



RESPONSIVE LAW ENFORCEMENT IN HANDLING CIVIL- MILITARY JURISDICTION CASES IN INDONESIA

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Abstract

Handling Civil-Military Jurisdiction Cases (In Indonesian, it is called Perkara Koneksitas) is the resolution of participation offenses (deelneming) carried out jointly by those who are subject to the general court judiciary and the military justice judiciary. The handling of these cases is carried out by two judicial subsystems, namely general justice and military justice, which jointly resolve connection cases. However, the current law does not clearly regulate the handling of Civil-Military Jurisdiction Cases, so law enforcement officials deviate from the provisions for handling. This article examines the Responsive law enforcement in handling civil-military jurisdiction cases with the conclusion that handling Civil-Military Jurisdiction Cases is part of general justice and military justice. Since there are two courts competent to enforce the law in the handling of such cases, under the provisions of Articles 89 to 94 of the Code of Criminal Procedure, the handling of such cases is carried out jointly by the subsystem in general justice and the subsystem in military justice. Investigations by the Police, Prosecutors and Military Poms/Oditors, Prosecution by Prosecutors and Oditurs, Trial by Judges from the General Court and Military Justice in a balanced manner. Because the two courts have very different case handling cultures, and until now there are no clear rules governing the technique of handling cases in connection, where there are two procedural laws that apply.

Introduction

Legal development is a conscious, systematic, and continuous effort to build a more advanced, prosperous, secure, and peaceful society, nation, and state within the framework and foundation of fair and certain law ¹[1]. The implementation of this development is an effort to achieve the goals of the state as enshrined in Pancasila and the 1945 Constitution, namely to protect the entire nation and all the people of Indonesia, to promote the general welfare, to educate the life of the nation, and to participate in establishing a world order based on independence, lasting peace, and social justice ²[2]. Social justice in the principles of Pancasila is a complex and multidimensional struggle, [3]³ One aspect of this is equality before the law. Article 27 paragraph (1) of the 1945 Constitution states: "All citizens shall have equal status before the law and the government, and shall be obligated to respect the law and the government, with no exceptions.

The Republic of Indonesia has two permanent criminal justice systems for different justiciables,⁴ [4] Namely, the civilian criminal court for civilians and the military court for members of the military, each with its own jurisdiction and different justiciables. Each judicial system operates with its own independent competence and authority to adjudicate, separate from the other. Each possesses absolute jurisdiction, meaning that one judicial system may not intrude upon or interfere with the jurisdiction of the other⁵. [5] The legal subjects in military courts are members of the armed forces, whereas the legal subjects in general (civilian) courts are civilians or the general public. Both the military and civilian court systems have their own distinct subsystems.

Criminal acts committed by those subject to the jurisdiction of the general court will be tried through the general (civilian) judiciary, while criminal acts committed by those under the jurisdiction of the military court will be tried through the military

¹ Jimly Asshiddiqie, *Agenda Pembangunan Hukum Nasional Di Abad Globalisasi* (Jakarta: PT. Balai Pustaka, 1998), lett 28.

² Wicipto Setiadi, "Pembangunan Hukum Dalam Rangka Peningkatan Supremasi Hukum (Development of Law in Order to Enhancement Supremacy of Law)," *Jurnal Rechtsvinding Media Pembinaan Hukum Nasional* 1, no. 1 (April 2012). <https://pdfcoffee.com/majalah-hukum-rechtsvinding-mei-2020-pdf-free.html>

³ Anggraini, Dina Meilina, *Implementasi Keadilan Sosial: dalam Upaya Mewujudkan Masyarakat Indonesia yang Sejahtera*, Vol 2, No 1 (2024): Seminar Pend, <https://prosiding.ikipgribojonegoro.ac.id/index.php/FPMIPA/article/download/2672/1869>.

⁴ A S S Tambunan, *Hukum militer Indonesia : Suatu Pengantar* (Jakarta: Pusat Studi Hukum Militer STHM, 2005), https://perpustakaan.komnasperempuan.go.id/web/index.php?p=show_detail&id=2739.

⁵ Parluhutan Sagala dan Fredy Ferdian, "Yurisdiksi Peradilan Militer," *Jurnal Pengadilan Militer Utama* 1, diakses 1 Desember 2024, <https://www.dilmiltama.go.id/home/e-journal/YurisdiksiPeradilanMiliter.pdf>.

judiciary. However, in criminal cases that have occurred thus far, certain offenses have been committed jointly (Criminal Participation / *deelneming*) by members of the Indonesian National Armed Forces and civilians. This situation naturally gives rise to a dualism in law enforcement. Therefore, the law has provided for such cases to be resolved through a *konneksitas* mechanism, as stipulated in Article 89 paragraph (1) of the Indonesian Criminal Procedure Code (KUHP) and Article 198 paragraph (1) of Law Number 31 of 1997 concerning Military Courts

The provisions regarding the procedure for *Koneksitas* examination are also specifically regulated in Articles 198 to 203 of Law Number 31 of 1997 concerning Military Courts. Article 198 paragraph (1) states: "A criminal offense committed jointly by persons subject to the jurisdiction of the military court and persons subject to the jurisdiction of the general court shall be examined and tried by a court within the general judiciary, unless, based on a decision of the Minister with the approval of the Minister of Justice, the case must be examined and tried by a court within the military judiciary⁶". [6]

The purpose of conducting proceedings through the *connectivity* mechanism is to ensure the prompt administration of justice. [7]⁷ A Civil-Military Jurisdiction Cases necessarily involves a joint criminal act (*deelneming*) committed by a civilian together with a member of the military, as stipulated in Article 55 of the Indonesian Criminal Code (KUHP). [8]⁸ The handling of *connectivity* cases is regulated in the Criminal Procedure Code (KUHP) and Law Number 31 of 1997 concerning Military Courts, in which the subsystems of the general judiciary and the military judiciary are combined into a permanent joint team. However, the general court subsystem and the military court subsystem have significantly different cultures in handling cases. In the handling of cases within the military judiciary, the relationship between subsystems is known as the command system, whereas in the general judiciary, it is characterized by a functional differentiation system. Due to the absence of clear regulations governing the handling of *connectivity* cases through the integration of both judicial subsystems into a permanent *connectivity* team, many such cases have deviated from the intended process, with perpetrators often being tried in separate judicial systems.

⁶ Ali Ridlo, Siswantari Pratiwi, dan Mardani, "Analisis Penyelesaian Perkara Koneksitas Dalam Perspektif Pidana Umum Dan Pidana Militer," *Pagayaruang Law Jurnal* 8, no. 1 (Juli 2024), <https://jurnal.umsb.ac.id/index.php/pagaruyuang>.

⁷ Bambang Suheryadi, *Koneksitas Dalam Perspektif Hukum Militer*, Presented at the National Seminar on the Urgency of Connectivity and the Handling of Connectivity Cases, a collaboration between the Deputy Attorney General for Military Crimes and the Faculty of Law, Suryadarma University of Aerospace, Jakarta, 11 Mei 2024.

⁸ Gde Ancana, Pujo Setio Wardoyo, dan Ema Diam Prihantono, "Pertanggungjawaban Notaris Terhadap Pembuatan Akta Yang Menimbulkan Perkara Pidana," *Notaire Fakultas Hukum Universitas Airlangga* 3, no. 1 (15 Mei 2020): 65, doi:10.20473/ntr.v3i1.15541.

Formulation Problem

Responsive Law Enforcement in Handling Civil-Military Jurisdiction Cases

Research Methods

regulations, where the laws that govern No clear.⁹

Result and Discussion

A. Type of Research

This type of research is normative juridical research, also referred to as doctrinal legal research or normative legal research, which involves the examination of secondary legal materials to address the issues that are the focus of the study. It conceptualizes law as a set of rules or norms that serve as standards for human behavior deemed appropriate, based on pragmatic truth [9]¹⁰ Normative legal research is intended to examine legal principles, norms, and rules [10] related to *koneksitas* adjudication.

B. Approach to the Problem

The statutory approach, or statute approach, is a method that utilizes legislation and regulations. The legal products referred to are those classified as *beschikking* or decrees decisions issued by administrative officials that are concrete and specific in nature, such as presidential decrees, ministerial decisions, regional government decisions, or decisions issued by certain authorized bodies¹¹. [11]

C. Legal Sources

- 1) Primary legal materials are obtained from the prevailing laws and regulations in Indonesia. In this research, the laws and regulations used are those related to military courts, general (civilian) courts, *koneksitas* adjudication, and the Indonesian Code of Criminal Procedure (KUHP).
- 2) Secondary legal materials are obtained from legal literature, articles, journals, internet sources, and commentaries on court decisions related to the legal issues under study, namely, those related to *koneksitas* adjudication or cases jointly committed by individuals who are respectively subject to the jurisdiction of general (civilian) courts and military courts.

D. Procedure for Collecting Legal Materials

The legal material search technique in this research was conducted through

¹⁰ Willa Wahyuni, "Objek Penelitian Hukum Normatif untuk Tugas Akhir," Hukum Online, 22 Desember 2022, <https://www.hukumonline.com/berita/a/objek-penelitian-hukum-normatif-untuk-tugas-akhir-lt63a46376c6f72/?page=2>.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Jakarta: Prenada Media, 2005), lett 28.

literature review and internet browsing. The search for legal materials was carried out by reviewing literature, namely by reading books related to *koneksitas* cases. Additionally, legal material searches were conducted through internet access to obtain sources such as electronic books, online dictionaries, and websites.

Result and Discussion

Law Enforcement Subsystem in the General Judiciary Investigation Subsystem

Investigators play a crucial role in identifying and thoroughly examining events that are suspected to constitute criminal offenses. [12]¹² Article 1 point (1) of Law Number 8 of 1981 on the Criminal Procedure Code states that an investigator is an officer of the Indonesian National Police or a certain civil servant who is granted special authority by law to conduct investigations. Article 6 of the Criminal Procedure Code (KUHP) states that investigators are officers of the Indonesian National Police or certain civil servants who are granted special authority by law. Consistent with the Criminal Procedure Code (KUHP), the provisions regarding investigators are also regulated in Article 10 of Law Number 2 of 2002 concerning the Indonesian National Police, which states that investigators are officers of the Indonesian National Police who are granted authority by law to conduct investigations. Meanwhile, for certain criminal acts such as corruption, investigations may be carried out by the Corruption Eradication Commission (KPK), the Police, and the Attorney General's Office¹³. [13] The authority of investigators is also stipulated in Article 7 paragraph (1) of the Criminal Procedure Code (KUHP), stating that due to their duties, investigators possess certain powers:

- a. Receiving reports or complaints from individuals regarding the occurrence of a criminal offense;
- b. Taking initial actions at the crime scene;
- c. Ordering a suspect to stop and examining the suspect's identification;
- d. Conducting arrests, detention, searches, and seizures;
- e. Conducting examination and seizure of documents;
- f. Taking fingerprints and photographing individuals;
- g. Summoning individuals to be heard and examined as suspects or witnesses;
- h. Bringing in experts needed in connection with case examinations;
- i. Terminating investigations;

¹² Trys Saragih, "Tugas dan Kewenangan Penyidik Dalam Perkara Pidana" (Yogyakarta, 2017), <https://e-journal.uajy.ac.id/11225/3/2MIH02387.pdf>.

¹³ Arief Fahmi Lubis, "Profesionalisme Oditur Militer Dalam Melakukan Penuntutan," Sollen: Jurnal Kajian Kontemporer Hukum dan Masyarakat 1 (2022).

- j. Taking other actions in accordance with the law and responsibility.

Prosecution Subsystem

A prosecutor is an official authorized by law to act as a public prosecutor and to execute court decisions that have obtained permanent legal force. Article 1 point 4 of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 regarding the Indonesian Prosecutor's Office states that¹⁴ [14] Prosecution is the act of the public prosecutor to submit a case to the competent District Court in the manner and under the procedures regulated by the criminal procedure law, with a request for the case to be examined and decided by a judge in a court session.

Article 14 of the Criminal Procedure Code (KUHP) states that the Public Prosecutor has the authority to;

- a. Receiving and examining investigation case files from investigators or assistant investigators;
- b. Conducting pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 100 paragraphs (3) and (4) and providing instructions for the improvement of the investigation by the investigators;
- c. Granting extensions of detention, carrying out detention or continued detention, and/or changing the detainee's status after the case has been submitted by the investigators;
- d. Preparing the indictment (letter of accusation);
- e. Submitting the case to the court;
- f. Notifying the defendant of the date and time of the court session along with summons letters, both to the defendant and witnesses, to appear at the designated session;
- g. Carrying out prosecution (to carry out accusation);
- h. Closing a case in the interest of justice;
- i. Taking other actions within the scope of duties and responsibilities as a public prosecutor in accordance with the provisions of this law;
- j. Executing court rulings¹⁵ [15]

In the Criminal Procedure Code (KUHP), we recognize the terms Prosecutor and Public Prosecutor. Meanwhile, Article 1 point 6 of KUHP states that to ensure the equivalence of the formulations of these two terms, it can be seen in Article 1 point 6, which is divided into two letters, namely: [16]¹⁶

¹⁴ Bernadetha Aurelia Oktavira, "Kewenangan Penuntut Umum dalam Proses Peradilan," *Hukum Online*, 9 November 2022, <https://www.hukumonline.com/klinik/a/kewenangan-penuntut-umum-dalam-proses-peradilan-lt5d94210cbf1d6/>.

¹⁵ H M A Kuffal, *Penerapan KUHP Dalam Praktik Hukum* (Malang: Universitas Muhammadiyah Malang, 2003).

¹⁶ Richard Olongsongke, "Kewenangan Jaksa Penuntut Umum Dalam Proses Pra Penuntutan Menurut Kitab Undang-Undang Hukum Acara Pidana," *E-Journal Unsrat* 3 (Oktober 2015),

- a) A Prosecutor is an official authorized by this law to act as a public prosecutor and to execute court decisions that have obtained permanent legal force;
- b) A Public Prosecutor is a Prosecutor who is authorized by this law to conduct prosecution and execute judicial rulings.

Regardless of the regulation methods concerning public prosecutors and prosecution, as well as the chapters and sections discussing investigation and the scope of the judiciary, this is based on the reality that, due to functional differentiation and specialization institutionally placing public prosecutors in the role of prosecution and execution of court decisions, the function of the public prosecutor is no longer complicated. It has been simplified into a clear function and authority, so its regulation in the Criminal Procedure Code (KUHP) can be organized within one chapter and several articles. [17]¹⁷

Judicial Subsystem

The existence of courts as a subsystem of the criminal justice system is regulated in the Judicial Power Law. Article 1 point 1 of Law Number 48 of 2009 concerning Judicial Power defines judicial power by stipulating that:

Judicial power is the independent state authority to administer justice in order to uphold the law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the implementation of the rule of law in the Republic of Indonesia.

In accordance with Law Number 48 of 2009 concerning Judicial Power and the Criminal Procedure Code (KUHP), the court's duty is to receive, examine, and decide cases submitted to it. In examining a defendant, the judge starts from the indictment prepared by the Public Prosecutor and bases the decision on evidence as stipulated in Article 184 of the Criminal Procedure Code (KUHP). Then, with at least two valid pieces of evidence, if the judge is convinced that a criminal act has occurred and the defendant is proven to be the perpetrator, the judge will render a verdict.

Correctional Subsystem

Correctional institutions (LAPAS) are regulated under Law Number 12 of 1995 concerning Corrections, which transformed the prison system into a correctional system. The correctional system is a series of integrated law enforcement efforts and represents the final part of the criminal justice system. According to the provisions of Article 1 point 3 of the Corrections Law, it states that: "A Correctional Institution is a place for the rehabilitation of prisoners and juvenile correctional students."

Law Enforcement Subsystem in Handling Military Criminal Cases

The military criminal justice system consists of components or subsystems including the military criminal judiciary, military courts, and military corrections. Equally important are the Commanding Officers Authorized to Punish (ANKUM)

<https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/10174>

¹⁷ M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHP Penyidikan dan Penuntutan*, Kedua (Jakarta: Sinar Grafika, 2012).

and the Officers Responsible for Case Submission (PAPERA).¹⁸ [18] In the criminal justice system, the police have the authority to conduct investigations, the prosecutor's office has the authority to prosecute (and in certain cases, acts as investigator, such as in corruption cases), the courts have the authority to adjudicate, and corrections serve as the place where convicts serve their sentences. Meanwhile, the military justice environment has a different structural arrangement, [19]¹⁹ It has a subsystem different from the general judiciary. These components are:

Commanding Officer Authorized to Punish (ANKUM).

In the military criminal justice system, the role of a Commanding Officer Authorized to Punish (ANKUM) is an integral part. The ANKUM plays a vital role in the investigation process of criminal cases involving military personnel. According to Article 74 of Law of the Republic of Indonesia Number 31 of 1997, a Commanding Officer Authorized to Punish (ANKUM) has the authority to:

1. Conduct investigations of subordinate soldiers under their command authority, the execution of which is carried out by investigators as referred to in Article 69 paragraph (1) letter b or letter c, namely the Military Police or the Military Prosecutor (Oditur).
2. Receive reports on the implementation of investigations from Military Police or Military Prosecutor investigators.
3. Receive case files resulting from investigations conducted by Military Police or Military Prosecutor investigators.
4. Conduct the detention of subordinate suspects who fall under their command authority.

The primary authority of an Ankum, which is not held by all military judicial officers, is the power to detain or suspend the detention of a suspect. In the process of enforcing military law, an Ankum cannot work alone; rather, the Ankum collaborates with the military police and the military prosecutor (Oditur) in conducting investigations and prosecutions against military personnel who violate either disciplinary rules or commit criminal offenses. [20]²⁰

Case-Surrendering Officer (Pepera)

In military criminal procedural law, the authority to submit a case to a military court does not lie with the Military Prosecutor (Oditur Militer/OTMIL), but rather with the Commander of the Armed Forces, who is referred to as the Case-Surrendering Officer (PAPERA).²¹ [21] Based on Article 123 paragraph (1) of the

¹⁸ Nikmah Rosidah, *Hukum Peradilan Militer* (Bandar Lampung: CV. Anugrah Utama Raharja, 2019).

¹⁹ Pengadilan Militer II-08 Jakarta, "Sejarah Singkat Peradilan Militer," Pengadilan Militer II-08 Jakarta, diakses 1 Desember 2024, Pengadilan Militer II-08 Jakarta.

²⁰ Syahbana, op. cit.

²¹ Taufik Kurniawan, "Peran Perwira Penyerah Perkara Dalam Tindak Pidana Militer (Studi Denpom IV/ 4 Surakarta)," diakses 28 November 2024,

Law of the Republic of Indonesia Number 31 of 1997 concerning Military Courts, the Case-Surrendering Officer (PAPERA) has the authority to:

1. Order investigators to conduct an investigation;
2. Receive reports on the implementation of the investigation;
3. Order the use of coercive measures;
4. Extend detention as referred to in Article 78;
5. Receive or request legal opinions from the military prosecutor (oditur) regarding the resolution of a case;
6. Submit a case to the competent court for examination and adjudication;
7. Determine that a case be resolved under military disciplinary law; **and**
8. Dismiss a case in the interest of law or in the public/military interest.

The authority of the Case-Surrendering Officer (PAPERA) is extensive, as they have the power to determine the course of a criminal case under investigation. However, before issuing a decision letter concerning the continuation of the case, the PAPERA must first hear the opinion of the Military Prosecutor (Oditur Militer) or Military Judge Advocate at the relevant command level²². [22]

Military Police

According to Article 69 paragraph (1) of Law Number 31 of 1997 concerning Military Judiciary, an investigator is the Commanding Officer with the Authority to Impose Punishment (Ankum). However, since the Ankum is the commander of a unit, it is not feasible for them to personally carry out investigations into criminal acts. Therefore, in order to ensure the effective implementation of the Ankum's investigative authority and to allow the commander to better focus their attention, energy, and time on their primary duties, the investigation is conducted by Military Police Investigators or Military Prosecutors. ²³[23]

The Military Police, as one of the sub-systems of the military criminal justice system, essentially holds the same authority as the police investigators within the general court system. The authority of the Military Police in conducting investigations within the military justice system is detailed in Article 71 paragraph

(1) of Law Number 31 of 1997, which states that, in addition to conducting investigations, the Military Police also has the authority to:

1. Receive reports or complaints from individuals regarding incidents

<https://eprints.ums.ac.id/4232/1/C100040181.pdf>.

²² Niko Bobi Setyadi, "Eksistensi Perwira Penyerah Perkara Dalam Sistem Peradilan Pidana Militer," Repository Ugm, diakses 2 Desember 2024, <https://etd.repository.ugm.ac.id/penelitian/detail/53868>.

²³ Cornella Olivia Rumbay dan Asrid Tatumpe, "Tinjauan Yuridis Terhadap Proses Penyelidikan Dan Penyidikan Tindak Pidana Militer Menurut Hukum Acara Pidana Militer Di Indonesia," Scientia De Lex 8, no. 1 (2020).

- suspected to constitute a criminal offense;
2. Take initial action at the time and place of the incident;
 3. Gather information and evidence;
 4. Order a person suspected as the perpetrator to stop and check their identification;
 5. Conduct arrests, searches, seizures, and inspect documents;
 6. Take fingerprints and photograph individuals;
 7. Summon individuals to be questioned and examined as suspects or witnesses;
 8. Request expert examination or bring in experts as needed in relation to the case investigation; and
 9. Undertake other legally responsible actions

Paragraph (2) states that, in addition to the authorities mentioned above, Military Police investigators also have the authority to:

1. Carry out the order of the Superior Officer Authorized to Punish (Ankum) to detain the suspect; and
2. Report the results of the investigation to the Superior Officer Authorized to Punish (Ankum).

Military Prosecutor

In relation to the general court system, the Military Prosecutor is positioned similarly to a Public Prosecutor, who has the authority to conduct prosecutions. However, in the military court system, the Oditur not only conducts prosecutions but also has the authority to conduct investigations. The Military Prosecutor's Office (Oditurat) is an executive body of state authority in the fields of prosecution and investigation within the Armed Forces, based on delegation from the Commander-in-Chief, with due regard to the interests of national defense and security administration.²⁴ [24] Military prosecution conducted by the Military Prosecutor (Oditur Militer) constitutes an indirect authority, as the transfer of a case is executed through the Case Submission Order (Penyerahan Perkara) from the Case Submitting Officer (Papera). In other words, the Military Prosecutor cannot transfer a case or carry out prosecution in a competent court without a Case Submission Decree (Keppera) from Papera, because according to Article 123 paragraph (1) letter f of Law Number 31 of 1997, the authority to submit a case essentially lies with Papera, not with the Military Prosecutor²⁵. [25]

The authority held by the Military Prosecutor (Oditur), as regulated by law, is as follows: Article 64 paragraph (1) of Law Number 31 of 1997, which states::

²⁴ Willa Wahyuni, "Mengenal Oditur Militer di Peradilan Militer," Hukum Online, 2022, <https://www.hukumonline.com/berita/a/peradilan-militer-lt6217123b409eb/?page=2>.

²⁵ Lubis, op. cit.

- 1) To prosecute criminal cases in which the defendant is
 - a) Soldiers holding the rank of Captain or below;
 - b) Those referred to in Article 9 point 1 letters **b** and **c**, whose rank includes Captain or below;
 - c) Those who, based on Article 9 point 1 letter **d**, must be tried by a Military Court; Melaksanakan penetapan hakim atau putusan pengadilan dalam lingkungan peradilan Militer atau pengadilan lingkungan Peradilan Umum;
- 2) Conducting additional examinations

Article 64 Paragraph (2):

In addition to the duties and authorities as referred to in paragraph (1), the Military Prosecutor's Office (Oditurat Militer) may also conduct investigations. For military personnel holding the rank of Major and above, the prosecution shall be carried out by the High Military Prosecutor's Office (Oditurat Militer Tinggi), as stipulated in Article 65 paragraph (1) letter a, points 1 and 2 of Law Number 31 of 1997.

Judge

Another component of the Military Criminal Justice sub-system is the court. The levels within the military judicial system consist of the Military Court, the High Military Court, the Main Military Court, and ultimately the Supreme Court. Courts within the military judiciary system, as stated in Article 12 of Law Number 31 of 1997, consist of ²⁶: [26]

- 1) Military Court, which is the court of first instance for criminal cases where the defendant holds the rank of Captain or below.
- 2) High Military Court, which serves as the appellate court for criminal cases decided at the first level by the Military Court. The High Military Court also serves as the court of first instance for:
 - a) Criminal cases where the defendant or one of the defendants holds the rank of Major or above, and
 - b) Disputes related to Armed Forces Administrative Affairs.
- 3) Main Military Court, which serves as the appellate court for criminal cases and Armed Forces Administrative Affairs disputes decided at the first level by the High Military Court.
- 4) Court of first and final instance for adjudicating criminal cases committed by soldiers in combat zones, which is a specialization (differentiation/specialization) within the military judicial system. This court is a structural organization that only becomes operational when needed and upon the appointment of its officials.

²⁶ Rosidah, op. cit.

Military Socialization (Masmil)

After the Military Court Judge's verdict is handed down and the soldier in question does not file any legal remedies, the soldier's status changes to that of a convict, and the sentence is subsequently carried out at the military detention facility. [27]²⁷ In general, the rehabilitation system for military convicts is not significantly different from that of civilian convicts in correctional institutions. Both undergo structured stages of rehabilitation aimed at reintegration into society. For military personnel, this includes the goal of returning to service as good soldiers who uphold the values of Pancasila and the Sapta Marga.

Law Enforcement Subsystem in the Handling of Connectivity Cases

Connectivity jurisdiction pertains to cases of complicity involving both civilian and military personnel, as regulated under Article 55 of the Indonesian Penal Code. [28]²⁸ "The handling of connectivity cases involves subsystems from both the civilian judiciary and the military judiciary, namely:

Investigation Subsystem

The handling of connectivity cases is regulated in the Indonesian Criminal Procedure Code and Law Number 31 of 1997 concerning Military Courts. The investigation of connectivity cases is carried out by a permanent team consisting of Military Police, Military Prosecutors (Oditur Militer), and investigators from the civilian judiciary. Therefore, investigative actions—including searches and seizures, as well as the examination of witnesses and suspects—are conducted jointly by the Military Police, Military Prosecutors, and civilian investigators. Connectivity jurisdiction refers to a judicial system applied to suspects involved in criminal offenses. In accordance with Article 89 of the Criminal Procedure Code, which states: [29]²⁹

- (1) Criminal acts committed jointly by individuals under the jurisdiction of the civilian judiciary and those under the jurisdiction of the military judiciary shall be examined and tried by a court within the civilian judiciary, unless, based on a decision by the Minister of Defense and Security with the approval of the Minister of Justice, the case is determined to be examined and tried by a court within the military judiciary.
- (2) The investigation of criminal cases as referred to in paragraph (1) shall be carried out by a permanent team consisting of investigators as referred to in Article 6, members of the Military Police of the Armed Forces of the Republic of Indonesia,

²⁷ Eko Karyadi, "Implementasi Pemasyarakatan Narapidana Tentara Nasional Indonesia Di Lembaga Pemasyarakatan Militer Pasca Undang-Undang Nomor 34 Tahun 2004 Tentang Tentara Nasional Indonesi," Pascasarjana Program Ilmu Hukum Universitas Andalas, 2011, epository.unand.ac.id/16799/1/thesis.pdf.

²⁸ Asep N Mulyana, Reda Manthovani, dan Narendra Jatna, Mandat Konstitusional Jaksa Agung Muda Bidang Pidana Militer (Depok: PT. Rajagrafindo Persada, 2020).

²⁹ Zainuddin Ali, Metode Penelitian Hukum (Jakarta: Sinar Grafika, 2009), lett 56

and military prosecutors (oditur militer or oditur militer tinggi), in accordance with their respective authorities under the applicable laws governing criminal investigations.

- (3) The team as referred to in paragraph (2) shall be established by a joint decree of the Minister of Defense and Security and the Minister of Justice.

The investigation team in connectivity (koneksitas) cases is composed of a permanent team consisting of civilian investigators, military police, and military prosecutors, each operating within their respective legal authorities as stipulated by applicable criminal investigation laws. This team is established through a joint decree issued by the Minister of Defense and Security and the Minister of Justice, in accordance with Articles 89 to 94 of the Indonesian Criminal Procedure Code: [30]³⁰ The structural legal component in this context refers to institutional changes related to the resolution of connectivity cases. With the separation of the Indonesian National Armed Forces and the National Police (Polri), and the fact that Polri is no longer subject to the jurisdiction of Military Courts, the institutional roles of the Ministry of Defense and Security and the Ministry of Justice in forming the Permanent Investigation Team for connectivity cases have become obsolete.

Therefore, the formation of a new Permanent Investigation Team needs to be re-evaluated. In the author's view, the team should be established through a Joint Decree between the Commander of the TNI, the Chief of the National Police, and the heads of investigative institutions within the civilian judiciary. This is intended as an effort to overcome obstacles related to the cultural components of law, namely the tendency of investigators and public prosecutors—both in the civilian and military judicial environments—to favor simplified legal processes without sufficient regard for procedural and substantive justice³¹. [31]

Prosecution Subsystem

As stipulated in Article 199 paragraph (1) of Law Number 31 of 1997 concerning Military Courts in conjunction with Article 90 paragraph (1) of the Indonesian Criminal Procedure Code (KUHP), it is stated that: To determine whether a criminal case, as referred to in Article 89 paragraph (1), shall be tried by a court within the military judiciary or a court within the civilian judiciary, a joint review must be conducted by the public prosecutor or high public prosecutor and the military prosecutor (oditur militer) or high military prosecutor (oditur militer tinggi), based on the results of the investigation conducted by the team.

This provision regulates only the authority of the public prosecutor and the military prosecutor to carry out a joint review, without granting further prosecutorial authority.

It is evident that the construction of Article 199 paragraph (1) of Law Number 31 of 1997 concerning Military Courts in conjunction with Article 90 paragraph (1) does not provide a comprehensive explanation regarding the authority to

³⁰ Mochamad Januar Rizki, "Menyoal Mekanisme Peradilan Umum atau Militer Dalam Kasus Pembunuhan Warga Aceh," Hukum Online, 30 Agustus 2023, <https://www.hukumonline.com/berita/a/menyoal-mekanisme-peradilan-umum-atau-militer-dalam-kasus-pembunuhan-warga-aceh-lt64eecd6e99477/>.

³¹ Ridlo, Pratiwi, dan Mardani, op. cit.

prosecute in court. The article only stipulates that the authority of prosecutors in connectivity (*koneksitas*) cases is limited to conducting a joint review. This limitation has led to differing interpretations among law enforcement officials—specifically, whether the joint review can also be understood to mean that both the civilian prosecutor and the military prosecutor (*oditur militer*) may jointly appear as public prosecutors before either civilian or military courts, similar to the roles played by investigators and judges. As a result, the provision lacks clear legal meaning and therefore cannot be used as a sound legal basis; in other words, the law becomes inapplicable. [32]³² The regulation does not provide clarity regarding the position of the prosecutor once a connectivity case has reached the trial stage, especially if the case is tried in a military court.

Therefore, a reconstruction of the legal norms regarding the handling of connectivity cases is indeed necessary, particularly concerning the prosecution carried out jointly by the military prosecutor (*oditur*) and the public prosecutor.

Judicial Subsystem

The positions of the Civil Courts and Military Courts within the positive law regarding connectivity cases both serve as forums for resolving criminal cases involving both civilians and military personnel. However, the role of these two judicial bodies in resolving connectivity cases still requires joint review, as the final decision depends on the findings of the Public Prosecutor or High Public Prosecutor and the Military Prosecutor (*Oditur Militer*) or High Military Prosecutor (*Oditur Militer Tinggi*). The case will subsequently be brought before either the District Court or the Military Court, depending on the severity and extent of the damages caused by the case to be tried.

Article 94 paragraph (2) of the Criminal Procedure Code (KUHP) and Article 203 of Law Number 31 of 1997 concerning Military Courts essentially state that:

1. In the event that a court within the civilian judiciary tries the case, the panel of judges shall consist of a Chief Judge from the civilian court and members of the panel appointed in balanced proportion from both the civilian judiciary and the military judiciary.
2. In the event that a court within the military judiciary tries the criminal case, the panel of judges shall consist of a Chief Judge from the military court and members of the panel appointed in balanced proportion from both the military judiciary and the civilian judiciary, with the civilian judges holding titular military ranks.

However, in practice, the enforcement of connectivity cases has always involved awaiting the decision of the Case Transfer Officer in accordance with the legal culture of the military judiciary. The *Papera* holds the authority to transfer a case to a court and to determine which court has jurisdiction to adjudicate the

³² Andrias Winarno, Bambang Bambang Sugiri, dan Yuliati Cholil, “Kekaburan Norma dalam Pasal 55 Undang-Undang Nomor 24 Tahun 2011 Tentang Badan Penyelenggaraan Jaminan Sosial,” *Media Iuris* 4, no. 3 (27 Oktober 2021): 341, doi:10.20473/mi.v4i3.29023.

matter, whether it be the military court or the civilian court.³³ [33] From a philosophical, historical, and juridical perspective, the state continues to maintain the Military Court system under a Mixed Court System, particularly in relation to the principle of connectivity. The Mixed Court System does not determine the point of loss or damage between the military and civilian courts. Rather, the dominant point of loss only determines the composition of military judges and civilian judges. The composition of military and civilian judges largely depends on the emphasis of the losses and consequences of the criminal act committed. If the primary losses and consequences affect the public interest, the majority of the judges will be civilian judges. Conversely, if the primary losses and consequences pertain to military interests, the majority of the judges will be military judges³⁴. [34]

The concept of the Mixed Court System establishes the principle that "criminal acts committed jointly by individuals under the jurisdiction of the civilian judiciary and the military judiciary shall be examined and tried by a court appointed by the Chief Justice of the Supreme Court." The composition of military and civilian judges is determined by the predominant focus of the loss and its impact on the public interest. This means that the majority of the judges will be civilian judges if the main loss affects the public interest. Conversely, if the predominant loss and its impact relate to military interests, the majority of the judges will be military judges, with a military judge serving as the presiding judge. This is in line with the constitutional recognition of the Military Court's existence as a Sub-Judicial Body of the Supreme Court, rather than a Special Court.

Closing

A. Conclusion

The handling of connectivity cases represents an overlap between the civilian judiciary and the military judiciary. Since two judicial bodies have authority to enforce the law in handling these cases, based on Articles 89 to 94 of the Criminal Procedure Code (KUHP), the process is conducted jointly by subsystems within the civilian judiciary and subsystems within the military judiciary. Investigations are carried out by the Police, Prosecutors, and Military Police/Military Prosecutors (Oditur), prosecution by Prosecutors and Military Prosecutors, and trials by judges from both the civilian and military courts in balanced proportions. However, because these two courts have very different procedural cultures and there is currently no clear regulation governing the technique of handling connectivity cases—where two procedural laws apply—this creates

³³ Ni Luh, Ayu Widhiarcani Laksmidewi, dan Ni Nengah Adiyaryani, "Kekhususan dalam Tahapan Penyerahan Perkara di Peradilan Militer," *Jurnal Pemuliaan Keadilan* 1, no. 4 (Oktober 2024): 28–41, doi:10.62383/pk.v1i3.96.

³⁴ Indriyanto Seno Adji, "Quo Vadis Asas Koneksitas : Peradilan Militer/Peradilan Umum & Sistem Peradilan Pidana," dalam FGD (Focus Group Discussion) tentang "Implementasi Kewenangan Jaksa Agung Dalam Penanganan Perkara Koneksitas (Jakarta, 2024).

challenges in enforcement.

B. Recommendations

With the existence of two subsystems—namely the general judiciary and the military judiciary—both having the authority to handle connectivity (civil-military jurisdiction) cases, it is essential to prevent a dualism of authority. This requires the development of formal criminal law through the revision of the Criminal Procedure Code (KUHAP) and the Military Court Law, by incorporating a comprehensive procedural mechanism for handling connectivity cases. This mechanism should cover all stages, including investigation, inquiry, prosecution, trial, and execution, as a standard operating procedure for managing such cases. The enforcement of law in Indonesian connectivity cases must reflect the interests of both the civilian and military communities, as part of the effort to achieve social justice for all the people of Indonesia.

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