



Criminal Offenses Committed by Civilians Together With Members Of The Military

Handika Syahputra Tamba¹, July Esther², Jusnizar Sinaga³.

^{1,2,3} Fakultas Hukum Universitas HKBP Nommensen

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Correspondence: July Esther

Email: julyesther@uhn.ac.id

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Abstract: The Military Court can only deal with such cases if there is a decision by the Minister of Defense and Security, approved by the Minister of Justice, to transfer it to a military court. This decision is usually based on consideration of the degree of harm caused to military interests. Based on the types and sources of data used in this research, the author applies normative qualitative research methods. Normative qualitative research is an approach carried out through literature studies by utilizing various references, such as laws, books, journals, theses, and laws and regulations relevant to the formulation of research problems. Conflicting sentences reflect the complexity of the criminal justice system involving various legal institutions, such as military police, civilian police, military prosecutors. The handling of this case requires good coordination between institutions to ensure a transparent legal process, in accordance with applicable regulations. This mechanism aims to accommodate equal legal treatment of perpetrators, both members of the military and civilians, while maintaining military discipline, the rule of law. Conflicting crimes reflect the complexity of the criminal justice system in Indonesia, because they involve two different legal jurisdictions. The mechanisms set out in the Military Justice Law aim to ensure justice for perpetrators and victims, while still considering the efficiency and effectiveness of the legal process. The handling of *koneksitas* cases requires cross-institutional cooperation to ensure a fair and transparent legal process.

Keywords: Legal Jurisdiction, Criminal, Military Justice, Civil-military Relations

Introduction

Law in society is a necessity, because it is impossible to imagine human life apart from society. Therefore, man, society and law are concepts that are closely interrelated. To achieve social order, certainty is needed in human interactions in society. This certainty not only ensures an orderly society, but also clarifies the role of legal institutions that enforce it. The ideal law is a law that is in harmony with the living law in society, which reflects the values of social justice that prevail (Bagir Manan, 2000).

Society and law always develop along with the times, these developments are accompanied by a process of adjustment, and sometimes the expected balance is not achieved in the adjustment. In other words, there are times when regulations and practices in the field are not always the same, due to several factors, including human resources, organization and settlement mechanisms Ridlo, A., Pratiwi, S., & Mardani, M. (2024).

Military Criminal Law is a judicial law and is established by law with the main task of receiving, examining and trying and resolving every case submitted Rumate, P. V. (2023). Law enforcement based on justice is carried out by every citizen, every state administrator, every social institution, including the military Swandana, M. D. M. (2024).

To create order, humans first form a structure among themselves called a social order called society. To create and maintain order in this social order, humans need regulatory tools that include two things: rules (law) and the governing party (power). In regulating the behavior of society, laws are needed which are implemented in the form of Laws, Criminal Codes, and various other rules.

As a state of law, Indonesia requires that every action or deed must be based on the applicable rule of law. In order for the law to continue to run effectively, full support from the state is needed to ensure its enforcement runs well without any intervention from other parties in carrying out its basic principles. National defense is an important aspect for the sustainability of a nation. For Indonesia, with its geographical characteristics as an archipelago and abundant natural and human resources, national defense efforts are an absolute necessity that must be properly implemented and regulated (Behavior, 2005).

According to Article 1 paragraph 1 of Law Number 3 of 2002 concerning National Defense, national defense encompasses all actions taken to preserve the Republic of Indonesia's territorial integrity, the sovereignty of the state, and the safety of every individual from dangers and disruptions that could jeopardize the unity of the state and nation. The Indonesian National Army (TNI) is a key component in this nation's security.

An essential component of the state security system, the Indonesian National Army (TNI) is tasked with upholding the state's sovereignty, defending the Republic of Indonesia's territorial integrity in accordance with Pancasila and the 1945 Constitution, and shielding the Indonesian people and homeland from any threats or disruptions that might jeopardize unity.

In the era of globalization, society continues to evolve with the changing times, where this development is often accompanied by a process of self-adjustment. However, these adjustments do not always run in balance, which sometimes leads to violations of norms, such as various forms of crime. Currently, not only the general public are the perpetrators

of criminal acts, but also officials, law enforcers, and even members of the TNI are involved in criminal acts. As a governmental instrument tasked with preserving the integrity and sovereignty of the state, the TNI is really the primary component of the national defense system. The TNI is supposed to serve as an example for the community as it is a group renowned for its members' adherence to the law and discipline. But in practice, a few of TNI members continue to engage in illegal activities (Syamsuddin, Arwin, 2017).

If members of the TNI are involved in a criminal offense, the Military Court has the right to process and try them. This is specifically regulated in Law No. 31/1997 on Military Justice, which stipulates that members of the TNI must undergo military justice if they commit a criminal offense. In some cases, criminal offenses involving members of the TNI also involve civilians, which in criminal law is known as a case of connexity.

The meaning of "connexity" itself comes from the Latin word *connexio* which means a criminal offense examined by a court within the general judicial environment against those who jointly commit an offense that falls within the general and military judicial environments, unless the harm caused by the offense lies in the interests of the military, then it is tried by a military court Mahmudi, M. (2023). A court system known as *koneksitas* is used for crimes in which civilian suspects or defendants and military suspects or defendants (TNI troops) are involved (participation or *deelneming*) or take joint action (*mede dader*) (Rasyid Ariman, 2015). In situations where civilians and military personnel jointly commit crimes, there is a unique justice system. According to Articles 55 and 56 of the Criminal Code, the offense of participation must thus be brought before the *koneksitas* court. According to the Criminal Code's Article 55:

A. Sentenced as a Perpetrator of a Crime:

1. Individuals who carry out, direct, or assist in carrying out an act.
2. Those who People who purposefully persuade someone else to carry out an act by offering something in exchange, abusing their position of authority or authority, using force, threats, or deceit, or by giving them opportunity, counsel, or knowledge.

B. In the case of an instigator, only the act intentionally encouraged shall be taken into account, including all its consequences.

Article 56 States:

1. Persons who knowingly provide assistance when a crime occurs.
2. Persons who intentionally provide an opportunity.

Article 16 of the Basic Law on Judicial Power (Law No. 48 of 2009) provides the legal foundation for connexity. Article 22 of the law is implemented by the measures outlined in the KUHAP. But before the Criminal Procedure Code was released, the Attorney General, the Minister of Justice, and the Minister of Defense and Security sought a "Joint Decree" to serve as a guide for implementing the provisions of Article 16 of Law No. 48 of 2009 regarding the concurrent case policy (M.Yahya Harahap, 2007).

If you examine closely, a joint judgment based on the Criminal Procedure Code's Chapter XI requirements can be found. the Decree under Article 16 of Law No. 48 of 2009 on the Judiciary, as well.

When a case involving a military party can cause a state difference in the general court, the *Koneksitas* court is established to decide the matter for the sake of state security. Article

89 through Article 94 of Chapter XI of the Criminal Procedure Code govern conveyancing. The following is the definition of *koneksitas* found in Article 89, paragraph (1):

“Crimes committed jointly by those belonging to the general judicial environment and the military judicial environment, shall be examined and tried by a court within the general judicial environment unless according to 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 within the military judicial environment”.

According to the clauses in Articles 89 and 94 of the KUHAP, the general court has the primary power to hear cases involving disputes between the military, which is within the jurisdiction of the military court, and the general public, which is under the general court. Only in select extreme circumstances—that is, when the Minister of Defense or Security decides that the case should be investigated and handled by a military court—will suspects—civilian or military—be tried in military tribunals (Andi Hamzah, 2008).

In accordance with the clauses expressly governed in Law Number 31 of 1997 governing Military Courts, Articles 198 to 203. which is stated in paragraph (1) of Article 198:

“Criminal offenses committed jointly by those who belong to the jurisdiction of the military court, and the jurisdiction of the general court, shall be examined and tried by a court within the general court, unless according to the decision of the Minister with the approval of the Minister of Justice the case must be examined and tried by a court within the military court”.

According to Article 90 paragraph (1), which states that the High Prosecutor's Office and the Oditur or the High Military Oditur will conduct a study based on the findings of the investigation conducted in accordance with Article 89 paragraph (2) in order to ascertain whether the court within the military court or general court is authorized to try criminal cases in accordance with the provisions of Article 89 paragraph (1) of the Criminal Procedure Code. In order to decide whether court has the authority to decide a *Koneksitas* case, the Criminal Procedure Code's Articles 90, 91, and 93 must be followed, whether the case is transferred to the General Court region or the Military Court area.

In accordance with the rules in the law in the case of *connexity*, in practice the rules of *connexity* are often ignored, so that often law enforcement officials ignore the provisions in the Criminal Procedure Code in the case of *connexity*. The case should have been transferred to the general court and the suspects were jointly tried in the general court. According to the view of Narullah, one of the Criminal experts, in accordance with the general concept of *Koneksitas* Court explained by former Supreme Court Justice M. Yahya Harahap in his book “Discussion of Problems and Application of KUHAP”, if the loss caused by a criminal offense does not affect military interests, even though many of the perpetrators are from the TNI, then general principles apply, and the case is resolved in the General Court area.

Based on the provisions of KUHAP and laws governing criminal offenses involving members of the TNI/military and civilians, such as Article 198 paragraph (1) of Law No. 31 of 1997 and Article 16 of Law No. 48 of 2009, it is stated that such cases must be examined and tried in courts within the general judicial area. Military courts can only handle such cases if there is a decision by the Minister of Defense and Security, approved by the Minister

of Justice, to transfer it to a military court. This decision is usually based on consideration of the degree of harm caused to military interests.

If there is a member of the TNI who commits a criminal offense, it will be handled according to the applicable law until it is brought to court. The trial process is conducted by specialized courts, specifically military courts. Like state courts, military courts are also open to the public except for moral crimes but it is very rare for civilians to participate in the procedure Khoiroh, A., & Firmansyah, H. (2023).

Military justice is regulated in Law No.31 of 1997 concerning Military Courts, Law No.39 of 1947 concerning the Military Criminal Code, as well as the Criminal Code, Criminal Procedure Code and criminal regulations outside the Criminal Code. Based on some of these regulations, which became the basis or argument in the debate Edy, S. S. (2024).

The author also finds examples involving members of the military and civilians who are jointly involved in the criminal act of corruption which is carried out continuously. This case is regulated and punishable under Article 2 Paragraph (1) in conjunction with Article 1 of Law Number 31 of 1999 which has been amended by Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, as well as in conjunction with Article 55 Paragraph (1) to 1 and Article 64 Paragraph (1) of the Criminal Code, as stated in the main indictment.

In accordance with Article 90 paragraph (1) which states, to determine whether the court within the military court or general court is authorized to try criminal cases in accordance with the provisions of Article 89 paragraph (1) of the Criminal Procedure Code, where a study will be carried out by the High Prosecutor's Office and the Oditur or also the High Military Oditur from the results of the investigation carried out in accordance with Article 89 paragraph (2). In a Koneksitas case to determine which court is entitled to resolve the case, whether the case is transferred to the General Court area or the Military Court area that must resolve it, in accordance with the provisions of Article 90, Article 91 and Article 93 of the Criminal Procedure Code.

In accordance with the rules in the law in the case of connexity, in practice the rules of connexity are often ignored, so that often law enforcement officials ignore the provisions in the Criminal Procedure Code in the case of connexity. The case should have been transferred to the general court and the suspects were jointly tried in the general court. According to the view of Narullah, one of the Criminal experts, in accordance with the general concept of Koneksitas Court explained by former Supreme Court Justice M. Yahya Harahap in his book "Discussion of Problems and Application of KUHAP", if the loss caused by a criminal offense does not affect military interests, even though many of the perpetrators are from the TNI, then general principles apply, and the case is resolved in the General Court area.

Such cases must be investigated and tried in courts within the general judicial area, according to the KUHAP provisions and laws governing criminal offenses involving TNI/military and civilians, such as Article 198 paragraph (1) of Law No. 31 of 1997 and Article 16 of Law No. 48 of 2009. Such matters can only be heard in military tribunals if the Minister of Defense and Security decides to transfer them to a military court and the Minister of Justice agrees. The degree of harm to military interests is typically taken into

account while making this judgment.

Additionally, the author cites instances of both citizens and military personnel working together to commit the ongoing crime of corruption. In accordance with the main indictment, this case is governed and punishable under Article 2 Paragraph (1), Article 1 of Law Number 31 of 1999, which has been amended by Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, as well as Article 55 Paragraph (1) to 1 and Article 64 Paragraph (1) of the Criminal Code.

Methodology

The data collection method is a method used to understand the object that is the focus of related science. Based on the types and sources of data used in this research, the author applies normative qualitative research methods. Normative qualitative research is an approach conducted through literature studies by utilizing various references, such as laws, books, journals, theses, and legislation relevant to the formulation of research problems. This method aims to produce a systematic understanding of the criminal offense of connexity. The data analysis used by the author in finding data both primary, secondary, and tertiary, namely descriptive judicial data analysis (Sugiyono, 2015). With this data analysis carried out as an effort to obtain data that specifically focuses on studies arranged in accordance with the structure of the case under study (Djama'an Satori ; Aan Komariah, 2010). Descriptive data analysis is a research method that describes or gives a description of the object under study through the data or samples collected. This method describes, or summarizes data points so that patterns can develop from the case or law that the author analyzes.

Result and Discussion

Mechanism in The Koneksitas Court in Resolving Criminal Offenses Committed by Civilians Together With Members of The Military

A unique procedure for resolving crimes committed simultaneously by civilians and military personnel is the koneksitas court. Since military personnel are subject to military justice and civilians fall under the general court's jurisdiction, a system that unifies the two jurisdictions is required to ensure that cases are decided equitably.

The following are the stages of the connectivity court mechanism:

1. Legal Basis for Connectivity

- a. The connectivity court mechanism is regulated in:
- b. Law Number 31 of 1997 concerning Military Justice (Articles 89-91).
- c. KUHAP (Criminal Procedure Code), particularly Articles 89-91.
- d. Government Regulation No. 27 of 1983 on the Implementation of KUHAP (Articles 40-41).

2. Stages of the Koneksitas Trial Mechanism

A. Joint Inquiry and Investigation

- Joint Investigation Team Established

When citizens and military personnel commit the same crime, a combined team that includes the following individuals conducts the investigation:

- a. Investigators from the National Police (for civilians).

b. Investigators from the Military Police (for members of the military).

Coordination of Investigations This joint team of investigators works together to collect evidence, conduct witness examinations, and ensure that the role of each perpetrator (civilian and military) in the crime is clearly revealed.

B. Determination of the Authorized Court

Under Article 89 of Law No. 31/1997, the decision as to which court will handle the case (general court or military court) must be decided by the Supreme Court (MA) if there is a difference of opinion.

If all parties agree, the case can be directly submitted to the court decided by the Attorney General and the TNI Commander with the approval of the Minister of Defense.

C. Submission of Case Files

Once the investigation is complete, the case file is handed over to the public prosecutor (JPU) or the Military Oditur, depending on which court has been determined as the forum for resolving the case.

D. Examination of The Case in Court

1. General Court

If general court is chosen as the forum, the case will be heard by a general court judge. The military member involved will still be tried in the general court.

2. Military Justice

If military justice is chosen, the civilians involved will be processed in a military court along with the military members.

3. Composition of Judges

In a *koneksitas* trial, the judges hearing the case may be a mix of general court judges and military court judges (Article 198 of the Military Justice Law).

E. Court Decision

1. After the completion of the trial, a judgment is rendered by the court of competent jurisdiction.
2. The verdict applies to all perpetrators (civilians and military) even if they are from different jurisdictions.

F. Execution of Judgment

- The implementation of the verdict is tailored to the type of punishment:
- For civilians: The sentence is carried out in accordance with the provisions of the general court.
- forms of accountability for members of the military who commit criminal acts with civilians

Forms of Accountability for Members of The Military Who Commit Criminal Acts With Civilians

Military criminal liability is a form of legal responsibility given to members of the military for criminal acts that violate military law or general criminal law, committed in their capacity as soldiers. In the context of military law, criminal liability includes not only offenses against general criminal norms, but also offenses related to military discipline, duties and responsibilities.

Accountability Under Military Law:

If a military member is found guilty, they will face criminal penalties under military law, such as Law No. 31 of 1997 or the KUHPM (Military Criminal Code). Demotion, incarceration, or dishonorable dismissal from military service are examples of sanctions.

Conclusion

Conflicting crimes reflect the complexity of the criminal justice system in Indonesia, as it involves two different legal jurisdictions. The mechanism regulated in the Military Justice Law aims to ensure justice for perpetrators and victims, while still considering the efficiency and effectiveness of the legal process. The handling of *koneksitas* cases requires cross-institutional cooperation to ensure a fair and transparent legal process.

References

- Bagir, M. (2008). *Ilmuan & Penegak Hukum: Kenangan Sebuah Pengabdian*, Jakarta: Behavior, O. (2005). *Buku Referensi*.
- Djama'an Satori ; Aan Komariah. (2010). *Metodologi Penelitian Kualitatif*.
- Edy, Slamet Sarwo. (2024). ANALISIS YURISDIKSI KEWENANGAN PENGADILAN DALAM MENGADILI TINDAK PIDANA KORUPSI YANG DILAKUKAN OLEH ANGGOTA MILITER BERSAMA-SAMA DENGAN ORANG SIPIL. *Fortiori Law Journal* 4.01.
- Hamzah, Andi. (2008). *Hukum Acara Pidana Indonesia*.
- Khoiroh, A., & Firmansyah, H. (2023). Sistem Pembuktian yang Digunakan Oditur Militer dalam Tindak Pidana Pembunuhan Berencana yang Dilakukan Anggota Militer. *UNES Law Review*, 6(2), 5668-5674.d
- Mahkamah Agung RI.
- Mahmudi, M. (2023). TANGGUNG JAWAB HUKUM ANGGOTA MILITER DALAM KASUS KORUPSI MELALUI PERADILAN KONEKSITAS ANTARA KPK DAN TNI. *HUNILA: Jurnal Ilmu Hukum dan Integrasi Peradilan*, 2(1), 113-124.
- Moh. Nazir. (2014). *Metode Penelitian*. Risman Sikumbang.

-
- Rasyid Ariman, Fahmi Raghieb. (2015). Hukum Pidana.
- Ridlo, A., Pratiwi, S., & Mardani, M. (2024). Analisis Penyelesaian Perkara Koneksitas Dalam Perspektif Pidana Umum Dan Pidana Militer. *Pagaruyuang Law Journal*, 8(1), 45-57.
- Rumate, Priska VO. (2023). Kajian Yuridis Terhadap Tindak Pidana Korupsi Yang Dilakukan Oleh Militer. *Lex Administratum* 11.1.
- Sugiyono. (2015). Metode Penelitian Pendidikan: Pendekatan Kuantitatif, Kualitatif, Dan R&D.
- Swandana, M. D. M. (2024). KEWENANGAN PERADILAN MILITER TERHADAP PENEGAKAN HUKUM PADA PERKARA KONEKSITAS YANG DILAKUKAN OLEH TENTARA NASIONAL INDONESIA (TNI). *JURNAL HUKUM MILITER*, 17(2), 1-21.
- Syamsuddin, Arwin. (2017). Kajian tentang anggota Militer yang Melakukan Tindak Pidana dalam Perkara Koneksitas Menurut KuhaP, *Lex Crimen*.
- Yahya Harahap, M. (2007). Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan.