

DEVELOPMENT OF MILITARY PRISONERS IN THE PERSPECTIVE OF MILITARY INTEREST

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ABSTRACT

Guidance for prisoners in Correctional Institutions is inseparable from a dynamic, which aims to provide more provisions for prisoners in returning the TNI's identity as before, namely being able to carry out their duties and responsibilities in the unit so that the Military Correctional Institution (Lemasmil) is the final stage of the system. law enforcement within the Military Courts. The purpose of this study was to determine whether the development of Military Prisoners in Military Correctional Institutions has been going well. Qualitative research uses a descriptive approach to collect data systematically, factually, and quickly according to the description when the research is carried out. The results of this study indicate that the separation of places to undergo punishment for military convicts from civilian convicts is absolutely necessary, because the Penitentiary for civilian prisoners is different in nature and the desired outcome with military convicts.

Keywords: Military Convicts, Military Law, Development of TNI Soldiers, Military Corrections.

INTRODUCTION

Prisoners are legal subjects whose freedom is temporarily imprisoned in an isolation room far from the scope of society, therefore they also need to pay attention to their welfare in the cell, especially a prisoner whose life is isolated by the public. In article 1 paragraph 7 of Law Number 12 of 1995 concerning the Correction of Convicts, namely Convicts who undergo the Penalty of Losing Independence in Correctional Institutions. From this regulation, prisoners are only subject to loss of independence. But the rights of the prisoners are of course the same as the rights of other legal subjects. Recently, the public has been surprised by how many crimes are controlled by inmates from within the Correctional Institution, whereas the Correctional Institution is a place where guidance is held for every criminal who is sentenced and the decision has permanent legal force. Such conditions clearly raise concerns and question marks why convicts whose rights to independence are revoked can control crimes from within the Penitentiary? The logical answer is that the function of coaching in the Correctional Institution does not work well. Penitentiary is a place of guidance for civilian prisoners while military convicts are placed in Military Correctional Institutions. The question is, does the phenomenon of convicts controlling a crime occur in Military Correctional Institutions? So far it has never been revealed to the public, so the conclusion is that the development of Military Prisoners in Military Correctional Institutions has been going well.

METHODS

This research was conducted using a normative juridical research method by conducting a comprehensive study based on legislation and empirical juridical research, namely conducting an assessment based on observations of the handling of respect and protection of human dignity in emergency situations, including especially during armed conflicts.

This research is a legal research that uses several approaches to answer the problems studied, namely: 1) the statute approach, 2) the conceptual approach, 3) the comparison approach, and 4) historical and philosophical approaches (historical approach) and (philosophy approach).

Data processing is done qualitatively. The written legal materials that have been collected are then systematized according to the problems studied. Furthermore, the legal material is studied and described in accordance with the problem using the relevant theoretical basis. To answer the problem, the legal material that has been systematized is then carried out an assessment so that it can answer correctly the meaning and position of the coaching model for prisoners in the Correctional Institution cannot be separated from a dynamic, which aims to provide more provisions for prisoners in restoring the identity of the TNI such as previously, namely being able to carry out their duties and responsibilities in the unit so that the Military Correctional Institution (Lemasmil) is the final stage of the law enforcement system within the Military Court.

DISCUSSION

In the constitutional system, Indonesia is affirmed as a state of law so that all actions must be based on the law and all citizens together to their position before the law. The Indonesian National Armed Forces (TNI), is a State defense instrument tasked with carrying out State defense policies to uphold the sovereignty of the State, maintain territorial integrity, and protect the safety of the nation, carry out military operations for war and military operations other than war, as well as actively participate in the task of maintaining peace. regional and international. In carrying out their responsibilities, of course, there will be the possibility of irregularities or violations of the law committed by Indonesian National Armed Forces Soldiers. Every criminal act committed by a TNI soldier will be resolved through a Military Court and the execution of the crime will be carried out at the Military Correctional Institution (Lemasmil). This provision can be seen in Article 10 of Law Number 39 of 1947 of the Military Criminal Code (KUHPM), which reads: Temporary imprisonment or imprisonment including substitute confinement imposed on the military, as long as he is not dismissed from military service is served in buildings controlled by the military. The existence of a coaching model for prisoners in Correctional Institutions cannot be separated from a dynamic, which aims to provide more provisions for prisoners in restoring the identity of the TNI as before, namely being able to carry out their duties and responsibilities in the unit. The Military Correctional Institution (Lemasmil) is the final stage of the law enforcement system within the Military Courts. The military justice system consists of 4 (four) subsystems namely Investigation, Prosecution, Courts and Correctional Institutions. The Penitentiary Subsystem as the last subsystem of the military justice system has the task of carrying out guidance for military convicts for which there is no additional penalty of dismissal from military service. The correctional system for military prisoners and civilian prisoners is subject to Law Number 12 of 1995 concerning Corrections. The pattern of fostering military prisoners is stated in the Decree of the Commander of the Indonesian

Armed Forces Number: Kep/976/XII/2014 dated December 16, 2014 concerning Administrative Guidelines for the Implementation of Military Prisons in the Indonesian National Armed Forces, while the pattern of fostering civilian prisoners is regulated in Government Regulation Number 31 of 1999 concerning Development and Guidance of Correctional Inmates.

There are differences in the pattern of fostering military convicts, the pattern of fostering civilian prisoners, namely the pattern of fostering military convicts applying coaching in the field of education, coaching skills activities and coaching related activities in the task of coaching so that the inmates can return to being good soldiers who live the military life order by complying with 8 (eight)) mandatory TNI, Soldier Oath, Sapta Marga and other service orders as well as all applicable laws and regulations, while the pattern of the civilian prisoner development system is in the form of personality development and independence development so that it can be useful to the community, meaning that the development of Civil Prisoners does not lead to the convict's initial work. TNI soldiers have the same legal position as ordinary people, namely in addition to being subject to legal provisions in the military environment, the TNI is also subject to legal provisions in general the same as ordinary people, as regulated in Article 1 of the Military Criminal Code which states that, "For the application of this law, the provisions of general criminal law, including the ninth chapter of the first book of the Criminal Code, shall apply, unless there are deviations stipulated by law.

Military Correctional Institution (LEMASMIL).

According to Law Number 31 of 1997 concerning Military Courts, the administration of Military Corrections is a subsystem of military justice which is fostered and developed in accordance with the interests of the administration of national defense. The regulations governing the administration of Military Corrections are currently still based on Reglement Voor de Militaire Strafgestichten Stbl 1934169 (Army Prison Reglement) and Voorschriften betreffende de gevalen... etc., Stbl 1934170 (Placement of Criminal Execution for Military Convicts outside the designated places). The two Staatsblad were then adjusted to the issuance of Law Number 41 of 1947 concerning Army Prisons. The current legislation governing the implementation of military prisons is no longer in line with developments. According to Law Number 41 of 1947 concerning Army Prisons, the highest general supervision and supervision authority rests with the Minister of Defense, this is not in accordance with changes in the laws and regulations governing the TNI and is not in accordance with changes in the organization that regulates the duties and responsibilities of the Commander in Chief. TNI.

In the General Correctional Institution environment, the pattern of fostering prisoners has referred to the Republic of Indonesia Law Number 12 of 1995 concerning Corrections, while in the Military Correctional Institution it still refers to the Staatblad Prison Regulations 1934 Numbers 169 and 170 which are the legacy of the Dutch Colonial as amended by Law Number 41 of 1947 concerning Army Prison. The current condition, Military Correctional still uses the term Prison in the Law of the Republic of Indonesia No. 41 of 1947 is no longer in accordance with the development of the TNI organization, also from a legal and human rights perspective, the term contains the meaning of revenge and torture which is contrary to humanity. In the Republic of Indonesia Law No. 41 of 1947, it is still possible to carry out prison sentences for captives at the military prison house and at the Provost's house. 31 of 1997 concerning Military Courts Article 256 explicitly explains that imprisonment or confinement is carried out in Military Correctional Institutions or in other places according to the provisions of the legislation.

Military Prisoners (Napimil).

Military convicts (Napimil) are TNI soldiers who are convicted based on court decisions who have obtained permanent legal force who are serving a sentence (criminal) for deprivation of liberty at the Military Correctional Institution (Lemasmil). TNI soldiers come from the people, namely Indonesian citizens who were elected through various stages of selection that are quite strict so that those who become TNI soldiers are selected Indonesian citizens who are then educated and trained in such a way as to carry out their duties as TNI soldiers. In the course of his career a soldier may violate the law either intentionally or unintentionally, which of course must be sanctioned either through disciplinary punishment or through the Court. If the violation that is committed is qualified as a criminal offense, whether general, special or military, the settlement is carried out through a Military Court with due regard to the public interest and the defense interest.

When the settlement of the case is carried out through the Military Court, the Court will impose a sentence on the defendant if the Judge believes that the defendant has committed a crime as formulated by the Prosecutor in his Indictment, and conversely the Court will release the Defendant if the Judge believes that the defendant has not been proven legally and convincingly. have committed a crime. The forms of punishment that will be imposed on the defendant if it is proven to have committed a crime as regulated in Article 6 of the Criminal Procedure Code are as follows:

1. The main crimes include
 - (a) Death Penalty
 - (b) Imprisonment
 - (c) Confinement and
 - (d) Criminal Cover
2. Additional penalties include
 - (a) Dismissal from Military Service and
 - (b) Revocation of certain rights.

Based on article 256 paragraph (1) of Law Number 31 of 1997 concerning Military Courts, it is expressly stated that imprisonment or confinement is carried out in a Military Correctional Institution or other place according to the provisions of the applicable laws and regulations and paragraph (3) mandates that if the convict is dismissed from the military service , imprisonment or confinement is carried out in a General Correctional Institution. From these provisions, it can be concluded that the convicts in Lemasmil are TNI soldiers who are sentenced to imprisonment and or confinement without an additional penalty of dismissal.

Seeing this provision, the question arises, why are Soldiers sentenced to imprisonment and/or confinement placed in Lemasmil?, why not return them to their original units to be trained, wouldn't it be better to place them in their units so that their basic abilities in their main tasks are not lost. To answer this, we must return to the theory of the purpose of punishment and the pattern of fostering the prisoner himself. Separation of soldiers who violate the law must be done either temporarily or permanently because, as mentioned in the previous section, to become a TNI soldier, they must go through various stages of selection and education, meaning those who succeed in doing so are good Indonesian citizens and obey the law, but with the passage of time there are soldiers who have bad morals, to avoid contamination of good soldiers, separation must be carried out.

The temporary separation of soldiers will be carried out in Lemasmil, then the permanent separation will be carried out in the General Prison. Separation of places to undergo punishment for military convicts from civilian convicts is absolutely necessary, because the Penitentiary for civilian

convicts has different characteristics and desired outcomes from military convicts. Penitentiary for civilian prisoners is intended to be able to re-associate in the surrounding community, the nature of the prison must be based on social rules in society, while the Penitentiary for military convicts is primarily intended to be able to return to military life.

While in prison, the habits and procedures of military life must always be prioritized for the military convicts, while for civilian prisoners the target is that the convict can continue his new life in the midst of society. According to SR. Sianturi in his book "Military Criminal Law in Indonesia" states that the nature of military crime is "a punishment for a military man", basically an act of education or guidance rather than an act of deterrence or retaliation, as long as the convict will be reactivated in military service after completing his sentence. A military person who will return to active duty must become a good and useful military person both because of his own awareness and as a result of the "educational actions" he received while in a military prison house (military rehabilitation house). Law Number 31 of 1997 concerning Military Courts mandates that prisons be changed by emphasizing that imprisonment or confinement is carried out in military prisons or other places according to the provisions of laws and regulations with the aim of fostering.

Military Convict Development

Activities in Military Correctional Institutions are not just to punish or keep prisoners but include a coaching process so that inmates are aware of their mistakes and improve themselves (so that they are ready to be used by units) and do not repeat criminal acts that have been committed. Coaching is an effort to make those being fostered improve their lives so that they can adjust and improve their skills, knowledge and intelligence in the environment.

The development of military prisoners is expected to be able to improve the prisoners themselves so that they do not commit criminal acts again. Implementation of coaching for military prisoners so that after completing their criminal period they can return to being good TNI soldiers with the spirit of Pancasila and the Sapta Marga. With the separation of prisons between military prisoners and civilian prisoners, there is often a thought among the general public that under the auspices of the military there is special treatment for military prisoners in military prisons. This is because the Military Correctional Institution is not like the Penitentiary in general which is open to the public, while the Military Correctional Institution is slightly closed.

The concept of fostering military prisoners in prisons is stated in the Decree of the Commander of the Indonesian Armed Forces Number: Kep/976/XII/2014 concerning Instructions for the Administration of Military Prisons in the Indonesian National Armed Forces, Decree of the Commander of the TNI Number Kep/1018/XII/2015 concerning Instructions Technical Procedures for Military Correctional Administration within the TNI and the Decree of the Commander of the TNI Number Kep/1102/XII/2016 concerning Technical Guidelines for the Rehabilitation of Military Corrections in the Indonesian National Armed Forces. The Law Enforcement System in Military Courts adheres to the principle of equality before the law, as Article 27 paragraph (1) of the 1945 Constitution states that; "All citizens are equal before the law and government and are obliged to uphold the law and government without exception." This confirms that the TNI and the community have the same position before the law without any discrimination. The Guidance of Military Convicts adheres to the Correctional System as regulated in the Decree of the Commander of the TNI Number: Kep/976/XII/2014 concerning Administrative Instructions for the Implementation of Military Penitentiary in the Indonesian National Armed Forces.

The Military Correctional System is an arrangement regarding the directions and limits as well as the method of treatment of Military Prisoners based on Pancasila which is carried out in an

integrated manner between Lemasmil officers, Military Prisoners and the Military Prisoners unit to realize the goals and objectives of the development in the military administration. If we examine in more depth the implementation of the Guidance of Military Convicts at Lemasmil, we can conclude that the pattern of coaching is in accordance with the theories, namely:

1. Theory of Retaliation (Absolute Theory) The theory of retaliation justifies punishment because someone has committed a crime. Against the perpetrators of criminal acts absolutely must be held in the form of a crime.

2. Theory of Purpose (Relative Theory) Theories that belong to the group of theory of purpose justify punishment based on or depending on the purpose of punishment, namely: for the protection of society or the prevention of crime.

3. Combined Theory. This combined theory does not only consider the past (revenge theory), but must also consider the future (goal theory).

In principle, all convicts who are serving a criminal period have been deprived of their freedom after a decision through a court decision has permanent legal force, then the convict is placed in the Correctional Institution as a prisoner. In Lemasmil soldiers will receive integrated guidance so that after completing their sentence, the Military Convict is ready to be used. This is in accordance with the purpose of criminal law itself, namely to fulfill a sense of justice in society by implementing and enforcing the rules of criminal law for the sake of creating justice, expediency, and legal certainty. The 1945 Constitution also gives recognition to Human Rights that; Article 28 G paragraph (1) "Everyone has the right to protect himself, his family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right. ."

Article 28 G paragraph (2) "Every person has no right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country." All of these provisions apply to all prisoners, including military convicts. Article 10 of the Military Criminal Code states that; "Temporary imprisonment or confinement, including substitute confinement imposed on the military, as long as he is not dismissed from military service is served in buildings controlled by the military." Inmates in Military Correctional Institutions only apply to military convicts who are still active as members of the TNI, this means that these Inmates of Military Correctional Institutions are not those who receive an additional criminal sentence of dismissal from their service in accordance with Article 6 letter b number 1 of the Military Criminal Code. Article 256 paragraph (3) of Law Number 31 of 1997 concerning Military Courts states that; "If the convict is dismissed from service to the army, the punishment as referred to in paragraph (1) is carried out at the General Correctional Institution." The process of fostering correctional inmates carried out at the Military Correctional Institution is carried out with the following principles:

(a). Command Unit

(b) Military Interest

(c) Legal Certainty

(d) Coaching and

(e) Humanity. The implementation of the Guidance of Military Prisoners must be carried out in a structured and directed manner because these military prisoners are TNI soldiers who are still needed by TNI organizations.

In order to restore the discipline of soldiers to animate the order of military life, a method of carrying out coaching is needed, then the coaches must have a sense of responsibility to restore the basic attitude of prisoners to return to being militant soldiers, the coaching method to achieve these

goals is carried out by:

- a) Communicative and Accommodative Approach. This method is carried out by interacting directly by prioritizing kinship, carrying out counseling, finding the root of the prisoner's personal problems and providing solutions. When the Napimil problem is over, the coaches will easily restore their patriotic spirit, instill a sense of loyalty to the TNI in their service to the Unitary State of the Republic of Indonesia.
- b) Persuasive Educational Approach. With this method approach, the coaches try to influence and change the behavior of military convicts through mental personality development, education, training, skills and providing equal treatment without discrimination. Placing military convicts as humans who have new and better potential, providing encouragement to realize their mistakes so that they will sincerely improve themselves and not repeat their actions again. With this approach, military convicts will return to being TNI and ready to be used again by their units when they are finished serving their sentences
- c) Integrated Approach. Guidance of Military Prisoners in Military Correctional Institutions is carried out in a systematic, integrated and continuous manner between Kalemasmil, Ankum, Military Prosecutor as Executor of Military Court decisions and Supervisory Judges as well as cooperating with other relevant agencies.

Indicators of Success in Coaching Military Convicts As explained in the introduction, currently many criminal actors are controlled by the convict from within the Correctional Institution. In addition to actors or controllers from within the institution, many of the perpetrators of criminal acts caught are former convicts who have finished carrying out coaching. If the perpetrator of the crime is a former inmate, then it is not an exaggeration if the author states that the guidance carried out in the Correctional Institution was not successful and the theories of the purpose of punishment were not achieved.

The indicator of the success of the Guidance of Military Convicts is simply the return of Military Convicts to have and carry out the military life system, namely to animate and carry out all service orders that are their obligations by referring to the Sapta Marga, the Soldier's Oath, 8 mandatory TNI and complying with applicable laws. Until now, there has never been a military prisoner controlling crime from within a Military Correctional Institution and it is very rare for a soldier who has undergone training in a Military Correctional Institution to commit a crime a second time.

Guidance of Military Convicts in Military Correctional Institutions is carried out with the aim of returning a soldier to the identity of the TNI so that the convict can return to carrying out his main duties in the unit after serving a sentence. To be able to achieve this target, the coaching must be carried out seriously in accordance with the standard operational procedures that have been outlined by the Upper Command. As long as the restrictions on the rights of freedom of a military prisoner do not violate basic human rights, then restrictions must be applied, one of which is the limitation of communication facilities such as cellphones.

If we look at the ability of civilian prisoners to control crime from within Detainees, it is inseparable from communication tools, limiting the means of cellphone communication is not a difficult job provided that the coaches and their supporting elements have high integrity, if the coaches and their supporting elements do not have integrity, this is an opportunity for citizens. The prisoners are very open to committing crimes even though they are physically in detention. Several factors that support the achievement of the success of inmates coaching in addition to the human resource factor (the coaches) and infrastructure, namely the external factor of the Court's Decision.

The length of time a military convict undergoes coaching is determined by the Court through a judge's decision. Judges in imposing a crime sometimes impose a crime with an order to reduce the length of the sentence that must be served as long as the defendant is undergoing temporary detention, if the decision is accompanied by an additional penalty of dismissal it will not cause problems, but if it is not accompanied by additional punishment, it is very influential and heavy work. for Lemasmil to restore the identity of military prisoners to their original state.

For example, a defendant is sentenced to 7 (seven) months. The prison is reduced while in detention, the defendant has been in detention for 6 (six) months, meaning that the defendant has only 1 (one) month to serve. 30 (thirty) days is a very short time to restore the identity of TNI soldiers, in my opinion ideally coaching at a Military Correctional Institution is 3 (three) months, with three months sufficient for Lemasmil to restore the condition of a soldier, both physically and psychologically. so that after completing the training the soldier is really ready to rejoin his unit.

The success or failure of coaching military convicts is influenced by superiors who have the right to punish and/or Papera, a soldier who is undergoing training should receive attention from the unit, namely by sending representatives to visit the convict, this visit will be very useful in boosting the mentality of the convict, because of how Even the most difficult thing in coaching convicts is to build or raise a fallen mentality because the general view is that going to prison is a taboo and shameful thing. When the convict's mentality is slumped and cannot be recovered, it will result in failure to carry out coaching so that the final assessment of Kalemasmil will give a bad assessment and may even recommend that the convict is no longer worthy to be maintained as a TNI soldier so that he can be dismissed through administrative means.

Continuation of Guidance for Military Convicts

As described above, the Military Correctional Institution is identical to the Educational Institution for TNI Soldiers who are serving a criminal sentence, this can be seen from the objective of the training targets to prepare soldiers to be ready to return to their units. Soldiers who have finished serving their sentences will return to their units, but sometimes their punishment does not end, especially when the unit commander or the former convict's superior judges that the soldier is a soldier who has committed a violation, negative forms of assessment are carried out by not giving assignments, silence or even not infrequently provide physical action.

If this condition is experienced by ex-convict soldiers, the training that has been carried out by Lemasmil may fail, the soldiers will lose their enthusiasm and motivation so that they have the potential to violate the law again. The coaching that has been carried out by soldiers in Lemasmil requires a large enough budget, therefore Lemasmil as an educational institution must carry out maximum guidance if the former military convict unit does not follow up or does not use soldiers who have returned to the unit, the budget that has been issued will be very large. in vain, in connection with this, it is necessary to emphasize from the TNI leadership so that the life sentence from superiors against former military convicts should be eliminated, if the soldiers have finished undergoing training then use the soldiers, develop the fighting spirit of the soldiers because it is not forever that naughty soldiers will remain delinquents would be very good if given a second chance for soldiers to give service to their units, because after all the judge's decision did not impose an additional penalty of dismissal from military service based on the belief that the soldier was This can still be useful for the TNI organization, on the other hand, if the Judge judges that the soldiers are no longer useful for the TNI organization, the Judge will definitely impose an additional sentence of dismissal.

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