

# Special Connection Judicial in Corruption Cases

Herman Bakir<sup>1</sup>, Mirtusin<sup>2</sup>

{herman\_bakir@borobudur.ac.id<sup>1</sup>, mirtusin12870@gmail.com<sup>2</sup>}

Universitas Borobudur<sup>1,2</sup>

**Abstract.** For military personnel, criminal liability is more of a preventative or retaliatory measure as long as the defendant plans to return to the military after serving his or her sentence. Despite the fact that they are residents of the Republic of Indonesia, the TNI is excluded from a different gathering, in light of the fact that each individual from the TNI is a customary resident, but since of the weight of the TNI's commitments as the center of keeping up with public protection, the TNI is excluded from a different gathering. There is a need to keep more focused control in the association, so maybe it is a different gathering to accomplish its primary objectives, hence unique principles and equity are required that are discrete from general equity. This sort of examination is Standardizing research. A conceptual approach and a statutory approach are used. Secondary data were used as the data source. Information investigation was done illustratively subjectively. Decisions are made utilizing a logical technique from general things to explicit things, particularly those connected with the exploration point, specifically the Unique Network of Equity in Debasement Cases. This research resulted in the finding that aspects of national defense and security are one of the priority considerations, so it would be good if they were linked. The military environmental law was immediately revised, but changes to this law have not been completed or realized to date.

**Keywords:** Judiciary; Special Connection; Corruption Cases

## 1 Background

The Criminal Methodology Code doesn't unequivocally express the importance of criminal procedural regulation, however just makes sense of a few pieces of criminal procedural regulation, to be specific request, examination, indictment, preliminary, pretrial, court choice, lawful activity, seizure, search, capture, and confinement. There are three main functions of criminal procedural law, namely searching for and finding the truth, making decisions by judges, and implementing decisions that have been taken. This is also a function of criminal procedural law which, apart from enforcing formal law, also finds the truth of criminal acts and perpetrators of criminal acts in connection crimes, including connection crimes related to corruption. Connectivity crimes are criminal acts committed by civilians together with members of the military, where the person/civil society should have the authority to try them in a general

court, while members of the military are tried by a military court[1]. For the military, a special court is held taking into account factors specifically in the military sector. This relates to state secrecy in the military world which must be maintained because it is related to the security of the state itself.

Availability comes from the Latin word "Connexio". This indicates that a criminal case is investigated by a general court jointly by civilians and military personnel, unless the loss caused by the crime is in the interest of the military, in which case it is tried by a military court. The network assessment occasion or network preliminary is a component that is applied to criminal demonstrations in which there is support, either partaking (deelneming) or mutually (made dader) including regular citizen culprits and culprits who have military status. In this case, it likewise applies to taking care of cases connected with criminal demonstrations of debasement. The treatment of criminal demonstrations analyzed through network is directed in Regulation Number 5 of 1950, Regulation Number 14 of 1970, Joint Pronouncement of the Pastor of Equity, Clergyman of Guard/Administrator of Safeguard, Boss Equity of the High Court, Head legal officer, Regulation Number 3 1975, Regulation Number 8 of 1981 concerning Criminal System Regulation, Regulation Number 31 of 1997 [2].

The judiciary is established by law with the main task of receiving, examining adjudicating, and resolving every case submitted. However, in Regulation Number 31 of 1997 concerning Military Equity a few arrangements are never again by improvements in the public eye, so changes should be made, one of which is in regards to the locale of military equity over individual individuals from the TNI who perpetrate criminal demonstrations of defilement. The Tactical Equity Regulation at present directs that the legal executive has the position to attempt individuals from the TNI who carry out military violations just as controlled in the KUHPM, yet not for wrongdoings that are not managed in the KUHPM. By and by, military equity will likewise attempt criminal demonstrations that are not managed in the KUHPM, one model is that the Tactical Court will attempt criminal demonstrations of defilement perpetrated by individual individuals from the TNI.

The aspect of national defense and security is one of the priority considerations, so it would be better if related to this, immediate revision of the law regarding the military environment was carried out, but changes to this law have not been completed or realized to date. Treatment of debasement cases perpetrated by TNI fighters is taken care of by military equity, notwithstanding, treatment of defilement cases carried out by TNI troopers along with regular folks is taken care of through availability hearings, network hearings are managed in Regulation Number 8 of 1981 concerning the Criminal Strategy Regulation (KUHPM). The affiliation assessment framework is moreover controlled in Guideline Number 31 of 1997 concerning Military Value, the organization court is entrusted with settling on the off chance that a lawbreaker act is perpetrated mutually by regular people and TNI troopers, both general wrongdoings and unique violations like debasement [3 ].

As a TNI fighter who is prepared and outfitted, he has the position to safeguard the Unitary Condition of the Republic of Indonesia, this is all conceded in light of regulation. However, soldiers from the TNI who break military criminal law will be tried at the Military Court under Law No. 31 of 1997 concerning Military Equity, however surprisingly, when TNI warriors carry out criminal demonstrations of debasement, they are still tried in military court. The principle of military necessity (Military Necessity) is often used in humanitarian law which was later adopted by our country, in this case, the TNI, to carry out its main tasks and personnel development tasks. This principle in humanitarian law means that a party to a dispute (belligerent) has the right to carry out any actions that can result in the success of a military

operation and at the same time does not violate the laws of war by paying attention to the principles: limitation and proportionality.

The quintessence of criminal responsibility for a tactical individual is a greater amount of a demonstration of prevention or counter as long as the convict will be reactivated in military help in the wake of finishing his sentence. A previous military convict who will get back to well-trained should turn into a tactical man. Criminal obligation for individuals from the military being referred to is an instance of criminal demonstrations that can be settled through military equity (Regulation Number 31 of 1997 concerning Military Equity). In the interim, military disciplinary discipline is an instructive activity for a tactical individual who is condemned to act as an activity to encourage military discipline. Military discipline is to a greater degree a blend of military training and discouragement, as long as the convict isn't excused from military help. Criminal liability is a manifestation of the consequences of criminal acts that have been committed or carried out, especially criminal liability for the crime of gratification by a military member.[4].

Despite the fact that each member of the TNI is an ordinary citizen and a citizen of the Republic of Indonesia, it is necessary to maintain more disciplined order in its organization so that it appears as though it is a separate group in order to achieve its primary goals. This is because the TNI is not considered to be a separate class of citizens because each member of the TNI is an ordinary citizen. This explicitness is that the tactical local area is a specialization of the overall population. As far as regulation, TNI individuals have similar situation as common individuals, really intending that as residents, TNI individuals are likewise dependent upon all appropriate legitimate guidelines, both crook and common regulation. The foundation of the tactical equity establishment is, as a matter of fact, to make a move against TNI individuals who perpetrate criminal demonstrations, to turn into a method for control for TNI individuals in completing their obligations so they can shape and create areas of strength for a, and honest TNI on the grounds that the TNI's undertaking is exceptionally huge to watch and save the country and state.

In the case of criminal acts of corruption committed by TNI soldiers, two judicial institutions have the authority to try, namely the TIPIKOR judiciary which is within the general judiciary, and the Military judiciary, both institutions have their specificities, the Military judiciary which is a judicial institution that specifically handles criminal acts committed by TNI soldiers, and the TIPIKOR judicial institution is a judicial institution that specifically handles corruption cases. Treatment of defilement cases perpetrated by TNI fighters is taken care of by military equity, nonetheless, treatment of debasement cases carried out by TNI troopers along with regular folks is dealt with through network hearings, availability hearings are controlled in Regulation Number 8 of 1981 concerning Criminal Method Regulation (KUHAP). The affiliation assessment framework is moreover controlled in Guideline Number 31 of 1997 concerning Military Value, the organization court is entrusted with settling on the off chance that a lawbreaker act is perpetrated mutually by regular people and TNI troopers, both general wrongdoings and unique violations like debasement [5].

## **2 Methodology**

This sort of investigation is Directing exploration. The systems used are a legitimate technique and a determined philosophy. The data source used is helper data. The examination of the data was illustrated and subjective. [6]. Closing is completed utilizing a rational

technique, in particular finishing up from general to explicit, particularly those connected with the exploration subject, specifically Exceptional Network Equity in Debasement Cases. Emotional data assessment is finished if the specific data got is as a variety of words and not a movement of numbers. Furthermore, they cannot be classified. Data can be assembled in various ways (interview discernments, document events, and recording tapes). It is for the most part dealt with first preceding being used in emotional investigation, including the results of interview records, data decline, assessment, data interpretation, and triangulation.[7].

### **3 Results and Discussion**

#### **3.1 Form of Special Judicial Connection in Corruption Cases**

Military Police, in resolving crimes, have the position of investigators in taking action on a criminal case whose task is to collect information on perpetrators, evidence, and witnesses as well as carry out arrests or confiscation of perpetrators based on warrants. Law enforcement carried out by the Military Police is a manifestation that Indonesia is a country of law where before the law everything is equivalent (equality before the law). This is further emphasized in Article 27 passage (1) of the 1945 Constitution, the fourth amendment, which expresses that residents have similar situation under regulation and government without any exemptions.

Articles 89 to 94 of the Criminal Procedure Code (KUHAP) define connectivity justice. Article 89 of the Criminal Method Code states: 1) Criminal demonstrations perpetrated mutually by those inside the overall equity climate and the tactical equity climate, will be inspected and attempted by a court inside the extent of general equity except if as indicated by the choice of the Priest of Guard and Security with the endorsement of the Pastor of Equity, the case should be analyzed and attempted by a court inside the extent of military equity. 2) A permanent team of investigators comprised of military prosecutors, or high military prosecutors as appropriate, with their respective authorities in accordance with the law applicable to the investigation of criminal cases is responsible for carrying out the investigation of criminal cases as intended in paragraph (1). The group as alluded to in passage (2) is framed by a joint pronouncement from the Clergyman of Guard and Security and the Priest of Equity. Despite the fact that there are guidelines that manage it, there are still contradictions, in light of the fact that in view of Article 89 of the Criminal Strategy Code, assuming a lawbreaker act is perpetrated by both military and regular citizen components, they will be attempted inside the extent of general equity, except if there is endorsement from the Pastor of Guard and Security and the Clergyman. Equity should be attempted inside the tactical equity climate [2].

Defilement cases including associates inside the degree with general equity and military equity, it is coordinated in Guideline Number 8 of 1981 concerning Criminal Method Guideline (KUHAP). The accessibility survey framework is moreover coordinated in Guideline Number 31 of 1997 concerning Military Value (Military Value Guideline). Concerning the guideline of network systems in the Criminal Technique Code and the Tactical Equity Regulation, one of the methods for taking care of criminal demonstrations of defilement including associates that fall inside the extension with general equity and military equity is the development of a super durable group. Nonetheless, there are examinations concerning debasement cases including regular citizens and individuals from the military. A network assessment or network preliminary

is an instrument applied to criminal demonstrations where there is investment, either mutually or together, including regular citizen culprits and culprits who have military status.

Regulation Number 8 of 1981 concerning Criminal Methodology Regulation, Regulation Number 31 of 1997 concerning Military Equity, Regulation Number 16 of 2004 concerning the Investigator's Office, and Regulation Number 48 of 2009 concerning Legal Power. In the Criminal Procedure Code, examination of connectivity is regulated in Chapter and tried in the general court environment unless according to the Decree of the Minister of Defense and Security (Menhankam) with the approval of the Minister of Justice (Menkeh) the case must be examined and tried by a military court. Furthermore, the investigation of the criminal case is carried out by a permanent team [8].

### **3.2 Judicial Implications of Special Connections in Corruption Cases**

If a case is not split, the connectivity investigation will continue with the prosecution and trial examination by the connectivity mechanism regulations contained in the statutory regulations. As for the process, 17 See Articles 89, 90, 91, 92, 93, and 94 of Law Number 8 of 1981 concerning Criminal Procedure Law. 18 The permanent team is a body investigating criminal cases connected to both general crimes and special/certain crimes as regulated in the Law. (Jakarta; National Legal Development Agency, Ministry of Justice of the Republic of Indonesia, 1994/1995), p. 18. The handling of corruption is more or less the same as that regulated in the laws and regulations above. In addition to the applicable statutory regulations above, this includes the authority to investigate and determine suspects who are subject to general judicial law in connection proceedings. However, the Corruption Eradication Committee still has to pay attention to the provisions in the Criminal Procedure Code, in terms of determining suspects carried out after the investigator has succeeded in collecting at least two pieces of evidence and has succeeded in making clear the criminal act that occurred. Even though a connectivity team has not been formed, if there is sufficient initial evidence by the provisions contained in the statutory regulations/the Constitutional Court decision number 21/PUUXII/ In 2014 someone could be named a suspect. In terms of pre-trial matters, it is managed in Unofficial law Number 27 of 1983 which expresses that availability cases depend on the regulations in force in each court, other debasement regulations additionally apply, for instance, Regulation Number 31 of 1999 jo. Regulation Number 20 of 2001 in regards to the Destruction of Defilement Wrongdoings (UU Tipikor), Regulation Number 30 of 2002 concerning the Debasement Annihilation Commission (UU KPK), and Regulation 46 of 2009 concerning the Defilement Wrongdoing Court. So for this situation on the off chance that there is a debasement case as planned in Article 11 of the Defilement Destruction Commission Regulation [9].

Resolving criminal acts of corruption must be carried out quickly and precisely. Article 25 of the Defilement Regulation expresses that examinations, arraignments, and assessments in trials in instances of criminal demonstrations of debasement should accept need over different cases to determine them as fast as could be expected. The principles of quick, inexpensive, and simple justice are relevant to these provisions.. Corruption is an extraordinary crime, in which the crime of corruption suffers the loss of the state's economy and finances which are intended for the welfare of society. Therefore, handling corruption cases takes priority over handling other cases. In particular, procedural law in

corruption trials is regulated in the Corruption Court Law, other general arrangements that are not managed in unambiguous regulations utilize the Criminal Strategy Code. By and large, the procedural regulation for preliminaries of criminal demonstrations of defilement actually alludes to the standards of criminal regulation and existing criminal procedural regulation. So for this situation, despite the fact that there are no unequivocal arrangements that manage the standards of unique criminal procedural regulation. Consequently, the rule of straightforward, quick, and minimal expense equity, which is one of the standards of general criminal procedural regulation, likewise applies to unique criminal procedural regulation.

This can prompt vagueness on the grounds that in the guidelines in regards to availability cases, both in the Criminal Method Code and the Tactical Equity Regulation, components with respect to taking care of network not entirely settled. Article 89 of the Criminal System Code and Article 198 of the Tactical Equity Regulation specify that in the event that there is a criminal offense instance of association, it will be inspected and attempted by a court inside the extent of general equity except if as per the choice of the Priest of Guard and Security with the endorsement of the Clergyman of Equity, the case should be inspected and attempted by a court inside the extent of military equity. Examination of criminal cases is completed by a long-lasting group comprising of specialists in the general court and military court, by their separate specialists as per relevant regulation. On account of exploring criminal cases, the group is then framed by a joint declaration from the Clergyman of Safeguard and Security and the Pastor of Equity. Be that as it may, in its execution, it isn't done by these arrangements yet is completed by regular citizen examiners assuming that the culprit of a crook act is connected with common society with the pertinent procedural regulation in the general court climate and is done by military specialists assuming the culprit of a criminal offense is connected with individuals from the military with the material procedural regulation in the tactical equity climate without a long-lasting crew being framed first [10].

Connectivity cases consist of elements of general justice and military justice that examine connectivity cases within the scope of justice, are examined within the scope of general court only, or are examined within the scope of military justice with the choice of the Priest of Safeguard and Security with the endorsement of the Pastor of Equity. Where the judicial determination is based on the severity of the loss, whether in the public interest or military interests, the examination carried out by the connectivity team can make a case examined into a series of complete connectivity examinations in terms of examining and proving the perpetrators, whether the perpetrators are from the civilians and members of the military. However, in the implementation of investigations into connectivity crimes, the formation of a connectivity team is often ignored because the formation of a connectivity team is considered complicated and takes a long time. If viewed according to criminal policy theory, the regulations regarding the formation of permanent connectivity teams can be formulated better so that they can be implemented easily to achieve justice. Marc Ancel's criminal law policy states that the term "policy" is taken from the term "policy" which comes from English so the term "Criminal Law Policy" has the same meaning as the term "Politics of Criminal Law". Next, Marc Ancel defines the meaning of Criminal Law Politics or "penal policy" as a science and art that aims to enable positive legal regulations to be formulated better.

In connectivity cases, separate (Split) investigations are often carried out and it is not uncommon for connectivity cases that should be investigated by a team to be carried out by investigators who are not included in the permanent team category. This can lead

to ambiguity because in the regulations regarding connectivity cases, both in the Criminal Methodology Code and the Tactical Equity Regulation, components with respect to taking care of availability still up in the air. Unless the Minister of Defense and Security with the approval of the Minister of Justice determines that the case must be examined and tried by a court within the scope of military justice, as stipulated in Article 198 of the Military Justice Law and Article 89 of the Criminal Procedure Code, all connected criminal cases will be examined and tried by a court within the scope of general justice. Examination Criminal cases are done by an extremely durable group comprising of specialists inside the general court and military court, by their particular specialists as indicated by material regulation. Because of the intricacy of network issues, the arrangement choice is to be settled through parting without utilizing availability components.[11].

#### **4 Conclusion**

1. The aspect of national defense and security is one of the priority considerations, so it would be better if related to this, immediate revision of the law regarding the military environment was carried out, but changes to this law have not been completed or realized to date. Treatment of debasement cases carried out by TNI troopers is taken care of by military equity, notwithstanding, treatment of defilement cases perpetrated by TNI fighters along with regular citizens is taken care of through network hearings, availability hearings are managed in Regulation Number 8 of 1981 concerning the Criminal Technique Regulation (KUHAP).
2. Policing out by the Tactical Police is a sign that Indonesia is a nation of regulation where under the watchful eye of the law everything is same (correspondence under the steady gaze of the law). This is additionally stressed in Article 27 segment (1) of the 1945 Constitution, the fourth amendment which communicates that residents have similar situation in regulation and government without any special cases. Judicial connectivity is regulated in Articles 89 to Article 94 of the Code of Law. Criminal Procedure (KUHAP).
3. Connectivity cases consist of elements of general justice and military justice that examine connectivity cases within the scope of justice, are examined within the scope of general court only, or are examined within the scope of military justice with the choice of the Pastor of Protection and Security with the endorsement of the Priest of Equity. Where the severity of the loss is the basis for the judicial decision, whether in the public or military interest, the examination carried out by the connectivity team can make a case examined into a series of complete connectivity examinations in terms of examining and proving the perpetrators.

#### **5 Suggestion**

1. It is hoped that the judiciary is established by law with the main task of receiving, examining adjudicating, and resolving every case submitted. However, in Law Number 31 of 1997 concerning Military Justice several provisions are no longer by developments in society, so changes need to be made, one of which is regarding the

jurisdiction of military justice over individual members of the TNI who commit criminal acts of corruption.

2. It is hoped that in connectivity cases separate (Split) investigations will often be carried out and it is not uncommon for connectivity cases that should be investigated by a team to be carried out by investigators who are not in the permanent team category. This can lead to ambiguity because in the regulations regarding connectivity cases, both in the Criminal Procedure Code and the Military Justice Law, mechanisms regarding handling connectivity have been determined.
3. It is trusted that military disciplinary discipline is an instructive activity for a tactical individual who is condemned to act as an activity to encourage military discipline. Military discipline is all the more a blend of military training and prevention, as long as the convict is not dismissed from military service. Criminal liability is a manifestation of the consequences of criminal acts that have been committed or carried out, especially criminal liability for the crime of gratification by a member of the military.

## References

- [1] Muhammad Faizal, "Peran Manunggal TNI-AD dalam pemberdayaan masyarakat (Suatu Studi di Kelurahan Sukur, Kab. Minahasa Utara)," *J. Militeristik*, vol. 02, pp. 88–98, 2014.
- [2] Nurhasim, *Praktek-Praktek Bisnis Militer, Pengalaman Indonesia, Burma, Filipina dan Korea Selatan*, 1st ed. Jakarta: PT Ghalia Indonesia, 2003.
- [3] Widjojo, *Transformasi TNI Dari Pejuang Kemerdekaan Menuju Tentara Profesional dalam Demokrasi: Pengulatan TNI Mengukuhkan Kepribadian dan Jati Diri*, 1st ed. Jakarta: Kata Hasta Pustaka, 2015.
- [4] Marpaung, *Menuju TNI Profesional Tidak Berbisnis dan Tidak Berpolitik, Perjalanan Advokasi RUU TNI*, 1st ed. Jakarta: PT Elexmedia Komputindo, 2005.
- [5] Melani, "Disparitas Putusan Terkait Penafsiran Pasal 2 Dan 3 UU Pemberantasan Tindak Pidana Korupsi," *J. Yusdisia*, vol. 03, pp. 55–65, 2014.
- [6] L. J. Moleong, *Metodologi Penelitian Kualitatif*, 7th ed. Bandung: PT. Remaja Rosdakarya, 2004.
- [7] Amirudin, *Pengantar Metode Penelitian Hukum*, 1st ed. Jakarta: PT Rajawali Press, 2010.
- [8] Oksidelfa, "Efektivitas Putusan Pidanaan Maksimal Bagi Pelaku Tindak Pidana Korupsi dalam Rangka Pengetasan Kemiskinan," *J. Huk.*, vol. 01, pp. 33–46, 2017.
- [9] Ihsan Asmar, "Pertimbangan Hakim Terhadap Penegakan Hukum Tindak Pidana Korupsi Dana Desa," *J. Ilm. Pendidik. Pancasila dan Kewarganegaraan*, vol. 06, pp. 56–72, 2021.
- [10] Syamsuddin, "Rekonstruksi Pola Pikir Hakim Dalam Memutus Perkara Korupsi, Berbasis Hukum Progresif," *J. Din. Huk.*, vol. 11, pp. 76–89, 2011.
- [11] Budi Saiful, "Penguatan Alat Bukti Tindak Pidana Pencucian Uang dalam Perkara Tindak Pidana Korupsi di Indonesia," *J. Integritas*, vol. 02, pp. 55–75, 2016.