

KPK Authority to Investigate, Prosecute, and Prosecute Corruption Offences Connexity

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Abstract

The unclear legal arrangements in Chapter XI of the Criminal Procedure Code (KUHP), particularly Article 89 to Article 94, have created legal uncertainty for the KPK in carrying out the functions of investigation and prosecution of koneksitas cases. This has resulted in weak coordination between the KPK and military institutions, which has an impact on suboptimal case handling and potential violations of the principle of justice. This research uses normative legal methods with regulatory, conceptual, and case study approaches. The results showed that Article 89 of KUHP gives priority to the General Court in processing koneksitas cases, but does not explicitly regulate the KPK's authority. This lack of clarity has made it difficult for the KPK to form a joint team with the Military Oditur as stipulated in Article 89 paragraph (2) of KUHP. This lack of legal certainty is a major obstacle in the effort to enforce a just and effective law.

Keywords: KPK Authority, Corruption Crime, KPK.

Introduction

The provisions governing the authority in handling criminal offences of connexity, namely criminal offences involving both civilian and military parties simultaneously, especially in corruption cases handled by the Corruption Eradication Commission (KPK) of the Republic of Indonesia, are due to the fact that the provisions do not clearly and explicitly regulate that they also apply as inherent authority for the KPK of the Republic of Indonesia, in the context of criminal law in Indonesia (Mochtar Kusumaatmadja, 2019).

Recent media reports have indicated that the KPK's professionalism standards were not met in handling a case of connexion allegedly involving the head of the National Search and Rescue Agency, who is an active member of the Indonesian National Army (TNI). This situation led to an apology from the KPK and the transfer of the case to the Military Police Centre (Puspom) of the TNI Headquarters. The news included, TNI rejects Basanas chief's suspect status, KPK apologises, what happened and Danpuspom TNI: KPK Suspects Military Personnel of Violating Provisions.

The handling of corruption cases involving elements of connexity at the KPK, such as the alleged corruption in the procurement of AW 101 helicopters in 2016-2017 and the alleged corruption case at the Marine Security Agency (Bakamla) in 2017, shows indications of the



KPK's weak professionalism in handling cases involving civilian and military actors. In these cases, the KPK tends to prioritise law enforcement against civilian perpetrators, while the provisions of Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirm that all citizens have equal status before the law and government without exception. In addition, Article 28D paragraph (1) of the 1945 Constitution also explicitly guarantees fair legal certainty and equal treatment for every citizen (Susanto, B., 2020).

The lack of professionalism of the KPK in handling koneksitas cases is due to the unclear legal norms governing the investigation, investigation and prosecution of koneksitas criminal offences. Existing regulations do not explicitly stipulate that the KPK has the authority to handle such cases. This legal uncertainty led to doubts on the part of the KPK, which ultimately led to the decision to stop or release investigations and prosecutions in connexity corruption cases. Such actions have a detrimental impact on society, because the state funds misappropriated in the koneksitas corruption case also include tax money paid by all Indonesian citizens.

Indonesia is a state of law, this is in accordance with the explicit recognition of the matter mentioned directly in the provisions of Article 1 paragraph (3) of the Constitution of the Republic of Indonesia. Recognition as a of law certainly has clear consequences that all state state must be carried out on the basis of and through the law alone. No other reason can be legitimised as the basis for running the wheels of state government. forms of action The affairs of the central government and the affairs that are the authority of the Regional Government, both Provincial and Regency / City, must all be carried out with a clear basis and legal products about it.

In terms of law enforcement itself, the 1945 Constitution in the provisions of Article 28D paragraph (1) also states that "everyone has the right to recognition, guarantees, protection and certainty of a just law, as well as equal treatment before the law". This means that in order for everyone to truly feel the recognition, guarantees, protection and certainty of a just law as well as equal treatment before the law, the state must seriously develop law enforcement instruments that are able to present all constitutional guarantees, especially regarding equitable legal certainty. Furthermore, in terms of prosecuting corruption offences, the Corruption Eradication Commission was established with Law Number 30 of 2002 concerning the Corruption Eradication Commission. This shows that legal certainty in the of corruption cases requires focused and serious work, because corruption, although there is still much debate about the label prosecution , is agreed by legal experts as a special crime whose investigation requires special expertise so that the handling of the case is carried out differently from criminal cases in general. "extra ordinary crime" In this regard, Article 42 of Law Number 30 of 2002 as amended by Law Number 19 of 2019 concerning the Corruption Eradication Commission (KPK) states that: "In the event of a criminal offence of corruption committed jointly by those subject to the general courts and military courts, the investigation, prosecution and examination shall be carried out according to the provisions of the procedural law applicable to the general courts." This provision is an important basis to ensure that cases of connexity involving perpetrators from two different jurisdictions can be handled with legal certainty and integration in the justice system (Effendi, R., 2021).



The mood of the lawmakers can be seen from the initial paragraph of the General Elucidation of Law Number 30 of 2002 which states "Corruption in Indonesia has become widespread in society. Its development continues to increase from year to year, both in terms of the number of cases that occur and the amount of state financial losses as well as in terms of the quality of criminal acts committed increasingly systematically and their environment that enters all aspects of public life" (Prasetyo, D., 2019).

The lawmaker's acknowledgement that corruption has entered all aspects of society shows that the lawmaker realises that there is a potential for corruption to occur in all lines of life, whether committed by civilian actors or military actors. Referring to the provisions of Article 28D paragraph (1) of the Constitution above, every individual is entitled to equal treatment before the law. Therefore, in the context of corruption offences involving both civilian and military perpetrators, the status of the perpetrator should not affect the nature or validity of the criminal act committed. Despite the different backgrounds of the perpetrators, the act, as long as it causes losses to state finances, is still corruption. For this reason, even though the perpetrators of crimes from the military have their own criminal justice system under Law Number 31 of 1997 concerning Military Justice, the lawmakers still open up opportunities to try criminal acts involving civilians and military together, which in the Criminal Procedure Code ("KUHAP") is referred to as "Koneksitas Criminal". KUHAP has specifically regulated the handling of this case in Chapter XI entitled KONEKSITAS which is regulated in the provisions of Article 89 to the provisions of Article 94 (Budi Setiawan, 2019).

Article 89(1) of KUHAP stipulates that the General Court has the priority position to hear cases involving civilian and military perpetrators. The military court is confirmed to only have the authority to hear such cases if there is a decision from the Minister of Defence with the approval of the Minister of Justice (Minister of Law and Human Rights) that the case be tried in the Military Court. After confirming the dominant position of the General Court (civilian), the provisions of Article 89 paragraph (2) confirm that the investigation of koneksitas cases is carried out with a permanent joint team of Police Investigators and Investigators from the military environment (Military Oditur and High Military Oditur) (Harkristuti Harkrisnowo, 2020). Although KUHAP has been established as the Criminal Procedure Law that regulates the examination process in corruption court proceedings, these provisions still raise doubts and legal debates. One of the questions that arises is whether the provisions regarding concurrent cases in Chapter XI of KUHAP also authorise the Corruption Eradication Commission (KPK) to investigate, prosecute and prosecute concurrent cases. To date, there is no legislation at the KUHAP level that explicitly states that the KPK has the authority to handle koneksitas cases in accordance with the provisions in the KUHAP (Jimly Asshiddiqie, 2019).

The absence of provisions that clearly regulate the exercise of authority to investigate, prosecute, and investigate corruption offences involving connexity in the Corruption Eradication Commission Law has resulted in legal uncertainty for the KPK in handling allegations of corruption offences that contain elements of connexity. As a result, the KPK cannot form a joint team for connexity as stipulated in Article 89 to Article 94 of the Criminal Procedure Code.



Although Article 62 of Law Number 30 of 2002 concerning the KPK explicitly states that the Criminal Procedure Code (KUHAP) is one of the procedural laws that can be used by the KPK to handle corruption cases, the procedural law for addressing corruption offenses involving elements of connexity, as referred to in Articles 89 to 94 of the Criminal Procedure Code, does not explicitly mention the inclusion of the KPK's authority in the investigation, inquiry, and prosecution of connexity corruption crimes (Soehino, 2019). Based on the description above, it is clear that there are significant and fundamental reasons to examine the legal uncertainty surrounding this matter.

Method

In conducting research, accurate data is needed, both primary data and secondary data. In order to obtain the data required for this writing that meets the requirements, both quality and quantity, certain research methods are used. The research method in this writing is a normative juridical method, where normative juridical research is legal research carried out by researching library materials or secondary data (Soerjono Soekanto & Sri Pamudji, 2011). Based on the background above, the problem formulation in this research focuses on the authority to investigate, investigate, and prosecute connexional corruption crimes in the KPK.

Results and Discussion

Analysis of the Conformity of the Provisions of the Case Procedure in Chapter XI of KUHAP with the Authority of the KPK.

The Criminal Procedure Code (KUHAP) regulates the provisions that apply to law enforcement agencies related to the law enforcement process that must be passed and carried out when a criminal offence case generally involves perpetrators / legal subjects subject to the general judicial environment and military justice. The regulation is contained in Articles 89 to 94 of KUHAP, known as the Chapter on Koneksitas, but the norms are addressed to police investigators and certain civil servant officials, public prosecutors, as well as military police and public prosecutors. KUHAP has not regulated investigators, investigators, and prosecutors at the KPK as the addressee of KUHAP norms related to the issue of connexity in corruption crimes whose law enforcement processes (investigation, investigation, and prosecution) are coordinated and controlled by the KPK based on Article 42 of Law 30/2002. This is understandable because the KPK was only established after the KUHAP came into force and the KUHAP has never been amended to accommodate the regulation of coordination and control by the KPK in criminal cases that have elements of connexity.

Chapter XI of the Criminal Procedure Code (KUHAP) regulates the procedure for examining cases involving civilian and military perpetrators in the same criminal offence. This regulation aims to ensure legal clarity regarding the handling of koneksitas cases, including the determination of jurisdiction and forum for settlement. The provisions of Chapter XI of KUHAP require special courts involving civilian and military elements to ensure justice for all parties involved. However, as stated in the Constitutional Court Decision Number 87/PUU-XXI/2023,



KUHAP does not explicitly regulate the role of the Corruption Eradication Commission (KPK) as investigator, prosecutor and investigator in koneksitas cases. This creates a legal gap that can lead to uncertainty in the handling of connexity corruption cases.

The Constitutional Court decision also confirmed that Article 42 of Law No. 30/2002 grants the KPK special authority to coordinate and control the investigation, prosecution and prosecution of corruption offences involving civilian and military parties. However, this authority only applies if the case is initially handled or discovered by the KPK. In practice, this often creates challenges, especially when there are differences in interpretation between the KPK, the Military Oditurat, and other law enforcement agencies regarding who is authorised to handle a case of connexity. Therefore, the Constitutional Court also recommended that lawmakers revise the KUHAP to accommodate the KPK's role more clearly in handling koneksitas cases, thereby creating greater legal certainty.

In addition, it is also necessary to highlight the importance of inter-agency cooperation to put aside egos sectoral and ensure that law enforcement runs efficiently. In handling koneksitas cases, the KPK must have a more structured coordination mechanism with the National Police, the Attorney General's Office, and the Military Court. This step is important to overcome structural and technical obstacles that often arise in the investigation, prosecution and prosecution of koneksitas cases. Thus, the KPK can play its role as a institution a *super body* that not only carries out law enforcement functions but also coordinates and controls the legal process as whole (Sudarsono, 2020).

KPK's Authority to Coordinate and Control Investigation, Investigation, and Prosecution.

Taking into account the aspects of substance, structure, and legal culture, it is necessary to provide confirmation of the norms of the provisions of Article 42 of Law No. 30 of 2002. Therefore, for the sake of legal certainty, according to the Constitutional Court Decision in Case Number 87/PUU-XXI/2023.

The ruling stated that Article 42 of Law No. 30/2002 on the Corruption Eradication Commission, which authorises the KPK to coordinate and control the investigation, investigation and prosecution of corruption offences involving perpetrators subject to military and general courts, is contrary to the 1945 Constitution of the Republic of Indonesia. However, the article still has binding legal force on the condition that the KPK's authority only applies if the law enforcement process of the connexity case has been handled from the beginning or first discovered by the KPK.

Asserting that Article 42 of Law 30 of 2002 must be understood as a provision that gives KPK the authority to investigate, prosecute, and prosecute corruption cases, as long as the case is discovered/started by KPK. This means that as long as a criminal act of corruption committed jointly by a person subject to the general court and a person subject to the military court is handled from the beginning by the KPK, the case will be handled by the KPK until there is a court decision that has permanent legal force. Conversely, in the event that a corruption offence committed by an individual subject to military justice is discovered and handled from the beginning by a law enforcement agency other than the KPK, then the agency has no obligation to transfer the



handling of the case to the KPK. Thus, based on the provisions of Article 42 of Law 30 of 2002, in principle, these provisions do not contain conditions that limit the KPK's authority in handling corruption offences involving perpetrators subject to military justice and general justice, as long as the law enforcement process has been handled from the beginning or discovered by the KPK. Therefore, in this situation, the KPK has no obligation to hand over the corruption offences to the Oditurat and military courts.

The Corruption Eradication Commission (KPK) has a strategic role in coordinating koneksitas cases, as stipulated in Article 6 letter c and Article 8 paragraph (2) of Law Number 30 of 2002 concerning the KPK, which states that the KPK has the authority to supervise other law enforcement agencies. In the context of koneksitas cases, this authority allows the KPK to ensure that the investigation, investigation and prosecution processes run according to applicable legal principles without administrative obstacles or overlapping authorities. KPK serves as the main controller in building synergy between law enforcement officials, both civilian and military, to create a more integrated law enforcement system.

This coordination includes strategic aspects, such as the division of tasks between law enforcement agencies and the provision of resources needed to support the smooth handling of koneksitas cases. In addition, KPK is also responsible for facilitating communication across institutions, including the Police and the Attorney General's Office, to ensure that koneksitas cases can be handled quickly and effectively. This is particularly important in the context of corruption cases that often involve multiple parties and have a high level of complexity (Nasution, A. M, 2019).

Analysis of Sentencing Tendencies by KPK Against Civilian Offenders

The tendency to punish civilian perpetrators by the KPK is influenced by several factors. First, legal regulations that give priority to the KPK to handle corruption offences involving public and private officials, as stipulated in Article 11 of Law Number 30 of 2002. Second, Indonesia's judicial system allows the KPK to focus its investigations on certain sectors that have a high vulnerability to corruption, such as procurement of goods and services, budget management, and licensing.

Another factor is social and political pressure. In some cases, the conviction of civilian perpetrators is often a matter of public concern, so the KPK must demonstrate transparency and integrity in law enforcement. For example, the e-KTP corruption case involving a number of officials and businessmen showed how the KPK utilised strong evidence to ensure fair and proportional punishment. On the other hand, challenges faced by the KPK include intervention efforts from interested parties, as well as technical obstacles in collecting complex evidence (Suryanto, A., 2022)

Analyses from an international perspective also show that anti-corruption agencies in different countries face similar challenges. In its annual report, Transparency International highlights that civilian perpetrators of corruption often have extensive networks, which requires cross-sectoral coordination to secure convictions. In addition, studies in South Africa and Brazil



show that strong anti-corruption agencies tend to be more successful in punishing civilian offenders than fragmented agencies. (Transparency International, 2023).

Analysis of the Challenges and Obstacles Faced by the Kpk in the Investigation, Investigation, and Prosecution of Conflict of Corruption Cases

In handling conflicting corruption cases, the KPK faces significant challenges and obstacles. One of the main challenges is the complexity of the connexity cases themselves, where these cases often involve actors from various backgrounds, such as public officials, businessmen, and military personnel. This complicates the process of gathering evidence, especially when it involves state secret documents or information protected by certain institutions (Muladi, A, 2020).

In addition, limited coordination between law enforcement agencies, such as the National Police, the Attorney General's Office, and the Military Court, is a serious obstacle. In some cases, overlapping authorities between the KPK and other institutions trigger jurisdictional conflicts that slow down the legal process. These obstacles are exacerbated by potential resistance from certain institutions that feel their authority is being interfered with by the KPK.

Other obstacles include political and social challenges, including pressure from interest groups that seek to thwart KPK's efforts through political intervention or public opinionnegative . Some have even used legal channels to undermine the KPK's position, such as *judicial reviews* of the KPK's authority under Law No. 19/2019 (Transparency International, 2023).

Another challenge faced by the KPK is the lack of regulatory harmonisation between Law No. 30/2002 on KPK and KUHAP, particularly in the regulation of koneksitas cases. As stated in Constitutional Court Decision No. 87/PUU-XXI/2023, KUHAP has not explicitly accommodated the KPK's authority to handle koneksitas cases involving perpetrators from military and general courts. This disharmony creates legal uncertainty that is often exploited by certain perpetrators or parties to avoid legal entanglement. The absence of clear technical regulations is also an obstacle in establishing an efficient coordination mechanism between the KPK, the Police, the Prosecutor's Office, and the Military Court.

From an operational perspective, technical barriers such as limited access to documents or digital evidence managed by other institutions also pose significant challenges. In some cases, the KPK has faced difficulties obtaining evidence that is state secret, especially in cases involving military personnel. In addition, the lack of human resources with specialised expertise in forensic technology also slows down the investigation process, especially in cases that require complex digital data analysis.

Legal culture challenges also play an important role in hampering the effectiveness of the KPK. In practice, a culture of reluctance towards certain institutions often leads to slow handling of koneksitas cases. This is particularly evident in the KPK's efforts to coordinate investigations with other institutions that tend to maintain sectoral egos. It is worth highlighting the importance of removing these cultural barriers to create more effective inter-agency synergies in combating corruption.



Political challenges facing the KPK also include attempts to weaken it through regulatory changes, such as the revision of the KPK Law in 2019. This revision is considered by many as a step that weakens the independence of the KPK, including in terms of oversight of the implementation of prosecutorial authority. In the context of connexity cases, this weakening could impact the KPK's ability to perform its functions optimally, especially when facing intense political pressure.

Conclusion

The KPK's authority to handle koneksitas cases has been debated in the Indonesian justice system. Although Chapter XI of the Criminal Procedure Code regulates connexity, this regulation has not explicitly authorised the KPK to handle cases involving elements of connexity. The KPK's authority to handle koneksitas cases is still a matter of debate in the Indonesian justice system. Although Chapter XI of the Criminal Procedure Code (KUHP) regulates connexity, this regulation has not explicitly authorised the KPK to handle cases involving elements of connexity.

After the issuance of the Constitutional Court Decision No. 87/PUU-XXI/2023, it strengthened the view that the KPK has the authority to handle koneksitas cases if the legal process is initiated by this institution, so that a uniform understanding is needed among law enforcement officials to ensure the effectiveness of the KPK's duties. The authority of the Corruption Eradication Commission (KPK) in conducting investigations, investigations, and prosecutions of conflicting corruption cases faces various challenges, both substantive and structural.

The focus on punishment of civilian perpetrators is dominant because the legal system still provides room for interpretation in handling koneksitas cases. Military courts have their own mechanisms for processing military personnel involved in criminal offences, so the KPK often focuses more on prosecuting civilian perpetrators.

Challenges and obstacles in handling koneksitas cases remain a major obstacle for the KPK, both in terms of regulation, inter-agency coordination, and structural aspects. One of the main obstacles is the discrepancy between the provisions in the Criminal Procedure Code and KPK regulations regarding the handling of koneksitas cases. In addition, the difference in jurisdiction between general courts and military courts often leads to conflicts of authority that slow down the investigation process.

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