



Jurisdictional Dualism (The Debate on the Handling of Military and Civilian Corruption Cases in Indonesia)

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ABSTRACT

The dualism of jurisdiction in handling corruption crimes involving civilians and military actors is a complex problem in the Indonesian legal system. Significant differences in legal procedures between the military judiciary and the general judiciary, coupled with coordination challenges between institutions such as the Corruption Eradication Commission (KPK) and military institutions, create obstacles in the enforcement process. One of the main challenges is the implementation of Article 42 of the KPK Law which authorizes the KPK to coordinate and control the investigation, investigation, and prosecution of corruption cases involving perpetrators from two different jurisdictions. This study aims to analyze the dynamics of the implementation of the KPK authority, identify inhibiting factors, and evaluate the legal mechanisms that can overcome this problem. The research method used is normative or doctrinal law, with a legal, historical, comparative and conceptual approach. Data were collected through the analysis of primary legal materials such as statutes and court rulings, as well as secondary and tertiary legal materials. The results showed that the strengthening of inter-institutional cooperation, harmonization of law between the military and general courts, as well as the reform of the law on Military Justice is needed to improve the effectiveness of handling corruption cases. Cases such as allegations of corruption in Basarnas and the procurement of the AW-101 helicopter highlight the importance of applying the principle of equality before the law, transparency in legal processes, and the use of modern technology by the KPK. This study recommends the establishment of clear Standard Operating Procedures (SOP) and the revision of laws and regulations to ensure that every perpetrator of corruption, whether civilian or military, is treated fairly and equally in accordance with applicable law.

Keywords: Dualism Of Jurisdiction, Corruption, Connectivity

Background

Corruption has become one of the troubling social and political problems in many countries, including Indonesia. The impact is enormous, eroding public confidence in the government, hindering economic growth, and creating inequality in society. To solve this problem, Indonesia established the Corruption Eradication Commission (KPK) and passed various laws aimed at combating corruption.¹ Corruption (Tipikor) that has been rampant in Indonesia has not only caused losses to the country's finances and economy, but also violated the social and economic rights of the community. Corruption has not only hindered the growth and continuity of national development aimed at creating a just and prosperous society, but has also developed into an extraordinary crime that requires special treatment.²

Law No. 30 of 2002 concerning the Corruption Eradication Commission, which was later amended through Law No. 19 of 2019, regulates the authority of the KPK to coordinate and control the process of investigation and prosecution of corruption crimes involving parties under the jurisdiction of military and general courts. The difference in jurisdiction between the military court and the General Court often arises when dealing with corruption cases, particularly those involving military personnel. According to Article 65, paragraph (2), of Law Number 34 of 2004, concerning the Indonesian National Army (TNI), military members who commit general crimes can be tried in the general court if the offense is not related to military duty. This demonstrates the flexibility in the Indonesian legal system to ensure that the principles of justice and human rights are maintained.³

In practice, corruption cases involving TNI officers often trigger debates related to legal authority. For example, the corruption case in Basarnas involving Kabasarnas Henri Alfiandi and several other suspects, including members of the TNI, has been in the spotlight. Basarnas, as a civil government institution, is directly under the president based on Law Number 29 of 2014. Thus, corruption cases in Basarnas should be under the jurisdiction of the General

¹ Setiyawan, D., & Muhtar, M. H. (2023). Contemplating the morality of law enforcement in Indonesia. *Journal of Law and Sustainable Development*, 11(10), e1261-e1261.

² Muhtar, M. H. (2019). Model politik hukum pemberantasan korupsi di Indonesia dalam rangka harmonisasi lembaga penegak hukum. *Jambura Law Review*, 1(1), 68-93.

³ Harahap, T. K., Prayuti, Y., Latianingsih, N., Damanik, A., Maheni, T., Farida, I., & Muhtar, M. H. *Mustaqim*.(2023). *PENGANTAR ILMU HUKUM*. Penerbit Tahta Media. Hlm. 91

Court, in accordance with the provisions of Law No. 46 of 2009 on corruption courts. The corruption court is part of the general judicial system designed to deal with corruption cases specifically, including those with broad impacts, such as those involving Basarnas.

However, this case sparked a polemic due to the involvement of active TNI members in acts of corruption within the civilian environment. The KPK leadership argued that the KPK had the authority to handle the case under Article 42 of the KPK Law, which gives the KPK the authority to control the legal process in corruption cases. Instead, the TNI argued that the case should have been handled by military justice, in accordance with the provisions of the Military Justice Law. This difference in views creates confusion in the community and raises questions about the mechanisms for handling corruption cases involving members of the military in the context of civilian institutions.

This dynamic reflects the complexities in Indonesia's legal system, particularly in handling cases involving military and civilian aspects. On the one hand, there are concerns that the handling of corruption cases by the military judiciary does not always result in the expected justice. Several previous cases, such as corruption in the Maritime Security Agency (Bakamla) and the procurement of the Agusta Westland (AW)-101 helicopter, show that the military courts have not been able to provide effective results in combating corruption. On the other hand, there is a need to ensure that law enforcement is conducted with respect to applicable legal procedures and maintaining public trust in law enforcement institutions. The Basarnas case also raises new dynamics in the handling of corruption in Indonesia.

The determination of suspects by the KPK against members of the TNI in this case is considered a step in accordance with the authority of the KPK. In fact, the legal principle of *lex posterior derogat legi priori*, which says that new rules can supersede old ones, supports the claim that the KPK is following the KPK Law, which is a more recent and specific rule for handling corruption cases. Nevertheless, the difference of opinion between the KPK and the TNI shows that there is still room to improve the legal arrangements related to jurisdiction in cases like this.⁴

Coordinating Minister for Political, Legal, and Security Affairs Mahfud MD stated that the handling of this case through military justice was in accordance with applicable law, referring to Law Number 31 of 1997 on Military Justice. However, he also acknowledged that the debate between the KPK and the TNI reflected the complexities of the law in Indonesia, particularly regarding cases involving members of the military in a civilian context. To overcome this uncertainty, it is important to reconstruct Article 42 of the KPK Law in order to provide further clarity on the legal procedures to be followed in cases of corruption involving TNI members in the civilian environment.

Reconstruction of Article 42 could include substantial changes to case handling procedures, including a clearer division of jurisdiction between the general and military courts. This step is important to ensure that the law is applied consistently and fairly, as well as to prevent conflicts between institutions in law enforcement. In this context, the Indonesian legal system must continue to evolve to handle increasingly complex corruption cases, both in terms of criminal law and relationships between law enforcement institutions.

Corruption remains a serious threat to democracy in Indonesia as it undermines the principles of justice, transparency, and the rule of law. The impact is not only felt in the form of economic losses but also in weakening public confidence in the government and creating inequality in society. To overcome this challenge, a joint commitment from all parties, including the KPK, TNI, and civil society, is needed to ensure that every corruption case is handled transparently, fairly, and in accordance with applicable legal principles. Thus, the eradication of corruption in Indonesia can be more effective and support the achievement of fair national development goals.

Formulation Of The Problem

1. How is the dynamics of handling corruption by the KPK regulated by the coordinating and controlling phrase in Article 42 of the KPK Law in handling corruption cases involving connections between civilian and military actors?
2. How are the inhibiting factors faced by the KPK in applying Article 42 of the Corruption Eradication Commission law to corruption cases involving suspects who are subject to military and general courts?

Research Methods

The research method used in this study is normative or doctrinal law, which focuses on the analysis of written regulations and other legal materials. Approaches applied include legal, comparative, historical, and conceptual approaches. The legal approach is used to analyze relevant legal norms, while the comparative approach aims to see the differences and similarities in legal systems between countries. The historical approach traces the development of regulation, and the conceptual approach examines legal concepts to understand doctrines and principles related to research issues. Legal materials used consist of primary materials, such as legislation and court decisions; secondary materials, such as literature and articles; and tertiary materials, such as legal dictionaries. The collection technique is carried out through literature studies, while the analysis of legal materials is carried out through legal interpretation and construction. We use literal, historical, and contextual interpretations to interpret and evaluate legal norms in our research. This process ensures in-depth analysis of the evolution of the law and its application in relation to the KPK's authority in dealing with corruption.

⁴ Abdussamad, Z., Muhtar, M. H., & Mustapa, M. I. (2024). Historical evolution of Indonesia's legal system (Transformations across different eras). *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 23(3), 1–15.

Discussion

1. The dynamics of handling corruption by the KPK regulated by the coordinating and controlling phrase in Article 42 of the KPK Law in handling corruption cases involving connections between civilian and military actors

Connectivity justice is a legal mechanism designed to deal with criminal acts involving offenders from two different jurisdictions, namely civil and military. In the context of corruption involving both parties, the authority of the Corruption Eradication Commission (KPK) is one of the important elements that allows effective handling of cases. Based on Article 42 of Law No. 30 of 2002 concerning the KPK, which was later strengthened through Law No. 19 of 2019, the KPK has the authority to coordinate and control the investigation and prosecution of corruption cases. This includes cases involving both civilian and military actors. Nevertheless, the authority upholds the principle of *Dominus Litis* and recognizes the Attorney General of the Republic of Indonesia as the primary prosecution institution, in line with the Single Prosecution System, which elevates the attorney general to the position of public prosecutor.⁵ Therefore, the term "public prosecutor" in the law's provisions encompasses prosecutors who serve as public prosecutors in the KPK.

This establishes the KPK as a unique institution under the regulation of legal experts, tasked with addressing corruption crimes perpetrated by both military and civilian entities. Article 11 of Law Number 19 of 2019 confirms that the KPK has the authority to investigate and prosecute corruption cases involving law enforcement officers, state officials, or other parties related to the corruption crime. In this context, the KPK not only serves as a supervisory institution but also as a controller in legal proceedings involving actors from both jurisdictions. This authority is also in line with Article 65, paragraph (2), of Law Number 34 of 2004 concerning the TNI, which explains that soldiers are subject to military justice for violations of the military criminal law and the General Court for violations of the general criminal law.

In dealing with corruption cases involving civilian and military actors, the KPK is required to establish close coordination with military institutions, such as the Military Police and the military Secretariat. Investigation and prosecution processes are often carried out collaboratively through the formation of joint teams. This cooperation is necessary to ensure that there is no overlap in authority and to increase efficiency in legal proceedings. The handling of connectivity cases has its own challenges, given the significant differences in legal procedures between civilian and military courts. Military justice has different rules and hierarchies than general justice, so it is necessary to harmonize laws that allow these two legal systems to work synergistically.

The KPK must also ensure that the principle of equality before the law is applied in every stage of handling cases. Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution affirm that all citizens have equal standing before the law without discrimination. In the case of connectivity, the KPK must ensure that civilian and military actors are treated equally in accordance with applicable law.⁶ For this reason, it is important for the KPK to establish close cooperation with military institutions, especially in the investigation and prosecution of connection cases. This cooperation includes joint training, formal agreements, and the preparation of mutually agreed-upon Standard Operating Procedures (SOPs). Connectivity cases that have been handled by the KPK show a dynamic that requires special attention. One of the prominent cases is the procurement of AW-101 helicopters involving private parties and TNI personnel. In this case, there is a difference in the final result, which indicates the inequality of treatment before the law. The perpetrators from among civilians were punished, while the TNI personnel involved were not sentenced.

A similar situation occurred in the Bakamla corruption case, which involved bribery in the procurement of integrated information transport devices. The latest case involves allegations of corruption in Basarnas, specifically involving TNI Vice Marshal Henri Alfiandi and Lt. Afri Budi Cahyanto. In this case, the handling was taken over by the Military Police Centre (Puspom) of the TNI, although the KPK had determined a suspect. Challenges in the handling of connectivity cases also include differences in legal procedures between civilian and military courts. Investigations and investigations in military justice are carried out by the military police and the military Oditurat on the basis of the military procedural law, which has its own hierarchy and discipline. Meanwhile, in the General Court, this process is carried out by the KPK or the police based on the procedures stipulated in the Criminal Procedure Code. In the prosecution process, the prosecutor from the AGO or KPK plays a role in the general court, while the military prosecutor serves in the military court. This difference raises the need to harmonize procedures so that enforcement proceedings can proceed effectively without violating suspects' rights.⁷

The effectiveness of the KPK handling corruption cases also depends on the extent to which this institution can utilize technology, cooperate with other institutions, and maintain transparency and accountability at every stage of the legal process. The commission has used advanced technologies, such as data analysis software and electronic case management systems, to improve efficiency in evidence collection and analysis. In addition, transparency in the process of handling cases is an important element of building public trust in this institution. In the face of existing challenges, the KPK needs to strengthen coordination with military institutions and other law enforcement agencies. One way that can be done is to draw up a clear and mutually agreed SOP. This SOP should cover all stages of handling the case, from investigation to trial, by ensuring that there is no discrimination against the perpetrator from any jurisdiction. Harmonization of laws is also an important step to equalize procedures and standards for handling corruption cases involving civilians and military actors. With this integrated approach, the KPK can ensure that every perpetrator is treated fairly and equally before the law. In

⁵ Agustino, L., Fitriani, I., Wicaksana, H. H., & Daelami, A. (2021). Corruption Eradication in Indonesia: The Experience of The Corruption Eradication Commission (KPK). *Journal of Governance*, 6(2). <https://doi.org/10.31506/jog.v6i2.12126>

⁶ Sosiawan, U. M. (2019). Peran Komisi Pemberantasan Korupsi (KPK) Dalam Pencegahan dan Pemberantasan Korupsi. *Jurnal Penelitian Hukum De Jure*, 19(4), 517. <https://doi.org/10.30641/dejure.2019.v19.517-538>

⁷ Korompot, M. I. S., Al-Fatih, S., & Pradhan, D. (2021). The Principle of Equality Before the Law in Indonesian Corruption Case: Is It Relevant? *Journal of Human Rights Culture and Legal System*, 1(3). <https://doi.org/10.53955/jhcls.v1i3.13>

exercising its connectivity authority, the KPK has a great responsibility to ensure that the legal process runs transparently, accountably, and in accordance with the principle of equality before the law.

Despite facing various challenges, such as differences in legal procedures and lack of coordination between institutions, the KPK still has enormous potential to strengthen efforts to eradicate corruption in Indonesia. Cases such as the procurement of AW-101 helicopters, corruption in Bakamla, and corruption in Basarnas show that much work still needs to be done to ensure effectiveness and fairness in handling connectivity cases.

The principle of equality before the law must be the main foundation in every step of the KPK's handling of cases. In this context, the KPK must ensure that all perpetrators, regardless of status or background, receive equal treatment in accordance with applicable law. Legal harmonization between civil and military courts, strengthening interagency coordination, and capacity building through joint training are steps that can be taken to achieve this goal. With sustained efforts, the KPK can maintain its central role in combating corruption in Indonesia, particularly in cases involving both civilian and military actors.

2. The KPK faces inhibiting factors when applying Article 42 of the Corruption Eradication Commission law to corruption cases involving suspects who are subject to both military and general courts.

The process of examining corruption crimes, especially those involving members of the military without the involvement of actors from civilian circles, is regulated under the Military Criminal Procedure Code. This gives the military justice system unique characteristics that distinguish it from the general justice system. The Military Criminal Procedure Code solely refers to the term "investigation" without specifying the investigation stage, as outlined in the Code of Criminal Procedure (KUHP). The investigation in this context is carried out by military investigators, consisting of superiors who have the right to punish, military police, and prosecutors.⁸

The investigation is aimed at collecting sufficient evidence to identify a suspect in a criminal offense. After the investigation phase is completed, the case file will be transferred to the military prosecutor for further investigation before being forwarded to the prosecution stage. The prosecution process in military justice is carried out by military prosecutors, who are responsible for bringing cases to the military courts. The process of trial in military courts itself is essentially similar to the process in general courts, although there are some fundamental differences in the stages of the trial. The stages include preparation for the trial, detention of the accused, summons of witnesses and defendants, examination of evidence, prosecution, and defense, as well as deliberation and decision-making.

All these stages adhere to the code of military criminal procedure, which provides specific guidelines for its execution, particularly in terms of hierarchy and military discipline. The case of alleged corruption in Basarnas involving two active military officers is a clear example of the challenges that arise in handling corruption crimes involving actors from the military environment. The case not only highlights legal issues but also points to the need for an in-depth revision of the legal framework governing military justice, including Law No. 31 of 1997 on Military Justice. Article 47, paragraph (1), of Law No. 34 of 2004 concerning the Indonesian National Army (TNI) states that a soldier can only occupy a civilian position after resigning or retiring from active military service. However, the reality on the ground often does not correspond to this provision.

To occupy a civil position, as in Basarnas, Article 47, paragraph (3), requires a request from the leadership of the relevant department or institution and compliance with applicable administrative provisions. This indicates a gap in the implementation of the rules that allow active military officers to occupy civilian positions without proper procedure. The Basarnas case also confirms that corruption does not know the limits of civil or military status. As a specific crime, corruption is subject to the Corruption Eradication Act and the Corruption Eradication Commission (KPK) Act. Therefore, the treatment of corruption cases should not differ based solely on whether the perpetrator is a member of the military or a civilian. However, the fundamental issue impeding the resolution of this case is the ongoing stagnation in the revision of the law on military justice.

The revision has long been promised by the president, even included in the National Legislation Program (Prolegnas) in the DPR. This delay resulted in the privilege and discriminatory treatment of TNI soldiers who committed criminal acts, including corruption. Another obstacle in the handling of cases of connectivity between civilian and military actors is the bureaucratic complexity involving different law enforcement institutions. The KPK, as an independent law enforcement agency, follows the procedure of the Civil Criminal Procedure Code provided for in the code of Criminal Procedure. Meanwhile, the military police and the military Oditurat operate under distinct laws of military procedure, each with their own unique hierarchies and organisational structures. Internal processes in the military system are often closed and nontransparent, thus creating obstacles for the KPK in accessing the information and evidence needed for investigations.

These differences in procedures and hierarchies created challenges in coordination between the KPK and military institutions. For example, internal military procedures often take longer, which can hinder or slow down the KPK's handling of cases. In addition, differences in decision-making and the way cases are handled often lead to uncertainty, even unnecessary delays. This underscores the need for legal harmonization, which allows these two legal systems to operate synergistically without violating the rights of perpetrators or compromising the effectiveness of law enforcement.

Bureaucratic obstacles pose a significant challenge in managing connectivity cases. To overcome this challenge, a strategic approach is needed that involves improving communication and coordination between the KPK and military institutions. In addition, the KPK needs to improve its human resource

⁸ Timang, Y., Widayati, W., & Darmadi, N. S. (2022). The Criminal Policy in Efforts to Overcome Crimes Perpetrated by the Indonesian National Army. *Law Development Journal*, 4(3), 480. <https://doi.org/10.30659/ldj.4.3.480-494>

capacity and budget to deal with the complexity of connectivity cases. By overcoming these barriers, the KPK can strengthen the effectiveness of handling corruption cases and ensure that all perpetrators, both civilian and military, are treated fairly and equally before the law.

The alleged corruption case in Basarnas also shows the importance of structural reforms in the military and general justice systems. In addition to the revision of the law on military justice, it is also important to ensure that TNI soldiers do not occupy civilian posts without fulfilling the conditions prescribed by law. The placement of active military personnel in civilian positions not only violates the principles of state administration but also opens up opportunities for abuse of authority that leads to corruption.

The KPK, as an institution responsible for combating corruption, must continue to strengthen its role in handling connectivity cases. One of the steps that can be taken is to strengthen cooperation with military institutions, such as the Military Police and the Military Oditurat. This cooperation includes joint training, the formation of a joint team of investigators, as well as the preparation of mutually agreed Standard Operating Procedures (SOP). This SOP should regulate all stages of handling cases, from investigation to trial, by ensuring that there is no discrimination or bureaucratic obstacles that hinder the legal process.

The effectiveness of handling connectivity cases is also highly dependent on the KPK's ability to leverage modern technology and increase transparency at every stage of the legal process. Technologies, such as data analysis software, electronic case management systems, and digital forensics, can assist the commission in collecting and analyzing evidence more quickly and accurately. Transparency in the handling of cases is also important to build public confidence in the KPK and ensure that the legal process is carried out fairly and accountably.

Connectivity cases such as those in Basarnas underscore the need for strategic measures to improve the law enforcement system in Indonesia. Harmonization between the civil and military courts; strengthening coordination between institutions; and increasing the capacity of human resources in the KPK are some of the steps that can be taken to overcome existing obstacles. With this integrated approach, the KPK can ensure that every perpetrator of corruption, regardless of his or her status as a civilian or military, is treated equally before the law.

The principle of equality before the law is the main foundation in a fair and democratic legal system. In the handling of connectivity cases, the KPK must ensure that all perpetrators are treated equally in accordance with applicable law. This is in line with Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution, which affirms that all citizens have equal standing before the law without discrimination. To achieve this goal, the KPK must continue to increase its capacity in handling connectivity cases and establish close cooperation with military institutions. With a strong commitment to the principles of equality and justice, the KPK can play a central role in combating corruption in Indonesia. Cases like Basarnas show that, while there are many challenges to handling connectivity cases, ongoing efforts to improve coordination, transparency, and effectiveness can help the KPK overcome existing barriers. With these measures, the KPK can ensure that the legal process runs fairly, effectively, and equally for all parties involved.

Conclusion

The dualism of jurisdiction in the handling of corruption involving civilian and military actors reflects the complexity of the legal system in Indonesia. The main obstacles that affect the effectiveness and fairness of handling cases are the differences in legal procedures between military and general courts, as well as coordination challenges between institutions such as the KPK and military. Although Article 42 of the KPK Law gives the KPK the authority to coordinate and control legal proceedings, its implementation is often hampered by bureaucratic constraints, uncertainty of norms, and the need for legal harmonization. Cases such as Basarnas and the procurement of the AW-101 helicopter show the importance of more in-depth legal reforms, including the revision of the Military Justice Act, to ensure that the principle of equality before the law is consistently applied. By strengthening interagency cooperation, increasing transparency, and utilizing modern technology, the KPK can play a more effective role in fighting corruption, ensuring justice, and building public trust in law enforcement in Indonesia.

References

- Abdussamad, Z., Muhtar, M. H., & Mustapa, M. I. (2024). Historical evolution of Indonesia's legal system (Transformations across different eras). *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 23(3), 1–15.
- Agustino, L., Fitriani, I., Wicaksana, H. H., & Daelami, A. (2021). Corruption eradication in Indonesia: The experience of The Corruption Eradication Commission (KPK). *Journal of Governance*, 6(2). <https://doi.org/10.31506/jog.v6i2.12126>
- Harahap, T. K., Prayuti, Y., Latianingsih, N., Damanik, A., Maheni, T., Farida, I., & Muhtar, M. H. (2023). *Pengantar ilmu hukum*. Penerbit Tahta Media.
- Korompot, M. I. S., Al-Fatih, S., & Pradhan, D. (2021). The principle of equality before the law in Indonesian corruption case: Is it relevant? *Journal of Human Rights Culture and Legal System*, 1(3). <https://doi.org/10.53955/jhcls.v1i3.13>
- Muhtar, M. H. (2019). Model politik hukum pemberantasan korupsi di Indonesia dalam rangka harmonisasi lembaga penegak hukum. *Jambura Law Review*, 1(1), 68–93.
- Setiyawan, D., & Muhtar, M. H. (2023). Contemplating the morality of law enforcement in Indonesia. *Journal of Law and Sustainable Development*, 11(10), e1261–e1261.

Sosiawan, U. M. (2019). Peran Komisi Pemberantasan Korupsi (KPK) dalam pencegahan dan pemberantasan korupsi. *Jurnal Penelitian Hukum De Jure*, 19(4), 517–538. <https://doi.org/10.30641/dejure.2019.v19.517-538>

Timang, Y., Widayati, W., & Darmadi, N. S. (2022). The criminal policy in efforts to overcome crimes perpetrated by the Indonesian National Army. *Law Development Journal*, 4(3), 480–494. <https://doi.org/10.30659/ldj.4.3.480-494>