

# AUTHORITY OF MILITARY POLICE INVESTIGATORS REGARDING CRIMINAL ACTS OF CORRUPTION ACCORDING TO LAW NUMBER 31 OF 1997 CONCERNING MILITARY JUSTICE

By

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## ABSTRACT

The background to this research is the investigation carried out by investigators within the scope of Military Justice with its implementation, and the role of the Military Police (POM) which coordinates with the Corruption Eradication Commission (KPK) as the front guard in eradicating Corruption Crimes. The problem in this research is the authority of Military Police Investigators (POM) regarding Corruption Crimes according to the Military Justice Law, as well as how the Military Police Investigators' (POM) Authority is implemented for Corruption Crimes according to the Military Justice Law. This research uses sociological jurisprudence. The sociological juridical approach is a research method carried out to obtain primary data and find the truth using inductive thinking methods and corresponding truth criteria and the facts used to carry out the induction process and correspondent truth testing are up-to-date facts. The way this sociological juridical method works in this research is from the results of collecting and discovering data and information through literature study of the basic assumptions and presumptions used in answering the problems in this research. The purpose of this research is to find out the authority of Military Police Investigators regarding Corruption Crimes according to the Military Justice Law, as well as how the authority of Military Police Investigators is implemented regarding Corruption Crimes according to the Military Justice Law

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## 1. INTRODUCTION

Handling of corruption cases committed by Indonesian National Army (TNI) soldiers is handled by Military justice, however the handling of corruption cases committed by Indonesian National Army (TNI) soldiers together with Civil Society is handled through connectivity hearings is also regulated in Law Number 31 of the Year 1997 concerning Military Justice, Connectivity Court whose task is to try if a criminal act is committed jointly by civilians and soldiers of the Indonesian National Army (TNI), both general crimes and special crimes such as corruption.

In the legal process, according to the provisions of Republic of Indonesia Law Number 31 of 1997 concerning Military Justice, every time a criminal act occurs within the Indonesian National Army (Tentara Nasional Indonesia/TNI) is under the authority of the Military Criminal Justice System. This process begins with the Military Police (POM) as the person responsible for the investigation, followed by handing over the files to the Military Prosecutor (Otmil) as the Public Prosecutor to examine formally and materially whether the results of the investigation are complete or not. After the Military Prosecutor (Otmil) declares that the case file is complete, the Military Prosecutor (Otmil) submits a legal opinion to the Case Submission Officer (Papera) who has 3 (three) authorities, namely

submitting or resolving the case to the Court, resolving it according to the Soldier's Disciplinary Law, or closing it for the sake of legal interests, public interests, or military interests.

The process of implementing the articles contained in the Military Prosecutor's indictment file (Otmil) must be made based on the results of the Military Police (POM) investigation. It is in this process that problems often occur which result in several cases of corruption within the Indonesian National Army (TNI) only being subject to articles of embezzlement or abuse of authority, there are several cases which are currently in the process of being investigated until the trial at the Military Court can be qualified as a crime. Corruption (Tipikor), however, in the end was only decided with Articles on abuse of authority and embezzlement due to errors in the application of Articles from the investigation process. In fact, the results of the investigation clearly revealed that the source of the funds used in the embezzlement came from state finances.

A mixed military criminal offense (*germengde militaire delict*) is a criminal offense involving a connection case, meaning a criminal offense committed jointly between civilians and the military, which in this case is based on military law and the Criminal Code. Example: criminal acts of theft carried out in collaboration between civilians and the military; the crime of murder where the victim is a civilian; and others. This mixed criminal act always involves legal subjects, namely civilians, both perpetrators and victims of criminal acts.

The lack of optimal coordination between law enforcement agencies within the Indonesian National Army (TNI) in resolving Corruption Crime (Tipikor) cases, especially the Military Police (POM) investigator and Military Prosecutor (Otmil) elements, has resulted in the slow resolution of Corruption Crime (Tipikor) cases, which is a phenomenon that recently occurred, encouraging efforts to strengthen the Military Justice System. As well as the authority or role of the Military Police (POM) in handling corruption cases within the scope of Military Justice.

By studying this problem, the author is interested in taking up research with the title "**Authority of Military Police Investigators regarding Corruption Crimes according to Law Number 31 of 1997 concerning Military Justice**"

#### **Formulation of the problem**

1. What is the authority of Military Police Investigators (POM) regarding Corruption Crimes according to the Military Justice Code?
2. How is the Military Police (POM) Investigating Authority Implemented for Corruption Crimes according to the Military Justice Code?

## **2. LITERATURE REVIEW**

### **A. The Authority of Military Police Investigators regarding Corruption Crimes according to Law Number 31 of 1997 Challenges Military Justice.**

Formally, the Corruption Eradication Commission (KPK) has the authority to handle corruption cases in any agency, including the military, this is explicitly explained in Articles 6 to 15 in Law Number 30 of 2022 concerning the Corruption Eradication Commission (KPK), so The Corruption Eradication Commission (KPK) has the authority to process corruption in any agency, including the military.

The Corruption Eradication Commission (KPK) here can ignore the military justice mechanism on the basis of *lex specialist derogat legi generalis* (specific laws override general laws). As we know, the Military Justice system (Dilmil) as regulated in Law Number 31 of 1997 concerning Military Justice is an exclusive legal system for military soldiers who are involved in crimes. Often a means of impunity for those who commit criminal acts. Article 65 paragraph (2) of the Indonesian National Army (TNI) Law itself states "Soldiers are subject to the power of military justice and are subject to the power of general justice in cases of violations of general criminal law as regulated by law." However, the Corruption Eradication Commission (KPK) as the front guard in eradicating corruption must not be afraid to prosecute Indonesian National Army (TNI) officers involved in corruption, and should not make the Military Justice Law an obstacle to resolving Indonesian National Army (TNI) officers who involved in corruption.

In handling Corruption Crimes (Tipikor) within the scope of Military Justice (Dilmil), it is possible to collaborate with the Corruption Eradication Commission (KPK), with the implementation of the law of the District Court (PN) and the implementation of the law of the Military Court (Dilmil), as previously explained, namely The handling of criminal acts investigated through connectivity is regulated, among 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 of 1975, Law Number 8 of 1981 concerning Criminal Procedure Law, Law Number 31 of 1997 concerning Military Justice, Law Number 16 of 2004 concerning the Prosecutor's Office, Law Number 48 of 2009 concerning Judicial Power. In the Criminal Procedure Code (KUHP), connectivity checks are regulated in Chapter XI regarding connectivity, specifically in Articles 90, 91, 92, 93 and 94.

Regarding the formation of the Connection Team as regulated in Article 89 paragraph (3) of the Criminal Procedure Code (KUHP) and Article 198 paragraph (3) of Law Number 31 of 1997 concerning Military Justice,

there are implementing regulations, namely a decision letter. The Minister of Defense and Security and the Minister of Justice Number K.10/M/XII/1993 and Number: M.57.PR.09.03/1983 stated that in cases of connectivity it is a criminal act as intended in Article 284 paragraph (2) of the Criminal Procedure Code (Criminal Code). Elements of the Prosecutor's Office or other investigating officials who are authorized based on statutory regulations are included as a Permanent Team.

Joint Decree which is the implementation of Article 89 paragraph (3) of the Criminal Procedure Code (KUHP) and Article 198 paragraph (3) of Law Number 31 of 1997 concerning Military Justice, while in paragraph (2) of each For each of the articles mentioned above, it is determined that the Permanent Team carries out investigations in accordance with their respective authorities according to the law applicable to the investigation of criminal cases. If a connectivity case is investigated through a connectivity mechanism, the connectivity investigation apparatus consists of a Permanent Team consisting of investigators from the Prosecutor's Office, the National Police, the Military Police (POM) and the Military Prosecutor (Otmil). Where the way of working is adjusted to the delineation and limits of authority and if a separate or split examination is carried out then the case is returned to the authorized investigator according to procedural law in accordance with the respective judiciary. In the event that a case is not split, the connectivity investigation will continue with the prosecution and trial examination in accordance with the connectivity mechanism regulations contained in the statutory regulations.

In carrying out splitting, it is said that it is not uncommon for connectivity cases that have been determined to be investigated to be carried out by investigators who are not included in the Permanent Team category. It is feared that this will cause ambiguity, because in the regulations regarding connectivity cases, both in the Criminal Procedure Code (KUHP) and in the Military Justice Law, mechanisms regarding handling connectivity have been determined.

Due to the complexity of connectivity problems, the solution option is to be resolved through splitting without using connectivity mechanisms. Due to the complexity of the connectivity mechanism, in a criminal case carried out jointly by civil society, in the resolution process there are two mechanisms, namely connectivity cases where the case is resolved through connectivity, namely civil society perpetrators and military perpetrators who are submitted to the Military Court or District Court (PN). . Meanwhile, connectivity cases where the cases are resolved separately (splits), namely civil society perpetrators are resolved through the District Court (PN) and military perpetrators are resolved through the Military Court.

The permanent team that examines connectivity cases consists of elements of the General Court and military justice which examines connectivity cases within the same scope of justice, is examined within the scope of general court only or is examined within the scope of military justice with the decision of the Minister of Defense and Security with the approval of the Minister of Justice. Where the judicial determination is based on the severity of the loss, whether in the public interest or military interests, the examination carried out by the Connection Team can make a case examined into a series of complete connectivity examinations in terms of examining and proving the perpetrators, whether the perpetrators are from civil society. as well as by members of the military.

Based on the connectivity justice explained above, Article 89 of the Criminal Procedure Code (KUHP) states that if a criminal act is committed by both military and civilian elements, they will be tried within the scope of the General Court, unless there is approval from the Minister of Defense. and Security and Justice Ministers must be tried within the Military Justice environment.

#### **B. Implementation of the Military Police's Investigative Authority for Corruption Crimes According to Law Number 31 of 1997 concerning Military Justice.**

As we all know, determining a suspect is one of the stages in resolving a criminal corruption case, this stage is the initial stage in opening and resolving a corruption case. The determination of suspects carried out by the Corruption Eradication Commission (KPK) against members of the TNI (Indonesian National Army) actually opened a clear path for the uncovering of corruption cases. Problems related to determining a suspect should also be avoided if a common perception and mission is established. In essence, determining a suspect is just the beginning of resolving a corruption case. Puspom and KPK (Corruption Eradication Commission) both have authority in their respective domains, but the law clearly and unambiguously emphasizes coordination, and the Corruption Eradication Commission (KPK) has clearly taken this step in the process, even though Puspom feel that the decision step mentioned is not an authority, but on the other hand, it would actually be better if the process was responded to positively, because it would actually facilitate Puspom's performance if later this case was taken over by Puspom as well. The evidence collected by the Corruption Eradication Commission (KPK) will speed up the performance of resolving this case, and if it can be handled quickly it will certainly be better because it is in accordance with the principles of resolving corruption crimes.

Results of the author's interview with Puspom TNI (Indonesian National Army) investigator Mr. Rus'an, who is related to the Corruption Eradication Commission (Komisi Pemberantasan Korupsi/KPK), which has the authority to process corruption in any agency, including the military. The Corruption Eradication Commission (KPK) here can

ignore the military justice mechanism on the basis of *lex specialist derogat legi generalis* (specific laws override general laws), in this case, it is possible to collaborate with the Corruption Eradication Commission (KPK), with enforceability State Judicial Law (Pengadilan Negeri/PN) and the implementation of Military Justice Law (Dilmil), namely the handling of criminal acts that are examined through connectivity, are regulated, among other things, in Law Number 5 of 1950, Law Number 14 of 1970, Joint Decree of the Minister of Justice, Apparatus The Connectivity Investigators consist of a Permanent Team consisting of investigators from the Police Prosecutor's Office, Military Police (POM) and Military Prosecutors (Otmil), whose way of working is adjusted to the delineation and boundaries of authority and if the examination is carried out separately or splitting, the case is returned to the investigator authorized according to procedural law in accordance with their respective courts. In the event that a case is not split, the connection investigation will continue with the prosecution and trial examination in accordance with the regulatory mechanisms in the laws and regulations. Thus the author asked the sources, namely; What about the limits on the authority of each connectivity investigator, where the results of all investigators continue in the trial examination, could this result in unclear results of the investigation in this case which is limited by the authority of each investigator? In this description Mr Rus'an responded;

*"Firstly, we are talking about criminal acts of corruption, we still refer to Article 9 of Law no. 31 of 1997 that those who are subject to military justice are soldiers or are equivalent to soldiers, we are talking about legal subjects, while the Corruption Eradication Commission is talking about objects, related to the problem of implementing criminal acts of corruption, we are also lex specialist derogat legi generalis, even related laws with military justice issues much earlier than the Corruption Eradication Committee Law,*

*Second, in Article 39 paragraph 1 of Law no. 30 of 2002 concerning the KPK, they said that the implementation of investigation and prosecution activities was based on the Criminal Procedure Code. How will the Corruption Eradication Committee do?*

*examination of the subject of military law, which refers to the Criminal Procedure Code? Because the detention process, for example, is the authority of Ankum and Papera, do they have the right to handle it? Meanwhile, the KPK refers to the Criminal Procedure Code,*

*Thirdly, in Article 42 the Corruption Eradication Committee has the authority to coordinate, regarding returns, coordinating is different from carrying out investigations, coordinating is supervision according to my understanding, different from carrying out investigations, the language here is only to coordinate if there is a criminal act of corruption, which is carried out jointly among people who are subject to general justice, as well as those who are subject to military justice. However, in Law no. 31 of 1999 concerning No Corruption Crimes states that the attorney general coordinates and controls investigations. If we talk about the authority of the military police, it is actually regulated in that law by the Attorney General, because the Corruption Eradication Commission has not yet been born, there are no specific regulations regarding connectivity. "And yesterday one of the people submitted a judicial review, related to the authority of the Corruption Eradication Committee (KPK), to carry out a connected investigation, and I don't know the progress until now."*

The absolute competence of military justice in Indonesia rests on Article 9 of HAPMIL. The article reads as follows;

1. Adjudicate criminal acts committed by someone who at the time of committing the criminal act was:
  - a) Soldier; b) who according to the law are equated with soldiers; c) members of a group or service or agency or who are equated or considered soldiers under the law; d) a person who does not fall into the categories in letters a, b and c, but upon the decision of the Commander in Chief with the approval of the Minister of Justice, must be tried by a court within the military justice environment.
2. Examining, deciding and resolving disputes regarding Armed Forces Administration;
3. Combine the claim for compensation in the relevant criminal case at the request of the party injured as a result of the criminal act which is the basis of the indictment, and simultaneously decide both cases in one decision.

Regarding the meaning of Soldier as mentioned in Article 9 number 1 letter a of HAPMIL above, it is explained.

In Article 1 number 42 HAPMIL as the Article reads;

*"Soldiers of the Armed Forces of the Republic of Indonesia, hereinafter referred to as Soldiers, are citizens who fulfill the requirements specified in the provisions of the laws and regulations and are appointed by authorized officials to devote themselves to the defense of the country by bearing weapons, being willing to sacrifice their lives and bodies, and taking part in national development and subject to military law."*

Another word for soldier is called military. The word military comes from the Greek word miles, which means an armed person who is ready to fight or who is ready to fight. In Latin the word miles means warrior or warrior. This word then developed into *militaris* (Latin) and *militair* (French) which then entered all languages in Europe. In Indonesian, besides the word military, other words are also known, namely army and laskar. In the past, these three terms were used mixed up. However, if you examine these three terms, they have slightly different meanings.



The formal definition of military according to law can also be stated in Article 46, Article 47 and Article 49 of the Army Criminal Code.

From the description of Article 9 point 1 which is linked to Articles 1 and 2 of the KUHPM above, it can be concluded that the absolute competence of military justice which is based on the subject of criminal offenses has placed soldiers as a very special group because almost all violations or crimes committed by soldiers will be brought to the realm of military justice. Of course, if this mechanism is seen from the perspective of the principle of equality before the law, it is a mechanism that should not be implemented. Because, basically the principle of equality before the law does not require different treatment based on the subject of the perpetrator. All legal subjects are the same before the law, the only difference is what criminal act was committed by the legal subject.

### 3. RESULTS AND DISCUSSION

Puspom TNI (Indonesian National Army) investigator, Mr. Rus'an, opined:

*"Talking about criminal acts of corruption, they are grouped into 3 (three): 1) abuse of authority and position which causes state losses; 2) infiltration, and; 3) gratification. If the investigation process fulfills the criminal elements in accordance with the articles that we suspect, then supported by strong evidence, then we will carry out procedures in accordance with applicable regulations, we will not arrange for people who have been proven to be legitimate and are convinced to have committed the crime. criminal corruption, which results in state losses, we continue to face abuse of authority, because when talking about criminal acts of corruption, one of the elements, or evidence that supports it, must be an audit, which states that there is a state loss, but if it is stated that there is no audit of state losses, How can we determine that it is related to criminal acts of corruption. Examples of cases that we handle: What about the case of Brigadier General Teddy, the maximum sentence was life imprisonment and dismissal and paid compensation of 200 billion, a criminal corruption case involving satellite and han problems, now in process and everything is transparent, the process Yesterday's criminal investigation was carried out by Basarnas, but it is now in the trial process. We have nothing to say regarding abuse of authority, as long as the evidence is sufficient and meets the requirements to be categorized as a criminal act of corruption. So far, our coordination with the judiciary has been smooth, before we hand over the case files, we will carry out a case title, to ask for input, suggestions and responses, do the case files that we have created meet the formal and material requirements? We will discuss them. "If there is input we write it down, so there are no obstacles during the investigation process, the main thing is to look for evidence because after all, when a suspect is involved in a criminal case he will try to hide what he got from the proceeds of the crime."*

Related to the case of Brigadier General Teddy who was found guilty of corruption in the procurement of defense equipment at the Ministry of Defense (Kemenhan). Based on information from the kemhan.go.id website, apart from being imprisoned for life, the 1-star general was also obliged to return state losses amounting to US\$ 12,409 or around Rp. 130 billion and was fired from the TNI (Indonesian National Army). "Trying the defendant to be legally and convincingly proven to have committed an act of corruption as the primary charge carries a sentence of life imprisonment and being dismissed from the military and demanding compensation." Chairman of the Panel of Judges, Brigadier General TNI Deddy Suryanto, knocks the gavel during a trial at the Level II Military Court in East Jakarta. The corruption case allegedly started when Teddy was still a colonel and served as Head of the Financing Implementation Division of the Ministry of Defense for the 2010-2014 period. Based on the Decree of the Commander of the TNI (Indonesian National Army) dated 31 December 2013, Teddy received a promotion to Finance Director of the TNI AD (Indonesian National Army) Headquarters with the rank of one star general or brigadier general until now.

Coordinating Minister for Political, Legal and Security Affairs Wiranto appreciated the decision of the Military Court judge who decided the case of Brigadier General Teddy Hernayadi who was sentenced to life imprisonment by the East Jakarta Military Court. According to him, corruption cases everywhere must be resolved legally.

Law enforcement against TNI (Indonesian National Army) soldiers, understandings gained regarding authorized investigators for TNI (Indonesian National Army) soldiers in the General Court include, among others; 1) That every soldier comes from the people and is equal in the eyes of the law is something that cannot be denied, but every soldier is a person who is specially trained and formed in a large organization to defend the country from threats and the power of weapons is also something that cannot be denied. , so that there is still a need for specificity in certain matters without sacrificing the sense of justice in society. Seeing this, in order to carry out the mandate of MPR Decree No: VII/MPR/2000, special investigators are still needed who psychologically know directly about the background of each soldier so that it will be easier to carry out the disclosure of a criminal act committed by a TNI (Indonesian National Army) soldier. ; 2) The Military Police are investigators within the TNI (Indonesian National Army) who can be classified as special police who assist in carrying out the duties of the National Police in the context of security and

public order as intended in Law no. 2 of 2002 concerning the National Police, and this assistance function does not conflict with one of the duties of the TNI (Indonesian National Army) in military operations other than war, namely assisting the National Police in the context of security and public order duties; 3) In Law Number 2; In 2002, regarding the National Police, there was no mention of the authority of National Police Investigators to carry out investigations against TNI (Indonesian National Army) soldiers. This is clearly because the target of carrying out the main duties of the National Police is aimed at the general public, not special people (TNI (Indonesian National Army) Soldiers who are trained). specifically what differentiates them from the general public, although between (TNI (Indonesian National Army) soldiers who are specially trained which differentiates them from the general public even though there is no difference between TNI (Indonesian National Army) soldiers and the general public in the eyes of the law).

The results of the author's interview with the Puspom TNI (Indonesian National Army) investigator, Mr. Rus'an, namely related to the contents of Article 69 paragraph 910 of Law Number 37 of 1997 concerning Military Justice, said that what is meant by investigator is the Military Police (POM), Oditur Military, then Article 69 paragraph 2 states about Assistant Investigators, namely the Provost of the Indonesian Army, the Provost of the TNI (Indonesian National Army) Navy and the Provost of the TNI (Indonesian National Army) of the Air Force, related to Investigators and Assistant Investigators, is this the same as between investigators? Polri and PPNS (Civil Servant Investigators) in handling special criminal acts? Or is it more emphasized as partners in the investigation who still have the same overall duties but help each other?, in this description Mr. Rus'an responded;

*"There is indeed a difference between investigators and assistant investigators in Law no. 31/1997, compared with investigators with PPNS investigators in the KUHAP, investigators in Law no. 31/1997 there are 3, military police, military prosecutors, and their assistants are: force provost, related to mentioning the issue of authority, in Article 73 it states that investigators and assistant investigators have the same authority, but regarding the authority to delegate case files, it is absolute the authority of the investigator, so far this is because the provost is part of the unification, in order to help the unification in order to enforce discipline and order, within the unit, to help as an initial partner, but if an incident occurs they immediately coordinate or report it to the police military, at least they are securing the crime scene, so that people do not enter the crime scene, if there is a criminal incident at that place, but the investigation process is pro justicia and other activities, carried out by investigators as regulated in article 69 paragraph 1, especially the military police and prosecutors. "*

So the duties of the authority of the Investigator and Assistant Investigator in Military Justice have the same role, but in the case of delegation of cases it is carried out by the Investigator, in this case the Investigator and the Assistant Investigator are the unifiers so that discipline is maintained according to the existing rules and regulations. Then, pro justicia investigations and other activities are carried out by investigators in accordance with Article 69 paragraph (1), which is also explained in Article 74 of Law No.31/1997;

*"a superior who has the right to punish has the authority; a) carry out investigations on subordinate soldiers who are under the authority of his command, the implementation of which is carried out by investigators as intended in Article 69 paragraph (1) letter c; b) receive a report on the implementation of the investigation from the Investigator as intended in Article 69 paragraph (1) letter b or letter c; c) receive case files resulting from investigations from Investigators as intended in Article 69 paragraph (1) letter b or letter c; and d) detain suspects from lower ranks who are under the authority of their commanders;"*

#### 4. CONCLUSION

1. Article 42 of Law no. 30 of 2002 concerning the Corruption Eradication Commission explains that the Corruption Eradication Commission has the authority to coordinate, coordinating is different from carrying out investigations, the language here is only to coordinate if there is a criminal act of corruption, which is carried out jointly among people who are subject to general justice, or those who subject to military justice, if what is meant by the authority of the military police is actually regulated in the Prosecutor's Law, because the Corruption Eradication Commission (KPK) has not been established as an investigative institution, it is understandable that there is no specific regulation regarding the connection between military police investigators and investigators. corruption eradication commission.
2. In Article 39 paragraph 1 of Law no. 30 of 2002 concerning the Corruption Eradication Commission states that; "Investigations, prosecutions for criminal acts of corruption are carried out based on the applicable criminal procedural law and based on Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, unless otherwise provided in this Law." So, if the subject of the law is military, it refers to the Military Procedure Law and not the Criminal Procedure Code, because the detention process is also the authority of Ankum and Papera.

## 5. SUGGESTION

There needs to be specific regulations regarding the resolution of criminal acts in a connected manner, especially in resolving cases of criminal acts of corruption involving members of the military, so that they can be synchronized with Law no. 30 of 2002 concerning the Corruption Eradication Commission.

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