

A Comparative Legal Analysis of Military Insubordination: Perspectives from National Law and Islamic Criminal Law

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Abstract

Military criminal offenses represent violations of hierarchical discipline, a foundational principle of the military system. This research examines the legal analysis of insubordination committed by military personnel from the perspective of Islamic criminal law. The primary objective of this study is to evaluate how the legal system – both positive law and Islamic criminal law – assesses the crime of insubordination within the military context. This study employs a qualitative normative juridical methodology, using a statute and conceptual approach to examine relevant legal provisions, including military criminal codes and Islamic jurisprudential sources. The findings reveal that insubordination is classified under Article 106 of the Indonesian Military Criminal Code (KUHPM) as a serious offense involving disobedience or resistance toward a superior officer. From the perspective of Islamic criminal law, such conduct is closely associated with *jarimat al-baghyu* (rebellion) and is punishable under the category of *ta'zîr*, which allows for discretionary sanctions such as imprisonment, dismissal, or other corrective measures. This study offers original insight by bridging the gap between formal military legal systems and Islamic legal thought, emphasizing the role of moral and ethical values in reinforcing military discipline. The implications suggest the potential for integrating *ta'zîr*-based principles into Indonesia's military justice system to enhance internal discipline through a framework grounded in justice, piety, and legal authority.

INTRODUCTION

The existence of laws designed to be followed and implemented by every member of the Indonesian National Armed Forces (Tentara Nasional Indonesia or TNI), particularly in maintaining national stability, reinforces the Republic of Indonesia's status as a fully sovereign state. The TNI, commonly referred to as the Indonesian military, serves as the apparatus responsible for defending the entire territory of Indonesia and preventing any form of colonization attempted by foreign entities.

As a state apparatus, the TNI is tasked with executing national defense strategies, such as establishing and maintaining state sovereignty, preserving territorial integrity, ensuring national security, and actively participating in peacekeeping missions both domestically and internationally. The term "military" derives from the Greek word *miles*, which means "trained for war." A soldier is an individual specifically trained, nurtured, and prepared for combat. Consequently, certain norms and regulations are strictly applied and rigorously enforced.¹

Discipline represents a fundamental mental attitude of obedience—entirely internalized, voluntarily upheld, sincerely practiced, and fully accountable. As a form of self-control to prevent neglect of official orders and legal regulations in daily military life, military discipline is a manifestation of obedience rooted in both physical and spiritual awareness, reflecting a soldier's devotion to the nation. Since TNI personnel are educated to be faithful and devout to God Almighty as an expression of loyalty to the nation and state, military discipline becomes an essential requirement in their lives.²

An example of insubordination within the military environment addressed in this study is a case heard at the Military Court III-12 Surabaya, under Case Number 20-K/PM.III-12/AD/II/2024. According to Article 106 paragraph (1) of the Indonesian Military Criminal Code (KUHPM), a criminal act of insubordination by a subordinate toward a superior had occurred. Furthermore, based on a statement from the Minister of Defense, TNI members who violate the law are subject to both general and military criminal sanctions, as reported by *sumsel.antaranews.com*. Examples include acts such as insubordination and desertion.³

¹ Richwan Luthfi, "Kajian Terhadap Desersi Dalam Hukum Pidana Militer (Studi Pada Denpom XIII/2 Palu)," *Legal Opinion* 12, no. 1 (2024): 33–46.

² Marchel Imanuel Padang, "Tinjauan Terhadap Penjatuhan Sanksi Bagi Anggota TNI Yang Melakukan Tindak Pidana Insubordinasi," ., 2016, 1–8.

³ Rio Feisal, "Menhan: Anggota TNI Melanggar Hukum Kena Pidana Militer Dan Umum," *Antara Sumsel*, February 5, 2025, <https://sumsel.antaranews.com/berita/773381/menhan-anggota-tni-melanggar-hukum-kena-pidana-militer-dan-umum?>

A member of the military may be charged with insubordination under Article 106 of the KUHPM if three conditions are met: first, the individual must be a member of the armed forces; second, the act must be deliberate and intentional; and third, the subordinate must have assaulted the superior in such a manner that the superior is hindered from fulfilling their duties. Given the hierarchical and organized nature of the military, which demands respect and compliance from subordinates to superiors, this offense is categorized as an extraordinary crime.⁴

The military legal system provides for the application of justice through military courts, which are authorized to impose stricter penalties. One of the regulations governing the jurisdiction of military courts is stipulated in Article 3 paragraph (4). Following the enactment of TAP MPR No. VII/MPR/2020, the following types of cases fall under the jurisdiction of military courts: (1) all criminal acts listed in the Military Penal Code; (2) general criminal acts committed by TNI personnel during their service; (3) general criminal acts committed by TNI personnel within military facilities, such as headquarters, barracks, posts, ships, or aircraft; and (4) general criminal acts committed by TNI personnel during wartime or under a state of military emergency.⁵

The issue of insubordination is also addressed in the Qur'an, particularly in Surah An-Nisa (4:59):

"O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger if you should believe in Allah and the Last Day. That is the best [way] and best in result."

Furthermore, the obligation to obey leaders is reinforced in a hadith narrated by Imam Ahmad ibn Hanbal:

"It is obligatory to listen to and obey the leaders and the commander of the faithful, whether he is righteous or sinful. One must also obey whoever holds the caliphate, who has gained the people's consensus, or whoever has gained power by force until he becomes the caliph and is called the commander of the faithful." (Narrated by Imam Ahmad ibn Hanbal).

Across the Islamic world, acts of violence or insubordination are perceived as threats to human life, which directly contradicts the fundamental objectives of Islam – namely, to ensure individual well-being and societal welfare. Islamic criminal law classifies violence that endangers human life under *jarimah ta'zir*. *Ta'zir* refers to discretionary punishments applied to offenders who violate either the rights of Allah or human rights, where the specific offenses are not determined by fixed legal texts. Sanctions under *ta'zir* may include imprisonment, fines, public shaming, or even capital punishment.⁶

⁴ Patresia Pivitha, "Pelaksanaan Ketentuan Pasal 106-109 Kuhpm Tentang Insubordinasi Di Pengadilan Militer Ii-11 Yogyakarta" (UAJY, 2017), hlm.2.

⁵ Niken Subekti Budi Utami, "Yurisdiksi Peradilan Terhadap Prajurit Tentara Nasional Indonesia Sebagai Pelaku Tindak Pidana," *Yustisia* 3, no. 2 (2014): hlm.105.

⁶ Asman Asman et al., *Studi Hukum Islam* (Eureka Media Aksara, 2023), hlm.80.

Literature Review

Previous studies that addressed similar core issues to this research include the following:

Marchel Imanuel Padang's journal article, titled *"A Review of Sanctions Imposed on TNI Members Committing the Crime of Insubordination"* (2017),⁷ found that imprisonment or detention penalties are carried out either in Military Correctional Institutions (Lemmasmil) or in general correctional facilities (Lapas) if additional sanctions such as dismissal or conditional sentencing are imposed. The additional sanction of dismissal is considered necessary when the offense poses a threat to the military and national security.

Wahyu Pratama Febriandini's journal article, titled *"The Evidentiary Process of Insubordination Crimes Committed by Military Personnel According to Article 172 of Law No. 31 of 1997 on Military Judiciary"* (2021),⁸ revealed that judges must base their findings of criminal guilt on valid evidence presented in court. This evidentiary system is regulated under Article 171 of Law No. 31 of 1997, while Article 172 outlines the admissible types of evidence, namely: witness testimony, expert opinion, defendant's statement, documents, and indications. The researcher concluded that the Military Court's ruling in Pontianak (Case No. 70-K/PM 1-05/AD/XI/2016) conformed to the stipulations in Article 172 of the aforementioned law.

Acham Adharis Wijaya's journal article, titled *"The Application of Probationary Sentences for Indonesian National Army Soldiers Proven to Have Committed Acts of Insubordination with Concrete Actions"* (2023),⁹ emphasized that although both the military and civilian courts address the offense of insubordination, they differ significantly in terms of procedural handling and applicable regulations. Insubordination is governed in the general Criminal Code under Articles 459–461, while specific provisions can be found in Articles 103 and 106–109 of the Military Criminal Code (KUHPM).

Differences between this study and previous research. *First*, Marchel Imanuel Padang's research focuses on the imposition of sanctions on TNI members for committing insubordination, particularly imprisonment or detention in correctional facilities, and

⁷ Padang, "Tinjauan Terhadap Penjatuhan Sanksi Bagi Anggota TNI Yang Melakukan Tindak Pidana Insubordinasi."

⁸ Wahyu Pratama Febriandini, "Keterbuktian Tindak Pidana Insubordinasi Yang Dilakukan Anggota Militer Sesuai Dengan Pasal 172 Undang-Undang Nomor 31 Tahun 1997 Tentang Peradilan Militer," *Verstek* 9, no. 2 (n.d.).

⁹ Achmad Adharis Wijaya, Potler Gultom, and Sujono Sujono, "Implementation of Probationary Penalty Against Soldiers of the Indonesian National Army Who Are Proven to Have Committed the Crime of Insubordination with Real Actions," *Jurnal Hukum Sehasen* 9, no. 2 (2023): 99–106.

dismissal as an additional penalty if the act endangers military or national life. In contrast, the present study focuses on the Islamic criminal law perspective regarding acts of insubordination committed by military personnel. *Second*, Wahyu Pratama Febriandini's study concentrates on the evidentiary standards and legal process required to prove insubordination under Article 172 of Law No. 31 of 1997 on Military Judiciary. It emphasizes the legal basis a judge must use to determine guilt in court. In contrast, this study examines how Islamic criminal law views acts of insubordination committed by military personnel. *Third*, Acham Adharris Wijaya's research analyzes the application of probation in cases of insubordination by TNI soldiers and highlights the procedural and regulatory differences between military and general courts, even though both address insubordination. His study references Articles 459–461 of the Criminal Code and Articles 103, 106–109 of the KUHPM. On the other hand, this study explores the issue from the perspective of Islamic criminal law and how it interprets insubordination by members of the military.

This study aims to analyze the crime of insubordination from both positive law and Islamic criminal law perspectives. It seeks to address the legal interpretation of insubordination committed by military subordinates against their superiors with deliberate intent, as regulated in Article 106 paragraph (1) of the KUHPM. Therefore, the researcher was motivated to explore this topic under the title: "A Comparative Legal Analysis of Military Insubordination: Perspectives from National Law and Islamic Criminal Law."

METHODS

This research employs a normative juridical method, utilizing both the statutory approach and the conceptual approach. According to Soerjono Soekanto, normative juridical research refers to legal research that relies on secondary data or library materials as the foundation for examining legislation and literature relevant to the issues being analyzed.¹⁰ This study is centered on library research, drawing on primary legal sources such as the *Military Criminal Code*, *Law No. 31 of 1997 on Military Judiciary*, as well as the *Qur'an* and *Hadith*.

Secondary legal materials include legal textbooks, scholarly journals, articles, and relevant court decisions.¹¹ The data analysis technique applied is qualitative, involving the classification, organization, and examination of legal materials based on the legal

¹⁰ Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Raja Grafindo Persada, 2007), hlm.13-14.

¹¹ Sarjono Dd, *Panduan Penulisan Skripsi* (Yogyakarta: Jurusan Pendidikan Agama Islam, 2008), hlm.20.

problems under study, followed by the formulation of normative conclusions. The methods of legal interpretation used in this study include grammatical, systematic, and teleological interpretations, aimed at comprehensively understanding the meaning of legal provisions. The validity of legal data is tested through cross-verification across sources, ensuring the relevance and consistency between primary and secondary legal materials.

RESULTS AND DISCUSSION

1. Criminal Law Review on the Crime of Insubordination Committed by Military Personnel

Disobedience toward superiors or refusal to follow orders is classified as an act of insubordination, which may also be seen as a betrayal of military service.¹² According to Article 106 paragraph (1) of the Military Criminal Code (KUHPM), a member of the military who, through overt action, attacks a superior, resists with violence or threats of violence, restricts their freedom to act, or compels them through force or threats to perform or neglect official duties, shall be charged with the offense of insubordination by concrete action and may be sentenced to a maximum of nine years' imprisonment.

Insubordination, also known as defiance or disobedience, is considered a "purely military crime." Every lower-ranking soldier is obligated to respect and obey higher-ranking officers within the chain of command. To ensure soldiers respect their superiors and execute all instructions effectively, the military command system must remain absolute and inviolable.¹³

If one interprets criminal law based on the principle of legality, the definition of insubordination or defiance becomes an act involving resistance against a superior through actual violence or threats of violence, where the victim is a superior officer and the perpetrator is a subordinate.¹⁴

Once a military member is proven to have committed insubordination, **military courts** have the authority to adjudicate the matter. The **Military Police** are tasked with conducting the investigation upon a report from the superior or command authority (*Ankum*). The case file is then reviewed by the **Military Prosecutor's Office (Orditur Militer)**, which drafts the indictment to be submitted to the military court. While the

¹² Sapto Handoyo Djakarsih Putro, Nazaruddin Lathif, and Lilik Prihatini, "Penerapan Sanksi Pidana Dalam Tindak Pidana Desersi," *PALAR (Pakuan Law Review)* 9, no. 4 (2024): 65–76.

¹³ Padang, *Loc.cit.*

¹⁴ Wijaya, Gultom, and Sujono, *Loc.cit.*

procedural steps in military and civilian courts are similar, the mechanisms and specific legal frameworks differ significantly.¹⁵

The legal process for addressing insubordination, based on Law No. 31 of 1997, includes the following stages:

a. Investigation Stage

- 1) An investigation may proceed upon a complaint from the victim (superior) or a report from *Ankum*. The report is submitted to the Military Police.
- 2) The investigation findings are recorded in an Official Report (*Berita Acara Pemeriksaan*).
- 3) The report is forwarded to the Military Prosecutor for review. If deemed complete, the investigator must submit it to the Case Submission Officer (PAPERA).

b. Case Submission Stage

- 1) Once the case is submitted to PAPERA, a decision is made on whether to proceed with a military court trial or merely a military disciplinary hearing.
- 2) If PAPERA decides to bring the case to trial, a formal decision letter is issued and submitted to the Military Prosecutor. If PAPERA disagrees, the Military Prosecutor may file an objection with the Primary Military Court, which will determine whether the case should proceed to trial.
- 3) If the case meets the requirements for trial, the Military Prosecutor prepares the indictment, submits it to the Military Court along with the investigation report and the case submission decision from PAPERA.

c. Court Hearing Stage

The court procedures in military trials generally follow the same format as in civilian courts.

d. Verdict Enforcement Stage

According to Article 106 of the KUHPM, the penalty for insubordination is a maximum of nine years in prison. If the act causes injury, the sentence increases to ten years, and if it results in death, a maximum of twelve years. These constitute principal penalties under military criminal law.

The role of military legal officers goes beyond law enforcement – they serve as crucial guardians of discipline, stability, and order within the armed forces. Military discipline is not merely a formal requirement but forms the foundation of military effectiveness and

¹⁵ Moch Faisal, *Hukum Acara Pidana Militer Di Indonesia* (Bandung: Mandar Maju, 2002), hlm.54.

integrity. In this context, the enforcement of law against insubordination plays a strategic role in ensuring that every soldier fully understands and fulfills their responsibilities.

Unchecked acts of insubordination can damage the command structure, which is the backbone of military organization. Disobedience by a single soldier does not only affect the individual but can trigger leadership crises, weaken troop morale, and create chaos in operational execution. Therefore, firm legal action against insubordination is essential to uphold discipline and ensure all soldiers operate within the framework of the *Sapta Marga* and *Soldier's Oath*, which emphasize honor, loyalty, and obedience to superiors.¹⁶

Moreover, enforcing the law in insubordination cases serves an educational function. Through consistent legal enforcement, soldiers are reminded that violations of discipline—especially those involving orders from superiors—carry serious consequences. This fosters deterrence, preventing future violations and reinforcing collective awareness of the importance of obedience within the military organization. In conclusion, the enforcement of criminal law in cases of insubordination is not merely a matter of sanctioning violations, but an integral mechanism for preserving the cohesion, effectiveness, and stability of the military. It aligns with the military's core objective of producing honorable, responsible, and highly disciplined soldiers, fully committed to duty and unquestionably loyal to the chain of command in service of national interests.

2. The Criminal Offense of Insubordination among Military Personnel from the Perspective of Islamic Criminal Law

Islamic criminal law, known in Arabic as *jarimah* or *jinayah*, is etymologically derived from the root *jarama-yajrimu-jarimah*, which implies "to commit" or "to sever." Terminologically, *jarimah* refers to acts prohibited by Islamic law (*sharī'ah*) that are subject to divine punishment, whether through *hudūd* or *ta'zīr*. The term *jinayah* shares a root with *janā-yajni-jinayah*, meaning to commit a sin. In legal terms, *jinayah* encompasses any action that violates Islamic law and causes harm to persons, property, or life.¹⁷

Islamic criminal law classifies offenses based on the severity of their punishment as follows:

a. Jarimah Hudūd

Hudūd (plural of *ḥadd*) refers to fixed punishments prescribed by divine revelation as a deterrent against certain crimes. These penalties are mandatory and non-negotiable, representing clear boundaries set by Allah to prevent transgressions.

¹⁶ Faisal, Op.,cit. hlm.21.

¹⁷ Mardani, "Hukum Pidana Islam," *Prenada Media*, 2019, hlm.1-2.

b. Jarimah Qiṣāṣ and Diyat

Under the law of retaliation (*qiṣāṣ*) and blood money (*diyat*), intentional murder is punishable by execution unless the victim's family forgives the perpetrator, in which case the sentence may be commuted to financial compensation.

c. Jarimah Ta'zīr

Ta'zīr is derived from *azara*, meaning to prevent, respect, or discipline. It also implies *ta'dīb*, or instruction. According to Sayyid Sābiq, *ta'zīr* encompasses punishments for offenses not specifically mentioned in the Qur'an or Sunnah, and are thus left to the discretion of the ruler or judge.¹⁸

The concept of *maqāṣid al-sharī'ah* refers to the objectives and purposes of Islamic law. Wahbah al-Zuhaylī defines *maqāṣid* as the understanding of the deeper meanings, wisdom, and ultimate aims underlying Islamic rulings. Abū Ishāq al-Shāṭibī asserts that the core objective of *sharī'ah* is to safeguard human welfare in both this world and the hereafter. Similarly, Imām al-Ghazālī argues that protecting the objectives of *sharī'ah* is essential for ensuring human survival, preventing corruption, and enabling prosperity.¹⁹

In general, Islamic law seeks to secure happiness, welfare, and benefit for all of humanity in both temporal and eternal contexts. The protection of five essential values – religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-‘aql*), progeny (*ḥifẓ al-naṣl*), and wealth (*ḥifẓ al-māl*) – is deemed obligatory.²⁰ Failure to preserve these five necessities threatens the very fabric of human existence.

Within the framework of *maqāṣid al-sharī'ah*, one of the primary goals is the protection of life (*ḥifẓ al-nafs*), emphasizing the right to life, safety, and personal security. This right is not limited to biological existence but includes protection from violence, abuse, and threats to societal stability.²¹

In the context of military insubordination, the relationship between *maqāṣid al-sharī'ah* and this type of offense becomes highly relevant. Insubordination is not merely a breach of military discipline; it may directly or indirectly threaten human life. In situations such as combat operations or emergencies, disobedience to a superior's command can lead to confusion, breakdowns in coordination, and even fatalities among soldiers or civilians. Hence, insubordination may violate the principle of *ḥifẓ al-nafs*, and Islamic law provides a moral and legal basis for addressing such conduct.

¹⁸ *Ibid.*

¹⁹ Panji Adam, *Hukum Islam: Konsep, Filosofi Dan Metodologi* (Sinar Grafika, 2021), hlm.104.

²⁰ FITRI FITRI WAHYUNI, "Hukum Pidana Islam" (PT NUSANTARA PERSADA UTAMA, 2018), hlm.207.

²¹ Ahmad Al-Mursi Husain Jauhar, *Maqasid Al-Syari'ah Fi Al-Islam*, *Penerjemahan Khikmawati (Kuwait)*, *Cetakan Pertama* (Amzah, Jakarta; 2009, 2009), hlm.22.

Islamic criminal law also relates insubordination to the concept of *al-baghyu* (rebellion). According to Muḥammad Amīn, *al-baghyu* is defined as the unjustified refusal to submit to a legitimate authority or ruler. Three elements characterize *al-baghyu*: (1) defiance against a legitimate leader; (2) resistance involving violence or overt acts of disobedience; and (3) intentionality in the perpetration of the act.²²

In a military context, acts of insubordination often contain elements similar to *al-baghyu*. When a soldier intentionally defies a lawful order from a superior officer within the military hierarchy, it constitutes a challenge to authority. If this defiance is expressed through violent or overt means, it satisfies the second element of *al-baghyu*. Moreover, such actions are typically premeditated, fulfilling the element of intent.

However, not all acts of insubordination should be equated with *al-baghyu*, which traditionally refers to armed rebellion against a central government. In the military context, insubordination is more accurately classified as *jarimah ta'zīr*, a punishable offense whose penalty is determined by the state or judiciary. This classification acknowledges that most cases of insubordination occur within the internal structure of military institutions rather than as large-scale political uprisings. Nonetheless, due to their defiance of legitimate authority, such acts can still be analogized to *al-baghyu* within the discretionary punishment framework of *ta'zīr*, highlighting the need for discipline and organizational stability.

Under Islamic criminal law, *ta'zīr* punishments for insubordination may include imprisonment, demotion, or other disciplinary measures aimed at correction and deterrence. The broader concept of *'uqūbah* (punishment) in this context serves to uphold public welfare (*maṣlahah*) and enforce compliance with lawful commands, including those within the military structure.²³ Thus, while military insubordination does not always constitute *al-baghyu* in the sense of armed political rebellion, its treatment as *jarimah ta'zīr* with analogous characteristics remains relevant in Islamic jurisprudence. It reflects the commitment to preserving discipline, obedience, and institutional integrity within the armed forces.

Ultimately, Allah SWT has ordained how violence against superiors should be addressed, as exemplified through the prophetic mission of Prophet Muhammad (PBUH) and the divine revelation of Islamic law. The purpose of Islamic law, as emphasized by al-Shāṭibī, is to ensure the comprehensive well-being of humanity in this world and the next.²⁴

²² Mardani, *Loc.,cit.*

²³ *Idem.*, hlm.48.

²⁴ Alaidin Koto, "Filsafat Hukum Islam/Oleh Alaidin Koto," 2012, hlm.49.

Islam places a strong emphasis on respect for legitimate authority as a fundamental religious value. As stated in a ḥadīth of the Prophet Muhammad (PBUH), narrated by Abū Hurayrah:

"Whoever obeys me has obeyed Allah, and whoever disobeys me has disobeyed Allah." (Ṣaḥīḥ Muslim No. 1835; Ṣaḥīḥ al-Bukhārī No. 7137).

In the military, success depends on soldiers obeying their superiors.²⁵ The Prophet (PBUH) clearly emphasized that obedience to military leadership should be unquestioning, recognizing that discipline and coordination are the backbone of any military force. This obedience is thus essential not only for operational success but also for preserving cohesion and order.

A powerful historical example is the Battle of Mu'tah, in which the Prophet (PBUH) appointed three commanders in succession: Zayd ibn Ḥārithah, Ja'far ibn Abī Ṭālib, and 'Abdullāh ibn Rawāḥah. When one commander fell in battle, leadership passed seamlessly to the next, as per the Prophet's instruction. The Muslim army followed these commands without hesitation, even in the face of grave danger, demonstrating the deeply rooted tradition of obedience within Islamic military ethics.

Therefore, obedience to superiors in the military is grounded not only in religious teachings but also in historical precedent. It forms the basis of military discipline and organizational stability. In the modern military context, internalizing these values is vital for enhancing morality, professionalism, and discipline among soldiers, while still upholding the principles of justice and legal protection.

CONCLUSION

The criminal offense of insubordination, as stipulated in Article 106 paragraph (1) of the *Military Criminal Code* (KUHPM), constitutes a serious violation within the military environment, carrying a maximum sentence of nine years' imprisonment. Insubordination is classified as a purely military offense, and its adjudication falls under the jurisdiction of the military judiciary, in accordance with Law No. 31 of 1997 on Military Courts, which clearly delineates the distinction between military and civilian criminal proceedings.

From the perspective of Islamic criminal law, insubordination can be associated with *jarīmat al-baghyu*, or rebellion against a legitimate authority. However, since military insubordination typically represents a breach of discipline and disobedience to superior orders rather than an organized rebellion, it is more appropriately categorized as a

²⁵ H Mohammad Daud Ali, *Hukum Islam Dan Peradilan Agama (Kumpulan Tulisan)* (PT RajaGrafindo Persada, 1997), hlm.20.

jarimah ta'zīr – a discretionary offense in which the punishment is left to the judgment of the state or judge. Sanctions in this context may include imprisonment, dismissal from position, or other corrective measures aimed at education and deterrence.

The significance of these findings highlights the necessity of strengthening military disciplinary law, not only through the lens of positive legal norms, but also by incorporating the principles of justice as emphasized in Islamic criminal jurisprudence. As a normative recommendation, it is essential to consider the codification or integration of Islamic legal norms, particularly concerning *jarimah ta'zīr*, into the framework of military law in Indonesia. This would not only affirm the role of Islamic law as one of the sources of law in Indonesia but also contribute to the development of a military disciplinary system that upholds justice, authority, and dignity.

REFERENCES

- Adam, Panji. *Hukum Islam: Konsep, Filosofi Dan Metodologi*. Sinar Grafika, 2021.
- Ali, H Mohammad Daud. *Hukum Islam Dan Peradilan Agama (Kumpulan Tulisan)*. PT RajaGrafindo Persada, 1997.
- Asman, Asman, Insan Kamil, Muhammad Yunus, Abdul Hafidz Miftahuddin, Ahmad Mustakim, Ahmad Burhan Hakim, Amrotus Soviah, Nurliana Nurliana, Hidayatullah Hidayatullah, and Taufiqurohman Taufiqurohman. *Studi Hukum Islam*. Eureka Media Aksara, 2023.
- Dd, Sarjono. *Panduan Penulisan Skripsi*. Yogyakarta: Jurusan Pendidikan Agama Islam, 2008.
- Faisal, Moch. *Hukum Acara Pidana Militer Di Indonesia*. Bandung: Mandar Maju, 2002.
- Febriandini, Wahyu Pratama. "Keterbuktian Tindak Pidana Insubordinasi Yang Dilakukan Anggota Militer Sesuai Dengan Pasal 172 Undang-Undang Nomor 31 Tahun 1997 Tentang Peradilan Militer." *Verstek* 9, no. 2 (n.d.).
- Feisal, Rio. "Menhan: Anggota TNI Melanggar Hukum Kena Pidana Militer Dan Umum." *Antara Sumsel*, February 5, 2025. <https://sumsel.antaranews.com/berita/773381/menhan-anggota-tni-melanggar-hukum-kena-pidana-militer-dan-umum?>
- Fitri Wahyuni, Fitri. "Hukum Pidana Islam." PT Nusantara Persada Utama, 2018.
- Jauhar, Ahmad Al-Mursi Husain. *Maqasid Al-Syari'ah Fi Al-Islam", Penerjemahan Khikmawati (Kuweis), Cetakan Pertama*. Amzah, Jakarta; 2009, 2009.
- Koto, Alaidin. "Filsafat Hukum Islam/Oleh Alaidin Koto," 2012.
- Luthfi, Richwan. "Kajian Terhadap Desersi Dalam Hukum Pidana Militer (Studi Pada Denpom XIII/2 Palu)." *Legal Opinion* 12, no. 1 (2024): 33–46.

- Mardani. "Hukum Pidana Islam." *Prenada Media*, 2019.
- Padang, Marchel Imanuel. "Tinjauan Terhadap Penjatuhan Sanksi Bagi Anggota TNI Yang Melakukan Tindak Pidana Insubordinasi." ., 2016, 1-8.
- Pivitha, Patresia. "Pelaksanaan Ketentuan Pasal 106-109 Kuhpm Tentang Insubordinasi Di Pengadilan Militer li-11 Yogyakarta." *UAJY*, 2017.
- Putro, Sapto Handoyo Djakarsih, Nazaruddin Lathif, and Lilik Prihatini. "Penerapan Sanksi Pidana Dalam Tindak Pidana Desersi." *PALAR (Pakuan Law Review)* 9, no. 4 (2024): 65-76.
- Soekanto, Soerjono. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Raja Grafindo Persada, 2007.
- Utami, Niken Subekti Budi. "Yurisdiksi Peradilan Terhadap Prajurit Tentara Nasional Indonesia Sebagai Pelaku Tindak Pidana." *Yustisia* 3, no. 2 (2014).
- Wijaya, Achmad Adharis, Potler Gultom, and Sujono Sujono. "Implementation of Probationary Penalty Against Soldiers of the Indonesian National Army Who Are Proven to Have Committed the Crime of Insubordination with Real Actions." *Jurnal Hukum Sehasen* 9, no. 2 (2023): 99-106.