Authority for Judicial Determinations in Connection Cases

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Abstract

The matter of connectivity is a criminal matter carried out by military personnel and civilians, both jointly (mede dader) and as accomplices (deelneming), so in the resolution process, it is regulated by several laws and regulations because it involves two jurisdictions, namely civilian and military courts. The purpose of this research is to demonstrate that in cases where the damage is more inclined towards military interests, the case is tried in military court, and if the damage is heavier on civilian/public (non-military) interests, there is a possibility of being tried in civilian court. A descriptive approach in qualitative research was used to systematically and quickly gather factual data in accordance with the description when conducting research. The results of this research show that although Article 90 of the Criminal Procedure Code (KUHAP) explains which jurisdiction handles the case, it is in the hands of the research team, including the prosecutor or chief prosecutor and military prosecutor or chief military prosecutor, based on Article 33 of the Supreme Court Law, the Supreme Court is worthy of taking over this authority.

1. Introduction

Responding to the attitudes and behavior of officials as enforcers of justice, it turns out that in the reality of life, it is not uncommon for law enforcement officials to commit procedural deviations because they do not understand or do not understand the provisions expressed and implied in the Criminal Procedure Code. (Nursadi, 2012). As we all know, the case of the Crime of Connection is a case of unlawful activity carried out by those

who carry out their mandate as law enforcement officials and civil society as citizens, both of whom are obliged to comply with existing legal provisions. Provisions for connection crimes are regulated in Articles 89-94 of Law Number 8 of 1981 concerning the Criminal Procedure Code and Articles 198-203 of Law Number 31 of 1997 concerning Military Justice. In these articles it is stated that Connexity is a criminal act in which the perpetrators (suspects) jointly commit it from within the General Court (civil) and the Military Justice (armed forces) environment which is examined by a team of investigators from a permanent team consisting of investigators as in Article 6 and the military police of the armed forces of the Republic of Indonesia and military prosecutors or high military prosecutors in accordance with their respective authorities according to the law applicable to the investigation of criminal cases (Syamsuddin, 2017).

As for the Connectivity case, it has a global nature and can also involve murder, corruption or other crimes. With the existence of the law above, it is clear that various groups of citizens in Indonesia, none of whom can be immune from the law, all of them, if they have been proven to have committed a criminal act, will receive appropriate punishment according to what they have done, both from among themselves. law enforcement officials or citizens seeking justice (Rohmawati et al., 2017). Furthermore, based on the formulation in the articles of the Criminal Procedure Code and the Criminal Code concerning Connection, a slight conclusion can be drawn that Connection is a type of criminal act that has a global nature because even though it contains elements of offenses (criminable acts) that are not clearly stated. In these articles it is not stated what the criminal offense is, but only contains about (Wantu, 2019):

1. Limitations regarding the meaning of connectivity; and
2. Procedures for resolving connection crime cases .

In the context of criminal law, what happens most often in real life, for example, is that most of what happens is connected to life crimes or corruption. The case of connectivity is when military members and civilians both carry out criminal cases together (mede dader) or participate (deelneming) so that the resolution process is regulated in several laws and regulations because it involves two courts including the general court and the military court. (Yanto, 2020). Efforts to avoid disparities in prosecution, disparities in decisions and create fair decisions are in accordance with Article 16 of Law no. 48 of 2009 concerning Judicial Power, Article 89 paragraph (1) of the Criminal Procedure Code and Article 198 paragraph (1) of Law no. 31 of 1997 concerning Military Justice so that connectivity cases are examined and the decision is at the connectivity trial.

If the decision of the Minister of Defense and Security has been approved by the Minister of Justice regarding the case, so that the team remains in accordance with Article 89 paragraph (2) of the Criminal Procedure Code, it can investigate the case. Then, if the administrative decision is not yet known, what happens? So it shows that the Minister of Justice and the Minister of Defense think that there is no need to consider matters of connectivity in this case. This is in accordance with the understanding of the doctrine of expressio unius est exclusio alterius, namely if you state something explicitly that applies to one situation, so that it will close other situations from applying it. According to Article 89 paragraph (1) of the Criminal Procedure Code, if a legal violation occurs in the form of a criminal act which is committed jointly with legal subjects who fall within the general court and military court, it is stated that the general court will try it. (Ilyas, 2013). It can be seen from the first sentence in the verse that it mandates prioritizing general justice over military justice. This is the philosophy that animates the KUHAP as a codification of the legal rules that apply in post-independence Indonesia, and such provisions are also not previously regulated in the HIR.

2. Research Method

This research is basically legal research with various approaches taken so that research problems can be answered, including: first, a statutory approach, second, a conceptual approach, third, a comparative approach. approach), and fourth, historical and philosophical approach. Data is processed in a qualitative way. By collecting written legal materials, systematization is then carried out based on the problem being studied. Then, a study and analysis of the legal material is carried out based on the problem using an appropriate theoretical basis. So that problems can be answered by systematizing legal materials, an assessment is then carried out so that they can accurately answer the meaning, position and implications of the law.

3. Results and Discussion

Civil and military (TNI) interactions in everyday life often give rise to many violations in the form of criminal acts committed together. Violations or criminal acts committed by the general public (not with military status) are tried in district courts, which are courts within the general justice environment. Meanwhile, violations in the form of criminal acts committed by the military (TNI), the military or the perpetrators of these criminal acts are tried in Military

Courts within the military justice environment (Kelsen, 2011). If a criminal act is committed jointly by civilians and the military (TNI), whether a general criminal act or a special criminal act, then the legal process goes through a connectivity court which is a court whose job is to adjudicate the event of a connectivity examination or connectivity court. (Hamzah, 2015) or connectivity is a system of justice that is applied to a criminal act in which the suspect or accused occurs participation (participation, deelneming)(Marpaung, 2014) or jointly (mede dader) between civilians and people with military status (TNI soldiers) (Ariman & Raghib, 2015).

Connectivity justice is a justice system for suspects who have committed offenses involving inclusion of civilians and military personnel, according to (Hamzah, 2015). Thus, the connectivity court carries out legal proceedings in cases involving offenses of participation between civilians and military personnel as regulated in Articles 55 and 56 of the Criminal Code. If a criminal offense occurs involving military or TNI soldiers (who are subject to military justice) and civilians (who are subject to general justice), then the primus inter pares which has the authority to adjudicate is a court within the scope of general justice. Connectivity justice arrangements are regulated in the provisions of the Criminal Procedure Code in CHAPTER general courts and military justice environments, shall be examined and tried by a court within the general justice environment unless according to the decision of the Minister of Defense and Security with the approval of the Minister of Justice the case must be examined and tried by a court within the military justice environment.

Provisions regarding connectivity are also specifically regulated in Articles 198 to Article 203 of Law Number 31 of 1997 concerning Military Courts. Article 198 paragraph (1) reads: (1) Criminal acts committed jointly by those included in the military justice judiciary and general court judiciary, are examined and tried by a court within the general court environment unless according to the Minister's decision with the approval of the Minister of Justice the case must be examined and tried by a court within the military justice environment. (Mawarni, 2018) S. R. Sianturi explained that criminal acts are actions that are prohibited from being carried out in certain circumstances, times and places (S.R. Sianturi, 2012) and if you violate it, you can face criminal threats in accordance with the law, because it is against the law and there is an element of error by an individual who has the ability to be responsible.(Moeljatno, 2015).

The development of crime in terms of number, form and mode also contributes to increasing connectivity cases. According to the Attorney

General's records in the 2015-2019 period, the potential for connectivity cases in the Military Justice environment was recorded at 23% of 6,404 cases or 1,473 cases, so that every year there is a potential for 295 connectivity cases. Article 89 paragraph (1) of the Criminal Procedure Code emphasizes that if a criminal offense is carried out by legal subjects together, it is included in military justice and general court, then the general court will try it. This verse has its first clause which contains the message that general justice takes precedence over military justice. This means that the Criminal Code has inspired the work of the Indonesian people in its first codification after independence. Please note that these provisions were not previously regulated by HIR. This case still has the possibility of being tried by military court, but the decision from the Minister of Defense and Security accompanied by the approval of the Minister of Justice still takes precedence with "THAT CASE" must be examined and tried by military court. This is based on the doctrine of noscitur a sociis, that a word must be interpreted by connecting the word to the sentence. Article 89 paragraph (1) of the Criminal Procedure Code contains the words "CASE ITU" which means that the Minister of Justice and the Minister of Defense and Security's decision is required to be a decision using a case-by-case approach (individual-casuistic).

The decision must be considered an administrative decision, that is, it must be completed once (einmalig). It is understood that there is conformity with the doctrine of ejusdem generis, where the interpretation of words is required within the group.(Pratiwi, 2020) The shift in authority creates a juridical and philosophical basis in Article 89 Paragraphs (2) and (3) of the Criminal Procedure Code that requires reinterpretation. The Supreme Court Law (Law Number 14 of 1985 which was amended to become Law No. 3 of 2009), in fact the connectivity courts in the two ministries are no longer compatible with the current situation, considering that their existence has been transferred to the Supreme Court. Article 33 of the Supreme Court Law explains that the termination of all disputes adjudicating authority at the first and final levels is carried out by the Supreme Court, including court disputes in the judicial environment and other environments. (Maulana, 2019). Article 33 of the Supreme Court Law has provisions that can be compared to Article 90 of the Criminal Procedure Code which is explained further below. If this case has been terminated, it will include a connectivity case, so it will combine the personnel elements of the panel of judges.

If the general court hears the case, then the chairman of the legal panel is a judge from the general court, while the 2 member judges, one of whom comes

from the military court and the other from the general court. However, it would be different if the case was handled by military justice. In Article 94 paragraph (5) of the Criminal Procedure Code, the Minister of Defense and the Minister of Justice have the authority to provide proposals for appointing member judges. Article 94 paragraph (5) has provisions that are no longer appropriate based on the judge no longer being in the two ministries. The panel of judges appointed by the minister can harm the judge's independence when carrying out their duties. If Article 89 paragraph (1) of the Criminal Procedure Code contains trial examinations, then Article 89 paragraph (2) contains investigations. The second paragraph, "Investigation of criminal cases in accordance with paragraph 1 is carried out by 1 permanent team which includes investigators in accordance with Article 6 of the Criminal Procedure Code and the military police of the Indonesian Armed Forces (ABRI) and military prosecutors or high military prosecutors based on their respective authorities in accordance with applicable law in investigating criminal case". In Article 89 paragraph (3), the formation of the team in accordance with paragraph 2 is based on a joint decision letter from the Minister of Justice and the Minister of Defense and Security. Philosophically, there was another clash.

If Article 89 paragraph (1) gives the impression that there are greater opportunities for general justice, Article 89 paragraph (2) instead starts with a permanent team investigation with military nuances. Continuing with Article 90 of the Criminal Procedure Code, determining the environment for judging is in the hands of researchers who include prosecutors and military prosecutors or high-ranking military prosecutors. In fact, it has been explained in the discussion above that the Supreme Court should be the one taking this authority in accordance with Article 33 of the Supreme Court Law. In Chapter XI of the Criminal Procedure Code which contains Articles 89 to. 94 KUHAP has complex provisions when the problem has a prosecution and investigation perspective. An example can be taken of a case where there are allegations of corruption where TNI officers were involved in the purchase of a helicopter which has been investigated by the Corruption Eradication Commission. In this case, several suspects have been identified, such as military and civilians. So this raises the question: has the Corruption Eradication Committee done enough to investigate this case or is it in accordance with the connectivity case procedures in the Criminal Procedure Code?

In order for the question to be answered, the reference lies in the matter of connectivity. This case culminates in the trial stage, so there is an opportunity

for this case to enter and be prioritized in general court. Based on the philosophy of Article 89 paragraph (1) of the KUHAP, the Corruption Eradication Commission already has its own legal regulatory basis, so that connection researchers based on Article 90 of the KUHAP (which includes prosecutors/high-ranking prosecutors and military prosecutors/high-ranking military prosecutors), are no longer appropriate maintained. The assumption that prosecutors or high-ranking prosecutors are involved is because of the potential the case has for entering general court, and the military prosecutor or high-ranking military prosecutor involved is because of the potential the case has for entering military justice. Through the KPK carrying out investigations, it can be predicted that the outcome of the case will be a general trial. So this matter is just an ordinary matter, and not a connection

The Determination of the Courts Who Have the Authority to Try TNI Members in Connection Cases

Previous connectivity trials involved Ministries (Minister of Justice and Menhankam/Pangab) and Institutions (Chairman of the Supreme Court and Attorney General) who were guided by the Joint Decree of the Minister of Defense and the Minister of Justice No.: Kep/10/M/XII/1983 – No. : M.57.PR.09.03 of 1993 dated December 29, 1983 concerning "Establishment of a Permanent Team for Investigating Criminal Cases and Joint Decisions of the Minister of Justice, Minister of Defense/Commander of Defense", Chairman of the Supreme Court, and Attorney General of the Republic of Indonesia No. Kep/B/61/XII/1971 dated 7 December 1971 concerning Examination of Connection Cases. However, with the publication of new laws and regulations to regulate changes in the nomenclature of ministries, the position, function and authority of ministries and institutions (K/L) relating to the process of resolving connection cases as well as the existence of guidelines from the Supreme Court regarding the authority to try members of the TNI as perpetrators of criminal acts in connectivity matters, then there are three (3) changes to statutory regulations which cause these provisions to be legally declared mutatis mutandis no longer valid.

First, the change in position of the Military Court, which was originally at TNI Headquarters, was changed to the Supreme Court in accordance with the mandate of Article 24 Paragraph (2) of the 1945 Constitution in conjunction with Article 2 of Law no. 4 of 2004 concerning "Judicial Power" in conjunction with Article 18 of Law Number 48 of 2009 concerning Judicial Power in conjunction

with Presidential Decree Number 56 of 2004 concerning "Transfer of the Organization, administration and finances of Military Justice from TNI Headquarters to the Supreme Court of the Republic of Indonesia". Second, changes to the nomenclature, functions and authority of Ministries and Institutions (Dephankam/Pangab, Department of Justice and Supreme Court) in Article 89 paragraph (1) of the Criminal Procedure Code stipulate that in connection cases they will be tried and examined in general courts unless based on the Minister of Defense and Security with approval from the Minister of Justice which requires being tried and examined in a military court environment. This provision was subsequently amended based on Article 16 of Law no. 48 of 2009 concerning Judicial Power which regulates that connection cases will be tried and examined at the general court unless certain circumstances arise based on the decision of the chairman of the Supreme Court where the case must be tried and examined by the Military Court.

Third, Presidential Regulation Number 15 of 2021 concerning the Organization and Work Procedures of the Indonesian Prosecutor's Office which adds "Junior Attorney General for Military Crime in the Attorney General's Organization who has the duties and authority of the Prosecutor's Office in the field of technical coordination of investigations and prosecutions by the Oditurate and responsible handling of connection cases to the Attorney General." Examples of connection cases in criminal acts of corruption, specifically Article 5 of Law no. 46 of 2009 concerning "Corruption Crime Courts" stipulates that the Corruption Court is the only court with the authority to examine, try and decide cases of criminal acts of corruption. (Jauzi, 2019). Referring to this article, if there are TNI members who commit corruption together with civilians, then both will be tried in the Corruption Court, but based on SEMA No. 07 of 2012 concerning the Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber stated explicitly that the authority to try members of the TNI who are corrupt is the Military Court with the consideration that Article 5 of Law Number 46 of 2009 is based on the act of corruption, not the perpetrator.

Linked to the provisions of Article 9 of Law Number 31 of 1997 concerning Military Justice which determines that the Military Court has the authority to accept and try criminal cases by (Widijantoro, 2020):

a. Military;
b. In accordance with the law, it is equated with the military;
c. Member of a group or agency or service that is considered or equated with

the military in accordance with the law;

d. An individual who does not fall into the categories in letters a, b and c but who, based on the decision of the Commander in Chief based on the approval of the Minister of Justice, must be tried in a Military Court.

Thus, whatever the criminal act, whether a crime within the Criminal Code or outside the Criminal Code (including criminal acts of corruption), if the perpetrator is a member of the TNI, he will still be investigated and tried in the Military Court. The issue of determining which court has the authority to try members of the TNI who commit corruption together with civilians refers to Law No. 48 of 2009 concerning Judicial Power in conjunction with Law No. 31 of 1997 concerning Military Justice to be resolved within the General Court unless there are specific circumstances of loss. is on the military side, then based on the decision of the Chairman of the Supreme Court it will be resolved in the Military Court.(Rosidah, 2019).

A case carried out jointly by someone who is subject to general court jurisdiction and military court jurisdiction should be examined and tried simultaneously in the District Court. You can imagine how difficult it is for a witness to be examined at a military court and then on another occasion he must also be examined at a district court. Moreover, military courts are not always located in every region/city. This kind of thing is clearly ineffective and also requires quite a lot of money. Apart from that, if you look closely at the sound of the provisions of the article above, the text of the article is one complete sentence without punctuated by periods. This indicates that the meaning of the word together apart from being intended for criminal acts or criminal acts carried out jointly by those who are subject to general justice and military justice, also contains the meaning that they must be tried together or in one joint file. (Hasani, 2013). The word together is even more accurate (grammatically) if its meaning is read in Indonesian dictionaries, such as in the large Indonesian dictionary which gives the following meaning: "Together, simultaneously, all, at the same time, along with". Meanwhile, according to the complete Indonesian dictionary, the meaning oftogether means "Together".(Hartono, 2010).

Apart from that, it is also related to the provisions of Article 141 of the Criminal Procedure Code that the public prosecutor can combine cases and make them into one indictment, if at the same time or almost the same time there are several criminal acts/criminal acts related to others.(Langi, 2016) In the explanation of the article, it is said to be related to others if the criminal act/act is committed by more than one person working together and is carried out at

the same time. Therefore, the word jointly is related to the case of connectivity, which means that the civilian defendants and military defendants must be together or simultaneously or jointly tried in one joint file as defendants, in other words they cannot be divided or divided into separate files. (Nasution, 2002). Meanwhile, according to Nikmah Rosidah in her book entitled "Military Justice Law" it is stated that the position between the General Court and Military Court in Positive Law regarding cases of connectivity between the two is a place for resolving criminal cases carried out jointly by both civilians and the military. However, the position of the two in resolving connectivity cases still requires joint research, bearing in mind that they are still waiting for the results of the decisions made by the Prosecutor/High Prosecutor and Military Prosecutor/High Military Prosecutor first, which will later be brought to court.

The Connectivity Case Trials in the Military Justice Environment

The purpose of punishment in the combined theory is to base punishment on the principle of retribution and the principle of retaliation for community order, in other words these two reasons are the basis for criminal imposition, but view punishment as law enforcement with the aim of protecting justice and the welfare of society. (Daris Warsito, 2018). Handling criminal cases really requires good cooperation from the community. Basically, there are many differences of opinion regarding the purpose of punishment, but there is one thing that cannot be denied, namely that the purpose of punishment is a means of preventing crime and reforming the convict, who does not necessarily mean that after being released, he will become aware, or regret it and a feeling of guilt may even arise. Even after being free, you will feel a sense of revenge. This shows that the severity of a crime is not a guarantee that you will be aware of the mistake you have committed. This combined theory attempts to combine the concepts adopted by absolute theory and relative theory.

So it can be concluded that the purpose of punishment is that apart from imposing a crime it must be a deterrent, it must also provide protection and education for the public and the convict and also enforce the law of the rules that have been formulated by government officials in running their government. (Wahyuni, 2017). Punishment of perpetrators of criminal acts is a dynamic process that includes continuous and careful assessment of the targets to be achieved and the consequences that can be chosen from certain decisions regarding certain matters at any given time. (Muaidi, 2019). This

fosters the idea that collecting the materials in this problem will support solving the problem in the best possible way. If the punishment carried out is not appropriate, it will have a deterrent effect on the suspect who committed the crime and will not give rise to the order required by the law. The question of how the relationship between law and politics is always interesting. As we know, if a criminal sentence is imposed in a military court against a military member, the sanctions given may be lighter and will be different if a military member is punished in a general court.

Then there will be disparities in sanctions (sanction gaps) which will result in legal uncertainty. Therefore, sentences involving military and civilian members should be carried out in general courts (Jurio et al., 2019). There are a number of advantages if a corruption case involving TNI members and civilians is handled in a related manner. First, it makes coordination easier and accelerates the resolution of corruption cases. Because, if the investigation and prosecution process is carried out by a connectivity team, there will be no such thing as "going back and forth" between investigators and prosecutors. Second, the process of handling corruption cases handled by law enforcement, especially the Corruption Eradication Committee, can be more transparent and accountable than what has been handled by the TNI itself. According to the author's analysis, there are advantages and disadvantages in court connectivity in specifically handling corruption cases. These advantages and disadvantages are the foundation for carrying out connectivity trials, because if connectivity trials do not have advantages then they will definitely not be included in the Law and the Criminal Procedure Code. (Dwiputrianti, 2009).

If we assess the advantages of connected justice according to the facts above, namely that it creates legal certainty, sanctions given to suspects become fairer, does not create a legal culture between military and civilian members, facilitates coordination between the Corruption Eradication Committee and POM TNI in resolving corruption cases that occur, creating transparency and accountability in law enforcement.(Jurio et al., 2019) Judicial connectivity aims to facilitate the process of cases carried out jointly between two different courts, especially in corruption cases. Meanwhile, if the lack of judicial connectivity is not implemented, there is no legal certainty, there is no justice in law enforcement, it complicates the process of investigating corruption cases, limits the authority of the Corruption Eradication Committee in handling corruption cases, creates disparities in

sanctions, there is no legal transparency. (Suradi, 2019). From these shortcomings we can see that connected justice should be carried out in order to create laws that are fair, firm and accountable. We can conclude that the advantages and disadvantages of connectivity justice in cases of criminal corruption described above are a reference that connectivity justice will be very profitable if implemented. The purpose of creating a coexistence court itself is to make it easier to handle cases involving two different courts.

4. Conclusion

Based on the explanation of the discussion above, the conclusions that can be given are as follows: Examination of connectivity cases does not have to be carried out in a connectivity manner, in the case of case files being split (splitting), the case is not examined through a connectivity court but rather according to the procedural law and court of each of the perpetrators. both military and civilian. If the perpetrator is a civilian, criminal procedure law (formal law) is applied in accordance with Law Number 8 of 1981 concerning the Criminal Procedure Code and is examined and tried in the General Court. Meanwhile, if the perpetrator is a member of the TNI, the military criminal procedural law (HAPMil) is applied in accordance with Law Number 31 of 1997 concerning Military Justice and is examined and tried at the Military Court. Even though it is carried out separately (splitting), connectivity case examinations will not give rise to disparities in prosecution and disparities in decisions because the process of handling cases at the investigation and prosecution stages will be coordinated and controlled by Jampidmil and/or the Corruption Eradication Commission. Connectivity justice should be carried out in order to create laws that are fair, firm and accountable. We can conclude that the advantages and disadvantages of connectivity justice in cases of criminal corruption described above are a reference that connectivity justice will be very profitable if implemented. The purpose of creating a coexistence court itself is to make it easier to handle cases involving two different courts. The connectivity case settlement procedure is a form of method for resolving criminal acts carried out jointly by those who are subject to the jurisdiction of the General Court and Military Court, and the investigative team in connectivity cases, including:

a) Investigations, carried out by Investigators from the National Police Headquarters, Investigators from the Military Police at the Military Police Center and Military Prosecutors or High Military Prosecutors

from the TNI General Authority;

b) Determining the judicial environment that has the authority to examine connectivity cases;
c) Preparation of a Decree on Handover of the Case by the Officer handing over the case (PAPERA) to the public prosecutor through the Military Prosecutor/High Military Prosecutor; and
d) The public prosecutor makes notes in the investigation team's BAP which have been carried out by the investigation team, these notes take the form of taking over the investigation team's BAP.

The position between General Courts and Military Courts in Positive Law regarding cases of connectivity between the two is a place for resolving criminal cases carried out jointly by civilians and the military. However, the position of the two judicial bodies in resolving connectivity cases still requires joint research, bearing in mind that they are still waiting for the results of the decisions made by the Prosecutor/High Prosecutor and the Military Prosecutor/High Military Prosecutor first, which will later be brought to the District Court or Military Court. depending on the level of damage from the impact of the case that will be tried.

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