EXPANSION OF MILITARY POLICE AUTHORITY

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ABSTRACT

The authority of Military Police in investigating military crimes based on Law No. 31/1997 is still limited, in which the Military Police cannot stop investigations. This study aims to expand the authority and main duties of the Military Police in the Military Justice system, related to the termination of investigations. This research uses a normative legal research method with a case study approach. The results showed that the granting of broader powers to Military Police investigators, especially the authority to stop the investigation process, is needed in order to realize the principles of justice and legal certainty in law enforcement in the Military Court environment. Termination of an investigation is carried out when there is a case which basically does not fall within the competence of Military Justice.

Keywords: Expansion of Authority; Military Court; Military Police

I. INTRODUCTION

Background

Soldiers would feel unfair sometimes with the decisions of the Military Court when there is a result of examination in court which says that a committed offense was not proven (free), and the accused was proven, but the act did not constitute a criminal act and, thus, the defendant was decided free from all legal guidance. This happens because the Military Police, as the examiners at the preliminary examining level, receives and proceeds all reports relating to criminal acts, and the Military Police must report to the Commander regarding all the Police reports that they received and must be completed and whenever in the future the examination finds other facts/evidence. The Military Police cannot stop their investigation as if all cases being investigated by the Military Police must be followed-up to the Military Prosecutor as the Prosecutor and then process the case to provide advice to the Case Submitting Officer (Papera) regarding the settlement of the case whether it will be transferred to the Military Court to be examined and decided by the Military Court or resolved legally with Discipline or will it be closed for legal purposes/Military interests. Military police do not have the authority to stop investigations even though in carrying out investigations there are facts or other evidences that may lead to civil cases.

Existence of Courts within the Military Courts is regulated in Article 24 paragraph (2) of the fourth amendment of the 1945 Constitution, which states that judicial power is exercised by a Supreme Court and the Judiciary Institution under its authority in the Military Court, Religious Court, State Administrative Court, General Court, and Constitutional Court. [1] Law enforcement in the Military Court as a form of the implementation of judicial power as regulated in Article 25 paragraph (4) of Law Number 48 of 2009 concerning the main provisions of the judicial power stipulates that one of the administrators of judicial power is carried out by the court within the Military Court, including the structure and the program that are regulated in a special law.

The legal provisions apply to members of the Indonesian National Army including the Law No. 31 of 1997 concerning Military Courts and the Law No. 39 of 1947 concerning the Military Criminal Code or hereinafter referred as KUHPM. Military legal regulations are applied to all members of the Indonesian National Army who carry out actions that are detrimental to the unity of the general public and the state, while the authority of Military Justice in examining and deciding criminal cases committed by the military and those which are equated has been
formed in a Military Criminal Justice system where the instruments have been running smoothly without encountering significant technical barriers. Its position is included in article 18 of Law No.48 of 2009 concerning Judicial Powers which states that judicial power is exercised by a Supreme Court and judicial bodies under it in the general court, religious courts, military courts, state administrative courts and by a Constitutional Court. [2]

This legal position of Military Courts has been recognized as a part of the criminal justice system in the judicial system in Indonesia where the Supreme Court is the highest court within the Military Court, meaning that Military Justice remains under the supervision of the Supreme Court. Further, as for the operational implementation in the formal law has been released as the Law No. 31 of 1997 concerning Military Courts as regulated in chapter IV article 69 to article 265 concerning Military Criminal Procedure Law.

Existence of the Military Court as a legal entity in the Military Criminal Justice System has institutionalized and organized all the instruments needed to run the Military Justice system. Indonesian military law originates from the duties of the Indonesian military (TNI) and is part of and is one of the systems of Indonesian national law. Therefore, Indonesian military law has a foundation, sources and scope that are consistent with national law. The mechanism of the settlement process for violation of criminal law has been implemented and enforced until now when the perpetrator of the criminal act is the military will be processed through the military criminal justice system mechanism with components or sub-systems consisting of superiors who have the right to punish (Ankum), case submission officers (Papera), Military Police, Military Prosecutors, Military Judges, and Military Prison Officers. [3]

Regarding to criminal procedural law used in military courts, it was originally based on the Law No. 8 of 1946 and the Law No. 6 of 1950 and the "Het HerzeieneInlandschReglement" (HIR) is used as the guideline and. According to this provision, the Prosecutor shall lead investigations, preliminary examinations and submit cases to military courts. Then, objections to this provision arise with the emphasis that the responsibility for the settlement of a military criminal case in the initial examination is no longer borne by the Army Prosecutor, but on the Military Supervisor/Commander and the Commander of the Force.

In the history of Military Justice, investigators are responsible to Ankum, Military Police, and Prosecutors. Superiors who have the right to punish (Ankum) are superiors who are given the authority to impose Military Discipline Punishment on subordinates who are under the authority of their Command, while the assistant investigator is the responsibility of the force Provos. The difference between the three components is Ankum, as the Commander, is fully responsible for the unit and his subordinates, and, therefore, the authority to carry out preliminary investigations and full investigations of criminal acts committed by subordinates under his authority is the inherent authority of the Ankum in order to determine the fate of his subordinates in the settlement of criminal cases whose execution is delegated to the Military Police and/or Prosecutors. This means that the authority to carry out the preliminary investigations and full investigations is absolutely in the hands of Ankum but, in practice, the implementation is carried out by the Military Police and/or the Prosecutor. Meanwhile, the Military Police and Prosecutors, as according to the law, is the officials who have the delegation of authority from the Commander in Chief as the highest Ankum to investigate criminal acts committed by soldiers.

The force Provos is part of the organic unit assigned to assist commanders/leaders at the headquarters/ships/ bases in carrying out law enforcement, discipline, order, and security of the unit environment. It can be seen that there are limits to the authority given to Provos. In fact, it is the Military Police and the prosecutor who carried out the filing of the initial examination of the perpetrator of a criminal offense, if, according to his knowledge, the evidence still needs to be obtained. In fact, Provos usually only handles problems that occur within the unit in assisting the commander's duties in implementing law enforcement, discipline and order.

The purpose of this research is to expand the authority of the Military Police and the main duties of the Military Police in the Military Criminal Justice System so that they have the authority to stop investigations when in the process of carrying out the investigation, new facts or evidence are found so that the case is no longer included in the competence/authority of the Military Court to examine and decide the case.

Research Method
This research is a normative legal research with using a case approach that has been examined and decided by the Military Court and/or the High Military Court in accordance with the Military Criminal Court System in Indonesian legal system. This approach has the characteristics of a perspective, which provides an assessment of something that is right or wrong, appropriate or inappropriate. The way of drawing conclusions generally uses deductive thinking, namely the norm system as general arguments and, then, confronted with certain cases or events and, in turn, conclusions are drawn as specific arguments. Thus, it was described the law in-abstracto or das sollen. It means that the law is created to provide legal certainty. [4]

The sources of legal research can be divided into primary and secondary legal materials. The primary legal materials are an authoritative in nature. They consist of legislation, official records or minutes in the making of legislation, and judge's decision. The secondary legal materials provide an explanation of primary law, such as draft laws, research results, works from legal circles, and so on. [5] Technique of collecting legal materials related to legal research is based on document study or library research. It uses the Law No. 39 of 1947 concerning the Military Criminal Code (KUHPM), the Law Number 31 1997 concerning Military Courts, and the Law No. 48 of 2009 concerning Judicial Power as the major premises. Meanwhile, the minor premise is the Judge's Consideration in Deciding the two cases in accordance with legal facts in 16/AD/X /2017 dated 15 March 2018, Appeal decision by the High Military Court III Surabaya No: 42-K / PMT III / BDG / AD / IV / 2018 dated 16 May 2018 and appeal decision by the Supreme Court of the Republic of Indonesia No: 275 / Mil / 2018 dated 29 October 2018. Thus, it can be concluded that the urgency of the Military Police's authority to stop investigations is needed in providing a sense of justice for soldiers who are suspected whenever some facts or other evidence are found in the investigation process so that the investigation process is not continued or the case is closed. Decision of Military Court III Surabaya Number 7-K / PMT III / AD / V / 2017 was read out on 3 August 2017 and Decision of Military Court III-16 Makassar No: 124-K / PM III-16 / AD / X / 2017.

II. RESULTS AND DISCUSSION

Land Boundary Ownership Dispute

In mid-2015, Mr. A (initials’s name) purchased four lots of land included in plot No. 18 S.I block 17 / Kamp BangkalaKohir 46 C.I on the name of Mr. B (initials’s name). Each of 150 m² was from Mr. H. (initials’s name); Ms. Hj. As (initials’s name). - (didn't buy/canceled because the number of sale & purchase deed (AJB) is unknown), Mr. M S (initials’s name)., Mr. G (initials’s name) and Mr. A (initials’s name) paid a down payment to build a perimeter foundation on the location, then it was prohibited by Mr. MJ (guardian of the land belonging to Mr. RS) because the foundation is built on some part of the land belonging to the late Mr. RS, the parent of Mr. RS. On 19 August 2015, Mr. RS reported the actions of Mr. A to the Military Police VII / Wrb (now the XIV / Hsn Military Police) to be resolved by law. In response to this report, investigators of the Military Police VII / Wrb (now the XIV / Hsn Military Police) invited Mr. to meet Mr. RS at the VII / Wrb Military Police, but did not get a settlement in a friendly manner and in September 2015 MR. RS made a Sale and Purchase Deed in front of the Land Deed Maker Officer a.n. Mr. T.A. on the basis of ownership of the Sale and Purchase Deed of Mr. HMD, et al, 2 (two) people.

Decision of the Military Court III Surabaya Number 7-K / PMT III / AD / V / 2017 is:

1. To declare that the Defendant Mr. A has not been proven properly and convincingly guilty of committing an offense to the first alternative indictment: "With the intention of self-benefit alone or other people against the law, destroying, moving, disposing of or making use of something that is used to determine the boundaries of the yard".
2. To release the defendant from all lawsuits from the First Alternative Indictment of the High Military Prosecutor.
3. To declare that the Defendant Mr. A was proven to have committed an act as stated in the Second Alternative Indictment: "Interfering with the right or proxy in exercising his right to a plot of land". However, the defendant's act in the Second Alternative Indictment was not a criminal act, but a civil affair.
4. To release the Defendant by reason of legal charges from the Second Alternative Indictment of High Military Features.
5. To recover the right of the Defendant in his capacity, position, dignity and worth.
6. To provide rights and opportunities to the parties involved in this decision to resolve ownership disputes over a right (land) in the course of the Civil Code.

Due to this decision, the defendant Mr. A and the High Military Prosecutor did not make an appeal so that the Surabaya Military High Court Decision III has obtained permanent legal force in accordance with the deed which has already obtained permanent legal force Number ABHT / 7-K / TMT. III / AD / 2017. In the case faced by Mr. A, it can be seen that the Defendant's act was not a criminal act, but a civil affair so as to provide rights and opportunities to the litigant parties to resolve ownership disputes over rights (land) in civil law channels and release the Defendant from The First Alternative Indictment of the High Military Prosecutor and releasing the Defendant from all lawsuits from the Second Alternative Indictment of the High Military Prosecutor and restoring the Defendant's rights in his ability, position, dignity and dignity. In this Decision of the Military Court III in Surabaya, it can be seen that the material of the case is not included in the competence of the criminal justice court but is included in the competence of the civil law court.

**Fraud case**

In February 2014, Mr. AH agreed with Mr. HAK to buy a unit of excavator and, then, on 27 February 2014, Mr. HAK sent money to Mr. AH, as much as Rp. 150,000,000, and the money was used as the down payment at the PT Buana Finance by Ms. N, the wife Mr. AH, in the contract agreement amounting to Rp. 351,684,000. Further, Mr. AH asked Mr. HAK to send another Rp. 50,000,000, and then the excavator was sent to the District Manokwari, Teluk Bintuni, West Papua. On 23 April 2014, a letter of agreement to receive the excavator was made by replacing the down payment of 486,000,000, on condition that Mr. HAK was obliged to pay installments to Mr. AH for 23 months in the amount of Rp. 24,580,000, - per month. Thus, Mr. HAK has paid his obligations in the amount of Rp. 574,200,000. Unfortunately, it turned out that Mr. AH did not pay this installment to PT. BF for 6 months, then Mr. HAK directly paid the arrears and the fine of Rp. 172,211,100, and continued the payment until it was paid off. Later, Mr. AH did not admit that he had ever received money from Mr. HAK and then reported to the XIV / Hsn Military Police that Mr. HAK has committed fraud with the number LP-08 / A-08 / II / 2017 / Idik dated 14 February 2017. Further, it was tried and decided by the Makassar Military III-16 Court with Decision Number: 124-K / PM III-16 / AD / X / 2017 dated 15 March 2018:

Makassar Military Court Decision III-16 Number 124-K / PM.III / -16 / AD / X / 2017 is:

1. To declare the aforementioned Defendant, namely Mr. HAK both of Yadav X / 30 / Pangkep Minv etc. daddam XIV / Hasanuddin was proven legally and convincingly guilty of committing the crime of "Fraud".
2. To sentence Mr. HAK was sentenced to imprisonment for 7 (seven) months.

To first-degree decision, the defendant's appealed. So that the High Military Surabaya III Court Number 42-K / PMT III / BDG / AD / IV / 2018 dated May 16, 2018, tried with the consideration that Andi Herman's demands were that the defendant return the down payment of 1 (one) Excavator unit amounting to Rp 486,000,000, - (four hundred and eighty-six million rupiah) and the defendant had fulfilled and sent to Mr. AH which exceeded his charges. Thus, that the ruling is as follows:

Decision of the Military Court III Surabaya Number 42-K / PMT III / BDG / AD / IV / 2018:

1. To formally accept the appeal submitted by the Defendant H. Ahmad Kamto, Serda NRP 620445.
2. To cancel the decision of the Military Court III-16 Makassar Number 124-K / PM.III- 16 / AD / X / 2017 dated March 15, 2018.

**JUDGING BY ITSELF:**

To state the Defendant Mr. HAK, was not legally and convincingly proven guilty of committing the crime of "Fraud".

To release the Defendant from the Military Prosecutor's charges.

1. Based on the decision of the Surabaya Military High Court III, the Military Prosecutor filed an appeal action so that the Supreme Court Decision Number 275 / Mil / 2018 dated 29 October 2018 was as follows:
2. The Supreme Court Decision Number 275 Mil / 2018
JUDGING BY ITSELF

1. To state the defendant Mr. HAK was legally and convincingly proven guilty of a criminal act of fraud.
2. To convict the defendant by imprisonment for 7 months.

In the case faced by Mr. HAK that the Defendant's actions in Makassar Military Court Decision III-16 Number 124-K / PM.III / -16 / AD / X / 2017 stated that the Defendant was legally and convincingly proven guilty of a criminal act "Fraud". Sentenced to imprisonment for 7 (seven) months, then on the decision of the Defendant's first degree appeal so that the High Military Surabaya III Court Decision Number 42-K / PMT III / BDG / AD / IV / 2018 dated May 16 2018, put the trial itself declaring that the Defendant Mr. HAK, was not legally and convincingly proven guilty of committing a criminal act of "Fraud" and, thus, acquitting the Defendant from the Military Prosecutor on the grounds that Mr. AH’s demand was that the defendant return the down payment of 1 (one) Excavator Unit of 486,000,000, - (four hundred eighty six million rupiah) where the Defendant had fulfilled and sent it to Andi Herman.

Furthermore, on the decision of the High Military Court III Surabaya, the Military Prosecutor filed an appeal, so that the Supreme Court Decision Number 275 / Mil / 2018 dated 29 October 2018 judged itself stating that the defendant Mr. HAK was legally and convincingly proven guilty of a criminal act fraud and the defendant shall therefore be subject to imprisonment for 7 (seven) months.

In this case, questioning the purchase of an excavator between Mr. HAK with Mr. AH with an installment agreement to the financing party of PT. BF out that Mr. AH did not pay the installments that have been sent by Mr. HAK for 6 months and Mr. AH denied that Mr. HAK has sent the installments to Mr. AH. In this case, the question is the sale and purchase of excavator heavy equipment and the problem of the agreement to pay the installment of down payment.

From the two cases mentioned above, it can be seen that the material of the case is in the realm of civil law. However, the case is processed through a criminal law settlement mechanism so that in the verdict of the panel of judges examining the case there are those found not legally proven and convincingly guilty of committing criminal acts so that they are free and free from all lawsuits. In the second case, at the first level trial a 7 (seven) month imprisonment was decided, then at the appeal level it was declared not legally and convincingly proven guilty of committing the crime of “fraud” and acquitting the Defendant from the military prosecutor charges. Furthermore, at the appeal level, the defendant HMR. HAK was legally and convincingly proven guilty of committing the crime of fraud, sentencing the defendant to 7 months imprisonment.

In the two cases above that occurred within the Military Court, it was due to the existence of an investigation mechanism that still needed to be completed, namely giving the Military Police a wider authority because there was a mechanism in force in the Military Criminal Justice System that the authority to stop investigations when they only rest with the Papera as regulated in article 101 Law No. 31 of 1997 concerning Military Courts. Case Submission Officers (Papera) are officers who by or on the basis of law have the authority to determine a criminal case committed by soldiers of the Indonesian National Army who are under the authority of their Commander to be handed over to or resolved outside the court within the Military Court or the Court within the General Courts. So that if there are other facts/evidences found in the preliminary examination/investigation process at the Military Police, it cannot be stopped immediately as regulated in Article 7 paragraph (1) letter i of the Law of the Republic of Indonesia No. 8 of 1981 concerning the Criminal Procedure Code states that the acting police of the Republic of Indonesia as criminal investigators are given the authority to stop investigations which are commonly known as SP3 (Letter of Cessation of Investigation).

The Military Police may carry out their duties as investigators who are also spearheading the actual process to determine whether the case will be continued or not. While the administrative mechanism for receiving police reports (LP) by the on-duty Military Police must also be reported gradually to the upper command according to the applicable standard procedures. This report must be followed up until it is completed, so that the Military Police investigator must continue the investigation and filing until it is completed to become a Case File (Pro Justitia), and there will be some problems during the investigation process until the filing when facts or other evidence were found which may result in the fact that the act was not a criminal act, or it turns out that the person being investigated is not a criminal actor. Then the military police investigator does not have the authority to immediately stop the
investigation process and, this leaves them no other option but to process the examination report (BAP) to completion.

After the investigation and filing carried out by the Military Police is complete, the BAP is transferred to the Military Prosecutor for prosecution, then the Military Prosecutor checks the completeness of the BAP whether it meets the material and formal requirements or not.

If it turns out that the case files/BAPs received by the Military Prosecutors are still incomplete, the Prosecutors will return the files to the Military Police to be completed with notes or to be completed by the Military Prosecutors themselves because the Military Prosecutors are also investigators in carrying out additional examinations as stipulated in article 65 paragraph (1) letter c in Law of the Republic of Indonesia No.31 of 1997. Furthermore, if the file is complete, the Military Prosecutor will process the file to draft a Minutes of Opinion (BapatOditur), Kaotmilti / Kaotmil Legal Opinion Suggestions to the Papera about the continuation of the case resolution. The contents of the SPH Kaotmilti/Kaotmil for the Papera are:

1. To continue the legal process for the suspect because the case is feasible and fulfills the elements to be examined in a military court attached with the Net concept of a Case Submission (Kepperia).
2. To settle the case through the process of imposing Military Discipline Punishment (Kumplin) because the act is a criminal act of such nature or the act is not a criminal act but there is an illegal act that is included in the category of military discipline by attaching the Net Concept of settlement obedience through channels of imposition of military discipline through the superior who has the right to punish (Ankum).
3. To close the case for legal purposes, or military interests, and / or public interest, by attaching the Net Concept of Case Closing Decision (Keptupra), so that, based on the description, it can be concluded that in the military criminal procedural law, as regulated in Law No. 31 of 1997, the Military Police do not have the authority to stop investigations but Papera has the authority to close cases after receiving advice from Kaotmilti / Kaotmil.

III. CONCLUSION

It can be concluded that in the cases as elaborated above, the soldiers can be caught in the law because of the legal process mechanism that needs to be completed, namely granting wider authority to the Military Police so in the case, when there are other facts/evidence in the investigation process, can be stopped immediately because it continuation will set a bad precedent for law enforcement in Indonesia, especially in law enforcement within the Military Court. A law enforcement without seeing the human rights is a useless law enforcement and cannot be justified, where there is a law then the human right is existed and vice versa, the recognition of human rights is in line with the objective of a state of law one of them is recognition and protection of rights that is implemented by the state and its equipment. The objectives of law are not only focused on achieving order in society, but also include legal certainty, expediency, and legal justice. Likewise, granting wider powers to Military Police investigators will provide more certainty, expediency, and legal justice to the soldiers. Thus, the termination of investigations can be carried out on cases that do not fall under the competence of the Military Court.

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