



# Crimination of Acts of Violence Which Performed Arbitrarily for Superiors Against Underboards in the Military Environment

Anggriani Wau  
Faculty of Law, Universitas Indonesia Maju, Indonesia

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## ARTICLE INFO

### Article history:

Received Jun 28, 2023  
Revised Jul 05, 2023  
Accepted Jul 29, 2023

### Keywords:

Acts of Violence;  
Arbitrarily;  
Military Environment;  
Sentencing;  
Superior;  
Subordinate.

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## ABSTRACT

This research aims to investigate the process of prosecution for arbitrary acts of violence committed by superiors against subordinates in the military environment. The study will employ a qualitative approach by collecting data through interviews with key informants who have experiences in the military environment, such as military legal experts, military personnel, and victims of violent acts. Data will also be gathered through a literature review on military policies and laws related to cases of violence by superiors against subordinates. The findings of this research will provide a clear overview of the prosecution process for acts of violence in the military environment and identify the factors that influence the success or failure of such processes. This study will also provide policy recommendations to enhance the effectiveness of prosecuting acts of violence by superiors in the military environment and pave the way for further research on human rights issues in the military context.

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## ABSTRAK

Penelitian ini bertujuan untuk menginvestigasi proses pemidanaan terhadap tindakan kekerasan yang dilakukan oleh atasan secara semena-mena terhadap bawahan di lingkungan militer. Studi ini akan menggunakan pendekatan kualitatif dengan mengumpulkan data melalui wawancara dengan informan kunci yang berpengalaman di lingkungan militer, seperti para ahli hukum militer, anggota militer, serta korban tindakan kekerasan. Selain itu, data juga akan dikumpulkan melalui studi literatur terkait kebijakan militer dan hukum yang terkait dengan kasus tindakan kekerasan oleh atasan terhadap bawahan. Hasil dari penelitian ini akan memberikan gambaran yang jelas mengenai proses pemidanaan terhadap tindakan kekerasan di lingkungan militer dan faktor-faktor apa saja yang mempengaruhi keberhasilan atau kegagalan proses tersebut. Studi ini juga akan memberikan rekomendasi kebijakan untuk meningkatkan efektivitas pemidanaan terhadap tindakan kekerasan oleh atasan di lingkungan militer, serta membuka jalan untuk penelitian lebih lanjut mengenai isu-isu terkait hak asasi manusia di lingkungan militer.

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### Corresponding Author:

Anggriani Wau,  
Faculty of law,  
University of Indonesia Maju,  
Jl Harapan No.50 Lenteng Agung, Daerah Khusus Ibukota Jakarta, Indonesia  
Email: educationalwau@gmail.com.

## I. INTRODUCTION

Punishment is interpreted broadly as a process of giving or imposing a sentence by a judge, so the criminal system includes all statutory provisions that regulate how criminal law is enforced or operationalized in a concrete way so that a person is subject to sanctions (criminal law)(Lubis 2022).

The military is the armed forces of a country and everything related to the armed forces. Another equivalent word is the army or armed forces. This philosophy that was formed because of its role in the course of the history of the Indonesian nation is what then places the TNI as an instrument of national defense and security.(Brigjen TNI W. Indrajit 2018).The Indonesian National Armed Forces (abbreviated as TNI) is the name for the armed forces of the Indonesian state. At the beginning of its formation, this institution was named the People's Security Army (TKR) then changed its name to the Indonesian Republican Army (TRI), and changed its name to the Indonesian Armed Forces (ABRI). Then after the separation between the armed forces and the police, the name was changed again to the Indonesian National Armed Forces (TNI) until now.(Pivitha 2016)

The TNI consists of three armed forces: the Army, Navy, and Air Force. The TNI is led by a TNI Commander, while each force is led by a Chief of Staff. TNI is the main component of the national defense system.

TNI is the main component of the national defense system. However, in reality, as state security, in recent years there have been many cases of violence against subordinates in the military. Such as the case of the late Prada Sandi Darmawan who was beaten to death by 6 (six) of his seniors for days from 7 July 2022 to 15 July 2022 in Sorong Papua. As a result of this action, on July 16 2022 at 19.57 WIT Prada Mar Sandi Darmawan was declared dead,” (Jawa Pos 2022).Then a member of the TNI in Balikpapan with the initials K slashed his superior because he was suspected of being triggered by the punishment given to Private K. He did not accept Kopda A who punished him with kicks and punches. (Kompas 2022).

Based on the data the researchers obtained from the case tracking information system (SIPP) website at the Military Court II-08 Jakarta, that there were several cases of violence by superiors to subordinates, the first was a case with a registration number 152-K/PM.II-08/AD/VII/2017 with the first indictment: Article 131 Paragraph (1) Jo Paragraph (2) of the Criminal Procedure Code or Second: Article 351 Paragraph (2) of the Criminal Code; then the case with registration number 143-K/PM.II-08/AD/V/2022 with the indictment of Article One: Article 131 Paragraph (1) of the Criminal Code in conjunction with Article 55 Paragraph (1) of the 1st Criminal Code. Or Second: Article 351 Paragraph (1) of the Criminal Code in conjunction with Article 55 Paragraph (1) of the 1st Criminal Code. Both cases concerned the criminal act of maltreatment by superiors against members of the military service.

Criminal acts committed by purely military members of the TNI are based on regulations related to the military (Amu 2012). The arbitrary punishment of military superiors against soldiers involved abuse of power and violations of human rights. The following are some of the theoretical frameworks used for this study, namely the theory of Authoritarianism: This theory focuses on the characteristics of authoritarianism in the military power structure, where superiors have strong control and often abuse their power over soldiers. In this context, arbitrary sentencing can be seen as a way for superiors to maintain and strengthen their power.

Organizational Behavior Theory: This theory involves the study of the dynamics of individual behavior in the context of military organizations. Arbitrary punishment can be caused by organizational factors such as corporate culture that emphasizes absolute obedience and blind respect for superiors. Military superiors who abuse power may be driven by an urge to exert dominance and control over their subordinates.

**Theory of Human Rights Violations:** Arbitrary sentencing is a violation of subordinate human rights in the military context. This theory highlights the importance of protecting the human rights of every individual, including subordinates, from unfair and arbitrary treatment. Such punishment can be seen as a violation of the right to freedom, justice and human dignity.

**Control and Justice Theory:** This theory refers to the need for an effective and just control system within military organizations. Arbitrary sentencing can occur when internal oversight mechanisms are ineffective or when there are no external mechanisms to deal with abuse of power. Lack of transparency, accountability and access to an independent legal system can provide opportunities for superiors to carry out arbitrary sentences.

**Conflict of Power Theory:** The arbitrary punishment of military superiors can be seen as the result of a power conflict between superiors and subordinates. Superiors who abuse power may seek to suppress or eliminate threats to their authority. This kind of conflict can arise from hierarchical dynamics and competition within the military power structure.

The problem approach is the process of solving or solving problems through predetermined stages so as to achieve research objectives. (Muhammad 2004). To discuss the problems contained in this study, researchers used an empirical research approach. Empirical research is legal research that obtains its data from primary data or data obtained directly from the public. (R. H. Achmad 2020)

The use of the empirical method in this study, namely from the results of collecting and discovering data and information through field studies in Correctional Institutions on the basic assumptions or assumptions used in answering the problems in this research, then carried out inductive-verification testing on the latest facts contained in in society. Thus the truth in a study has been declared reliable without having to go through a rationalization process.

This research is located at the II-08 Jakarta Military Court (DILMIL II-08 Jakarta), Jalan Raya Penggilingan, Cakung, East Jakarta, DKI Jakarta Province, because the Jakarta Military Court II-08 has the main task and function of examining and deciding cases at the firstly in criminal cases committed by active TNI Soldiers, where the accused has the rank of Captain and below, the Military Court is limited by only examining criminal cases committed by TNI Soldiers with the rank of Captain and below, this shows that there are special rules which are limited by law to rank, as explained in Article 40 of Law Number 31 of 1997 concerning Military Justice.

Through this research, researchers can understand the process of imposing sentences on military officials who commit arbitrary violence against their subordinates, as well as how the process flows, so that this research can benefit the military, military families and society. so it is hoped that handling as above can be prevented, and does not happen again in the future.

Based on the results of interim investigations and examinations that have been carried out by researchers, the problem of analyzing criminal violence in the military environment has never been carried out in the form of the same topics and problems. Therefore, as far as is known, the research entitled, "The Process of Criminalizing Acts of Violence That Was Arbitrarily Perpetrated by Superiors Against Subordinates in the Military Environment (A Research in the Legal Area of the Military Court II-08 Jakarta)" is genuine because it has never been done before. This means that academically this research can be justified for its authenticity, because no one has conducted research that is the same as the title of this research. As for the previous journal research title that was researched by researchers ziyat ilham and Nursiti, namely a journal with the title Crime against superiors with violence (insubordination) committed by members of the Indonesian national army (a study in the jurisdiction of military court I-01 Banda Aceh). (Ziyat Ilham 2022)

## II. RESEARCH METHODE

The nature of the research conducted by researchers is empirical/sociological. Empirical social research is based on realities in the field or through direct observation. The type of data used in

this study is primary data, namely data obtained from field objects (Field Research), namely research carried out by taking data from the competent authority, in this case the Military Court II-08 Jakarta, and secondary data is data obtained from materials, namely library research (Library Research), namely where to read books that have something to do with the object in question according to the title.

The approach method used in this study is a qualitative research method, namely by collecting data stated by respondents in writing or verbally as well as real behavior that is researched and studied as a whole.(M. F. Achmad 2010).

The source of legal materials in this research is based on the source materials from field research. Source materials in the form of literature and government documents are also needed to complement and support field research materials.

Source of data in this study using empirical data. In this study, using Primary and Secondary data types (Library Research). Primary data comes from research conducted in the community based on direct observation/observation and interviews.(R. H. Achmad 2020). Secondary data is obtained through literature review of scientific work, research results or theories of experts related to the problem to be discussed.(R. H. Achmad 2020).Tertiary data comes from encyclopedias, materials from the internet, bibliography and so on. While the data used comes from Primary, Secondary data and is also supported by Tertiary data. Conversely, if the data source is directly from the respondent, it means that the data obtained is primary data (Field Research)(R. H. Achmad 2020).

The data collection method used in this research is first by observation. Observations were made through a problem approach to find out the extent of the violence that occurred among the military. Observation in this case was carried out by closely observing the lives of members of the military soldiers, then approaching several members of the military soldiers who experienced violence from their superiors.(Sunggono 2001).

Then the second is to use the interview method. in this case is holding direct interviews with several parties, both those directly involved and those who are not directly involved. The party directly involved in this case is the victim (name suppressed), then the party authorized to try the case is the Military Court, in this case the researcher chose the Military Court II-08 Jakarta, the source of the interview in this study was the Military Court Judge. Mr. Major Chk Subiyatno, S.H., M.H.

The data that has been collected is then analyzed using qualitative analysis methods by describing and describing the problems related to this problem and supported by inductive logical thinking.

### III. RESULT AND DISCUSSION

Based on the data the researchers obtained from the case tracking information system (SIPP) of the II-08 Jakarta Military Court, that there were several cases of violence by superiors against members of the first soldier with registration number 152-K/PM.II-08/AD/VII/2017 with the first indictment: Article 131 Paragraph (1) Jo Paragraph (2) of the Criminal Procedure Code or Second: Article 351 Paragraph (2) of the Criminal Code; then the case with registration number 143-K/PM.II-08/AD/V/2022 with the indictment of Article One: Article 131 Paragraph (1) of the Criminal Code in conjunction with Article 55 Paragraph (1) of the 1st Criminal Code. Or Second: Article 351 Paragraph (1) of the Criminal Code in conjunction with Article 55 Paragraph (1) of the 1st Criminal Code. The two cases were both about the criminal act of abuse by superiors against their subordinates.

The results of the researcher's interview with the Judge of the Military Court, Major Chk Subiyatno, S.H., M.H, on 1 February 2023 at the Main Military Court II-08 Jakarta said that acts of violence in the military are educational in nature, not physical and psychologically damaging to soldiers. The military is synonymous with violence. Violence in this case is usually in the form of running

punishment, squat jumps which aim to have a positive effect on soldiers. Meanwhile, acts of violence that are persecuted or are destructive to the body and mentality of soldiers are not legally permitted, and these actions are regulated in Article 131 of the Criminal Procedure Code.

Meanwhile, the results of interviews by researchers with several members of the military in January 2023, who asked not to be identified, said that there were several officials in the military who lacked self-control, so not many of them had personal problems taking out their anger brutally on their subordinates. If we look at the cases of law violations that are increasingly happening in Indonesia at this time, the background is the moral crisis and the nation's mental weakness. The same thing was conveyed by Natsir that mental weakness is caused by weak understanding of religion, low understanding of political ethics, national and state ethics, injustice, lack of exemplary and weak law enforcement. (Laksamana Pertama TNI Drs. Ian Heriyawan 2022)

### **1. Military legal standing**

Based on the legal aspect, members of the military have the same position as civilians, but due to the burden of obligations on members of the military, they are subject to special laws and separate courts. (Silalahi 2016) The laws and regulations governing acts of violation committed by military personnel consist of the Criminal Code (KUHP), the Military Criminal Code (KUHPM), the Military Discipline Code (KUHDM) regulations other general criminal laws. (Pudji Astuti 2019)

The Military Criminal Code, which is a military criminal code inherited from the Dutch colonial government *Wetboek van Militaire Strafrecht* which was enacted after Indonesia became independent based on Law Number 39 of 1947, adheres to a system of criminal sanctions that is relatively similar to the Criminal Code for its classification, which is classified under Principal Crime (Main Crime for KUHPM) and Additional Crime. However, there are no fines for the main types of punishment in the KUHPM, and there are two additional crimes that are specific to the military, namely: dismissal from military service; and Demotion. (Kolonel Chk Dr. Agustinus PH 2018).

In the Military Criminal Code, it is regulated regarding military criminal law which in its meaning is "part of the positive law that applies to justifiable military justice, which determines the bases and regulations regarding actions that are prohibited and obligatory as well as against violators." "threatened with a criminal sentence, which determines what matters and when the violator can be held accountable for his actions and also determines the method of prosecution, sentencing, and execution of the criminal for the sake of achieving justice and law order". (Letkol Laut Sinoeng Hardjanti n.d.)

As for the Judicial Power within the Indonesian National Armed Forces, it resides in the Military Court. This is stated in article 5 of Law no. 31 of 1997 Article 1 which reads: Military Court is the executor of judicial power within the Armed Forces to uphold law and justice by taking into account the interests of the organizers of state defense and security.

The Main Military Court is one of the Special Courts that handles cases of military crimes, especially examines and decides cases at the appeal level, criminal cases and Armed Forces Administrative disputes which have been decided at the first level by the High Military Court which is being appealed, this is stated in Article 42 Law Number 31 of 1997 concerning Military Courts. In addition to this, according to Article 43 of Law Number 31 of 1997, the Main Military Court also decides cases at the first and last levels of all disputes regarding the authority to adjudicate between Military Courts domiciled in different jurisdictions of the High Military Court and between High Military Courts and between the High Military Court and the Military Court. (Mayjen TNI Agus Dhani Mandaladikari 2018).

The Military Court that applies to members of the military has levels, namely the First Level, namely the Military Court. This Military Court has the authority to examine and decide on criminal cases at the first level where the defendant is a soldier with the rank of captain and below. The Second Level is the High Military Court which has the authority to examine and decide on criminal cases at the first level where the defendant is a soldier with the rank of Major and above as well as to examine and decide at the appellate level of criminal cases that have been decided by the Military Court.(E.Y. Kanter 1981)The third level is the Main Military Court, namely the Military Court which has the authority to examine and decide at the appeal level of criminal cases that have been decided at the first level by the main military court that was requested for an appeal.

Within the Indonesian National Armed Forces, a TNI member has the obligation to comply with the Sapta Marga, the Soldier's Oath, uphold the discipline of soldiers and is obliged to carry out Service Orders. In this case, we also need to know terms that are part of the military case settlement process in Indonesia, including: (Sjarif 1996)Authorities are officials who are authorized to act as public prosecutors and executors of decisions or court decisions within the military court .

environment.Court is the body that exercises judicial power within the military court environment.Ankum, superiors who have the right to punish or superiors who have the authority to impose disciplinary punishment on members or soldiers who are under their command authority according to the provisions of the applicable laws.

TNI officers who are appointed and authorized to submit criminal cases of their members to the competent military court. The TNI Commander is the highest officer, and the chief of staff is the papera for suspects who organically serve within the force environment. Papera is held as low as Dan Rem/Dan Brigit (AD), and Lanal (AL), and Air Force (AU).

TNI investigators, superiors who have the right to punish/military police officers.Reports, notifications submitted by a person due to his rights or obligations based on law to the competent authority regarding a criminal event that has occurred or is being or is suspected to be occurring.

Complaints, notifications accompanied by requests by interested parties to authorized officials to take legal action against someone who has committed a criminal act which is detrimental to the complaint.

Confiscation, a series of actions by military police investigators to take over or keep under their control movable or immovable objects, tangible or intangible, for the purposes of evidence in investigations, prosecutions, and court hearings.Detention, placement of suspects or defendants in certain places by TNI investigators on orders from superiors who have the right to punish, case-handing officers, or presiding judges or heads of courts with decisions in matters according to the method stipulated in the law.Submission of a case, the act of a case handing officer handing over a criminal case to a court within the military court environment or a court within the authorized public court environment, by demanding that it be examined and tried in matters and 6 according to the manner regulated by law.Closing of the case, the action of the officer submitting the case not to be able to submit the criminal case to the military court.A suspect is a person who is considered justifiable in the military court environment, who because of his actions or circumstances, based on initial evidence, should be suspected of being the perpetrator of a crime.

The defendant is a suspect who is prosecuted, examined and tried in a court session within the military court environment or a court within the military court environment and within the general court environment. A witness is a person who can provide information for the purposes of investigation, prosecution, and trial in a criminal case that he has heard about, seen for himself, and experienced for himself.

Witness testimony is one of the means of evidence in a criminal case in the form of testimony from a witness regarding a criminal case that he himself heard, saw for himself, and experienced for himself, by mentioning the reasons for that knowledge.

Expert testimony is information given by a person who has special expertise on matters needed to clarify a criminal case for the purposes of examination. A legal adviser is a person who, according to the provisions of the applicable laws and regulations, fulfills the requirements to provide legal assistance according to the method stipulated in the law.

A convict, is a person who is sentenced based on a court decision within the court environment or a court within the general court environment that has obtained permanent legal force. Legal Remedies, in military criminal procedural law, the right of 7 defendants or prosecutors not to accept the decision of the first/first and final level of court or appellate level or level of cassation in the form of resistance or appeal or cassation or the convict or his heirs or the auditor to submit a request for review court decisions that have obtained permanent legal force and according to the method regulated by law.

## **2. Legal Flow**

The Military Police Report (POM) is the beginning of an investigation and investigation. The police report must include clear information about the place and time of the incident, a description of the incident, the consequences of the incident, the identity of the complainant and the article that was violated. This police report is based on reports from individual reporters either orally or in writing, notifications from units/services/responses/agencies preferably by letter or telephone, orders from the top command by letter or telephone, or the knowledge of the investigator himself. (PUTRA 2014)

The act of arresting and detaining is the authority of the ankum concerned, except in the case of being caught red-handed where everyone has the right to make an arrest but the suspect must still be handed over to the nearest TNI agency along with evidence, then the TNI agency will hand it over to the military police force, at the first opportunity notify the person concerned.

Meanwhile, there are two ways to summon witnesses, namely: First, the method for summoning military witnesses, for summons made in writing with a summons signed by the commander or investigative officer of the military police force through an ankum from the TNI sanction. In the same way as the summons for a suspect to summon a TNI witness is carried out by means of a summons addressed to his ankum with a request to be ordered to the person concerned, the summons is accompanied by a receipt of the receipt of a summons of 2 (two) sheets. Summoning TNI witnesses outside the jurisdiction of the summoning agency is carried out through their ankum with a copy of the POM of the local force, whereas if the witness is in detention then it is conveyed through the agency where the suspect is detained. (Adji 1961). Second, the way to call non-military witnesses for summons is to do it with a summons and delivered it directly to the person concerned at his place of residence, and an acceptance letter is attached. After the summons was made, an examination was held of the suspect and witnesses. Examination of suspects and witnesses is carried out by investigators with the aim of obtaining information about an event that is suspected of constituting a crime and obtaining as complete evidence as possible to support evidence of a crime allegedly committed by the suspect.

In the event that a suspect commits a crime as described above, prior to the commencement of the examination by the investigator, the investigator is obliged to notify the suspect about his right to receive legal assistance or that he must be accompanied by a legal adviser in his case, and for the smooth running of the examination at trial, if there is concern among the witnesses could not be present at the trial because of an interest that could not be abandoned, illness, death, or moving areas, after the examination, the witnesses were sworn in to strengthen the statement accompanied by Minutes of Oath Taking. Case investigations can also be carried out by the Prosecutor if the TNI Commander deems that a case needs to be investigated by the Prosecutor and the Commander orders the Orjen TNI, then the Orjen orders the Prosecutor.(PUTRA 2014)

#### IV. CONCLUSION

Based on the research above, the researcher draws several conclusions that the cause of the criminal act of abuse committed by superiors against subordinates is due to a lack of self-control, as well as the imposition of a crime that has not provided a deterrent effect on the perpetrator, so additional threats are needed in the form of dismissal from military service; that soldiers who receive ill treatment from their superiors can complain about these actions to the military unit where they are assigned, or can register the case directly at the nearest military court for further investigation; that members of the military as victims of abuse are protected by law and the State, so there is no need to shrink from complaining to high-ranking superiors as long as the victim acts according to the law. The researcher's suggestion in this study is for every military environment to provide socialization related to military law and its feedback to members of the military who commit military crimes; then to the Superiors who have the right to punish (Ankum) to carry out routine monitoring and evaluation of TNI Soldiers to ensure the mental and psychological condition of soldiers; as well as to every military environment to emphasize Soldiers regarding Santiaji in the TNI environment such as Sapta Marga, Soldier Oath and 8 (eight) Compulsory TNI in order to avoid unlawful acts.

The contribution of this research is expected to increase transparency, accountability, public awareness and protection of human rights in the military system. Some of the contributions of this research include, This research can increase the accountability of military officials for the actions taken. By researching and examining sentencing processes, research can help identify weaknesses in the system and ensure that the human rights of every individual, including military personnel, are properly protected. This includes the right to justice, fair treatment, and the rule of law without discrimination. Research can assist in victim recovery and reconciliation processes, both for victims of violations and for military personnel who were not involved in these violations by seeking justice and supporting victims can assist in rebuilding trust and strengthening bonds between members of the military. The results of this research can help raise public awareness of issues related to the military justice system and the application of the law to military superiors. Higher public awareness can encourage more progressive action in improving the existing system.

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