

Military Court Authority to Adjudicate Serious Human Rights Violations Committed by TNI Personnel

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ABSTRACT: *This study examines the Military Court's legal process and authority in trying to resolve human rights violations committed by TNI personnel. Normative legal research is used with a legislative approach and a conceptual approach, which is then analyzed against laws and regulations related to the problem to determine which court has the authority to try the case. The analysis results show that the Military Court's rule is to try criminal acts committed by a soldier, who according to the law is considered equal to a soldier, and members of a group or position or agency are considered soldiers according to the law. Military courts in the military justice system, even though they are under the jurisdiction of a special court, namely the human rights court in the general justice system.*

Penelitian ini bertujuan mengkaji bagaimana proses hukum dan kewenangan Pengadilan Militer dalam mengadili pelanggaran HAM yang dilakukan oleh personel TNI. Penelitian yuridis normatif digunakan dengan pendekatan perundang-undangan dan pendekatan konseptual, yang kemudian dianalisis terhadap peraturan perundang-undangan yang berkaitan dengan permasalahan untuk menentukan pengadilan mana yang berwenang mengadili perkara. Hasil analisis menunjukkan kewenangan Pengadilan Militer adalah mengadili tindak pidana yang dilakukan oleh seorang prajurit, yang menurut undang-undang dianggap sederajat dengan prajurit, dan anggota suatu kelompok atau jabatan atau badan dianggap prajurit menurut undang-undang. Pengadilan militer dalam sistem peradilan militer, padahal berada di bawah yurisdiksi pengadilan khusus, yaitu pengadilan hak asasi manusia dalam sistem peradilan umum.

Keywords: *Military Court, Human Rights Violations, TNI Personnel.*

I. INTRODUCTION

The presence of an independent and impartial judiciary characterizes the concept of the rule of law. There are four types of independent and impartial tribunal within the Judiciary Bodies, all of which lead to one judiciary, namely that which is under the Supreme Court of the Republic of Indonesia, such as the general court, religious court, administrative court, and military court (Valdanito, 2024). Each court has different objects and subjects, and they have different specialities. The competence of the general court in criminal cases involves the judicial system, which starts with the investigation process, prosecution, trial, and correctional institutions. Based on Article 2 of the Military Criminal Code, criminal cases involving military personnel for general or military crimes are processed through the mechanism of the military criminal justice system with sub-systems of Ankum, Papera, Military Police, Military Prosecutor, and Military Judges (Pebrianto, 2024). The existence of military courts was particularly prominent during the New Order era, which had extensive authority and placed military personnel as "special" citizens and rejected the concept of civilian supremacy, clearly indicating that "military supremacy" is the one that is maintained with certain special privileges for the TNI soldiers. Meanwhile, Article 6 of Law Number 8 of 1981 concerning Criminal Procedure Law is carried out by the National Police and Civil Servants (Purwoleksono, 2015). There is a need for clarity regarding one of the issues above related to the authority of investigators to examine military members who commit general crimes (UU No.8, 1981).

Based on Article 9 of the Military Judiciary Law, it states that the military judiciary environment has the authority to:

1. Adjudicate criminal acts committed by individuals who, at the time of committing the criminal act, are:
 - a. Soldiers;
 - b. Those who, according to the law, are equated with Soldiers;
 - c. Members of a group, position, or body, or those equated or considered as Soldiers according to the law;
 - d. Individuals who do not fall under the categories in points a, b, and c must be tried by a Court within the military judiciary environment upon the decision of the Commander with the approval of the Minister of Justice.
2. Examine, decide, and resolve disputes within the Armed Forces Administration.
3. Merge claims for compensation in the criminal case concerned at the request of the aggrieved party as a result of the criminal act which forms the basis of the accusation, and simultaneously decide both cases in one ruling.

Based on the above, there have been numerous cases of severe violations of human rights committed by members of the military towards civilians. These violations generally occurred during President Suharto's administration, when the armed forces (later

transformed into the TNI and Polri) were used to maintain power (Erdianto, 2016). Human rights violations by the TNI reached their peak at the end of the New Order regime when popular resistance grew stronger. The first case was the Trisakti tragedy, which occurred at Trisakti University in Jakarta, Indonesia on May 12, 1998. During a demonstration demanding the resignation of President Soeharto, the Army shot unarmed demonstrators. Four students - Elang Mulia Lesmana, Heri Hertanto, Hafidin Royan, and Hendriawan Sie - were killed and dozens were injured. This shooting triggered riots and a wave of national revolution, ultimately leading to Soeharto's resignation. The second case, the Semanggi Tragedy in Jakarta, Indonesia, involved two incidents during which state forces fired on unarmed civilians and protesters during special parliamentary sessions. The first incident, known as Semanggi I, occurred on November 13, 1998, resulting in 17 deaths. The second incident, Semanggi II, took place on September 24, 1999, resulting in 12 deaths and over 200 injuries. The third case, the Lampung tragedy, occurred on September 28, 1999. It started when students from Lampung University marched towards Bandar Lampung University to join their peers in protesting the Emergency Response Law (PKB) and showing solidarity for those who died in Semanggi Jakarta four days earlier. After joining, they held a protest and marched towards Makorem 043/Garuda Hitam. However, when passing the headquarters of the Koramil Kedaton near Bandar Lampung University, the situation became uncontrollable as the Koramil Commander refused the students' demand to sign a rejection of the implementation of the PKB Law, leading to stone throwing and gunfire. The students scattered and sought refuge at Bandar Lampung University. Shortly after, it was discovered that bullet fragments had taken the life of Muhammad Yusuf Rizal. On that day, September 28, 1999, Muhammad Yusuf Rizal, a student in the Social and Political Science department of Lampung University from the Class of 1997, passed away from gun wounds that penetrated his chest and a bullet that went through his neck. He was shot in front of the Koramil Kedaton headquarters in Lampung. Dozens of other students were injured and had to be treated at a hospital. Several days later, Saidatul Fitriah, a student at Lampung University who was also a victim of police violence, sadly passed away (Hadjon & Djatmiati, 2017).

In its development of eradication, it is regulated in a special court under Law No. 26 of 2000 concerning Human Rights Courts (State Gazette of the Republic of Indonesia Year 2000 No. 208, Supplementary State Gazette of the Republic of Indonesia No. 4026, hereinafter referred to as the "Human Rights Court Law") as a special court within the general judiciary system (UU No.26, 2000).

Based on Article 1 number 5 of Law Number 49 of 2009 concerning General Courts (State Gazette of the Republic of Indonesia Year 2009 Number 158, Supplement to State Gazette of the Republic of Indonesia Number 5077, hereinafter referred to as the "General Courts Law"), Special Courts are courts that have the authority to examine, judge, and decide on certain cases that can only be established within one of the judicial bodies (UU No.49, 2009). Referring to the authority regarding cases of criminal violations of human rights in Article 1 paragraph 3 and Article 4 of Law No. 20 of 2000 concerning Human Rights Courts, human rights courts are the only special courts within the general

court system authorized to adjudicate and decide on cases of serious human rights violations, including genocide and crimes against humanity.

Based on the description above, it can be observed that there is a norm conflict between Article 9 paragraph (1) of Law No. 31 of 1997 on Military Courts and Article 1 point 3 as well as Article 4 of Law No. 26 of 2000 on Human Rights Courts for the trial of serious human rights violations by military personnel (TNI). Whether perpetrators of serious human rights violations committed by TNI members are subject to military court within the military justice system or subject to human rights court remains uncertain.

II. METHOD

Legal research is aimed at discovering the coherence of truth, namely the alignment between legal rules and legal norms, the alignment between legal norms and legal principles, and whether an individual's actions are in accordance with legal norms or principles (Ruslan & Gassing, 2021). This research method utilizes the normative juridical research type (legal research). This type of research is based on the currently applicable laws and regulations (positive law) to find the truth in a formal juridical manner, which is then linked to its application in the practical world of law, especially in relation to criminal acts in the field of serious human rights violations committed by military personnel. The approach methods used in this research consist of several methods known in normative legal research, such as the statutory approach and the conceptual approach. The legal materials utilized in this research are primary legal materials, including laws and regulations, official records, and minutes within laws and regulations.

III. RESULT AND DISCUSSION

Basis of Law Preferences in Determining Jurisdiction

Based on the description above, there are two fundamental elements of criminal law, namely the existence of a norm that enforces a prohibition or command, and the existence of sanctions for violating the norm such as criminal penalties. Bruggink states that in legal principles there is a fundamental judgment called legal principles. Therefore, legal principles play a role as the foundation of positive legal systems and as a measure of critical judgment on positive legal systems (Holili et al., 2024; Shidarta, 2020).

According to Van Eika Hoemes:

“The principles of Law should not be considered as specific legal norms, but rather as the foundations of law, or guidelines for existing laws. The formation of law, in practice, needs to be oriented towards these legal principles. In other words, legal principles are the foundations or guiding directions in the formation of positive law.”

Starting from the clear view, it is evident that fundamental principles as the foundation and critical evaluation play a role when there are conflicts in the legal system, where legal principles serve to resolve conflicts as will be discussed in this chapter on the

jurisdiction of human rights courts within the general court system and military courts within the military justice system to investigate, prosecute, and decide on cases of serious human rights violations committed by military personnel (TNI) (Helmi, 2016). Based on the aforementioned conflicts, it is necessary to explain the aspects of the preference principle which include the principles of *lex posterior derogat legi priori*, *lex superior derogat legi inferiori*, and *lex specialis derogat legi generalis*, as follows:

1. Lex Posterior derogat legi priori

The principle of *lex posterior derogat legi priori* means that a new regulation takes precedence over an old regulation, so that the new law in practice is prioritized over the old law that regulates the same matters, if the new law does not specify the repeal of the old law.

Peter Mahmud Marzuki stated that the principle of *lex posterior derogat legi priori* means that:

“New legislation supersedes old legislation and the limitation of using this principle arises when faced with 2 (two) regulations of the same hierarchy.” (Marzuki, 2013).

Bagir Manan also provides a definition of the principle of *lex posterior* by emphasizing a principle that the new legislation must be equal to or at least higher than the old legislation and the old legislation regulates the same aspects.

Peter Mahmud Marzuki clarifies the philosophical foundation of the principle of *lex posterior derogat legi priori* that:

“If the form of legislation contained in the old legislation is not contrary to the philosophical foundation of the new legislation, then the legislation remains valid in accordance with the transitional provisions of the new legislation.” (Marzuki, 2013).

Based on the above opinion stating that the philosophical principle of *lex posterior derogat legi priori* can be seen from the transition rules or closing provisions in a new legislation which are often mentioned at the end of a section of a law, resulting in whether the old law still applies as its substance or no longer applies as a whole of the substance of the section. The function of the principle of *lex posterior derogat legi priori* is indeed that the newer legislation overrides the older legislation, thus requiring the use of the new law by preventing dualism that can cause legal uncertainty.

2. Lex superior derogat legi inferiori

The principle of *lex superior derogat legi inferiori* means that regulations of higher authority take precedence in their implementation over lower laws. For example, laws take precedence over government regulations, presidential regulations, ministerial regulations, provincial regulations, district regulations, and so on.

According to Bagir Manan, the principle of *lex superior derogat legi inferiori* means that:

“Regulations of higher legal authority override regulations of lower legal authority, unless the content of the higher legal regulations govern matters that are within the jurisdiction of lower legal regulations as stipulated by the law.”

Starting from the priority of a legal force of regulations, one must look at the hierarchy of Indonesian legal regulations as regulated in Article 7 paragraph (1) in Law No. 12 of 2011 concerning the Formation of Legal Regulations which asserts that the types and hierarchy of such legal regulations are as follows:

“First, there is the 1945 Constitution, secondly MPR Decrees, thirdly laws (UU)/Government Regulation in Lieu of Law (Perppu), fourthly Government Regulations (PP), fifthly Presidential Regulations (Perpres), sixthly Provincial Regional Regulations (Perda Provinsi), and Regional Regulations of Districts/Cities (Perda Kabupaten/kota). “

Then based on Article 8 of the Law on the Formation of Legislation, regulations such as those established by the DPR, DPD, MA, MK, BPK, KY, BI, Ministers, bodies, institutions, or commissions of equivalent rank established by Law or Government on the mandate of the Law, Regional DPRD, Regents/Mayors, Village Heads, or of equivalent rank shall have legal binding force as long as instructed by higher regulations or established based on authority.

Kusnu Goesniadhie stated that:

“Legislation of lower levels must not contradict legislation of higher levels that regulate the same normative material. In case of a conflict, the legislation of a higher level shall prevail over the legislation of a lower level, and due to the hierarchy in legislation, the principle of *lex superior derogat legi inferiori* applies.”

The principle of *lex superior derogat legi inferiori* provides an effort to solve problems regarding the interpretation of legislation by first considering the level of the law based on the hierarchy established, so that legal norms in legislation create legal certainty, justice, and utility.

3. *Lex specialis derogat legi generalis*

Lex specialis derogat legi generalis means that specific laws are given priority over general laws, so that provisions that are general in nature can be overruled by regulations that specifically regulate the same matter.

Soejono Sukanto stated that for specific events, the law that mentions the specific event must be applied, although the law that mentions a more general event that can include the specific event can also be applied.

In the field of criminal law, the principle of *lex specialis derogat legi generalis* is regulated in Article 63 paragraph (2) of the Criminal Code which states that if an act falls within a general criminal provision but also within a specific criminal provision, only the specific regulation applies.

According to Peter Mahmud Marzuki:

“The principle of *lex specialis derogat legi generalis* refers to two legal regulations that have the same hierarchical position but differ in substance, with one being a specific regulation of the other.” (Marzuki, 2013)

According to Bagir Manan, there are several principles that must be considered in the principle of *lex specialis derogat legi generali*, including:

“Provisions found in general legal rules still apply, unless specifically regulated in other special legal rules; furthermore, *lex specialis* must be equivalent to the provisions of *lex generalis*, meaning law with law, for example provisions in the criminal procedural law book with the provisions of the juvenile criminal justice system; and finally, *lex specialis* must be within the same legal environment (regime) as *lex generalis*, in this case such as the Human Rights Court Law with other court laws.”

Therefore, the principle of *lex specialis derogat legi generali* is important for law enforcement officials when applying criminal laws to cases they are handling.

4. *Lex specialis systematica*

The clash of authority in a court often occurs due to the abundance of laws or special regulations, such as *lex specialis*, which, of course, will not be separated from legal issues when applying them, thus raising a question mark when an act is suspected of a criminal offense as discussed above, where Law Number 31 of 1997 concerning Military Judiciary and Law Number 26 of 2000 concerning Human Rights Courts, both of which are *lex specialis* from the provisions of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP) (UU No.8, 1981).

In the development of legal science, including criminal law, according to Hiariej (2018), the principle of *lex specialis derogat legi generali* cannot resolve legal disputes if there is an act that is threatened and falls under more than one provision of legislation, each of which is classified as a special offense or crime. Based on the above explanation, which legal rule should be used considering that the conflicting laws are both *lex specialis* (Kristiyadi, 2023).

According to Remmelink (2017), when two conflicting laws affect the enforcement of criminal law because the procedural law regulated by those laws differs, another principle is needed to resolve the issue of conflicting authorities in cases of human rights violations committed by military personnel (Indonesian National Armed Forces), namely by using the principle of *lex specialis systematica* as a derivative or extension of the use of the principle of *lex specialis derogat legi generali*. The principle of *lex specialis systematica* in the Netherlands is better known as legal speciality or systematic speciality, in addition to logical speciality (Hafizah et al., 2022).

According to Hiariej (2018), the criteria for systematic speciality are the object of a general definition that is more fully regulated within a specific corridor framework, while logical speciality has detailed criteria for defining crimes within the limits of a general definition. For example:

An individual illegally cuts down trees in a protected forest area, resulting in environmental damage. This act violates environmental management laws on one hand, and forestry laws on the other hand. However, upon further examination, the case should be based on the regulations in forestry laws because they are more complete and

detailed within the specific criminal provisions framework. Therefore, forestry laws are *lex specialis systematica*.

Moving from the two legal regulations described above, in the Republic of Indonesia Law Number 31 of 1997 Regarding Military Courts and Republic of Indonesia Law Number 26 of 2000 Regarding Human Rights Courts, both of which are *lex specialis systematica* regulations that are both *lex specialis* provisions of the Criminal Procedure Code, however, if there are legal regulations that are more specific in regulating the specificity of the subjects who are military personnel (TNI), then they are still subject to military courts which have absolute authority in the legislation that is the only authority to try perpetrators of crimes committed by military personnel (TNI) (UU No.31, 1997). This subordination is carried out and occurs in various legal contexts. *First*, there is a material law specification that applies *sui generis* to the military, namely military law and general criminal law. And in the military, there is a unique way of treating its members, as long as the treatment is still within reasonable limits. *Second*, a soldier must set a good example and not act arbitrarily towards the community because essentially the TNI is also ordinary humans. *Third*, a soldier is prepared to face very dangerous situations, namely threats to national security from both domestic and foreign sources. *Fourth*, a soldier must be accustomed to obeying their commanders because they are bound by a command system that greatly restricts their movements. This is necessary so that soldiers do not easily disobey their superiors and act arbitrarily (Ramadhan & Heniarti, 2022).

IV. CONCLUSION

The authority of the Military Court is to adjudicate criminal acts committed by a soldier, who according to the law is considered equal to a soldier, and members of a group or office or body deemed as soldiers according to the law. Therefore, the provisions in Law No. 31 of 1997 Concerning Military Justice are specific provisions of the Criminal Procedure Code. The same goes for the provisions in Law No. 26 of 2000 Concerning Human Rights Courts which are specific provisions of the Criminal Procedure Code. If there is a military member (TNI) suspected of committing a serious human rights violation crime, then based on the *Lex Specialis Systematica* principle, the perpetrator of serious human rights violation crimes committed by a military member (TNI) will still be tried in the military court within the military justice system, even though it is under the jurisdiction of a special court, namely the human rights court within the general court system.

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