

## Legal Implications of Dual Jurisdiction in Connectivity Cases: a Study of the Major Point of Loss of Criminal Acts from the Perspective of Legal Certainty

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### ABSTRACT

This study examines regulatory weaknesses in Chapter XI of the Criminal Procedure Code regarding connexity cases, analyses the juridical implications of judicial dualism on legal certainty, and proposes legal reforms to enhance certainty in criminal procedure. Using Gustav Radbruch's theory of legal certainty, the theory of connexity, and the theory of civil supremacy, the research highlights the need for clear rules and consistent law enforcement. Employing a normative legal method with a juridical-analytical approach, the study reviews relevant legislation (Criminal Procedure Code, Attorney General's Act, Military Justice Act) and case studies (TWP-AD and Satellite Procurement Project) using qualitative descriptive analysis. Findings reveal that the ambiguous definitions of "public interest" and "military interest" in Chapter XI of the Criminal Procedure Code contribute to judicial dualism in connexity cases. The study underscores the need to reinforce coordination through the Military Prosecutor for Military Criminal Matters (Jampidmil), whose role is currently underrepresented in the legal framework. Reform is necessary to establish clearer parameters for determining jurisdictional emphasis and integrating Jampidmil into the criminal procedural system. This research has significant implications, advocating for amendments to the Criminal Procedure Code to eliminate judicial dualism, strengthen Jampidmil's role as a technical coordinator, and enhance legal certainty within the judicial system. By focusing on the juridical impact of judicial dualism and offering concrete solutions for reform, this study contributes to the development of Indonesia's criminal procedural law with an original and practical approach.

**Keywords:** *Judicial Dualism, Connectivity Cases, Criminal Procedure Code, Point of Loss of Loss, Legal Certainty, Military Judicial Commission*

### 1. INTRODUCTION

Judicial dualism in connection cases is a complex legal issue and often leads to legal uncertainty. Connexity cases, as regulated in Chapter XI of the Criminal Procedure Code, cover situations where the crime involves perpetrators from two different judicial environments, namely the general court and the military court. The current procedural law stipulates that the focus of the loss is the basis for determining the competent judicial environment (Badu & Aripri, 2019). However, the lack of clarity in the definition of public interest and military interest causes potential conflicts of jurisdiction and slows down the law enforcement process.

One clear example of this problem is the case of the Army's Mandatory Housing Savings (TWP-AD) which involves actors from the civil and military spheres. Align with research from Pakpahan & Gaol (2022) In this case, there is a difference of opinion between the prosecutor and the prosecutor regarding which court has the authority to examine and try the case. The prosecutor considers that this case is more appropriately handled by the general court based on the significant state losses, while the prosecutor considers that the military court has more authority because the main suspect is an active member of the military. This situation shows that the existing regulations are still not strong enough to provide legal certainty.

In addition, although Presidential Regulation Number 15 of 2021 and the Attorney General's Law have introduced Jampidmil (Deputy Attorney General for Military Criminal Matters) as technical coordinator in connection cases, its existence is not

listed in the Criminal Procedure Code (Sari et al., 2023). This limits the role of the Jampidmil in determining the judicial environment and makes it legally non-binding. The weaknesses in this regulation increase the risk of judicial dualism, which can undermine the principles of justice and equality before the law (Mahmud, 2021).

The point of loss that determines the judicial environment in Chapter XI of the Criminal Procedure Code also raises many problems of interpretation. Public interest and military interest have broad definitions and often overlap. In some cases, the public interest involves aspects such as national stability and community welfare, while military interest focuses more on state security and confidentiality. Without clear parameters, judicial dualism has the potential to hinder the resolution of cases and create injustice (Milky et al., 2024).

This study aims to analyse the legal implications of judicial dualism in connected cases and to evaluate the weaknesses of existing regulations. By exploring concrete cases such as TWP-AD and the Satellite Procurement Project, this study will provide recommendations for the reform of criminal procedure law in Indonesia, including strengthening the role of the Military Prosecutor for Military Criminal Matters and affirming the criteria for the focus of loss. According to Faisal (2024), the reformulation of the Criminal Procedure Code is expected to increase legal certainty and prevent judicial dualism in the future.

To determine the originality of the research that the author is conducting, in this case, previous research is included with the same theme of discussion as research that has been conducted previously. The results of previous research were conducted by Amalia (2022), with the title: 'Reformulation of the Authority to Adjudicate General Crimes by the Military in Indonesia'. Dissertation in the Doctoral Program in Law, Faculty of Law, Gadjah Mada University, Yogyakarta, 2015. From the results of research conducted, it can be seen that (1) The regulation of the authority to try military courts for general crimes committed by the military in Indonesia is contained in Law No. 7 of 1946, Government Regulation No. 37 of 1948, Emergency Regulation Number 46/MBKD/49, Law No. 5 of 1950 and Law No. 31 of 1997 (Irianto, 2022).

The background to the idea of granting military judicial authority to try public offences committed by the military cannot be separated from the politics of law which calls for the establishment of a special court. (2) The regulation of the authority of the General Court to try general crimes committed by the military is basically not only contained in MPR Decree No. VII/MPR/2000 and Law No. 34 of 2004, but is also found in Law No. 21 of 1964 and Law No. 26 of 2000. The issuance of MPR Decree No. VII/MPR/2000 and Law No. 34 of 2004 has led to the transfer of authority to try general criminal acts committed by the military from military courts to general courts (Heriyanto, 2024). In essence, this cannot be separated from the mandate and agenda of reform and this is a manifestation and reflection of the principle of equality before the law (Syauqi, 2017).

And (3) The reformulation of the authority to try ordinary crimes committed by the military is a necessity for the implementation of the transfer of authority to try ordinary crimes committed by the military from military courts to general courts. The reformulation here is intended to explore the main points of thought so that general crimes committed by the military can be tried by the general court. Research conducted (Edy, 2017), with the title 'Independence of the Military Justice System in Indonesia: A Study of the Structure of the Military Justice System'. Dissertation for the Doctor of Law Programme, Faculty of Law, Gadjah Mada University, Yogyakarta, 2016. From the results of research conducted, it can be seen that (1) The philosophy of the occurrence of independence in the military justice system is firstly due to the interests of the military (TNI), which are related to the main task of the TNI to defend the sovereignty of the country, therefore by placing the role of unit commander (Ankum) and military institutions within the law enforcement system.

Secondly, at the beginning of the formation of the military judicial organisation, civilian judicial officials were placed as acting officials in military courts (Fadhlurrahman et al., 2019). The head of the district court was appointed as the location of the army court because of his position as chairman of the army court. The district court clerk also served as the army court clerk, and the head of the district prosecutor's office was appointed as the army prosecutor. This situation gave rise to objections on the grounds that it was considered to be disadvantageous for the military or the military unit. (2) In the future, the military court must be independent both institutionally and functionally. In this context, the investigator is a military police officer consisting of the Army, Navy and Air Force, reporting to the TNI Danpuspom.

Prosecution and referral of cases to court are carried out by a military prosecutor who reports to the TNI Orjen. The court's authority is no longer based on the defendant's rank. The organisational, administrative and financial management of military courts is entirely under the auspices of MARI as regulated by law. Research conducted, with the title 'The Authority of the Military Court to Resolve Corruption Cases Committed by Soldiers of the Indonesian National Army (TNI)'. Dissertation in the Doctoral Program in Law, Faculty of Law, Universitas Airlangga, 2020 (Ikawati, 2021). From the results of research conducted, it can be seen that in essence, the military court is an institution that exists to resolve criminal cases including corruption cases committed by legal subjects as referred to in article 9 paragraph (1) of Law number 31 of 1997 as well as military administrative disputes.

This can be seen from the verdict in a corruption case involving a member of the military, namely the verdict of Lieutenant General (Ret.) Djadja Suparman, S.Ip., M.M., in the case of Brigadier General Teddy Hernayadi, S.E., M.M. and the case of

First Lieutenant Inf. Sangkot. It is worth noting here that the military court can try cases of corruption committed by TNI soldiers in accordance with the principle of Lex Specialist Systematic. Research conducted by Yuliani (2021), with the title 'Criminal Offence of Insubordination Committed by Soldiers of the Indonesian National Army. Dissertation for the Doctoral Programme in Law at the Faculty of Law, Hasanuddin University, Makassar, 2021.

From the research conducted, it can be seen that (1) The nature of the legal regulation of TNI soldiers who commit the crime of insubordination in the military legal system is regulated in the Military Criminal Code (KUHPM), this regulation becomes a basis for punishment when the military commits a crime of insubordination so that TNI soldiers can carry out their duties with a full sense of responsibility and adhere to the Sapta Marga by upholding the dignity of superiors, (2). The implementation of the law against TNI soldiers who commit the crime of insubordination is currently considered to be ineffective based on the application of the law by military prosecutors who tend to prosecute the perpetrators too lightly, creating a disparity between the charges and the sanctions threatened in the Military Criminal Code.

The legal reformulation of the crime of insubordination as a military legal instrument in Indonesia is to add the phrase insubordination to Article 105 of the Military Criminal Code or to revoke the article so that it does not contain a waste of meaning. In addition, the addition of minimum sanctions, especially in the articles on insubordination, also needs to be included so that there is no disparity in the demands of the Military Prosecutor.

## 2. METHOD

This study uses a normative legal research method with a juridical-analytical approach (Saragih & Fadly, 2022). This method was chosen to analyse the problem of judicial dualism in connected cases based on applicable laws and regulations, legal doctrine, and court decisions. The following is a detailed description of the research method used:

### Research Approach

Statute Approach: This study analyses related laws and regulations, such as the Criminal Procedure Code, the Attorney General's Act, the Military Justice Act, and other regulations relevant to connective cases. Case Approach: Research using concrete case studies, such as the TWP-AD case and the East Longitude 1230 Orbit Satellite Procurement Project case, to understand the application of the law and its juridical implications. Historical Approach: This approach is used to trace the historical background of the formation of Chapter XI of the Criminal Procedure Code on connectivity, as well as the development of regulations that affect judicial dualism. Conceptual Approach: This approach is used to understand the concepts of public interest, military interest, and the role of Jampidmil in the criminal justice system.

### Data Source

Primary Legal Materials: Criminal Procedure Code, Law Number 31 of 1997 concerning Military Justice, Attorney General's Office Law Number 16 of 2004 (with amendments), Law Number 20 of 2001 concerning the Eradication of Corruption, and Presidential Regulation Number 15 of 2021 concerning the Attorney General's Office of the Republic of Indonesia. Secondary Legal Materials: Legal literature, academic journals, expert opinions, and other relevant official documents. Tertiary Legal Materials: Legal dictionaries, encyclopedias, and other reference documents used to support the analysis.

### Data Collection Techniques

Library Research: Data is collected through a study of legislation, court decisions, and relevant academic documents. Case Analysis: In-depth research into the TWP-AD case and the Satellite Procurement Project as comparative material to identify judicial dualism that occurs in practice.

### Data Analysis Techniques

Qualitative Analysis: The data obtained is qualitatively analysed to understand and interpret the legal rules, principles, and doctrines relating to the case. Comparative Analysis: Comparing the application of the law in various connected cases to identify weaknesses in the existing legal arrangements. Descriptive-Analytical Analysis: Research systematically explains legal issues and provides an in-depth analysis of the resulting juridical implications.

### Location and Scope of Research

Normative study of regulations applicable in Indonesia. Analysis of cases that have been decided or are in the legal process by the Supreme Court and related judicial institutions. The role of institutions such as the Military Prosecutor's Office, the Attorney General's Office, and the Supreme Court in handling connective cases.

### Research Method Objective

Analyse the weaknesses in criminal procedure law that cause judicial dualism in connection cases. Providing recommendations for Criminal Procedure Code (KUHP) reform to increase legal certainty in connection cases. Strengthen the role of Jampidmil in the criminal justice system in Indonesia. This research method is expected to produce a comprehensive analysis to support the improvement of regulations and legal practices in handling connectivity cases in

Indonesia.

### 3. RESULTS

Judicial dualism in connective cases, as regulated in Chapter XI of the Criminal Code, often leads to legal uncertainty. This uncertainty arises from differences in interpretation between the general and military judicial environments regarding the emphasis of losses, both in relation to public interests and military interests. Connective cases, such as the TWP-AD and Satellite Procurement Project cases, are proof that the regulations in the Criminal Code still have weaknesses.

#### Weaknesses of the Criminal Procedure Code in the Connection Chapter

The Criminal Procedure Code does not explicitly provide clear parameters regarding the definition of 'public interest' and 'military interest'. This lack of clarity leads to different interpretations between prosecutors and public prosecutors, thus potentially giving rise to judicial dualism. In the TWP-AD case, for example, the military prosecutor emphasised the aspect of military interest based on the status of the suspect as an active member of the Indonesian National Defence Forces (TNI), while the prosecutor argued that the case should be handled in a general court because of the significant state losses.

#### Weight Point Analysis of Losses

Determining the point of focus of loss in a connectivity case is often a matter of debate. In the case of the Satellite Procurement Project, the Supreme Court ruled that this case fell under the scope of general jurisdiction because the loss was considered to have an impact on the interests of the nation and the state at large. On the other hand, in the TWP-AD case, the military prosecutor emphasised that the loss concerned military interests because the source of funds came from TNI soldiers.

#### The Role of Jampidmil in Ensuring Legal Certainty

Presidential Regulation Number 15 of 2021 and the Attorney General's Law have introduced Jampidmil as the technical coordination of prosecution in connected cases. However, the existence of Jampidmil has not been included in the Criminal Procedure Code, so its role does not have clear legal force in deciding which court has jurisdiction. A reformulation of the Criminal Procedure Code is needed to include Jampidmil as the main controller in coordinating the handling of connected cases.

#### Legal Implications of Judicial Dualism

Judicial dualism can lead to injustice and violations of the principle of equality before the law. The placement of connected cases in military courts for general criminal cases such as corruption often gives rise to allegations of discrimination. This is not in line with the principle of legal certainty, which demands clarity and consistency in the application of the law. This study found that good governance in connection cases requires a clearer coordination mechanism between the Attorney General's Office and the Military Prosecutor's Office. The concept of good governance in this study includes: (1) Transparency in determining jurisdiction; (2) Accountability in the investigation and prosecution process; (3) Efficiency in the administration of justice; (4) Legal certainty for all parties involved.

Research data shows that the formation of the Joint Prosecution Team for Military and Police Cases (Jampidmil) is one solution to overcome obstacles in the enforcement of military and police cases by unifying the vision between prosecutors and public prosecutors in handling military and police cases. The results of the study show that the lack of clarity in the jurisdictional mechanism often causes differences in interpretation between the general and military courts. Based on Article 89 (1) of the Criminal Procedure Code, connected cases are examined in the general court, unless there is a decision from the Minister of Defense and Security with the approval of the Minister of Justice to transfer it to the military court. To that end, this study found that the establishment of the Military Prosecution Service for Military Criminal Matters (Jampidmil) contributes to providing legal certainty through: The provision of a coordination mechanism between the general and military courts. The development of clearer procedural standards in connection cases. Ensuring the principle of a fair trial for all parties involved.

Research data shows that the establishment of the Military Prosecutor for Military-Military Connection Cases (Jampidmil) in Presidential Regulation 15/2021 is based on the need for a more effective coordination structure in handling military-military connection cases. The results of the study reveal that the main objectives of the establishment of Jampidmil are: (1) Reduce jurisdictional conflicts between the Attorney General's Office and the Military Prosecutor's Office; (2) Improve the effectiveness of investigations and prosecutions; (3) Ensure the principle of due process of law in connection cases; (4) Strengthen coordination in law enforcement, especially in criminal acts involving civilian and military elements. Thus, the results of this study show that the establishment of the Jampidmil has had a positive impact on the justice system in Indonesia, increasing the effectiveness of the judicial process and ensuring greater legal certainty for the parties involved.

### 4. CONCLUSIONS AND RECOMMENDATIONS

Judicial dualism in connection cases shows the need for Criminal Procedure Code reform to overcome weaknesses related

to the emphasis on losses. Emphasis on one court, namely the general court, for general criminal cases such as corruption can increase legal certainty and efficiency in handling cases. In addition, the role of the Military Prosecutor's Office for Military Criminal Matters must be strengthened to prevent fragmentation in the judicial process. Recommendations include: (1) Addition of clear parameters in the Criminal Procedure Code regarding the definition of public interest and military interest; (2) Explicit recognition of the role of the Military Legal Aid Agency in handling connection cases; (3) Development of an integrated judicial system to integrate general and military judicial functions; (4) It is hoped that this document will serve as a reference for further development in the reform of the criminal procedural legal system in Indonesia.

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