



The Position of Military Police Investigator in Investigating Criminal Against Soldier of the Indonesian Armed Forces Regarding Evidence from Banks

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Abstract

Military Police Investigators based on Law No.31 of 1997 concerning Military Courts are one of the investigators within the Military Courts environment. In carrying out their duties, the investigator encountered obstacles when collecting evidence related to banking, such as customer data and banking transactions, especially customers who are members/soldiers of the Indonesian National Armed Forces (TNI). This is because according to Law No.10 of 1998 concerning Banking there are limitations to law enforcement agencies being granted permission to request evidence from banks. After conducting a literature study, it can be concluded that there are constitutional rights granted by the 1945 Constitution regarding the position and authority of Military Police investigators which cannot be carried out properly in obtaining evidence from banks in the process of investigating Military Criminal cases by TNI Soldiers. In addition, there is disharmony between the norms in the Law on Military Justice and the Law on Banking regarding the authority of Military Police investigators to obtain evidence from banks, which will lead to discrimination for Military Police investigators who also have the duty and function of being law enforcement officers trying to find material truth in gathering evidence. evidence in a crime, as well as causing chaos in law enforcement due to overlapping laws and regulations and resulting in legal uncertainty. So it is necessary to carry out various strategies through legal politics whose implementation is in the form of policy formulation at the legislative level, namely through banking law reform or judicial review.

Keywords: *Military Courts; Military Police Investigators; Evidence from Banks; Banking*

Introduction

As an independent nation with all the potential and advantages it has, it is only natural that Indonesia has the Indonesian National Armed Forces as a military force to maintain the independence and efforts to fill it. The rigors of discipline and training to form TNI soldiers so that they are ready to carry out their duties, of course, will not change their original identity as social beings. General Endriartono Sutarto once said that a Soldier with all the demands that must be lived must also realize that he is a social

being, therefore he must become a humanist figure who is able to position himself fairly in the midst of family and society.¹ A TNI soldier will of course continue to carry out reciprocal interactions with the surrounding environment, his unit, his superiors, colleagues, subordinates, his family and with the community and carry out other legal actions.

When he interacts with other people or with his environment it is not impossible that there are TNI soldiers who commit acts that violate the law, and along with the development of science and technology today, the modus operandi of military crimes committed by TNI soldiers can develop increasingly sophisticated with the use of information technology, electronic transactions or banking transactions so that the investigation task will also be more complex. Currently, based on Law No.31 of 1997, it is specifically determined that one of the investigators authorized to conduct investigations into all kinds of criminal acts committed by unscrupulous TNI Soldiers is Military Police investigators. In cases with the modus operandi mentioned above, Military Police investigators require various necessary investigative steps including those related to banking transactions, examination of the assets of the perpetrators of criminal acts kept in banks and collection of other evidence which even requires witness statements (testimony). from bank officials to support and strengthen other evidence that has been found related to the occurrence of military crimes. However, the provisions of Article 42 paragraph 1 of Law No.7 of 1992 concerning Banking as amended by Law No.10 of 1998 stipulates, among other things, that the Management of Bank Indonesia may grant permission to law enforcers such as the Police, Attorney General's Office or Judges to obtain information from banks regarding deposits of suspects or defendants in banks, solely for the benefit of justice in criminal cases. This provision limits the space for military police investigators to be able to directly request the necessary evidence from the banking sector, thereby becoming an obstacle faced by military police investigators in resolving cases so that they can immediately be transferred to the military court.

This is a dilemma for Military Police investigators, on the one hand they want to carry out the investigation process quickly and thoroughly but on the other hand there are laws and regulations that hinder the investigation process. Case data collected from several sources is an example of obstacles, especially within the authority of Military Police investigators in the process of collecting evidence originating from banks or related to banking transactions, including the case of the Indonesian Air Force Sergeant BW who was arrested by the National Narcotics Agency (BNN) in 2013, namely the dealer The ecstasy type drug, which indicated that it had assets worth billions of rupiah, was allegedly obtained from the proceeds of money laundering, resulting in a tug-of-war on investigative authority between BNN and Military Police Investigators.² Another example is the adultery case of an unscrupulous TNI AD in 2018 in Banda Aceh where investigators received a request for data from Bank BTN Syariah Banda Aceh to refuse.³ Then the case of abuse of authority by TNI AD officials in 2022 in Central Java where military police investigators received a rejection of requests for evidence from the BCA Semarang bank and from the Central Java Regional OJK Office, and finally the case of selling illegal ammunition by unscrupulous members of the AD TNI in Papua in 2022 which is categorized as military treason as conveyed by the Commander of the Indonesian National Armed Forces (TNI) Admiral Yudo Margono at the TNI Rapim in Jakarta in 2023 which is in accordance with SEMA No.5 of 2021, namely violating article 64 paragraph 1 of the Military Criminal Code (KUHPM).⁴ In this case, it was suspected that several suspects used banking transactions to receive payment for the sale of ammunition.

Two of the three cases above, namely the abuse of authority and the illegal sale of ammunition, were violations of military criminal provisions, namely violating Article 126 of the Criminal Procedure Code and Article 64 of the KUHPM which are the full jurisdiction of the military court and the

¹ Yusuf Ambari, *Endriartono Sutarto, Prajurit Profesional yang Humanis*. Bandung : CV. Alfabeta, 2016, hal.5.

² <https://www.tribunnews.com/nasional/2013/08/28/usut-pencucian-uang-narkoba-serma-bw-kewenangan-siapa>. Diakses pada tanggal 4 April 2023.

³ Pomdam Iskandar Muda, *Data Perkara Pomdam Iskandar Muda*, 2018.

⁴ Puspomad, *Data Perkara Puspomad*, 2022.

investigation is under the authority of Military Police investigators, however, they are still hampered by the provisions of Article 42. paragraph 1 of Law No.7 of 1992. The conditions above indicate a conflict or disharmony of norms contained in Law No.31 of 1997 with Law No.10 of 1998. There is. The existence of limitations on law enforcement agencies having the authority to carry out their duties related to banking, especially evidence from banks, will lead to discrimination for Military Police investigators who also have the duties and functions as law enforcement officers who seek to find material truth in collecting evidence for a crime, as well as causing chaos in law enforcement because it was triggered by overlapping laws and regulations and resulted in legal uncertainty. Romli Atmasasmita stated that "justice will not be realized if there is no legal certainty and legal certainty will not be real if the law fails to function as a regulator of public order"⁵ Based on the description above, the problems in this paper are:

1. To what extent is the position of TNI AD Military Police Investigators in the investigation of criminal cases carried out by TNI Soldiers and related to evidence from the Bank?
2. What strategy is needed to achieve harmonization and synchronization between the laws governing banking institutions and the authority of military police investigators within the military court environment?

Research Methods

This article uses a normative legal research approach in which law is conceptualized as a norm or rule through the Statutory Approach and Conceptual Approach research methods. The legal materials used come from library research, namely primary legal materials in the form of various laws and regulations, secondary legal materials in the form of interpretations of primary legal materials, and tertiary legal materials which are analyzed using various theories and information theories such as the Big Indonesian Dictionary (KBBI) and the principles - conceptual legal principles.

Result and Discussion

1. Position of Military Police Investigators in the Military Court

One of the most well-known legal institution theories put forward by Lawrence M. Friedman is the theory of legal institutions, where the three main elements of legal institutions are structure, substance, and culture. Regarding structure, Lawrence M. Friedman explains that "the structure of a system is the framework of its subject; it is the permanent form, the institutional subject of the system, the hard and rigid bones that allow processes to flow within their boundaries. The structure of a judicial system is imagined when we talk about the number of judges, the jurisdiction of the courts, how the higher courts are above the lower courts and the people associated with the various types of courts."⁶ Furthermore, regarding substance, Lawrence M. Friedman explained that "substance is composed of rules and regulations on how the institution should behave". Friedman also explained the opinion of H.L.A Hart that "the hallmark of a legal system is a double set of rules. A legal system is a unity of primary regulations and secondary regulations."⁷ Lawrence M. Friedman's final explanation of the Theory of Legal System regarding legal culture is "elements of social attitudes and values. Legal culture for Friedman is a social force that continuously moves the law, undermines it here, renews it there, revives it here, turns it off there, choosing which parts of the law will operate, which parts will not, replace, bypass and pass what is necessary. appear, what changes occur openly or secretly".⁸

⁵ Romli Atmasasmita, *Teori hukum Integratif*, Yogyakarta : Genta Publishing, 2012, hal 24-25.

⁶ Lawrence M Friedman, *Sistem Hukum : Perspektif Ilmu Sosial (terjemahan)*, Bandung : Nusa Media, 2018, hal 15.

⁷ Ibid, hal 16.

⁸ Ibid, hal 17.

Lawrence M. Friedman's theory is one of the analytical tools that can be used to look at the institutional structure of law enforcement in the military court environment and the substance of the statutory provisions governing existing military criminal law and determining whether or not the law can be implemented properly and consistently. see the cultural influence of military life. Article 24 paragraph (2) of the 1945 Constitution, Third Amendment of 2001 states that "Judicial power is exercised by a Supreme Court and judicial bodies under it within the general court environment, religious court environment, military court environment, state administrative court environment; and by a Constitutional Court". Then it was reaffirmed regarding the jurisdiction of military justice in the main law that regulates the justice system in Indonesia, namely article 25 paragraph 4 of Law No.48 of 2009 concerning Judicial Power which reads "Military Courts as referred to in paragraph (1) have the authority to examine, try and decide cases of military crimes in accordance with the provisions of laws and regulations. The law becomes a formal law and procedure which contains substantially the workings of the military criminal justice system and the military administrative justice system. Furthermore, specifically the law enforcement structure in the military court environment as the implementing apparatus and the mechanism is regulated based on Law Number 31 of 1997 concerning Military Courts, namely the presence of superiors who have the right to punish (Ankum) and case surrendering officers (Papera), military police, military auditors and Military Judge and Military Penitentiary.

At the level of investigations into unscrupulous members of the TNI who commit violations of the law, article 69 paragraph 1 of Law No.31 of 1997 specifically stipulates that "Investigators are Superiors with the Right to Punish (Ankum), Military Police and Auditors". And for the implementation of Ankum's investigations into his subordinate Soldiers who are under his command authority, it is carried out by Military Police Investigators as further stipulated in Article 74 letter a. These two articles emphasize the position of Military Police investigators as one of the spearheads in law enforcement within the Indonesian National Armed Forces who are authorized to carry out the process of investigating criminal cases carried out by TNI Soldiers. The investigative authority possessed by Military Police investigators is actually not too much different from the authority of Polri investigators, this is regulated in Law No.31 of 1997 Article 71 paragraph 1 which reads "Investigators in carrying out investigations into an event that is suspected of being a crime carried out by a person or suspected as a suspect, has the authority:

1. Receive a report or complaint from someone about the occurrence of an event that is suspected of being a criminal act;
2. Take the first action at the time and place of the incident;
3. Seeking information and evidence;
4. Order a person suspected of being a suspect to stop and check his identification;
5. Arrest, search, confiscate and examine documents;
6. Take someone's fingerprints and photograph;
7. Summon someone to be heard and examined as a suspect or witness;
8. Requesting the assistance of an expert in examining or bringing in the necessary expert in connection with the examination of a case; and
9. Take other actions according to responsible law.

With the authority mentioned above, Military Police investigators work to clarify a case until a suspect is found and then followed up by the Prosecutor and the Military Court for settlement in accordance with applicable law.

There are several definitions of authority and authority from legal experts, including the notion of authority according to H.D. Stoud which was conveyed again by Ridwan HR namely "*bevoegheid is een begrip uit het bestuurlijke organisatierecht, wat kan worden omschreven als het geheel van regels dat betrekking heeft op de verkrijging en uitoefening van bestuurechtelijke bevoegdheden door publiekrechtelijke rechtssubjecten in het bestuurechtelijke rechtsverkeer*" which means that power is the

entire rule for public legal subjects to obtain and use government power in public law relations.⁹ Furthermore, according to Ridwan HR: Authority is not the same as power (*macht*). Power only describes the right to do or not to do. In law, power means rights and obligations (*rechten en plichten*). In terms of regional autonomy, rights mean the power to regulate and regulate oneself, while obligations mean the power to regulate horizontally. Vertical means managing government power in an orderly series of all government.¹⁰

From the several definitions of authority mentioned above, it can be seen that the principle of legality is the main pillar for the emergence of authority in a legal subject because this authority is obtained formally and originates from laws to carry out various things or authority which is a specification of this authority. Theoretically, authority originating from laws and regulations according to H.D. Van Wijk and Willem Konijnenbelt quoted by Ridwan HR. , divided into 3 (three) ways to obtain this authority, namely:¹¹

1. Attribution is when legislators delegate government powers to government agencies.
2. Delegation is the transfer of government authority from one government agency to another.
3. Mandate is when a government agency permits other agencies to exercise power on its behalf.

Knowing the source and method of obtaining the authority of an organ in government is important because it relates to legal accountability in the use of that authority, this is also in line with one of the principles of a rule of law, namely that there is no authority without accountability, so that every authority obtained is held accountable by the officials concerned. Thus every authority must have a legal basis.¹² It can be seen that with his position as one of the investigators in the Military Court environment, it means that the authority of Military Police investigators is obtained by attribution, namely the authority obtained and regulated in laws and regulations to carry out investigative actions including arrest, detention, seeking information and goods. evidence and other actions, as stipulated in Article 71 paragraph 1 of Law No.31 of 1997. By having this authority, it means that Military Police Investigators have the power to act in accordance with the provisions stipulated in the laws and regulations, so that the meaning of granting authority is granting legitimacy to carry out an action. Without the authority regulated in laws and regulations, Military Police Investigators cannot take any action. Thus the granting of authority to military police investigators is to carry out their duties and obligations as stipulated in existing laws and regulations.

2. Investigation of Criminal Cases by TNI Soldiers Related to Evidence from the Bank

When he interacts with other people or with his environment it is not impossible that some TNI soldiers commit acts that violate the law, both violations of military criminal law and general or special criminal law that apply to all Indonesian citizens. Along with the development of science and technology today, the modus operandi of crimes committed by TNI Soldiers can develop increasingly sophisticated with the use of information technology, electronic transactions or banking transactions so that the investigation task will also be more complex, but the investigative steps of Military Police investigators become hampered by the limitations of law enforcement agencies authorized to carry out their duties related to requests for banking transaction data. Several examples of criminal acts committed by unscrupulous TNI Soldiers have occurred with new modes and transactions using banking services, including criminal cases regulated in Article 411 of the Criminal Code (KUHP) concerning adultery by unscrupulous TNI AD in 2018 in Banda Aceh where investigators received requests for rejection data

⁹ Ridwan, H.R, *Hukum administrasi Negara*, Jakarta : Rajawali Pers, 2018, hal 98.

¹⁰ Ibid, hal 99.

¹¹ Ibid, hal 102.

¹² Iswandi, Suhaimi, M. Gaussyah, Kewenangan Badan Pertimbangan Jabatan dan Kepangkatan Dalam Mengisi Jabatan Struktural, *Kanun Jurnal Ilmu Hukum*, Vol. 19 No. 2 (Agustus, 2017), pp. 269-284, <https://jurnal.usk.ac.id/kanun/article/view/5970/6827>.

from Bank BTN Syariah Banda Aceh.¹³ Then the criminal case regulated in Article 126 of the KUHPM concerning the abuse of authority by TNI AD officers in 2022 in Central Java where military police investigators received requests for data from the BCA Semarang bank and from the Central Java regional OJK office and finally the case of selling illegal munitions by unscrupulous members TNI AD in Papua in 2022 which is categorized as military treason as conveyed by the Commander of the Indonesian National Armed Forces (TNI) Admiral Yudo Margono at the TNI Rapim in Jakarta in 2023, which is in accordance with SEMA No.5 of 2021 which violates article 64 paragraph 1 of the KUHPM.¹⁴ In this case, it was suspected that several suspects used banking transactions to receive payment for the sale of ammunition.

The analysis in this article will be more focused on discussing military crimes which are the full jurisdiction of the Military Court and investigations which are the authority of Military Police investigators in accordance with laws and regulations. E.Y. Kanter said that there are 7 types of crimes in the KUHPM which include military crimes, namely:

1. Crimes Against State Security (Article 64);
2. Crime of Carrying Out War Obligations, Without Intending to Provide Assistance to the Enemy or Harming the State for the Interests of the Enemy (Article 73 to Article 81);
3. Crimes That Are A Way For A Military Person To Withdraw from The Implementation of Service Obligations (Articles 85 to Article 87);
4. Crime Against Service (Article 97 and Article 98);
5. Crime Concerning Various Service Obligations (Article 118);
6. Theft and Confiscation (Article 140);
7. Destruction, Destruction or Disappearance of Items Needed by the Armed Forces (Article 147 and Article 148).¹⁵

In carrying out investigations, the evidentiary procedure becomes one of the important phases or procedures in the implementation of criminal procedural law as a whole, and the use of evidence and its assessment before a court session is called the evidentiary system in which the implementation of this evidentiary system also depends on the judicial system in force in the country. The Indonesian Judicial System adheres to the Continental European judicial system which was inherited from the Netherlands but has been modified in accordance with developments in laws and regulations. In connection with the evidentiary process, Article 6 paragraph 2 of Law No.48 of 2009 stipulates that "no one can be sentenced to a crime, unless the court, because of valid means of proof according to law, has the conviction that someone who is deemed to be liable for responsible, has been guilty of the act he was accused of". The above provisions are reaffirmed in Article 183 of the Criminal Procedure Code (KUHAP) which states that "a judge may not impose a sentence on a person unless, with at least two valid pieces of evidence, he obtains confidence that a crime has actually occurred and it is the defendant who is guilty of committing it". When viewed from the context of Article 183 of the KUHAP, it can be concluded that Indonesia adheres to a system of evidence based on the law in a negative way (negative wettelijk). The elucidation of article 183 of the KUHAP says that this provision is to guarantee the upholding of truth, justice and legal certainty for a person.

The two laws and regulations mentioned above indeed seem to show that the law of proof is only carried out during examinations in court, but in fact the process of proof has started from the investigation stage because evidence in the general criminal justice system and the military criminal justice system is a systemic movement of the subsystems that support it. Within the military justice environment, these subsystems are Superiors who have the right to punish (Ankum) or Papera, Military Police, Military Prosecutors, Military Judges and Military Correctional Institutions. In the military criminal justice

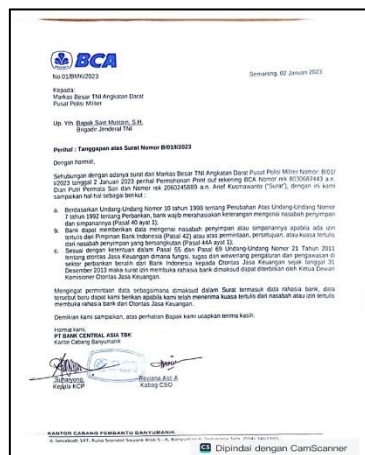
¹³ Pomdam Iskandar Muda, *Op. Cit.*, 2018.

¹⁴ Puspomad, *Op. Cit.*, 2022.

¹⁵ E.Y. Kanter, et.al. *Hukum Pidana Militer di Indonesia*, Alumni AHM - PTHM, Jakarta, 1981, Hal. 49.

subsystem, the first to apply the evidence law is the Military Police investigators, Article 16, paragraph 1, of the Military Justice Law No.31 of 1997 states: "An investigation is a series of actions taken by the investigators of the armed forces." The Republic of Indonesia (TNI) searches and collects evidence during the event and in accordance with the methods prescribed in this law, in order to use these evidence to clarify the crime committed and to locate the suspect. This shows that military and police investigators have a legal mandate to find and collect evidence that can later be used by judges to determine the guilt or innocence of TNI soldiers. In addition, Article 76 paragraph 1, and Article 79 paragraph 1, of Law No.31 of 1997, which provide for arrest and detention at the investigative stage, also require sufficient prima facie evidence. There is an obligation for investigators to look for evidence that aims to get the truth about the occurrence of an event, who was involved in the event and who is responsible for the emergence of the consequences of the event to be submitted to the Judge as material for consideration in deciding a criminal case. The truth that is sought in the verification process is material truth, or at least close to material truth about an event process, because even though the judge did not see with his own eyes the events that occurred, the judge can describe in his mind what really happened, so that the judge will gain confidence. about it and make a fair decision.

From the several cases mentioned above, Military Police investigators encountered obstacles in carrying out their duties and obligations, especially when they needed evidence related to banking such as customer data and banking transactions of customers who were members of the TNI. Article 42 paragraph 1 of Law number 10 of 1998 concerning Banking which stipulates that "For the Interests of Justice in Criminal Cases, the Management of Bank Indonesia can only give permission to the police, prosecutors or judges to obtain information from the bank". Currently in the implementation of the granting of the license through the Financial Services Authority as stipulated in article 55 paragraph 2 of the Law on the Financial Services Authority it is stated "Since December 31, 2013, the functions, duties and authority to regulate and supervise financial services activities in the banking sector have shifted from Bank Indonesia to OJK". Military Police investigators have actually carried out the procedures according to the provisions above, but in reality banking institutions and even the OJK itself cannot give permission to Military Police investigators to obtain information from banks on the grounds that there is a provision in Article 42 paragraph 1 of Law No.10 of 1998 which does not mention regarding the granting of permits to investigators in the Military Court environment, even though Military Police investigators are also carrying out their duties in accordance with statutory regulations. (Pay attention to the BCA Bank Letter and the Financial Services Authority (OJK) Letter below regarding the rejection of the requests for evidence).



BCA Bank Letter and Letter from the Financial Services Authority (OJK) regarding the rejection of requests for evidence

From the two letters above, it can be seen that the two institutions, both banking and OJK, refused a request from Military Police investigators to request data needed as evidence in the case being handled and asked investigators. The two institutions uphold the rules regarding bank secrecy as stipulated in Article 40 paragraph 1 of Law No.10 of 1998 which states that banks are required to keep confidential information about depositors and their savings and restrictions on officials authorized to obtain information from banks as stipulated in Article 42 paragraph 1 Law No.10 of 1998 which stipulates that "For the Interests of Justice in Criminal Cases, the Management of Bank Indonesia can only give permission to the police, prosecutors or judges to obtain information from the bank". This is indeed understandable because in carrying out its business activities as a collector and distributor of public funds, banks provide services that are very private and require high trust from their customers so that banks and related institutions such as the OJK impose provisions on bank secrecy which very strictly limit the opportunities for people to other parties or institutions outside the banking system requesting information related to banking activities or transactions. In addition, opening bank secrets will of course have implications for the relationship between the customer and the bank and criminal sanctions so that if there is leakage or disclosure of information and violates the law or misuses the information, the perpetrator of the leak or misuse of the information can also be subject to criminal penalties as stipulated in Article 47 paragraph 1 and 2 Law No.10 of 1998, namely acts that deliberately force banks or affiliated parties to provide information that must be kept confidential without carrying a written order or permission and acts that deliberately provide information that must be kept confidential.

The provisions of the legislation mentioned above will of course intersect with the duties and functions of military police investigators as one of the investigators in the military court environment, who seek to find material truth in collecting evidence of a crime according to their authority based on Law No.31 of 1997. Because for the sake of this task, it is possible that when a military crime occurs related to evidence from a bank, it is necessary to examine the assets of the perpetrators of military crimes kept in the bank and collect other evidence related to banking transactions and even require witness statements. (testimony) from bank officials to support and corroborate other evidence that has been found. From the example of the case above, if you follow the provisions of Law No.10 of 1998, the procedure for sending letters of request in stages and through other institutions (the Police or the Prosecutor's Office) will certainly become an obstacle to accelerating the process of resolving military criminal case investigations because the correspondence process it will take a long time, even though the powers possessed by military police investigators are essentially the same and equal to the powers of other investigators.

In the context of protecting national interests, every country must form regulations that can provide a legal umbrella for its armed forces within the national legal system so that they can carry out their duties to defend and protect state sovereignty and its national interests, including by means of war.¹⁶ This is in accordance with the mandate of article 30 paragraph 3 of the 1945 Constitution which expressly states "The Indonesian National Armed Forces consists of the Army, Navy and Air Force as state instruments tasked with defending, protecting and maintaining the integrity and sovereignty of the state". In order to guarantee the implementation of this task, the presence of the KUHPM with its own Military Justice System is needed and strictly regulates TNI members not to take actions that are detrimental to the interests of the state for the sake of upholding state sovereignty and protecting national interests. The application of a separate military justice system is inseparable from the personality principle adopted by the KUHPM and the provisions in Article 24 paragraph (2) of the 1945 Constitution which regulates the type of justice under the jurisdiction of the judiciary. The principle of personality in the context of *Lex Specialis* is essentially an exception to the principle of equality before the law, as Max Weber stated in an article entitled *The Fates Of Human Beings are Not Equal*, quoted by Satjipto Rahardjo that inequality in

¹⁶ S. Supriyatna, "Memahami Urgensi Peradilan Militer Dari Sudut Kepentingan Pertahanan Dan Keamanan Negara", *Jurnal Yuridis UPN Veteran*, Vol. 1 No. 2, Desember 2014, Hal. 83 – 202.

society is a fate that must be accepted by the people of the world.¹⁷ Furthermore, Satjipto Rahardjo stressed regarding the reality of exceptions to the principle of equality in people's lives that the law which must adhere to the principle of human equality turns out to have to deal with a very different reality, where the law is required to treat every member of society equally, at the same time the law actually faced with a different situation.

Regarding the conflict regarding authority in legal norms between the KUHPM as material law and Law No.31 of 1997 as the formal law and Law No.10 of 1998 which occurs above, the principle of *lex specialis derogat legi generali* may not be able to resolve juridical disputes in relation to officials who are given permission to obtain information from banks, what is used is a systematic *lex specialist* as a derivative or derivation of the *lex specialis derogat legi generalis* principle. According to Edward O.S. Hiariej there are three dimensions that serve as parameters for limiting law to systemic jurisprudence. First, the substantive penalty provisions of the Act are different from the existing general provisions. Second, the law regulates formal criminal law, which is also different from the general rules of criminal procedure. Third, the legal specificity of the address or legal person. If we compare KUHPM as a substantive law and Law No. 31 of 1997 as a formal law with Law No.10 of 1998 using the above parameters of the systemic law expert principle, it can be analyzed that Law No.31 of KUHPM and In 1997 acquired the system Professional law qualifications. The substantive provisions of the Military Penal Code differ from the Military Penal Code, and the formal provisions of the Military Penal Code differ from the Military Penal Code, governed by Law No.31 of 1997. Furthermore, the treatment of military criminal law is specific, namely Soldiers or people who are equated with Soldiers, while banking crimes as stipulated in Law No.10 of 1998 and Bank Indonesia laws, both material law and formal law deviate from the KUHP and KUHAP, it's just that the address in banking crimes is general in nature. In addition, the character of military criminal law is very, very special. In addition to having legal norms and sanctions that contain heavier penalties than other crimes, military criminal law is also based on the principle of personality. Thus based on the *lex specialis systematis* criteria, only military criminal law meets these criteria, while banking crimes and other acts do not meet the criteria as *lex specialis systematis*, so that in fact there is no reason for the OJK or banks to rule out the authority of investigators within the Military Court in the process of investigating military criminal cases related to requests for evidence from the Bank.

3. Strategy in Realizing Synchronization and Harmonization Between Laws and Regulations

Legal issues related to the authority of Military Police investigators regarding requests for evidence from banks indicate that there is a conflict between the norms of existing laws and regulations, namely the KUHPM and the Law on Military Justice and the Law on Banking, giving rise to the phenomenon of legal uncertainty which in the end will further distance us from the true purpose of law, namely justice. Romli Atmasasmita stated that justice would not be realized if there was no legal certainty and legal certainty would not be real if the law failed to function as a regulator of public order,¹⁸ so according to him the essence of national legal politics is legal certainty, justice and benefit must be seen as a *conditio sine qua non* for development of national law instead of *conditio qum qua non*.¹⁹ Thus legal certainty is the main essence that is very important in order to achieve the main goal of law, namely justice.

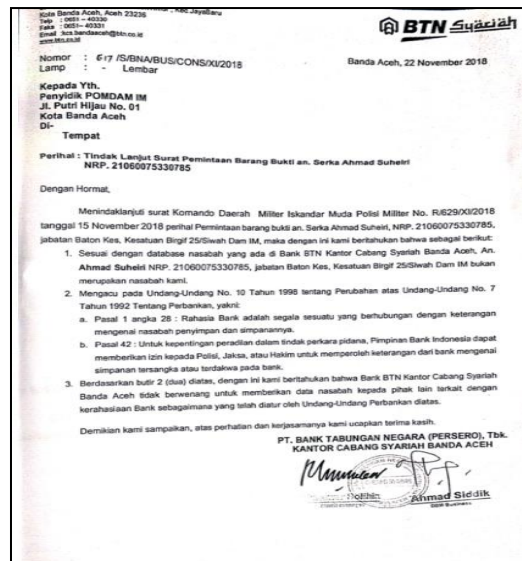
Changes towards improving laws and regulations have actually been seen in Law No.21 off 2008 concerning Sharia Banking, where in article 43 paragraph 1 it states "For the purposes of justice in criminal cases, the leadership of Bank Indonesia can give permission to the police, prosecutors and judges or other investigators authorized by law to obtain bank statements regarding deposits or futures investments of the suspect or defendant at the bank". The existence of the phrase "...or other investigators

¹⁷ Satjipto Rahardjo, *Penegakan Hukum: Suatu Tinjauan Sosiologis*, Jakarta: Genta Publishing, 2009, hlm. 61

¹⁸ Romli Atmasasmita, *Teori Hukum Integratif*, Yogyakarta : Genta Publishing, 2012, Hal. 25.

¹⁹ *Ibid*, Hal. 111.

who are authorized under the law...” opens opportunities for other investigators according to the law to be granted permission to request information from the Bank. It can be analyzed that the legislators of Islamic banking laws are aware of the existence of other investigators in accordance with laws and regulations who are also entitled to obtain data about customers related to criminal acts that have occurred. However, in reality in the field, in the example of a criminal act by an unscrupulous TNI AD who violated Article 411 of the Criminal Code concerning adultery in 2018 in Banda Aceh, the BTN Syariah bank refused a request by the Military Police investigator from Pomdam Iskandar Muda to request customer data using the provisions of Article 42 paragraph 1 Law No.10 of 1998 which limits institutions that are allowed to request bank customer data. The BTN Syariah Bank in Banda Aceh does not use the provisions in Law No.21 of 2008 and the author has not explored further with the relevant bank regarding the reasons for not using the rules that underlie the implementation of Islamic banking in Indonesia.



Letter from BTN Syariah Bank regarding the rejection of requests for evidence

The several examples above clearly show that there is disharmony between existing norms as previously explained, which has led to conflicts over authority over the investigative process. Several things that can be seen related to this conflict include, firstly, there are constitutional rights of investigators in the Military Court environment, especially Military Police investigators granted by the 1945 Constitution, cannot be carried out as they should be due to the limitations of authority regulated in the Banking Law. Second, this conflict of authority is also specific and actual, namely related to investigations into military criminal violations by TNI Soldiers that have occurred and are the full jurisdiction of the Military Court and have the potential to occur again in the future. Third, the delay in the investigation process by Military Police investigators is a result of the existence of regulations in the Banking Law. This condition certainly cannot be maintained because it will lead to legal uncertainty so that a strategy is needed to be taken in realizing synchronization and harmonization between laws and regulations. According to the author, the first strategy that must be taken is through legal politics so that these problems can be resolved so as to guarantee legal certainty in the law enforcement process, moreover that investigation has a very strategic role in law enforcement and is a determinant of the success of law enforcement.

The way out through implementation of legal politics can be through policy formulation at the legislative level, namely by formulating existing laws and regulations as part of legal renewal, so that existing legal loopholes that cause disharmony can be synchronized and in line with realizing justice. The policy formulation that will be formulated later is of course not only related to the banking law but is

comprehensive in nature with laws and regulations by accommodating the authority of investigators in the military court environment because it is in accordance with the constitution and statutory regulations in the military court environment and is systematic *lex specialis*. The results of the formulation are expected to better reflect legal certainty and accommodate the authority of investigators in the military court environment, will indirectly improve the quality of existing laws and regulations and of course will directly increase the effectiveness of law enforcement because the sound of laws and regulations is clear and there is no need for other interpretations and can be carried out by law enforcement officials, especially military police investigators. Then by reformulating formal law, namely procedural law which is regulated separately in the Banking Law and involving legal instruments, it will also improve the performance of the legal structure to become more effective, especially in the context of authority among legal instruments in different judicial environments.

The second strategy that can be pursued more quickly than revising legislation is through a judicial review of Law No.10 of 1998, specifically the provisions of Article 42 paragraph 1 which limits institutions that are allowed to request bank customer data. H.M. Laica Marzuki explained that the review of laws that are the authority of the Constitutional Court is to examine the constitutionality of a law, examine the extent to which the law in question is in accordance with or contradicts (*tegengesteld*) with the Constitution. *Constitutie is de hoogste wet*. When the Constitutional Court considers a law to be contrary to the Constitution, the law does not have binding legal force.²⁰ In the above process, the TNI, TNI Legal Development Board and Investigators in the Military Court environment can act as subjects seeking justice or have legal standing to submit requests for review of laws before the Constitutional Court and fulfill the requirements stipulated in Article 51 paragraph (1) of the Law Law No. 24 of 2003 concerning the qualifications of the applicant as a party who considers that their constitutional rights and/or authorities have been impaired. Decision No.15/PUU-XIX/2021 of the Constitutional Court regarding the conflict of authority of PPNS within the Ministry of Environment and the TTPU Law can be a concrete example in making efforts to resolve conflicts of authority of Military Police investigators with the Banking Law through judicial review at the Constitutional Court so that it is hoped that by If there is a decision resulting from a judicial review regarding the conflict of authority mentioned above, then the constitutional losses experienced by Military Police Investigators will not or will no longer occur.

Conclusion

From the discussion that has been stated previously, the conclusions of this paper are: first, there are constitutional rights related to the position and authority of investigators in the Military Court environment, especially Military Police investigators granted by the 1945 Constitution, cannot be carried out properly in obtaining evidence from banks in the process of investigating cases Military Crime by unscrupulous TNI Soldiers and is the full jurisdiction of Military Courts because there are norms regulated in the Banking Law concerning limitations on investigators or officials who are given the authority to obtain evidence from banks and this clearly shows the existence of disharmony between norms and creates the phenomenon of legal uncertainty which in the end it will increasingly distance itself from the true purpose of law, namely justice. Second, the disharmony between the norms in the Law on Military Justice and the Law on Banking regarding the authority of Military Police investigators to obtain evidence from banks, will lead to discrimination for Military Police investigators who also have the duties and functions of law enforcement officers trying to find material truth in collecting tools. evidence of a crime, as well as causing chaos in law enforcement because it was triggered by overlapping laws and regulations and resulted in legal uncertainty.

²⁰ H.M. Laica Marzuki, "Judicial Review di Mahkamah Konstitusi", *Jurnal Legislasi Indonesia*, Vol.1 No.3, November 2004.

Suggestion

As a suggestion for input to the President and the DPR as legislators that in making special laws and regulations that are generally applicable and there are criminal rules and their formal rules, it is necessary to consider the mention of investigators in the Military Court environment, mentioned together with Polri Investigators and PPNS according to the scope of the rules made, bearing in mind that in the process of resolving cases of individual TNI Soldiers, there are constitutional rights of investigators within the Military Court environment granted by the 1945 Constitution which cannot be set aside or enforced using only applicable principles such as the *lex specialis derogat legi generalis* principle or the systematic *lex specialis* principle.

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