

## Juridical Analysis of the Role and Position of the Young Attorney General for Military Criminal Affairs in Connection Cases



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**ABSTRACT:** The Prosecutor's Office of the Republic of Indonesia carries out state prosecutorial powers as regulated in Law Number 16 of 2004 which has been amended by Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia (UU Prosecutor's Office). The Supreme Prosecutor's position is as the Highest Public Prosecutor (*dominus litis*). This is also reflected in the Elucidation of Article 57 paragraph (1) of Law Number 31 of 1997 concerning Military Justice which explains that the Prosecutor General in carrying out prosecutions within the military justice environment is responsible to the Attorney General as *dominus litis*. However, in practice, prosecutors often do not report the implementation of the prosecution of military criminal cases they handle to the Attorney General, so that unified implementation of the one-roof prosecution policy (one-roof system) has not been achieved. Reflecting on the various circumstances above, a Junior Attorney General for Military Crimes was formed in the organizational structure of the Attorney General's Office of the Republic of Indonesia. Based on this description, the formulation of the problem studied by the author is: 1) What is the role and position of the Deputy Attorney General for Military Crimes in connectivity cases? 2) What are the implications of the presence of the Deputy Attorney General for Military Crimes in connection cases? The research method used is normative juridical with descriptive research. The data collection technique used is document study as the main data. Based on the research results, it can be concluded that Attorney General for Military Crimes has the role of supporting the Attorney General in carrying out the duties and authority of the Prosecutor's Office in the field of technical coordination of prosecutions carried out by the judiciary and handling connection cases. The presence of Attorney General for Military Crimes has implications for efforts to eradicate issues of disparity and dualism in prosecution as well as striving for effectiveness, efficiency and transparency in the process of handling connectivity cases.

**KEYWORDS:** Attorney General for Military Crimes, Connectivity Cases, Dominus Litis, Single Prosecution System.

### I. INTRODUCTION

That the Republic of Indonesia is a State based on law (*Rechtsstaat*) not based on mere power (*Machtsstaat*), this is as reflected in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). The 4th amendment states that the Republic of Indonesia is a legal state. The main concept to be offered in the principle of the rule of law can be further compressed into two main elements which cannot be separated from each other, namely, on the one hand, limitation of state authority and on the other hand, protection of human rights.<sup>1</sup> Considering that Indonesia is a rule of law country, it is also necessary to strengthen law enforcement institutions in Indonesia.

According to Soerjono Soekanto, one of the factors that influence law enforcement includes law enforcement factors, namely the parties directly involved in the law enforcement process, namely the police, prosecutors, judiciary, advocates and correctional institutions have a very determining role in the success of law enforcement efforts. in society. The essential problem in law enforcement in Indonesia is not only due to unresponsive legal products, but also comes from law enforcement officers. To lay the foundation for law enforcement, the main pillar is law enforcers who are able to carry out their duties with integrity and dedication.<sup>2</sup>

Law Number 8 of 1981 concerning Criminal Procedure Law (hereinafter referred to as KUHAP) has introduced a new approach to the criminal justice system in Indonesia, namely the introduction of an integrated criminal justice system (Integrated Criminal Justice System). Mardjono Reksodiputro defines the Criminal Justice System as a crime control system consisting of police

<sup>1</sup> Jan S. Maringka, *Reformasi Kejaksaan Dalam Sistem Hukum Nasional*, Sinar Grafika, Jakarta, 2017, h.20

<sup>2</sup> Achmad Ali, *Tujuan dan Fungsi Hukum*. Ghalia Indonesia, Jakarta, 2001, h.74

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institutions, prosecutors, courts and prisons for convicted criminals. It is hoped that the four sub-systems in criminal justice can work together and form an "Integrated Criminal Justice System".<sup>3</sup>

The term criminal justice system refers to a working mechanism for dealing with crime that uses a basic systems approach. A systems approach is an approach that uses all the elements involved in it as a unity and is interconnected (interrelation) and influences each other. Through this approach, the police, prosecutor's office, court and correctional institutions are important elements and are related to each other.

The criminal justice system as a system is basically an open system. An open system is a system that in its movement to achieve goals, both short-term (resocialization), medium-term (crime prevention) and long-term (social welfare) is greatly influenced by the social environment and areas of human life, so the criminal justice system in its movements will always experience interfaces (interaction, interconnection, interdependence) with their environment in ranks, society, economy, politics, education and technology, as well as subsystems of the criminal justice system itself (subsystem of criminal justice system).

The criminal justice system in the Criminal Procedure Code is an integrated criminal justice system. This system is based on the principle of functional differentiation between law enforcement officers in accordance with the authority process granted by law.<sup>4</sup> The criminal justice system in Indonesia is not only regulated in a book of statutory regulations, in this case the Criminal Procedure Code, but also in other statutory regulations relating to the criminal justice system.<sup>5</sup>

The criminal justice system always works on the basis of a tiered, integrated and coherent information system, so that if misleading information appears it will have a broad impact on the court's performance in accommodating the public's sense of justice. Coherence and integration in the working of the criminal justice system can have internal and external dimensions.

In the internal dimension, attention is focused on integration between law enforcement institutions, while the external dimension is focused on the wider social system. Even though the justice system has a special character, it always follows a general character in the form of integrated cooperation between various subsystems to achieve the same goal. Therefore, it is necessary to make choices among the many variations of punishment to be applied appropriately. Basically, criminal law and punishment must be updated based on humanity, and the basis of all community activities must be based on utilization.<sup>6</sup>

Criminal acts committed by civilians who are also committed by members of the military who have their own procedural laws or carried out jointly by people who are subject to general justice and people who are subject to military justice are called connection cases.<sup>7</sup> The permanent team which examines connectivity cases consists of elements of general justice and military justice which examines connectivity cases within the same scope of justice, examined within the scope of general court only or 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 emphasis on whether the loss is in the public interest or military interest. Examinations carried out by the connectivity team can make a case examined into a complete series of connectivity examinations in terms of examining and proving the perpetrators, both perpetrators who come from civil society and members of the military.

Strengthening law enforcement agencies in Indonesia is very important, especially in terms of the authority of the law enforcement agency itself because if the authority of the law enforcement agency is not strengthened and clarified, it will give rise to a dualism of authority between two or more agencies in handling a criminal case. One example of the dualism in handling cases is between the Prosecutor's Office and the Military Prosecutor in handling military criminal cases. Tiarsen Buaton also expressed the same thing, who stated that there were possible problems regarding the subjection of soldiers to the general court which included several aspects, namely 1) investigative problems, 2) problems with security and paper institutions, 3) problems with prosecutors, 4) problems with trial judges, 5) the problem of locus delicti, 6) the problem of carrying out executions, 7) additional legal impositions in the form of dismissal from military service and 8) socio-cultural and psychological problems.<sup>8</sup>

Specifically regarding the issue of prosecutors, Tiarsen Buaton stated that in the Criminal Procedure Code it is stated that the prosecutor of criminal cases is a prosecutor, while in Law of the Republic of Indonesia Number 31 of 1997 concerning Military Justice (hereinafter referred to as Law No. 31 of 1997) it is stated that the prosecutor is in military justice is a military prosecutor,

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<sup>3</sup> Mardjono Reksodiputro, 1997, *Hak Asasi Manusia Dalam Sistem Peradilan Pidana*, Pusat Pelayanan Keadilan dan Pengabdian Hukum UI, Jakarta, hlm. 85.

<sup>4</sup> M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Penyidikan Dan Penuntutan*, Jakarta: Sinar Grafika, 2009, hal. 90.

<sup>5</sup> Tolib Effendi, *Sistem Peradilan Pidana: Perbandingan Komponen Dan Proses Sistem Peradilan Pidana Di Beberapa Negara*, Yogyakarta: Pustaka Yustisia, 2013, hal. 145.

<sup>6</sup> Agus Suroso, *Fiksi Hukum Dalam Pembuatan Peraturan Perundang-Undangan*, Jakarta: Perpustakaan Nasional, 2013, hal. 130

<sup>7</sup> Indonesia Badan Pembinaan Hukum Nasional, *Analisis dan evaluasi hukum tentang putusan pengadilan militer dalam perkara koneksitas* (Badan Pembinaan Hukum Nasional, Departemen Kehakiman, 1996)., hlm. 2.

<sup>8</sup> Tiarsen Buaton, "Peradilan Militer di Indonesia di Bawah Kekuasaan Mahkamah Agung", dalam Jufrina Rizal dan Suhariyono AR (Editor), *Demi Keadilan Antologi Hukum Pidana dan Sistem Peradilan Pidana Enam Dasawarsa Harkristuti Harkrisnowo*, Pustaka Kemang, Jakarta, 2016, h.397-399

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when soldiers are tried in general court it is questioned who the prosecutor is, whether the prosecutor or the military prosecutor.<sup>9</sup> The existence of dualism in prosecutorial institutions in the event that an Indonesian National Army (TNI) soldier is involved in a criminal act or commits a criminal act, resulting in ambivalence or bias in determining the prosecutorial institution with the most authority to prosecute perpetrators of military crimes, considering that the Criminal Procedure Code mentions prosecutors as prosecutor of criminal cases, whereas Law No. 31 of 1997 mentions military prosecutors as prosecutors of military criminal cases.

Regulating TNI soldiers to submit to general justice is not easy. Even in practice and implementation, it still has its own psychological problems that are interesting to deepen in order to find a way.<sup>10</sup> In practice, adjustments are needed to suit various situations in Indonesia. Nevertheless, the demands of the constitution regarding the desire for equality before the law are unstoppable. Likewise, openness in trying TNI soldiers who commit criminal acts in public courts needs to be done by prioritizing the principle of a win-win solution.

Whereas in Indonesia currently, especially in implementing policies and controlling the prosecution of military crimes as in Law No. 31 of 1997, we are trying to build functional relations between subsystems in an integrated manner. Concrete evidence that shows the link between responsibilities between military prosecutors and the Attorney General as the highest person responsible for prosecution in the Republic of Indonesia is reflected in the Elucidation of Article 57 paragraph (1) of Law No. 31 of 1997 which states that "The Auditor General in carrying out his duties in the field of technically, prosecution is responsible to the Attorney General of the Republic of Indonesia as the highest public prosecutor in the Republic of Indonesia through the Commander in Chief, while in carrying out the duties of developing the Administrative Bureau it is responsible to the Commander in Chief."<sup>11</sup> Something similar to the Elucidation of Article 57 paragraph (1) of Law No. 31 of 1997 is also reflected in the Elucidation of Article 18 paragraph (1) of Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia, which essentially states that "The Attorney General is the leader and person in charge who controls the implementation of the duties and authority of the prosecutor's office, the Attorney General is also the leader and person with the highest responsibility in the field of prosecution."

If you look closely, the Elucidation of Article 57 paragraph (1) of Law No. 31 of 1997 and the Elucidation of Article 18 paragraph (1) of Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia imply that on the one hand there is a correlation in the prosecutorial authority of the Attorney General. as the highest person responsible for prosecuting criminal cases, both civil criminal cases and military criminal cases, but on the other hand, there is legal disharmony because it tends to be that every military criminal case handled by military prosecutors does not report the prosecution activities that have been carried out to the Attorney General as the highest person responsible prosecution in Indonesia.<sup>12</sup>

Handling of cases that do not go through connectivity justice tends to cause disparity in case handling and invalidity of the handling process, apart from that the absence of technical coordination between Prosecutors and Military Prosecutors has implications for the legal subject of connectivity cases carried out jointly by military members and civilians.

The authority regarding justice for military members who commit criminal acts of corruption is tried in the military court unless they commit it together with civilians, then joint justice will apply. In finding which court to use to handle connectivity cases, you can look at the losses resulting from the criminal act.

A connectivity examination or connectivity trial is a mechanism applied to criminal acts where there is participation, either jointly (*delneming*) or jointly (*made dader*) involving civilian perpetrators and perpetrators who have military status. 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 police and military prosecutors. Where the mechanism is adjusted to the delineation and limits of authority and if a separate examination is carried out (*splitting*) then the case is returned to the authorized investigator according to the 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.

As explained above, the implementation of integrated criminal justice, which is the implementation of judicial power, is not only within the general justice environment, but also within the military justice environment. Even though its structure and powers as well as procedural laws are specifically regulated in Law Number 31 of 1997 concerning Military Justice, it is able to uphold law and justice which always pays attention to the interests of maintaining state defense and security, creating social order, and is able to realize social welfare. (social welfare).

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<sup>9</sup> *Ibid.*, h.398

<sup>10</sup> [Hukumonline.com](http://www.hukumonline.com), *Reformulasi Keberadaan Peradilan Militer di Indonesia*, available at [www.hukumonline.com](http://www.hukumonline.com), dikunjungi pada hari Rabu, 27 Maret 2024, pukul 10.19 WIB

<sup>11</sup> Soniardhi, Soniardhi. "Kewenangan Anjum Terhadap Tawanan Perang Dalam Hukum Disiplin Militer." *Jurnal Magister Hukum Udayana* (Udayana Master Law Journal) 6, no. 4 (2017): 464-477.

<sup>12</sup> Widodo, Tedhy. "Gugatan Pihak Ketiga Terhadap Eksekusi Barang Sitaan dalam Perkara Tindak Pidana Korupsi." *Jurnal Magister Hukum Udayana* (Udayana Master Law Journal) 7, no. 2 (2018): 238-249.

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Starting from the constitutional mandate and positive legal mandate, integration between the components of civil and military justice is a necessity as an implementation of judicial power to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Integration between the components of civil and military justice is necessary realized in an institution that is integrated and complements each other in a coordinative manner, so that it is a chain of processes starting from the stages of inquiry/investigation, prosecution, trial examination to the execution stage.<sup>13</sup>

The presence of prosecutors as investigators and prosecutors in military justice does not necessarily eliminate the role of the prosecutor's office. The presence of a prosecutor is very important in carrying out the prosecution process in court. The prosecutor's position is as a "representative of the state" in carrying out prosecutions, so that the prosecutor's office has a role in every judicial institution, including military justice. Prosecutors still have a role in terms of supervision, because the Military Justice Law contains provisions that prosecutors are responsible to the Attorney General in carrying out their duties in the technical field of prosecution and also in terms of coordinating the implementation of Judges' determinations and decisions of courts with authority to try cases.<sup>14</sup>

Other problems are also seen in the handling of connectivity cases which are regulated in the Criminal Procedure Code. The regulation of connection crimes can be found in the provisions of Articles 89-94 of the Criminal Procedure Code. Article 89 of the Criminal Procedure Code regulates that criminal acts of connection are criminal acts committed jointly by those within the general justice environment and the military justice environment.<sup>15</sup> Handling connectivity cases falls under the jurisdiction of two courts, namely the general court for civilians and the military court for military members. The procedural law provisions used are also different, where civilians are subject to the provisions of the Criminal Procedure Code, while military members are subject to the provisions of the criminal procedural law contained in the Military Justice Law.

The handling of connectivity cases, both against civilian and military perpetrators, should be examined and tried jointly in general courts or, with exceptions, they can be examined and tried in military courts. Where these provisions do not at all open up the possibility of examining separately or dividing connectivity matters.<sup>16</sup> However, in practice many connectivity cases are tried separately, namely justiciable military trials are tried by military courts and non-justiciable military cases are tried by general courts. This incident will have consequences for dualism and disparity in prosecution. Dualism because there are two different prosecution agencies in handling criminal acts. The disparity in prosecution between prosecutors and prosecutors in imposing unequal sentences for the same criminal incident gives rise to the potential for lawsuits against the state.<sup>17</sup>

The various problems above gave rise to the idea of forming an assistant element for the Attorney General in the field of Military Crimes or what could be called the Junior Attorney General for Military Crimes (Jampidmil). Jampidmil is a new structure in the Attorney General's Office for the military criminal chamber which acts as a "decision maker" in overcoming various obstacles in prosecution in each court so that certainty, justice and legal benefits can be created. The formation of Jampidmil is essentially a form of implementation of the single principle prosecution system, which means that no other institution has the right to carry out prosecutions unless it is under the control of the Attorney General as the country's highest public prosecutor. The principle of a single prosecution system is reflected in Article 2 paragraph (2) of the Prosecutor's Law which states that: "The Prosecutor's Office is one and inseparable" (een en ondeelbaar).<sup>18</sup>

The Military Crimes Division at the Prosecutor's Office has duties and authority in the field of technical coordination of prosecutions carried out by the Prosecutor's Office as well as handling connection cases which are directly responsible to the Attorney General.<sup>19</sup> With the existence of the Military Criminal Division, it is hoped that the duality of prosecution policies which often gives rise to disparities in punishment for the same type of crime committed by the same subject, at the same time, in the same place will no longer occur. Furthermore, this step is needed to address problems related to the handling of connectivity crimes which have not been processed and tried through connectivity mechanisms, so that law enforcement can be carried out accountably, objectively and fairly.

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<sup>13</sup> Dr. Asep N. Mulyana dkk, *Mandat Konstitusional Jaksa Agung Muda Bidang Pidana Militer*, Depok: Rajawali Pers, 2020, Hlm. 7-8.

<sup>14</sup> Muhammad Ihsan, 2021, "Kedudukan Kejaksaan Republik Indonesia dalam Proses Penuntutan Peradilan Militer di Indonesia", *Jurnal Intelektualita: Keislaman, Sosial, dan Sains*, Vol. 10, No. 2, 2021, hlm. 284-285.

<sup>15</sup> Pasal 89 Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (LN 76 Tahun 1981, TLN. No. 3209).

<sup>16</sup> Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia: Direktorat Jenderal Peraturan Perundang-undangan, "Urgensi Koneksitas & Penanganan Perkara Koneksitas", [https://ditjenpp.kemkumham.go.id/index.php?option=com\\_content&view=article&id=5754:urgensi-koneksitas-penanganan-perkara-koneksitas&catid=268:kegiatan-djpp&Itemid=73&lang=en](https://ditjenpp.kemkumham.go.id/index.php?option=com_content&view=article&id=5754:urgensi-koneksitas-penanganan-perkara-koneksitas&catid=268:kegiatan-djpp&Itemid=73&lang=en), dikunjungi pada Rabu 27 Maret 2024 pukul 12.30 WIB.

<sup>17</sup> Kelaesar Anna dkk, 2022, "Kewenangan Jaksa Agung Muda Bidang Pidana Militer dalam Penuntutan Tindak Pidana Koneksitas", *Journal of Lex Generalis (JLS)*, Vol. 3, No. 9, 2022, hlm. 1510.

<sup>18</sup> Rudi Pradisetia Sudirdja, "Satu Komando Penuntutan Untuk Sipil Dan Militer", <https://pji.kejaksaan.go.id/index.php/home/berita/877>, dikunjungi pada Rabu 27 Maret 2024 pukul 16.00 WIB.

<sup>19</sup> Pasal 25B ayat (1) Peraturan Presiden Republik Indonesia Nomor 15 Tahun 2021 tentang Perubahan Kedua atas Peraturan Presiden Nomor 38 Tahun 2010 tentang Organisasi dan Tata Kerja Kejaksaan Republik Indonesia (LN No. 67 Tahun 2021).

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Based on the explanation of the problem above, there are two important problem formulations in this research, namely what is the role and position of the Deputy Attorney General for Military Crimes in connectivity cases and what are the implications of the presence of the Deputy Attorney General for Military Crimes in connectivity cases.

## II. RESEARCH METHODS

### A. *Type of Research*

The research in writing this thesis is a type of normative juridical research or also called doctrinal legal research. Normative legal research is legal research carried out by examining library materials so that normative legal research is also called doctrinal legal research. According to Peter Mahmud Marzuki,<sup>20</sup> Normative legal research is a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced.

Apart from that, Soerjono Soekanto in his discussion of normative legal research is based on the nature and scope of legal discipline, where discipline is defined as a system of teachings about reality, which usually includes analytical discipline and prescriptive discipline, and legal discipline is usually included in the prescriptive discipline if law considered to only cover the normative aspect. However, still in the same writing, Soerjono Soekanto wants to prove and emphasize that legal discipline can generally also be interpreted as a system of teachings about law as norms and reality (behavior) or as something to aspire to and as reality/law. life, even the legal discipline has general and specific aspects.<sup>13</sup>

Furthermore, it is also explained that the nature of legal dogmatics (the science of legal rules and the science of the main meanings in law) is theoretical-rational and the reasoning model used is logical-deductive, while the science of legal reality (legal sociology, legal anthropology, legal psychology, comparative law, and legal history) are theoretical-empirical in nature and the reasoning model used is inductive logic. Legal philosophy is ethical-speculative and legal politics is functional-practical. Normative legal research has a tendency to image law as a prescriptive discipline where it only looks at law from the perspective of its norms, which of course are prescriptive.

### B. *Research Approach*

The research approach used by researchers is the Legislative approach, which is an approach taken by examining all laws and regulations related to the legal issue being handled.<sup>21</sup> This research also uses descriptive analysis to describe the role and position of the Deputy Attorney General for Military Crimes in Connection Cases.

## III. RESULTS AND DISCUSSION

### A. *Role and Position of the Deputy Attorney General for Military Crimes in Connection Cases*

#### 1. *The position of the Attorney General as the Highest Public Prosecutor*

The position of the Deputy Attorney General for Military Crimes as a new institution in the organizational structure of the Attorney General of the Republic of Indonesia (hereinafter referred to as the Attorney General of the Republic of Indonesia) cannot be separated from the study of the position of the Attorney General as the leader and highest person in charge of the Attorney General of the Republic of Indonesia (hereinafter referred to as the Attorney General of the Republic of Indonesia) as an institution on a state that exercises state power in the field of prosecution. The Attorney General is a state official who is appointed and dismissed by the President.<sup>22</sup> Several statutory provisions which contain provisions regarding the position of the Attorney General include:

- a. Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (UU Prosecutor's Office)

The Attorney General's Law contains several articles containing provisions regarding the Attorney General. First, regarding the definition of Attorney General, it is contained in Article 18 paragraph (1) which explains that:

*"The Attorney General is the highest public prosecutor and state attorney in the Unitary State of the Republic of Indonesia."*

Second, regarding the position and position of the Attorney General in the Prosecutor's Office, it can be found in the provisions of Article 18 paragraph (4) which reads:

*"The Attorney General is the leader and highest person in charge of the Prosecutor's Office who leads, controls the implementation of the duties, authority of the Prosecutor's Office, and other tasks assigned by the state."*

Furthermore, as an inseparable part of the body of the Prosecutor's Law, the explanatory part of Article 18 paragraph (4) confirms that:

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<sup>20</sup>Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta,:Kencana Prenada, 2010), hal. 35

<sup>21</sup>Peter Mahmud Marzuki, *Penelitian Hukum*, hal. 93.

<sup>22</sup> Pasal 19 Undang-Undang Nomor 11 Tahun 2021 tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia.

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*“Because the Attorney General is the highest leader and person responsible for controlling the implementation of the duties and authority of the Prosecutor's Office, the Attorney General is also the highest leader and person responsible in the field of Prosecution.”*

Initially, the position of the Attorney General as the Highest Public Prosecutor was not explicitly regulated in the body norms of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, where it was only confirmed through the explanatory section of the law. In subsequent developments, through Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the provisions regarding the position of the Attorney General as the Highest Public Prosecutor were made into the body norm of Article 18 paragraph (1) so that this provision can be used as a legal basis for making further regulations containing formulas containing norms.<sup>23</sup>

The Prosecutor's Law also contains provisions that emphasize the position of the Attorney General within the scope of his duties and authority in handling connectivity cases. Article 35 letter g contains provisions that:

*“The Attorney General has the duty and authority to coordinate, control and carry out inquiries, investigations and prosecution of criminal acts committed jointly by persons subject to general justice and military justice.”*

Furthermore, as a basis for strengthening the position of the Attorney General as the Highest Public Prosecutor in the territory of the Unitary State of the Republic of Indonesia, the provisions of Article 35 paragraph (1) letter i were formulated which became the basis for delegating authority and responsibility for carrying out prosecutions by the Prosecutor General within the Military Court environment. The provisions of Article 35 paragraph (1) letter i emphasize that:

*“The Attorney General has the duty and authority to delegate part of his prosecutorial authority to the prosecutor general to carry out prosecutions.”*

Article 35 paragraph (1) letter i is an improvement on the provisions of Article 57 paragraph (1) jo. The explanation of Article 57 of the Military Justice Law contains norms regarding the mechanism for accountability of the Auditor General to the Attorney General as the highest public prosecutor (*dominus litis*). Article 35 paragraph (1) letter i clarifies the source of this responsibility, namely based on the slice of prosecutorial authority delegated by the Attorney General.<sup>24</sup>

### b. Law Number 31 of 1997 concerning Military Justice (Military Justice Law)

The position of the Attorney General as the highest Public Prosecutor is also contained in the provisions of the Military Justice Law as the legal basis for military justice in Indonesia. Elucidation of Article 57 paragraph (1) contains the provision that:

*“In carrying out its duties in the technical field of prosecution, the Prosecutor General is responsible to the Attorney General of the Republic of Indonesia as the highest public prosecutor in the Republic of Indonesia through the Commander in Chief, while in carrying out the duties of developing the Prosecutor General, he is responsible to the Commander in Chief.”*

The above regulations are also in line with the regulations regarding the duties and authority of the Auditor General as contained in Article 66 letter c which states that:

*“In the context of resolving and carrying out prosecutions of certain criminal cases whose procedures are specifically regulated, coordinating with the Attorney General's Office, Military Police and other law enforcement agencies.”*

Based on the above arrangements, it can be interpreted that the Attorney General has the position of the highest public prosecutor in the Unitary State of the Republic of Indonesia, while the Prosecutor General has the position of the highest prosecutor within the TNI who is responsible for the technical aspects of his prosecution to the Attorney General.<sup>25</sup>

### c. Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (UU TIPIKOR)

The Corruption Law contains regulations that indicate the position of the Attorney General in handling corruption cases. Article 27 contains provisions that:

*“In the event that a criminal act of corruption is found that is difficult to prove, a joint team can be formed under the coordination of the Attorney General.”<sup>26</sup>*

Furthermore, confirmation of the position of the Attorney General as the person responsible for prosecution can be found in Article 39 which reads:

*“The Attorney General coordinates and controls the investigation, investigation and prosecution of criminal acts of corruption carried out jointly by persons subject to the General Court and Military Court.”*

<sup>23</sup> Asep N. Mulyana, 2020, *Mandat Konstitusional Jaksa Agung Muda Bidang Pidana Militer*, Rajawali Pers, Jakarta, hlm. 111.

<sup>24</sup> Muh. Ibnu Fajar Rahim, 2023, *“Asas-Asas Hukum Penuntutan: The Legal Principles Of Prosecution”*, The Prosecutor Law Review, Vol. 1, No. 1, 2023, hlm. 14.

<sup>25</sup> *Ibid.*, hlm. 112.

<sup>26</sup> Pasal 27 Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

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The provisions in the TIPIKOR Law further highlight the existence of the Attorney General as the Highest Public Prosecutor in the Republic of Indonesia. This is also in line with the position of the Republic of Indonesia Prosecutor's Office as a state institution that exercises state power in the field of prosecution. This situation is a logical consequence of the dominus litis principle which places prosecutorial authority as a monopoly right of the Public Prosecutor so that no other body has the authority to do so.<sup>27</sup>

### 2. *The urgency of establishing a Junior Attorney General for Military Crimes*

The Indonesian Prosecutor's Office is an institution that exercises state prosecutorial power, positioning the Attorney General as the highest prosecutorial authority in Indonesia, including in handling military criminal cases. The above various statutory regulations indicating the position of the Attorney General as the Highest Public Prosecutor became the legal basis for the institution of the Deputy Attorney General for Military Crimes in the organizational structure of the Indonesian Attorney General's Office. The Deputy Attorney General for Military Crimes exists as a solution to various problems that arise because there has not been a unified control over the prosecution of military crimes in Indonesia. Apart from that, the widespread handling of connection cases which were resolved separately was also a major factor in the formation of the Deputy Attorney General for Military Crimes. The formation of the Deputy Attorney General for Military Crimes was motivated by the idea that efforts were needed to implement the principles of realizing bureaucratic reform and accelerating the provision of legal services to the community. With the formation of the Deputy Attorney General for Military Crimes, it is hoped that there will be an increase in the effectiveness of the implementation of the duties and authority of the Indonesian Prosecutor's Office in carrying out technical coordination of prosecutions carried out by the judiciary and handling connection cases.<sup>28</sup>

Thus, the urgency of establishing the Deputy Attorney General for Military Crimes can be described with the following arguments:<sup>29</sup>

- a. Establishment of an organizational structure at the Indonesian Attorney General's Office which functions as an intermediary to supervise the implementation of prosecutorial obligations by the Attorney General towards the military, especially the Prosecutor General's Office, in the case of prosecution of certain cases;
- b. The implementation of supervision, control and evaluation of the prosecution process in the Oditurate by the Attorney General, aims to ensure that the process of enforcing law and justice by the Oditurate in the realm of military justice is carried out independently, professionally and morally;
- c. Efforts to prevent imbalances in the prosecution process that could compromise the principles of justice in cases that are tried separately, through the involvement of prosecutors from the Prosecutor's Office and the Prosecutor's Office;
- d. Provide consistency and uniformity of views to prosecutors and prosecutors in handling cases of serious human rights violations; and
- e. Increasing the effectiveness and efficiency of resolving soldiers' cases based on legal evidence that can end in acquittal.

The study by the Deputy for Organization and Administration of the Ministry of Administrative and Bureaucratic Reform stated that the handling of connectivity cases was less than optimal, partly due to the lack of socialization of the Sector Competency Selection (SKB) related to the Formation of the Connection Team.

According to the author, the non-optimal handling of connectivity cases is not solely due to the issue of socializing the formation of connectivity teams, but rather due to institutional issues and various other substantial issues. In practice, the normative provisions contained in positive law still cause substantial problems in the law enforcement process, especially related to connectivity cases.

There are several problems related to law enforcement practices in the country. This scrutiny is important, because in reality many criminal cases are committed by active TNI soldiers, which not only violate the Military Criminal Code, but also violate general criminal law or simultaneously violate several statutory regulations (*concursum idealis*).<sup>30</sup>

On the other hand, statistics have also shown that many criminal cases are carried out jointly between civil law subjects and military law subjects (*deelneming*). Criminal acts carried out simultaneously between civil and military legal subjects will cause problems in law enforcement practice, due to differences in procedural legal procedures and institutions that handle the case.

Likewise with the process of prosecuting cases, where the process and policy of prosecuting military law subjects is the domain of the Military Prosecutor's Office, while the prosecution policy of civil law subjects is the domain of the Prosecutor's Office. The existence of dualism in prosecution policies tends to give rise to disparities in punishment for the same type of crime committed at the same object, time and place. Conditions like this are contrary to the principles of equality before the law as mandated in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, that:

<sup>27</sup> Asep N. Mulyana, 2020, *Op.Cit.*, hlm. 38.

<sup>28</sup> Kelaesar Anna dkk, 2022, *Op.Cit.*, hlm. 1509.

<sup>29</sup> Kutipan Surat Badan Pembinaan Hukum Mabes TNI Nomor: B/22/I/2020 tanggal 09 Januari 2020 perihal Rencana Penempatan Oditur Militer dalam Struktur Jabatan di Kejaksaan Agung RI sebagaimana dikutip oleh Asep. N. Mulyana, 2020, *Mandat Konstitusional Jaksa Agung Muda Bidang Pidana Militer*, Rajawali Pers, Jakarta, hlm. 105-106.

<sup>30</sup> Dr. Asep N. Mulyana dkk, *Op.Cit.*, hlm. 94-95

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*“All citizens have the same position under the law and government and are obliged to uphold the law and government without exception.”*<sup>31</sup>

Substantially, the provisions of Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia contain the meaning that all Indonesian citizens have the same position, rights and obligations in the legal field. The existence of equality in the law requires the state to treat all citizens equally, and not differentiate between them in law enforcement processes and policies.

The implementation of the constitutional mandate becomes a problem, when the principles of equality of process and equality of treatment for the same case and carried out on the same object, place and time are not fulfilled. Moreover, military criminal law in the country still departs from the base on offender doctrine, which is based on the legal subject of the perpetrator being an active TNI soldier or who is equivalent to a member of the military.

In fact, the basis of military criminal law, which was initially adopted and implemented in the Netherlands, has undergone modifications. The judicial process currently being practiced in the Netherlands for military members who commit criminal acts will be tried in a military court by a panel of judges consisting of 2 (two) civilian judges and one military judge with the chairman of the panel being a civilian judge.<sup>32</sup>

In the process of law enforcement and military justice practices in various parts of the world, there have been quite significant developments. Military criminal law does not only depart from the base on offense doctrine, but has shifted to the base on offenses doctrine, where the law enforcement process and judicial practice are based on actions, whether committed by military law subjects or civil law subjects.

Considering the objective reality in the process of law enforcement and judicial practice in this country, the discourse on establishing an institutional structure for the Deputy Attorney General for Military Criminal Law has become something urgent. According to Eddy O.S Hiarj, there are at least 2 (two) theoretical reasons and international conventions for the formation of the institutional structure of the Deputy Attorney General for Military Criminal Law.

First, in the criminal law doctrine that applies universally everywhere in the world, the prosecutor is *dominus litis*. This means that the prosecutor is the owner in the sense of controlling criminal cases. Second, the prosecutor's doctrine that applies universally is that the prosecutor is an inseparable unit starting from the top leadership down to the prosecutors at the lower level.<sup>33</sup>

Observing the various handling of criminal cases involving civil and military legal subjects as described above, there are several important issues that are interesting to note in the handling of connectivity cases:

- a. The process of handling cases involving civil and military legal subjects that are not handled through connectivity institutions is a bad precedent for law enforcement in Indonesia, because it is unconstitutional and contrary to statutory provisions.
- b. The Connection Team, as one of the teams mandated by law to handle cases, has not been able to work optimally in investigating the involvement of related parties, because it is incidental and not structured within formal institutions in an integrated institution.
- c. In the event that connectivity institutions do not function, there is the potential for discrimination and violation of the principles of equality of process and equality of treatment in the process of handling cases and law enforcement, because case handling and case enforcement policies are carried out partially through different processes, institutions and policies.
- d. This raises the potential for lawsuits against the state, because the process of handling cases is carried out by those who do not have the authority and legal standing to carry out their duties and functions. Potential lawsuits against the state include, among other things, execution confiscations carried out by prosecutors, which is the authority of the Prosecutor as regulated in the provisions of Article 18 paragraph (2) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

In the event that the convict does not pay the replacement money as intended in paragraph (1) letter b no later than 1 (one) month after the court decision which has super durable legal force, his property can be confiscated by investigators and sold to cover the replacement money. Coordination of the implementation of execution arrests is carried out with the Public Prosecutor at the Attorney General's Office, because the implementation of regulations in the special field of charges, including executions, is carried out by the Prosecutor under the obligation of the Attorney General. through the Commander in Chief as explained in Article 57 paragraph (1) of Law Number 31 of 1997 concerning Military Justice.

The absence of connectivity has the potential to cause the case handling process to be invalid, because it does not involve cooperation, coordination and is not carried out in accordance with the mechanism specified in the provisions of Article 66 letter c of Law Number 31 of 1997 concerning Military Justice:

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<sup>31</sup> *Ibid.*

<sup>32</sup> Penjelasan Pasal 66 huruf c Undang-Undang Nomor 31 Tahun 1997 Tentang Peradilan Militer

<sup>33</sup> Critical Review Prof. Dr. Eddy O.S Hiarj dalam Asep N. Mulyana, *Hukum Pidana Kontemporer*, Jakarta: PT. Gramedia Widiasarana Indonesia, 2020, hlm. xiv.



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*“In the context of resolving and carrying out prosecutions of certain criminal cases whose procedures are specifically regulated, coordination is carried out with the Attorney General's Office for the Military Police, and other law enforcement agencies.”<sup>34</sup>*

One of the reasons behind the proposal to establish a Deputy Attorney General for Military Crimes is in the context of effectively handling connectivity cases which require coordination between elements of the TNI General Prosecutor's Office and the Indonesian Prosecutor's Office. The Attorney General's Office is of the view that with coordination cooperation related to the implementation of law enforcement duties and functions, this will also become a solid foundation for harmonious partnership ties that will avoid barriers of differences, dichotomies and disparities in civil-military treatment, when someone experiences prosecution. the problem of connectivity that military members try together with civil society, each of which is subject to different judicial environments.

In this case, technical coordination between prosecutors and military prosecutors is needed to ensure the absolute competence of which court has the authority to try the case, whether in military justice or general court. This technical coordination between Prosecutors and Military Prosecutors is also a mandate from the description of Article 57 paragraph (1) of Law No. 31 of 1997 concerning Military Justice which states that the Prosecutor General in carrying out duties in the technical field of prosecution is responsible to the Attorney General of the Republic of Indonesia as Public Prosecutor. highest level in the Republic of Indonesia through the Commander of the Indonesian National Army (TNI).<sup>35</sup>

At the implementation level, the principle of a single prosecution system in the military justice law has not been able to operate optimally. This is caused by several factors, one of which is the limited functional relationship between the Prosecutor's Office and the Prosecutor's Office in the technical field of prosecuting military criminal cases. Limited functional relations also often result in many differences in views and attitudes between prosecutors and prosecutors regarding the technicalities of a case, which results in difficulties in creating an integrated criminal justice system. With the promulgation of Law no. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office, the principle of a single prosecution system is contained in Article 18 paragraph (1) of Law U No. 11 of 2021.

Legal harmonization in terms of adjustments to government decisions means that the President can issue a Presidential Regulation which allows Military Prosecutors, High Military Prosecutors and General Prosecutors to be employed as officials within the Prosecutor's Office, making it easier to coordinate the prosecution of perpetrators of military crimes. Harmonization of law in terms of the legal system, namely by adding a new Echelon He structural position directly under the Attorney General, namely Junior Attorney General for Military Crimes.

That the presence of the Deputy Attorney General for Military Crimes can reduce the dualism of prosecutorial institutions in handling military criminal cases in Indonesia. That the presence of the Deputy Attorney General for Military Crimes functions as a bridge between the Attorney General and the TNI Commander to further improve coordination in handling military crimes.

### **3. Existence and Position of the Deputy Attorney General for Military Crimes in the Indonesian Legal System**

In the Indonesian legal system, the Deputy Attorney General for Military Crimes is a new institution in the organizational structure of the Indonesian Attorney General's Office. The Deputy Attorney General for Military Crimes has the scope of duties and authority in the field of coordinating prosecutions carried out by the judiciary and handling connection cases. <sup>85</sup> Based on the provisions in Article 18 paragraph (7) of the Prosecutor's Law, it can be seen that the Deputy Attorney General for Military Crimes is together with elements of the Attorney General Other young people serve as assistant leadership elements, in this case the Attorney General. As a new institution in the organizational structure of the Indonesian Attorney General's Office, as stated in Article 6 of the Attorney General's Law which states that: "The organizational structure and work procedures of the Attorney General's Office are regulated by Presidential Regulation"<sup>86</sup>, the formation of the Deputy Attorney General for Military Crimes was legitimized through the stipulation of Presidential Regulation of the Republic of Indonesia Number 15 of 2021 concerning the Second Amendment to Presidential Regulation Number 38 of 2010 concerning the Organization and Work Procedures of the Prosecutor's Office of the Republic of Indonesia (hereinafter referred to as Presidential Decree No. 15 of 2021).

Provisions regarding the Deputy Attorney General for Military Crimes in Presidential Decree no. 15 of 2021 can be found in the provisions of Articles 25A to Article 25C. The provisions of Article 25A paragraph (1) confirm the position of the Deputy Attorney General for Military Crimes as an assistant leadership element in carrying out the duties and authority of the Prosecutor's Office in the field of technical coordination of prosecutions carried out by the judiciary and handling connection cases, responsible to the Attorney General. Furthermore, paragraph (2) of this article contains provisions regarding the organizational structure of the Deputy Attorney General for Military Crimes which explains that the Deputy Attorney General for Military Crimes is led by the Deputy Attorney General for Military Crimes.<sup>36</sup>

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<sup>34</sup> Dr. Asep N. Mulyana dkk, *Op.Cit*, hlm. 97-98

<sup>35</sup> *Ibid*.

<sup>36</sup> Pasal 25A Peraturan Presiden Republik Indonesia Nomor 15 Tahun 2021 tentang Perubahan Kedua atas Peraturan Presiden Nomor 38 Tahun 2010 tentang Organisasi dan Tata Kerja Kejaksaan Republik Indonesia.

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Furthermore, the provisions of Article 25B contain various provisions related to the scope of duties and authority of the Deputy Attorney General for Military Crimes. The provisions of paragraph (1) of this article explain that the Deputy Attorney General for Military Crimes is responsible for carrying out the duties and authority of the Prosecutor's Office in the field of technical coordination of prosecutions carried out by the judiciary and handling connection cases. Then, paragraph (2) of this article seeks to clarify the scope of duties and authority of the Deputy Attorney General for Military Crimes in the field of technical coordination of prosecutions carried out by the judiciary and handling connection cases. Article 25B paragraph (2) contains provisions that read:

*“The scope of the technical coordination of prosecutions carried out by the judiciary and the handling of connection cases as intended in paragraph (1) includes investigation of connection cases, research on the results of investigations, additional examinations, giving legal opinions to the officer handing over the case, handing over the case, closing the case, terminating the prosecution, prosecution, resistance, legal action, implementation of judge's decisions and court decisions that have obtained permanent legal force, examination, supervision of the implementation of conditional criminal decisions, supervision of criminal decisions and conditional release decisions, and other legal actions in the field of technical coordination of prosecutions carried out by the judiciary and handling connectivity issues.”*

Furthermore, it was explained that the duties and authority of the Deputy Attorney General for Military Crimes were based on three basic principles. First, the Deputy Attorney General for Military Crimes operates in an integrative, coordinative and collaborative manner. The Deputy Attorney General for Military Crimes carries out the function of coordinating the implementation of the duties of the military justice apparatus including superiors who have the right to punish, military police, case handling officers, prosecutors, and of course prosecutors. The Deputy Attorney General for Military Crimes also integrates the entire case resolution process from the investigation stage to the implementation of the decision (execution). Second, the Deputy Attorney General for Military Crimes is complementary, that is, it does not eliminate the involvement and role of military law enforcement officials such as superiors who have the right to punish, military police, prosecutors, and/or prosecutors. The Deputy Attorney General for Military Crimes is actually trying to ensure that there is strong cooperation and complementarity between law enforcers. Third, there are parameters (limitations) in the scope of implementation of duties and functions related to the intersection of duties in law enforcement efforts against violators or perpetrators of crimes/crimes. Where in the context of disciplinary efforts for the occurrence of a violation it is the authority of superiors who have the right to punish, whereas in terms of taking action against perpetrators of criminal acts/crimes it is the authority of Law Enforcement Officials including in this case the Military Police, Prosecutors and Prosecutors.<sup>37</sup>

Then, as stated in the provisions of Article 25C, it is emphasized that in carrying out his duties and authority, the Deputy Attorney General for Military Crimes carries out the functions:<sup>38</sup>

- a. Formulating policies in the field of technical coordination of prosecutions carried out by the judiciary and handling connection cases;
- b. Implementation of technical coordination of prosecutions carried out by the judiciary and law enforcement in handling connectivity cases;
- c. Handling connectivity issues;
- d. Coordination and synchronization of policy implementation in the technical field of prosecution carried out by the judiciary and law enforcement in handling connectivity cases;
- e. Implementation of working relationships with agencies or institutions both domestically and abroad in the field of technical coordination of prosecutions carried out by the judiciary and handling cases, connectivity and improving the quality of human resources;
- f. Monitoring, analysis, evaluation and reporting on the implementation of technical coordination tasks for prosecution carried out by the judiciary and handling connectivity cases; and
- g. Implementation of other duties assigned by the Attorney General.

Provisions regarding the elements of officials who can fill the position of Deputy Attorney General for Military Crimes are explained in Article 62A. Where it is determined that the position of Deputy Attorney General for Military Crimes as part of the central institution is only filled by Echelon I officials.<sup>39</sup> Article 62A explains that:

*“The position of Deputy Attorney General for Military Crimes is a position that can be filled by Civil Servants or Indonesian National Army soldiers who have competence and expertise in accordance with the provisions of statutory regulations.”*

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<sup>37</sup> Asep N. Mulyana, 2021, *Bahan Hukum: Jampidmil sebagai Upaya Adaptif dan Inovatif menghadapi Tuntutan Perkembangan Penegakan Hukum dalam Penanganan Perkara Koneksitas*, disampaikan pada RAKORNISKUM TA 2021, hlm. 9 sebagaimana dikutip oleh Kelaesar Anna dkk, 2022, “Kewenangan Jaksa Agung Muda Bidang Pidana Militer dalam Penuntutan Tindak Pidana Koneksitas”, *Journal of Lex Generalis (JLS)*, Vol. 3, No. 9, hlm. 1512.

<sup>38</sup> Pasal 25C Peraturan Presiden Republik Indonesia Nomor 15 Tahun 2021 tentang Perubahan Kedua atas Peraturan Presiden Nomor 38 Tahun 2010 tentang Organisasi dan Tata Kerja Kejaksaan Republik Indonesia.

<sup>39</sup> Asep N. Mulyana, 2020, *Op.Cit.*, hlm. 160.

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Provisions regarding the mechanism for placing TNI soldiers in the Indonesian Prosecutor's Office are further regulated in the Republic of Indonesia Prosecutor's Regulation Number 2 of 2022 concerning the Assignment and Development of Indonesian National Army Soldiers within the Republic of Indonesia Prosecutor's Office (hereinafter referred to as Perja No. 2 of 2022). Article 2 Perja no. 2 of 2022 contains provisions that read:

- (1) Certain ASN positions within the Prosecutor's Office can be filled by TNI Soldiers.
- (2) Filling of positions as intended in paragraph (1) is carried out through assignment.
- (3) Certain ASN positions within the Prosecutor's Office as referred to in paragraph (1) which can be filled include:
  - a. Middle High Leadership Positions and Pratama High Leadership Positions in the JAM Military Crime Sector;
  - b. Administrator positions at JAM for Military Crimes and Assistant for Military Crimes; and
  - c. Supervisory position at JAM in the Military Crime Division.
- (4) The position as intended in paragraph (3) is in accordance with the position competency standards determined by the Attorney General as PPK after obtaining approval from the Minister.

Furthermore, as a follow-up to the stipulation of Presidential Decree no. 15 of 2021, within the Republic of Indonesia Prosecutor's Office, implementing regulations were formed in the form of Republic of Indonesia Prosecutor's Regulation Number 1 of 2021 concerning the Second Amendment to the Attorney General's Regulation Number PER-006/A/JA/07/2017 concerning the Organization and Working Procedures of the Republic of Indonesia's Prosecutor's Office (hereinafter referred to as Perja No. 1 of 2021) which contains further provisions regarding the institution of the Deputy Attorney General for Military Crimes and an explanation of his duties and authority.

Explicitly, the position of the Deputy Attorney General for Military Crimes in the organizational structure of the Attorney General's Office can be found in the provisions of Article 6 letter g1 which is the basis for legitimizing the presence of the Deputy Attorney General for Military Crimes as a new institution within the Indonesian Attorney General's Office. Furthermore, specific regulations regarding the institution of the Deputy Attorney General for Military Crimes can be found in Chapter VIIA concerning the Deputy Attorney General for Military Crimes. In the setting of this chapter it is also explained that the organizational structure of the Deputy Attorney General for Military Crimes consists of: 1) Secretariat of the Deputy Attorney General for Military Crimes; 2) Enforcement Directorate; 3) Directorate of Prosecution; 4) Directorate of Execution, Extraordinary Legal Remedies and Examination; and 5) Functional Position Groups.<sup>40</sup>

Furthermore, as a logical consequence of the presence of the Deputy Attorney General for Military Crimes as an institution at the central level filled by Echelon I officials, this is followed by the presence of an institutional structure at the regional level, namely at the High Prosecutor's level. At the High Prosecutor's level, there is a Military Crimes Division headed by a Military Crimes Assistant (Aspidmil) who comes from the Prosecutor's ranks with an Echelon III position.<sup>41</sup> Aspidmil is one of several supporting leadership elements, in this case the Head of the High Prosecutor's Office (Kajati) related to the implementation of duties and functions in the field of military crime. Further regulations regarding Aspidmil can be found in Article 791 paragraph (1) letter g1 Perja No. 1 of 2021. Aspidmil is based in the High Prosecutor's Office, whose legal area is the High Military Prosecutor's Office and/or the Military Prosecutor's Office.

Based on the various descriptions above, the existence and position of the Deputy Attorney General for Military Crimes emphasizes its function in bridging coordination and creating harmonization between Prosecutors and Prosecutors in technical coordination of prosecutions. The Deputy Attorney General for Military Crimes is present as a decision maker who acts in the process of making decisions or policies (decision making) from various existing alternatives to produce one final choice to overcome various problems in the process of implementing law in the field. The Deputy Attorney General for Military Crimes plays a role in finding solutions to obstacles and/or constraints that arise in 2 (two) spheres of justice, namely general justice and military justice so that they can function optimally. The presence of the Deputy Attorney General for Military Crimes as a decision maker is concreted in the provisions of Article 25C letter a of Presidential Decree no. 15 of 2021 jo. Article 519B letter a Perja No. 1 of 2021 which confirms that the Deputy Attorney General for Military Crimes, in carrying out his duties and authority, carries out the function of formulating policies in the field of technical coordination of prosecutions carried out by the judiciary and handling connection cases.

It is hoped that the presence of the Deputy Attorney General for Military Crimes can reduce the nuances of dualism in prosecutorial institutions and disparities in prosecution in handling military criminal cases in Indonesia as well as becoming a bridge between the Attorney General and the TNI Commander to further improve coordination in handling connected crimes. Apart from that, as a logical consequence of the presence of the Deputy Attorney General for Military Crimes at the central institution, this also presents the Military Crimes Division which is led by the Assistant for Military Crimes (Aspidmil) at the High Prosecutor's level

<sup>40</sup> Bab VIIA Peraturan Kejaksaan Republik Indonesia Nomor 1 Tahun 2021 tentang Perubahan Kedua atas Peraturan Jaksa Agung Nomor PER-006/A/JA/07/2017 tentang Organisasi dan Tata Kerja Kejaksaan Republik Indonesia.

<sup>41</sup> Asep N. Mulyana, 2020, *Op.Cit.*, hlm. 164.

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who also has the scope of duties and authority in technical coordination of prosecutions. carried out by the Prosecutor's Office and handling connection cases.

### *4. Mechanism for Implementing Duties and Functions of the Deputy Attorney General for Military Crimes in Prosecuting Connection Cases / Practices for Handling Connection Cases*

In principle, the author agrees that an explanation of an article in a piece of legislation cannot be used as a legal basis for making further regulations and must not include a formulation containing norms. However, the explanation functions as an official interpretation for the makers of legislation on certain norms. in the torso.<sup>42</sup> In this case, the Elucidation of Article 57 paragraph (1) of Law Number 31 of 1997 concerning the Military Justice System cannot be used as a basis for amending the Presidential Regulation concerning the Organization and Administration of the Prosecutor's Office of the Republic of Indonesia.

However, as understood, the substance or content of the Presidential Regulation which is regulated in the provisions of Article 13 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, basically contains 3 (three) materials, namely:

- a. Materials required by law;
- b. Materials for implementing government regulations; or
- c. Material for carrying out government power.

It is further stated in the Elucidation of Article 13 of Law Number 12 of 2011 concerning the Prosecutor's Office of the Republic of Indonesia, that a Presidential Regulation was formed to carry out further regulations regarding the Law or Government Regulation which is expressly or indirectly ordered to be issued. Starting from the provisions of Article 13 of Law Number 12 of 2011 concerning the Prosecutor's Office of the Republic of Indonesia and its explanation, the material in the Presidential Regulation regarding the Deputy Attorney General for Military Crimes is actually to exercise prosecutorial powers, the same as judicial powers and other governmental powers. This is in line with the existence of the prosecutor's office as a government institution that exercises state power in the field of prosecution.

On this basis, the President needs to regulate the Organization and Procedures of the Prosecutor's Office through a Presidential Regulation in order to exercise state power in the field of prosecution. Regarding the material that will be regulated in the Presidential Regulation on the Organization and Administration of the Prosecutor's Office, it will of course be adapted to social dynamics and state affairs, as well as norms spread across various laws and regulations that regulate authority, function, duties and positions, as well as other matters. regarding the prosecutor's office itself.

Through such understanding, the institutional structure of the Deputy Attorney General for Military Crimes in the Presidential Regulation is not solely based on the Elucidation of Article 57 paragraph (1) of the Military Justice Law. Likewise, in interpreting explanations in a legal institution, it should be understood as part of the body where its preparation is carried out together with the preparation of the text of the norms of the articles.

As for the substance of the norms of Article 57 paragraph (1) of the Military Justice Law, it is essentially related to the responsibilities of the Prosecutor and Prosecutor General in carrying out the prosecution function according to hierarchical channels. Accountability is according to hierarchical channels, where the implementation of the Oditur's functional duties is responsible to the Oditurate official, who organizationally supervises the Oditur. In this case, the Head of the Technical Implementation Unit of the Oditurate is responsible to the Head of the Military Oditurate, then the Head of the Military Oditurate is responsible to the Head of the High Military Oditurate and the Head of the High Military Oditurate is responsible to the Auditor General. Meanwhile, the Auditor General in carrying out his duties in the technical field of prosecution is responsible to the Attorney General of the Republic of Indonesia as the highest public prosecutor in the Republic of Indonesia through the Commander in Chief, while in carrying out his duties in developing the Prosecutor General he is responsible to the Commander in Chief.

As mentioned above, the material content that will be regulated in the Presidential Regulation on the Organization and Administration of the Prosecutor's Office is of course adapted to social and constitutional dynamics, as well as norms spread across various positive laws. There are several statutory regulations that can be used as the basis for a Presidential Regulation regarding the institutional structure of the Deputy Attorney General for Military Crimes, including:

- a. Article 39 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Corruption Crimes.
- b. Article 66 letter c Law Number 31 of 1997 concerning Military Justice.
- c. Article 18 paragraph (1) Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.
- d. Article 65 paragraph (2) Law of the Republic of Indonesia Number 34 of 2004 concerning the Indonesian National Army.

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<sup>42</sup> Lampiran II Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan, Jakarta.: Direktorat Jenderal Peraturan Perundang-Undangan Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2013, hlm. 119.

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Apart from legislation as positive law, there are also various international conventions which can be used as references and basic foundations for the need for an institutional structure in the Attorney General's Office which is a technical bridge for prosecutions related to military crimes. The international convention in question is the Rome Statute, which firmly establishes the Prosecutor/Public Prosecutor as the only profession that has the authority to investigate and prosecute criminal acts of serious human rights violations. Apart from the Rome Statute, there is also the 1990 UN Convention on the Prevention of Crime and the Treatment of Criminals, which, among other things, establishes guidelines for the role of prosecutors in handling criminal cases.

In carrying out the duties and authority as intended in Article 25C of Presidential Regulation Number 15 of 2021 concerning the Second Amendment to Presidential Regulation Number 38 of 2010 concerning the Organization and Work Procedures of the Prosecutor's Office of the Republic of Indonesia, the Deputy Attorney General for Military Crimes carries out the functions:

- a. Formulating policies in the field of technical coordination of prosecutions carried out by the judiciary and handling connection cases;
- b. Implementation of technical coordination of prosecutions carried out by the judiciary and law enforcement in handling connectivity cases;
- c. Handling connectivity issues;
- d. Coordination and synchronization of policy implementation in the technical field of prosecution carried out by the judiciary and law enforcement in handling connectivity cases;
- e. Implementation of working relationships with agencies or institutions both domestically and abroad in the field of technical coordination of prosecutions carried out by the judiciary and handling cases, connectivity and improving the quality of human resources;
- f. Monitoring, analysis, evaluation and reporting on the implementation of technical prosecution coordination tasks carried out by the judiciary and handling connectivity cases; and
- g. Implementation of other duties assigned by the Attorney General.<sup>43</sup>

### 5. *Technical Accountability for Handling and Prosecuting Connection Cases*

One thing that cannot be denied is that military criminal law has its own characteristics and characteristics. However, it is also important to understand that military criminal law has the same role and function as criminal law in general as a last resort (*ultimum remedium*, the last resort), when disciplinary training or other persuasive efforts are unable to overcome the occurrence of a crime. Therefore, the role of the commander and superior who has the right to punish (*Ankum*) has an important meaning in following up on violations committed by TNI soldiers.

The important role of the commander towards his subordinate soldiers will immediately increase, when the commander is also given the right to become a Case Handing Officer (*Papera*). In this case, the role of the commander will take precedence over other law enforcers such as military police, prosecutors and military judges,<sup>44</sup> so *Ankum* and *Papera* really determine whether or not a soldier's action will be continued in the legal process or the results of the work of the military justice process in general.

In reality, the role and authority of commanders is so large in the law enforcement process in the military environment, disrupting the independence of investigators and military criminal investigators who are very dependent on superior-subordinate relationship mechanisms.<sup>45</sup> This is what causes inefficient law enforcement in the military environment, because procedures are very long and take up a lot of time.

Viewed from the aspect of interests, there is a potential for conflict which places *Ankum* and law enforcement officials in a diametric position. On the one hand, law enforcement agencies will try to process suspects through the courts, while on the other hand, *Ankum/Papera* tends to avoid the judicial process. If legal violations committed by soldiers are brought and processed in court, it is the same as questioning the responsibility of the *Ankum* concerned as commander.<sup>46</sup> In fact, Article 3 paragraph (4)a of the People's Consultative Assembly Regulation Number VII of 2000 concerning the Role of the Indonesian National Army and the National Police of the Republic of Indonesia expressly mandates:

"TNI soldiers are subject to the authority of military justice in cases of violations of military law and are subject to the authority of general justice in cases of violations of general criminal law."

The MPR's decision is reaffirmed in Article 65 paragraph (2) of Law Number 34 of 2004 concerning the Indonesian National Army. *Ankum's* tendency not to process legal violations committed by soldiers through judicial mechanisms is not only contrary to

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<sup>43</sup> Pasal 25C Peraturan Presiden Nomor 15 Tahun 2021 Tentang Perubahan Kedua Atas Peraturan Presiden Nomor 38 Tahun 2010 Tentang Organisasi dan Tata Kerja Kejaksaan Republik Indonesia.

<sup>44</sup> S.R. Sianturi, *Hukum Pidana Militer di Indonesia*. Jakarta: Alumni AHAEM-PETEHAEM, 1985, hm. 54.

<sup>45</sup> Kontras, *Menerobos Jalan Buntu: Kajian Terhadap Sistem Peradilan Militer di Indonesia*. Jakarta: PT. Rinam Antartika, 2009, hlm. 59.

<sup>46</sup> M. Fajrul Falaakh et al. *Implikasi Reposisi TNI-Polri di Bidang Hukum*. Yogyakarta: Fakultas Hukum UGM Yogyakarta, 2001, hlm. 159

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the MP Decree but is also one of the problems and obstacles in the revision process of Law Number 31 of 1997 concerning the Military Justice System.<sup>47</sup> In fact, every criminal act must essentially be processed and tried through a court that is open and accountable, as well as independent and impartial. Therefore, Article 49 of Law Number 26 of 2000 concerning Human Rights Courts, has annulled Ankum's authority:

"Provisions regarding the authority of superiors who have the right to punish and officers who hand over cases as intended in Article 74 and Article 123 of Law Number 31 of 1997 concerning Military Justice are declared invalid in the investigation of serious human rights violations according to this law."

The obligation to carry out examinations fairly, impartially and openly to the public in a judicial process, is the mandate of Article 14 paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR):<sup>48</sup>

*"Everyone has the same position before the law. In determining criminal charges against him, or in determining all his rights and obligations in a lawsuit, every person has the right to a fair and public hearing, by a judicial body that is competent, independent and impartial and established according to law. The media and the public may be prohibited from participating in all or part of the trial for reasons of morals, public order or national security in a democratic society or if it is truly necessary in the opinion of the legal tribunal in special circumstances, where publication would actually be detrimental to the interests of justice itself; "However, every decision taken in a criminal or civil case must be pronounced in an open trial, unless the interests of the children dictate otherwise, or if the trial concerns a marital dispute or the guardianship of children."*

One effort to ensure the independence, impartiality and competence of the military justice system is to involve prosecutors in determining whether or not a case can be transferred to court. This integration of military and civilian law enforcement processes is not only an implementation of modern state administration, which distributes and divides state power into executive, legislative and judicial branches of power. But more than that, integrating the military justice system and not placing it superior to other justice systems is a necessity for judicial independence.

Of course, the integration of prosecutors in the law enforcement process for criminal acts involving TNI soldiers does not necessarily negate and eliminate the duties, role and authority of Ankum. In this case, the commander as Ankum still has the authority to punish, as a form of guidance and supervision of TNI personnel, as well as enforcing military discipline laws in the military environment.<sup>49</sup>

The limitations on the role and authority of Ankum are in line with Paragraph 4 of the 1984 General Comments of the UN Human Rights Committee regarding the administration of justice, which produces 2 (two) important substances.<sup>50</sup> **First**, the limitation of the jurisdiction of military justice, one of the focuses of which is related to military justice jurisdiction is only aimed at trying military members who commit only military crimes.

**Second**, strengthening guarantees for the fulfillment of the principles of fair trial and judicial independence in the context of integrating the military justice system into the general justice system. The focus of this effort includes, among other things, institutionally strengthening the guarantee of independence and impartiality of the military justice system, including civilian law enforcement officers (Prosecutors and Judges) in the military justice system, and legal efforts (appeals and cassation) can be taken against military justice decisions by higher civil judicial power.

The two general comments of the UN Human Rights Committee emphasized that the jurisdiction of military justice is only limited to subjects who commit criminal acts (*ratione personae*) who are members of the military, and are only limited to violations of disciplinary law and military crimes (military offenses). In this context, military crimes are military criminal offenses which are strictly regulated and formulated in the Military Criminal Code.

The integration of the Prosecutor's Office in the law enforcement process for non-crimes involving TNI soldiers, while still paying attention to and prioritizing military interests in carrying out national defense and security. However, in accordance with the principle of military interests, in the judicial process, military interests are always balanced with legal interests. This is because the military justice procedural law as regulated in Law Number 31 of 1997 concerning the Military Justice System is prepared based on a systemic approach by combining various conceptions of national criminal procedural law, including those contained in Law Number 8 of 1981 and the Law Criminal Procedure Law. conception of procedural law. State Administration as regulated in Law Number 5 of 1986 with various specific events originating from the principles and characteristics of the life order of the Armed

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<sup>47</sup> Manfred Nowak, *U.N. Covenant on Civil and Political Rights; ICCPR Commentary, 2nd Revised Edition*, N.P. Engel, Publisher, Kehl, 2005, hlm. 306.

<sup>48</sup> Undang-Undang Republik Indonesia Nomor 12 Tahun 2005 tentang Kovenan Internasional Hak-Hak Sipil-Politik (*International Covenant on Civil and Political Rights*), ps. 14

<sup>49</sup> Sonson Basar, "*Pembinaan dan Pengawasan Prajurit TNI dalam Rangka Meningkatkan Pelayanan Pengadilan di Lingkungan Peradilan Militer*", disampaikan pada Rakeras Mahkamah Agung Tahun 2009, hlm. 15.

<sup>50</sup> Emmanuel Decaux, *Issue of the Administration of Justice Through Military Tribunals*, E/CN.4/Sub.2/2003/4, 27 Juni 2003 paragraf 72 .

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Forces. Based on a systems approach, integration of prosecution policies is a form of compliance with the Integrated Criminal Justice System (ICJS).

Based on the two juridical arguments above, an inter-ministerial and institutional committee can immediately be formed to discuss and formulate the second amendment to Presidential Regulation Number 38 of 2010 in conjunction with Presidential Regulation Number 29 of 2016 concerning the Organization and Working Procedures of the Prosecutor's Office of the Republic of Indonesia. Formulate the concept of changes to the Presidential Regulation, to become the basis for harmonization, unity and consolidation in the Ministry of Law and Human Rights.

The second amendment to Presidential Regulation Number 38 of 2010, which is the normative basis for the structural formation of the Deputy Attorney General for Military Crimes, is one of the innovations in the stagnation of the revision of Law Number 31 of 1997 concerning the Military Justice System. That the initiation of the revision of Law Number 31 of 1997 began in 2005, as an effort to eliminate impunity for TNI soldiers who commit general crimes, and was intended to improve the legal process carried out by Ankum, which some parties considered closed and not transparent. and does not accommodate the interests of victims, and is only limited to field actors with relatively low sanctions.

The current military justice system cannot unearth the truth or the full picture of crimes, especially crimes against humanity. This will of course have an impact on the victim's dissatisfaction with the process. Another impact of this is that the parties who should be responsible cannot be brought to justice. Even if only as a witness once. Instead, these parties act as Ankum (Supervisor with the Right to Punish) or Papera (Case Submission Officer), who have the right to stop the case for certain purposes. Even though military justice is within the military institution, military justice must still pay attention to several principles of honest and impartial justice (fair trial) as well as the independence of a judicial administration.

Another problem concerns the application of superior responsibility, which is now a progressive trend in other places, which is not found in the experience of holding military trials in cases of serious human rights violations. Therefore, UN expert Mr. Emmanuel Decaux in his study of military justice suggests that the Criminal Code be evaluated periodically in a systematic manner, so that there is no overlap between the Criminal Code and the Military Criminal Code.<sup>51</sup>

In the implementation of the handling of connection cases at the prosecution stage, the investigation is carried out to be researched together with the prosecutor and the prosecutor, then the results of the research are reported to the attorney general as the highest public prosecutor and the director general of special services to find out whether the investigation into the case will later be transferred to the general court or to the military.

If an agreement is handled at the general court, it will be submitted to the general court, but if an agreement is handled at the military court, it will be submitted to the military court. By having connectivity cases handled by the connectivity team, enforcement of the principle of equality before the law can be maintained, meaning that protracted case handling can be avoided.

### ***B. Implications of the presence of the Deputy Attorney General for Military Crimes in Connection Cases***

#### ***1. Synergy and Institutional Strengthening in Handling Crime Cases Connectivity***

The Deputy Attorney General for Military Crimes was formed based on the coordination of 2 (two) institutions, namely the Indonesian Prosecutor's Office and the TNI. The Deputy Attorney General for Military Crimes was formed based on Presidential Decree no. 15 of 2021 jo. Job No. 1 of 2021. The presence of the Deputy Attorney General for Military Crimes has implications for the birth of a new institutional structure in the organizational structure of the Indonesian Attorney General's Office and influences the dynamics of law enforcement in Indonesia. The presence of the Deputy Attorney General for Military Crimes was also seen as a form of effort to synergize and strengthen the institutions of both the Indonesian Prosecutor's Office and the TNI. From the perspective of the Indonesian Prosecutor's Office, the impact of the formation of the Deputy Attorney General for Military Crimes can be described as follows:<sup>52</sup>

- a. The presence of the Deputy Attorney General for Military Crimes as a new institution in the organizational structure of the Indonesian Attorney General's Office is seen as being in line with the spirit of reform and respect for the principles of civil supremacy as part of democratic principles;
- b. It is hoped that the Deputy Attorney General for Military Crimes can maximize the application of connectivity mechanisms in handling cases involving civil and military elements so that they can overcome various problems related to duality and disparities in prosecution in the Indonesian legal system. The presence of the Deputy Attorney General for Military Crimes to coordinate the implementation of justice to achieve a fast, simple and low-cost justice process; and
- c. Substantially, the institutional formation of the Deputy Attorney General for Military Crimes plays a role in strengthening the authority of the Attorney General as the Highest Public Prosecutor (*dominus litis*) and creating a unified implementation

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<sup>51</sup> Emmanuel Decaux, Issue of the Administration of Justice Through Military Tribunals, E/CN.4/Sub.2/2006/58, 13 Januari 2006, Prinsip No. 20; Evaluasi atas Kitab Pidana Militer, Paragraf 64-66.

<sup>52</sup> Muh. Irfan F dkk, 2021, *Op.Cit.*, hlm. 8-9.

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of the one-roof prosecution policy (one roof system) under the coordination of the Indonesian Attorney General's Office as the state institution that holds the authority. to carry out prosecution within the Republic of Indonesia.

From the TNI's perspective, institutionally the formation of the Deputy Attorney General for Military Crimes in the organizational structure of the Indonesian Attorney General's Office has had the following impact:<sup>53</sup>

- a. The establishment of an institution in the structure of the Indonesian Attorney General's Office which links the implementation of the accountability of the Oditurate as the body that acts as the highest public prosecutor within the TNI with the technical process of prosecution supervised by the Attorney General;
- b. The implementation of the monitoring, control and evaluation function of the technical aspects of prosecution in the Oditurate by the Attorney General, aims to ensure that the process of enforcing law and justice by the Oditurate in military justice can take place independently, professionally and with integrity; and
- c. The existence of the Deputy Attorney General for Military Crimes who coordinates the handling of connectivity cases also contributes to confirming and strengthening the existence of military justice as one of the judicial environments in Indonesia. This can also eliminate perceptions among the public who often think that military justice is only synonymous with handling criminal cases carried out by TNI soldiers.

Apart from that, the presence of the Deputy Attorney General for Military Crimes also had an impact on the placement of TNI personnel in the Indonesian Prosecutor's Office. This placement is a step to strengthen synergy between 2 (two) institutions, namely the Indonesian Prosecutor's Office and the TNI in order to accelerate the handling of connection cases. This step is also a means of facilitating coordination of civil APH instruments with APH instruments in the military justice environment.

To date, there are only 20 (twenty) Aspidmil position formations in 20 (twenty) High Prosecutors' Offices in Indonesia. The basis for determining this amount is based on Attachment to Perja No. 1 of 2021 which confirms that Aspidmil is under the High Prosecutor's Office, whose legal area is the High Military Prosecutor/Military Prosecutor. However, this situation does not rule out the possibility that in the future Aspidmil will be present in other jurisdictions of the High Prosecutor's Office along with additional Odmulti/Odmil placements in various regions in Indonesia.<sup>54</sup>

Based on the explanation above, it can be seen that at least for the Prosecutor's Office, the placement of military personnel in the Deputy Attorney General for Military Crimes at the central level and Aspidmil at the regional level has at least the following impacts:<sup>55</sup>

- a. With the inclusion of the military judiciary into the functional structure of the Indonesian Prosecutor's Office, prosecution policy and accountability become more centralized, namely under the control of the Attorney General as the Highest Public Prosecutor in the Unitary State of the Republic of Indonesia;
- b. For the Indonesian Prosecutor's Office, the placement of military personnel from both POM and/or the military judiciary in the directorate of the Deputy Attorney General for Military Crimes will increase the effectiveness of the implementation of state authority to prosecute every type and classification of criminal acts; and
- c. By joining military personnel in the Deputy Attorney General for Military Crimes, the provisions regarding related justice and the role of the Attorney General in coordinating the handling of corruption cases will be more optimal.

### 2. Mechanism for Handling Connectivity Cases in Indonesia

The presence of the Deputy Attorney General for Military Crimes in the organizational structure of the Indonesian Prosecutor's Office is aimed at accommodating the implementation of connected justice in order to ensure legal certainty for civil and military legal subjects involved in a criminal act. Connectivity justice has actually been accommodated in various laws, including the Judicial Power Law, the Criminal Procedure Code, and the Military Justice Law. However, unfortunately in practice there was a stigma that if connectivity cases were resolved jointly, it was seen as inefficient because the procedures were complicated due to bureaucracy and the lengthy procedures for obtaining approval letters from the Minister of Defense and Security and the Minister of Justice. In practice, law enforcement officials hide behind the pretext of the principles of simple, fast and low-cost justice as the right solution for law enforcement. In fact, this violates the norms for the regulation of judicial connectivity as regulated in the various statutory provisions above. The implications for the decision to handle connectivity cases which are resolved separately can actually be declared null and void.<sup>56</sup>

Thus, in order to overcome the a quo situation and obstacles, as well as in an effort to increase the effectiveness, efficiency and transparency of the conduct of connected justice, a Deputy Attorney General for Military Crimes was established as a decision maker to bridge the various obstacles faced by each sphere of justice. The formation of a Deputy Attorney General for Military Crimes is essentially a means of ensuring legal certainty in the implementation of connected justice. This relates to the issue of

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<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> Muh. Irfan F dkk., *Loc.Cit.*

<sup>56</sup> Parluhutan Sagala, 2016, *Op.Cit.*, hlm. 10-12.



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disparity in case handling if connectivity cases are resolved individually by 2 (two) judicial spheres. The role of the Deputy Attorney General for Military Crimes in alleviating this disparity issue is to coordinate the handling of connectivity cases and be the person responsible for forming the Permanent Connection Team (Action and Prosecution) in handling connectivity cases. If a criminal act has occurred which is strongly suspected to be a connection crime, the Deputy Attorney General for Military Crimes will coordinate with the APHs in the general justice and military courts to ensure that the APHs agree and have the same understanding to resolve the handling of the case through judicial mechanisms. connectivity.

Furthermore, the implications of the presence of the Deputy Attorney General for Military Crimes in handling connectivity cases are related to the scope of his authority in establishing Permanent Connections. Previously, based on the provisions of Article 89 paragraph (3) of the Criminal Procedure Code, the formation of a Permanent Connection Team had to be based on approval from the Minister of Defense and Security and the Minister of Justice. However, after the establishment of the Deputy Attorney General for Military Crimes in the organizational structure of the Indonesian Attorney General's Office, as a reference for the implementation of duties and authority covering 2 (two) institutions, a Joint Decree was issued by the Minister of Defense of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Commander of the Indonesian National Army. Number: 2196/M/XII/2021 jo. Number: 240 of 2021 jo. Number: KEP/1135/XII/2021 concerning the Establishment of a Permanent Team to Investigate Connectivity Criminal Cases (hereinafter referred to as SKEP KONEKSITAS TEAM). Article 5 of the CONNECTION TEAM SKEP reads:<sup>57</sup>

“For criminal investigations carried out jointly by those within the General Court and Military Court, a permanent team of connectivity was formed at the center and in the provinces consisting of the following elements:

- a. *Military police;*
- b. *Prosecutor;*
- c. *Investigator; and*
- d. *Prosecutor.”*

Thus, the formation of the Permanent Connection Team is now being carried out under the auspices of the Deputy Attorney General for Military Crimes. The Deputy Attorney General for Military Crimes is responsible for forming the Permanent Connection Team whenever there is a connection case. The formation of the Permanent Connection Team is always coordinated with POM and the Military General Authority. Later, the formation of the Permanent Connection Team will be confirmed based on a Joint Decree on the Permanent Team based on the approval of the Attorney General through delegation of authority to the Deputy Attorney General for Military Crimes.

In fact, as a form of the Attorney General's commitment to accelerating connectivity cases, a Special Unit for Handling Connection Cases and Technical Coordination of Prosecution was formed in February 2023 based on Decree of the Attorney General of the Republic of Indonesia Number 1 of 2023 dated January 3 2023 concerning the Establishment of a Special Unit for Handling Connection Cases and Technical Coordination of Prosecution and then followed up with the Decree of the Attorney General of the Republic of Indonesia Number: KEP-IV-22/C/01/2023 dated 13 January 2023 concerning the Transfer of Civil Servants of the Attorney General of the Republic of Indonesia as a Special Unit for Handling Cases for Prosecution Connection and Technical Coordination.<sup>58</sup> Di mana Satuan Khusus ini berkedudukan di SubDirektorat Penuntutan Jaksa Agung Muda Bidang Pidana Militer yang diketuai by Alawi Muharmansyah, S.H and members of 12 other ASN members within the Deputy Attorney General for Military Crimes.

Furthermore, the implications in terms of administration are proven by the existence of a special corps used in filing connection case handling. After the presence of the Deputy Attorney General for Military Crimes, it is now more regular that for handling connectivity cases, the Deputy Attorney General for Military Crimes will use the flag for connectivity cases which will be signed by 2 (two) APH elements (Civil and Military). In handling connection cases under the auspices of the Deputy Attorney General for Military Crimes, case files at both the investigation and prosecution stages basically have the same format and arrangement as case files in general. However, what is slightly different is that at the end of the filing, as one of the formal requirements for the case file, the connectivity case file will contain 2 (two) signatures of the investigator and/or public prosecutor involving both APH elements from 2 (two) judicial environments, namely POM, Prosecutors and Investigating Prosecutors in investigation files, and Military Prosecutors and Public Prosecutors in indictment files in connection cases.

Apart from that, the formation of the Deputy Attorney General for Military Crimes also realizes the implementation of a parallel investigation mechanism in handling connection cases involving civilian and military subjects, especially in cases of criminal acts

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<sup>57</sup> Tim Pengajar pada Jaksa Agung Muda Bidang Pidana Militer, 2023, *Bahan Hukum: Penanganan Perkara Koneksitas*, Kejaksaan Agung Republik Indonesia, hlm. 47.

<sup>58</sup> Antaranews, “*Jampidmil membentuk satgas percepat penanganan perkara koneksitas*”, <https://www.antaranews.com/berita/3373572/jampidmil-membentuk-satgas-percepat-penanganan-perkara-koneksitas>, dikunjungi pada Kamis 28 Maret 2024 pukul 16.29 WIB.

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of corruption. The parallel investigation mechanism can be interpreted as an action to investigate the facts of a criminal offense that occurred at the same time involving 2 (two) or more different jurisdictions. Thus, in complex cases that cover two or more jurisdictions, in this case the jurisdiction of the general court and military court, there is a joint investigation mechanism that allows for accommodation of the combined expertise of investigators from the jurisdictions concerned to complement each other's efforts. Such a mechanism is particularly useful in cases of complex financial crimes, for example money laundering and predicate crimes such as criminal acts of corruption, which affect all jurisdictions involved due to the transnational nature of the crime.<sup>59</sup>

The Deputy Attorney General for Military Crimes plays a role in coordinating a more optimal investigation process by minimizing obstacles in the form of not having a unified process for examining evidence, witnesses and/or suspects for a case involving 2 (two) subjects from different judicial spheres. In the past, before the establishment of the Deputy Attorney General for Military Crimes, when the investigation process was still carried out separately by the APH in the general justice and military justice environments, several obstacles and obstacles arose in the form of not carrying out an effective and efficient investigation process if one of the APH (Military) elements and Civil) feel the need to carry out examinations of evidence, witnesses and/or suspects who come from conflicting judicial jurisdictions. This situation often causes difficulties in examining evidence, witnesses and/or suspects which results in the imperfect process of proving a case where the object of the case is the same but the subject is different. In this joint investigation process, it is hoped that APHs who are members of the Permanent Connection Investigation Team can identify information that may be relevant to handling cases that may not be reached by APHs in different judicial environments and then try to share this information proactively and spontaneously. This is solely to achieve a more optimal investigation process with a more effective and efficient investigation implementation mechanism.

Furthermore, the implications of the presence of the Deputy Attorney General for Military Crimes can be seen through the elaboration of provisions regarding the scope of coordination of the implementation of prosecutions by the judiciary and the handling of connectivity cases as outlined in Article 25B paragraph (2) of Presidential Decree No. 15 of 2021, among others, as follows:

- a. Connection Case Investigation;
- b. Research Results of Investigation;
- c. Additional Investigation;
- d. Providing Legal Opinions to Case Submitting Officers;
- e. Submission of Cases;
- f. Case Closing and Termination of Prosecution;
- g. Prosecution;
- h. Resistance;
- i. Legal effort;
- j. Implementation of Judge's Determinations and Court Decisions that have obtained Permanent Legal Force;
- k. Examination;
- l. Supervision of Conditional Criminal Decisions, Supervision of Criminal Decisions, and Conditional Release Decisions; and
- m. Other legal actions in the field of technical coordination of prosecutions carried out by the judiciary and handling connection cases.

### 3. *Obstacles in the Implementation of Duties and Authorities*

Nevertheless, there are still several challenges and obstacles faced by the Deputy Attorney General for Military Crimes as an institution in carrying out its duties and authority, namely:

- a. There are no written technical instructions for handling connectivity cases;  
Regarding the absence of written technical instructions (hereinafter referred to as operational guidelines) in handling connectivity cases, there are several obstacles faced, including:

- 1) Until now, the implementation of coordination between the Deputy Attorney General for Military Crimes with POM, Military Prosecutors, and Papera still refers to technical verbal coordination between the Indonesian Prosecutor's Office and the TNI. This situation requires a progressive step in the form of a government policy, in this case the Attorney General of the Republic of Indonesia and the Commander of the TNI, in seeking written regulations regarding the technical implementation of coordination in handling connectivity cases, so that it can guarantee legal certainty and become a reference in handling cases in the future.
- 2) There has been no coordination and cooperation between the Deputy Attorney General for Military Crimes and the National Police and PPNS Investigators. Until now, coordination is still focused on efforts to establish coordination with APH elements in the military justice environment. In fact, there is a need for coordination and synergy between the Deputy Attorney General for Military Crimes and Police and PPNS Investigators such as BNN Investigators, Quarantine Investigators, and/or Forestry

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<sup>59</sup> Basel Institute of Governance, "Guideline 8: Parallel Investigation", <https://learn.baselgovernance.org/mod/page/view.php?id=884>, dikunjungi pada Kamis, 28 Maret 2024, pukul 10.00 WIB.

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Investigators. This situation causes delays in the process of taking action against various potential connection crimes in the field of general crimes and/or other specific crimes. This situation requires steps in the form of establishing cooperation and strengthening synergy between the Deputy Attorney General for Military Crimes and Police and PPNS Investigators so that the process of prosecuting connection cases in various sectors can run optimally. The inability of investigators and prosecutors to present irrefutable evidence will lead to an unfair law enforcement process against perpetrators of criminal acts.<sup>60</sup>

- 3) There are no written provisions regarding the mechanism for determining the rank of tutiler for Judges from the General Court environment when appointed as Judges who handle connectivity cases in the Military Court environment. Based on the provisions in Military Justice, there are provisions regarding the rank of judges who can hear cases in the Military Court. This became a new issue and problem during the examination of connection cases which were determined to be tried at the Military Court. Until now, the legal guidelines related to the mechanism for granting tutiler rank to Judges from the General Courts have not been regulated comprehensively. If this situation is not resolved immediately, it will have an impact on hampering the judicial process which is fast, simple and low cost. Apart from that, the absence of provisions regarding matters relating to legal consequences that must be held accountable by those in the position of supervisor is also a source of problems in the future. Thus, the formulation of written guidelines regarding this matter needs to be hastened by the Supreme Court (MA) so that it can immediately resolve various obstacles and obstacles in the trial process of this connectivity case.
- b. There are still challenges in the form of military justice mechanisms which are slightly different compared to general justice as well as the recognition of a hierarchy in the ranks of military members which is command in nature towards military members who are perpetrators of criminal acts. In practice, examinations of TNI soldiers who have contact with criminal offenses must be based on permission from ANKUM. And the delegation of cases involving soldiers can only be carried out after obtaining approval from Papera. If this situation is not handled, it will cause various obstacles in accelerating the handling of connectivity cases in Indonesia. Supposedly, with the enactment of connectivity justice, the rank hierarchy held by ANKUM and Papera will dissolve and not affect the process of taking action against TNI soldiers. Thus, in this situation, it is necessary to have a good understanding between APH from the general justice environment and military justice, in this case ANKUM, Military Prosecutor, Papera, and the Public Prosecutor under the institutional coordination of the Deputy Attorney General for Military Crimes in resolving a matter. criminal cases committed by military soldiers. This is because the APHs play a very large role in determining the continuation of the case so that it can be examined and tried by the competent court; and
- c. There is still egocentrism that is highlighted by TNI institutions regarding the handling of connectivity cases in the military justice environment. This has recently been seen from irregularities in the mechanism for handling the Mimika Mutilation Case in Papua and the Basarnas Corruption Case which were not resolved through a connected justice mechanism under the institutional coordination of the Deputy Attorney General for Military Crimes. This has once again highlighted public attention and created a paradigm among society that there is impunity and the perception that TNI members are first class citizens who always receive exclusivity in this case regarding the handling of criminal cases. This situation requires immediate action from the government through legislative and executive powers to implement accelerated military justice reform. This also does not escape the fact that Law Number 31 of 1997 concerning Military Justice is considered unable to accommodate various changes and legal reforms that occur in society.

## CONCLUSIONS

The role and position of the Deputy Attorney General for Military Crimes in handling connectivity cases in Indonesia is as an assistant leadership element, in this case the Attorney General, in carrying out the duties and authority of the Indonesian Prosecutor's Office in the field of technical coordination of prosecutions carried out by the judiciary and handling connectivity cases. The Deputy Attorney General for Military Crimes acts as a decision maker by carrying out policy formulation functions in the field of technical coordination of prosecutions carried out by the judiciary and handling connection cases. The formation of the Deputy Attorney General for Military Crimes was legitimized based on Presidential Decree no. 15 of 2021 jo. Job No. 1 of 2021. The institution of the Deputy Attorney General for Military Crimes is located at the Attorney General's Office of the Republic of Indonesia and as a logical consequence also brings the position of Aspidmil to the institution of the High Prosecutor's Office in Indonesia.

The implication of the presence of the Deputy Attorney General for Military Crimes in connectivity cases in Indonesia is to eradicate the issue of disparity and dualism in prosecution as well as guaranteeing the implementation of a fair legal process for perpetrators of connectivity crimes in Indonesia, so that there is unified implementation of the one-roof policy in the system. judiciary in Indonesia, especially in carrying out policies and controlling the prosecution of criminal acts, connectivity has become a one-stop prosecution facility or institution that brings together and elaborates Military Prosecutors and Prosecutors to unite in coordinating and synchronizing the implementation of policies in the technical field of prosecution carried out by Military

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<sup>60</sup> Handar Subhandi Bakhtiar. "Pentingnya Bukti Forensik Pada Pembuktian Tindak Pidana." *Jurnal Hukum Pidana&Kriminologi*, Vol. 03 (2022): hlm 40.

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Prosecutors and Prosecutors in handling connectivity matters. Apart from that, the Deputy Attorney General for Military Crimes also plays a role in ensuring the implementation of effectiveness, efficiency and transparency in the process of handling connected criminal cases in order to achieve legal objectives, namely justice, legal certainty and legal benefits.

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