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The Position of Military Justice to the Indonesian Judiciary System

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ABSTRACT: The main problem in this paper is how the position of military justice in the Indonesian judicial system with the issuance of Article 3 paragraph (4) Letter (a) of MPR Decree Number: VII / MPR / 2000, which explains that Indonesian National Military submit to the power of military justice in cases of lawlessness. military and submit to the general court for violations of general criminal law. This research is a type of juridical normative research that bases positive legal norms using statutory, conceptual and comparative approaches. The position of Military Justice in the Indonesian judicial system is part of the judicial power which has a strong and unquestionable position, because it is not against the constitution and is still in the corridor of the legal system in Indonesia, which is stated in Article 24 Paragraph (2) of the Fourth Amendment of the 1945 Indonesian Constitution as the constitution. state, and more emphasized in Article 18 of Law Number 48 of 2009 concerning Judicial Power.

KEY WORDS: Military Justice, Judicial power, Indonesian National Military.

1. INTRODUCTION

Indonesia's independence proclamation on August 17th, 1945 gave birth to the noble ideals that were written in the Preamble of the 1945 Constitution (hereinafter abbreviated to the 1945 Constitution). These noble ideals are listed in paragraph IV of the original 1945 Constitution, the formulation is to protect all Indonesian people and all Indonesian blood spills and to advance public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace and justice. social. In order to achieve these goals, a concerted effort by all elements of the nation is required in the roles, functions and tasks of each nation's components. The opening of the 1945 Constitution is a mode of vivendi or the noble agreement of the Indonesian people to live together in a pluralistic nation bond. The opening of the 1945 Constitution of the Republic of Indonesia can be called a sign of birth or deed, because as a mode of vivendi it contains statements of independence or proclamation, as well as self-identity and stepping steps to achieve the ideals of the nation and the goals of the state.[1] The proclamation and the 1945 Constitution were the philosophical foundations of the Indonesian people in carrying out their community, nation and state life.

Reform in the military environment began with the emergence of MPR Decree Number: VI/MPR/2000 concerning the Separation of the Indonesian National Military (hereinafter abbreviated as TNI) and the National Police of the Republic of Indonesia (hereinafter abbreviated as Polri), which stipulated that Polri was no longer in an organization with the Indonesian National Military. MPR Decree Number: VII/MPR/2000 concerning the Role of the Indonesian National Military and the Role of the Police. The role of the Indonesian National Military as the main system of national defense with one of its main tasks is to uphold national sovereignty, the territorial integrity of the Unitary State of the Republic of Indonesia and to protect the whole nation and the spilling of Indonesian blood from threats and disturbances to the integrity of the nation and the state, while the role of the National Police as a state instrument that plays a role in maintaining Kamtibmas, upholding the law, providing shelter and service to the community. Both of these Decrees gave birth to Law Number 2 of 2002 concerning the National Police, Law Number 3 of 2002 concerning State Defense and Law Number 34 of 2004 concerning the Indonesian National Military, and Law Number 48 of 2009 concerning Judicial Power, which changed the status fostering Military Justice.

Article 3 paragraph (4) Letter (a) MPR Decree Number: VII/MPR/2000, explains that Indonesian National Military are subject to the power of military justice in the case of violations of military law and subject to general justice in the case of violations of general criminal law. This provision has been reaffirmed in Article 65 paragraph (2) of the military Law which states that soldiers are subject to the power of military justice in the case of violations of military criminal law and subject to general court power in the case of violations of general criminal law governed by the law. The stipulation of Article 65 paragraph (2) of the military Law has resulted in a fundamental change in the military legal system. This research is needed because not many researchers pay attention

[1] Moh. Mahfud MD, *Perdebatan Hukum Tata Negara Pascaamandemen Konstitusi*, Jakarta, Rajawali Pers, 2010, hal.3.

to military law, especially to the justice system. Starting from the background of the problem and the issuance of MPR Decree Number: VII/MPR/2000 and Law Number 34 of 2004 concerning the Indonesian National Military, the main issue in this paper is how the position of military justice in the Indonesian justiciary system.

2. METHOD

This research is a type of juridical normative research that bases positive legal norms using statutory, conceptual and comparative approaches. Judging from the type of research, it is classified as a descriptive analytical research, namely research carried out by obtaining a solution or answer to a problem under study which is carried out by narrating the research object in accordance with the current circumstances or facts. In accordance with doctrinal research, the data used are secondary data including primary, secondary and tertiary law materials. The image is then analyzed using deduction logic.[2]

3. MILITARY JUSTICE COMPETENCIES IN THE LEGAL SYSTEM IN INDONESIA

Each judicial environment has its own absolute competence. This absolute competence determines the jurisdiction of cases that can be tried by each court environment.[3] The authority or competence of military justice in upholding law and justice should fall within the corridor of such independence. The independence of judicial power as referred to in the 1945 Constitution is essentially an independent power, meaning that apart from the influence of government power, there must be a guarantee in law regarding the position of judges.[4]

Before Indonesia's independence, the Military Tribunal in the Dutch East Indies was a special court to try members of the Dutch East Indies military, both members of the Nederlandsh Indisch Leger Koninklijk (KNIL) and members of the Koninklijke Marine in Nederlandsch Indie, regardless of their origin. After independence, with the issuance of Law No. 7 of 1946 concerning Army Courts, the competence of Military Courts to examine and prosecute criminal acts is regulated in Article 2, the formulation of which is as follows.

An army court hears criminal cases that constitute crimes and violations committed by:

a. Soldiers of the Indonesian National Army, the Indonesian Navy, and the Indonesian Air Force.

b. A person who is determined by the President by Government Regulation as being equal to the soldier referred to in sub a;

c. People who are not included in groups a and b, but who are related to military interests, are determined by the Minister of Defense to be tried by an Army Court.

Political development and state administration forced Law Number 7 of 1946 to be amended and replaced with Government Regulation Number 37 of 1948. In this Government Regulation, the competence of military justice is contained in Article 2, the formulation of which is as follows:

1. What comes under the authority of the Judiciary in the Army Court is to examine and decide on criminal cases against crimes and violations committed by:
    a. A person who was a soldier at the time of the Indonesian National Army;
    b. A person who at that time was a person who was determined by the President by Government Regulation as being equal to the soldier referred to in section a;
    c. A person who at that time was a member of a group or rank that was equaled or considered a soldier by or under the law;
    d. A person who is not included in groups a, b and c, but based on the decision of the Minister of Defense with the approval of the Minister of Justice must be tried by the Court within the scope of the Military Court.
2. With other laws stipulated rules about the law that must be done or considered in the examination and termination.

Military Justice Competencies in the Indonesian legal system can be divided into absolute and relative competencies. Absolute competence in accordance with Article 9 of Law Number 31 of 1997 concerning Military Courts (hereinafter abbreviated to the Law on Military Courts) is as follows.

1. To try a criminal act committed by someone who at the time of committing a crime is:
    a. Soldier;
    b. Which according to the law is likened to a soldier;

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[2] Yogo Pamungkas, Pergeseran Kompetensi Peradilan Tata Usaha Negara, ACTA DIURNAL Jurnal Ilmu Hukum Kenotaraiatan Volume 3, Nomor 2, Juni 2020, hal.343.

[3] Randang S. Ivan, Tinjauan Yuridis Tentang Peranan Identitas Domisili Dalam Menentukan Kompetensi Relatif Pengadilan, Jurnal Lex Privatum, Vol. IV/No. 1/Jan/2016, hal. 24.

[4] Slamet Sarwo Edy, Independensi Sistem Peradilan Militer Di Indonesia (Studi Tentang Struktur Peradilan Militer), Jurnal Hukum dan Peradilan, Volume 6 Nomor 1, Maret 2017, hal.107.

c. Members of a group or department or body or who are equal or considered to be soldiers according to the law;
d. A person who is not included in the group letters a, b, and c but on the decision of the Commander in Chief with the approval of the Minister of Justice must be tried by a court within the scope of a military court.

2. Checking, deciding, and settling disputes in the Indonesian National Military Administration (now read by the Indonesian National Military).
3. Combine the lawsuit for compensation in the criminal case concerned at the request of the injured party as a result of a criminal act which is the basis of the indictment, and at the same time decide upon the two cases in one decision.

Legal norms Article 9 of the Law on Military Courts gives the authority of the Military Courts to examine, try, and decide general and military criminal cases and Military Administration cases whose legal subjects are soldiers. The subject of military criminal law has been regulated in several articles in the Military Criminal Code (KUHPM), are as follows:

a. Article 46 of the Indonesian Criminal Code is as follows:
   (1) Those in the Indonesian National Military voluntarily make service ties to be obliged to continue in the actual service, for the whole time from that service;
   (2) All other voluntary members in the force and the military are obliged, to the extent or during their actual service, likewise if they are outside the actual time they can be called for service, doing as stipulated in Article 97, Article 99 and Article 139 KUHPM.[5]
b. Article 47 Paragraph (1) of the KUHPM the formula includes the army is as follows.
   (1) Former members of the army used by an army service;
   (2) The commissioners of conscription who dress in army uniforms every time they carry out their duties as such; (3) Retired officers as members of an (extraordinary) army court dressed in army uniform, every time they perform their duties as such;
   (4) Those who have a titular rank, either obtained by him or by force of law or at the time of danger or on the basis of the law of danger, as long as they are doing the work they get from their cellular rank;
   (5) They as members of an organization are equal or considered to be the same as the army.
      (a) By or by force of law;
      (b) When a state of danger is by or on the strength of the rules of the National Defense Council on the basis of the state of danger Law
c. Article 49 Paragraph (2) of the Indonesian Criminal Code is that the members of the army in the first paragraph are considered to have the last position or a higher rank given to them at the time or after they leave military service.
d. Article 50 of the Criminal Procedure Code is that former army members are equated with members of the army for insults or matters which after a year after leaving military service are carried out by him to formerly higher ranks who were still serving in the army regarding previous official affairs.
e. Article 68 of the Criminal Procedure Code is anyone who in a time of war deliberately goes contrary to a promise he made in Indonesian prisoners of war, or violates a promise he gave or a condition which he agreed to for which he was released temporarily or later from Indonesian prisoners of war, or entered into an evil agreement for that matter which was threatened with capital punishment, or life imprisonment or temporary criminal for a maximum of twenty years.
f. Article 69 of the Criminal Code formulation is in the event of a war in which Indonesia is not involved, then the military internment of one of the warring countries in the region, who deliberately goes against the promise he gave, or violates the promise he gave or a statement which he is capable of for which he is permitted to leave temporarily or permanently, or enters into an evil agreement for that, is liable to a maximum imprisonment of seven years.

Relative competence is the authority to examine a case, contained in Article 10 of the Law on Military Courts, the formulation of which is that the Courts in a Military Court environment adjudicate a criminal offense in which the locus delictie is

[5] Pasal 97 KUHPM rumusanya adalah sebagai berikut: (1) Militer, yang dengan sengaja, menghina atau mengancam dengan suatu perbuatan jahat kepada seseorang atasan, baik di tempat umum secara lisan atau dengan tulisan atau lukisan, atau dihadapannya secaralisan atau dengan isyarat atau perbuatan, atau dengan surat atau lukisan yang dikirimkan atau yang diterimakan, maupun memaki-maki dia atau menistanya atau dihadapannya mengejeknya, diancam dengan pidana penjara maksimum satu tahun; (2) Apabila tindakan itu dilakukan dalam dinas, diancam dengan pidana penjara maksimum dua tahun. Pasal 99 KUHPM, rumusanya adalah sebagai berikut: (1) Militer, yang sengaja menghina atasan dengan suatu tindakan nyata, diancam dengan pidana penjara maksimum dua tahun delapan bulan; (2) Apabila tindakan itu dilakukan dalam dinas, diancam dengan pidana penjara maksimum enam tahun. Rumusan Pasal 139 KUHPM, adalah sebagai berikut : (1) Militer yang dengan sengaja tidak memenuhi suatu panggilan yang sah untuk melakukan dinas yang sebenarnya, diancam dengan pidana penjara maksimum dua tahun delapan bulan; (2) Apabila tindakan itu dilakukan dalam waktu perang, diancam dengan pidana penjara maksimum delapan tahun enam bulan; (3) Jika tidak ternyata bahwa tindakan itu dilakukan dengan sengaja,maka petindak diancam dengan pidana penjara maksimum satu tahun.

located in their jurisdiction, or the defendant belongs to a unit within the jurisdiction its jurisdiction. Article 11 explains that if there is more than one court in power presiding over a case on equal terms, the court accepting the case must first try the case. For more clearly this issue of relative competence needs to be observed in the provisions of Article 14, stating that the place of residence of the Main Military Court is in the Capital City of the Republic of Indonesia and its jurisdiction covers the entire territory of Indonesia. Whereas the issue of name, place of domicile and other jurisdiction of the court was determined by the Commander's decision. In fact, if necessary Military Courts and High Military Courts can convene outside their domicile. This can only be done with the permission of the Head of the Main Court.

In carrying out the provisions of Article 14 Paragraph (2) and Article 51 Paragraph (2) of the Military Court Law, the Indonesian National Military Commander issued Decree Number: Kep / 6 / X / 2003 concerning the Name, Position, and Legal Area of Military Courts, Military Courts High and Military Courts of Battle, as well as Military Oditurates, High Military Oditurates, and Military Battle Oditurates. Based on the Indonesian National Military Commander's Decree it is explained that The Highest Military Court (Dilmilti) and The Highest Military Oditurates (Odmilti) I Medan with their domicile in Medan, with legal areas covering the provinces of Nanggroe Aceh Darussalam, North Sumatra, West Sumatra, Riau, Bengkulu, Jambi, South Sumatra, Bangka Belitung, Lampung, West Kalimantan , Central Kalimantan, South Kalimantan and East Kalimantan. The Highest Military Court (Dilmilti) and The Highest Military Oditurates (Odmilti) II Jakarta with their domiciles in Jakarta, with legal areas covering the provinces of DKI Jakarta, West Java, Banten, Central Java and the Special Region of Yokyakarta, while Dilmilti and Odmilti III Surabaya with domiciles in Sidoarjo, East Java, with legal areas covering the provinces of East Java, Bali, West Nusa Tenggara, East Nusa Tenggara, South Sulawesi, Southeast Sulawesi, Central Sulawesi, Gorontalo, North Sulawesi, Maluku, North Maluku and Papua.

4. MILITARY JUSTICE COMPETENCIES IN SEVERAL COUNTRIES

The military justice system in this world is different, between one country and another country is not the same. The Thai Military Court is explicitly formulated in the constitution. Categorically Thailand's constitution mentions 3 (three) types of judicial institutions, namely civil justice, state administrative justice and military justice, this shows the military's very dominant role in the political system in the Thai state. According to the Thai constitution (section 281) the military court is authorized to examine and try all types of military criminal cases and other cases regulated according to Thai national law. With this arrangement, every member of the Thai Armed Forces who commits a crime will be tried by a military court. Military court competencies include all types of criminal cases carried out by members of the Armed Forces, both cases relating to official or military office or general criminal cases.[6]

The Philippine state has two courts which have the authority to prosecute crimes committed by soldiers of the Armed Forces of the Philippines, namely military and civil justice. All violations of the law relating to the duties and positions of the Armed Forces are tried by the Military Courts, whereas for all types of general criminal acts that are not related to the service and or military discipline are tried by the civil courts.[7]

Malaysia inherits the tradition of British government administration and justice. The Malaysian Military Court has the authority to prosecute military and general criminal offenses because general crimes are also considered military crimes if the perpetrators are members of the military. However, several crimes that are considered serious include betrayal, intentional or unintentional killings, rape and genocide in which victims of civil society are examined and tried in the Civil Court.

The American Military Court's jurisdiction is determined by subject, deed and locus delicti. Crimes are committed during peacetime or war, during peacetime only authorized to try members of the Armed Forces while civilians are not tried by the Military Court. During wartime its jurisdiction was expanded, being able to examine and prosecute civilians working for the Armed Forces as well as those who participated in troops on the battlefield, prisoners of war and in certain crime cases, for example providing assistance to the enemy and spy crimes.

In contrast to Thailand, the Philippines and Malaysia, in Singapore members of the Armed Forces are subject to two judicial bodies that have the authority to prosecute. Military criminal offenses relating to official duties and military positions are subject to military law and tried by military courts, whereas if the military is involved in general criminal acts, they are subject to civil criminal law and tried by civil courts.[8]

The Netherlands has abolished the Military Court, if there is a member of the military who commits a criminal offense, the relevant personnel will be examined and tried in the Civil Court. However, it is noted that in every District Court and the Court of Appeals there are always representatives from the military to sit as members of the complete panel of Judges. This was done to

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[6] Mohammad Fajrul Falaakh, *Sistem Peradilan Bagi Polisi dan Militer (Perspektif Perbandingan*), Bahan Diskusi Propatria, Jakarta , 2002, hal.2.

[7] Ibid, hal. 2.

[8] Ibid, hal 3.

ensure that military interests were also considered in each case involving the military, even though the Military Courts were eliminated, however the system of disciplinary proceedings remained in force.[9]

In Indonesia the military justice system has general jurisdiction, that is, it has the authority to examine and adjudicate general and military crimes. The jurisdiction of the military court is not as pure as the classification, Law Number 26 of 2000 concerning the Human Rights Court, explains that gross human rights violations committed by Indonesian National Military were tried at the Human Rights Court.

5. THE POSITION OF MILITARY JUSTICE AS ONE COMPONENT OF JUDICIAL POWER IN THE LEGAL SYSTEM IN INDONESIA

Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia Fourth Amendment explains that all citizens are at the same position in law and government and are obliged to uphold the law and government without exception. For the military who is proven to have committed an act against the law, sanctions must be implemented according to the applicable law. If the behavior committed is a criminal act, it must be resolved according to the applicable regulations without discriminating against people, guided by the values of justice based on that everyone is treated equal before the law (equality before the law).[10] All citizens are subject and treated equally in law and government. The court must run and protect the parties who litigate in court. The discussion of the position of the Military Court as a special court which is one component of Indonesia's judicial power is very important, bearing in mind that it can always change according to the development of society.

After Indonesia's independence, in each law the judicial authority, both Law Number 19 of 1964, Law Number 14 of 1970 and Law Number 4 of 2000, has been regulated regarding special justice, only in each law There are different degrees of firmness in the arrangement. The provisions regarding special courts in Law Number 19 of 1964 are not very clear. The body of the law does not mention the existence of a special court, the only regulation that indicates the establishment of a special court in one of the judicial environments is in the explanation section. Elucidation of Article 7 paragraph (1) of Law Number 19 of 1964 is as follows.

> (1) This Law distinguishes between General Courts, Special Courts and State Administrative Courts. General Courts include the Economic Court, the Subversion Court, the Corruption Court. Special Courts consist of Religious Courts and Military Courts. What is meant by the State Administrative Court is the so-called "administrative justice" in the Provisional People's Consultative Assembly Decree Number: II / MPRS / 1960, and includes, among other things, the so-called "civil service court" in Article 21 of Law Number 18 of 1961 concerning Basic Personnel Provisions (Statute Book Year 1961 Number 263, Supplement to Statute Book Number 2312).

This provision can be interpreted that special courts can only be formed within the general court environment. The main problem is that the law does not regulate the laws and regulations at what level is needed to form the special court. This has an impact on who or what institution has the authority to form a special court, besides that the regulation also does not show what is the function of the special court establishment. Unlike Law Number 19 of 1964, Law Number 14 of 1970 which replaces the law then stipulates a little more clearly about special courts, although the arrangements are still in the Explanation section. Elucidation of Article 10 Paragraph (1) of Law Number 14 of 1970 explains as follows:

> (1) This Act distinguishes between four judicial environments each having a particular jurisdiction of jurisdiction and includes the first and appeals Courts of Judiciary. The Religious, Military and State Courts of Justice are special courts, for judging specific matters or for specific groups of people, while the General Court is a public trial on both civil and criminal matters. The differences in these four judicial environments do not cover the possibility of specialization (differentiation / specialization) in each of the contexts, for example in the General Court can be specialized in Traffic Court, Child Court, Economic Court, etc. by law.

From the above provisions, it appears that special court arrangements are relatively more stringent than Law Number 19 of 1964. These provisions open up opportunities for the establishment of special courts in all judicial environments, not limited to general justice. The regulation regarding the laws and regulations needed to form a special court is clear enough, namely by law. When compared, between Law Number 19 of 1964 and Law Number 14 of 1970, it appears that within the judiciary itself there has been a change. The judicial environment was previously divided into three parts, namely the General Courts, Special Courts consisting of Religious Courts, Military Courts, and State administrative judicial (TUN) Courts, then Law Number 14 of 1970 divided them into only two, namely the General Courts and Special Courts. Religious Courts, State administrative judicial and Military Courts are Special Courts.

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[9] Frederico Andre Guzman, *Military Jurisdiction and International Law, Military Court and Gross Human Right Violation*, Geneva: Colombian Commission of Jurist, 2004, hal. 294.

[10] Kadek Wijana, I Made Sepud dan Anak Agung Sagung Laksmi Dewi, Peradilan Tindak Pidana Korupsi Bagi Anggota Militer, Jurnal Analogi Hukum, 2 (3) (2020), hal.405.

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Law No. 14/1970 opens up the possibility of holding specialization in each judicial environment, it is apparently not reflected in the laws governing each judicial environment. Of the four laws governing the judiciary, the law that states that in its judicial environment can be specialized is only Law Number 2 of 1986 concerning General Courts, while in three other judicial body laws such as Law Number 5 Year 1986 concerning State administrative judicial Justice, Law Number 7 of 1989 concerning Religious Courts and Military Courts Act did not mention a word about this. This certainly raises one question, whether in the three judicial bodies special courts could be formed. The non-regulation of special courts in the three judicial bodies does not appear to be accidental. Apart from that at that time there were no special courts under the judicial environment other than the general court, the other three judicial bodies themselves were inherently considered to be a specialty of the general court, so it might be a bit odd if the special judiciary was held again. This can be seen from the explanation of Article 10 Paragraph (1) of Law Number 14 of 1970.

Despite these differences, one thing to note from the two laws is that the term special court is not yet known. The special court term is expressly stated in Law Number 4 of 2004, which replaces Law Number 14 of 1970. In Law Number 4 of 2004, the special court position is no longer placed in the Elucidation section of the Act, but has been inserted in the torso. Article 15 Paragraph (1) and its Elucidation of Law Number 4 of 2004 explains as follows: (1) Special Courts can only be established in one of the court environments referred to in Article 10 regulated by law. Elucidation of Article 15 Paragraph (1), referred to as "special court" in this provision, includes but not limited to juvenile court, commercial court, human rights court, corruption court, industrial relations court within the general court, and tax court in state administration justice environment.

Comparison of the three Judicial Power Laws, it seems that the affirmation of special court arrangements in the torso section was carried out because at the time of formulating Law Number 4 of 2004 the special courts that were established were quite numerous. This condition is different when the two laws before formulation, previously there were only one special court or there was only one, namely the economic court. Lack of clarity about whether in an environment other than general court can also be formed special court or not as happened in the previous period, then answered with the issuance of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Court. Article 9A of Law Number 9 of 2004 expressly states that within the State administrative judicial court, special courts or special courts can also be formed. This change seems to occur because of two things, namely: first, to be able to create a tax court, which according to the law was originally established as a separate judicial body, then became part of the State administrative judicial body. Secondly, due to a change in the perspective of the legislators towards the three judicial bodies or environments other than the general court which was once considered a special court to be no longer considered a special court.

The basis for the specificity of the legal arrangements governing the special courts that existed and had existed in Indonesia can be grouped into two, namely the courts which are specific because of the material laws that are their scope, and the courts that are specific to the subjects involved. The special courts included in the first category are the Economic Court, Commercial Court, Human Rights Court, Tax Court and Fisheries Court. This court has absolute competence in relation to legal objects, meaning that every case included in certain legal objects is the authority of this court. The Economic Court resolves every economic crime case, the Commercial Court handles every bankruptcy case, postponement of debt payment obligations and intellectual property rights, the Tax Court handles tax disputes, the Human Rights Court examines gross human rights violations, the PHI Court examines industrial relations disputes, and the Fisheries Court handles fisheries criminal offenses stipulated in the fisheries law. None of the cases included in the scope of the law above can be resolved outside these special courts.

Unlike the first category, the second category on which specialization is based is the subject involved. Juvenile Court, the subject of particularity of the suspect or defendant is a child aged between 8-18 years. The Corruption Court, not all corruption cases fall into its absolute competence, only corruption cases which have been prosecuted by the KPK can be examined in the Corruption Court, while corruption cases whose prosecution is carried out by the prosecutors are still examined at the District Court.

The judicial military conference is legally stipulated in Article 18 of Law Number 48 of 2009 concerning Judicial Power, which has replaced Act Number 14 of 1970 and Law Number 4 of 2004, the formula of which is exactly the same as formulated in Article 24 of the 1945 Constitution of the Republic of Indonesia the. As one of the pillars of judicial power, the Military Court is a logical consequence of the status of the subject of a criminal offense, namely a person of military status. Military justice is only intended for members of the military or those who are equal to the military. Indeed, the existence or existence of a Military Court must be maintained, but the problem is whether the scope of its authority continues to prosecute general criminal acts and military criminal offenses committed by Indonesian National Military or only examine and try military military offenses, whereas criminal acts are generally examined and tried in general courts.

Based on the 1945 Constitution of the Republic of Indonesia and the Law on Judicial Power and several laws on Military Courts that have prevailed in Indonesia, there is no doubt the existence and position of military justice as one of the judicial powers in Indonesia. This is in accordance with what Muchsin stated, is as follows.

> There is no doubt about the existence and position of military justice as one of the judicial powers in Indonesia. The judicial position of the military court in Indonesia is very strong because it has been guaranteed and recognized in the constitution

of the Republic of Indonesia (UUD RI 1945). Because military justice is part of judicial authority, military justice must also uphold the principle of judicial power that is free and independent of all interventions.[11]

The rationale for the establishment of the Military Courts Act is based on Law Number 14 of 1970 concerning Basic Provisions for Judicial Power, Law Number 1 of 1988 concerning Amendments to Law Number 20 of 1982 concerning Basic Provisions for Defense and Security Republic of Indonesia. State defense as one of the functions of the Indonesian state government is a very essential factor in the life of the state, namely ensuring the survival of the Indonesian state. The state instrument which has an important role and task in the implementation of the state defense system is the military, in this case the Indonesian National Army.[12] Article 43 of Law Number 20 Year 1982 explains that the military is developed and developed in accordance with the interests of the Defense and Security Agency, and it is also determined that the army has its own court and its commanders have the authority to submit cases. Courts within the scope of military justice are the implementing bodies of judicial power within the military. The courts under the auspices of the military court consist of.

a. Courts in the Military Courts. Courts in the military court environment in accordance with Law No. 31 of 1997 concerning Military Justice consists of.

1) Military Court (Dilmil) which is the first court for a criminal case where the defendant is a Captain.

2) High Military Court (Dilmiti) which is an appellate court for a criminal case which is decided in the first instance by a military court, and is also a first court for a criminal case where the defendant / one of the defendants has a higher rank (Article 65 Paragraph 1) , and a military administrative dispute suit.

3) Main Military Court (Dilmiltama) which is an appellate court for criminal cases and military administrative disputes which are decided at the first level by the High Military Court.

b. Battle Military Court. Battle Military Courts are the first and last court level to try criminal cases conducted by soldiers in battle areas, which are the differentiation (specialization) of the courts in the military court environment. This court is a new organizational framework that functions when needed and is accompanied by filling positions.

These judicial bodies culminate in the Supreme Court in accordance with the principles set out in the Law on Judicial Power. The composition of the court in the Military Courts environment is determined as such because it is judicially a soldier given the rank, as a symbol of the legitimacy of authority and responsibility in the lives of soldiers who function to uphold military discipline and honor. The Military Court Law in addition to regulating military court also regulates the procedural law for military administration. The law on Military Administrative Court Procedures has not yet been implemented because Article 353 states that specifically regarding Military Administrative Procedure Law its application is regulated by government regulations no later than three years from the enactment of this law, in fact up to now it has been more than 10 (ten) years Regulations The government in question does not yet exist, so the Military Administrative Court has not yet run.

6. JUDICIAL SYSTEM AGAINST INDONESIAN NATIONAL MILITARY IN ACCORDANCE WITH THE DIRECTION OF REFORM

Military Justice does not only belong to the military and for the interests of the military or the interests of defense and security, but belongs to the community at large and for the benefit of the community as well. The Latin proverb which is commonly known in military doctrine relating to the interests of state defense and security teaches Civis pacem para bellum, that if a country wants peace (security) it must be prepared for war. This preparation was carried out not during the war or the pre-war period, but in times of peace (civil order), that is, long before the threat of war, which was always predicted to be a real danger.[13] Military justice functions to provide legal protection for the wider community, so internally there needs to be a new paradigm for the military justice system to be more open to outsiders in various processes involving the military justice system. Military law has the characteristics of being harsh, fast and has different procedures from law in general. This distinctive feature comes from the tough military task of safeguarding and defending the sovereignty of the country by engaging in combat with the enemy to uphold state security. To carry out these tasks, apart from needing strength and toughness, order and discipline are also needed to maintain the integrity of the military organization.[14]

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[11] Muchsin, *Eksistensi dan Kedudukan Peradilan Militer Dalam Sistem Kekuasaan Kehakiman di Indonesia*, Majalah Varia Peradilan Tahun XXVI Nomor 300, November, 2010, hal. 43.

[12] Niken Subekti Budi Utami; Supriyadi, Yurisdiksi Peradilan Terhadap Prajurit Tentara Nasional Indonesia Sebagai Pelaku Tindak Pidana, Jurnal Yustisia Universitas gajah mada, Vol. 3 No.2 Mei - Agustus 2014, hal. 100.

[13] S. Supriyatna, Memahami Urgensi Peradilan Militer Dari Sudut Kepentingan Pertahanan Dan Keamanan Negara, Jurnal Yuridis Vol. 1 No. 2, Desember 2014, hal.183.

[14] Amanda Rosaline Fajar Sari, Kewenangan Peradilan Militer Dalam Mengadili Purnawirawan TNI, Jurnal Jurist-Diction: Vol. 1 No. 1, September 2018, hal.52.

The Position of Military Justice to the Indonesian Judiciary System

In order for military justice to carry out its functions properly, supervision is needed. Supervision is the process of activities that compare what is being carried out, implemented, or carried out with what is desired, planned or ordered.[15] An effective monitoring system should support the strategy and focus on what needs to be done, not just measurement efforts. The main attention is on activities that are important for the achievement of organizational goals. The supervisory system must support efforts to solve problems by making decisions, not just pointing out irregularities. The system must be able to show why there are deviations and what should be done to correct them.

Changes in the Military Justice system associated with national development in Indonesia function to improve and change to be better in accordance with the objectives of the wider community. Military justice, like other Courts, often experiences problems involving several aspects including weak human resources, institutions, management and facilities and infrastructure. This is in line with Barda NawawiArief's statement which states that the factors that influence and determine the quality of law enforcement are individual quality (HR), institutional quality (institutional), work mechanism (management), infrastructure, facilities, quality of legal substance and legislation, and environmental quality.[16]

In resolving cases of general criminal acts committed by Indonesian National Military there are three possibilities that can be offered, namely:

a. Maintaining the spirit of the principles of Law Number 31 of 1997 with adjustments as referred to in Law Number 48 of 2009, still maintaining existing laws, but still requires strong support from the Parliament and the government.

b. Imposing the Criminal Procedure Code as a whole as carried out by the National Police, with difficult consequences in its implementation because of the principle of unity of command and commanders responsible to his subordinates which is a fundamental principle in military organization and life, besides being related to psychological unity and soldiers, and based on reasons rational and realistic.

c. The right combination so as not to conflict with the spirit of change / reform that has been going on and wanted by the Parliament, which is related to the investigation, investigation, prosecution and execution of sentences.

Responding to the three alternatives above, the author is more inclined to the first alternative, by not changing the military justice system and still maintaining the spirit and principles of the Military Courts Law, but still needs strong support from the executive and legislative branches, so that when described when a Indonesian National Military commits General criminal offenses are investigations and investigations carried out by the Military Police, the prosecution is carried out by Military Oditurates, and the trials are carried out by Military Courts. If forced to change the jurisdiction of military justice, it is sufficient for certain crimes that the competence is handed over to general courts such as corruption, because indeed there is currently a special court that handles it with the Corruption Eradication Commission and the Corruption Court or establishing a Constitutional Court.

7. CONCLUSIONS

Based on the results of the identification, analysis and discussion described in this paper, it can be concluded that the position of the Military Courts in the Indonesian justice system is part of the judicial power that has a strong position and no doubt, because it does not conflict with the constitution and is still within the corridors of the legal system in Indonesia. that is stated in Article 24 Paragraph (2) of the Fourth Amendment to the 1945 Constitution of the Republic of Indonesia as a state constitution, and is further emphasized in Article 18 of Law Number 48 of 2009 concerning Judicial Power.

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[16] Barda Nawawi Arief, *Masalah Penanganan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, Jakarta, Kencana Prenada Media Group, 2008., hal. 20.

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