

# Professionalism of the Authority in Military Justice System in Indonesia

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**Abstract:** In the military justice system, the regulation of investigative institutions, especially investigators on superiors with the right to punish (Ankum in the Military Court law, is not in accordance with the principle of professionalism because Ankum does not have investigative expertise and does not have functions related to judicial power. Therefore, the existence of investigators Superiors who have the right to punish will not guarantee due process law and cannot provide values of justice. The purpose of this study was to analyze the professionalism of investigators' authority in the military justice system in Indonesia. This study uses a constructivist paradigm and is a non-doctrinal type of research, with method of socio-legal research approach. This research is descriptive analytical, which is expected to be able to provide a detailed, systematic and comprehensive description of the object under study. The data used in this study are primary data and secondary data, namely data obtained from through interviews and from library materials collected through literature studies which were then analyzed qualitatively. The results showed that: First, Ankum was made an investigator of subordinates under his command authority, as a derivative of the principle of unity of command, and the principle of the commander in charge full responsibility to the unit and its subordinates, so that in the event that his subordinates commit a crime, Ankum can determine the fate of his subordinates. Ankum as an investigator has a legal gab, meaning that Ankum attributively in the law has the authority to investigate, but in fact Ankum cannot conduct an investigation and has never been sworn in as an investigator.

**Keywords:** Investigator, justice, military justice, reconstruction.

## 1. Introduction

In the military justice system in Indonesia, using the Military Criminal Procedure Code (Hapmil) in Law Number 31 of 1997, Regarding Military Courts. In Article 69 paragraph (1) of Law Number 31 of 1997, 3 (three) investigative institutions are stipulated, namely the superior with the right to punish (Ankum), the Military Police and/or the Prosecutor. Institutional regulations and investigators' authority in Article 69 paragraph (1) letter a (Ankum as investigator) and Article 74 (authority of Ankum) Law Number 31 of 1997, in the current military justice system, are considered not based on the values of justice [1].

The investigative agency in the provisions of Article 69 paragraph (1) letter a (Ankum investigators) Law Number 31 of

1997, and the explanation it says that, according to the principle of unity of command, the commander is fully responsible for the unit and its subordinates, the authority to investigate and investigate criminal acts What is done by a subordinate who is under the authority of his command is an authority attached to Ankum in order to determine the fate of his subordinates referred to in the settlement of criminal cases whose implementation is delegated to the Military Police investigator and/or the Public Prosecutor [2].

The authority of Ankum in the provisions of Article 74 of Law Number 31 of 1997. In Article 74, it is emphasized that Ankum's authority is to carry out investigations against his subordinates, but in its implementation it is carried out by Military Police investigators / Prosecutor, Ankum receives reports on the results of the investigation and case files on the results investigations from Military Police investigators/Prosecutor, and finally Ankum has the authority to detain suspects (Ankum's subordinates). The provisions of Article 74 of Law Number 31 of 1997, if we look closely, do not reflect Ankum's professionalism as an investigator, but rather a formality that Ankum has the authority to investigate his subordinates, but its implementation is carried out by Military Police investigators / Prosecutors. The substance of Article 74 of Law Number 31 of 1997 shows the superiority of Ankum investigators over Military Police investigators/Prosecutor. Whereas attributively (Article 69 (1) of Law Number 31 of 1997), Ankum, Military Police and/or Public Prosecutor are both investigators with the same/equal position, i.e. both as investigators. But in reality (empirically), in the investigation of suspects (ankum's subordinates), Ankum tends to be superior to Military Police investigators or the Prosecutor, with his authority to request a report on the results of the investigation and case files on the results of the investigation to the Ankum investigator/ Prosecutor. With the regulation of Ankum's authority in Article 74 of Law Number 31 of 1997, it is clear that it does not meet legal values, namely justice, benefit and legal certainty [3].

## 2. Research Method

This type of research is descriptive analytical. Analytical

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descriptive research The approach method in this research is Socio Legal Research. Socio legal research studies, research data sources consist of primary data sources and secondary data sources, primary data is data obtained directly through sources in the research field. This primary data source allows researchers to find authentic data/research results from trusted sources. Secondary data sources, namely data sources which include; primary legal materials, secondary legal materials and tertiary legal materials the data obtained were then analyzed by qualitative descriptive methods.

### 3. Research Results

#### A. *The Existence of Military Courts in Indonesia*

The existence of the military judiciary as the executor of judicial power for the military community in Indonesia is stipulated in the 1945 Constitution, (3rd amendment), Chapter IX, article 24, paragraph (1) Judicial power is an independent power to administer justice to enforce justice. law and justice, paragraph (2) Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment and by a Constitutional Court, and paragraph (3) Other bodies whose functions are related to judicial power are regulated by law. The provisions of paragraph 2 clearly stipulate the military judiciary as an agency under the Supreme Court that administers judicial power [4].

The military court as the executor of judicial power is regulated in Law Number 48 of 2009, Article 18 states that the judicial bodies under the Supreme Court, include; general courts, religious courts, military courts and state administrative courts. From the provisions of the 1945 Constitution and the law on judicial power, it is clear that the existence and position of the military judiciary as an institution exercising judicial power within the military is very strong. This needs to be emphasized by TAP MPR RI Number VII/MPR/2000, in Article 3 paragraph (4) it is stated that TNI soldiers who violate general criminal law are the jurisdiction of the general court, while military courts only process military violations or crimes committed by TNI soldiers [5]. Then in 2004, the government and the DPR enacted Law Number 34 of 2004 concerning the Indonesian National Armed Forces, which in article 65 paragraph (2) stipulates that soldiers are subject to the power of military courts, in the case of violations of military criminal law, and general court in cases of violation of general criminal law, which is regulated by law.

With the emergence of Article 3 paragraph (4) of the MPR Decree which was followed up by Article 65 paragraph (2) of Law Number 34 of 2004 and Article 24 of the 1945 Constitution of the Republic of Indonesia, which was followed up by Law Number 4 of 2004 concerning Powers the judiciary and has been amended by Law Number 48 of 2009, Concerning Judicial Powers, there are pros and cons regarding the existence of military courts. On the one hand, there is an opinion that says that military courts are far from the reach of civilian courts, as if the military is immune to the law, and that military courts that

try military will be impartial and not independent like civilian courts in general. However, after the promulgation of Law Number 48 of 2009 concerning Judicial Powers, the organization, finance and administration of military justice are under the Supreme Court. This makes the military judiciary more independent and impartial. In this way, the existence of military courts is getting stronger [6].

If we look at the provisions of Article 24 paragraphs (1) and (2) of the 1945 Constitution, it requires that judicial power be exercised independently, free from any influence. So the institution that holds the power to carry out the function of judicial power in enforcing the rule of law, should be an autonomous or independent institution, free from other state powers.

While article 24 paragraph (3) states that, there are other bodies whose functions are related to judicial power which are also part of the exercise of judicial power, but must be regulated by law, such as law enforcement agencies, namely the police, prosecutors, the Corruption Eradication Commission. (KPK), Witness and Victim Protection Agency, Center for Reporting and Analysis of Financial Transactions (PPATK) and other institutions [7].

Efforts to make judicial power independent/independent free from government influence (executive) have been achieved with the issuance of Law Number 48 of 2009 concerning Judicial Power. Based on the law, a clear separation has been made between the functions of executive power and the functions of judicial power by uniting all matters concerning the judiciary within the general judiciary, religious courts, military courts and state administrative courts under one roof Supreme Court [8].

The existence of this military court is very much needed in the context of law enforcement against TNI soldiers. Since the founding of the Republic of Indonesia, the need for military courts has been felt to be organizationally separate from the general courts. There are several reasons why military courts are needed separate from general courts, namely:

- a) There is a heavy main task to protect, defend and defend the integrity and sovereignty of the nation and state which, if necessary, is carried out by force of arms and by means of war;
- b) The need for a special organization and special maintenance and education regarding the TNI's main and important tasks;
- c) He is allowed to use weapons and missions in carrying out the tasks assigned to him;
- d) He needs and then treats them (TNI members) with strict, severe and distinctive legal rules and norms and is supported by severe criminal sanctions as a means of monitoring and controlling every member of the military to behave and act and behave. in accordance with what is required by the main task.

According to Asep N Mulyana, there are at least 3 (three) reasons for the existence of military courts that are separate from civil courts in general:

First, the military court has existed that by necessity, the military is a special society separate from civil society. Based

on the fact that military justice is the Primary Business of the Armed Forces and the Navy to fight or be ready to fight, so that it becomes a necessity, forming laws and military traditions from the past.

Second, the emphasis is on the military's need to improve military discipline effectively and efficiently, the aim of which is to maintain a "ready state". Violations of military discipline must be dealt with quickly and can carry heavier penalties when compared to civilians who have committed the same act. Furthermore, for people who have committed military offenses abroad, it is recommended that the examination be carried out at the place where they committed the violation rather than returning the soldiers who violated them to be examined in the territory of their own country.

Third, military cases are typical cases for civilian judges or jurors, lack of operational knowledge and experience is the wrong composition to make decisions against soldiers. In this case, courts that specifically examine and adjudicate subjects of military law require people who have certain knowledge and skills, and understand the peculiarities of military courts.

Rain Lijova, explained that there are several reasons for the existence of the current military justice system;

First, the number is so significant that most countries that follow the Common Law system have decided to have military courts. This is due to the role of the jury as examiners of the facts that have been explained by the witness and the role of cross-checking the statements of the witnesses. Meanwhile, in countries that follow the Civil Law system, the majority of investigative judges and the possibility to present evidence in court, have reduced the function of the need for "mobile" military courts for members of the armed forces.

Second, military courts tend to be formed in countries where the armed forces have a special position in society. The armed forces have greater political influence than a civilian government that is subordinate to the military, especially by extending the authority of the military courts to handle military discipline and military criminal cases. This reason is partly an explanation for the existence of military courts in several Eastern European, Latin American and Asian countries.

From various reasons, arguments and objective reality according to the culture and military history of a country, which becomes the basis for determining the existence of a military court of a country, including the Indonesian state. The existence of a military court in Indonesia, which is a special court, certainly has certain characteristics, both in terms of structure, culture and legal substance, as well as procedural and jurisdictional procedures [9].

#### *B. Institutional Regulations and Authorities of Investigators in the Military Justice System in Indonesia*

Institutional regulations and the authority of investigators in the military justice system have been regulated in the Military Criminal Procedure Code in Law Number 31 of 1997. Criminal procedural law, both in the military court environment (specifically), and in the general court environment, has the same goal, namely to protect the rights of suspects/defendant and also to regulate and limit the authority of law enforcement

officers such as the Police/Military Police as investigators, Prosecutors/Prosecutor as prosecutors, Judges as case breaker, implementation of judge's decisions in Correctional Institutions and legal advisors as legal service holder/as an element of law enforcement as well [10].

Military criminal procedural law with specific arrangements is also to protect the interests of the suspect/defendant and to maintain a balance between legal interests and military interests. However, in the regulation of investigative institutions and their authorities, there are several problems, especially in the Anku institution as an investigator and its authority is not based on the values of justice, so that in practice in the field (empirically) it can harm other parties in the military legal process, and contrary to the principle of professionalism of investigators [11].

The regulations of the Anku institution as mentioned above, in the context of enforcing criminal law against soldiers today, contain weaknesses so that they become unprofessional investigators on the grounds;

First, Anku was appointed as an investigator, viewed from the aspect of the values that underlie/background the Anku institution as an investigator, namely as a derivative of the principle of unity of command, and the commander is fully responsible for the unit and its subordinates, then it is declared that Anku has the authority as investigators to be able to participate in determining the fate of their subordinates who are being processed by law. If the legis/reason ratio that underlies Anku is made an investigator as a continuation of these principles, it deviates from the principle of professionalism, because Anku does not have expertise in the field of investigation.

Second, Anku as an investigator, in reality the Anku institution does not have a function related to the function of judicial power, as stipulated in Article 38 (1) and (2) of Law Number 48 of 2009 concerning Judicial Power. This means that the Anku institution is not suitable as an investigator, because Anku is not a judicial institution. Third, Anku as an investigator, does not guarantee a due process of law, even in the fact that in the legal process (investigation) against suspects (Anku's subordinates), Anku is often not neutral / tends to defend his subordinates in the legal process, so that it can create a sense of injustice for the other party. Fourth, Anku as an investigator, in its implementation is delegated to the Military Police investigator. However, in reality, in the case of the detention of the suspect (Anku's subordinates), the Military Police investigator/Prosecutor is not authorized to detain the suspect. The authority to detain suspects remains with Anku. This system of authority to detain suspects is contrary to the principle of professionalism because it can lead to arbitrariness and injustice in the detention of suspects, as well as legal uncertainty.

The problems with the Anku investigators and their powers include: Article 69 of Law Number 31 of 1997, it is stated that Investigators are superiors with the right to punish, military police and prosecutors. The assistant investigators are the Provost of the Indonesian National Army for the Army, the Provost of the Indonesian National Army for the Navy, the

Provost of the Indonesian National Army for the Air Force; and the Provost of the Indonesian National Police [12].

In the explanation of Article 69 paragraph (1) it is explained that in accordance with the principle of unity of command, the Commander is fully responsible for the unit and his subordinates, the authority to investigate and investigate criminal acts committed by subordinates who are under the authority of his command is an inherent authority of the Entitled Superior. To punish, in order to determine the fate of the subordinates referred to in the settlement of criminal cases whose implementation is delegated to the Military Police investigators and/or the Public Prosecutor [13].

The Military Police Investigator is an official who has delegated authority from the Commander in Chief as the Superior with the Highest Punishment Entitlement to conduct investigations into criminal acts committed by soldiers. And the Prosecutor Investigator is one of the officials who has delegated authority from the Commander in Chief as the superior with the highest Punishment Entitlement to conduct investigations into criminal acts committed by soldiers.

In the explanation of Article 69 paragraph (2) the Provost is part of the organic unit whose task is to assist the commander/leader at the headquarters/ship/chivalry/base in carrying out law enforcement, discipline, order and environmental security of the unit.

From the provisions of Article 69 (1), Ankum is appointed as an investigator, as an embodiment of the principle that superiors are fully responsible for their subordinates, so that Ankum is attached to the authority as an investigator of subordinates under his command, to participate in determining the fate of his members in the settlement of the case, but in carrying out the investigation Ankum delegated to the Military Police investigator or Military Prosecutor (Military Police investigator who carried out the investigation). Meanwhile, Military Police investigators and Military Auditors have the authority as investigators obtained from the delegation of authority from the TNI Commander as the highest Ankum within the TNI. The results of the investigation were reported to Ankum [14].

Furthermore, in the provisions of Article 70 of Law Number 31 of 1997, it is emphasized that the requirements, appointment, and dismissal of investigators and assistant investigators as referred to in Article 69 paragraph (1) letter b and paragraph (2) will be further regulated by a Panglima Decree. As a follow up to Article 70, the Decree of the Commander of the TNI, Number: Perpang/171/XII/2011, dated December 29, 2011, concerning the requirements for the appointment, dismissal of investigators and assistant investigators of the military police was issued. The substance of the Decree of the Commander of the Indonesian National Armed Forces, Number: Perpang/171/XII/2011, dated December 29, 2011, as a legitimacy as an investigator and assistant investigator in the military justice environment, includes: investigators must first undergo education as investigators and investigators must first take an oath as an investigator. However, it should be emphasized that the Decree of the Commander of the Indonesian National Armed Forces, Number: Perpang/171/XII/2011, dated December 29, 2011, was

excluded for Ankum [15].

So it can be concluded that, Ankum's institutional regulations serve as investigators, the legal ratio is, so that Ankum can participate in determining the fate of its subordinates who are undergoing legal processes or in the settlement of criminal cases that they are undergoing. Ankum himself has in fact never conducted an investigation, because the authority and conduct of the investigation have been delegated to the Military Police investigator or the Prosecutor [16].

In addition, Ankum is actually not an actual investigator, although attributively in Article 69 (1) a Ankum is designated as an investigator, because Ankum has in fact never conducted an investigation. Even if Ankum conducts his own investigation of his subordinates, the results of the investigation are not legally valid, because Ankum has never been sworn in as an investigator and does not meet the requirements as stipulated in the Decree of the Commander of the Indonesian Armed Forces, Number: Perpang/171/XII/2011, dated December 29, 2011, concerning Requirements for Appointment, Dismissal of Investigators and Assistant Military Police Investigators.

Likewise, with the provisions of Article 69 (2) of Law Number 31 of 1997, concerning assistant investigators consisting of the Provost Forces (AD, AL, and AU). From the substance of the explanation of Article 69 paragraph (2), it shows clearly and unequivocally that the provost is a unit organ, whose task is to assist the commander in law enforcement, discipline and order in his unit. From the editorial, the sound of Article 69 paragraph (2), with the explanation seems out of sync, because in the editorial of Article 69 paragraph (2), it is stipulated that the provost is an assistant investigator, but in his explanation the provost is the enforcer of law, discipline and order in the unit. The formulation of the provost as a law enforcer contains a broad notion that is not specific as an investigator, but the provost as an organ of law enforcement, discipline and order, is more concerned with law enforcement tasks in general, namely enforcement of discipline and order in his unit [17].

Based on the explanation above, the substance of the explanation of Article 69 paragraph (2) is correct, that the provost is actually an institution that has a function as law enforcement, discipline and order in the internal headquarters/unit, not as assistant investigators who are qualified investigators, so that the provost is not worthy of being used as an assistant investigator. The reasons are: First, the crime scene (TKP) mostly occurs outside the headquarters/unit and rarely does the crime scene occur inside the headquarters/unit. If the crime scene is outside the headquarters/unit, then it is outside the provost's authority. Second, if the provost is appointed as an assistant investigator, certain conditions are needed, such as the provost must have attended investigator education and the provost must be sworn in as an assistant investigator. Without an oath as an assistant investigator, the investigation product produced is invalid, as stated in the TNI Commander Decree, Number: Perpang/171/XII/2011, dated December 29, 2011, concerning Requirements for the Appointment, Dismissal of Investigators and Military Police Assistant Investigator [16].

Returning to the problem of Ankum as an investigator, with the ratio legis, Ankum is used as an investigator, so that Ankum can participate in determining the fate of his subordinates who are undergoing legal processes or in the settlement of criminal cases that he is currently undergoing, this contains injustice and legal uncertainty in the legal process against soldiers, and other parties related to the process and settlement of soldiers' cases. Considering that Ankum is the direct supervisor of the suspect (ankum's subordinate), it will be easy to intervene in the investigation process. In reality, Ankum is not neutral and tends to defend his men. Any intervention from Ankum in accordance with its interests will disrupt the investigation process, and even stop the investigation. Such a situation will clearly harm the litigants, because the injured party cannot get a sense of justice [18].

Regarding the possibility of Ankum's intervention in the investigation, Slamet Sarwo Edy said that philosophically placing the role of non-judicial institutions (such as Ankum), the role of unit commanders as investigators and as Officers Submitting Cases (Papera) to court in the law enforcement system, causes ambiguity and the independence of the military justice system. The involvement of Ankum as an investigator in the military justice system also opens opportunities/gaps for Ankum's intervention against military police investigators, for example in determining what violations/crimes will be applied to the suspect (Ankum's subordinate).

The same thing is related to the possibility of Ankum and Papera's intervention in the investigation process, T. Gayus Lumbuun stated that Ankum and Papera's function in the military justice system is an issue related to the legal structure of the military court. Ankum and Papera have strong authority to determine the legal mechanism that will be applied to violations of the law committed by members of the military. Ankum and Papera have the authority to determine whether an offense is classified as a disciplinary offense, a military offense or a general offence. Even when a violation is only considered a disciplinary offence, Ankum can immediately determine and impose penalties, this represents an intervention [10].

The example of Ankum acting unfairly and tending to defend his subordinates, occurred in a case reported to the TNI Puspom investigator, according to Police Report Number LP-04/A-04/2020/ Idik, March 11, 2020, regarding the crime of entering someone else's house by force, vandalism and theft on Jalan H. Juanda Number 17 Bandung, West Java, on behalf of the reporter Rudy Surjawan. TNI members reported on behalf of: Suspect a.n. Marine Lt. Col. (S) Drs. I. H, Nrp.12902/P, Position Paban Ren Srena, Unit Lantamal III Jakarta Koarmada 1, with Ankum Commander of Lantamal III Jakarta.

The background of the case, the suspect feels that he owns the land and building on Jl. Ir. H. Juanda No. 17 Bandung, and forced his way into the complainant's house (Rudy Surjawan) and occupied the complainant's house and land, even though the complainant had a right of title in the form of a land certificate on Jl. Ir. H. Juanda No. 17 Bandung. After the house was occupied by the suspect, there was an act of vandalism and there were lost items belonging to the complainant. For this incident, the reporter reported the case to the Puspom TNI investigators.

Puspom TNI investigators conducted an investigation by summoning the suspect for questioning, but Ankum Suspect, Danlantamal III Jakarta did not respond to calls from Puspom TNI investigators, and did not present the suspect to investigators, without any reason. In the end, the investigation could not be continued because the suspect could not be examined by the Puspom TNI investigators. As a result, the rights of the complainant to obtain justice and legal certainty are neglected.

Regarding the closing of the case for reasons of legal interest, it should be, if the reason for closing the case is for legal purposes, it means that the case file made by the Military Police investigator does not meet the formal or material requirements and the case file by the military auditor is returned to the investigator for completion. However, in this case there was no return of case files by Otmilti to investigators, but Paperanya immediately closed the case. Incidents like this clearly do not give a sense of justice, the case should have been handed over to the High Military Court to be tried and decided in accordance with applicable regulations [19].

From the several examples above, it is necessary to evaluate the reasons for the need for the Ankum institution to be used as an investigator, as stated attributively in Article 69 (1) a of Law Number 31 of 1997. Evaluation of the values that are used as legal norms that make Ankum as investigator. The values of the principle of the commander being responsible for his subordinates, then it was declared that Ankum had the authority as an investigator, then it became the norm that Ankum became an investigator for his members/subordinates. After Ankum became an investigator, did Ankum become a professional investigator, in the sense of an educated investigator and sworn in as an investigator? Can the results of Ankum's investigation be used as legal material (such as Minutes of Examination, Confiscation and so on) for the purposes of investigation, prosecution and proceedings in military courts? Can Ankum as an investigator act fairly in the investigation process, not arbitrary, and impartial/impartial towards the parties? With this evaluation, it is hoped that in the future, the Ankum institution in the military justice system can find the right and trusted role as an honest law enforcer and can realize the sense/values of justice [20].

#### 4. Conclusion

The professionalism of investigators' authority in the military justice system in Indonesia has not been realized because there is a conflict regarding the authority of superiors who have the right to punish as investigators, who normatively have delegated their investigative authority to Military Police investigators or With the delegation/delegation of investigative authority, Ankum should no longer be able to carry out / carry out investigative authority, because the investigative authority and investigative responsibilities have been transferred to the Military Police investigators/Prosecutor. However, in Article 74 letter d, Ankum is still authorized to detain suspects (ankum's subordinates), even though the detention authority is included in the realm of investigative authority. From the aspect of Ankum being appointed as an investigator even though

Ankum cannot and has never conducted an investigation, Ankum has never been sworn in as an investigator so that Ankum institutionally and the products of Ankum's investigation are legally invalid. In addition, Ankum is not actually a judicial institution, because the function of Ankum is not related to the functions of judicial power.

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