

MILITARY PENAL CODE ON THE CRIMINAL ACT OF INSUBORDINATION COMMITTED BY MEMBERS OF THE MILITARY

Decision Number 74-K/PM I-02/AL/VII/2018

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Abstract

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The Indonesian army has the main task to protect the sovereignty of the Republic of Indonesia, for this duty, the soldiers are trained and educated to be high discipline, professionals, and obedient to orders from superiors. Being disciplines not all done by the soldiers, there are still some who commit acts of indisciplinary and contains elements of criminal which example is insubordination. Insubordination is one of the military offense sets in the Code of Military Criminal. The problems examined in this study and its purpose is to determine the criminal proceedings and obtain the data regarding the consideration of the judges in the criminal sanction against soldiers who commit criminal acts of insubordination in the scope of the Military Court. Based on the problem formulation and the research objective, the research method used in this study is the normative legal research methods, namely legal research conducted by examining the library materials or secondary data related to the Military Law. The study shown that : Firstly, criminal proceedings insubordination was the same case with the handling of military offense in general, that is done through the following stages: the stage of investigation, the submission of the case, the examination at the trial, and the verdict. Secondly, one consideration of the judges in giving judgment in insubordination case, for instance, is whether the perpetrator was ever awarded in his career as military personnel.

Keywords: criminal, Military Law, Insubordination, Indonesia Army personnels.

1. INTRODUCTION

It has become the right and obligation of every citizen of the Republic of Indonesia in an effort to defend the defense and security of the Unitary State of the Republic of Indonesia as stipulated in Article 30 paragraph (1) of the 1945 Constitution. State defense and security efforts are carried out through the universal people's defense and security system by the Indonesian National Army and the National Police of the Republic of Indonesia.

The Indonesian National Army consists of the Army, Navy, Air Force, as instruments of the State tasked with defending, protecting, and maintaining the integrity and sovereignty of the State as stipulated in Article 30 paragraph (3) of the 1945 Constitution. As a means of state defense, the TNI has the main task of upholding state sovereignty, maintaining the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the Constitution of the Republic of Indonesia Year 1945, and protecting the entire nation and all Indonesian bloodshed from threats and disturbances to the integrity of the nation and state, in accordance with Article 7 paragraph (1) of Law Number 34 of 2004 concerning the Indonesian State Army.

In the life of soldiers, discipline must be with confidence, obedience and obedience, loyal to superiors by sticking to the joints that have been stated in the clan sapta and the soldier's oath. Every member of the army, high or low, must and must uphold the honor of the army and always deny actions or words that can tarnish / damage the good name of the army, both within the unit and outside the unit.



Military criminal acts are criminal acts whose subject of law is military circles and are specific to the military. Criminal acts that can be categorized as military crimes if a military person commits acts that are contrary to the rules of applicable military law. It is said to be a military crime, because it is of a special nature or a military interest requires that the act be determined as a criminal offense. Military Criminal Law and Military Criminal Procedure Law are military-specific laws. Called specifically with the understanding to distinguish it from the General Criminal Procedure Law that applies to everyone. Special laws are needed for members of the military, because for certain criminal offenses, the threat of punishment is felt too light if only the General Criminal Law is applied. For example, theft committed by the military in satrian or military dormitories, besides that there are certain acts that can only be done by a military person, do not apply to the public, desertion, refusing orders from superiors / services, insubordination and so on.

One of the military crimes committed is Insubordination. Insubordination according to Article 106 paragraph (1) of the KUHPM is a military who deliberately by concrete action, attacks a superior, resists him with violence or threats of violence, deprives him of his freedom to act, or coerces him or neglects a service job, threatened with insubordination to concrete actions with a maximum imprisonment of nine years. Insubordination is a serious crime from the point of view of military order and its effect on military institutions.

The elements of the criminal act of insubordination are important as a basis for the judge's consideration to apply criminal sanctions to TNI soldiers who commit the crime of insubordination. In this element of criminal acts, between acts and criminal responsibility are two things that cannot be separated.

The establishment of the military judiciary is to crack down on members of the military who commit criminal acts and become one of the tools of control for strong, professional and law-abiding military members.

2. METHOD

Types of Research

The type of legal research used is normative legal research, which is research that focuses on positive law in the form of laws and regulations. This research requires secondary legal material as the primary data. In this normative legal research, positive legal norms are studied in the form of laws and regulations relating to the form of accountability for military members who commit criminal acts of insubordination.

Sources of Legal Materials

The data used in this normative legal research are secondary data, namely data obtained from library materials. The secondary data includes:

Primary Legal Material is legal material obtained from laws and regulations (positive law), including:

- 1) Constitution of the Republic of Indonesia Year 1945
- 2) Military Criminal Code (KUHPM)
- 3) Law Number 31 of 1997 concerning Military Justice
- 4) Law Number 34 of 2004 concerning the Indonesian National Army

Secondary Legal Material is a legal opinion obtained from library materials that provide instructions and explanations about primary legal materials which are laws obtained from books (literature), journals, theses, articles / papers, websites, and expert opinions, which provide opinions related to the topic of Military Insubordination carried out by Military Members in Decision Number 74-K / PM I-02 / AL / VII / 2018.

Tertiary Law material can be the Great Dictionary Indonesian.

Data Collection

The collection of legal materials is obtained by conducting a literature study. Literature study is a method of collecting data by searching, finding and studying primary and secondary materials in the



form of books, literature, laws and regulations related to the object of research to obtain data that supports the results of the case study conducted.

Legal Material Analysis The method used in processing and analyzing the data obtained in research is a qualitative analysis method, namely by understanding and comparing primary legal material with secondary law, whether there are differences or similarities in legal opinions and whether there are gaps.

Thinking Process. In drawing conclusions, the thinking process is carried out deductively, which is a method of thinking that departs from general propositions whose truth has been recognized (believed / diasiomatic) which ends in a conclusion (new knowledge) of a specific nature.

3. RESULTS AND DISCUSSION

The crime of Insubordination is disobedience to superiors or orders or refusal of orders, can also be interpreted as acts that are contrary to devotion. This criminal act of Insubordination in the Criminal Code is regulated in Article 459 paragraph (1) and Article 460 paragraph (2) which relate to the actions of crew members who resist their superiors. Meanwhile, in the Military Criminal Code, the Criminal Act of Insubordination is regulated in Articles 106, 107, 108, and 109. In the KUHPM, this criminal act of insubordination is regulated related to the actions of a subordinate, in this case a soldier who has a lower rank against a superior whose rank is higher than him.

The following is the division of categories of Subordinated crimes:

- Insubordination (Article 105 KUHPM)
- Insubordination to concrete actions (INDAKTA) (Article 106 KUHPM): There are three (3) parts in INDAKTA, namely;
 - 1) planned INDAKTA (Article 107 of the Indonesian Civil Code);
 - 2) INDAKTA by two (2) or more persons-Muterij (Article 108 KUHPM);
 - 3) INDAKTA in time of war/Muterij on board (Article 109 KUHPM).

a. Elements of the Criminal Act of Insubordination

The elements of the criminal act of insubordination are important as a basis for the judge's consideration to apply criminal sanctions against TNI soldiers who commit the crime of insubordination. In this element of criminal acts, between acts and criminal responsibility are two things that cannot be separated.

This element is also the basis for determining mitigating or burdensome matters for someone who commits a criminal act. With this element, the facts of the actions committed by the TNI soldiers themselves are born, as for the elements according to Article 106 of the KUHPM are:

1) Military

What is meant by military according to Article 46 of the KUHPM is those who are bound to voluntary service to the Army and are required to be in service continuously and the grace period of the service bond is called the military or all other volunteers in the Army and conscripts while they are in the service bond.

According to Article 6 paragraph (1) point b: What is meant by "every person who by law is equated with the Military" includes:

- a) Student Warriors;
- b) Titular Military;
- c) Citizens mobilized for their skills in time of war; or
- d) Prisoner of war.

That in Indonesia what is meant by military is the strength of the Armed Forces of a country regulated under the laws and regulations Article 1 number 20 of Law Number 34 of 2004 concerning the Indonesian National Army.

2) Intentional with concrete actions attacking superiors

- a) According to M.V.T (Memorie van Toelichting) that what is meant by intentionality is to want and suspect the occurrence of an action and its consequences, meaning that a person doing an action intentionally must want and realize his action and or the consequences which are a form of guilt in the criminal act of dolus.



- b) What is meant by a concrete action is a material action in the form of using a force of energy from the perpetrator or defendant to achieve the name of the target.
- c) Meant by attacking superiors is an act against superiors where the activities of the superior to subordinates do not yet exist.

3) resist him by force or threat of violence, deprive him of his freedom to act or coerce him by force or threat of violence to perform or neglect an official job

- a) That what is meant by violence is an act committed by the Defendant who uses force or physical force against others with the aim of making pain, or suffering, as for how to do it by hitting, kicking, strangling and so on.
- b) That what is meant by threat of violence is an act from the Defendant against another person with the intention that the other person feels fear because of something threatening and harming him with violence.

4) Which Causes Injury

- a) This one element is a condition of punishment, it is implied by the word cause which means for his actions or actions, the perpetrator or defendant is only convicted if it causes injury to people.
- b) Defined as a wound is an abnormality or change in the skin, which generally causes pain or discomfort in others.
- c) The injuries here include bruises, which are wounds that occur on the inside, although on the outside there are no visible injuries. For example, wounds on the flesh, wounds on the contents of the head or brain, wounds on the contents of the bones or marrow, and wounds on the contents of other body cavities.

b. Types of Subordinated Crimes according to the KUHPM

1) According to Article 105 of the KUHPM

a) The military deliberately through concrete actions threatened with violence against superiors

The real action he took was to look at the circumstances when the threat occurred or was carried out. It can also be seen what purpose the threat is carried out. This TNI soldier's subordinate knew very well because his actions were a severe threat to his superiors. These concrete actions can be in the form of actions, they can also be mimics or gestures.

It can be understood that the understanding of real action with an action is basically the same, meaning that what a person does is part of a real action, but violence is different from evil deeds. Violence is something that uses energy against people or goods that can cause harm to the threatened, while in evil acts there is no need for energy. The immediate threat is to clench a fist with the intention of one day punching the superior. Indirect threats include pointing a loaded firearm at the superior.

b) Committed criminal acts within the service

In service, it means when the TNI soldier is subordinated during service time, or when the service time has not ended in the unit where he serves.

2) According to Article 106 of the KUHPM

There are several important things that must be noted in this Article, regarding the type of criminal act of insubordination, namely:

- a) The military deliberately by apparent action attacked a superior, resisting with violence and threats of violence.
- b) Deprive him of his freedom to act or coerce him by force or threat of violence to perform and/or neglect an official job.

3) According to Article 107 of the KUHPM

This subordination is carried out by concrete and premeditated actions. It is clear here that the person concerned wants to someday plan an action in the future and know the consequences that will occur from his actions.

According to Simons, that:

Advance planning exists, if the decision to do the act has been calmly considered by the offender within the previous grace period, and the nature and effect of the act have been taken into account. About the short and long period of time determining decision making is not included in a calculation in advance planning.

4) According to Article 108 of the KUHPM

Insubordination carried out with two or more people united. The perpetrators of this crime must be two or more persons united. The form of criminal liability of each participating perpetrator is the same, including in terms of the consequences of the crime, if for that reason they have cooperated.

Unitedly is what unites the crackers. This can be seen from their respective psychological elements, for example, A holds his boss and B does not stick but holds his boss so as not to resist.

5) According to Article 109 of the KUHPM

Insubordination is carried out during a state of war where the country is in a state of crisis which is carried out by concrete actions.

This act of concrete action means that as explained earlier, insubordination in a state of war is the most severe criminal act committed by a TNI soldier, and the threat given is not messing with severe sanctions either.

B. Case Analysis

The offender has been charged with the crime of "Insubordination to a concrete act committed by two persons or more jointly resulting in injury". In the following ways:

- a. That on Wednesday, October 18, 2017 at approximately 14.00 WIB the defendants, Witness 2 (Kopda Mar Hamin), Witness-3 (Kopda Mar Tengku Erwin Syaputra), Witness-4 (Praka Mar Langgeng Widianto) and Witness-5 (Kopda Mar Robby Kasendia) participated in training at TNGL, when the training took place Kopda Mar Daryanto experienced a koleb but could be overcome subsequently Praka Mar Didik Sugeng and Praka Mar Joko Suwito also experienced a collapse but for Praka Mar Didik Sugeng it could be overcome while Praka Mar Joko Suwito was lifted into a hut near the main target and immediately treated by the Health Team but Praka Mar Joko Suwito has died.
- b. That then Praka Mar Dedy H told all members who participated in the training to return to the Battalion then the members waited for the pickup truck, after arriving at the Battalion the Defendants saw that the situation was crowded and Witness-2 saw that Danyonif 8 Marines had been chased by the members towards the highway to the civilian house (Sdri Butet) while the Commander's house had also been damaged and there were 2 (two) motorcycles that were stacked and burned while the Wadan house had also been damaged by the members as well as the window glass of the guard was broken using gun butts.
- c. That then all members were ordered to gather at the intersection near the guard then Pasintel (Captain Mar Tri Hendriatmo) came and asked all members "what is your purpose and will?" simultaneously the members replied "Danyon, Wadanyon and Dankima were replaced without sertijab" then Pasintel replied "yes I don't know, I reported to my superiors first" then Pasintel called Asintel Kormar with Mobile on loudspeaker so that all members hearing it while again asking "what is your purpose and will" then simultaneously all members again replied "Danyon, Wadanyon and Dankima were replaced without sertijab" hearing this Asintel replied "yes tomorrow I will go there" then the members simultaneously answered so that Dankormar went to Yonif 8 Mar but Asintel said "Dankormar has a busy schedule, it's the same as I represent Dankormar" then Pasintel called Danbrigif 3 Mar, after calling Danbrigif 3 Mar, Pasintel said to all members "tomorrow at about 14.00 WIB Danbrigif 3 Mar arrives in Medan" then the members said "yes already, Danbrigif our father too" after that at about 24.00 WIB all members returned weapons to the arsenal.
- d. That on October 19, 2017 at approximately 17.00 WIB all members received orders to gather at Bapra (Soldier Hall) Kima in the context of briefing Danbrigif 3 Mar but it turned out that Danbrigif 3 Mar group first stopped at the funeral home so that the briefing schedule was pushed

back, then at approximately 17.30 WIB the Defendants, Witness-2, Witness-3, Witness-4 and Witness-5 convoy from Bapra went around on motorbikes with other colleagues and stopped at home Dankima, because at that time Dankima was holding a baby child, the convoy continued to the house of Danki E Yonif-8 Mar, namely Witness-1 (Captain Mar Amir Mahmud) at Yonif 8 Marine Complex Brandan Base.

- e. That after arriving and stopping at the house of Witness-1, then Witness-1 came out of the house so that Kopda Mar Syamsudin immediately met him and chatted in front of the house, after that Witness-1 asked the members "what is your wish?" then Kopda Mar Purwanto replied "How is this Danki's responsibility?" then from the back someone shouted "why not help?" then Witness-4 said "diher training now is okay" then Witness-2 shouted "how is this accountable?" hearing the members shouting, Witness-1 replied in a high tone "I am the first to help Praka Mar Joko Suwito" and suddenly Defendant-3 immediately kicked Witness-1 in the buttocks using his right foot 1 (one) time then Tendakwa-2 also immediately hit Witness-1 using his hand on the left shoulder 1 (one) time and the same thing was done by Defendant-3 by hitting Witness-1 used his hands on his shoulders 1 (one) time, as well as other members immediately participated in the beating so that Witness-1 immediately lowered his head while protecting his head
- f. That then Witness-1 was rescued by Kopda Mar Syamsudin, Kopda Mar Erwin, Kopda Mar Rudik, Kopda Mar Bambang den Kopda Mar Doni Anton by being taken into the house and locking the door of the house from the inside so that the members pelted the windows of the house of Witness-1 using flower pots until they broke and after that the members dispersed then Kopda Mar Syamsudin, Kopda Mar Erwin, Kopda Mar Rudik were allowed to return while Kopda Mar Bambang and Kopda Mar Doni Anton remained in place just in case.
- g. That the reason for the Tendakwa to beat Witness-1 was to hold the leaders in Yonif 8 Marines accountable regarding the death of Praka Mar Joko Suwito while participating in training at TNGI due to dehydration
- h. That as a result of the actions of the Defendants (Defendant-1, Defendant-2, Defendant-3) and other members of Yonif -8 Mar based on Visum et Repertum from the TNI AL Hospital Number Ver/67/X/2017/RUMKIT dated October 31, 2017 signed by Dr. Faizah has resulted in Witness-1 suffering a scratch on the left thigh, swelling under the left eye and swelling in the left eyebrow, resulting from blunt force trauma.

1) Elements of the criminal act of Insubordination

Fulfill the elements of a criminal act as stated in Article 108 paragraph (1) jo paragraph (2) 1st KUHPM : Paragraph (1) : With a maximum prison sentence of 12 (twelve) years. Paragraph (2) :-D with a maximum imprisonment of 15 (fifteen) years. With a sentence of life imprisonment or temporary imprisonment of 20 (twenty) years.

2) Prosecutor's Indictment

That the Defendants at the times and places mentioned below, namely on the nineteenth of October 2000 seventeen or other times at least at some time in 2017 located at Yonif 8 Marine Complex Brandan Base North Sumatra or other places at least in places that fall within the jurisdiction of Military Court I-02 Medan, has committed a criminal offence:

"Insubordination to concrete actions carried out by two or more people together that result in injury".

3) Judge's Verdict

- a. Stating the above defendants, namely Budi Santoso, Kopda Mar NRP. 105506, Andi Susiaranto, Kopda Mar NRP.105383 and Agung Prasetyawan, Praka Mar NRP.112007, were legally and conclusively found guilty of committing a criminal offence: "Insubordination to a concrete act committed by two more people in a united manner resulting in injury"
- b. Convict the Defendants therefore by:

Defendant I

Main Crime: Imprisonment for 1 (one) Year 2 (two) months. Stipulating that the time the



defendant is in custody needs to be deducted entirely from the sentence imposed.
Additional Criminal : Discharged from Military Service.

Defendant II

Main Crime: Imprisonment for 1 (one) Year 2 (two) months. Stipulating that the time the defendant is in custody needs to be deducted entirely from the sentence imposed.
Additional Criminal : Discharged from Military Service.

Defendant III

Main Crime: Imprisonment for 1 (one) Year 2 (two) months. Stipulating during the time the Defendant was in custody needs to be deducted entirely from imposed penalties.
Additional Criminal : Discharged from Military Service.

- c. Establish evidence in the form of letters: 2 (two) sheets of Visum et Repertum from the Dr. Komeng Makes Navy Hospital Number Ver/67/X/2017/RUMKIT dated October 31, 2017 Remain attached to the case file.
- d. Charge the Defendants a case fee of Rp.7,500.00 (seven thousand five hundred rupiah) each.
- e. Ordered that the Defendants be detained.

Based on the case we saw from Decision Number 74-K / PM I-02 / AL / VII / 2018 there are several factors and countermeasures, here are the factors and countermeasures:

- a) Factors causing Military Insubordination in the above Case
 - Internal Factors: There is a personality of each defendant who has a spiritual defect so that he cannot control himself to commit crimes.
 - External Factors: Because Danki made an unwearing atmosphere because he said "I was the one who first helped the deceased (Praka Joko Suwito), so the three defendants vented their frustration.
- b) Countermeasures

Doing Preemptive Countermeasures As superiors remind their subordinates to stick to the existing Sapta Marga and Soldier's Oath, superiors must also be loyal to themselves and their subordinates.

4. CONCLUSION

The crime of Insubordination is disobedience to superiors or orders or refusal of orders, can also be interpreted as acts that are contrary to devotion. This criminal act of Insubordination in the Criminal Code is regulated in Article 459 paragraph (1) and Article 460 paragraph (2) which relate to the actions of crew members who resist their superiors. There are also types in Article 105 of the KUHPM (giving a strong threat to his superiors), a maximum of two years and eight months imprisonment. Article 106 of the KUHPM (Threatening or attacking superiors not even performing their duties), punishable by imprisonment for a maximum of nine years. Article 107 of the KUHPM (This type of crime is having a plan in advance), the penalty is imprisonment for a maximum of ten years. Article 108 of the KUHPM (Committed by more than one person), the penalty is imprisonment for a maximum of twelve years. Article 109 of the KUHPM (Carried out in a state of war), the penalty is death, life imprisonment or imprisonment for a maximum of twenty years. These articles also apply the punishments specified in the KUHPM.

The occurrence of Military Insubordination Crime there are several factors due to the internal factors of the soldier himself such as his personality, faith and devotion, lack of understanding of the law and also the existence of psychiatric disorders in a soldier, but it can be overcome with several efforts such as preemptive, namely against superiors who apply good and healthy physical and spiritual guidance to their subordinates and if it has been done but is not effective, it can handing over a soldier to ANKUM for further training, if it cannot be done again and has violated existing norms, the last resort is to be tried under the Military Administration Law, Military Discipline Law and Military Criminal Law. We can see the analysis in Decision Number 74-K / PM I-02 / AL / VII / 2018 where



several soldiers attacked a superior because a friend died due to dehydration during training, but felt that a superior was not right in taking care of it, committed violations that violated the hierarchy, namely committing criminal acts of insubordination that caused injuries to superiors.

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