ATLANTIS PRESS

Advances in Economics, Business and Management Research, volume 140

International Conference on Law, Economics and Health (ICLEH 2020)

Verdict of Military Tribunals on Soldiers Committing Crimes and Fired Disrespectfully from the Military Service

Esron Sinambela[1]
[1] Jayabaya University
E-mail: esronsinambela@yahoo.com

ABSTRACT - The crucial point in the administration of military justice is the role of a commander as the superior who has the authority to punish (Ankum) and submitter case officer (Papera). Because the subject of offense in military criminal law is a person or individual of the military, or persons who are likened to the military. In this case the institution cannot be tried in a military court environment, even though the policy has caused casualties to the community. The purpose of this study is to analyze and find out whether a respectful dismissal from military service is the authority of the Unit Commander for the soldiers under his command, and how the position of military judges who do not have command authority in imposing penalties to dismiss disrespectfully from military service. The formulation of the problem in this research is Is the disrespectful dismissal of military service as the authority of the Unit Commander for the soldiers under his command?.This research method uses a normative juridical approach which is carried out by examining literature sources.The results obtained in this study are to propose that in a military court ruling there is no need to impose a dishonorable discharge from military service. The provisions regarding superior command need to be sharpened so that commanders are more careful and careful in giving orders to their subordinates

Keywords: military justice, soldier, dismissal

I. INTRODUCTION

Military Courts as one of the judiciary institutions under the Supreme Court of the Republic of Indonesia. Military justice has the authority to adjudicate crimes committed by servicemen or persons likened to servicemen, then also settle military administrative disputes and combine compensation cases in criminal cases or adjudicate cases of connectivity. As regulated in Article 9 of Law Number 31 of 1997 concerning Military Courts, criminal offenses committed by members of the military, both general criminal offenses as stipulated in the Criminal Law Code (KUHP) and other criminal laws. Military criminal offenses as contained in the KUHPM (Book of Military Criminal Law), are all tried in Military Courts.

The structuring of our justice today is still based on liberal-individual ideology. Therefore, military justice reform should be carried out with a fairly basic. Because it is indeed mandated by the 1945 Constitution. Reform of the military court in question includes reform of the legal substance, legal structure, facilities and legal infrastructure, as well as legal awareness and culture. Thus the existence of military justice in Indonesia can provide legal certainty, legal protection, law enforcement, and human rights, increasing legal awareness. Then it can also provide legal services that have the purpose of justice and truth, order, and welfare in the framework of running an increasingly orderly and orderly state so that development can run smoothly.

The crucial point in the administration of military justice is the role of a commander as the Judicial Authority (Ankum) as well as the Submission Officer (Papera). This is the main obstacle for the administration of justice in a transparent and accountable manner.

Because the subject of offense in military criminal law is a person or individual of the military, or people who are equal to the military. So it often causes problems if the action is an order or policy of the institution. In this case, the institution cannot be tried in a military court environment, even though the policy has caused casualties to the community [1].

A subordinate soldier in carrying out his duties stated the act was at the command of the commander, then the commander in the field would declare the act as a superior's command and so on. As a result of this situation, it is difficult for victims (civilians) to obtain justice, because military justice does not examine legal entities (rechstpersonn) as subjects of offense. Then also the Indonesian criminal justice system has not been able to provide protection to victims (civilians) to have the same position in civil and military justice environments.

There are a number of cases which have yet to be resolved, for example the case of Tanjung Priok (1984) and East Timor (1992). On the one hand the act is considered by the community to be against the law (criminal point of view), and has caused victims (civil). But who should be responsible until now is unclear. The responsibility of who was the event, was the commander individually or the responsibility of the institution?

The crucial issue in military court is the authority of the commander as Papera (Submission Officer), because they determine whether criminal acts committed by military members will go to court or not. In military justice there is a unity of command, namely that the readiness and mobility of troops is maintained. But these good principles have the potential to be misused. The commander can also refuse to surrender his men, on the pretext of prioritizing military interests. This has happened in connection with the handling of the Bernas journalist murder case in Yogyakarta (1996).

Serma Edy Wuryanto by the Yogyakarta Police Chief was not submitted to Denpom for an investigation.

The subject of offense has also experienced development. Military justice does not only handle cases conducted by military personnel. In the case of civilians likened to the army, even in emergency situations, civilians are tried by military courts. The expansion of the subject of this offense is not only caused by certain circumstances which give the military authority to apply military law to civilians. In a state of peace, civilians can be compared to the military.

The process and procedure for dismissal of soldiers of the Indonesian National Armed Forces (TNI) through the administrative process is the authority of the unit commander for the soldiers under his command, as well as for fostering administration of all soldiers under his command. It also includes administrative guidance relating to a soldier who was fired from military service through a Military Court ruling. When connected with the role of the unit commander in disciplinary coaching in the unit he leads, as a unit commander fully responsible for the coaching discipline in his unit.

For Military Judges in assessing a soldier who is still feasible or not worthy to be defended in the military service, through a court ruling a dismissal from the military service is carried out. it should be entirely in the hands of a military judge, so that intervention from a unit commander for a soldier who is being faced may be heard before a military court. The intervention to provide an assessment of the soldier concerned is as a discipline that can jeopardize the coaching of disciplinary joints in his unit. So that if the dismissal of a soldier who has been assessed by a unit commander cannot carry out discipline of soldier discipline, the unit commander can take administrative actions of dismissal so that it is not necessary to hand over the soldier concerned to the Military Court.

Formulation of the problem:

The problem to be raised in this study is related to the Verdict of Military Courts against Military Soldiers who commit a crime, so that additional crimes sentenced from the Military Service are: "Whether the dismissal is not respectfully dismissed from military service as the authority of the Unit Commander against the soldiers who are in the army under the authority of the commander?"

Research purposes:

The purpose of this study is to analyze and find out whether the dismissal is not respectful from the military service as the authority of the Unit Commander for soldiers who are under the authority of the commander.

II. RESEARCH METHODS

The method used in this research is descriptive analytical method with the main approach is juridical normative. Descriptive analytical means describing and depicting something that is the object of research critically through qualitative analysis. Because what is intended to be studied is within the scope of jurisprudence, the normative approach includes: legal principles, synchronization of laws and regulations, including efforts to find legal inconcreto [2].

In a normative juridical study, the use of the statute approach is a sure thing. It is said to be certain, because in legal logic, normative legal research is based on research conducted on existing legal materials. Although for example the research was conducted because it saw a legal vacuum, but the legal vacuum can be known because there are already legal norms that require further regulation in positive law [3].

III. DISCUSSION

For a TNI soldier who is dealing with a case in a Military Court, where according to an estimate the soldier concerned will be subject to additional crimes fired from military service. And will automatically attempt to have additional crimes fired from military service so that the soldier concerned will seek to prevent additional crimes from being fired from military service.

In such case the trial process in the hearing of the soldier concerned will endeavor according to his capabilities, and with all the might and effort so that the soldier concerned avoids additional criminal penalties in particular being fired from military service.

As a Military Judge who examines and hears criminal cases submitted by the military court, where the results of the trial are revealed the facts in accordance with the evidence. The defendant can be proven legally and convincingly that he committed a crime and was sentenced to additional dismissal from military service. Regulations concerning Military Oditural Authority are regulated in Article 64 paragraph (1) b of Law Number 31 of 1997 concerning Military Courts, namely carrying out the determination of Judges or decisions of the Court in the military court or in the general court.;

In relation to the implementation of military court decisions or executions of military court decisions in this case the Military Oditur has the task of carrying out the things stated in the decision of the ruling. As it relates to imprisonment and other additional penalties specified in the relevant law, but regarding additional criminal dismissals from military service, the Military Oditur does not have the authority to carry out the ruling..

Related to the dismissal of TNI soldiers is through an administrative process which becomes the authority of the unit commander of the soldiers under his command. Thus also for administrative guidance for all soldiers under his command, including administrative guidance relating to a soldier who was fired from military service. When connected with the role of the unit commander in disciplinary coaching in the unit he leads, as a unit commander fully responsible for the coaching discipline in his unit.

Military Courts are bodies that carry out judicial power within the Military Courts which include Military Courts, High Military Courts, Major Military Courts, and

Military Courts. Military justice is the exercise of judicial power within the Armed Forces to uphold law and justice by taking into account the interests of the administration of national security. The existence of the Military Courts is then confirmed in Article 18 of Law Number 48 of 2009 concerning Judicial Power which states that judicial power is exercised by a Supreme Court and a judicial body that is under the scope of the General Courts, Religious Courts, Military Courts, and Military Courts State Administrative Court, and by a Constitutional Court.

The rules on crimes committed jointly by members of the military with civilians were first regulated in Law Number 5 of 1950 concerning the Composition and Power of Courts or Prosecutors in the Scope of Army Justice. The use of the term koneksitas was only introduced in the New Order era when it was canceled in Act Number 14 of 1970 concerning the Principles of Judicial Power which was later also regulated by Act Number 8 of 1981 concerning the Code of Criminal Procedures, especially Article 8. Law the connectivity event was then regulated separately in Law Number 31 of 1997 concerning Military Justice and several laws and regulations under it.

Law enforcement is one of the characteristics of a democratic country, for that the court must take the front line to uphold the law. So the case submitted to him must be decided in accordance with the sense of justice of the community. For this reason, the judiciary must be independent and accountable, free from interference from other parties and be held accountable to the public. The issue of independence of the judiciary is expressly regulated in Article 1 of Law Number 4 of 2004 which has been amended by Law Number 48 of 2009 concerning Judicial Power which stipulates that judicial power is the power of an independent state to administer justice in order to enforce the law and justice based on Pancasila, for the sake of the implementation of the Republic of Indonesia's Law State [4].On the basis of the freedom of judges intended to produce objective decisions, the intention is to be free from the influence of the interests of certain interests of other parties. So the court is expected to be able to provide satisfaction to the parties who litigate and citizens in general. The partisanship attitude is very contrary to the soul and spirit of the existence of a judicial institution which must always pay attention, treat, and provide equal opportunities to the parties to the dispute (equality before the law).

Regarding the importance of the freedom of the judiciary in the era of law enforcement and increasing the rule of law, the government has actually been aware of this in the past. During the enactment of Law Number 19 of 1964 concerning the Principal Provisions of Judicial Power, the President gave an opportunity and power to interfere in court matters by placing the Supreme Court under the President. The function of judicial power according to Article 3 of Law Number 19 of 1964 was used as an instrument of revolution based on the Pancasila towards Indonesian socialist society.

Likewise with Law Number 14 of 1970 revoking Law Number 19 of 1964, it also gave large powers to executive institutions to interfere in the affairs of the judiciary because organizationally, administratively, and financially came under the authority of each department which is the executive of the executive body. To anticipate the emergence of these judicial freedoms, then Law Number 35 of 1999 was enacted concerning amendments to Law Number 14 of 1970 concerning the Principal Provisions of Judicial Power. Article 1 of Law Number 35 Year 1999 expressly stipulates that the respective judicial, organizational, administrative and financial environment is under the authority of the Supreme Court, so that with the release of judicial power from interference from executive and legislative power, creating independent and accountable judicial power.

IV. CONCLUSION

The renewal of the Military Court that will be carried out incrementally must still be in contact with other subsystems. Therefore, to carry out reformulation and reconstruction needs to be done carefully based on scientific considerations. Therefore, the update should be done to get the better, not the opposite. Even when the Military Judicial Draft Bill was passed, the possibility of problems began to arise from there.

This judicial power is closely related to the process of law enforcement. The two meanings are closely related to the unity of judicial responsibilities which contains 3 (three) dimensions, namely administrative responsibilities that demand the quality of organizational management, administration, and financial management. Procedural responsibilities that require accuracy or accuracy of the procedural law used, as well as substantive responsibilities related to the accuracy of the association between facts and applicable law.

The arrangement of the composition and power of the court in the Military Courts environment as regulated in Law Number 31 of 1997 concerning Military Courts which up to now is no longer in accordance with Law Number 3 of 2002 concerning National Defense and Law Number 48 of 2009 about Judicial Power. Based on Law Number 5 of 1986 concerning State Administrative Court, as amended by Law Number 9 of 2004 concerning Amendment to Law Number 5 of 1986, then amended by Law Number 51 of 2009 concerning Amendment to Administrative Justice The State, the Military Court is also authorized to examine, decide upon, and settle administrative disputes for the Indonesian National Army. In connection with the foregoing considerations, it is deemed necessary to amend Law No. 31 of 1997 concerning Military Justice.

REFERENCES

[1]. Adi Sulistiyono, Isharyanto, *Sistem Peradilan Di Indonesia dalam Teori dan Praktik,* Jakarta: Kencana, 2018, hlm. 310

[2]. Soerjono Soekanto & Sri Mamudji, Penelitian Hukum Normatif, Jakarta: Rajawali,1985, hlm. 4-15. Lihat juga Roni Hanitijo Soemitro, Metode Penelitian Hukum dan Jurimetri, Jakarta: Ghalia Indonesia, 1983, hlm. 11-12

[3]. Johnny Ibrahim, Teori dan Metodologi Penelitian Hukum Normatif, Malang: Bayu Media Publishing, 2010, hlm 301.

[4]. Undang-Undang tentang Kekuasaan Kehakiman, Pasal 1