



## Application of Military Law Towards TNI Members in Cases of Criminal Act of Insubordination at Dilmilti II Jakarta

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### Abstract

*Insubordination is an act that is completely unacceptable in the military, because it is considered to have violated the Sapta Marga and the Soldier's Oath which are the basic reference for personality patterns as TNI soldiers. Acts against superiors should not be carried out in the military environment, because acts against superiors or insubordination are classified as serious crimes. For this reason, we will further examine the absolute competence of the High Military Court in handling Insubordination Crime Cases and how military law is applied to TNI members in cases of insubordination crimes at the Jakarta II High Military Court. The research method used in this research is a normative legal research method. From the research results it was found that the High Military Court is a Second Level Military Court which has the authority to hear appeals from First Level Military Court Decisions. Then the application of military law to members of the TNI in cases of criminal acts of insubordination at the Jakarta II High Military Court is basically the same as the First Level Military Court, namely based on the Military Criminal Code (KUHPM). The results of the DILMILTI decision can be different from those of the Military Court of First Instance due to differences in the opinions of the panel of judges, but can also have the same results because of the similarities in the analysis and opinions of the Panel of Judges so that the new decision actually strengthens the previous decision.*

**Keywords:** *insubordination, military law, military court*

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## INTRODUCTION

The Indonesian National Army (TNI) is the main component of the country's defense tasked with maintaining sovereignty, defending territory, protecting the safety of the nation, and carrying out military operations for war and non-war. Derived from the Greek word "milies," TNI means people prepared for war. In the era of globalization, TNI plays a role as the spearhead in facing security threats, including military attacks that threaten the Republic of Indonesia. TNI soldiers are trained to be disciplined, obey orders, and use weapons efficiently in order to maintain national security.

Being a TNI soldier means being ready to sacrifice personal interests for the sake of the organization and the country. Although full of risks, being a soldier is a source of pride, because you feel loyalty, togetherness, and a distinctive esprit de corps. The strict discipline applied aims to achieve the ideals of the country, according to the opening of the 1945 Constitution, namely protecting the nation, advancing welfare, educating life, and maintaining world order.

In terms of law, military personnel have the same status as ordinary members of society, meaning that as citizens, all applicable legal rules apply to them, including criminal law, civil law, criminal procedure and civil procedure. The difference is that more specific regulations are still needed that are stricter and more severe for military personnel, this is because there are several acts that can only be carried out by soldiers that are originally

military and do not apply to the general public, for example: refusing service orders, opposing superior orders (insubordination), and desertion.

Lately, there have been many criminal cases involving TNI soldiers, both pure military crimes and non-pure military crimes. Pure military crimes include insubordination, which is spontaneous resistance by subordinates to superiors. In fact, General Soedirman advised that obedience to leadership is the main strength of the army. The crime of insubordination is regulated in the Criminal Code and the Criminal Code, but its law enforcement uses the Criminal Code as a special military criminal law. The principle of *Lex Specialist Derogat Legi Generale* applies, where special law (the Criminal Code) overrides general law (the Criminal Code). Special law is needed because the threat of general criminal law is considered too light for certain violations. In practice, if there are TNI soldiers who commit criminal acts of insubordination, if the person concerned has received punishment, and is deemed to be able to be accepted back into the unit or in other words not dismissed, then they must be given special guidance by the commander in the unit where the TNI soldier serves.

Criminal acts committed by soldiers reflect a disregard for TNI ethics and discipline. Soldiers must obey the rules, be in a unit, and not go against official orders. Violation of these rules shows an irresponsible attitude in upholding the *Sapta Marga* and the Soldier's Oath. Because military discipline is very important, military criminal law is applied with a heavier threat than general criminal law, in order to maintain order within the TNI environment.

Since August 2004, all judicial bodies have been under the Supreme Court through a one-roof policy, confirmed in various laws, including Law No. 48 of 2009 concerning Judicial Power. Military Courts are a special part of the country's judicial system, but are still supervised by the Supreme Court, not the TNI Headquarters. Military Courts have special procedural law, namely Law No. 31 of 1997. TNI members are required to be disciplined, obedient, and be role models in society, in accordance with the *Sapta Marga* and the Soldier's Oath.

Every member of the TNI is required to comply with the provisions of military law, including the Criminal Code regulated in Law No. 39 of 1997, the Military Disciplinary Code (KUHDM), and the Military Disciplinary Regulations (PDM). This law applies to all soldiers, both Privates, Non-Commissioned Officers, and Officers, who commit acts detrimental to the unit, society, or the state. The increase in insubordination among the TNI reflects a decline in understanding of military doctrine and discipline, as well as the importance of hierarchy in the organization. If discipline declines, the development of the unit will be disrupted, causing more violations. Therefore, the author chose the title: "The Application of Military Law to TNI Members in the Case of Insubordination Crimes at the Jakarta II High Military Court."

Based on the description above, the main problems that can be researched and included in this writing can be formulated as follows:

1. What is the Competence of the High Military Court in Handling Cases of Insubordination Crimes?
2. How is military law applied to TNI members in cases of criminal acts of insubordination at the Jakarta High Military Court II (DILMILTII)?

## METHOD

In the research for writing this thesis, the author used a normative legal research method (normative juridical), which was approached conceptually (conceptual approach) by examining the principles, doctrines and sources of law in a philosophical and legal sense to obtain a clear and correct picture and understanding of the problems discussed. The method of presenting data in this study uses a normative legal method which will be presented in the form of a description that is arranged systematically, logically, and rationally. In the sense that all the data obtained will be connected to each other according

to the main problem being studied, so that it is a complete unity (Sudarto, et al. 2019). This means that existing problems are studied based on existing laws and regulations. Normative law research uses normative case studies in the form of legal behavioral products, for example studying laws. The main point of study is the law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. (Suwarjono, et.al, 2023)

This study uses a legal research approach in the form of a statute approach, a conceptual approach and a case approach by studying, analyzing, grouping laws and regulations, legal principles and legal doctrines and legal concepts, certain court decisions related to military law in Indonesia and the application of military law by the Supreme Court or Judges at Military Courts in examining, trying and deciding cases related to criminal acts of insubordination. With a legal research approach, researchers will obtain information from various aspects regarding the issue being tried to find an answer.

## RESULTS AND DISCUSSION

### Competence of the High Military Court (DILMILTI) in Cases of Criminal Acts of Insubordination

Criminal acts committed by the TNI are divided into two categories: pure military crimes and mixed military crimes. Pure military crimes include insubordination, desertion, abuse of power by superiors, and theft of war goods. Meanwhile, other cases are classified as impure military crimes. Military life is responsible for enforcing discipline and service orders. Violations of this reflect the irresponsibility of military members in carrying out the Sapta Marga and the Soldier's Oath, which can damage the discipline and order of the TNI.

Military personnel require special regulations, because some serious offenses in the military context are not adequately regulated in general criminal law. For example, theft of weapons in a military environment does not receive a commensurate penalty under general criminal law. With the existence of military criminal law, this offense can be subject to a heavier penalty, providing better accommodation for legal issues in the military.

Military Law has several provisions in law enforcement, namely the existence of Military Courts or Military Courts so that special, heavier penalties are imposed. In relation to this, there is a regulation that regulates the competence of Military Courts, namely in Article 3 Paragraph (4) of MPR Decree Number VII/MPR/2000 concerning the Role of the Indonesian National Army and the Role of the Indonesian National Police. Bacharudin stated that if the provisions of Article 3 Paragraph (4) letter a of MPR Decree No. VII/MPR/2000 are applied, then the cases that are within the competence of Military Courts are:

1. All criminal acts regulated in the Criminal Code;
2. General crimes committed by TNI members during military service;
3. General crimes committed by TNI members in headquarters, barracks, barracks and ships/aircraft; and
4. general crimes committed by soldiers in a state of military emergency and war

The Military Court functions as a judicial body that is not supervised by the TNI Headquarters or the Department of Defense, but under the supervision of the Supreme Court. Every member of the TNI is expected to maintain honor and avoid reprehensible behavior that can damage the reputation of the military. Actions that violate the law, community norms, or official regulations can harm the authority of the TNI and disrupt public order.

TNI members who break the law can be punished under civil criminal law and military criminal law. Civil criminal law applies to TNI members, and if the act is not listed in the KUHPM, then the KUHP can be applied.

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In the case of insubordination, the settlement in Military and General Courts is different. The Criminal Code regulates insubordination in Articles 459-461, while the Criminal Code regulates it in Articles 106-109. For cases of TNI insubordination, complaints can come from victims or reports from superiors who have the right to punish.

Efforts to overcome criminal acts are carried out in two ways: penal and non-penal. Penal prevention is repressive, focusing on oppression after the crime has occurred, while non-penal is preemptive and preventive, trying to prevent before the crime occurs. In the context of criminal acts of insubordination, the author will follow these guidelines to overcome the case. The steps to overcome criminal acts of insubordination will be explained further.

#### 1. Preemptive Efforts

Preemptive efforts are initial actions to prevent criminal acts, carried out without violence, such as inviting and advising. In the context of TNI soldiers, the role of superiors is very important to prevent insubordination by:

- a. Implementing the principle of commander's responsibility towards subordinates.
- b. Implementing the perpendicular command.
- c. Provides guidance on military norms.
- d. Take a good approach so that soldiers carry out their duties sincerely.
- e. Reminding us of the values of the Sapta Marga and the Soldier's Oath.
- f. Demonstrate loyalty so that there is no conflict between superiors and subordinates.

#### 2. Preventive Efforts

Preventive efforts are further steps to prevent criminal acts from occurring by not giving the perpetrators a chance. In this case, TNI superiors must immediately respond to the negative behavior of their subordinates, such as responding to revenge or dissatisfaction with appropriate coaching, so that the potential for insubordination can be avoided.

#### 3. Repressive Efforts

Repressive measures are implemented after a crime has occurred, with a focus on law enforcement and sanctions. These actions aim to hold the perpetrators accountable and encourage them to realize their mistakes and not repeat actions that harm others. With the application of severe sanctions, it is hoped that similar violations will be prevented in the future.

If a criminal act of insubordination occurs against a TNI soldier, there are three alternative handling options to provide a deterrent effect:

##### 1. Military Administrative Law

Schorsing is an administrative action implemented by a superior (commander) against a soldier who violates. Schorsing aims to temporarily suspend the soldier's duties. If this action is deemed ineffective, the commander can refer the case to ANKUM (Superior Authorized to Impose Punishment).

##### 2. Military Disciplinary Law

Disciplinary Sanctions: ANKUM has the authority to impose sanctions in accordance with the provisions of Article 9 of Law No. 25 of 2014 concerning Military Disciplinary Law. The types of sanctions that can be given include:

- a. Reprimand: An official warning that a soldier must heed.
- b. Minor Disciplinary Detention: This sanction can last up to 14 days, providing an opportunity for reflection and learning.
- c. Severe Disciplinary Detention: This sanction is more serious, with a maximum period of 21 days.

If ANKUM considers this disciplinary sanction to be insufficient, the next step is to process the case through criminal law.

##### 3. Military Criminal Law

If the violation is considered serious, the soldier can be tried under the Military Criminal Code. In this process, the Military Prosecutor and Judge have an important role in determining the punishment. The punishments that can be imposed include:

- a. Principal Penalties: These include imprisonment or in extreme cases, the death penalty, depending on the severity of the offense.
- b. Additional Penalties: Dismissal from military service may be imposed if the Judge deems it necessary based on the evidence and charges presented.

The purpose of implementing this punishment is to educate and train soldiers, and prevent the recurrence of insubordination in the future. This is expected to maintain discipline and integrity within the TNI.

The military court has the power or authority as stated in Article 40 of the Military Court Law which states: The Military Court examines and decides at first instance criminal cases in which the Defendant is:

1. Soldiers with the rank of Captain and below;
2. Those as referred to in Article 9 number 1 letter b and letter c whose Defendants "include the rank level" of Captain and below;
3. Those who are based on Article 9 number 1 letter d must be tried by a Military Court.

According to Sergeant Robiyantoro, the military justice system is as follows:

1. Starting from criminal acts committed by members of the military or those equated with the military.
2. Then the investigator receives a report or complaint.
3. Military police investigators conducted the investigation process into the case by submitting an investigation warrant for the case by submitting an investigation warrant issued by papera.
4. After the letter was issued, investigators conducted an investigation.
5. The military police investigator made a BAP and the original BAP was sent to the military auditor while the photocopy of the BAP was sent to papera.
6. Then the case was tried in the Military Court.
7. If the TNI's decision is not to dismiss them, they will serve their sentence in a military prison, whereas if they are dismissed, they will serve their sentence in a general prison.

The military justice system is one of the implementers of judicial power that tries criminal cases committed by the military or those equated with the military.<sup>22</sup> In the author's opinion, the military justice system that has been explained above is basically the military justice system, namely the legal process at all stages from reporting or complaints, investigations to the implementation of decisions, where criminal cases committed by members of the military or those equated with the military are examined and decided in their respective jurisdictions.

After knowing the authority of the court in the military court system, the author hopes that all law enforcers and the public must understand so that there are no wrong lawsuits or reports in their submission to the competent court, so that a fast, simple and low-cost trial can be realized.

All parties need to be careful in the implementation of the military justice system in Indonesia, considering that there are still many criminal acts committed by members of the TNI, it is likely that there are still some that need to be improved with the implementation of the military justice system in Indonesia. According to Law Number 31 of 1997, military justice is the executor of judicial power within the armed forces to uphold law and justice by paying attention to the interests of organizing state defense and security, in its implementation military justice is carried out by a military court, namely a court which is the body implementing judicial power within the armed forces.

### **Application of Military Law in Cases of Insubordination Crimes at the Jakarta High Military Court (DILMILT) II**

The author takes two examples of the High Military Court Decision at DILMILT II Jakarta in the case of the Crime of Insubordination to explain the application of the law, namely:

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## 1. Decision Number: 03-K/BDG/PMT-II/AD/I/2018

The first discussion of Decision Number: 03-K/BDG/PMT-II/AD/I/2018, with three Defendants. The three Defendants have been charged with committing a Criminal Act of Insubordination in the form of an Act of beating or physical action against the victim on behalf of Major Inf Catur Irawan based on the Military Prosecutor's Indictment Number: Sdak/96/K/AD/II-09/VIII/2017 dated August 21, 2017, concluded that there was sufficient reason to bring the Defendants to trial at the Military Court II-09 Bandung with the Indictment of having committed a series of the following acts

The Defendants have committed the crime of Insubordination, namely on Saturday, January 7, 2017, or at least in 2017 at Ma Yonif 312/KH Jl. Wera Subang at least in places included in the jurisdiction of Military Court II-09 Bandung, have committed the crime of "Insubordination with real actions carried out by two or more people together if because of the crimes they committed or because of real actions related to the crimes committed resulted in injury"

That due to the beating incident carried out by Koptu Agus Setia Permana (Witness-2), Kopda Maskur (Witness-4), Koptu Suherman (Witness-3), Kopda Wahyudi (Witness-5) and Kopda Nurhali (Witness-7) against Major Inf Catur Irawan (Witness-1), Witness-1 suffered injuries under the right and left eyelids caused by blunt force, therefore there were no obstacles to carrying out work and positions, according to Visum Et Repertum Pro Yustitia Number 353/03/443190-Rm dated January 10, 2017 from the Class B Regional General Hospital of the Subang Regency Government which was examined and signed by Dr. Ismail Tresnawan. That the Defendant's actions have sufficiently fulfilled the elements of a criminal act as formulated and threatened with punishment in Article 108 paragraph (1) in conjunction with paragraph (2) 1 of the Criminal Code or Article 135 paragraph (1) of the Criminal Code.

The demands (Requisitoir) of the Military Prosecutor which were read out on Monday, October 23, 2017, the contents of which requested that the Bandung II-09 Military Court issue the following verdict:

1. Declaring that the Defendants have been proven legally and convincingly guilty of committing the following crimes:
  - a. Defendant I: Riad Empep Supriyadi,  
Sergeant NRP. 21040086570685.
  - b. Defendant II: Somad Suharya,  
Corporal NRP. 31980470640476.
  - c. Defendant III: Igan Wahyudin,  
Kopda NRP. 31010111241080
2. The prosecutor requested that the defendant be sentenced to the following penalties:

Defendant-I:

Principal Criminal Procedure : Imprisonment for 15 (fifteen) months is reduced while in temporary detention.

Additional Penalty: Dismissed from Military Service.

Defendant II:

Principal Punishment: 15 (fifteen) months of imprisonment reduced during the period of temporary detention.

Additional Penalty: Dismissed from Military Service.

Defendant III:

Principal Punishment: 15 (fifteen) months of imprisonment reduced during the period of temporary detention.

Additional Penalty: Dismissed from Military Service.

Based on the Minutes of the Trial and Decision of the Military Court II-09 Bandung Number 138-K/PM.II-09/AD/VIII/2017 which was tried at the First Level with the verdict stating that the defendants were proven legally and convincingly to

have committed the crime of "Verbally inciting a military person to commit a crime". Then the defendants were charged with imprisonment for 7 (seven) months and 25 (twenty five) days and ordered that the defendants be released from detention.

Then, the Military Auditor in his appeal memorandum submitted objections to the Decision of the Military Court II-09 Bandung Number 138-K/PM.II-09/AD/VIII/2017, which in essence are as follows:

1. Objection because the sentence was not accompanied by additional punishment in the form of dismissal from military service.
2. The defendant's actions damaged military discipline, especially in the 312/KH Infantry Battalion Unit.
3. Asking the Second High Military Court to reopen the trial and issue a fairer verdict.

In essence, the Military Prosecutor in his appeal memo objected to the Decision of the First Level Panel of Judges Number 138-K/PM.II-09/AD/VIII/2017 because it did not impose a sentence of dismissal. The Panel of Appeals Judges stated that the Military Prosecutor's objection would be considered after proving the elements of the charges based on trial facts, witness statements, and evidence. Before assessing further, the Panel of Appeals Judges will review alternative charges related to insubordination and incitement to commit crimes as regulated in Article 108 and Article 135 of the Criminal Code.

Because the First Alternative Charge was not proven, the Panel of Appeals Judges proved the Second Alternative Charge, namely incitement of the military to commit a crime based on Article 135 paragraph (1) of the Criminal Code. The elements include: "Whoever", "orally or in writing incites the military", and "to commit a crime". The legal facts from the trial, including the incident at the Yonif 312/KH transportation pool related to the incident at the Artemis Cafe, were examined. Other evidence found was an order from the Pasi Intel to the Defendant to collect and ask about the involvement of members in the destruction of the cafe.

The Panel of Judges of the Appellate Level of the High Military Court disagreed with the Decision of the Military Court II-09 Bandung Number 138-K/PM.II-09/ADA/VIII/2017, which stated that the Defendant was proven guilty of inciting the military to commit a crime (Article 135 paragraph 1 of the Criminal Code). The Appellate Judge decided to annul the decision because it was considered inappropriate, and rejected the Prosecutor's objection in his Appeal Memo. The Appellate Judge retried and stated that the Defendant only repeated the orders of his superiors without any intention of committing a crime, in accordance with applicable military regulations.

The Panel of Judges at the Appellate Level adjudicated with Decision NUMBER: 03-K/BDG/PMT-II/AD/I/2018, based on Article 14 of Law Number 48 of 2009 concerning judicial power in conjunction with Article 189 paragraph (4) in conjunction with Article 195 paragraph (1) letter (d) of Law of the Republic of Indonesia Number 31 of 1997 concerning Military Courts and other laws and regulations related to this case.

**TO JUDGE**

1. Declaring formal acceptance of the appeal submitted by Military Auditor Major Chk Eko Susanto, SH NRP.636814.
2. Canceling the Decision of the Military Court II-09 Bandung Number 138-K/PM.II- 09/AD/VIII/ 2017 dated 7 November 2017.

**JUDGE YOURSELF**

1. Declaring the Defendants
  - a. Defendant-I : Riad Empep Supriyadi, Serka NRP 21040086570685.
  - b. Defendant-II : Somad Suharya, Private NRP 31980470640476
  - c. Defendant-III : Igan Wahyudin, Private First Class NRP 31010111241080

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Not proven legally and convincingly guilty of committing a crime:

- 1) First, "Insubordination with real actions carried out by two or more people together if the crimes they commit or the real actions related to the crimes committed result in injury."
  - 2) Second, "Anyone who, verbally or in writing, incites a military person to commit a crime"
2. To acquit the Defendants therefore from all charges of the Military Auditor.
- Establishing evidence in the form of letters
- 1) 1 (one) sheet of Visum Et Repertum Pro Yustitia Number 353/03/443190-Rm in the name of Catur Irawan, 36 years old, male, Muslim, occupation TNI, address Yonif 312/KH Dormitory Jl. Brigjen Katamso Wera Subang; remains attached to the case file.
  - 2) Charging case costs at the Appeal Level to the State.
  - 3) Ordering the Clerk to send a copy of this decision along with the case files to the Military Court II-09 Bandung

Based on the description, it can be concluded that Decision NUMBER: 03-K/BDG/PMT-II/AD/I/2018, in the Application of Military Law to the Crime of Insubordination, there is a Difference of opinion between the Panel of Judges at the Appellate Level and the Panel of Judges at the First Level. In the final decision, the Defendants were declared legally proven to have committed the crime of insubordination and were subject to sanctions in accordance with applicable law.

2. Decision Number: 134-K/PMT-II/BDG/AL/IX/2022

Discussion of the second Decision Number: 134-K/PMT-II/BDG/AL/IX/2022, with the Defendant Manuel Victor Mandowen, rank/Nrp is Sertu Ttu/115045, and position is Bintara Detachment. The Defendant has been charged with committing the Criminal Act of Insubordination. The Indictment of the Military Prosecutor II-07 Jakarta Number Sdak/126/VI/2022 dated June 29, 2022, concluded that there was sufficient reason to bring the Defendant to trial at the Military Court II-08 Jakarta on charges of having committed a series of acts.

The defendant has committed the crime of Insubordination, namely on Tuesday, the Fourth of January in the year Two thousand twenty-two at approximately 13.30 WIT or other times at least in the month of January in the year Two thousand twenty-two or at least in the year Two thousand twenty-two at Masatkopaska Koarmada III Katapop Salawati Sorong Regency, West Papua or other places at least in a place that is included in the jurisdiction of the Military Court III-19 Jayapura which has the authority to examine and try this case, which based on the Decision of the Chief Judge at the Military Court III-19 Jayapura Number 139 / PM.III-19 / AL / IV / 2022 dated June 9, 2022 the case was transferred to the Military Court II-08 Jakarta has committed a crime.

The defendant was proven legally and convincingly guilty of committing the crime: "A military member who intentionally, with real action, attacks a superior, is threatened with insurrection", as regulated and threatened with criminal penalties in Article 106 Paragraph (1) of the Criminal Code.

Based on the above facts, the Defendant's actions have fulfilled the elements of the criminal act charged against him, therefore the Decision of the First Instance Court, as far as the elements of the criminal act are proven, must be confirmed.

The appeal filed by the Defendant on September 12, 2022 against the Decision of the Jakarta Military Court II-08 Number 188-K/PM.II-08/AL/IX/2022 has been submitted in accordance with the procedure and can be formally accepted. In the appeal memorandum, the Military Auditor submitted the following objections:

1. The Panel of Judges of the First Instance did not consider the Defendant's physical and psychological condition, who was tired during the interrogation, so that his emotions and behavior were uncontrolled.
2. The defendant did not receive any direction or advice from his superiors regarding his mistake.



3. The defendant expressed remorse, and the sentence of one year in prison and dismissal was deemed too harsh.
4. The defendant apologized to the Indonesian Navy and Satkopaska for his attitude and behavior.

As regulated and threatened with criminal penalties in Article 106 Paragraph (1) of the Criminal Code, the Panel of Judges at the Appellate Level is of the opinion that the decision is correct and proper in accordance with the legal facts revealed in the trial as follows:

1. That it is true that the Defendant entered the Indonesian Navy in 2009 through the Dikmaba PK XXIX education at Kodikal Surabaya, after graduating he was inaugurated with the rank of Serda Ttu, then assigned to Lanal Gorontalo, in 2014 he participated in Dikpaska 38 at Pusdiksus Kopaska then assigned to Satkopaska Koarmada I Pondok Dayung Jakarta then in 2020 he was assigned to Satkopaska Koarmada III Sorong until the time of committing the act that became the case, he still had active duty status with the rank of Sertu Ttu NRP 115045.
2. That it is true after checking his identity, when committing the act that is the subject of this case, the Defendant was still an active military member/soldier of the Indonesian Navy with the rank of Sergeant Ttu NRP 115045, Non-Commissioned Officer Position, Detachment Kesatuan Satkopaska Koarmada III, had not been dismissed from military service or his service period had ended and when the Defendant committed the act that is the subject of this case, he still had military status.
3. That it is true according to the Decision Letter on the Handover of the Case from the Dansatkopaska Koarmada III as Papera Number Kep/06/III/2022 dated March 25, 2022, the Defendant as a member of the military was handed over to the Military Court II-08 Jakarta to be examined and tried for his case because he was charged with committing a crime: "Military who intentionally, with real action, attacks a superior, fights him with violence, or threats of violence, deprives him of his freedom to act, or forces him with violence or threats of violence to carry out or ignore official work".
4. That it is true that on Saturday, January 2, 2022, at around 22.39 WIT, the Defendant contacted the Head of Operations Training Unit of Koarmada III, Major Laut Irawan Prasetyo (Witness-1) via WA telephone and said that he was undergoing quarantine at Wisma Atlit Jakarta because he had just returned from Singapore with his wife. Because the telephone connection was disconnected, Witness-1 sent a WA chat and ordered "Send ticket booking and Swab Results", a few moments later the Defendant sent proof of ticket booking and Swab results which were written below Rotterdam, Netherlands.
5. That it is true that on Monday, January 3, 2022 at around 08.15 WIT, Witness-1 reported the Defendant to Dansatkopaska Koarmada III Lieutenant Colonel M. Machri Mokoagow (Witness-4), then Witness-4 ordered that when the quarantine was complete, he was ordered to check again. Then at around 08.38 WIT, Witness-1 contacted the Defendant via WA Chat "Where is your leave permission?" but the Defendant did not reply.
6. That it is true that on Tuesday, January 4, 2022, at approximately 07.34 WIT, the Defendant reported to Witness-1 that he was already in Sorong, then the Witness ordered the Defendant to Share lock (share location), then the Defendant sent the Share Lock position at the Airport, then Witness-1 ordered to take a photo with his wife with the aim of checking the truth but it was not sent, then the Defendant replied "Please allow us to go home early because we escaped from the Wisma Atlit Jakarta quarantine yesterday at 3 am
7. That it is true that at around 11.58 WIT the Defendant contacted Witness-1 to say that he was still on his way, then Witness-1 ordered him to immediately approach Satkopaska Koarmada III. At around 13.30 WIT the Defendant

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entered the Satkopaska Koarmada III Office, then at around 13.45 WIT Witness-1 sat on the stairs behind the Satkopaska Koarmada III office and invited the Defendant to chat. Witness-1 ordered the Defendant to sit down but the Defendant refused and took a standing position in front of Witness-1 with a distance of  $\pm 1$  (one) meter so that Witness-1 ordered the Defendant to step back.

8. That it is true that Witness-1 then asked the purpose of the leave and why he had to be quarantined at Wisma Atlit, but the Defendant only answered "we are from Singapore", then Witness-1 asked "with who?", and the Defendant answered "with the candidate (Ms. Vinolia Kurni)" then Witness-1 asked again "Where is your wife?", and answered "I have divorced her according to customary law, I have returned her to her parents". Then Witness-1 asked "where is your candidate?", and the Defendant answered "at Wisma Atlit". Furthermore, Witness-1 said "if you are at Wisma Atlit, call, I want to talk to your candidate" Witness-1 repeated the order 2 (two) times, but the Defendant did not answer.
9. That it is true that the Defendant then opened his mask and rebuked and shouted while pointing and challenging the Witness with the words "What do Pasops want?". These words were repeated several times. Furthermore, the Defendant said in an emotional tone "if you want to punish, punish me, if you want to fire, fire me, don't involve my candidate, this is my business", then the Defendant challenged Witness-1 with the words "Punish me, fire me if I'm wrong, Don't involve my candidate".
10. That it is true that Witness-4 heard a commotion then came out of the room and several members of Satkopaska came closer, then Witness-4 shouted "Shut up Mandowen, what are you doing, shouting in front of an Officer". Hearing the words of Witness-4, the Defendant still put his hands on his hips and stepped back about 3 (three) steps while putting on a horse stance with clenched fists while saying "if you want to punish, punish me, if you want to fire, fire me, don't involve my candidate, this is my business". Then Witness-4 said "Mandowen what do you want?", but the Defendant repeated the words "If you want to punish, punish me, if you want to fire, fire me". Then Witness-4 ordered other Satkopaska members to arrest the Defendant and secure him in the Pasmin Major Laut Tadisa room.
11. That it is true that Witness-1 then went in to meet the Defendant and asked "what's wrong with you" and the Defendant answered in an emotional tone "Pasops pressured me". Because the Defendant was still angry, Witness-1 finally left the room. When several personnel from Satkopaska Koarmada III conducted a search of the Defendant's green backpack, items were found including a sharp machete/parang that had just been sharpened.
12. That it is true that the Defendant knew that Witness 1 was the Defendant's direct superior at Satkopaska Koarmada III, but the Defendant deliberately fought Witness 1 because the Defendant did not accept being interrogated and reprimanded for going abroad without permission.
13. That it is true that the Defendant still has 2 (two) other cases, first violating Article 103 paragraph (1) of the Criminal Code which is currently in the trial process, second the Defendant violated Law Number 4 of 1984 concerning infectious disease outbreaks Article 14 Paragraph (1) and Law Number 6 of 2018 concerning health quarantine Article 9 Paragraph (1) and Article 93 which are currently still in process at Puspomal.

Based on the above facts, the Defendant's actions have fulfilled the elements of the criminal act charged against him, therefore the Decision of the First Instance Court, as far as the elements of the criminal act are proven, must be confirmed.

That regarding the sentence imposed on the Defendant in the form of a Principal Sentence of 1 (one) year imprisonment, the Panel of Judges at the Appellate Level is of the opinion that the sentence is appropriate and fair and commensurate with the Defendant's mistake, however, the Panel of Judges at the Appellate Level considers it necessary to add the following regarding the Defendant's circumstances:

- a. The defendant was aware that his actions against his superiors were wrong and against the law, but still did so, showing disrespect for military rules, which is a serious offense.
- b. The motive for the Defendant's actions was his displeasure at the interrogation and reprimand for traveling abroad without permission, even though he knew it violated Indonesian Navy regulations.
- c. The purpose of sentencing is to provide a deterrent effect, and the Panel of Appellate Judges considered that dismissal from military service was an appropriate, fair and proportionate punishment for the Defendant's violation.

The Panel of Judges at the Appellate Level decided that the principal sentence imposed on the Defendant was appropriate, fair, and balanced, so it needed to be strengthened. Regarding the additional sentence in the form of dismissal from military service, the Panel of Judges was of the opinion that the Defendant's actions, which opposed his superiors with threats of violence and showed an attitude of insubordination, were inappropriate for a TNI soldier. The Panel considered that these actions could disrupt military discipline and order, so that the Defendant was not fit to be retained as a member of the TNI. This decision strengthened the decision of the First Instance Military Court. This act of insubordination is regulated in Articles 106-108 of the Criminal Code, which can be punished with a maximum of nine years in prison, dismissal, or demotion.

The liability of perpetrators of criminal acts of insubordination by TNI members with lower ranks is regulated in Articles 106-109 of the Criminal Code as follows:

1. Article 106: Military personnel who attack or resist their superiors with violence or threats are subject to a maximum prison sentence of 9 years.
2. Article 107: Premeditated insubordination is punishable by a maximum of 10 years in prison.
3. Article 108: Insubordination committed jointly is punishable by a maximum of 12 years in prison.
4. Article 109: Insubordination during wartime is punishable by death, life imprisonment, or a maximum of 20 years.

The law enforcement process is carried out through direct complaints or reports from superiors, with resolution through the court process in accordance with Law No. 31 of 1997.

Based on the 2 Decisions, there are two differences in the application of the law which the Author summarizes in the following table:

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Indicator	First Instance Military Court Decision Number 134-K/PMT-II/BDG/AL/IX/2022	First Instance Military Court Decision Number 03-K/PMT-II/BDG/AL/IX/2022
Defendant	3 defendants with different ranks, Serka, Koptu and Kopda	1 defendant with the rank of Sergeant
Elements of the Crime of Insubordination	Causing injury By Word or Writing inciting members to commit crimes	with real action, attacking a superior, threatened because of Insurbation
Chapter	Article 108 paragraph (1) in conjunction with paragraph (2) 1 of the KUHPM Article 135 paragraph (1) of the Criminal Code	Article 106 Paragraph (1) of the Criminal Code
Appeal Decision Results	The appeal application was accepted, the Defendant was found to have been legally proven to have violated the provisions of the article and committed the crime of insubordination.	The appeal was rejected, the Defendant was found to have legally violated the provisions of the article and committed the crime of insubordination.

## CONCLUSION

Based on the results of the research and discussion, the author concludes that: The High Military Court has the authority to handle appeals against decisions of the First Instance Military Court that are considered unfair. As a Second Instance Military Court, it follows the provisions of Article 41 of Law of the Republic of Indonesia No. 31 of 1997, with the peak of judicial power remaining in the Supreme Court.

The High Military Court uses the same legal basis as the First Instance Military Court, namely the Criminal Code and the Criminal Code, especially Article 106 of the Criminal Code. The verdict at the high level can be different or strengthen the previous verdict, depending on the analysis and opinion of the panel of judges. The crime of insubordination is a violation committed by TNI soldiers against their superiors, both during and outside of duty hours, with the provisions stipulated in Articles 106-109 of the Criminal Code. There are examples of cases in the First Instance Military Court that were submitted to the High Military Court, with differences in the judges' considerations regarding the elements of the crime.

The First Instance Military Court needs to be more observant in assessing and analyzing military criminal cases before trying or making decisions so that the Court can decide cases fairly and effectively so as to reduce the level of appeals. Research into legal facts also needs to be improved in order to provide a fair final Court Decision.

The Judge's Consideration greatly influences the Decision Results in the Military Court, especially at the High Military Court Level, for Insubordination Crime Cases. There needs to be good collaboration between Military Court Judges and Members of the Indonesian National Army so that good synergy can be realized in enforcing Military Law.

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