

## **Analysis of Military Court Decision Number 94-K/PM III-18/D/IX/2018 in The Case of Persecution Committed by Unscrupulous Military Personnel**

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### **Abstract**

The decision of the Ambon Military Court III-18 Number: 94-K/PM III-18/AD/IX/2018 is a case of persecution. Basically, the decision of the Military Court is closed to members of the TNI itself so that public opinion never sees it. The decisions taken sometimes lack a sense of justice for members of the TNI who are accused. Therefore, the aspect of justice is one of the references in seeing the judge's consideration in making a Military Court decision. This research is to analyze and examine the military court verdict number 94-K/PM III-18/D/IX/2018 in the case of persecution committed by members of the TNI that has fulfilled a sense of justice and explain and examine the legal considerations of judges in imposing Military court verdict Number 94-K/PM III-18/D/IX/2018. This research uses normative research type. It was found that the Military Court Decision Number 94-K/PM III-18/D/IX/2018 in the case did not fully fulfill the sense of justice. The verdict only in terms of substantive justice is not fulfilled, while in terms of procedural justice it has been fulfilled. Thus the verdict has not fulfilled the sense of justice for the defendant himself. The judge's legal considerations in handing down Military Court Decision Number 94-K/PM III-18/D/IX/2018 in the case of persecution committed by members of the TNI are based on facts or events that occur and are supported by existing evidence, so that the judge can make decisions in accordance with the mistakes made.

**Keywords:** Decision, Crime, TNI



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### **INTRODUCTION**

Law Number 26 of 1997 concerning the Law on Discipline of Soldiers of the Indonesian National Army and Decree of the Commander of the Indonesian National Army Number Kep/22/VIII/2005 dated August 10, 2005, regulate the laws and regulations of soldier discipline and get sanctions for members who violate these rules<sup>1</sup>. The Indonesian National Army is the hope of the nation and state in the eyes of society so all actions and deeds carried out by members must be in accordance with the rules and avoid despicable acts, let alone violating military discipline, the Military Code of Law or the General Criminal Code<sup>2</sup>. TNI members are always given guidance so that the image of the TNI in the eyes of the community so that the role of Military Justice is needed. Therefore, every member of the TNI who commits a criminal offense is held accountable for the offense he/she committed in a military court as stated in Article 5 paragraph (1) of Law Number 31/1997 concerning Military Justice<sup>3</sup>.

Military justice conducted for members of the TNI is a closed matter, so the general public negatively assesses the implementation of the law against unscrupulous members of the TNI who have committed a mistake does not run as much or as fair as possible and assesses the military court's decision in providing punishment for military members who are guilty of committing a criminal offense is lenient. This is precisely a member of the TNI has the same position as other civilians, so the rules that exist in the military are more than the rules that apply to the general public or other general citizens. Military justice institutions are formed to act against members of the TNI who are negligent in carrying out their duties and often commit

criminal acts. In principle, members of the military regardless of whether they are high or low in rank are still obliged to uphold military honor and not commit acts that can tarnish or damage the good name of the military. The Military Court is authorized by law as a special court that examines and tries criminal offenses committed by members of the TNI.

Article 27 paragraph (1) of the 1945 Constitution states that: "All citizens shall be equal before the law and government and shall uphold the law and government with no exception". The article concludes that the law will not discriminate between people from ethnicity, religion, race, and intergroup. However, it does not necessarily make all Indonesian citizens who commit a criminal offense tried in the same court. Meanwhile, Article 18 of Law Number 48 of 2009 concerning Judicial Power (hereinafter abbreviated as the Judicial Power Law) states that: "Judicial power shall be exercised by a Supreme Court and the judicial bodies subordinate thereto within the general court, religious court, military court, state administrative court, and by a Constitutional Court". Article 2 of the Military Criminal Code states that: To criminal offenses not listed in this code, committed by persons subject to the power of military judicial bodies, general criminal law is applied, unless there are deviations stipulated by law. The formulation of this article is very clear that in the settlement of cases committed by the TNI if the criminal offense committed is not listed in the Military Criminal Code or in the sense that TNI officers commit general criminal offenses, then in the application of the law still uses the Criminal Code (KUHP) but is tried in the military judicial environment.

## **RESEARCH METHODS**

This research uses normative research is on the inventory of positive law, legal principles and doctrines, legal discovery, legal systematics, the level of synchronization, comparative law and legal history. The type of research also uses a statutory approach and a conceptual approach.

## **RESEARCH RESULT AND DISCUSSION**

### **Cases of Criminal Offenses**

Military crimes included in the jurisdiction of military courts are general crimes or crimes that have been codified in the Criminal Code (KUHP) if committed by members of the military, as well as special crimes (outside the codification) regulated in other criminal laws and regulations, as well as crimes regulated in the Military Criminal Code (KUHPM). An act or *strafbaarfeit* is an act committed by a person that harms another person. One of the criminal offense that often occurs and is even committed every day is the crime of persecution as regulated in Article 351 of the Criminal Code which states:

1. Maltreatment shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiahs,
2. If the act results in serious injury, the offender shall be punished with a maximum imprisonment of five years.
3. If the fact results in death, he shall be punished by a maximum imprisonment of seven years.
4. With maltreatment shall be equated to intentional damage to health.
5. Attempt to commit this crime is not punishable.

Based on the decision of Military Court III-18 Ambon Number: 94-K/PM III-18/AD/IX/2018, the case of maltreatment that occurred on May 01, 2018, the defendant was drunk and attended a birthday party and at 03.10 said goodbye and returned to the Task Force Post. On the way, the defendant stopped because there were many people and the defendant stopped to tell the victim to disperse, but the victim insisted and as a result, the defendant hit the victim. The beating caused the victim to ask questions and some provoked and chased the

defendant. However, during the chase the victim took a rock and struck the defendant on the left side and the defendant immediately stabbed the victim with a bayonet on the left side the victim collapsed and some of the victim's friends beat the defendant until he became unconscious. The victim was rushed to RSUD Tulehu but there was no progress and then referred to RST dr. J.A. Latumeten Ambon was treated and then referred back to RSUD dr. Haulussy Ambon for surgery on the victim. However, until the operation was completed the victim was unconscious and eventually died.

After what the victim experienced, the victim's family processed the law through the military court. The legal process was carried out with the verdict that the defendant RL was legally and convincingly proven guilty of committing the crime of maltreatment which resulted in death. RL was sentenced to 1 (one) year and 3 (three) months imprisonment. Basically, the Court Decision The military is closed to members of the TNI itself, so the public never sees it. Decisions made also sometimes lack a sense of justice for the TNI member who is the defendant. Therefore, the aspect of justice is one of the references in seeing the judge's consideration in the Military Court's decision.

### **What was done by TNI personnel?**

#### **1. Definition and Characteristics of the Crime of Maltreatment**

In the Criminal Code, the crime of maltreatment is regulated in Articles 351 to 358 of the Criminal Code. These articles regulate physical violence, while psychological violence does not. Based on the element of guilt, there are two types of crimes against the body, namely:

- a. Crimes against the body that are committed intentionally. This crime is qualified as maltreatment (mishandling) and is contained in Chapter XX of Book II, Articles 351 to 358.
- b. Crimes against the body due to negligence, contained in Article 360 of Chapter XXI, known as negligence causing injury to another person. Maltreatment is one form of crime against the human body.

The law does not define what constitutes maltreatment. Persecution is the intentional infliction of pain or injury to the body of another person<sup>10</sup>. In addition, maltreatment can be defined as a deliberate act aimed at inflicting pain or injury to the body of another person, the effect of which is solely the purpose of the actor. The crime of persecution is divided into several types and has different threats in each article. The following are some of the types of maltreatment, namely:

- a. Ordinary maltreatment (Article 351 of the Criminal Code)
- b. Light maltreatment (Article 352 of the Criminal Code)
- c. Aggravated Maltreatment (Article 353 of the PC)
- d. Serious Maltreatment (Article 354 of the PC)
- e. Aggravated Serious Maltreatment (Article 355 of the PC)
- f. Persecution of Persons of Certain Qualifications or in a Certain Aggravating Manner

#### **2. Concept and Principle of Justice in the Criminal Justice System**

Justice is one of the most important objectives of any legal system, in addition to other legal objectives, namely legal certainty, expediency, and order. There are four good values that are important foundations in human life, namely justice, truth, law, and morals, and according to Plato, justice is the highest value of virtue. The concept of justice has been put forward by many experts because justice is something that is very close to the fulfillment of human rights and interests. In the concept of justice, there are many understandings by experts about justice, fairness means putting everything in proportion<sup>12</sup>. The word fair or

justice is a combination of moral and social values which is the embodiment of fairness; balance; temperance; and straight forwardness. The implementation of criminal justice is a mechanism for the work of criminal law enforcement officers starting from the process of investigation and inquiry, arrest, detention, and prosecution to examination in court, or in other words the work of police, prosecutors, judges, and correctional officers, which also means the process or work of criminal procedural law. The criminal justice system is also known as the "criminal justice system" which begins with the process of arrest, detention, prosecution, and examination before the court, and ends with the execution of punishment in correctional institutions. The criminal justice system was first introduced by criminal law experts and experts in the criminal justice system in the United States in line with dissatisfaction with the work mechanisms of law enforcement officials and law enforcement institutions. The criminal justice system as a system is basically an open system, in the sense that the criminal justice system in its movement will always experience interference (interaction, interconnection, and interdependence) with its environment in levels, society: economy, politics, education and technology as well as subsystems of the criminal justice system itself (a subsystem of the criminal justice system). Barda Nawawi Arief defines the criminal justice system as a process of criminal law enforcement<sup>15</sup>. Therefore, it is closely related to the criminal legislation itself, both substantive criminal law and criminal procedural law. Basically, criminal law is the enforcement of criminal law in abstracts which will be realized in law enforcement in concerto. Thus, the criminal justice system in its process where law enforcers work in accordance with the principles of justice that are prioritized in realizing the process. The principle of justice is the cornerstone in the criminal justice system to realize the law as it should be expected by everyone.

### 3. Chronology of the Persecution Incident Committed by TNI Personnel

On April 30, 2018, Serda Jeneskel Pical as Babinsa of Waai Village, Salahutu Sub-district, Central Maluku District came to meet Danpos Satgas Yonif Raider 515/UTY at Waai Village Post, Saluhutu Sub-district, Central Maluku District to request assistance from the Waai Satgas Yonif Raider 515/UTY Kostrad Post personnel to help secure the celebration of his son Yulius Matulesy's birthday party. Then Danpos Yonif Raider 515/UTY ordered I Kadek Siderase and Defendant RL to secure the birthday party celebration. That at approximately 23.30 Wit Jeneskel Pical, I Kadek Siderase and Defendant RL arrived at Yulius Matulesy's house in Talitakumi Sector, Waai Village, Salahutu District, Central Maluku where a birthday party was held, then Yulius Matulesy took a large 1.5 liter Aqua sopi drink from the room and put the sopi drink on the table while saying to Wellem Bakarbesy "Here Wellem, let me have an appetite", then Wellem Bakarbesy consumed the alcohol in the living room in turn, at approximately 00-30 Wit on May 01, 2018 the Defendant RL together with Wellem Bakarbesy in an intoxicated condition went to the party and participated in dancing at the event, after 03. 00 a.m., Jeneskel Pical ordered I Kadek Siderase to stop and disperse the party but the response of some people was disappointed by shouting "huuuuu.....", but most people were willing to disperse and some were still at the party then at around 03.10 a.m. I Kadek Siderase and Defendant RL said goodbye to Jeneskel Pical and Yulius Matulesy to return to the Task Force Post.

On the way to leave the party venue approximately 80 meters away precisely at the T-junction of the alley exit of Yulius Matulesy's house in Waai Village, Talitakumi Sector, Salahutu Sub-district, Central Maluku District, the motorcycle driven by I Kadek Siderase who was riding with the Defendant RL stopped due to the large number of people approximately 20 people crowding along the road including Br. Dhelkrist Lodewyk Bakarbesy (Victim) who was sitting with 1 (one) friend on a motorcycle parked beside the



road, then I Kadek Siderase again told the community to immediately disperse, but was answered by the Victim "The event is closed until this morning", I Kadek Siderase answered that it was dispersed, sister, the birthday party was over, no more, again the victim answered zinc, beta still want to see the party again "after that the Defendant RL using his left hand clenched into a fist hit the victim in the face while saying "disperse already" the party is over".

That after being hit by the defendant, the victim asked the Defendant RL "why did you hit me", but the Defendant RL did not answer the question, instead the Defendant RL got off the motorcycle while the victim approached the Defendant RL who at that time took out a bayonet from the right side of his shirt and pointed the bayonet at the victim then the Defendant RL said "you are a member of the Brimob who hit me", when he saw the argument between the victim and the Defendant RL, When they saw the argument between the victim and the Defendant RL, several people who were in the vicinity of the scene shouted provocatively, "don't be afraid of the army, gang up on him", seeing many people in a state of emotion while shouting provocatively with the words "we pele him" and swearing words "puki hole", finally the Defendant RL ran away which was then chased by the victim and followed by Sesar Salamony, Frits Bakarbesy, Fernando Samuel Tuhaalauruw, Olop Pattimukay and several other community members.

When chasing Defendant RL, the victim stopped at the side of the road and picked up a round stone the size of a hand, and returned to chase Defendant RL and then after chasing for approximately 200 meters with his right hand he managed to grab the back shirt of the Defendant RL by using the stone he was holding once and hit the left side of the head of the Defendant RL, so than the defendant immediately stabbed the victim on the left side of his head until the victim collapsed on the body of the Defendant RL who also fell with the victim. When the victim fell down the victim's friends totaling approximately 5 people including Gill Ririratuhelela kicked and punched Defendant RL repeatedly causing Defendant RL to lose consciousness. Subsequently, the victim was taken to Tulehu Regional Hospital for treatment, but because there was no progress finally the Tulehu Regional Hospital was referred for further treatment to RST dr. J.A.Latumeten Ambon, after arriving at RST. dr. J.A.Latumeten the victim was treated before being referred back to Dr. Haulussy Ambon Regional Hospital for treatment. Haulussy Ambon for better medical treatment, then at approximately 10.15 a.m. until 12.30 a.m. an operation was carried out to remove the bayonet which was still stuck in the left side of the victim's head, however until the operation was completed the victim was unconscious until finally on May 03, 2018 at approximately 22.30 a.m. the victim passed away.

As a result of the actions of Defendant RL, the victim suffered one stab wound, one scratch, and one laceration caused by sharp and blunt force trauma. The exact cause of death was not determined because there was no internal examination or autopsy, this was confirmed by the Visum Et Repertum from Dr. M. Haulussy Hospital Number 353/05/RSUD/2018 Dated May 01, 2018 on behalf of Br. Dekris Bakarbesy signed by Dr. C.W. Sialana, M.Kes., Sp.F. NIP 197701271006041015.

### **Judges' Legal Considerations in Military Court Decision Number 94-K/PM III-18/D/IX/2018**

#### **1. Analysis of the Fulfillment of Sense of Justice in Military Court Decision Number 94-K/PM/III-18/D/IX/2018**

A judge's decision which is the conclusion of all events and facts obtained by the judge in examining the case is assessed based on legal norms that are relevant to these facts. Furthermore, connected with the values of justice, the judge's decision will have nuances and provide legal and justice values, as well as at the same time provide certainty in the

resolution of a case, especially in Military Court Decision Number 94-K/PM III-18/D/IX/2018. Military Court Decision Number 94-K/PM III-18/D/IX/2018 is perceived as not providing a sense of justice, where the author believes that the Military Court Decision Number 94-K/PM III-18/D/IX/2018 has not provided justice for the defendant himself. This is because the defendant provided self-defense which resulted in the death of the victim, but on the other hand the defendant was mistreated until he fainted. Thus, the judge's consideration did not look at the defense aspect of the defendant who experienced the violence.

Justice falls into two categories, namely substantive justice and procedural justice. Substantive justice relates to material law, while procedural justice relates to formal law or procedural law, namely, how to enforce or carry out the material law. Both substantive justice and procedural justice experience the same problems at the level of implementation. The Military Court Decision Number 94-K/PM III-18/D/IX/2018 in the case of persecution committed by unscrupulous TNI personnel in terms of justice can be seen that substantive justice has not been fulfilled, while procedural justice has been fulfilled. Substantive justice decisions do not only accommodate the rules that apply in the most social stage of justice discovery. Substantive justice in Military Court Decision Number 94-K/PM III-18/D/IX/2018 in the case of persecution committed by unscrupulous TNI regarding the content of the judge's decision in adjudicating a case, which is made based on objective, honest, impartial and rational (logical) considerations. Thus, the Military Court Decision Number 94-K/PM III-18/D/IX/2018 is felt to have not fulfilled the sense of justice. Basically, the decision provides justice, where the judge does not look at the aspect of justice in terms of the defendant himself. For this reason, the panel of judges in Military Court Decision Number 94-K/PM III-18/D/IX/2018 does not reflect justice for the defendant, so the fulfillment of justice has not really been fulfilled properly in handing down the decision.

## 2. Factors Affecting the Fulfilments of a Sense of Justice in a Case of Maltreatment Committed by a TNI Officer

Factors that influence the judge's decision so that it does not reflect the value of justice:

- a. Quality of Judges. In determining the quality of judges, it can be seen from the aspect of formal education (science) and their understanding of the rules of material law and formal law (criminal procedure law) as well as their understanding of justice itself. High education will provide high and measurable performance parameters. The ideal performance standards for judges should be oriented towards improving the integrity and professionalism of judges, not to undermine the independence of judges.
  - b. Judge Independence. The independence of judicial power has implications for law enforcement by judges in court because the attitude of judges will determine their objectivity in deciding cases. This shows that judges have a special position because they are the last bastion for justice seekers.
  - c. Judge Intervention. As the last bastion of law enforcement, the courts have an important role in realizing a sense of justice in society. judges should make fair and wise decisions by considering the legal implications and impacts on society.
- ## 3. Judges' Legal Considerations in Military Court Decision Number 94-K/PM III-18/D/IX/2018.

A legal consideration in a judge's decision is considered sufficient if it meets the minimum requirements for consideration as follows: Considerations according to law and legislation and Considerations for the sake of realizing justice. Military Court III-18 Ambon handed down Decision Number 94-K/PM III-18/AD/IX/2018 against RL in a case of mistreatment committed against DB, causing the victim to die. The actions committed by RL violated Article 351 paragraph (3) of the Criminal Code. In the decision, the judge gave legal

considerations regarding the elements of Article 351 paragraph (3) of the Criminal Code as follows: First element: "Whoever", Second element: "Intentionally inflicting pain or injury to another person", Third element: "Willfully causing death". That the Panel of Judges hereby hand down the following verdict: Stating that the defendant mentioned above, namely Romario Leonardo D.W., Private, NRP 31140393100194, is legally and convincingly proven guilty of committing the crime: "Maltreatment resulting in death" and Punish the defendant therefore with: Imprisonment for 1 (one) year and 3 (three) months days.

The author sees that the facts in the field are that there are still many criminal acts among the TNI such as taking the law into your own hands and the arrogance that makes TNI personnel out of control in carrying out their duties. Based on the events described above, the criminal acts committed by the TNI have violated the Basic Norms in the TNI and violated Article 7 paragraph (1) of Law Number 25 of 2014 concerning Military Discipline Law, and are contrary to the interests of the military which always maintains solidarity with the people in order to support the main task of the TNI, so that the nature and attitude inherent in the defendant when connected with the values that apply in the life of the TNI, the defendant does not have the value of the nature and attitude that should be owned by the TNI, which is feared that the existence of the defendant in his status as TNI will defame the body and will interfere with the development of discipline and order in military life.

In the settlement of the above case there is still injustice in the judge's consideration of the case of persecution resulting in death committed jointly as stated in Article 351 Paragraph (3) of the Criminal Code which is actually a maximum imprisonment of 7 years, but the Military Oditur charged the defendant with imprisonment for 2 years, in this case the amount of leniency given by the Military Oditur to the defendant and has not made the TNI personnel feel deterrent for his actions so that it cannot provide lessons for other TNI soldiers, as well as the impact caused by taking the law into your own hands so that the crime of persecution has a very bad impact on society.

## **CONCLUSION**

Military Court Decision Number 94-K/PM III-18/D/IX/2018 in the case of Criminal Offenses committed by Members of the Indonesian Armed Forces did not fully fulfill the sense of justice. The verdict only in terms of substantive justice is not fulfilled, while in terms of procedural justice, it has been fulfilled. This is because in the decision, the panel of judges did not look at the defendant's justification and only looked at the guilt of the defendant for causing the death of the victim. Thus, the verdict has not fulfilled the sense of justice for the defendant himself. Thus the verdict has not fulfilled the sense of justice for the defendant himself. The judge's legal considerations in handing down Military Court Decision Number 94-K / PM III-18 / D / IX / 2018 in the Case of Criminal Offenses Committed by Unscrupulous TNI as one of the alternatives in deciding cases handled. Where the judge's legal considerations are based on facts or events that occur and are supported by existing evidence so that the judge can make a decision in accordance with the mistakes made. Thus, the legal considerations of the judge at the Military Court are seen from the actions committed by the defendant in accordance with the provisions of the legislation.

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