



Actualization of the Government's Role in the Establishment of the Military Environment Anti-Corruption Corps

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Abstract

The military is part of a special law, so that in the Unitary State of the Republic of Indonesia, often the Military becomes its own attraction to review in terms of actualization of military criminal handling in the field of corruption in the military environment, as well as its own attraction also in the role of the government in the formation of the Anti-Corruption Corps, the government also in Article 10 of the 1945 Constitution so that it is the commander-in-chief in the Indonesian National Army, When seeing and understanding the handling of special criminal cases, namely corruption, often the independent institution of the Corruption Eradication Commission often has wrong procedures in arresting Military soldiers who commit criminal acts of corruption, in this case there needs to be attention and the latest ideas in the formation of the Anti-Corruption Corps within the Military, so that the handling of corruption cases in the military environment does not occur technical errors or errors in Authority procedures. In this study using the type of Normative Juridical research, reviewing applicable laws and regulations relevant to this research, and approaches with legal theory help complete this research.

Keywords : Anti Corruption Corps; Military; Government; Authority

Introduction

The state is an entity from the existence of laws and regulations carried out by the Government, so often the government sometimes only carries out part of the Constitutional Mandate (UD NKRI 1945), carries out the Partial Mandate of the 1945 Constitution, then the government's performance is so much, so that in certain parts it is still not well managed, there are even some institutions that have not been formed



from laws and regulations, and the establishment of these institutions requires regulations legislation that is a product of political law of the president as Head of Government, as well as a product of political law between the president and the House of Representatives.

Institutions that have not been formed due to the many tasks of the government in this case are the president as the head of government, even though the president is not only the Head of Government, but also as the Supreme Commander of the Army of the Republic of Indonesia, meaning that the Presidential Authority derived from the 1945 Constitution is in the form of original authority or Attribution Authority. The establishment of an unformed institution is still one part of the Military Criminal Law.¹The formulation of the law on the opinion of experts, as follows: Cicero argues that "Law is the highest reason, implanted in nature, which prescribe those things which ought to be done and forbids the country, Jeremy Bentham, the purpose of law is to give as much happiness as possible to the greatest number of people, Utrecht argues that the purpose of law, namely: a. Justice, b. Uses and c. Polyonyl.

In general, the law is divided into: a. Private Law and, b. Public Law, the realm of a. Private Law includes: 1. Civil, 2. Trade, 3. Disputes, while b. Public Law includes: 1. Criminal, 2. Constitutional Governance, 3. Procedural Law, when described for Criminal divided into General Criminal and Special Criminal, Procedural Law divided into Criminal Procedure, Civil Procedure Law, State Administrative Procedure Law, Code of Military Procedure. The General Criminal Law has a definition of a group of regulations that are coercive, if the rules are violated by someone, the violator will be sanctioned. Criminal law sanctions in the form of suffering, in the form of punishments threatened to violators in the form of: 1. Death Penalty, 2. Imprisonment, 3. Fines, 4. Deprivation of Certain Rights and so on.

Military comes from the Foreign Language "Greek" namely *Millies* means someone who is armed and ready to carry out battles or wars, especially in the context of defense and security. In articles 46, 47 and 48 of the Army Criminal Code which have been amended and supplemented by Law Number 39 of 1947

Section 46

(1) What the Army meant was:

To be 1 : They are bound to serve voluntarily in the Army, which is obliged to be in continuous service within the grace period of service

To be 2 : All other volunteers in the Army in the military are conscripted and while they are in service, as well as if they are out of actual or actual service within a grace period during which they may be called up for service, commit a

¹ Moch Faisal Salam, 2006, *Hukum Pidana Militer di Indonesia*, Mandar Maju, Bandung, hal. 13-15



mistake or One of the errors of the Act formulated in Section 97, 99 and 139 of the Indonesian Civil Code.

(2) Every military must be informed that it is subject to military order

The meaning of Military Criminal Law in a broad sense includes criminal law in the material sense and criminal law in the formal sense, Criminal law in the material sense is a group of rules and regulations for criminal acts that contain orders and prohibitions to enforce legal order and if the orders and prohibitions are not obeyed then criminal punishment is threatened, Formill Criminal Law is better known and called the Criminal Procedure Law is a group of legal regulations that contain provisions on judicial powers and the manner of examination, prosecution, prosecution and punishment of military persons who violate material criminal law. Formill's Criminal Law is known as the Criminal Procedure Law which fundamentally maintains the Material Criminal Law, while Military Criminal acts, distinguished among others general crimes (*commune delicta*) that can be committed by any person, which is the opposite of special crimes (*delicta propria*) which can only be committed by certain subjects, in this case military subjects. Military Crime is one element of Special Crime, so that it can develop its crime with Actions that lead to corruption crimes, the special meaning of the crime is: a. the perpetrator is a subject of law committing a special crime (military), b. crime is an extraordinary crime harming the state in terms of state finances and budget. Special criminal acts are special criminal laws that have a special scope, as laws and regulations of a special nature, the legal basis of their enforceability, can deviate from the provisions of General Book I of the Criminal Code, special criminal laws and regulations are regulations that regulate outside the Criminal Code, and if known,² Specific Crimes include: a. Corruption, b. Money Laundering, c. Fisheries Crimes, c. Terrorism Crimes, d. Narcotics and Psychotropic Crimes. In the Criminal Act of Corruption, corruption is a fraudulent act that harms the national budget, as well as misappropriation of state money for the benefit of individuals and groups. The occurrence of criminal acts of corruption, including from various causative factors, namely: a. weak religious, moral, and ethical education, b. absence of harsh sanctions against perpetrators of corruption, c. absence of a transparent government system, d. economic factors, low salaries of public officials, causing corruption to become a culture, e. poor management and the absence of effective and efficient supervision. Judging from the factors causing corruption, namely the absence of firm or harsh sanctions, even poor management and the absence of effective and efficient supervision, corruption among the military also lacks effective and efficient supervision, where often investigations and investigations in corruption cases are less efficient, less efficient is the need for the government's role in the establishment of the Anti-Corruption Corps Institution in the Military Environment, is a good idea to minimize and overcome corruption crimes within the military and even handle corruption cases that are members of the TNI who occupy certain positions in Non-Ministerial Government Institutions. In writing this study, the formulation of the

² Aziz Syamsudin, 2016, *Tindak Pidana Khusus*, Sinar Grafika, Jakarta, hal.14-15



problem used is: a. How is the Actualization of the Government's Role in the formation of the Anti-Corruption Corps institution in the Military Environment, b. How are the Obstacles to Actualization of the Government's Role in the formation of the Anti-Corruption Corps institution in the Corruption Environment in the Military Environment. The research method used is Normative Juridical Research, and through the approach in this study is an approach using Legal Theory, making the analysis knife complete this research.

Actualization of the Government's Role in the establishment of the Anti-Corruption Corps institution in the Military Environment

The government is a subject who occupies a position in the executive field, so that the authority of the president to hold government power and as the commander-in-chief of the Indonesian National Army is stated in the Constitution or Constitution of the Republic of Indonesia 1945, in article 10, namely: "The President holds the highest power over the Indonesian National Army, then in Article 4 paragraph 1 namely: "The President holds government power based on the Constitution or Constitution". Reviewing the actualization of the government's role in the formation of the Anti-Corruption Corps institution, some cases that still use coordination with the TNI, especially in filling structural positions in non-ministerial institutions, cases that often occur are cases of corruption, even ³ The Independent Institution, namely the Corruption Eradication Commission (KPK), still misinterprets or misinterprets procedures in arrests or Hand Capture Operations for high-ranking Indonesian Army officers who occupy positions in Non-Ministerial Government Institutions. Given the legal theory of ⁴authority where the Authority of Attribution is the authority derived from the Constitution, the President should implement the Mandate of the 1945 Constitution, even other authorities are delegated authority, namely delegation of authority from institutions vertically or horizontally to exercise this authority, ⁵ in responsive legal theory, namely: a theory that implies that laws are made to meet social needs, so far the law seems slow in Indonesia, so that the actualization of arrests by the KPK of high-ranking TNI officers suspected of corruption, seems wrong procedure and slow, because, the responsiveness of the law is not paid attention to by the Government, even the effectiveness of the law is also a determinant for the law to be obeyed or not obeyed, or even become a determinant of norms that in the TNI clan sapta are obeyed or not obeyed. In the sapta clan norm, it is explained that, the Army upholds Takwa to God Almighty, defends honesty, truth and justice, defends honesty,

³ <https://mediaindonesia.com/politik-dan-hukum/600418/tangkap-kepala-basarnas-kpk-mengaku-salah-dan-minta-maaf-ke-tni>, diakses tanggal 08-04-2024

⁴ Riawan Tjandra, 2018, *Hukum Administrasi Negara*, Sinar Grafika, Jakarta, hal 96-97

⁵ Phillippe Nonet & Philip Selznick, 2003, *Hukum Responsif pilihan di Masa Transisi*, Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (*HuMa*), Jakarta, hal. 59-60



this means that every one's actions can be applied honestly in every behavior of a TNI soldier, but in criminal acts of corruption committed by TNI soldiers or TNI officers, it does not obey the norms on the TNI clan sapta, and lack of compliance with applicable laws and regulations in terms of military discipline, in Law Number 25 of 2014 concerning Military Discipline Law, violations of military discipline include: a. types of violations that are contrary to official orders, service regulations, or actions that are not in accordance with military rules b. acts that violate criminal laws and regulations that are so mild in nature, that violations that originate from violations Military discipline regulations can even result in TNI officers who are also TNI soldiers can commit specific criminal crimes, namely:⁶Corruption. Corruption comes from the Latin " corruptio = bribery " , " corruptore " = "destructive", so there are symptoms where officials, state bodies are abusing authority with the occurrence of bribery, forgery and other irregularities. In the opinion of Baharudin Lopa, Corruption is: a. Corruption with disguised motives and b. Corruption with dual motives, the author agrees with the opinions of criminal law experts, corruption is a special criminal crime, so that the actualization of the government in this case the president as holding the highest power of the TNI and the head of government should coordinate with each other to the Minister of Defense, Commander of the TNI, Military Police of the Indonesian National Army, to play an active role in the formation of the Anti-Corruption Corps Institute, which the institution was formed as a form of support for eradicating corruption within the Military and eradicating corruption among high-ranking military officers occupying positions in non-ministerial Government Institutions (LPNK), even in terms of investigation and investigation, the Indonesian Army Military Police (PUSPOM TNI), either later the handling of investigations and investigations to the Military Police of the TNI-AD, TNI-AL, and TNI-AU related to corruption cases, or even investigations and investigations of corruption cases in the body TNI or it can also be interpreted that the Military Police in their respective branches conduct investigations and investigations in terms of cases of special criminal acts in this case corruption among the military, namely the Navy, Army and Air Force. The use of a principle, namely the lex Specialis derogate legi generalie principle, then the handling of corruption cases in the military environment using this principle is very important that military criminal law is a special crime and outside the Criminal Code, namely the use of the Corruption Law and the KUHPM and Law Number 31 of 1997 concerning Military Justice and using ⁷ The basis of IUS Speciale against violators is not to violations.⁸ The Indonesian National Army in handling corruption cases within the Military is a positive step in eradicating corruption in Indonesia, as well as reviewing, understanding the handling of corruption in the military environment where the suspects are TNI officers and even TNI soldiers who occupy structural positions in Non-Ministerial government institutions, or who occupy positions outside the LPNK, then the Government in this

⁶ Evi Hartanti, 2007, *Tindak Pidana Korupsi*, Sinar Grafika, Jakarta, hal 8-9

⁷ Slamet Sarwo Edy, *Analisis Yurisdiksi Kewenangan Pengadilan Dalam Mengadili Tindak Pidana Korupsi Yang dilakukan Oleh Anggota Militer Bersama-sama Dengan Orang Sipil*, Fortiori Law Journal. Vol 4 (1). Januari (2024), Hal 17-34

⁸ Bahrain Yamin, Fitriani Amalia, Sarudi, Sahrul, Fahrurrozi, *Penyidikan Tindak Pidana Korupsi Terhadap TNI Oleh Penyidik KPK*, Jurnal Ganec Swara. Vol 17 (4). Desember (2023), Hal 1543-1548



case the President as well as the Head of government and commander-in-chief of the TNI, can form a presidential regulation in the establishment of new organizations or institutions in handling investigations and investigations of corruption cases within the military, even the House of Representatives can revise military criminal law products in supporting the eradication of corruption within the military, so that later the TNI Commander in issuing the TNI Commander's Decree on the placement of TNI soldiers in terms of having a high-ranking officer position in the new organization can refer or guide to the Law and Presidential Regulation, so that later legal justice can be felt in the environment of legal renewal / or reform (developing laws).

Obstacles to Actualization of the Government's Role in the Establishment of Anti-Corruption Corps Institutions in the Corruption Environment in the Military Environment.

Actualization of the Role of the Government which is the head of the development of an activity, in this case the activity in question is a legal activity, meaning that the government as government power and commander-in-chief of the Indonesian National Army, should be able to have the authority and power to support the eradication of corruption among the military, support the establishment of the Anti-Corruption Corps Institute, which aims more at a directed system of authority, and effective, so that the president as the head of government, can form presidential regulations, and can also draft laws to form laws leading to the Military Criminal Law, or even make presidential regulations that regulate the establishment of Independent Organizations or Anti-Corruption Corps Institutions in the Military Environment, but in terms of implementation, have obstacles to the formation of anti-corruption corps, namely:

- a. The President as the head of government feels that there is no need to establish an anti-corruption institution in the military corps and its legal basis, because there are still many government work agendas that are prioritized
- b. The President as head of government, together with the Minister of Defense, the Commander of the TNI and the House of Representatives, has not included programs for the establishment of new institutions in handling corruption in the Military Environment
- c. The President as the Head of Government and the House of Representatives, together with the Minister, the TNI Commander have not directed⁹Legal politics, for national legal reform related to the substances of the law relating to the establishment of new institutions and the function of new institutions in handling corruption in the military environment, as well as coaching law enforcement.

⁹ Moh. Mahfud MD, 2001, *Politik Hukum di Indonesia*, Rajawali Press, Jakarta, hal 8-9



Conclusion

In special laws, as well as settlements outside the Criminal Code (KUHP), solutions related to investigations and investigations are also needed, this special institution established by the President together with the House of Representatives, and in coordination with the Minister and the Commander of the TNI which aims to handle corruption cases in the military environment is handled efficiently and effectively and, so that it does not seem to have unclear authority, causing perceptions in the community that legal settlement does not run optimally. The government should think about and make legal products to regulate the authority of independent state institutions in terms of handling corruption crimes within the military can have the power and power of investigation and investigation regulated by laws and regulations.



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