

Implementation Of Judge's Decisions On Decisions In Connection Cases Criminal Justice System

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Abstract. The purpose of this study is to examine the formulation of connectivity cases in Indonesian positive law and the implementation of judges' decisions on connectivity cases in the criminal justice system. The approach used in this research is a normative approach. The data collection technique used is conventional and online literature search. The data analysis method used in this research is qualitative because the data is presented in a descriptive-narrative way. The results showed that before the birth of the Criminal Procedure Code, a joint decision was made between the Minister of Justice, the Minister of Defense and Security, and the Attorney General, Joint Decree Number B/16/XII/1971 regarding wisdom in the examination of criminal acts carried out jointly by people who are included in the Criminal Procedure Code. military court environment. The basis for connectivity is contained in Article 22 of the Law of the Republic of Indonesia Number 14 of 1970 concerning the Basic Provisions of Judicial Power. The examination of connectivity in the Criminal Procedure Code is regulated in Chapter XI concerning Connectivity in Articles 89 to 94. In principle, all connectivity cases are examined and tried by a court in the general judiciary, except for the decision of the Minister of Defense and Security with the approval of the Minister of Justice, the case can be examined and tried by the court. in the military courts. However, in practice irregularities are often found, namely connectivity cases are resolved separately, meaning that general civilians are examined and tried by the general district court, while members of the military/armed forces are examined and tried by the military court.

Keywords: Judge; Connectivity; Justice

1. Introduction

It is possible that in everyday life there are criminal acts committed by TNI soldiers together with civil society. If one observes these provisions, this indicates that the meaning of the word together, apart from being intended for criminal acts or criminal acts, is carried out jointly by those who are subject to general courts and military courts and also implies that they must be tried together or in one case. the same file. Criminal acts committed jointly by those who are included in the general court environment and the military court environment, according to the provisions, should be resolved according to the procedural law for the examination of connectivity [1]. The cases are resolved by splitting or in other words the perpetrators of civilian crimes are tried by the district court, as a court within the scope of the general court, while the perpetrators of crimes committed by TNI soldiers are tried by the military court as a court within the scope of military justice.

As in the case of Decision Number 92-K/PM I-01/AD/IV/2014 on behalf of the defendant Heri Shafitri, Decision Number 257/Pid.B/2014/PN Bna on behalf of the defendant Umar alias Mimbe bin M. Adam and Decision Number 258/ Pid.B/2014/PN Bna on behalf of the defendant Rasyidin alias Mario. The crime of misuse of firearms involving TNI soldiers and 2 civilians was tried by the military court for perpetrators of TNI soldiers and the district court for perpetrators of civilians. A TNI soldier is someone who is armed and prepared to do battle or war, especially in the context of national defense and security. As a TNI soldier, if he commits an act or criminal act that is classified as a military crime whose regulation is contained in the Military Criminal Code (KUHPM), the TNI soldier will be examined and tried in accordance with the examination procedure contained in the Law of the Republic of Indonesia No. 31 of 1997 concerning Military Courts [2].

Law enforcement in a legal state like Indonesia requires the existence of an institution called judicial power or a judicial body [3]. This judicial power is tasked with enforcing the law and supervising the enactment of applicable laws and regulations (*ius constitutum*) [4]. Judges have the most important role because judges have the right to decide cases. Judges in carrying out their duties, especially in deciding a connection case, must always adhere to the principles of an independent and impartial trial [5]. The judiciary as a symbol of the rule of law and the last bastion of justice should be impartial and provide equal legal treatment, which is the dream of all levels of society [6]. Judges who are the implementers and spearheads of the judiciary as well as those who interact with the community are required to have quality and professionalism in researching, weighing, and making legal decisions for connectivity cases [7].

A connection case where the authority to try it is within the general court environment, the examination process is carried out by a panel of judges [8]. The composition of the panel of judges consists of presiding judges from general courts and member judges divided equally between general court judges and military court judges. Vice versa, if the authority to adjudicate cases is within the military court, then the panel of examining judges consists of the chief judge from the military court environment and the member judges divided equally between military judges and general court judges by being given the titular military rank.

Based on the description above, it can be seen that the judge in making a decision is based on various considerations. However, the judge's decision often becomes controversial and is widely opposed by various parties. The judge's consideration plays a very important role, especially in making a decision, whether the decision handed down is in accordance with the applicable laws and regulations, because it is not impossible that a decision that has been handed down is not in accordance with the applicable legal provisions. The formulation of the problem in this research are What is the formulation of the connectivity case in Indonesian positive law?, and How is the implementation of the judge's decision on the connection case decision in the criminal justice system?

2. Method

This type of research is library research [9]. Library research is research that is carried out through library data collection or research carried out to solve a problem which basically relies on a critical and in-depth study of relevant library materials [10]. This research includes library research because data sources can be obtained from libraries or other documents in written form, both from journals, books and other literature. The approach used in this research is a normative approach.

3. Discussion

3.1. Formulation of Connectivity Cases in Indonesian Positive Law

The handling of criminal acts examined through connectivity is regulated among others through the Law of the Republic of Indonesia Number 5 of 1950 concerning the Emergency Law concerning the Structure and Powers of Courts/Prosecutors in the Military Courts (Emergency Law Number 16 of 1950) as Law Federal Law of the Republic of Indonesia Number 14 of 1970 concerning Basic Provisions of Judicial Power, Joint Decree of the Minister of Justice, Minister of Defense/Commander of Defense, Chief Justice of the Supreme Court, Attorney General, Law of the Republic of Indonesia Number 3 of 1975 concerning Political Parties and Working Groups, Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law, Law of the Republic of Indonesia Number 31 of 1997 concerning Military Courts, Law of the Republic of Indonesia Number 16 Number 2004 concerning the Prosecutor's Office, Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power. Connectivity checks in the Criminal Procedure Code are regulated in Chapter XI on Connectivity in Articles 89 to 94.

Connectivity is a judicial system that is applied to a criminal act where there is participation (*deelneming*) or jointly (*mede dader*) between civilians and people with military status (TNI soldiers). Article 55 Paragraph (1) The 1st Criminal Code which is commonly used in handling a criminal act that involves more than one perpetrator. Regarding Article 55 of the Criminal Code, it is theoretically known as what is called *deelneming* (inclusion). *Deelneming* is related to a criminal event where the perpetrator is more than 1 (one) person, so the roles and responsibilities of each perpetrator of the criminal event must be sought [11].

Connectivity can also be said to be a trial between those who are subject to the jurisdiction of the general court and the military court. In accordance with Article 89 of the Criminal Procedure Code which reads :

1. Criminal acts committed jointly by those belonging to the general judiciary and the military court environment, are examined and tried by a court within the general judiciary, except if according to a decision of the minister of defense and security with the approval of the minister of justice, the case must be examined and tried by the court within the military court environment.
2. 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 and the Military Police of the Armed Forces of the Republic of Indonesia and military prosecutors or high military prosecutors in accordance with their respective authorities according to the applicable law. applies to criminal investigations.
3. The team as referred to in Paragraph 2 is formed by a joint decree of the minister of defense and security and the minister of justice.

In practice, although there have been arrangements, between *das sollen* and *das sein* there has been no conformity, meaning that between what should be (*das sollen*) normatively is not in accordance with the reality or facts that occurred (*das sein*), because based on Article 89 of the Criminal Procedure Code that if a crime occurs which are both committed by military and civilian elements, they are tried in the scope of the general court, unless there is an approval from the Minister of Defense and Security and the Minister of Justice must be tried in the military court environment [12].

The basis for connectivity is contained in Article 22 of the Law of the Republic of Indonesia Number 14 of 1970 concerning the Basic Provisions of Judicial Power. The article reads :

Criminal acts committed jointly by those belonging to the general court environment and the military court environment are examined and tried by the court in the general court environment, except if according to the decision of the Minister of Defense/Security with the approval of the Minister of Justice the case must be examined and tried by a court within the military court.

Long before the birth of the Criminal Procedure Code, a joint decision was made between the Minister of Justice, the Minister of Defense and Security, and the Attorney General, Joint Decree Number B/16/XII/1971 regarding the policy of examining criminal acts carried out jointly by people who are included in the military court environment. which determines that:

1. The investigation is carried out jointly by the police and the public prosecutor's office together with the police and military administrative apparatus in accordance with their respective powers according to the applicable law in the investigation of criminal acts.
2. The determination of which court will adjudicate the connectivity offense shall be determined by joint research between the Prosecutor or the High Prosecutor and the competent Prosecutor or High Prosecutor of the Armed Forces. The results of the research were reported to the Attorney General and the ABRI prosecutor general. the determination of which court will adjudicate the connectivity offense is based on the losses it causes. If the loss is in the military field, then the judge is the Military Court. In addition, additional factors such as the nature of the crime, the role and number of perpetrators in each party are also considered.
3. If it is determined that the general court is adjudicating, then the official report is ratified (taken over) by the Public Prosecutor/Prosecutor. Likewise, it is commensurate if it is determined that the military court will adjudicate.

While waiting for the enactment of the law governing the examination of connectivity cases, in 1971 a joint decision was issued by three agencies that governed the policy for the completion of the examination of connectivity cases. Even if you pay close attention, the policy provisions outlined in the joint decision are almost the same as the articles formulated in Chapter XI of the Criminal Procedure Code. The joint decree is a transfer from the explanation of Article 22 of the Law of the Republic of Indonesia Number 14 of 1970.

The articles mentioned above stipulate that criminal acts committed jointly by those who belong to the general judiciary and the military court environment are examined and tried in the general judiciary, except according to a Decree of the Minister of Defense and Security with the approval of the Minister of Justice, the case must be examined and tried. by a military tribunal. Furthermore, the investigation of the criminal case is carried out by a permanent team formed by a joint decree of the Minister of Defense and Security and the Minister of Justice consisting of General Judiciary Investigators, Military Police and Military Oditur (Otmil) or

High Military Oditur (Otmilti) in accordance with their authority and law applicable to the investigation of criminal cases [13].

As for the formation of a permanent connection team as regulated in Article 89 Paragraph (3) of the Criminal Procedure Code and Article 198 Paragraph (3) of the Law of the Republic of Indonesia Number 31 of 1997, there are implementing regulations, namely the Decree of the Minister of Defense and Security and the Minister of Justice Number K. 10/M/XII/1993 and Number M.57.PR.09.03/1983 concerning the Establishment of a Permanent Team. Article 4 Paragraph (3) of the joint decree states that the team leader remains in charge of coordinating and supervising the implementation of the investigation by the permanent team concerned so that it can run smoothly, directed, efficient and effective.

The joint decree is the implementation of Article 89 Paragraph (3) of the Criminal Procedure Code and Article 198 Paragraph (3) of the Law of the Republic of Indonesia Number 31 of 1997 concerning Military Courts, while in Paragraph (2) of each of the articles mentioned above, it is determined that the permanent team conducts investigations in accordance with their respective authorities according to the law applicable to the investigation of criminal cases. If a connection case is examined through the connectivity mechanism, the connectivity investigator consists of a permanent team consisting of prosecutors, police, military police and public prosecutors. The way the team works is adjusted to the authority that exists in each team element. In terms of the authority of each team element, suspected civilian perpetrators were examined by elements of the National Police investigators and suspected members of the TNI or Polri were examined by investigators from the Military Police and Military Prosecutor.

The criminal case of connectivity is tried or examined by the general court (district court), then the panel of judges consists of the presiding judge from the general court and member judges, each appointed from the general court and the military court in a balanced manner [14]. If a criminal case is tried or examined by a military court, the panel of judges consists of a presiding judge from the military court and a member judge from each military court and the general court who are given the titular rank.

In principle, all connectivity cases are examined and tried by courts within the general judiciary, except for the decision of the Minister of Defense and Security with the approval of the Minister of Justice, the case can be examined and tried by a court within the military court. However, in practice irregularities are often found, namely connectivity cases are resolved separately, meaning that general civilians are examined and tried by the general district court, while members of the military/armed forces are examined and tried by the military court.

This is clearly contrary to the provisions of the legislation in force because according to Article 89 Paragraph (1), criminal acts committed jointly by those belonging to the general court environment and the military court environment, are examined and tried by the court within the general court environment unless according to the the decision of the Minister of Defense and Security with the approval of the Minister of Justice, the case must be examined and tried by a court in the environment military court. The reason for the deviation according to the author is due to the length of the process or procedure that must be taken, both in the administrative, personnel and financial fields that support the settlement of the case and this is certainly contrary to the Criminal Procedure Code which applies the principle of fast justice.

Considering that the procedure for handling criminal cases regulated in the Criminal Procedure Code is not as simple as the principles applicable in the Criminal Procedure Code, according to the author's knowledge, the provisions stipulated in the Criminal Procedure Code are rarely applied properly in practice [15]. Therefore, if a criminal act of connectivity occurs, the suspect or defendant with the status of a member of the military is handled by law

enforcement officers and military courts, while the suspect or defendant with civilian status is handled by non-military law enforcement officers and the general court (Police investigators or Civil Servants Investigators). Civil Servants, Public Prosecutors, District Courts, High Courts and Supreme Courts).

3.2. Implementation of Judges' Decisions on Connectivity Case Decisions in the Criminal Justice System

The purpose and objective of connectivity is to provide a guarantee for the implementation of a speedy and fair trial of connectivity, although there is a possibility that this process will not be as easy as adjudicating ordinary criminal cases. With the connection between the two groups with different judicial environments in committing a crime, the legislators are of the opinion that it is more effective to simultaneously attract and try them in a judicial environment. In addition to these aims and objectives, this regulation on connectivity has a practical problem in the bureaucratic determination of the judiciary that will adjudicate rather protractedly, whereas in the Criminal Procedure Code a speedy trial system (speedy trial; *contante justitie*) is adopted [16].

As previously explained, a case can only be heard as a connection case if there is a decision from the Minister of Defense and Security and it has been approved by the Minister of Justice. Not to mention waiting for the results of the assessment from the investigative team formed to determine whether the case belongs to the general court or the military, so you can imagine the time it will take to settle the case. This issue should also need to be considered so that the aims and objectives of connectivity provide a guarantee for the implementation of a fast and fair judicial connection that can be realized without neglecting the true values of justice.

Deciding on a criminal case means upholding justice for a criminal case or in other words upholding material criminal law [17]. Enforcing material criminal law requires a process based on statutory provisions [18]. The concept of justice or equality is very important in every court [19]. As a judiciary that exercises judicial power, judges must be able to provide justice to justice seekers, so the judge's decision is also interpreted as justice given by the judge to justice seekers after going through the proceedings in the trial. It is found that the principles of justice in criminal procedural law must be understood and applied, both formally and substantively in order to realize a fair decision. Achieving a fair decision can only be realized if the criminal procedure law is implemented both formally and in substance in the examination of criminal cases [20]. Thus, the judge's decision that contains injustice can be avoided.

In the following, the author gives an example of a connection case. The case is the misuse of firearms. The problem of misuse of firearms that occurs is not only carried out by TNI soldiers who are supposed to provide a sense of security for the Indonesian people, but instead commit disturbing acts. The fact that TNI soldiers control firearms and misuse them is of course worrying because it involves the survival of the people themselves. So that people no longer feel safe in the protection of military members.

One of the cases of misuse of firearms involving TNI soldiers was the case of Praka Heri who was proven to have lent his inventory of SS2 V1 type firearms to two civilians. The firearm was used to strafe the post for candidates for the Nasdem Party legislative candidates in Kunyet Mule Village, Matangkuli District, North Aceh, on February 17, 2014 in the morning. Praka Heri gave the firearms along with 13 rounds of ammunition to Rasyidin alias

Mario and Umar alias Membe. No one died during the shooting at the NasDem Party post, but two NasDem party cadres were injured due to being mistreated by Umar.

The verdict in this case is Decision Number 92-K/PM I-01/AD/IV/2014 on behalf of the defendant Heri Shafitri, Decision Number 257/Pid.B/2014/PN Bna on behalf of the defendant Umar alias Mimbe and Decision Number 258/Pid.B/2014/PN Bna on behalf of the defendant Rasyidin alias Mario. The crime of misuse of firearms involving TNI soldiers and 2 civilians was tried by the military court for perpetrators of TNI soldiers and the district court for perpetrators of civilians.

The decisions analyzed in this study are 3 (three) decisions that already have permanent legal force, namely Decision Number 92-K/PM I-01/AD/IV/2014 on behalf of the defendant Heri Shafitri, Decision Number 257/Pid.B/ 2014/PN Bna on behalf of the defendant Umar alias Mimbe bin M. Adam and Decision Number 258/Pid.B/2014/PN Bna on behalf of the defendant Rasyidin alias Mario. The defendant Praka Heri was still tried in the military court, while the other two defendants who were civilians were tried in the district court, namely in the general court.

In Praka Heri's decision, the panel of judges considered that Praka Heri's act of lending firearms solely because he received a reward from Rasyidin and Umar and that Praka Heri's actions could not be justified. Praka Heri was legally and convincingly proven guilty of committing a criminal offense under Article 1 of the Firearms Act and sentenced to 3 (years) imprisonment and dismissed from military service as an additional crime.

In the decision of Rashidin and Umar, the panel of judges considered the existing legal facts, explained the elements of the crime and stated that Rashidin and Umar had fulfilled these elements. The panel of judges also did not find any forgiving reasons and justifying reasons that could erase the unlawful nature of Rashidin and Umar's actions. The panel of judges stated that both of them must still be found guilty and sentenced to a punishment commensurate with the actions they have committed. Rasyidin and Umar were proven legally and convincingly guilty of committing a criminal offense under Article 1 of the Firearms Law and sentenced to prison for 1 year and 6 months.

Looking at the three decisions, Praka Heri's decision is the one with the most severe punishment. Praka Heri was sentenced to 3 (three) years in prison and dismissed from military service, while Rasyidin and Umar were sentenced to 18 (eighteen) months in prison. The difference between these decisions is the dismissal of Praka Heri from military service. According to Article 62 of the TNI Law, TNI soldiers are dishonorably discharged if they have a character or act that can harm the discipline of the soldier or TNI. The actions taken by Praka Heri by lending firearms that do not belong to him, but the TNI inventory is an act that is detrimental to the TNI itself and cannot be justified.

The actions carried out by Praka Heri in the case above, are more accurately said to be abuse of possession of firearms because Praka Heri has a legal permit to carry and use firearms, so he has the right to the firearms. Praka Heri is an active member of the military, so the firearms he carries are inventory weapons under his control with a borrowed status. The firearms controlled by Praka Heri should only be used for official purposes, not loaned to Umar and Rasyidin. Praka Heri's actions were clearly not in accordance with the purpose of giving the firearms, so Praka Heri abused the control over the firearms he was holding. For Rashidin and Umar, the shooting they did was only done to scare them. Umar did abuse 2 (two) people who were in the post before leaving with Rasyidin, but did not use Praka Heri's firearm.

The Criminal Procedure Code and the Military Criminal Procedure Code in the judicial connection cases regulate the authority to try. The authority to adjudicate connectivity cases,

based on Article 91 of the Criminal Procedure Code. The determination of relative power to adjudicate in the case of connectivity, if the right is the district court, then Article 84 of the Criminal Procedure Code must be considered. If the connection case which is authorized to adjudicate is a court within the scope of a general court, it will be in line with if the focus of the loss caused by the crime lies in the public interest and therefore the criminal case must be tried by a court in a general court environment. However, the exclusion provisions are tried by a court within the military court environment, if the emphasis of the loss caused by the crime lies in the interests of the military, then the criminal case must be tried by a court within the military court environment. The complexity of the disagreements and the determination of the weight of loss between the public interest and the military interest at the investigation stage is a dynamic problem in its own right in legal practice. Even if this matter has been regulated expressly, if there is a difference of opinion between the investigators between the public prosecutors and the Prosecutor General then proceeded to a difference of opinion between the Attorney General and the Prosecutor General, the opinion of the Attorney General was decisive.

The complexity and dynamics of complex process problems in the context of settlement both in the investigation and trial stages of criminal acts of connectivity make it difficult for investigators and general courts or military courts to apply the connectivity examination procedures that have been regulated in the KUHAP and the Military Criminal Procedure Code which should be absolute (limitative and imperative).). The reasons for justification and pragmatism of investigators and general courts or military courts that hide behind the principles of simple, fast and low-cost justice are the right solutions in law enforcement.

Observing the complexity of the problems of the complicated process and being faced with the principles of a simple, fast and low-cost trial, making the choice of resolving the crime of connectivity to be resolved through the mechanism of splitting the perpetrators of criminal acts carried out jointly by those who belong to the general justice environment and the judicial environment. military courts to each judicial environment, namely military courts and general courts. Splitting relates to the form of cumulative indictment (Article 141 of the Criminal Procedure Code and Article 128 of the Law of the Republic of Indonesia Number 31 of 1997 concerning Military Courts) both in law and in legal practice, giving the possibility of several cases in one indictment .

4. Conclusion

Prior to the birth of the Criminal Procedure Code, a joint decision was made between the Minister of Justice, the Minister of Defense and Security, and the Attorney General, Joint Decree Number B/16/XII/1971 regarding the policy of examining criminal acts jointly by persons belonging to the judiciary. military. The basis for connectivity is contained in Article 22 of the Law of the Republic of Indonesia Number 14 of 1970 concerning the Basic Provisions of Judicial Power. Connectivity checks in the Criminal Procedure Code are regulated in Chapter XI on Connectivity in Articles 89 to 94.

In principle, all connectivity cases are examined and tried by a court in the general court environment, except for a decision of the Minister of Defense and Security with the approval of the Minister of Justice, the case can be examined and tried by a court within the military court. However, in practice irregularities are often found, namely connectivity cases are resolved separately, meaning that general civilians are examined and tried by the general district court, while members of the military/armed forces are examined and tried by the military court. This is due to practical problems in the bureaucratic determination of the

judiciary who will adjudicate rather protractedly, whereas in the Criminal Procedure Code a fast and fair judicial system is adopted.

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