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Outline Of The Development Of Military Criminal Law In Indonesia

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Abstract

This study aims to examine the broad development of military criminal law in Indonesia using normative legal research methods. The approaches employed include legislative and historical approaches to trace the dynamics of military criminal law regulation from the colonial period to the modern era. The results indicate that military criminal law in Indonesia was initially an adoption of the Dutch colonial legal system, which was then maintained and adapted after independence. Over its development, military criminal law has undergone a transformation toward a more modern national legal system while retaining its distinctive characteristics as an instrument for enforcing discipline in the military environment. However, this development also faces various challenges, such as the dualism between military criminal law and general criminal law and the suboptimal updates to the Military Criminal Code (KUHPM). Furthermore, there is a need to align military criminal law with the principles of the rule of law, transparency, and human rights protection. Therefore, efforts to reform regulations and harmonize laws are needed to create a more effective, just, and accountable justice system. This research is expected to contribute to the development of military criminal law in Indonesia and serve as a reference for further research.

I. INTRODUCTION

Before Indonesian independence, the criminal law applicable to the military essentially followed the colonial system (Dutch East Indies), which distinguished between general and military criminal law. This system was oriented toward maintaining colonial power, not protecting citizens.

After the Proclamation of Independence in 1945, the need for a national army (TNI) automatically led to the need for special criminal regulations for soldiers, as they held weapons, were given coercive powers, and were in a dangerous situation (the war of independence). At this stage, the logic was simple: the young nation had to maintain military discipline and obedience, thus the formation of military justice is seen as an urgent need.

After Indonesian independence, the military criminal justice system did not undergo immediate, comprehensive changes. Instead, it remained heavily influenced by the colonial legal system, which was gradually adapted to the needs of the independent Indonesia. The Military Criminal Code (KUHPM) became a crucial instrument for regulating criminal acts committed by military personnel and maintaining discipline within the Indonesian National Armed Forces.

In its development, military criminal law in Indonesia continues to experience changes and reforms, especially after the 1998 Reform era. These reforms encouraged the existence of Adjustments to the military justice system to make it more transparent, accountable, and in line with the principles of the rule of law and the protection of human rights. This is reflected in the regulation of military justice through Law Number 31 of 1997 concerning Military Justice, which serves as the operational basis for military justice to date.

Furthermore, the development of military criminal law is also influenced by the dynamic relationship between military courts and general courts, particularly regarding the authority to prosecute military personnel who commit general crimes. The debate over this dual jurisdiction demonstrates that military criminal law continues to evolve in response to the demands of the times and the needs of the national legal system.

Thus, studying the broad outlines of the development of military criminal law in Indonesia is crucial for understanding how this

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legal system was formed, developed, and adapted to social, political, and legal changes. This study is also relevant for assessing the extent to which military criminal law is able to address modern challenges in fair and professional law enforcement within the military.

II. RESEARCH METHODS

This research employs a normative legal research approach that focuses on the examination of applicable legal norms, both those contained in legislation and in legal doctrine and literature. This research aims to analyze the broad outlines of the development of military criminal law in Indonesia through the exploration and review of relevant legal materials.

The approaches used in this research are a legislative approach and a historical approach. The legislative approach examines various regulations related to military criminal law, while the historical approach is used to understand the development of military criminal law over time, from the colonial period to post-Indonesian independence.

Legal materials used in the research

legislation, secondary legal materials in the form of books, journals, and expert opinions, and tertiary legal materials as supporting materials. The collection of legal materials was carried out through literature studies by reviewing various written sources relevant to the research topic.

Next, the collected legal materials were analyzed qualitatively by systematically describing and interpreting them to gain a comprehensive understanding. The results of the analysis were presented descriptively and analytically to provide a clear picture of the development of military criminal law in Indonesia and to draw conclusions consistent with the research objectives.

III. RESULTS AND DISCUSSION

A. Research result

Based on normative legal studies, the development of military criminal law in Indonesia demonstrates dynamics influenced by changes in the state system, legal politics, and the needs of military institutions in maintaining internal discipline and order. Historically, military criminal law in Indonesia is inseparable from the legacy of Dutch colonial law, particularly as contained in the Wetboek van Militair Strafrecht (Military Criminal Code), which was later adopted and adapted into the Military Criminal Code (KUHPM) after Indonesian independence.

In the early days of independence, military criminal law remained in place as a tool to maintain stability and discipline within the military, which at that time played a strategic role in upholding national sovereignty. The regulations in force during this period were still heavily influenced by the colonial legal system, but they were gradually adapted to reflect national values and the needs of the independent nation.

Subsequent developments indicate efforts to reform military criminal law, marked by adjustments to the national legal system. This is evident in various changes to laws and regulations governing military justice, including restrictions on the authority of military justice to better align it with the principles of the rule of law and the protection of human rights. In this context, a tendency has emerged to position the military not merely as a legal subject subject to. This includes primary legal materials in the form of regulations internal rules, but also as part of a broader national legal system.

Furthermore, research findings indicate a dualistic regulatory framework between general criminal law and military criminal law. Military criminal law has specific characteristics that regulate certain crimes that can only be committed by military personnel, such as disciplinary violations, desertion, and insubordination. However, in practice, debate persists regarding the boundaries of authority between military courts and general courts, particularly in handling general crimes committed by military personnel.

In the reform era, developments in military criminal law have increasingly shifted toward the principles of transparency, accountability, and the rule of law. This is evidenced by the discourse and efforts to reform military justice, including the push to revise the Criminal Code (KUHPPM) to better align with modern legal developments and democratic principles. These reforms also reflect the need to balance the importance of maintaining

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military discipline with the protection of individual rights.

Thus, the results of this study indicate that the broad development of military criminal law in Indonesia has shifted from a colonial system to a more modern and responsive national legal system. Nevertheless, challenges remain in harmonizing military criminal law with general criminal law and in realizing a fair and transparent justice system.

B. Discussion

1. HISTORY OF MILITARY CRIMINAL LAW

According to current legal science, civil law is divided into four parts, namely law:

a) about a person (personal law);
b) family;
c) wealth is divided into absolute wealth law, relative wealth law;
d) inheritance. Explanation:

1) Personal law contains regulations regarding humans as legal subjects,

regulations regarding conversations to have rights and the ability to act independently in exercising one's rights and matters affecting capacity. This is the entire legal norm that regulates the status of individuals as legal subjects, their capacity to act in legal transactions, civil records, absences, and domicile. This includes the status of legal entities as subjects of civil law.

2) Family law is the totality of legal norms that regulate legal relationships based on family ties, for example marriage, parental authority, guardianship and custodianship.
3) Property law is the totality of legal norms that govern the relationship between legal subjects and their assets, or regulate rights and obligations that can be valued in money. Absolute property law encompasses property rights, which grant direct control over an object and can be enforced against any individual. Relative property law encompasses individual rights, which arise from a contract and can only be enforced against certain parties.
4) Inheritance law is the entire legal norm that regulates the transfer of rights and obligations in the field of property law from the heir to all his heirs and the consequences thereof.

2. SYSTEMATICS ACCORDING TO THE CIVIL CODE

a) Book I about people

The provisions regulated in Book I regulate the law of individuals and family law, this is because according to the legislators, the definition of law of individuals in a broad sense also includes family law. In relation to the provisions of Book I of the Civil Code today with the enactment of Law No. 1 of 1974 concerning Marriage, all provisions related to marriage as long as they are regulated in the law, then The provisions on marriage in the Civil Code are no longer valid (Andi Hamzah, 2008).

b) Book II about objects

The provisions regulated in Book II of the Civil Code concern property rights which are part of property law as regulated in the doctrine. According to the doctrine, property law is divided into two, namely absolute property law which is a property right regulated in Book II concerning Objects.

III Concerning Agreements. In relation to the provisions of Book II concerning Objects, the Civil Code is no longer in effect, namely with the enactment of Law No. 5 of 1960 concerning Basic Agrarian Principles. Based on this law, all legal provisions concerning the earth (soil), water, and other natural resources contained therein that have been regulated in Law No. 5 of 1960 are declared invalid. In addition, in relation to guarantees for land and objects related to land that previously used the provisions of the Mortgage as regulated in Book II of the Civil Code, with the enactment of Law No. 4 of 1996 concerning mortgage rights, they are declared invalid. In Book II concerning Objects, the Civil Code also regulates the provisions of inheritance law based on 2 reasons according to the law makers through the provisions of Article 584 of the Civil Code which states that inheritance is one way to obtain ownership rights. In addition, the provisions in Article 528 of the Civil Code determine that inheritance rights are property rights.

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c) Book III on obligations

The law of obligations regulated in the book III of the Civil Code, as previously mentioned, is part of relative property law (according to doctrine). Contract law regulates the legal relationship between one person and another to provide something, do something, or not do something within the scope of property law that originates from laws or agreements. Specifically regarding contract law, the principle of freedom of contract applies, in which each party is allowed to regulate their own binding agreements between them. may even deviate from the provisions in force in the Civil Code (SR Sianturi 1985).

d) Book IV on proof and expiration

Book IV of the Civil Code regulates the means of evidence used to claim or defend a person's civil rights in court. In addition, Book IV of the Civil Code also regulates the expiration or certain time period that causes a person to lose his civil rights or obtain civil rights, for example the time period when a person loses the right to claim his property rights or the time period that causes a person to obtain property rights. Regarding the regulations contained in Book IV of the Civil Code, legal experts (doctrines) are of the opinion that it should not be included in material civil law, but included in formal civil law (procedural law), but the law makers assume that related to evidence and expiration are material procedural law so they are included in material law. The law makers distinguish between material procedural law which is included in the scope of material law and formal procedural law which is included in the scope of procedural law (formal).

3. HISTORY FORMED HIS Civil Code

The validity and existence of civil law in Indonesia is inseparable from the history of the Indonesian nation. Before the Dutch colonialists arrived in Indonesia, the Indonesian nation, which at that time consisted of large and small kingdoms, already had its own legal system. This legal system was known as customary law, which generally took the form of unwritten law. In several regions with a Muslim majority at that time, it is undeniable that customary law provisions were heavily influenced by Islamic law. In Wajo, for example, inheritance law uses both Islamic law and customary law, both of which are integrated, and customary law...

adapt to Islamic law. at that time for certain areas of Aceh for example or during the reign of Sultan Agung, Islamic law was enforced as the official law of the State. Thus, before the Dutch set foot on Indonesian soil, two legal systems had been in effect, namely customary law and Islamic law. When the Dutch set foot and colonized Indonesia, the validity of customary law and Islamic law in Indonesia was maintained, this was reflected in the legal policy of the Dutch Colonial government at that time which was stated in Article 131 IS. The provisions contain the following (R. Soesilo 1996).

a) Civil law, commercial law, criminal law, civil procedural law, criminal procedural law, must be placed in the Law Code or codification.
b) For European groups, the provisions of the laws and regulations existing in the Netherlands in civil law must be applied as an application of the principle of Concordance.
c) For native Indonesians and foreign Easterners, European legal provisions in the field of civil law and commercial law can be applied, if their needs require it.
d) Native Indonesians and foreign Easterners were allowed to submit themselves to the laws that applied to Europeans, either partially or completely.
e) Customary law, which still applies to native Indonesians and foreign East Asians, remains in effect as long as it has not been written into law. Based on this, it is clear that the implementation of Dutch legal provisions in Indonesia did not abolish the pre-existing legal system. This is actually related to the divide-and-rule policy of "device et ampera" implemented by the Dutch

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colonial government. The implementation of this Dutch legal policy resulted in a division of law and population groups in Indonesia. This is reflected in

the implementation of Article 163 IS which originates from the new Article 109 RR which states that in relation to the implementation of BW in Indonesia, the population of the Dutch East Indies is divided into the following 3 groups.

a) Europe.
b) Foreign East.
c) The Land of the Sons.

4. HISTORY LAW CIVILINDONESIA AND THE NETHERLANDS

a) Development of Civil Law in Indonesia

The history of the development of civil law in Indonesia is inseparable from the history of the development of legal science in other European countries, in the sense that the development of civil law in Indonesia is greatly influenced by the development of law in other countries, especially those that have direct relations. Indonesia as a country under the auspices of the Dutch East Indies government, policies in civil law are inseparable from the policies that occurred and were implemented in the Netherlands. The year 1848 was a very important year in the history of Indonesian law. In this year, private law applicable to the European legal group was codified, namely collected and included in several law books based on a certain system (Moeljatno 2008).

In codifying civil law, the principle of concordance is still maintained, the risk is that almost all the results of the 1848 codification in Indonesia are imitations of the results of the codification that had been implemented since 1838 in the Netherlands, with several exceptions made to adjust the law for the European legal group in Indonesia with special circumstances. What is meant by the principle of concordance is the principle of adjustment or the principle of equality in the application of the legal system in Indonesia which is based on the provisions of Article 131 paragraph (2) IS which states "For the Dutch group, the laws in the Netherlands must be adopted or emulated." According to Kansil, this means that the law that applies to Dutch people in Indonesia must be the same as the law that applies in the Netherlands. So, to be clear, codified law in Indonesia and codified law in the Netherlands are based on the principle of concordance.

b) Development of civil law in the Netherlands System law civil Dutch, orBurgerlijk Wetboek (BW), is based on several things, namely: Code Napoleon, French civil law which is based on Roman law Corpus Juris Civilis
- Pre-colonial customary law
- Roman-Dutch law

The Dutch legal system adheres to civil law, or Continental European legal system. In this system, the judge's role in lawmaking is limited. Indonesia once used the Dutch legal system because it was a Dutch colonial colony. At that time, Indonesia did not yet have laws derived from its own traditions (Lilik Mulyadi 2012).

Dutch civil law as a source of Indonesian civil law has been updated since 1947. Nieuw Burgerlijk Wetboek (New Dutch Civil Code) was successfully compiled and has been in effect since 1992, consisting of 10 (ten) books. This update is quite significant when compared to Indonesian civil law which still uses the old Civil Code (KUHPer) which consists of 4 (four) books. In its development, the Max Planck Encyclopedia of European Civil Law states that the most significant update is the expansion of the principle of good faith in all Books 3 and 6 of Nieuw Burgerlijk Wetboek.

The similarity between the principle of good faith in Indonesian civil law and Dutch civil law is that the principle of good faith gives rise to rights and obligations that are not expressly stated in the agreement. Conversely, the difference between the principle of good faith in Indonesian civil law and Dutch civil law lies in the broadening of interpretation that upholds the principle of freedom of contract and helps judges in court to avoid multiple interpretations.

and the cancellation of the clause

in the general terms and conditions of a contract and compensation for the injured

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party due to the cancellation of the contract at the contract drafting stage. This is a lack of the principle of good faith in Indonesian civil law, which does not yet recognize the function of derogation or restriction.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Based on the results of normative legal research conducted, it can be concluded that the development of military criminal law in Indonesia demonstrates a shift from a legal system rooted in colonial heritage to a national legal system that is more adaptive to current developments. Military criminal law initially adopted colonial provisions, which were then maintained after independence with various adjustments to meet the nation's needs. Over time, military criminal law has functioned not only as an instrument for enforcing discipline within the military but has also undergone transformation to align with the principles of the rule of law and the protection of human rights.

Furthermore, these developments also demonstrate efforts to more comprehensively integrate military criminal law into the national legal system. However, various issues remain, such as the duality of regulations between military criminal law and general criminal law, as well as the less-than-optimal reform of regulations governing military justice. This demonstrates that despite significant progress, military criminal law in Indonesia still requires refinement to meet the challenges of modern law.

B. Suggestion

The suggestion that can be made in this study is the need to update the Military Criminal Code (KUHPM) to better align with national legal developments and democratic principles. Furthermore, clarity is needed regarding the boundaries of authority between military courts and general courts to avoid overlap in case handling. And legislators are also expected can strengthen the harmonization of military criminal law and general criminal law, thus creating a more effective, just, and transparent legal system. Furthermore, further research is needed to examine the implementation of military criminal law in practice, so that it can make a real contribution to legal development in Indonesia.

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