



Discussion Criminal Offense of Fraud Committed By Members of The Indonesian National Army (TNI)

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Abstract: *The crime of fraud committed by members of the Indonesian National Army (TNI) can damage the integrity and image of the military institution. This study aims to analyze the settlement mechanism of criminal fraud cases by members of the Indonesian National Army (TNI) in the Military Court based on Law Number 31 of 1997. A normative juridical approach with descriptive method is used to examine the stages of settlement, including investigation, prosecution, and implementation of decisions, through a case study of Decision Number 41-K/PM.I-02/AD/III/2024. The results showed that the settlement of the case began with an investigation by the Military Police, continued with prosecution by the Military Oditur, and ended with the execution of the decision in the military court. The judge's consideration in handing down the verdict is based on juridical and non-juridical factors. The imposition of criminal penalties and dismissal from military service reflects the function of the Military Court in maintaining the discipline and integrity of the TNI.*

Keywords: *Fraud, Settlement, Military*

Introduction

The State of Indonesia is a state of law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This means that the State of Indonesia in carrying out the life of the nation and state must be in accordance with the applicable laws, including state officials, state apparatus including members of the Indonesian National Army (TNI) who must submit and obey the applicable laws (Siallagan, 2016). In this era of globalization, the growth and development of society as a community has been very developed, thus causing major changes and influences on the level of welfare in Indonesia. Community behavior is one of the determinants of high and low welfare in Indonesia, but there are still many people who do not care about the norms or rules of applicable law. This has a huge impact on the occurrence of various crimes in Indonesia (Salamor, 2024).

Crime is an act that can harm society, which crimes that occur throughout the world may not be endless because in the news of mass media such as television and newspapers still always contain the occurrence of crime. One form of crime that occurs in society is fraud. Fraud is a crime committed by someone with deception and a series of lies (Dunn et al., 2011).

Basically, the act of fraud is seen from anywhere is very despicable, because these actions can cause feelings of distrust of each other and the impact can damage the order of community life and these actions are an act that violates the law. Fraud in Indonesia is not only committed by the general public but there are also members of the Indonesian National Army (TNI) (Zaida & Mohd. Din, 2021). The TNI is a state tool used to maintain the sovereignty of the Unitary State of the Republic of Indonesia against threats to the sovereignty, integrity and territorial integrity of the Indonesian state from inside and outside the region by carrying out the tasks assigned by the State. The TNI is also one of the main pillars in maintaining the sovereignty and security of the country that upholds discipline, integrity and morality to maintain public image and trust, but in reality it is not uncommon to find cases where TNI members are involved in a criminal case, one of which is criminal fraud (Ummah, 2019).

Fraud committed by members of the TNI is a very concerning issue because it involves individuals who should be role models in upholding the law and protecting the public. This crime not only undermines public trust but also shows a violation of the code of ethics and military discipline, even though based on their duties the TNI is required to be someone who has high discipline from various aspects.

The crime of fraud is regulated in Chapter XXV of Book II of the Criminal Code (KUHP) which is formulated in Article 378 which states that "whoever, with the intent to unlawfully benefit himself or another, by using a false name, false dignity, deceit, or a series of lies, induces another person to surrender something to him, or to give a debt or to cancel a debt, shall, being guilty of fraud, be punished by a maximum imprisonment of 4 (four) years (Sudarta, 2022).

Thus, based on the above understanding, it can be concluded that the definition of criminal fraud is a trick or a series of false words so that someone feels trusted because of what seems to be true and usually someone who commits fraud will explain something as if it were true or happened, but in fact his words are not in accordance with reality, because the aim is only to convince the person who is targeted to be recognized by his wishes (Gunadi, 2014). Based on the description above, the crime of fraud has the following main elements.

- a. With the intent to unlawfully benefit oneself or others. That is, the explanation of this element is simply so that the perpetrator gets a profit so that this profit is the main purpose of the perpetrator in committing the criminal act unlawfully (Rahmanto, 2019). Thus, the intent is intended to benefit and against the law, so that the perpetrator must know that the benefit must be unlawful.
- b. By using one or more means of inducing fraud (false name, false dignity or false circumstances, deceit and a series of lies). This means that the nature of the perpetrator in committing the crime of fraud is determined by the means by which the perpetrator moves another person to hand over something (Dunn et al., 2011). As for the driving tools used to move others, namely a false name means that the name is different from the real name even though the difference seems small or the use of a name that is not one's own name, but someone else's name, even the use of a name that is not owned by anyone is also included in the use of a false name; Deception means an act carried out

in such a way that it creates trust or confidence in the truth of something to another person; false dignity or state means when a person gives a statement that he is in a certain state, which state gives rights to the person who is in that state; series of lies means if between the various lies there is such a relationship and one lie complements another lie so that they reciprocally create a false image as if it were the truth. Thus, the series of lies must be told in such a way as to form a story that is logically acceptable and convincing to others.

- c. Moving another person to deliver goods, or to give a debt, or to cancel a receivable means that there is a connection between the means of movement and the delivery of goods. This means that there must be a causal relationship between the means used and the delivery in question (Pipit Mulyah, Dyah Aminatun, Sukma Septian Nasution, Tommy Hastomo, Setiana Sri Wahyuni Sitepu, 2020a). The delivery of goods that occurs as a result of the use of a means of inducement cannot be proven without elaborating on the effects caused by the use of the means of inducement, so as to create an appropriate situation to mislead a person in delivering the goods.

Methodology

This research uses a normative juridical approach method, which is an approach that focuses on the study of law through research on library materials or secondary data. This approach aims to analyze legislation and legal concepts relevant to the crime of fraud by members of the Indonesian National Army (TNI). Thus, this approach helps to understand the legal basis and norms that apply in the settlement of these cases. The type of research used is descriptive juridical research, which is a method that aims to describe, elaborate, and explain legal problems in society and their resolution. This research relates the problems discussed with the current legislation. The data used in this research comes from primary legal materials (laws and related regulations), secondary legal materials (literature, journals, and expert opinions), and tertiary legal materials (legal dictionaries). The results of the analysis are expected to provide conclusions that answer problems related to fraud by members of the TNI and law enforcement in the military context (Andriya Maulana, 2023).

Result and Discussion

1. Mechanism for resolving criminal acts of fraud committed by members of the TNI based on Law No. 31 of 1997

The crime of fraud committed by members of the TNI is a jurisdiction within the scope of Military Justice as stipulated in Law No. 31 of 1997 which states that courts within the military justice environment are authorized to examine, try and decide criminal cases committed by members of the TNI (Pokhrel, 2024). The mechanisms or stages of resolving fraud crimes committed by members of the TNI based on Law No. 31 of 1997 include the investigation stage, the prosecution stage, and the stage of implementing the decision (A MARDIWIBOWO, 2024).

a) Investigation Stage

The investigation stage in the case of criminal fraud committed by members of the TNI is an important process carried out by the Military Police (POM TNI) in the

mechanism for resolving cases of criminal fraud committed by members of the TNI with the aim of gathering accurate evidence so that the case can be submitted to the prosecution and trial stages (Syifawaru et al., 2022). The initial process of the investigation carried out by the military police is to receive a report filed by the reporter either orally or in writing by the victim or known by the investigator himself. Furthermore, the POM makes a report in which it must include a description of how the incident occurred, a clear description of the location and time of the case, the consequences of the incident, the personal data of the person reporting and also the article violated by the perpetrator.

Then the military police summon the suspect for examination. The summons is made in writing and uses a summons signed by the commander or military police investigating officer through Ankum. The examination is carried out by the investigator in order to obtain information on an event that is thought to be a criminal act and also in obtaining as complete evidence as possible which will be used to prove the case which is thought to be carried out by the suspect. Before the examination process is carried out, the investigator has the right to inform the suspect about his right to obtain legal counsel assistance (Di et al., 2022).

b) Prosecution Stage

In the process of prosecuting a criminal act of fraud committed by a member of the TNI is a series of legal stages in the Military Court after the investigation conducted by the Military Police (POM TNI) is complete and the case file is complete (P-21), the case file will be submitted to the Military Oditur (Lapae et al., 2022). Before reading out the charges, the Military Oditur must first make a plan of charges where this plan of charges contains a letter compiled by the Military Oditur before submitting formal charges at trial. This letter contains a draft or proposal sentence that will be prosecuted against a defendant for a criminal offense that has been committed. The submission of the charge plan is a form of guidance, control, and supervision from the Oditurat General of the Indonesian Armed Forces as the supreme leader and in charge of the highest court as explained in Article 66 letter a and Article 67 letter a of Law Number 31 of 1997 concerning Military Justice.

Military Justice. Aside from being a form of guidance and supervision, the submission of plan is also a manifestation of the provisions of Article 47 paragraph (2) Law Number 31 of 1997, the prosecutor is one and not separated in conducting prosecution. If sufficient evidence has been found that the defendant committed a criminal act of fraud, the military oditur will prepare an indictment. The indictment prepared by the Military Prosecutor contains a description of the act of fraud committed by the defendant, which contains several things such as the identity of the defendant, the time and place of the fraud, the evidence that strengthens the allegations of fraud, and the article charged to the defendant. After the indictment is finalized, the military prosecutor submits the case file to the Military Court for trial.

During the trial the military prosecutor will present the charges to the Panel of Judges when the evidentiary process is complete, which is based on witness testimony. When the evidentiary process has been completed, the military prosecutor submits the charges against the defendant in accordance with the facts of the trial (Retnaningsih et al., 2020).

c) Stage of Decision Implementation

The stage of execution of the decision is the first stage that begins after the Panel of Judges at the Military Court makes a decision, based on the evidence and testimony that has been presented at the trial. In this decision the Judge will state whether the defendant is guilty of the crime of fraud and determine the sentence to be imposed. After the verdict is rendered, the Military Court will deliver the verdict to the military prosecutor and the commander of the unit where the defendant serves (Susanto Agus, Zahri Saepuddin, 2022).

Furthermore, once the execution of the verdict has commenced (the defendant begins serving a prison sentence), the military prosecutor and the unit commander are responsible for ensuring that the sentence is carried out in accordance with the Court's order.

2. The Basis for Judges' Consideration of TNI Members involved in the Crime of Fraud based on Decision Number 41-K/PM.I-02/AD/III/2024

Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) in Article 1 states that Judges are State Judicial Officials authorized by law to adjudicate. Judges in imposing punishment must be in order to ensure the establishment of truth, justice and legal certainty for a person. In Indonesia, the principle of freedom of judges is fully guaranteed in Law No. 48/2009 on Judicial Power, which stipulates that judicial power is an independent state power to administer justice in order to uphold law and justice. The freedom of judges referred to here means freedom in formulating the law, not creating the law. In terms of finding the law, judges can reflect on jurisprudence and the opinions of well-known jurists (doctrine). It should be emphasized that the position of the judge is impartial. With the freedom they have, impartial judges can be interpreted that judges are not one-sided in their considerations and judgments (Satria, 2022).

Article 197 Paragraph (1) letter d of the Criminal Procedure Code states that the judge's reasoning must be compiled concisely regarding the facts and circumstances along with the evidence obtained from the examination in court which is the basis for determining the defendant's guilt. Lilik Mulyadi stated that "The judge's consideration consists of juridical considerations and facts in the trial. In addition, the panel of judges must master or be familiar with the theoretical and practical aspects, jurisprudence and position cases being handled.

Judges in making decisions consider juridical and non-juridical factors. Non-juridical factors that can be considered by judges are judges looking at the environment and using their conscience, while the juridical factors are looking at laws and theories related to the case or cases that have been tried. That way, the judge's consideration is based on the facts and evidence revealed at trial and also the judge's own belief in a case (Pipit Mulyah, Dyah

Aminatun, Sukma Septian Nasution, Tommy Hastomo, Setiana Sri Wahyuni Sitepu, 2020b).

Thus, based on the explanation above, the judge's reasoning in the crime of fraud based on Decision Number 41-K / PM.I-02 / AD / III / 2024 is one of the examples of cases that the author takes in this study, where the judge's reasoning based on Decision Number 41-K / PM.I-02 / AD / III / 2024 is a consideration of the aggravating and mitigating circumstances of the decision, these considerations are used as reasons by the judge in imposing his decision, be it in the form of a punishment decision or so on.

The basis for the Judge's consideration in the crime of fraud based on Decision Number 41-K / PM. I-02/AD/III/2024 is the existence of aggravating circumstances and mitigating circumstances where aggravating circumstances such as the defendant's actions violating the 2nd and 6th points of the Soldier's oath; the defendant's actions have defamed the Yonkav 6/NK Unit and the Army in general in the midst of the community; The defendant did not show good faith to return one unit of Toyota Avanza Silver Nopol owned by witness-3; The defendant's actions have caused losses to witness-3 in the form of losing one unit of Toyota Avanza Silver Nopol; The defendant's actions caused the witness-3's rental business to come to a halt and could no longer be run as long as the witness-3's car had not been returned or replaced by the defendant within 2 (two) years, causing a very large immaterial loss; that in addition to the witness-3's car being pawned by the defendant, the defendant also pawned rental cars belonging to other people with the same motivation, namely to be rented out and then pawned by the defendant;

The defendant also used the money obtained from pawning the car of witness-3 to play online gambling, which the defendant understood that the highest leadership of the TNI had strictly prohibited the discipline of Soldiers in online gambling activities, but the defendant ignored it; the defendant had also been sentenced before the defendant was tried in this case; and the defendant was never deterred by the several sentences that had been handed down to him, this can be seen that the defendant always repeated his actions for the same reason, namely playing online gambling, while the defendant had already been sentenced to a criminal penalty in a gambling case (Putusan et al., n.d.).

The mitigating circumstances were that the defendant was polite, confessed and regretted his actions and promised not to reoffend, which facilitated the trial.

Thus, based on the explanation above regarding the aggravating circumstances and mitigating circumstances, the basis for the judge's consideration of the crime of fraud committed by members of the Indonesian National Army (TNI) based on Decision Number 41-K/PM. I-02/AD/III/2024 is to state that the defendant is legally and convincingly proven guilty of committing the crime of fraud with a principal punishment of imprisonment for 1 (one) year and 2 (two) months as well as an additional punishment of being dismissed from the Military Service by determining evidence in the form of 1 (one) photo of a car type Avanza Silver color Nopol; 3 (three) photocopies of BPKB Car type Avanza Silver color Nopol; 1 (one) sheet of proof of vehicle loan handover; 5 (five) photocopies of proof of money transfer; and 1 (one) certificate.

Conclusion

Based on the results of the discussion that has been described, it can be concluded that the crime of fraud committed by members of the TNI is a jurisdiction within the scope of Military Justice as stipulated in Law No. 31 of 1997 which states that courts within the military justice environment are authorized to examine, try and decide criminal cases committed by members of the TNI. The mechanisms or stages of resolving fraud crimes committed by members of the TNI based on Law No. 31 of 1997 include the investigation stage, the prosecution stage, and the stage of implementing the decision.

And the verdict on the crime of fraud committed by members of the Indonesian National Army based on Decision Number 41-K / PM.I-02 / AD / III / 2024 is correct because it is in accordance with applicable laws. The Panel of Judges stated that the defendant was legally and convincingly proven guilty of committing the crime of fraud by determining the evidence revealed in the trial and also the judge's own belief in the case.

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