

# Dual Empire of Penal System: Examining the Military Court's Decision on Budget Misuse by Military Officer

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**ABSTRACT:** This research aims to analyze the dualism of the penal system regarding corruption crimes committed by military personnel, comparing the adjudication of such crimes in military courts versus general courts in Indonesia. Utilizing a normative method involving the study of judges' decisions, the research focuses on the 'Ratio Decidendi' of Military Judges at the III Surabaya High Military Court in Case Number 5-K/PMT.III/AD/I/2022 concerning budget misuse by military officials. It explores the relationship between this decision and the concepts of justice and legal certainty within the context of the dualistic judicial system. The findings highlight disparities in the application of punishment between the military court and the Corruption Court for similar cases. Specifically, the research notes that despite clear evidence of budget misuse amounting to billions of rupiah, the defendant was only charged with abuse of power under the Military Criminal Code, rather than corruption under the Corruption Law. Consequently, the corruptions committed by military officials are often categorized as an abuse of power, resulting in lighter penalties compared to those stipulated in the Corruption Law. This decision suggests that the exclusive jurisdiction of military justice may undermine principles of accountability and transparency within the legal system.

**KEYWORDS:** Military Court, Military Penal Code, Corruption, Corruption Court, The Corruption Eradication Commission



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## I. INTRODUCTION

The constitution of Indonesia as a country is contained in the 1945 Constitution, which in its dynamics has undergone various changes. In the Fourth Amendment in 2002, it was emphasized that Indonesia adheres firmly to the concept of the State of Law or "Rechtsstaat" which was previously only contained in the Explanation of the 1945 Constitution. Adhering to the concept of the rule of law, ideally what should be the commander in chief in the dynamics of state life is law, not politics or economics.

The idea of the rule of law was built by developing legal instruments as a system that prioritizes functionality and fairness. Implementation of this development is by arranging the supra structure and infrastructure of political, economic, and social institutions in an orderly and orderly manner, as well as building a rational and impersonal legal culture and awareness in social, national, and state life.<sup>1</sup> Legal dynamics during the 78 years after independence, the concept of a rule of law cannot be implemented ideally, there are various obstacles, especially realizing the development of a just and prosperous society, which has not been fully achieved, due to the existence of criminal acts of corruption.

Corruption is influenced by both internal and external factors. Internal factors stem from the perpetrator, often related to low moral standards, leading individuals to engage in corrupt practices without considering the consequences. External factors, often driven by political dynamics, include competition for power or position, which can incentivize corrupt behavior. Additionally, deficiencies in the legal system contribute to the problem. Laws may be ineffective or unevenly enforced, with weaknesses in

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<sup>1</sup> Jimly Asshiddiqie, *Gagasan Negara Hukum Indonesia*, Ketua Mahkamah Konstitusi Republik Indonesia dan Ketua Asosiasi Hukum Tata Negara dan Hukum Administrasi Negara Indonesia, <https://www.pn-gunungsitoli.co.id>

addressing corruption issues.<sup>2</sup> As a result, this inequality within the legal framework can result in injustices.

Corruption is one of the causes of the failure of the state in its efforts to improve the welfare of the people, because of its destructive nature, so corruption is categorized as an extraordinary crime by various countries, including Indonesia.<sup>3</sup> Meanwhile, in Indonesia, many government officials and even law enforcers abuse their authority. Indonesian Corruption Watch (ICW) found budget misuse as the most dominant technique of corruption in 2022. According to the ICW report, potential losses in 405 corruption cases with 909 suspects in 2022 reached almost IDR 33 trillion.<sup>4</sup>

Corruption is a criminal act of abuse of authority, based on the fact that Indonesia is recognized as having one of the highest rates of abuse of authority in Asia.<sup>5</sup> Abuse of authority can be interpreted in three distinct ways. First, Using authority for actions that directly oppose the public interest, instead benefiting personal or group interests. Secondly, utilizing authority with actions aimed at the public interest but straying from the legal or regulatory objectives granted. The last, abuse can also understood as manipulating authority procedures meant for achieving specific goals by employing alternative procedures to avoid compliance.<sup>6</sup>

Corruptions are cases that can be classified into a crime called "white color crime", which tend to the crimes committed by people who have a high position in society and are carried out in connection with their duties or

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<sup>2</sup> Iwan Irawan, *Korupsi Dan Membangun Kesejahteraan Rakyat Indonesia*, <https://binus.ac.id/character-building/2020/05/korupsi-dan-membangun-kesejahteraan-rakyat-indonesia-2/>, 05 May 2020, diakses 15 September 2023

<sup>3</sup> <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20230209-ini-alasan-mengapa-korupsi-disebut-kejahatan-luar-biasa>, 09 Februari 2023, diakses 15 September 2023

<sup>4</sup> Indonesia Corruption Watch, 2023, "Monitoring Report Trends in Prosecution of Corruption Cases in 2022: Corruption Across the Trias Politica", h.30.

<sup>5</sup> H.Siahaan, *Pengantar Sejarah dan Teori Sosiologi Hukum*. (Jakarta Erlangga. 2013), h.46

<sup>6</sup> Firna Novi Anggoro, *Testing the Element Abuse of Authority toward Decision and/or Government Officials Act by Court Administrative*, *Fiat Justisia Jurnal Ilmu Hukum*, Vol. 10 No. 4, October-December 2016, p. 605-8S20, pp. 651.

work.<sup>7</sup> The complexity of the problem of corruption during the economic crisis and the many threats from corruption means that criminal acts of corruption are categorized as a "national problem" that must be faced very seriously. Corruption is a disgraceful act and falls into the social disease category that develops in society.<sup>8</sup>

This article raises legal issues related to abuse of authority committed by members of the military so the substance of the writing is directed at the military justice institution. Indonesia currently has two different criminal justice systems, namely criminal court and military court for military members who have the competence and authority to try separately. Each judiciary has exclusive jurisdiction (absolute competence) so that absolutely one judicial environment (civil and military) cannot be interfered with or overlapped by other judicial realms.<sup>9</sup>

Abuse of authority in budget management is formally recognized as an extraordinary crime that requires an extraordinary measure by taking into account variables of due process of law, national defense, victims of crime, and international peace and security.<sup>10</sup> The difficulty in arresting perpetrators of abuse of authority related to budget management mostly fails because the prosecutor didn't provide evidence that convinces the judge. Apart from that, other reasons are related to each other, but also because the defendant was clever at eliminating traces so that the prosecutor was unable to convince the judge of his accusations.<sup>11</sup>

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<sup>7</sup> D.Prinst, *Pemberantasan Tindak Pidana Korupsi*. (Bandung:Citra Aditya Bakti,2014),h. 55

<sup>8</sup> Cecep Dudi Muklis Sabigin, *Perspektif Perbuatan Melawan Hukum Oleh Pejabat Publik Dalam Tindak Pidana Korupsi*, *Jurnal Konstituen*, Vol. 3/No. 1, Februari 2021: 49–58

<sup>9</sup> Agustinus PH. *Prospeksi dan Urgensi Acara Pemeriksaan Koneksitas*, *Jurnal Hukum Militer*. 2007. Volume I No. 2 Pusat Studi Hukum Militer STHM. Jakarta

<sup>10</sup> Mulyadi. *Aspek Moral dan Etika dalam Penegakan Hukum Pidana*, *Seminar Nasional dan Rekornas*. 2003. FORKAPHI. Jakarta

<sup>11</sup> Evi Hartanti. *Tindak Pidana Korupsi*.(Jakarta Sinar Grafika, 2005),h.56

There are many practices carried out by the military, where the perpetrators of these actions should be subject to sanctions referring to Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, but in practice, judges still give sanctions that refer to Articles of the Criminal Code and the Army Code, where the sanctions are much lighter. The Decision of the Surabaya III High Military Court Number 5-K/PMT.III/AD/I/2022 is the best case pattern to describe this dualism of sanction where the defendant was a member of the military who committed acts of misuse of billions of rupiah in the budget only to be sentenced to "Abuse of Power" which refers to the Army Code with a prison sentence. 3 months 20 days.

In contrast to the main element of Article 3 which states that every person to benefit himself and/or other people or a corporation by abusing his authority, opportunities, or facilities available to him because of his position or position can harm finances and/or the economy country.<sup>12</sup> Article 3 should be a reference and basis for implementing sanctions for criminal acts of corruption in the military environment, not only referring to the provisions in the Army Code.

Therefore, it is interesting to deeply examine the Ratio Decidendi of Military Judges in Case Number 5-K/PMT.III/AD/I/2022. In the previous research conducted by Rima Katherina Poli, it was found that criminal liability received by legal subjects of members of the Indonesian National Army Forces (TNI) was in accordance with the duration as regulated in Article 12B of Law of the Republic of Indonesia Number 31 of 199. Corruption Crime, by the final decision (ein verdict) of the Military Judge at

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<sup>12</sup> Guse Prayudi. Tindak Pidana Korupsi Dipandang Dalam Berbagai Aspek. (Yogyakarta.Pustaka Pena, 2010),h51.

the Military Court.<sup>13</sup> Other research from Utami and Supriyadi has revealed that the concept of a judiciary that has the authority to try soldiers who commit crimes, whether military crimes or general crimes, is still tried under the jurisdiction of the Military Court. So it can be presumed that criminal acts of corruption committed by members of the military should be tried by military court.<sup>14</sup>

Until now, it's evident that military penal systems rarely impose strict sanctions on perpetrators who fulfill the criteria outlined in Article 3 of the Corruption Eradication Law. Therefore, this research will specifically examine the Decidendi Ratio of military judges at the Surabaya III Military High Court in case Number 5-K/PMT.III/AD/I/2022, especially whether this decision legally contains the meaning of criminal justice. Apart from that, this research will also examine the legal certainty of the dualistic judicial system which examines budget abuse committed by military officers.

## II. METHODS

This article uses normative legal methods, which move from principles, synchronization, systematics, and legal comparisons.<sup>15</sup> By using statutory, conceptual, and case approaches<sup>16</sup>, this study aims to investigate the jurisdiction and efficacy of courts in adjudicating cases of budget misuse among military personnel. It specifically analyzes the ruling of Surabaya High Military Court III in Case Number 5-K/PMT.III/AD/I/2022 to examine

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<sup>13</sup> R. K. Poli, (2017). Pertanggungjawaban Bagi Anggota Militer Yang Melakukan Tindak Pidana Gratifikasi. *Lex Privatum*, 5(10), 19–26. Retrieved from <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/18741>

<sup>14</sup> N. S. B. Utami, Supriyadi. (2014). Yurisdiksi Peradilan Terhadap Prajurit Tentara Nasional Indonesia Sebagai Pelaku Tindak Pidana. *Yustisia Jurnal Hukum*, 3(2), 100–107. Retrieved from <https://doi.org/10.20961/yustisia.v3i2.11102>

<sup>15</sup> Zaenudin Ali. *Metode Penelitian Hukum*. (Jakarta, Sinar Grafika, 2010).h.15

<sup>16</sup> Jhonny Ibrahim. *Teori dan Metodologi Penelitian Hukum Normatif*. (Malang, Banyumedia, 2007),h.16

the dualistic nature of the penal system concerning such misconduct within the military.

### III. MILITARY COURT AND ITS PENAL SYTEM

The TNI has the main task of upholding state sovereignty, and defending the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution following the contents of Article 7 paragraph (1) Law Number 34 of 2004 concerning the Indonesian National Army.<sup>17</sup> However, because military members are burdened with the obligations of the armed forces as the core of the defense of the state, it is necessary to maintain a more disciplined order in their organization, so that it is as if they are a separate group to achieve or carry out their main objectives, for this a special law is needed, and a separate judiciary that is separate from the general judiciary. The specificity is that the army society is a specialization rather than the general public.<sup>18</sup>

Military Criminal Law is a special criminal law, a law made for several special legal subjects or for certain events, therefore special criminal law contains provisions and principles that can only be carried out by certain legal subjects,<sup>19</sup> whose criteria are that the subject/perpetrator and the action are specific.<sup>20</sup> Therefore, it is affirmed in Article 9 of the Military Courts Law that courts operating within the military penal system possess the jurisdiction to prosecute criminal acts perpetrated by individuals who, at the time of committing the offense, held a position as a TNI official. However, in the Military Court Law, several provisions are no longer suitable for

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<sup>17</sup> Jeremy Emmanuel, Nyoman Serikat Putra Jaya, Umi Roza, Kebijakan Pertanggungjawaban Pidana Anggota Tni Dalam Tindak Pidana Korupsi (Studi Kasus Putusan Nomor 363 K/MIL/2017), Diponegoro Law Journal, Volume 8, Nomor 3, Tahun 2019,h.2096-2116

<sup>18</sup> Moch. Faisal Salam, Hukum Acara Pidana Militer Di Indonesia, (Bandung: Mandar Maju, 2002), h. 14

<sup>19</sup> E. Utrecht. Hukum Pidana I, (Pustaka Tinta Mas, Surabaya, 1994),h.35

<sup>20</sup> Pompe dalam Andi Hamzah,Perkembangan Hukum Pidana Khusus, (Jakarta.Ragunan. 1991),h.1

society and criminal development, so changes need to be made, one of which is regarding the jurisdiction of military justice over individual TNI officials who commit criminal acts of corruption. In practice, military justice also tries criminal acts that are not regulated in the KUHPM, one example is that the Military Court tries criminal acts of corruption committed by unscrupulous TNI officials.<sup>21</sup> The handling of corruption cases involving TNI officials frequently falls under the jurisdiction of military courts. However, when examining corruption cases involving TNI officials with civilians, the process is typically conducted through connectivity hearings, as stipulated in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP).

*A. The Authority to Examining Budget Misuse: Military Court vs State Court*

Even though there are regulations that regulate it, there are still discrepancies, based on Article 89 of the Criminal Procedure Code if a criminal act is committed by both military and civilian elements, they will be tried within the scope of general justice, unless there is approval from the Minister of Defense and Security and the Minister of Justice must be tried under military court. The essence of criminal liability for a military person is basically more of an act of deterrence or retaliation as long as the convict will be reactivated in military service after completing his sentence.

A military man (ex-convict) who will return to active duty must become a military man. Criminal liability for members of the military in question constitutes the implementation of criminal acts<sup>22</sup> which can be resolved through military court. Criminal responsibility is a manifestation of the consequences of criminal acts that have been committed, especially

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<sup>21</sup> Edward Febriyatri Kusuma, *Dihukum Seumur Hidup, Ini Modus Brigjen Teddy Korupsi Dana Alusista*, <https://news.detik.com/berita/d-3388384/dihukum-seumur-hidup-ini-modus-brigjen-teddy-korupsi-dana-alusista>, diakses pada 21 September 2023

<sup>22</sup> L. Marpaung, *Asas-Asas Praktik Hukum Pidana*. ( Jakarta: Sinar Grafika, 2014), h. 67



criminal responsibility for criminal acts of corruption by a member of the military.<sup>23</sup>

Corruption criminal behavior in terms of structural aspects is a special judicial institution that has the authority to handle cases of criminal acts of corruption. This is also regulated in Article 5 of the Corruption Court Law which states that the court for criminal acts of corruption<sup>24</sup> is the only court that has the authority to examine, try, and decide cases of criminal acts of corruption. The military justice institution that handles corruption cases is a bold step in taking consequences, but this action seems to violate the authority of the corruption criminal justice institution.<sup>25</sup>

The benchmark for abuse of authority is based on the type of authority as regulated in statutory regulations, or using the parameters of the principle of legality; whereas in free authority (discretionary) the parameters for abuse of authority use the general principles of good governance, because the principle of 'wetmatigheid' is not sufficient.<sup>26</sup> In line with this doctrine, even if there is a deviation from a policy, whether it is called 'detournement de pouvoir' or 'abus de droit', then the assessment of the deviation must be in the realm of administrative law, whether a correction is carried out by the policy issuer, superior or by the Peratun, not criminal law which carries it out his judgment.<sup>27</sup>

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<sup>23</sup> Kaligis, O.C, Pencegahan dan Pemberantasan Korupsi dalam Tugas Kedinasan (Pasca UU No. 30 Tahun 2014), (Bandung, Alumni,2015),h.21

<sup>24</sup> I.Fahrojih, Hukum Acara Pidana Korupsi, Setara Press Kelompok. (Malang: Intrans Publishing, 2016).h.67

<sup>25</sup> R. Atmasasmita, Sistem Peradilan Pidana Kontemporer.( Jakarta: Kencana Prenada Media Group,2010). h.87

<sup>26</sup> Philipus M Hadjon. "Konsep Penyalahgunaan Wewenang Berdasarkan UU No. 30 Tahun 2014". Perlu dibandingkan dengan UUAP yang mensyaratkan sahnya keputusan (dan tindakan) harus didasarkan pada syarat kumulatif, memenuhi peraturan perundang-undangan dan Asas-Asas Umum Pemerintahan yang Baik (AAUPB) vide Pasal 8 ayat (2) Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan, Undang-Undang (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 292, Tambahan Lembaran Negara Nomor 5601)

<sup>27</sup> SF Marbun, "(R)UU Administrasi Pemerintahan sebagai Ujung Tombak Negara Hukum Demokratis (Telaah dari Optik Hukum Administrasi)", dalam Menggagas Undang-Undang, Administrasi

Considering that military personnel are governed by specific rules and legal frameworks under their needs, Article 2 of the Military Penal Code (Kitab Undang-Undang Hukum Pidana Militer/KUHPM) stipulates that if a matter is not explicitly addressed within the code, general criminal penalties and other provisions specified by law will apply. In practical terms, this implies that when it comes to imposing significant sanctions such as imprisonment and fines for offenses like budget misuse, the principle of concordance applies. This means that the penalties imposed on military personnel should align with those stipulated for civilians under the Corruption Eradication Law in Indonesia.<sup>28</sup>

*B. Selected Case of Budget Misuse of Military Officer: The Case of Surabaya High Military Court III*

Referring to the position case, the decision of the Surabaya High Military Court III in deciding case Number 5-K/PMT.III/AD/I/2022 against the perpetrator of budget misuse by military officials, the judge only sentenced him to prison for 3 (three) months and 20 (two) twenty) days. The Panel of Judges believed that there was sufficient valid and convincing evidence that the Defendant was guilty of committing the crime of "military intentionally abusing power, forcing someone to do something" as regulated and punishable by crime in Article 126 of the Criminal Code.

The Defendant's involvement in this case originated during their tenure as Danyonif 527/BY. It began with a report filed by a member via an anonymous channel to the Upper Command, regarding the misallocation of budget funds intended for various purposes such as Large-Scale Social

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Pemerintahan, Sepuluh Karya Tulis Terbaik Lomba Jurnalistik dan Karya Tulis Para Ahli (Jakarta): Aliansi Jurnalis Independen (AJI) Jakarta, 2008)

<sup>28</sup> Elwi Danil, Korupsi: Konsep, Tindak Pidana dan Pemberantasannya, (Jakarta, Rajawali Pers, 2014), h.51

Restrictions (LSSR/PSBB) operations<sup>29</sup>, forest combat training, D/F ration provisions, and assets for rice field activities. These funds were meant for distribution among the unit members, yet Defendant failed to allocate them in full, retaining a portion for unit and personal rehabilitation purposes without prior consent from the members of Yonif 527/BY. Furthermore, these funds were not properly deposited in the unit treasurer's custody. This behavior underscores the Defendant's disregard for the efforts of the members and their entitlements.

The Defendant's actions were essential to obtain personal gain as Commander so that the unit was considered neat and clean by the higher units by taking advantage of his position as Danyonif 527/BY without caring about suggestions from other officers regarding the distribution of members' rights which should be distributed. This shows that the Defendant, as a leader, prioritizes his personal goals rather than carrying out his duties and responsibilities according to the rules, which should not be done and because of his actions, he cannot be a good role model for his subordinates. As a result of the Defendant's actions in not distributing members' rights according to the provisions, members of Battalion Yonif/527 BY felt objections and reported them to higher units, thereby tarnishing the good name of the TNI, especially Battalion 527/BY, in the perspective of the public and TNI leadership.

Corruption crimes committed by TNI officials are interpreted as violations of Law Number 25 of 2014 concerning Military Discipline Law

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<sup>29</sup> Large-scale social restrictions, abbreviated as LSSR or Pembatasan Sosial Berskala Besar/PSBB (Indonesia), are restrictions on people's health and movement imposed by the Indonesian government to curb the spread of the COVID-19 pandemic. These restrictions are imposed by local authorities with the approval of the Ministry of Health. The policy includes measures such as closing public places, schools, implementing restrictions on public transportation, and organizing travel to and from designated areas which also involves security and military personnel. Namira Ivanka, Large-scale Social Restrictions: What's Next?. *The Indonesian Journal of International Clinical Legal Education*, 2(2), p. 201-214. pp. 202.

and fulfilling the elements of criminal acts of corruption as regulated in the Corruption Eradication Law. Corruption crimes committed by TNI Officials are included in the criteria based on Article 11 of the Corruption Eradication Commission Law, so the Corruption Eradication Commission (KPK) should also have the authority to carry out investigations, the results of the examinations carried out by them can be used as a basis for investigations by the KPK and for handling the crime.

In cases of corruption crimes occurring within the military and general courts, the KPK can collaborate with the Military Police/Military Prosecutors to conduct investigations. The KPK retains the authority to supervise investigations related to these cases, even if they are not directly connected to the KPK's primary focus. However, if the cases do not have any direct connection, the handling is primarily conducted within the military penal system. Nevertheless, any decisions made in these cases must still adhere to the provisions outlined in the Corruption Eradication Law.

Related to Pound's concept of the legal system, in the military environment, the structural aspect encompasses law enforcement officials such as Military Judges, Military Prosecutors, Military Legal Advisors, and Military Police. These officials uphold the law within the military framework. In terms of substance, it refers to the legal provisions governing the military, including both formal laws and material laws specific to military operations. Regarding legal culture, it pertains to the attitudes of soldiers towards the legal institutions established within the Armed Forces. This includes the extent to which these institutions foster discipline among soldiers and ensure adherence to regulations. These legal structures within the military must contribute to enhancing discipline among soldiers without undermining the chain of command or causing disobedience toward superior officers who are in charge of the unit.

If these concepts are applied in the military court, three elements must be addressed within the military justice system<sup>30</sup>:

1. Structural aspect

This involves establishing a law enforcement framework within the military environment. This includes roles such as Military Judges, Military Prosecutors, Military Legal Advisors, and Military Police who enforce laws and regulations specific to the military context.

2. Substance Aspect

This aspect refers to the content of the legal provisions governing the military. It encompasses formal laws, material laws, and other statutory regulations that govern military operations, conduct, and discipline.

3. Cultural Aspect (goal/ends):

This aspect focuses on cultivating a legal culture within the military to instill morals and attitudes of integrity, faith, and good character among soldiers and law enforcement officers. This involves promoting respect for the law, adherence to ethical standards, and fostering a sense of duty and responsibility toward upholding justice within the military community.

Judges at military courts in handing down sentences for perpetrators of criminal acts of corruption committed by members of the military must impose the same sentences as those who are civilians. This is in accordance with the principle of equality before the law, namely the principle of equality of all people before the law without any discrimination in the treatment of each person. Even though those who commit criminal acts of corruption

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<sup>30</sup> Rony Suryandoko, M.Adnan Madjid, Resmanto Widodo Putro, Strategi Dalam Pemberantasan Tindak Pidana Korupsi Untuk Penguatan Sistem Peradilan Militer, Jurnal Strategi Pertahanan Darat, Agustus 2018, Volume 4 Nomor 2, h.52-66

come from the military, their treatment must be the same as civilians, there is no special treatment for military members. The law must be enforced by its function and purpose in this country so that there is no suspicion among the public regarding the legal process anywhere.<sup>31</sup>

Military members should be commanders in chief who protect the law themselves and not violate the law. The military must maintain its soldiers' oath and as a safeguard for the State's defense must strictly act under military regulations and the rules of positive law that apply in Indonesia. Don't let the military, which protects national defense, act as perpetrators of criminal acts, especially in terms of abuse of office to carry out actions that benefit themselves (corruption).

#### **IV. LEGAL IMPLICATIONS OF MILITARY JUDGES' CONSIDERATIONS: PERSPECTIVE OF JUSTICE AND LEGAL CERTAINTY**

The judge's considerations are one of the most important aspects in determining the realization of the value of a judge's decision which contains justice (*ex aequo et bono*) and legal certainty, that it also contains benefits for the parties concerned so that the judge's considerations must be addressed carefully, well, and careful.<sup>32</sup> If the judge's considerations are not thorough, good, and careful, then the judge's decision originating from the judge's considerations will be annulled by the High Court/Supreme Court.<sup>33</sup>

Apart from that, in essence, the judge's consideration should encompass the primary issues acknowledged or undisputed arguments, a juridical

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<sup>31</sup> Mbayu Baghaskara, Penegakan Hukum Pidana terhadap Anggota Militer yang Melakukan Tindak Pidana Korupsi Alat Utama Sistem Pertahanan Negara Dihubungkan dengan Undang-Undang Nomor 20 Tahun 2001 Juncto Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi. *Prosiding Ilmu Hukum*, Volume 6, No. 2, Tahun 2020, h.415-417

<sup>32</sup> Nyoman Serikat Putra Jaya, *Hukum Pidana Khusus*, (Semarang, Badan Penerbit Universitas Diponegoro, 2016), h.52

<sup>33</sup> Mukti Arto. *Praktek Perkara Perdata pada Pengadilan Agama*. Cet V (Yogyakarta, Pustaka Pelajar, 2004), h.114

examination of the decision covering all facets of the proven facts in the trial, and a meticulous assessment of each component of the Plaintiff's petition. This enables the judge to determine whether the claim is substantiated and if it warrants inclusion in the final decision.

Courts within the military justice institution<sup>34</sup> which is the body implementing judicial power within the armed forces, organizationally and administratively under the guidance of the Commander in Chief. This guidance must not reduce the judge's freedom in examining and deciding cases. The function of supervision and technical judicial guidance of courts within the military justice environment remains under the Supreme Court as the highest state judiciary. Talking about justice in relation to the judge's considerations, the term justice (*iustitia*) comes from the word "fair" which means: impartial, impartial, siding with the right, proper, not arbitrary<sup>35</sup>. From several definitions it can be concluded that the meaning of justice is all matters relating to attitudes and actions in relationships between humans, justice contains a demand that people treat each other under their rights and obligations, this treatment does not discriminate or show favoritism, but everyone is treated equally by their rights and obligations.<sup>36</sup>

Judges in examining a case also need evidence, where the results of that evidence will be used as consideration in deciding the case. Evidence is the most important stage in the examination at trial and aims to obtain certainty that an event or fact presented actually occurred, to obtain a correct and fair judge's decision. The judge cannot decide before it is clear to him

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<sup>34</sup> Tiarsen Buaton, *Peradilan Militer Dalam Kekuasaan Kehakiman di Indonesia*, (Jurnal Hukum Militer STHM, Vol.1-No.2 Agustus 2007),h.24-36

<sup>35</sup> Made Raka Kusuma AP, Suhariningsih, Hamidah, S., & Widhiyanti, H. N. (2022). Legal protection for indonesian citizens on ownership of land right to use by foreign citizens: Case study in indonesia. *The International Journal of Social Sciences World (TIJOSSW)*, 4(2), p. 444–448. pp. 446

<sup>36</sup> Darji Darmodiharjo dan Shidarta, *Pokok-Pokok Filsafat Hukum*, (Jakarta, Gramedia Pustaka Utama, 2012),h.78

that the event or fact occurred, that is, its truth is proven, so that it appears that there is a legal relationship between the parties.<sup>37</sup>

The judge's freedom contextually has 3 (three) essences in exercising judicial power. Primarily, judges are bound solely by the law and pursuit of justice. Second, there are no entities (including the government) that can influence or direct the decision that will be handed down by the judge. In addition, there are no consequences for the judge's personality in carrying out his judicial duties and functions.<sup>38</sup>

For judges, legal reasoning is useful in taking considerations to decide a case. Before reaching a decision, it is imperative for a judge to meticulously consider and strive to ensure that the forthcoming verdict does not instigate new legal disputes. The decision must be comprehensive, aiming to resolve all pertinent issues to prevent the emergence of subsequent cases. The judge's task does not stop with just passing a decision but also completes its implementation. In civil cases, judges must help those seeking justice and try as hard as possible to overcome all obstacles and obstacles to achieve simple, fast, and low-cost justice.<sup>39</sup>

The legal considerations made by a judge also constitute one of the duties and obligations of a judge, which is to delve into, follow, and comprehend the legal principles and sense of justice prevailing in society. This serves as material to be processed for legal deliberations. Implicitly, a judge in fulfilling their duties may engage in legal discovery or 'rechtvinding', the process of finding law.

Law number 19 of 2019 concerning the Corruption Eradication Commission is the legal basis for the existence of the KPK which

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<sup>37</sup> Ibid

<sup>38</sup> Ahmad Rifai, *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif*, (Jakarta: Sinar Grafika, 2011),h.98

<sup>39</sup> Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty, 2002),h.67



substantially regulates the authority, duties, and functions of the Corruption Eradication Committee in eradicating corruption in Indonesia. The scope of authority and functions carried out by the Corruption Eradication Committee is legal legitimacy in the name of state power, as is the scope of state administrative authority which is given a role in the field of executive power, the field of judicial power, and the field of legislative power, which in general is the entire resource for administering state administration and government administration. This is commonly referred to as the state apparatus.<sup>40</sup>

The investigative authority carried out by the KPK in eradicating criminal acts of corruption in the case of the Surabaya High Military Court III Number 5-K/PMT.III/AD/I/2022 in corruption cases, involving suspects within the scope of general court and military court, is governed by KUHAP. The connectivity inspection mechanism is also regulated in the Military Justice Law. The mechanism for investigating connectivity is also outlined in the Military Court Law. In both the Criminal Procedure Code and the Military Court Law, procedures for addressing corruption crimes involving suspects falling under general and military jurisdictions include the establishment of a permanent team.

A connectivity examination or connectivity trial is a mechanism applied to criminal acts in which there is involvement, either taking part (*delneming*) or jointly (*made dader*) involving civilian perpetrators and perpetrators who have military status.<sup>41</sup> In this case, it also applies to handling cases related to criminal acts of corruption and budget misuse. The handling of criminal acts examined through connectivity is regulated, among

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<sup>40</sup> Danil Elwi, *Korupsi Konsep Tindak Pidana Dan Pemberantasannya*, (Jakarta, Raja Grafindo Persada, 2001), h.54

<sup>41</sup> Di Akses Dari, "Tinjauan Putusan terhadap Penyimpangan Ketentuan Hukum Acara Pemeriksaan Koneksitas"., <http://www.dilmil-jakarta.go.id/?p=2906> pada tanggal 24 September 2023

others, in Law Number 5 of 1950, Law Number 14 of 1970, Joint Decree of the Minister of Justice, Minister of Defense/Commander of Defense, Chief Justice of the Supreme Court, Attorney General, Law Number 3 1975, Law Number 8 of 1981 concerning Criminal Procedure Law, Law Number 31 of 1997 concerning Military Court, Law Number 16 of 2004 concerning the Prosecutor's Office, Law Number 48 of 2009 concerning Judicial Power. In the Criminal Procedure Code, connectivity checks are regulated in Chapter XI regarding connectivity.<sup>42</sup>

Referring to Article 5 of Law Number 46 of 2009 concerning the Corruption Court, where the Corruption Court is the only court that has the special authority to examine and decide cases of corruption, it can be concluded that every Indonesian citizen, whether military or without exception, if they are proven to have committed corruption, they must be accused in the Corruption Court.<sup>43</sup> In the other hand, Article 9, paragraph 1 of the Military Court Law stipulates that courts operating within the military court system possess the jurisdiction to prosecute criminal acts committed by individuals who, at the time of committing the offense, were soldiers, members of a group or service, or individuals equivalent to soldiers as defined by law. Furthermore, individuals who do not belong to this group but are deemed by the commander's decision, with the approval of the Minister of Justice, to be tried within the military justice system must also be prosecuted accordingly.

This provision means that all military members who violate criminal law, whether violations of military criminal law or violations of general criminal law are tried in military courts. Violations of criminal acts committed by the military are processed through the applicable military

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<sup>42</sup> Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana

<sup>43</sup> Mohammad Hatta, *KPK dan Sistem Peradilan Pidana* (Yogyakarta, Liberty, 2001), h. 18

criminal penal system that consists of parts that are closely related to each other.<sup>44</sup> The lack of a clear rationale regarding the subjective competence of military courts, particularly as outlined in Article 9 of the Military Court Law, raises concerns about transparency and accountability. It appears that military interests may play a significant role in shaping the jurisdiction of these courts. This regulation grants the TNI considerable latitude to investigate and adjudicate cases of corruption, human rights violations, and other criminal acts within the military justice system, potentially conflicting with the principles and policies that advocate for the separation of courts based on the nature of crimes. This lack of clarity and potential inconsistency with existing legislation may lead to confusion and undermine public trust in the legal system. Addressing these issues may require further examination and potential reform to ensure alignment with established legal principles and the promotion of transparency and accountability.

Due to its subjective jurisdiction, the court possesses the ability to address not only serious offenses but also traffic infractions. Article 108 (5) stipulates that for traffic violations, an investigator drafts a report detailing the type of infraction committed by the individual. This report is signed by both the investigator and the suspect before being forwarded to the Military Court/High Military Court through the appropriate Military Court/High Military Prosecutor. It appears that for corruption crimes, the exclusive authority lies within the Corruption Court. Therefore, military officials who commit a corruption crime can be prosecuted in the Corruption Court. Regarding the investigation, prosecution, and handling of cases involving military personnel accused of corruption, coordination between the military,

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<sup>44</sup> Rizki, A. K. (2015). Dasar Pertimbangan Hakim Pengadilan Militer Dalam Menjatuhkan Putusan Putusan Terhadap Tni (Tentara Nasional Indonesia) Sebagai Pelaku Tindakan Asusila (Studi Atas Putusan No. 28-K/PM. Ii-10/AD/iv/2013 Di Mahkamah Militer II-10 Semarang). *Unnes Law Journal*, 4(1).

including the Military Police and Military Prosecutors, and the KPK is very essential. This coordination ensures effective collaboration between military and civilian authorities in handling corruption cases involving military personnel, thereby upholding accountability and the rule of law.<sup>45</sup>

Article 42 of the Corruption Eradication Commission Law grants KPK the authority to coordinate and control investigations, inquiries, and prosecutions of corruption crimes committed jointly by individuals under both military court and general court jurisdictions. Despite its inclusion in connectivity matters, the author contends that the KPK can oversee investigations and prosecutions. This implies that even in cases solely involving military personnel, the Commission can conduct investigations leading to prosecution. However, coordination with military police and military prosecutors is still required in practice.

In case Number 5-K/PMT.III/AD/I/2022, referring to Article 11 of Law Number 19 of 2019, if the military commits a criminal act of corruption resulting in state losses of at least Rp. 1,000,000,000.00 (one billion rupiah), it should be examined by the Corruption Court. According to the conditions outlined in the law, the Corruption Eradication Commission (KPK) can prosecute cases involving law enforcement officers, state officials, and others related to corruption that disturbs the public and causes state financial losses of at least Rp. 1,000,000,000.00 (one billion rupiah). Therefore, in cases of corruption crimes like those observed in this research, defendants should be tried in the Corruption Court, applying the relevant articles in the Law on Corruption Crimes rather than those in the Criminal Code.

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<sup>45</sup> Dini Dewi Heniarti, "Developing Trends of Military Justice", *The Internasional Journal of Sciences*, No 1, 2012, Vol 5, h. 35-47

## V. CONCLUSION

Military judges are mandated to apply the principle of equality before the law, ensuring that perpetrators of criminal acts of corruption, regardless of military status, receive the same treatment as civilians. Therefore, sentences imposed by military courts on military personnel proven to have committed corruption must be in line with those imposed on civilian perpetrators, emphasizing fairness and transparency in the legal process. The Corruption Eradication Commission (KPK), which is protected by law, has the authority to investigate corruption cases, including those involving military personnel, based on the *lex specialist* principle, prioritizing its role in eradicating corruption, regardless of jurisdiction. This conclusion is reinforced by the Military Justice Law, which stipulates that military courts solely address military offenses. Meanwhile, corruption offenses, even when committed by military officials, fall under the corruption law and must be examined by the corruption court to ensure fairness and consistent legal certainty.

## BIBLIOGRAPHY

- Jimly Asshiddiqie, Gagasan Negara Hukum Indonesia, Ketua Mahkamah Konstitusi Republik Indonesia dan Ketua Asosiasi Hukum Tata Negara dan Hukum Administrasi Negara Indonesia, <https://www.pn-gunungsitoli.co.id>
- Iwan Irawan, Korupsi Dan Membangun Kesejahteraan Rakyat Indonesia, <https://binus.ac.id/character-building/2020/05/korupsi-dan-membangun-kesejahteraan-rakyat-indonesia-2/>, 05 May 2020 ,diakses 15 September 2023
- <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20230209-ini-alasan-mengapa-korupsi-disebut-kejahatan-luar-biasa>, 09 Februari 2023, diakses 15 September 2023
- H.Siahaan, Pengantar Sejarah dan Teori Sosiologi Hukum. (Jakarta Erlangga. 2013)
- D.Prinst, Pemberantasan Tindak Pidana Korupsi. (Bandung:Citra Aditya Bakti,2014)
- Cecep Dudi Muklis Sabigin, Perspektif Perbuatan Melawan Hukum Oleh Pejabat Publik Dalam Tindak Pidana Korupsi, *Jurnal Konstituen*, Vol. 3/No. 1, Februari 2021: 49–58
- Agustinus PH. Prospeksi dan Urgensi Acara Pemeriksaan Koneksitas, *Jurnal Hukum Militer*. 2007. Volume I No. 2 *Pusat Studi Hukum Militer STHM*. Jakarta
- Mulyadi. Aspek Moral dan Etika dalam Penegakan Hukum Pidana, Seminar Nasional dan Rekornas. 2003. FORKAPHI. Jakarta
- Evi Hartanti. Tindak Pidana Korupsi.(Jakarta Sinar Grafika, 2005)
- Guse Prayudi. Tindak Pidana Korupsi Dipandang Dalam Berbagai Aspek. (Yogyakarta, Pustaka Pena,2010).

- R. K. Poli, (2017). Pertanggungjawaban Bagi Anggota Militer Yang Melakukan Tindak Pidana Gratifikasi. *Lex Privatum*, 5(10), 19–26. Retrieved from <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/18741>
- N. S. B. Utami, Supriyadi. (2014). Yurisdiksi Peradilan Terhadap Prajurit Tentara Nasional Indonesia Sebagai Pelaku Tindak Pidana. *Yustisia Jurnal Hukum*, 3(2), 100–107. Retrieved from <https://doi.org/10.20961/yustisia.v3i2.11102>
- Buchari Said, Sekilas Pandang Tentang Hukum Pidana Militer (Militair Strafrecht), Fakultas Hukum Universitas Pasundan Bandung, 2008, h. 33.
- Zaenudin Ali. Metode Penelitian Hukum. (Jakarta, Sinar Grafika, 2010)
- Jhonny Ibrahim. Teori dan Metodologi Penelitian Hukum Normatif. (Malang, Banyumedia, 2007), h. 16
- Jeremy Emmanuel, Nyoman Serikat Putra Jaya, Umi Roza, Kebijakan Pertanggungjawaban Pidana Anggota Tni Dalam Tindak Pidana Korupsi (Studi Kasus Putusan Nomor 363 K/MIL/2017), *Diponegoro Law Journal*, Volume 8, Nomor 3, Tahun 2019, h. 2096-2116
- Moch. Faisal Salam, Hukum Acara Pidana Militer Di Indonesia, (Bandung: Mandar Maju, 2002)
- E. Utrecht. Hukum Pidana I, (Pustaka Tinta Mas, Surabaya, 1994)
- Pompe dalam Andi Hamzah, Perkembangan Hukum Pidana Khusus, (Jakarta, Raguunan, 1991)
- Edward Febriyatri Kusuma, Dihukum Seumur Hidup, Ini Modus Brigjen Teddy Korupsi Dana Alusista, <https://news.detik.com/berita/d-3388384/dihukum-seumur-hidup-ini-modus-brigjen-teddy-korupsi-dana-alusista>, diakses pada 21 September 2023

- L.Marpaung, *Asas-Asas Praktik Hukum Pidana.* ( Jakarta: Sinar Grafika,2014)
- Kaligis, O.C, *Pencegahan dan Pemberantasan Korupsi dalam Tugas Kedinasan (Pasca UU No. 30 Tahun 2014),* (Bandung, Alumni,2015)
- I.Fahrojih, *Hukum Acara Pidana Korupsi, Setara Press Kelompok.* (Malang: Intrans Publishing, 2016)
- R. Atmasasmita, *Sistem Peradilan Pidana Kontemporer.*( Jakarta: Kencana Prenada Media Group,2010)
- Philiphus M Hadjon. “Konsep Penyalahgunaan Wewenang Berdasarkan UU No. 30 Tahun 2014”. Perlu dibandingkan dengan UUAP yang mensyaratkan sahnya keputusan (dan tindakan) harus didasarkan pada syarat kumulatif, memenuhi peraturan perundang-undangan dan Asas-Asas Umum Pemerintahan yang Baik (AAUPB) vide Pasal 8 ayat (2) Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan, Undang-Undang (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 292, Tambahan Lembaran Negara Nomor 5601)
- SF Marbun, “(R)UU Administrasi Pemerintahan sebagai Ujung Tombak Negara Hukum Demokratis (Telaah dari Optik Hukum Administrasi)”, dalam *Menggagas Undang-Undang, Administrasi Pemerintahan, Sepuluh Karya Tulis Terbaik Lomba Jurnalistik dan Karya Tulis Para Ahli* (Jakarta): Aliansi Jurnalis Independen (AJI) Jakarta, 2008)
- Elwi Danil, *Korupsi: Konsep, Tindak Pidana dan Pemberantasannya,* (Jakarta, Rajawali Pers,2014)
- Rony Suryandoko, M.Adnan Madjid, Resmanto Widodo Putro, *Strategi Dalam Pemberantasan Tindak Pidana Korupsi Untuk Penguatan Sistem Peradilan Militer, Jurnal Strategi Pertahanan Darat,* Agustus 2018, Volume 4 Nomor 2, h.52-66



Mbayu Baghaskara, Penegakan Hukum Pidana terhadap Anggota Militer yang Melakukan Tindak Pidana Korupsi Alat Utama Sistem Pertahanan Negara Dihubungkan dengan Undang-Undang Nomor 20 Tahun 2001 Juncto Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi. *Prosiding Ilmu Hukum*, Volume 6, No. 2, Tahun 2020, h.415-417

Nyoman Serikat Putra Jaya, Hukum Pidana Khusus, (Semarang, Badan Penerbit Universitas Diponegoro, 2016)

Mukti Arto. Praktek Perkara Perdata pada Pengadilan Agama. Cet V (Yogyakarta, Pustaka Pelajar, 2004)

Tiarsen Buaton, Peradilan Militer Dalam Kekuasaan Kehakiman di Indonesia, (*Jurnal Hukum Militer STHM*, Vol.1-No.2 Agustus 2007).h.24-36

Darji Darmodiharjo dan Shidarta, Pokok-Pokok Filsafat Hukum, (Jakarta, Gramedia Pustaka Utama, 2012)

Ahmad Rifai, Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif, (Jakarta: Sinar Grafika, 2011)

Sudikno Mertokusumo, Hukum Acara Perdata Indonesia, (Yogyakarta: Liberty, 2002)

Danil Elwi, Korupsi Konsep Tindak Pidana Dan Pemberantasannya,(Jakarta,Raja Grafindo Persada, 2001)

Di Akses Dari, "Tinjauan Putusan terhadap Penyimpangan Ketentuan Hukum Acara Pemeriksaan Koneksitas", <http://www.dilmil-jakarta.go.id/?p=2906> pada tanggal 24 September 2023

Mohammad Hatta, KPK dan Sistem Peradilan Pidana" (Yogyakarta,Liberty,2001),h. 18

Rizki, A. K. (2015). Dasar Pertimbangan Hakim Pengadilan Militer Dalam Menjatuhkan Putusan Putusan Terhadap Tni (Tentara Nasional

Indonesia) Sebagai Pelaku Tindakan Asusila (Studi Atas Putusan No. 28-K/PM. Ii-10/AD/iv/2013 Di Mahkamah Militer II-10 Semarang). *Unnes Law Journal*, 4(1).

Dini Dewi Heniarti, “Developing Trends of Military Justice”, *The Internasional Journal of Sciences*, No 1, 2012, Vol 5, h. 35-47

Erna Kurniawati, Adwani, Mujibussalim, Kewenangan Pengadilan Militer I-01 Banda Aceh Dalam Mengadili Tindak Pidana Umum Yang Dilakukan Oknum Anggota Tni Di Aceh, *Syiah Kuala Law Journal* : Vol. 2(2) Agustus 2018, h.216-232

Indonesia Corruption Watch, 2023, “Monitoring Report Trends in Prosecution of Corruption Cases in 2022: Corruption Across the Trias Politica”

Namira Ivanka, Large-scale Social Restrictions: What’s Next?. *The Indonesian Journal of International Clinical Legal Education*, 2(2), p. 201-214.

Made Raka Kusuma AP, Suhariningsih, Hamidah, S., & Widhiyanti, H. N. (2022). Legal protection for Indonesian citizens on ownership of land right to use by foreign citizens: Case study in Indonesia. *The International Journal of Social Sciences World (TIJOSSW)*, 4(2), p. 444–448. pp. 446