
Dilemma of Legal Protection for TNI Soldiers Due to the Legal Vacuum in Military Administrative Procedure Regarding Litigation Mechanisms and Non-Litigation Options

Angling, Evita Isretno Israhadi

Universitas Borobudur, Indonesia

angling.yunanto2@gmail.com, evita_isretno@borobudur.ac.id

KEYWORDS

legal vacuum,
military
administrative
procedural law,
TNI Soldiers

ABSTRACT

This research addresses the legal vacuum experienced by TNI soldiers due to the absence of a Government Regulation governing military administrative procedural law, as mandated by Law Number 31 of 1997 on Military Justice. The study aims to analyze the impact of this legal uncertainty on soldiers' access to justice, particularly those who feel aggrieved by military administrative decisions, while highlighting real-life examples of the challenges they encounter in pursuing justice. A normative juridical method with a descriptive-analytical approach is employed to examine relevant legal materials, cases, and theoretical frameworks. The results reveal significant legal uncertainty that creates barriers for soldiers to challenge administrative decisions effectively, leading to a lack of clarity in resolving disputes and protecting their rights. The findings underscore the urgent need for policy interventions, including issuing clear and comprehensive regulations on military administrative procedural law and establishing a specialized institution dedicated to handling such disputes. In conclusion, this research emphasizes the importance of addressing the legal vacuum to strengthen the legal system, ensure fairness, and safeguard the rights of TNI soldiers in Indonesia.

INTRODUCTION

As the primary defense institution, TNI not only functions as a physical defense tool against external threats but also as a protector of society in times of emergency, natural disasters, and social conflicts. In an increasingly complex and dynamic geopolitical context, the existence of TNI is essential to ensure that the sovereignty of the nation remains intact. Given Indonesia's geographical condition, which consists of thousands of islands and is vulnerable to various forms of threats, both military and non-military, TNI must be on standby to defend the territorial integrity and maintain national security (Salam & Moch, 2022).

TNI actively participates in supporting national development. Through various programs such as infrastructure development, humanitarian assistance, and human resource development, TNI helps create conditions conducive to economic growth and community welfare. TNI also has programs related to community empowerment, such as social service activities, aimed at strengthening the relationships between the military and society. This harmonious relationship is important in building public trust in military institutions and creating a sense of security among the community (Prihadi et al., 2023).

The emergence of demands for democratization and good governance is a crucial aspect that needs to be taken into account by all elements of the state. Democratic values demand a democratically elected and accountable government aimed at empowering civil society.

Meanwhile, the principle of good governance requires a professional, effective, and efficient government to address various issues and encourage broad participation from all stakeholders while ensuring justice and equality for all citizens (Agustina, 2009).

In response to these demands for change, the Indonesian National Armed Forces (TNI), as a key component of national defense, has carried out internal reforms. This reform was outlined in the defense white paper published by the Ministry of Defense in 2000 (Badaru, 2021). The essence of this reform is to create professional TNI soldiers by reducing their involvement in non-military affairs. This policy requires restrictions on TNI participation in politics and the elimination of the concept of "kekaryaan," which previously granted access for TNI members to hold strategic positions in civilian environments. Consequently, this reform intends to produce TNI soldiers with professional expertise in their respective fields (Adiwijoyo & Reformasi, 2020).

According to Article 2(a) of the Republic of Indonesia Law Number 34 of 2004 concerning the Indonesian National Armed Forces, a professional soldier is one who is well-trained, educated, and adequately equipped. A professional TNI is also not involved in practical politics or business, is assured of their welfare, and is subject to state political policies based on democratic principles, civilian supremacy, respect for human rights, and national and international laws that have been ratified (Dwiyanto, 2018). This shows TNI's commitment to functioning within the framework of a democratic state that respects the law. The state's political decisions regarding legal reforms related to the TNI, as part of national legal development in the context of military law, were marked by the enactment of the Republic of Indonesia Law Number 31 of 1997 concerning Military Justice (Suarna, 2022). This law contains provisions regarding military administrative procedural law regulated in Chapter V. With the Military Justice Law in place, TNI soldiers who feel aggrieved by military administrative decisions have the right to file a complaint through the High Military Court as the court of first instance. This provides soldiers with an opportunity to seek justice against decisions they consider detrimental, taking into account the rank and position of the judges authorized to examine and adjudicate such cases (Gumelar & Nachrawi, 2022).

Military administration refers to the administrative system applied within the armed forces, particularly the Indonesian National Armed Forces (TNI), to perform the functions of training and utilizing the armed forces, as well as managing national defense. On the other hand, Military Administrative Decisions are written documents issued by Military Administrative Bodies or Officials. These documents contain legal actions taken based on existing legal provisions related to the administration, utilization of military forces, and defense management concerning personnel, material, facilities, and services. These decisions are concrete, individual, and final, and they can have legal consequences for individuals or legal entities affected by them (Witra, 2014).

Indirectly, Law Number 31 of 1997 concerning Military Justice has brought about reforms to the Sapta Marga (Seven Principles of the Indonesian National Army) and the Soldiers' Oath, which have traditionally been seen as strong doctrines within TNI. These doctrines require soldiers to obey their superiors without questioning any orders or decisions issued. However, with this law, soldiers under command have the opportunity to correct and critique written orders or decisions from superiors that they consider detrimental. This reform opens space for soldiers to obtain legal protection against arbitrary actions that may be taken by their superiors. In other words, the presence of Law Number 31 of 1997 represents one form of legal protection from the state for TNI soldiers (Simanjuntak, 2021).

However, TNI soldiers have not fully been able to exercise their rights to file lawsuits against Military Administrative Decisions that are detrimental to them. This is due to the absence of a Government Regulation regulating the mechanism, as mandated in Article 353 of Law Number 31 of 1997. This article states that this law shall come into force on the date of

promulgation, but the implementation of military administrative procedural law must be regulated by Government Regulations no later than three years after the law is enacted (Krismen, 2014). However, it should be noted that this Law was enacted more than 25 years ago, specifically on October 15, 1997, and until now, the necessary Government Regulations to enforce the provisions are still absent. Consequently, this situation creates a legal vacuum in the regulation of Military Administrative Law. The lack of a clear legal framework makes it difficult for TNI soldiers to obtain the justice and legal protection they should receive. This legal vacuum is very concerning, as it can affect soldiers' trust in the legal system and justice within the military environment (Pakpahan & Gaol, 2022).

The legal vacuum related to Military Administrative Justice in Indonesia, especially due to the lack of government regulations governing the procedures within this judicial system, has created uncertainty for those seeking justice. This is particularly experienced by TNI soldiers who feel wronged by the issuance of Military Administrative Decisions by Military Administrative Officials. Without clear material law, the soldiers' right to file a complaint is hindered. Courts lacking a legal basis will face deadlocks, while courts without formal law tend to lose direction and exceed their authority (Rifandhana, 2015).

A notable case relating to this legal vacuum is the lawsuit filed by the Families of Victims of Forced Disappearances of 1997-1998, which demanded the appointment of Major General TNI Untung Budiharto as Commander of the Jakarta Regional Military Command. This lawsuit was filed not only with the Jakarta State Administrative Court (PTUN) but also with the Jakarta High Military Court (Triwulan & Sh, 2016). However, Jakarta PTUN rejected this lawsuit on the grounds that the decision of the TNI Commander regarding the appointment of Major General Untung Budiharto was not within the jurisdiction of PTUN, but rather under the authority of the Military Administrative Court, according to existing regulations. Meanwhile, although the same lawsuit was filed with the Jakarta High Military Court, that court also did not provide a satisfactory response, citing that the necessary instruments and legal procedures to handle the case were not yet available (Titik Triwulan T, 2016).

This legal vacuum is not a new issue. Previously, in 2007, a TNI officer named Major Chk Kantor Ketaren also filed a military administrative lawsuit after being dismissed from his position by the Commander of the IV/Diponegoro Military Command. In this case, Major Kantor Ketaren felt aggrieved because the dismissal did not comply with the applicable TNI regulations, wherein the authority to dismiss a senior officer should rest with the Chief of Staff of the Army, not the Military Commander. Despite feeling aggrieved, Major Kantor Ketaren could not file an effective legal complaint because the Military Administrative Court had not been functional due to the lack of regulatory framework governing it. This condition creates challenges for TNI soldiers in seeking justice, even though they are citizens protected by the same legal rights as other citizens, as stipulated in Article 27 paragraph (1) and Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. With these articles, every individual should be entitled to protection and fair legal certainty. However, in practice, the legal vacuum in the regulation of Military Administrative Justice leads to difficulties for soldiers in filing complaints and seeking justice.

This study explores the legal vacuum faced by TNI soldiers due to the absence of Government Regulations governing military administrative procedural law, as mandated by Law Number 31 of 1997 concerning Military Justice. Research gap arises from the lack of effective mechanisms to address military administrative disputes, creating a disparity between soldiers' constitutional rights and their ability to pursue justice. While prior research has primarily examined military justice from a disciplinary perspective, there remains limited scholarly focus on the practical consequences of the legal vacuum for soldiers' access to justice and the institutional reforms needed to bridge this gap. This study addresses the overlooked

issue by analyzing the real impact of the absence of regulations on soldiers' rights and offering concrete policy recommendations to resolve the existing challenges.

The novelty of this research lies in its proposition to integrate an alternative dispute resolution mechanism through administrative efforts while advocating for the issuance of specific regulations on military administrative procedural law. This study also introduces the concept of establishing a specialized body or task force to handle military administrative disputes, ensuring streamlined access to justice for soldiers. By emphasizing the constitutional rights of TNI soldiers and identifying practical solutions to overcome legal uncertainty, the research provides a fresh perspective on reforming the military justice system.

The purpose and benefits of this research are to analyze the legal implications of the current vacuum in military administrative procedural law and propose solutions to ensure fairness and legal certainty for TNI soldiers. The findings aim to provide policymakers and military stakeholders with actionable recommendations, such as the prompt issuance of Government Regulations and the establishment of dispute resolution mechanisms. For TNI soldiers, this research serves to strengthen their legal protection, enabling them to effectively assert their rights. Additionally, the broader benefit lies in enhancing public trust in the military institution and promoting a fair and transparent legal system in Indonesia.

RESEARCH METHOD

The normative juridical research method is an approach that focuses on legal studies through the analysis of existing legal norms, including statutes, legal doctrines, and court decisions. In this research, a legislative approach is used to examine the legal provisions governing military administrative justice, such as Law Number 31 of 1997 concerning Military Justice, as well as other related regulations concerning the rights of soldiers within the context of administrative law. Meanwhile, the conceptual approach aims to explore and analyze the underlying basic concepts that form the basis of legal regulation, such as principles of justice, legal protection, and the rule of law, which are relevant in understanding the existing legal vacuum within the military justice system. The combination of these two approaches provides a strong theoretical framework for understanding the issues faced by TNI soldiers in accessing justice, as well as identifying the necessary reform measures to enhance legal protection for them.

RESULTS AND DISCUSSION

Legal Regulations in Law Number 31 of 1997 Concerning Military Justice Related to Litigation and Non-Litigation Mechanisms for TNI Soldiers Feeling Aggrieved by Military Administrative Decisions

The delay in the issuance of Government Regulations governing military administrative justice procedures, more than the stipulated timeframe (three years after the enactment of Law Number 31 of 1997), has resulted in legal uncertainty for TNI soldiers who feel aggrieved by military administrative decisions. In the absence of clear regulations, both individuals and legal entities lack access to demand justice. In legal theory, Fence M. Wantu states that law that does not provide certainty will lose its meaning and cannot serve as a behavioral guideline. This is particularly relevant in the context of the experience of Major Chk Kantor Ketaren, S.H., Sp.N, M.Kn, a mid-ranking officer in the IV/Diponegoro Military Command. The lawsuit filed by Major Chk Kantor Ketaren originated from the issuance of a military administrative decision in the form of a Decree of Dismissal from his position as Head of Legislation Section by the Commander of the IV/Diponegoro Military Command. Major Chk claims that this action was unlawful because his dismissal should have been carried out by the Chief of Staff of the Army (Kasad), not by the Commander of Kodam IV/Diponegoro. As a result of this decision, Major

Chk feels aggrieved both materially—due to the loss of his position allowance—and immaterially, such as damage to his reputation and career.

Because he could not pursue legal channels through the Military Administrative Court, Major Chk attempted to file a civil lawsuit in the Semarang District Court. He argued that the Decree of Dismissal issued by the Commander was unlawful according to Article 1365 of the Civil Code, which states that any unlawful act that harms another person can be subject to compensation. However, in the exception to the lawsuit, the Legal Team of Kumdam IV/Diponegoro stated that the District Court did not have the authority to handle this matter, as this was a military administrative dispute that should be adjudicated by the High Military Court. Consequently, the lawsuit filed by Major Chk was rejected, with a decision from the Semarang District Court on July 9, 2007, affirming that the High Military Court had the authority to adjudicate military administrative disputes.

This situation highlights the inability of Major Chk Kantor Ketaren and other soldiers to file lawsuits in the Military Administrative Court, considering the court had not been operational due to the lack of rules governing it. This clearly contradicts the constitutional rights guaranteed by the 1945 Constitution of the Republic of Indonesia, which provides legal protection to every citizen. Article 353 of Law Number 31 of 1997 states that this law comes into effect from the date of promulgation, but the procedural law for military administration should be regulated by Government Regulation within a maximum of three years after the promulgation. The absence of such regulation creates a legal gap that obstructs TNI soldiers' access to justice.

The clause stating that the application of Military Administrative Procedural Law must be regulated by Government Regulations has resulted in legal uncertainty for petitioners seeking justice. This ambiguity not only complicates access for TNI soldiers feeling aggrieved but also leads to constitutional harm that can affect their rights as citizens. The harm stems from several articles in the 1945 Constitution of the Republic of Indonesia that should guarantee the constitutional rights of every individual. Articles 24 (1) and (2) of the 1945 Constitution emphasize that judicial power is independent and has the responsibility to organize justice in order to uphold the law and justice. In this context, the military judicial environment is under the Supreme Court. The legal uncertainty caused by the ambiguity regarding the application of military administrative procedural law can be considered a violation of this guarantee, as petitioners lack certainty in accessing justice through a judicial system that should be clear and structured.

Article 28D (1) of the 1945 Constitution guarantees that everyone has the right to recognition, legal protection, and fair legal certainty, as well as equal treatment before the law. In the absence of Government Regulations governing Military Administrative Procedural Law, TNI soldiers who feel aggrieved are at risk of losing their right to fair and equal treatment before the law, which is supposed to be a fundamental right for every citizen. This situation creates injustice in the legal process that should not occur. Article 28H (2) of the 1945 Constitution recognizes each individual's right to obtain ease and special treatment in achieving equal opportunities and benefits aimed at equality and justice. The uncertainty arising from this legal ambiguity can impede TNI soldiers' access to legal mechanisms necessary to advocate for their rights, preventing them from enjoying the treatment expected by the constitution. Article 28I (2) of the 1945 Constitution grants every individual the right to be free from discriminatory treatment on any grounds, as well as the right to receive protection from such discriminatory treatment. Given the legal vacuum in military administrative regulation, there is a risk that TNI soldiers may experience discriminatory treatment, either directly or indirectly, in legal processes. This indicates that the legal uncertainty arising from the ambiguity in the implementation of military administrative procedural law not only harms individuals but also has the potential to violate human rights as regulated in the constitution.

Upon closer examination, Law Number 31 of 1997 concerning Military Justice contains legal loopholes that can be leveraged by TNI soldiers as a legal protection effort when they feel aggrieved by state administrative decisions. One relevant provision is Article 265 (3), which states that "Soldiers and those equated with soldiers may file a lawsuit after all administrative efforts concerned have been utilized according to applicable regulations." In the explanation of this article, it is interpreted that administrative efforts include filing objections and obtaining decisions from the Military Administrative Body or Official. Furthermore, the mechanism for conducting administrative efforts will be regulated by a decision from the Commander, which provides further guidelines regarding the process.

Based on the provisions of Article 265 (3), TNI soldiers who cannot file lawsuits for military administrative disputes in the High Military Court due to the absence of Government Regulations governing military administrative procedural law can still seek legal protection. This can be achieved through administrative efforts as an alternative to non-litigation dispute resolution. In this case, resolving legal issues occurs outside the court, known as alternative dispute resolution. The concept of dispute resolution through administrative efforts provides an opportunity for soldiers to fight for their rights even if they cannot access formal litigation channels due to the legal vacuum.

The resolution of military administrative disputes through administrative efforts is similar to the process of filing objections against military disciplinary penalties. This is regulated in Law Number 25 of 2014 concerning Military Discipline Law, which provides a mechanism for military members to submit objections against disciplinary penalties imposed on them. In this process, military personnel who feel aggrieved may first file an objection to the supervisor who has the authority to impose the penalty. If this first objection is unsatisfactory, they may escalate the second objection to the supervisor of that supervisor. As a last resort, if the punished individual still feels they have not received justice, they have the right to file a complaint with the Military Discipline Consideration and Supervision Council (DPPDM).

The Legal Vacuum Resulting from the Absence of Government Regulation Governing Military Administrative Procedural Law on the Capacity of TNI Soldiers to File Lawsuits and Seek Justice

The legal vacuum arising from the lack of Government Regulation governing military administrative procedural law poses significant problems for TNI soldiers who feel aggrieved by military administrative decisions. Article 353 of Law Number 31 of 1997 concerning Military Justice states that the application of military administrative procedural law must be further regulated by Government Regulations within a maximum of three years after the law is promulgated. However, to date, the regulations in question have not been issued, leading to uncertainty and confusion among soldiers regarding the legal processes they can pursue to advocate for their rights. In this situation, soldiers lack a clear avenue for filing lawsuits, which should serve as a means of obtaining justice when they feel wronged by decisions made by military administrative officials.

This legal vacuum not only results in legal uncertainty for TNI soldiers but also has the potential to violate their constitutional rights. According to the 1945 Constitution, every citizen, including TNI soldiers, is entitled to equitable legal protection and equal treatment under the law. The absence of regulations governing the lawsuit process forces soldiers to seek alternative ways to obtain justice, such as filing civil lawsuits in regular courts, even though it is clear that this is not the appropriate channel for resolving military administrative disputes. As an example, the case of Major Chk Kantor Ketaren illustrates that lawsuits filed in the District Court were rejected on the grounds that such matters should be handled by the High Military Court. This emphasizes that without clear regulations, aggrieved soldiers not only lose access to justice but also become trapped in convoluted legal processes.

The legal vacuum can damage public trust in the military justice system and the military

institution itself. TNI soldiers, who are supposed to exemplify obedience to the law, feel sidelined by a situation that does not support the protection of their rights. This undermines not only the morale of the soldiers but can also adversely impact their performance in fulfilling the duties of the state. As an institution responsible for the security and defense of the country, this legal uncertainty may create doubts about the firmness and discipline of TNI soldiers. Therefore, it is crucial for the government to swiftly issue Government Regulations governing military administrative procedural law so that TNI soldiers can have legal certainty in advocating for their rights and obtaining the justice they deserve.

The legal vacuum resulting from the absence of Government Regulations governing military administrative procedural law has a direct and significant impact on the ability of TNI soldiers to file lawsuits. In legal terms, access to justice is not only related to the ability to obtain a final decision on a case but also encompasses the availability of clear legal procedures and guidelines that can be followed by individuals who feel aggrieved. Without adequate regulations, TNI soldiers who feel wronged by military administrative decisions lack appropriate channels to express their dissatisfaction. This creates a situation where soldiers are mired in uncertainty, unsure of whom to file their lawsuits against and how the process should unfold.

A real example of the impact of this legal vacuum can be seen in the case of Major Chk Kantor Ketaren, a TNI soldier faced with serious issues related to decisions issued by the Commander of the IV/Diponegoro Military Command. After being dismissed from his position through an order that he deemed to violate applicable legal provisions, Major Chk Kantor felt aggrieved both materially and immaterially. He attempted to file a lawsuit in the Semarang District Court, hoping to achieve justice against what he considered unlawful actions. However, the court rejected his claim on the grounds that the matter was a military administrative dispute that should be handled by the High Military Court. In this case, the ambiguity regarding the appropriate legal pathway due to the legal vacuum resulted in the rejection of his lawsuit, despite his belief that he was entitled to legal protection.

Moreover, the difficulties encountered by Major Chk Kantor Ketaren reflect the harsh reality faced by many other soldiers who may find themselves in similar situations. Without clear legal guidance, they not only feel confused navigating the legal process but also face the risk of losing their rights. In this context, the legal vacuum serves not only as a barrier to accessing justice but also as a potential source of despair and frustration among soldiers who should have legitimate channels to advocate for their rights. This uncertainty can diminish their trust in the justice system, which in turn may disrupt their performance and morale in carrying out military duties.

The broader implications of this legal vacuum also affect the reputation of the military institution itself. When soldiers are unable to find justice within a system that is supposed to protect their rights, it can tarnish the image and credibility of the military institution in the eyes of the public. As an institution with an essential role in maintaining national security and sovereignty, it is vital for the TNI to ensure that its members receive appropriate legal protection. The inability to effectively address these legal issues can trigger a crisis of public trust, which can ultimately impact the stability and integrity of the military institution.

To address the legal vacuum affecting the capacity of TNI soldiers to file lawsuits and seek justice, it is essential to promptly issue Government Regulations governing military administrative procedural law. This regulation will serve as a clear guideline for soldiers feeling aggrieved by military administrative decisions and provide the necessary legal framework for dispute resolution. In this context, the issuance of these regulations will not only provide legal certainty but also demonstrate the government's commitment to protecting the rights of soldiers as citizens entitled to justice.

Additionally, it is recommended that the government and related agencies conduct a

comprehensive study on the legal needs and procedures that should be included in military administrative procedural law. This study should actively involve the participation of TNI soldiers and other stakeholders to ensure that the resulting regulations are relevant and applicable in practice. Such involvement will also create a sense of ownership among soldiers regarding the existing rules, thereby motivating them to comply with and utilize the mechanisms provided.

Another recommendation is to establish a specialized agency or task force tasked with handling military administrative disputes. This agency could function as a mediator or arbiter in resolving conflicts between soldiers and military institutions. With the existence of this agency, soldiers would not only have easier access to voice their complaints but would also feel more heard and recognized in the resolution of their legal issues. This would positively contribute to enhancing soldiers' trust in the existing legal system.

The government should also pay attention to legal training and education for TNI soldiers. This education should encompass knowledge of their rights as well as the legal procedures they can use to protect those rights. By providing adequate understanding of the legal system, soldiers will be better prepared to take necessary steps when facing legal issues. Comprehensive legal education can also help cultivate a respect for the law and increase awareness of the importance of justice within the military environment.

CONCLUSION

The legal vacuum resulting from the absence of Government Regulations governing military administrative procedural law has created significant challenges for TNI soldiers who feel aggrieved by military administrative decisions. This uncertainty has the potential to obstruct access to justice for soldiers, as they lack clear legal guidelines to assert their rights. This situation creates an environment where soldiers, as part of the state apparatus, feel they have lost avenues to seek justice, which in turn can undermine trust in the legal system and the military institution itself. This situation becomes more complex when soldiers attempt to seek justice through alternative avenues, such as district courts, but often encounter rejections based on inappropriate legal jurisdiction. Consequently, soldiers suffer both materially and immaterially, resulting in greater dissatisfaction within the institution. To address this legal vacuum, strategic measures must be taken that involve the prompt issuance of Government Regulations governing military administrative procedural law. This policy should be accompanied by in-depth studies on the relevant legal needs and procedures, as well as the active participation of soldiers and other stakeholders. Additionally, the establishment of a specialized agency to handle military administrative disputes could provide a more effective and responsive alternative for addressing soldiers' needs. Ongoing legal education efforts are also crucial to equip soldiers with the necessary knowledge to effectively advocate for their rights. With these steps, it is hoped that a more solid and transparent legal system will be created, one that not only protects the rights of TNI soldiers but also enhances trust in legal and military institutions in Indonesia.

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