



THE AUTHORITY OF MILITARY COURT IN PUNISHMENT OF CORRUPTION ABUSE OF MILITARY HOUSING SAVINGS FUNDS

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ABSTRACT

The purpose of this research is to determine the authority of the main military court in prosecuting violations of military conscription savings funds. The research method used in this research uses a normative juridical approach. The results of the research stated that the sentence had been carried out by a judge based on the provisions regulated in the Criminal Code and the Corruption Eradication Law. The examination carried out by the judge from the examination at the court of first instance to the appeal level has not been carried out in the form of reverse evidence. This is related to civil interests, namely PLTN, which is a private legal entity related to housing procurement, only carries out its obligations as a company appointed by the Army TWP Organization for the construction of Army housing. The military criminal justice system needs to be developed so that military judges can give civilians the opportunity to provide reverse evidence, which is the NPP's right as a defendant who does not have TNI status.

A. INTRODUCTION

Analysis of the Institutional Position of Military Judges on the Independence of the Indonesian Military Judiciary. The Indonesian state is legitimate as mandated in the 1945 Constitution of the Republic of Indonesia as the highest basic law in this country. An explanation of this is contained in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that Indonesia is a legal state.¹ Indonesia currently has two different criminal justice systems, namely criminal court and military court for military members who have the competence and authority to try separately.² Determination of the status of evidence of

1 Irwan Sanjaya Putra., "Niken Wahyuning Retno Mumpuni, Analysis of the Institutional Position of Military Judges Against the Independence of the Indonesian Military Courts", *Jurnal Nurani Hukum: Jurnal Ilmu Hukum* 5, No. 2 (2022): 190-204

2 Jerymia Seky Tanaem, etc., "Dual Empire of Penal System: Examining the Military Court's Decision on Budget Misuse by Military Officer", *Indonesian Journal of Law and Society* 5, No. 1 (2024): 35-60

crimes in military courts has the same legal implications as in general courts.³ The predominant perception within Indonesian society is that the military justice system is primarily utilized to address matters pertaining to military law, particularly within the context of criminal law, which is considered applicable exclusively to military personnel. In essence, civilians are subjected to legal proceedings in district courts as defendants, whereas military members or soldiers undergo the examination process within military courts to determine their status as defendants. However, *de jure*, military law is given the authority to conduct examinations against civilians as regulated in Law No. 31 of 1997 concerning Military Justice.

The position before the law of a military member is no different from that of a citizen other, nevertheless the legal procedures that must be followed by members of the military those who violate the law or criminal acts are different from the people in general (civilian), because members of the Military are subject to Military justice and the general public is subject to general justice.⁴ These provisions that the Military Justice Act has the authority stipulated in Article 9 Paragraph (1), namely "Trying criminal acts committed by individual who at the time of committing a criminal act is: a. Soldier; b. Who by virtue of the law is equated with a soldier; c. A member of a class or ministry or agency or who is equated or regarded as a soldier by virtue of the law; d. A person who is not included in the categories in letters a, b, and c, but by decision of the Commander with the approval of the Minister of Justice must be tried by a Court within the military judicial system".

The provisions of Article 9 Paragraph (1) letter d of Law No. 31 of 1997 concerning Military Justice implicitly convey that civilians or citizens who are not members of the military can be examined if they commit a criminal offense. Meanwhile, the case will be further reviewed based on the Decree of the Commander with the approval of the Minister of Justice. This article is applied in this research case study, namely the decision given by the Main Military Court in Decision Number: 13-K/PMU/BDG/AD/III/2023, which stated that there was a state loss of IDR 34,375,756,533, used by YAK and IDR 80,333,490,434 used by NPP related to the misuse of TNI-AD Mandatory Housing Savings funds.

Decision Number: 13-K/PMU/BDG/AD/III/2023 is the result of an appeal filed by YAK and NPP who consider that the legal issues they face are not the competence or authority of the Military Court, even though this has been emphasized in their defense memorandum since the examination at the first level military court. The problematic is that there are interesting legal reasons to be studied scientifically in the order of criminal and administrative law. This includes an administrative examination of the cooperation between NPP, which is a legal entity or director of a company that can cooperate with YAK, who is the financial director of the Army

3 Irman Putra, Arief Fahmi Lubis., "The Status of Evidence Proceeds of Crime in General and Military Crimes", *International Journal of Multi Science* 1, No. 6, (2020): 54-64

4 Dava Prawira Wibowo., "The Decide Trials in Absentia in Desertion Crimes", *Ius Ponale* 4, Issue. 1, (2023): 60-74.

Mandatory Housing Savings Management Agency or abbreviated as BP TWP AD based on the Army Chief of Staff Regulation Number Perkasad/3/II/2009 dated February 12, 2009 concerning the Implementation of Mandatory Housing Savings Management and Procurement of Non-Service Housing for Army Personnel through KPR Swakeloka.

The explicit fact mentions that YAK is a retired soldier, but in this case, YAK had misused funds while still an active TNI-AD member, while NPP in this case is a civilian who owns a company under the name PT Griya Sari Harta (PT GSH), which manages TNI-AD housing development. BP TWP AD is money sourced from soldiers' salaries allocated in DIPA TNI-AD deducted through a banking mechanism of IDR 150,000, - (one hundred and fifty thousand rupiah) per month, then the management is handed over to the TWP AD, which is an Extra Structural organization of the TNI AD. This program was formed certainly for the welfare of TNI-AD soldiers and civil servants, but this was harmed by YAK and NPP in the misappropriation of TWP AD funds.

The interesting facts to study how far the authority of the military court in carrying out its role and function within the judicial power in the armed forces as confirmed in Article 8 Paragraph (1) of Law No. 31 of 1997 concerning Military Courts. The implementation of the law given by military court judges needs to be studied more deeply, whether the provisions taken by deciding for YAK and NPP must be examined and prosecuted in the realm of the military criminal justice system.

In previous research conducted by Fahrizal S. Siagian stated that Corruption committed in military institutions is clearly contrary to the rules of the laws in force in Indonesia, both special military rules and general rules. The Anti-Corruption Commission is obliged to comply with the National Criminal Corruption Law. The regulations governing the suppression of criminal acts of corruption in the military environment, both for individuals and institutions, have not specifically regulated the matter. There are no specific internal rules in the military environment regarding the financing of corruption in Indonesia.⁵ Furthermore, in her research, Yasmirah stated that in the legislation regarding the crime of corruption, the element of "abuse of authority" has been regulated and is even part of the core of corruption offenses. In Article 3 of Act No. 31 of 1999 in conjunction with Act No. 20 of 2001 concerning the Eradication of Corruption. From the formulation of Article 3, it can be seen that the element of "abuse of authority" is a core part of the corruption offense. The problem is that the concept of abuse of authority in this offense is not further explained.⁶

Considering this whole problem, it is necessary to study further the authority of the military court in examining cases of corruption committed by retired Army soldiers and civilians, who have private legal entities, even the

5 Fahrizal S. Siagian, Saied Firouzfaz, Najuasah Putra., "The Obligation of Military Institutions to Comply with the Anti-Corruption Act", *Mulawarman Law Review* 8, Issue. 2 (2023): 1-15

6 Yasmirah Mandasari Saragih, Tengku Riza Zarzani., "The Law Enforcement of Corruption Crimes in Terms of Authority Abuse", *IJLR: International Journal of Law Reconstruction* 7, No. 1 (2023): 54-62

AD Mandatory Housing Savings (TWP AD) finances audited by BPKP that are denied by the defendants as not part of the state loss because the source of funds from TWP AD is monthly salary deductions belonging to soldiers who are members of TWP AD, namely non-service housing established by the Army unit for the welfare of the Indonesian Army/TNI. This analysis is able to help the confusion of these issues, which was reviewed based on applicable legal provisions.

The purpose of this research is to determine the authority of the main military court in adjudicating violations of military conscript housing savings funds so that it can be useful in the development of legal knowledge regarding abuse of authority.

B. RESEARCH METHODS

This research method is normative juridical, normative legal research in Indonesia still tends to be preferred for solving legal problems or cases using deductive reasoning.⁷ This type of research stems from a normative premise that is self-evident. Fourth, the concept of law as positive norms in the national legislation system. This type of research looks at law as it is written in books using logical deduction means to build a positive legal system. Fifth, the legal concept is decided in concreto and systematized as a judge through judicial processes using the doctrinal research method.⁸

C. RESULTS AND DISCUSSION

1. The Consideration of Judges in the Decision of the Main Military Court Case

The study of each decision needs to be further analyzed in the judge's consideration by providing an overview of the authority of the judge examining the case to the implementation of the law carried out by the scope of judicial power, the truth or error that needs to be reviewed more deeply related to all aspects in providing punishment to each convict. Every process of examining every person will certainly face a criminal law enforcement policy that goes through four processes/stages (investigation, prosecution, court decisions, and implementation/execution of decisions). Each stage/process is a subsystem of the entire criminal justice system (SPP). Hence, an integrated SPP consists of 4 (four) subsystems, namely investigation agency/institution, prosecution agency/ institution, court agency/institution, and decision/ criminal execution agency/institution.⁹ The integrated SPP with these four stages, what about the sub-system within the military justice system which is specific to the scope of the

7 Tunggul Ansari Setia Negara., "Normative Legal Research in Indonesia: Its Origins and Approaches", *ACLJ: Audito Comparative Law Journal* 4, Issue. 1 (2023): 1-9

8 Afif Noor., "Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research", *Jurnal Ilmiah Dunia Hukum* 7, Issue. 2 (April 2023): 94-112

9 Barda Nawawi Arif., *Kapita Selekta Hukum Pidana tentang Sistem Pidana Terpadu (Integrated Criminal Justice System)*, (Semarang: Diponegoro University Publishing Board, 2011): 25.

Armed Forces even though basically military justice is within the judicial power.

The Indonesian Encyclopedia understands military law as a system of jurisprudence that provides policies and regulations for the armed forces and civilians under military rule. starting from the process of examination, investigation and prosecution until the court follows the military criminal procedure law.¹⁰ In addition, the narrow understanding of military criminal law is military justice, but if examined more broadly, that, Military government, State of war law, namely the implementation of military jurisdiction without written legal authority for a while by a government over the civilian population of an area through the armed forces, the term in Indonesia is SOB (Staat van Oorlog en Beleg) or known as Martial Law, and The exercise of military jurisdiction over military units stationed in the Region in a friendly country in peacetime.¹¹

The term military comes from the Greek "*miles*", which means someone who is given a weapon and has the ability to fight, particularly in the context of defense and security of a country.¹² The military is juridically further regulated in Law No. 31 of 1997 concerning Military Justice, but the legislation is more familiar with the term soldier, which is defined in Article 1 point 42 of Law No. 31 of 1997 concerning Military Justice, namely "Soldiers of the Armed Forces of the Republic of Indonesia, hereinafter referred to as Soldiers, are citizens who meet the requirements stipulated in the provisions of laws and regulations, and are appointed by authorized officials to devote themselves to the defense of the country by bearing arms, willingly sacrificing body and soul, and participating in national development and being subject to military law."

As for some groups including the authority of the military to be examined if there is a legal problem, the military court has the authority to adjudicate as follows Soldier, those who by law are equated with soldiers, Member of a class or ministry or agency or what is equated or considered as a soldier by law, Law enforcement in the Military Court System in the settlement of criminal cases committed by TNI soldiers is seen as not yet fully guaranteeing legal protection for the rights of suspects, this is due to the absence of a control agency that oversees the actions of law enforcement officers in carrying out their duties and authorities as is the case in the system.¹³

10 Asep Suherdin and Maryanto., "Analysis of Law Enforcement to Drugs Criminal Act in Military Environment (Case Study in Jurisdiction of Military Court II/09 Bandung)", *Jurnal Daulat Hukum 2*, Issue. 4 (December 2019): 507-512

11 Van Hoeven., *Encyclopedia Indonesia Ichtiah Baru*, (Jakarta, 1984): 2247.

12 Nikmah Rosidah., *Military Justice Law*, (Bandar Lampung: CV. Anugrah Utama Raharja, 2019): 3

13 Sugeng Sutrisno., "Pre-Trial in the Criminal Justice System in Military Criminal Judges in Indonesia", *International Journal of Business and Social Science Research 2*, Issue. 11 (2021): 1

Besides the groups that are included in the realm or authority of the military court, there are several principles of military criminal procedure law, namely, the principle of unity of command, in the organizational structure of a commander has a central position and is fully responsible for his unit and subordinates so that the commander is given the authority to submit cases for the settlement of criminal cases. In addition, military criminal procedure law does not have the institution of compensation and rehabilitation, the principle of commanders being responsible for their subordinates. This principle explains that the function of a commander is multifunctional, namely as a leader, teacher, parent, family, so a commander must be fully responsible for the unit and his subordinates, the principle of military interests, this principle is in the implementation of defense and security. Military interests are more important than group and individual interests, but in the judicial process the interests of the law take precedence. The Indonesian National Army is aware is part of the modern warfare used by the enemy to attack a country. Modern warfare now no longer uses armed power.¹⁴

The criminal law that applies to the military personally if one of the military members commits a crime or violation of the law, then the provisions referred to in this case are the Criminal Code or Law No. 1 of 1946 concerning Criminal Law, which has been amended into Law No. 1 of 2023 concerning Criminal Law. Criminal law is defined as a collection of legal laws that establish the illegal activities, the punishments for those who conduct them, the procedures that the defendant and his court must follow, and the punishment inflicted on the offender.¹⁵

The term general criminal offense is called *delicta communia* with the meaning of criminal offense. In the Criminal Code clause at the beginning of the editorial uses the word "whoever", while the term in a special criminal offense is *delicta propria*.¹⁶ In the scope of military criminal law, the provisions of general criminal offenses still apply to soldiers who have been regulated in Article 1 of the KUHPM, which states that the implementation of the KUHPM applies the provisions of general criminal law. The definition of pure military crime itself is a prohibited or required act, which in principle is only violated by soldiers, in other words, criminal acts committed by soldiers due to special circumstances.¹⁷

Criminal Justice System in general criminal is essentially a system of power to enforce criminal law, In modern societies, the effectiveness

14 Syamsuel Hoeda, M. Arief Amrullah & Y.A. Triana Ohoiwutun., "The Principles of Military Necessity on Dismissal Punishment towards Soldiers on Drug Abuse", *International Journal of Creative Research and Studies* 3, Issue. 12 (2019): 10-21

15 Nur Rohim Yunus, Amrizal Siagian, Fitriyani Zein., "Criminal Law System in Indonesia and Its Comparison with Other Legal Systems", *SALAM: Jurnal Sosial dan Budaya Syar-I* 9, No. 2 (2022): 573-594

16 Moeljatno and Marliman Prodjohamidjojo., *Memahami Dasar-Dasar Hukum Pidana Indonesia* 2, cet.3, (Jakarta: Pradnya Paramita, 1997): 5.

17 Sianturi, S.R., *Military Criminal Law in Indonesia*, (Jakarta: AHMPH Alumni, 1985): 19

of legal systems isn't just about punishment but also about transforming and helping offenders improved.¹⁸ The order of the military criminal justice system remains through the four sub-systems of the justice system, but the law enforcement component is different because the military adheres to the principle of unity of commanders, so that Article 74 of the Military Justice Law confirms that the Superior Authorized to Punish or known as Ankum. Then, the next stage of the power of investigation is carried out by Aknum and the Military Police, then the power of prosecution is carried out by military prosecutors, the power to try and impose decisions/sentences is carried out by military judges, and the power to execute decisions/sentences is carried out by military correctional facilities or known as masmil.¹⁹ Therefore, every person who goes through the process in the military criminal justice system will face the overall judicial power of the military or armed forces.

This research case study is related to the decision of the Main Military Court Number: 13-K/PMU/BDG/AD/III/2023, namely the appeal decision on the misuse case of funds committed by YAK, who is a retired officer with the last rank of Brigadier General of the TNI and NPP, who is a civilian and owns a company with the position as President Director of PT Griya Sari Harta (PT GSH). As for some of the facts revealed in the trial of the first level court, the Decision of the High Military Court II Jakarta Number: 21-K/PMT.II/AD/II/2022 conveyed that YAK and NPP worked together to procure TNI-AD housing for their negligence resulting in state losses with the results of the audit of the Financial and Development Supervisory Agency (BPKP) amounting to IDR 133.763.305.600, - so that YAK and NPP were determined as convicted of corruption based on Article 2 Paragraph (1) jo Article 18 of Law No. 31 of 1999 concerning Eradication of Corruption as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption jo Article 55 Paragraph (1) to 1 Criminal Code jo Article 64 Paragraph (1) Criminal Code.

YAK committed the crime of corruption together with NPP, during his active period as a soldier who has an obligation to submit to military law as stipulated in Article 1 point 42 of the UUPM. In 2019, YAK served as Director of Finance in the TWP-AD Organizational structure, which was formed based on the Decree of the Chief of Staff of the Army (Kasad) with No: KEP/74/XII/2004 dated 30 December 2004 concerning the Organization and Duties of the Army Mandatory Housing Savings Management Agency (Orgas BP TWB AD). The regulations for the organization are regulated in the Army Chief of Staff Regulation No: Perkasad/3/II/2009 concerning Guidelines for the Implementation of Management of Mandatory Housing Savings and Procurement of Non-Service Housing for Army Personnel through Self-Managed Mortgage as

18 Illan Barriola, Bruno Deffains, and Olivier Musy., "Law and Inequality: A Comparative Approach to the Distributive Implications of Legal Systems", *International Review of Law and Economics* 75, No. 22 (2023): 2

19 Nikmah Rosidah., *Military Justice Law, Op.Cit.* : 58-64

amended by the Decree of the Army Chief of Staff No: 181/III/2018 dated March 12, 2018 concerning Management of Mandatory Housing Savings and Distribution of Self-Managed Home Ownership Loans (KPR) for Army Personnel, funds from the AD TWP are sourced from the salaries of soldiers who participate in the AD TWP program of IDR 150,000 per month.

In 2019, there was cooperation between the BD TWP AD Orgas represented by YAK as Finance Director and NPP for the construction of AD houses by opening deposits in banks, which made YAK and NPP misuse TWP AD funds and caused state losses of IDR 133,763,305,600, - the results of the BPKP audit.

In this case, the examination was conducted in the realm of military justice concerning the implementation of the principle of *lex specialis derogate legi generali*, which pertains to how special provisions, such as examination in the realm of military justice override general provisions or examination in the realm of the Corruption Court, including in the general judicial classification. This is because the subject and object of the case is the judicial power of the military court, so this case is tried in a military court. Moreover, YAK, who is the defendant in this case, is a brigadier general, so the court that has the authority is the High Military Court based on the Explanation of Law No. 31 of 1997 concerning Military Justice. In addition, it is stated in the Explanation of the UUPM that in general the position of judges in military courts has privileges in the form of independence in carrying out their duties compared to other sub-systems of judicial power of military courts. There are several legal considerations given by judges in the power of military courts, namely, The legal considerations provided by the court of first instance in relation to the misappropriation of funds committed by YAK and NPP for the fulfillment of the primair charge, namely Article 2 Paragraph (1) jo Article 18 of Law No. 31 of 1999 on the Eradication of Corruption as amended by Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of Corruption jo Article 55 Paragraph (1) to 1 of the Criminal Code jo Article 64 Paragraph (1) of the Criminal Code with six elements of the crime, as follows, The fulfillment of the first element "every person", this element means a legal subject in the form of a person or legal entity, including a corporation regulated in Article 1 point 3 of the Anti-Corruption Law, which means that a natural person is an individual or in construction referred to as a human being and is commonly known in legal construction as a *natuurlijke person*.²⁰ The fulfillment of this element for the defendants is a legal subject that has a relationship in the TWP AD case, The fulfillment of the second element "unlawfully" is associated

20 Hisar Sitohang, Martono Anggusti, Uton Utomo., "Legal Analysis of Corruption Crime with Abuse of Position in the Form of Active Bribery (Study of Decision Number: 195/PID.SUS/TPK/2017/PN SBY)", *PATIK: Journal of Law* 07, No. 02 (August 2018): 81.

with criminal responsibility that must be imposed on the perpetrator of the crime for the basis of imposing a criminal offense.²¹

The fulfillment of this element is due to the unlawful act committed by YAK and NPP in using TWP AD funds without approval from the Head of the Army and not supported by valid administration, as for the fact that TWP AD funds were transferred from TWP funds to YAK's personal account and made credit guarantees in the form of *Cash Collateral Credit* facilities without the knowledge of superior approval, thus ignoring Article 8 Paragraph (1) letter c of Head of the Army Regulations No.60 of 2014 concerning the TWP AD Orgas, namely receiving and distributing TWP AD funds in accordance with applicable procedures. In fact, the deposit of funds from BNI Bank is a disbursement of funds from a deposit with state financial guarantees that have been misused by YAK and NPP, The third element, "the act of enriching oneself or another person or a corporation", is fulfilled, as the defendants acted for their own benefit by enriching themselves through disbursing funds three times not in the name of TWP AD but in the personal account of YAK as the Finance Director of the BP TWP AD Orgas, The fulfillment of the fourth element "may harm the state finances and/or the state economy", that there are audit results from the BPKP representative of DKI Jakarta, which has the mandate or representation of the state. Thus, it has the authority to declare the value of state losses for the misuse of TWP AD funds committed by YAK and NPP before the military court, the fulfillment of the first element "committed jointly or individually", in this element based on Article 55 Paragraph (1) of the Criminal Code so that it can be reviewed with the decision of the Hoge Raad Number: W.12851, which argues related to acts committed jointly or individually, namely "if the two participants have directly cooperated to carry out their plan and the cooperation is so complete and perfect that it is unimportant, which of them has then completed their crime".²²

Based on the judge's consideration, the actions of the defendants were carried out in collaboration, namely the beginning of the disbursement until the procurement of housing was carried out together without the approval of the superiors of YAK. The fulfillment of the sixth element "committed in several acts as a continuous act", that there are acts committed jointly and continuously, namely with the entire disbursement of TWP AD funds not disbursed to the TWP AD account but an account in the name of YAK or the 1st defendant and after that transferred to the account of the 2nd defendant, namely NPP in a continuous manner.

The fulfillment of the six elements of the indictment submitted by the prosecutor and based on the overall considerations presented by the judge of the court of first instance gave a decision by trying the

21 *Ibid*, :79

22 Leden Marpaung., *Principles of Criminal Law Theory and Practice*, (Jakarta: Sinar Grafika, 2005): 82

defendant on behalf of YAK, namely the main punishment: imprisonment for 16 years, stipulating that the time the defendant is in temporary detention is deducted in full from the sentence imposed and a fine of IDR 750,000,000, - If the fine is not paid, it will be replaced by imprisonment for six months. Furthermore, additional punishment is used to pay restitution for state financial losses in the amount of IDR 34,375,756,533, - no later than one month after the court's decision has obtained permanent legal force and if within that period the defendant does not pay the restitution, his property will be confiscated by the military prosecutor and auctioned to cover the restitution, and if the defendant does not have sufficient property to pay the restitution, he will be sentenced to imprisonment for four years.

The main punishment received by the defendant on behalf of NPP is imprisonment for 16 years, stipulating that the time the defendant is in temporary detention is fully deducted from the sentence imposed and a fine of IDR 750,000,000, - If the fine is not paid, it will be replaced by imprisonment for six months. In addition, the additional punishment is to pay restitution for state financial losses in the amount of IDR 80,333,490,434- no later than one month after the court's decision has obtained permanent legal force and if within this period, the defendant does not pay the restitution, his property will be confiscated by the military prosecutor and auctioned off to cover the restitution, and if the defendant does not have sufficient property to pay the restitution, he will be sentenced to imprisonment for six years.

The legal considerations given by the main military judge of the opinion that all matters proven by the criminal offense at the trial court examination could be upheld because the appellate judge assessed the actions committed by the defendant as follows, The misuses of funds committed by the defendant was immoral and selfish, resulting in the misuses of funds for the welfare of soldiers, the defendant's actions did not support the government's program to clean up *KKN* (Corruption, Collusion and Nepotism), The crime committed by the defendant will have an impact on the TNI/Civil Servants who do not trust the community by developing housing to purchase land in the community;

On these three grounds decision, the court of first instance was upheld and several of the rulings of the court of first instance were amended, in conclusion the judge of the Main Military Court rendered a decision by ruling to formally accept the appeal filed by the defendants on behalf of YAK and NPP. In addition, the judge also formally accepted the appeal filed by the High Military Oditurate at the High Military Oditurate II Jakarta.

In the decision given by the Main Military Court, the decision of the Jakarta High Military Court II Number: 21-K/PMT.II/AD/2022 dated January 31, 2023 was amended, only regarding fines, additional imprisonment for restitution and the status of the defendants' evidence. The main punishment received by YAK is imprisonment for 16 years, and stipulates that the time the defendant is in temporary detention,

which is deducted in full from the sentence imposed and a fine of IDR 1,000,000,000,- If the fine is not paid, it will be replaced by imprisonment for one year. As for compensation, there is no change, but if within a period of time YAK is unable to return the state losses, it will be sentenced to imprisonment for five years.

This addition is also applied to NPP, namely by increasing the basic punishment of imprisonment to 16 years, and stipulating that the time the defendant is in temporary detention is deducted in full from the sentence imposed and a fine of IDR 1,000,000,000, - If the fine is not paid, then it is replaced by imprisonment for one year. Related to the additional punishment in paying compensation for state financial losses is still the same in the amount of IDR 80,333,490,434- but if within a period of time YAK cannot return the state losses, it will be sentenced to imprisonment for seven years.

2. The Review of Analysis of the Implementation of Law in Decision Number: 13-K/PMU/BDG/AD/III/2023

The implementation of military law in decision Number: 13-K/PMU/BDG/AD/III/2023 which strengthens decision Number: 21-K/PMT.II/AD/2022 states *de jure* and *de facto* that the military court has full authority to examine the case of corruption of the Army TWP funds committed by YAK and NPP since 2019 until the examination is carried out in 2022. The examination carried out by YAK and NPP is a criminal offense that causes the value of state losses in the military area so that the examination carried out in resolving this case is carried out based on Article 8 Paragraph (1) of the UUPM carried out within the scope of the military, namely the Armed Forces by implementing the principle of *lex specialist derogate legi generali*. Therefore, the military court has the authority to conduct an examination before the court by carrying out all legal processes based on the military criminal justice system stipulated in the UUPM.

The study of the authority of military judges to examine the defendants, namely YAK is a retired soldier, while NPP is a civilian. The researcher assumed in this scope that YAK committed a criminal offense while carrying out his duties as an active soldier, while NPP is a civilian who has an interest in the military scope, namely the construction of Army housing, which is hampered so that the military court has the authority to examine both Article 9 Paragraph (1) letter d UUPM, the approval of the Minister of Justice for the Decree of the TNI Commander. The NPP is basically a civilian, but the object that makes him convicted of the crime of corruption is the scope of the military.

The military judge in his decision said that the source of funds for the AD TWP is the salary of AD soldiers allocated in the DIPA of the Army, which is deducted through a direct mechanism of IDR 150.000,- per month. DIPA or Budget Implementation List is regulated in Defense Regulation Number 16 of 2014 concerning the State Defense Program

and Budget System, that DIPA TNI AD²³ is a budget prepared by the budget user²⁴, namely the Minister of Defense. This confirms that it is included in the *APBN* (Budget Revenue and Expenditure Goods) which then its management certainly follows the provisions stipulated in Law No. 17 of 2003 concerning State Finance which confirms the nature of the APBN must be managed in an orderly manner, obeying applicable legal provisions, efficient, economical, open, effective, and responsible with due regard to a sense of justice and order.²⁵

In addition, the Army TWP was established based on the Decree of the Chief of Staff of the Army (Kasad) with No: KEP/74/XII/2004 dated 30 December 2004 concerning the Organization and Duties of the Army Mandatory Housing Savings Management Agency (Orgas BP TWB AD). Regulations on the organization are regulated in the Army Chief of Staff Regulation No: Perkasad/3/II/2009 concerning Guidelines for the Implementation of Management of Mandatory Housing Savings and Procurement of Non-Service Housing for Army Personnel through Self-Managed Mortgage as amended by Decree of the Army Chief of Staff No: 181/III/2018 dated March 12, 2018 concerning Management of Mandatory Housing Savings and Distribution of Self-Managed Home Ownership Loans (KPR) for Army Personnel, so that in conclusion, the TWP AD funds are part of state finances. Then, the consequences of the criminal acts committed by YAK and NPP are part of the criminal act of corruption that harms state finances.

In addition, in military law, the main principle in military law applies, namely the principle of unity of command, so that financial management in the military sphere should be under the orders of the head of the unit that issued the Decree, and the military scope of unity of command must be upheld for the sake of the main military interests.

D. CONCLUSION

The aim of the research carried out to determine the authority of the main military court in adjudicating violations of military conscription savings funds and the results obtained are that the judge's considerations are stated in the decision of the Main Military Court Number: 13-K/PMU/BDG/AD/III/2023 which strengthens decision Number : 21-K/PMT.II/AD/2022 by providing additional grounds and additional penalties have been implemented by the judge based on the provisions regulated in the Criminal Code and the Corruption Eradication Law. In addition, the military judiciary has the authority to examine cases of misuse of the Army's Compulsory Military Savings Fund (TWP) carried out by YAK and NPP, by applying the principle of *lex specialist derogate legi generali* and the principle of unity of command. The examination carried out by the judge from the examination at the court of first instance to the appeal level has

23 Article 1 point 34 of the Minister of Defense Regulation No. 16 of 2014 on the State Defense Program and Budget System.

24 *Ibid*, Article 1 point 7

25 Article 3, Law No. 17 of 2003 on State Finance.

not been carried out in the form of reverse evidence. This is related to civil interests, namely PLTN, which is a private legal entity related to housing procurement, only carries out its obligations as a company appointed by the Army TWP Organization for the construction of Army housing. The military criminal justice system needs to be developed so that military judges can provide opportunities for civilians to carry out reverse evidence, which is the NPP's right as defendants who do not have TNI status.

BIBLIOGRAPHY

Books:

- Barda Nawawi Arif., *Kapita Selekta Hukum Pidana tentang Sistem Pidana Terpadu (Integrated Criminal Justice System)*, Semarang: Diponegoro University Publishing Board, 2011.
- Leden Marpaung., *Principles of Criminal Law Theory and Practice*, Jakarta: Sinar Grafika, 2005.
- Moeljatno and Marliman Prodjohamidjojo., *Memahami Dasar-Dasar Hukum Pidana Indonesia 2*, cet.3, Jakarta: Pradnya Paramita, 1997.
- Nikmah Rosidah., *Military Justice Law*, Bandar Lampung, CV. Anugrah Utama Raharja, , 2019.
- Sianturi, S.R., *Military Criminal Law in Indonesia*, Jakarta: AHMPPTHM Alumni, 1985.
- Van Hoeven, *Encyclopedia Indonesia Ichtiar Baru*, Jakarta, 1984.

Journals:

- Afif Noor., "Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research", *Jurnal Ilmiah Dunia Hukum* 7, Issue. 2 (April 2023).
- Asep Suherdin and Maryanto., "Analysis of Law Enforcement to Drugs Criminal Act in Military Environment (Case Study in Jurisdiction of Military Court II/09 Bandung)", *Jurnal Daulat Hukum* 2, Issue. 4, December 2019.
- Dava Prawira Wibowo., "The Decide Trials in Absentia in Desertion Crimes", *Ius Ponale*, Vol 4 Issue 1, 2023.
- Fahrizal S. Siagian, Saied Firouzfah, Najuasah Putra., "The Obligation of Military Institutions to Comply with the Anti-Corruption Act", *Mulawarman Law Review* 8, Issue. 2 (2023).
- Hisar Sitohang, Martono Anggusti, Uton Utomo., "Legal Analysis of Corruption Crime with Abuse of Position in the Form of Active Bribery (Study of Decision Number: 195/PID.SUS/TPK/2017/PN SBY)", *PATIK: Journal of Law* 07, No. 02 (August 2018).

- Illan Barriola, Bruno Deffains, and Olivier Musy., "Law and Inequality: A Comparative Approach to the Distributive Implications of Legal Systems", *International Review of Law and Economics* 75, No. 22 (2023).
- Irman Putra, Arief Fahmi Lubis., "The Status of Evidence Proceeds of Crime in General and Military Crimes", *International Journal of Multi Science* 1, No. 6 (2020).
- Irwan Sanjaya Putra, Niken Wahyuning Retno Mumpuni., "Analysis of the Institutional Position of Military Judges Against the Independence of the Indonesian Military Courts", *Jurnal Nurani Hukum: Jurnal Ilmu Hukum* 5, No. 2 (2022).
- Jerymia Seky Tanaem, etc., "Dual Empire of Penal System: Examining the Military Court's Decision on Budget Misuse by Military Officer", *Indonesian Journal of Law and Society* 5, No.1 (2024).
- Nur Rohim Yunus, Amrizal Siagian, Fitriyani Zein., "Criminal Law System in Indonesia and Its Comparison with Other Legal Systems", *SALAM: Jurnal Sosial dan Budaya Syar-I* 9, No.2 (2022).
- Sugeng Sutrisno., "Pre-Trial in the Criminal Justice System in Military Criminal Judges in Indonesia", *International Journal of Business and Social Science Research* 2, Issue. 11 (2021).
- Syamsoel Hoeda, M. Arief Amrullah & Y.A. Triana Ohoiwutun., "The Principles of Military Necessity on Dismissal Punishment towards Soldiers on Drug Abuse", *International Journal of Creative Research and Studies* 3, Issue. 12 (2019).
- Tunggul Ansari Setia Negara., "Normative Legal Research in Indonesia: Its Origins and Approaches", *ACLJ: Audito Comparative Law Journal* 4, Issue. 1, (2023).
- Yasmirah Mandasari Saragih, Tengku Riza Zarzani., "The Law Enforcement of Corruption Crimes in Terms of Authority Abuse", *IJLR: International Journal of Law Recontruction* 7, No. 1, (2023).