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Synchronization of the Material Content of Legislation Concerning Connected Corruption Post Constitutional Court Decision Number 87/PUU-XXI/2023

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ABSTRACT

This study examines the implications of Constitutional Court Decision Number 87/PUU-XXI/2023 on the authority of the KPK in handling connected corruption cases. Specifically, this study aims to analyze the material content drafting of the KPK Law post a quo decision, and to formulate recommendations for synchronization with the Criminal Procedure Code and the Military Court Law. This normative legal research uses a statute approach and a case approach, with legal interpretation, legal construction, and legal synchronization analysis techniques. The results show that a quo decision affirms the KPK's authority to handle connected cases, as long as the case is handled or discovered by the KPK from the outset. The logical-juridical consequence of a quo Decision is the necessity to reconstruct the material content, especially Article 42 of the KPK Law. As formal criminal procedural law, exceptions to the applicability of the connectedness provisions in the Criminal Procedure Code and the Military Court Law also require adjustment. This synchronization is essential to realize legal certainty and the effectiveness of eradicating connected corruption.

Keywords: Amendment to Law; Connected Corruption; Criminal Procedure Law; KPK Authority; Legal Synchronization.

INTRODUCTION

The Reformation Era, marked by the collapse of the New Order regime, ushered in high hopes for the creation of a just and prosperous Indonesian legal order for all its citizens. A crucial agenda in this reformation was the eradication of corruption, which had long been institutionalized and had damaged various aspects of national and state life (Yustia & Arifin, 2023). Corruption, which *a priori* constitutes an abuse of authority and power, has a direct impact on state financial losses and the national economy at the macroeconomic level. This corrupt act is classified as an extraordinary crime because it has multidimensional destructive impacts: hindering national development, undermining the foundations of democracy, and injuring the public's sense of justice.

As an illustration, in the defense and security sector, corruption in the procurement of primary weapons systems (*alutsista*) not only results in state financial losses but also significantly hinders military modernization, which in turn weakens the state's defense capabilities and endangers national sovereignty. Furthermore, in the political realm, corruption of social assistance funds or the use of state budgets for illegal political campaign purposes damages the principles of equality and fairness in political contests, distorts voter aspirations, and ultimately legitimizes power obtained illegally. Furthermore, corruption in the judicial system, such as the practice of bribing judges or prosecutors, creates striking disparities in legal treatment, where justice can be bought and sold. This results in an erosion of public trust in legal institutions, and at a more extreme level, can trigger social instability. Therefore, it is the collective awareness of the latent danger of corruption that has given rise to a strong and sustained commitment to eradicating it systematically, comprehensively, and without discrimination in order to realize the ideals of a just rule of law.

Indonesia's commitment to eradicating corruption systematically and comprehensively is manifested in the establishment of the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* or KPK), which was legislated through the KPK Law. The establishment of the KPK was based on a major premise that conventional law enforcement institutions, at that time, were deemed not to have shown optimal, effective, and efficient performance in tackling systemic corruption. Therefore, the KPK was designed as a superbody institution, endowed with broad and independent authority, and impartial, free from all forms of intervention by the executive, legislative, or judicial branches ([Rompegading, 2022](#)). The main objective of establishing the KPK was to overcome the various structural and cultural obstacles that have hindered law enforcement against corruption, and to uphold the principle of equality before the law. With this principle, it is hoped that no single perpetrator of corruption, regardless of position or social status, can escape the law, in order to achieve justice and legal certainty ([Ali et al., 2023](#)).

However, the KPK Law also contains provisions regarding special criminal procedural law for connected corruption offenses, namely corruption offenses involving civilians and military personnel jointly. Specifically, Article 42 of the KPK Law, which regulates the KPK's authority to coordinate and control the investigation, prosecution, and adjudication of connected corruption offenses, actually creates the potential for disharmony and overlapping jurisdictional authority. This potential conflict of authority arises because of the overlap with the authority held by the Attorney General's Office and the Military Prosecutor's Office, which also have jurisdiction in handling connected cases under the Criminal Procedure Code and the Military Court Law. On the other hand, the existence of the Junior Attorney General for Military Crimes institutionally has the duty and function to accommodate the Attorney General's Office's authority in handling criminal cases involving military members, including, in this case, connected corruption offenses.

The root cause of the conflict of authority, overlapping jurisdiction, and the potential for a legal vacuum (vacuum of law) in law enforcement, particularly in handling connected corruption offenses, lies in the lack of harmonization in the national legal system ([Manurung & Harefa, 2024](#)). Harmonization of criminal procedural law is a *conditio sine qua non* to achieve vertical and horizontal synchronization and coherence between various applicable legislations. Therefore, legal harmonization in the context of law enforcement is a crucial element and an absolute prerequisite in the national legal reform agenda. The implication of this legal harmonization is the realization of legal certainty (*rechtszekerheid*) and the creation of a hierarchical and systematic legal order, which is a fundamental characteristic of the rule of law (*rechtsstaat*).

The conflict of authority in handling connected corruption offenses, which centers on the interpretation of Article 42 of the KPK Law, not only causes disharmony and friction between law enforcement agencies, but also triggers a fundamental

constitutional debate. This debate stems from the different scope of jurisdictional authority of the judicial bodies under the auspices of the Supreme Court. The Judicial Power Law stipulates that the Supreme Court oversees four judicial environments. The general court has absolute competence to adjudicate criminal cases committed by civil legal subjects, while the military court has absolute competence to adjudicate criminal cases committed by members of the Indonesian National Armed Forces (*Tentara Nasional Indonesia* or TNI). The Corruption Court, although functionally specialized in handling corruption cases, is structurally and administratively within the scope of the general court. This is the root of the debate on jurisdiction in handling connected corruption cases.

The conflict of authority in handling connected corruption not only creates legal uncertainty, but also has the potential to weaken corruption eradication efforts because the law enforcement process becomes hampered and inefficient. This can reduce public trust in law enforcement agencies that are perceived as unable to cooperate and act professionally. Furthermore, this conflict opens up opportunities for perpetrators of corruption to exploit legal loopholes and avoid criminal liability. This jurisdictional difference is the root of the problem when corruption offenses involve perpetrators from two different judicial environments (connected offenses).

The constitutional debate over the KPK's authority to handle connected corruption cases reached its peak when Gugum Ridho Putra filed a petition for judicial review of the KPK Law, the Criminal Procedure Code, and the Military Court Law to the Constitutional Court. This petition was registered as Case Number 87/PUU-XXI/2023. During the proceedings, it was revealed that the differing interpretations of Article 42 of the KPK Law were not merely a matter of implementing the norm in the field, but a problem of the uncertainty of the norm itself. In its legal considerations, the Judges acknowledged the legal uncertainty caused by Article 42 of the KPK Law and declared that the article was conditionally unconstitutional under the 1945 Constitution of the Republic of Indonesia.

Constitutional Court Decision Number 87/PUU-XXI/2023 provides constitutional affirmation that the KPK has the authority to coordinate and control the investigation, prosecution, and adjudication of connected corruption offenses as long as the case is handled from the outset by the KPK. Broadly speaking, the research of [Gaol et al. \(2024\)](#) and [Pangastuti et al. \(2024\)](#) reaffirms the authority of the KPK. The difference with previous research is that this research provides further analysis related to the relevant material content drafting in the KPK Law in order to follow up on *a quo* Decision. This decision, although providing legal certainty, has not completely solved the problem. Synchronization of the material content of legislation related to the criminal procedural law for connected corruption is still needed to prevent potential conflicts of authority between law enforcement agencies in the future.

Thus, this research is present to comprehensively analyze the relevant material content drafting in the KPK Law as a follow-up to *a quo* Decision, as well as to formulate recommendations for comprehensive synchronization of the material content of legislation. The aim is to achieve legal certainty, ensure the effectiveness of eradicating connected corruption offenses, and strengthen an integrated criminal justice system.

METHOD

This research is categorized as normative legal research, focusing on the analysis of positive legal norms related to the synchronization of the material content of legislation concerning the criminal procedural law for connected corruption. To achieve the research objectives, two main approaches were employed: a statute approach and a case approach ([Sampara & Husen, 2016](#)). The statute approach was used to comprehensively examine the KPK Law, the Criminal Procedure Code, the Military Court Law, and other relevant legislation. As a crucial analytical instrument, the case approach focused on Constitutional Court Decision Number 87/PUU-XXI/2023. This decision holds central significance because it directly addresses the constitutionality of the KPK's authority in handling connected corruption cases.

The data sources for this research consist of primary and secondary legal materials ([Irwansyah, 2020](#)). Primary legal materials include the aforementioned legislation and *a quo* Decision. Secondary legal materials encompass various legal literature, including textbooks, scientific journals, articles, previous research findings, legal memoranda, and other authoritative library resources relevant to the subject matter. The process of collecting legal materials was carried out through library research, document study, and legislation inventory. Library and document studies were conducted by carefully examining literature and legal documents, both available in physical and digital forms. The legislation inventory was carried out to systematically identify and compile regulations related to the criminal procedural law for connected corruption, thus obtaining a comprehensive overview of the applicable regulatory framework.

The analysis of legal materials in this research applied various techniques commonly used in normative legal research ([Qamar & Rezah, 2020](#)). Legal interpretation, including grammatical, teleological, and systematic interpretation, was applied to explore the meaning of legal norms contained in the legislation. Legal construction, through analogical reasoning and *rechtsverfijning* (legal refinement), was used to construct legal arguments and fill potential legal vacuums. Content analysis was utilized to deeply examine the substance of legislation and court decisions. Legal synchronization, both vertical and horizontal, was applied to analyze the alignment and harmony between legal norms in various legislations related to the criminal procedural law for connected corruption. Through this series of analytical techniques, it is expected that comprehensive, in-depth, and scientifically valid research conclusions can be formulated to answer the research objectives.

RESULTS AND DISCUSSION

A. Constitutional Analysis of KPK Authority: Interpretation of Constitutional Court Decision Number 87/PUU-XXI/2023

Constitutional Court Decision Number 87/PUU-XXI/2023 has established an important jurisprudence that sets a new legal precedent in the law enforcement system for corruption offenses in Indonesia, particularly those involving perpetrators subject to two different jurisdictions: general courts and military courts. The decision not only provides legal certainty that has long been a juridical polemic, but also triggers academic and practical discourse on the relationship of authority between law enforcement agencies within the framework of an integrated criminal justice system. More than just legal reasoning, this decision reflects complex constitutional dynamics, where the principle of state institution independence, the principle of equality before the law, and the effectiveness of corruption eradication become central issues, which mandates harmonization, synchronization, and law enforcement of connected corruption offenses.

Analysis of the judicial review petition filed by Gugum Ridho Putra against the constitutionality of the criminal law norms of connection in the KPK Law, Criminal Procedure Code, and Military Court Law, reveals the core of the problem at the level of implementation and legal interpretation. Specifically, the Petitioner questioned the constitutionality of Article 26 section (4) and Article 42 of the KPK Law, Articles 89 to 94 of the Criminal Procedure Code, and Articles 198 to 203 of the Military Court Law, with legal standing based on the potential erosion of the KPK's independence in handling connected corruption cases. The *argumentum ad absurdum* constructed by the Petitioner rests on the *rechtsonzekerheid* (legal uncertainty) inherent in the formulation of Article 42 of the KPK Law. The phrase "coordinate and control" in *a quo* article, which regulates the KPK's authority in handling connected cases, is interpreted problematically because it opens the door to multiple interpretations. The Petitioner proposes a dichotomous legal construction: the phrase can be interpreted as granting attributive authority to the KPK, or conversely, as a delegative obligation to hand over connected cases to the Attorney General's Office or the Military Prosecutor's Office. This concern has implications for the potential weakening of the KPK's independence.

Responding to the substance of the petition, the Judges comprehensively considered the philosophical, sociological, and juridical foundations of corruption eradication in Indonesia. The Judges reaffirmed the *ratio legis* of corruption eradication, which is not only dimensioned in state financial loss, but also in the violation of human rights, particularly the social and economic rights of the community. Therefore, corruption eradication must be carried out with an extraordinary, systematic, sustainable, and integrated approach, involving all components of the nation. In the context of the KPK's independence, the Judges

referred to established and consistent jurisprudence, particularly Constitutional Court Decision Number 5/PUU-IX/2011 and Constitutional Court Decision Number 70/PUU-XVII/2019. *A quo* decisions firmly confirm the KPK's position as an independent state institution (auxiliary state organ) in the executive branch. This independence is affirmed as a *conditio sine qua non* for the effectiveness, impartiality, and professionalism of the KPK's performance in eradicating corruption, without interference or influence from political forces or any other party (Abdullah & Mustomi, 2023). Thus, the Petitioner's concerns about the potential reduction of the KPK's independence due to the interpretation of Article 42 of the KPK Law became a central issue whose constitutionality was reviewed by the Judges.

In adjudicating *a quo* petition, the Judges applied a comprehensive method of legal interpretation to Article 42 of the KPK Law, using a tri-pronged approach: grammatical, teleological, and systematic. In conducting a grammatical interpretation of Article 42 of the KPK Law, the Judges focused on the textual meaning of the phrase "coordinate and control." This analysis rests on the principle of *verba legis* interpretation, which is to interpret laws based on the literal meaning of the words contained therein. The Judges affirmed that the phrase "coordinate and control" does not contain the meaning of subordination or subordination of the KPK to other law enforcement agencies. Conversely, the phrase gives strong legal standing to the KPK as an institution that has attributive authority. This authority includes the act of leading, directing, and supervising all stages of the law enforcement process for connected corruption offenses, from investigation, to prosecution. This grammatical interpretation emphasizes that the KPK has a central and autonomous role in handling connected cases, not just a facilitator or passive coordinator.

Teleological interpretation, also known as interpretation based on the purpose of the law's formation, was carried out by the Judges by tracing the *ratio legis* and original intent of the formation of the KPK Law. In this context, the Judges affirmed that the main objective of the KPK's establishment, as stated in the considerations and body of the KPK Law, is to eradicate corruption effectively, efficiently, and without discrimination. Therefore, any interpretation of Article 42 of the KPK Law that has the potential to weaken, reduce, or limit the KPK's authority in handling corruption cases, including connected cases, is an interpretation that is contrary to the purpose of the KPK Law itself. In other words, the Judges used a teleological approach to ensure that the interpretation of Article 42 of the KPK Law is in line with the spirit of corruption eradication which is the reason for the KPK's existence (*raison d'être*).

Furthermore, the systematic approach in legal interpretation requires the Judges to interpret Article 42 of the KPK Law not in isolation, but in the context of

all the norms and spirit contained in the KPK Law as a whole. The Judges affirmed that the KPK Law grants broad discretionary authority to the KPK in all aspects of corruption eradication. This authority includes the authority to investigate, prosecute. Therefore, interpreting Article 42 of the KPK Law as a limitation of the KPK's authority in connected cases would create inconsistency and disharmony in the legal system built by the KPK Law itself. This systematic approach also strengthens the KPK's position as a superbody institution with comprehensive jurisdiction in eradicating corruption, regardless of the background of the legal subject of the perpetrator of corruption, including those from the military justice environment. This superbody concept adopted by the KPK, in a comparative law perspective, has a functional similarity with the Independent Commission Against Corruption (ICAC) of Hong Kong, which has comprehensive jurisdiction over all corruption offenses, regardless of the employment background or agency of origin of the perpetrator (Fauzi et al., 2023).

Nevertheless, the Judges expressly acknowledged the existence of substantial regulatory disharmony between the KPK Law, the Criminal Procedure Code, and the Military Court Law. This disharmony stems from fundamental differences in the regulation of handling connected cases. The Criminal Procedure Code, as the *lex generalis* in criminal procedural law, which was enacted before the establishment of the KPK, does not contain provisions that explicitly and comprehensively accommodate the KPK's authority in handling connected cases. The absence of this specific regulation creates a vacuum of law which has the potential to hamper the effectiveness of law enforcement.

On the other hand, the Military Court Law regulates a mechanism for handling connected cases that is diametrically different from the mechanism mandated in the KPK Law. The Military Court Law, which is based on the principle of *judex militaris* (special justice for soldiers), gives exclusive authority to military courts to adjudicate members of the TNI in all types of criminal offenses, including corruption offenses. This philosophical and procedural difference between the KPK Law and the Military Court Law creates the potential for overlapping jurisdiction and conflict of authority between law enforcement agencies, namely the KPK, the Attorney General's Office, and the Military Prosecutor's Office.

The regulatory disharmony between the KPK Law, the Criminal Procedure Code, and the Military Court Law not only raises theoretical issues, but also has significant practical consequences in the enforcement of connected corruption offenses. *First*, overlapping jurisdictional authority can lead to legal uncertainty as to which institution is authorized to conduct investigations, and prosecutions in a connected case. *Second*, differences in case handling mechanisms can trigger conflicts of interest between law enforcement agencies, which in turn can hamper the law enforcement process and reduce the effectiveness of corruption eradication.

Recognizing the serious implications of this regulatory disharmony, the Judges affirmed that the harmonization and synchronization of legislation, both vertically (between laws and regulations below them) and horizontally (between equivalent laws), is a *conditio sine qua non* (absolute requirement/legal necessity). This harmonization aims to create a coherent, consistent, and integrated legal system, so that there are no more loopholes that can be exploited by perpetrators of corruption, particularly in connected cases. Regulatory harmonization is also a manifestation of the principle of the rule of law (*rechtsstaat*) which requires legal certainty (*rechtszekerheid*) and justice (*gerechtigheid*).

Based on the entire series of legal considerations, the Judges, in the operative part of its decision, declared Article 42 of the KPK Law unconstitutional under the 1945 Constitution of the Republic of Indonesia and not conditionally binding. The operative part of Constitutional Court Decision Number 87/PUU-XXI/2023 states in full:

"The Corruption Eradication Commission has the authority to coordinate and control the investigation, prosecution, and adjudication of corruption offenses committed jointly by persons subject to military courts and general courts, as long as the law enforcement process of the case is handled from the outset or is initiated/discovered by the Corruption Eradication Commission."

A quo Decision, which declares Article 42 of the KPK Law conditionally constitutional, has profound juridical-philosophical implications. The legal status of a norm declared conditionally constitutional is that it remains in force and has binding legal force as long as it is interpreted in accordance with the interpretation that is limitatively and imperatively formulated by the Judges in the operative part of its decision. In this context, Article 42 of the KPK Law is declared constitutional if and only if it is interpreted that the KPK has attributive authority, plenary power, and exclusive authority to handle connected corruption cases *ab initio litis* (from the beginning of the case being handled or discovered by the KPK). The phrase "from the outset or is initiated/discovered by the KPK" is a *conditio sine qua non*, a constitutive element, and a crucial point that determines the constitutionality and applicability of Article 42 of the KPK Law. *Mutatis mutandis*, *a quo* decision can be equated with authentic interpretation (*authentieke interpretatie*) in the legislative process, which provides an official, final, and legally binding explanation of the true meaning of a legal norm.

The juridical and sociological implications of the Judges interpretation are very significant, especially for the existence and authority of the KPK. *A quo* decision *expressis verbis* strengthens the constitutional legitimacy of the KPK's authority in investigating and resolving connected corruption cases. This affirmation provides a solid legal basis for the KPK to reject all forms of intervention, intimidation, politicization, or other efforts aimed at weakening or delegitimizing the KPK's

authority in handling connected cases. Furthermore, this decision reaffirms the legal standing and *raison d'être* of the KPK as a leading sector institution and avant-garde in eradicating corruption in Indonesia (Nurdiana et al., 2023), without exception for corruption offenses involving TNI personnel who are subject to the jurisdiction of military courts. *A quo* decision also provides legal certainty and eliminates the ambiguity that has surrounded the handling of connected corruption cases.

It should be underlined that *a quo* decision, although strengthening the KPK's authority in handling connected corruption cases, does not necessarily annul or eliminate the jurisdictional authority of the Attorney General's Office or the Military Prosecutor's Office in handling these corruption cases. *A quo* decision actually introduces and affirms the principle of jurisdictional priority. This principle stipulates that if the KPK has handled a connected corruption case *ab initio litis* (from the beginning of the case being handled or discovered), then other law enforcement institutions, legally, lose jurisdictional authority to take over or handle *a quo* case.

The implementation of this jurisdictional priority principle must also be accompanied by the strict and consistent application of the *ne bis in idem* principle. This universal legal principle, which prohibits double jeopardy against a person for the same crime, is a *conditio sine qua non* to ensure legal certainty and justice (McGuire, 2016). The application of the *ne bis in idem* principle in the context of connected cases prevents duplication of case handling and protects the rights of suspects or defendants from arbitrary treatment.

Thus, the authority of the Attorney General's Office and the Military Prosecutor's Office in handling corruption cases involving members of the TNI is not abolished, but is limitatively restricted. *A quo* authority remains in existence and can be exercised as long as the corruption case is not handled by the KPK from the outset. This arrangement creates a check and balances mechanism between law enforcement agencies, while ensuring that there is no *vacuum of law* in handling corruption offenses, including those involving legal subjects from the jurisdiction of military courts.

Furthermore, in the *obiter dictum* of its decision, the Judges *impliedly* provides a constitutional mandate for changes or revisions to legislation relevant to the handling of connected corruption cases. This mandate is based on the consideration that the current regulatory disharmony, particularly between the KPK Law, the Criminal Procedure Code, and the Military Court Law, has the potential to cause jurisdictional conflicts in the future. Therefore, *a quo* decision can be seen as a catalytic jurisprudence, which triggers and encourages comprehensive legal harmonization and synchronization. This harmonization is a *conditio sine qua non*

to create a coherent, consistent, and effective legal system in eradicating corruption, particularly involving legal subjects from different judicial jurisdictions.

As a *punctum saliens* (important point), *a quo* decision is a monumental jurisprudence that has significant precedential value in the development of criminal law, particularly the criminal procedural law of corruption in Indonesia. This decision provides a constitutional interpretation that is final, binding (*erga omnes*), and has permanent legal force (*res judicata pro veritate habetur*) on Article 42 of the KPK Law. Substantially, *a quo* decision affirms and strengthens the KPK's authority in handling connected corruption cases *ab initio litis* (beginning of case handling). Moreover, this decision affirms the principle of *equality before the law* as a fundamental pillar in eradicating corruption, without recognizing jurisdictional discrimination, both against legal subjects subject to general courts and military courts. Thus, this decision not only resolves the constitutional question raised, but also provides clear guidance for the enforcement of connected corruption offenses in the future.

B. Material Content of KPK Authority in the KPK Law: Reconstruction Post Constitutional Court Decision Number 87/PUU-XXI/2023

As comprehensively analyzed in the previous sub-section, Constitutional Court Decision Number 87/PUU-XXI/2023 has juridical implications for the need for normative reconstruction of the KPK Law. *A quo* decision, which provides a conditionally constitutional interpretation of Article 42 of the KPK Law, does not automatically change the wording of the *in litis* law. Therefore, a legislative amendment to the KPK Law is an unavoidable constitutional imperative. This sub-section will focus on identifying the problematic material content of the KPK Law related to the KPK's authority in connected cases post *a quo* decision. As a normative basis, Article 42 of the KPK Law stipulates that:

"The Corruption Eradication Commission has the authority to coordinate and control the investigation, prosecution, and adjudication of corruption offenses committed jointly by persons subject to military courts and general courts."

After *a quo* decision, it was proven juridically that the formulation of Article 42 of the KPK Law contains an inherent weakness in the form of normative ambiguity. The phrase "coordinate and control" is open to multiple interpretations, which in practice has the potential to cause conflicts of authority between law enforcement agencies. This juridical deficiency leads to the absence of normative parameters that limitatively regulate when, under what conditions, and to what extent the KPK has the authority to "coordinate and control" connected cases.

In-depth analysis of the KPK Law reveals that the problematic Article 42 is not an isolated issue, but part of a broader systemic problem. Comprehensively, the norms governing the handling of connected cases in the KPK Law are not equipped

with detailed, clear-cut, and comprehensive technical operational guidelines regarding the mechanism for implementing the coordination and control of *a quo* cases. This legal vacuum (*rechtsvacuum*) is a substantial *lacuna legis* (deficiency in the law) and has the potential to cause serious implications (Purwadi et al., 2024).

The absence of clear and binding technical operational guidelines regarding the procedures for coordination and control of cases between the KPK, the Attorney General's Office, and the Military Prosecutor's Office, opens the door to procedural uncertainty. This uncertainty not only hampers the effectiveness of law enforcement, but can also trigger jurisdictional friction between law enforcement agencies. Each institution may have different interpretations and implementations of the authority it has, which in turn can lead to conflicts of interest and jurisdictional disputes.

From the perspective of the *rechtsstaat* (rule of law), this *lacuna legis* in the technical operational regulation of handling connected cases cannot be justified. The rule of law requires three main pillars: legal certainty (*rechtszekerheid*), justice (*gerechtigheid*), and legal expediency (*doelmatigheid*) (Fitrah et al., 2021). The absence of comprehensive, limitative, and operational regulations regarding the coordination and control of connected cases clearly contradicts the principle of legal certainty and has the potential to hinder the realization of justice and legal expediency in eradicating corruption. Therefore, resolving this *lacuna legis* is an urgent need in the context of criminal law reform, particularly the criminal procedural law of corruption.

A quo decision, which declares Article 42 of the KPK Law conditionally constitutional, has provided a solid legal basis for amending the KPK Law. The juridical consequence of this decision is the necessity to reformulate and reconstruct the material content of the KPK Law, particularly that relating to the KPK's authority in connected cases. Amending the KPK Law is no longer just a discourse, but an unavoidable constitutional imperative. The substantial objectives of this amendment are:

1. To completely eliminate ambiguity and multiple interpretations of Article 42 of the KPK Law;
2. To strengthen legal certainty (*rechtszekerheid*);
3. To preemptively and preventively prevent potential conflicts of authority (jurisdictional conflict); and
4. To ensure the effectiveness and efficiency (*doelmatigheid*) of eradicating connected corruption.

Based on normative juridical analysis and referring imperatively to the operative part of *a quo* decision, Article 42 of the KPK Law must be comprehensively reformulated. Also, the reformulation of this article is insufficient when it is not

completed with the addition of new norms that contain the procedural law on connected corruption offences. The following is a proposed new formulation of Article 42 of the KPK Law, which is drafted using legislative drafting techniques and systematic interpretation:

- (1) The KPK has the authority to conduct investigations, and prosecutions of corruption offenses committed jointly by persons subject to military courts and general courts.
- (2) In handling corruption offenses as referred to in section (1), the KPK has the authority to conduct investigations, and prosecutions, if:
 - a. from the outset or is initiated/discovered by the KPK; and
 - b. involves state losses of at least IDR 1,000,000,000.00 (one billion rupiah).
- (3) In the event that the Corruption Offense does not meet the provisions as referred to in section (2), the KPK shall hand over the investigation, and prosecution to the Attorney General's Office and/or the Military Prosecutor's Office.
- (4) In the event that the Corruption Offense is handed over as referred to in section (3), the KPK has the authority to carry out coordination and supervision duties based on this Law.

The proposed formulation of the *de lege ferenda* norm (the law as it should be) fundamentally changes the construction of Article 42 of the KPK Law by explicitly eliminating the phrase “coordinate and control.” This elimination is based on the *ratio legis* that the KPK’s authority to conduct investigations, and prosecutions independently and exclusively, in essence, inherently includes the functions of coordination and control. In other words, the functions of coordination and control no longer need to be explicitly stated because they are implicitly contained in the *trias politica* authority of law enforcement held by the KPK.

Furthermore, the new formulation adopts verbatim the phrase “from the outset or is initiated/discovered by the KPK” from the operative part of *a quo* decision. This verbatim adoption aims to close the gap for interpretations that deviate (*contra legem*) from the intent and purpose of *a quo* decision. This phrase is the key that determines the KPK’s exclusive jurisdiction in handling connected corruption cases, while also ensuring legal certainty and preventing overlapping authority with other law enforcement institutions.

It is important to underline that this new formulation does not eliminate the authority of the Attorney General’s Office and the Military Prosecutor’s Office in handling connected corruption cases. *A quo* authority remains recognized in its existence, but is limitatively restricted. The Attorney General’s Office and the Military Prosecutor’s Office remain authorized to handle corruption cases involving members of the TNI, as long as the case is not handled by the KPK from

the outset. This restriction is in line with the principle of jurisdictional priority affirmed in *a quo* Decision.

With this new norm formulation construction, Article 42 of the KPK Law is expected to fulfill the principle of legality comprehensively. *First, lex certa* (clear formulation), because the KPK's authority and the limitations on the authority of other law enforcement agencies are formulated explicitly and unambiguously. *Second, lex stricta* (strict formulation), because the KPK's authority is limited to cases that are "from the outset or are initiated/discovered by the KPK," not opening up space for arbitrary expansion of authority. *Third, lex scripta* (written formulation), because all provisions regarding the authority of the KPK and other law enforcement agencies in connected cases are explicitly stated in the law ([Sahroni, 2024](#)).

In order to increase the effectiveness of handling connected corruption cases and ensure *rechtszekerheit* (legal certainty), the KPK Law should ideally contain explicit and comprehensive provisions regarding the legal status of TNI personnel seconded to the KPK, both those serving as investigators and public prosecutors. The ambiguity of the legal status of TNI personnel seconded to the KPK is currently a *lacuna legis* which has the potential to cause a series of problems, both from juridical, administrative, and operational aspects. From a juridical perspective, the unclear legal status of TNI personnel at the KPK can raise questions about their legal standing and authority in carrying out legal actions, such as arrests, detentions, searches, and seizures. This can also affect the validity of the evidence obtained and the legal processes carried out. From an administrative perspective, status ambiguity can lead to problems related to salaries, allowances, promotions, transfers, and disciplinary sanctions against the TNI personnel concerned. From an operational perspective, unclear status can hamper the effectiveness of performance, coordination, and synergy between TNI personnel and other KPK employees.

Therefore, explicit, detailed, and comprehensive regulation regarding the legal status of TNI personnel seconded to the KPK is a necessity. This regulation must explicitly regulate the position, authority, responsibilities, rights, and obligations of these TNI personnel while carrying out their duties at the KPK. In addition, this regulation must be able to preventively prevent the potential for conflicts of interest or dualism of loyalty between TNI personnel and their home institution (TNI) and the KPK as the institution where they are assigned. Harmonization and synchronization of regulations between the KPK Law, the TNI Law, and the Military Court Law are key in formulating provisions regarding the legal status of TNI personnel seconded to the KPK. In order to ensure an orderly legal transition and prevent a *vacuum of law* after the amendment of the KPK Law, the formulation of comprehensive, anticipatory, and prescriptive transitional

provisions is a necessity. These transitional provisions have a crucial function to regulate the legal status of connected cases that are in the process of being handled or have been handled by the KPK or other law enforcement institutions before the amendment of the KPK Law becomes effective. In formulating transitional provisions, the principles of justice (*iustitia*), expediency (*utilitas*), and legal certainty must be used as the main basis and central consideration.

First, connected corruption cases that have been handled by the KPK before the amendment of the KPK Law comes into force, *ipso jure* (by law) remain handled and completed by the KPK until completion. The legal basis for this option is the attributive authority of the KPK which has been affirmed and strengthened by *a quo* decision. This option ensures the continuity of law enforcement and avoids the potential for stagnation or uncertainty in case handling. *Second*, connected corruption cases that are in the process of being handled in other law enforcement institutions (the Attorney General's Office or the Military Prosecutor's Office) at the time the amendment to the KPK Law comes into force, may be transferred to the KPK. However, this transfer is not automatic, but must be based on a mechanism and requirements that are limitatively and strictly regulated in the transitional provisions. These mechanisms and requirements must be designed in such a way as to prevent abuse of authority and ensure accountability of the transfer process.

Third, for connected corruption cases that have not been handled by any law enforcement institution at the time the amendment of the KPK Law comes into force, the new provisions governing the KPK's jurisdictional priority shall fully apply. This means that the KPK has exclusive authority to handle *a quo* case if the case is handled or discovered by the KPK from the outset. This option ensures full implementation of the spirit of reform of the criminal procedural law for connected corruption. The three *a quo* options are not mutually exclusive, but can be combined and formulated in detail in the transitional provisions to create an effective, efficient, and fair legal transition.

Thus, the reconstruction of the material content of the KPK Law related to the KPK's authority in connected corruption cases is a constitutional imperative that cannot be postponed. The amendment of the KPK Law, which is oriented towards *a quo* decision, is not only to fulfill the formality aspect *an sich*, but also to realize the substantial objective: strengthening the KPK as a *superbody* institution (state auxiliary body), ensuring legal certainty, preventing conflicts of authority, and increasing the effectiveness of eradicating connected corruption. The *de lege ferenda* recommendations outlined in this sub-section are expected to be a constructive and applicable contribution of thought for lawmakers, as a manifestation of a collective effort to realize a just legal system, free from corruption, and upholding the rule of law.

C. Synchronization of the Criminal Procedure Law for Connected Corruption: Harmonization of the Criminal Procedure Code and the Military Court Law Post Constitutional Court Decision Number 87/PUU-XXI/2023

Constitutional Court Decision Number 87/PUU-XXI/2023 not only provides a constitutional interpretation of Article 42 of the KPK Law, but also has broader juridical implications. In this case, the necessity to synchronize and harmonize other legislation related to the handling of connected corruption cases. The Judges, explicitly in its legal considerations, acknowledged the existence of regulatory disharmony between the KPK Law, the Criminal Procedure Code, and the Military Court Law, and views synchronization and harmonization as a *conditio sine qua non* to realize an integrated, effective, and efficient criminal justice system.

The reconstruction of the material content of the KPK Law, as described in the previous sub-section, is the first step. Comprehensive and substantial harmonization necessitates adjustments to the Criminal Procedure Code and the Military Court Law, as the formal criminal procedural law (*lex generalis*) applicable to each jurisdiction. Thus, it is important to analyze the provisions in the Criminal Procedure Code and the Military Court Law that have the potential to be disharmonious with the KPK Law (post-reconstruction) and *a quo* decision, and to formulate comprehensive, applicable, and criminal justice system strengthening-oriented recommendations for synchronization and harmonization.

As a normative basis, the provisions of the criminal procedural law for connection, historically-systematically, are regulated in Articles 89 to 94 of the Criminal Procedure Code and Articles 198 to 203 of the Military Court Law. These two laws, in principle, regulate two crucial aspects in handling connected cases ([Septiana & Hamonangan, 2023](#)), including:

1. Determination of the jurisdiction of the court authorized to examine and adjudicate the case (forum); and
2. The mechanism for investigating connected cases, including the establishment of a permanent investigation team.

Article 89 section (1) of the Criminal Procedure Code and Article 198 section (1) of the Military Court Law, substantively, regulate the determination of the forum or jurisdiction of the court authorized to examine and adjudicate connected cases. Before the issuance of *a quo* Decision, these two articles became the primary legal basis in determining whether a connected case would be adjudicated in the general court or military court environment. This determination of jurisdiction, in the pre-*a quo* decision era, was based on various considerations, including the majority of the legal subjects of the perpetrators, the amount of state losses caused, and the qualification of the offense charged (whether it was a general crime or a military crime). However, the operative part of *a quo* decision has fundamentally transformed the landscape of the criminal procedural law for

connection, particularly in the context of corruption offenses. *A quo* decision gives absolute priority to the KPK to handle connected corruption cases as long as the case is handled or discovered by the KPK from the outset (*initio litis*).

The juridical-normative implication of *a quo* decision is imperative and binding (*erga omnes*). The logical consequence is the necessity to reorient and reconstruct several articles in the Criminal Procedure Code and the Military Court Law that regulate the forum or jurisdiction of the court in connected cases. *A quo* provisions, which were previously the main legal basis for determining jurisdiction, can no longer be applied absolutely (*stricto sensu*) after *a quo* decision. *In abstracto*, these provisions remain in effect, but *in concreto*, the provisions regarding the forum do not apply to connected corruption cases that are the absolute authority of the KPK based on the constitutional interpretation provided by the Judges.

In addition to the issue of court jurisdiction (forum), another crucial issue that requires synchronization and harmonization in handling connected corruption cases is the investigation mechanism. Historically-normatively, Article 89 section (2) and (3) of the Criminal Procedure Code and Article 198 section (2) and (3) of the Military Court Law regulate the establishment of a permanent investigation team. This permanent team, according to *a quo* provisions, consists of elements of investigators from the Military Police, Military Prosecutors, and investigators from the general court environment (for example, Police or Prosecutor's Office investigators). The establishment of this permanent team is based on a joint decree between the Minister of Defense and the Minister in charge of law and human rights affairs (formerly the Minister of Justice, now the Minister of Law). The *ratio legis* or basic philosophy of establishing this permanent team is to ensure coordination, synergy, and effectiveness of law enforcement in cases involving legal subjects from two different jurisdictions (general courts and military courts) ([Pakpahan & Gaol, 2022](#)).

However, post-issuance of *a quo* decision which grants attributive authority and absolute priority to the KPK in handling connected corruption cases from the outset, the relevance and effectiveness of establishing a permanent investigation team as regulated in the Criminal Procedure Code and the Military Court Law is questioned, and even potentially counterproductive. If the KPK, based on the authority granted by *a quo* decision, has handled a connected corruption case from the outset, then the determination of the composition and involvement of investigators, and public prosecutors in *a quo* case is fully subject to the internal provisions regulated in the KPK Law, no longer to the provisions regarding the permanent team in the Criminal Procedure Code and the Military Court Law. This marks a fundamental paradigm shift in the mechanism for investigating connected corruption cases, from a collaborative model based on a permanent

team (mandated by the Criminal Procedure Code and the Military Court Law) to a single handling model by the KPK (based on the KPK Law and *a quo* decision).

The juridical-normative consequence of this paradigm shift is the necessity to amend Article 89 section (2) and (3) of the Criminal Procedure Code and Article 198 section (2) and (3) of the Military Court Law which regulates the establishment of a permanent investigation team in connected cases. This amendment must explicitly state an exception to the application of the provisions regarding the permanent team in connected corruption cases that are handled by the KPK from the outset. More than just fulfilling the formal aspect of compliance with *a quo* decision and realizing legal certainty, this amendment has the substantial objective of preventing dualism in the investigation mechanism which has the potential to cause conflicts of authority between the KPK and the permanent team, and ensuring the efficiency and effectiveness of law enforcement.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion, it can be concluded that Constitutional Court Decision Number 87/PUU-XXI/2023 has fundamental implications for the enforcement of connected corruption offenses in Indonesia. Furthermore, the interpretation of Article 42 of the KPK Law in the decision, constitutionally affirms the KPK's authority to conduct investigations, and prosecutions of corruption cases involving perpetrators subject to general courts and military courts, as long as the case is handled or discovered by the KPK from the outset. This conditionally constitutional interpretation not only provides legal certainty, but also strengthens the KPK's position as the leading institution in eradicating corruption, without jurisdictional discrimination. Thus, the decision effectively mitigates potential conflicts of authority between law enforcement agencies and strengthens the principle of equality before the law.

The logical-juridical consequence of *a quo* decision is the necessity to reconstruct the material content, particularly Article 42 of the KPK Law. The original provision of the article, using the phrase "coordinate and control," has been juridically proven to cause ambiguity and multiple interpretations, thus it is no longer relevant to the spirit of *a quo* decision. Reconstruction of the material content of the KPK Law should be directed at formulating norms that are firmer, straightforward, and operational, which explicitly state the KPK's authority to conduct its own investigations, and prosecutions of connected corruption cases. In addition, the KPK Law needs to be equipped with norms that technically regulate the coordination mechanism between the KPK and other law enforcement agencies, while upholding the principle of the KPK's independence and the principle of priority handling of cases by the KPK. In other words, amendment of the KPK Law is an unavoidable constitutional imperative.

Harmonization and synchronization of regulations are not sufficient only for the KPK Law. As formal criminal procedural laws applicable to each jurisdiction, the Criminal Procedure Code and the Military Court Law also require adjustments. The provisions in the Criminal Procedure Code and the Military Court Law that regulate the determination of jurisdiction (forum) and the mechanism for investigating connected cases must be amended to exclude their applicability to connected corruption cases that are handled by the KPK from the outset. In principle, amendments to the Criminal Procedure Code and the Military Court Law must be in line with *a quo* decision and the new formulation of Article 42 of the KPK Law, thus creating an integrated, harmonious, and effective criminal justice system in handling connected corruption cases, without sacrificing the principle of the KPK's independence and *equality before the law*.

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