



## Characteristics and law enforcement of acts of insubordination by members of the Indonesian national army

Christian Endrita Udayana, Umi Enggarsasi

Faculty of Law, University of Wijaya Kusuma Surabaya, Dukuh Kupang, Surabaya, Indonesia

### Abstract

The Indonesian National Army (TNI) has a consistent attitude in enforcing the law, as mandated by the legal framework. In addition to being bound by general law, they are also subject to a special set of regulations known as military law. The behavior of all TNI personnel is regulated by military law, which includes their behavior towards their superiors. The Military Criminal Code (KUHPM) in military law specifically addresses the issue of subordinates' accountability to superiors when their behavior deviates from prescribed guidelines known as *santi aji*, which all TNI soldiers are required to adhere to. This arrangement is outlined in chapter IV of the second book on crime, which focuses on offenses related to official duties. This research aims to identify various types of insubordination crimes committed by members of the Indonesian National Army (TNI) and assess the legal responsibility of TNI members involved in these crimes. The analysis will be based on Articles 97 to 109 of the Military Criminal Code (KUHPM). Apart from that, this research will examine the efforts that have been made by the Military Police, especially as military investigators, in order to overcome the occurrence of criminal acts of insubordination in the military environment.

**Keywords:** TNI, military, criminal acts of insubordination

### Introduction

Indonesia is a legal state regulated by the 1945 Constitution as stated in Article 1 paragraph (3). The idea of a rule of law originates from Plato, who argued that effective government depends on well-structured legal norms known as *nomoi*.<sup>[1]</sup> The confirmation of this constitutional article indicates that all aspects of social, state and governmental life must always adhere strictly to legal principles. To create a legal system, legislation is needed that prioritizes justice and propriety in all aspects of people's lives and welfare, while still paying attention to the importance of legal knowledge. This shows how important legislation is in the Indonesian legal system.

Human actions must comply with applicable laws, including laws governing the military sector. In particular, there are special laws governing the behavior of members of the Indonesian National Army (TNI). The difference lies in the fact that TNI members have greater responsibilities in terms of national defense compared to ordinary citizens. TNI members are subject to stricter and more onerous laws governing their behavior. This is based on the legal principle of *Lex Specialis Derogat Legi Generali*, which means that specific laws take precedence over general laws. Special laws that apply to members of the TNI include Law Number 39 of 1947 which is also known as the Military Criminal Code (KUHPM), the Military Criminal Procedure Code (KUHPM), and various regulations. Legislation that specifically regulates the military. Meanwhile, general laws such as Law Number 1 of 1946, known as the Criminal Code (KUHP), Criminal Procedure Code (KUHP), and various other laws and regulations apply to the general public. From a legal perspective, TNI members have the same position as ordinary citizens. This means that they are subject to all applicable laws and regulations, including criminal law, civil law, criminal procedural law and civil procedural law.

This inequality simply arises because of the increasing responsibility of citizens in terms of national defense, even though every citizen is essentially obliged to participate in defending their country, as regulated in Article 30 of the 1945 Constitution. However, the main responsibility is national defense entrusted to the Armed Forces, whose main objective is to maintain state sovereignty and government authority by fighting enemies from within and outside the country, so that domestic security can be guaranteed.<sup>[2]</sup> Based on Article 1 paragraph (1) of Law Number 3 of 2002 concerning National Defense, national defense is all actions taken to protect the sovereignty of the country, the territorial integrity of the Unitary State of the Republic of Indonesia, and the safety of the entire population from all threats or disturbances that could endanger the unity and integrity of the nation and state.

In military dynamics, the hierarchical structure between higher officials and lower individuals has a significant influence in military life. Superiors are expected to demonstrate wise and fair leadership, as well as being role models in their behavior and attitudes. They must exercise their authority objectively and avoid arbitrary actions. In addition, they are responsible for providing accurate direction to their subordinates, both through official direction and other direction. On the other hand, subordinates are obliged to obey the orders or directions of their superiors, realizing that this is important to maintain the hierarchical structure in a military context.

To proactively address and reduce violations committed by military personnel, the military implements a comprehensive system that includes disciplinary guidelines and procedures. This system is enforced by a set of laws that provide legal consequences to soldiers who violate military regulations. The need for a Military Criminal Code arose from the perception that general criminal law was not severe enough for military personnel who committed certain

offences. These special criminal codes are necessary to provide more severe penalties, potentially exceeding those for the initial offense, due to unique circumstances or other factors specific to the military.

This behavior is very risky in the military realm because it goes against the behavior expected of a TNI soldier, which includes obeying TNI doctrine and maintaining soldier discipline. This behavior is not in line with the Sapta Marga principles and the soldier's oath. Consequently, if a TNI soldier commits insubordination, they must be held accountable for their actions according to the specific nature of their offence. A member of the Military's responsibility for any activity that does not comply with the rules is governed by more precise regulations, known as military regulations. The formulation of the problem that will be studied is the characteristics and procedures for law enforcement of acts of insubordination by military members.

### Methods

The research method used in this research is Normative Juridical, with field research, namely examining applicable legal provisions and what happens in reality in society. Namely applying a statutory approach, by understanding the laws relating to the content and regulations of the problem. Apart from that, it uses a conceptual approach and a case approach.

### Discussion

#### History of the TNI/military members

Military refers to the collective armed forces and all aspects related to them within a country.<sup>[3]</sup> Additional synonyms include Army or military. The military usually consists of those who serve as soldiers. The presence of a clear hierarchy in the military ensures that leaders demonstrate firm and courageous behavior, as they are responsible for leading the armed forces. Military refers to the collective armed forces and all aspects related to them within a country.

Another term often associated with the military is militarism, which refers to an attitude characterized by firmness, rigidity, aggression, and authoritarianism, resembling the behavior exhibited by the military. Indeed, the perpetrator could potentially be a non-military individual in a position of authority. Because their responsibilities largely occur on the battlefield, the military is specifically taught and required to demonstrate firmness and discipline. A well-defined chain of command is essential in military operations, with leaders expected to demonstrate firm and courageous decision-making as they guide armed forces.

The Indonesian National Army (TNI) refers to the military forces of the Republic of Indonesia. Initially, this organization was known as the People's Security Army (TKR). Subsequently, the TKR was disbanded and replaced by the Indonesian Republic Army (TRI), which then changed its name to the Indonesian Armed Forces (ABRI). Furthermore, after the separation between the military and the police, the name was returned to the Indonesian National Army (TNI) and remains so to this day. The TNI consists of three military forces: the Army, Navy, and Air Force. The TNI is under the leadership of a Commander, and each force is led by a Chief of Staff.<sup>[4]</sup>

The TNI consists of three armed forces: the Army, Navy and Air Force. The TNI is led by a Commander, with each

force led by a Chief of Staff. Since the Guided Democracy era until the New Order era, the Indonesian National Army (TNI) and the Police were temporarily merged. This merger is often referred to as ABRI, which is an abbreviation for the Armed Forces of the Republic of Indonesia. Since 18 August 2000, the separation of the TNI and POLRI has been implemented in line with MPR Decree number VI/MPR/2000 and MPR Decree number VII/MPR/2000, which specifically regulate this issue.

Before the Proclamation of Indonesian Independence, military control in the Dutch East Indies was exercised by the Royal Dutch East Indies Army (KNIL). Although the KNIL did not play a direct role in the formation of the future Indonesian armed forces, it contributed by providing military training and infrastructure for some future TNI officers, despite acting as an enemy during the Indonesian National Revolution of 1945-1949. In the Dutch East Indies, there were military training centers, military schools and military colleges. The KNIL, apart from recruiting Dutch volunteers and European mercenaries, also recruited native Indonesians.

During Nazi Germany's occupation of the Netherlands in 1940, and with the Japanese Empire endangering the oil resources of the Dutch East Indies, the Dutch authorities decided to allow the native population of the island of Java to join the KNIL. In the midst of World War II and the Japanese occupation of Indonesia, the Indonesian people's search for freedom reached its climax. Japan attempted to gain support from the Indonesian people in their struggle against the Allied Forces by actively promoting and assisting the Indonesian nationalist movement. This includes providing military instruction and supplying weapons to Indonesia's younger generation. The Japanese military formed an Indonesian volunteer force known as PETA (Defenders of the Homeland) on October 3 1943. Japan formed the East Asia Pacific Tactical Alliance (PETA) with the aim of assisting their military forces in defending themselves from potential Allied attacks into Southeast Asia.

Japanese military training of Indonesian youth was initially aimed at gaining local support for the Japanese Empire. However, it later proved to be a valuable asset for the Republic of Indonesia during the Indonesian War of Independence from 1945-1949. Additionally, this training played a role in the formation of the People's Security Army in 1945.

The formation of the TNI began because the Indonesian State, in its initial stages, did not have any military units. The People's Security Agency, which was formed at the PPKI session on 22 August 1945 and declared by President Soekarno on 23 August 1945, did not function as a recognized military organization. The Central Indonesian National Committee (KNIP) has power over BKR branches both at the center and in the regions, which are not under the command of the president, who serves as supreme commander of the armed forces. BKR is not within the scope of the Minister of Defense's authority. The BKR's aim was only to maintain domestic security, with the aim of avoiding the perception that Indonesia was preparing for conflict with the Allies.

Furthermore, through a Government Decree issued on October 5 1945, the BKR underwent a transformation and changed its name to the People's Security Army (TKR). The People's Security Army underwent a name change on

January 7, 1946, and became known as the People's Security Army. Furthermore, on January 26 1946, it underwent another change and changed its name to the Indonesian Republic Army (TRI). Since 1959, October 5 has been officially recognized as Indonesian National Armed Forces Day, previously known as Armed Forces Day. This national day was established through Presidential Decree Number 316 of 1959 on December 16 1959 to commemorate the founding of the Indonesian Armed Forces<sup>[5]</sup>.

In Indonesia at that time, apart from the Indonesian Republic Army, there were many armed groups. To overcome this, President Soekarno issued a decree on 15 May 1947 which merged the Indonesian Republic Army with these armed groups to form the Indonesian National Army (TNI). The unification occurred and was officially established on June 3, 1947. In the period from 1950s to 1960s, the Republic of Indonesia faced challenges in maintaining the integrity of the nation due to rebellions and separatist movements in several regions. Between 1948 and 1962, the TNI was actively involved in regional conflicts in West Java, Aceh and South Sulawesi against Darul Islam/Tentara Islam Indonesia (DI/TII), a militant organization that aimed to establish the Islamic State of Indonesia. In 1963, the TNI played a role in suppressing the rebellion of the Republic of South Maluku.

Between 1961 and 1963, the Indonesian National Army (TNI) was involved in military operations aimed at reclaiming West Irian for Indonesia. From 1962 to 1965, the TNI was also involved in the Indonesia-Malaysia confrontation. Indonesia established strong diplomatic relations with the Soviet Union from 1961 to 1965. The Soviet Union sent a total of 17 ships to the Indonesian Navy. The heaviest ships on offer are the Sverdlov-class cruisers, with a deadweight of 16,640 tons, far surpassing the Sigma-class corvettes, which displace only 1,600 tons. Indonesia acquired a total of 12 Whiskey class submarines along with 2 auxiliary vessels. The Indonesian Air Force has around a hundred fighter aircraft, including 20 supersonic MiG-21s, 10 supersonic MiG-19s, 49 MiG-17s, and 30 MiG-15s.

Under the New Order regime, the military in Indonesia was often known as ABRI (Armed Forces of the Republic of Indonesia). ABRI is a joint entity with components from the armed forces and the national police (Polri). During the first period of the New Order, the military branches were referred to as ADRI (Army of the Republic of Indonesia), ALRI (Navy of the Republic of Indonesia), and AURI (Air Force of the Republic of Indonesia). Since October 1971, the official name of the armed forces has been returned to the Indonesian National Army, so that each component is referred to as the Army, Navy and Air Force components<sup>[6]</sup>.

Under President Soeharto's administration during the New Order era, ABRI was actively involved in the Indonesian political landscape. The military's involvement in Indonesian politics was the result of the implementation of ABRI's dual function concept which deviated far from its initial goals.<sup>[7]</sup> At that time, many TNI soldiers were sent to various companies and government institutions. Within the legislative body, ABRI has its own faction, both in the DPR and in the People's Consultative Assembly. Members of this faction were appointed and not elected, and were known as the ABRI Faction or FABRI for short.

During the 1970s to 1990s, the Indonesian military made great efforts to suppress armed separatist movements in the

provinces of Aceh and East Timor. The Santa Cruz incident in East Timor in 1991 had a negative impact on the reputation of the Indonesian military in the eyes of the world. As a result of this incident, the United States stopped providing financial assistance to IMET (International Military Education and Training), a program that facilitates training for the Indonesian military.

After the fall of Suharto in 1998, there was a surge in democratic and civil movements aimed at replacing the military's influence in Indonesian politics. As a result, the TNI has implemented certain reforms at this time, including the elimination of the dual function of ABRI. These changes also include the involvement of law enforcement in wider civil society, raising concerns about the role of the Indonesian police within the framework of the armed forces. This change resulted in the separation of the police and military. In 2000, the National Police of the Republic of Indonesia regained its independence and became a separate institution from the military. The official title of the Indonesian military underwent a transformation from the Armed Forces of the Republic of Indonesia (ABRI) to the Indonesian National Army (TNI). Three new laws were enacted, namely Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, Law Number 3 of 2002 concerning National Defense, and Law Number 34 of 2004 concerning the Indonesian National Army. The President is now asked to recommend a candidate for TNI Commander, who must be the Chief of Staff of the Armed Forces, for approval from the DPR. The TNI's political power was abolished, and ABRI's dual function was abolished.

Presidential Regulation Number 43 of 2009 concerning the Takeover of TNI-Owned Businesses was issued in 2009 and archived until 10-25-2016 at the Wayback Machine. Based on Law Number 34 of 2004 concerning the Indonesian National Army (TNI), a special body will be formed to supervise the management of all TNI-owned companies. During the merger of the Indonesian National Army (TNI) and the Indonesian National Police (POLRI), a system called Catur Dharma Eka Karma (CADEK) was used. During the reform period in Indonesia, the TNI experienced a fairly large internal reform process. One of the changes that occurred was the change from Catur to Tri after POLRI was separated from ABRI. Based on the Decree of the TNI Commander Number Kep/21/I/2007 which was issued on January 12 2007, TNI Information was designated as Tri Dharma Eka Karma, abbreviated as TRIDEK.

The Indonesian National Army Headquarters is located under the supervision of the President of the Republic of Indonesia. The highest official at TNI Headquarters, known as the TNI Commander, has the title of General, Admiral, or Marshal and leads the TNI under the authority of the President. In accordance with Presidential Regulation Number 10 of 2010, it has been revised to become Presidential Regulation Number 62 of 2016<sup>[8]</sup>.

### **Characteristics of acts of insubordination in the military**

Insubordination is the action of TNI soldiers who deliberately disobey or refuse to follow orders or commands from superiors, both inside and outside official duty hours. Disobedience is considered a criminal offence. The condition is that superiors must have a service order in order to carry out their duties or represent their unit. This action is a violation of the soldier's oath and the seven soldiers' oaths,

which are regulated in Law Number 31 of 1997 concerning Military Justice. The aim of enforcing discipline against insubordination is to uphold the authority of the commander or leader and to strengthen the obedience of subordinates in carrying out military duties. Within the TNI, disobedience is a serious violation that cannot be justified.

Within the TNI, insubordination is rife, with various patterns and approaches. Disobedience is an action that cannot be justified within the military, because it is considered a violation of the seven soldier's oaths and promises which are the basis for the standards of behavior of TNI soldiers. This writing discusses two main issues. First, discussing the challenges associated with implementing criminal penalties for TNI soldiers who commit acts of insubordination. Second, examine the measures used to prevent and handle cases of insubordination among TNI soldiers.

Defiance refers to the act of defying or ignoring superiors or rules, or refusing to comply with directions. Defiance can also be seen as an act contrary to loyalty or devotion. The criminal act of disobedience, as defined in the Criminal Code, is regulated in Article 459 paragraph (1) and Article 460 paragraph (2). This provision specifically relates to the behavior of crew members who defy or defy their superiors. The Military Criminal Code regulates the criminal act of insubordination in Articles 106, 107, 108, and 109. The Criminal Code regulates the criminal act of insubordination, namely the actions of subordinates, especially soldiers whose rank is lower, against superiors whose rank higher. The classification of criminal acts of insubordination can be explained in the following chart: Disobedience is the act of deliberately disobeying or refusing to follow orders or instructions from superiors. This is a violation of Article 105.

### Types of acts of insubordination in the military

Insubordination refers to the actions of a military member who engages in disrespectful or disobedient behavior towards superiors. Insubordination is a crime that occurs when a soldier or military member intentionally disobeys a superior's instructions or behavior. It is characterized by a deliberate violation of authority. This can occur both inside and outside scheduled work hours. For this behavior to be classified as insubordination, the superior must have a valid service directive authorizing the performance of their unit's responsibilities or representation.

Acts of insubordination are a common type of offense that often occurs in the military environment. Insubordination refers to the willful refusal or disobedience of service orders by a military member in response to a superior's orders. Military crimes refer to criminal acts that are specifically associated with the military. This term specifically identifies military personnel as its topic. Examples of military misconduct may manifest as acts of insubordination, desertion, or abandonment of guard positions. Insubordination refers to the act of ignoring or disregarding instructions or orders given by someone with higher authority. If a military member commits disobedience, he or she may be subject to a maximum prison sentence of 2 years and 4 months. Meanwhile, if disobedience is committed during war, the punishment is more severe, namely a maximum of 5 years in prison.

Several times there have been violations of insubordination committed by Military Members, but not all of these

violations have resulted in the military justice process. In the current Disobedience Case, there are two ways that can be taken to resolve this problem, namely:

#### a. Resolved internally

It cannot be denied that TNI members will commit violations while carrying out their duties. Each TNI member is placed in one team or squad, and each squad is led by a superior who is responsible for his subordinates. Not all violations committed by TNI members will be immediately reported to the military court by their superiors. The superior will give a warning or give a punishment, which is a consequence that has been determined and agreed upon within the team unit. If members who violate the rules continue to repeat their actions or make no effort to improve themselves, superiors can choose to report their actions to TNI law enforcement officers, especially the Military Police of each unit (AD Military Police, Navy Military Police, Air Force Military Police), to followed up by the Military Court.

#### b. Reported to military law enforcement officials

Incidents of criminal violations must be immediately reported to Military Law Enforcement Officers if superiors can no longer tolerate violations committed by TNI members. Various types of criminal violations can occur among members of the TNI. The following are some examples of potential manifestations of defiance:

1. Refusal to Comply with Service Orders: If a military member refuses or intentionally disobeys service orders, they may face criminal consequences, including a maximum prison sentence of 2 years and 4 months. If the act was committed during wartime, the possible penalties are more severe, including a maximum term of imprisonment of 5 years<sup>[9]</sup>.
2. Desertion: Desertion is the act of military personnel leaving their unit or location of duty without obtaining permission. This behavior can also be seen as a form of insubordination, which can result in legal consequences<sup>[10]</sup>.

It is important to know that military criminal law has different provisions from civil criminal law, and the Indonesian Military Criminal Code (KUHPM) regulates the criminal responsibility of military personnel. In the military, illegal actions can be classified into two categories. The first offense is strictly a military crime, while the second offense includes a combination of military and non-military elements. For more details:

#### 1. Pure military crime

Actions of a purely military nature are prohibited or mandatory. Generally, military personnel are the only ones who can violate these principles, either due to extraordinary circumstances or when military objectives require that the act be classified as a criminal offense. The phrase "in principle" is used because the definition of the crime covers a broader scope of military matters. Some examples of pure military crimes are:

- a. in a state of war, a military member deliberately surrenders control of a fortified position to the enemy, without making any efforts to defend it as expected of him (Article 73 of the Criminal Code)
- b. Crime of Desertion (Article 87 of the Criminal Code)
- c. Leaving the Guard Post (Article 118 KUHPM)
- d. Against superiors (insubordination) (Article 105 KUHPM)<sup>[11]</sup>.

## 2. Mixed military crimes

Mixed criminal offenses refer to behavior that is either prohibited or required. The law first determines the classification of this type of crime, which is then further regulated in the Criminal Code or other military regulations. This is due to the uniqueness of the military institution.

Below we will explain several examples of military criminal acts, including assault, murder, drug crimes, domestic violence, and others. It should be noted that civilians can also commit similar crimes. The aim here may be to discuss the criminal offenses mentioned, which can also be committed by civilians. These activities are strictly illegal and can be subject to legal penalties based on relevant positive laws and regulations in Indonesia.

The components of criminal acts of insubordination are very important for judges to assess and impose criminal penalties on TNI soldiers who commit acts of insubordination. In this aspect of a criminal act, criminal conduct and responsibility cannot be separated<sup>[12]</sup>. This aspect is also the basis for determining mitigating or aggravating elements in the case of a person who commits a criminal act. The emergence of this element is associated with activities carried out by TNI soldiers themselves. These components are defined in accordance with Article 106 of the Criminal Code:

1. Military what is meant by military according to Article 46 of the Criminal Code, what is meant by "military" is a person who voluntarily joins the Armed Forces and is obliged to serve continuously. Their period of service is known as a military service bond. This term includes both volunteers and conscripts in the Armed Forces, as long as they are still bound by service obligations. In Indonesia, what is meant by "military" is the strength of a country's Armed Forces, which is regulated in Article 1 number 20 of Law Number 34 of 2004 concerning the Indonesian National Army.
2. Deliberately using real action to attack a superior
  - a. According to M.V.T, what is meant by intentionality is a deliberate desire and awareness of an activity and its consequences. This means that a person who acts intentionally must have the intention and awareness of his actions and the consequences they cause, which is seen as a form of error in the crime of dolus.
  - b. What is meant by a real action is a real action when the perpetrator or defendant uses his authority to achieve a certain goal.

What is meant by attacking a superior is an act committed against a superior when a superior-subordinate relationship has not yet been established<sup>[13]</sup>.

3. Committing physical aggression or using fear of physical harm to limit a person's ability to act or coerce a person, by force or threat of force, to perform or neglect duties related to the job:
  - a. Violence refers to actions carried out by the Defendant, using physical force or power, with the intention of causing pain or suffering to another person. This can be done with actions such as hitting, kicking, choking, and similar methods.
  - b. Threats of violence refer to the Defendant's deliberate actions to cause fear in another person by using violence or the possibility of violence to harm them.

4. Which results in injury
  - a. The presence of this factor is necessary for criminality, as indicated by the phrase "caused," which implies that the perpetrator's or defendant's actions are only punishable if they result in harm to another person.
  - b. Abnormalities or changes in the skin, which often cause pain or distress to others, are defined as injuries.
  - c. Injuries in this case also include bruises, namely internal injuries that do not appear as visible wounds from the outside. For example, injury to the skin, injury to the contents of the skull or brain, injury to the contents of the skeleton or bone marrow, and injury to the contents of other body cavities<sup>[14]</sup>.

### Insubordination law enforcement procedures in the military

The Supreme Court (MA) in Indonesia is responsible for exercising judicial power, and military justice is one of the legal systems within the jurisdiction of the Supreme Court. The position of military justice in the legal system in Indonesia is regulated in Article 10 paragraph (2) of Law Number 4 of 2004 which further emphasizes this. The contents of this article are explained as follows:

"Bodies under the Supreme Court include judicial bodies in the general court, religious court, military court and state administrative court."

Apart from that, Article 42 paragraph (3) of Law Number 4 of 2004 specifically regulates the transfer of the military justice environment from the TNI Headquarters to the Supreme Court. Article 42 states:

"The organizational, administrative and financial transfer within the military justice environment was completed no later than June 30 2004."

Regarding the authority and jurisdiction of military justice, it is specifically regulated in Article 9 of Law Number 31 of 1997, namely:

- a. Military courts have the authority to try criminal acts committed by people who at the time of committing the criminal act met the following criteria:
  1. Soldier,
  2. Those who are equated by law with soldiers,
  3. People who are legally considered soldiers and are affiliated with a group, position, or organization,
  4. Persons who are not included in the groups mentioned in letters a, b and c, but are selected by the supreme commander and approved by the Minister of Justice, are tried in a military court.
- b. Adjudicate, determine and resolve state administration disputes in the military environment.
- c. Combine claims for compensation in the relevant criminal case at the request of the injured party, arising from the criminal act which is the basis of the indictment, and at the same time combine the two cases into one decision.

Before conducting a criminal case examination against a suspect, procedural steps are required, namely receiving the case file, handling the case, and submitting the case file to the court.

- a. In handing over case files, the military police unit is tasked with handing over suspects and evidence to Koatmil/Koatmilti. If the suspect is detained, Koatmil/Koatmilti again delegates responsibility for

detention to the military police unit that first submitted the case file. Case files received must be recorded in the system, after which Koatmilti appoints an Auditor to handle the process of handling these files. If possible, the appointed Auditor will also act as a public prosecutor.

- b. Case Handling involves the appointment of an Auditor by Koatmil/Koatmilti to carry out case handling operations and document the findings in the Minutes of Opinion. The Minutes of Opinion are prepared based on well-established facts that meet the elements of the criminal offense charged and discuss related issues. These facts were obtained from witness statements, the suspect's words, and interrelated clues.
- c. After the chief of staff (head of administration and internal affairs) examines the case file carefully and ensures it is complete, the case file is submitted to the court. The original case files are then transferred to the competent court accompanied by a case transfer letter signed by Koatmil/Koatmilti.

The trial procedures in the military court environment are the same as the trial procedures in the civil court environment. The first level investigation and prosecution process involves military investigators, including superiors who have the authority to impose crimes (Ankum), Military Police, Military Examiners, and Case Submission Officers (Papera). Furthermore, military trials include examination of case files, evidence, witness statements, statements from investigators and experts, all of which are carried out by military judges. Third, the implementation of the decision is carried out by a military judge, who is guided by the results of the first level examination and trial process, as well as the applicable laws and regulations. Humanitarian aspects are the main consideration in determining whether a suspect is guilty or not <sup>[15]</sup>.

In the event that a Court Hearing is required to resolve a case, the Case Handover Officer (PAPERERA) delegates the case by handing over the Case Handover Decree along with the Indictment Letter prepared by the Military Prosecutor, as well as other related case files. Examination Stages in the Trial Before the start of the trial, Koatmil made many preparations, including <sup>[16]</sup>:

- a. First, Koatmil, in accordance with the court's decision, sends a summons to the defendant and witnesses, stating the exact time and place of the trial. The summons is sent to Ankum, with a copy to papera (if the defendant and witness are members of the TNI), or delivered by the local village head/headman, village head, RT/RW, accompanied by a relaas.
- b. Second, Koatmil/koatmilti issues an order to each prosecutor who will appear as a public prosecutor. Next, the head of section/kasi/sub-district head transfers the case files and evidence to the appointed public prosecutor.
- c. Third, if the public prosecutor intends to amend the indictment, the amendment must be submitted to the court within the military court no later than 7 (seven) days before the trial begins. Furthermore, changes to the indictment can only be made once and must be submitted to the defendant and the court.

Regarding detention, after the case is transferred to the military court, the authority to detain is also transferred to

the court that handles the case within the military court. Once all the necessary trial conditions are met, the trial can begin. The trial stages include:

- a. Firstly, the presence of the defendant initially requires the Public Prosecutor to prepare in the courtroom before the panel of judges enters the courtroom. Furthermore, after the trial was started by the chairman of the panel of judges, the Public Prosecutor was ordered by the chairman of the panel of judges to present the defendant before the panel of judges. Therefore, the Public Prosecutor then ordered officers to escort the defendant to the courtroom.
- b. Second, the Public Prosecutor reads the indictment while standing, and when finished, the Public Prosecutor returns to his seat.
- c. Third, unless there is an objection from the defendant or his legal advisor, or with the approval of the chairman of the panel of judges, the defendant or his legal advisor has the right to file an objection to the Public Prosecutor's indictment.
- d. Fourth, witness examination involves the Public Prosecutor presenting witnesses before the panel of judges in accordance with the orders of the chairman of the panel of judges. The Public Prosecutor then ordered officers to bring the witness to the courtroom. The prosecutor continues to examine witnesses directly, so that witnesses can give their statements without interference. After the witness has finished giving his statement, the head of the panel of judges gives the defendant the opportunity to express his opinion on the witness's statement. After the defendant provides a response, the head of the panel of judges can examine the witnesses regarding the defendant's response. The defendant, with the authority of the chairman of the panel of judges, can be given the authority to examine witnesses.
- e. Fifth, the examination of the defendant begins after all witnesses have finished giving statements. Therefore, the defendant was instructed to sit in the examination chair. However, the examination of the defendant only partially began when he was asked about his views on the witness' testimony.
- f. Sixth, after the examination of all witnesses and the defendant is complete, the chairman of the panel of judges presents all the evidence to the defendant and asks whether the defendant understands the evidence and its relevance to the case, in order to assess understanding of the incident. However, if it is deemed important, evidence can be presented before the examination of all witnesses and the defendant is complete.
- g. Seventh, after all examination activities are completed, the panel of judges holds a discussion, and the presiding judge officially declares the examination closed. Furthermore, the trial was rescheduled to allow the panel of judges to deliberate and reach a conclusion.
- h. Eighth, the court announces its decision. If the panel decides that the defendant is guilty of the crime of which he is accused, the court will impose a criminal sentence. However, if the defendant is not proven guilty as charged, the court will declare them free of all charges. After a court decision has permanent legal force, the clerk creates a document known as a deed to reflect this permanent legal force.

### Law enforcement of insubordination acts committed by military members

In cases of insubordination, Military Courts and General Courts differ in the stages of resolution and the rules used tend to be different even though they both regulate insubordination. In the Criminal Code, insubordination is regulated in Articles 459-461, while special regulations are regulated in Articles 106-109 of the Criminal Code. This is different from ordinary crimes, if someone is beaten, causing injury, they can be punished with criminal abuse, and there must be a prior complaint from the victim or family who feels aggrieved <sup>[17]</sup>. Meanwhile, in cases of insubordination committed by TNI soldiers, the case will be resolved through court through direct complaints from the victim and/or reports from superiors who have the right to punish (Ankum). In the case of going against a superior's orders, there are elements that can result in a member of the TNI being charged with the criminal act of insubordination, namely Article 106 of the Criminal Code, the first element is that he is a member of the military, the second is an act carried out deliberately and clearly, and the next element is that a subordinate carried out an attack against his superiors with violence, thereby neglecting his official work. What this means is that every subordinate must respect his superiors, superiors here are not only direct superiors but every TNI soldier who, because of his rank and/or position, is in a higher position than other TNI soldiers <sup>[18]</sup>.

Regulations for criminal acts of insubordination existed before the Criminal Code, but the Criminal Code specifically regulates criminal acts committed on board ships. The Criminal Code includes Articles 459, 460, and 461, which outline criminal acts of disobedience as determined by the Author.

#### a. According to the Criminal Code

1. The criminal act as intended in Article 459 of the Criminal Code is referred to as a criminal act of insubordination. This criminal offense occurs if a passenger or sailor on a Republic of Indonesia ship threatens or physically attacks the captain, or unlawfully detains the captain for a specific purpose.
2. As stated in Article 460 of the Criminal Code, this act of insubordination is referred to as *Muiterij* or "rebellion" which is carried out by at least two people who harm the captain or ship's officers, which can result in death.
3. Based on Article 461 of the Criminal Code, the perpetrators of this crime are sailors or can be referred to as crew members who carry out a rebellion or strike against ship operations.

#### b. According to the Military Criminal Code

1. According to Article 105 of the Criminal Code
  - a. The military deliberately uses concrete actions to intimidate superiors with the possibility of violence. The actual action is seen in the particular conditions in which the threat is carried out or occurs. The intent behind the threat can also be seen. This TNI soldier's subordinate was very aware that his actions posed a significant danger to his superior. Actual demonstration of action can be realized through physical actions, as well as through facial expressions or body movements. It can be concluded that the understanding of actual action through an action is basically the same, which shows that what an individual

does is a component of the actual action, but violence has a different connotation from evil actions. Violence is the act of using physical force against people or property, resulting in potential injury to those targeted. On the other hand, evil acts may not always require the use of force. Immediate threats refer to the act of tightly closing one's hands with the deliberate aim of hitting a person in higher authority with a blow at some point in the future. An example of an indirect threat is pointing a loaded gun at someone's superior.

b. Criminal acts committed while carrying out official responsibilities. On duty is the occurrence of insubordination committed by a TNI soldier during his designated term of duty, or when his term of duty has not yet ended in the unit where he is serving.

2. Article 106 of the Criminal Code outlines several important aspects related to acts of defiance, including various types of illegal behavior, namely:

- a. The military deliberately launches attacks against more powerful entities, using violence and threats of violence.
- b. They limit his freedom of action or force him, using force or the threat of force, to perform or neglect official duties. The author has provided a description of various types of criminal acts of insubordination as described in Article 106. This information can be found in the sub-chapter which discusses the components of criminal acts of insubordination.

3. According to Article 107 of the Criminal Code

This act of defiance was carried out with real action and was planned beforehand. The individual in question shows a clear intention to develop strategies and carry out future actions, while also showing awareness of the implications that occur. Simons argues that premeditation is evident when the perpetrator has carefully considered their intentions to commit an act over a period of time and has evaluated the nature and consequences of that act. In terms of decision making, duration, whether short or long, is not included in the calculations at the initial planning stage.

4. According to Article 108 of the Criminal Code

Disobedience carried out jointly by two or more people. The perpetrator of this violation must consist of at least two people acting together. The form of criminal liability is the same for everyone, including criminal penalties if they have cooperated. Unity is a common bond between criminals. This difference is evident in the psychological aspects of each individual. For example, A shows aggression by physically slapping his boss, but B shows self-control by restraining his boss to prevent retaliation.

5. According to Article 109 of the Criminal Code

Disobedience occurs during times of conflict, namely when a country is in a critical situation, and is demonstrated through concrete actions. This concrete action indicates that as previously explained, disobedience in a state of war is the most serious criminal act committed by TNI soldiers, and the threats that accompany it have major consequences.

**Closing****Conclusion**

Characteristics of acts of insubordination that are considered unlawful if committed by members of the TNI are that criminal cases of insubordination occur within the TNI and involve TNI members who resist or oppose orders from superiors. Legal enforcement of acts of insubordination committed by military members has also been prepared by the government in the Military Criminal Code (KUHPM), the contents of which completely contain the legal provisions governing insubordination committed by members of the TNI. The KUHPM is the basis for imposing sanctions if TNI members commit acts of disobedience that are considered to violate the law. The aim is to uphold the authority of the commander or leader and to encourage the obedience of subordinates in carrying out their military responsibilities. To deal with insubordination, law enforcement relies on military courts. TNI soldiers below the rank of Captain are tried at the Military Court, while those with the rank of Major and above are tried at the High Military Court.

**Recommendation**

To overcome disobedience in the military, the government can take steps by increasing education and training programs for military personnel on the importance of obeying orders from superiors. Increasing understanding of hierarchy and tasks can effectively reduce insubordination. The government must ensure consistent use of law enforcement measures to address cases of disobedience. This requires strict monitoring of the behavior of military personnel and severe punishment for anyone who breaks the rules. Build efficient communication channels between superiors and subordinates. Superiors must provide clear instructions, while subordinates must demonstrate positive and effective responses. Engaging in open and honest communication has the potential to minimize misunderstandings and conflict. Establish a highly effective internal oversight structure to closely monitor the behavior of military personnel. This can help identify early indications of insubordination and implement proactive steps. Increase the level of awards and recognition for military personnel who demonstrate exceptional obedience and achievement. This can incentivize them to maintain loyalty to their directives and obligations. Cooperation between governments, militaries, and allied organizations is essential to establishing a disciplined and professional atmosphere that supports all of these actions.

**References**

1. Titik Triwulan Tutik, *Construction of Indonesian Constitutional Law Post-Amendment to the Constitution*. (Jakarta: Prenadamedia Group, 2010), 1945, 61.
2. Moch Faisal Salam. *Indonesian Military Justice*. (Bandung: Mandar Maju, 1994) page 15.
3. Free Encyclopedia, *Military Articles*, 2023. Accessed, 2024, <https://id.wikipedia.org/wiki/Militer>.
4. Free Encyclopedia, *July, Indonesian National Army*, 2023. Accessed July 10, 2023, [https://id.wikipedia.org/wiki/Tentara\\_Nasional\\_Indonesia](https://id.wikipedia.org/wiki/Tentara_Nasional_Indonesia)
5. Wikisource, *Update on Indonesian Presidential Decree no. 316 of 1959 concerning National Days which are not Holidays and their explanations*, accessed 10 July 2024-2022. [https://id.wikisource.org/wiki/Halaman:TDKGM\\_01.22\\_2\\_\(2\\_2\)\\_Regulation\\_of\\_President\\_Indonesia\\_No.\\_316\\_year\\_1959\\_about\\_National\\_Days\\_which\\_are\\_Not\\_Holidays\\_along\\_with\\_their\\_explanations.pdf/2](https://id.wikisource.org/wiki/Halaman:TDKGM_01.22_2_(2_2)_Regulation_of_President_Indonesia_No._316_year_1959_about_National_Days_which_are_Not_Holidays_along_with_their_explanations.pdf/2)
6. Heyder Affan. "Army's dual function, single principle up to P4". BBC Indonesia, 2013. Accessed January 3, 2024, <https://id.scribd.com/document/410579889/Tentara-Nasional-Indonesia>
7. Ramzi, "Meaning of the Abbreviation FABRI / Abbreviation of FABRI - Indonesian Acronym Dictionary", 2012. Accessed January 4, 2024, <https://id.scribd.com/document/410579889/Tentara-Nasional-Indonesia>
8. Legal Information Documentation Network, *Article 154 of Presidential Regulation Number 66 of 2019* accessed 22 April 2024-2020, [sipuu.setkab.go.id](http://sipuu.setkab.go.id).
9. Syifa Fauziah. *Criminal Acts of Insubordination in Indonesian Military Criminal Law*, accessed May 22 2024-2017, <https://www.academia.edu/35645403/>
10. Robi Amu, 2019, *Study of Indonesian Military Criminal Law Against the Crime of Desertion*, accessed 22 May 2024, <https://media.neliti.com/media/publications/12531>
11. Herdjito. "Disparities in Sentencing in Desertion Crime Cases" (Research, Legal and Judicial Research and Development Center, KUMDIL Research and Development Agency, Supreme Court), 2014, 39.
12. Frans Maramis, *General and Written Criminal Law in Indonesia*, (Jakarta, Raja Grafindo Persada, 2013), p. 82.
13. SR Sianturi. *Military Criminal Law in Indonesia*, (Jakarta, AHAEM-PATEHAEM Alumni, 1985) p. 341.
14. Sugiman. Interview on December 23 2016 at the Military Prosecutor's Office II- 11 Yogyakarta, 2016. <http://repository.ums.ac.id/bitstream/handle/123456789/11763/Bab%20II.pdf?sequence=4&isAllowed=y>
15. Moch Faisal Salam. *Military Criminal Procedure Law in Indonesia*, Bandung: Mandar Maju, 1996, 60.
16. Darwan Prinst, *Military Justice*, (Bandung: Citra Aditya Bakti, 2003), p. 21
17. Mochamad Arif Agus, *Insubordination to Unlawfull Order*, accessed 31 July 2024-2023. <https://ojs.rewangrencang.com/index.php/JHLG/article/download/353/197/1537>
18. Anuar Bukhari. *Enforcement of the Crime of Insubordination in the Military*, accessed on 31 July 2023-2019. <https://ojs.rewangrencang.com/index.php/JHLG/article/download/353/197/1537>