



Problematics of Judicial Connection in Handling Corruption Cases (Decision Number: 74/Pid.Sus-TPK/2022/PN.Jkt.Pst)

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Abstract

A connectivity court is a court that functions to try criminal offenses committed jointly by civilians and members of the military (TNI), both general and special crimes, such as corruption. Provisions regarding koneksitas courts are regulated in detail in the Criminal Procedure Code, specifically in Chapter XI Article 89 to Article 94, as well as Article 198 to Article 203 in Law Number 31 of 1997 concerning Military Courts. However, in practice, when there is a criminal offense involving members of the TNI and civilians, the case should be resolved through a koneksitas mechanism. In reality, perpetrators are often tried in different courts, with TNI members being tried in military courts and civilian perpetrators in general courts. This creates disparity and ignores the principle of equality before the law, which in turn creates injustice. Law enforcers focus more on procedural justice than on achieving substantial justice.

Keywords: *justice, expediency, and legal certainty*

INTRODUCTION

Indonesia, with a population of 270,203,913 according to the 2020 Population Census, is the fourth largest country in the world. Of that number, 585,345 people are Indonesian National Armed Forces (TNI) soldiers, consisting of 470,446 Army personnel, 76,034 from the Navy, and 38,865 from the Air Force. TNI soldiers, who come from the people and serve the people, have an important role in maintaining the sovereignty and integrity of the Unitary State of the Republic of Indonesia (NKRI). In addition to carrying out military operations, both for war and non-war, the TNI is also active in maintaining international peace, in accordance with the values of democracy, civil supremacy, human rights, and national and international law.

In carrying out their duties, TNI soldiers are subject to general regulations like other citizens, but are also bound by special rules such as the Military Criminal Code and Soldier Discipline. However, soldiers are still human beings who can make mistakes. In cases of violations of the law, soldiers are tried through different mechanisms than civilians, namely based on the Military Criminal Code (KUHPM), the Military Court Law, and other related regulations. Although there are differences in the legal systems between the military and civilians, violations involving both, such as in cases of connectivity, are regulated in connectivity trials, which allow both to be tried together. (Effendi, 2010).

However, in practice, criminal acts involving military and civilian members are often tried separately, which triggers injustice and gaps in the application of the law. A real example of this problem is the corruption case of the procurement of the AW 101 TNI AU Helicopter and the Bakamla corruption case. In both cases, the civilian and military

perpetrators were tried in different courts, even though they should have been through a connected court. As a result, the principle of "equality before the law" was not fully realized. (Lamintang, 1984).

From here arises the question of the effectiveness of the connectivity court in Indonesia. Should every connectivity case be processed through the connectivity court? Why in practice is there often a separation of justice between civilian and military? These questions illustrate the problems underlying the ineffectiveness of the connectivity court, which is the basis for further research on the Problems of the Connectivity Court in Handling Corruption Cases (Decision Number: 74/Pid.Sus-TPK/2022/PN.Jkt.Pst).

Based on this background, the formulation of the problem in this study includes two main things. First, what are the problems faced by the connectivity court in handling corruption cases. Second, how is criminal liability in the context of the problems of the connectivity court related to handling corruption cases, especially in Decision Number 74/Pid.Sus-TPK/2022/PN.Jkt.Pst.

The objectives of this study are divided into objective and subjective objectives. Objectively, the study aims to examine and understand the problems of connectivity justice in handling corruption cases, as well as to analyze the criminal liability arising from these problems. Subjectively, this study is intended to apply the theoretical knowledge that the author has obtained during college and deepen understanding in criminal law by comparing theory and field practice.

METHOD

The research in this thesis uses a normative legal approach or is also known as doctrinal legal research, where law is understood as a norm or rule that serves as a guideline for human behavior that is considered appropriate. (Sokantan, 2011). The author examines the legal principles by first identifying the legal rules contained in the laws and regulations. This study utilizes various approaches, namely the statute approach, the conceptual approach, the case approach, and the comparative approach. These approaches are used to examine the laws and regulations, legal principles, legal doctrines, legal concepts, and court decisions related to the problem of the Connectivity Court in Indonesia, and how the Supreme Court or District Court Judges apply them in handling cases of connectivity crimes.

The data used in this study are secondary data obtained from legal material sources. Data collection is carried out through literature studies by collecting relevant materials. Data collection tools in the form of document studies of primary, secondary, and tertiary legal sources related to the problem being studied. (Sudarto & Santoso, 2019). Sources of legal materials consist of primary legal materials, namely laws and regulations such as the 1945 Constitution, the Criminal Code, the Criminal Procedure Code, and other related laws. Secondary legal materials include legal publications such as textbooks, law journals, and research results that provide additional explanations to primary legal materials. (Robbani, 2021). Meanwhile, tertiary legal materials consist of sources that provide explanations of primary and secondary legal materials, such as legal dictionaries and encyclopedias.

In data analysis, this research is qualitative, which means that the data is described systematically, logically and orderly so that it is easy to understand and can explain the analysis results in depth. (Yustisio et al., 2023). Drawing conclusions is done using the deductive method, where conclusions are drawn from general facts to specific things.

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RESULTS AND DISCUSSION

Results

This study explores the problems faced in the connectivity justice system, especially when handling corruption cases involving perpetrators from both civilian and military circles. Connectivity justice is a mechanism applied when there is involvement of both parties in a criminal act, as regulated in a number of laws and regulations, including Law Number 5 of 1950 and Law Number 31 of 1997 concerning Military Justice. (Sujono, 2023). Research shows that the connection court regulates the division of authority between general and military courts, depending on the harm caused, whether it touches more on public interests or military interests. (Septiana & Hamonangan, 2023).

However, there are obstacles in practice. One of the most striking problems is the difference of opinion between prosecutors from general courts and military prosecutors in determining the justice of the court that should handle a particular case. The study also noted that there is still a lack of clear criteria in defining "military interests", thus complicating the law enforcement process in the field. The decision whether a case should be tried in a military or general court often has to be based on the subjective decision of the relevant officials, which sometimes complicates the investigation and prosecution process.

In addition, this study highlights the important role of the latest regulation that changes the mechanism of the connectivity court, where now it is sufficient with the decision of the Chief Justice, no longer the Minister of Defense and the Minister of Law and Human Rights, to determine which court has the authority to try connectivity cases. However, the study also underlines that the change has not completely resolved the existing problems, especially because in practice differences of opinion between general and military courts still often occur, hindering an efficient and fair legal process. (Mulyana, 2023).

Discussion

In the discussion of the connection court, it is clear that the main problem that arises is related to the inclusion of criminal acts between civilians and the military, which causes difficulties in determining which jurisdiction has the right to try the case. The connection court, as regulated in various laws such as Law Number 31 of 1997 concerning Military Justice, provides a mechanism by which general courts can try cases involving military personnel, unless there is a specific decision stating that the case must be tried in a military court. The ambiguity in this application creates differences in the handling of criminal cases, especially those involving major crimes such as corruption.

The regulation on connectivity has not been fully effective so far, especially because of the overlap between military and general courts in the investigation, prosecution, and verdict processes. Many connectivity cases are examined separately by each jurisdiction, both military and general, which creates inconsistencies in the principles of justice, especially in terms of disparities in decisions and processes. In some cases, connectivity trials allow for two investigators, namely from the general and military sides, which leads to inefficient dualism of legal policies. This also occurs in the prosecution stage, where prosecutors and military prosecutors work separately, thus slowing down the legal process.

The connectivity court also shows weaknesses in the criminal justice system, where disparities between civilian and military defendants often occur. Basically, the material law applied in connectivity cases is often different even though the legal objects and facts are the same. This is exacerbated by the fact that two different judicial systems can produce inconsistent, even contradictory, decisions. In this case, there is a need for reform in the connectivity justice system so that it can produce fairer and more consistent decisions.

In the context of military justice, military judges often have constraints in terms of rank or authority to try defendants with higher ranks, especially when the judge comes from a general court. Therefore, it is recommended that general court judges assigned to military trials be given equal or higher titular ranks to maintain the dignity and honor of the trial

process. This arrangement also aims to ensure that the legal process remains within a framework that respects the status of soldiers and prevents bias in decision-making.

In its practical implementation, the connectivity court still faces various systemic challenges, especially in terms of legal substance, legal structure, and legal culture. These problems slow down the implementation of the principles of justice mandated by the constitution, such as in Article 27 paragraph (1) of the 1945 Constitution, which states that every citizen has equal standing before the law. This ineffectiveness creates a gap between the ideal expectations of the legal system (*das sollen*) and the reality on the ground (*das sein*).

The corruption case related to the procurement of AW 101 helicopters by the Indonesian Air Force, as described in Decision Number 74/Pid.Sus-TPK/2022/PN.Jkt.Pst, shows various problems in the procurement procedure for defense equipment. In this case, the defendant, John Irfan Kenway alias Irfan Kurnia Saleh, a director of PT Diratama Jaya Mandiri, was involved in setting specifications and the procurement process for helicopters that did not comply with applicable regulations.

Based on the results of the study, it was found that the defendant committed several unlawful acts. Among them, the defendant ordered the AW-101 Helicopter with a VVIP configuration without official approval from the government and continued the transaction before the budget was approved. The defendant also arranged for the auction process to win his company by providing two companies in the auction, namely PT Diratama Jaya Mandiri as the winner and PT Karsa Cipta Gemilang as the assistant.

In addition, the technical specifications of the helicopter submitted by the defendant did not match the needs of the Indonesian Air Force. The helicopter received turned out to be a former order from the Indian Air Force, and not a new helicopter that met the heavy-lift specifications desired by the Indonesian Air Force. The findings were confirmed by a team of independent experts, who stated that the helicopter was not suitable for heavy-lift duties due to differences in technical configuration.

In the procurement process, the defendant also modified the technical documents to adjust the VVIP specifications to transport, but did not make the required physical modifications such as ramp doors and increasing the frame capacity. This action caused state financial losses, because the helicopters submitted did not comply with the contract and operational needs.

The Panel of Judges in its decision stated that the defendant's actions were a violation of government procurement regulations, as well as enriching himself by receiving command funds (DK) from procurement term payments. The judge also found that the defendant and other parties opened a cross-year account to accommodate procurement funds with interest, which should not have been done.

From the analysis results, it can be concluded that this case shows weaknesses in the supervision system and implementation of defense equipment procurement, which allows for corruption. This case also shows the importance of transparency and compliance with regulations in every process of government procurement of goods and services.

CONCLUSION

Based on the results of the research that has been conducted, it is concluded that the connection court plays a role in trying criminal acts committed jointly by civilians and the military, both for general crimes and special crimes such as corruption. However, the effectiveness of the connection court is still not optimal, which causes a gap between normative expectations (*das sollen*) and the reality that occurs (*das sein*). In this context, the unfulfilled components of substance, structure, and legal culture among law enforcers are factors that hinder the implementation of the principle of equality before the law according to Article 27 paragraph (1) of the 1945 Constitution. The practice of the connection court which has so far been running separately between general and military

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courts often causes disparities in sentencing, both in the application of material law, trial processes that are not in accordance with due process of law, to different criminal decisions. Ideally, the resolution of corruption cases involving perpetrators from general and military courts must use a connectivity examination mechanism, in accordance with applicable laws and regulations, such as Law Number 5 of 1950, Law Number 31 of 1997 concerning Military Justice, and the Joint Decree of 2021 concerning the formation of a permanent team for investigating connectivity criminal cases.

Based on this study, there are several suggestions that need to be considered to improve the effectiveness of connectivity trials in handling cases involving civilian and military perpetrators. First, there needs to be a clearer and more coordinated regulatory update between military courts and general courts, especially in cases of connectivity crimes, so that there is no disparity in the criminal process and verdict. Second, increasing synergy between law enforcers, both from investigators, prosecutors, military prosecutors, and judges, must be carried out to ensure equality in the application of the law. Third, the implementation of the connectivity examination mechanism must be given more attention, with the application of regulations that are consistent in accordance with applicable laws. This will help create legal certainty and substantive justice for the parties involved in the connectivity trial process.

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