CHALLENGES AND OPPORTUNITIES OF REFORMING LEGISLATION OF INDONESIAN MILITARY COURTS WITH AN INTERPRETIVE APPROACH TO IBN QAYYIM'S THOUGHTS ON LEGAL REFORM

UNDERGRADUATE THESIS

Presented as Partial Fulfillment of the Requirements of Obtaining a Bachelor Degree of Law at the Faculty of Islamic Religious Studies

Acc untuk
dutter Munaqosyah
29/4-24

By:

Hafiz Darius Shina

20421087

INTERNATIONAL PROGRAM

FACULTY OF ISLAMIC RELIGIOUS STUDIES

ISLAMIC UNIVERSITY OF INDONESIA

YOGYAKARTA

2024

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Supervisor Lecture:

Dr. Drs. Yusdani, M.Ag.

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YOGYAKARTA

2024

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STATEMENT LETTER PAGE

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Hereby declare that the results of writing this thesis are my own work and are of true authenticity. If it turns out that later the writing of this thesis is the result of plagiarism or plagiarism of other people's work, then I am willing to take responsibility and be willing to accept sanctions based on the rules and regulations that apply at the Islamic University of Indonesia.

Thus, I make this statement honestly and not forced.

Yogyakarta, 29 April 2024

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Hafiz Darius Shina

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PENGESAHAN

Tugas Akhir ini telah diujikan dalam Sidang Munaqasah Program Sarjana Strata Satu (S1) Fakultas Ilmu Agama Islam Universitas Islam Indonesia Program Studi Ahwal Al-Syakhshiyyah IP yang dilaksanakan pada:

Hari	:	Selasa
Tanggal	:	28 Mei 2024
Judul Tugas Akhir	:	Challenges and Opportunities of Reforming Legislation of Indonesian Military Courts with an Interpretive Approach to Ibn Qayyim's Thoughts on Legal Reform
Disusun oleh	:	HAFIZ DARIUS SHINA
Nomor Mahasiswa	:	20421087

Sehingga dapat diterima sebagai salah satu syarat untuk memperoleh gelar Sarjana Strata Satu (S1) Syariah pada Fakultas Ilmu Agama Islam Universitas Islam Indonesia Yogyakarta.

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Penguji I	: Dr. Mukhsin Achmad, S.Ag, M.Ag.	(.....)
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Yogyakarta, 28 Mei 2024

Dekan,

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Dr. Drs. Asmuni, MA

INTERNAL MEMO

Yogyakarta, May, 5th 2024 CE

Syawwal, 14th 1444 H

Subject : **Undergraduate Thesis**

Dear : His Honorable Dean of Faculty of Islamic Studies

Islamic University of Indonesia

At Special Region of Yogyakarta

Assalaamu 'alaikum Wr. Wb.

Based on the appointment by the Dean of the Faculty of Islamic Studies, Universitas Islam Indonesia, with letter number: 1779/Dek/60/DAATI/FIAI/XI/2023, on November 21st, 2023, CE. / Jumadal Ula 7th, 1444, H. for our duties as supervisor of the thesis:

Student Name	: Hafiz Darius Shina
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Academic Year	: 2023/2024 CE
Undergraduate Thesis Title	: Challenges and Opportunities of Reforming Legislation of Indonesian Military Court with An Interpretive Approach of Ibn Qayyim's Thoughts on Legal Reform

After researching and making necessary improvements, we finally decided that your thesis above fulfills the requirements to be submitted to the Munaqasyah Trial of the Islamic Studies Faculty, Islamic University of Indonesia.

Thus, it can be tested soon, and together with us, we will send 4 (four) copies of the thesis in question.

Wassalaamu 'alaikum Wr. Wb.

Supervisor

Dr. Drs. Yusdani, M.Ag.

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SUPERVISOR APPROVAL

The undersigned is the undergraduate thesis supervisor, certifying that:

Student Name : **Hafiz Darius Shina**

Student ID : **20421087**

Undergraduate Thesis Title : **Challenges and Opportunities of Reforming Legislation of Indonesian Military Court with An Interpretive Approach of Ibn Qayyim's Thoughts on Legal Reform**

According to the process and the results of supervising among several months, and being made necessary improvements, then the concerned person can register herself to join the Munaqasyah Trial of the *Ahwal Syakhshiyyah* International Program Department, Faculty of Islamic Studies, Islamic University of Indonesia.

Yogyakarta, May 5th, 2024

Supervisor

Dr. Drs. Yusdani, M.Ag.

ACKNOWLEDGEMENT

"Praise to Allah Subhanahu wa Ta'alaa who has given hidayah, knowledge, ability to His servants who are only able to rely on Him. Prayers and Greetings to the Prophet Muhammad, and all his followers until Allah placed it in His Paradise. Dedication and Greetings to our Parents as the first teachers, and other teachers we have ever learned from. Our younger siblings whom we love and are proud of. Our big family prayed for us until we were able to pass the final stage of university. We also dedicate this work to our friends who studied together at UII. We pray that Allah will be pleased and facilitate all steps taken, in this world and the hereafter."

Aamiin.....

Author

Hafiz Darius Shina

MOTTO

"And ease my task for me"

Q.S. Thaha : 26[1]

"*I believe today I am doing according to the will of the Almighty"*

Adolf Hitler[2]

"Sikap pasrah kepada Tuhan bukan berarti tidak mau bekerja, melainkan percaya bahwa Tuhan itu Maha Kuasa. Berhasil tidaknya apa yang kita lakukan merupakan otoritas Tuhan"

Alm. Jend. H. M. Soeharto[3]

"*Nobody should pin their hops on a miracle"*

Vladimir Putin[4]

---

[1] Terjemah Surah Tha Ha dalam Bahasa Inggris, *AYATALQURAN.NET,* Surah Thaa Haa طه (Taa Haa) Terjemah Bahasa Inggris - Al Quran Terjemah (ayatalquran.net), accessed on December 12th, 2023, CE.

[2] Candra Novitasari, Kata-kata Adolf Hitler, *Pelajarindo.com,* Kata-Kata Adolf Hitler : 50+ Quotes Kontroversial, Motivasi & Kutipan Bijak (pelajarindo.com), Translated to English Language, accessed on December 12th, 2023, CE.

[3] Ilham Budhiman, Presiden yang Dicintai Rakyatnya, Inilah 18 Kata-kata Soeharto dengan Makna Mendalam: "Jangan Kejam dan Sewenang-wenang terhadap Rakyatnya". *Berita99.co*, (2022), 18 Kata Kata Soeharto Penuh Makna, Quotes yang Bijak dan Indah! (99.co), accessed on December 12th, 2023, CE.

PEDOMAN TRANSLITERASI ARAB LATIN

KEPUTUSAN BERSAMA

MENTERI AGAMA DAN MENTERI PENDIDIKAN DAN KEBUDAYAAN REPUBLIK INDONESIA

Nomor: 158 Tahun 1987

Nomor: 0543b//U/1987

Transliterasi dimaksudkan sebagai pengalih-hurufan dari abjad yang satu ke abjad yang lain. Transliterasi Arab-Latin di sini ialah penyalinan huruf-huruf Arab dengan huruf-huruf Latin beserta perangkatnya.

A. Konsonan

Fonem konsonan bahasa Arab yang dalam sistem tulisan Arab dilambangkan dengan huruf. Dalam transliterasi ini sebagian dilambangkan dengan huruf dan sebagian dilambangkan dengan tanda, dan sebagian lagi dilambangkan dengan huruf dan tanda sekaligus.

Berikut ini daftar huruf Arab yang dimaksud dan transliterasinya dengan huruf latin:

Tabel 0.1: Tabel Transliterasi Konsonan

Huruf Arab	Nama	Huruf Latin	Nama
ا	Alif	Tidak dilambangkan	Tidak dilambangkan

[4] AzQuote Editor, Vladimir Putin Quotes, *AzQuote.com*, TOP 25 QUOTES BY VLADIMIR PUTIN (of 693) | A-Z Quotes (azquotes.com), accessed on December 12th, 2023, CE.

ب	Ba	B	Be
ت	Ta	T	Te
ث	Ṡa	ṡ	es (dengan titik di atas)
ج	Jim	J	Je
ح	Ḥa	ḥ	ha (dengan titik di bawah)
خ	Kha	Kh	ka dan ha
د	Dal	d	De
ذ	Żal	ż	Zet (dengan titik di atas)
ر	Ra	r	er
ز	Zai	z	zet
س	Sin	s	es
ش	Syin	sy	es dan ye
ص	Ṣad	ṣ	es (dengan titik di bawah)
ض	Ḍad	ḍ	de (dengan titik di bawah)
ط	Ṭa	ṭ	te (dengan titik di bawah)
ظ	Ẓa	ẓ	zet (dengan titik di bawah)
ع	`ain	`	koma terbalik (di atas)
غ	Gain	g	ge

ف	Fa	f	ef
ق	Qaf	q	ki
ك	Kaf	k	ka
ل	Lam	l	el
م	Mim	m	em
ن	Nun	n	en
و	Wau	w	we
ه	Ha	h	ha
ء	Hamzah	‘	apostrof
ي	Ya	y	ye

B. Vokal

Vokal bahasa Arab, seperti vokal bahasa Indonesia, terdiri dari vokal tunggal atau *monoftong* dan vokal rangkap atau *diftong*.

1. Vokal Tunggal

Vokal tunggal bahasa Arab yang lambangnya berupa tanda atau harakat, transliterasinya sebagai berikut:

Tabel 0.2: Tabel Transliterasi Vokal Tunggal

Huruf Arab	**Nama**	**Huruf Latin**	**Nama**

َ	Fathah	a	a
ِ	Kasrah	i	i
ُ	Dammah	u	u

2. Vokal Rangkap

Vokal rangkap bahasa Arab yang lambangnya berupa gabungan antara harakat dan huruf, transliterasinya berupa gabungan huruf sebagai berikut:

Tabel 0.3: Tabel Transliterasi Vokal Rangkap

Huruf Arab	**Nama**	**Huruf Latin**	**Nama**
يْ...	Fathah dan ya	ai	a dan u
وْ...	Fathah dan wau	au	a dan u

Contoh:

- كَتَبَ kataba
- فَعَلَ fa`ala
- سُئِلَ suila
- كَيْفَ kaifa
- حَوْلَ haula

C. Maddah

Maddah atau vokal panjang yang lambangnya berupa harakat dan huruf, transliterasinya berupa huruf dan tanda sebagai berikut:

Tabel 0.4: Tabel Transliterasi *Maddah*

Huruf Arab	**Nama**	**Huruf Latin**	**Nama**
اَ...ىَ...	Fathah dan alif atau ya	ā	a dan garis di atas
...ى	Kasrah dan ya	ī	i dan garis di atas
...وُ	Dammah dan wau	ū	u dan garis di atas

Contoh:

- قَالَ qāla
- رَمَى ramā
- قِيْلَ qīla
- يَقُوْلُ yaqūlu

D. Ta' Marbutah

Transliterasi untuk ta' marbutah ada dua, yaitu:

1. Ta' marbutah hidup

   Ta' marbutah hidup atau yang mendapat harakat fathah, kasrah, dan dammah, transliterasinya adalah "t".

2. Ta' marbutah mati

Ta’ marbutah mati atau yang mendapat harakat sukun, transliterasinya adalah “h”.

3. Kalau pada kata terakhir dengan ta’ marbutah diikuti oleh kata yang menggunakan kata sandang *al* serta bacaan kedua kata itu terpisah, maka ta’ marbutah itu ditransliterasikan dengan “h”.

Contoh:

- رَوْضَةُ الأَطْفَالِ raudah al-atfāl/raudahtul atfāl
- الْمَدِيْنَةُ الْمُنَوَّرَةُ al-madīnah al-munawwarah/al-madīnatul munawwarah
- طَلْحَةْ talhah

E. Syaddah (Tasydid)

Syaddah atau tasydid yang dalam tulisan Arab dilambangkan dengan sebuah tanda, tanda syaddah atau tanda tasydid, ditransliterasikan dengan huruf, yaitu huruf yang sama dengan huruf yang diberi tanda syaddah itu.

Contoh:

- نَزَّلَ nazzala
- البِرُّ al-birr

F. Kata Sandang

Kata sandang dalam sistem tulisan Arab dilambangkan dengan huruf, yaitu ال, namun dalam transliterasi ini kata sandang itu dibedakan atas:

1. Kata sandang yang diikuti huruf syamsiyah

Kata sandang yang diikuti oleh huruf syamsiyah ditransliterasikan sesuai dengan bunyinya, yaitu huruf "l" diganti dengan huruf yang langsung mengikuti kata sandang itu.

2. Kata sandang yang diikuti huruf qamariyah

Kata sandang yang diikuti oleh huruf qamariyah ditransliterasikan dengan sesuai dengan aturan yang digariskan di depan dan sesuai dengan bunyinya.

Baik diikuti oleh huruf syamsiyah maupun qamariyah, kata sandang ditulis terpisah dari kata yang mengikuti dan dihubungkan dengan tanpa sempang.

Contoh:

- الرَّجُلُ ar-rajulu
- اَلْقَلَمُ al-qalamu
- الشَّمْسُ asy-syamsu
- اَلْجَلاَلُ al-jalālu

G. Hamzah

Hamzah ditransliterasikan sebagai apostrof. Namun hal itu hanya berlaku bagi hamzah yang terletak di tengah dan di akhir kata. Sementara hamzah yang terletak di awal kata dilambangkan, karena dalam tulisan Arab berupa alif.

Contoh:

- تَأْخُذُ ta'khużu
- شَيئٌ syai'un

- النَّوْءُ an-nau'u
- إِنَّ inna

H. Penulisan Kata

Pada dasarnya setiap kata, baik fail, isim maupun huruf ditulis terpisah. Hanya kata-kata tertentu yang penulisannya dengan huruf Arab sudah lazim dirangkaikan dengan kata lain karena ada huruf atau harkat yang dihilangkan, maka penulisan kata tersebut dirangkaikan juga dengan kata lain yang mengikutinya.

Contoh:

- وَ إِنَّ اللهَ فَهُوَ خَيْرُ الرَّازِقِيْنَ — Wa innallāha lahuwa khair ar-rāziqīn/ Wa innallāha lahuwa khairurrāziqīn
- بِسْمِ اللهِ مَجْرَاهَا وَ مُرْسَاهَا — Bismillāhi majrehā wa mursāhā

I. Huruf Kapital

Meskipun dalam sistem tulisan Arab huruf kapital tidak dikenal, dalam transliterasi ini huruf tersebut digunakan juga. Penggunaan huruf kapital seperti apa yang berlaku dalam EYD, di antaranya: huruf kapital digunakan untuk menuliskan huruf awal nama diri dan permulaan kalimat. Bilamana nama diri itu didahului oleh kata sandang, maka yang ditulis dengan huruf kapital tetap huruf awal nama diri tersebut, bukan huruf awal kata sandangnya.

Contoh:

- الْحَمْدُ للهِ رَبِّ الْعَالَمِيْنَ — Alhamdu lillāhi rabbi al-`ālamīn/ Alhamdu lillāhi rabbil `ālamīn
- الرَّحْمنِ الرَّحِيْمِ — Ar-rahmānir rahīm/Ar-rahmān ar-rahīm

Penggunaan huruf awal kapital untuk Allah hanya berlaku bila dalam tulisan Arabnya memang lengkap demikian dan kalau penulisan itu disatukan dengan kata lain sehingga ada huruf atau harakat yang dihilangkan, huruf kapital tidak dipergunakan.

Contoh:

- اللهُ غَفُوْرٌ رَحِيْمٌ — Allaāhu gafūrun rahīm
- لِلّهِ الأُمُوْرُ جَمِيْعًا — Lillāhi al-amru jamī`an/Lillāhil-amru jamī`an

J. Tajwid

Bagi mereka yang menginginkan kefasihan dalam bacaan, pedoman transliterasi ini merupakan bagian yang tak terpisahkan dengan Ilmu Tajwid. Karena itu peresmian pedoman transliterasi ini perlu disertai dengan pedoman tajwid.

ABSTRACT

Hafiz Darius Shina – 20421087

Challenges and Opportunities of Reforming Legislation of Indonesian Military Court with An Interpretive Approach of Ibn Qayyim's Thoughts on Legal Reform

This thesis delves into the legal ideas of Ibn Qayyim, a prominent Islamic jurist, and their potential application in the reform of Indonesian Military Courts. The research examines the obstacles and possibilities associated with such a reform, providing a thorough analysis of the current state of the military justice system in Indonesia. Ibn Qayyim's legal philosophy, which places great importance on justice, fairness, and the well-being of society, offers a valuable framework for reform. His ideas, deeply rooted in Islamic jurisprudence, advocate for a legal system that is not only fair but also adaptable to the evolving needs of society. Similar to military justice systems around the world, the Indonesian Military Courts face numerous challenges. These challenges encompass issues related to transparency, accountability, and the safeguarding of human rights. However, these challenges also present opportunities for significant reform. By drawing on Ibn Qayyim's legal thoughts, this thesis puts forward a series of reforms aimed at enhancing the fairness, transparency, and effectiveness of the Indonesian Military Courts. These reforms take into consideration the unique context of the Indonesian military and legal system, while being guided by Ibn Qayyim's enduring principles of justice and societal well-being. In conclusion, this study emphasizes the relevance of Ibn Qayyim's legal ideas in contemporary legal discourse and reform. It highlights the potential of these ideas in addressing the challenges faced by the Indonesian Military Courts and in capitalizing on the opportunities for reform.

Keywords: *Ibn Qayyim Legal Thoughts, Legal Reform, Indonesian Military Courts, Challenges, Opportunities.*

PREFACE

بِسْـــــــــــمِ اللَّـــهِ الرَّحْـــــــــمَنِ الرَّحِيْـــــــــــمِ

الحَمْدُ لِلَّهِ رَبِّ العَا لَمِيْنَ، وَالصَّلاَةُ وَالسَّلاَمُ عَلَى رَسُوْلِ اللَّهِ، وَعَلَى آلِهِ وَاَصْحَابِهِ وَ مَنْ تَبِعَهُمْ بِإِحْسَانٍ إِلَى يَوْمِ الدِّيْنِ. أَمَّا بَعْدُ .....

All praise and deep gratitude to Allah, the One True Almighty God, for his blessing and guidance; thus, this thesis can be finished on its time, the time Allah has decreed. Shalawat and greetings are always devoted to the prophet Muhammad SAW, who brought the light out in the dark era and removed all the ignorance, hence existed the freedom of learning for all gender, and found many discoveries until created this civilization.

The process of arranging and finishing this thesis, titled “Challenges and Opportunities of Reforming Legislation of Indonesian Military Court with An Interpretive Approach of Ibn Qayyim’s Thoughts on Legal Reform.” is not separated from the support, guidance, suggestion, and supervision of several involved parties till this thesis can be finished properly. Thus, incredible gratefulness is sincerely given to the honorable:

1. Prof. Fathul Wahid, S.T., M.Sc., Ph.D., as the Rector of Islamic University of Indonesia.
2. Dr. Drs. Asmuni, M.A., as the Dean of the Faculty of Islamic Studies Islamic University of Indonesia.
3. Dr. Anton Priyo Nugroho, S.E., M.M., as the Head of the Department Islamic Studies Faculty of Islamic Studies Islamic University of Indonesia.
4. Krismono, SHI., MSI., as the Head of Diploma Program in Family Law (Ahwal Syakhṣiyah) .

5. As the thesis supervisor, Dr. Drs. Yusdani, M.Ag., has supervised me comprehensively and patiently during these several months.
6. As the academic supervisor, Fuat Hasanuddin, Lc., M.A., supervised and advised me in my educational journey in this Department.
7. M Miqdam Makfi, Lc., MIRKH., As study program secretary Ahwal Syakhsiyah IP, who always provides direction and support, from the beginning of the semester to working on the final assignment.
8. All lectures of the Study Program in Family Law (Ahwal Syakhṣiyah) Faculty of Islamic Studies Islamic University of Indonesia and academic civitas of Faculty of Islamic who have been giving helpful knowledge until this thesis can be finished.
9. Enormous gratitude to my parents, H. Hari Purnomo, S.E. & Hj. Khusnul Laily, who always love and pray for me, give financially and immaterial support, thorough preparation in religion and science, both theoretically and practically. If it weren't for them, I wouldn't have grown up this well. May Allah give them health and long life so that they accompany me on my life journey.
10. To my beloved Sisters and brother, Hafiza Az Zahroh, Aqila Salsabila Hafiza, & Muhammad Hafiz Musyaffa, thank you to support me mentally and I hope Allah makes it easy for you in seeking knowledge and get best things in this world.
11. The entire extended family, grandmothers, grandfathers, aunts, uncles, cousins whose names I cannot mention one by one, thank you very much for your best wishes for me.
12. The parties who have helped my research, Military Judges, Major (Legal Corps) Puryanto, S.H., Major (Legal Corps) Samsul Arifin, S.H., Major (Legal Corps) Aditya Candra C., S.H., and Mr. Pujiono, Military Court II-11 Yogyakarta Civil Servant.
13. All my besties and friends who supported me accompanied me in joy, sorrow, laughter, and tears. Those beside me in my worst condition understand me for who I am and become my charger. Hats off for My best friends, Farich Alvin Arbiansyah, M. Abdul Azis Taufiq Hirzi, Ahwal

Syakhṣiyah IP Class 20K, Santuii 2020, Skuyliving Family 100, Apprentice Colleague, and Workmates.

14. To someone that I can’t mention, wherever you go, and you live, hopefully Allah bless you at the world, and afterlife.
15. All parties that cannot be mentioned one by one have been making an immense contribution to arranging this thesis.

The arrangement of this thesis is far from the perfect word because all the perfectness is Allah's own. Thus, I wish all dearest readers to give supportive suggestions and criticism for improving and revising this thesis so that this thesis can be valuable and helpful later.

LIST OF CONTENT

CHAPTER I

INTRODUCTION

A. Background

Legal reform can mean a change in whole or in part in the legal position that occurs in a group. In the tradition of Muslim academics, the role of legal reform can be influential for the legal consequences carried out by a Muslim. The concept of legal reform for Muslim academics, is to seek, examine, test, and interpret the meaning of propositions and jurisprudence that is capable with a balanced understanding in textual and contextual interpretation, and has consequences as a new law that is still under the auspices of sharia law.

Legal reform does not only apply to Islam, but also applies to all institutions in the world that have laws, and face dynamics after the implementation of previous laws. One of the legal reform efforts that occurred in Indonesia was a legal reform effort in the form of reform of military court legislation, which has juridical complexity compared to other courts.

The Indonesian Military Court is one of the judicial institutions that plays an important role in implementing justice and discipline for the armed forces. This judiciary has specifications in trying military personnel involved in military crimes, with supervision from the Supreme Court as stakeholder of legal judicial power in Indonesia. The role of the constitution; both in the form of the 1945 Constitution, the Law, the

Military Criminal Code, are explanations of special provisions regarding law enforcement for the armed forces and those involved with military personnel in military criminal provisions. In the constitution, the step taken by the state is to divide the jurisdiction of military courts, in several military jurisdictions throughout Indonesia, along with special rules that apply to the armed forces[5].

However, military justice has several obstacles, including the availability of information related to the continuity of trials, effectiveness, and some human rights-related issues for the armed forces.

Military justice legislation and revision of jurisprudence, enacted by the Indonesian government during the 2nd President of Indonesia, Alm. President Suharto, known as an authoritarian leader and strong military influence in the government he led. The historical context inherent in military justice makes the reason for the need for legislative reform that is more relevant to the times[6].

Accountability and transparency in the military justice process in Indonesian military courts have limitations in implementation, although in Law Number 31 of 1997 concerning Military Courts and the Military Criminal Code, there is a form and description of the legal scheme carried out for the armed forces in Indonesia. Thus, creating a low level of awareness of military law for civilians, both those who have relationships

[5] Parluhutan Sagala & Ferdian Fredy, "Yurisdiksi Peradilan Militer dalam Kekuasaan Kehakiman di Indonesia, *United States Defense Institute of International Legal Studies (US DIILS)* (2017), 1-23.
[6] Leonard C. Sebastian, et al., Civil-Military Relation in Indonesia after the Reform Period, *JSTOR*, (2018), 49-78.

with military personnel and are entangled in military criminal acts, and those who do not have relationships.

Doctrination of military personnel is one of the things that must be taken into consideration by legal experts in responding to military justice. Because the military mindset is not the same as the civilian mindset, in the name of human rights justifying the punishment of military crimes committed by the armed forces and those related to military crimes is inhumane[7].

The concept of reform of Indonesian military justice regulations, can be compared with Ibn Qayyim's interpretation of Islamic legal regulation reform as an effective and efficient step in facing the dynamics of the times, as well as the interpretation in the law in question.

Despite the challenges on the ground, opportunities for constitutional reform of Indonesia's military judiciary are wide open. From the democratic procession in the Indonesian state, accompanied by the development of information technology, it is expected to be able to provide effectiveness and transparency in the Indonesian military justice environment, as well as guard the rule of law and legal knowledge of the Indonesian military in the Indonesian armed forces.

[7] Parluhutan Sagala & Ferdian Fredy, "Yurisdiksi Peradilan Militer dalam Kekuasaan Kehakiman di Indonesia, *United States Defense Institute of International Legal Studies (US DIILS)* (2017), 1-23.

B. Problem Statement

1. How challenges and opportunities in legislation reform of military justice in Indonesia?
2. How the values of Ibn Qayyim's views relevant to changes in the law of Indonesia's military justice law?

C. Objective of Research

Objectives of this Research are :

Main Purposes

1. Identify obstacles to the implementation and analyze the opportunities involved in reforming of the military justice constitution in Indonesia.
2. Understanding relevancies of Ibn Qayyim's principles and views of legal reform.

Special purposes

1. Identify field obstacles to the implementation of the military justice legislation in Indonesia, especially at regional Military Courts and Analyze the opportunities involved in reforming Indonesia's military justice legislation based on field obstacle.
2. Understanding relevancies of Ibn Qayyim's interpretation of legal reform, especially criminal law reform.

D. Benefits of Research

Benefits from this research are:

1. Contribution to understanding about Indonesian Military Courts : this research can contribute to understanding and analyzing about problem

of Indonesian Military Courts legislations. This will help to implement and maintain about field problem at Indonesian military courts.

2. Guidelines for academicians, practitioners, and related institutions : this research can provide guidelines for academicians, practitioners, and related institutions with military courts.
3. Relevancies to law science : this research can help for developing and maintaining awareness of law for users and academicians, especially who had responsibility in military courts.
4. Regulatory development : this research can provide important insights for authorities and users as stakeholders for judicial power, especially at military courts. Stakeholders can use the results of the research for implementable regulations and relevant with the times.
5. Contributions to academic literature : this research can contribute to academical literature in the fields of criminal law and military crime. The research can be a steppingstone for future research and can enrich understanding of the challenges faced by military justice in Indonesia and opportunities for reform of constitutions relevant to military justice.

E. Discussion Systematics

Discussion systematics consists of the logical argument that exposes the urgency of each chapter and subchapter from this thesis and the

relation between one and another (logical sequences). Systematic represents the thesis as a unity that is integral and urgent.

Discussion systematic is an explanation and exposure that is done descriptively regarding the things that are written generally for ease in understanding the full description of this thesis, such as:

The first chapter is formed from the introduction; This chapter discussesbackground of the problem, research questions, research objectives, research benefits, and systematic discussion. To be able to find out the background behind the problem of this thesis, a summary of the problem, objectives and benefits of the research.

The second chapter consists of a literature review and conceptual framework; The discussion in this chapter is about previous research and new research used by researchers to compile this research, then an appropriate literature review is carried out, and relevant to this research.

The third study discusses research methodology. In this chapter, the researcher explains and explains the type of method chosen in carrying out this research. There is also an explanation of the type of approach, research location, informants, informant selection techniques, data collection techniques, and analyze data.

The fourth chapter contains the results and discussion that explains research results from observations and interviews. Then there is a discussion regarding analysis obtained from data and reality.

The fifth chapter is the conclusion, it is the last chapter which contains conclusions and suggestions or recommendations. The conclusion shows a summary of all the research steps and then the recommendations

will outline several policy proposals stakeholders in the future to deal with this phenomenon.

CHAPTER II

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

A. Literature Review

1. In the Journal written by Parluhutan Sagala & Fredy Ferdian[8] entitled "The Jurisdiction of Military Courts in Judicial Power in Indonesia" has the following general framework: 1. Military justice in Indonesia has several things that need attention. First, military courts can combine claims for damages in the criminal case in question. Second, there is a dispute over the authority to adjudicate within the Military Court. Third, there is a difference of opinion between the Case Submission Officer (Papera) and the Prosecutor about whether a case should be submitted to the Court in the military court environment or the Court in the general court environment and the Battle Military Court. 2. The principles of Military Law that need to be considered are the principle of personality/individuality, the principle of extra-territoriality, the principle of military law that is harsh, firm, and wise, the principle of balance between legal interests and legal purposes/purposes, and the principle that emphasizes the importance of the military self (subject) and the Security of the State and Nation. 3. Judicial power in Indonesia is regulated in the Constitution of the Republic of Indonesia Year 1945. There is also an arrangement of

[8] Parluhutan Sagala & Ferdian Fredy, "Yurisdiksi Peradilan Militer dalam Kekuasaan Kehakiman di Indonesia, *United States Defense Institute of International Legal Studies (US DIILS)* (2017), Ch. 1-23.

jurisdiction of the Military Court as the executor of judicial power in Indonesia. 4. The nature of military justice in Indonesia can be seen from several perspectives. Military courts have distinguishing criteria based on the subject or perpetrator of a criminal act. The military judiciary reserves the right to hear cases allegedly committed by persons subject to military law. 5. Laws and regulations related to military justice in Indonesia include the Constitution of 1945, Law Number 39 of 1947 concerning the Military Criminal Code, Law Number 8 of 1981 concerning the Code of Criminal Procedure, Law Number 31 of 1997 concerning Military Justice, Law Number 48 of 2009 concerning Judicial Power, and Law Number 25 of 2014 concerning Military Discipline Law.

This journal has the following advantages:

- Comprehensive presentation of the jurisdiction of military courts, Principles of Military Law Applicable to Military Personnel, and military court levels in the systematics of judicial constitutions in Indonesia.
- Presentation of various constitutional materials and amendments related to Indonesian military justice.
- Comparison of various courts and implementation of the constitution covering the judiciary in Indonesia.

This journal has the following shortcomings:

- Lack of information regarding jurisdiction and concepts of military justice.
- Lack of updates to the latest news.

The conclusion of this journal is a comprehensive presentation of the jurisdiction of Indonesian military courts in general, covering all Indonesian territory and adjudicating all levels of military rank covering three units in the Indonesian National Army. Although it has some shortcomings related to details and updates, the information provided by the author provides an overview of the role of military law implemented in military courts in Indonesia.

2. In a journal written by Melissa Crouch[9] entitled "The Challenges for Court Reform after Authoritarian Rule: the Role of Specialized Courts in Indonesia" has several general frameworks related to special courts as follows: 1. A comprehensive discussion of major reforms in Indonesia after the fall of the Suharto government. These reforms involved constitutional changes, legislative changes, and significant institutional reforms. 2. Highlight the importance of special courts in Indonesia's court reform strategy. Specialized courts, such as the Constitutional Court, Human Rights Court, and Anti-Corruption Court, have been an important part of efforts to increase independence, reduce corruption, and improve expertise in the judiciary. 3. Military courts were an important part of court reform in Indonesia after Suharto's authoritarian era. Military courts have special jurisdiction in handling cases related to the military and national security. However, military courts also face challenges in maintaining their independence

[9] Melissa Crouch, The Challenges for Court Reform after Authoritarian Rule: The Role of Specialized Court in Indonesia, *UNSW,* (2021), 1-25.

and ensuring fairness in judicial proceedings. Court reform in Indonesia needs to consider the role and challenges faced by military courts to ensure a fair and independent judicial system in the country. 4. Identify challenges faced in court reform after authoritarian rule. One of the main challenges was the corrupt and unprofessional legal culture in the courts under the Suharto regime. Special courts are expected to address these challenges but must also pay attention to the issues that exist in the general courts. 5. Highlight the influence of legal culture in Indonesian courts. The legal culture in general courts and special courts needs to be considered simultaneously to understand the problems in the Indonesian legal system.

This journal has the following advantages:

- Descriptive explanation of judicial comparison in Indonesia.
- Introduction to the history of military justice in the Suharto era to the reform era.
- Identify issues of independence of a comprehensive military judiciary.

This journal has the following shortcomings:

- Lack of examples of causes related to Indonesian military justice.
- Lack of updates on post-reform judicial developments.

The conclusion of this journal is the presentation and comparison of various courts in Indonesia that occurred during the Suharto period until after the reform, including military courts. The main issue highlighted by the author is the independence of each judiciary in carrying out law enforcement, and the history that colors it. However,

the lack of updates on judicial developments in Indonesia, especially post-reform military justice, is noted in this journal.

3. The journal written by Jamin Ginting and Alex Victor Christian[10] entitled "Indonesian Military Court Law Absolute Competent through Equality before Law Principle" has several general statements as follows: 1. The courts in Indonesia apply based on the competence they have and affect their jurisdiction. 2. Judicial power has been regulated in article 24 paragraph 2 of the 1945 Constitution, where the Military Court is under the auspices of the Supreme Court. As a legal consequence, Military Courts in Indonesia have the same level as other General Courts, such as civilian courts for non-military members. Military Courts in Indonesia have the same jurisdiction as General Courts, but specifically for members of the military who commit general crimes under the Indonesian Criminal Code and Military Criminal Code. 3. Indonesia as a state of law is obliged to treat its citizens equally, including in the administration of justice through the courts. The principle of Equality Before Law is applied in Indonesian courts through the absolute jurisdiction of each court. Absolute jurisdiction means the jurisdiction of the court based on the matter in dispute in the case. There are six main courts in Indonesia subject to the Supreme Court, namely the General Court, the Religious Court, the Military Court, the State Administrative Court, and the Constitutional

[10] Jamin Ginting & Alex Victor Christian, Indonesian Military Court Law Absolute Competent through Equality before Law Principle, *International Journal of Criminology and Sociology,* (2021), 1422-1429.

Court. The Supreme Court is the supreme body that administers justice through these courts. 4. Article 9 Paragraph 1 of the Law on Military Courts in Indonesia operates based on Law Number 31 of 1997 concerning Military Courts. Its jurisdiction is provided for in Article 9 Paragraph 1 which states that the jurisdiction of this court is for members of the military or civilians who are considered members of the military who commit criminal acts. Crimes that fall within the jurisdiction of military courts include general crimes in the "Criminal Code" (KUHP). Therefore, military courts have jurisdiction to decide cases in which a member of the military commits a criminal offense, regardless of whether the crime falls under a general criminal offense or a military criminal offense. 5. Military members are subject to two court jurisdictions because the General Court also retains its jurisdiction for General Criminal Offences. This is reinforced by Article 11 of the Law on Military Courts which recognizes that for a criminal offence there can be more than one court exercising jurisdiction over the case. However, Article 11 is not the main legal issue in writing this paper because the author writing this paper is related to Article 9. As a result, members of the military will enjoy the privilege of one of the courts will be more favorable than the other.

This journal has the following advantages:

- A comprehensive explanation of the history and division of jurisdiction of various courts in Indonesia, including military courts.

- Discussion of examples of problems related to the conflict between the concept of equality in the eyes of the law and the Law on Military Justice and the 1945 Constitution.

This journal has the following shortcomings:

- The journal's discussion did not focus on the implementation of military justice.
- The author's lack of understanding of doctrinal concepts applicable to military personnel.

The conclusion of this journal is that the judiciary in Indonesia has various fields and specialties, one of which is military courts. The advantages of this journal are that it has a comprehensive explanation of the history of justice in Indonesia until after the reform, and a discussion of the differences in the principle of equality in the eyes of the law with the constitution of military justice. Although the shortcomings are the lack of updates on information after the reform era, and the lack of understanding of the concept of doctrination in military personnel, especially the Indonesian armed forces.

4. The journal written by Novitaningrum Eka Putri & Kristiyadi[11] entitled "Consideration of Military Judges in Deciding Narcotics Abuse Committed by the Indonesian National Army" has the following general framework: 1. The purpose of prosecuting drug offenders

[11] Novitaningrum Eka Putri & Kristiyadi, Consideration of Military Judges in Deciding Narcotics Abuse Committed by the Indonesian National Army, *Verstek*, (2023), 333-340.

within the scope of military justice is to prevent other TNI members from committing these crimes. The purpose of prosecuting perpetrators or defendants of drug crimes in the scope of military justice is to use a combined theory (general and special prevention) which means the punishment of drug offenders in the scope of military justice, in addition to retaliating is also intended so that the person concerned (convict) does not repeat his actions and return to the right path. 2. From the results of writing, the consideration of military judges in sentencing drug offenders does not consider the amount of evidence but considers the quality (class of narcotics) and evidence possessed by drug crime defendants. The judge's consideration of the quality of evidence in narcotics cases is very influential in determining criminal convictions, because the quality of evidence determines the articles to be applied and the sanctions that will be imposed on the defendant. 3. The consideration of the Military Judge in the Decision of the Banda Aceh Military Court Number: 51-K / PM I-01 / AD / VI / 2020 is in accordance with Article 183 of the Criminal Procedure Code, because in the decision there are six witness statements, two of which are expert statements. In this case, there is also a letter as evidence, namely a sheet of Minutes of Urine Examination of the Aceh Government Health Office, UPTD, Center for Health Laboratories and Medical Device Testing Number 445.5/008/BLK/I/2020 dated January 30, 2020, concerning the results of the analysis of Ria Andriyansah's urine examination. Then the last in this case there is a testimony from the defendant that he did or that he knew himself or experienced

himself. The judge's consideration in the decision was in accordance with Article 183 of the Code of Criminal Procedure.

This journal has the following advantages:

- Integration of examples of military criminal cases with laboratory testing results related to drug abuse.
- Consideration of military judges in making decisions that refer to the regulations of the Penal Code and the Military Criminal Code.

This journal has the following shortcomings:

- Lack of attention to the regulation of the Military Criminal Law for perpetrators of military crimes.

The conclusion of the journal about military courts consideration of narcotics abuse crimes is a comprehensive explanation of military judges' verdicts against perpetrators of drug and drug abuse. The integration between medical knowledge and legal bases referring to Article 186 of the Code of Criminal Procedure makes this journal have added value in understanding military law, although the role of military criminal law is not relied upon in determining the decision of the military judge in this case.

5. The journal written by Sudarman Setiawan, et al.[12] entitled "Competence of the Authority of Military Police Investigators on Money Laundering Criminal Cases in Connecting Cases" has the following general framework: 1. Military Courts are judicial

[12] Sudarman Setiawan, et al., Competence of the Authority of Military Police Investigators on Money Laundering Criminal Cases in Connecting Cases, *Locus Journal of Academic Literature Review,* (2023), 512-521.

institutions that have special jurisdiction in handling cases involving members of the military. 2. Military Courts have the authority to examine, adjudicate, and decide criminal cases that occur within the military. 3. Military Courts serve to maintain discipline and order within the armed forces and provide justice for military members involved in criminal cases. 4. Military courts have different procedures and rules from general courts, including in handling corruption and money laundering cases involving members of the military. 5. Military courts also have the authority to try cases involving members of the military and civilians in connexity cases. 6. Military Courts in Indonesia are regulated in Law No. 31 of 1997 on Military Courts and have a separate structure and procedure from general courts. 7. Military Courts aim to provide justice for members of the military and maintain integrity and professionalism within the military environment.

This journal has the following advantages:

- A comprehensive presentation of the role of military police in military justice as investigators before handing over cases to prosecutors in prosecuting perpetrators of corruption crimes.
- Explanations of jurisdiction and regulations of military courts are different from those of general courts.

This journal has the following shortcomings:

- Lack of comparative examples of similar case rulings occurring in military circles.

The conclusion of this journal is Military police have a role in money laundering by military personnel only up to the stage of investigation. A comprehensive explanation of the position of military police and military courts in prosecuting money laundering crimes by military personnel. Coupled with an explanation of the regulations and jurisdiction of Indonesian military courts that are different from general courts. The availability of comparative examples of various verdicts in cases of money laundering by military personnel is a lack of understanding in this journal.

6. The journal written by Sugeng Sutrisno[13] entitled "Pre-Trial Criminal Justice of System in Military Criminal Judges in Indonesia" has several general frameworks as follows: 1. Comprehensive discussion of the constitution in the form of the 1945 Constitution and Law No. 39 of 1999 concerning Human Rights. 2. Interpretation of academics in the form of writings and comments on the implementation of human rights in the military justice environment. 3. A conceptual approach of doctrine and legal knowledge relevant to the military justice system. 4. A new conceptual approach that is considered more relevant for military courts and other courts under the supervision of the Constitutional Court. 5. The importance of empowering human resources from among the Indonesian National Armed Forces who have a role in the jurisdiction of Indonesian military courts.

[13] Sugeng Sutrisno, Pre-Trial Criminal Justice of System in Military Criminal Judges in Indonesia, *International Journal of Business and Social Science Research,* (2021), 1-9 .

This journal has the following advantages:

- Comprehensive explanation of the concept of Human Rights and military doctrine.
- Author ideas of solving human resource problems in military courts, and other courts in general.

This journal also has the following shortcomings:

- It only focuses on theoretical approaches, with no examples of additional regulations that apply in addition to the Criminal Code and the Criminal Procedure Code for military personnel.

The conclusion of this journal is that the concept of pre-trial in military courts is a concept that protects human rights in military personnel who commit criminal acts. The comparative approach of doctrine with human rights, and the presentation of increasing understanding for human resources among the military are the advantages of this journal, although it lacks examples of concepts written by the author.

7. Journal written by Irwan Sanjaya Putra and Niken Wahyuning Retno Mumpuni[14] entitled "Analysis of the Institutional Position of Military Judges Against the Independence of the Indonesian Military Courts" which has the following general framework: 1. Significant developments in legal science and independence from military justice as a step in achieving the ideal form of statehood. 2. Constitutional guarantees regarding the freedom of judicial implementation in the

[14] Irwan Sanjaya P. & Niken Wahyuning R.M., Analysis of the Institutional Position of Military Judges Against the Independence of the Indonesian Military Courts, *Jurnal Nurani Hukum*, (2022), 190-204.

Republic of Indonesia as the jurisdiction of military and other courts. 3. Testing the independence of military judges under different jurisdictions, the Supreme Court as the highest institution in judicial power and the Indonesian National Army as an armed forces institution that has special authority in securing the territory of the Republic of Indonesia. 4. The author's recommendation is promoting the independence of Military judges in the implementation of justice within the armed forces to avoid interference when the trial is conducted.

This journal has the following advantages:

- Comparative exposure to the position of military courts under two jurisdictions; The Supreme Court as the highest institution in judicial power, and the Indonesian National Army the institution in charge of securing the territorial boundaries of the Indonesian state.
- Comprehensive presentation of the concept of independence in various courts, including military courts.

This journal has the following shortcomings:

- It only focuses on theoretical research, not oriented to field research.

The conclusion of the journal which has the theme of independence of military judges has a comprehensive explanation of the concept of independence of military judges, and a comparative approach to the position of military judges under the auspices of two influential institutions in the state. Although it has shortcomings in the form of a theoretical approach alone in answering the problems raised by the authors.

8. The journal written by Joko Sasmito[15] entitled "Judicial Independence in the Enforcement of Military Crimes in the Indonesian Justice System" has the following general framework: 1. Identify the role of the military as state security, human rights watchdog, and democratic institution. 2. Field and theoretical approaches to the differences between civilian and military courts. 3. Author's advice on the examination of serious military human rights-related problems, including cases of disappearances. 4. Recommendations on improving security and protection for military law personnel; Military judges, prosecutors, and other military legal apparatuses. 5. Constitutional ambiguity in technical matters relating to military trials conducted by civilians and involved in military crimes. 6. The author's recommendation is to limit the power of military courts, and all matters relating to human rights violations committed by the armed forces in special courts relating to human rights. 7. The importance of administrative control related to military law.

   This journal has the following advantages:

   - A comprehensive explanation of the role of the military in the state, theoretical and field analysis of violations committed by armed forces against human rights, and a comparative approach to civil and military in the eyes of the law.

[15] Joko Sasmito, Judicial Independence in the Enforcement of Military Crimes in the Indonesian Justice System, *Lex Publica*, (2018), 16-22.

- The author's recommendations from theoretical and field research in the mutual enhancement of military law constitutions, and the oversight of human rights in military justice.

This journal has the following shortcomings:

- Does not explain examples of ambiguous forms listed in the regulations of the Military Criminal Code, Military Criminal Procedure Law, Criminal Law, and Criminal Procedure Law that apply to civilians.

The conclusion of the journal that talks about independence in the military justice environment has the advantage of a comprehensive presentation of the role of the military in the state, and a comparative study of the position of civilians and military personnel in the eyes of the law, as well as recommendations from the results of the author's research in increasing the independence of military judges. The drawback is that there are no examples that express ambiguity over the author's hypothesis that civilians commit military crimes and are punished by regulations contained in the Military Criminal Code, Military Criminal Procedure Law, Criminal Law, and Criminal Procedure Law.

9. The journal written by Asep Suherdin and Maryanto[16] entitled "Analysis of Law Enforcement to Drugs Criminal Act in Military Environment (Case Study in Jurisdiction of Military Court II/09

[16] Asep Suherdin & Maryanto, Analysis of Law Enforcement to Drugs Criminal Act in Military Environment (Case Study in Jurisdiction of Military Court II/09 Bandung), *Jurnal Daulat Hukum*, (2019), 507-512.

Bandung)" has the following general framework: 1. Military law enforcement against the criminal act of misuse of soldiers for drugs within the jurisdiction of Military Court II/09 Bandung. 2. Descriptive explanations of the effects of doctrine in education and groups. 3. Challenges in law enforcement against military personnel who commit criminal and military crimes in the form of drug abuse. 4. The author's recommendations include transparency in law enforcement within the military, and reforms in regulations related to military law enforcement, in military courts II/09 Bandung in particular, and military courts throughout Indonesia in general.

This journal has the following advantages:

- Comprehensive presentation of military police involvement in military justice, as investigators of military crimes, in the form of drug abuse committed by soldiers, before assigning them to prosecutors for trial in military courts.
- Presentation of doctrinal concepts in educational and military institutions that are easy for readers to understand.

This journal has the following shortcomings:

- It only focused on the judicial scheme until the verdict was promulgated, without further explanation of the penalties applicable to military criminal offenders.

The conclusion of the journal, which has the theme of field studies on law enforcement in the jurisdiction of the Bandung Military Court, has the advantage of a comprehensive explanation of the role of the military police in military justice, and doctrinal approaches that occur

in educational and military environments. The drawback of this journal is the lack of explanation of the actions after the verdict was judged by a military court against the perpetrators of military drug abuse crimes.

10. The journal written by Amanda Rosaline Fajar Asri and Bambang Suharyedi[17] entitled "The Authority of Military Court in Prosecuting Retired Members of Indonesian Armed Forces" has the following general framework: 1. A comprehensive explanation of the authority and jurisdiction of military courts. 2. Study of the constitutional theory of military justice and cases relating to military criminal acts committed by members of the military. 3. Explanation of technical issues related to military justice starting from investigations, submission of case files, to implementation of military justice. 4. Retired soldiers who commit corruption crimes are legally tried in corruption courts. However, if corruption is committed while still serving as an active military, corruption trials are carried out by military courts. This is also true with other criminal acts committed by retired soldiers while still serving as active military officers.

    This journal has the following advantages:

    - A comprehensive explanation of the regulations that apply to retired soldiers who commit corruption crimes while still active in the army.

[17] Amanda Rosaline F.S. & Bambang Suheryadi, The Authority of Military Court in Prosecuting Retired Members of Indonesian Armed Forces, *PalArch Journal of Archeology of Egypt / Egyptology,* (2020), 2320-2332.

- Interpretations from various legal experts regarding criminal acts committed by retired soldiers, which *Tempus Delecti* falls within the realm of military courts.

This journal has the following shortcomings:

- It focuses only on civilian jurists, paying less attention to the opinions of legal experts from the military.

The conclusion of the journal with the theme of the implementation of military law in retired soldiers, who committed military crimes in the form of corruption while still active in the military, has the advantage of a comprehensive explanation of the classification of subjects in military law, and the concept of *Tempus Delecti* for the implementation of military law in retired soldiers, who committed military crimes in the form of corruption while still active in the military. The drawback was the absence of the interpretation of jurists from the military.

11. Journal article written by Iffatin Nur and Muhammad Ngizzul Muttaqin[18] entitled "Reformulating the Concept of Maslahah: From a Textual Confinement Towards a Logic Determination" which can be summarized as follows: 1. Reformulation of Maslahah: The concept of legal reform includes the reformulation of maslahah, which is the main purpose of Islamic sharia to create benefits for human life in this world. The reformulation of maslahah involves a mujtahid perspective

[18] Iffatin Nur & Muhammad Ngizzul Muttaqin, Reforming the Concept of Maslahah: From a Textual Confinement Towards a Logic Determination, *Justicia Islamica: Jurnal Hukum & Sosial*, (2020), 73-91.

that refers to the context of real problems and incorporates ethical and humanitarian concepts in the structure of the maslahah. 2. Collective-Based Ijtihad: Legal reform also involves collective-based ijtihad, which is legal decision making that involves various points of view and thoughts from various aspects of life. This collective-based ijtihad aims to create a scientific maslahah-based ijtihad methodology that can produce Islamic legal products needed by the ummah in the contemporary era. 3. Logical Determination: Legal reform also involves logical determination in solving contemporary problems that exist in the current era. In legal reform, maslahah is not only limited to legal texts, but also considers human values and social ethics as the essence of the concept of maslahah.

The advantages of this journal are as follows:

- Qualitative Approach: The journal uses qualitative research methods, which enable researchers to gain a deep understanding of maṣlaḥah concepts and reformulations in contemporary contexts.
- Content Analysis: This journal uses content analysis methods to analyze data from the literature of books, journals, and other writings related to maṣlaḥah. It provides a systematic and structured approach in understanding this concept.
- Concept Reformulation: This journal discusses the importance of reformulating the concept of maṣlaḥah from the confinement of the text to the determination of logic. This opens opportunities to develop and renew understanding of maṣlaḥah in the contemporary era.

The shortcomings of this journal are as follows:

- Data Limitations: This journal only uses data from book literature, journals, and other writings. This limitation may affect the completeness and accuracy of the analysis performed.
- Perspective Limitations: This journal focuses more on the maṣlaḥah perspective from the mujtahīd point of view. Other perspectives, such as the viewpoint of society or legal practitioners, may not be fully described in this journal.
- General Limitations: This journal deals only with the concept of maṣlaḥah and its proposed reformulation. The journal provides no information on the practical application of the concept of maṣlaḥah in everyday life for a Muslim.

The conclusion of the journal entitled Reformulating the Concept of Maslahah: From a Textual Confinement Towards a Logic Determination more specifically discusses Islamic legal reform using several formulas that are contextual to the times. The advantages of this journal are approaches in the form of real time interviews, content reformulation, and content analysis. The shortcomings of this journal are limited data, perspectives, and general restrictions.

12. The journal written by Asrul Hamid and Dedisyah Putra[19] with the title "The Existence of New Direction in Islamic Law Reform Based on the Construction of Ibn Qayyim al Jauziyyah Thoughts" which can be

[19] Asrul Hamid & Dedisyah Putra, The Existence of New Direction in Islamic Law Reform Based on the Construction of Ibn Qayyim al Jauziyyah Thought, *JURIS: Jurnal Ilmiah Syariah,* (2021), 248-257.

summarized as follows: 1. Islamic law needs to be relevant and practical in dealing with novel cases arising from changing times. 2. The concept of maqasid al-syari'ah emphasizes the importance of maslahah in determining laws. 3. Ibn Qayyim al-Jauziyyah advocated for ijtihad to adapt Islamic law to the contemporary context. 4. Social changes and the dynamic nature of human society require frequent exercise of ijtihad. 5. Reform in Islamic law should consider the locality and temporality aspects of Islamic teachings while maintaining its universality.

The advantages of this journal are as follows:

- The journal focuses on the topic of Islamic law reform, which is a relevant and important subject in today's changing world.
- The author references the works of Ibn Qayyim al-Jauziyyah, a renowned Islamic scholar, providing a solid foundation for the research.
- The journal uses a descriptive research method with a focus on the concept of maqashid al-syariah (the objectives of Islamic law), which adds depth and clarity to the analysis.

The shortcomings of this journal are as follows:

- The journal does not provide a comprehensive analysis of the opposing viewpoints or criticisms of Ibn Qayyim al-Jauziyyah's ideas on Islamic law reform.
- The document does not include any empirical data or case studies to support the arguments made.

- The journal does not discuss the limitations or potential challenges of implementing the proposed reforms in practice.

The conclusion of the journal entitled The Existence of New Direction in Islamic Law Reform Based on the Construction of Ibn Qayyim al Jauziyyah Thoughts has a focus on criticism of the lack of reform in Islamic law, with the integration of the thought of Ibn Qayyim al-Jauziyyah. The advantage of this journal is that it makes the center point of discussion on the thought of Ibn Qayyim in the stagnation of Islamic law. The drawback of this journal is the lack of comparison to the thoughts of Ibn Qayyim.

13. Journal written by Muhammad Izazi Nurjaman and Doli Witro[20] with the title "The Relevance of the Theory of Legal Change According to Ibnu Qayyim al-Jauziyyah in Legal Products by Fatwa DSN-MUI Indonesia" which can be summarized as follows: 1. The theory of legal change as a tool of social engineering was first introduced by Roscoe Pound, an American legal expert of Sociological Jurisprudence. 2. Islamic law has an equal position with customary law and western law in Indonesia, and it has been implemented into various legal products, including legislation, judges' decisions, and fatwas by the DSN-MUI. 3. The theory of legal change proposed by Ibn Qayyim al-Jauziyyah is relevant to the legal products of the fatwa DSN-MUI in Indonesia, as it allows for future changes based on the needs and problems faced. 4.

[20] Muhammad Izazi Nurjaman & Doli Witro, The Relevance of the Theory of Legal Change According to Ibnu Qayyim al-Jauziyyah in Legal Products by Fatwa DSN-MUI Indonesia, *El Mashlahah : Scientific Journal of Sharia Faculty IAIN Palangkaraya,* (2021), 167-186.

Islamic law serves as a means of social engineering and can be used to change mindset and behavior, with the principles of enjoining what is right and forbidding what is wrong playing a role in guiding people to behave according to Sharia. 5. The role of Islamic law in society is dynamic and aims to advance the lives of people to be better and beneficial for all parties. The law formation process differs between traditional and modern societies, with the state playing a role in resolving conflicts and achieving community satisfaction.

The advantages of this journal are as follows:

- The journal "El-Mashlahah" focuses on the relevance of the theory of legal change according to Ibnu Qayyim al-Jauziyyah to the legal product of the fatwa DSN-MUI in Indonesia.
- It uses a qualitative research method with a literary approach, providing a comprehensive picture of the application of the theory.
- The journal discusses the role of Islamic law as a means of social engineering and its position as a source of law in Indonesia.

The shortcomings of this journal are as follows:

- The journal does not provide a detailed analysis of the specific legal products of the fatwa DSN-MUI in Indonesia.
- It does not explore the potential limitations or challenges in implementing the theory of legal change proposed by Ibn Qayyim al-Jauziyyah.
- The journal does not discuss alternative theories or perspectives on legal change in Islamic law.

The conclusion of the journal entitled The Relevance of the Theory of Legal Change According to Ibnu Qayyim al-Jauziyyah in Legal Products by Fatwa DSN-MUI Indonesia, is to compare the thoughts of Ibn Qayyim al Jauziyyah with legal standing products compiled by DSN MUI. The advantage of this journal is that it provides results in the form of descriptive narratives in research related to legal reform carried out by Ibn Qayyim with the context of Islamic legal products for the Indonesian Muslim community. The drawback of this journal is that it does not mention specifically which legal products are provided by DSN MUI which are inspired by the thoughts of Ibn Qayyim.

14. Journal written by Idham, et al.[21] entitled "Dynamic Development of Family Law in Muslim Countries" can be summarized as follows : 1. Islamic Family Law is a part of Islamic law that specifically regulates marriage, divorce, inheritance, and wills. 2. There are two methods of reforming Islamic law: intra-doctrinal reform and extra-doctrinal reform. 3. Intra-doctrinal reform involves combining the opinions of several madhhab imams or taking the opinion of madhhab imams outside of the schools they adhere to. 4. Extra-doctrinal reform involves providing a completely new interpretation of the existing texts, also known as ijtihad. 5. The development of schools of fiqh (Islamic Jurisprudence) was influenced by the opinions of great scholars such as Abû Hanîfah, Mâlik, Shâfi'î, and Ahmad ibn Hanbal.

[21] Idham, et al., Dynamic Development of Family Law in Muslim Countries, *al-'Adalah,* (2022), 161-178.

6. Differences in the application of Islamic law in different Muslim countries can be attributed to the influence of different madhahib. 7. Differences of opinion in family law, such as the concept of maturity (bâligh), can be seen among different madhahib, leading to variations in its application in different Muslim countries.

This journal has the following advantages:

- The journal provides a concrete picture of the development of Islamic family law in Muslim countries, from its original form of conventional fiqh to becoming positive law.
- It offers insights into the role of the state in enforcing a legal system and the different models applied in the development of family law in Muslim countries.
- The research methodology combines historical and socio-anthropological approaches, providing a comprehensive analysis of the topic.

The shortcomings of this journal are as follows:

- The journal does not provide a detailed discussion of specific cases or examples of the application of family law in different Muslim countries.
- It does not delve into the specific challenges or controversies surrounding the development of family law in Muslim countries.
- The journal does not offer a comparative analysis of the effectiveness or impact of different approaches to family law in Muslim countries.

The conclusion of the journal entitled Dynamic Development of Family Law in Muslim Countries looks at the problem of Islamic legal reform. The advantage of this journal is that it provides views related to Islamic legal reform that starts from just theory to specific legal regulations that apply in Muslim-majority countries. The drawback of this journal is the lack of specification of examples that have implemented the regulation of Islamic law in Islamic countries.

15. The journal written by Budi Pramono[22] entitled "Law Enforcement of Indonesian National Army (TNI) Soldiers with a Progressive Legal Approach" which can be summarized as follows : 1. Progressive law enforcement aims to liberate law enforcement officers to interpret articles and civilize the nation, aligning with the nation's efforts to achieve national goals. 2. The law should be responsive and aspirational, reflecting the aspirations and wills of the community. 3. The concept of responsive law is relevant in chaotic military environments and promotes conflict resolution and reaching solutions. 4. Law enforcement institutions in the military should be isolated from the social context and have a hierarchical structure based on rank. 5. Reforms are necessary to ensure that the law remains compatible with society and to achieve human welfare and happiness. 6. The use of coercive measures and formal litigation processes may not always lead to ideal conflict resolution, and alternative dispute resolution methods

[22] Budi Pramono, Law Enforcement of Indonesian National Army (TNI) Soldiers with a Progressive Legal Approach, *Hang Tuah Law Journal*, (2021), 30-42.

should be prioritized for small and simple cases. 7. The concept of progressive law enforcement aims to liberate law enforcement officers in their thinking and actions, allowing them to serve humanity and let the law flow. It emphasizes the interpretation of laws to civilize the nation and achieve national goals. Progressive law enforcement rejects uncontrolled legal inequality and prioritizes the human factor, ethics, and morality in achieving truth and justice. 8. Law enforcement in the military environment should keep up with the changing times and respond to them. It should serve the community by relying on the morality aspect of law enforcement personnel. The progressive legal approach encourages law enforcers to become wise figures with comprehensive insights, using alternative dispute resolution methods for small and simple cases. It aims to achieve justice, prosperity, and a happy life for humans. 9. Law is an institution that regulates society and aims to deliver humans to a just, prosperous, and happy life. It is not a king but a tool that functions to give grace to humans. Progressive law recognizes that humans are basically good, compassionate, and concerned for others. It departs from the view of humanity and emphasizes the importance of human welfare and happiness in the application of law.

This journal has the following advantages:

- Focus on Progressive Law Enforcement: The journal focuses on the concept of progressive law enforcement, which emphasizes the liberation of law enforcement officers to serve humanity and achieve national goals. This approach can contribute to the

development of law enforcement practices in the military environment.

- Normative Legal Research: The journal adopts a normative (doctrinal) legal research method, which views the law as a complete system of principles, norms, and legal rules. This method allows for a comprehensive analysis of legal principles and their application in the context of law enforcement.
- Statutory and Conceptual Approach: The journal utilizes a statutory and conceptual approach, which involves the collection of legal materials through literature studies. This approach enables a thorough examination of legal concepts and their practical implications.

This journal has the following shortcomings:

- Limited Empirical Research: The journal primarily relies on normative legal research and literature studies, which may limit the inclusion of empirical data and real-world case studies. This could potentially affect the practical applicability of the concepts discussed in the journal.
- Lack of Diverse Perspectives: The journal does not explicitly mention the inclusion of diverse perspectives or alternative viewpoints. This may limit the breadth of analysis and potential counterarguments that could be explored in relation to progressive law enforcement in the military environment.
- Limited Discussion on Challenges and Limitations: The journal does not extensively discuss the challenges and limitations of

implementing progressive law enforcement in the military context. A more comprehensive analysis of potential obstacles and practical considerations could enhance the overall depth of the journal's findings.

The conclusion of the journal entitled Law Enforcement of Indonesian National Army (TNI) Soldiers with a Progressive Legal Approach is a form of doctrinal research related to law enforcement in the military. This journal has the advantage of a diverse approach to research related to military law enforcement. The suggestion for the future is to increase references and add perspective specifications in future research.

From some of the literature mentioned by the author, the author examines the challenges and opportunities in Indonesian military justice legislation, which have been implemented by Indonesian military justice stakeholders. This study has differences with previous research, by integrating Ibn Qayyim's thoughts on legal reform. This study uses field research and observational data collection techniques to look at the form of challenges of implementation of Indonesian military court legislation, and opportunities of reforming legislation that related with Indonesian military court legislation at Military Court II-11 Yogyakarta.

B. Theoretical Framework

1. Definition of Challenges and Opportunities of Legislation Reform.

The challenges and opportunities in legislation reform are a series of words that can be described as a result of trial and error of the

implementation of applicable regulations, in this context is the implementation of regulations contained in the Indonesian constitution in the form of the Criminal Code, Code of Criminal Procedure, Code of Military Criminal Procedure, Law of Military Discipline, Regulation of the Commander of the Indonesian National Army, and other regulations that apply within the Indonesian army in the three forces. In addition, the author also adds some expert opinions regarding the reform of Indonesian military court legislation.

Denny Indrayana[23], an expert on Indonesian politics responded to the challenges and opportunities of legislational reform in Indonesia in his thesis entitled "Indonesian Constitutional Reform 1999-2002 An Evaluation of Constitution Making in Transition" which challenged constitutional reform, including the failure of previous constitutional reform efforts in 1945, 1949, 1950, and 1956-1959. In addition, pressure to adopt the "seven words" of the Jakarta Charter into the Constitution also almost brought the constitutional amendment process to a halt. Sustained constitutional reform in 1999-2002 had the opportunity to secure Indonesia's transition from Suharto's authoritarian rule to democratic institutional arrangements. Constitutional reform is also a prerequisite for the success of overall reform of the country, including political and economic reforms. Denny also added that the constitutional reform movement also affects the limits of authority of several parties, in this case

[23] Denny Indrayana, Indonesian Constitutional Reform 1999-2002 An Evaluation of Constitution Making in Transition, *Kompas Publishing Books*, (2008) 1-330.

the limited authority of the Indonesian National Army and the Police to change regulations formulated by the People's Representative Assembly, with the context of legislation that can have a better impact on the Indonesian National Army and the Police. This happened during the transition period of the Indonesian government from 2002 to 2003, which ultimately led to the failure of legislative reform which at that time was expected to undergo ideal changes for all circles but was hampered due to internal disputes between the People's Representative Assembly regarding amendments to the 1945 Constitution and the legislation below.

The opinion of Mas Pungky Hendra Wijaya[24] in his thesis entitled "Reforming Indonesian Government Bureaucracy: Political and Statutory Challenges in Reorganization" that Challenges in Constitutional Reform are challenges faced in Indonesian public sector reform, especially in the field of institutional reform. These challenges include political and legal obstacles often faced in reforming government institutions. Some political barriers include the resistance of politicians or top-level officials in the public sector to reform measures. In addition, there are also laws that maintain some ministries or agencies, so the reform of such institutions involves a difficult political process. The Opportunity in Constitutional Reform is a proposed legal framework designed to establish an effective and efficient government organization. Thus, providing an opportunity to develop a legal framework that supports bureaucratic reform in Indonesia.

[24] Mas Pungky Hendra Wijaya, Reforming Indonesian Government Bureaucracy: Political and Statutory Challenges in Reorganization, *Curtin University Press,* (2020) 1-269.

Annie Pohlman[25] an Asian geopolitical observer and Indonesian Studies Lecturer from Queensland, Australia in her research report entitled "Indonesia and Post-New Order Reforms: Challenges and Opportunities for Promoting the Responsibility to Protect" provides an overview of challenges and opportunities in law reform in Indonesia in several points. Challenges in Legislative Reform in Indonesia: 1. Concerns about Judicial Reform: Despite significant improvements in Indonesia's legal infrastructure since the end of the New Order, there are still many areas of concern in judicial reform in Indonesia. Some of the challenges faced include concerns over the independence of judges and limited access to justice for the community. 2. Constitutional Reform: One of the main challenges in reforming legislation in Indonesia is amending the 1945 Constitution. This constitution gives highly centralized powers to the President and needs to be reformed to be more in line with democratic principles and the protection of human rights. 3. Coordination between Laws: Harmonization between various laws is also a challenge in reforming laws and regulations in Indonesia. Efforts are needed to harmonize different laws so that there is no overlap or conflict between them. There are several opportunities in Legislative Reform in Indonesia: 1. Increased Rights Protection: One of the opportunities in legislation reform in Indonesia is the improvement of human rights protection. These reforms have paved the way for better protection of individual and societal

[25] Annie Pohlman, Indonesia and Post-New Order Reforms: Challenges and Opportunities for Promoting the Responsibility to Protect, *Academia Edu*, (2010), 1-40.

rights. 2. Improving Civil Society: Legislative reforms have also provided opportunities for strong civil society growth in Indonesia. A strong civil society can play a role in fighting for justice and ensuring government accountability. 3. Judicial Reform: While challenges remain, Indonesia's legislative reform has opened opportunities to improve the justice system. These reforms can improve the independence of judges, access to justice, and accountability of the justice system. From a research report conducted by Annie Pohlman, challenges, and opportunities in law reform in Indonesia are discussed as part of efforts to implement the Responsibility to Protect.

Southeast Asian Political Observer and Lecturer at the University of Brunei Darussalam, Paul J. Carnegie[26], interprets constitutional reform in Indonesia entitled "Reorganizing Constitutional Power in Indonesia: The Politics of Reform" in several points that can be described as follows: Challenges in Legislative Reform in Indonesia. 1. Political Power: The main challenge in law reform in Indonesia is political power that can influence the law-making process. Pre-existing configurations of political elites and civil-military relations may limit or influence the options available in legislative reform. 2. Political Culture: Another challenge is the political culture in Indonesia. Pre-existing political practices and social conventions can influence the law-making process. This can hinder significant changes in legislation. 3. Time Constraints: Limited time is also

[26] Paul J. Carnegie, Reorganizing Constitutional Power in Indonesia: The Politics of Reform, *Journal of Politics and Democratization,* (2020), 53-70.

a challenge in reforming laws and regulations in Indonesia. The lawmaking process takes a long time and is complex. Sometimes, time constraints can hinder the broader reform process. The opportunities in Legislative Reform in Indonesia are as follows: 1. Greater Recognition: Legislative reform can provide greater recognition for previously marginalized segments of society. By introducing better legal protections, legislative reforms can strengthen inclusion and more effective representation. 2. Limitation of Executive Power: Legislative reforms can limit executive power and prevent tyranny of the majority. By introducing better monitoring mechanisms and balance of power, legislative reform can strengthen Indonesia's democratic system. 3. Enhanced Legal Security: Legislative reform can improve legal security in Indonesia. By strengthening the rule of law and protecting human rights, legislative reform can create a more stable and predictable environment for people and businesses. Paul also added that legislative reform in Indonesia faces challenges such as political power, political culture, and time constraints. However, legislative reforms also provide opportunities such as greater recognition, restrictions on executive power, and increased legal security.

In a research report written by Sukardi Rinakit[27], entitled "The Indonesian Military after the New Order", providing the results of his research related to challenges and opportunities in law reform, in his research that focuses on the post-New Order era with the following

[27] Sukardi Rinakit, The Indonesian Military after the New Order, *ISEAS*, (2005), 1-269.

description: Challenges in Reform of Indonesian Military Justice Legislation. 1. Limitations on Human Rights Protection: One of the challenges in reforming Indonesia's military justice legislation is ensuring adequate human rights protections for military defendants. This involves increasing transparency, accountability, and independence of the military justice system. 2. Dependence on Military Power: Reform of military justice legislation also faces challenges in reducing dependence on military power. In this context, it is important to ensure that the military judiciary is not too beholden to military interests and can perform their functions independently. 3. Equality of Treatment: Another challenge is ensuring equality of treatment within the military justice system. Reform of military justice legislation should ensure that all defendants, both military and civilian, are treated fairly and equally before the law. Followed by Opportunities in Indonesian Military Justice Legislation Reform as follows: 1. Increased Accountability: Military justice legislation reform can provide opportunities to increase accountability of the military justice system. By strengthening oversight and accountability mechanisms, the military justice system can become more transparent and effective in addressing lawlessness committed by military personnel. 2. Strengthening Human Rights: Military justice legislation reform can also provide opportunities to strengthen human rights protections in the military context. By improving military justice laws and procedures, individual rights can be better respected and protected. 3. Increased Professionalism: Reform of military justice legislation can be an opportunity to improve the professionalism of military personnel involved

in the military justice system. By strengthening military legal education and training, military personnel can have the knowledge and skills necessary to perform their duties well.

The response from Zen Zanibar[28], a law lecturer from Sriwijaya University, Indonesia, regarding the challenges and opportunities faced, and related to legislative reform entitled "The Indonesian Constitutional System in the Post Amendment of the 1945 Constitution" as follows: Challenges in Legislative Reform. 1. Paradigm Change of Constitutional Law: The main challenge in legislative reform is to change the existing paradigm of constitutional law. These changes involve a shift in power from the president to the legislature, such as presidential term limits and the transfer of law-making power to the House of Representatives (DPR). 2. Implementation of Regional Autonomy: Legislative reform also faces challenges in the implementation of regional autonomy. Law No. 22 of 1999 grants broad autonomy to local governments, but challenges arise in managing natural resources and regulating relations between central and local governments. The Opportunities in Legislative Reform are as follows: 1. Strengthening the Function of the DPR: Legislative reform provides an opportunity to strengthen the function of the DPR as a legislative institution. In constitutional changes, the power to make laws is transferred to the DPR, thus providing an opportunity for the DPR to be more active in the legislative process. 2. Public Participation: Legislative

[28] Zen Zanibar, The Indonesian Constitutional System in the Post Amendment of the 1945 Constitution, *Sriwijaya Law Review,* (2018), 45-55.

reform also provides opportunities to increase public participation in the law-making process. With the paradigm shift in constitutional law, the public could be involved in the legislative process and provide broader input. 3. Improving Legal Quality: Legislative reform can be an opportunity to improve the quality of law in Indonesia. With the change in the constitutional law paradigm, it is hoped that a more fair, transparent, and just law can be created for all Indonesian people.

An observer and researcher from the US, Marcus Mietzner[29], in his book entitled "The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance" provides responses regarding challenges and opportunities in legal reform related to Indonesian military justice as follows: Challenges of Indonesian Military Justice Reform: Military justice reform in Indonesia faces several challenges. First, there are still concerns that the military judiciary is not independent and is unduly influenced by military interests. This can hinder efforts to achieve fair and transparent justice. Second, there is still a need to strengthen the capacity of the military judiciary in handling cases of human rights violations committed by members of the military. Better training and increased resources are needed for military justice to effectively handle these cases. The Opportunities for Indonesian Military Justice Reform are as follows: Despite the challenges faced, there are also opportunities for military justice reform in Indonesia. First, international

[29] Marcus Mietzner, The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance, *East-West Center Washington*, (2006), 1-85.

pressure and demands to comply with international human rights standards can lead to positive changes in the military justice system. Second, growing awareness of the importance of accountability and transparency in the military justice system could drive further reforms. With increased public awareness and pressure from civil society, there is an opportunity to improve the military justice system. Third, support from the government and relevant institutions to strengthen military justice can also be an opportunity for reform. With the right support, military justice can be improved in terms of independence, professionalism, and effectiveness. However, it is important to remember that military justice reform is a complex process and takes time. These challenges and opportunities must be faced carefully and with a strong commitment to achieving positive change.

In a book written by Al Araf and colleagues[30], entitled "Reformasi Peradilan Militer di Indonesia" provides responses to the challenges and opportunities in reforming Indonesian military justice legislation as follows: Challenges in Reform of Military Justice Legislation: First, Differences in perceptions and patterns of thinking of a soldier with civil society, so that it has the impression of being too coercive in uniformizing military jurisdiction with civil society. Second, Government innovation in the unification of military jurisdiction with civil society that is not firm in its implementation. Third, Multi-interpretation and broad meaning of

[30] Al Araf, et al., Reformasi Peradilan Militer di Indonesia, *Imparsial the Indonesian Human Rights Monitor,* (2008), 1-122.

criminal acts in Law No. 31 of 1997. Fourth, The scope of military criminal space is very wide. Fifth, The issue of increasing the connection of Law No. 31 of 1997. The opportunities for reform of military justice legislation are as follows: First, Uniformity of military jurisdiction with civil society. Second, Amendment of several articles in the law on military courts that eliminate the concept of multi-interpretation. Third, The transitional bill on military courts can be a better legal foundation than the old jurisprudence and legislation.

In the book written by Ibn Qayyim al Jauziyyah[31], with the title "I'laamul Muwaqi'in ‘an Rabb al-‘Aalamiin" can be summarized as follows: 1. All nash listed in fiqh have permanent legality. 2. Changes in law that occur in fiqh are not inferred from the consequences that arise, but stem from the similarity of causes stated in the Sharia. 3. The classification of sources of Islamic law that have a fixed and presumptive nature and are debated among scholars. 4. Madzhab acts as a medium for Muslims to carry out fiqh, which comes from the interpretation of Ulama' by Four Madzhab to the regulations that apply in Islam and is implemented by all Muslims in the world. 5. Various examples related to the implementation of Islamic law in the past. 6. Various examples of legal products that occurred during the time of the Prophet until today. As for the connection that is built is, there is a part of Islamic law in the form of fiqh, which can be changed / reformed, with the interpretation of jurists

[31] Ibn Qayyim Al-Jauziyyah, I’laamul Muwaqi’in ‘an Rabb al-‘Aalamiin, *Daar Kutub al-‘Ilmiyyah*, (1991), Ch. 1-584.

based on the similarity of causes, not consequences arising from the implementation of legal interpretation, which is legalized by ulama' from four Madzhab recognized throughout the world.

2. Definition of Indonesian Military Courts and Their Items

At the beginning of the study of military courts that are used as objects, there needs to be a fundamental explanation in understanding the military court itself, by referring to the concepts of Indonesian Criminal Law, Indonesian Criminal Procedure Law, Indonesian Military Criminal Law, Military Discipline Law, and Indonesian Military Criminal Procedure Law, as guidelines for military personnel in military life, and regulating matters that become references for military judges to military personnel who commit military crimes and / civil society who committed military criminal acts.

Military justice regulations differ from civilian courts, with details for soldiers who commit criminal offences, which will refer to Article 16 of the Military Criminal Code, which has a general provision that soldiers who commit criminal acts will be punished according to the general requirements applicable in the Criminal Code[32], if they do not commit serious violations of military discipline[33].

[32] Indonesia, Kitab Undang-undang Hukum Pidana Militer Pasal 16, accessed on August 13th, 2023, Kitab Undang-Undang Hukum Pidana Militer | Hukum Positif Indonesia (rendratopan.com)
[33] *Ibid.*

Indonesian military courts have four distinct court competencies and considerable jurisdiction with the following divisions:

1. Military Courts and Military Procuratorate Based on Judicial Competence
    a. Military Court : Handles cases involving soldiers below the rank of captain.
    b. High Military Court : Handles cases involving soldiers above the rank of captain.
    c. Main Military Court : Handles appeals and jurisdiction disputes among military courts.
    d. Military Courts of Battle : Handles military offenses during combat.
    e. Military Procuratorate : Prosecute cases involving soldiers below the rank of captain.
    f. High Military Procuratorate : Prosecute cases involving soldiers above the rank of Major.
2. Military tribunals and Military Procuratorate by jurisdiction:
    a. Military Courts : Regional jurisdiction over several military units.
    b. High Military Court : Jurisdiction over multiple military courts, covering at least three provinces.
    c. Main Military Court : National jurisdiction, overseeing high and military courts.
    d. Military Courts of Battle : Jurisdiction during combat situations.

e. Military Procuratorate : Same jurisdiction as Military Courts.

f. High Military Procuratorate : Same jurisdiction as High Military Court[34].

Military courts have an organizational structure as the executor of military law in the military environment, with differences in the military rank of soldiers at each level of the court, and can be described as follows :

1. Military Court and Military Procuratorate :

- Military Court Head : Colonel, oversees court functions and acts as a judge.
- Military Court Deputy Head: Lieutenant Colonel, assists and supervises court operations, and acts as military judge.
- Military Judges : Minimum rank of Major, responsible for examining and deciding cases.
- Military Clerk : Minimum rank of Captain, handle trial documentation.
- Military Substitute Clerk : Minimum rank of Captain, handle trial documentation, and replace the duties of military clerks who are unable to attend.
- Junior Clerk of Military Law : Minimum rank of Major, handle trial documentation and handle technical preparation for trial

[34] Kumparan, Pengertian Pengadilan Militer dan Jenisnya, September 9th 2021, accessed on August 14th, 2023, Peradilan Militer: Pengertian dan Jenis-jenisnya | kumparan.com

- Junior Military Criminal Clerk **:** Minimum rank of Major, handle trial documentation and handle technical preparation for trial.
- Military Court Secretary : Minimum rank of Major, manages trial preparations and record-keeping.
- Military Court Staff : Soldier, Civil servant, and honorary servant in charge of technical affairs of military courts[35].
- Military Prosecutor : Minimum rank of Captain, prosecutes perpetrators of military crimes[36].

2. High Military Court :

- Head of the High Military Court : Brigadier General, oversees court functions and acts as a high military judge.
- Deputy Head of the High Military Court : Colonel, assists and supervises court operations, and acts as high military judge.
- High Military Judges : Minimum rank of Colonel, responsible for appellate cases and jurisdiction disputes.
- High Military Clerk : Minimum rank of Colonel, handle trial documentation.
- High Military Substitute Clerk : Minimum rank of Major, handle trial documentation, and replace the duties of high military clerks who are unable to attend.

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[35] Dilmil II – 11 Yogyakarta, Profil Pengadilan, Ketua Pengadilan, Pejabat, dan Staff. accessed on August 24th, 2023, https://www.dilmil-yogyakarta.go.id/.
[36] Tentara Nasional Indonesia, Peraturan Panglima TNI No. 7 Tahun 2018, accessed on August 14th, 2023, https://jdihn.go.id/files/1250/c7bb179d040fd3aaa02fd3f0a9fe4d68.pdf.

- High Junior Clerk of Military Law : Minimum rank of Major, handle trial documentation, drafting High Military Judges' Decrees and Trial Decrees; and Prepare the room and equipment of the congregation**.**
- High Junior Military Criminal Clerk : Minimum rank of Major, handle trial documentation, judicial administrative support to the Supreme Court of Justices in examining, adjudicating and deciding cases.
- High Junior Registrar of Military Administration: Minimum rank of Major, handle trial documentation, and military administrative review in accordance with technical guidelines set by the Registrar of the Supreme Court.
- High Military Secretary : Minimum rank of Colonel, manages trial preparations and record-keeping..
- High Military Staff : Soldier, Civil servant, and honorary servant in charge of technical affairs of military courts[37].
- High Military Prosecutor : Minimum rank of Captain, prosecutes higher-ranking military crimes[38].

3. Main Military Courts :

- Head of the Main Military Court **:** Lieutenant General, oversees court functions and acts as a judge.

[37] Dilmilti II Jakarta, Profil Kepala Pengadilan Militer Tinggi, Hakim Tinggi Militer, Pejabat, Kepala Bagian, dan Staff Pengadilan Militer Tinggi, accessed on September 12th, 2023 https://www.dilmilti-jakarta.go.id/main/index.php.

[38] Tentara Nasional Indonesia, Peraturan Panglima TNI No. 7 Tahun 2018, accessed on August 14th, 2023, https://jdihn.go.id/files/1250/c7bb179d040fd3aaa02fd3f0a9fe4d68.pdf.

- Deputy Head of the Main Military Court : Brigadier General, assists and supervises court operations, and acts as main military judge.
- Main Military Judges : Minimum rank of Brigadier General, handle appeals and jurisdiction disputes.
- Main Military Clerk : Minimum rank of Brigadier General, handle trial documentation.
- Main Military Substitute Clerk : Minimum rank of Colonel, manages trial preparations and record-keeping.
- Main Junior Clerk of Military Law : Minimum rank of Lieutenant Colonel, manages trial preparations and record-keeping, prepare a trial schedule plan; Drafting Main Military Judges' Decrees and Trial Decrees; and Prepare the room and equipment of the congregation**.**
- Main Junior Military Criminal Clerk : Minimum rank of Lieutenant Colonel, manages trial preparations and record-keeping.
- Main Junior Registrar of Military Administration: Minimum rank of Lieutenant Colonel, manages trial preparations and record-keeping
- Main Military Secretary : Minimum rank of Colonel, manages trial preparations and record-keeping.

- Main Military Staff : Soldier, Civil servant, and honorary servant in charge of technical affairs of military courts [39].

4. Battle Military Court:

- Head of the Battle Military Court : Lieutenant Colonel, appointed by the Commander..
- Battle Military Judges : Minimum rank of Lieutenant Colonel, must match or exceed the rank of the accused..
- Battle Military Prosecutor **:** Minimum rank of Major, must match or exceed the rank of the accused[40].

3. History & Development of Indonesian Military Courts**.**

Military Courts in Indonesia have a long history and experience dynamics in the implementation of military law enforcement for soldiers. From the website of the High Military Court II Jakarta[41], Before Indonesia's independence, during the colonial period, the Netherlands and Japan had followed the system of the colonial state, with the center of the military court at that time located in Jakarta. Switched to the position of military courts in the post-independence period of

[39] Dilmiltama Jakarta, Profil Kepala Pengadilan Militer, Hakim Militer, Pejabat, Kepala Bagian, dan Staff Dilmiltama, accessed on September, 12th 2023, http://dilmiltama.go.id/home/index.php/.
[40] Dunia Pengertian, Pengertian Pengadilan Militer Pertempuran, accessed on September 13th , 2023, Pengertian Pengadilan Militer Pertempuran - Dunia Pengertian.
[41] Dilmilti II Jakarta, Sejarah Peradilan Militer Indonesia, accessed on September 18th , 2023, https://www.dilmilti-jakarta.go.id/main/index.php.

Indonesia which continued until the 1970s, where there were no specific regulations governing Military Courts, which can be interpreted that all regulations and state institutions that have not been changed new, follow the form before the independence of the Republic of Indonesia. In this context, military courts have a vital role with regulatory conditions not yet existing, until finally Law no. 7 of 1946 emerged which regulates the implementation of law enforcement in a military environment which is divided into two courts: the Army Court and the Supreme Army Court. Switching in 1948 to the issuance of Government Regulation No. 37 of 1948 which added the legality of extraordinary military courts which were divided into three levels of courts: Military Courts, High Military Courts, and Supreme Military Courts. However, during the leadership of the Old Order, the Military Court was not an independent institution, but was under the influence of executive and legislative stakeholders, and there was a constitutional reform from the 1950 Constitution to the 1945 Constitution which was chaotic at that time.

Departing from the above political context, Law Number 14 of 1970 concerning Basic Judicial Regulations was born which replaced Law Number 19 of 1964. Law No. 14 of 1970 was the result of a conflict of opinion among New Order constituents. group. The order and power of the military group does not want the power of the judiciary of the Republic of

Indonesia to be beyond the control of the government or bureaucracy. As a result of the compromise between these two opposing views, Article 19 was abolished and the meaning of Articles 24 and 25 as well as its decisions were included in the new law on judicial authority, but the administrative, organizational and financial of the Courts and the state administrative court headed by the Director General of the Supreme Court. In its implementation, all judicial powers, which include the regulation of judicial power, general courts, state administrative courts, military courts, religious courts, and the Supreme Court, were still under the control of the executive power and legislative power of the New Order until the end of the New Order period, although theoretically and legally, they already existed.

Turning to the period towards the end of the New Order term, more precisely in 1997, President Suharto issued Law no. 31 of 1997 which regulates military courts based on jurisdiction and military rank of perpetrators of military crimes which can be described as follows: Military Courts, High Military Courts, Main Military Courts, and Battle Military Courts. After the New Order period, in some government cabinets there has been a one-stop judicial system, where several agencies that have courts that have specific matters have submitted their judicial organization to the Supreme Court. Religious Courts and High Religious Courts previously

under the Ministry of Religious Affairs, State Administrative Courts and High Administrative Courts previously under the Ministry of Law and Human Rights, as well as Military Courts, High Military Courts, Main Military Courts, and Battle Military Courts previously under the Ministry of Defense and Security, fall within the authority of the Supreme Court along with supporting instruments in the judiciary that mentioned above as stated in Law No. 4 of 2004 Articles 13, 43, 44, and 45.

The transfer of judicial power from the ministry to the Supreme Court has not been able to change the legislation, which in this context is in the form of reform of military court legislation that is considered irrelevant to the times, which began with the drafting of the Transitional Law on Military Courts which until now has been constrained by bureaucracy and other obstacles[42]. Despite those challenges, in year 2014, the Military Discipline Law contained in Law No. 25 of 2014, replaced the military discipline law contained in Law No. 26 of 1997 which was considered irrelevant to the dynamics that occurred within the Indonesian National Army[43].

4. Legal Basis of Indonesian Military Justice.

[42] Al Araf, et al., Reformasi Peradilan Militer di Indonesia, *Imparsial the Indonesian Human Rights Monitor*, 2007, 1-105.
[43] Indonesia, UU No. 25 Tahun 2014 tentang Hukum Disiplin Militer, accessed on September 19th, 2023, UU No. 25 Tahun 2014 (bpk.go.id).

In an institution, regulations and legal basis are forms of identity, legality, and state guarantees from established institutions, including the Indonesian Military Court.

During the Dutch colonial occupation, Dutch and indigenous soldiers who were members of the Dutch Army in the Dutch East Indies / Indonesia at that time (KNIL) and committed Dutch military crimes were examined and tried at the "*Krijgsraad*" for the first degree. The "*Hoog Militair Gerechtshof*" has the functions of a military tribunal and appeals from the "*Krijgsraad*". This also applies to the Dutch Navy which at the first level in the examination and termination of cases is called "*Zeekrijgsraad*" and The "*Hoog Militair Gerechtshof*". The jurisdiction is divided into temporary military court courts named "*Temporaire Krijgsraad"*, and "*Krijgsraad"* located in Padang, Cimahi, and Ujung Pandang (Makassar). The Supreme Court itself is a continuation *of "Het Hoogerechtshof Ver Indonesie*" (Dutch Supreme Court based in Indonesia) which was based on R.O in 1842 and was based in Jakarta[44]. The regulation used during the Dutch occupation was the Constitution of the Kingdom 1815[45].

Turning to the independence of the Republic of Indonesia, legislation relating to Indonesian military justice was recorded

[44] Dilmilti II Jakarta, Sejarah Peradilan Militer Indonesia, accessed on September 24th , 2023, https://www.dilmilti-jakarta.go.id/main/index.php.
[45] Georg Nolte, et al., European Military Law System, *De Gruyte Recht*, 2003, Ch. 1-889.

in Law No. 7 of 1946, although at that time it was not possible to implement Indonesian military justice law. The Indonesian government at that time took anticipatory steps in the military court, which at that time was still experiencing political instability by issuing Government Regulation No. 37 of 1948 which gave the legality of military courts under the names of the Military Court, High Army Court, and Supreme Army Court. Turning to 1950, the impact of political instability at that time led to the issuance of Emergency Law No. 16 of 1950 which was supplemented by Law No. 2 of 1950 concerning the independence of independent military judicial power with contents like Government Regulation No. 37 of 1948, which in the end the independence of military judicial power was only implemented in the issuance of Presidential Decree in 1959 which also marked the end of Old Order rule.

Turning to the New Order government established regulations regarding separate military judicial powers with the issuance of Law No. 14 of 1970, which gave legality to the presence of Indonesian military courts which divided the classification and jurisdiction of military courts into 3 types: Military Courts, High Military Courts, and Supreme Military Courts. Over time, the MPR issued MPR Decree No. 111/MPR/1978 with the expectation of independence of judicial power, including military courts, although its implementation could not be implemented until the end of the

New Order term. The New Order also contributed to the laws and regulations relating to the Indonesian military judiciary and other judicial powers as follows:

- Law No.14 of 1970 concerning the main provisions of judicial power.
- Law No. 14 of 1985 concerning the Supreme Court.
- Law No. 2 of 1986 concerning General Courts.
- Law No. 5 of 1986 concerning the State Administrative Court.
- Law No. 7 of 1989 concerning Religious Courts.
- Law No. 31 of 1997 concerning Military Justice.

The Military Court environment has a different pattern of structure even though it culminates in the Supreme Court. Based on the Law. No. 31 of 1997 The Military Court is structured as follows :

- Military Court as a Court of First Instance for Defendants of rank or equated with Captain and below.
- High Military Court.
- Main Military Court.
- Battle Military Court.

Judiciary in the Military Court Environment is the Implementing Body of Judicial power within the Armed Forces, with the duties and authority to prosecute criminal acts committed by a person at the time of committing a crime are :

- Soldier. Those under the Act are equated with Soldiers. Members of a class or office or body or who are equated or considered soldiers under the Law.
- Examine, decide, and resolve the relevant Armed Forces Administration dispute at the request of the injured party because of the Criminal Act on which the charges are based and at the same time decide both cases in one Judgment.

The seat of the Main Military Court is in the Capital City of the Republic of Indonesia, while the name, place of residence and jurisdiction of the Court is determined by Decree of the Commander-in-Chief and if necessary the Military Court and the High Military Court may convene outside their place of residence, also if necessary the Military Court and the High Military Court may convene outside their jurisdiction with the permission of the chief of the Main Military Commander while the Supreme Court in the Court The military at the Cassation Level is under the Supreme Court of the Republic of Indonesia.

During the reform period, which began in the late 1990s, The MPR issued a decree on the separation of the Indonesian National Army and the Police, which promulgated MPR Decree No. VI/MPR/2000, and MPR Decree No. VII/MPR/2000 concerning the role of the Indonesian National Army and the Police, which indirectly allows the state to

prosecute soldiers who commit criminal acts[46], although its implementation has not been maximized, and the entire judiciary, which had specific problem specifications and certain jurisdictions, had transferred judicial power in one power headed by the Supreme Court with the promulgation of Judicial Power Law No. 4 of 2004 which stated that the entire Judicial Technical and Non-Technical Judicial Fields related to the judiciary, transferred under the power of the Supreme Court[47].

In 2007, the DPR held hearings related to amendments to Law No. 31 of 1997 concerning Military Justice. In this regard, the DPR also summoned the Minister of Defense and the TNI Commander to ask about the probability of transitioning the jurisdiction of military justice to be integrated with the civil society justice system. The hope of the House of Representatives is that if the Military Justice Bill is passed, it will facilitate integration while eliminating differences in privilege in the judiciary for all citizens, including the army. After several meetings and hearings, the House of Representatives has not yet reached a meeting point from the passage of the Military Justice Bill, as well as the delay in the passage of the idea that began in the administration of

[46] Amr, Revisi UU Peradilan Militer: Prajurit TNI Bisa Diadili di Peradilan Umum, Accessed September 28th , 2023. Revisi UU Peradilan Militer: Prajurit TNI Bisa Diadili di Peradilan Umum (hukumonline.com).
[47] Dilmilti II Jakarta, Sejarah Peradilan Militer Indonesia, accessed on September 27th , 2023, https://www.dilmilti-jakarta.go.id/main/index.php.

President Susilo Bambang Yudhoyono[48], even though it has been passed regarding the revision of the Military Discipline Law for the TNI in Law No. 25 of 2014 concerning Military Discipline Law at the end of President Susilo Bambang Yudhoyono's term[49].

[48] Al Araf, et al., Reformasi Peradilan Militer di Indonesia, *Imparsial the Indonesian Human Rights Monitor*, 2007, 1-105.
[49] Indonesia, UU No. 25 Tahun 2014 tentang Hukum Disiplin Militer, accessed on September 27th , 2023, UU No. 25 Tahun 2014 (bpk.go.id).

CHAPTER III

RESEARCH METHOD

This research is field research using qualitative methods. As well as the problems that will be discussed in this research and to provide useful results, this research is carried out using normative research. The normative research method is library law research which is carried out by examining literature materials or mere secondary data**.** This research was also revealed through the process of interview methods, observation, and documentation techniques. Data collection techniques are divided into two, primary and secondary data, primary data is a raw object from "first-hand information" actors such as military court staff, military judges, and academics who are experts in Indonesian military justice law.

A. Type of Research and Approach

This research includes field research, namely research that is carried out systematically by collecting existing data in the field. This type of research is field research namely go directly to the field to explore the problems to be studied. Researchers immediately go down to the research site and conduct interviews with informants as well as direct observation. The nature of this research is descriptive research qualitative, namely research conducted based on views, strategies and model implementation by drawing problems based on the findings. Describe the results of interviews and observations to obtain the desired data and analyze it. The approach used is a juridical approach and

case study approach. The juridical approach is legal research carried out by examining library materials or secondary data as basic material for research by conducting searches on regulations and literature related to the problem under study[50], and case study approach is the concentration of attention on the phenomenon that occurs[51]. The location of this research was carried out in Yogyakarta Military Court II-11 at Bantul, Special Region of Yogyakarta.

B. Analysis Method

This research is a field research using qualitative methods. As well as the problems that will be discussed in this research and to provide useful results, this research is carriedout using normative research. The normative research method is library law research which is carried out by examining literature materials or mere secondary data **.** This research was also revealed through the process of interview methods, observation, and documentation techniques. Data collection techniques are divided into two, primary and secondary data, primary data is a raw object from Military Judges, Military Court's Staff, and Academicians who have competence in military law, especially Indonesian military justice law. While the secondary data covers various related references.

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[50] Willa Wahyuni, Tiga Jenis Metodologi untuk Penelitian Skripsi Jurusan Hukum, *Hukumonline.com*, accessed on 14th December, 2023, Tiga Jenis Metodologi untuk Penelitian Skripsi Jurusan Hukum (hukumonline.com).

[51] David Hizkia Tobing, et.al., Bahan Ajar Pendekatan dalam Penelitian Kualitatif, *Program Studi Psikologi FK Unud.*, (2017), 1-42.

C. Data Sources

Data collection techniques researchers divide data sources into two parts.

1. Primary data, namely an object or original document, raw material from actors called "first-hand information" includes all information, results of interviews and documentation, material relating to challenges and opportunities of legal reform of Indonesian military court law.
2. Secondary data, which includes various references, as well as literature related to the Indonesian military court law. Example from conference proceedings from Parluhutan Sagala & Fredy Ferdian entitled “Yurisdiksi Peradilan Militer dalam Kekuasaan Kehakiman di Indonesia”, journal articles from Melissa Crouch entitled “The Challenges for Court Reform after Authoritarian Rule: the Role of Specialized Courts in Indonesia”, Jamin Ginting and Alex Victor Christian entitled “Indonesian Military Court Law Absolute Competent through Equality before Law Principle”, Novitaningrum Eka Putri & Kristiyadi entitled “Consideration of Military Judges in Deciding Narcotics Abuse Committed by the Indonesian National Army”, Sudarman Setiawan, et al. entitled “Competence of the Authority of Military Police Investigators on Money Laundering Criminal Cases in Connecting Cases”, Sugeng Sutrisno entitled “Pre-Trial Criminal Justice of System in Military Criminal Judges in Indonesia”, Irwan Sanjaya Putra and Niken Wahyuning Retno Mumpuni entitled “Analysis of the Institutional Position of Military Judges Against the Independence of the Indonesian Military Courts”, Joko Sasmito entitled “Judicial Independence in the Enforcement of Military Crimes in the Indonesian Justice System”, Asep Suherdin and Maryanto entitled

"Analysis of Law Enforcement to Drugs Criminal Act in Military Environment (Case Study in Jurisdiction of Military Court II/09 Bandung)", Amanda Rosaline Fajar Asri and Bambang Suharyedi entitled "The Authority of Military Court in Prosecuting Retired Members of Indonesian Armed Forces", Iffatin Nur and Muhammad Ngizzul Muttaqin entitled "Reformulating the Concept of Maslahah: From a Textual Confinement Towards a Logic Determination", Asrul Hamid and Dedisyah Putra entitled "The Existence of New Direction in Islamic Law Reform Based on the Construction of Ibn Qayyim al Jauziyyah Thoughts", Muhammad Izazi Nurjaman and Doli Witro entitled "The Relevance of the Theory of Legal Change According to Ibnu Qayyim al-Jauziyyah in Legal Products by Fatwa DSN-MUI Indonesia", Idham, et al. entitled "Dynamic Development of Family Law in Muslim Countries", and Budi Pramono entitled "Law Enforcement of Indonesian National Army (TNI) Soldiers with a Progressive Legal Approach". Books from Ibn Qayyim Al-Jauziyyah entitled "I'laamul Muwaqi'iin 'an Rabb Al 'Alamiin" and Al Araf et al. entitled "Reformasi Peradilan Militer di Indonesia".

D. Data Collection Technique

Data collection techniques that used in this research:

1. Interview, which is a data collection technique that includes the method used by a person for the purpose of a particular task, trying to obtain verbal information from a respondent in a face-to-face conversation. This technique is a way to obtain data or information about field reality

of challenges and opportunities of legal reform of Indonesian military court law. Accompanied with direct questions and answers from military judges, military clerk, military court staff, and academicians who had competence with military court law. In this study, the writer anticipates that there will be a respondent who lacks reading and writing knowledge, so in this case the writer uses guided free interviews, namely with certain guidelines that are prepared in advance while the delivery is delivered freely.

2. Documentation techniques are data collection techniques by finding data about things or variables in the form of notes, transcripts, books, newspapers, magazines and so on.

3. Determination of the respondent, namely the respondent is the military judge, military clerk, military court staff, and academicians. The name of respondents is real.

4. Data analysis technique : The analysis technique that the compiler uses in this study is the deductive method, which is to draw conclusions after researching the data that has been collected.

CHAPTER IV

FINDINGS AND DISCUSSION

A. Findings of Research :

- **Indonesian Military Court Legislation Amendments, Efforts to Change, Its Challenges of Its Implementation, and Its Opportunities of Reform.**

1. History of Regulated Legislation of Indonesian Military Court and Its amendments

Regulations related to the legality of military courts in Indonesia were first recorded in 1946, with the issuance of Law No. 7 of 1946 concerning the legality of Indonesian military courts. Although this law was only issued in 1946, soldiers involved in military crimes were punished by commanders in each force unit and were implemented before Indonesian independence in 1945 CE. In Law No. 7 of 1946, it is explained that the government establishes military courts in addition to civil society courts which are divided into 2 levels: the army court and the supreme army court. An extraordinary military tribunal may be held if needed.

In 1948, the government issued Government Regulation No. 37 of 1948 concerning military courts which were divided into 3: the army court, the high army court, and the supreme army court. Turning in 1950, the government issued Emergency Law No. 16 of 1950 which in substance, the same as Government Regulation no. 37 of 1948, which

changed the naming of the court as follows: 1. Military court, 2. High Military court, 3. Supreme Military court.

During the reign of President Sukarno, the government always intervened in the policies and authorities possessed by the judicial power in particular, and other institutions in general. This resulted in the regulations that existed at that time, defending the government in power, and having no independence. The judicial power, then held by the Supreme Court, gained its independence in 1959, with the issuance of a Presidential Decree on 5 July 1959, included military court.

Turning to the reign of president Suharto, which in 1964, with the issuance of Law No. 19 of 1964, which confuses the legality of administrative judicial power, distinguishes between the technical implementation system under the Supreme Court, and the administrative system under the Ministry of Justice. This has left the judicial power unable to stand independently and has not accommodated religious courts. This is not in accordance with the concept of the 1945 Constitution, which during the Suharto era still used the 1950 Provisional Constitution. With the presence of Law No. 14 of 1970, a kind of legislation reformation from previous Law, that stated to omit Article 19 on Law No. 19 of 1964. Presence of Law No. 14 of 1970 was issued that gave independence to judicial power, other than military courts, to be regulated by the Supreme Court. As compensation between the military and the government, although there was no visible implementation of the law in question until the end of the Suharto era.

As for the post-reform era, the judicial environment is divided into four: general court, religious court, state administrative court, and military court. However, in the era of reform, the regulations used are still relevant with the following explanation: 1. Law No. 14 of 1970 concerning the main provisions of judicial power, 2. Law No. 14 of 1985 concerning the Supreme Court, 3. Law No. 2 of 1986 concerning General Courts, 4. Law No. 5 of 1986 concerning State Administrative Courts, 5. Law No. 7 of 1989 concerning Religious Courts, 6. Law No. 31 of 1997 concerning Military Justice. All of these courts, still under their respective departments, are finally under a system integrated with the Supreme Court of the Republic of Indonesia with the issuance of Law No. 4 of 2004 concerning judicial power, the independence of judicial power, and the addition of judicial levels and directorates integrated with relevant departments[52].

2. The draft reform of the Military Justice Law No. 31 of 1997 and reasons failed to be passed by the legislative power

The concept of reform of the military court law had emerged at the end of 1999, for several reasons. Among them are the separation of the TNI and Polri from the status of the Armed Forces of the Republic of Indonesia (ABRI), and the closing of judicial proceedings in military courts.

[52] Editor of Main Military Court, Sejarah Peradilan Militer Indonesia, accessed on March 1st , 2024, SEJARAH PERADILAN MILITER DI INDONESIA (dilmiltama.go.id).

In fact, in Tap MPR No. VI of 2000 concerning the separation of the TNI and Polri, and Tap MPR No. VII of 2000 concerning connection courts for soldiers, became the inspiration for all provisions on military courts contained in Law No. 34 of 2004 concerning the integration of the judicial environment under the Supreme Court.

However, during the reform period from 1999-2004, the DPR as the legislative power has not been able to pass the draft reform of Law No. 31 of 1997, because discussions between the government, the military, and the DPR have not agreed on the compromise of draft changes to the justice system in the military environment.

In the 2004-2009 term of office, the DPR made draft amendments to Law No. 31 of 1997, as one of the Priority List of the Prolegnas Bill, with the establishment of a Special Committee (pansus), and the issuance of the decision of the DPR Kep. No. 01 / DPR-RI / III / 2004-2005. All factions in the DPR exercise their right of initiative to reform the military justice law, which must be relevant to the times, and the military is subject to the rule of law.

A new problem arose in 2005 until Early 2006, when there was several Public Hearing Meetings (RDPU) held by the DPR together with several human rights institutions, legal practitioners, military law stakeholders, and the government in discussing several technical and legal matters related to the Military Justice Bill which was considered irrelevant. It's just that, after several RDPU incidents, there is still a deadlock among all parties involved, because military justice stakeholders reject the compromises proposed by some of the parties mentioned by the

author earlier, citing differences in mindset, as well as the unpreparedness of human resources in prosecuting soldiers who commit general and/or military crimes. On the other hand, the DPR with several participants involved in the RDPU, seemed to force several legal clauses contained in Law No. 34 of 2004 concerning the integration of the judicial environment under one roof, to be included in the Military Justice Bill, which was unable to explain the jurisdiction of military justice stakeholders to military justice stakeholders.

In late 2006, the government approved several articles submitted by the DPR to compensate the draft Military Justice Bill after being given official testimony by the DPR. One of them is that common crimes committed by soldiers will be tried in public courts. Some parties, both from legal experts, human rights institutions, and from the government hope that the military justice bill can be realized, by fulfilling the agreed compromises, able to provide transparent and integrated legality, although in the end this bill has not been passed, and military courts use the Military Justice Law and some legal standing that is bound by military law[53].

Since the case of the former head of the National Search and Rescue Agency, Vice Marshal (Ret.) Henri Alfiandi, in mid-2023, many human rights activists, activists, and legal experts have aspirations for the government, to enact the Military Justice Bill as a new law, and restore

[53] Al Araf, et al., Reformasi Peradilan Militer di Indonesia, *Imparsial the Indonesian Human Rights Monitor*, (2008), 1-122.

civilian supremacy as legal stakeholders and provide legal protection for all groups, including the army[54].

3. Challenges in the Implementation of the Military Court Legislation

The challenge in implementing Law No. 31 of 1997, at Military Court II-11 Yogyakarta especially, does not revolve around the implementation of the regulation in question. But in one of the articles, and the explanation in it has not been further regulated by the institution of legislative power, which makes it no legal umbrella that overshadows it, and some regulations that have changed their legality form. For example, military administration already exists, and is listed in 1 article, as well as in the explanation of the law. Article 353 of Law No. 31 of 1997 concerning the military administrative procedure law, which will be promulgated in the form of a government regulation 3 years after Law No. 31 of 1997 is promulgated, which until now has not been issued by the government, so that there is only a military administrative clerk, contained in the high and main military courts, as an anticipatory measure taken by military courts. Turning to the explanation of the law that outlines technical regulations related to military administrative procedural law from examination to termination, and does not include specific regulations related to military administrative law[55].

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[54] Shinta Milenia, Urgensi Revisi UU Peradilan Militer, Perlukah Segera Diselesaikan, *Kompas TV,* (August 7th, 2023), accessed on March 3rd , 2024, Urgensi Revisi UU Peradilan Militer, Perlukah Segera Diselesaikan? (kompas.tv)

[55] Indonesia, UU No. 31 Tahun 1997 Tentang Peradilan Militer, accessed on March, 6th 2024.

“According to Major (CHK) Puryanto, Military Justice in Indonesia faces several significant challenges. First, there is the military administrative law, but until now no relevant government regulations have been issued by the government. This creates a legal vacuum and legal uncertainty for soldiers and commanders. Without clear government regulations, it is difficult to define the boundaries and procedures to be followed in military courts. Second, the DPR factor that does not pay attention to regulatory views that affect the military justice law. The DPR as a legislative institution should play an important role in the formation and revision of the military justice law. However, if the DPR does not pay attention to the views and inputs of various parties related to this regulation, it will be difficult to create fair and effective laws. Third, the relationship between commanders and soldiers is also a challenge. In military culture, soldiers are taught to obey the commander's orders. However, this doctrine can backfire if commanders give orders that are contrary to law and human rights, and soldiers feel compelled to obey them. This could lead to soldiers having to be tried in military courts. Or even because of the commander's dislike for his soldiers, the commander is able to dismiss soldiers without clarity and direct them to military judicial proceedings. Another challenge is the presence of social media, which if it reports something about soldiers and without clear information, can make soldiers captured on social media to be tried in military courts, and the public's perception of nepotistic military justice, as a result of the trauma of the aftermath of the 30 September

movement/PKI tragedy that killed civilian witnesses from the incident, became part of the challenges in implementing the military justice legislation "[56]. Thus, to overcome these challenges, cooperation between all parties is needed, including the government, parliament, and the military institution itself. In addition, fair and transparent law enforcement is also essential to ensure that soldiers' rights are protected in the military justice process.

4. Opportunities in reform of the Military Court Legislation

"According to Major (CHK) Samsul Arifin, Military justice legislation reform has considerable opportunities under the following conditions: First, the awareness of the DPR and the government as regulators to make legal products that have not been regulated in the previous government, especially regarding military administration, and not rashly in revising a law. This awareness is important to ensure that any regulations made truly meet the needs and reflect the realities on the ground, as well as consider their long-term impact. Second, education of TNI Headquarters to all soldiers, especially those who serve as commanders in each military unit, about the importance of military justice regulations and other regulations that bind the army. This education is important to ensure that each soldier understands his or her rights and obligations, as well as the procedures to be followed in military justice"[57]. Another side, "according to Major (CHK) Aditya Chandra, the role of academics in educating the public regarding

[56] Interview with Major (CHK) Puryanto, S.H. at Yogyakarta, March 6th , 2024.
[57] Interview with Major (CHK) Samsul Arifin, S.H. at Yogyakarta, March 6th , 2024.

technical and regulatory issues in military justice, as well as providing constructive criticism to the government in reviewing legislation, especially military justice legislation. Academics have an important role to play in providing research-based knowledge and perspectives, which can assist governments in making or revising legislation. With these three conditions, the opportunity for reform of military justice legislation becomes even greater. However, of course, commitment and cooperation from all parties are needed to make it happen"[58].

B. Discussion :

- **Ibn Qayyim Thoughts on Legal Reform and the relevance of its value to changes to Indonesia's Military Justice Law**

1. Ibn Qayyim's thoughts on Legal Reform

Ibn Qayyim in his book *I'laamul Muwaqi'iin,* describes the meaning of law as one of several ways to change the provisions of the applicable law. Ibn Qayyim gives an example with the use of analogies that have been used by companions in matters of the nature of interaction between people.

In Third book on the chapter the Changes in Sharia Law based on interpretive changes in ijtihad are mentioned:

تغير الحكم الشرعي بتغير الأزمنة و الأمكنة.[59]

Meanings : Changes in Sharia law adjust changes of the time and the place.

[58] Interview with Major (CHK) Aditya Chandra, S.H. at Yogyakarta, March 6th , 2024.
[59] Ibn Qayyim al-Jauziyyah, I'laamul Muwaqi'iin 'an Rabb al-'Alamiin, *Daar al-Kutub al-'Ilmiyyah,* (1991), Vol. 3, Ch. 17.

In addition, Ibn Qayyim argues, that changes in law, especially Sharia law relating to worship that has interaction with humans, do not only dwell on the textual, but rather the context faced by the law which consists of legal substance, conditions, relevance, and times that affect legal changes, without abandoning the concept of *Maqashid Sharia.* Ibn Qayyim argues that legal reform is important to deal with future problems, which are more relevant and dynamic[60].

As for what underlies Ibn Qayyim's interpretation of the importance of legal reform, lies in the textual understanding that massively occurred at that time, closed the door of Ijtihad, and considered the interpretation of the Imams of Madzhab to be final, so that there was stagnation in the product of Islamic law that occurred, and was unable to answer new problems that were not contained in existing references. This is what made Ibn Qayyim at that time considered a radical scholar, because he had an understanding of the text of the sharia that was relevant to the substance of the law and opened the space for ijtihad to answer more complex problems, in accordance with the corridors of *Maqashid Sharia* [61].

2. The relevance of the Values of Ibn Qayyim's thought to the concept of changing the law of military justice

As for the context of the values of Ibn Qayyim's thoughts that are relevant to the case of attempts to change the military justice law, it can be

[60] Siti Rahmawati, Paradigma Perubahan Hukum Islam (Eksplorasi Pemikiran Ibnul Qayyim Al Jauziyah), *Al Bayyinah : Jurnal Hukum Islam,* (January 11th , 2018 CE), 17-28.
[61] Abdul-Rahman Mustofa, On Taqlid : Ibn al Qayyim's Critique of Authority in Islamic Law, *Oxford University Press*, 2013, 1-242.

described as follows : According to the values of Ibn Qayyim's concept of thought regarding the maintenance of law and its reforms, stakeholders, parliaments, and military justice officials discussed the maintenance and improvement of regulations related to military justice that are still being implemented today. This is relevant to the efforts of legal reform in the Indonesian military justice system.

The context in which the values of Ibn Qayyim thoughts can be exemplified as follows: the respondents stated that the existing regulations are implemented as a form of legal maintenance of military justice even though there are several articles that have not accommodated further rules in the law. Another factor that has the power to reform legislation is the Parliament, which determines reforms to the regulation of military justice, after evaluation and communication with military justice stakeholders. In addition, there are several field issues that seem to need to be considered to reform existing regulations. Among them are the progress of social media that is often misused, disinformation from unscrupulous commanders on their subjectivity to soldiers, and the unavailability of regulations from the government related to military administrative law entities, and military administrative law that regulates and supervises problems in military administration.

Overall, the values of Ibn Qayyim's thinking provides a useful framework for guiding the process of legal reform. Despite the challenges and paradoxes, his approach emphasizes a balance between change and consistency, adaptation and integrity, all of which are crucial in the context of military justice.

CHAPTER V

CONCLUDING REMARK

A. Conclusion

Based on this research, it can be concluded that:

1. The challenges that occur on the ground related to the implementation of military justice legislation are only a few things. First, the lack of legality for military administrative law and its apparatus is one of the problems for military courts, especially for high military courts. Second, the development of information technology which, in some cases, can lead to misinformation against soldiers while in society, which can drag the soldiers to military justice. Third, in some cases, when an unscrupulous commander is unhappy with his soldier, he can dismiss the soldier without notice and drag the soldier to a military court for no apparent reason. This can be detrimental to the soldier in various ways. Fourth, the assumption of civil society to the military court is that it is nepotists who defend the army, because it is part of the state apparatus, as a result of the trauma of the tragedy of the 30 September Movement / PKI, at which time the military courts killed anyone from civil society who had come into contact with the PKI. As for the opportunities that occur if there is a reform of military justice legislation, there are several points. First, the establishment and establishment of a special institution that regulates and adjudicates military administrative matters. Second, from the side of military justice stakeholders, it is expected to be able to provide education for

commanders related to military justice law, and play an objective role in directing soldiers. Third, the role of academics in examining the legal role of Indonesian military justice, and providing education to the public regarding military justice and technical issues that are different from civil society courts.

2. Ibn Qayyim al-Jauziyyah, one of the contemporary scholars of the Hanbali madhhab, interpreted the change in law to have some strict requirements. First, if the interpretation of the meaning of the written text is still relevant, then there is no need to change the meaning of the law. Second, the requirements for legal changes must be relevant to the times and grammatical developments that occur in the community related to the law in question. The value obtained from the values of Ibn Qayyim's thoughts regarding the concept of legal change is that the law should adapt and evolve along with the changes in society and its needs, although there are some legal provisions that if considered still relevant, then they need to be maintained, which in this context is an unrealized effort to change the military justice law, and the duration from the implementation of Indonesia's military justice legislation to date, as part of legal safeguards.

B. Suggestions

From several conclusions that the author gets from Ibn Qayyim al-Jauziyyah's interpretation of legal reform with the title "Challenges and Opportunities of

Reforming Legislation of Indonesian Military Court With an Interpretive of Ibn Qayyim's Thought of Legal Reform" then:

1. Suggested for further research may be able to conduct further research can more in-depth examine of legal implementation, especially in military court and its apparatus.
2. Subsequent research could involve in-depth interviews with military judges and academicians that had competence of military court law and its apparatus.
3. Advanced studies can explore how the implications of existing military justice regulations on soldiers undergoing military justice and the aftermath of their trials.
4. Government, The House of Representatives, and military justice stakeholders are able to provide education related to the value of Islamic law that is relevant to applicable regulations, especially Indonesian military justice legislation, and educating the public about the different legal implications of military justice for soldiers. Click or tap here to enter text.

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Lampiran 1

Daftar Responden :

Responden Pertama

Nama : Puryanto, S.H.

Pangkat / NRP : Mayor (CHK) / 29201518704 67

Jabatan : Pokkimmil Golongan VI

Penempatan : Pengadilan Militer II-11 Yogyakarta

Responden Kedua

Nama : Samsul Arifin, S.H.

Pangkat / NRP : Mayor (CHK) / 21960369130576

Jabatan : Pokkimmil Golongan VI

Penempatan : Pengadilan Militer II-11 Yogyakarta

Responden Ketiga

Nama : Aditya Candra C., S.H.

Pangkat / NRP : Mayor (CHK) / 11100010370887

Jabatan : Pokkimmil Golongan VI

Penempatan : Pengadilan Militer II-11 Yogyakarta

Lampiran 2

Daftar Pertanyaan Untuk Responden Pertama

1. Apa yang dimaksud dengan UU Peradilan Militer?

- Jawaban : salah satu regulasi yang dikeluarkan pemerintah terkait perangkat dan teknis yang terdapat dalam lingkungan pengadilan militer, baik dari tingkat pengadilan militer hingga pengadilan militer utama.

2. Secara usia, UU Peradilan Militer dapat dikatakan sudah tua dan sebagian akademisi menganggapnya tidak relevan, apakah benar seperti itu?

- Jawaban : jika ditinjau dari usia undang-undang itu, memang sudah cukup tua dan belum ada perubahan. Walaupun begitu, undang-undang ini dapat dikatakan sebagai undang-undang yang kompleks, detail, dan lebih mencakup seluruh aspek peradilan spesifik dibanding undang-undang yang dimiliki peradilan sipil, yang selalu ada perubahan tanpa detail yang *make sense*.

3. Di dalam UU tersebut, terdapat kata ABRI yang sudah tidak digunakan sejak awal masa reformasi, bagaimana pandangan bapak terkait hal itu?

- Jawaban : untuk sekarang memang sudah ada pemisahan antara Polisi Republik Indonesia (Polri) dengan Tentara Nasional Indonesia (TNI). Maka, Polri tentu memiliki regulasi tersendiri, dan diadili di peradilan sipil. Karena pada dasarnya, ABRI hanya terdiri 4 satuan perang, yang berkurang 1, maka sisanya masih termasuk dalam *term* ABRI, walaupun secara makna beralih pada TNI.

4. Dari beberapa buku dan artikel, disebutkan bahwa sipil ingin menguasai seluruh lingkungan peradilan, termasuk lingkungan peradilan militer, bagaimana tanggapannya?

- Jawaban : hal tersebut tidak relevan, karena secara lingkungan, pola pikir, dan tugas yang diemban seorang tentara, berbeda dengan masyarakat sipil. Selain tentara itu milik negara, tentara menghadapi tekanan yang jauh berbeda dengan masyarakat sipil. Selain patuh pada perundang-undangan yang berlaku, mereka harus patuh pada hukum militer, perintah panglima, dan perintah komandan. Tentu juga, para akademisi masih sedikit yang mengerti dunia militer dan kompleksitas militer, sehingga perlu adanya sinergi antara akademisi, *stakeholder,* dan pemerintah terkait hal ini.

5. Beralih pada pertanyaan berikutnya, apa saja yang menjadi tantangan dalam implementasi perundang-undangan militer?

- Jawaban : ada beberapa tantangan yang dihadapi peradilan militer / dilmil. Salah satunya dalam pasal 353 UU No. 31 Tahun 1997 tentang peradilan militer, disebutkan akan ada peraturan tersendiri terkait tata usaha militer, yang hingga saat ini belum ada dan menjadikannya cacat hukum. Hal ini kemudian oleh Panglima TNI, dibuatkan panitera tata usaha militer yang berkedudukan di Pengadilan Militer Tinggi / Dilmilti, sebagai antisipasi atas kasus yang berkaitan dengan tata usaha militer. Ada badan hukum tersendiri yang mengurus terkait permasalahan hukum militer di TNI yang bertugas menyampaikannya pada DPR terkait hal itu, namun kami merasa untuk saat ini peraturan yang berlaku masih relevan.

6. Apa peluang yang akan terjadi jika ada reformasi perundang-undangan peradilan militer?

- Jawaban : Memberikan keleluasaan terhadap *stakeholder* peradilan militer untuk memberikan regulasi terkait hukum tata usaha militer dan perangkatnya untuk direalisasikan, dan mampu memberikan edukasi yang proporsional dan tepat bagi akademisi dan masyarakat terkait perbedaan regulasi peradilan militer dengan peradilan sipil.

Daftar Pertanyaan Untuk Responden Kedua

1. Apa saja tantangan yang dihadapi *stakeholder* peradilan militer dalam implementasi perundang-undangan peradilan militer?

- Jawaban : Dalam beberapa kasus yang dihadapi Pengadilan Militer, khususnya Pengadilan Militer / Dilmil II-11 Yogyakarta, salah satu kasusnya ada tentara yang harus diadili dikarenakan tersebarnya misinformasi di media sosial yang meng-*capture* tentara menerima uang dan sembako dari masyarakat dengan *caption* tentara memalak masyarakat. Hingga akhirnya, sidang digelar, dan masyarakat yang dalam media sosial ter-*capture* hadir di persidangan untuk membela tentara yang memang menerima sembako dan uang sebagai bentuk terimakasih mereka pada tentara yang menjaga lingkungan mereka dari premanisme, walaupun yang tentara terima itu telah mereka kembalikan dan masyarakat sempat bingung dengan perlakuan tentara yang mengembalikan apa yang telah masyarakat beri. Ini salah satu dampak negatif media sosial dan tantangan dari implementasi perundang-undangan peradilan militer di era modern ini.

2. Apa yang menjadi peluang apabila terjadi reformasi perundang-undangan militer?

- Jawaban : Sama yang disampaikan Pak Puryanto, ya adanya hukum tata usaha militer dan perangkatnya yang dibuat regulasinya, yang memiliki kewenangan yang relevan dengan kewajibannya. Di sisi lain, kalau ternyata lembaga khusus hukum tata usaha militer tidak bekerja dengan baik, sama saja menghambur-hamburkan keuangan negara, dan tidak berfaedah.

Daftar Pertanyaan Untuk Responden Ketiga

1. Tantangan apa yang dihadapi peradilan militer dalam implementasi perundang-undangan militer?

- Jawaban : salah satu yang dapat dikatakan sebagai tantangannya adalah faktor *trust issue* yang dimiliki oleh masyarakat dan menjadi trauma. Hal ini bermula ketika pasca tragedi G30S/PKI, dimana semua masyarakat sipil yang diseret ke mahkamah militer, nama lampau dari pengadilan militer, yang pernah bersinggungan dan / memiliki ikatan dengan kerabat yang menjadi anggota PKI dihabisi oleh pengadilan militer. Hal inilah yang menyebabkan masyarakat menganggap bahwa pengadilan militer yang sekarang adalah seperti masa lalu yang membela tentara bersalah, karena sama-sama dari tentara, dan pasti nepotis.

2. Apa yang jadi harapan apabila ada reformasi perundang-undangan peradilan militer?

- Jawaban : sama seperti Pak Pur dan Pak Samsul, dan juga menurut saya, ada baiknya untuk kedepannya TNI bersama *stakeholder* peradilan militer dan pemerintah bekerjasama dalam edukasi bagi para komandan yang sedang pendidikan, tentang sikap objektif dalam melatih prajurit, dan pemerintah serta DPR tidak terburu-buru dalam merubah undang-undang bagi peradilan militer, yang masih relevan hingga sekarang dengan penambahan hukum tata usaha militer dan perangkatnya untuk mengadili kasus yang berkaitan dengan tata usaha militer, walaupun tidak terlalu banyak kasusnya, tapi ada dalam lingkungan militer.

Lampiran 3

Beberapa Pasal dalam UU No. 31 Tahun 1997 yang Mengalami Pergeseran Arti Pasca Implementasi UU Peradilan Militer

1. Pasal 1, 2, 3, 4, 5, 8, 9, 15, dan seterusnya yang mengandung kata "Angkatan Bersenjata dan / ABRI", mengalami pergeseran makna menjadi Tentara Nasional Indonesia (TNI) yang terdiri dari tiga matra, setelah Kepolisian Republik Indonesia (Polri), menjadi institusi tersendiri, memiliki regulasi tersendiri, dan diadili pada peradilan sipil, jika melakukan tindak pidana. Hal ini menurut para responden bukan menjadi masalah yang berarti setelah adanya pemisahan Polri dan TNI dari Angkatan Bersenjata Republik Indonesia (ABRI).
2. Pasal 1, 2, 3, 4, 9, 15, dan seterusnya yang mengandung kata "Tata Usaha Militer", memiliki permasalahan tersendiri. Dari para responden, ada hal yang perlu dicermati. Permasalahan tata usaha militer secara umum tidak memiliki kendala yang berarti dalam lingkungan peradilan militer, baik dari tingkat Pengadilan Militer (Dilmil), hingga Pengadilan Militer Utama (Dilmiltama), dikarenakan terdapat regulasi tersendiri yang harus dipatuhi prajurit, dan telah dilakukan *fit, cross, & proper check* sebelum seorang prajurit menerima hal yang berkaitan dengan tata usaha militer.

3. Dalam UU No. 31 Tahun 1997 Pasal 353 disebutkan : “Undang-undang ini mulai berlaku pada tanggal diundangkan, khusus mengenai Hukum Acara Tata Usaha Militer, penerapannya diatur dengan Peraturan Pemerintah selambat-lambatnya 3 (tiga) tahun sejak Undang-undang ini diundangkan.” Namun dalam implementasinya, pemerintah belum mengeluarkan regulasi yang dimaksud dalam undang-undang hingga saat ini, sehingga dapat dikatakan Hukum Acara Tata Usaha Militer memiliki cacat hukum. Adapun tanggapan dari para responden, untuk mengatasi hal tersebut Badan Hukum TNI membentuk panitera tata usaha militer sebagai alternatif dalam penyelesaian masalah tata usaha militer yang berkedudukan di Pengadilan Militer Tinggi (Dilmilti) pada setiap yurisdiksi. Para responden menyatakan, jika terdapat reformasi peradilan militer dan dibentuk badan hukum tata usaha militer, serta perangkat pendukungnya, dikhawatirkan menjadi inefisiensi dalam implementasi regulasi peradilan militer Indonesia.

LAMPIRAN 4

CURRICULUM VITAE

Name	: Hafiz Darius Shina
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