

The Authority Of Military Justice To Try Military Doctors Who Perform Malpractices In Non-Government Hospitals

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Article Info

Received : 30th March 2023

Accepted : 19th December 2023

Published : 30th December 2023

Keywords:

Authority, Military Justice, Military Doctor, Malpractices

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DOI :

10.24843/KP.2023.v45.i03.p07

Abstract

In every action of a military doctor in a hospital, there are certainly interesting potential problems related to criminal acts in general or the military as well as in the field of health law. The aims of study were to analyze the form of regulations and legal issues for military doctors who practice in non-government hospitals; analyze authorities and justice mechanisms that prosecute malpractice acts of military doctors in non-government hospitals. The type of research was normative juridical. The approach study used a statute approach and conceptual approach. Legal materials obtained from research, literature study, statutory regulations and legal articles. The results of the research explain that a military doctor is a soldier with strata officer status or rank who can practice both in private practice and in non-government hospitals based on regulations, in accordance with the condition that a doctor must have a doctor's registration letters and a practice license. The military judiciary has authority over every T soldier who commits a crime, be it a military crime or a general crime, including military doctors who are definitely officers, if they commit a crime or malpractice at a place of practice in a non-government hospital.

1. Introduction

The military court is one of the judicial institutions under the Supreme Court which has Justisiable where the perpetrators are TNI soldiers.¹ Since July 2004 based on the Decree of the President of the Republic of Indonesia No. 56 of 2004 has carried out the transfer of the organization within the Military Court environment from the TNI Headquarters to the Supreme Court of the Republic of Indonesia. This is the

¹ Agustinus, (2013). Hakim Pemeriksa Pendahuluan, Telaah Konsep RUU Hukum Acara Pidana, *Jurnal Hukum Militer*, 1 (3), 23-31.

realization of Law No. 4 of 2004 concerning judicial power. Supriyatna² explained that the existence and role of the Military Court is very important in guaranteeing the interests of state defense and security.

Based on law no. 4 of 2004 article 10 paragraph 1 emphasized that judicial power is carried out by a Supreme Court and the bodies under it. Furthermore, in Article 13 paragraph 1 it is emphasized that the organization, administration and finance of the Supreme Court and the judicial bodies under it are under one roof of the Supreme Court. The Military Court with all its limitations and shortcomings must be able to carry out the duties of the Military Court on an equal footing with other courts.³ Some time ago, military courts received much attention regarding military courts not being open or transparent and many complaints from justice seekers addressed to judicial institutions because of the low quality of the judge's decision in trying a case. To get out of this situation, the task of the judges lies in the mission of realizing justice. Sarwo Eddie⁴ found that the military courts were not culminated and not supervised by TNI headquarters, but culminated and supervised by the Supreme Court of the Republic of Indonesia.

Non-government hospitals or private hospitals also have a hospital management orientation with a profit-oriented background, this is because the capital or budget that is owned comes from individuals or groups and of course in the form of foundations or limited liability companies or other legal entities.⁵ What about a military doctor who has a Practice License to practice in Non-Governmental Hospitals, when referring to the TNI Law number 34 of 2004 Article 39 point D, of course this is not allowed, but based on the Minister of Defense Number 85 of 2014, it becomes basis for a Military Doctor to practice in a non-government hospital, referring to the Law on the TNI number 34 of 2004 concerning the Indonesian National Armed Forces Article 39 point D, of course this is not allowed, but based on the Regulation of the Minister of Defense of the Republic of Indonesia Number 85 of 2014 concerning Professional Soldiers of the Indonesian National Armed Forces Serving Outside the Ministry of Defense Agencies And the Indonesian National Army, became the basis for a military doctor to practice in non-government hospitals. Raeeszadeh⁶ explain that Military Medicine serves to meet the health needs of troops. Professional Military Medicine has started working almost since the age of modern warfare in the 20th century. Regarding the growing global trends of war, terrorism

² Supriyatna S. 2014. Memahami Urgensi Peradilan Militer Dari Sudut Kepentingan Pertahanan Dan Keamanan Negara. *Jurnal Yuridis* . 1 (2), p. 23

³ Rifani, A.J, & Prakasa, S.U.C. (2021). Independensi Peradilan Militer Terhadap Prajurit Tni Sebagai Pelaku Tindak Pidana Narkotika. *Audito Comparative Law Journal (ACLJ)*, 2(3), 131-142. <https://doi.org/10.22219/aclj.v2i3.16756>

⁴ Edy, S. S. 2017. Independensi Sistem Peradilan Militer di Indonesia (Studi Tentang Struktur Peradilan Militer). *Jurnal Hukum dan Peradilan*, 6 (1), p. 105 - 128

⁵ Decree of the Minister of Health of the Republic of Indonesia Number: 772/Menkes/SK/VI/2002 Concerning Guidelines for Hospital Internal Regulations (Hospital By Law).

⁶ Raeeszadeh, M, Goodarzi J.M, Moghaddam, A , Machian , M.S.B, Gooshki,H.S., (2022). Peran kedokteran militer dan pentingnya pelatihan kedokteran militer. *J Family Med Prim Care*. Agustus; 11(8), p.4184-4189.

and natural disasters and modern changes in war strategies, weapons and their consequences, Military Medicine is undergoing a process of evolution.

The implementation of medical practice, which is one of the core parts of various activities in the implementation of health efforts, must be carried out by doctors who refer to ethical standards, high morals, and expertise as a profession.⁷ Doctors are parties who have expertise in the medical or medical field who are considered to have the ability and expertise to carry out medical procedures, while patients are sick people who are unfamiliar with their illness and entrust themselves to be treated and cured by doctors.⁸ Therefore, doctors are obliged to provide the best possible medical services for patients.⁹

The problem is that military doctors practicing in non-government hospitals certainly have different rules and standard procedures and operations compared to government hospitals, because non-government hospitals have a profit-oriented orientation, some are benefit-oriented and the level of patient service satisfaction is of course the same. cannot be separated from the possibility of malpractice actions where the legal issues will be more complex. Therefore it is very important to know the extent of the role of the Military Court for military doctors who experience malpractice in non-government hospitals. Rahmani¹⁰ explained that military medicine is a branch of occupational medicine that seeks the prevention and treatment of illness or injury due to military work in operational environments. Nezampur research results¹¹ explained that the main goal of medical support is to preserve military strength. Avoiding the loss of human strength as a result of illness or calamity maintains united strength before battle. Therefore, expanded security and improved safety programs are one of the hallmarks of military medical care.

Proportional law enforcement against the actions of doctors who commit medical malpractice, in addition to providing legal protection for the public as consumers, on the other hand also for doctors who are involved in legal issues if indeed they have gone through the judicial process and are proven not to have committed malpractice will be able to restore their good name. which is considered contaminated.

⁷ Vini H. R. Gosal, Aaltje E. Manampiring, Caecilia Waha. Perilaku Profesional Tenaga Medis terhadap Tanggung Jawab Etik dan Transaksi Terapeutik dalam Menjalankan Kewenangan Klinis. *Medical Scope Journal* 2022;4(1), p. 1-9

⁸ Herniati, D.D. 2011, *Yurisdiksi Peradilan Militer Dalam Perspektif Pembaharuan Hukum Pidana Sebagai Alternatif Membangun Indenpendensi Peradilan Militer*, Dissertation, Bandung, Fakultas Hukum Universitas Padjadjaran

⁹ Decree of the Executive Board of the Indonesian Doctors Association no. 221/PB/A.4/04/2002, regarding the Implementation of the Indonesian Medical Code of Ethics

¹⁰ Rahmani R, Mehrvarz Sh, Zareei Zavaraki E, Abbaspour A, Maleki H. Peran Kedokteran Militer Dalam Angkatan Bersenjata Dan Kebutuhan Untuk Mengembangkan Program Pendidikan Khusus Dalam Kedokteran Militer Iran. *J Mil Med.* 13 (1),p. 247-52.

¹¹ Nezampur G, Shadmani M, Akhavan M. (2016). Evaluasi Strategi Penasihat Baru Iran terhadap Kelompok Takfiri di Suriah. *Triwulanan Riset Keamanan-Perlindungan, Universitas Imam Hussein.* 5 (10). P. 1-22. https://jpas.ihu.ac.ir/article_201038_135e032ab1911d43cd8bc6f614851dc.pdf. p.15

Knight¹² found that the rights of doctors and dentists to obtain legal protection for suspected medical crimes based on Indonesian laws and regulations that are just have not been realized in providing justice, order and certainty. Daughter¹³ found that there are still many cases of malpractice carried out by doctors in Indonesia.

I Made Budhiarta¹⁴ find out what types of medical and judicial violations are authorized to try military doctors in private practice, while the author writes and researches related to the existence of conflicts of legal norms and the authority of military justice when acts of malpractice occur in non-government hospitals by military doctors, but both for the theme raised to discuss the juridical aspects of military justice. Saptaning¹⁵ explains in relation to the role of the military court in dealing with the enactment of Law number 34 of 2004 concerning the TNI alone, while the author tries in addition to the enactment of the law but also tries to compare related to Regulation of the Minister of Defense of the Republic of Indonesia Number 85 of 2014 concerning National Armed Forces Soldier Professionals Serving Outside the Institutions of the Ministry of Defense and the Indonesian National Armed Forces, so if there is a legal problem, namely malpractice, then where is the position of the military court Law Number 31 of 1997 concerning Military Courts with the Decree of the People's Consultative Assembly Number VII/MPR/2000 concerning the Role of the Indonesian National Armed Forces and the Role of the Indonesian National Police, while from other writings known to the Author, they raise problems related to military justice against violations discipline, absenteeism, insubordination and other violations committed by TNI Soldiers.

Handayani¹⁶ found that the ethical responsibility of military doctors must be based on their actions in accordance with applicable regulations, so as not to violate the Indonesian Medical Code of Ethics (KODEKI) and Law Number 25 of 2014 concerning Military Discipline Law. then the legal responsibility of military doctors who make mistakes when providing medical services to patients can be held accountable for general crimes and military criminal liability.

This research was conducted with the existence of previous research gaps where this research has updates on the authority of military justice to try military doctors who commit malpractice in non-government hospitals. The urgency of the research was carried out because there are still military doctors who practice in non-government hospitals and even practice malls. This research examines the law of military doctors

¹² Satria, B. (2019). Perlindungan Hukum Terhadap Dokter Atas Dugaan Melakukan Tindak Pidana Medik Dihubungkan Dengan Ajaran Sifat Melawan Hukum Materii. *Jurnal Analogi Hukum*. 2 (1). P. 28-29

¹³ Putri, K, A, W, W., Budiarta, I, N, P., Arini, D, G, D. (2020). Tanggungjawab Dokter Terhadap Pasien dalam Perjanjian Terapeutik. *Jurnal Analogi Hukum*. 2 (3). 315-319. Doi: <https://doi.org/10.22225/ah.2.3.2582.315-319>.p.317

¹⁴ Budhiarta.I.M. (2019). *Kewenangan peradilan dalam menangani pelanggaran medis dokter militer yang melakukan praktik pribadi*. Thesis. Ganesha University of Education.p.23

¹⁵ Peni S.P. (2019). *Yuridis Terhadap Kewenangan Peradilan Militer Dalam Mengadili Prajurit TNI yang Melakukan Tindak Pidana Umum pasca Berlakunya Undang- Undang TNI*. Thesis. University of Indonesia.p.16

¹⁶ Handayani.D.P. (2016) *Tindak Pidana Dan Pertanggungjawaban Pidana Dokter Militer Di Bidang Hukum Kesehatan*. Thesis, Airlangga University.p.34

who commit malpractice within the domain of military justice authority. The objectives of study include 1) to analyze a forms of regulations and legal issues of military doctors practicing in non-government hospitals and 2) to analyze authorities and mechanisms of justice that prosecute military doctors for malpractice in non-government hospitals.

2. Research Methods

Legal research is a process to find legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand.¹⁷The type of research used in writing this thesis is normative juridical (Legal Research), namely research that is focused on examining the application of principles or norms in applicable positive law. The approach used in this study is a statute approach and is supported by a conceptual approach. This study uses primary and secondary legal materials. Primary legal material related to judge's decisions and implementing regulations related to this research problem. Secondary legal materials for this research are legal materials found in library studies, such as scientific papers contained in the literature, scientific papers, theses, dissertations, textbooks, and scientific research journals. The legal materials obtained from the research of the literature on laws and regulations and legal articles are then described, linked and presented in a more systematic way of answering the problems that have been formulated.

3. Results and Discussion

3.1 Practice Military Doctor in Non-Governmental Hospital

Military doctors, both general practitioners and dentists, especially in the Navy, the process of accepting a military doctor goes through stages and stages of selection which of course must be in accordance with interests, abilities, qualifications and later according to projected assignments. The acceptance stages include a physical ability test, a medical test consisting of a physical health test and a mental health test, an academic test, a Psychological test, an Ideological Mental test, and an English test, as well as an Administrative Requirements test, all of the test provisions are adjusted to the grades the weight of the material and the overall test score results. Of course, all of these stages must be passed by all TNI soldiers, both enlisted, non-commissioned officers and officers.¹⁸This of course must also be passed by Health Workers who wish to serve in the Military for general practitioners, dentists, nurses, pharmacists, and other health workers. This is of course not easy because of the terms and conditions that must be carried out and passed whether a person or health worker meets the requirements to be accepted as a TNI soldier. Furthermore, if the selection test can be passed and meets the requirements to become a Soldier, the next step is to take part in the basic military education stages organized by the TNI Education Institute, which is carried out according to the time determined by the TNI until the end of the basic education.

¹⁷ Marzuki, P.M.(2019), *Penelitian Hukum*, Kencana Prenada Media Grup, Jakarta, p. 136.

¹⁸ Perkasa Number: Perkasal/22/V/2012, Concerning The Technical Guidebook FOR Organizing Education Entrance Selection FOR Indonesian Navy Soldiers.

At the end of basic military education, a TNI soldier, officer is appointed by decree of the President of the Republic of Indonesia. When an officer is first appointed as a second lieutenant, the inauguration ceremony is carried out by reciting the Soldier's Oath and the Officer's Oath. So since the appointment of an Officer to become a Second Lieutenant (Officer with the profession of a doctor) the person concerned is bound by the Law, the Soldier's Oath and the Officer's Oath.¹⁹ military doctor, of course, a Soldier who has the rank of officer, must and must behave in discipline both in the service and in society, if this is violated, of course there will be a risk of being subject to disciplinary action or disciplinary punishment, and if it is related to an action that results in a criminal act, then against concerned is subject to military punishment. A TNI soldier, in this case a military doctor, is bound by the disciplinary law regulated in Law Number 26 of 1997 concerning the Discipline Law for Soldiers, while military criminal punishment is regulated in the Military Criminal Code, and also the Law General Crimes, so that for a military doctor who commits a criminal act, not only military criminal punishment is imposed but also general criminal punishment. This means that in addition to aiming at enforcing the internal order of the army organization, the criminal law of the army also aims at regulating and enforcing public order.²⁰

How to be able to guarantee the resilience and ability of Soldiers to guard and be ready to carry out their main tasks and provide a sense of security and calm when the Soldier carries out an assignment in the field of operation so that he has to leave his family. This is of course the main task for every military doctor to provide health services who are always ready to handle other than sick TNI Soldiers as well as their families. The role played by a military doctor means that he must have high courage and discipline to support the TNI in carrying out Military War Operations (OMP) and Military Operations Other Than War (OMSP). Carry out independent practice or practice in non-government hospitals,

The hospital is an integral part of a social and health organization with the function of providing comprehensive (comprehensive), disease healing (curative) and disease prevention (preventive) services to the community, besides that the hospital is also a training center for health workers and a medical research center.²¹The definition of a hospital according to Law Number 44 of 2009 concerning Hospitals is a health service institution that organizes full individual health services that provide inpatient, outpatient and emergency services.

Regulation of the Minister of Defense of the Republic of Indonesia Number 85 of 2014 concerning Professional Soldiers of the National Armed Forces Serving Outside the Institutions of the Ministry of Defense and the Indonesian National Armed Forces which in article 4 of the a quo regulation reads:

¹⁹ Undang-Undang Nomor 26 Tahun 1997 tentang *Hukum disiplin Prajurit*, Article 1 Number 1.

²⁰ Asshidiqie.J. (2014). *Konstitusi dan Konstitusionalisme Indonesia*, Jakarta, Sinar Grafika, p.9

²¹ Samsudin (2021). Pengaruh Pelayanan Administrasi Terhadap Kepuasan Pasien Di RSUD. Pasar Rebo'. *Jurnal Ekonomi, Manajemen, Bisnis, dan Sosial (EMBISS)*, 1(4), pp.397-402. Available at :<https://embiss.com/index.php/embiss/article/view/55>.p.401

"(1) Every professional TNI soldier as referred to in Article 3 paragraph (1) letters a, b and c who carries out professional assignments outside the military and military institutions is required to have written permission for professional assignment.

Article 5 of the a quo regulation which reads: Every professional TNI soldier as referred to in Article 3 paragraph (1) letter d, letter e, letter f, and letter g who practices outside the Kemhan and TNI Institutions is required to have a Profession Practice Permit.

Military doctors who practice at non-government hospitals, as an example the authors take data at one of the TNI hospitals in Surabaya with a total of 66 (sixty six) military doctors who practice at non-government hospitals in the Surabaya region and around a number of 27 (twenty seven) military doctors in 25 non-government hospitals in the Surabaya area and its surroundings, this data is only from one TNI hospital which is taken as a sample from several other TNI hospitals in Surabaya, so the possibility will be greater the amount of the data. As for the implementation of the military doctor's duties based on an assignment order issued by the Head of the work unit where the doctor is on duty.

As for the working relationship between non-government hospitals and military doctors, they have a binding agreement, namely the Cooperation Agreement (PKS). The agreement creates a legal relationship which is commonly referred to as an engagement. The agreement itself is a legal relationship regarding the property of two parties, in which one party promises or is assumed to promise to do something, while the other party demands the implementation of the promise.²²In contract law adheres to the principle of freedom of contract. Freedom of contract is the freedom of the parties involved in an agreement to be able to compile and approve the clauses of the agreement, without interference from other parties.²³

Agreement between the first party of the hospital and the second party of military doctors, that the hospital as a service provider and military doctors must provide medical services which include consulting services, physical examination, support, care, treatment and medical procedures needed for outpatients and hospitalization at the hospital. As for military doctors, they are required to provide according to their profession the best and most up-to-date health services for each patient, must comply with all standard operating procedures for medical and non-medical services according to the hospital's formulary, must make good and optimal use of all medical equipment available by the hospital. , must support the efforts of the Hospital Director and Management in order to create work discipline and performance related to practice schedules and Doctor visits and other matters in the context of creating Good Clinical Governance, participate in providing suggestions and suggestions in order to improve, improve and develop Hospital service functions, must notify in

²² Anita.N.S. (2018). Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian. *Binamulia Hukum* 7 (2). 107-112. <https://doi.org/10.37893/jbh.v7i2.20>.p.110

²³ Shabrina ,L. (2021). Analisis Asas Kebebasan Berkontrak Terhadap Perjanjian Pinjaman Bridging Financing, *Law, Development and Justice Review*, 4 (2), pp. 194-202, <https://doi.org/10.14710/ldjr.v4i2.13582>.p.200

advance and seek a replacement doctor if unable to attend in terms of handling outpatients, inpatients and operative procedures. As for the existence of legal issues, there is a clause in the liability article, that the first party is exempt from all legal responsibility, both criminal and civil, caused by the second party, in this case a military doctor,

The main task for health workers in the Ministry of Defense and the TNI, is to provide preventive services because it is related to the readiness of TNI Soldiers to maintain physical health in order to support tasks that are military operations in nature as well as military operations other than war, as well as to maintain the value of peace of Soldiers.²⁴ TNI who are carrying out operational duties and have to leave their families, because both units and health units and health workers can guarantee the health of the families left behind. By paying attention to the role and duties of a military doctor related to services or duties as preventive health workers, of course this is not easy to implement if the military doctor does not carry out these duties and responsibilities seriously. This is related to the fact that military doctors certainly have a very important role in assisting local governments in providing health services, especially in areas that may be quite far from health centers, the difficulty in providing health services to the local community, the availability of medicines that may difficult to obtain and limited doctors other than the military. So the role of military doctors is very important in carrying out the main tasks contained in the TNI Law and of course it is in line with the spirit and breath of TNI Soldiers as servants, protectors of the community. the difficulty of providing health services to the local community, the availability of medicines which may be difficult to obtain and the limited number of doctors other than the military. So the role of military doctors is very important in carrying out the main tasks contained in the TNI Law and of course it is in line with the spirit and breath of TNI Soldiers as servants, protectors of the community. the difficulty of providing health services to the local community, the availability of medicines which may be difficult to obtain and the limited number of doctors other than the military. So the role of military doctors is very important in carrying out the main tasks contained in the TNI Law and of course it is in line with the spirit and breath of TNI Soldiers as servants, protectors of the community.

As for the contractual agreement between military doctors and non-government hospitals, there are rules or provisions related to TNI Soldiers, namely that, as Soldiers, the duties and obligations that must be carried out must be in accordance with command orders in a straight line upwards, meaning that whatever is carried out by a TNI Soldier, be it main tasks and other duties, it must be based on direct or indirect command orders and in the interests of the TNI. Related to several tasks related to other agencies, usually this form of cooperation is poured into a cooperation agreement in the form of a Memorandum of Understanding, Memorandum of Understanding, Cooperation Agreement or Preliminary Agreement. The forms of these cooperation agreements are regulated in the Regulation of the TNI Commander number 28 of 2021 concerning Formation of Memorandums of Understanding and Cooperation Agreements within the Indonesian National Armed Forces, concerning

²⁴ Septiana.S. dan Hamonangan, H. (2023). Kedudukan Peradilan Umum Dan Peradilan Militer Dalam Perkara Koneksitas Ditinjau Dari Perspektif Hukum Positif Indonesia. *Jurnal Ilmiah Publika*. 11 (1). p. 108

Procedures for Forming Cooperation Charters and Cooperation Agreements within the Indonesian National Armed Forces. The TNI Commander Regulation was made in order to enforce the agreements that have been made by each force or work units of the TNI, both the AD, the AL and the TNI AU. the interests of the TNI and work units as well as causing problems in the utilization of resources and the use of defense equipment. In the TNI War no. 28 Year 2021,²⁵ and it is possible that the signing or agreement of either the Memorandum of Understanding or the Cooperation Agreement is signed by the Chief of Staff or a representative but must be based on approval and a letter of delegation by the TNI Commander.²⁶In carrying out basic tasks and assignments in other places, including when it is related to foundations or private parties, there should be a principal agreement or MOU between the TNI Hospital and Non-Governmental Hospitals, this is to prevent things that do not go wrong desirable both to military doctors who carry out practices and to hospitals. There are specialties for military doctors who practice in hospitals, especially non-government hospitals. because in non-government (private) hospitals the financial system of the hospital is not related to the State Revenue and Expenditure Budget (APBN) or the Regional Revenue and Expenditure Budget (APBD) so that non-government (private) hospitals have independent authority in determining the direction and policy vision and the mission of his hospital but still does not conflict with the applicable laws and regulations. In carrying out medical practice, a general practitioner and a military doctor basically have the same duties and authorities as stipulated in Law Number 29 of 2004 concerning Medical Practice, but for military doctors there are special provisions that must be obeyed by every military doctor. which is inseparable from military rules and unit rules.

3.2 Authority of Military Courts to Trial Military Doctors Who Commit Malpractice in Non-Governmental Hospitals

Law enforcement in Indonesia as a manifestation of the exercise of judicial power as stipulated in Law Number 4 of 2004 concerning Judicial Power is carried out in 4 (four) judicial environments, namely the general court environment, the religious court environment, the military court environment and the administrative court environment. state according to its absolute competence. Referring to Law Number 48 of 2009 concerning Provisions on Judicial Power, it is stipulated that one of the organizers/executors of judicial power is carried out by a court within the military court environment, including the composition and procedures regulated in a separate law. The legal basis for courts within the military court environment is also contained in Article 24 paragraph (2) of the fourth amendment of the 1945 Constitution which reads:

Law Number 34 of 2004 concerning the Indonesian National Armed Forces as the legal basis and dignity of the existence of the Indonesian National Armed Forces (TNI). The Indonesian National Armed Forces are part of the blood of the Indonesian nation which has the responsibility to maintain the country's defense and security. When carrying out this responsibility, of course there is the possibility of irregularities

²⁵ Regulation of the TNI Commander, number 38 of 2021, regarding the Establishment of a Memorandum of Understanding and Cooperation Agreement within the TNI. Article 8.

²⁶ *Ibid.*, Article 14

committed by members of the Indonesian National Armed Forces (TNI). These forms of deviation include violations of human rights (HAM), violations of military discipline laws and military crimes. For every crime committed by members of the Indonesian National Armed Forces, the majority is resolved through Military Courts, unless the Case Submitting Officer (PAPERA) is of the opinion that the crime is resolved through military discipline law. The most common criminal acts committed by members of the Indonesian National Armed Forces are fraud crimes. Special law is needed for members of the military because for certain criminal offenses if general criminal law is applied, then it is felt that the punishment is too light. For example, criminal acts of fraud or malpractice committed by military doctors against patients in non-government (private) hospitals, while for acts that can only be carried out by the military, such as desertion, refusing service orders, and so on, general criminal law does not apply. If these things are included in the Criminal Code, it will make the Criminal Code difficult to implement.²⁷

A military doctor commits a crime that is not regulated in the Criminal Code but is regulated in the Criminal Code, so he can be subject to punishment as stipulated in the Criminal Code. However, if a military doctor commits a crime that is the same as contained in the KUHPM and is also regulated in the Criminal Code, then what is used is military criminal law because it is in accordance with the legal principle "Lex Specialis Derogate Legi Generalis" which means that special laws or laws override law or general law. Since military criminal law is a special law from general criminal law, then what should be applied is military criminal law.

The existence of special criminal law actually cannot be separated from the specificities contained in the criminal law concerned. Sudarto²⁸ argues that the specificity of special criminal law lies in the existence of provisions that deviate from general criminal law concerning certain groups of people or acts. The specificity of military criminal law cannot be denied and is obvious because it applies to certain groups of people, namely the military.

Loebby Loqman²⁹ also argues that the specificity of special criminal law lies in regulating acts that are only committed by certain people, for example military criminal law that applies to the military. In addition, special criminal law can also be interpreted as a criminal law that regulates a crime that has a special nature. Departing from the understanding of general criminal law and special criminal law above, when viewed from the subject of the enactment of criminal law, general criminal law can be given an understanding as criminal law made by legislators and generally applied to all citizens, including the military. Thus general criminal law has space.

In line with the implementation of the principle of unity of command in the legal field, the possibility of a conflict occurring is actually very small. It is known that when a crime is committed by a military doctor and a unit, besides disturbing the interests of

²⁷ Sjahdeini.S.R. (2017). *Kebebasan Berkontrak dan Perlindungan yang seimbang Bagi Para Pihak Dalam Prejanjian Kredit Bank di Indonesia*, Jakarta: PT Macanan Jata Cemerlang, p. 20-21

²⁸ Chazawi, A. (2020), *Pelajaran Hukum Pidana*. Bagian I, Rajawalipers, Jakarta.p.45

²⁹ Hartanto. (2020), *Hukum Tindak Pidana Khusus*, Publish, Jakarta.p.34

the TNI itself, it will also disrupt the interests of the general public. Because the true interests of the TNI are also the interests of the general public, members of the military who commit criminal acts apply the provisions of general criminal law. However, for the military there are provisions regulated in the Criminal Code that specifically apply to the military. These specific provisions are regulated in the Military Criminal Code (KUHPM), which is an addition to the provisions already regulated in the Criminal Code.

The judiciary as the executor of judicial power in Dutch is called *rechtspraak* and in English it is called judiciary. Judiciary comes from the Arabic language *just* which has been absorbed in Indonesian which means the process of adjudicating or an attempt to seek justice or settlement of legal disputes before a judicial body according to applicable regulations. In Arabic it is called *al-Qadha*, meaning the process of judging or the process of seeking justice. In military courts, the definition of courts is contained in Article 1 Paragraph (1) of Law Number 31 of 1997 which formulates that Courts are bodies that exercise judicial power within the military courts which include Military Courts, High Military Courts, Main Military Courts, and Military Courts. Military Battle.

The case settlement mechanism is part of the criminal law enforcement process or commonly referred to as the criminal justice system, briefly defined as a system in society to deal with crime so that it is still within the limits of community tolerance. TNI soldiers who commit criminal acts can be resolved through disciplinary law and through a criminal process. TNI soldiers in their daily life, both on duty and in society, are required to behave in a disciplined manner. Discipline violations can be given sanctions according to the severity of the violation. Violations can be grouped into disciplinary and criminal offenses. The mechanism for resolving violations committed by TNI soldiers can be resolved through disciplinary action, disciplinary punishment, and military courts. Disciplinary actions and penalties are given for disciplinary violations, both pure and impure, while criminal cases are resolved through the Military Court. Disciplinary action is carried out with the consideration of increasing the effectiveness and efficiency of the unit, a Commander and a responsible superior are given the authority to impose disciplinary action if they see violations committed by soldiers.

The two fields of law, namely criminal and disciplinary law, have different objectives and are regulated in different laws. Disciplinary law is regulated in Law Number 26 of 1997 concerning Soldier Discipline Laws, while military criminal law is regulated in the Military Criminal Code, which originates from *Wetboek van Militair Strafrecht*. The main difference between disciplinary and criminal law lies in its purpose. Discipline law aims to regulate and enforce the internal order of the army's Norma organization (internal order). The military criminal law, in addition to aiming at upholding internal order (internal order), also aims at regulating and upholding public order (public order). The norms contained in military criminal law include disciplinary law, someone who violates military criminal law must violate discipline, but someone who is proven to have violated disciplinary law does not necessarily violate military criminal law. Therefore, it often happens that a person who violates military criminal law is considered to have violated military criminal law as well as military discipline law.

If a soldier commits a crime, his case will be investigated by Military Police investigators. The results of the PM's investigation are set forth in the form of a Criminal Case File (BPP) to be delegated to the Prosecutor. The Prosecutor then studies the BPP, if in the opinion of the Prosecutor the criminal case is mild in nature and can be resolved according to disciplinary law, the Prosecutor will make a Legal Opinion (SPH) to Papera so that the case is resolved according to soldier disciplinary law. Based on the SPH from the Prosecutor, Papera will make a Decision Letter on Settlement of Cases According to Discipline Law (Skeppkumlin) to be delegated to Ankum and Ankun on the basis of the Skeppkumlin to carry out a disciplinary hearing to impose disciplinary punishment.

Disciplinary hearings can be held because there is a transfer of cases from the Military Court or a handover from the Pomal or Provos investigators because there is a disciplinary violation. Based on Article 189 of Law Number 31 of 1997, if a soldier during a trial will be acquitted of all charges and acquitted and prosecuted but according to the Judge's assessment, the act was not appropriate for a TNI soldier to commit, the Judge decides the case to return to Papera to be resolved through disciplinary law. On the basis of returning the case from the Military Court to Papera, Papera then issues a Skeppera. On the basis of the Skeppera from Papera, Ankum will then process the case through a disciplinary hearing to impose a disciplinary penalty and issue a Skepkumlin. Each implementation of the decision is recorded in the case register book. Supervision of the implementation of the judge's decision is carried out by the Head of the Court at the first level and specifically supervision of the implementation of conditional sentences is carried out with the assistance of the commander concerned, so that the Commander can provide guidance so that the convict returns to become a good military man and will not commit another crime.

4. Conclusion

Based on the discussion, the conclusions of this study include 1) A military doctor is a TNI soldier with strata officer status or rank who can practice both in private practice and in non-government hospitals based on regulations, in accordance with the requirements as a doctor must have a doctor's registration letter and practice license. Practicing in non-government hospitals through the mechanism of requesting permission and approval from the Commander, Commander or Head of Work Unit, and of course already based on approval from the non-government hospital. As for the cooperation in practice, the military doctor has a Cooperation Agreement bond between the Hospital as the first party and the military doctor as the second party; 2) The military court has authority over every TNI soldier who commits a crime, be it a military crime or a general crime, including a military doctor who is definitely an officer, if he commits a crime or malpractice at a place of practice in a non-government hospital. In the event that there is a claim against a military doctor from a patient who has suffered material, immaterial and administrative claims due to malpractice at the said non-government hospital, then based on the Minister of Defense Regulation this matter must receive legal assistance. when committing a crime or malpractice in a place of practice in a non-government hospital. In the event that there is a claim against a military doctor from a patient who has suffered material, immaterial and administrative claims due to malpractice at the said non-government hospital, then based on the Minister of Defense Regulation this matter must receive legal assistance.

when committing a crime or malpractice in a place of practice in a non-government hospital. In the event that there is a claim against a military doctor from a patient who has suffered material, immaterial and administrative claims due to malpractice at the said non-government hospital, then based on the Minister of Defense Regulation this matter must receive legal assistance.

Suggestions that can be given include 1) Regulation of the Minister of Defense concerning Indonesian National Armed Forces Professionals, especially related to Military Doctors who practice in non-Governmental Hospitals, it is necessary to have derivatives of this Regulation, bearing in mind that in its implementation there are several things that are still in conflict between the regulations and other provisions and 2) It is hoped that there will be revisions or drafting of laws and regulations related to Military Courts covering all fields related to social, national and state life, and also handled by several agencies (Ministry of Defense, TNI Headquarters, Kemenkumham, Ministry of Health related to Medical Personnel or Military Doctors, and others), so that it is necessary to have a strategic policy regarding plans to draft laws and regulations on Military Courts.

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