E-ISSN: 2962-2816 | P-ISSN: 2747-1985
JOURNAL OF LAW, POLITIC AND HUMANITIES (JLPH)
https://dinastires.org/JLPH dinasti.info@gmail.com +62 811 7404 455
DOI: https://doi.org/10.38035/jlph.v3i4
Received: 30 August 2023, **Revised:** 14 September 2023, **Publish:** 15 September 2023

Handling Criminal Cases of Corruption Involving Active Indonesian National Army (TNI) Soldiers

Delfina Gusman[1]
[1] Andalas University, Padang, Indonesia, delfinagusman@law.unand.ac.id

Corresponding Author: delfinagusman@law.unand.ac.id

Abstract: Based on the set of laws related to eradicating corruption and the class of laws within the military scope in Indonesia, whether the involvement of active TNI soldiers in criminal acts of corruption in enforcement is processed through the Military Court or the Corruption Crime Court as the court in General Justice environment? And what about the authority of the Corruption Eradication Commission (KPK) in this matter?.

Keyword: Corruption Crimes, Corruption Eradication Commission, Law Violations.

INTRODUCTION

The pros and cons regarding the legality regarding the appointment of KABASARNAS held by an active TNI soldier, namely Marshal Vice Marshal Henri Alfiandi, as a suspect by the Corruption Eradication Commission (KPK) are issues related to differences in interpretation within the scope of legal norms. For those who agree with this suspicion, the Corruption Eradication Committee (KPK) argues that based on the Corruption Eradication Commission Law, handling corruption cases is the authority of the Corruption Eradication Commission, the end of the process 'leading' to the Corruption Crime Court within the General Courts without looking at the background of the person who committed the criminal act. the corruption. For those who are against it, every criminal act committed by an active TNI soldier must be handled based on the Military Justice Law.

Contradicting Law Number 30 of 2002 concerning the Corruption Eradication Commission and its amendments [1](hereinafter referred to as the Corruption Eradication Committee Law) with Law Number 31 of 1997 concerning Military Justice (hereinafter referred to as the Military Justice Law) in handling corruption cases involving active TNI soldiers. This is a logical thing, because the legal norms of these two laws have a direct correlation with the subject and object in the occurrence of criminal acts of corruption involving active TNI soldiers.

[1] Law Number 30 of 2002 concerning the Corruption Eradication Commission. The Law has undergone 2 (two) amendments, namely through Law Number 10 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2015 concerning Amendments to Laws. Law Number 30 of 2002 concerning the Corruption Eradication Commission Becomes a Law, and Law (UU) Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission

The academic question is what is the solution to this 'contradiction' from the perspective of the legal norm order in Indonesian positive law? The answer is by reviewing the formulation of legal norms contained in the two laws and their relationship to the formulation of legal norms in other laws and regulations as well as the principles or principles in the implementation of laws and regulations. In this way, it can be seen whether the involvement of active TNI soldiers in criminal acts of corruption is processed based on the Corruption Eradication Committee Law or the Military Justice Law, or whether there are provisions in other laws that can provide a solution to this problem.

METHOD

This research is normative or doctrinal legal research using qualitative descriptive methods, as the data source is secondary data, which consists of primary legal materials, secondary legal materials, or tertiary data.[2] For academic work purposes, the output of legal research is a prescription in the form of recommendations or suggestions.[3]

RESULTS AND DISCUSSION

Legal Principles of Law Enforcement

Positive law is interpreted as a system of norms that is formulated in the form of an order of legal norms and legal order. The legal norm order is the organization of the formulation of legal norms, where the formation or formation of a legal norm is based on the existence of other legal norms. Meanwhile, the legal order is the organization of the legal form of a collection of legal norms that have been formulated, for example the formulation of legal norms within the scope of the content of the law, the legal form of the norms that have been formulated is categorized as written law that is regulative (regeling) which *is* called laws, as well as the Constitution, Government Regulations, Presidential Regulations and so on. The legal order is a manifestation of the order of legal norms in the form of law.

According to Hans Kelsen, the legal order is a system of general norms and specific norms which are connected to each other according to the principle that the law regulates its own formation. [4]The hierarchization or leveling of legal norms results in the formation of different legal orders. Hans Kelsen stated that a norm is included in the legal order only because the norm has been formed according to the provisions of other norms in that legal order. The series of processes ultimately reaches the constitution, the formation of which is determined by the basic norms that have been postulated.[5]

A norm whose formation is not determined by other norms cannot be included in a legal order.[6] Therefore, every legal formation is always an application of the law. The formation of legal norms is the application of higher legal norms, which regulate their formation, and the application of higher legal norms is usually the formation of lower legal norms which are determined by these higher legal norms. For example, making laws is the formation of law, but by paying attention to the constitution, it is realized that making these laws is also the application of law. In every law making, where the provisions of the constitution are implemented, then the provisions of the constitution are simultaneously applied. The formation of a constitution in the sense of legal norms can also be seen as the application of basic norms.[7]

[2]Amiruddin and Zainal Asikin, 2014, *Introduction to Legal Research Methods* , Jakarta: PT.RajaGrafindo, p 118
[3]Peter Mahmud Marzuki, 2006, *Legal Research* , Jakarta: Kencana Prenada Media Group, p 41
[4]Hans Kelsen, 2006, *General Theory of Law and State (translation of the book General Theory of Law and State) translated by Raisul Muttaqin* , Bandung : Nusamedia & Nuansa , p . 190
[5]Ibid
[6]Ibid, p. 191
[7]Ibid

The hierarchization or leveling of legal norms results in the formation of different legal orders, the implementation of which is based on principles or principles that apply universally in law, namely; the principle of *'lex superior derogate legi inferi'* (higher law ignores the application of lower law), the principle of ' *lex specialis derogate legi genarali'* (special law ignores the application of general law), and the principle of ' *lex postereore derogate legi priore'* (later laws ignore the enactment of previous laws). Especially in the principle of *'lex superior derogate legi inferior', the legal* norm system must be seen in the context of a strict hierarchical structure, where lower legal norms must not conflict with legal norms that have a higher position in the hierarchical structure between legal norms.[8]

The principle of ' *lex specialis derogate legi genarali'* , there are several important things that need to be considered in this principle, namely; *Firstly* , the provisions found in the general regulations remain valid, except for those specifically regulated in the special regulations. For example, regarding criminal acts of corruption, investigations are carried out by KPK investigators. *secondly* , the provisions of *the lex specialis* must be equivalent to the provisions of *the legi genarali* (Law with Law). *Third* , the provisions of *the lex specialis* must be in the same legal environment as *the legi genarali* , for example; Tax Law (Income Tax Law with General Provisions and Tax Procedures Law). [9]The principle of ' *lex postereore derogate legi priore'* , the principle of requiring the use of new laws, where new legal regulations must be equal or superior to old legal regulations. The new regulations and the old regulations regulate the same aspects or things [10]. Apart from these three principles or principles of law , the application of laws (regulations) also adheres to the principle of not having retroactive effect.[11]

Laws are a type of statutory regulation which is written law that is regulatory in nature (*regeling*), its application is ' *mutatis mutandis* ' based on principles or principles that apply universally in law as stated above. One of the consequences of these legal principles or principles is that they serve as parameters for making ' *complaints* ' by aggrieved parties by enacting a law through a *judicial review mechanism* .

KPK, Corruption Crimes and State Administrators

The establishment of the Eradication Commission is a mandate of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (hereinafter referred to as the Law on the Eradication of Corruption Crimes) which is a replacement for Law Number 3 of 1971 concerning the Eradication of Corruption Crimes. Based on Article 43 paragraph (1) of Law Number 31 of 1999, it mandates the formation of a Corruption Eradication Commission which will be regulated in a separate Law within a period of no later than 2 (two) years from the promulgation of the Law. In paragraph (2) It is stated that the Corruption Eradication Commission has the duty and authority to carry out coordination and supervision, including carrying out inquiries, investigations and prosecutions in accordance with the provisions of applicable laws and regulations. And paragraph (3), the Commission membership as referred to in paragraph (1) consists of government elements and community elements. As well as paragraph (4), provisions regarding the formation, organizational structure, work procedures, accountability, duties and authority, and membership of the Commission as referred to in paragraph (1). paragraph (2) and paragraph (3) are regulated by law.

[8]Jimly Asshiddiqie, 2020, *Hierarchical Theory of Legal Norms* , Jakarta: Constitution Press (Konpress), p 2
[9]Suhariyono, 2020, *Formation of Good Legislation and Practical Guidelines* , Depok: Papas Sinar Sinanti, Pg 148-149
[10]ibid
[11]Amiroeddin Sjarif in Soimin, 2010, *Formation of State Legislation in Indonesia* , Yogyakarta: UII Press, p. 33

Based on Article paragraph 43 of Law 31 of 1999, Law Number 30 of 2002 concerning the Corruption Eradication Commission was established as amended by Law Number 10 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2015 concerning Amendments to Law Number 30 of 2002 Concerning the Corruption Eradication Commission Becoming a Law, and Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.

Actions that are categorized as criminal acts of corruption as stated in Law 31 of 1999 as amended by Law Number 20 of 2001 are as follows:

1. Any person who unlawfully commits an act of enriching himself or another person or a corporation which can harm the state's finances or the state's economy.[12]
2. Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunities or facilities available to him because of his position or position which can harm the state's finances or the state's economy.[13]
3. Any person who gives or promises something to a civil servant or state administrator with the intention that the civil servant or state administrator does or does not do something in his or her position, which is contrary to his or her obligations; or giving something to a civil servant or state administrator because of or related to something that is contrary to his or her obligations, whether or not done in his or her position[14]
4. Every person who gives or promises something to a judge with the intention of influencing the decision of a case submitted to him for trial; or giving or promising something to someone who according to statutory provisions is determined to be an advocate to attend a court hearing with the intention of influencing the advice or opinion that will be given in connection with a case submitted to the court for trial.[15]
5. Contractors, building experts who when constructing buildings, or sellers of building materials who, when delivering building materials, commit fraudulent acts that could endanger the security of people or goods, or the safety of the country in a state of war. Every person whose job is to supervise the construction or delivery of building materials, deliberately allows fraudulent acts as intended. any person who, when handing over goods needed by the Indonesian National Army and/or the National Police of the Republic of Indonesia, commits fraudulent acts which could endanger the safety of the country in a state of war; or any person tasked with supervising the delivery of goods required by the Indonesian National Army and/or the National Police of the Republic of Indonesia intentionally allows fraudulent acts as referred to [16].
6. Civil servants or people other than civil servants who are assigned to carry out a public office continuously or temporarily, intentionally embezzle money or securities held because of their position, or allow such money or securities to be taken or embezzled by other people, or assist in do that act [17].
7. servants or people other than civil servants who are assigned the task of carrying out a public office continuously or temporarily, deliberately falsify books or lists specifically for administrative inspection [18].
8. servants or people other than civil servants who are assigned the task of carrying out a public office continuously or temporarily, intentionally: a.) embezzle, destroy, damage or make unusable goods, deeds, letters or lists used for convince or prove in front of an authorized official, who is controlled because of his position; or b) allow other people to

[12]Article 2 Law Number 31 of 1999
[13]Article 3 Law Number 31 of 1999
[14]Article 5 Law Number 20 of 2001
[15]Article 6 Law Number 20 of 2001
[16]Article 7 Law Number 20 of 2001
[17]Article 8 Law Number 20 of 2001
[18]Article 9 Law Number 20 of 2001

remove, destroy, damage or make unusable the goods, deeds, letters or lists; or c) help other people remove, destroy, damage or make unusable the goods, deeds, letters or lists.[19]

9. Civil servants or state officials who receive gifts or promises even though it is known or reasonably suspected that the gift or promise was given because of the power or authority related to their position, or which, in the opinion of the person giving the gift or promise, is related to their position [20].
10. Civil servants or state officials who receive gifts or promises, even though it is known or reasonably suspected that the gift or promise was given to motivate them to do or not do something in their position, which is contrary to their obligations.[21]
11. Civil servants or state administrators who receive gifts, even though it is known or reasonably suspected that the gift was given as a result or because they have done or not done something in their position that is contrary to their obligations.
12. A judge who accepts a gift or promise, even though it is known or reasonably suspected that the gift or promise was given to influence the decision of a case submitted to him for trial.
13. A person who, according to statutory provisions, is determined to be an advocate to attend a court hearing, receives a gift or promise, even though it is known or reasonably suspected that the gift or promise is to influence the advice or opinion that will be given, in connection with a case submitted to the court for trial.
14. Civil servants or state officials who with the intention of benefiting themselves or others unlawfully, or by abusing their power force someone to give something, pay, or receive payment at a discount, or to do something for themselves.
15. A civil servant or state administrator who, while carrying out his duties, requests, accepts or deducts payments from a civil servant or other state administrator or to the general treasury, as if the civil servant or other state administrator or the general treasury owes him a debt, even though It is known that this is not a debt.
16. Servants or state officials who, when carrying out their duties, requesting or accepting work, or handing over goods, appear to have a debt owed to them, even though it is known that this is not a debt.
17. Civil servants or state officials who, while carrying out their duties, have used state land over which there is a right to use, as if in accordance with statutory regulations, have caused harm to people who have the right, even though they know that this action is contrary to statutory regulations.
18. Civil servants or state administrators, whether directly or indirectly, intentionally participate in contracting, procurement or rental, which at the time the action is carried out, is in whole or in part assigned to manage or supervise it.[22]
19. Any gratification to civil servants or state officials is considered a bribe, if it is related to their position and is contrary to their obligations or duties, with the following conditions: a). whose value is IDR 10,000,000.00 (ten million rupiah) or more, proof that the gratification is not a bribe is carried out by the recipient of the gratification; b) whose value is less than IDR 10,000,000.00 (ten million rupiah), proof that the gratuity is a bribe was carried out by the public prosecutor.[23]

[19]Article 10 Law Number 20 of 2001
[20]Article 11 Law Number 20 of 2001
[21]Article 12 Law Number 20 of 2001
[22]*Ibid*
[23]Article 12B Law Number 20 of 2001

20. Every person who gives a gift or promise to a civil servant in view of the power or authority attached to his or her position or position, or by the giver of the gift or promise is deemed to be attached to that position or position.[24]
21. Any person who violates the provisions of the Law which expressly states that a violation of the provisions of the Law is a criminal act of corruption, the provisions stipulated in this Law apply [25].
22. Any person who attempts, assists or enters into an evil conspiracy to commit a criminal act of corruption.[26]
23. Any person outside the territory of the Republic of Indonesia who provides assistance, opportunities, facilities or information for a criminal act of corruption to occur [27].

Regarding state administrators as one of the criteria for perpetrators of criminal acts of corruption, based on Article 1 point 2 of Law Number 30 of 2002, what is meant by state administrators is state administrators as intended in Law Number 28 of 1999 concerning State Administrators who are Clean and Free from Corruption , Collusion, and Nepotism. According to Article 1 number 1 of Law Number 28 of 1999, State Administrators are State Officials who carry out executive, legislative or judicial functions and other officials whose main functions and duties are related to state administration in accordance with the provisions of applicable laws and regulations. The state administrators in question include:

1. State Officials at the Highest State Institutions [28];
2. State Officials at High State Institutions;
3. Minister;
4. Governor;
5. Judge;
6. Other state officials in accordance with the provisions of applicable laws and regulations;
7. Other officials who have strategic functions in relation to state administrators in accordance with the provisions of applicable laws and regulations [29].

Meanwhile, Article 1 number 2 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission states that what is meant by state administrators is ' *state officials who exercise executive, legislative or judicial power and other officials whose functions and duties are related to state administration in accordance with the provisions of the invitation. laws and regulations*. Based on the principle or principles of ' *lex postere ore derogate legi priore'* , the definition of state administrator in Article 1 number 2 of Law Number 19 of 2019 overrides or ignores the definition of organizer as stated in Article 1 number 1 of Law Number 28 of 1999.

TNI Soldiers and Law Violations

In Article 1 number 13 of Law Number 34 of 2004 concerning the Indonesian National Army, what is meant by Soldier is a member of the Indonesian National Army. In Article 21 it is stated that Soldiers are Indonesian citizens who fulfill the requirements stipulated in statutory regulations and are appointed by authorized officials to devote themselves to military service. Active soldiers can hold positions in offices in charge of coordinating the fields of Politics and State Security, National Defense, Military Secretary to the President,

[24]Article 13 Law Number 31 of 1999
[25]Article 14 Law Number 31 of 1999
[26]Article 15 Law Number 31 of 1999
[27]Article 16 Law Number 31 of 1999
[28]After the amendment to the 1945 Constitution, the position of state institutions was no longer differentiated into the 'dichotomy' of highest institutions and high institutions, this was because the People's Consultative Assembly (MPR) was no longer an institution 'incarnation of popular sovereignty' and was declared the highest institution.
[29]Article 2 Law Number 28 of 1999

State Intelligence, National Code, National Resilience Institute, National Defense Council, National Search and Rescue (SAR), National Narcotics, and the Supreme Court. Soldiers who occupy the positions referred to are based on the request of the heads of departments and non-departmental government institutions and are subject to administrative provisions that apply within the department and non-departmental government environment in question.[30]

Regarding violations of law, Article 65 paragraph (2) and paragraph (3) of Law Number 34 of 2004 confirms that Soldiers are subject to the authority of military justice in cases of violations of military criminal law and are subject to the power of general justice in cases of violations of general criminal law as regulated by law. -invite. If the general judicial authority does not function, then soldiers are subject to judicial authority regulated by law. The jurisdiction of soldiers' submission in cases of violation of the law is based on the provisions of Article 65 paragraph (2) and (3) of Law Number 34 of 2004 which has a different meaning from Article 1 number 42 of Law Number 31 of 1997 concerning Military Justice, which states "Soldiers of the Armed Forces of the Republic of Indonesia *who hereinafter referred to as Soldiers are state soldiers who meet the requirements specified in the provisions of statutory regulations and are appointed by authorized officials to devote themselves to the defense of the state by carrying weapons, being willing to sacrifice their body and soul, and taking part in national development and complying with military law . ”* . Soldiers' submission to military law as confirmed in Law Number 31 of 1997 means that every legal violation committed by a soldier is processed based on military criminal law, regardless of whether it is a violation of military criminal law or a violation of general criminal law.

The question is whether law enforcement against soldiers who violate the law in the context of non-military criminal acts such as corruption crimes, its jurisdiction remains "subject to military law as stated in Law Number 31 of 1997 concerning Military Justice or Law Number 34 of 2004 concerning Soldiers Indonesian National, which provides space for soldiers to submit to the power of general justice in cases of violations of general criminal law?

Comparing Law Number 31 of 1997 concerning Military Justice and Law Number 34 of 2004 concerning the Indonesian National Army in terms of law enforcement against soldiers who commit violations of the law in the context of non-military crimes can be constructed through the following arguments; *Firstly* , historically Law Number 31 of 1997 is a legal product that was formed before the amendment to the 1945 Constitution, where its formation during the New Order era was heavily influenced by 'militaristic' political elements which positioned ABRI as a defense and security force as well as a political force or what is known as ABRI's dual function term. Meanwhile, Law Number 34 of 2004 is a legal product that was formed after changes to the 1945 Constitution. One of the consequences of the changes to the 1945 Constitution was the reform of the functions and institutions in the field of state defense and security which had the impact of 'erasing' the principle of the dual function of the Armed Forces. According to Ni'matul Huda, the socio-political role in ABRI's dual function has led to deviations in the roles and functions of the TNI and POLRI which have resulted in the development of the foundations of democracy in the life of the nation, state and society.[31]

Second , Law Number 31 of 1997 is a law within the judicial power group (judiciary). On the other hand, the existence of Law Number 34 of 2004 is an organic law relating to the Indonesian National Army under the executive branch of power. The question is, what legal principles or principles will be used as guidance to ensure that one of the two laws both regulates the jurisdiction of 'self-submission' for soldiers who commit violations of the law in

[30]Article 47 Law Number 34 of 2004
[31]Ni'matul Huda, 2009, *Indonesian Constitutional Law* , Jakarta: RajaGrafindo Persada, Pg 231

the context of non-military crimes? Is it the principle of ' *lex specialis derogate legi genarali'* or the principle of ' *lex postereore derogate legi priore'* or both?

Based on the principle of ' *lex specialis derogate legi genarali'* (specific laws ignore the enactment of general laws), it is difficult to build an argument that the legal norms contained in Law Number 34 of 2004 are *the lex specialis* of the legal norms of Law Number 31 of 1997 .Because the two laws are in different families, the existence of Law Number 34 of 2004 is a Law under the executive power group, while Law Number 31 of 1997 is a Law within the judicial power group (judiciary). Apart from that, the legal norms that underlie the formation of the two laws are also different, Law Number 31 of 1997 was formed based on the legal norms of the 1945 Constitution (before the amendment), while Law Number 34 of 2004 was formed based on the legal norms of the 1945 Constitution of the Republic of Indonesia (after the amendment). .

However, with the principle of ' *lex postereore derogate legi priore'* (later laws ignore the enactment of previous laws) it can be stated that the legal norms in Law Number 34 of 2004 can ignore the legal norms contained in Law Number 31 of 1997 in terms of jurisdiction . 'submission' for soldiers who violate the law in the context of non-military crimes. This is because the legal norm of Article 1 number 13 in conjunction with Article 21 of Law Number 34 of 2004 [32]is *lex postereore* (new/later) and the legal norm of Article 1 number 42 of Law Number 31 of 1997 is *legi priore (* old/previous) in terms of definition or understanding. Regarding soldiers , the statement that soldiers are subject to military law which is 'embedded' in the definition or understanding of soldiers as stated in Article 1 number 42 of Law Number 31 of 1997 is no longer interpreted [33]as 'absolute' except in the case of soldiers committing military crimes. . This non-absolute is due to the continuity of Article 1 number 13 in conjunction with Article 21 of Law Number 34 of 2004 with Article 65 paragraph (2) and paragraph (3) of Law Number 34 of 2004 which confirms that Soldiers are subject to the authority of military justice in cases of violations of military criminal law and subject to general judicial authority in cases of violations of general criminal law regulated by law. If the general judicial authority does not function, then soldiers are subject to judicial authority regulated by law

Corruption Crime Court and the Authority of the Corruption Eradication Commission

Article 2 of Law Number 46 of 2009 concerning Corruption Crime Courts states that the Corruption Crime Court is a special court within the General Courts," further Article 5 confirms that the Corruption Crime Court is the only court that has the authority to examine, try, and decide cases of criminal acts of corruption, and in Article 6 it is stated that the Corruption Crime Court as intended in Article 5 has the authority to examine, try and decide cases: a. criminal acts of corruption; b. the crime of money laundering where the original crime is a crime of corruption; and/or c. a criminal act that is expressly defined in another law as a criminal act of corruption.

The provisions of Article 2, Article 5 and Article 6 of Law Number 46 of 2009 above, can be emphasized that the only court that has the authority to examine, try and decide cases of criminal acts of corruption is the court of criminal acts of corruption within the General

[32] Article 1 number 13 of Law Number 34 of 2004 concerning the Indonesian National Army, what is meant by Soldier is a member of the Indonesian National Army. Article 21 states that soldiers are Indonesian citizens who fulfill the requirements specified in statutory regulations and are appointed by authorized officials to serve in military service.

[33]Article 1 number 42 of Law Number 31 of 1997: Soldiers of the Armed Forces of the Republic of Indonesia, hereinafter referred to as Soldiers, are state soldiers who fulfill the requirements specified in the provisions of statutory regulations and are appointed by authorized officials to devote themselves to the defense of the state by bearing weapons, willing to sacrifice body and soul, and participate in national development and **submit to military law**

Courts. Based on the interpretation of *a contrario* , it can be stated that criminal cases of corruption cannot be tried by courts within the Military Court, Religious Court or State Administrative Court. Law Number 46 of 2009 is a *lex specialis* in terms of the authority to adjudicate within the scope of judicial power (judiciary) specifically for handling cases of criminal acts of corruption. Whatever arguments are built against the process of handling corruption cases as long as the 'end' does not go to the courts for criminal acts of corruption within the general justice environment, these arguments cannot be legally justified.

Regarding the Corruption Eradication Committee's authority to handle corruption cases involving active TNI personnel, the discussion can begin by analyzing Article 42 of Law Number 30 of 2002, which reads: The Corruption Eradication Commission has the authority to coordinate and control the investigation, inquiry and prosecution of criminal acts of corruption carried out jointly by persons subject to military justice and general justice.

The phrase "a criminal act of corruption committed jointly by a person subject to military justice and a general court" in the provisions of Article 42 can be interpreted as a criminal act of corruption committed by more than one person, where the fault is the person subject to military justice. , if so the person in question is none other than a soldier or member of the TNI. The logic of 'thinking' in Article 42 of Law Number 30 of 2002 is still based on the provisions of Article 1 number 42 of Law Number 31 of 1997 concerning Military Justice, where the statement that soldiers are 'subject to military law' is 'embedded' in the definition or understanding of soldiers as stated in Article 1 number 42 of Law Number 31 of 1997.

In line with reforms in the field of defense and security, through Law Number 34 of 2004 concerning the Indonesian National Army, the definition of a soldier has also undergone changes and also the submission of soldiers in the case of committing violations of the law is no longer absolutely subject to military law through military justice, the submission of soldiers depends on to the criminal act committed, if it is a military crime it is subject to the military justice process and if it is a general crime it is subject to the general justice process. The phrase "criminal acts of corruption committed jointly by persons subject to military justice and general justice" in the provisions of Article 42 of Law Number 30 of 2002 is not in line with Law Number 34 of 2004, especially in terms of interpreting the phrase "by persons subject to justice military". With the promulgation of Law Number 34 of 2004, Article 42 of Law Number 30 of 2002 should also have been made the object of change when there were two changes to the Corruption Eradication Committee Law in 2015 and 2019.

Furthermore, the authority of the Corruption Eradication Commission is to coordinate and control the investigation, inquiry and prosecution of criminal acts of corruption carried out jointly by persons subject to military justice and general justice. Law Number 30 of 2002 does not explain the form of coordinating and controlling investigations, investigation and prosecution of criminal acts of corruption, especially cases involving active TNI soldiers. However, Article 6 letter b of Law Number 19 of 2019 states that the Corruption Eradication Commission has the authority to coordinate with agencies authorized to carry out the Eradication of Corruption Crimes and agencies that provide public services. However, the criteria for the agency referred to in the law are not explained. However, in the explanation of Article 6 of Law Number 30 of 2002 it is stated 'What is meant by "authorized agency" includes the Financial Audit Agency, the Financial and Development Supervisory Agency, the State Administration's Assets Audit Commission, inspectorates in Departments or Non-Departmental Government Institutions'.

In essence, none of the articles in Law Number 30 of 2002 concerning the Corruption Eradication Commission and its amendments regulate the relationship between the Corruption Eradication Commission and TNI institutions in terms of handling corruption cases involving active TNI personnel in the context of the Corruption Eradication Committee's authority to coordinate and control investigations, investigations and

prosecution of acts. corruption crime. This is what will trigger the emergence of 'sectoral ego' in each of these institutions when handling a criminal corruption case involving active TNI soldiers.

CONCLUSION

After conducting a study of the laws in the eradication of corruption and the Military Justice Law and the TNI Law based on legal principles or legal principles that apply universally in law, namely; the principle of ' *lex specialis derogate legi genarali'* (specific laws ignore the enactment of general laws), and the principle of ' *lex postereore derogate legi priore'* (later laws ignore the enactment of previous laws). So it can be concluded that law enforcement for individual TNI soldiers involved in criminal cases of corruption cannot be carried out through the military law enforcement process which 'leads' to the military justice mechanism. The authority of the Corruption Eradication Commission (KPK) in matters of inquiry, investigation and prosecution of cases of criminal acts of corruption is absolute in the sense of *equality before the law* , meaning that there is no difference in treatment between civilians and the military. However, in implementing its authority, the Corruption Eradication Commission has a coordination mechanism. In terms of handling corruption cases involving active TNI soldiers, the coordination referred to is not in the sense of sharing authority with TNI institutions but rather in the form of verification and confirmation. What is the form of coordination in the form of verification and confirmation between the Corruption Eradication Commission and TNI institutions, this is something that has not been regulated in the Corruption Eradication Committee Law. As a suggestion, a form of verification and confirmation form of coordination should be formulated between the Corruption Eradication Commission and TNI institutions through amendments to the Corruption Eradication Commission Law.

REFERENSI

Amiruddin dan Zainal Asikin, 2014, *Pengantar Metode Penelitian Hukum*, Jakarta: PT.RajaGrafindo

Hans Kelsen, 2006, *Teori Umum Tentang Hukum Dan Negara (terjemahan dari buku General Theory of Law and State) diterjemahkan oleh Raisul Muttaqin*, Bandung: Nusamedia & Nuansa

Jimly Asshiddiqie, 2020, *Teori Hieraraki Norma Hukum*, Jakarta: Konstitusi Press (Konpress)

Ni'matul Huda, 2009, *Hukum Tata Negara Indonesia* , Jakarta : RajaGrafindo Persada

Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group

Soimin, 2010, *Pembentukan Peraturan Perundang-Undangan Negara Di Indonesia*, Yogyakarta : UII Press

Suhariyono, 2020, *Pembentukan Peraturan Perundang-Undangan Yang Baik Pedoman Praktis*, Depok : Papas Sinar Sinanti.

The 1945 Constitution of the Republic of Indonesia

Law Number 31 of 1997 concerning Military Justice

Law Number 31 of 1999 concerning the Eradication of Corruption Crimes

Law Number 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion and Nepotism

Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes

Law Number 30 of 2002 concerning the Corruption Eradication Commission

Law Number 34 of 2004 concerning the Indonesian National Army

Law Number 46 of 2009 concerning Corruption Crime Trials

Law Number 10 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2015 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission into Law

Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.