

## Peradilan militer dalam kekuasaan kehakiman di Indonesia: studi tentang kedudukan dan yurisdiksinya periode 1945-2008

Buaton, Tiarsen, author

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### Abstrak

#### <b>ABSTRAK</b>

Sistem peradilan militer yang berlaku di dunia berbeda-beda antara satu negara dengan negara lain. Ada ahli yang menggolongkan sistem peradilan militer didasarkan pada tiga sistem hukum yang berlaku di dunia ini, yaitu common law system, roman law system dan socialist law system. Namun beberapa ahli yang lain menggolongkan sistem peradilan militer berdasarkan kewenangan mengadili atau yurisdiksi dari pengadilan militer itu sendiri menjadi empat golongan yaitu (1) peradilan militer mempunyai yurisdiksi bersifat umum, (2) Peradilan militer mempunyai yurisdiksi umum yang berlaku secara temporer, (3) Peradilan militer mempunyai yurisdiksi terbatas pada kejahatan militer dan (4) peradilan militer mempunyai yurisdiksi hanya pada saat perang atau operasi militer. Kebanyakan peradilan di berbagai negara lebih menganut pada sistem peradilan militer yang berwenang mengadili kejahatan secara umum Rencana DPR untuk mengubah system peradilan militer dengan membatasi yurisdiksi peradilan militer hanya terbatas mengadili kejahatan militer menimbulkan pro dan kontra, dimana masing masing mempunyai alasan yang berbeda. Penelitian ini menjadi penting untuk memberikan pertimbangan dan masukan kepada DPR dan Pemerintah dalam rangka menyusun Rancangan Undang Undang Peradilan Militer yang baru dan sekaligus memberijawaban atas beberapa pertanyaan berikut ini. Pertama, bagaimana kedudukan dan yurisdiksi peradilan militer di Indonesia setelah ditetapkannya Undang-Undang Nomor 4 Tahun 2004 tentang Kekuasaan Kehakiman. Kedua, bagaimanakah kedudukan asas-asas militer yang? merupakan bagian dari asas-asas peradilan militer seperti asas kesatuan komando, komandan bertanggungjawab terhadap anak buahnya dan asas kepentingan militer, apabila prajurit yang melanggar tindak pidana umum diadili pada peradilan umum. Ketiga, sistem Peradilan Militer yang bagaimanakah yang seyogyanya diterapkan di Indonesia. Dari hasil penelitian ini dapat ditarik beberapa kesimpulan sebagai berikut: Pertama, bahwa setelah ditetapkannya UU No 4 Tahun 2004 tentang Kekuasaan Kehakiman dimana Peradilan Militer berada di bawah kekuasaan Mahkamah Agung, telah membuat peradilan militer semakin independen dan imparial, sehingga tidak perlu lagi mengubah sistem peradilan militer yang ada saat ini. Secara umum dapat dikatakan bahwa pengadilan umum tidak tepat untuk mengadili tindak pidana yang dilakukan oleh prajurit. Pengadilan militer tetap dibutuhkan untuk menegakkan standard disiplin militer karena militer dianggap sebagai komuniti khusus, yang mempunyai disiplin khusus, yang mempertaruhkan nyawanya untuk mempertahankan kedaulatan Negara . Kedua, bahwa asas-asas peradilan militer yaitu asas kesatuan komando, asas komandan bertanggungjawab terhadap anak buahnya dan asas kepentingan militer merupakan asas yang harus ada dalam sistem peradilan militer selain asas umum yang terdapat dalam peradilan umum. Apabila asas tersebut tidak berlaku maka fungsi komandan selaku Anjum/Papera juga tidak berlaku lagi. Demikian juga fungsi pembinaan yang dilakukan oleh komandan selaku Pembina disiplin akan berkurang atau sama sekali hilang sehingga ketaatan prajurit akan berkurang terhadap komandan. Selanjutnya apabila ketaatan berkurang maka disiplin prajurit juga akan berkurang. Dan apabila disiplin berkurang maka efisiensi, kesiapan dan efektifitas

pasukan akan sulit dicapai; Ketiga, bahwa sistem peradilan militer yang seyogyanya diterapkan di Indonesia adalah sistem peradilan militer yang sesuai dengan budaya militer Indonesia dimana Peradilan Militer masih tetap mempunyai yurisdiksi untuk mengadili kejahatan militer dan kejahatan umum.

#### *<i><b>ABSTRACT</b></i>*

There is no the same military court system in the world. Every state has its own military system. Some experts make the classification of the military justice system on the three main existing system of law, that is, common law system, roman law. system and socialist law system. However the other experts suggested a classification based on the jurisdictional powers of military courts. They distinguished four different system as follows: (1) one in which military courts have general jurisdiction; (2) one in which they have general jurisdiction on a temporary basis; (3) one in which jurisdiction is limited to military offences; and (4) one in which they have jurisdiction solely in time of war or military operation. Beside these two classification, there are another types of military jurisdiction: firstly, the traditional kind, based on the principle of 'he who gives the orders sits in judgement' made up of members of military and endowed with broad jurisdictional powers; secondly, one in which military justice is incorporated into ordinary jurisdiction as a specialized branch of the latter; and, thirdly, one in which military justice is abolished in peacetime. According to the Act Number 31/ 1997 concerning Military Court, the military justice System in Indonesia has general jurisdiction and is incorporated into ordinary jurisdiction. It means that Indonesian Military court has general jurisdiction to try civil offences and military offences. The plan of the Council of Indonesian Representative to limit the military court jurisdiction just to try military offences has caused different opinion between the government and the Council. This dissertation is conducted in order to give the answer of the three questions, that is: first, how is the occupation and the jurisdiction of Indonesian Military Court after the Act Number 4/ 2004 concerning The Judicial Authority; Secondly, how is the military principles as the part of the principles of military court such as the principle of unity of command, the principle of every commander be responsible for this subordinate, and the principle of military necessity; and, thirdly, which court system is suitable to be implemented in Indonesia. The research has been done by using the methodology of normative to analyze the development of Indonesian Military Court jurisdiction after Indonesian Independence until 2008. After conducting research and making descriptive and prescriptive this dissertation has made some conclusion. First, after concluding the Act Number 4/2004 concerning the Judicial Power, in which the position of military court is under the Supreme Court has made the military court become more independent and impartial, free from command intervention.. So, no need to change the jurisdiction of Military court. It can be mentioned that the involvement of civilian court to try the military would be detrimental to morale and discipline of military as a special community and would thus pose grave danger to national security. Secondly, all the principles of military court that is, the principle of unity of command, the principle of every commander be responsible for his subordinate, and the principle of military necessity should exist in military judicial system beside the general principle of civil court. If those principles are not available, the role of the commander as the senior officer that has authority to condemn his subordinate does not function. if it happens, the efficiency, the readiness and the effectiveness of military unit will be difficult to be achieved.. Third, the military judicial system implied in Indonesia should be in accordance with the military culture in which the military court still has the jurisdiction to try the member of military who conducts either military offences or civil offences.</i>