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Detention by the Commanding Officer (ANKUM) in the Investigation of Military Offences: Problematizing Authority Through a Due Process of Law Analysis

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Abstract
This article examines the authority of the Commanding Officer with disciplinary power (*Atasan yang Berhak Menghukum* or ANKUM) to order detention during the investigation of military offences in Indonesia and evaluates its compatibility with the principle of due process of law. The problem is fundamentally structural: although Law No. 31 of 1997 recognizes ANKUM, Military Police, and Oditurs as investigators, the law simultaneously places decisive detention authority in the hands of ANKUM, while Military Police or Oditurs often perform the actual investigative work. This design creates a normative overlap between command authority and criminal process, thereby generating risks of conflict of interest, impaired investigative independence, and procedural unfairness. Using a normative juridical method based on statutory, comparative, and conceptual approaches, this article argues that detention by ANKUM is difficult to reconcile with due process requirements of impartiality, objectivity, and institutional independence. A comparison with the United States military justice system shows a different model: pretrial confinement is constrained by probable cause, neutral review, and anti-command-influence safeguards. The article therefore proposes a reconstruction of Indonesian military procedural law by transferring detention authority to Military Police or Oditurs, limiting ANKUM to administrative notification and disciplinary supervision, and introducing an explicit prohibition on command interference in criminal investigations.

Keywords: ANKUM; detention; military investigation; due process of law; command influence

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INTRODUCTION

As a constitutional state based on law, Indonesia recognizes the principle that all citizens are equal before the law. Article 27(1) of the 1945 Constitution affirms equal standing in law and government, a guarantee that should also extend to members of the armed forces unless a statute validly establishes narrowly tailored exceptions. Military justice, therefore, may constitute a special jurisdiction, but it cannot be treated as a constitutional enclave exempt from procedural fairness and legal accountability (The 1945 Constitution of the Republic of Indonesia, art. 27(1); Rosidah, 2019, pp. 1–3).

In Indonesia, military criminal procedure is principally governed by Law No. 31 of 1997 on Military Courts. The statute identifies ANKUM, Military Police, and Oditurs as investigators. At the same time, the law authorizes Military Police or Oditurs to execute detention orders issued by ANKUM, while Article 74 expressly empowers ANKUM to detain subordinate suspects under his or her command. Articles 78 and 79 further place detention decisions and their grounds within a framework dominated by ANKUM and the chain of command. This means that coercive intervention against liberty remains, in decisive part, under command authority rather than under an institutionally independent investigative authority (Law No. 31 of 1997 on Military Courts, arts. 69, 71(2), 74, 78–79).

This legal design produces a serious due process problem. Detention is not a merely administrative matter; it is a coercive measure that restricts personal liberty

and may affect the fairness of the entire criminal process. In a system committed to due process, such a measure should be based on objective legal criteria and exercised by an authority sufficiently independent from hierarchical or personal interests. However, ANKUM is simultaneously the suspect's superior officer, disciplinary authority, and detention decision-maker. That institutional fusion creates a persistent risk of conflict of interest and weakens the independence of the investigators who actually handle the case (Reksodiputro, 1994, p. 27; Putri, 2009, p. 47).

The doctrinal tension becomes more visible because the Indonesian statute itself implicitly recognizes functional separation. In practice, ANKUM does not usually conduct the technical investigation directly; Military Police or Oditurs collect evidence, question witnesses, and prepare the case file. Yet, when the most intrusive pretrial coercive measure must still depend on ANKUM's approval, investigators are placed in a subordinated position. Such a configuration does not merely risk inefficiency; it risks structural bias in criminal justice administration (Fadhlurrahman et al., 2019, p. 53; Rumbay, 2020, p. 3).

This article therefore asks three questions. First, is ANKUM's authority to order detention during investigation consistent with due process of law? Second, how does the Indonesian arrangement compare with the United States military justice system? Third, what normative reconstruction should be proposed to harmonize military discipline with procedural fairness?

METHOD

This study employs a normative juridical method through three complementary approaches. First, the statutory approach is used to examine the normative structure of Law No. 31 of 1997 and other relevant legal provisions governing military criminal procedure in Indonesia. Second, the comparative approach is applied to contrast the Indonesian framework with the United States military justice system, particularly with respect to the regulation of detention during the investigation stage. Third, the conceptual approach is utilized to assess the legality and propriety of detention authority in light of the principles of due process of law, impartiality, and protection against command interference.

The legal materials in this study consist of primary legal sources, including legislation and other binding legal instruments, as well as secondary doctrinal materials and relevant scholarly literature. These materials are examined to identify both the normative foundations and the theoretical implications of detention authority within the military justice system. The analysis is conducted using systematic interpretation to understand the internal coherence of the applicable legal framework and comparative interpretation to evaluate the similarities and differences between Indonesian and U.S. legal arrangements (Tambunan, 2013, p. 44; Rosidah, 2019, pp. 1–3).

RESULTS AND DISCUSSION

3.1. ANKUM's Detention Authority and the Due Process of Law Problem

The central defect in the current Indonesian model lies in the coexistence of two incompatible logics. On the one hand, criminal investigation requires professional objectivity, evidentiary assessment, and legal neutrality. On the other hand, military command rests on hierarchy, obedience, unit cohesion, and institutional loyalty. Law No. 31 of 1997 fuses these two logics by granting ANKUM a decisive role in detention while allowing other investigators to carry out the technical investigation. The result is a normatively unstable model in which the formal power over liberty is retained by command, whereas the functional knowledge of the case is held by the investigators (Law No. 31 of 1997 on Military Courts, arts. 69, 71(2), 74).

From a due process perspective, detention should be justified by law, necessity, and procedural impartiality. The Indonesian law indeed states that detention must be based on sufficient grounds and concerns such as flight risk, destruction of evidence, repetition of the offence, or disturbance to order. Yet the deeper problem is not only the existence of detention grounds; it is the identity of the authority who decides whether those grounds exist. Because ANKUM is the direct superior of the suspect, the detention decision is inherently vulnerable to institutional bias, whether in the form of undue protection, selective leniency, reputational shielding of the unit, or disproportionate severity designed to preserve internal discipline (Law No. 31 of 1997 on Military Courts, arts. 78–81; Reksodiputro, 1994, p. 27).

This structure also compromises investigative independence. Under Article 71(2), Military Police or Oditurs may implement detention, but only on ANKUM's order. Thus, investigators who directly assess evidentiary urgency cannot independently deploy detention when they believe it is necessary for the integrity of the investigation. Their role becomes derivative rather than autonomous. In procedural terms, such dependence is difficult to reconcile with a fair criminal process because the authority that knows the facts is not the authority that controls the coercive response (Law No. 31 of 1997 on Military Courts, art. 71(2); Putri, 2009, p. 47).

Accordingly, the issue is not whether military justice may have special procedures. It may. The real issue is whether a special procedure may place coercive pretrial authority in the hands of a superior officer whose institutional position is inseparable from the command relationship at the heart of the case. On this point, the answer should be negative. A military justice system may preserve discipline without allowing command authority to dominate detention decisions in criminal investigation.

3.2. Comparative Perspective: Indonesia and the United States

A comparison with the United States military justice system is instructive, not because it should be copied wholesale, but because it demonstrates a more elaborate balance between military necessity and procedural safeguards. Official U.S. policy places strong emphasis on the independence, objectivity, and effectiveness of Defense Criminal Investigative Organizations, indicating that investigative functions are expected to operate with a degree of professional separation from ordinary command interests (Department of Defense, 2023, pp. 1–3).

The Manual for Courts-Martial, United States (2024 edition) also subjects pretrial confinement to clear legal standards. R.C.M. 301 governs the reporting of offences, R.C.M. 302 governs apprehension, R.C.M. 305 governs pretrial confinement, and R.C.M. 306 governs initial disposition. Under R.C.M. 305(d), no person may be ordered into pretrial confinement except for probable cause, which

requires a reasonable belief that an offence triable by court-martial has been committed, that the confined person committed it, and that confinement is required by the circumstances. Continued confinement is then subject to a 48-hour probable cause determination and a 7-day review by a neutral and detached officer (Manual for Courts-Martial, United States, 2024, R.C.M. 301, 302, 305, 306).

To be precise, the U.S. system does not eliminate the commander from the process. Commanders may still play roles in ordering or reviewing aspects of restraint, especially in the initial stage. However, that role is not legally unbounded. The decision is cabined by probable cause, written justification, and neutral review. This procedural architecture matters because it prevents pretrial confinement from operating as a purely discretionary instrument of command. In other words, military hierarchy remains present, but it is juridically disciplined (Manual for Courts-Martial, United States, 2024, R.C.M. 305(i)–(k)).

The U.S. model is further shaped by a strong anti-command-interference norm. 10 U.S.C. § 837 (Art. 37) prohibits coercion or unauthorized influence over courts-martial and other military tribunals. Although that provision is principally directed to adjudicative actors, it reflects a broader structural commitment to preventing command dominance over military justice. The current U.S. Code also criminalizes intentional noncompliance with procedural rules under 10 U.S.C. § 931f (Art. 131f). Scholarly discussion of *unlawful command influence* treats command interference as one of the gravest threats to fairness in military justice because it diverts decision-making from law and evidence toward hierarchy and obedience (10 U.S.C. § 837, 2025; 10 U.S.C. § 931f, 2025; Marrazzo, 2022, pp. 611–612).

Seen comparatively, the difference between Indonesia and the United States is not that one system has commanders and the other does not. The real difference is the legal position of command within criminal procedure. In Indonesia, command retains decisive control over detention during investigation. In the United States, command is constrained by legal thresholds, neutral review, and a stronger anti-interference framework. For that reason, the U.S. model more effectively protects the due process values of impartiality, legality, and institutional accountability.

3.3. Proposed Reconstruction of ANKUM's Authority

The most defensible reform is not the abolition of command structure within the military justice system, but its reallocation. ANKUM should remain responsible for discipline, supervision, and administrative command. However, the authority to order detention during criminal investigation should be transferred to Military Police or Oditurs as professional law-enforcement actors. This would align coercive power with factual case knowledge and reduce the conflict of interest inherent in the current arrangement.

A reconstructed model should contain four elements. First, detention authority should be vested in the investigator handling the case, subject to explicit legal grounds and documentary reasoning. Second, ANKUM should receive prompt notification of detention as part of command administration, but should not have authority to approve or refuse it. Third, the law should require an early review by an independent or neutral authority within a fixed time limit, borrowing the logic, though not necessarily the exact form, of the U.S. probable-cause and neutral-review model. Fourth, the statute should expressly prohibit command interference in criminal investigation and detention decisions, thereby introducing an Indonesian analogue to the anti-*unlawful command*

influence principle (Manual for Courts-Martial, United States, 2024, R.C.M. 305; 10 U.S.C. § 837, 2025).

Such reform would not negate *unity of command*. Rather, it would place that principle in its proper domain. Unity of command is indispensable for operational readiness and internal discipline, but it should not determine whether a suspect is deprived of liberty in a criminal process. Once detention is understood as a *pro justitia* measure rather than an instrument of discipline, its control should follow the logic of criminal procedure, not the logic of hierarchical command.

CONCLUSION

ANKUM's authority to order detention during the investigation of military offences under Law No. 31 of 1997 is not fully compatible with the principle of due process of law. The problem is structural: the law places a coercive criminal-process decision in the hands of the suspect's superior officer, even though the technical investigation is generally conducted by Military Police or Oditurs. This arrangement creates a conflict of interest, restricts investigative independence, and weakens procedural impartiality (Law No. 31 of 1997 on Military Courts, arts. 69, 71(2), 74, 78–79).

The comparative perspective confirms that a military justice system can preserve command structure without subordinating detention to unchecked command power. The United States model retains military hierarchy but subjects pretrial confinement to probable cause, neutral review, and a broader anti-command-influence framework. That design offers a more persuasive reconciliation between discipline and due process (Manual for Courts-Martial, United States, 2024, R.C.M. 305; 10 U.S.C. § 837, 2025).

For that reason, Indonesian military procedural law should be reconstructed by transferring detention authority to professional investigators, limiting ANKUM to administrative and disciplinary functions, and codifying an explicit prohibition on command interference in criminal investigation. Only through such a reform can the military justice system move toward a model that is not only disciplinary, but also objective, accountable, and constitutionally fair.

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