

The Urgency of Establishing a Supervisory Body for Investigative Implementation in the Military Auditor

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Abstract. This article discusses the urgency of establishing a Supervisory Body for Investigative Implementation in the Military Auditor to improve the military justice system in Indonesia. The injustices experienced by members of the TNI in certain cases, such as adultery without adequate evidence, indicate serious weaknesses in the current oversight mechanism. The Supervisory Body is expected to ensure that the investigation process complies with legal standards and principles of justice, prevent abuse of power, and enhance transparency and accountability. Additionally, the existence of this body will enhance professionalism in investigations and guarantee the protection of human rights. The Supervisory Body will also provide mechanisms for ongoing evaluation and improvement to enhance the quality of investigations. With the establishment of the Supervisory Body, it is hoped that public trust and the trust of TNI members in the military justice system will increase, and the relationship between the military and society will become stronger. Overall, the establishment of the Supervisory Body for Investigative Implementation in the Military Auditor is a crucial step towards creating a military justice system that is fair, transparent, and reliable, capable of delivering true justice for all members of the TNI.

Keywords: Urgency, Investigation Oversight Body, Military Auditor.

1 Introduction

The Indonesian National Armed Forces (TNI) are regarded as role models in the eyes of the public; therefore, TNI members must act in accordance with the rules applicable in the military and general regulations, and avoid unbecoming conduct, as any actions by TNI members will be judged by society. Every TNI member must adhere to the 8 mandatory TNI duties stipulated in the Minister of Defense and Security's Decree. In the military, the principle of equality before the law also applies, whereby if a TNI member commits a criminal act, they are all equal in the eyes of the law. Each TNI soldier who commits a criminal offense will be processed in military court[1]. Despite TNI soldiers being seen as role models for society, many still engage in criminal activities, one of which is adultery. Generally, military criminal law also explains what is contained in general criminal law; conversely, what is contained in general criminal law also applies to military law unless otherwise specified. The Indonesian Criminal Code, which has been codified, contains many forms of crimes and various objectives[2].

In the military justice system, the integrity and accuracy of the investigation process are crucial foundations for achieving true justice. However, there are various challenges and deficiencies that can disrupt the investigation process, especially those conducted by the

Military Prosecutor. One prominent issue is the injustice experienced by members of the Indonesian National Armed Forces (TNI) in certain cases, such as adultery offenses, which in many cases are not supported by adequate evidence and witnesses. Such cases raise fundamental questions about justice and accuracy in the conduct of investigations. Injustice experienced by TNI members found guilty without strong evidence can undermine confidence in the military justice system. This reflects a significant gap in the oversight and control mechanisms over the investigation process conducted by the Military Prosecutor.

The Military Prosecutor, as part of the military justice system, plays a crucial role in enforcing military law. They are responsible for conducting investigations into legal violations committed by members of the TNI. However, in practice, there are often concerns about independence, objectivity, and professionalism in the conduct of investigations. Without strict oversight, the investigation process is vulnerable to abuse of power, procedural errors, and bias. The most common and frequent example is the offense of adultery, often charged against TNI members. If related to civilian law, it falls under Article 284 of the Indonesian Criminal Code (KUHP). However, Article 284 of the KUHP cannot be applied if only one perpetrator is prosecuted; both parties, both male and female, must be processed, determining who is the adulterer and who is the victim of adultery. Likewise, Article 281 of the KUHP in civilian law cannot be prosecuted if there is no complainant, no one else witnessed the act, there are no witnesses, no evidence, or the perpetrator cannot report due to the concurrent offense.

In military law, TNI members accused of adultery often face excessively enforced legal sanctions, leading to violations of justice and human rights. In civilian law, adultery cannot be prosecuted under the Indecency Article if there is no complainant, no one else witnessed the act, there are no witnesses, no evidence, or the perpetrator cannot report due to the concurrent offense. However, in Military Courts, it must be enforced if there is an Official Assignment Letter from the TNI Military Prosecutor, although historically, such a letter should only be issued if there is a complaint, witnesses, and evidence, allowing for enforcement. Thus, military disciplinary law cannot be applied under Law No. 25 of 2014 concerning Military Discipline Law, and conversely, individuals should not be prosecuted or dismissed from the TNI.

This situation is further exacerbated by the absence of a supervisory body with the authority to oversee, evaluate, and correct the investigation process in the Military Prosecutor's Office. In the civilian justice system, there are oversight institutions to ensure that the investigation process adheres to legal standards and principles of justice. However, in the military context, such oversight mechanisms are minimal or even entirely absent.

The Military Prosecutor's Office is part of the TNI with the duty and authority to prosecute within the TNI Military Judiciary. Considering the role and position of the Military Prosecutor in prosecution, which is part of law enforcement, and law enforcement itself has been under negative scrutiny, professionalism among Military Prosecutors as law enforcers is imperative for improving their performance in the prosecution process. Therefore, Military Prosecutors, as law enforcers, must continuously increase their knowledge, enhance their skills, and commit to their professional code of ethics. With extensive knowledge, particularly in the discipline of law, continuously improving their expertise in prosecution, and maintaining a strong commitment to their professional code of ethics, the execution of prosecution duties within the TNI can be significantly improved. As the performance of Military Prosecutors in carrying out their duties in prosecution improves, the objectives of prosecution can be achieved maximally and optimally, ultimately leading to general satisfaction among the populace as seekers of justice for the work done by the Military Prosecutors[3].

The urgency of establishing a Supervisory Body for Investigation Implementation in the Military Prosecutor's Office becomes increasingly evident when considering the negative impact of injustice in the investigation process. Innocent members of the TNI who are wrongly convicted can suffer significant personal and professional losses. Their reputation, career, and personal lives can be destroyed due to unfair decisions. Additionally, this can also diminish morale and trust among TNI members as a whole.

The Supervisory Body for Investigation Implementation in the Military Prosecutor's Office is expected to function as an effective control mechanism to ensure that every investigation process is conducted transparently, objectively, and in accordance with principles of justice. This body should have strong independence, clear authority, and adequate resources to carry out its duties. With the existence of such a supervisory body, it is hoped that injustices and errors in the investigation process can be minimized. Furthermore, the establishment of a supervisory body can enhance accountability and transparency in the military justice system. TNI members and the general public will have greater confidence in the integrity of the military legal process. This can also provide a sense of security for TNI members that their rights will be protected and that any accusations will be thoroughly and fairly examined.

Specifically, by emphasizing the urgency, the establishment of the Supervisory Body for Investigation Implementation in the Military Prosecutor's Office is a crucial step in improving the military justice system in Indonesia. It is an effort to ensure that every TNI member receives fair treatment and that the investigation process is conducted with high integrity. Through the establishment of this body, it is hoped that a more fair, transparent, and accountable military justice system will be created, instilling greater confidence in law enforcement within the military environment.

The problem statement in this paper is: What is the Urgency of Establishing a Supervisory Body for Investigation Implementation in the Military Prosecutor's Office?

2 Method

2.1 Method

The method used in writing this applied thesis is the descriptive analytical method, which involves using data that clearly describes the issues directly observed in the field, followed by analysis and conclusions to achieve problem-solving[4]. Data collection methods include observation and literature review to obtain solutions to the problems addressed in this thesis.

In line with the research objectives, this study falls within the realm of qualitative research, thus employing a qualitative approach[5]. According to Petrus Soerjowinoto et al., qualitative method emphasizes the researcher's process of understanding the formulation of problems to construct a complex and holistic legal phenomenon[6].

2.2 Approach

The approach used is socio-legal juridical, involving the examination of norms, concepts, societal perspectives, legal doctrines obtained from secondary legal sources, as well as relevant laws and regulations, particularly concerning the issue of the Urgency of Establishing a

Supervisory Body for Investigation Implementation in the Military Prosecutor's Office, specifically regarding the crime of adultery, according to legislation and other supporting regulations serving as primary legal sources. Additionally, a case approach is employed, presenting the results of observations and closed interviews regarding members of the Indonesian National Armed Forces (TNI) who are accused of adultery, where the imposition of legal sanctions is overly forced and decided, thus violating justice and human rights (HAM). Consequently, as suspects of adultery, TNI members cannot be subject to military disciplinary law according to Law No. 25 of 2014 concerning Military Discipline Law, because there is no evidence, witnesses, or if the perpetrator is only one person, and not vice versa facing criminal charges, or even being dismissed from the TNI, as has been the case so far.

3 Result and Discussion

3.1 The Professionalism of Military Prosecutors and the Authority to Submit Cases to Military Courts Currently

Article 1, number 7 of Law Number 31 of 1997 concerning Military Judiciary stipulates that Military Prosecutors and High Military Prosecutors, hereinafter referred to as Military Prosecutors, are officials authorized to act as public prosecutors, as implementers of court decisions or rulings within the Military Judiciary or Courts within the General Judiciary in criminal cases, and as Investigators in accordance with the provisions of the law. Furthermore, in the general explanation section of Law Number 31 of 1997, it is explained that Military Prosecutors, High Military Prosecutors, and the Military Prosecutor General are functional officials who exercise state administrative authority in the field of prosecution and investigation. From the above provisions, it can be concluded that the authority of Military Prosecutors includes the field of prosecution and investigation, but the most dominant authority of Military Prosecutors is in the field of prosecution because the authority of Military Prosecutors in the field of investigation is only limited to certain cases upon the order of the Military Prosecutor General. Therefore, in this writing, the author will focus more on the professionalism of Military Prosecutors in the field of prosecution. Regarding the duties and authority of Military Prosecutors in the field of prosecution, Law Number 31 of 1997 concerning Military Judiciary, which is procedural law within the Military Judiciary Jurisdiction, does not provide a definition of what is meant by prosecution. The definition of prosecution can be found in Article 1, number 7 of the Criminal Procedure Code (KUHP) which states that prosecution is the action of the public prosecutor to transfer criminal cases to the competent district court in accordance with the provisions of this law with a request for examination and judgment by the judges in a court session.

Referring to the definition of prosecution in the Criminal Procedure Code (KUHP), prosecution within the Military Judiciary can be interpreted as the action of Military Prosecutors to transfer criminal cases to the competent court in accordance with the provisions of this law (Law No. 31 of 1997) with a request for examination and judgment by the judge in a court session. However, the transfer of cases in the General Judiciary performed by Prosecutors is a direct authority of the prosecutor as the public prosecutor without the need for a decision from other officials, while the transfer of cases in the Military Judiciary performed by Military Prosecutors is an indirect authority because the transfer of cases is the implementation of the Case Submission by the Case Submitter (Papera). This is in accordance with Article 130

paragraph (1) which states that the Case Submission by Papera as referred to in Article 123 paragraph (1) letter f is carried out by Military Prosecutors by transferring case files to the competent court accompanied by an indictment. Thus, normatively, the authority to submit cases to the court lies with the Case Submitter (Papera) by issuing a Case Submission Decision (Keppera), while Military Prosecutors are officials authorized to carry it out. The Case Submission Decision (Keppera) issued by Papera serves as the basis for Military Prosecutors to transfer cases and take other prosecution actions in court. In other words, Military Prosecutors cannot transfer cases or take prosecution actions in court without a Keppera from Papera because according to Article 123 paragraph (1) letter f of Law Number 31 of 1997, the authority to submit cases lies with Papera, not with Military Prosecutors. Therefore, the responsibility of Military Prosecutors in carrying out prosecution technically and juridically lies with the Military Prosecutor General (Orjen TNI), while operationally, it is the responsibility of the Case Submitter (Papera). Before the prosecution process begins, which is transferring cases to the competent court, there are several pre-prosecution actions that are the duties and authorities of Military Prosecutors, including conducting case file research, refining and processing case files, and drafting indictments.

3.2 The Urgency of Establishing a Supervisory Body for Investigation Execution at the Military Prosecutor's Office.

As previously explained, the urgency of establishing a Supervisory Body for Investigation Execution at the Military Prosecutor's Office becomes increasingly apparent when considering the negative impacts of injustice in the investigation process. TNI members who are innocent but are found guilty may suffer significant losses, both personally and professionally. Their reputation, career, and personal lives can be shattered due to unfair decisions. Additionally, this can also lower morale and trust among TNI members as a whole.

If there is an indictment that does not meet the specified requirements due to the lack of professionalism of the Military Prosecutor who prepares the indictment, it will have fatal consequences for the prosecution as the indictment may be declared null and void[7]. Similarly, in the examination process during the trial, the Military Prosecutor, as the Public Prosecutor, has the burden to prove the alleged acts to the Defendant. At this stage, the Military Prosecutor's skill and expertise are tested to convince the judge as much as possible regarding the alleged acts against the Defendant, using evidence prepared according to the investigation results or presenting other evidence as additional proof if necessary. The results of this examination are then documented in the requisitoir submitted during the trial[8]. This is in accordance with Article 183 paragraph (1) of Law No. 31 of 1997 of the Republic of Indonesia, which states that after the examination is declared complete, the Military Prosecutor submits the requisitoir. The urgency of the requisitoir is the demand of the Military Prosecutor as the public prosecutor against the Defendant submitted to the judge, whether it is a request for criminal sanctions or acquittal based on the evidence examined during the trial[9].

The cases frequently encountered by TNI members who are suspected of adultery often lead to excessive imposition of legal sanctions, resulting in violations of justice and human rights (HAM). Under military law, adultery cannot be prosecuted under the Article on Moral Offenses if there is no reporter, no witnesses, no evidence, or if the perpetrator cannot report due to the offense being consensual. Consequently, military disciplinary law cannot be applied under Law No. 25 of 2014 on Military Discipline[7], and instead, they should not be prosecuted

or even dismissed from the TNI. Thus, the sense of injustice arising from this significant gap, namely the absence of a Supervisory Body for Investigation Implementation at the Military Prosecutor's Office, underscores the urgent need for its establishment, which should be promptly realized.

Adultery committed by TNI members is purely consensual between both parties involved, often knowing that both the perpetrator and the victim are already married, for instance. This undirected behavior leads to inappropriate and unworthy actions towards the perpetrator. Engaging in such behavior demonstrates a lack of direction and rational thinking on the part of the perpetrator, especially when involved in illicit relationships with someone already married within the same workplace. Nonetheless, strong evidence and eyewitnesses are still required, and both parties involved must be punished. This is where the crucial role of the Supervisory Body for Investigation Implementation at the Military Prosecutor's Office is needed.

There are several reasons regarding the Urgency of Establishing a Supervisory Body for Investigation Implementation at the Military Prosecutor's Office, including:

1. **Maintaining the Integrity and Credibility of the Military Judicial System.**
The military judicial system holds a significant responsibility in upholding the law within the Indonesian National Armed Forces (TNI). The integrity and credibility of this system greatly depend on how investigations are conducted. Without adequate supervision, the investigation process is vulnerable to abuse of power and unethical practices. The establishment of a Supervisory Body will ensure that every investigation is conducted according to legal standards and principles of justice, thus preserving the integrity and credibility of the military judicial system.
2. **Preventing Injustice in Investigations.**
Cases where TNI members are found guilty without sufficient evidence and witnesses demonstrate serious injustice in the investigation process. This injustice not only harms the individuals involved but also undermines the morale and trust among TNI members as a whole. An independent Supervisory Body can examine and oversee every investigation process, preventing injustice, and ensuring that every TNI member receives fair treatment.
3. **Strengthening Accountability and Transparency.**
Accountability and transparency are two key elements in an effective judicial system. With the existence of a Supervisory Body, the investigation process will become more transparent, and every action taken by the Military Prosecutor can be accounted for. This will enhance public and TNI members' trust in the military judicial system, ensuring that every decision made is based on strong evidence and fair procedures.
4. **Reducing the Potential for Abuse of Authority.**
Without adequate supervision, there is a significant risk of abuse of authority by parties involved in the investigation process. The Supervisory Body will serve as a control mechanism to identify and address any indications of abuse of authority. Thus, the investigation process will be protected from unlawful interventions and actions.
5. **Enhancing Professionalism in Investigations.**
The Supervisory Body will ensure that investigations are conducted by officers with high competence and integrity. This includes ensuring that investigation procedures adhere to professional standards and ethics. Consequently, the quality and outcomes of investigations will improve, delivering true justice.

6. **Guaranteeing Protection of Human Rights.**
In the context of military justice, it is crucial to ensure that the human rights of every individual are respected and protected. The Supervisory Body will play a role in ensuring that every investigation is conducted while respecting individuals' rights, including the right to a fair process and protection from inhumane or degrading treatment.
7. **Providing Mechanisms for Continuous Evaluation and Improvement.**
The Supervisory Body serves not only to oversee but also to evaluate and provide recommendations for improving the investigation process. With continuous evaluation, any weaknesses in the investigation process can be identified and rectified, thus enhancing the quality and effectiveness of investigations over time.
8. **Supporting More Effective Law Enforcement.**
With the existence of the Supervisory Body, every stage of the investigation process will be more structured and controlled. This will support more effective and efficient law enforcement, ensuring that every action taken by the Military Prosecutor complies with applicable legal provisions.
9. **Responding to Societal Demands and Expectations.**
Society, including the TNI's extended family, holds high expectations for the military justice system. The establishment of the Supervisory Body is a response to the demand for increased transparency, accountability, and fairness in the investigation process. It will also help strengthen the relationship between the military and society, enhancing the TNI's positive image in the public eye.

The establishment of a Supervisory Body for the Implementation of Investigations in the Military Prosecutor's Office is an urgent necessity to ensure that the investigative process is conducted with high transparency, accountability, and fairness. This body will play a crucial role in maintaining the integrity of the military justice system, preventing injustice, and protecting the human rights of all individuals involved. With the existence of this Supervisory Body, it is hoped that trust in the military justice system will increase, and better justice will be provided for all members of the TNI and the general public.

4 Conclusion

The establishment of a Supervisory Body for the Implementation of Investigations in the Military Prosecutor's Office is an urgent and crucial step to be taken in order to improve the military justice system in Indonesia. Several fundamental reasons support the urgency of forming this body, which can be summarized in several key points. First, the integrity and credibility of the military justice system rely heavily on a fair and transparent investigative process. Without effective oversight, investigations can be vulnerable to abuse of authority and unethical practices. An independent Supervisory Body will ensure that every investigative process adheres to legal standards and principles of justice, thereby maintaining trust in the military justice system. Second, the injustices experienced by TNI members, such as in cases of adultery lacking adequate evidence, demonstrate serious flaws in the current oversight mechanisms. The Supervisory Body will play a role in preventing such injustices by conducting rigorous and objective oversight of every investigation, ensuring that every TNI member receives fair treatment. Third, the existence of the Supervisory Body will strengthen accountability and transparency in the investigative process. With clear oversight mechanisms,

every action taken by the Military Prosecutor can be accounted for, thereby increasing public and TNI members' trust in the military justice system. This will also reduce the potential for abuse of authority and ensure that the human rights of every individual involved in the investigation are respected and protected. Fourth, the Supervisory Body will support the enhancement of professionalism in conducting investigations. By ensuring that investigations are carried out by competent and integrity-driven officers, the quality and outcomes of investigations will improve. Additionally, this body will provide mechanisms for ongoing evaluation and recommendations for improvement, allowing any weaknesses in the investigative process to be systematically identified and addressed. Finally, the establishment of the Supervisory Body is a response to the demands of society and the broader TNI community to enhance transparency, accountability, and fairness in the military justice system. With the existence of this body, it is hoped that the relationship between the military and society will strengthen, and the positive image of the TNI will increase in the eyes of the public.

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