for TNI Soldiers in the Future Legal Perspective (*Ius Constituendum*)**

In the context of implementing a General Court of Justice for TNI personnel in the future, in accordance with the

<sup>1</sup> Barda Nawawi Arief, *ibid*

<sup>2</sup> Barda Nawawi Arief, *ibid*.

<sup>3</sup> Barda Nawawi Arief, *ibid*

will of Article 65 (2) of Act Number 34 of 2004, the laws and regulations in the general court environment mentioned above must be renewed/reformed to accommodate and regulate TNI Soldiers. In the settlement of general criminal cases in the General Judiciary Institution. In reforming these laws and regulations as a desired legal perspective in the future, these 2 (two) aspects shall be considered, namely, aspects of the substance and legal structure in the general court environment, as follows:

**a. Aspect of legal substance**

All applicable legal regulations within the General Courts, especially in criminal cases, which include: Law of the Republic of Indonesia Number 8 of 2004 concerning Amendments to Act Number 2 of 1986 concerning General Courts, the Criminal Code and other special criminal laws, and Act Number 8 of 1981 on the Criminal Procedure Code must be reformed by including TNI Soldiers as legal subjects in the settlement of general criminal cases, as explained in the section above. Thus, the substance of legal regulations in the general court environment is in accordance with the will of the provisions of Article 65 (2) of Act Number 34 of 2004.

**b. Aspect of the legal structure**

One significant matter in the context of resolving general criminal cases for military personnel/TNI soldier in general courts in the future is the existence of the General Judiciary Institution and its law enforcement officers who are authorized to examine and adjudicate the case. The visualization can be described as follows:

**(1) The Judiciary**

The existence of a military court shows that the trial of military personnel is a special judiciary. Therefore, it is necessary to consider establishing a General Court that specifically handles cases of general crimes of TNI soldiers. However, if the establishment of a this special general court is considered unnecessary, then the existing State Courts can be applied to TNI Soldiers through the process of amendment to the Republic of Indonesia Act Number 8 of 2004 concerning Amendments to Law Number 2 1986 and other laws and regulations.

**(2) Law enforcement officers**

The procedural law currently in force in the Military Courts is Act Number 31 of 1997, however it cannot be automatically apply to military personnel who are tried in the general courts, because its substance is related to the mechanism of the investigation, the role of *Ankum* and *Papera* who helped determine the course of the suspect's case. Meanwhile, the general court does not regulate the role of *Ankum* and *Papera*. The current procedural law in general courts is the Criminal Procedure Code (Act Number 8 of 1981).

The Criminal Procedure Code only regulates investigators (Polri) and prosecutors as public prosecutors for public. It does not regulate investigators and prosecutors against TNI soldiers. Therefore, the Act Number 8 of 1981 must be updated/reformed, so as to regulate law enforcement officers for TNI Soldiers who commit general crimes. The law enforcement officers of general courts for Soldiers are expected, as follows;

**(1) Investigator**

From the Military Police (hereinafter referred to as POM) of each force in accordance with the Decree of the Commander of the TNI Number Skep/ 01 /III/ 2004 dated March 26, 2004 concerning the Implementation of the Functions of the Military Police within the TNI. The Military Police Investigator was appointed in the general court for the following reasons:

- (a) To streamline the process of investigation of TNI soldiers to avoid psychological obstacles and resistance of the TNI soldiers in facing Police or other investigators as stated by the Chairman of Indonesia Military Watch (IMW), Prastowo<sup>1</sup> RK Sembiring Meliala member of Commission I of the DPR RI also stated that the investigators for members of the TNI who were tried in the general court were still the Military Police.<sup>2</sup>
- (b) The Act Number 8 of 1981 does not contain a single investigator, but it is possible for other investigators such as certain civil servants who are authorized by law (article 6). For example, the case of illegal logging by TNI soldier shall be investigated by the competent investigators, especially Forest Police. Likewise, Law No. 31 of 1997 does not adhere to a single investigator, but the investigators are *Ankum*, Military Police and Military Prosecutor. Thus, for the success of investigation process, the investigation shall be carried out by the Military Police for TNI personnel who will be tried in the general court by considering psychological aspect and the historical aspect that Military Police are special military investigators.

<sup>1</sup> *Atasi Kendala Psikologis, Tentara Sebaiknya Disidik PM*, Suara Pembaharuan, dated December 5<sup>th</sup>, 2006

<sup>2</sup> *Tentara Sebaiknya Tetap Diperiksa PM*, Republika, dated December 4<sup>th</sup>, 2006

**(2) Public Prosecutor.**

In the Prosecution of TNI Soldiers who will be tried in the general court later will be handled by the Public Prosecutor by involving the Military Prosecutor (Oditur). Regarding the involvement of the military prosecutor in this Prosecution, the Governor of Lemhanas Muladi suggested that the military prosecutor also present at the general court specifically dealing with TNI personnel who were tried in general/civil courts.<sup>1</sup> Other rationale to involve the Military Prosecutor is, if a Soldier commits a general crime in the area of military operation or in the area of battle (a state of war). Crimes that occur in areas of operation/battle require special handling, and the law enforcement (the prosecutor) also needs to understand the situation and conditions in the area of operation, in addition to having to understand the psychological condition of the suspect. Therefore, it is necessary to involve the Military Prosecutor in handling cases of TNI Soldiers in the General Courts. The issue of involving the Military Prosecutor in the General Court needs to be regulated. The role of the Military Prosecutor in the General Court, apart from being an Investigator, can also act as a liaison with *Ankum/Papera* from the defendant to provide information reports and legal advice if needed regarding the Soldier's case, considering the important role of *Ankum* and *Papera* in handling cases of their subordinates.

The role of *Ankum* and *Papera* in the general courts referred to is only limited to being able to request and receive information from the Prosecutor on the progress of handling the cases of their members, not to determine the detention of suspects, interfere or determine whether the cases of their members can be filed or terminated/closed. Putting aside the role and authority of *Ankum* and *Papera*, it is for the sake of respecting the principle of equality before the law for every citizen (Equality before the Law) or the principle of non-discrimination in human rights, except for cases involving military secrets and state secrets involving the military. In the case of military and state secrets, the Prosecutor is obliged to report to *Papera*, and then *Papera* has the authority to determine whether the investigation is continued or terminated for the sake of the military or the state. Regarding the change in the authority of *Ankum* and *Papera*, it can be analogous to the change in the authority of *Ankum/Papera* in cases of gross human rights violations regulated in Act Number 26 of 2000, where the role of *Ankum* and *Papera* is sidelined. Based on this analogy, in ordinary criminal cases, the role of *Ankum* and *Papera* can be ruled out, but in cases involving military secrets and state secrets, the role of *Ankum* and *Papera* are still needed in the interests of the TNI and the state.

**(3) Panel of judges.**

The composition of the panel of judges is regulated in the Republic of Indonesia Act Number 8 of 2004 concerning Amendments to Law Number 2 of 1986 concerning General Courts. The trial of criminal cases of TNI soldiers in a general court later shall involve military judges. Therefore, it is necessary to revise the substance of Act Number 8 of 2004 concerning Amendments to Law Number 2 of 1986. In this revision, it is expected that the composition of the panel of judges will include military judges. The involvement of military judges in this general court is to handle cases of TNI soldiers. Regarding the involvement of military judges, the Governor of Lemhanas Muladi also suggested that military judges shall be involved in the General Courts to specifically handle TNI cases<sup>2</sup> The involvement of military judges in this general trial is by considering criminal cases of TNI soldiers that occur in combat areas, as is the involvement of military prosecutors in combat areas described above. It can also refer to Presidential Decree Number 56 of 2004 which regulates the implementation of the transfer of the organization, administration and finances of courts within the military justice environment from TNI Headquarters to the Supreme Court. By this Presidential Decree, it means that the Supreme Court has the authority to regulate judicial mechanisms for military personnel. Thus, it is expected that the Chief Justice of the Supreme Court can regulate the involvement of military judges in this general court environment, by issuing a regulation that stipulates the involvement of military judges in handling cases of TNI soldiers who are tried in the General Courts.

**(4) Implementation of military convicts development**

Military convicts who have received the general court decision are later expected to be fostered in the Military Correctional Institution (Lemmasmil), considering the following considerations;

- (a) Mental, physical and discipline development. In the event that the General Court (PU) imposes a prison sentence on a military defendant, then the convict should serve his sentence and be fostered in a public correctional institution as regulated in Act Number 12 of 1995 concerning Penitentiary. The law contains a system of guidance applicable to civilian convicts and does not regulate the guidance of military convicts. Meanwhile, the coaching system for military prisoners is different from the training system for general

<sup>1</sup> *Anggota TNI Harus Siap Diperiksa Polisi*, Republika, dated December 5<sup>th</sup>, 2006

<sup>2</sup> *Ibid. Anggota TNI Harus Siap Diperiksa Polisi*, Republika, dated December 5<sup>th</sup>, 2006

- prisoners.
- (b) Military convict builder. To provide guidance to military convicts oriented to the aspects of mental, physical and discipline development, the coach from the TNI apparatus is needed because only TNI officers can understand the conditions of the military prisoners/soldiers they foster.
  - (c) Training Place. To be able to carry out training for military prisoners as described above, it can only be done in military prisons because the equipment and facilities have been prepared according to the standards for coaching military prisoners.

#### 4. Conclusions

Based on the above description, the following conclusions can be drawn:

- 1) The provisions of TAP MPR Number VII/MPR/2000 and article 65 paragraph (2) of Act Number 34 of 2004 have not been implemented so far, thus the settlement of general criminal law violations committed by TNI Soldiers at this time (after the enactment of Act Number 34 of 2004) is still guided by the provisions of the Criminal Code and Act Number 31 of 1997 concerning Military Courts. Meanwhile, to enforce the provisions of Article 65 paragraph (2) of Act Number 34 of 2004, it shall be preceded by reformation of criminal law in the Military Courts and criminal law in the General Courts in accordance with the substance of Article 65 paragraph (2) of the Act Number 34 of 2004, but the investigations is specifically carried out by TNI investigators, considering that the Law on Military Courts is the Constitutum, namely Act Number 31 of 1997 concerning Military Courts.
- 2) In reforming criminal law in the General Courts environment related to the Competence of General Courts for TNI Soldiers who violate general criminal law in the future, as the expected law (*Ius Constituendum*), it is necessary to establish a law that regulates the investigation, namely the Military Police in carrying out police action as a basis. The role and function of superiors entitled to punish (*Ankum*) and case submission officers (*Papera*) in the settlement of general criminal cases for TNI soldiers, because the judicial process in the general judiciary does not recognize the role and function of *Ankum* and *Papera* in the process of resolving disputes in court. Another point to regulated is that the investigators are expected to the military police officers, public prosecutors are the military prosecutors, and the judges are both general and military judges, while for TNI soldiers who have been tried and sentenced imprisonment as a prisoner, it is expected that the guidance will be carried out at the Military Correctional Institution (Lemmasmil).

#### 5. Suggestions

- 1) To consider the establishment of a separate General Court for TNI who violate the general criminal law. By considering special nature of the life of TNI Soldiers, a special judicial process is necessary as well. Another consideration is the existence of special courts for gross human rights violators who are also in the general judiciary, thus it can be analogous to the general court for TNI who violate general criminal law, and the investigation process shall be carried out by investigators from the TNI Military Police to maintain a working relationship between institutions, TNI and non-TNI investigators.
- 2) If in the future a general trial is imposed for TNI who violate the general criminal law, it is necessary to consider that investigators who carry out police actions are still TNI investigators. The roles and functions of *Ankum* and *Papera* are still maintained, considering that TNI Soldiers who are undergoing legal proceedings are still bound by the regulations of Soldier discipline, and guidance for Soldiers is the responsibility of *Ankum* and *Papera*. If the roles and functions of *Ankum* and *Papera* are abolished, it can damage the disciplined life and loyalty of Soldiers to their superiors and their duties as a means of national defense.

#### References

- Arief, Barda Nawawi, 2006, Meneropong Kompetensi/ Jurisdiksi Peradilan Militer Di Indonesia Dalam Perspektif Pembaharuan Sistem Hukum, Dalam Workshop Peradilan Militer, Bogor.
- A'an Efendi M.H S. H. and Dr Dyah Octorina Susanti M.Hum S. H., 2021, *Ilmu Hukum*, Prenada Media.
- Chrisnandi, Yuddy, 2005, Reformasi TNI, Perspektif Baru Hubungan Sipil Militer di Indonesia, Jakarta.
- Daud, A. Wahab, 1999, Hukum Militer, Pusbakum Jakarta.
- Daulai Parluhutan, Ikhsan Rosyada, 2006, Mahkamah Konstitusi, Memahami Keberadaannya Dalam Sistem Ketatanegaraan Republik Indonesia, Rineka Cipta, Jakarta.
- Faisal Salam, Moch, 2004, Peradilan Militer Di Indonesia. Mandar Maju, Bandung.
- \_\_\_\_\_, 2006, Hukum Pidana Militer di Indonesia, Mandar Maju, Bandung.
- Fatkhurohman, et. al., 2004, Memahami Keberadaan Mahkamah Konstitusi Di Indonesia, Citra Aditya Bakti, Bandung.

Hadisoeparto, Hartono, 2006, Pengantar Tata Hukum Indonesia, Liberty, Yogyakarta.  
Harahap, M. Yahya, 2006, Pembahasan, Permasalahan dan Penerapan KUHAP, Edisi Kedua, Sinar Grafika, Jakarta.  
Kaelan, 2004, Pendidikan Pancasila, Paradigma, Yogyakarta.  
MD, Moh. Mahfud, 2006, Membangun Politik Hukum, Menegakkan Konstitusi, LP3ES, Jakarta.  
Poerwadarminta, W.J.S., 1996, Kamus Bahasa Indonesia, Balai Pustaka, Jakarta.  
Rusli, Muhammad, 2006, Potret Lembaga Pengadilan Indonesia, PT. Raja Grafindo Persada, Jakarta.  
Seno Adji, Oemar et.al, 2007, Peradilan Bebas & Contempt Of Court, Diadit Media, Jakarta.  
Soekanto, Soerjono, 2007, Pengantar Penelitian Hukum, Universitas Indonesia (UI-Press), Jakarta.  
Sianturi, S.R. 1985, Hukum Pidana Militer di Indonesia, Alumni AHAEM-PETEHAEM, Jakarta.  
Sudikno Mertokusumo, 2006, Penemuan Hukum sebuah pengantar, Liberty, Yogyakarta.  
Sembiring, Sentosa, 2006, Himpunan Lengkap Tentang Badan Peradilan Dan Penegakan Hukum, Nuansa Aulia, Bandung.

### **Legislations :**

The 1945 Constitution of the Republic of Indonesia.  
TAP MPR RI Number VII/MPR/2000 on the Role of TNI and Polri  
Indonesian Act Number 31 of 1997 on Military Court  
Indonesian Act Number 34 of 2004 on Indonesian National Army.  
Indonesian Act Number 14 of 1985 on Supreme Court  
Indonesian Act Number 5 of 2004 on the Amandement to Act Number 14 of 1985 on Supreme Court  
Indonesian Act Number 2 of 1986 on General Court  
Indonesian Act Number 8 of 2004 Amandement to Act Number 2 of 1986 on General Court.  
Indonesian Act Number 5 of 1986 on PTUN.  
Indonesian Act Number 9 of 2004 Amandement to Act Number 5 of 1986 on PTUN.  
Indonesian Act Number 7 of 1989 on Religious Court.  
Indonesian Act Number 3 of 2006 Amandement to Act Number 7 of 1989 on Religious Court.  
Indonesian Act Number 24 of 2003 on Constitutional Court.  
Indonesian Act Number 3 of 2002 on State Defense.  
Indonesian Act Number 4 of 2004 on Judicial Power.  
Indonesian Act Number 8 of 1981 on KUHAP.  
Indonesian Act Number 22 of 2004 on Judicial Commissions  
KUHPM (Act Number 39 Tahun 1947).  
KUHP (Act Number 1 of 1946 Jo Act Number 73 of 1958).  
Indonesian Act Number 12 of 1995 on Penitentiary

### **Verdicts**

Presidential Decree Number 56 of 2004 on the implementation of the transfer of the organization, administration and finances of courts within the military justice environment from TNI Headquarters to the Supreme Court  
Decree of the Commander of the TNI Number Skep/ 01 /III/ 2004 dated March 26, 2004 concerning the Implementation of the Functions of the Military Police within the TNI

### **Legal Dictionaries**

Kamus Hukum, 2006, Indonesia Legel Center Publishing.  
Kamus Ilmiah Populer, 2006, Referensi Ilmiah, Ideologi, Politik, Hukum, Ekonomi, Sosial, Budaya & Sains, Gitamedia Press.