

The Competence of the Judiciary in Cases of Document Forgery Conducted by a TNI Soldier Before Joining TNI

Arief Fahmi Lubis

Military Law College (*Sekolah Tinggi Hukum Militer*) – PTHM/AHM
Jl. Matraman Raya No. 126, Central Jakarta
E-mail arieffahmilubis0@gmail.com

Abstract. One interesting case to examine is when a soldier is suspected of committing the crime of document forgery, which is one of the prerequisites for becoming a TNI soldier before the perpetrator officially becomes a TNI soldier. The objective of this research was to demonstrate the importance of considering the *tempus delicti* (time of the offense) when determining the jurisdiction of the judiciary. This qualitative research employed a descriptive approach to systematically gather data that were systematic, factual, and expedient in line with the condition when this study was conducted. The findings indicated that when a soldier is suspected of committing the crime of document forgery, a requirement for becoming a TNI soldier before their official enlistment, the jurisdiction of the civilian court system applies.

Keywords: Judiciary Competence, TNI Soldiers, Military Judiciary.

INTRODUCTION

National defense, as one of the functions of the Indonesian government, is a fundamental factor in the nation's life, ensuring the survival of Indonesia. The state institution with a pivotal role in the implementation of the national defense system is the military, specifically the Indonesian National Armed Forces (Indonesian: *Tentara Nasional Indonesia* [TNI]). To support and ensure the fulfillment of the TNI's duties, specific regulations that exclusively apply to TNI soldiers have been established and enforced, in addition to general regulations. These particular regulations, exclusively for TNI soldiers, are known as military law. One of these specific regulations, which pertains solely to TNI soldiers, is Indonesia's Law No. 31/1997 concerning Military Justice. This law governs the jurisdiction of the judiciary over TNI soldiers who commit criminal acts. The provisions concerning the jurisdiction of the judiciary over TNI soldiers who commit criminal acts are found in Article 9, Paragraph 1 of Indonesia's Law No. 31/1997. Essentially, this article affirms that the judiciary authorized to try TNI soldiers who commit criminal acts is the Military Judiciary.

The criminal acts referred to in Article 9, Paragraph 1 of Indonesia's Law No. 31/1997 encompass both military and civilian criminal offenses. However, these provisions regarding the jurisdiction of the judiciary over TNI soldiers who commit criminal acts

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*Arief Fahmi Lubis, arieffahmilubis0@gmail.com

underwent significant changes after the reform era began. This transformation is evident in the provisions of Article 3, Paragraph 4, Letter A of the Decree of the People's Consultative Assembly No. VII/MPR/2000, and it was subsequently reaffirmed in Article 65, Paragraph 2 of Indonesia's Law No. 34/2004 concerning the Indonesian National Armed Forces. Essentially, both articles state that TNI soldiers are subject to the authority of the Military Judiciary when committing military criminal acts and are subject to the authority of the Civil Judiciary when committing civilian criminal acts. Based on the provisions of Article 3, Paragraph 4, Letter A of the Decree of the People's Consultative Assembly No. VII/MPR/2000 and Article 65, Paragraph 2 of Indonesia's Law No. 34/2004, it can be understood that there are two jurisdictions for the judiciary that apply to TNI soldiers who commit criminal acts: the Military Judiciary and the Civil Judiciary. The Military Judiciary has the authority to adjudicate TNI soldiers who commit military criminal acts, while the Civil Judiciary has the authority to adjudicate TNI soldiers who commit civilian criminal acts.

This differs from the jurisdiction of the judiciary applied to TNI soldiers who commit criminal acts in Indonesia's Law No. 31/1997, which is solely granted to the Military Judiciary. Ironically, the reality demonstrates that the provisions of Article 3, Paragraph 4, Letter A of the Decree of the People's Consultative Assembly No. VII/MPR/2000, and Article 65, Paragraph 2 of Indonesia's Law No. 34/2004 have not yet been implemented until now, especially concerning the jurisdiction of the Civil Judiciary over TNI soldiers who commit civilian criminal acts. Consequently, the implementation of jurisdiction for TNI soldiers who commit civilian criminal acts still relies on and is based on Indonesia's Law No. 31/1997. This stems from the provisions of Article 65, Paragraph 3 of Indonesia's Law No. 34/2004, essentially stating that if the jurisdiction of the Civil Judiciary does not function, then TNI soldiers who commit criminal acts are tried in the Military Judiciary, for both military and civilian criminal acts. The situation and conditions mentioned above reveal a contradiction (gap) between normative provisions (*das Sollen*) and the reality in the field (*das Sein*) regarding the jurisdiction of the Civil Judiciary over TNI soldiers who commit civilian criminal acts. Based on the background of thought mentioned above, it is intriguing to conduct research on the competence of the judiciary in cases of document forgery conducted by a TNI soldier before joining TNI or becoming a TNI soldier.

METHODS

This study was legal research that employs various approaches to address the researched issues, including (1) the statutory approach, (2) the conceptual approach, (3) the comparative approach, and (4) historical and philosophical approaches. Data processing was conducted qualitatively. Written legal materials that had been gathered were then systematically organized based on the issues being researched. Furthermore, these legal materials were examined and elucidated based on relevant theoretical foundations. To address the issues, an evaluation of the systematically organized legal materials was conducted to provide precise interpretations and legal implications.

RESULTS AND DISCUSSION

The Theory of Retribution (*Absoluut, vergelding*) justifies punishment because an individual has committed a criminal act, and as a result, they are subject to punishment as retribution for their actions. The consequences of punishment for the offender are not questioned. The only consideration for punishment is the past, meaning the time when the criminal act occurred. Future intentions to reform the offender are not taken into account. Therefore, a criminal must be punished absolutely.¹

In fulfilling the need for TNI (Indonesian National Armed Forces) personnel, the Indonesian government conducts a selection of individuals from the civilian population based on specific criteria. Candidates for the TNI who come from civilian backgrounds still have civilian status (not yet military status). In the selection process, various documents are required as prerequisites. Falsifying documents during the recruitment process can lead to incorrect assessments of potential TNI recruits and potentially disrupt the selection system for becoming a soldier. It is important to note that Military Courts have specific jurisdiction that applies to military personnel. Military Courts are established to uphold the law and discipline within the military environment, typically handling criminal offenses committed by military members while they are on active military duty. According to Indonesia's Law No. 31/1997 concerning the Military Judiciary in Indonesia, Military Courts have authority over criminal offenses committed by TNI soldiers both on and off duty. However, the issue arises when a TNI recruit commits the criminal act of falsifying administrative documents, which is one of the requirements for becoming a TNI

¹ S.R.Sianturi. *Hukum Penitensia Di Indonesia*, (Jakarta: Pusat Studi Hukum Militer,2013),hlm.22

soldier, before officially joining the TNI or while still having civilian status. In practice, Military Courts conduct trials for cases that occurred before the accused individual became a TNI soldier because these cases are discovered or processed through legal proceedings after the person has become a TNI soldier.

Currently, the issue of the independence of Military Courts is under scrutiny due to its potential for injustice. This is because Military Courts only apply to military personnel as perpetrators of criminal acts, while cases of common crimes, such as document forgery involving TNI personnel before they officially become military personnel, should be tried in civilian courts according to the nature of the offense. In principle, there should be no differentiation in the jurisdiction for the same cases.² This applies in cases where a soldier is suspected of committing the crime of falsifying administrative documents (document forgery), which is one of the prerequisites for becoming a TNI (Indonesian National Armed Forces) soldier before the perpetrator officially becomes one. In this situation, the juridical analysis of military court authority is as follows:

1. Article 9 of Indonesia's Law No. 31/1997 regarding Military Courts stipulates that Military Courts have the authority to investigate, prosecute, and decide on criminal cases committed by military personnel before they become soldiers.
2. In the case of document forgery for the acceptance of TNI soldiers by prospective TNI-AD (Indonesian Army) soldiers, where a prospective soldier is suspected of document forgery before becoming a military member, the *tempos delicti* (timing of the offense) indicates that the perpetrator still has civilian status, and thus, civilian courts have jurisdiction. On the other hand, if the case is discovered and legally processed after the perpetrator has become a TNI soldier, Military Courts may have jurisdiction.
3. Ultimately, the judge's discretion will also play a significant role in determining jurisdiction. For example, if the judge believes that document forgery significantly affects the recruitment process and the individual's status as a soldier, the case may fall under Military Court jurisdiction. However, if the judge thinks otherwise, the case may be handled by civilian courts.

² Erna Kurniawati, Adwani, Mujibussalim, *Kewenangan Peradilan Militer I -01 Banda Aceh dalam mengadili Tindak Pidana Umum yang dilakukan oleh oknum TNI*.

Military Court Jurisdiction

As stipulated in Article 9 of Indonesia's Law No. 31/1997 concerning Military Courts, the courts within the Military Court jurisdiction have the authority to adjudicate criminal acts committed by an individual who, at the time of committing the crime, falls into one of the following categories:

1. Soldier,
2. Those equated with soldiers according to Indonesia's Law,
3. Members of a group, office, or organization that is equated with soldiers according to Indonesia's Law, and
4. Someone who does not fall into the categories mentioned in points 1, 2, and 3 but, by the decision of the Commander-in-Chief of the Indonesian National Armed Forces with the approval of the Minister of Justice, must be tried by a court within the Military Court jurisdiction.

The legal norm contained in Article 9 of Indonesia's Law No. 31/1997 provides the Military Courts with the authority to investigate, prosecute, and adjudicate any criminal case without distinction between civilian criminal cases or military criminal cases, and to examine, prosecute, and adjudicate such cases in a single judgment. The explanation in Article 9, Paragraph 1, Letter A of the Military Court Law only clarifies that military criminal acts are specifically aimed at perpetrators who have military status. The determination of *tempus delicti* must consider that the act-causing a consequence prohibited by legal rules-will pose difficulties if the act and consequence occur at different times, namely as follows.

1. The time of the conduct, and
2. The time of the consequence.

The time of conduct is when the criminal act is committed, while the time of consequence is when the consequences of a criminal act occur.³ To determine which approach to use, it must be distinguished according to the intention of the regulation, namely as follows.

1. For the right to prosecute, what is needed is the time when the entire act occurred. Therefore, the approach used is the time after the consequence occurred (the time of consequence).

³ Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta :Rineka Cipta, 2008) hlm,59.

2. To determine the applicability of a criminal regulation, the perpetrator's capability to be held responsible, and the existence of an act that is contrary to the law, the type of approach used is the time of conduct.

Regarding the TNI Soldier being tried within the Military Court jurisdiction, a TNI soldier is tried within the Military Court if the criminal act occurred while they were already a TNI Soldier and still an active member status of the TNI.

The Competence of the Judiciary Regarding Criminal Acts by TNI Soldiers Committed Before Becoming TNI Soldiers

The concept of competence, as defined by R. Subekti and R. Tjitrosoedibio, originates from the medieval Latin term "*competentia*," which translates to "*hetgeen ann iemand toekom*" or "what becomes someone's authority."⁴ In Indonesian, this term is interpreted as "*kewenangan*" or "*kekuasaan/hak*," referring to authority or rights associated with the entity exercising judicial power. Therefore, "competence" represents the delegation of authority, power, or rights to a governing body or court responsible for conducting judicial proceedings. This is crucial to ensure that petitions or lawsuits submitted to the governing body or court are reviewed and adjudicated by the appropriate authority. Consequently, it is imperative to assess whether the court is competent to hear a particular case. The terms "*pengadilan*" (court) and "*peradilan*" (judiciary), when analyzed from a linguistic perspective, originate from the root word "*adil*" (fair), accompanied by prefixes such as "*pe-*" and "*per-*," as well as the suffix "*-an*."

Absolute competence and relative competence represent two distinct concepts within the Indonesian military justice system. The concept of absolute competence pertains to the exclusive jurisdiction of Military Courts over specific criminal cases. Military Courts possess the authority to investigate and adjudicate criminal cases involving specific individuals, including enlisted personnel holding the rank of Captain or lower, as stipulated in Article 9, Paragraphs 1 (b) and (c) of Indonesia's Law No. 31/1997 on Military Justice. Virtually, all violations or crimes committed by military personnel fall under the purview of Military Courts. Regardless of whether Civilian Courts possess jurisdiction over these cases, Military Courts retain the power to examine and resolve cases falling within their absolute competence.

⁴ Faisal Salam, *Peradilan Militer Di Indonesia*, (Bandung: Penerbit Mandar Maju, 2004), hlm.164.

Regarding the principle of “*tempus delicti*” (time of the crime), based on Mezger’s perspective as presented in Prof. Moeljatno, S.H.’s book, it is emphasized that “*tempus delicti*” cannot serve as a uniform answer for all circumstances. The use of “*tempus delicti*” is differentiated based on its intended purpose and regulations:

1. To determine the expiration of rights and the necessity of prosecution, it refers to the time when the entire act took place, which occurs after the consequences have manifested.
2. To determine whether criminal law rules apply, assessing responsibility, or establishing the legality of an act (due to permission from authorities), “*tempus delicti*” refers to the time of the act itself, and the timing of the consequences is not relevant.⁵

The Indonesian National Armed Forces (Indonesian: *Tentara Nasional Indonesia* [TNI]) have their respective legal system known as military law. If a TNI member commits a crime while on duty or in active service, the TNI soldier who is the perpetrator will be tried in a Military Court. The Military Court will use the Indonesian Military Criminal Code (Indonesian: *Undang Undang Hukum Pidana Militer* [KUHPM]) and the Indonesian Criminal Code (Indonesian: *Kitab Undang-Undang Hukum Pidana* [KUHP]) as references in conducting the legal process. However, if the criminal act of falsifying administrative documents (document forgery), which is one of the requirements for becoming a TNI soldier, occurs (*tempus delicti*) before becoming a member of the TNI-AD (Indonesian Army) or while still a civilian, it cannot be tried in the Military Court. This is because the criminal act was committed while the individual was still a civilian, and jurisdiction falls under the civilian court.

As a result, the perpetrator or TNI soldier will first undergo a legal process through administrative procedures within the TNI, namely, being dishonorably discharged (Indonesian: *Pemberhentian Tidak Dengan Hormat* [PDTH]) from military service by the case-handing officer (Indonesian: *Perwira Penyerah Perkara* [PAPER]) through the authorized superiors who have the right to impose penalties (Indonesian: *Atasan Yang Berhak Menghukum* [ANKUM]). This is because, according to the applicable regulations, the actions taken by the soldier have violated norms and/or committed acts that can harm military discipline or the Indonesian National Armed Forces (TNI). This is following Article 58, Paragraph 2, Letter D of Government Regulation No. 39/2010 concerning the

⁵ Moeljatno, *asas-asas hukum pidana* (Jakarta :Rineka Cipta, 2008) hlm.89

Administration of Soldiers, which states “It is known that those accepted as Student Soldiers have intentionally provided false, untrue, or incomplete information.” To avoid violating Article 9 of Indonesia’s Law No. 31/1997 on Military Justice, Article 58, Paragraph 2, Letter D of Government Regulation No. 39/2010 concerning the Administration of Soldiers dictates returning the case to the civilian jurisdiction. Subsequently, the perpetrator or former TNI soldier is handed over to civilian investigators (police officers) to undergo legal proceedings in civilian court.

CONCLUSION

The Indonesian National Armed Forces (Indonesian: *Tentara Nasional Indonesia* [TNI]) have their respective legal system known as military law. If a TNI member commits a crime while on duty or in active service, the offender, who holds the status of a TNI soldier, will be tried in a Military Court. However, if the criminal act of falsifying administrative documents (document forgery), which is one of the requirements for becoming a TNI soldier, occurs (*tempus delicti*) before joining the TNI-AD (Indonesian Army) or while still in civilian status, it cannot be tried in the Military Court. This is because the criminal act was committed while the individual still had civilian status, and jurisdiction falls under the civilian court.

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